



# MARIN COUNTY

## COMMUNITY DEVELOPMENT AGENCY

ALEX HINDS, DIRECTOR

**STAFF REPORT TO THE PLANNING COMMISSION**  
**VERMEF APPEALS OF THE COMMUNITY DEVELOPMENT AGENCY'S**  
**APPROVAL OF THE TIPPING AND TONG DESIGN REVIEW CLEARANCES**

Item Numbers:	8 and 9.	Application No:	DC 05-19 and DC 04-77
Applicants:	Curt Proaps and Cedric Tong	Appellant:	Paul Vermeff
Property Address:	42 and 32 Calypso Shores, Novato	Assessor's Parcels:	157-310-41 (42 Calypso Shores) and 157-321-01 (32 Calypso Shores)
Hearing Date:	November 29, 2004	Planner:	Curtis Havel

<b>RECOMMENDATION:</b>	<b>Deny the Vermeff Appeal and Sustain the Community Development Agency's Approval of the Tipping and Tong Design Review Clearance Applications</b>
<b>APPEAL PERIOD:</b>	<b>Ten calendar days to the Marin County Board of Supervisors</b>
<b>LAST DATE FOR ACTION:</b>	<b>November 29, 2004</b>

### INTRODUCTION:

On September 27, 2004, two appeals were filed by Paul Vermeff in response to the Community Development Agency's approval of two separate Design Review Clearance applications at 42 and 32 Calypso Shores in Novato (both properties are located to either side of the appellant's property at 38 Calypso Shores). Both Design Review Clearance approvals were issued for as-built fences on September 15, 2004. Since the appellant has presented identical bases of appeal for both applications, this staff report contains the analysis and discussion related to both projects and appeals, although separate resolutions have been prepared for each application and appeal.

### SUMMARY RECOMMENDATION:

Staff recommends that the Planning Commission deny the Vermeff appeals and sustain the Community Development Agency's (CDA) approval of the Tipping and Tong Design Review Clearance applications which authorized the construction of a 7-foot, 4-inch tall fence at 42 Calypso Shores and an approximately 8-foot, 2-inch tall fence and an approximately 8-foot, 6-inch tall arbor at 32 Calypso Shores in Novato. The fences incorporate materials and colors that are consistent with the community character and with fences that have been constructed throughout the County. The fences would comply with the planned district development standards of the governing BFC-RSP zoning district, would enhance the privacy enjoyed by the inhabitants of the subject and surrounding properties, and would not impact views or interfere with the primary viewshed enjoyed from the appellant's property.

**PROJECT DESCRIPTIONS:**

*Tipping Design Review Clearance (42 Calypso Shores, Novato)*

The Tipping Design Review Clearance application is a proposal to legalize the as-built construction of a detached deck and an existing redwood fence located along the northeasterly rear portion of the residence on the property. The plans submitted by the former property owner (Tipping) describe a 6-foot tall fence. However, during the routine site visit conducted by staff, it was discovered that the fence actually reaches a height of approximately 7 feet, 4 inches. The 352 square foot deck has a maximum height of approximately 19 inches above grade, is partially bordered by the redwood fence along the northeasterly portion of the deck, and opens up to the northwest. The application materials mention the location of a portable hot tub and additional fencing along the opposite side of the patio. However, neither the fence nor the hot tub were present during staff’s inspection of the site and have not been included as part of the Design Review Clearance approval.

*Tong Design Review Clearance (32 Calypso Shores, Novato)*

The Tong Design Review Clearance application is a proposal to legalize the as-built construction of a redwood fence that spans the perimeter of the northerly property boundary. The fence ranges in height from 5 feet, 4 inches to 8 feet, 2 inches (the top 2 feet of the fence consists of open lattice). Also included in the project is an approximately 8-foot, 6-inch high arbor, which extends from the north elevation of the existing residence to the northerly property boundary. The northerly property boundary is adjacent to a property owned by the Marin County Flood Control and Water Conservation District which includes an approximately 20-foot wide access to the banks of Novato Creek.

**SUMMARY OF THE VERMEF APPEAL:**

On September 27, 2004, Paul Vermeff, property owner of 38 Calypso Shores, Novato, filed a timely appeal of the CDA’s approval of the Tipping and Tong Design Review Clearances asserting the following issues: 1) the fences interfere with views enjoyed from the appellant’s property therefore impacting the peaceful enjoyment of his property; and 2) the fences are not consistent with the Covenants, Conditions, and Restrictions (CC&R’s) established by the Keys Landing Homeowners Association.

**GENERAL INFORMATION:**

Countywide Plan:	SF6 (Single Family, 4 to 7 units per acre)
Zoning:	BFC-RSP-5.8 (Bayfront Conservation District, Residential, Single-Family Planned, 5.8 units per acre maximum density)
Lot sizes:	8,500 square feet (42 Calypso Shores) and 12,000 square feet (32 Calypso Shores)
Adjacent Land Uses:	Single-family residential
Vegetation:	Introduced landscaping
Topography and Slope:	Flat
Environmental Hazards:	None identified

## **ENVIRONMENTAL REVIEW:**

The Environmental Coordinator has determined that this project is Categorically Exempt from the requirements of the California Environmental Quality Act pursuant to Section 15303, Class 3 of the CEQA Guidelines because it entails construction of accessory structures reasonably related to the residential use of the property with no potentially significant impacts on the environment.

## **PUBLIC NOTICE:**

The Community Development Agency has provided public notice of the appeal hearing identifying the applicants and appellants, describing the project and its location, and giving the earliest possible decision date in accord with California Government Code requirements. This notice has been mailed to all property owners within 600 feet of the subject property.

## **PLAN CONSISTENCY:**

The proposed projects are consistent with the goals and policies of the Marin Countywide Plan and implementing Design Review findings and planned district development standards of the Marin County Development Code. The Keys Landing Homeowners Association has reviewed and recommended approval of the proposed project at 32 Calypso Shores (Tong) (Attachment xxx). Please refer to the plan consistency findings contained in the attached resolution.

## **ANALYSIS OF APPEAL:**

Paul Vermeff submitted two Petitions of Appeal on September 27, 2004 related to the administrative approvals of the Tipping and Tong Design Review Clearances. Both Petitions identified two identical bases of appeal alleging the following: 1) the fences significantly interfere with views from the appellant's property, therefore impacting the peaceful enjoyment of his property; and 2) the fences exceed 6 feet in height and therefore are in violation of the Covenants, Conditions, and Restrictions (CC&R's) established by the Keys Landing Homeowners Association. Below is staff's response to the issues raised by the appellant:

1. *The fences significantly interfere with views from the appellant's property therefore impacting the peaceful enjoyment of his property.*

### Response to Appeal:

The appellant asserts that the construction of the fences at 42 and 32 Calypso Shores significantly affect views enjoyed from his property. These impacted views consequently prevent the appellant from the peaceful enjoyment of his property.

The purpose of the Design Review process, among other things, is to ensure that adverse physical or visual effects which might otherwise result from unplanned or inappropriate development are minimized or eliminated. According to Marin County Code Section 22.42.020.B.7, projects can be exempted (cleared) from the full Design Review process when a determination is made that: a) the project is minor and incidental in nature; and, b) the project is consistent with the intent of Chapter 22.42 (Design Review) of the Marin County Code. When staff determines that a project qualifies for an exemption, a Design Review Clearance is issued to reflect the Agency's findings. The Design Review Clearance process is considered quasi-ministerial in nature because if the above findings can be made, then the project is approved without any discretionary conditions of approval that would otherwise alter the project as it was originally proposed.

Both sites were visited by staff during the processing of the Design Review Clearance applications. Based upon observations at the project site, staff determined that the fences did not interfere with the primary viewshed of Novato Creek enjoyed by the appellant. Review of an aerial photographs reveals that the appellant's home is located closer to the Novato Creek than the houses at 42 and 32 Calypso Shores, further providing evidence that there would be no substantial obstructions of primary viewshed enjoyed by the appellant.

The fence constructed at 42 Calypso Shores (Tipping) partially obstructs views from a small window located along the northerly elevation of the appellant's home. However, the only view obstructed is that of the rear yard area at 42 Calypso Shores due to hedges and landscaped areas in the rear yards of properties to the northwest. Furthermore, the fence constructed at 42 Calypso Shores has not obstructed the primary viewshed of Novato Creek and it appears that partial views of the Novato Creek are still accessible from the small window along the northerly elevation of the appellant's home.

The fence constructed at 32 Calypso Shores (Tong) is situated along the northerly property line and at no point obstructs views enjoyed by the appellant of Novato Creek. The fence does obstruct the appellant's views of the rear yard area at 32 Calypso Shores. However, with the exception of an entryway, there are no windows located along the southeasterly elevation of the appellant's home where views could be impacted. Finally, the primary bulk of the appellant's home at 38 Calypso Shores is located approximately 30 feet to the north of the subject fence (and property line) at 32 Calypso Shores, thereby further minimizing potential impacts to primary views to the northeast.

The fences that have been constructed at 42 and 32 Calypso Shores are a reasonable accessory improvement for a single-family residential property. They utilize materials and colors that are consistent with the community character and reflect fencing styles that are found throughout the County. It is common for property owners who desire additional privacy to construct fences around their yard areas, thereby providing the inhabitants of the subject and surrounding properties with additional privacy. Finally, and perhaps most important with respect to the appeal, the fences that have been constructed do not obstruct the appellant's views of Novato Creek to the northeast. It is for these reasons that the Community Development Agency staff determined that the projects could be approved through the Design Review Clearance process.

2. *The projects are not consistent with Covenants, Conditions, and Restrictions (CC&R's) established by the Keys Landing Homeowners Association.*

#### Response to Appeal

The appellant asserts that the proposed projects are inconsistent with the Keys Landing Homeowners Association CC&R's. Covenants, Conditions, and Restrictions (CC&R's) are private agreements typically made between a homeowners association and property owners within the Association boundaries regarding the maintenance and development of their properties. The County's land use and zoning purview over this project is based principally upon policies contained in the Marin Countywide Plan and zoning ordinance. While there may be similarities between standards established by CC&R's and the development standards of various zoning districts, CC&R's are private restrictions and the County does not have the authority to administer, interpret, or enforce them. In this particular instance, the development standards of the BFC-RSP zoning district allow the construction of fences over 6 feet in height with Design Review approval.

Regardless of whether the fences are inconsistent with the CC&R's, the governing zoning district does not expressly prohibit them. Design Review Clearance applications have been approved indicating that the fences are consistent with the community character, are minor and incidental

with respect to the primary residential use of the property, and would not obstruct views enjoyed by neighboring property owners.

### **CONCLUSION:**

The proposed projects do not interfere with the primary viewshed of the Novato Creek enjoyed by the appellant and adjacent residents along the northeasterly side of Calypso Shores. The projects are consistent with the principally permitted residential uses authorized by the BFC-RSP-5.8 zoning district and are incidental to the single-family residential use of the subject properties. The fences provide the subject and adjacent property owners with a greater degree of privacy in their rear yard areas, and are consistent with other development in the surrounding community with respect to style, building materials, and colors. Finally, although the CC&R's may, or may not, be more restrictive with respect to fence height or placement, the development standards of the BFC-RSP zoning district allow the construction of fences over 6 feet in height.

### **RECOMMENDATION:**

Staff recommends that the Planning Commission review the administrative record, conduct a public hearing, and move to adopt the attached resolutions: (1) denying the Vermeff Appeal; and (2) sustaining the Community Development Agency's approvals of the Tipping and Tong Design Review Clearance applications.

- Attachments:
1. Proposed Resolution Denying the Vermeff Appeal and Sustaining the Community Development Agency's approval of the Tipping Design Review Clearance
  2. Proposed Resolution Denying the Vermeff Appeal and Sustaining the Community Development Agency's approval of the Tong Design Review Clearance
  3. Vermeff Petitions for Appeal, received 7/19/04
  4. Tipping Design Review Clearance, 9/15/04
  5. Tong Design Review Clearance, 9/15/04
  6. Location Map
  7. Assessor's Parcel Map
  8. Aerial Photo
  9. Reduced Plans
  10. Letter from Paul Vermeff, 5/25/04
  11. Letter from Keys Landing Homeowners Association dated 5/4/04
  12. Letter from Bel Marin Keys Community Services District dated 4/22/04

MARIN COUNTY PLANNING COMMISSION

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION DENYING THE VERMEF APPEAL AND SUSTAINING THE  
COMMUNITY DEVELOPMENT AGENCY'S APPROVAL OF  
THE TIPPING DESIGN REVIEW CLEARANCE 05-19  
42 CALYPSO SHORES, NOVATO  
ASSESSOR'S PARCEL 157-310-41

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**SECTION I: FINDINGS**

- I. WHEREAS Richard and Patricia Tipping are requesting Design Review Clearance approval for the as-built construction of a detached deck and an existing redwood fence. The plans submitted by the former property owner (Tipping) describe a 6-foot tall fence. However, during the routine site visit conducted by staff, it was discovered that the fence actually reaches a height of approximately 7 feet, 4 inches. The fence and deck are located along the northeasterly rear portion of the residence. The 352 square foot deck has a maximum height of approximately 19 inches above grade, is partially bordered by the redwood fence along the northeasterly portion of the deck, and opens up to the northwest. The subject property is located at 42 Calypso Shores, Novato and is further identified as Assessor's Parcel 157-310-41.
- II. WHEREAS on September 15, 2004, the Community Development Agency issued an approval of the Tipping Design Review Clearance granting authorization for the construction of a 7-foot, 4-inch tall redwood fence.
- III. WHEREAS, a timely appeal of the Community Development Agency's approval of the Tipping Design Review has been filed by Paul Vermeff asserting the following issues: 1) the fence would obstruct views enjoyed from the appellant's property and therefore interfere with the appellant's peaceful enjoyment of the property; and 2) the project would be inconsistent with the Covenants, Conditions, and Restrictions (CC&R's) of the Keys Landing Homeowners Association.
- IV. WHEREAS the Marin County Planning Commission held a duly noticed public hearing on November 29, 2004, to consider the merits of the project and appeal, and hear testimony in favor of, and in opposition to, the project.
- V. WHEREAS the Marin County Planning Commission finds that this project is Categorically Exempt from the requirements of the California Environmental Quality (CEQA) Act pursuant to Section 15303, Class 3 of the CEQA Guidelines because it entails construction of accessory structures reasonably related to the residential use of the property with no potentially significant impacts on the environment.

VI. WHEREAS the Marin County Planning Commission finds that the proposed project is consistent with the Marin Countywide Plan for the following reasons:

- A. The construction of a fence and deck would be consistent with the SF6 (Single Family, 4 to 7 units per acre) land use designation;
- B. The project would be consistent with the prevailing community character and is incidental to the primary residential land use of the property;
- C. The project would not cause significant adverse impacts on water supply, fire protection, waste disposal, schools, traffic and circulation, or other services; and,
- D. The project would not result in tree removal or grading.

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

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

The fence and deck will be situated solely on the subject property and will result in a structure of height, mass and bulk proportionate to the 8,500 square foot site. The fence and deck are improvements commonly associated with residential development and would be consistent with development patterns elsewhere in the neighborhood. The fence and deck will incorporate building forms that are commonly used in fence and deck construction and utilize materials and colors that are consistent with the surrounding natural and built environments.

- 2. **It 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 and pleasing development of the neighborhood as a whole, including public lands and rights-of-way.**

The project will not impact view, light, air, and privacy of surrounding residences or public areas due to the following reasons: (1) the fence and deck would not substantially obstruct views of the Novato Creek from adjacent properties; and (2) the fence would provide a greater degree of privacy in the rear yards for residents of the subject and adjacent properties.

- 3. **It will not directly, or cumulative, 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 discussion contained in Findings VII (1) and (2) above are supportive of this finding.

- 4. **It 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 project does not entail the removal of any trees, and no landscaping has been proposed.

**5. It will be in compliance with the design and locational characteristics listed in Chapter 22.16 (Planned District Development Standards) of the Marin County Development Code.**

The fence and deck are attractively designed and would be compatible with that of other structures in the vicinity and consistent with the residential use of the property, would respect the surrounding natural environment because no vegetation removal is proposed, and would not diminish views from surrounding properties because the fence would not obstruct adjacent properties views of the Novato Creek to the northeast. The project will not encroach onto adjoining private properties, public lands, or private and public easements and rights-of-way. As discussed in Findings VII (1) and (2) above, the proposal will not prevent the development, use, or enjoyment of other properties in the vicinity because no detriment with respect to light, air, privacy, height, and land use factors will result.

**6. It 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 of characteristics of the following:**

**a. The area, heights, mass, materials, and scale of structures;**

The fence and deck are modest in scope and are reasonably related to the residential development of the property. As discussed in Findings VII (1) and (2) above, the project would preserve views and privacy enjoyed by adjacent properties, and would result in development that is consistent with the development patters of the community. The overall scale of the project is compatible with other development in the area and is appropriate given the size and configuration of the property.

**b. Drainage systems and appurtenant structures;**

The project would not affect site drainage.

**c. Cut and fill or the reforming of the natural terrain, and appurtenant structures (e.g. retaining walls and bulkheads);**

The project would not result in the reforming of the natural terrain and would not require any retaining walls.

**d. Areas, paths, and rights-of-way for the containment, movement or general circulation of animals, conveyances, persons, vehicles, and watercraft; and**

The development on the property will not interfere with the containment, movement, or circulation of animals, conveyances, or persons. The fence will enclose a portion of the rear yard that does not provide a thoroughfare for the general public and does not show evidence that it is used as a migratory route for animals.

**e. Will not result in the elimination of significant sun and light exposure, views, vistas, and privacy to adjacent properties.**

The siting of the fence and deck will not eliminate the sun and/or light exposure on adjacent properties, or result in the elimination of views, vistas, or privacy. The primary viewshed of the immediate vicinity is of the Novato Creek to the northeast. The fence will provide a greater degree of privacy for the residents of the subject property and the residents of the neighboring properties. The design of the fence and deck is compatible with that of other improvements in



the vicinity and incorporates materials and colors that are consistent with the natural and built environments.

7. **It includes features which foster energy and natural resource conservation while maintaining the character of the community.**

This finding is not applicable to the project.

8. **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 project is consistent with policies and programs in the Countywide Plan because the project involves the construction of a fence and deck, which would comply with the SF6 (Single Family, 4 to 7 units per acre) land use designation. The project is consistent with the principally permitted residential uses authorized by the BFC-RSP-5.8 (Bayfront Conservation District, Residential, Single-Family Planned, 5.8 units per acre maximum density) zoning district and is incidental to the single-family residential use of the subject property. The proposed project does not interfere with the primary viewshed of the Novato Creek enjoyed by adjacent residents along the northeasterly side of Calypso Shores. The fence provides the subject and adjacent property owners with a greater degree of privacy in their rear yard areas, and is consistent with other development in the surrounding community with respect to style, building materials, and colors. Based on the findings above, the construction of the fence and arbor will not be detrimental to the public interest, health, safety, convenience or welfare.

VIII. WHEREAS the Marin County Planning Commission finds that the bases for the Vernef appeal cannot be sustained and that the Community Development Agency acted appropriately in issuing the Tipping Design Review due to the following factors:

1. *The fences significantly interfere with views from the appellant's property therefore impacting the peaceful enjoyment of his property.*

Response to Appeal:

The appellant asserts that the construction of the fence at 32 Calypso Shores significantly affect views enjoyed from his property. These impacted views consequently prevent the appellant from the peaceful enjoyment of his property.

The existing fence does not interfere with the primary viewshed of Novato Creek enjoyed by the appellant. Review of an aerial photographs reveals that the appellant's home is located closer to the Novato Creek than the home at 42 Calypso Shores, thereby providing a wider angle of incidence for views of Novato Creek and further providing evidence that there are no obstructions of the primary viewshed enjoyed by the appellant.

The fence constructed at 42 Calypso Shores partially obstructs views from a small window located along the northerly elevation of the appellant's home. However, the only view obstructed is that of the rear yard area at 42 Calypso Shores due to hedges and landscaped areas in the rear yards of properties to the northwest. Furthermore, the fence constructed at 42 Calypso Shores has not obstructed the primary viewshed of Novato Creek and it appears that partial views of the Novato Creek are still accessible from the small window along the northerly elevation of the appellant's home.

The fence at 42 Calypso Shores is accessory and incidental to the primary single-family residential use of the property, utilizes materials and colors that are consistent with the community character, and reflects fencing styles that are commonly found throughout the County. It is reasonable for a property owner who desires additional privacy to construct fences around their yard areas, thereby providing the inhabitants of the subject and surrounding properties with additional privacy. Finally, the fences that have been constructed do not obstruct the appellant's views of Novato Creek to the northeast. This basis of appeal holds no merit based on the discussion above.

2. *The projects are not consistent with Covenants, Conditions, and Restrictions (CC&R's) established by the Keys Landing Homeowners Association.*

Response to Appeal:

The appellant asserts that the proposed project is inconsistent with the Keys Landing Homeowners Association CC&R's. Covenants, Conditions, and Restrictions (CC&R's) are private agreements made between property owners regarding the maintenance and development of their properties. The County's land use and zoning purview over this project is based principally upon policies contained in the Marin Countywide Plan and zoning ordinance. In this particular instance, the development standards of the BFC-RSP zoning district allow the construction of fences over 6 feet in height with Design Review approval. While there may be similarities between standards established by CC&R's and the development standards of various zoning districts, CC&R's are private restrictions and the County does not have the authority to administer, interpret, or enforce them.

**SECTION II: PROJECT APPROVAL**

NOW, THEREFORE, BE IT RESOLVED that the Marin County Planning Commission hereby denies the Vernef appeal and sustains the Community Development Agency's approval of the Tipping Design Review.

**SECTION III: VESTING OF RIGHTS**

The applicant must vest this Design Review approval by securing a Building Permit for all of the approved work and substantially completing all approved work by November 29, 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 Director approves it. Design Review extensions to a total of not more than four (4) years may be granted for cause pursuant to Marin County Code Section 22.56.050.

**SECTION IV: APPEAL RIGHTS**

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 **December 9, 2004.**

**SECTION V: VOTE**

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the County of Marin, State of California, on the 29<sup>th</sup> day of November, 2004, by the following vote to wit:

AYES:

NOES:

ABSENT:

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ALLAN BERLAND, CHAIRMAN  
MARIN COUNTY PLANNING COMMISSION

Attest:

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Jessica Woods  
Recording Secretary

MARIN COUNTY PLANNING COMMISSION

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION DENYING THE VERMEF APPEAL AND SUSTAINING THE  
COMMUNITY DEVELOPMENT AGENCY'S APPROVAL OF  
THE TONG DESIGN REVIEW CLEARANCE 04-77  
32 CALYPSO SHORES, NOVATO  
ASSESSOR'S PARCEL 157-321-01

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**SECTION I: FINDINGS**

- I. WHEREAS Cedric Tong is requesting Design Review Clearance approval for the construction of an 8-foot, 2 inch tall fence (the top 2 feet of the fence consists of open lattice). Also included in the project is an approximately 8-foot, 6-inch high arbor, which extends from the north elevation of the existing residence to the northerly property boundary. The subject property is located at 32 Calypso Shores, Novato and is further identified as Assessor's Parcel 157-321-01.
- II. WHEREAS on September 15, 2004, the Community Development Agency issued an approval of the Tong Design Review Clearance granting authorization for the construction of an 8-foot, 2 inch tall fence and an 8-foot, 6-inch high arbor extending from the north elevation of the existing residence to the northerly property boundary.
- III. WHEREAS, a timely appeal of the Community Development Agency's approval of the Tong Design Review Clearance has been filed by Paul Vermeff asserting the following issues: 1) the fence would obstruct views enjoyed from the appellant's property and therefore interfere with the appellant's peaceful enjoyment of the property; and 2) the project would be inconsistent with the Covenants, Conditions, and Restrictions (CC&R's) of the Keys Landing Homeowners Association.
- IV. WHEREAS the Marin County Planning Commission held a duly noticed public hearing on November 29, 2004, to consider the merits of the project and appeal, and hear testimony in favor of, and in opposition to, the project.
- V. WHEREAS the Marin County Planning Commission finds that this project is Categorically Exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15303, Class 3 of the CEQA Guidelines because it entails construction of accessory structures reasonably related to the residential use of the property with no potentially significant impacts on the environment.
- VI. WHEREAS the Marin County Planning Commission finds that the proposed project is consistent with the Marin Countywide Plan for the following reasons:
  - A. The construction of a fence and arbor would be consistent with the SF6 (Single Family, 4 to 7 units per acre) land use designation;
  - B. The project would be consistent with the prevailing community character and is incidental to the primary residential land use of the property;
  - C. The project would not cause significant adverse impacts on water supply, fire protection, waste disposal, schools, traffic and circulation, or other services; and,

D. The project would not result in tree removal or grading.

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

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

The fence and arbor will be situated solely on the subject property and will result in a structure of height, mass and bulk proportionate to the 12,000 square foot site. The fence and arbor are improvements commonly associated with residential development and would be consistent with development patterns elsewhere in the neighborhood. The fence and arbor will incorporate building forms that are commonly used in fence and arbor construction and utilize materials and colors that are consistent with the surrounding natural and built environments.

- 2. It 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 and pleasing development of the neighborhood as a whole, including public lands and rights-of-way.**

The project will not impact view, light, air, and privacy of surrounding residences or public areas due to the following reasons: (1) the fence and arbor would not obstruct views of the Novato Creek from adjacent properties; and (2) the fence would provide a greater degree of privacy in the rear yards for residents of the subject and adjacent properties.

- 3. It will not directly, or cumulative, 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 discussion contained in Findings VII (1) and (2) above are supportive of this finding.

- 4. It 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 project does not entail the removal of any trees, and no landscaping has been proposed.

- 5. It will be in compliance with the design and locational characteristics listed in Chapter 22.16 (Planned District Development Standards) of the Marin County Development Code.**

The fence and arbor are attractively designed and would be compatible with that of other structures in the vicinity and consistent with the residential use of the property, would respect the surrounding natural environment because no vegetation removal is proposed, and would not diminish views from surrounding properties because the fence would not obstruct adjacent properties views of the Novato Creek to the northeast. The project will not encroach onto adjoining private properties, public lands, or private and public easements and rights-of-way. As discussed in Findings VII (1) and (2) above, the proposal will not prevent the development, use, or enjoyment of other properties in the vicinity because no detriment with respect to light, air, privacy, height, and land use factors will result.

**6. It 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 of characteristics of the following:**

**a. The area, heights, mass, materials, and scale of structures;**

The fence and arbor are modest in scope and are reasonably related to the residential development of the property. As discussed in Findings VII (1) and (2) above, the project would preserve views and privacy enjoyed by adjacent properties, and would result in development that is consistent with the development patterns of the community. The overall scale of the project is compatible with other development in the area and is appropriate given the size and configuration of the property.

**b. Drainage systems and appurtenant structures;**

The project would not affect site drainage.

**c. Cut and fill or the reforming of the natural terrain, and appurtenant structures (e.g. retaining walls and bulkheads);**

The project would not result in the reforming of the natural terrain and would not require any retaining walls.

**d. Areas, paths, and rights-of-way for the containment, movement or general circulation of animals, conveyances, persons, vehicles, and watercraft; and**

The development on the property will not interfere with the containment, movement, or circulation of animals, conveyances, or persons. The fence will enclose the rear yard. The 20-foot wide access road adjacent to the northerly property boundary will remain open for the circulation of the public and animals.

**e. Will not result in the elimination of significant sun and light exposure, views, vistas, and privacy to adjacent properties.**

The siting of the fence and arbor will not eliminate the sun and/or light exposure on adjacent properties, or result in the elimination of views, vistas, or privacy. The primary viewshed of the immediate vicinity is of the Novato Creek to the northeast. The fence will provide a greater degree of privacy for the residents of the subject property and the residents of the neighboring properties. The design of the fence and arbor is compatible with that of other improvements in the vicinity and incorporates materials and colors that are consistent with the natural and built environments.

**7. It includes features which foster energy and natural resource conservation while maintaining the character of the community.**

This finding is not applicable to the project.

8. **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 project is consistent with policies and programs in the Countywide Plan because it involves the construction of a fence and arbor, which would comply with the SF6 (Single Family, 4 to 7 units per acre) land use designation. The project is consistent with the principally permitted residential uses authorized by the BFC-RSP-5.8 (Bayfront Conservation District, Residential, Single-Family Planned, 5.8 units per acre maximum density) zoning district and is incidental to the single-family residential use of the subject property. The proposed project does not interfere with the primary viewshed of Novato Creek enjoyed by adjacent residents along the northeasterly side of Calypso Shores. The fence provides the subject and adjacent property owners with a greater degree of privacy in their rear yard areas, and is consistent with other development in the surrounding community with respect to style, building materials, and colors. Based on the findings above, the construction of the fence and arbor will not be detrimental to the public interest, health, safety, convenience or welfare.

VIII. WHEREAS the Marin County Planning Commission finds that the bases for the Vernef appeal cannot be sustained and that the Community Development Agency acted appropriately in issuing the Tong Design Review Clearance due to the following factors:

1. *The fences significantly interfere with views from the appellant's property therefore impacting the peaceful enjoyment of his property.*

Response to Appeal:

The appellant asserts that the construction of the fence at 32 Calypso Shores significantly affect views enjoyed from his property. These impacted views prevent the appellant from the peaceful enjoyment of his property.

The existing fence at 32 Calypso Shores does not interfere with the primary viewshed of Novato Creek enjoyed by the appellant. Review of an aerial photographs reveals that the appellant's home is located closer to the Novato Creek than the home at 32 Calypso Shores, thereby providing a wider angle of incidence for views of Novato Creek and further providing evidence that there are no obstructions of the primary viewshed enjoyed by the appellant.

The fence constructed at 32 Calypso Shores is situated along the northerly property line and at no point obstructs views enjoyed by the appellant of Novato Creek. The fence does obstruct the appellant's views of the rear yard area at 32 Calypso Shores. However, with the exception of an entryway, there are no windows located along the southeasterly elevation of the appellant's home where views could be impacted. Finally, the primary bulk of the appellant's home at 38 Calypso Shores is located approximately 30 feet to the north of the subject fence (and property line) at 32 Calypso Shores, thereby further minimizing potential impacts to primary views to the northeast.

The fence at 32 Calypso Shores is a reasonable accessory improvement for a single-family residential property. It utilizes materials and colors that are consistent with the community character, and reflects fencing styles that are commonly found throughout the County. It is reasonable for a property owner who desires additional privacy to construct fences around their yard areas, thereby providing the residents of the subject and surrounding properties with additional privacy. Finally, the fence that has been constructed does not obstruct the appellant's views of Novato Creek to the northeast. This basis of appeal holds no merit based on the discussion above.

2. *The projects are not consistent with Covenants, Conditions, and Restrictions (CC&R's) established by the Keys Landing Homeowners Association.*

Response to Appeal:

The appellant asserts that the proposed project is inconsistent with the Keys Landing Homeowners Association CC&R's. Covenants, Conditions, and Restrictions (CC&R's) are private agreements made between property owners regarding the maintenance and development of their properties. The County's land use and zoning purview over this project is based principally upon policies contained in the Marin Countywide Plan and zoning ordinance. In this particular instance, the development standards of the BFC-RSP zoning district allow the construction of fences over 6 feet in height with Design Review approval. While there may be similarities between standards established by CC&R's and the development standards of various zoning districts, CC&R's are private restrictions and the County does not have the authority to administer, interpret, or enforce them.

**SECTION II: PROJECT APPROVAL**

NOW, THEREFORE, BE IT RESOLVED that the Marin County Planning Commission hereby denies the Vernef appeal and sustains the Community Development Agency's conditional approval of the Tong Design Review.

**SECTION III: VESTING OF RIGHTS**

The applicant must vest this Design Review Clearance approval by securing a Building Permit for all of the approved work and substantially completing all approved work by November 29, 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 Director approves it. Design Review extensions to a total of not more than four (4) years may be granted for cause pursuant to Marin County Code Section 22.56.050.

**SECTION IV: APPEAL RIGHTS**

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 December 9, 2004.**



**SECTION V: VOTE**

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the County of Marin, State of California, on the 29<sup>th</sup> day of November, 2004, by the following vote to wit:

AYES:

NOES:

ABSENT:

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ALLAN BERLAND, CHAIRMAN  
MARIN COUNTY PLANNING COMMISSION

Attest:

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Jessica Woods  
Recording Secretary