

**MARIN COUNTY PLANNING COMMISSION MINUTES**  
**January 26, 2004**  
**Marin County Civic Center, Room #328 - San Rafael, California**

*Commissioners Present:* Allan Berland, Chair  
Steve Thompson, Vice  
Hank Barner  
Don Dickenson  
Jo Julin  
Ross Herbertson

*Commissioners Absent:* Ray Buddie

*Staff Present:* Alex Hinds, Agency Director  
Brian C. Crawford, Deputy Director of Planning Services  
Ben Berto, Principal Planner  
Jessica Woods, Recording Secretary

*Minutes Approved on:* **February 9, 2004**

Convened at 1:00 p.m.  
Adjourned at 3:54 p.m.

1. ROUTINE TRANSACTIONS:

- a. M/s, Barner/Julin, and passed unanimously of those present, to incorporate the staff reports into the Minutes. Motion passed 6/0 (Commissioner Buddie not present).
- b. Continuances- None

2. COMMUNICATIONS

The Commission acknowledged additional correspondence regarding the Strawberry Village Shopping Center and the Ghazi Variance/Design Review project.

3. OPEN TIME FOR PUBLIC EXPRESSION, LIMITED TO THREE MINUTES PER SPEAKER

Bruce Corcoran, 184 Great Circle Dr., Mill Valley, submitted a letter dated January 12<sup>th</sup> discussing the traffic impact fees for Strawberry Village Shopping Center Expansion Project along with three graphs for the Commission's consideration. He revisited the calculation of the traffic impact fees and concluded that George Nickelson under counted the number of vehicles that should had been used in calculating the traffic impact fee by 14 trips. He pointed out that there is an under payment by the applicant of about \$50,000 if his analysis is correct. He requested adding another trip to be included for affordable housing units. He believed the applicants should be required to pay their fair share. He further hoped upon the Commission's further review that they require the applicant to pay the fair fees to the community and since there is a sale pending, the Commission must move quickly for the potential buyer to realize that traffic impact fees must be paid.

Chair Berland responded that this matter should be discussed with staff due to the fact that the Commission had already taken action on this matter. He pointed out that the Commission is not in the position to consider that issue at this time. He believed staff would deal with the error appropriately.

Alex Hinds, Agency Director, explained that Mr. Corcoran's comments would be made available to Public Works staff for their review. Staff added that some affordable housing units were included in the project that may result in the difference of the calculations that Mr. Corcoran's discussed. Staff circulated a memo from Public Works staff explaining the events.

Commissioner Dickenson requested that a report from staff be provided in order for the Commission to understand the conflicting information and, if there is a problem, the Commission should be aware and be able to discuss the options for the fee calculations. He also felt the applicant should be required to pay the appropriate fee. The Commission concurred. Staff requested that Public Works provide a response to Mr. Corcoran's letter and then staff would address the matter under Director's Oral Report at a later date. The Commission agreed.

Commissioner Dickenson reiterated that he desired that the report back from staff include the two issues raised by Mr. Corcoran. Staff agreed.

#### 4. RATIFICATION OF RESOLUTION: GHAZI VARIANCE/DESIGN REVIEW

Ratification of resolution denying a Variance and Design Review proposal to approve a 130 square foot (65 square feet per story), as-built portion of the house that is located 22.8 feet from the north front property line and encroaches 7.2 feet into the 30 foot front yard setback. This represents a change from the 31.5-foot front yard setback approved through prior design review. In addition, the applicant is requesting design review approval of the change in the east side setback from the approved 36.3 feet to 39.2 feet, and in the west side setback from the approved 104 feet to 94 feet. The applicants are also requesting approval of a change in the building and retaining wall colors from the approved medium tans to lighter shades of tan. Revisions to the approved landscape plan and a six-foot wood fence on the north property line are also proposed with this application. The house, containing 6,542 square feet, with a maximum height of 29 feet and including 540 square feet of attached garage space, received Design Review approval on December 28, 2001. A pool and landscaping were also included in the original design review approved plans. The subject property is located at **49 Bret Harte Road, San Rafael**, and is further identified as **Assessor's Parcel 018-123-08**.

Ben Berto, Principal Planner, summarized the staff report and recommended that the Commission adopt a modified Resolution denying the Ghazi Variance and Design Review applications.

Chair Berland discussed the letter from Hansen Bridgett, attorneys for the applicant, and asked County Counsel whether the Commission should rule on the findings and proposed resolutions as staff prepared or defer this for further consideration. Deputy County Counsel David Zaltzman responded that the action that the Commission had taken at the previous meeting was to simply deny the two applications. He pointed out that the findings that were made are equally applicable to the Design Review Amendment application before the Commission had the full application been up on a de novo hearing. He recommended some minor language revisions to make it clear that the language relating to the lack of any entitlement to any project on this site is simply your opinion based on the facts and that the only action is to deny the actual applications before the Commission. He stated that the findings appeared to be equally applicable whether looking at the project as a whole or the project amendments by the applicant. Staff took it as direction if the matter is appealed to the Board of Supervisors to raise the issue of whether or not the original design review approval was indeed ever vested. Chair Berland responded that specific action was taken as set forth in the notice before the Commission and in the course of the testimony the Commission made findings which were not necessarily required, but the point is that the Commission did make those findings and for the public record he did not view any harm in setting forth the Commission's conclusions based on the evidence presented to the Commission.

Chair Berland asked County Counsel if he reviewed the revised Resolution. Deputy County Counsel Zaltzman responded in the affirmative. He proposed changes to No. 4 to make it clear that it is the Commission's opinion that the original design review never vested by virtue of the fact that it was built in a different location; and therefore, never substantially relied on the design review approval as granted. County Counsel Zaltzman also changed No. 7 under "A" to add the following language: "*whether considered as a whole or limited to the issues addressed in the application before the Commission.*"

Chair Berland suggested changing the last sentence of No. 4 as well. County Counsel Zaltzman agreed that a similar change should be made to that section to reflect the opinion that the project was not properly vested; and therefore, the property owner should be deemed not to have secured any rights to construct the project in accordance with the January 18, 2001 Building Permit, the project approved by the December 28, 2001 Design Review approval or the project that was constructed. The Commission agreed.

Commissioner Dickenson commented on the Resolution and discussed Section 4 on page 2 and recommended stating the following: "*reflect the findings that the project may not have been properly vested; and therefore, the property owner may not have secured any rights.*" He also clarified the top of page 4 under No.7A where it stated, "*encroachment of the as built residence into the front yard setback results in adverse visual impacts on the adjacent*" and inserted the phrase, "*property at 53 Bret Harte.*" He discussed the next section to state, "*that a second-story roof deck adversely affects privacy of the adjacent property at 44 Bret Harte.*" He also changed

Finding "B" to the third sentence to read, "*The property at 53 Bret Harte Road has bay views adversely affected*" with the next sentence stating. "*The property at 47 Bret Harte Road experiences an adverse impact on privacy from a second-story deck overlooking their yard*" and insert "*and into the windows.*" He then corrected Finding "D" to the last line to clarify that additional downhill landscaping should be provided as well to soften the visual impacts and insert, "*of the home as viewed from Highway 101 and nearby properties.*"

Chair Berland asked Commissioner Dickenson that in view of the findings of not approving the design review or variance are these corrections at all relevant and believed it might be a moot issue at this point. Commissioner Dickenson agreed and recommended striking the last two sentences. The Commission agreed.

Commissioner Dickenson discussed Finding "F" on page 5 and recommending inserting the word "colors" to the first line.

Commissioner Barner pointed out that there are implications in terms of site disturbance and asked whether that observation should be made part of the Resolution. Chair Berland asked County Counsel if this would have relevance with respect to the action that the Commission had taken. Deputy County Counsel Zaltzman responded that there was a building permit issued for the original rebuild and when that was not built according to the building permit, the applicant received after the fact design review approval, which had nothing to do with the issue before the Commission. Commissioner Barner noted that it is a matter of history that should be included as an observation relating to site location and site disturbance. Deputy County Counsel Zaltzman responded that it could be inserted in Finding "5C" in addition to what is already mentioned in relation to substantial amount of excavation and grading.

Chair Berland recommended adding language to Finding "5C" that in addition to the prior existing residence there was additional grading involved in moving the structure uphill. Commissioner Barner agreed. Staff suggested stating, "*a substantial amount of additional excavation and grading associated with the new house.*" Chair Berland recommended including "*additional disturbance was involved in moving the original structure.*" Staff agreed.

Chair Berland expressed concern for Finding "5B" "in relation to the last sentence and recommended deleting the entire sentence stating, "*Inadequate geotechnical engineering justification has been presented to support any necessity of relocating the house uphill on the lot from the original location approved by the December 28, 2001, Design Review Notice of Decision and plans prepared by the applicant.*" Deputy County Counsel Zaltzman suggested rewording that language to deal with the fact that the evidence is available, but no amount of evidence could justify moving the residence without going through the proper permit process. Chair Berland suggested stating, "*Although this information was presented, the Commission found in view of the fact that no notice was given to the staff or approval given to the applicant, the applicant had no authority to move the house.*" The Commission and staff agreed.

Commissioner Julin believed a reference should be included to the illegal location of the house under Section 1: Findings to the second to last sentence to add "*in that the structure was constructed 10 feet higher in elevation uphill from that which was approved.*" Commissioner Herbertson expressed concern for that statement in that the 10-foot elevation increase was merely one of a number of violations and felt the general statement is adequate to capture all concerns of the Commission. Chair Berland agreed to leave the statement general.

Commissioner Dickenson suggested modifying Chair Berland's Finding "5C" language to state, "*Including additional grading (beyond that required to demolish the previous home and build a home as initially approved) that resulted from moving the house uphill.*" The Commission and staff agreed.

The hearing was open to the public.

Mary McEachron, attorney representing the applicant/owner, respectfully disagreed with Deputy County Counsel Zaltzman's opinion that the proposed changes to the Resolution cure the underlying problem as addressed in her letter provided to the Commission.

John Sharp, attorney representing Ms. Rifken and Mr. & Mrs. Pollack, discussed the limited language proposed in the Resolution and had no objection to County Counsel's recommendation or any of the other proposed changes as discussed. He noted for the record that if to the extent this matter is heard under any other forum that the entirety of the record is considered, so some of the non-conformities or concerns identified by the various Commissioners and staff going back to the original applications at the site would be in that record and subject to comment and review in any future forum. He pointed out that there were many references in the letter received from Ms. McEachron to relevance of matters set forth in the findings in the Resolution as those findings relate to the Brown Act. He explained that the standard as to whether the Brown Act had been satisfied for notice requirements is not relevant, it is whether the notice that appeared, specifically on the agenda of January 12<sup>th</sup> contained sufficient information in part to the applicant and the public of what would be discussed and under consideration. He added that the agenda specifically identified a variance and specifically identified modified design review to that extent it incorporated all of the findings that the Commission made such as negative impacts to neighbors and so on are part of the findings to be made, if approval is to be granted. He further added that appropriate notice was given in his opinion and believed the Brown Act was satisfied.

The hearing was closed to the public.

M/s, Dickenson/Julin, and passed unanimously of those present, to ratify the draft Resolution denying the Ghazi Design Review and Variance based on the findings set forth therein and as modified during the Commission's discussions. Motion passed 6/0 (Commissioner Buddie not present).

Chair Berland informed all parties of interest that this action could be appealed to the Board of Supervisors within 10 calendar days.

MARIN COUNTY PLANNING COMMISSION

RESOLUTION NO. PC04-002

A RESOLUTION DENYING THE GHAZI VARIANCE AND DESIGN REVIEW  
49 BRET HARTE, SAN RAFAEL  
ASSESSOR'S PARCEL 018-123-08

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**SECTION I: FINDINGS**

- I. WHEREAS Fakoor Popal, on behalf of the owner Mahmood Ghazi, has submitted a Variance request for a front yard setback of 22.8 feet, 7.2 feet less than the 30 foot setback required by the underlying R1:B3 zoning and 8.45 feet less than the 31.25 foot front yard setback approved by Design Review on December 28, 2001. In addition, the applicant has submitted a Design Review request for modified residence setbacks, modified building colors, landscape modifications, and a new wooden fence. The requests are in response to discoveries by the County of Marin that the project as built differed from the Design Review plans and conditions approved on December 28, 2001. The subject property is located at 49 Bret Harte Road, San Rafael, and is further identified as Assessor's Parcel 018-123-08.
- II. WHEREAS the Marin County Planning Commission held a duly noticed public hearing on January 12, 2004, 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 finds that the proposed project is Categorically Exempt from the requirements of the California Environmental Quality Act, per Section 15301, Class 1 because modifications to the site and largely built residence would not result in significant adverse environmental effects.
- IV. WHEREAS the Marin County Planning Commission is of the opinion that the County development entitlement that the property owner was granted to construct a residence at 49 Bret Harte Road, which in amended form is the subject of this Variance and Design Review proposal, may not have been properly vested in accordance with the provisions in Duration Of Permit And Vesting Of Rights section of the December 28, 2001 Design Review Notice of Decision. The property owner failed to construct the residence in conformance with the approved Design Review plans and conditions of approval required by the above Notice of Decision. In particular, the existing residence does not comply with the approved setbacks required by Condition #1 of the Notice of Decision. Therefore, the property owner did not perform a substantial amount of work in accordance with the approved Design Review and building permit plans within the 2 year vesting period prescribed by the above Notice of Decision. The constructed residence also does not conform to the initial building permit issued for the property on January 18, 2001, prior to the submittal and approval of the December 28, 2001 Design Review, because that initial permit proposed a smaller, 3,950 square foot building that complied with the setback and other zoning development standards and did not exceed the thresholds (floor area and building height) for requiring Design Review. The initial building permit was subsequently superseded by a building permit issued on March 5, 2002, in reliance upon the December 28, 2001 Design Review approval. The following findings, and particularly those pertaining to Design Review in Finding VII, include the opinion that the project may not have been properly vested, and therefore, the property owner may not have secured any rights to construct either the project approved by the January 18, 2001, the December 28, 2001 Design Review approval, or the project that was constructed.
- V. WHEREAS the Marin County Planning Commission finds that the proposed project is not consistent with the Marin Countywide Plan (MCP) for the following reasons:

- A. The project is located in the Ridge and Upland Greenbelt Policy Area (see Figure EQ-10, MCP). The structure is not located, designed, or screened to minimize its visual prominence, inconsistent with MCP Program EQ-3.18a and Policy EQ-3.19.
- B. The project as originally approved complied with Marin County standards for flood control, geotechnical engineering, and seismic safety. The property location is classified as Weak in MCP Figure EH-3 "Maximum Ground Shaking Intensity", and having a Moderate Level of Susceptibility in the MCP Figure EH-4 "Geologic Units Susceptible to Ground Shaking." Geotechnical information submitted with the application indicates that although a slide area exists adjacent to the site, the slope stability classification of the property is Zone 2 on a sliding scale of 1 to 4, with one being the most stable and 4 being the least. Although geotechnical information was presented, in view of the fact that no notice was given to staff or approval given to the applicant, the applicant had no authority to move the house.
- C. The project involves a substantial amount of additional excavation and grading, inconsistent with MCP Policy EQ-3.16, including additional grading (beyond that required to demolish the previous home and build the home as initially approved for Design Review) that resulted from moving the house uphill but at the same vertical elevation as the residence approved by Design Review.
- D. The project's proposed encroachment of the residence into the front yard setback is inconsistent with the Marin Countywide Plan Policy EQ-3.8 because it results in a project that is not of good aesthetic design. The residence features overly tall floor heights (12 and 9 feet for the first and second floors, respectively), unbroken vertical walls greater than 20 feet in height, a great room with a ceiling greater than 23 feet in height, substantial cuts into the natural grade resulting in a flat building and site pad on a steeply sloped lot, visual and privacy impacts to the immediate neighbors, excessive retaining walls, exterior colors that are too bright, and a relative lack of screening landscaping.

VI. WHEREAS the Marin County Planning Commission finds that the proposed project is not consistent with the mandatory findings to approve a Variance (Section 22.54.050 of Marin County Code and Section 65906 of the California Government Code), as specified below.

- A. Because of special circumstances applicable to subject property, including size, shape, topography, location, or surroundings, the strict application of the zoning ordinance is found to deprive subject property of privileges enjoyed by other properties in the vicinity and under identical zone classification.

The Variance request is for a reduction in the front yard setback. The finding cannot be made, because no special circumstance exists with respect to shape, topography, location, or surroundings to justify the variance. The applicants have not provided sufficient rationale that relocation of the house was necessary to avoid health or safety problems (see variance analysis in staff report) that would have otherwise adversely affected the house in the approved location. In addition, the geotechnical reports and other information submitted with the Variance application do not establish special circumstances regarding the physical aspects of the property, its location, or surroundings that warrant deviating from the required front yard setback standard. As submitted with the approved building permit application, feasible alternatives were available that adequately addressed geotechnical issues in a manner consistent with the required setbacks. The majority of homes in the neighborhood also appear to comply with the required 30 foot front yard setback.

- B. The granting of the Variance will not be detrimental to the public welfare or injurious to other property in the territory in which said property is situated.

The finding cannot be made. The granting of the Variance will be detrimental to the privacy and views of the surrounding neighbors, and to the overall public welfare with a view to the property.

- C. The granting of this Variance does not constitute a grant of special privilege inconsistent with the limitations upon other properties in the vicinity and zone in which the subject property is situated.

The finding cannot be made. Granting of the Variance would constitute a grant of special privilege insofar as other properties in the vicinity and under the same zoning district have been required to meet the minimum front yard setback. Special circumstances do not exist which would justify an exception to this setback.

- D. The granting of a Variance for the property does not authorize a use or activity which is not otherwise expressly authorized by the particular zoning district regulations governing such property.

*The granting of a Variance for a reduced front yard setback for a single-family residence does not authorize a use which is not expressly authorized by the R1:B3 zoning district governing the property.*

VII. WHEREAS the Marin County Planning Commission finds that the project is inconsistent with the mandatory findings to approve the Design Review application (Section 22.42.060 of the Marin County Code), as specified below:

- A. **The proposed development will properly and adequately perform or satisfy its functional requirements without being unsightly or creating incompatibility/ disharmony with its locale and surrounding neighborhood.**

The finding cannot be made. The proposed residence, whether considered as a whole or limited to the issues presented in the application before the Commission-, is inharmonious and incompatible with its locale and the surrounding neighborhood. In addition to being substantially larger than any nearby house, the design and location of the proposed structure maximizes its visibility at the expense of neighboring structures. The site layout involves excessive grading and retaining walls. The encroachment of the as-built residence into the front yard setback results in adverse visual impacts on the adjacent neighbor to the north at 53 Bret Harte Road. A second-story roof deck adversely affects the privacy of the adjacent downhill neighbor at 47 Bret Harte Road. The light color of the residence and dearth of downslope landscape screening also present substantial visual impacts from Highway 101 and nearby neighborhoods.

- B. **The proposed development will not impair, or substantially interfere with the development, use, or enjoyment of other property in the vicinity, including, but not limited to, light, air, privacy and views, or the orderly development of the neighborhood as a whole, including public lands and rights-of-way;**

The finding cannot be made. The development will impair the use and enjoyment of other property in the vicinity with respect to views and privacy. The uphill neighbor at 53 Bret Harte Road has bay views adversely affected by the expanse of second story roof massing that was moved closer to the neighboring residence without County authorization. The downhill neighbor at 47 Bret Harte Road experiences an adverse impact on privacy from a second story deck overlooking their yard and into their windows.



- C. The proposed development will not directly, or cumulatively, impair, inhibit, or limit further investment or improvements in the vicinity, on the same or other properties, including public lands and rights-of-way;**

The project is located entirely within the boundaries of the project site and has driveway access to a public street. Therefore, the project will not impair further investments and improvements in the vicinity.

- D. The proposed development will be properly and adequately landscaped with maximum retention of trees and other natural features and will conserve non-renewable energy and natural resources;**

The finding cannot be made. The applicants have submitted a revised landscaping plan that provides a considerable amount of trees and shrubs between themselves and the uphill neighbors. However, it would be unreasonable to expect that the overall mass and bulk of the residence and its incompatibility with the surrounding neighborhood can be adequately and reliably mitigated by introduced landscaping.

- E. The proposed development will comply with applicable design and locational characteristics listed in Chapter 22.16 (Planned District Development Standards);**

Planning District Development Standards are not applicable in this conventionally zoned district.

- F. The proposed development will minimize or eliminate adverse physical or visual effects which might otherwise result from unplanned or inappropriate development, design, or placement. Adverse effects include those produced by the design and location characteristics of the following:**

1. The area, heights, mass, materials, color, and scale of the structures;
2. Drainage systems and appurtenant structures;
3. Cut and fill or the reforming of the natural terrain, and appurtenant structures (e.g., retaining walls and bulkheads);
4. Areas, paths, and rights-of-way for the containment, movement or general circulation of animals, conveyances, persons, vehicles, and watercraft; and
5. Will not result in the elimination of significant sun and light exposure, views, vistas, and privacy to adjacent properties.

The finding cannot be made. The area, height, mass, materials, colors, and scale of the structure are incompatible with and produce adverse visual impacts on the neighborhood. Both the first and second floors of the residence feature ceiling heights (12 and 9 feet, respectively) that contribute to excessive building height and mass. The design of the structure features unbroken vertical walls from grade to the roof parapet. The constructed area, 7,496 gross square feet (a net County-counted area of 6,706 square feet) substantially exceeds the size of any immediately neighboring homes. County Ridge and Upland Greenbelt standards stipulate that development be placed in the least visible location from adjacent properties and view corridors. The structure in its proposed (constructed) location presents adverse view and privacy impacts to uphill and downhill neighbors, and to the traveling public on Hwy 101. The light color of the house (including trim) and retaining walls increases visual impacts. The amount of additional cut and fill involved with the proposed design results in a development that does not conform to the natural terrain and contains excessive retaining walls and bulkheads.

- G. **The project design includes features which foster energy and natural resource conservation while maintaining the character of the community.**

The project complies with Marin County's Title 24 Energy Conservation requirements.

- H. **The design, location, size, and operating characteristics of the proposed use are consistent with the Countywide Plan and applicable zoning district regulations, are compatible with the existing and future land uses in the vicinity, and will not be detrimental to the public interest, health, safety, convenience, or welfare of the County.**

The finding cannot be made. The proposed project is inconsistent with the Countywide Plan for reasons stated in Finding Y above. In addition findings for the variance cannot be made, resulting in a project that does not comply with the applicable zoning district regulations.

## **SECTION II: DECISION**

NOW, THEREFORE BE IT FURTHER RESOLVED that the Ghazi Variance VR 04-11 and Design Review DM 04-23 is **denied** in accordance with the Planning Commission's action taken at the meeting of January 12, 2004.

## **SECTION III: APPEAL RIGHTS**

NOW, THEREFORE BE IT 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 February 5, 2004.**

## **SECTION IV: VOTE**

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the County of Marin, State of California, on the 26<sup>th</sup> day of January, 2004, by the following vote to wit:

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

NOES:

ABSENT: Buddie

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ALLAN BERLAND, CHAIRMAN  
MARIN COUNTY PLANNING COMMISSION

Attest:

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Alexandra Morales  
Planning Commission Secretary

## 5. DIRECTOR'S ORAL REPORT

### a. Status report on Countywide Plan Update

Alex Hinds, Agency Director, provided the Commission with a copy of the Countywide Plan Update Status Report for their consideration that is being presented to the Board of Supervisors at their meeting of January 27, 2004. Staff explained that the latest administrative draft proposes increased protection and reduced development potential in environmentally sensitive areas. The Plan also recommended additional opportunities be made available for affordable and employee housing in already-urbanized commercial areas close to employment and transit. The end result is a reduction of about 1,800 market rate units and 600 units, and this reduction would be reassigned to other site specific locations and the remaining 1,200 units would be made available for low and very low and/or employee housing. The Plan as drafted proposed a reduction of about 650,000 square feet of potential commercial or other types of non-residential development. In addition, staff set up a scenario process working with community representatives to establish four alternative scenarios, which focused on the following topics: Economic Vitality, Environmental Preservation, Housing, and Transportation. The proposed Plan alternative is derived from the best policy ideas that were generated during this process along with additional public input, staff's ideas and policies already included in the Countywide Plan. Staff is proposing that a land use monitoring program and an expanded role for the Countywide Planning Agency be included in as a General Plan Implementation Program, so staff can affectively track accumulative impacts from all the different decisions by the various cities and towns in the County and be in a position to better coordinate and be aware of what is occurring. He then invited the Commission's comments.

Commissioner Dickenson recommended viewing the effect of San Rafael's new plan on the number in the plan as well as in the draft plan. Staff agreed to use the latest numbers. Commissioner Dickenson believed it is important to track what is in the Plan as well as the Draft Plan, and suggested adding a footnote. Staff pointed out that in addition, these numbers would be used for the EIR and it would be beneficial for the EIR to be aware of San Rafael's numbers.

Commissioner Dickenson asked staff to explain the fact that 1,219 units would be "banked" for affordable/employee housing. Staff responded that this update was not intended to result in major changes to land use designations or massive rezoning and was primarily a policy update.

Commissioner Barner discussed non-residential development and expressed concern for the numbers in the 2004 Plan not being realistic. Staff responded that in addition to the area around the third phase of the Lucas Project there are also commercial densities in the Novato area. Staff's proposal is to apply the new Baylands Corridor to follow the historic extent of the Baylands, plus an appropriate buffer, so some of the land that would retain commercial/industrial land use designation would also have a Baylands Corridor designation. Staff did not desire to impose a massive down zoning or reduction in development potential, but rather add the environmentally sensitive constraints associated with the Baylands Corridor. Commissioner Barner believed that if they have unrealistic projections for non-residential areas that in turn would reflect the number of housing units needed, particularly for work/employment housing. Staff responded that these are called "theoretical build-out" and these are not necessarily restricted to the 10 or 15-year period that this Plan would likely remain in effect. Staff agreed that the numbers are high, but for CEQA and General Planning purposes they use the worse case analysis.

Commissioner Dickenson clarified with staff that in order to get any units out of this "banked" for San Quentin and the Quarry they must all be below market rate units. Staff responded that for the proposed properties a Specific Plan must be conducted and consistent with the General Plan, so prior to development of those properties they would require a General Plan amendment.

Commissioner Dickenson asked why the County would be conducting a Specific Plan for urban development that did not belong in an unincorporated area. Staff responded that the County respects the idea that the City

could and probably should conduct the planning for that area. Staff agreed to add language that continues with the idea that the City would be conducting the planning for the Quarry should they decide to do so.

Commissioner Herbertson believed the phrase, “*worse case scenario*” should not be used and suggested “*the highest impact scenario*” so the EIR could justifiably address the magnitude of the impact. He added that rather than being silent on this proposed planned community designation, it seemed the EIR should assume some impacts from San Quentin or the Quarry being developed. Staff responded that the EIR would assume impacts, but the level of specificity is commensurate with the specificity of the proposed project, so if they had exact numbers the EIR would go into much greater detail. In this case, the EIR would review the general impacts and state, “*when the numbers are determined that a much more specific and detailed EIR would be required at that time.*”

Dan Dawson, Senior Planner, pointed out that there are currently no units assigned to the Quarry and the 350 units are actually located in the Peacock Gap Neighborhood Plan. In terms of San Quentin, there are two parallel assumptions for the purposes of analysis: What the current build-out would allow, which is approximately 560 units; and the alternative is assuming no units, but for the purposes of traffic modeling using the ITE assumption for a correctional facility based on the number of inmates, which would both be evaluated in tandem. Staff indicated that language was drafted today that recommended that as a County Policy that death row not be expanded at the prison.

Commissioner Julin discussed the Quarry in relation to housing units and asked staff why no density proposals are provided. Staff responded that the idea is that a project that would be proposed in that location would be so important that staff did not necessarily desire to prematurely assume the number. Staff added that the City’s EIR did not show the 350 units previously discussed in the Peacock Gap Neighborhood Plan. Staff further stated that they are completely open to including a number, but staff had been struggling how to handle it, so if the desire of the Commission is to include a number leaving it the same as what the Peacock Gap Neighborhood Plan allowed in which the EIR would review.

Commissioner Dickenson believed a review of build-out of all of the potentially development sites including the Quarry because critical streets are Third Street and Pt. San Pedro Road, which is a constraint that would limit development on the peninsula and in order to make any informed decisions anywhere along the peninsula some assumptions are needed to understand what the ultimate build-out might be. The Commission and staff agreed.

Staff also noted that language would be added that it is anticipated that the City rather than the County would be conducting this comprehensive planning for this site.

Chair Berland discussed the critical situation in housing in Marin County and believed the proposal to add the most substantial percentage increase from existing housing in West Marin that has no public water or sewer system from existing housing would further impact Sir Francis Drake and Shoreline Highway. He suggested increasing the development potential near Highway 101 and St Vincent Silveria and other areas adjacent to Highway 101. Staff responded that they reduced the potential build-out in West Marin more than anywhere else in the entire County due to the fact that it is entirely on septic and West Marin functions as a living history museum. Mr. Dawson pointed out that there are a number of single family zoned lots that remain and in short of acquiring them, staff consciously did not remove development potential arbitrarily on the assumption that they may or may not be developed, so development potential that had the possibility of multiply units, especially those with environmental constraints were reduced. Staff added that there are still a substantial number of lots that have potential for one unit even if they do have potential, environmental or slope issues. Staff explained that to state “*no development potential*” is getting into the area of takings.

Staff noted that they are proposing at the community plan stage that the Countywide Plans polices and designations be further refined and customized to reflect in much greater detail the site specific concerns of that area.

b. Report on On-Going/Pending Development Projects

Brian Crawford, Director of Planning Services, reported on the status of the Residential Design Review Guidelines Manual, which the Commission reviewed an administrative draft form. Staff expected to receive some final revision to the illustrations and graphics that need to be clarified or otherwise amended to improve the message that those items were attempted to be conveyed from the County's Consultant. Staff noted that a number of text revisions had been made already following the Commission's direction from the meeting late last year. Staff then discussed other miscellaneous matters for the Commission review.

Commissioner Julin recommended setting limits on the period in which an application could be pending. She felt it is in the best interest of the community for matters to be completed in a timely fashion. Chair Berland suggested asking County Counsel whether staff could have a policy without a formal ordinance that would state that they would not accept applications for projects in which a project action had been taken and an appeal is pending. He recommended exploring whether that is possible and adopt that as an Administrative/Office Procedure. Staff agreed to establish a policy or practice that would address this issue.

Staff briefly reported that the Tomales Bay Association filed a court challenge of the Board of Supervisors approval of the Webber Coastal Permit, which the Commission previously approved.

6. APPROVAL OF MINUTES – JANUARY 12, 2004

M/s, Thompson/Julin, and passed unanimously of those present, to approve the Minutes of January 12, 2004, as amended. Motion passed 6/0 (Commissioner Buddie not present).

7. UPDATE ON BOARD OF SUPERVISORS ACTIONS

January 27, 2004: Approve EIR Contract for Countywide Plan; Environmental Assessment for Sorocko Subdivision Application and Master Plan

February 3, 2004: Bicardo/Fitzgerald Design Review Appeal, San Rafael

February 10, 2004: Pappas Design Review Appeal, San Anselmo

8. FUTURE AGENDA DISCUSSION ITEMS, FIELD TRIPS

February 9, 2004: St. Vincent's Grading Violation, San Rafael

February 23, 2004: Strawberry View Control Ordinance, Strawberry Braun Design Review, Kentfield

March 8, 2004: Oak View Master Plan, San Rafael

March 9, 2004: Countywide Plan Workshop

Commissioner Herbertson informed the Commission and staff that he would be resigning with regret from the Planning Commission.