

MARIN COUNTY PLANNING COMMISSION MINUTES
FEBRUARY 24, 2003
Marin County Civic Center, Room #328 - San Rafael, California

Commissioners Present: Allan Berland
Ross Herbertson
Don Dickenson
Jo Julin
Hank Barner
Steve Thompson (Out for Items 1-3)

Commissioners Absent: Ray Buddie

Staff Present: Alex Hinds, Agency Director
Brian C. Crawford, Deputy Director of Planning Services
Tim Haddad, Environmental Planning Coordinator
Jeremy Tejirian, Planner
Johanna Patri, Senior Planner

Alexandra Morales, Planning Commission Secretary

Approved on: ***APRIL 7, 2003***

Convened at 1:00 p.m.
Adjourned at 6:30 p.m.

1. ROUTINE TRANSACTIONS:

- a. M/s Barner/Julin, and passed unanimously of those present, to incorporate Staff Report into Minutes. Motion passed 5/0 (Commissioners Buddie and Thompson not present).
- b. Continuances: None.

2. COMMUNICATIONS

The Commission acknowledged staff's supplemental memorandum, including a letter from Richard J. Paoli regarding the Dickens Negative Declaration, Subdivision, and Design Review.

3. DIRECTOR'S ORAL REPORT

- a. Report on Progress of General Plan Updates

Staff informed the Commission that an overview of the Key Trends and Issues report will be presented at the next meeting. Workshops before the Commission will then be scheduled to discuss each of the sections. All interest groups will be notified once the workshops have been scheduled.

- b. Update on Board of Supervisors Actions

February 25, 2003: Waldo Point Harbor Master Plan

March 18, 2003: Draft Development Code

- c. Report on On-Going Development Projects

The Board of Supervisors hearing on the Moritz Appeal has been postponed until the Coastal Commission acts on the Hansen Brubaker project since the merits of both projects are very similar.

Staff informed Commissioners of the following upcoming projects: Strawberry Shopping Center remodeling (Strawberry); Whalers Point (Richardson Bay); redevelopment of the Fire Side property (San Rafael); and Thornberg's property (Marin City).

4. TIME FOR PUBLIC EXPRESSION ON ITEMS NOT ON TODAY'S AGENDA

Commissioner Dickenson asked staff to consult with County Counsel regarding a potential conflict of interest since he had worked on the Whaler's Point project approximately 20 years ago.

Agency Director Alex Hinds informed the Commission that the Marin County Community Development Agency would be presented with an award for their green business award program.

Staff informed the Commission that a farewell reception for Commissioner Garbarino was tentatively scheduled for March 17, 2003 @ 4:00 p.m. Confirmation forthcoming.

- 5A. DRAFT NEGATIVE DECLARATION OF ENVIRONMENTAL IMPACT: DICKENS
5B. TENTATIVE MAP/SUBDIVISION AND DESIGN REVIEW: DICKENS

Hearing to consider applications proposing to divide a 2.1-acre parcel into six single-family residential lots and Design Review for a single-family residence on proposed Lot 4. The Design Review would result in a two-story, 2,989 square foot single-family residence with an attached garage that would be located adjacent to the existing residence near the top of the hill on the property. The proposed residence would attain a maximum height of 29.5 feet above finished grade, and would maintain minimum setbacks of 25 feet from the proposed access easement along the western front property line and 7 feet from the southern side property line. The project site is currently accessed by an existing driveway that extends from the entry to North San Pedro Road to the existing single-family residence on Lot 6. The applicant proposes to widen and improve the existing driveway from the North San Pedro Road up to the northern boundary of proposed Lot 6. The first approximately 120 feet of the access way, referred to as Arbor Court, from North San Pedro Road would maintain a minimum paved width of 28 feet, and would then narrow to a width of 16 feet as it curves up the hill. The applicant also proposes drainage system improvements designed to collect on-site storm water through catch basins along Arbor Court and culverts that would direct water to drainage dissipaters along the northern property line. Domestic water and sanitary services to the proposed lots would be provided by the Marin Municipal Water District and the Las Gallinas Sanitary District, respectively. The existing sanitary sewer main that extends from North San Pedro Road to the existing residence on Lot 6 would be utilized by the other residences within the subdivision. The future residences would be connected to the sewer main by individual laterals, but the applicant does not propose increasing the capacity of the sewer main. Other public utilities, including gas, electric, and telephone, would be extended underground to the proposed undeveloped lots from utility easements along Arbor Court. The subject property is located at **277 North San Pedro Road, San Rafael**, and is further identified as **Assessor's Parcel 180-181-30**.

Prior to taking action on the merits of the project, the Planning Commission will consider the grant of a Negative Declaration of Environmental Impact for this project.

Jeremy Tejirian, Planner, summarized the merits of the proposed project as set forth in the staff report, further expanding on some of the key issues with regards to tree removal and replacement, grading and drainage, visual effects, and access. He concluded his presentation by responding to Commissioners' questions in the following manner:

- The Department of Public Works recommended that 8 feet of the median on North San Pedro Road, along the property frontage be removed in order to facilitate access in and out of the driveway. Every effort will be made to minimize the amount of center lane removal.
- At this time, it has not been determined whether the mine shaft should be filled or not.
- The Tentative Map will clearly show the easement necessary to extend the pathway around the tree.
- Drainage plans will be required for the two front lots at the time development is proposed to ensure that drainage does not sheet flow onto adjacent properties.

The hearing was opened to public testimony.

Brent Dickens, property co-owner/architect, commented on the planning review process, stating that neighbors have responded positively to the proposed project. He made himself available to respond to any questions.

Mark Dickens, property co-owner/potential builder, also made himself available to answer to any questions.

Mitchell Ablove, Marin Cove Homeowners Association (HOA), expressed concern that not all neighbors may have received notice of the hearing. He then read into the record a letter from the Board of Directors of Marin Cove HOA and a letter from Marcia Cannon. Basically, the concerns raised by the Board of Directors with regards to development of lot 4 related to height, drainage, and view impacts. With respect to Lot 5, concerns related to potential blockage of sunlight, erosion, and adequate visual screening.

Mark Davis, concerned neighbor, stated that while he was confident that the applicants would make every effort to address concerns raised, he recognized that there would be unavoidable impacts to adjacent properties. Some of the concerns raised related to: 1) proposed height; 2) the real need to shorten the median since the driveway could be shifted to the west; 3) the adequacy of the proposed drainage mitigations; and 4) abandonment of the well where one of the dissipaters would be.

Mr. Dickens (Brent) responded to some of the issues raised in the following manner: 1) the median will not be disturbed if it is not necessary; 2) the mine has been evaluated and found safe by the geologist, and will be for recreational purposes; 3) the large trees along the access road will not be removed; 4) some of the replacement trees have already been planted; 5) to the extent possible, pervious materials will be used in order to minimize drainage runoff.

In response to Commissioner Barner, Mr. Dickens (Brent) stated that a copy of the geologist's report attesting to the safety of the mine shaft was available.

Commissioner Barner expressed concern that while the applicants' intent to preserve trees as much as possible was good, he noted that trees continue to grow. Incorporating the existing trees into the design of the homes could require high maintenance in the future. Mr. Dickens (Brent) concurred and concluded by stating that every effort would be made to address Mr. Paoli's concerns as stated in the letter submitted by Mr. Ablove.

Mr. Dickens (Mark) further clarified the following issues: 1) the mine shaft consisted of a horizontal carving on the side of a rock and not a hole on the ground; 2) the footprints of Lots 4 and 6 were dictated by the trees; and 3) the well to be abandoned is a 16-inch, corrugated pipe that is buried on the ground.

In response to Commissioner Berland, Mr. Dickens (Mark) stated that the mine shaft could be blocked off or filled if necessary.

The hearing was closed to public testimony.

Staff responded to Commissioners' questions in the following manner:

- Additional details regarding drainage and hydrology improvements will be required when development is proposed. (*Thompson*)
- Condition #33a can be modified to indicate that the median will only BE modified if deemed necessary by staff. (*Herbertson*)
- Condition #33c requires an encroachment permit for construction of accessibility ramps, utilities, etc., within the road right-of-way, and not for actual structures. (*Berland*)
- The retaining wall along San Pedro Road is 3-4 feet high and less than 10 feet long. (*Barner*)
- Condition #33o could be modified to clarify that the concrete wall is necessary for the driveway, not the structures. (*Dickenson*)
- Recognizing the drainage sensitivity of the area, there will be ample opportunity to explore the use of pervious materials in order to minimize drainage problems. (*Julin*)
- The existing residence on Lot 6 will remain. (*Barner*)
- It was unknown whether demolition permits were obtained for the buildings that have been demolished. (*Barner*)

Commissioner Julin recognized that much thought had gone into this application. She supported staff's recommendations with the modifications suggested above.

Commissioner Barner stated that as long as there was a geologist report regarding the safety of the mine shaft, he was comfortable. Therefore, he asked that a copy of the report be placed in the file. He also asked that a note be made stating that the applicant recognizes that incorporating the existing trees into the design of the building could have implications and could require high maintenance, but that he holds the county harmless.

Commissioner Dickenson supported the basic concept of the project, but made the following suggestions:

- Compatibility of the proposed project with the neighborhood was questionable. Therefore, language could be modified to lower the threshold for triggering Design Review from 4,000 to 3,000 square feet.
- Rather than adding six feet to the building envelope on Lot 5, require that the northern building envelope be moved uphill six feet also in order to maintain the original size of the building envelope, but increase the setback from the Marin Cove property line and allow more separation and landscaping.
- Add a condition requiring that FAR be calculated, excluding access easements that encumber the lots.

Commissioners Thompson and Berland concurred with Commissioner Julin. Furthermore, Commissioner Berland believed it would be unfair to penalize this applicant by using a different Design Review threshold and FAR calculation. He did not believe that compatibility with the neighborhood required it, and imposing a different Design Review threshold and FAR calculation could have unintended consequences.

After taking into consideration the information presented, and expressing individual comments and concerns, the majority of the Commission agreed on the following:

- Use of the mine shaft will be reviewed and approved by the CDA director.
- Require a deed disclosure that incorporation of existing trees into the design of the structure could raise implications and require high maintenance.
- Modify Condition #33a to indicate that every effort would be made to minimize alteration of the median.
- Clarify Condition #33o to clarify that the concrete walls will only be used for the driveway.
- Shift the building envelope of Lot 5 six feet further uphill, but maintain its current size and shape.
- Reduce the threshold for triggering Design Review to 3,000 square feet, not including the garage.
- Add a condition requiring that FAR be calculated, excluding the Arbor Court easement.
- Incorporate the changes recommended in staff's supplemental memorandum to the Planning Commission.

M/s Dickenson/Julin, and passed unanimously of those present, to adopt the attached Resolution adopting a Negative Declaration of Environmental Impact for the Dickens Subdivision and Design Review, based on the findings set forth therein. Motion passed 6/0 (Commissioner Buddie not present).

M/s Dickenson/Berland, and passed unanimously of those present, to adopt the attached Resolution approving the Dickens Subdivision and Design Review, based on the findings and subject to the conditions set forth therein, as modified above. Motion passed 6/0 (Commissioner Buddie not present).

Chair Herbertson informed all parties of interest that action on this matter could be appealed to the Board of Supervisors within 10 (ten) calendar days.

MARIN COUNTY PLANNING COMMISSION

RESOLUTION NO. PC03-003

A RESOLUTION ADOPTING A NEGATIVE DECLARATION OF ENVIRONMENTAL IMPACT FOR THE DICKENS SUBDIVISION AND DESIGN REVIEW
ASSESSOR'S PARCEL NO. 180-181-30
277 NORTH SAN PEDRO ROAD, SAN RAFAEL

SECTION I: FINDINGS

- I. WHEREAS the applicants, Brent and Mark Dickens, are requesting Tentative Map/Subdivision approval to divide a 2.1-acre parcel into six single-family residential lots and Design Review approval for a single-family residence on proposed Lot 4. The proposed lots would range in size from 10,165 square feet to 21,767 square feet. The Design Review would result in a two-story, 2,989 square foot single-family residence with an attached garage that would be located adjacent to the existing residence near the top of the hill on the property. The proposed residence would attain a maximum height of 29.5 feet above finished grade, and would maintain minimum setbacks of 25 feet from the proposed access easement along the western front property line and 7 feet from the southern side property line. The project site is currently accessed by an existing driveway that extends from the entry to North San Pedro Road to the existing single-family residence on proposed Lot 6. The applicant proposes to widen and improve the existing driveway from the North San Pedro Road up to the northern boundary of proposed Lot 6. The first approximately 120 feet of the access way, referred to as Arbor Court, from North San Pedro Road would maintain a minimum paved width of 28 feet, and would then narrow to a width of 16 feet as it curves up the hill. The applicant also proposes drainage system improvements designed to collect on-site storm water through catch basins along Arbor Court and culverts that would direct water to drainage dissipaters along the northern property line. Domestic water and sanitary services to the proposed lots would be provided by the Marin Municipal Water District and the Las Gallinas Sanitary District, respectively. The existing sanitary sewer main that extends from North San Pedro Road to the existing residence on Lot 6 would be utilized by the other residences within the subdivision. The future residences would be connected to the sewer main by individual laterals, but the applicant does not propose increasing the capacity of the sewer main. Other public utilities, including gas, electric, and telephone, would be extended underground to the proposed undeveloped lots from utility easements along Arbor Court. The subject property is located at 277 North San Pedro Road, San Rafael, and is further identified as Assessor's Parcel 180-181-30.
- II. WHEREAS the Marin County Community Development Agency - Planning Division prepared an Initial Study for the project which determined that potential impacts relating to Land Use and Planning, Traffic and Circulation, Biological Resources, Noise, and Aesthetics/Visual Resources are avoided or mitigated to a point where no significant effects would occur because revisions in the project plans have been made by or agreed to by the applicant and there is no evidence that the project as revised may have a significant effect on the environment.
- III. WHEREAS the Marin County Environmental Coordinator determined that based on the Initial Study, a Negative Declaration of Environmental Impact was required for the project pursuant to CEQA.
- IV. WHEREAS on January 24, 2003, a Negative Declaration was completed and distributed to agencies and interested parties to commence a 20 day public review period for review and comment on the Negative Declaration, and a Notice of the public review period and hearing date to consider approval of the Negative Declaration was published in a general circulation newspaper pursuant to CEQA.

- V. WHEREAS after the close of the public review period on February 13, 2003, the Marin County Planning Commission conducted a public hearing on February 24, 2003, to receive public testimony on the adequacy of the Negative Declaration for approval.
- VI. WHEREAS, the Marin County Planning Commission has reviewed and considered the information contained in the Initial Study, Negative Declaration and comments and responses thereto.

SECTION II: ACTION

NOW, THEREFORE, BE IT RESOLVED that the Marin County Planning Commission hereby makes the following findings:

1. Notice of the public review period and hearing on the Negative Declaration was given as required by law and said hearing was conducted pursuant to Sections 15073 and 15074 of the State CEQA Guidelines and the County CEQA process.
2. All individuals, groups and agencies desiring to comment on the Negative Declaration were given the opportunity to address the Marin County Planning Commission.
3. The Negative Declaration for the project consists of the Initial Study, Negative Declaration document, and supporting information incorporated by reference therein.
4. The Negative Declaration was completed in compliance with the intent and requirements of CEQA, the State CEQA Guidelines, and the County EIR process.

SECTION III: VOTE

PASSED AND ADOPTED at the regular meeting of the Planning Commission of the County of Marin, State of California, on the 24th day of February, 2003, by the following vote to-wit:

AYES: Barner, Berland, Dickenson, Herbertson, Julin, Thompson

NOES:

ABSENT: Buddie

ROSS HERBERTSON, CHAIRMAN
MARIN COUNTY PLANNING COMMISSION

Attest:

Alexandra Morales
Planning Commission Secretary

MARIN COUNTY PLANNING COMMISSION

RESOLUTION NO. PC03-004

A RESOLUTION APPROVING WITH CONDITIONS
THE DICKENS SUBDIVISION AND DESIGN REVIEW
ASSESSOR'S PARCEL NO. 180-181-30
277 NORTH SAN PEDRO ROAD, SAN RAFAEL

SECTION I: FINDINGS

- I. WHEREAS the applicants, Brent and Mark Dickens, are requesting Tentative Map/Subdivision approval to divide a 2.1-acre parcel into six single-family residential lots and Design Review approval for a single-family residence on proposed Lot 4. The proposed lots would range in size from 10,165 square feet to 21,767 square feet. The Design Review would result in a two-story, 2,989 square foot single-family residence with an attached garage that would be located adjacent to the existing residence near the top of the hill on the property. The proposed residence would attain a maximum height of 29.5 feet above finished grade, and would maintain minimum setbacks of 25 feet from the proposed access easement along the western front property line and 7 feet from the southern side property line. The project site is currently accessed by an existing driveway that extends from the entry to North San Pedro Road to the existing single-family residence on proposed Lot 6. The applicant proposes to widen and improve the existing driveway from the North San Pedro Road up to the northern boundary of proposed Lot 6. The first approximately 120 feet of the access way, referred to as Arbor Court, from North San Pedro Road would maintain a minimum paved width of 28 feet, and would then narrow to a width of 16 feet as it curves up the hill. The applicant also proposes drainage system improvements designed to collect on-site storm water through catch basins along Arbor Court and culverts that would direct water to drainage dissipaters along the northern property line. Domestic water and sanitary services to the proposed lots would be provided by the Marin Municipal Water District and the Las Gallinas Sanitary District, respectively. The existing sanitary sewer main that extends from North San Pedro Road to the existing residence on Lot 6 would be utilized by the other residences within the subdivision. The future residences would be connected to the sewer main by individual laterals, but the applicant does not propose increasing the capacity of the sewer main. Other public utilities, including gas, electric, and telephone, would be extended underground to the proposed undeveloped lots from utility easements along Arbor Court. The subject property is located at 277 North San Pedro Road, San Rafael, and is further identified as Assessor's Parcel 180-181-30.
- II. WHEREAS the Marin County Planning Commission held a duly noticed public hearing on February 24, 2003, to consider the merits of the project, and hear testimony in favor of and in opposition to the project.
- III. WHEREAS the Marin County Planning Commission has reviewed and considered testimony in favor of and against a proposed Negative Declaration and finds, subject to the recommended mitigation and monitoring measures and the recommended conditions of project approval contained herein, that this project will not result in any potential, significant environmental impacts, and qualifies for a Negative Declaration of Environmental Impact in compliance with the California Environmental Quality Act (CEQA), the State CEQA Guidelines, and the County CEQA process.
- IV. WHEREAS the Marin County Planning Commission finds that the proposed project would be consistent with the Marin Countywide Plan because:
 1. The proposed project would be consistent with the governing Countywide Plan Single-Family Residential land use designation (SF6);

2. The proposed project would provide housing opportunities on an infill site which is served by existing roadways, and necessary public and community facilities within the City Centered Corridor;
 3. The proposed project would comply with Marin County standards for flood control, geotechnical engineering, and seismic safety, and include improvements to protect lives and property from hazard;
 4. The proposed project would comply with the governing development standards related to roadway construction, parking, grading, drainage, flood control and utility improvements as verified by the Department of Public Works; (Title 24 of the Marin County Code)
 5. The proposed project would not cause significant adverse impacts on water supply, fire protection, waste disposal, schools, traffic and circulation, or their services; and
 6. The proposed project would minimize soil disturbance and maximize retention of natural vegetation.
- V. WHEREAS the Marin County Planning Commission finds that the proposed project would be consistent with the governing Single Family Residential, (R-A) zoning because the proposed division of the subject 2.1-acre property into six single-family residential lots would result in parcels ranging in size from 10,165 square feet to 21,767 square feet, which significantly exceed the 7,500 square foot minimum lot size requirements set forth by the zoning district and comply with the minimum lot size requirements established by the Lot-Slope Ordinance.
- VI. WHEREAS the Marin County Planning Commission finds that the proposed project is consistent with the mandatory findings to approve a Subdivision (Tentative Map), as established by Section 20.32.110 of Marin County Code, as follows:

1. **The proposed map is consistent with applicable general and specific plans.**

The proposed project is consistent with the Marin Countywide Plan because the land use designation specified for the subject property is Single Family, Residential, four to seven units per acre (SF6), and the proposed single-family residential, six-lot Subdivision on a 2.1 acre parcel would result in an overall density well below the permitted density range. The proposed six lot Subdivision is consistent with the goals and policies of the Countywide Plan because it provides for additional residential opportunities in the City Centered Corridor without adversely affecting natural resources, agricultural areas, archaeological resources, public open spaces, wetlands and other sensitive habitat areas or disrupting existing public services for water supply, fire protection, waste disposal, schools, traffic, circulation or other services.

2. **The design or improvement of the proposed subdivision is consistent with applicable general and specific plans.**

The design and improvements of the proposed land division are consistent with the Countywide Plan polices because, as modified by conditions of approval, the location, layout and design of the proposed lots, building envelopes, future single-family development, vehicular access, utilities, and landscaping will: (1) meet design goals and policies established by the Countywide Plan regarding vegetation preservation and retention and preservation of the natural beauty and quality of life in the Santa Venetia community; and (2) satisfy requirements established in Titles 20 (Subdivision), 22 (Zoning), and 24 (Development Standards), including those that will address maximum permitted floor area, setbacks, height, off-street parking, and development guidelines to minimize grading and tree removal for the future residential improvements.

3. **The site is physically suitable for the type of development.**

The subject property is physically suitable for the type of development proposed because, as called for by the Countywide Plan and permitted by the R-A zoning district, each lot within the proposed Subdivision would provide an adequate building site for low-density, infill single-family residential development with County-approved access and utilities and services without significant disruption to the surrounding natural landscape or the residential community of Santa Venetia.

4. **The site is physically suitable for the proposed density of development.**

The site is physically suitable for the proposed density of development because the proposed subdivision of the 2.1-acre property into six residential lots would meet the minimum lot size requirements set forth by the Countywide Plan land use designation, the governing R-A zoning, and the County Slope Ordinance. Further, the project would not result in significant adverse physical impacts relating to unstable soil conditions, archaeological disturbances or drainage alterations as discussed in the staff analysis of the project and the attached Initial Study.

5. **The design of the subdivision or proposed improvement is not likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat.**

The design of the subdivision is not likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat because the subject property does not provide habitat for any special-status species, native trees would be retained to the greatest extent possible, and because future development would be served by an existing roadway.

6. **The design of the subdivision is not likely to cause serious public health problems.**

The design of the subdivision, proposed improvements, and future single-family residential development is not likely to cause serious public health problems because the proposed project would incorporate the installation of drainage improvements and any future residential improvements would comply with the minimum fire safety standards as required by the San Rafael Fire Protection District. In addition, the natural landscape would be retained through restricting development to specific building envelopes on Lots 4 and 5.

7. **The design of the subdivision or type of improvement will not conflict with easements, acquired by the public at large, for access through or use of property within the proposed subdivision.**

The design of the proposed project would not conflict with easements, acquired by the public at large, for access through or use of property within the proposed subdivision because no public access easements exist within or immediately adjacent to the project site. Further, pursuant to conditions of project approval, the applicant shall be required to widen the private driveway which would improve access through the subject property.

VII. WHEREAS the Marin County Planning Commission finds that the proposed project is consistent with the mandatory findings to approve a Design Review, as established by Section 22.82.040 of Marin County Code, as follows:

The proposed residence and garage would comply with all development standards applicable to the governing zoning district, and would be of a comparable height, size and scale with other structures existing in the surrounding community. Additionally, the project would utilize creative design features that break up the mass of the structure such as articulations in the building facades, decking and fenestration.

The proposed residence and garage would not limit or inhibit the use or enjoyment of other properties in the vicinity because the improvements are consistent with the uses permitted by the governing zoning district and would maintain adequate setbacks from all property lines and other buildings on the subject and surrounding properties. Additionally, the project has been designed to protect and preserve existing views, light, and privacy of surrounding residences.

The proposed residence and garage would minimize potential adverse physical and visual impacts because it would be constructed of building materials with colors that compliment the surrounding natural environment and would be consistent with the surrounding community character. Furthermore, the project includes the protection of existing trees that would reduce and soften visual impacts of the new construction, stabilize and prevent the erosion of graded soils around the structure and enhance the privacy of the occupants of the subject and surrounding properties.

Finally, the design of the proposed residence and garage would be consistent with the current goals and policies contained in the Marin Countywide Plan and development standards in the Marin County Code to ensure that it minimizes alterations to the natural environment by reducing grading activities and replacing any significant trees removed for development.

SECTION II: CONDITIONS OF PROJECT APPROVAL

NOW, THEREFORE, BE IT RESOLVED that the Marin County Planning Commission hereby approves the Dickens Subdivision and Design Review (SD 00-2 and DR 01-103) subject to the following conditions:

Marin County Community Development Agency-Planning Division

1. The Dickens Subdivision and Design Review is hereby approved to subdivide Assessor's Parcel Number 180-181-30 into six lots and construct a new single-family residence on Lot 4. The subdivision of the 2.1-acre property is approved with six lots with varying sizes as shown below.

<u>Lot Number</u>	<u>Lot Size (sq.ft.)</u>	<u>Average Width (ft.)</u>	<u>Average Slope</u>	<u>Development Status</u>
1	10,165	86.1	less than 8 percent	vacant
2	11,950	101.5	less than 8 percent	vacant
3	12,649	74	less than 8 percent	vacant
4	18,673	93	16 percent	vacant
5	21,767	92.5	16 percent	vacant
6	16,289	98.9	19 percent	single-family residence

The residential development of Lots 1 through 3, and lot 5, is not proposed as part of the current application. The sponsor has submitted proposed building envelopes for Lots 4, 5, and 6, that would be more restrictive than required by the R-A zoning district. The building envelopes for the future development of Lots 1, 2, and 3 would be based on the setback requirements of the governing R-A zoning.

The approved project shall include widening and improving the existing driveway from the North San Pedro Road up to the northern boundary of proposed Lot 6. The first approximately 120 feet of the access way, referred to as Arbor Court, from North San Pedro Road shall maintain a minimum paved width of 28 feet, and shall then narrow to a width of 16 feet as it curves up the hill. The proposed approved access way alignment is shown on the building envelope sheet of the plans. The applicant shall also construct drainage system improvements designed to collect on-site storm water through catch basins along Arbor Court and culverts that shall direct water to drainage dissipaters.

This approval also allows the construction of a two-story, 2,989 square foot single-family residence with an attached garage on Lot 4 of the approved Subdivision. The residence shall attain a maximum height of 29.5 feet above finished grade, and shall maintain minimum setbacks of 25 feet from the proposed access easement along the western front property line and 7 feet from the southern side property line.

2. EXCEPT AS MODIFIED HEREIN, subsequent development, use of, and permits for, the subject property shall be in substantial conformance with application materials on file with the Marin County Community Development Agency Department consisting of materials samples, lighting details, and 11 sheets of plans labeled Exhibit "A": The Arbor Subdivision" prepared by Irving Schwartz Associates, and Dickens Architecture, with final revisions submitted December 5, 2002.
3. BEFORE RECORDATION OF THE FINAL MAP, OR ISSUANCE OF ANY BUILDING, GRADING, OR OTHER CONSTRUCTION PERMITS, applicants shall submit a "Conforming Tentative Map" that accurately shows the design and improvements of the subdivision.
 - A. The "Conforming Tentative Map" shall show that the road alignment and lot lines have been revised in conformance with the Building Envelopes sheet of "Exhibit A," except that the building envelope for Lot 5 shall be shifted 15 feet towards the northern front property line and 6 feet towards the eastern side property line, resulting in a 39-foot setback from the access easement along the front property line, and a 14-foot setback from the western side property line.
 - B. The "Conforming Tentative Map" shall show that the access easement terminating on Lot 6 shall be modified in conformance with the Building Envelope plan, and that the remaining portion of the driveway on Lot 6 shall be encumbered with a fire turnaround easement in conformance with the Tentative Map fire turnaround shown on the Schwarts Inc. Tentative Map, and the fire turnaround shall be in conformance with the requirements of the San Rafael Fire Department and the Marin County Department of Public Works.
 - C. The parking easement on Lot 5 shown on the Arbor Subdivision Supplemental Information sheet shall be shown on the "Conforming Tentative Map," and shall conform with the requirements of the Department of Public Works.
 - D. The drainage easement and location of the dissipater on Lot 3 shall be extended approximately 15 feet parallel to the northern property line.
 - E. All easements shown in the "Conforming Tentative Map" shall be of the same kind and character as the approved Tentative Map.
 - F. There have been minor alterations to the property since the Tentative Map was prepared. The Tentative Map shows an accessory structure on the lower portion of the property, and indicates that it shall remain, but the accessory structure referred to has already been demolished by the applicants. Three trees shown on the northern side of Lot 5 that were destroyed by high winds during a storm in January, 2002, and have been removed, shall be eliminated from the plans.
 - G. The dissipater shown on the Tentative Map adjacent to the rear property line on Lot 3 shall be moved approximately 15 feet northwest, parallel to the rear property line, provided Department of Public Works staff approves the revision.

- H. The "Conforming Tentative Map" shall be submitted for the review and approval of the Planning Division and Department of Public Works, Land Use and Water Resources section. All improvements shown on the "Conforming Tentative Map" shall be designed and constructed in conformance with Marin County Code and the requirements of the Marin County Planning Division and Department of Public Works.
- I. The lot area calculations shall be revised to exclude those portions of the approved lots that are encumbered by the Arbor Court easement. The revised lot area calculations shall be used to calculate the future floor area ratio of future residences and accessory structures, in accordance with other calculations necessary for development permits.
4. BEFORE ISSUANCE OF ANY BUILDING PERMIT FOR ANY NEW RESIDENCE, the applicants shall file a Final Map with the County Recorder to record the subdivision approved herein, and such map shall be recorded. The required Final Map must be in exact conformance with the "Conforming Tentative Map" as required by Condition 3 above. An addendum to the Final Map shall also be recorded that shows the approved building envelopes in addition to all other information shown on the Final Map. Prior to recordation of the Final Map, the Final Map must be submitted to the County Surveyor for review and approval. Final Map data and form must be in compliance with provisions of Chapters 20.36 and 20.40 of the Marin County Code.
 5. BEFORE ISSUANCE OF ANY BUILDING, GRADING, OR OTHER CONSTRUCTION PERMITS, the applicants shall replace the fence shown on the Tentative Map running parallel to the northwestern property line of approved Lot 1 with a 6-foot high fence. The lower 4 feet of the fence shall be solid, and the upper 2-feet shall be lattice or similar partially open design.
 6. The easement that provides for access to Assessor's Parcel 180-181-18 shall not be adversely affected by the approved project. The easement shall be kept free of construction materials and equipment that would impede the access to Assessor's Parcel 180-181-18.
 7. Approved exterior building materials and colors for the approved residence on Lot 6 are identified as "Exhibit B," consisting of a materials samples board and lighting detail. All flashing, metal work and trim shall be treated or painted an appropriately subdued, nonreflective color.
 8. Future development of a single family residence which exceeds a floor area of 3,000 square feet and/or a maximum building height of 18 feet above natural or finished grade, whichever is more restrictive, on any lot created by this subdivision shall be subject to Design Review in accordance with procedures, standards and criteria set forth in the Zoning code and associated design guidelines for planned districts, hillsides, or a defined community area.
 9. The future development of all lots shall minimize impervious surfaces. Plans shall include calculations of the area of each lot that would be covered by impervious surfaces. If the lot coverage area exceeds 30 percent of the area of the lot, then semi-pervious surface materials shall be utilized for the additional area in conformance with the "Start at the Source" guidelines issued by BASMAA, and the requirements of the Department of Public Works. All areas of lot coverage that exceed 30 percent of the lot area shall utilize semi-pervious paving materials, and other Best Management Practices shall be required at the discretion of the Planning Division and Department of Public Works.
 10. The property owner shall be responsible for ensuring on-going maintenance and preservation of the existing and approved trees needed for screening the structure(s) from off-site locations. Only those trees shown on the site plan as proposed for removal, if any, may be removed. No other existing trees on the subject property shall be removed except to comply with local and State fire safety regulations, to prevent the spread of disease as required by the State Food and Agriculture Department, and to prevent reasonably safety hazards to people and property. Any proposed tree removal must be done in compliance with the provisions contained in the Marin County Native Tree Preservation and Protection Ordinance (Ord. 3291).

11. If archaeological resources are discovered during construction, all work at the site shall cease and the applicant shall contact the Marin County Environmental Coordinator. A registered archeologist, chosen by the County and paid for by the applicant, shall assess the site and shall submit a written report to the Community Development Agency Director advancing appropriate mitigations to protect the resources discovered. No work at the site may recommence without approval of the Community Development Director. All future development of the site must be consistent with findings and recommendations of the archaeological report as approved by the Community Development Director. If the report identifies significant resources, amendment of the permit may be required to implement mitigations to protect resources.
12. All utility connections and extensions serving the project shall be installed underground.
13. BEFORE ISSUANCE OF ANY BUILDING, GRADING, OR OTHER CONSTRUCTION PERMITS, the applicant shall prepare and submit a construction management plan for review and approval by the Community Development Agency Director, the Department of Public Works and the San Rafael Fire Department which:
 - A. Addresses construction traffic control (including flag persons, appropriate signs, etc.) to ensure that vehicular traffic and pedestrian movement will continue to occur safely during construction periods. Construction trucks and equipment traffic shall be limited to hours established under Condition 7 below.
 - B. Creates a program for public notification to residences along the roadway regarding the construction phasing/staging program. The program shall address potential road closure events (i.e., concrete trucks, construction material deliveries, etc.). It shall be the responsibility of the holder of the Building Permit to notify owners of properties along the roadway at least 24 hours before any closure or blocking of the roadway. Closure of the road shall be limited to periods of 30 minutes from the hours of 9:00 AM to 4:00 PM, Monday through Friday, and 9:00 AM to 3:30 PM on Saturday.
 - C. Identifies a construction management coordinator whose name and telephone number shall be available and posted at the construction site and who shall respond to complaints and questions from area residents.
 - D. Designates a construction staging area(s) for parking of construction workers' personal vehicles, construction materials and equipment that do not interfere with the use of the driveway by affected neighbors, especially the access for Assessor's Parcel 180-181-18.
 - E. Submit a video of the driveway for Assessor's Parcel 180-181-18 that documents the condition of the driveway to the Department of Public Works prior to the construction of the project to provide staff with a baseline for future driveway repairs. The property owner/Building Permit holder shall immediately repair damage to the driveway for Assessor's Parcel 180-181-18 caused by construction vehicles and activities and utilities installation.
 - F. At no time shall the approved development interfere with access to Assessor's Parcel 180-181-18.
14. The owner(s) of the subject property shall execute and record with the Marin County Recorder a statement of acknowledgement containing the disclosure statement in Section 23.03.050(1) of Marin County Code on a form provided by the Community Development Agency - Planning Division.

15. Pursuant to California Government Code Section 66474.9(b), the County of Marin shall require that the subdivider defend, indemnify, and hold harmless the County or its agents, officers, and employees from any claim, action, or proceeding against the County or its agents, officers and employees to attack, set aside, void, or annul, the approval by the County of the Dickens Subdivision, which action is brought within the time period provided for in California Government Code Section 66499.37. The County shall promptly notify the subdivider of any claim, action, or proceeding and the County shall cooperate fully in the defense. If the County fails to cooperate fully in the defense, the subdivider shall not thereafter be responsible to defend, indemnify, or hold harmless the County.
16. The applicants shall construct or cause to be constructed all improvements required by Title 20 (Subdivision), Title 24 (Development Standards), and any improvements shown on or required as a condition of approval of the Subdivision approved herein, including site grading, utilities, drainage, stream stabilization, and roadway improvements. Prior to recordation of the Final Map and commencement of any construction work, the subdivider shall submit Improvement Plans for review and approval of the Marin County Department of Public Works, as specified in Title 24 of the Marin County Code. The required subdivision improvements must be completed before occupancy of any new structure within the subdivision.
17. The required Improvement Plans shall comply with the following development and design criteria to the satisfaction of the Community Development Agency Director:
 - a) Maximum retention of trees and other significant vegetation shall be required.
 - b) Grading and retaining walls must be minimized and natural topographic features must be retained.
 - c) Any retaining walls shall be treated with texture, colors and/or landscaping to reduce any visual impacts.
18. BEFORE ISSUANCE OF ANY BUILDING, GRADING, OR OTHER CONSTRUCTION PERMITS, planning staff will verify that a revised plan which shows that the building envelope for Lot 5 has been modified in conformance with the Modified Building Envelope for Lot 5 included with "Exhibit A" which would relocate the building envelope 15 feet northeast and extend it upslope to the east to maintain a 6 foot setback to the approved access shown on the Building Envelope sheet of "Exhibit A."
19. BEFORE ISSUANCE OF ANY BUILDING, GRADING, OR OTHER CONSTRUCTION PERMITS, the project sponsor shall submit a tree replacement plan for review and approval by planning staff which specifically addresses the replacement of native trees proposed for removal. Native trees proposed for removal shall be replaced with native trees at a ratio of 2:1. The recommended 2:1 ratio may be administratively reduced if it is determined that a 2:1 replacement requirement is infeasible or undesirable from a visual or biological standpoint, or if it would adversely affect the health of existing trees on the property. The tree replacement plan shall specify the number, location, species and size of replacement trees. The 3 oak trees shown on the Design Review site plan shall be planted, and at least 3 additional oaks shall be planted in an appropriate area of the site.
20. BEFORE ISSUANCE OF ANY BUILDING, GRADING, OR OTHER CONSTRUCTION PERMITS, the sponsor shall install temporary construction fencing around the dripline of the existing trees in the vicinity of any area of grading, construction, materials storage, soil stockpiling, or other construction activity. The fencing is intended to protect existing vegetation during construction and shall remain until all construction activity is complete. Fencing shall not be required where improvements have been approved within the dripline area of trees.

21. BEFORE ISSUANCE OF ANY BUILDING, GRADING, OR OTHER CONSTRUCTION PERMITS, the sponsor shall submit a report prepared by a licensed arborist, landscape architect, or forester, that certifies the adequacy of the protective fencing installed and that identifies additional tree protection measures, if necessary, for review and approval by the Community Development Agency, prior to commencement of construction.
22. BEFORE FINAL INSPECTION of construction of the subdivision improvements or the construction of the residence on Lot 4, the sponsor shall submit a letter from an arborist, landscape architect, or forester certifying that the recommendations in the report submitted in compliance with mitigation A-2-d were implemented by the sponsor during construction.
23. Unless a public emergency services provider recommends otherwise or unique circumstances necessitate a change, street addresses for the approved lots shall be as follows:

Lot #	Street Address
1	271 North San Pedro Road
2	285 North San Pedro Road
3	283 North San Pedro Road
4	279 North San Pedro Road
5	281 North San Pedro Road
6	277 North San Pedro Road

24. These Subdivision conditions of project approval contained herein must be recorded for each lot concurrently with the recordation of the Final Map.
25. BEFORE APPROVAL OF IMPROVEMENT PLANS AND ISSUANCE OF A GRADING PERMIT, the following items must be submitted to the Community Development Agency, Planning Division:
 - A. Verification from the Marin Municipal Water District, which confirms that all required legal, financial, and construction agreements have been applied for and completed to install new water distribution facilities for the approved lots.
 - B. Verification from the San Rafael Fire Protection District, which confirms that all required legal, financial, and/or construction agreements have been applied for and completed.
 - C. Verification from the Las Gallinas Sanitary District, which confirms that all required legal, financial, and/or construction agreements have been applied for and completed to install new sewer connections for the approved lots.
 - D. Verification from Pacific Gas and Electric, which confirms that all required legal, financial, easements, contracts, and construction agreements have been applied for and completed to provide underground power lines serving the approved lots.
26. Hours of site preparation and actual construction, shall be limited to 7:00 a.m. to 5:00 p.m., Monday through Friday, and 9:00 a.m. to 4:00 p.m. on Saturday. No site preparation or construction shall be permitted on Sundays or holidays. The approved hours of construction must be noted on any subsequent development plans. At the applicant's request, the Director may administratively authorize minor modifications to these hours of construction.

27. During site preparation and actual construction, the applicants shall ensure that construction crews undertake a program of dust control, including but not limited to: routinely watering graded surfaces as needed to prevent dust blowing, covering and/or watering trucks carrying soil, and frequently cleaning soil carried by construction vehicle tires from the site onto the road.
28. All soils disturbed by development of the project shall be reseeded with native grasses or wildflowers to control erosion.
29. The applicant shall be responsible for ensuring that all construction vehicles, equipment and materials are stored on site and off the street so that pedestrian and vehicles can pass safely at all times.
30. The applicant shall be responsible for ensuring that the number of construction vehicles shall be limited to the minimum number necessary to complete the project.
31. BEFORE FRAMING INSPECTION, the applicant shall provide a written determination from a licensed surveyor or engineer verifying that the approved residence on Lot 4 complies with the approved height and setbacks.
32. Any changes or additions to the project shall be submitted to the Community Development Agency for review and approval before the contemplated modifications may be initiated.

Department of Public Works-Land Use and Water Resources

33. BEFORE APPROVAL OF IMPROVEMENT PLANS OR ISSUANCE OF GRADING PERMITS, the applicant shall comply with the following requirements:
 - A. The applicants shall submit revised plans which show that a portion of the western end of the median island shall be removed to improve the left turn capability from the entrance of the project site. The minimum extent of the median necessary for traffic safety shall be removed, as determined by the Department of Public Works.
 - B. Applicant shall obtain all necessary permits from other agencies.
 - C. An Encroachment Permit shall be required for all construction within the road right-of-way.
 - D. A separate Building Permit is required for site/driveway retaining walls with a height more than 4' (or 3' when backfill area is sloped or has a surcharge).
 - E. Fill slopes shall be no steeper than 2 horizontal to 1 vertical without a soil engineer's review and approval.
 - F. Submit Erosion and Siltation Control plans.
 - G. Improvement plans shall be prepared in accordance with Marin County Code (MCC) Title 20, Subdivisions, and must conform to MCC, Title 24, Development Standards or as approved by the Department of Public Works.
 - H. The Improvement Plans shall show the driveway profile, cross section, slopes, drainage, and N San Pedro Road approaches and improvements.
 - I. A "Stability Report" must be submitted, prepared by a Registered Civil Engineer with soils engineering expertise or a Registered Geotechnical Engineer. The report must attest to the suitability and geological feasibility of placing buildings on the sites and identifying any drainage or soils problems which the design of the project must accommodate. The existing cave on Lot 6 shall be evaluated for safety and

stability, and if the cave is found to be unsafe, it shall be filled in conformance with the recommendations of the geotechnical Report and the Department of Public Works requirements.

- J. Maximum slope for driveway turnaround and parking on Lots 5 & 6 shall not exceed 8%.
 - K. Provide hydraulic and hydrology calculations for improvements which verify that the approved project would not result in substantial adverse impacts to surrounding properties.
 - L. Provide a detailed drainage plan for the project.
 - M. The plans must be reviewed and approved by a Registered Soils Engineer or a Registered Civil Engineer with soils expertise. Proof of the same may be by the engineer's stamp and signature on the plans or by letter.
 - N. Timber walls on the upslope side of roads or driveways shall not exceed 3 feet in height. Walls higher than 3 feet shall be concrete.
 - O. A concrete bulkhead shall be used underneath the driveway immediately adjacent to N. San Pedro Road.
 - P. Revised Sections A-A and B-B so that asphalt is over base material.
 - Q. Revise Plans to improve curbs and ramps adjacent to North San Pedro Road to comply with California Title 24 accessibility standards.
34. Before Recordation of Final Map the applicants shall submit a maintenance agreement(s) that provides for the ability of the drainage and roadway improvements to be maintained by the associated parcels. Such agreement shall be provided to the Department of Public Works for review and approval. The agreement(s) shall be recorded concurrent with the Final Map.
35. Before Issuance of Building Permit for the approved residence on Lot 4:
- A. The plans must be reviewed and approved by a Registered Soils Engineer or a Registered Civil Engineer with soils expertise. Proof of the same may be by the engineer's stamp and signature on the plans or by letter.
 - B. Note on the plans that prior to final inspection, the Design Engineer/Architect shall certify to the County in writing that all grading, drainage, and site retaining wall construction was done in accordance with plans and field directions, and that site improvements shall be inspected by a Department of Public Works engineer.

SECTION III: VESTING AND APPEAL RIGHTS

NOW, THEREFORE BE IT FURTHER RESOLVED that the applicant must vest this Subdivision approval by filing a final map no later than February 24, 2006, or all rights granted in this approval shall lapse unless the applicant applies for an extension at least 30 days before the expiration date above and the Agency Director approves it. An extension to the Subdivision approval of up to three years may be granted for cause pursuant to Section 20.34.060 of the Marin County Code. The Design Review approval shall be vested by recordation of a Final Map in addition to obtaining a Building Permit for the residence and performing a substantial amount of work in reliance with the permit.

NOW, THEREFORE BE IT FURTHER RESOLVED that this decision is final unless appealed to the Marin County Board of Supervisors. A Petition for Appeal and a \$675.00 filing fee must be submitted in the Community Development Agency - Planning Division, Room 308, Civic Center, San Rafael, no later than **4:00 p.m.** on **March 3, 2003**.

SECTION IV: VOTE

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the County of Marin, State of California, on the 24th day of February, 2003, by the following vote to wit:

AYES: Barner, Berland, Dickenson, Herbertson, Julin, Thompson

NOES:

ABSENT: Buddie

ROSS HERBERTSON, CHAIRMAN
MARIN COUNTY PLANNING COMMISSION

Attest:

Alexandra Morales
Planning Commission Secretary

- 6A. DRAFT NEGATIVE DECLARATION OF ENVIRONMENTAL IMPACT: THREE SONS, LLC (NICK'S COVE) MASTER PLAN AMENDMENT AND MASTER PLAN WAIVER REQUEST/COASTAL PERMIT/PRECISE DEVELOPMENT PLAN/TIDELANDS PERMIT
- 6B. MASTER PLAN AMENDMENT AND MASTER PLAN WAIVER REQUEST/COASTAL PERMIT/PRECISE DEVELOPMENT PLAN/TIDELANDS PERMIT: THREE SONS, LLC (NICK'S COVE)

Hearing to consider the proposed project as a request for a Master Plan Amendment for proposed improvements on the "Lands of Three Sons, LLC") and a Master Plan Waiver request for construction of the off-site septic system and well on the "Lands of Zimmerman", and Coastal Permit, Precise Development Plan, and Tidelands Permit approvals for the restoration of the commercial facilities associated with Nick's Cove. The project consists of various land use programs and the physical redevelopment of Nick's Cove to provide commercial and recreational uses to serve both the local community and visiting tourists. The major objectives of the land use program are to: (a) support the economic vitality of the eastern shore of Tomales Bay; (b) restore and preserve an historic resource; and (c) provide amenities to the general public and public access to Tomales Bay. In general, the project proposes to provide 11 over-night guest units, one on-site manager's residence, a restaurant facility, a pier for public access (including viewing and fishing and access to four boat slips within Tomales Bay) and various site improvements including on-site parking with valet service, water storage tanks, underground utility lines, stream restoration and landscaping modifications to the existing water source from springs on the "Lands of Poncia" (Assessor's Parcel 104-110-10) and off-site sewage disposal and water systems on the "Lands of Zimmerman" (Assessor's Parcel 104-110-11) to serve the commercial project. The subject property is located at **23240 State Route One, Marshall (Assessor's Parcel 104-140-02), 23115 State Route One, Marshall (Assessor's Parcel 104-150-01) and 23900 State Route One (Assessor's Parcel 104-110-11).**

Prior to taking action on the merits of the project, the Planning Commission will consider the grant of a Negative Declaration of Environmental Impact for this project.

Alex Hinds, Agency Director, begun by stating that recognizing the sensitivity and beauty of West Marin, staff has been working closely with the applicant to make sure that the scope of the project is considered a restoration project, and not an expanded use with new development. Towards that end, other issues were also addressed, i.e., increasing concerns regarding septic systems being located near Tomales Bay. In considering how to best address said concern, it was determined that the septic system for the proposed restoration project could be located on an adjacent property across State Route One without impacting the existing agricultural use of that property. It is not the intent to replace three acres of grazing land with leachfields, rather it is anticipated that controlled grazing could still be permitted over the leachfield and the added water from the new well would improve the quality of the grazing lands.

Johanna Patri, project planner, noted staff's supplemental memorandum dated February 24, 2003 which was provided to the Commission just before the hearing recommending modifications to the Department of Public Works and Environmental Health Division's conditions of approval. The supplemental memorandum also included responses to comments received regarding the Negative Declaration. Even though some comments were received subsequent to the close of the comment period, responses were provided. However, staff noted that none of the comments received on the Negative Declaration raised new or severe impacts not already considered in the Negative Declaration. According to CEQA, it has been determined that modifications and additions to the recommended conditions of approval were not for mitigation purposes, but simply to verify current County standards. Additionally, it was also determined that said proposed modifications were not intended to mitigate potential impacts, but rather were intended to clarify conditions already addressed in the proposed Negative Declaration and merit issues of the project.

Staff then proceeded to summarize the merits of the proposed project, as set forth in the staff report highlighting the property's history, application review process, septic system, proposed improvements, aesthetics and visual resource protection mitigations, and energy efficiency proposals. She concluded by responding to Commissioners' comments in the following manner:

- A specific finding to the fact that approval of the proposed project would not be precedent setting was not included, but could be.
- The intended agricultural use for the leachfield area was controlled grazing, not crops.
- While the end of Pier D appears to be off-site, a condition of approval will be added requiring that all proposed development is kept within the subject property.
- At one point Department of Public Works calculated parking requirements for restaurants based on the number of seats. However, it is now calculated based on square footage identified as public areas. Therefore, although the gross deck and restaurant area is calculated at 5,500 square feet, only 2,400 square feet were identified for public use. Areas such as the kitchen, area behind the bar, etc., were not included in the square footage used to calculate parking requirements.
- While there were no photographs showing that the cottages once had decks, the structural appearance appears to have had balconies.
- Unit C6 has been vacant probably since 1973.
- While building X2 appears to be within SCA setbacks, no new development within the SCA.
- Conditions of approval require that all deliveries be made before business hours right in front of the restaurant in order to avoid conflicts with parking.

Commissioner Barner expressed concern that given the distance between the parking lot and the restaurant, parking within the roadway would result. Staff responded that posting of "No Parking" signs could be explored with Cal-Trans.

The hearing was opened to public testimony.

Pat Kuleto, project sponsor, commented on the application review process, in which the applicants, staff, applicable agencies, and community members worked closely together to come up with an acceptable project. As a result, most of the community members have signed a petition in support of the proposed project. Furthermore, he stated that the proposed project would be nothing but an asset to the community because it would: 1) restore the restaurant and bring it up to code; 2) not only upgrade the septic system, but would place it at a safe distance away from the Bay; 3) upgrade water and fire systems; and 4) improve parking conditions. He then introduced the development team, who was present to respond to any questions, and consisted of Gary Giacomini (project attorney), Bill Kirsch (project architect), Scott Davidson (planning consultant), Robert Harrison (traffic engineer), Dianne Renshaw (environmental consultant), Steve Arago (civil engineer), and Dewey Livingston (historian consultant).

Project architect Bill Kirsch responded to some of the questions raised by the Commissioners in the following manner:

- A map prepared by the applicant shows that the gross square footage of the restaurant building was 3,200 square feet plus 900 square feet of area for outdoor dining. If the total square footage is below 4,000 square feet, the usable square footage for seating would be 2,346 square feet; DPW's calculations were 2,390 square feet.
- Both C7 structure's decks are new due to new entrances to the buildings.
- It is likely that the X2 structure is shown within the SCA by mistake; there will be no new buildings built within the SCA.
- Proposed landscaping improvements would discourage random street parking.
- The working deck behind the restaurant has been removed from the project plans.
- Plans have been corrected to show that pier D will be built within the subject property.
- It was uncertain whether decks on Cottages 1-5 actually existed and might have rotted away, but inspections of the structural supports indicate that decks were present and that decks still exist in bits and pieces. They were not typical decks according to current standards.

Susan Stompe, Marin Conservation League (MCL), submitted a letter on behalf of MCL dated February 24, 2003. Basically, MCL requested that while the project was presented as a continuation of existing uses, current conditions have changed. The water quality of Tomales Bay has deteriorated, septic systems and their impacts are under review, tidelands and coastal zone uses have been restricted, and traffic volumes have increased. Some of the concerns expressed relate to the proposed off-site septic system, historic preservation of the structures, potential parking impacts on adjacent uses, increase in traffic, potential inconsistency with SCA policies, offsite water supply, runoff from the proposed hillside parking lot, and impacts from the working deck.

Catherine Caufield, expressed concern that many aspects of the proposed project have changed. She then made the following comments: 1) the size of the restaurant should not be increased; 2) the fishing hut may have been constructed recently; and 3) SCA policies must be imposed.

The following people commented in support of the proposed project.

Rosalind Hudson, concerned resident
Mary McEwen, concerned resident
Jack Matthews, concerned resident
Daniel DeLong, independent business owner
Felicity Kirsch, Carriage House B&B
Gerry Coles, West Marin Visitor Bureau
Tim Furlong, concerned resident
Mary Zimmerman, concerned resident
Scott Wilmore, concerned resident
Sharon Doughty, concerned resident
Steve Doughty, concerned resident
Michael Watchorn, Hog Island Oyster Company
Gregg Cockcroft, concerned resident
George Smith, concerned resident
Ann Grymes, concerned resident
Bill Hemphill, concerned resident
Jeff Harriman, Pt. Reyes Seashore Lodge
Ed Vallejo, concerned resident
Matthew Hablethwaite, concerned resident

Comments were generally in strong support of the proposed project, some based on personal experiences. The sense of supporters of the project was that the proposal would restore an important historic facility, while bringing back a portion of the infrastructure that once existed in the area. Other comments in support were as follows: 1) while it was recognized how important it was to protect environmental resources, it was also noted that human resources were also important; 2) businesses are an important part of a community, therefore, a balance between businesses and conservation must be found; 3) imposing too many restrictions will make the project unfeasible; 4) recognizing that the ranching community in West Marin has suffered in the recent years, the proposal will provide some additional income to the rancher and improve the viability of an agricultural operation by providing additional water; 5) off site septic systems are not unusual in West Marin; and 6) the applicant has demonstrated great stewardship for the bay and the environmental sensitivity of West Marin.

Gerry Koles, concerned resident, asked the Commission to review the project as a whole and to consider how the proposed project would impact the character of the community. He then noted that most of the people being served by the proposed project would be from outside the county.

Lynnette Kahn, concerned resident, stated that while she strongly supported restoration of Nick's Cove, she had serious concerns regarding the proposed parking arrangements. Given the number of parking spaces provided compared to the number of staff members (17) and the number of spaces allocated for the inn (11), it appears that

only 18 spaces would be available for customers. She concluded by stating that traffic congestion needed to be further considered; the proposed pedestrian crossing on Highway 1 was very unsafe.

Bob Kahn, concerned resident, stated that while he supported the concept of restoring Nick's Cove, he was concerned regarding parking and traffic safety.

Gary Giacomini, project consultant, stated that the project was a golden opportunity to allow the restoration of a historic property. Commenting on the applicant's reputation, he assured the Commission that the proposed project would not have any negative impacts on the community. On the contrary, the only precedent to be set by approving the proposed project would be nothing but positive because the proposal would restore existing historic buildings, and would upgrade and locate a septic system away from Tomales Bay, while helping a marginal farm operation. In his opinion, the precedent to be set from approving the proposed project would be to encourage someone else to come and restore the other distressed properties, i.e., the Marshall Tavern.

The hearing was closed to public testimony.

In response to Commissioner Julin, Agency Director Hinds stated that should the Commission act on this matter at this hearing, it would still have to go to the Board of Supervisors in April and then to the Coastal Commission within two to three months. However, since it was known that some of the proposal was a legal non-conforming use, it was also recognized that the proposal involved legal non-conforming structures. However, it was also recognized that the proposal was considered a restoration project if seen as a whole project.

Commissioner Julin supported staff's recommendation, reiterating that community members know their community best and what is best for their community. So far, few negative comments about the project had been received.

Commissioner Dickenson commended the developers for working with the community. He then made the following comments: precedent setting by allowing a septic system off-site was not there, since some other properties already had the same arrangements; obtaining off-site water supply was the historic situation; parking space standards were met; Pier D would be within the property; and he was satisfied that the fishing house had been there. However, some of his remaining concerns related to:

- Inconsistency with LCP policies with regard to development over the tidelands - the proposed decks on Cottages 1-5 were a concern since there was no clear proof that those decks ever existed. Decks would restrict shore access.
- Cottage 6, which is immediately on the creek bank, has very little historic value. The applicant could reconstruct that building in an area above the accessory buildings outside the SCA.
- Decks on C7 should be moved outside the SCA.

Commissioner Barner agreed that the location of the off-site septic system would be positive. However, he suggested that use of the leachfield area for agriculture purposes be further explored. He suggested possibly using it with a more intensive agricultural use, i.e., apple trees, in order to increase the cash flow for the property owner.

Commissioner Thompson found decking to be a technical issue that could be dealt with by staff. However, he found the bridge unnecessary and could be eliminated. He had no problem with off-site septic system and found the parking plan acceptable. He also agreed that should a parking problem arise, the applicant would find a solution because it would be in his best interest.

Commissioner Berland agreed that the proposal would allow a historical landmark to be restored. He was confident that it was in the best interest of the applicant to solve any parking problems that came up by making arrangements with the adjacent neighbors. Additionally, he agreed that the required findings could be made concerning the improvements to be constructed on the CAPZ zone site since the extra income and water would help the farming operation where the leachfields are to be located. He concluded by stating that he wanted to make sure that making

such findings for this unique project could not be interpreted to allow construction of large country estates with long term ground leases on agricultural lands in west Marin.

After taking into consideration the information presented, the majority of the Commission agreed on the following:

- Add an additional finding that use of the off-site septic system would not be growth inducing, since it represents an upgrade to existing facilities for health and safety purposes and that the land would continue to be available for agricultural (i.e. controlled grazing) uses.
- All development must take place within the subject property, including Pier D.
- Add a condition affirming that outbuilding X2 and any other new accessory structures will be located outside the SCA.
- County staff should work with the applicant and Coastal Commission staff to assess the structural integrity and possible alternative locations for structure C6 outside of the SCA or demolish the structure and rebuild it outside of the SCA.
- New decking for C7 should be located outside of the SCA.
- With regards to Cottages 1-5, staff and the applicant should work with the Coastal Commission to determine if the cantilevered decks are acceptable.

M/s Herbertson/Julin, to adopt the attached resolution recommending to the Board of Supervisors adoption of the Negative Declaration of Environmental Impact for the Three Sons (LLC, Inc.) Master Plan, Master Plan Waiver Request, Coastal Permit, Precise Development Plan, and Tidelands Permit based on the Findings set forth. Motion passed 5/1 (Commissioner Dickenson voted against the motion and Commissioner Buddie not present).

M/s Herbertson/Berland, to adopt the attached resolution recommending to the Board of Supervisors approval of the Three Sons (LLC, Inc.) Master Plan, Master Plan Waiver Request, Coastal Permit, Precise Development Plan, and Tidelands Permit based on the Findings and subject to the conditions therein, as modified. Motion passed 5/1 (Commissioner Dickenson voted against the motion and Commissioner Buddie not present).

Commissioner Dickenson voted against on both motions because he did not find that the cottage decks proposed over the tidelands, the improvements to Cottage 6 and the new decks on Cottage 7 complied with LCP and SCA Policies.

Chairman Herbertson informed all parties of interest that this action would automatically go to the Board of Supervisors for final actions.

MARIN COUNTY PLANNING COMMISSION

RESOLUTION NO. PC 03-005

A RESOLUTION RECOMMENDING THAT THE MARIN COUNTY BOARD OF SUPERVISORS ADOPT A NEGATIVE DECLARATION OF ENVIRONMENTAL IMPACT FOR THE THREE SONS, LLC (NICK’S COVE) MASTER PLAN AMENDMENT AND MASTER PLAN WAIVER REQUEST, COASTAL PERMIT, PRECISE DEVELOPMENT PLAN, AND TIDELANDS PERMIT
23240 STATE ROUTE ONE, ASSESSOR’S PARCEL 104-140-02 (“LANDS OF THREE SONS, LLC”)
23115 STATE ROUTE ONE, ASSESSOR’S PARCEL 104-150-01 (“LANDS OF THREE SONS, LLC”)
23900 STATE ROUTE ONE, ASSESSOR’S PARCEL 104-110-11 (“LANDS OF ZIMMERMAN”)
MARSHALL

SECTION I: FINDINGS

I. WHEREAS the applicant, Three Sons, LLC (Nick’s Cove), is seeking Master Plan Amendment to the 1973 Master Plan (Board of Supervisors Ordinance No. 1979) and Master Plan Waiver request, Coastal Permit, Precise Development Plan, and Tidelands Permit approvals proposing various improvements on the “Lands of Three Sons, LLC” and construction of an off-site sewage disposal system and well on the “Lands of Zimmerman” to serve the proposed restoration and reuse of the commercial facilities associated with Nick’s Cove. The project consists of various land use programs and the physical redevelopment of Nick’s Cove to provide commercial and recreational uses to serve both the local community and visiting tourists. The major objectives of the land use program are to: (a) support the economic vitality of the eastern shore of Tomales Bay; (b) restore and preserve an historic resource; and (c) provide local and visitor serving amenities to the general public and public access to Tomales Bay. In general, the project proposes to provide 11 over-night guest units, one on-site manager’s residence, a restaurant facility, a pier for public access (including viewing and fishing and access to four boat slips within Tomales Bay) and various site improvements including on-site parking with valet service, water storage tanks, underground utility lines, stream habitat restoration and landscaping, modifications to the existing water source from springs on the “Lands of Poncia” (Assessor’s Parcel 104-110-10) and off-site sewage disposal and water systems on the “Lands of Zimmerman” (Assessor’s Parcel 104-110-11) to serve the commercial project. The restoration of the existing structures, including exterior finishes and colors, will retain the structures historic appearance.

Specifically, the proposed physical improvements comprise an 18-month phased plan to restore the Nick’s Cove site through restoration and reuse of the existing improvement on 9.83-acre primary site (“Lands of Three Sons, LLC”, consisting of a total of 6.03 acres of dry land), construction of new septic and well water systems located on the 280-acre auxiliary agricultural site (“Lands of Zimmerman”) and improvements to the existing water system on the “Lands of Poncia as outlined below.

Assessor’s Parcel 104-150-01 (“Lands of Three Sons, LLC”): 1.92 acres of dry land located west of State Highway One on the bayside of Tomales Bay

- Restoration of five cottages (totaling 2,860 square feet) to provide five over-night guest units and construction of new cantilevered decks (totaling 576 square feet) to replace the previously removed deteriorated decks at the rear of the cottages;
- Remodeling/repair of the existing restaurant, rear deck, and covered porch: restaurant to seat 84 persons; and deck at the rear of the restaurant to seat 46 persons with the addition of a retractable awning over the deck (total square footage, approximately 5,533);

- Repair of the existing pier (approximately 385 feet long by 6.5 feet wide) and 450 square foot dock over Tomales Bay and construction of a 242 square foot fishing/utility shelter at the end of the existing pier to replace a destroyed fishing shelter with an offer of public access and use by the public during operating hours of the restaurant;
- Construction of four boat slips and one mooring area at the end of the existing pier for visiting boaters;
- Repair of the existing concrete seawall that provides protection and prevent further erosion;
- Repair of boardwalks for pedestrian access along the front of the restaurant and cottages;
- Development of five on-site parking spaces, including one space for people with disabilities and a vehicle turnaround;
- Construction of new underground transmission lines for carrying water to the restaurant and cottages, and underground utility lines; and
- Construction of: (a) three grease interceptor tanks (1,500-gallon capacity each) for the restaurant; (b) four 1,500-gallon sewage holding tanks for the restaurant and the five bayside cottages with all facilities traffic rated and with iron manhole covers; (c) an underground pressure line for carrying effluent off-site; (d) under ground water lines; and (e) underground utility lines.

In summary, restoration of the existing improvements, totaling 8,400 square feet of commercial development on the 1.92 acres of dry land will result in a floor area ratio (FAR) of 10%, where a range of 5% to 10% is allowed by the CWP land use designation. Approximately 4,214 square feet of decks, a dock and a pier over tidelands will be repaired. New decks and a shelter on the repaired dock over tidelands, consisting of 576 and 242 square feet respectively, will be constructed to replace the previously existing improvements.

Assessor's Parcel 104-140-02 ("Lands of Three Sons, LLC"): 4.11 acres located upland and east of State Highway One

- Conversion of two existing one-story residences, totaling 2,118 square feet, into four over-night guest units and the additions of decks to the units;
- Redevelopment of one vacant two-story, 1,284 square foot structure, previously used as a residence, into two over-night guest units and one residence for an employee of the facility;
- Construction of a new water system appurtenant to the off-site well to serve the commercial development, including two new 10,000-gallon concrete water storage tanks and a distribution system to serve the proposed project;
- Construction of a 3,000 square foot sand filter system and 3,000 gallon sewage holding tank north of the parking site;
- Installation of a new fire hydrant adjacent to the highway;
- Construction of underground water, sewage lines, and utility lines;
- Construction of a new parking area (consisting of turf block over 6-inch crushed aggregate in parking spaces and asphalt at entrance) located north of the existing cottages for 41 on-site parking spaces, including two spaces for people with disabilities, and the provision for valet parking for 16 additional vehicles, with one access onto State Route One, the removal of five trees, and a split-face block retaining wall on the west side from 2 feet to 8 feet in height facing into the parking area;

- Construction of decomposed granite pedestrian walkways, drainage, grading, and landscaping improvements with an irrigation system, including a small orchard and terraced vegetable, herb, and flower gardens to be used in the restaurant and lodging operation;
- Restoration of the riparian habitat on either side of the existing creek and within the 100-foot Stream Conservation Area utilizing native shrubs, grasses, and perennials, construction of a foot bridge over the creek, development of pedestrian trails, and planting of coastal native grasslands on the hillsides;
- Preservation of existing signs and construction of additional signs for identification and pedestrian direction and safety;
- Reconstruction of four accessory structures, totaling 500 square feet, to be used for feed storage, potting shed, tool shed, laundry room; and
- Modifications to the existing water system (consisting of leased spring water from “Lands of Poncia”, Assessor’s Parcel 104-110-10, two water storage tanks, and distribution lines) including: (a) repairing the existing transmission lines within existing easements to provide fire protection, irrigation, and maintain domestic service to four single-family residences located off-site, south of the project site and across State Route One that are not part of the subject project; (b) capping transmission lines to the existing structures on the project site; (c) installing a new fire hydrant in the area of Cottage C6, prior to crossing State Route One; (d) constructing an accessory structure to house chlorinating facilities, and (e) installing an irrigation service off the existing main to supply irrigation for landscaping to the project site. (Marin County Environmental Health Services would designate this system as a “non-community small public water system” with implementation of a “mutual system agreement” to provide an ongoing maintenance program by all affected parties.)

In summary, restoration of the existing improvements, totaling 3,902 square feet of commercial development on the 4.11-acre project site, will result in a FAR of approximately 2%, where a range of 30% to 50% is allowed by the CWP land use designation.

Assessor’s Parcel 104-110-11 (“Lands of Zimmerman”): the 280-acre agricultural property located north of the primary project site and west of State Route One

- Replacement of the existing on-site sewage disposal system with the construction of a new sewage disposal system with leach fields and a 3,000-gallon siphon chamber with dual alternating siphons (located approximately 3,600 feet northeast of the primary project site and to serve the commercial operation) including shallow pressurized trenches divided into four sections encompassing an area in size of approximately three acres, protected from subsurface drainage by an intercept drain;
- Construction of a new 38 gallon per minute well (located approximately 2 miles northeast of the primary project site and to provide water service to the commercial site as well as the Zimmerman property) with underground water lines to the proposed two new 10,000-gallon concrete water storage tanks on the east side of the Nick’s Cove project site; and
- Construction of appurtenant underground sewage and water pipelines within utility easements over the “Lands of Zimmerman” to benefit the primary project site.

Proposed Business Plan

Restaurant Hours of Operation

	<u>Peak Season</u> (app. May 15 – September 30)	<u>Off Season</u> (app. October 1 – May 14)
Breakfast	As needed	As needed
Lunch	11:30 am – 5:00 pm	11:30 am – 5:00 pm
Sunday – Saturday Dinner	5:00 pm – 10:00 pm	5:00 pm – 8:00 pm
Sunday – Saturday Bar	11:30 am – 11:00 PM	11:30 am – 9:00 PM

Expected Number of Employees

Restaurant:	11	9
Lodging	1	1
Management	4	4
Caretaker	1	1
Totals	17	15

Office and Administration Facilities

The restaurant will maintain a multi-use office space and a small office will be set-up in the manager's residence. Check-in procedures for the lodging accommodations will be handled at the front reception desk in the restaurant. Reservations and marketing will be handled off-site in the applicant's corporate offices in San Francisco.

Security

There will be staff on-site 24 hours a day and an alarm system will secure the property.

Use and Management of the Pier and Boat Slips

The pier will be available for public access and fishing during hours of operation of the restaurant. Boat slips will be available for the public and guests using the facilities. Long-term use of the boat slips by the public will be discouraged.

The subject properties are located 23240 State Route One, 23115 State Route One, and 23900 State Route One in Marshal and are further identified as Assessor's Parcels 104-140-02, 104-150-01, and 104-110-11 respectively.

- II. WHEREAS the Marin County Planning Commission finds that the Marin County Community Development Agency - Planning Division prepared an Initial Study for the project which determined that potential physical impacts relating to transportation/circulation, biological resources, aesthetics/visual resources, and cultural resources are avoided or mitigated to a point where no significant adverse environmental impacts would occur because mitigation measures to the project, as agreed to by the project sponsor, have been incorporated as conditions of project approval, and there is no evidence that the project, as conditioned, will have a significant effect on the environment.
- III. WHEREAS the Marin County Community Development Agency – Planning Division prepared a Mitigation, Monitoring, and Reporting Program identified as “Exhibit 1”, and incorporated into this resolution by reference, which encompasses the following:

- A. A list of mitigation and monitoring measures required of the applicant at each state of project approval and development;
 - B. A checklist to document and verify mitigation measure compliance; and
 - C. A general condition of project approval which requires that all stages of project development shall conform with the adopted Mitigation, Monitoring and Reporting Program and stipulates that the County of Marin will verify compliance with each of the required mitigations.
- IV. WHEREAS the Marin County Environmental Coordinator determined that, based on the Initial Study, a Negative Declaration of Environmental Impact is recommended for the project pursuant to the California Environmental Quality Act (CEQA). All project-related, potentially significant, adverse effects and appropriate mitigation measures have been discussed in the Initial Study. All required mitigation measures have been incorporated into conditions of project approval contained in the conditional approval resolution. With mitigation measures incorporated into conditions of approval, the proposed project would have no significant adverse environmental impacts, and no conditions described in the CEQA Guidelines have been identified that would require the preparation of an Environmental Impact Report. Responses received to date to the Initial Study, during the 30-day public comment and review period, have been addressed in the staff report and the conditions of approval.
- V. WHEREAS on January 15, 2003, a Negative Declaration was completed and distributed to agencies and interested parties to commence a 30-day public review period for review and comment on the Negative Declaration, and a Notice of the public review period and hearing date to consider approval of the Negative Declaration was published in a general circulation newspaper pursuant to CEQA.
- VI. WHEREAS after the close of the public review period on February 14, 2003, on February 24, 2003, the Marin County Planning Commission conducted a duly noticed public hearing to receive public testimony on the adequacy of the Negative Declaration and to consider the grant of a Negative Declaration of the Three Sons, LLC (Nick's Cove) Master Plan Amendment and Master Plan Waiver request, Coastal Permit, Precise Development Plan and Tidelands Permit applications.
- VII. WHEREAS the Marin County Planning Commission reviewed and considered the information contained in the Initial Study, Negative Declaration, and comments and responses thereto.

SECTION II: ACTION

NOW, THEREFORE, BE IT RESOLVED that the Marin County Planning Commission hereby makes the following findings and recommends to the Board of Supervisors adoption of a Negative Declaration of Environmental Impact and Mitigation Monitoring and Reporting Program for the Three Sons, LLC (Nick's Cove) Master Plan Amendment, Master Plan Waiver request, Coastal Permit, Precise Development Plan and Tidelands Permit applications as adequate and complete for purposes of approving the project by the Board of Supervisors.

- A. Notice of the public review period and hearing on the Negative Declaration was given as required by law and said hearing was conducted pursuant to Section 15073 and 15074 of the State CEQA Guidelines and the County CEQA process.
- B. All individuals, groups and agencies desiring to comment on the Negative Declaration were given the opportunity to address the Marin County Planning Commission.
- C. The Negative Declaration for the project consists of the Initial Study, Negative Declaration document, and supporting information incorporated by reference therein.

D. The Negative Declaration was completed and considered in conjunction with the comments thereto in compliance with the intent and requirements of CEQA, the State CEQA Guidelines, and the County CEQA process.

SECTION III: VOTE

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the County of Marin, State of California, on the 24th day of February 2003 by the following vote to wit:

AYES: Barner, Berland, Julin, Herbertson, Thompson

NOES: Dickenson

ABSTAIN:

ABSENT: Buddie

ROSS HERBERTSON, CHAIRMAN
MARIN COUNTY PLANNING COMMISSION

Attest:

Alexandra Morales
Recording Secretary

MARIN COUNTY PLANNING COMMISSION

RESOLUTION NO. PC03-006

A RESOLUTION RECOMMENDING THAT THE MARIN COUNTY BOARD OF SUPERVISORS ENACT AN ORDINANCE TO CONDITIONALLY APPROVE THE THREE SONS, LLC (NICK’S COVE) MASTER PLAN AMENDMENT AND ADOPT A RESOLUTION TO CONDITIONALLY APPROVE THE MASTER PLAN WAIVER, COASTAL PERMIT, PRECISE DEVELOPMENT PLAN, AND TIDELANDS PERMIT 23240 STATE ROUTE ONE, ASSESSOR’S PARCEL 104-140-02 “LANDS OF THREE SONS, LLC” 23115 STATE ROUTE ONE, ASSESSOR’S PARCEL 104-150-01 “LANDS OF THREE SONS, LLC” 23900 STATE ROUTE ONE, ASSESSOR’S PARCEL 104-110-11 “LANDS OF ZIMMERMAN” MARSHALL

SECTION I: FINDINGS

I. WHEREAS the applicant, Three Sons, LLC (Nick’s Cove), is seeking Master Plan Amendment to the 1973 Master Plan (Board of Supervisors Ordinance No. 1979) and Master Plan Waiver request, Coastal Permit, Precise Development Plan, and Tidelands Permit approvals proposing various improvements on the “Lands of Three Sons, LLC” and construction of an off-site sewage disposal system and well on the “Lands of Zimmerman” to serve the proposed restoration and reuse of the commercial facilities associated with Nick’s Cove. The project consists of various land use programs and the physical redevelopment of Nick’s Cove to provide commercial and recreational uses to serve both the local community and visiting tourists. The major objectives of the land use program are to: (a) support the economic vitality of the eastern shore of Tomales Bay; (b) restore and preserve an historic resource; and (c) provide local and visitor serving amenities to the general public and public access to Tomales Bay. In general, the project proposes to provide 11 over-night guest units, one on-site manager’s residence, a restaurant facility, a pier for public access (including viewing and fishing and access to four boat slips within Tomales Bay) and various site improvements including on-site parking with valet service, water storage tanks, underground utility lines, stream habitat restoration and landscaping, modifications to the existing water source from springs on the “Lands of Poncia” (Assessor’s Parcel 104-110-10) and off-site sewage disposal and water systems on the “Lands of Zimmerman” (Assessor’s Parcel 104-110-11) to serve the commercial project. The restoration of the existing structures, including exterior finishes and colors, will retain the structures historic appearance.

Specifically, the proposed physical improvements comprise an 18-month phased plan to restore the Nick’s Cove site through restoration and reuse of the existing improvement on 9.83-acre primary site (“Lands of Three Sons, LLC”, consisting of a total of 6.03 acres of dry land), construction of new septic and well water systems located on the 280-acre auxiliary agricultural site (“Lands of Zimmerman”) and improvements to the existing water system on the “Lands of Poncia as outlined below.

Assessor’s Parcel 104-150-01 (“Lands of Three Sons, LLC”): 1.92 acres of dry land located west of State Highway One on the bayside of Tomales Bay

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- Remodeling/repair of the existing restaurant, rear deck, and covered porch: restaurant to seat 84 persons; and deck at the rear of the restaurant to seat 46 persons with the addition of a retractable awning over the deck (total square footage, approximately 5,533);

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- Redevelopment of one vacant two-story, 1,284 square foot structure, previously used as a residence, into two over-night guest units and one residence for an employee of the facility;
- Construction of a new water system appurtenant to the off-site well to serve the commercial development, including two new 10,000-gallon concrete water storage tanks and a distribution system to serve the proposed project;
- Construction of a 3,000 square foot sand filter system and 3,000 gallon sewage holding tank north of the parking site;
- Installation of a new fire hydrant adjacent to the highway;
- Construction of underground water, sewage lines, and utility lines;

- Construction of a new parking area (consisting of turf block over 6-inch crushed aggregate in parking spaces and asphalt at entrance) located north of the existing cottages for 41 on-site parking spaces, including two spaces for people with disabilities, and the provision for valet parking for 16 additional vehicles, with one access onto State Route One, the removal of five trees, and a split-face block retaining wall on the west side from 2 feet to 8 feet in height facing into the parking area;
- Construction of decomposed granite pedestrian walkways, drainage, grading, and landscaping improvements with an irrigation system, including a small orchard and terraced vegetable, herb, and flower gardens to be used in the restaurant and lodging operation;
- Restoration of the riparian habitat on either side of the existing creek and within the 100-foot Stream Conservation Area utilizing native shrubs, grasses, and perennials, construction of a foot bridge over the creek, development of pedestrian trails, and planting of coastal native grasslands on the hillsides;
- Preservation of existing signs and construction of additional signs for identification and pedestrian direction and safety;
- Reconstruction of four accessory structures, totaling 500 square feet, to be used for feed storage, potting shed, tool shed, laundry room; and
- Modifications to the existing water system (consisting of leased spring water from “Lands of Poncia”, Assessor’s Parcel 104-110-10, two water storage tanks, and distribution lines) including: (a) repairing the existing transmission lines within existing easements to provide fire protection, irrigation, and maintain domestic service to four single-family residences located off-site, south of the project site and across State Route One that are not part of the subject project; (b) capping transmission lines to the existing structures on the project site; (c) installing a new fire hydrant in the area of Cottage C6, prior to crossing State Route One; (d) constructing an accessory structure to house chlorinating facilities, and (e) installing an irrigation service off the existing main to supply irrigation for landscaping to the project site. (Marin County Environmental Health Services would designate this system as a “non-community small public water system” with implementation of a “mutual system agreement” to provide an ongoing maintenance program by all affected parties.)

In summary, restoration of the existing improvements, totaling 3,902 square feet of commercial development on the 4.11-acre project site, will result in a FAR of approximately 2%, where a range of 30% to 50% is allowed by the CWP land use designation.

Assessor’s Parcel 104-110-11 (“Lands of Zimmerman”): the 280-acre agricultural property located north of the primary project site and west of State Route One

- Replacement of the existing on-site sewage disposal system with the construction of a new sewage disposal system with leach fields and a 3,000-gallon siphon chamber with dual alternating siphons (located approximately 3,600 feet northeast of the primary project site and to serve the commercial operation) including shallow pressurized trenches divided into four sections encompassing an area in size of approximately three acres, protected from subsurface drainage by an intercept drain;
- Construction of a new 38 gallon per minute well (located approximately 2 miles northeast of the primary project site and to provide water service to the commercial site as well as the Zimmerman property) with underground water lines to the proposed two new 10,000-gallon concrete water storage tanks on the east side of the Nick’s Cove project site; and
- Construction of appurtenant underground sewage and water pipelines within utility easements over the “Lands of Zimmerman” to benefit the primary project site.

Proposed Business Plan

Restaurant Hours of Operation

	<u>Peak Season</u> (app. May 15 – September 30)	<u>Off Season</u> (app. October 1 – May 14)
Breakfast	As needed	As needed
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Sunday – Saturday Dinner	5:00 pm – 10:00 pm	5:00 pm – 8:00 pm
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Expected Number of Employees

Restaurant:	11	9
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Caretaker	1	1
Totals	17	15

Office and Administration Facilities

The restaurant will maintain a multi-use office space and a small office will be set-up in the manager's residence. Check-in procedures for the lodging accommodations will be handled at the front reception desk in the restaurant. Reservations and marketing will be handled off-site in the applicant's corporate offices in San Francisco.

Security

There will be staff on-site 24 hours a day and an alarm system will secure the property.

Use and Management of the Pier and Boat Slips

The pier will be available for public access and fishing during hours of operation of the restaurant. Boat slips will be available for the public and guests using the facilities. Long-term use of the boat slips by the public will be discouraged.

The subject properties are located 23240 State Route One, 23115 State Route One, and 23900 State Route One in Marshal and are further identified as Assessor's Parcels 104-140-02, 104-150-01, and 104-110-11 respectively.

- II. WHEREAS an Initial Study has been prepared for the proposed project pursuant to the requirements of the California Environmental Quality Act, and the Marin County Planning Commission, at a duly noticed public hearing on February 24, 2003, recommended to the Board of Supervisors the grant of a Negative Declaration of Environmental Impact based on the findings that this project will not result in any potential, significant environmental impacts, and qualifies for a Negative Declaration of Environmental Impact in compliance with the California Environmental Quality Act (CEQA), the State CEQA Guidelines, and the County CEQA process and that all project-related effect have been discussed in the Initial Study and recommended mitigations have been incorporated into the recommended conditions of project approval.
- III. WHEREAS the Marin County Planning Commission held a duly noticed public hearing on February 24, 2003, to review and consider the merits of the project, and hear testimony in favor of, and in opposition to, the proposed project.

IV. WHEREAS the Marin County Planning Commission finds that the proposed project, subject to the conditions of approval contained herein, is consistent with the relevant policies of the Marin Countywide Plan (CWP) for the reasons outlined below.

- A. *Land Use Designation and Intensity of Development:* The subject property is located within the Coastal Recreation Corridor, as established by the CWP, which designates this corridor for Federal parklands, open space, recreational and agricultural uses, and low-density commercial and residential development to preserve the existing, small coastal communities. The appurtenant CWP land use designations determine the allowed land uses – including open space, recreational and agricultural uses, the preservation of existing coastal communities, commercial activities and tourist facilities, and standards for commercial building intensity and residential density within the Coastal Zone. The project site consists of three CWP land use designations.

Assessor's Parcel 104-140-02 ("Lands of Three Sons, LLC"), located east of State Route One: The proposed restoration and reuse of the existing residential structures to provide six over-night guest units and one residence for an employee of the commercial facility and accessory structures for appurtenant uses associated with the Nick's Cove commercial operation would be consistent with the CWP Coastal, Residential Commercial (C-RS) land use designation and the allowed floor area ratio (FAR) because the total commercial redevelopment of approximately 3,902 square feet of floor area would result in a FAR of approximately 2% and one residential unit on the 4.11-acre parcel where the CWP land use designation allows a FAR range for commercial development of 30% to 50% and a residential density of 1 to 20 dwelling units per acre.

Assessor's Parcel 104-150-01 ("Lands of Three Sons, LLC"), located west of State Route One: The proposed restoration of five cottages with the addition of new decks to provide five over-night guest units, the remodeling of the existing restaurant and deck, the repair of the existing pier, dock, and boardwalks, and construction of a new fishing/utility shed to replace an existing shed would be consistent with the CWP Coastal, General Commercial (C-GC) land use designation and the allowed FAR because the total commercial restoration of approximately 8,400 square feet of floor area would result in a FAR of 10% on the 1.92 acres of dry land, where the CWP land use designation allows a FAR range for commercial development of 5% to 10%.

Assessor's Parcel 104-110-11 ("Lands of Zimmerman"), located north of the primary project site and west of State Route One: The proposed construction of a new sewage disposal system and a well for water provisions on this 280-acre agricultural/residential parcel to serve the off-site commercial operation would not be inconsistent with the CWP Coastal, Agriculture, one primary dwelling unit per 30 to 60 acres (C-AG1) land use designation relating to residential density. The proposal does not change the current residential density of the parcel. In addition, the proposed development would be located on less than three acres, or 1% of the project site, with the remainder 277 acres available for agricultural use. Therefore, the proposed improvements associated with the proposed project on the agriculture parcel would not be inconsistent with the CWP C-AG1 land use designation nor have a significant impact on the current agricultural use of the property consisting of cattle grazing or potential future agricultural use of the parcel as further discussed in the Project and Development Issues Analysis section below.

(CWP Community Development Map 7.11 1 and Community Development Policies CD-1.3, CD-8.1 to 8.3, CD-8.5 to 8.6, CD-8.8, CD-8.10, CD-15.9, and CD-15.20)

- B. *Preservation of Agricultural Lands:* The project is consistent with CWP policies which require the preservation of agricultural lands by (1) maintaining agricultural zoned parcels in sizes large enough to sustain agricultural production; (2) discouraging the conversion of agricultural land to non-agricultural uses; (3) discouraging uses which are not compatible with long term agricultural productivity; and (4) requiring that non-agricultural uses allowed on agricultural lands:(a) be consistent with agricultural land uses; (b) be compatible with the rural character of the Coastal Recreation corridor; and (c) enhance the

economic viability of agricultural operations for potential agricultural use. The only improvements proposed on the subject agricultural lands are the construction of a below-grade septic system to serve the off-site commercial operation and the construction of a new water well to serve the commercial development and the agricultural use on the "Lands of Zimmerman". Construction of these systems would not interfere with the existing or potentially future agricultural operation of the subject property. Only three acres, or 1%, of the property would be encumbered with the proposed development resulting in the remaining 277-acre agricultural property retained in a size large enough to sustain agricultural production (*CWP Agricultural Policies A-1.1, A-1.4, A-1.10*).

- C. *Preservation of Historic Structures and Resources*: The primary project site is a small settlement consisting of modest commercial and residential structures and an old fishing/boating pier, which was part of the local fishing community established in the 1930's. The proposed project would restore the commercial vitality of the project site and would preserve the unique and historic cottages along the shoreline of Tomales Bay as well as the restaurant and the structures on the upland side of State Route One. Very few exterior modifications are proposed. The proposed project would be consistent with the CWP policies requiring preservation of historic structures as the restoration project would restore for reuse an important part of the historic fabric of the Marshall area on Tomales Bay. The historic structures would be preserved, and the long-established physical character of the village center would be enhanced and protected from damage or rapid change (*CWP Community Development Policies CD-2.10, CD-15.8, and Environmental Quality Policy EQ-3.33*).
- D. *Provision for Recreation, Visitor Serving, and Commercial Facilities*: The shoreline of Tomales Bay is a major public recreation area, and Miller Park, a public recreational destination, is an immediate neighbor to the project site. The proposed project would allow for public access on the existing pier and would provide visitor-serving amenities as well as local-serving, commercial activities and facilities. The project would preserve an important historic recreation and visitor-serving component of the East Shore Planning Area. The project would provide visitor serving overnight lodging and both visitor- and local-serving restaurant facilities for the public consistent with the CWP policies (*CWP Community Development Policies CD-15.9 and CD-15.20*).
- E. *Value of Riparian Systems, and Enhancement and Preservation of a 100-foot Stream Conservation Area (SCA)*: An unnamed blue line creek as mapped on the U. S. Geological Survey Map, Tomales, CA Quad, flows east to west through the upland property, under the highway, under the restaurant into the mud lands and out into Tomales Bay. The CWP policies require the designation of a 100-foot wide Stream Conservation Area (SCA) along all natural watercourses supporting riparian vegetation and limit the type of development that may encroach into the SCA. (defined as a buffer zone extending 100-feet laterally outward from the top of banks for all blue-line creeks on properties located in the Coastal Zone). Maintenance of the SCA buffer represents one measure to provide quality habitats for sensitive species including those that have been listed as protected species by the Federal government.

The project proposes removal of all parking areas within the designated 100-foot SCA and includes a creek enhancement program utilizing native vegetation common to West Marin to restore and increase wildlife habitat. The project proposes to restore and repair structures identified as proposed Cottages C6 and proposed C7, including the reconstruction of a staircase to the second story of Cottage C6, and development of pedestrian walkways within the SCA as permitted under CWP Policy EQ-2.4. This work will not involve an increase in floor area of structure over what has historically existed.

The removal of all parking areas within the SCA, implementation of the proposed creek enhancement program, and minimal repairs to existing structures and development of pedestrian walkways would not result in any potential significant environmental impacts relating to the ultimate protection of the habitat value of the creek and would be consistent with the County's SCA policies relative to permitted development within the 100-foot SCA.

The proposed project would be consistent with the pertinent CWP SCA policies because the project would protect, preserve, and enhance the creek riparian system and its habitat areas. The project will support only uses and development within the SCA that enhance the appearance of the streamside environment and protect native vegetation, and encourage restoration of damaged portions of the SCA to their natural state utilizing a variety of species natural to the creek environment (*CWP Environmental Quality Policies EQ-2.1 – 2.24, EQ-2.6, EQ-2.33 and EQ-3*).

- F. *Special Status Species and Habitat Preservation*: The “Preliminary Environmental Assessment, Nick’s Cove”, dated June 28, 2001, and “Streamside Conservation Area – Habitat Enhancement Planting, Management, and Monitoring Specification”, prepared by Diane Renshaw, Consulting Ecologist, and submitted by the applicant, identifies the presence of specific sensitive species and measures for protecting these species and their habitat. During the biological reconnaissance conducted on April 30, 2001, Ms. Renshaw identified seven existing natural habitat areas at the site - open water, intertidal mudflat and beach, wetland, stream and stream corridor, grassland, brush, and trees – that have the potential to provide suitable habitat for eight of the special status animal species: California red-legged frog, brown pelican, coho salmon, chinook salmon, steelhead trout, great blue heron, great egret, and Ricksecker’s water scavenger beetle. No special plant communities were found. The Negative Declaration of Environmental Impact provides a thorough discussion on the biological resources found at the project site and the affect the proposed project may have on these resources. The assessment concludes that with implementation of the recommended mitigation measures the project would not result in any significant impacts to special status species and their habitats. With the mitigation measures incorporated as conditions of project approval, the proposed project would be consistent with CWP policies requiring special status species and habitat preservation The project would maintain significant natural areas to ensure the continued health and survival of these species (*CWP Environmental Quality Policies EQ-2.87 (Species Preservation in the Environmental Review Process) and 2.88 (Protection of Special Status Species)*). (Please refer to Finding XI. (I.) below for additional discussion and pertinent mitigation measures.)
- G. *Preservation of Community Character, Visual Qualities, and Scenic Vistas*: The CWP policies require that view potential of the natural and built environment be considered in the review of any development project development in rural portions of the County (particularly in West Marin communities. Development should be consistent with the rural character of the area and lighting should be subtle and harmonious with the rural environment. Waterfront development should be designed for openness and to permit optimal views for public enjoyment of the bayfront. The proposed project would provide visitor- and local-serving amenities that would support recreational uses of the existing site while preserving this hamlet as an important remnant of Marin's heritage and a classic example of an historic coastal community in West Marin. The project would preserve the visual qualities of the site and existing view corridors to the bay. No significant vegetation would be removed in order to accommodate proposed improvements. All parking improvements have been designed to utilize decomposed granite, gravel, or turf block, and railroad ties as wheel stops in order to maintain the rural character of the site. Lighting would be limited to the minimum necessary for safety, and would be low-level lighting that is directed downward rather than outward (*CWP Environmental Quality Policies EQ-1.3, EQ-2.72 – EQ-2.74, EQ-3.11 and EQ-3-5*).

- H. *Minimal Site Disturbance and Grading Activities:* While the proposed parking plan requires excavation into the hillside north of the development site and additional site disturbance in a sloped area of the property, the parking plan results in additional new parking spaces that: (a) do not encroach into the State Route One road right-of-way; (b) provide for one access onto State Route One; and (c) do not encroach into the 100-foot SCA. This parking plan balances the need for on-site parking for the commercial operation on a site with limited level areas against the need to preserve the potential natural resources of the on-site blue-line creek, provide a measure of vehicle safety standards, and not result in a significant environmental impact. The project would be consistent with CWP policies relative to minimal site disturbance because the project would adhere to the Department of Public Works regulations that require minimal grading while allowing for adequate access (*CWP Environmental Quality Policy EQ-3*).
- I. *Archaeological and Cultural Resource Protection:* The cultural resource maps maintained by the Community Development Agency indicate that the subject property is located in an area of high archaeological sensitivity. The project sponsor has submitted a cultural resource evaluation of the site, prepared by Archaeological Resource Service and an overview of the historic use and structures, prepared by local historian David Livingston. The archaeological evaluation determined, based on past literature research, that there is a possibility that mixed midden parts could be found in the gravel road fill north of the creek and west of the highway. In May 2001, a surface examination was conducted. Some evidence of midden soil was observed on the east side of the highway. No artifacts were found in the soil. Evidence of a fragment of a mortar bowl is visible in the rock wall dividing the parking areas between proposed Cottage C7 and C8, although it may have been imported to the site at one time. If this mortar is disturbed due to the removal of a section of the rock wall during construction of the new parking lot, the archaeological evaluation recommends that the mortar should be recovered from the wall. Mandatory mitigation measures incorporated into conditions of project approval would assure the protection of potential archaeological resources. Conditions of approval require that if archaeological resources are encountered at any time during construction on any portion of the property, an archaeologist must be contacted to evaluate the find. If it is determined that a prehistoric site exists (a) no future development activity shall take place at or in close proximity to the prehistoric site within the development area; (b) the historical site(s) shall be filled to protect the resources; (c) no additional excavation shall occur at these locations other than to remove surface organic material; and (d) the applicant may be required to submit a revised project to protect the resource(s) (*CWP Environmental Quality Policies EQ-3.29 through EQ-3.32*).
- J. *Preservation of Tidelands and Protection of Plant and Wildlife Habitat:* CWP policies encourage areas subject to tidal action tidelands to be left in their natural state because of their potential biological importance to the estuarine ecosystem. Diking, filling, or dredging, unless the area is already developed and currently being dredged, is prohibited. The project proposes to rehabilitate the existing shoreline cottages to provide over-night guest accommodations, consistent with their historic use (since the 1930's). With the exception of the reconstruction of small cantilevered decks totaling 576 square feet at the rear of the cottages that were removed because of their unsafe and deteriorating condition, the cottages will not be enlarged, and the decks would not require any additional fill in the bay. The restaurant and attached deck at the rear will be repaired. The pier will be repaired. These improvements will require a minimal amount of new fill in conjunction with the replacement and repair of existing piers in accordance with CWP policies (*CWP Environmental Quality Policies EQ-2.44 and EQ-3.2*).
- K. *Integration of Jobs and Housing:* CWP policies encourage housing to be located near jobs and integrated with commercial uses in order to discourage long commutes and lessen traffic congestion. The five vacant cottages on the shoreline side served from time to time as long-term residential units. There currently are two existing residences and one vacant structure, once a residence on the east side. With the exception of one employee living unit within the east side vacant structure, all structures are proposed to be converted to over-night guest accommodations associated with the redevelopment of the recreation and visitor serving operation. While the project results in a reduction of the potential number of long-term residential units, six of the existing structures have not contributed to the housing stock of Marshall

for over a decade. Consistent with the competing goals and policies of the Local Coastal Program, Unit II supporting the provision of recreation and visitor serving facilities, the project will result in restoring an important recreation and visitor serving operation and will maintain one employee residence on site, thereby resulting in the loss of only one currently existing residence (*CWP Policies CD-2.2 and CD-2.5*).

V. WHEREAS the Marin County Planning Commission finds that the proposed project, subject to the recommended conditions of project approval contained herein, is consistent with the relevant policies of the Local Coastal Program, Unit II for the reasons outlined below.

A. *Provisions for Public Access:* As a component of the proposed project, the project sponsor proposes to dedicate for public access during the hours of operation of the restaurant the use of the existing pier that extends out into Tomales Bay. Redevelopment and reconstruction of the proposed improvements and facilities on the bay side of State Route One would not interfere with existing vertical or lateral access to tidelands and would enhance and increase the opportunities for public access to Tomales Bay. The proposed project supports and encourages the enhancement of public access opportunities to the coast. (*LCP Provisions for Public Access Policies 1, and 3.b. (2)*)

B. *Recreation and Visitor Serving Facilities:* The proposed project entails the rehabilitation and revitalization of Nick's Cove as a visitor- and local- serving facility in the Marshall community. The project would provide lodging and dining opportunities for visitors to the coast, as well as the local community, and would provide boat slips and a pier that would be available for public recreation. Restoration and reuse of the proposed improvements and facilities will preserve the unique historic qualities of the coastal commercial center and will not conflict with the protection of natural resources and agriculture lands. The proposed project supports and encourages the enhancement of public recreational opportunities and development of visitor-serving facilities in the coastal zone undertaken in a manner which preserves the unique qualities of Marin's coast and which is consistent with the protection of natural resources and agriculture (*LCP Recreation and Visitor Serving Facilities Policy 1*).

The project would provide a total of 11 over-night accommodations as well as a restaurant facility consistent with visitor-serving uses encouraged by LCP Policies. The project is consistent with the LCP policy that encourages visitor-serving uses on this site and supports the continued and upgraded use, with possible expansion, of Nick's Cove. Overnight accommodations, such as bed and breakfast facilities, on the upland side of State Route One are encouraged, consistent with the availability of water supply, sewage disposal, and parking facilities (*LCP Recreation and Visitor Serving Facilities Policy 3.e. (2)*).

C. *Protection of Agricultural Lands:* As discussed in the Marin Countywide Plan, Item B (Preservation of Agricultural Lands) section above, only three acres (1%) of the 280-acre property would be encumbered with the proposed development, the remaining 277 acres would be of a size large enough to sustain agricultural production. The proposed improvements to serve this unique project would provide a cash flow that would augment and enhance the economic viability of the agricultural operation of the subject property. In addition, the terms of the lease require the project sponsor to provide a water system for the agricultural property, thus increasing water for the current livestock grazing agricultural operation. Furthermore, the proposed development would not be in conflict with the terms of the Land Conservation Contract (Williamson Act) over the agricultural parcel in accordance with the Marin County Assessor's office. Additionally, the project sponsor proposes to develop a limited agricultural operation on the upland side of the primary parcel with the growing of small orchards and vegetable, herb, and flower gardens for use in the commercial operation. Therefore, the proposed project would not result in improvements or uses that would impact agricultural lands and is consistent with LCP policies that encourages the protection of the existing and future viability of agricultural lands in the coastal zone, in accordance with Sections 30241 and 30242 of the Coastal Act, which requires the maximum amount of prime agricultural land to be maintained in agricultural production, and prohibits the conversion of agricultural land to non-agricultural uses (*LCP Agricultural Lands Policy 1*).

- D. *Commercial and Recreational Uses on Tomales Bay:* The project proposes to repair the existing pier and appurtenant facilities and construct new boat slips for public access for both commercial and recreational uses. The upgrading and continuing use of the restaurant has the potential to support commercial fishing activities by providing a market for local commercial fishing operations. The proposed project would encourage recreational fishing and boating and support facilities on the shoreline of the bay. (*LCP Commercial and Recreational Uses of Tomales Bay Policy 1*)
- E. *Structures on the Shoreline of Tomales Bay:* In general, the LCP policies discourage the proliferation of shoreline structures in the Unit II coastal zone due to their potential visual impacts, obstruction of public access, interference with natural shoreline processes and water circulation, and effect on marine habitats and water quality. No new structures are proposed on the shoreline of Tomales Bay are proposed. Only the existing cottages, restaurant and pier that have been on the shoreline without resulting in any environmental impacts will remain to be restored and reused. The pier will be available for public access during the hours of operation of the restaurant. The project is also consistent with the LCP policies that allow repair of seawalls because only the rotted/damaged wood element of the existing seawall at the vicinity of the cabins would be replaced with a new extension consisting of either concrete, masonry block, or treated lumber at this location. In accordance with established LCP criteria: the condition requiring the repair is site specific and not attributable to a general erosion trend; the repair would not would not adversely affect adjacent or other sections of the shoreline; the wall is not located in wetlands or other significant resources or habitat area, will not cause significant adverse impacts to fish or wildlife, and will not result in reduction in public access or use and enjoyment of the natural shoreline (*LCP Shoreline Structures Policies 1 and 2*).
- F. *Development on Public Trust Lands Along the Shoreline:* Public trust lands include tidelands and submerged lands. Development on public trust lands is a particularly significant issue and new filling of tide and submerged lands is restricted to activities that serve a public purpose. LCP policies allow existing structures on public trust lands along the shoreline of Tomales Bay to continue and to be rebuilt if damaged or destroyed by natural disaster. The project proposes to rehabilitate the existing shoreline cottages to provide over-night guest accommodations, consistent with their historic use (since the 1930's). With the exception of the reconstruction of small cantilevered decks totaling 576 square feet at the rear of the cottages, the cottages will not be enlarged, and the decks would not require any additional fill in the bay. The restaurant and attached deck at the rear will be repaired. The pier, to be available for public access, will be repaired with some new piers required to replace piers destroyed by tidal action. This project proposes to restore and repair the existing shoreline structures and preserve the valuable historic character of this site; therefore, the proposed project is consistent with LCP Public Trust Lands Policy 2, relative to land use and the filling of public trust lands (*LCP Public Trust Lands Policy 2*).
- G. *Preservation of Historic Structures, Aesthetics, and Landscaping:* LCP policies encourage the protection of the unique qualities and character of coastal communities located in the Unit II coastal zone and supports the preservation and restoration of historic structures and the integrity and special qualities of coastal villages. These policies require development to be screened with appropriate landscaping. However, such landscaping shall not, when mature, interfere with public views to and along the coast. The use of native plant material is encouraged.

The historic analysis ("A Cultural Resources Evaluation of Nick's Cove and Cottages", prepared by Archaeological Resource Service), submitted by the project sponsor, indicates that this site contains structures of historic and aesthetic value. The project sponsor proposes to restore these structures as part of the renovation of the Nick's Cove commercial operation. Proposed new landscaping would provide additional screening and softening of the proposed facilities. Landscaping on the bayside of State Route One would be limited to shrubs and groundcover in order to preserve existing views of the bay. The majority of the proposed landscaping, including the creek restoration project, would employ native, drought tolerant plant materials (*LCP New Development and Land Use Policies 1.a., 3.a. and 3.b.*).

- H. *Protection of Water Quality of Tomales Bay:* The use of septic systems along the shoreline of Tomales Bay is an important factor in establishing the water quality of Tomales Bay. As encouraged by the LCP policies, the Marin County Community Development Agency - Environmental Health Services Division (EHS) has worked, and continues to work, with other agencies (i.e. Regional Water Quality Control Board, State Department of Health) to protect the water quality of Tomales Bay. In 1992, EHS approved the repair of an on-site sewage disposal system on the bayside of the project site to serve the restaurant because of sewage discharge into the bay. Since 1992, the shoreline cottages have had no sewage disposal provisions approved by the County because of the constraints and limitations of the bayside property to provide sewage disposal in compliance with County standards. Furthermore, testing by the project sponsor's engineers concludes that construction of an on-site sewage disposal system on the upland side to serve the entire project is not feasible

The project proposes to construct to County standards a new, off-site below ground sewage disposal system on the auxiliary parcel in a location approximately 300 feet above the high tide of Tomales Bay. Placing the sewage disposal for the existing structures on this site would increase the protection of water quality of Tomales Bay by eliminating any potential for sewage discharge into the bay waters as all sewage from existing structures would be disposed onto the auxiliary parcel ("Lands of Zimmerman"). In addition, the project proposes to abandon all existing sewage tanks, cesspools, and disposal trenches. The off-site sewage disposal system, sited on the upland side and east of State Route One away from Tomales Bay, and the removal of all existing on-site sewage disposal facilities along the bay front of the subject property would provide protection of the water quality of Tomales Bay and avoid the potential for sewage entering the Bay (*LCP Natural Resource Policy 2*).

- I. *Protection of the Stream Conservation Area (SCA) and Riparian Habitats:* As discussed in the Marin Countywide Plan, Item E (Value of Riparian Systems and Preservation of a 100-foot Stream Conservation Area), an unnamed blue line creek as mapped on the U. S. Geological Survey Map, Tomales, CA Quad, flows east to west through the upland property, under the highway, under the restaurant into the mud lands and out into Tomales Bay. The LCP policies limit the type of development that may encroach into the SCA.

As described above under the CWP SCA policy discussion, there currently exist within the SCA a number of improvements and uses. The CWP SCA policies allow certain structures and uses within the SCA, specifically, all currently existing structures and uses, including reconstruction and repair of these structures, and development of pedestrian trails. All parking areas will be removed from the 100-foot SCA buffer zone. The proposed project includes a creek enhancement plan to restore and increase wildlife habitat along the creek banks in order to further advance LCP SCA policies pertaining to the enhancement and protection of water quality, riparian vegetation, and the rate and volume of stream flows. (*LCP Natural Resources Policy 3*).

- J. *Filling in Submerged Lands:* The LCP policies define "fill" as: "earth or any other substance or material, including pilings placed for the purpose of erecting structures thereon, placed in a submerged area.". These policies limit diking, filling, and dredging of submerged lands to certain uses including: (1) new or expanded commercial fishing facilities;(2) incidental public service purposes and utilities; (3) restoration purposes; and (4) new or expanded boating facilities except in wetlands. The construction of new piers recognized as fill, in intertidal and subtidal areas of Tomales Bay, have the potential to create adverse environmental effects by degrading water quality by leaching harmful compounds into the Bay, disrupting intertidal and tidal substrates during construction, interfering with shoreline processes, and impacting wild life.

The project proposes the repair and replacement of some of the pilings associated with the restoration of the existing pier, cottages, and restaurant, and reconstruction of the fishing/utility shed at the end of the pier, which entails approximately 7 new pilings. Thomas L. Whitchurch, P.E., Civil Engineer, the project sponsor's engineer, made an inspection of the pier pilings (letter April 2, 2001). The inspection concludes

that some piers were damaged and generally had either rot and/or structural damage, typically in the vicinity of the water line. The project proposes to salvage these piers by cutting away the rotted/damaged part of the pile and pouring a concrete pier approximately 12 to 18 inches in diameter atop existing structurally sound concrete, and extending up to the bottom of the newly cut section of the pile. Alternatively, the existing piers may be replaced with concrete piers. Mr. Whitchurch estimates that a total of 76.68 square feet of new fill is required to repair the existing pilings for the pier, restaurant, and cottages. Department of Public Works staff has reviewed and approved Whitchurch's assessment.

The restoration of the existing facilities and the small amount of fill required for new pilings to reconstruct the historic fishing/utility shed for public fishing use are activities that are consistent with the policies of the LCP and would not result in any significant new fill in submerged lands (*LCP Diking, Filling, and Dredging Policy 2*).

- K. *Protection of Housing Opportunities*: LCP policies support the protection of housing opportunities for persons of low and moderate income. Currently, on the primary project site are five cottages on the shoreline side, (that from time to time served as long-term residential units) and two existing residences and one vacant structure, once a residence, on the east side. While these structures are not proposed for demolition, with the exception of one employee living unit within the vacant structure, these structures are all proposed to be converted to over-night guest accommodations associated with the recreation and visitor serving commercial operation. While the project results in limiting the number of long-term residential units, the project is designed to restore an important recreation and visitor serving facility with one employee residence on site consistent with the goals and policies of the Local Coastal Program, Unit II (*LCP New Development and Land Use Policy 4(a.)*).

VI. WHEREAS, the Marin County **Planning Commission** finds that the proposed project, subject to the conditions of approval contained herein, is consistent with the relevant policies of the East Shore Community Plan because the project would: (1) protect and enhance the blue-line creek and the 100-foot stream conservation area; (2) maintain the East Shore's uniqueness, social and economic diversity, and sense of community; (3) encourage development with a viable local economy; (4) maintain compatible existing and new land uses with the bay; (5) generate employment opportunities for residents within the planning area; (6) preserve existing development that is small-scale; (7) protect historical and archaeological resources; (8) not result in development on lands zoned C-APZ-60 that conflicts with any agricultural operation; (9) result in the continuation and revitalization of the historic commercial visitor- and local-serving operation at Nick's Cove and (10) ensure the protection of the water quality of Tomales Bay. (*Community Plan Land Use Policies CD-6, CD-7, CD-7-1, CD-15, and CD-21*).

VII. WHEREAS the Marin County **Planning Commission** finds that the proposed project, subject to the conditions of approval contained herein, is consistent with the governing zoning districts as defined in Marin County Code, Title 22, (Zoning) and the requirements of Title 7 (Water), Title 18 (Sewers), Title 19, (Buildings), Title 23 (Natural Resources) and Title 24 (Development Standards) for the reasons outlined below.

- A. Development and use of the 4.11-acre upland portion (*Assessor's Parcel 104-140-02*) of the project site would be consistent with the governing Coastal, Residential Multiple, Planned Commercial District (C-RMPC) zoning district which allows commercial and residential development as permitted uses as approved by a master plan.
- B. Development and use of the 5.72-acre bayside portion (*Assessor's Parcel 104-150-01*) of the project site would be consistent with the governing Coastal Commercial, Planned District (C-C-P) zoning district that allows commercial development as a permitted use as approved by a master plan.
- C. The restoration and reuse of Nick's Cove as a visitor- and local-serving commercial operation on the primary site, with infrastructure consisting of sewage disposal and water systems constructed on the 280-acre agricultural parcel (*Assessor's Parcel 104-110-11, zoned C-APZ*) to serve this unique project would not impact the agricultural use and viability of the agricultural parcel and would be consistent with Marin County Code Section 22.57.036 for the reasons cited below.
 - 1. Construction of the proposed septic system and leachfields would require approximately 3 acres (1%) of the 280-acre property but those three acres would not be removed permanently from agricultural use as the leachfield areas will remain in agricultural production.
 - 2. The project does not involve the division of agriculturally zoned lands, and the parcel would remain in a parcel size large enough to sustain current and future agricultural production.
 - 3. By leasing a small portion of the agricultural land to the Nick's Cove operator for the septic and well systems which generates supplemental income, the owner's ability to economically sustain a cattle operation on the agriculturally zoned property will be improved.
 - 4. Construction of the septic system off-site on upland agricultural property would: (a) allow for reuse of the historic Nick's Cove property; (b) provide further protection to the water quality and resources of Tomales Bay by moving the sewage disposal system farther inland and away from the bay; and (c) would not interfere with the existing or potential future agricultural operation of the Zimmerman property.
 - 5. Construction of the new water well off-site on the agricultural property will not result in an impact on the water supply for the current or future agriculture use of the property as yield test data prepared by O'Connor Environmental, Inc. and Nor-Cal Pumpworks concludes that there will be excess water from the well to serve the agricultural use on the agriculturally-zoned property.
 - 6. Construction of the off-site infrastructure for the restoration of Nick's Cove would not be in conflict with the terms of the Land Conservation Contract (Williamson Act) (LLC) over the agricultural parcel in accordance with the Marin County Assessor's office as the County maintains the governance over the LLC.
 - 7. Construction of the off-site septic system on agriculturally-zoned land to serve the restoration and reuse of the Nick's Cove site would not be growth inducing or precedent setting because: (a) the off-site septic system represents an upgrade to existing sewage disposal systems on the Nick's Cove site for health and safety reasons in compliance with current Marin County Environmental Health Services regulations; (b) the off-site system will serve only the Nick's Cove project and the existing structures; (c) no additional parcels or new structures will be served by the off-site septic system; (d) the approved project represents the total build-out to be served by the off-site septic system and (e) the subject off-site sewage disposal system has been reviewed and approved on the basis that it will exclusively serve the Nick's Cove project.

- D. Water systems and sewage disposal systems have been designed and approved by Marin County Environmental Health Services in accordance with MCC Titles 7 and 18 respectively.
- E. Project approval requires that restoration of the structures and piers must be reviewed by a registered engineer for structural integrity. The construction of the repairs and restoration of the structures and piers would require a building permit from the Marin County Community Development Agency, Building Inspection Division. This division would review the building permit application for compliance with Uniform Building Code standards and requirements in regards to addressing public and private safety hazards.
- F. The project would result in excavation and disturbance of soils only to construct on-site parking to meet Department of Public Works (DPW) parking standards and Cal-Trans ingress and egress standards.
- G. No improvements would be constructed in geological hazardous areas.
- H. Proposed on-site parking is sufficient to meet the parking requirements of DPW and the proposed parking lot, augmented by valet parking service, has been designed in accordance with parking standards approved by DPW.

VIII. WHEREAS the Marin County **Planning Commission** finds that the requirements for Master Plan approval for the proposed improvements on Assessor's Parcel 104-110-11 ("Lands of Zimmerman"), consisting of 280 acres of agricultural lands can be waived pursuant to Marin County Code Sections 22.44.040 (A) and 22.56.026 (C) because: (1) the Master Plan Amendment application for proposed improvements on the "Lands of Three Sons, LLC" along with the Coastal Permit, Precise Development Plan, and Tidelands Permit applications for proposed improvements on the "Lands of Three Sons, LLC" and the "Lands of Zimmerman" provide the specific submittal requirements and information for adequate merit and environmental review of the proposed project relating to the restoration of Nick's Cove, thereby allowing the request for a Master Plan Waiver for proposed related improvements on the "Lands of Zimmerman"; (2) only minor improvements (well and sewage disposal systems) to serve the restoration and reuse of the commercial facilities are proposed on approximately 3 acres (1% of the land area) resulting in approximately 277 acres to be available for agricultural use; and (3) the proposed improvements on the agricultural lands would be consistent with the relevant policies and standards of the Marin Countywide Plan, the Local Coastal Program, Unit II, the East Shore Community Plan, and the allowed uses of the governing zoning districts.

IX. WHEREAS the Marin County Planning Commission finds that the Three Sons, LLC (Nick's Cove) Master Plan for the restoration, reuse, and proposed improvements associated with the Nick's Cove commercial operation on Assessor's Parcels 104-140-02 and 104-150-01 ("Lands of Three Sons, LLC) as required by Marin County Code Section 22.56.026 (C) can be approved subject to conditions of approval contained herein because: (1) the project is consistent with all applicable policies of the Countywide Plan, Local Coastal Program, Unit II, and East Shore Community Plan, and all regulations, standards, and allowed uses of the governing zoning districts; (2) the site is physically suitable for the type, intensity, and density of the proposed development and land uses with County-approved access and utilities and services; (3) the project would not result in significant disruption to the surrounding natural landscape or the coastal, residential community of Marshall; and (4) the project would not result in any significant environmental impact, including fish and wildlife or their habitats.

X. WHEREAS the Marin County Planning Commission finds that the proposed project, subject to the conditions of approval contained herein, would be consistent with the requirements for approval of a Precise Development Plan because the project: (1) is consistent with the pertinent goals, policies and objectives of the Marin Countywide Plan, the Local Coastal Program, Unit II, and the East Shore Community Plan; (2) would conform to the purpose and allowed land uses of the governing zoning districts; (3) would provide for visitor- and local-serving commercial uses and service establishments consistent with the character of the

surrounding community; (4) would not result in substantially enlarging the size of the existing commercial structures or alter the exterior appearance of the historic buildings; (5) would not impair or interfere with the orderly and pleasing development of the neighborhood or create detriment with respect to light, air, privacy, view, height, bulk, mass, and land use issues; and (6) would be consistent with the proposed Master Plan.

XI. WHEREAS the Marin County Planning Commission finds that the project, subject to conditions of approval contained herein, is consistent with the mandatory findings for Coastal Permit approval pursuant to the requirements and objectives of the Local Coastal Program, Unit II (Marin County Code Section 22.56.130) as outlined below.

A. Water Supply:

Improvements to the Existing Water System

There are currently two (2) 10,000-gallon concrete aboveground tanks on the upland property that provide water for domestic and fire protection uses to the existing cottages, restaurant, and four residences off-site and south of the subject project site. These tanks are supplied from spring water (which is leased to the project site) on the "Lands of Poncia" (Assessor's Parcel 104-110-10) property, located upslope and east of the project site. The tanks are fed by gravity flow through an aboveground plastic pipeline system. Current water treatment consists of manually adding the necessary chemicals to the tanks on a predetermined time schedule. This system will remain and will be modified to provide fire protection, irrigation, and maintain domestic service to four single-family residences located off-site, south of the project site and across State Route One that are not part of the subject project. Modifications consist of (a) capping transmission lines to the existing structures on the project site; (b) installing a new fire hydrant in the area of Cottage C6, prior to crossing State Route One; (c) constructing an accessory structure to house chlorinating facilities, and (d) installing an irrigation service off the existing main to supply irrigation for landscaping to the project site. Marin County Environmental Health Services (EHS) have reviewed and approved of the improvements to the existing water system. EHS would designate the spring water system as a "non-community small public water system" with implementation of a "mutual system agreement" to provide an ongoing maintenance program by all affected parties. Prior to any building permit approval from EHS, the applicant must first apply for and obtain a permit-to-operate a non-transient, non-community (NTNC) public water system, subject to the submittal and review of various data including calculations of the minimum storage volume for drinking water, water quality testing results, and a Technical, Managerial, and Financial (TMF) Report for maintenance of the water system.

Proposed New Water System for the Operation

The water supply for the commercial operation will be from a well on the "Lands of Zimmerman" east of the project site. The well on the "Lands of Zimmerman" lies approximately 0.75 miles northeast of the Nick's Cove property at an elevation of approximately 540 feet. The Groundwater Well Analysis, prepared by O'Connor Environmental, Inc., the project sponsor's consultant and submitted with the application, states that the water table rose about 100 feet in the well in about one week during testing for yield which strongly suggests that the aquifer is relatively permeable and essentially "brimming full with groundwater". A 3-day pump test of the well conducted by Nor-Cal Pumpworks, Inc. indicated that the well has a relatively high capacity rate of gallons per minute (gpm) and suggests that the well capacity may have a much greater yield than the 38 gpm measured, with an estimated yield of 50 gpm yield. In accordance with the terms of the lease with the Nick's Cove commercial operation, no more than 30 gpm can be taken from the well, leaving the remainder water for the cattle operation on the Zimmerman property. Using assumptions provided by the California Code of Regulations, Marin County Environmental Health Services (EHS) staff estimates that the restaurant and 8 cabins or residences (11 over-night guest units and one residence as proposed) would need a water yield less than 31 gpm to meet the County yield requirements. (This does not factor in water yield for irrigation that

will be provided by the spring water source on the "Lands of Poncia"). EHS staff has reviewed the O'Connor and Nor-Cal Pumpworks assessments, the yield test data, and is satisfied that the sustained yield of the well was measured at 38 gpm.

Water will be pumped from the well through an underground PVC transmission line within a newly created water easement to the two new 10,000-gallon concrete water tanks to be constructed next to the existing tanks. The new downline will supply water to the 11 guest units, manager's residence, laundry facilities, and the restaurant. As a matter of standard practice, Department of Public Works staff will require a site specific geotechnical investigation as necessary for construction of the new water tanks.

New underground PVC transmission downlines will be constructed, with a line traversing through the project, under State Route One, and terminating at Cottage C5 with a 2-inch blow-off assembly. This assembly will be used for flushing purposes as needed. Facilities within the Cal-Trans right-of-way will be installed per Cal-Trans standards.

Summary

At the completion of the redevelopment of Nick's Cove, the project will have two water systems: (1) spring water from the "Lands of Poncia", existing water storage tanks, and distribution lines to supply fire protection and domestic water service to the existing four residences off-site and south of the project site, plus landscape irrigation to the project site; and (2) water from the well on the "Lands of Zimmerman", two new storage tanks, and appurtenant facilities to supply water to the project. Usage of the water supply from the springs on the "Lands of Poncia" will be reduced because of the proposed water source for the operation from the "Lands of Zimmerman". The O'Connor Analysis concludes that the water usage from the Zimmerman well for the commercial operation is unlikely to have a significant effect on ground water supplies of other wells in the vicinity. Therefore, the proposed commercial uses would not directly or indirectly significantly impact or alter any existing surface water or aquifer in the project area.

B. Septic System Standards:

Use of septic systems along the shoreline of Tomales Bay is an important factor in establishing the water quality of Tomales Bay. The Marin County Community Development Agency - Environmental Health Services Division (EHS) has worked, and continues to work, with other agencies to protect the water quality of Tomales Bay. In 1992, EHS approved the repair of an on-site sewage disposal system on the bayside of the project site to serve the restaurant because of sewage discharge into the bay. Since 1992, the cottages have had no sewage disposal provisions approved by the County because of the constraints and limitations of the bayside property to provide sewage disposal in compliance with County standards. Furthermore, testing by the project sponsor's engineers concludes that construction of an on-site sewage disposal system on the upland side to serve the entire project is not feasible.

The project proposes to construct to County standards a new, off-site below ground sewage disposal system on the "Lands of Zimmerman" to serve the commercial operation in a location approximately 3,600 feet northeast of the primary project site and 300 feet above the high tide of Tomales Bay. The improvements include a 3,000-gallon siphon chamber with dual alternating siphons, shallow pressurized trenches divided into four sections, and appurtenant underground sewage pipelines within utility easements over the "Lands of Zimmerman" encompassing an area in size of approximately three acres.

In addition, the project proposes to abandon all existing sewage tanks, cesspools, and disposal trenches. The off-site sewage disposal system, sited on the upland side and east of State Route One further away from Tomales Bay, and the removal of all existing on-site sewage disposal facilities along the bay front

of the subject property would assure long-term protection of the resources and water quality of Tomales Bay by removing the potential for sewage to enter the Bay.

C. Grading and Excavation:

The applicant is proposing a parking design in response to issues raised by: (1) Cal-Trans staff requiring the elimination of undefined and multiple vehicular accesses onto State Route One and encroachments in the State Route One road right-of-way, both of which are in violation of the Cal-Trans standards; (2) Department of Public Works staff requiring adequate on-site parking built to Marin County Code, Title 24 standards; and (3) Planning Division staff requiring that new parking facilities be outside the required 100-foot SCA. A new parking area would be located north of proposed Cottage C8 in order that only one access onto State Route One would exist in compliance with the requirements of Cal-Trans and provisions for adequate parking spaces outside of the 100-foot SCA. Construction of the new parking area would necessitate approximately 2,158 cubic yards of excavation and 6 cubic yards of fill with approximately 2,152 cubic yards of off-haul.

While the proposed parking plan requires excavation into the hillside north of the development site and additional site disturbance in a sloped area of the property, the parking plan results in additional new parking spaces that: (a) do not encroach into the State Route One road right-of-way; (b) provide for one access onto State Route One; and (c) do not encroach into the 100-foot SCA. This parking plan balances the need for on-site parking for the commercial operation on a site with limited level areas against the need to preserve the potential natural resources of the on-site blue-line creek, provide a measure of vehicle safety standards, and not result in a significant environmental impact. The project would be consistent with CWP policies relative to minimal site disturbance because the project would adhere to the Department of Public Works regulations that require minimal grading while allowing for adequate access

D. Archaeological Resources:

The cultural resource maps maintained by the Community Development Agency indicate that the subject property is located in an area of high archaeological sensitivity. The project sponsor has submitted a cultural resource evaluation of the site, prepared by Archaeological Resource Service. The archaeological evaluation determined, based on past literature research, that there is a possibility that mixed midden parts could be found in the gravel road fill north of the creek and west of the highway. In May 2001, a surface examination was conducted. Some evidence of midden soil was observed on the east side of the highway. No artifacts were found in the soil. Evidence of a fragment of a mortar bowl is visible in the rockwall dividing the parking areas between proposed Cottage C7 and C8, although it may have been imported to the site at one time. If this mortar is disturbed due to the removal of a section of the rockwall during construction of the new parking lot, the archaeological evaluation recommends that the mortar should be recovered from the wall. Mandatory mitigation measures incorporated into conditions of project approval would assure the protection of potential archaeological resources. Conditions of approval require that if archaeological resources are encountered at any time during construction on any portion of the property, an archaeologist must be contacted to evaluate the find. If it is determined that a prehistoric site exists (a) no future development activity shall take place at or in close proximity to the prehistoric site within the development area; (b) the historical site(s) shall be filled to protect the resources; (c) no additional excavation shall occur at these locations other than to remove surface organic material; and (d) the applicant may be required to submit a revised project to protect the resource(s). In addition, all monitoring procedures contained in the archaeological evaluation have been incorporated into conditions of project approval.

E. Coastal Access:

The shoreline portion of the property is located between the sea and the first public road and adjacent to a coastal area identified by the Local Coastal Program Unit II, where public access is desirable or

feasible. The project proposes only to restore those improvements that are existing on the shoreline of Tomales Bay. In addition, as a component of the proposed project, the applicant proposes to dedicate during the hours of operation of the restaurant public access and use of the existing pier that extends out into Tomales Bay. Restoration of the proposed improvements and facilities on the bay side of State Route One would not interfere with existing vertical or lateral access to tidelands and would enhance and increase the opportunities for public access to Tomales Bay. The proposed project supports and encourages the enhancement of public access opportunities to the coast.

F. Housing:

LCP policies support the protection of housing opportunities for persons of low and moderate income. Currently, on the primary project site are five cottages on the shoreline side, (that from time-to-time has served as long-term residential units) and two existing residences and one vacant structure, once a duplex, on the east side. While these structures are not proposed for demolition, with the exception of one employee living unit within the vacant structure, these structures are all proposed to be converted to over-night guest accommodations associated with the recreation and visitor serving commercial operation.

While the project results in a reduction of the potential number of long-term residential units, six of the existing structures have not contributed to the housing stock of Marshall for over a decade. Consistent with the competing goals and policies of the Local Coastal Program, Unit II supporting the provision of recreation and visitor serving facilities, the project will result in restoring an important recreation and visitor serving operation and will maintain one employee residence on site, thereby resulting in the loss of only one currently existing residence.

G. Stream Conservation Protection:

The proposed project is subject to the Streamside Conservation Area (SCA) policies contained in the CWP because an unnamed blue-line creek as mapped on the U. S. Geological Survey Map, Tomales, CA Quad flows east to west through the upland portion of the property. The project proposes a creek enhancement plan utilizing vegetation native to creek banks of West Marin in accordance with the findings of the Renshaw Assessment. Planning staff and the Department of Public Works, Creek Naturalist, have reviewed and approved the assessment and accompanying maps and the proposed landscape and creek enhancement plans and specifications.

Currently, within the SCA there exist a number of improvements and uses, including: a vacant structure (proposed Cottage C6); a structure currently used as a residence (proposed Cottage C7); two informal and undefined parking areas well within the SCA (one in front of proposed Cottage C6 and one in front of proposed Cottage C7).

The project proposes removal of all parking areas within the designated 100-foot SCA. The project proposes to restore and repair structures identified as proposed Cottages C6 and proposed C7, including the reconstruction of a staircase to the second story of Cottage C6, and development of pedestrian walkways within the SCA as permitted under CWP Policy EQ-2.4. This work will not involve an increase in floor area of structure over what has historically existed.

The removal of all parking areas within the SCA, implementation of the proposed creek enhancement program, and minimal repairs to existing structures and development of pedestrian walkways would not result in any potential significant environmental impacts relating to the ultimate protection of the habitat value of the creek and would be consistent with the County's SCA policies relative to permitted development within the 100-foot SCA.

In order to assure the establishment and long-term viability of the implementation of the habitat enhancement planting plan and the landscape plan, project approval requires the following conditions.

1. Before issuance of any construction permits, the applicant shall submit a precise landscape plan, creek enhancement plan, and irrigation plan utilizing the plant palette shown on Sheet 21 (further identified as part of Exhibit "A-1" on file in the Planning Division) for review and approval by the Planning Division staff. The landscape plan shall: (a) indicate proposed plantings by scientific and common names; (b) indicate the container size at the time of planting and the height at maturity; and (c) indicate the method and general location of the irrigation. The landscape, creek enhancement, and irrigation plan shall list all of the general conditions and specifications contained in the Streamside Conservation Area, Habitat Enhancement Planning, Management, and Monitoring Specifications, prepared by Diane L. Renshaw, Consulting Ecologist, dated August 21, 2002, on file in the Planning Division (*Mitigation Measures 7(a)-3*).
2. Before issuance of any Occupancy Permit, the applicant shall implement the creek enhancement plan and before issuance of any Occupancy Permit for the rehabilitation of the cabins on the east side of State Route One, the project sponsor shall implement the landscape plan (*Mitigation Measures 7(a)-4*).
3. Before issuance of any Occupancy Permit, the applicant shall enter into a 3-year Landscape Maintenance Agreement with the County with financial security consisting of a Certificate of Deposit of an approved bank, naming the County. The security shall consist of 150% of the cost of a 3-year maintenance and monitoring contract submitted with the Agreement with terms as outlined in Sections VI (Maintenance During the Monitoring Period) and VII (Monitoring Plan) of the enhancement plan. The 3-year term of the Landscape Maintenance Agreement shall be tied to the actual completion date of each phase of landscaping (*Mitigation Measures 7(a)-5*).

Finally, conditions of approval require the project sponsor to execute a Streamside Alteration Agreement with the State Department of Fish and Game before implementing the enhancement plan. Therefore, as modified by the conditions of approval, the project would be consistent with the SCA policies of the CWP and the streamside preservation policies of the Local Coastal Program, Unit II.

H. Dune Protection:

The project site is not located in a dune protection area as identified by the Natural Resources Map for Unit II of the Local Coastal Program.

I. Wildlife Habitat:

A Biological Assessment (Assessment), dated June 28, 2001, and a Streamside Conservation Area, Habitat Enhancement Planting, Management, and Monitoring Specifications, dated August 21 2002, prepared by Diane L. Renshaw, Consulting Ecologist, were submitted with the applications. These studies provide a description of the existing biological resources, an assessment of the proposed project on the natural resources on and surrounding the Nick's Cove project site, and a streamside conservation area enhancement plan. The Negative Declaration of Environmental Impact provides a thorough discussion on the biological resources found at the project site and the affect the proposed project may

have on these resources. During the biological reconnaissance conducted on April 30, 2001, Ms. Renshaw identified seven existing natural habitat areas at the site - open water, intertidal mudflat and beach, wetland, stream and stream corridor, grassland, brush, and trees – that have the potential to provide suitable habitat for eight of the special status animal species: California red-legged frog, brown pelican, coho salmon, chinook salmon, steelhead trout, great blue heron, great egret, and Ricksecker's water scavenger beetle. No special plant communities were found. The following is a summary of the findings of the analysis of the seven natural habitat areas found on site and the affect the proposed project may have on these areas

Coho Salmon, Chinook Salmon, and Steelhead Trout: Open Waters of Tomales Bay

The Assessment states that open waters of Tomales Bay are nutrient-rich estuarine waters that provide nursery habitat for shellfish, particularly oysters, and a large number of anadromous and marine fish, including coho salmon, chinook salmon, steelhead trout, and Pacific lamprey. Tomales Bay has been designated Critical Habitat for the central California Coast evolutionarily significant unit (ESU) of steelhead. The only part of the proposed project that would lie in open waters is the last 50+/- feet of the existing fishing pier and the proposed approximately 240 square foot deck at the end of the pier. While eelgrass beds, which are important spawning and nursery areas for many species of fish and invertebrates, exist near the northern end of Tomales Bay, the Assessment finds that there are no eelgrass beds in the vicinity of the project site.

The Assessment concludes that there are no sensitive species expected in the intertidal zone at the project site and no significant impacts are expected to intertidal organisms or their habitat resource. Condition of project approval prohibits the use of pressure-treated and creosote soaked woodpiles for repair/construction of piles. Concrete or steel piles shall be used and cofferdams shall be utilized to keep concrete contained until it is dry and cured. Construction, including pier and piling work shall be done from above. Tarps or other netting shall be hung beneath the work area to keep debris, construction materials, and tools out of the water. Best Management practices shall be employed to prevent any debris or wet concrete from falling into the water. A Construction Management Plan with these provisions shall be posted on the first sheet of the building permit plans and shall be posted on-site during construction activities. If eelgrass is found below the low tide line, the eelgrass shall not be disturbed. (*Mitigation Measure 7(a)-2*)

Coho Salmon, Chinook Salmon, and Steelhead Trout: Stream

The coho salmon, Chinook salmon, and steelhead trout are all anadromous fish, with adults maturing in a marine environment and migrating back into the freshwater streams and rivers of their birth to spawn. Chinook salmon and coho salmon typically spawn in larger coastal streams than the stream on the project site, and steelhead are most commonly found in cool, clear, fast-moving streams and rivers, with gravel riffles and occasional pools. The Renshaw Assessment finds that the current wildlife habitat value of the stream is limited by its uniformly straight channel, absence of riffles and pools, and lack of riparian cover but it is a source of water, estimated to be 8 inches in depth at peak season, based on evidence of shelving along the banks. The creek becomes dry in the summer. The Assessment concludes that presently there is no suitable habitat within the creek for salmon breeding. The Assessment concludes that the stream at the Nick's Cove site does not provide suitable spawning habitat for any of these fishes, although they are likely to be present offshore in the waters of Tomales Bay.

Brown Pelican

The brown pelican is a common summer visitor to the marine and estuarine waters of Tomales Bay. Offshore rocks, docks, wharves, jetties, and breakwaters are typical resting habitat for the brown pelican, which also uses mudflats, sandy beaches, and the water surface for loafing. Brown pelicans can be expected to use the pier, buildings, and all parts of the intertidal and open water habitat area at the site for loafing and feeding. The proposed project is not expected to have a significant impact on the presence of the brown pelican. To assure that exterior lighting installed on the renovated restaurant, cottages, and piers is not detrimental to nighttime movements of marine and migratory birds over Tomales Bay, conditions of project approval require the applicant to submit an exterior lighting plan with the building permit plans and shall provide a tear sheet with specifications with lighting wattage of all selected lighting fixtures. Lighting shall be of low wattage, hooded, and directed downward and away from the bay, and shall be for safety purposes only (*Mitigation Measure 7(a)-1*).

Food preparation and clean-up associated with the restaurant, if allowed on the deck at the rear of the restaurant could result in unwanted substances into Tomales Bay (garbage, petrochemicals, detergents, etc.) Conditions of project approval will require the owner/operator to submit to the Community Development Agency a business plan for the operation of the restaurant that: (a) prohibits food preparation and clean-up (other than associated with the serving of meals and dining) on the deck; and (b) requires posting of signs in visible places on the deck that prohibits the feeding of gulls and pelicans from the deck.

California Red-legged Frog Critical Habitat and Ricksecker's Water Scavenger Beetle

The Renshaw Assessment states that Nick's Cove is named as a California red-letter frog critical habitat watershed by the U. S. Department of Fish and Wildlife Service. The Assessment also states that suitable breeding ponds are located within 1,500 feet of the project site and suitable habitat does exist in the dense willow riparian thicket immediately upstream from the project site. While presently there is no suitable breeding habitat for the California red-legged frog or the Ricksecker's Water Scavenger Beetle along the creek on the Nick's Cove project site, because adult frogs are known to move along water courses, it can be assumed that the Nick's Cove site is used at least occasionally by wandering and foraging frogs. The proposed creek enhancement plan will increase potential habitat value for the red-legged frog and the Ricksecker's Water Scavenger Beetle.

Great Blue Heron

Trees that are mapped at the site include Monterey pine, Monterey cypress, and blue gum eucalyptus. None of these are native to the site. Situated approximately 0.25 miles upland and outside the project site boundaries, there is an undisturbed thicket of riparian vegetation with a grove of eucalyptus and Monterey cypress a short distance from the stream. The eucalyptus grove is a known rookery for nesting great blue herons and great egrets. During the site survey, an active great blue heron roost was found. These groves are also known as roosting grounds for the great egret. The Renshaw Assessment states that most birds are able to accommodate some level of disturbance, but most are sensitive to sudden changes in customary activities. Herons and egrets are most sensitive to disturbance during March and April, critical months for nest building and egg-laying. No major construction activity will take place near the eucalyptus grove, nor will the project require any human intrusion into the eucalyptus grove as a result of this project. Therefore, the project is not expected to result in any significant impacts to nesting or egg-laying herons or egrets.

J. Protection of Native Plant Communities:

Review of the California Natural Diversity Data Base (CNDDDB), prepared by the State Department of Fish and Game and on file with the Community Development Agency, indicates that the subject property is not located within the habitat area of any endangered, threatened, or special plant species. In addition, the Natural Resources Map for Unit II of the Local Coastal Program indicates that the subject property is not located in an area containing rare and endangered plants. A Biological Assessment, dated June 28, 2001, prepared by Diane L. Renshaw, Consulting Ecologist, was submitted with the applications. Based on a field reconnaissance, the Renshaw assessment states that no special status plant communities were found on site. Therefore, the proposed project is not likely to significantly reduce the number or available habitat area for any identified plant species.

K. Shoreline Protection:

The project site is located adjacent to the shoreline, but not within a bluff erosion zone. The project will not obstruct public access, interfere with natural shoreline processes and water circulation, create erosion of the shoreline banks, or adversely effect marine habitats and water quality of Tomales Bay. No new structures are proposed on the shoreline of Tomales Bay. Only the existing cottages, restaurant and pier that have been on the shoreline without resulting in any environmental impacts will remain to be restored and reused. The pier will be available for public access during the hours of operation of the restaurant. The project is also consistent with the LCP policies that allow repair of seawalls because only the rotted/damaged wood element of the existing seawall at the vicinity of the cabins would be replaced with a new extension consisting of either concrete, masonry block, or treated lumber at this location. In accordance with established LCP criteria: the condition requiring the repair is site specific and not attributable to a general erosion trend; the repair would not adversely affect adjacent or other sections of the shoreline; the wall is not located in wetlands or other significant resources or habitat area, will not cause significant adverse impacts to fish or wildlife, and will not result in reduction in public access or use and enjoyment of the natural shoreline.

L. Geologic Hazards:

The subject property is located within a state designated "Earthquake Fault Zone" as defined by the California Division of Mines and Geology (CDMG) and the California Alquist-Priolo Special Studies Zone Act. This act requires that a detailed investigation be performed by a registered geologist, prior to development of habitable structures, to evaluate the potential for ground surface fault rupture. The subject property is located approximately 4,000 feet (3/4 mile) east of the main trace of the San Andreas Fault zone. There are no mapped tsunamis, high liquefaction, or landslide areas on the subject property. Structures located along Tomales Bay are subject to tidal action. However, these structures have been on this site for over 70 years with no significant impacts resulting from tidal action. The project area is outside of the "Slope Stability of the Tomales Bay Study Area" as mapped by Donald L. Wagner and Theodore C. Smith, 1977.

A Soils Report, prepared by Bogos Paul Torikian, P. E., dated, March 1, 2001, and submitted with the applications found no geological hazards on the east side of State Route One, specifically on the hillside above the site of the new proposed parking area. Construction of building improvements would require compliance with County building codes for seismic safety. As a matter of standard practice, Department of Public Works (DPW) will require site specific geotechnical investigations as necessary for any development prior to issuance of improvement plans or building permits. Any foundation reconstruction plans will be required by DPW to be reviewed and stamped by a Registered Engineer prior to the issuance of building permits. Therefore, the proposed project would not result in, or expose people to, any significant effects due to geological hazards.

M. Public Works Projects:

The proposed project does not entail expansion of public roads, flood control projects, or utility services.

N. Land Division Standards:

The project does not entail divisions of lands.

O. Visual Resources:

The CWP policies require protection of the visual resources thereby assuring that visual qualities and view potential of the natural and built environments will be considered in reviewing development projects. In particular, preserving visual resources should be achieved by avoiding the removal of and damage to trees (Policy EQ-3.11

The proposed project would not affect or degrade the scenic area and views of Tomales Bay as viewed by the public traveling State Route One or visiting Miller Park, the County park to the north. In addition, the project would not conflict with adopted aesthetic or visual policies or standards. The project consists of restoring and redeveloping existing structures consisting of the cottages and restaurant on the bay (west) side of the project site and the residences on the upslope (east) side. Construction of the new decks on the cottages would not obscure or impinge on the views of Tomales Bay to any substantial amount. The proposed project does not require the removal of substantial vegetation that would diminish the visual and aesthetic qualities of the project sites. Use of exterior materials and finishes, similar to that which exists today, will be compatible with the natural environment and the surrounding community character. As a standard County provision, all utility lines must be undergrounded. County standards allow exterior lighting for safety purposes only and require that all exterior lighting be hooded and directed downward to assure that development does not result in glare from exterior lighting.

Proposed new improvements that may result in changes to the open scenic vista of the project site consist of construction of two new 10,000-gallon concrete water storage tanks and a retaining wall (from 2 to 8 feet in height) along the west side of the new parking area. Only the two new water storage tanks and the retaining wall have the potential to alter significantly the existing scenic views as seen by the traveler along State Route One. The retaining wall faces into the parking area so that only the finished heights are seen from within the parking area. The two new water storage tanks would double the size and mass of the existing tanks, sited in a prominent upslope location as viewed by the southbound traveler. In order to blend the apparent height and bulk of the new 10,000-gallon water storage tanks into the natural hillside environment, conditions of approval require the applicant to paint the tanks an earth-toned color that blends into the landscape and takes into account the seasonal landscape color changes. Said color shall be submitted to the Planning Division for review and approval before issuance of any construction permits. In addition conditions of approval require that all mechanical equipment, including air-conditioning units, shall be installed within the interior of the structures or inside baffled and sound insulated structures and enclosures that blend with the exterior architectural elements of the structures.

P. Recreation/Visitor Facilities:

The proposed project entails the rehabilitation and revitalization of Nick's Cove as a visitor- and local-serving facility in the Marshall community. The project would provide lodging and dining opportunities for visitors to the coast, as well as the local community, and would provide boat slips and a pier that would be available for public recreation. Restoration and reuse of the proposed improvements and facilities will preserve the unique historic qualities of the coastal commercial center and will not conflict with the protection of natural resources and agriculture lands. The proposed

project supports and encourages the enhancement of public recreational opportunities and development of visitor-serving facilities in the coastal zone undertaken in a manner which preserves the unique qualities of Marin's coast and which is consistent with the protection of natural resources and agriculture (*LCP Recreation and Visitor Serving Facilities Policy 1*).

The project is consistent with the LCP policy that encourages visitor-serving uses on this site and supports the continued and upgraded use, with possible expansion, of Nick's Cove. Overnight accommodations, such as bed and breakfast facilities, on the upland side of State Route One are encouraged, consistent with the availability of water supply, sewage disposal, and parking facilities (*LCP Recreation and Visitor Serving Facilities Policy 3.e. (2)*).

Q. Historic Resource Preservation:

The project site is a small settlement consisting of modest commercial and residential structures and an old fishing/boating pier, which was part of the local fishing community established in the 1930's. The proposed project would restore the commercial vitality of the project site and would preserve the unique and historic cottages along the shoreline of Tomales Bay as well as the restaurant and the structures on the upland side of State Route One. Very few exterior modifications are proposed. The proposed project would be consistent with the LCP policies requiring preservation of historic structures as the restoration project would restore for reuse an important part of the historic fabric of the Marshall area on Tomales Bay. The historic structures would be preserved, and the long-established physical character of the village center would be enhanced and protected from damage or rapid change.

R. Fire Protection:

The Marin County Fire District staff has made several site visits and reviewed the project plan. The project includes upgrades of the water system for fire protection and includes installation of a new fire hydrant at the project site. Adequate fire protection for the proposed project is available from the Marin County Fire District..

XII. WHEREAS the Marin County Planning Commission finds that the proposed project, subject to the conditions of approval contained herein, would be consistent with the mandatory findings for protection of tidal waterways (Marin County Code Section 22.77.040) as outlined below

A. The encroachment of the tidelands is the minimum necessary to achieve the purpose of the proposed work.

The project entails the repair and restoration of the deteriorated portions of the existing structures, including the pier, and construction of a small deck at the end of the pier for fishing and boat access, and construction of four boat slips to enhance boating on Tomales Bay. These improvements will be constructed in a manner that will meet current County standards for public health and safety. The minor improvements and repairs would be the minimum amount of work within the tidelands to achieve the purpose of the proposed project. The project would not result in any change in use of the existing facilities within the tidelands.

B. The proposed fill, excavation or construction will not unduly or unnecessarily:

1. Inhibit navigation;

The project would not result in any development within Tomales Bay that would inhibit navigable waters. There would be no adverse impacts to watercraft navigating surface water near the subject property.

2. Inhibit access to publicly owned tidelands;

There are no known access easements over the subject property that would be affected by the project. The pier will be available for access and fishing by the public during the hours of operation of the restaurant.

3. Cause or increase the likelihood of water pollution;

The proposed project, consisting of the repair and reconstruction of piers for existing decks, the pier and structural underpinnings associated with the restaurant and cottages would not result in any increase in the amount of impervious surfaces on the subject property. The construction of the new deck area at the end of the pier would require approximately 7 new piers. The proposed work would not alter surface drainage patterns or result in water pollution within Tomales Bay.

4. Cause or increase the likelihood of flooding of adjoining lands;

There would be no increase in structural improvements on the shoreline that would alter existing, or result in additional, water run-off or change or obstruct drainage patterns or flow of tidal action. The Department of Public Works staff has not identified any drainage or flooding problems associated with the proposed project and will review the project at the building permit stage to determine that drainage is adequately addressed on the subject property. Therefore, the project would not increase the likelihood of flooding on adjacent lands as verified by Department of Public Works staff. Water would continue to flow and currents within the bay would not be altered.

5. Destroy or accelerate the destruction of habitats essential to species of fish, shellfish and other wildlife of substantial public benefit;

The open waters of Tomales Bay are nutrient-rich estuarine waters that provide nursery habitat for shellfish, particularly oysters, and a large number of anadromous and marine fish, including coho salmon, chinook salmon, steelhead trout, and Pacific lamprey. The only part of the proposed project that would lie in open waters is the last 50+/- feet of the existing fishing pier and the 240 square foot proposed deck at the end of the pier. While eelgrass beds, which are important spawning and nursery areas for many species of fish and invertebrates, exist near the northern end of Tomales Bay, the Biological Assessment, prepared by Diane Renshaw and submitted with the applications, found that there are no eelgrass beds in the vicinity of the project site.

The Assessment concludes that there are no sensitive species expected in the intertidal zone at the project site and no significant impacts are expected to intertidal organisms or their habitat resource. Condition of project approval prohibits the use of pressure-treated and creosote soaked woodpiles for repair/construction of piles. Concrete or steel piles shall be used and cofferdams shall be utilized to keep concrete contained until it is dry and cured. Construction, including pier and piling work shall be done from above. Tarps or other netting shall be hung beneath the work area to keep debris, construction materials, and tools out of the water. Best Management practices

shall be employed to prevent any debris or wet concrete from falling into the water. A Construction Management Plan with these provisions shall be posted on the first sheet of the building permit plans and shall be posted on-site during construction activities. If eelgrass is found below the low tide line, the eelgrass shall not be disturbed.

Aquatic wildlife would continue to pass beneath the existing pier and the proposed deck with minimal interference. The structures could continue to provide cover protection for fish as it does now. There would be no additional pilings or fill that would alter the flow of creek. The project would not result in any additional impact to waterfowl inhabiting the immediate area.

6. Interfere with or detract from the line of sight of the public toward the water, particularly on natural features of visual prominence;

With the exception of the proposed small fishing shed at the end of the pier, all structures currently exist on the shoreline of the bay. These structure would not represent imposing structures or substantially detract or interfere with the view shed or open waters towards Tomales Bay.

7. Conflict with the scenic beauty of the shoreline due to height, bulk, form, color materials, illumination or the extent and design;

The project, consisting of the restoration and reuse of the improvements associated with "Nick's Cove, would not result in impacts to the scenic beauty of the shoreline due to height, bulk, form, color materials, illumination, or the intensity and design of the project. All structures are existing, with the exception of the small fishing shed to be rebuilt at the end of the pier. The project would not result in a proliferation of new structures on the shoreline of Tomales Bay. Landscaping on the shoreline would be limited to ground cover as needed. Exterior colors and materials would continue to blend with the scenic beauty of the shoreline and would not add to the bulk, height or mass capable of blocking views from or to Tomales Bay.

8. Create a safety hazard in connection with settlement of fill or earthquakes; or

Project approval requires that construction of the structure must be reviewed by a registered engineer for structural integrity. The construction of the repairs and rebuilding of the structures would require a building permit from the Marin County Community Development Agency, Building Inspection Division. This division would review the building permit application for compliance with Uniform Building Code standards and requirements in regards to addressing public and private safety hazards.

9. Diminish natural waterways by siltation, sedimentation or bank erosion.

The proposal involves the restoring the existing pier and deck at the rear of the restaurant and involves new piers for the deck with a fishing shed at the end of the pier. Existing drainage patterns would not be altered as a result of the project. However, the project will be reviewed by Department of Public Works staff prior to the issuance of a Building Permit for additional required drainage improvements or prevention of siltation, sedimentation, or bank erosion into Tomales Bay associated with the project.

B. The proposal is in substantial harmony with the Marin Countywide Plan, the Local Coastal Program, Unit II and the East Shore Community Plan and is consistent with public trust policies for tidelands areas.

The proposed project, subject to the conditions of approval contained herein, is consistent with the relevant policies of the East Shore Community Plan because the project would: (1) protect and enhance the blue-line creek and the 100-foot stream conservation area; (2) maintain the East Shore's uniqueness, social and economic diversity, and sense of community; (3) encourage development with a viable local economy; (4) maintain compatible existing and new land uses with the bay; (5) generate employment opportunities for residents within the planning area; (6) preserve existing development that is small-scale; (7) protect historical and archaeological resources; (8) not result in development on lands zoned C-APZ-60 that conflicts with any agricultural operation; (9) result in the continuation and revitalization of the historic commercial visitor- and local-serving operation at Nick's Cove and (10) ensure the protection of the water quality of Tomales Bay.

Land use designations and development of the project site are governed by the objectives and policies of the Marin Countywide Plan (CWP), the Local Coastal Program, Unit II (LCP), and the East Shore Community Plan (Community Plan) and the provisions of Marin County Code (MCC) Title 7 (Water) Title 18 (Sewers), Title 19, (Buildings), Title 22 (Zoning), Title 23 (Natural Resources) and Title 24 (Development Standards). As modified by the mandatory mitigation measures and recommended conditions of approval, the project would be consistent with the applicable goals and policies of the Marin Countywide Plan, including those relating to the CWP land use designations, building intensity (floor area ratio) and residential density (units per acre) provisions, preservation of agricultural lands, preservation of historic structures, protection of streams, riparian habitat, and special status species. The project conforms to appurtenant major environmental policies that provide standards to minimize potential physical impacts relative to the project. (

The CWP specifies that land use in the Coastal Zone shall be subject to the provisions of the Local Coastal Program in addition to the CWP land use designations (CWP Policy CD-8.10). As modified by the mandatory Negative Declaration of Environmental Impact mitigation measures and recommended conditions of approval, the project would be consistent with the applicable goals and policies of the LCP that encourage the protection of agriculturally productive lands and discourage development of agriculturally zoned lands that diminish the productivity of such lands. The project also would comply with policies that encourage recreation and visitor serving facilities, preservation of historic structures, protection of water quality of Tomales Bay and stream conservation areas and their riparian habitats, and provisions for public access but discourage the proliferation of shoreline structures due to their potential visual impacts, interference with natural shoreline processes and water circulation, and effects on marine habitats and water quality.

Public trust lands include tidelands and submerged lands. Development on public trust lands is a particularly significant issue and new filling of tide and submerged lands is restricted to activities that serve a public purpose. LCP policies allow existing structures on public trust lands along the shoreline of Tomales Bay to continue and to be rebuilt if damaged or destroyed by natural disaster. The project proposes to rehabilitate the existing shoreline cottages to provide over-night guest accommodations, consistent with their historic use (since the 1930's). With the exception of the reconstruction of small cantilevered decks totaling 576 square feet at the rear of the cottages, the cottages will not be enlarged, and the decks would not require any additional fill in the bay. The restaurant and attached deck at the rear will be repaired. The pier, to be available for public access, will be repaired with some new piers required to replace piers destroyed by tidal action. This project proposes to restore and repair the existing shoreline structures and preserve the valuable historic character of this site; therefore, the proposed project is consistent with LCP Public Trust Lands Policy 2, relative to land use and the filling of public trust lands (*LCP Public Trust Lands Policy 2*).

The project would conform to the requirements of the State Lands Commission, Department of Public Works and the County adopted Uniform Building Codes. As a condition of project approval, the applicant would be required to obtain approval the State Lands Commission before issuance of a Building Permit. The project would not result in any substantial additional fill within Tomales Bay, inconsistent with the CWP or LCP environmental and land use policies associated with this project.

C. Public benefits will be created to offset some of the detriments, which may be caused by the nature of the proposal.

The project includes use of the pier for access and fishing by the public during the operation of the restaurant. The project also includes construction of four boat slips at the end of the pier for public use.

D. The proposed fill, excavation or construction will not adversely affect existing public rights on the property.

No public rights are known to exist over the subject property that is already developed. The adjacent properties to the south are privately owned. The project would not interfere with the use of Miller Park, a County park, to the north.

SECTION II: CONDITIONS OF PROJECT APPROVAL

NOW, THEREFORE, BE IT RESOLVED that the Marin County Planning Commission hereby recommends that the Marin County Board of Supervisors enact an ordinance which approves the Three Sons, LLC (Nick's Cove) Master Plan Amendment (01-07), and adopt a resolution which approves the Master Plan Waiver request, the Coastal Permit (01-26), the Precise Development Plan (01-08), and the Tidelands Permit (01-05) applications subject to the conditions outlined below.

Marin County Community Development Agency-Planning Division

1. Specifically, the approved physical improvements shall comprise up to an 18-month phased plan to restore the Nick's Cove site through restoration and reuse of the existing improvement on 9.83-acre primary site ("Lands of Three Sons, LLC", consisting of a total of 6.03 acres of dry land), construction of new septic and well water systems located on the 280-acre auxiliary agricultural site ("Lands of Zimmerman") and improvements to the existing water system on the "Lands of Poncia as outlined below.

Assessor's Parcel 104-150-01 ("Lands of Three Sons, LLC"): 1.92 acres of dry land located west of State Highway One on the bayside of Tomales Bay

- Restoration of five cottages (totaling 2,860 square feet) to provide five over-night guest units and construction of new cantilevered decks (totaling 576 square feet) to replace the previously removed deteriorated decks at the rear of the cottages;
- Remodeling/repair of the existing restaurant, rear deck, and covered porch: restaurant to seat 84 persons; and deck at the rear of the restaurant to seat 46 persons with the addition of a retractable awning over the deck (total square footage, approximately 5,533);
- Repair of the existing pier (approximately 385 feet long by 6.5 feet wide) and 450 square foot dock over Tomales Bay and construction of a 242 square foot fishing/utility shelter at the end of the existing pier to replace a destroyed fishing shelter with an offer of public access and use by the public during operating hours of the restaurant;
- Construction of four boat slips and one mooring area at the end of the existing pier for visiting boaters;

- Repair of the existing concrete seawall that provides protection and prevent further erosion;
- Repair of boardwalks for pedestrian access along the front of the restaurant and cottages;
- Development of five on-site parking spaces, including one space for people with disabilities and a vehicle turnaround;
- Construction of new underground transmission lines for carrying water to the restaurant and cottages, and underground utility lines; and
- Construction of: (a) three grease interceptor tanks (1,500-gallon capacity each) for the restaurant; (b) four 1,500-gallon sewage holding tanks for the restaurant and the five bayside cottages with all facilities traffic rated and with iron manhole covers; (c) an underground pressure line for carrying effluent off-site; (d) under ground water lines; and (e) underground utility lines.

In summary, restoration of the existing improvements, totaling a maximum of 8,400 square feet of commercial development on the 1.92 acres of dry land shall result in a maximum floor area ratio (FAR) of 10%.

Assessor's Parcel 104-140-02 ("Lands of Three Sons, LLC"): 4.11 acres located upland and east of State Highway One

- Conversion of two existing one-story residences, totaling 2,118 square feet, into four over-night guest units and the additions of decks to the units;
- Redevelopment of one vacant two-story, 1,284 square foot structure, previously used as a residence, into two over-night guest units and one residence for an employee of the facility;
- Construction of a new water system appurtenant to the off-site well to serve the commercial development, including two new 10,000-gallon concrete water storage tanks and a distribution system to serve the project;
- Construction of a 3,000 square foot sand filter system and 3,000 gallon sewage holding tank north of the parking site;
- Installation of a new fire hydrant adjacent to the highway;
- Construction of underground water, sewage lines, and utility lines;
- Construction of a new parking area (consisting of turf block over 6-inch crushed aggregate in parking spaces and asphalt at entrance) located north of the existing cottages for 41 on-site parking spaces, including two spaces for people with disabilities, and the provision for valet parking for 16 additional vehicles, with one access onto State Route One, the removal of five trees, and a split-face block retaining wall on the west side from 2 feet to 8 feet in height facing into the parking area;
- Construction of decomposed granite pedestrian walkways, drainage, grading, and landscaping improvements with an irrigation system, including a small orchard and terraced vegetable, herb, and flower gardens to be used in the restaurant and lodging operation;
- Restoration of the riparian habitat on either side of the existing creek and within the 100-foot Stream Conservation Area utilizing native shrubs, grasses, and perennials, construction of a foot bridge over the creek, development of pedestrian trails, and planting of coastal native grasslands on the hillsides;

- Preservation of existing signs and construction of additional signs for identification and pedestrian direction and safety;
- Reconstruction of four accessory structures, totaling 500 square feet, to be used for feed storage, potting shed, tool shed, laundry room; and
- Modifications to the existing water system (consisting of leased spring water from “Lands of Poncia”, Assessor’s Parcel 104-110-10, two water storage tanks, and distribution lines) including: (a) repairing the existing transmission lines within existing easements to provide fire protection, irrigation, and maintain domestic service to four single-family residences located off-site, south of the project site and across State Route One that are not part of the subject project; (b) capping transmission lines to the existing structures on the project site; (c) installing a new fire hydrant in the area of Cottage C6, prior to crossing State Route One; (d) constructing an accessory structure to house chlorinating facilities, and (e) installing an irrigation service off the existing main to supply irrigation for landscaping to the project site. (Marin County Environmental Health Services would designate this system as a “non-community small public water system” with implementation of a “mutual system agreement” to provide an ongoing maintenance program by all affected parties.)

In summary, restoration of the existing improvements, totaling a maximum 3,902 square feet of commercial development on the 4.11-acre project site, shall result in a maximum FAR of 2%.

Assessor’s Parcel 104-110-11 (“Lands of Zimmerman”): the 280-acre agricultural property located north of the primary project site and west of State Route One

- Replacement of the existing on-site sewage disposal system with the construction of a new sewage disposal system with leach fields and a 3,000-gallon siphon chamber with dual alternating siphons (located approximately 3,600 feet northeast of the primary project site and to serve the commercial operation) including shallow pressurized trenches divided into four sections encompassing an area in size of approximately three acres, protected from subsurface drainage by an intercept drain;
- Construction of a new 38 gallon per minute well (located approximately 2 miles northeast of the primary project site and to provide water service to the commercial site as well as the Zimmerman property) with underground water lines to two new 10,000-gallon concrete water storage tanks on the east side of the Nick's Cove project site; and
- Construction of appurtenant underground sewage and water pipelines within utility easements over the “Lands of Zimmerman” to benefit the primary project site.

Approved Business Plan

Restaurant Hours of Operation

	<u>Peak Season</u> (app. May 15 – September 30)	<u>Off Season</u> (app. October 1 – May 14)
Breakfast	As needed	As needed
Lunch	11:30 am – 5:00 pm	11:30 am – 5:00 pm
Sunday – Saturday Dinner	5:00 pm – 10:00 pm	5:00 pm – 8:00 pm
Sunday – Saturday Bar	11:30 am – 11:00 pm	11:30 am – 9:00 pm

Number of Employees

Total	17 staff personnel	15 staff personnel
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Staff will be on-site 24 hours a day

Office and Lodging Accommodations to be Located On-site

Check-in procedures for the lodging accommodations will be handled at the front reception desk in the restaurant. Reservations and marketing will be handled off-site in the applicant's corporate offices in San Francisco.

Use and Management of the Pier and Boat Slips

The pier will be available for public access and fishing during hours of operation of the restaurant. Boat slips will be available for the public and guests using the facilities. Long-term use of the boat slips by the public will be discouraged.

2. Development, use of, and permits for, the subject property shall be in substantial conformance with application materials and plans on file with the Marin County Community Development Agency Department consisting of:
 - a. Project Plans: Plans entitled "Nick's Cove and Cottages", consisting of the Cover Sheet and Sheets 2 (existing conditions), 8 – 14, and 16 – 17 (structural components), prepared by William W. Kirsch, Architect, and Sheets 4 – 7, (restaurant components), prepared by ADR, and further identified as "Exhibit A".
 - b. Project Plans: Plans entitled "Nick's Cove and Cottages", prepared by CSW/Stuber-Stroeh Engineering Group, Inc. consisting of Sheet 1A (Vicinity Map) and Sheets 18 – 24A and 24B, and 25 (landscape and creek enhancement, grading and drainage, parking, septic, utilities and generalize habitat types), and further identified as "Exhibit A-1"
 - c. California Coastal Commission Boundary Determination No. 46-2000, memo, dated December 1, 2000, received in the Planning Division, December 12, 2000, and further identified as "Exhibit A-2"
 - d. Structural Reviews, prepared by Thomas L. Whitchurch, P.E., Civil Engineer, dated September 29, 2000, and April 2, 2001
 - e. Preliminary Soils Report and Geotechnical Feasibility Letter, prepared by Torikian Associates, dated March 1, 2001, and November 21, 2000, respectively
 - f. "Hydrology Analysis", prepared by CSW/Stuber-Stroeh Engineering Group, Inc., dated February 14, 2001
 - g. "A Cultural Resources Evaluation of Nick's Cove and Cottages", prepared by Archaeological Resource Service, dated May 25, 2001
 - h. "Preliminary Environmental Assessment, Nick's Cove", dated June 28, 2001, and "Streamside Conservation Area – Habitat Enhancement Planting, Management, and Monitoring Specifications", dated August 21, 2002, prepared by Diane Renshaw, Consulting Ecologist,
 - i. "Nick's Cove and Cottages, Traffic and Parking Study", prepared by Robert L. Harrison, Transportation Planning, dated March 15, 2002
 - j. "Nick's Cove – Water Facilities", prepared by CSW/Stuber-Stroeh Engineering Group, Inc., dated May 15, 2001
 - k. "Nick's Cove Groundwater Well, Marin County", prepared by O'Connor Environmental, Inc., Watershed Geomorphology and Hydrology, dated May 9, 2001

3. PRIOR TO ISSUANCE OF ANY BUILDING OR CONSTRUCTION PERMIT, the applicant must submit the following items:
- a. An exterior lighting plan with the building permit plans and provide a tear sheet with specifications with lighting wattage of all selected lighting fixtures. Lighting shall be of low wattage, hooded, and directed downward and away from the bay, and shall be for safety purposes only (*Biological Resources Mitigation Measure 7 (a)-1*).
 - b. A Construction Management Plan that includes, but not necessarily limited to: the construction phasing of the approved project and the staging area(s) with a site plan for all construction activities;
 - c. A precise landscape plan, creek enhancement plan, and irrigation plan utilizing the plant palette shown on Sheet 21 (further identified as part of Exhibit "A-1" on file in the Planning Division) for review and approval by the Planning Division staff. The landscape plan shall: (a) indicate proposed plantings by scientific and common names; (b) indicate the container size at the time of planting and the height at maturity; and (c) indicate the method and general location of the irrigation. The landscape, creek enhancement, and irrigation plan shall list all of the general conditions and specifications contained in the Streamside Conservation Area, Habitat Enhancement Planning, Management, and Monitoring Specifications, prepared by Diane L. Renshaw, Consulting Ecologist, dated August 21, 2002, on file in the Planning Division (*Biological Resources Mitigation Measure 7 (a)-3*).
 - d. A precise landscape and irrigation plan for review and approval by the Planning Division staff, showing: (1) the removal of five pine trees along the western side of State Route and the replacement of these trees with a minimum of 12 trees consisting of a mix of native evergreen and deciduous trees and a mix of sizes including some 36-inch box trees (*Mitigation Measure 6-(b)-1 Traffic/Circulation*); (2) the planting of vines along the outside perimeter of the retaining wall that will result in vegetation growing over the wall to screen and soften the wall (*Aesthetics/Visual Resources Mitigation Measure 13 (a)-1*); and (3) the general vegetable and flower gardens, and small orchard upslope from the parking area.
 - e. A sample earth-toned color for the new 10,000-gallon water storage tanks to the Planning Division for review and approval; said color shall blend into the landscape and take into account the seasonal landscape color changes (*Aesthetics/Visual Resources Mitigation Measure 13 (a)-1*).
 - f. Building permit plans showing all mechanical equipment, including air-conditioning units, installed within the interior of the structures or inside baffled and sound insulated structures and enclosures that blend with the exterior architectural elements of the structures (*Aesthetics/Visual Resources Mitigation Measure 13 (b)-1*).
 - g. The Three Sons, LLC (Nick's Cove) Master Plan/Coastal Permit/Development Plan/Tidelands Permit conditions of project approval contained herein must be recorded with the Marin County Recorder's office and proof of recordation submitted to the Community Development Agency;
 - h. A letter of confirmation from the Pacific Gas and Electric Company which confirms that all required legal, financial, easements, contracts, and agreements have been applied for and completed to provide utilities must be submitted;
 - i. Samples of exterior building materials and colors that shall blend into the natural environment and be compatible with the established community character;
 - j. Building permit plans that include to the greatest extent feasible implementation of the County's Building Energy Efficient Structures Today Practices (BEST), such as ventilation systems, use of finishes utilizing low-volatile, organic compounds to minimize the toxicity of air quality, and water conserving fixtures;

- k. Any proposed construction plans, including piers, shall be reviewed and approved by a Registered Structural Engineer for structural integrity as required by the Building Inspection Division. Certification shall be by either his/her signature on the plans or a stamped and signed letter;
 - l. A proposal to the Community Development Agency – Planning Division (CDA) and DPW for review and approval for sign(s) to be posted visibly at various facilities informing visitors that no parking is allowed in the State Route One road right-of-way and that this provision is enforced by the California Highway Patrol (*Transportation/Circulation Mitigation Measure 6 (d)-2*). In addition, a proposal must be submitted for a sign program with locations identifying valet parking and self-parking facilities. These signs should be posted ahead of the location of the facilities.
 - m. A proposal to CDA for review and approval for sign(s) to be posted visibly at the pier in various locations stating that the pier is for access and fishing by the public during the operation of the restaurant, the use of the four boat slips at the end of the pier is for public use while using the facilities, and that the feeding of gulls and pelicans from the deck and piers is prohibited; and
 - n. A proposal to CDA for review and approval of a business plan for: (1) the operation of the restaurant that: (a) prohibits food preparation and clean-up (other than associated with the serving of meals and dining) on the deck (i.e. garbage, petrochemicals, detergents, etc); (2) the location, facilities, disposal, management, and recycling of waste.
 - o. A proposal to CDA for review and approval for “No Trespassing on Private Property” signs to be posted at the boundary lines of the Nick’s Cove property.
 - p. A Surface Runoff Pollution Control Plan in accordance with Marin County Code Section 24.04.627, which specifically addresses: (1) erosion/sedimentation; (2) fertilizers, pesticides, and herbicides to be used on site; (3) runoff from roadway, parking areas and rooftops; and (4) general site housekeeping so as not affect the creek or SCA. The plan shall incorporate Best Management Practices for review and approval by DPW staff.
 - q. Building Permit plans shall show: (a) all improvements located within the property lines of the subject property, including Pier D; (b) all accessory structures outside of the 100-foot SCA; and (c) no new construction within the 100-foot SCA.
4. PRIOR TO ISSUANCE OF AN OCCUPANCY PERMIT FOR ANY STRUCTURE, the applicant must submit the following items:
- a. Implement the creek enhancement plan and the general landscape plan (*Biological Resources Mitigation Measure 7 (a)-4*);
 - b. Enter into a 3-year Landscape Maintenance Agreement with the County with financial security consisting of a Certificate of Deposit of an approved bank, naming the County. The security shall consist of 150% of the cost of a 3-year maintenance and monitoring contract submitted with the Agreement with terms as outlined in Sections VI (Maintenance During the Monitoring Period) and VII (Monitoring Plan) of the Streamside Conservation Area, Habitat Enhancement Planning, Management, and Monitoring Specifications, prepared by Diane L. Renshaw, Consulting Ecologist, dated August 21, 2002, on file in the Planning Division The 3-year term of the Landscape Maintenance Agreement shall be tied to the actual completion date of each phase of landscaping (*Biological Resources Mitigation Measure 7 (a)-5*);
 - c. A final valet parking business plan and a draft lease with a valet service provider to the Community Development Agency – Planning Division and Department of Public Works (DPW) for review and

approval that includes days and hours of operation, a statement that the parking of cars within the State Route One road right-of-way is strictly prohibited, that the maximum effort shall be taken to prevent the queuing vehicles onto State Route One, a contact phone number where a responsible person will be available at all times during hours of operations, and the location of any proposed valet service signs. At a minimum, the valet parking plan must provide valet parking services on weekend days from Memorial Day weekend through Labor Day weekend, on holidays, on peak weekends throughout the year, special events at the facility, and as conditions require. The valet parking plan and services may be reevaluated on an annual basis by the Community Development Agency and Department of Public Works (*Transportation/Circulation Mitigation Measure 6 (d)-1*). The valet business plan must also indicate that all handicap accessible spaces will always be available to the public during valet service and the valet service shall comply with CCR, Title 24, 1127 B.1.

- d. Contact the Community Development Agency – Planning Division (CDA) staff for a site visit for inspection of the completed landscaping a minimum of 5 working days before said inspection. Failure to pass the inspection will result in subsequent inspections being charged to the applicant/owner based on an hourly rate as indicated by the CDA fee schedule;
 - e. The sign(s) to be posted visibly at various facilities informing visitors that no parking is allowed in the State Route One road right-of-way and that this provision is enforced by the California Highway Patrol must be installed (*Transportation/Circulation Mitigation Measure 6 (d)-2*);
 - f. The sign(s) to be posted visibly at the pier in various locations stating that: the pier is for access and fishing by the public during the operation of the restaurant; the use of the four boat slips at the end of the pier is for public use while using the facilities; and feeding of gulls and pelicans from the deck and piers is prohibited must be installed; and
 - g. A copy of the approved business plan for the operation of the restaurant that: (1) prohibits food preparation and clean-up (other than associated with the serving of meals and dining) on the deck (i.e. garbage, petrochemicals, detergents, etc); and (2) provides the location, facilities, disposal, management, and recycling of waste must be posted visibly in the restaurant/kitchen.
5. Pressure-treated and creosote soaked woodpiles shall not be permitted for repair/construction of piles. Concrete or steel piles shall be used and cofferdams shall be utilized to keep concrete contained until it is dry and cured. Construction, including pier and piling work shall be done from above. Tarps or other netting shall be hung beneath the work area to keep debris, construction materials, and tools out of the water. Best Management practices shall be employed to prevent any debris or wet concrete from falling into the water. The Construction Management Plan with these provisions shall be posted on the first sheet of the building permit plans and shall be posted on-site during construction activities. If eelgrass is found below the low tide line, the eelgrass shall not be disturbed (*Biological Resources Mitigation Measure 7 (a)-2*).
 6. On an annual basis from the date of final project approval, the project sponsor shall submit to the Marin County Department of Public Works, a copy of the lease for valet parking services stating the provisions outlined in Condition 3 (c) above (*Transportation/Circulation Mitigation Measure 6 (d)-3*). Approval is based on a restaurant public area of 2,397 square feet requiring 48 parking spaces (1 parking space per 50 square feet of public area). The restaurant use and the other uses combine require 62 spaces, which are met through on-site parking and the use of valet parking. Should valet parking be discontinued or become ineffective, and the other uses remain, then the effective restaurant public area must be reduced to 1,600 square feet.
 7. The project sponsor shall provide and maintain adequate corner sight distance from the egress of the parking area on the east side of State Route One about 100 to 150 feet north of the proposed driveway access. (*Mitigation Measure 6-(b)-1 Traffic/Circulation*).

8. No trees shall be removed unless to comply with the local and State fire safety regulations, to prevent the spread of disease as required by the State Food and Agriculture Department, and to prevent safety hazards to people and property. Routine tree trimming and maintenance activities that enhance the health of the trees is permitted.
9. Exterior lighting may be permitted for safety and security purposes only. It must be unobtrusive and maintain privacy through the use of hooded, low-level, low-wattage light fixtures which cast light in a downward direction.
10. All utility connections and extensions(with the exception of the water transmitting lines from the "Lands of Poncie" must be placed underground.
11. Hours of site preparation and actual construction, shall be limited to 7:00 a.m. to 5:00 p.m., Monday through Friday, and 9:00 a.m. to 4:00 p.m. on Saturday. No site preparation or construction shall be permitted on Sundays or Federal holidays. The approved hours of construction must be noted on any subsequent development plans. At the applicant's request, the Director may administratively authorize minor modifications to these hours of construction.
12. During site preparation and actual construction, the subdivider shall ensure that construction crews undertake a program of dust control, including but not limited to: routinely watering graded surfaces as needed to prevent dust blowing, covering and/or watering trucks carrying soil, and frequently cleaning soil carried by construction vehicle tires from the site onto the road.
13. All soils disturbed by development of the project shall be reseeded with native grasses or wildflowers to control erosion.
14. The applicant shall be responsible for ensuring that all construction vehicles, equipment and materials are stored on site and off the street so that pedestrian and vehicles can pass safely at all times.
15. The applicant shall be responsible for ensuring that the number of construction vehicles shall be limited to the minimum number necessary to complete the project.
16. In the event that any human remains, artifacts, or other indicators of prehistoric or historic use of the parcel are encountered during site preparation or construction activities on any part of the project site, all work at the vicinity of the discovered site shall stop and the project sponsor shall contact the Marin County Environmental Coordinator immediately. If human remains are encountered, the County Coroner must also be contacted. A registered archaeologist, chosen by the County and paid for by the project sponsor, shall assess the site and shall submit a written evaluation to the Agency Director advancing appropriate conditions to protect the site and the resources discovered. State law designates procedures should human remains be encountered. If the remains are deemed to be Native American and prehistoric, the Coroner must contact the Native American Heritage Commission so that a "Most Likely Descendant" can be designate. No work at the site may recommence without approval of the Agency Director. If it is determined that a prehistoric site exists the following shall be implemented:
 - a. No future development activity shall take place at or in close proximity to the prehistoric site within the development area;
 - b. The historical site(s) shall be filled to protect the resources there;
 - c. No additional excavation shall occur at these locations other than to remove surface organic material without approval of the CDA staff;
 - d. All future development of the site must be consistent with findings and recommendations of the archaeological assessment, of the May 2001, "Archaeological Evaluation", including Appendix A, Monitoring Procedures, prepared by Archaeological Resources Service;

- e. The applicant may be required to submit a revised project to protect the resource(s). Miner revisions may be approved by the CDA staff. Substantial revisions will require submittal of appropriate review applications.

If the mortar located in the rockwall near the entrance to the parking lot is disturbed due to the removal of a section of the rockwall during construction of the new parking lot, the mortar must be removed and Archaeological Resource Service (ARS) must be contacted and retained to evaluate the mortar for retention as deemed appropriate by (ARS). (*Cultural Resources Mitigation Measure 14 (a)-1*)

17. The approved project shall be subject to a one-year compliance review by the Department of Public Works (DPW) and Community Development Agency (CDA) staffs. This compliance review shall occur one year after the restaurant receives an occupancy permit. A written compliance report shall be issued to the applicant/operator/owner(s). If the applicant/operator/owner(s) is not in compliance, a list of infractions will be provided. The applicant/operator/owner will have 30 days to comply with all conditions. If the applicant/operator/owner is not in compliance, the matter will be turned over to the Community Development Agency – Zoning Enforcement. It will be the responsibility of the applicant/operator/owner(s) to call DPW and CDA to arrange a site visit 15 days before the compliance review is required.
18. Any changes or additions to the project shall be submitted to the Community Development Agency for review and approval before the contemplated modifications may be initiated.

Department of Public Works-Land Use and Water Resources

19. BEFORE ISSUANCE OF ANY BUILDING OR CONSTRUCTION PERMIT, the applicant must submit a detailed parking plan that addresses the following items:
 - a. The parking plan must locate and provide dimensions for the turnaround on the turnaround deck for spaces 39 through 42. Provide engineer's calculations showing the structural adequacy of the deck. A structural engineer shall inspect and certify that the existing turnaround deck is capable of supporting a minimum HS 20-44 loading as specified in the most recent edition of the Standard Specification for Highway Bridges as adopted by and published by the American Association of State Highway Officials, or submit building permit improvement plans needed to comply with the standard.
 - b. All parking and loading areas shall meet State of California, Title 24 accessibility standards. Non-handicap head-in parking spaces shall be a minimum size of 8.5 by 18 feet and 8 by 20 feet for parallel spaces. The parking lot shall comply with the applicable section of Marin County Code Title 24 as approved by DPW.
 - c. The first 30 feet of the driveway entrance, the valet drop-off/pick-up area, the handicap parking spaces, and the accessible route of travel shall be paved.
 - d. All parking and loading areas shall meet State of California accessibility standards.
20. BEFORE ISSUANCE OF ANY BUILDING OR CONSTRUCTION PERMIT, the applicant must meet the following conditions:
 - a. Indicate the Special Flood Hazard Areas on the site plan. Any substantial improvement shall comply with Marin County Code Chapter 23.09, Floodplain Management.
 - b. Any proposed foundation reconstruction plans shall be reviewed and approved by a Registered Soils Engineer. Certification shall be by either his/her signature on the plans or a stamped and signed letter.

- c. Bridges and utility crossings that span the creek (open channel waterways) shall have a minimum clearance of 2 feet between soffit and the 100-year storm frequency flow elevation. Also, the structures shall be designed and constructed such that hydraulic conditions in the upstream and downstream waterway will be not be altered in a way which would cause degradation, erosion, or other undesirable effects. Obtain approval from the appropriate agency for work within the creek or creek bank.
- d. Submit a copy of the CALTRANS encroachment permit, if required, prior to issuance of a grading or building permit for the parking area and/or retaining walls.
- e. Provide a copy of the easements for the septic system and the water system from the "Lands of Zimmerman" prior to issuance of any building permits.
- f. An erosion and siltation control plan shall be submitted for approval.
- g. Prior to issuance of any Building Permit or Grading Permit, the applicant shall submit a Surface Runoff Pollution Control Plan in accordance with Marin County Code, Section 24.04.627, which addresses both interim (during construction) and long-term (post construction) stormwater pollution control measures. Best Management Practices shall be incorporated into the design and planning phases of development, as well as the long-term site management program to ensure the removal of non-point source pollutants in stormwater runoff.
- h. The site plans and architectural elevations must be revised to show NGVD elevations of the ground and the bottom of the lowest horizontal structural member.
- i. A final hydrology/ hydraulic study must be submitted that: (1) verifies the 100-year storm water surface elevation of the creek; and (2) verifies the adequacy of the existing and proposed drainage structures and systems.
- j. The final, project specific hydrology study, noted in Condition 18. i. must also address the amount of increase in impervious surfaces east of State Route 1 and the hydraulic capacity of drainage facilities with the State right-of-way to verify that the project meets the 25-year storm water standards required by CalTrans. All on-site drainage improvements must be designed so that, should there be any storm water runoff beyond the existing capacity of the State right-of-way drainage facilities, that excess capacity shall be designed to be retained or dissipated on the applicant's property so that the State facilities need not be altered. The applicant shall submit the final, project specific hydrology study and drainage plans first to CalTrans for review and approval before submitting to the County. Written verification from CalTrans shall be provided of CalTrans approval.

Marin County Environmental Health Services

21. FOOD ESTABLISHMENT: PRIOR TO ISSUANCE OF A BUILDING PERMIT, the applicant must submit to EHS the plans submitted to the Building Inspection Division for plan check for approval by EHS before remodeling the kitchen. In order to operate the restaurant, the applicant must remodel the kitchen and obtain a Health Permit.
22. SEWAGE: PRIOR TO ISSUANCE OF BUILDING PERMITS, the applicant must apply for an individual sewage disposal system permit for construction of the sewage disposal system and obtain an operating permit. Locate all septic system tanks, leach field, sewer lines, water lines and wells or springs on the same development site plan. Water lines and sewer lines should be separated by ten feet and located in different trenches.
23. WATER (Spring): PRIOR TO ISSUANCE OF BUILDING PERMITS, the applicant must apply for and obtain a domestic common water system for the spring water source on "Lands of Poncia". During the review process, the following data must be submitted to Environmental Health Services:
 - a. Submit information and a completed permit application for a Common Water System. Include a description of the system (including tanks and backflow prevention devices) and number of connections; include residential use and other uses.
 - b. The four residences served by the spring will need to obtain a permit-to-operate the water source as a drinking water source. The system will change from a transient non-community system to a common water system. Water quality testing is required if the spring is to be used as a drinking water source. Test results are required for Primary Bacteriological, Primary Inorganic, and Secondary Drinking Water Standards.
 - c. If the spring source is to be used as a drinking water source, a treatment design that meets the contaminant reductions in the Surface Water Treatment Rule will be required.
 - d. Copies of easements and recorded maintenance agreements for each effected parcel are required if the spring is to be used for drinking water. The applicant must indicate who is responsible for delivering safe drinking water to the four single-family residences located south of the project site, and how.
 - e. Construction of the accessory structure to house the chlorinating facilities for the spring water system will be required.
 - f. Separate the spring from the proposed project by severing lines and by installing approved backflow prevention devices, if and where necessary. Capping transmission lines used for drinking water by the existing Nick's Cove structures will be required.
24. WATER (Well): PRIOR TO ISSUANCE OF BUILDING PERMITS, the applicant shall provide the following information to Environmental Health Services for the well drilled on the "Lands of Zimmerman" in January 2000 (permit DW 99/00-36A):
 - a. The applicant is required to obtain an operating permit for a transient non-community (TNC) small public water system from Environmental Health Services. The applicant is encouraged to contact the Water Specialist, Scott Callow, as soon as possible.
 - b. A description and number of connections that are connected to both water sources and a scaled plan showing the sources, treatment plant(s), and distribution system(s) are required for reviewing the application. The sampling site plan and an emergency notification plan are required prior to operation of the system. (During the application process, EHS can entertain a proposal to designate the well source for drinking water and the spring source for irrigation water if the two sources and distribution systems are separated and protected by approved backflow prevention programs.)

- c. Water quality testing is required of TNC public water systems by the Water Code. Analyses are required for Primary Bacteriological, Primary Inorganic Standards (inorganic chemical water quality data were received 11/01/00), and Secondary Drinking Water Standards. If water quality results from the well do not meet the standards, a treatment design shall be submitted for review before installation.
- d. A Technical, Managerial, and Financial (TMF) Report shall be submitted to show the feasibility of maintaining the water system. The applicant must develop a plan to comply with the requirements for a Certified Water Systems Operator.
- e. Description of easements and recorded maintenance agreements, for both the drinking water and irrigation water must be provided.
- f. Calculations are needed for determining the minimum storage volume for drinking water, under Section 64564 of Title 22 of the California Code of Regulations.
- g. Plans for construction of a water treatment plant, as needed, shall be provided.

Marin County Fire Department

- 25. BEFORE ISSUANCE OF ANY BUILDING OR CONSTRUCTION PERMIT, the applicant shall submit a letter from the Fire Department that all requirements have been met including, but not necessarily limited to: a pressurized fire protection water supply, a vegetation management plan for structures on the east side of State Route One, location of LPG tank installations, and fire sprinklers for structures which meet the Fire Department criteria of "substantial re-model".
- 26. BEFORE ISSUANCE OF AN OCCUPANCY PERMIT FOR ANY STRUCTURE, the applicant shall submit a letter from the Fire Department that all requirements have been met.

State of California, Department of Transportation

- 27. BEFORE ISSUANCE OF ANY BUILDING OR CONSTRUCTION PERMIT, the applicant must submit written verification to the Community Development Agency and Department of Public Works that all requirements have been met, including, but not limited to: (a) obtaining an Encroachment Permit for any work in the CalTrans road right-of-way (ROW), if required, including construction of driveways and installation of utilities; (b) driveways on the east and west side of State Route One designed per CalTrans design standards; and (c) sight distances designed per CalTrans standards. The improvement plans for driveways and utilities within the ROW and sight distances onto State Route One shall be reviewed and approved by CalTrans before submittal to the County.

State of California, Department of Fish and Game

- 28. BEFORE ISSUANCE OF ANY BUILDING OR CONSTRUCTION PERMIT, the applicant must submit written verification to the Community Development Agency and Department of Public Works that all requirements have been met, including, but not limited to, a Streambed Alteration Agreement for any work to be performed in the creek or on creek banks.

State of California Coastal Commission

29. BEFORE ISSUANCE OF ANY BUILDING OR CONSTRUCTION PERMIT FOR WORK TO BE DONE WITHIN THE STATE OF CALIFORNIA COASTAL COMMISSION JURISDICTION, the applicant must submit written verification to the Community Development Agency and Department of Public Works that all requirements have been met, including, but not limited to, issuance of a Coastal Permit.

U. S. Department of Commerce, National Oceanic Atmospheric Administration, (Gulf of the Farallones and Cordell Bank National Marine Sanctuaries)

30. BEFORE ISSUANCE OF ANY BUILDING OR CONSTRUCTION PERMIT FOR WORK TO BE DONE WITHIN THE JURISDICTION OF THE GULF OF THE FARALLONES NATIONAL MARINE SANCTUARY (GFNMS), (below the mean high tide of Tomales Bay) the applicant must submit written verification from (GFNMS) to the Community Development Agency and Department of Public Works that all requirements have been met, including, but not limited to, a Gulf of the Farallones National Marine Sanctuary permit. Before the issuance of said permit, the GFNMS may require:
- a. A soils condition analysis, including the presence of any heavy metals, hydrocarbons, etc. at pile sites;
 - b. An analysis of resources at the pile sites;
 - c. The number, location, material, method, and construction time of year of piles to be repaired and/or removed and installed;
 - d. The functional purpose of each pile (re: cottage, porch, pier, etc.); and
 - e. The method of containment of disturbed sediment.

State of California Lands Commission

31. BEFORE ISISUANCE OF ANY BUILDING OR CONSTRUCTION PERMIT FOR WORK TO BE DONE WITHIN THE STATE LANDS COMMISSION JURISDICTION, the applicant must submit written verification to the Community Development Agency and Department of Public Works that all requirements have been met.

SECTION III: VESTING AND PERMIT DURATION

NOW, THEREFORE BE IT RESOLVED that the Three Sons, LLC (Nick's Cove), Master Plan, Master Plan Waiver, Coastal Permit, Precise Development Plan, and Tidelands Permit approvals shall be valid for a period of two years from the date of approval. An approved Master Plan may be extended by the Community Development Agency Director for a maximum period of four years beyond the initial period of approval provided the applicant files an extension application, accompanied by the appropriate filing fees, prior to the expiration of the Master Plan, and provided the Master Plan remains consistent with the Marin Countywide Plan, the Local Coastal Program, Unit II, and the East Shore Community Plan. The Three Sons, LLC (Nick's Cove) Coastal Permit, Precise Development Plan, and Tidelands Permit approvals shall be vested by securing a Building Permit and/or other permits related to the approved work within two years after final approvals from the County and/or the Coastal Commission and substantially completing the improvements in accordance with the Building Permit(s) and/or other permits, or all rights granted in this approval shall lapse, unless the applicant applies for an extension at least 30 days before the expiration date above and the Community Development Director approves it. A Precise Development Plan, Coastal Permit, and Tidelands Permit extension of not more than four years may be granted for cause pursuant to Marin County Codes Sections 22.45.063, 22.56.120 and 22.82.130.

SECTION III: VOTE

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the County of Marin, State of California, on the 24th day of February 2003, by the following vote to wit:

AYES: Barner, Berland, Julin, Herbertson, Thompson
NOES: Dickenson
ABSTAIN:
ABSENT: Buddie

ROSS HERBERTSON, CHAIRMAN
MARIN COUNTY PLANNING COMMISSION

Attest:

Alexandra Morales
Recording Secretary

7. FINAL ENVIRONMENTAL IMPACT REPORT: OAKVIEW MASTER PLAN, VESTING TENTATIVE MAP AND USE PERMIT

Continued meeting on the Final EIR for the Oakview proposal to consider action recommending that the Board of Supervisors certify the Final EIR as adequate and complete pursuant to the California Environmental Quality Act (CEQA). A public hearing to receive testimony on the Planning Commission's recommendation for certification of the Final EIR has not been scheduled. This meeting is a continuation of the August 5, 2002 Commission meeting at which the hearing on the Final EIR was closed and staff directed to provide additional information on issues of concern to the Commission prior to action to certify the Final EIR. The project proposes to subdivide the 106.3-acre subject property, located in the northwestern quadrant of the U.S. Highway 101/Lucas Valley Road interchange, into two parcels for future residential and office building development. Parcel 1 would include 15.3 acres reserved for 28 detached single-family residential lots, 1.8 acres of public right-of-way, and 34.8 acres of open space for a total of 51.9 acres. Parcel 2 would consist of 20.1 acres reserved for 94,400 square feet of administrative/professional office development, and 34.3 acres of open space for a total of 54.4 acres. All open space areas would be deeded or offered for dedication to the Marin County Open Space District, the Marinwood Community Services District, or a similar public entity. The subject property is zoned RMP-1.38 (Residential, Multiple Family, Planned District, 1.38 units per acre maximum density) which requires Master Plan review for the ultimate development of the site. RMP zoning allows office buildings subject to securing a Use Permit pursuant to Marin County Code Section 22.47.022(12)(e). A Tentative Map is required pursuant to Marin County Code Section 20.08.050 because the proposal entails division of the subject property into two roughly equal-sized lots for the residential and office portions of the project. The project is located at 200 Lucas Valley Road, San Rafael, and is within the unincorporated area of Marin County immediately north of the City of San Rafael. The project site is bounded on the east by Highway 101, on the south by Lucas Valley Road, on the west by residential lots along Ellen Drive, Erin Drive, Lisa Court, and Elvia Court, and on the north by Miller Creek, and is further identified as Assessor's Parcel 164-270-03.

Tim Haddad, Environmental Planning Coordinator, explained the purpose of the meeting stating that since this was a continuation of the hearing held on August 5, 2002, at which time the public portion of the hearing was closed, the meeting was not noticed as a public hearing. At that time, the Commission directed staff to prepare a Final EIR Response to Comments Amendment to address the issues raised. He then briefly commented on the merits of the proposed project, as set forth in the staff report, and highlighted the environmental review process, including the issues identified, project alternatives, and conclusions.

Alex Hinds, Agency Director, further explained that the purpose of the meeting was to move forward from the environmental review process and onto the merits of the project. Therefore, while there may be concerns with certain aspects of the project, those should not be raised at this time.

In response to Commissioner Herbertson, staff stated that while it was not required to open the meeting to public comment, under the Brown Act, any member of the public could address the Commission.

Staff responded to Commissioner Dickenson's comments in the following manner:

- The estimated additional 8 traffic trips would take place on Miller Creek only, not the entire study area.
- A specific mitigation plan for the replacement of wetland loss has not been presented. However, the project sponsors provided a mitigation concept sufficient to establish mitigation standards. Regardless, it is known that the existing fresh water seeps would be lost and not recreated. However, some of the proposed mitigations are to: restore and enhance the wetland area by the office building; restore wetlands off-site; or the banking concept. Either way, the developer will have to meet the standards as laid out in the Mitigation Plan or there is no project.
- DPW does not support providing access to the residential units off Lucas Valley Road because of safety reasons, as outlined on Page 7-52. However, Alternative 4, which does not have access off Lucas Valley Road is still considered the most environmentally superior alternative.
- References to access off Elvia should be replaced with Ellen.

- The configuration and alignment of the road across Miller Creek is more of a merits issue. The EIR concluded that the road alignment was consistent with SCA policies primarily based on the conclusions in the EIR biology section that impacts of the alignment would be mitigated. However, the Commission and the Board of Supervisors ultimately has the authority to determine the project's consistency with the policies.
- Alternative 4 was rated higher because it eliminates a connection to Lucas Valley Road and for the biological reasons listed on page 6.0-28.
- While an assisted living component could have some benefits with regards to traffic, parking, and mass and bulk, environmental impacts from the proposed office building were very similar. However, because of the nature of the use, it was determined that there would be increased fire and emergency access needs for an assisted living use.

Members of the public were given the opportunity to speak, but were reminded that the purpose of the meeting was to consider the adequacy of the responses to comments, and not the merits of the project.

Doug Maloney, representing Daphne/Baccioco, urged the Commission to move forward with the project.

Commissioner Julin supported staff's recommending, recognizing the quality of work staff has put into this project.

M/s Julin/Barner, and passed unanimously of those present, to adopt the attached Resolution recommending that the Board of Supervisors certify the Oakview Master Plan, Subdivision, Tentative Map, and Use Permit Final EIR. Motion passed 5/0 (Commissioners Buddie and Berland not present).

Commissioner Dickenson stated that his concerns regarding policy consistency were addressed by staff's response that these issues would be considered as part of the merits.

Chair Herbertson informed all parties of interest that this matter would automatically go the Board of Supervisors for final action.

MARIN COUNTY PLANNING COMMISSION

RESOLUTION NO. PC03-007

A RESOLUTION RECOMMENDING THAT
THE MARIN COUNTY BOARD OF SUPERVISORS CERTIFY
THE OAKVIEW MASTER PLAN, SUBDIVISION TENTATIVE MAP AND USE PERMIT
FINAL ENVIRONMENTAL IMPACT REPORT

- I. WHEREAS, in May 1995, the project sponsors, V. Daphne and E. Bacciocco submitted a Master Plan, Subdivision Tentative Map, and Use Permit application proposing to subdivide a 106.3-acre subject property located in the northwestern quadrant of the U.S. Highway 101/Lucas Valley Road interchange into two parcels for future residential and office building development. The project proposed 71 single-family detached housing units, two office buildings totaling 94,400 square feet of office space, 52.9 acres of open space and 9.0 acres for Highway 101 freeway interchange reserve. A Draft EIR on the 1995 proposal was prepared and circulated in September 1996 to members of the Planning Commission, Board of Supervisors, State Clearinghouse, State and local agencies, property owners and other interested groups and individuals for a 45-day public review and comment period. The Draft EIR determined that there were 12 unavoidable impacts resulting from the proposed project and unresolved issues regarding geotechnical stability of the site. The Planning Commission conducted a public hearing on the Draft EIR in November 1996. Substantial comment on the Draft EIR was received from the public and Agencies during the public review period and at the hearing on the Draft EIR. In November 1996, after reviewing the Draft EIR findings and comments, the project sponsor requested the County suspend review of the proposed project to consider development of a revised project plan to address the issues raised by the EIR; and
- II. WHEREAS, between 1996 and 1999, the project sponsor conducted additional geotechnical work on the site and developed a revised project design. The design and layout of the project was substantially changed and an application depicting the currently proposed project was submitted to the County in April 1999 and determined complete in July 1999. The project as revised in 1999 proposes to subdivide the 106.3-acre subject property into two parcels. Parcel 1 would include 15.3 acres reserved for eventual site development with 28 detached single-family residences, 1.8 acres of public right of way and 34.8 acres of open space for a total of 51.9 acres. Parcel 2 would consist of 20.1 acres reserved for eventual development of 94,400 square feet of administrative/professional office development, 9.0 acres reserved for future interchange improvements to U.S. Highway 101, and 34.3 acres of open space for a total of 54.4 acres; and
- III. WHEREAS, CEQA requires re-noticing and recirculation of an EIR when significant new information is added to the Draft EIR after it has been released for public review but prior to its certification. The County and Project Sponsor agreed that the substantial revisions to the previous project design and layout constituted significant new information and that the Draft EIR should be revised and recirculated for public review and comment. The County selected an environmental consultant and the project sponsor submitted the funds necessary to initiate preparation of the revised project EIR; and
- IV. WHEREAS, A Notice of Preparation (NOP) for the Recirculated Draft Revised EIR was issued in August 1999 for a 30-day public comment period. A public scoping session on the Draft EIR was conducted in the Community on January 26, 2000, to further identify environmental issues and concerns of the public for evaluation in the EIR; and
- V. WHEREAS, the Draft EIR and a Notice Of Completion (NOC) and notice of public hearing on the Draft EIR were distributed on March 28, 2001, to members of the Planning Commission, Board of Supervisors, State Clearinghouse, state and local agencies and special districts, surrounding property owners, and other interested groups and individuals. The Notice of Completion and notice of public hearing was published in a newspaper of general circulation to begin a 45-day public review and comment period on the adequacy of

the Draft EIR. The public review and comment period ended on May 7, 2001 and was re-noticed and extended for an additional seven days, ending on May 14, 2001; and

- VI. WHEREAS, on May 7, 2001, the Marin County Planning Commission conducted a public hearing to receive testimony on the adequacy of the Draft EIR. Oral and written comments were presented at the hearing. Following the close of the public hearing, the Commission directed that a Final EIR Response to Comments be prepared after the close of the comment period on the Draft EIR; and
- VII. WHEREAS, on May 14, 2001, the public review and comment period on the Draft EIR was closed, and written comments were received on the Draft EIR until 4:00 p.m. on that date. Following the close of the public review period, meetings were held with the project sponsors representatives to discuss significant issues raised in comments on the EIR from the City of San Rafael, County Planning Commissioners, and other commentors regarding the need for on-site affordable housing, transportation, circulation and traffic count concerns, wetlands restoration, energy analysis and project energy efficiency, visual analysis, and incompatibility of the project's proposed office uses with City Plan Policies. The project sponsors agreed to submit project design options for residential and affordable housing use in lieu of the proposed office buildings and optional wetland restoration plans and to fund additional updated transportation and circulation analysis and visual and energy analysis in the Final EIR. Completion of the EIR and project processing were put on hold pending submittal of project design options; and
- VIII. Whereas, the project design options were submitted in June 2002 and included a optional design for an assisted living residential use in lieu of the proposed office use that is intended to be compatible with the residential land use designation in the City's General Plan and proposed as an option to affordable housing. The project sponsor also submitted an optional wetlands restoration plan that includes off site wetlands restoration and incorporates all of the other wetlands mitigation measures recommended in the Draft EIR; and
- IX. Whereas, the Final EIR response to comments provides a "Master Response" that evaluated options to the project at a similar level of analysis as the proposed project and determined that the options to the project do not result in any new or more severe significant impacts from those identified in the Draft EIR. The Final EIR found that potential traffic and circulation, hydrology, geology and soils, seismicity, vegetation and wildlife, cultural, air quality and service effects would be similar to or less than the project as proposed and that the mitigation recommended in the Draft EIR would still be required. The Final EIR evaluated noise impacts to the assisted living residential option and determined that potentially significant interior noise exposure could be reduced to insignificance by mitigation measures for design of the buildings incorporating sound rated windows and mechanical ventilation. The Final EIR Master Responses also incorporates additional detailed transportation and circulation, visual and energy analysis of the project and determines that there are no new or more severe significant impacts from those identified in the Draft EIR. The Master Responses incorporating the project option and additional analysis result in only minor clarifications, additional information, and minor changes to the text of Final EIR. None of these changes to the EIR introduce new or more severe impacts, nor are they substantial enough to trigger CEQA requirements for recirculation of the document for additional public review as a Revised Draft EIR.
- X. WHEREAS, on June 27, 2002, the Final EIR, Response to Comments and a notice of distribution of the Final EIR for review and notice of a public meeting of the Planning Commission to consider recommendation for certification of the Final EIR were distributed to members of the Planning Commission, Board of Supervisors, State Clearinghouse, state and local agencies and special districts, EIR commentors, and other interested groups and individuals. Notice of distribution of the Final EIR for review and notice of the public meeting of the Commission to consider recommendation for certification of the Final EIR was published in a newspaper of general circulation to begin a 14-day public review and comment period on the Final EIR ending on July 12, 2002. Prior to the July 12 ending date, the Final EIR comment period was re-noticed and extended for an additional 14 days at the request of the community; and

- XI. WHEREAS, the extended 28-day comment period on the Final EIR was closed on July 26, 2002 and written comments were received on the Final EIR until 4:00 p.m. on that date. These comments primarily address concerns regarding the merits of the project and/or design considerations for approval or disapproval. Since the comments result in only minor clarifications and insignificant changes to the Final EIR, they do not trigger CEQA requirements for recirculation of the document for additional public review and do not prevent certification of the EIR as adequate and complete; and
- XII. WHEREAS, on August 5, 2002, the Marin County Planning Commission conducted a public hearing to consider a recommendation to the Board of Supervisors to certify the Final EIR. The Final EIR and comments on the Final EIR together with staff's report recommending certification of the Final EIR were provided to the Commission; and
- XIII. Whereas, the Marin County Planning Commission considered the written comments and received additional testimony on the Final EIR at the August 5th hearing. After taking into consideration all the information presented and expressing individual comments and concerns, the Commission closed the public hearing, directed staff to provide additional information to clarify impact analysis and respond to environmental issues raised over the adequacy of the Final EIR and continued action on the Commission's recommendation for certification of the Final EIR to a future date; and
- XIV. Whereas, Community Development Agency Staff and the EIR consultants prepared a Final EIR Response to Comments Amendment dated December 2002 which provides responses to all of the environmental issues raised in the written comments, public testimony and comments and concerns of Commissioners on the Final EIR. The Final EIR Response to Comments Amendment and a notice of distribution and notice of a public meeting of the Planning Commission to consider recommendation for certification of the Final EIR were distributed to members of the Planning Commission, Board of Supervisors, State Clearinghouse, state and local agencies and special districts, EIR commentors, and other interested groups and individuals. Notice of distribution of the Final EIR Response to Comments Amendment and notice of the public meeting of the Commission to consider recommendation for certification of the Final EIR was published in a newspaper of general circulation; and
- XV. Whereas, on February 24, 2003, the Marin County Planning Commission conducted a public meeting to consider a recommendation to the Board of Supervisors to certify the Final EIR. The Final EIR and Final EIR Response to Comments Amendment, together with staff's report recommending certification of the Final EIR were provided to the Commission; and
- XVI. WHEREAS, the Marin County Planning Commission has reviewed and considered the information in the Draft EIR, Final EIR, Final EIR Response to Comments Amendment, Final EIR Appendices, and EIR administrative record, for adequacy, completeness and compliance with CEQA, State CEQA Guidelines, and County Environmental Review Procedures.

NOW, THEREFORE, BE IT RESOLVED, that the Marin County Planning Commission makes the following findings:

1. Notice of the Planning Commission hearing on the Draft EIR and meeting to certify the Final EIR was given as required by law and the actions were conducted pursuant to State CEQA Guideline Sections 15088, 15088.5, 15089, 15090; and
2. All individuals, groups and agencies desiring to comment were given adequate opportunity to submit oral and written comments on the Draft EIR and to submit written comments on the adequacy of the Final EIR for certification. These opportunities for comment meet or exceed the requirements of CEQA and the County Environmental Review procedures; and
3. The Oakview project Final Environmental Impact Report consists of the Final EIR, Final EIR Amendment and appendices, (including a draft mitigation monitoring program); and

4. All comments submitted during the public review and comment period on the Draft EIR, the public hearing on the adequacy of the Draft EIR conducted by the Planning Commission and the public review and comment period on the Final EIR were responded to adequately; and
5. The Planning Commission was presented with all of the information in the administrative record, testimony, and EIR documents for the project Final EIR, and the Commission has reviewed and considered this information and the Final EIR; and
6. The Final EIR has been completed in compliance with the intent and requirements of CEQA and the State CEQA Guidelines, and the County EIR process, and reflects the independent judgment of the County of Marin. The Planning Commission has considered and will continue to consider the information contained in the Final EIR prior to making recommendation to the Board of Supervisors regarding the project or any of the project options or alternatives.

NOW, THEN LET IT BE FURTHER RESOLVED that the Marin County Planning Commission recommends that the Marin County Board of Supervisors certify the Final Environmental Impact Report for the Oakview project Master Plan, Subdivision Tentative Map and Use Permit as adequate and complete in compliance with CEQA, the State CEQA Guidelines and the County Environmental Review Procedures, and is adequate and complete for consideration in making a decision on the merits of the project.

PASSED AND ADOPTED at the regular meeting of the Planning Commission of the County of Marin, State of California, on the 24th day of February, 2003, by the following vote to-wit:

AYES: Barner, Julin, Thompson, Dickenson, Herbertson

NOES:

ABSENT: Buddie, Berland

ROSS HERBERTSON, CHAIRMAN
MARIN COUNTY PLANNING COMMISSION

Attest:

Alexandra Morales
Recording Secretary

8. APPROVAL OF MINUTES – FEBRUARY 10, 2003, MEETING

M/s Julin/Barner, to adopt the Minutes of February 10, 2003 with minor modifications. Motion passed 4/0/1 (Commissioner Dickenson abstained, and Commissioners Buddie and Berland not present).

9. FUTURE AGENDA DISCUSSION ITEMS, FIELD TRIPS

March 10, 2003

Spawn Appeal of the Agency's approval of the Headland Minor Design Review (San Geronimo)
Milstein Design Review (MV)
Trends and Issues

March 24, 2003

Hicks Mountain (Nicasio)
Tobias Appeal of the Administrative Variance Denial (Lucas Valley)
Fitzgerald Design Review (San Rafael)