



MARIN COUNTY

COMMUNITY DEVELOPMENT AGENCY

ALEX HINDS, DIRECTOR

STAFF REPORT TO THE PLANNING COMMISSION HASSON APPEAL OF THE COMMUNITY DEVELOPMENT AGENCY'S CONDITIONAL APPROVAL OF THE EASTWOOD PARK DESIGN REVIEW

Item No:	8	Application No:	DM 05-86
Applicant:	Tamalpais Community Services District	Appellant:	Thomas Hasson
Property Address:	627 Eastwood Way, Mill Valley	Assessor's Parcel:	049-074-25
Hearing Date:	November 28, 2005	Planner:	Eric Engelbart

RECOMMENDATION:	Deny the Hasson Appeal and Sustain the Community Development Agency's Conditional Approval of the TCSD Design Review Application
APPEAL PERIOD:	Ten calendar days to the Marin County Board of Supervisors
LAST DATE FOR ACTION:	November 28, 2005

SUMMARY RECOMMENDATION

Staff recommends that the Planning Commission deny the Hasson appeal and sustain the Community Development Agency's (CDA) conditional approval of the Tamalpais Community Services District (TCSD) Eastwood Park Design Review allowing the redevelopment of Eastwood Park.

PROJECT DESCRIPTION

The applicant is requesting Minor Design Review (DM 05-86) approval in order to carry out site improvements to Eastwood Park. Many of the improvements have been designed so that the park will comply with the Americans with Disabilities Act. The improvements include a new five foot wide pedestrian trail, play equipment, minor site grading, play area fencing, irrigation and drainage, turf and trees, and a permanent unisex restroom, as well as other site improvements as shown on the approved plan sets. The proposed restroom has a floor area of approximately 70 square feet with an approximately 60 square foot covered entrance area and would have maximum height of 10.5 feet. The permanent restroom would be constructed in the same location as an existing portable restroom facility. The permanent restroom would contain a locking mechanism that prevents access to the restroom after sunset. Eastwood Park is located at the intersection of Eastwood Way and Glenwood Ave in Mill Valley and is further identified as **Assessor's Parcels 049-074-25**. The site was purchased for use as a community park by the Tamalpais Community Services District in 1971 and has been in continual use as a park since that time.

SUMMARY OF THE HASSON APPEAL

On August 31, 2005, the CDA granted administrative conditional approval of the TCSD (Eastwood Park) Design Review permitting the aforementioned improvements in Eastwood Park. On September 9, 2005, Thomas Hasson, property owner of 616 Eastwood Way, Mill Valley, filed a timely appeal of the Community Development Agency's conditional approval of the TCSD Design Review, asserting that the project should not be approved for a variety of reasons (see Analysis of Appeal, below, and Attachment 2). The reasons for the appeal generally relate to the decision-making process, increased intensity of use, and adverse impacts on community character.

GENERAL INFORMATION:

Countywide Plan:	OS (Open Space)
Zoning:	OA (Open Area district)
Lot size:	approximately 5.11 acres)
Adjacent Land Uses:	Single-family residential
Vegetation:	Various native and introduced trees and plant life
Topography and Slope:	Gentle to moderate slope
Environmental Hazards:	None identified

ENVIRONMENTAL REVIEW:

The Environmental Coordinator has determined that this project is Categorical Exempt from the requirements of the California Environmental Quality Act pursuant to Section 15302, class 2 and Section 15303, class 3 of the CEQA Guidelines because it entails renovations and upgrades in equipment to an existing park, primarily for the purpose of bringing the park into compliance with the Americans with Disabilities Act. The new facilities would have substantially the same purpose and capacity as those that currently exist.

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 project, as modified by conditions of approval, is consistent with the goals and policies of the Marin Countywide Plan and the Tamalpais Community Plan. The Tamalpais Design Review Board has reviewed and recommended approval of the project (see Attachment # 7). Please refer to the plan consistency findings contained in the attached resolution.

PROJECT ANALYSIS:

Background:

Eastwood Park is an approximately 5-acre community park located in Mill Valley, addressed as 627 Eastwood Way. The TCSD owns the property in fee and the property is surrounded entirely by residential development. The park currently contains an open playfield, playground equipment, tennis courts, a basketball court, and a portable restroom facility. Development on the subject property has a history of contention. In 1991, the TCSD replaced an older set of play equipment with new and larger equipment. This replacement was carried out without the benefit of permits, as the TCSD believed that such replacement of existing facilities would not trigger any need for discretionary review by the County of Marin. After being informed that the equipment replacement was indeed subject to Design Review, the TCSD applied for Design Review approval through the County's Planning Department. Although County staff recommended approval of the equipment, several neighbors in the immediately surrounding area felt that the equipment was too intensive for the site and not in keeping with the park's rustic character. The Planning Commission ultimately approved the project [at its regular meeting of December 16, 1991]. Since that time, the TCSD received grant money in order to further redevelop and enhance the park. However, according to the TCSD, a condition of the grant money requires the park to be brought into compliance with the Americans with Disabilities Act (ADA). The ADA compliance requirements have dictated many components of the project, particularly the proposed asphalt trail. In designing the project, the TCSD held discussions at no less than 16 meetings. Additionally, the TCSD held four noticed public hearings on the project. The TCSD subsequently submitted an application for Design Review approval to the County of Marin. After a thorough review by County staff, Design Review approval was granted on August 31, 2005. An appeal of this approval was subsequently filed in a timely fashion, and is the basis for this staff report.

ANALYSIS OF APPEAL

Thomas Hasson (a neighboring property owner who resides at 616 Eastwood Way) submitted a Petition of Appeal on September 9, 2005, identifying six bases of appeal of staff's administrative approval of the Design Review. The basis of the Hasson appeal is as follows: 1) The play equipment that was approved by the Planning Commission in December 1991 was never brought into compliance with ADA, as was required by the Planning Commission as a condition of approval. Therefore, the TCSD has no vested right to place the currently proposed equipment in the same location; 2) there is considerable opposition to the permanent public restroom by nearly 100% of neighbors whose properties are on the boundaries of the neighborhood park; 3) the character of the park and the neighborhood will be permanently changed in a manner not reflective of resident's desire to preserve the rustic nature of the community; 4) the process of decision-making was flawed and not conducted in a transparent manner; 5) possible negative impact of project on properties surrounding the park, including increased noise, traffic, sight views, and making the park more desirable for homeless; 6) there has been a disregard for public input regarding:

- A) the repair of structures already in place;
- B) size (width) and composition (materials) of ADA path to be installed;
- C) Move path away from field;
- D) discuss and review the installation of permanent restroom;
- E) refusal to incorporate surface that discourage skateboarding as was demanded at public meetings for park design;
- F) provide information about maintenance schedules for park and permanent restroom;
- G) provide cost information for permanent restroom – failed to perform cost analysis though directed to do so by Board of Directors;

Please see the discussion below for staff's response to the above-referenced points of appeal.

1. *Not a minor change as vestment in play structure was never perfected by compliance with Marin County Planning Resolution requiring that play structure be handicapped accessed within 1 year of 12-16-1991. Play structure has been removed, thus this is not a minor change*

Response to Appeal:

The appellant references a condition of approval that was applied to the project site by the Planning Commission as part of the previous Design Review approval for installation of playground equipment in 1991. The condition specifically stated:

“In order to vest their rights in this design review approval, the applicant shall submit written verification that the play equipment incorporates handicapped access which complies with the governing requirements. If the TCSD has to construct new improvements to provide handicapped access, they shall first submit revised plans for review and approval by the Marin County Planning Department.”

The appellant claims that the handicapped accessibility was never completed on site, as required by the above condition. However, the playground equipment to which this condition was applied was ultimately removed from the site. The applicants are now proposing new equipment on site that would be handicapped accessible and have appropriately applied for review and approval of the new equipment through the Marin Community Development Agency. As such, approval of the currently proposed Design Review application would bring the project site into compliance with the intent of the above condition and with handicapped accessibility requirements.

2. *Considerable opposition to permanent public restroom of nearly 100% of neighbors whose properties are on the boundaries of the neighborhood park.*

Response to Appeal

Eastwood Park has had a restroom facility adjacent to the tennis courts for many years, albeit in a portable structure. As part of its proposal, the TCSD proposes to place a permanent restroom in the exact same location as the existing portable restroom facility. Staff’s approval of this facility was primarily aligned with the basic goals of promoting the health, safety, and convenience of the public. From a public policy perspective, the replacement of portable restrooms with permanent facilities results in several significant public benefits. One such benefit relates to the fact that portable restrooms typically have to be emptied by pumper truck on a regular basis. When this process takes place, there can be leakage of both chemicals and/or effluent waste as the contents of the restroom are transferred to the disposal truck. As the existing portable restroom is in fairly close proximity to a tributary of Coyote Creek, minimizing such potential contamination of the County’s water quality is clearly in the public’s interest. Additionally, permanent restrooms provide a facility for washing one’s hands – a convenience that is not provided by the current portable facilities. The park contains playground equipment, barbecue facilities, as well as a tennis court and basketball court, and it is visited by persons of all ages, including families with children. As such it is logical and reasonable for the public to have a place to wash up after using these amenities.

Furthermore, after consultation with Ron Paolini - Deputy Director of Parks and Landscaping for the County of Marin, staff was informed that the County’s Parks Department tries to install permanent restrooms in parks whenever possible. In addition to permanent facilities providing a convenience to the public, the Parks Department has found that the portable restrooms tend to be a less desirable alternative, and often result in members of the public relieving themselves in the woods or in other adjacent areas because they can find the portable restroom to be unsanitary. This trend is particularly true with children who often find themselves at eye level with the facility’s urinals. While the immediate surrounding residents have the convenience of being able to use their own private restrooms

in their adjacent private residences, residents of the greater Tamalpais Valley who use Eastwood Park do not have this ability and would therefore be able to make use of a permanent restroom. Accordingly, it is not surprising that neighbors with no need to use such a facility would fail to see or appreciate the benefit, if not need, for such a facility. Many of the adjacent property owners have voiced strong opposition to improvements to the site that would make the park more desirable to the public at large because they feel that Eastwood Park should be provided exclusively for the use of the immediate neighborhood and do not welcome the use of the park by members of the greater Tamalpais Valley.

There is also a significant precedent for the placement of permanent restrooms in parklands throughout Marin County. Staff located at least seven other parks in Marin (including some of similar sizes) that already have permanent restrooms, and there are plans for the installation of permanent restrooms in at least four other parks in the near future¹. The County Parks Department also informed staff that they have had virtually no additional reported problems related to illicit or homelessness activities as a result of installation of such facilities.

As a means of addressing neighborhood concern that such illicit activities might occur in the proposed permanent restroom, the applicants have agreed to install a locking mechanism on the facility that will automatically prevent access after sunset. The lock will be inspected and the facility will be cleaned five days per week. In summary, the greater public good provided by a permanent restroom facility far outweighs the minimal impacts that such a facility might have on the adjacent community. As such, staff recommends approval of the permanent restroom facility.

3. *The character of the park and the neighborhood will be permanently changed in a manner not reflective of resident's desire to preserve the rustic nature of the community,*

Response to Appeal:

The primary purpose of the proposed project is to replace previously existing playground equipment, to provide the general public with the convenience and sanitary benefits of a permanent restroom, and to bring the park into compliance with the Americans with Disabilities Act and Title 24 (California's Disability Standards). Although these goals, particularly the installation of the asphalt pathway for handicapped access to the site, would moderately increase development in the park, they would not result in substantially greater intensity of use than the current or historic use of the park. Furthermore, the project was reviewed and approved by the Tamalpais Design Review Board (TDRB) – an advisory body whose primary purpose is to review projects for their compatibility with the Tamalpais Valley community, as addressed by the Tamalpais Valley Community Plan. Consequently, staff feels that the purported claims that the project would permanently change the character of the park are unfounded.

4. *The process of decision-making was flawed and not conducted in a transparent manner.*

Response to Appeal:

The appellant makes numerous claims that there was a disregard for public input throughout the processing of this project. However, the majority of these claims relate to the internal decision making processes that occurred at the TCSD. Furthermore, the decision-making process on this project has been highly visible. The TCSD held 16 spirited public meetings as well as four public hearings on the project. Furthermore, the Marin County Community Development Agency (CDA) has no jurisdiction over the decision-making processes and decisions of the TCSD. The administrative decision making

¹ According to information obtained from the Marin County Parks Dept., there are currently permanent restroom facilities in Paradise Beach Park, McNears Park, Deer Park, Stafford Lake Park, Bolinas Park, Lagoon Park, and Gerstle Park; the Parks Department has plans for future permanent restroom facilities at Black Point, Miller Park, Forest Knolls Park, and Pueblo Park.

process carried out by the Community Development Agency was transparent and carried out in a manner fully consistent with the public noticing requirements of the Marin County Development Code. Staff completed all required public notice including a visible posting on site as well as a mailed notice to all property owners within 600 feet of the proposed project, as is required by the Marin County Development Code. Staff also responded to all phone calls, emails, and requests for information relating to this project. In addition, staff met with numerous members of the public, including the appellants, on several occasions, and responded to all requests for information. At no time during the County's processing of this application was the public prevented from reviewing files, documents, or the decision-making processes in any way

5. *Possible negative impact of project on properties surrounding the park. This may come about through increased noise, traffic, sight views, and making park more desirable for homeless.*

Response to Appeal:

The proposed project is limited to the redevelopment and incremental enhancement of an existing park. The proposed project was reviewed by the County's Department of Public Works (DPW) and it was determined that the project would not necessitate any additional parking requirements, or traffic impact analysis. In fact, the proposed project triggers no quantifiable thresholds with regard to traffic, noise, parking, or visual impacts. The boundaries of the park are not increasing, nor is the height of any facility beyond a few feet. Eastwood Park is a small community facility that is not particularly accessible (i.e. not on a major arterial road). As was discussed in Item 2, above, statements related to the permanent restroom being more appealing to the homeless are unsubstantiated and based on conjecture. At no time has the appellant provided any evidence supporting the claim that a permanent restroom would result in an increased homeless presence. The applicants are proposing to install a locking mechanism on the door that will automatically prohibit access to the restroom after sunset – a feature that does not currently exist on the portable restroom. The applicant has also agreed to have the restroom inspected and cleaned five days per week and the project has been conditioned such that if the self-locking mechanism were ever disabled, it will be the TCSD's responsibility to manually lock the facility until such time as the lock could be repaired. The County has installed permanent restrooms in at least seven other parks in Marin County, and has had no reports of additional homeless presence due to such facilities. Staff finds the claims related to increased negative impacts to be unsubstantiated.

6. *There has been a disregard for public input. This encompasses requests to: A) repair structures already in place; B) size (width) and composition (materials) of ADA path to be installed; C) move path away from field; D) discuss and review the installation of permanent restroom; E) refusal to incorporate surface that discourage skateboarding as was demanded at public meetings for park design; F) provide information about maintenance schedules for park and permanent restroom; G) provide cost information for permanent restroom – failed to perform cost analysis though directed to do so by Board of Directors.”*

Response to Appeal:

Many of the above statements relate to the internal decision making processes of the TCSD that led up to the park improvement project that is being proposed. As discussed in Item 4, above, the CDA is not involved with TCSD's meetings or decision-making processes. The TCSD submitted an application for the redevelopment of Eastwood Park. TCSD, as a community services district authorized and charged with, among other things, development and maintenance of park facilities, is a valid applicant to bring this project forward. Details of their processes are irrelevant to the CDA's review. Staff's duty is to review the proposal for conformity with the Countywide plan, Tamalpais Community Plan, and Development Code. After a thorough review and analysis, staff concluded that the project was indeed consistent with the policies and regulation of the above documents. As such, staff recommends

approval of the project. However, because some of the individual points above relate to the design of the project, the discussion below will address in part this particular basis of appeal.

A) *Repair structures already in place.*

Eastwood Park is owned in fee by the TCSD and managed by its own Parks and Recreation Department. The County of Marin does not directly control issues such as maintenance of Eastwood Park. Prior issues relating to decisions on maintenance of the existing park are presumably reflected in the project for which the TCSD is applying.

B) *Size (width) and composition (materials) of ADA path to be installed.*

Staff extensively reviewed the size, location, and composition of the proposed pathway. Staff ultimately approved the design as proposed because its primary function is to comply with the Americans with Disability Act (ADA), which requires that an accessible pathway be provided that inter-connects the parking area, the playground area, and the restroom facility. Additionally, ADA requirements mandate that the path be constructed of a material that provides for a stable, firm, and slip resistant surface. Given that the proposed trail must also traverse a change in grade, and be constructed in a manner that holds up over time, the applicant proposed that the pathway be constructed of asphalt (AC), as asphalt and concrete are the best (perhaps only) materials that meet the above requirements, while also minimizing maintenance costs. The TCSD also submitted a study conducted by the United States Forest Service (see Attachment 9), which showed that few alternative trail surfacing materials hold up well enough over time to still allow usage by a wheelchair confined individual. Staff also discussed this issue with Rocky Burks of the Department of Public Works, the County's specialist on ADA compliance issues. Mr. Burks confirmed that concrete and asphalt are the only ADA compliant materials that will hold up over time. Two other materials that can also provide for a firm, stable, and slip resistant surface - terra pave and decomposed granite - require significant additional maintenance. Maintenance issues related to such materials are exacerbated when the pathway is situated upon a slope, as is the case in Eastwood Park.

C) *Move path away from field.*

The proposed location of the pathway is a function of compliance with the Americans with Disabilities Act. The ADA requires a pathway that would inter-connect the parking area, the playground, and the restroom. The proposed design accomplishes this goal while minimizing the amount of paved surface.

D) *Discuss and review the installation of permanent public restroom.*

Please see the discussion related to the restroom in Item 2, above.

E) *Refusal to incorporate surface that discourage skateboarding as was demanded at public meetings for park design.*

By their very nature, surfaces that meet the ADA requirement of being stable, firm, and slip resistant are going to be potentially conducive to skateboarding. The appellant has provided staff with no feasible alternative material that would both meet ADA requirements and simultaneously prevent skateboarding, nor is staff aware of such a material. There is presently no prohibition of skateboarding at Eastwood Park. If the appellant would like such a prohibition, they have the right to lobby the TCSD to implement restrictions on skateboarding.

F) *Provide information about maintenance schedules for park and permanent restroom.*

The applicant has stated that the restroom will be maintained on a daily basis, Monday through Friday. This daily maintenance requirement has been incorporated as a condition of approval in the recommended resolution.

- G) *Provide cost information for permanent restroom – failed to perform cost analysis though directed to do so by Board of Directors.”*

This relates to an internal TCSD decision and has no bearing on the County’s review process.

RECOMMENDATION

Staff recommends that the Planning Commission review the administrative record, conduct a public hearing, and move to adopt the attached resolution: (1) denying the Hasson Appeal; and (2) sustaining the Community Development Agency’s conditional approval of the TCSD (Eastwood Park) Design Review.

- Attachments:
1. Proposed Resolution Denying the Hasson Appeal and Sustaining the Community Development Agency’s conditional approval of the TCSD Design Review
 2. Hasson Petition for Appeal, received September 9, 2005
 3. CEQA Categorical Exemption
 4. Location Map
 5. Assessor’s Parcel Map
 6. Design Review (DM 05-86) Notice of Decision, August 31, 2005
 7. Minutes from Tamalpais Design Review Board meeting of 5/18/05
 8. Department of Public Works memorandum, 3/30/04
 9. “Soil Stabilizers on Universally Accessible Trails” Study
 10. Petition in Support of permanent restroom
 11. Letters in Support of project
 12. Petition in Opposition to permanent restroom
 13. Letters in Opposition to project
 14. 1991 Design Review Approval
 15. Reduced Plans

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MARIN COUNTY PLANNING COMMISSION

RESOLUTION NO. _____

A RESOLUTION DENYING THE HASSON APPEAL AND SUSTAINING THE
COMMUNITY DEVELOPMENT AGENCY’S APPROVAL OF THE EASTWOOD PARK DESIGN REVIEW
DM 05-86
627 EASTWOOD WAY, MILL VALLEY
ASSESSOR’S PARCEL 049-074-25

SECTION I: FINDINGS

- I. WHEREAS The Tamalpais Community Services District (TCSD) is requesting Minor Design Review (DM 05-86) approval in order to carry out site improvements to Eastwood Park. Many of the improvements have been designed so that the park will comply with the Americans with Disabilities Act. The improvements include a new five foot wide pedestrian trail, play equipment, minor site grading, play area fencing, irrigation and drainage, turf and trees, and a permanent unisex restroom, as well as other site improvements as shown on the approved plan sets. The proposed restroom has a floor area of approximately 70 square feet with an approximately 60 square foot covered entrance area and would have maximum height of 10.5 feet. The permanent restroom would be constructed in the same location as an existing portable restroom facility. The permanent restroom would contain a locking mechanism that prevents access to the restroom after sunset. Eastwood Park is located at the intersection of Eastwood Way and Glenwood Ave in Mill Valley and is further identified as **Assessor's Parcels 049-074-25**. The site was purchased for use as a community park by the Tamalpais Community Services District in 1971 and has been in continual use as a park since that time.
- II. WHEREAS on August 31, 2005, the Community Development Agency issued a conditional approval of the TCSD Eastwood Park Design Review granting authorization for the above improvements.
- III. WHEREAS, a timely appeal of the Community Development Agency’s approval of the TCSD Eastwood Park Design Review has been filed by Thomas Hasson asserting the following issues: “1) not a minor change as vestment in play structure was never perfected by compliance with Marin County Planning Resolution requiring that play structure be handicapped accessed within 1 year of 12-16-1991. Play structure has been removed, thus this is not a minor change; 2) Considerable opposition to permanent public restroom of nearly 100% of neighbors whose properties are on the boundaries of the neighborhood park; 3) the character of the park and the neighborhood will be permanently changed in a manner not reflective of resident’s desire to preserve the rustic nature of the community, 4) The process of decision-making was flawed and not conducted in a transparent manner, 5) possible negative impact of project on properties surrounding the park. This may come about through increased noise, traffic, sight views, and making park more desirable for homeless. 6) There has been s disregard for public input. This encompasses requests to: A) repair structures already in place. B) size (width) and composition (materials) of ADA path to be installed. C) Move path away from field. D) discuss and review the installation of permanent restroom. E) refusal to incorporate surface that discourage skateboarding as was demanded at public meetings for park design. F) Provide information about maintenance schedules for park and permanent restroom. G) provide cost information for permanent restroom – failed to perform cost analysis though directed to do so by Board of Directors.”
- IV. WHEREAS the Marin County Planning Commission held a duly noticed public hearing on November 28, 2005 to consider the merits of the project and appeal,

- 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 15302, class 2 and Section 15303, class 3 of the CEQA Guidelines because it entails renovations and upgrades in equipment to an existing park, primarily for the purpose of bringing the park into compliance with the Americans with Disabilities Act. The new facilities would have substantially the same purpose and capacity as those that currently exist on site.
- VI. WHEREAS the Marin County Planning Commission finds that the proposed project is consistent with the Marin Countywide Plan and the Tamalpais Community Plan for the following reasons:
- A. The redevelopment of a community park is consistent with the OA (Open Area) land use designations;
 - B. The project complies with Marin County Stream Conservation Area (SCA) policies that specifically allow the reconstruction of existing uses as well as the construction of trails within the SCA (Policy EQ 2.4). The project is consistent with the County's SCA policies because the proposed restroom will replace an existing restroom in the same location (i.e. without further encroachment into the SCA) and the proposed access improvements are limited to minor modifications to an existing pathway. Both of these project components are permitted by the underlying OA zone;
 - C. The project complies with Marin County standards for flood control, geotechnical engineering, and seismic safety, and include improvements to protect lives and property from hazard;
 - D. The project complies with governing development standards related to roadway construction, parking, grading, drainage, flood control and utility improvements as verified by the Department of Public Works;
 - E. The project will not cause significant adverse impacts on water supply, fire protection, waste disposal, schools, traffic and circulation, or other services;
 - F. The project complies with the Community Plan policies that parcels maintain current densities;
 - G. The project complies with the Community Plan policies to provide adequate on-site parking;
 - H. The project complies with Community Plan policies that require a landscape plan for all projects that require Design Review;
- VII. WHEREAS the Marin County Planning Commission finds that the proposed project is consistent with all of the mandatory findings to approve the TCSD (Eastwood Park) Design Review application (Section 22.42.060 of the Marin County Code) as specified below.
1. **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 project can be found consistent with the above finding because the proposed work would not substantially alter the existing intensity or use of the site. The property has historically been used as a public park and would continue to be used as such following completion of the project. The project components are primarily designed to accommodate the requirements of the Americans with Disabilities Act as well as to advance the health, safety, convenience and welfare of the public who makes use of the park. Therefore, the project would not be incompatible with its locale.

2. **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 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 because the project is for the redevelopment of an existing park. The proposed changes will not result in any new structural development that is substantively more intensive than that which has historically existed on site. The proposed improvements will not diminish light, air, privacy, or views currently available to surrounding residents.

3. **The proposed development 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 project will not directly or in a cumulative fashion impair, inhibit, or limit further investment or improvements in the vicinity because the proposed development is consistent with allowed uses in the OA zone district and will not detract from the harmonious development of the neighborhood.

4. **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 proposed project can be considered consistent with the above finding because the project will ultimately result in an increase in the amount of landscaped areas on site. Furthermore, the existing and proposed landscaping will assist with the stabilization and prevention of the erosion of graded soils on site.

5. **The proposed development 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 design of the proposed project will respect the site's natural environment while also making the property accessible to disabled members of the public. The project will not encroach onto adjoining private properties, public lands, or private and public easements and rights-of-way, and adequate parking will be provided for the public using the parklands. As discussed in Findings VII 1 and 2 above, the proposal will not inhibit the use or enjoyment of other properties in the immediate vicinity of the project site.

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

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

The project will not result in adverse effects in regard to area height, mass, or materials, as the project proposes minimal expansion of the structural development that has always existed on site. More specifically, the site has historically contained playground equipment and will continue to contain playground equipment in the exact same location. Additionally, the

proposed restroom will be finished with natural cedar lap siding and dark grey asphalt shingles, thus maintaining the rustic character of the park setting.

b. Drainage systems and appurtenant structures;

The drainage system for the project has been preliminarily reviewed and accepted by the Department of Public Works. As part of the Building Permit review, the Department of Public Works will review the grading and drainage plans to ensure that the project incorporates drainage systems that will adequately collect, convey and distribute surface run-off into appropriate drainage systems.

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

The project will require minimal grading. Furthermore, much of the proposed grading is for the purpose of installing the proposed ADA accessible trail.

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. In fact, the project will further enhance the ability of persons to navigate the parkland by providing a stable, level and handicapped accessible pathway interconnecting the major areas of the park.

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

The project involves minimal structural development beyond that which has historically existed on site. As such, the project will not result in the elimination of sun and light exposure, views, vistas, or privacy of adjacent properties.

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

The project will foster energy and natural resource conservation because it is simply for the redevelopment of an existing park. No intensive energy consuming uses are proposed on site

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.

F. The project will be consistent with policies and programs in the Countywide Plan because the project involves the redevelopment of an existing park. The project is consistent with the site's general plan designation of OS (Open Space) as well as its OA (Open Area) zoning. Additionally, the project will not result in any substantive changes to its historic use as a public park. The project also complies with Marin County Stream Conservation Area (SCA) policies that specifically allow the reconstruction of existing uses as well as the construction of trails within the SCA (Policy EQ 2.4). The project is consistent with the County's SCA policies because the proposed restroom will replace an existing restroom in the same location (i.e. without further encroachment into the SCA) and the

proposed access improvements are limited to minor modifications to an existing pathway. Both of these project components are permitted by the underlying OA zone;

VIII. WHEREAS the Marin County Planning Commission finds that the bases for the Hasson appeal cannot be sustained and that the Community Development Agency acted appropriately in issuing the TCSD (Eastwood Park) Design Review due to the following factors:

1. *Not a minor change as vestment in play structure was never perfected by compliance with Marin County Planning Resolution requiring that play structure be handicapped accessed within 1 year of 12-16-1991. Play structure has been removed, thus this is not a minor change*

Response to Appeal:

The appellant references a condition of approval that was applied to the project site by the Planning Commission as part of the previous Design Review approval for installation of playground equipment in 1991. The condition specifically stated:

“In order to vest their rights in this design review approval, the applicant shall submit written verification that the play equipment incorporates handicapped access which complies with the governing requirements. If the TCSD has to construct new improvements to provide handicapped access, they shall first submit revised plans for review and approval by the Marin County Planning Department.”

The appellant claims that the handicapped accessibility was never completed on site, as required by the above condition. However, the playground equipment to which this condition was applied was ultimately removed from the site. The applicants are now proposing new equipment on site that would be handicapped accessible and have appropriately applied for review and approval of the new equipment through the Marin Community Development Agency. As such, approval of the currently proposed Design Review application would bring the project site into compliance with the intent of the above condition and with handicapped accessibility requirements.

2. *Considerable opposition to permanent public restroom of nearly 100% of neighbors whose properties are on the boundaries of the neighborhood park.*

Eastwood Park has had a restroom facility adjacent to the tennis courts for many years, albeit in a portable structure. As part of its proposal, the TCSD proposes to place a permanent restroom in the exact same location as the existing portable restroom facility. Staff’s approval of this facility was primarily aligned with the basic goals of promoting the health, safety, and convenience of the public. From a public policy perspective, the replacement of portable restrooms with permanent facilities results in several significant public benefits. One such benefit relates to the fact that portable restrooms typically have to be emptied by pumper truck on a regular basis. When this process takes place, there can be leakage of both chemicals and/or effluent waste as the contents of the restroom are transferred to the disposal truck. As the existing portable restroom is in fairly close proximity to a tributary of Coyote Creek, minimizing such potential contamination of the County’s water quality is clearly in the public’s interest. Additionally, permanent restrooms provide a facility for washing one’s hands – a convenience that is not provided by the current portable facilities. The park contains playground equipment, barbecue facilities, as well as a tennis court and basketball court, and it is visited by persons of all ages, including families with children. As such it is logical and reasonable for the public to have a place to wash up after using these amenities.

Furthermore, after consultation with Ron Paolini - Deputy Director of Parks and Landscaping for the County of Marin, staff was informed that the County's Parks Department tries to install permanent restrooms in parks whenever possible. In addition to permanent facilities providing a convenience to the public, the Parks Department has found that the portable restrooms tend to be a less desirable alternative, and often result in members of the public relieving themselves in the woods or in other adjacent areas because they can find the portable restroom to be unsanitary. This trend is particularly true with children who often find themselves at eye level with the facility's urinals. While the immediate surrounding residents have the convenience of being able to use their own private restrooms in their adjacent private residences, residents of the greater Tamalpais Valley who use Eastwood Park do not have this ability and would therefore be able to make use of a permanent restroom. Accordingly, it is not surprising that neighbors with no need to use such a facility would fail to see or appreciate the benefit, if not need, for such a facility. Many of the adjacent property owners have voiced strong opposition to any improvements to the site that would make the park more desirable to the public at large because they feel that Eastwood Park should be provided exclusively for the use of the immediately surrounding neighborhood and do not welcome the use of the park by members of the greater Tamalpais Valley.

There is also a significant precedent for the placement of permanent restrooms in parklands throughout Marin County. Staff located at least seven other parks in Marin (including some of similar sizes) that already have permanent restrooms, and there are plans for the installation of permanent restrooms in at least four other parks in the near future. The County Parks Department also informed staff that they have had virtually no additional reported problems related to illicit or homelessness activities as a result of installation of such facilities.

As a means of addressing neighborhood concern that such illicit activities might occur in the proposed permanent restroom, the applicants have agreed to install a locking mechanism on the facility that will automatically prevent access after sunset. The lock will be inspected and the facility will be cleaned five days per week. In summary, the greater public good provided by a permanent restroom facility far outweighs the minimal impacts that such a facility might have on the adjacent community. As such, staff recommends approval of the permanent restroom facility.

3. *the character of the park and the neighborhood will be permanently changed in a manner not reflective of resident's desire to preserve the rustic nature of the community,*

The primary purpose of the proposed project is to replace previously existing playground equipment, to provide the general public with the convenience and sanitary benefits of a permanent restroom, and to bring the park into compliance with the Americans with Disabilities Act and Title 24 (California's Disability Standards). Although these goals, particularly the installation of the asphalt pathway for handicapped access to the site, would moderately increase development in the park, they would not result in substantially greater intensity of use than the current or historic use of the park. Furthermore, the project was reviewed and approved by the Tamalpais Design Review Board (TDRB) – an advisory body whose primary purpose is to review projects for their compatibility with the Tamalpais Valley community, as addressed by the Tamalpais Valley Community Plan. Consequently, staff feels that the purported claims that the project would permanently change the character of the park are unfounded.

4. *The process of decision-making was flawed and not conducted in a transparent manner.*

The appellant makes numerous claims that there was a disregard for public input throughout the processing of this project. However, the majority of these claims relate to the internal decision making processes that occurred at the TCSD. Furthermore, the decision-making process on this project has been highly visible. The TCSD held 16 spirited public meetings as well as four public hearings on the project. Furthermore, the Marin County Community Development Agency (CDA)

has no jurisdiction over the decision-making processes and decisions of the TCSD. The administrative decision making process carried out by the CDA was transparent and carried out in a manner fully consistent with the public noticing requirements of the Marin County Development Code. Staff completed all required public notice including a visible posting on site as well as a mailed notice to all property owners within 600 feet of the proposed project, as is required by the Marin County Development Code. Staff also responded to all phone calls, emails, and requests for information relating to this project. In addition, staff met with numerous members of the public, including the appellants, on several occasions, and responded to all requests for information. At no time during the County's processing of this application was the public prevented from reviewing files, documents, or the decision-making processes in any way

5. *Possible negative impact of project on properties surrounding the park. This may come about through increased noise, traffic, sight views, and making park more desirable for homeless.*

The proposed project is limited to the redevelopment and incremental enhancement of an existing park. The proposed project was reviewed by the County's Department of Public Works (DPW) and it was determined that the project would not necessitate any additional parking requirements, or traffic impact analysis. In fact, the proposed project triggers no quantifiable thresholds with regard to traffic, noise, parking, or visual impacts. The boundaries of the park are not increasing, nor is the height of any facility beyond a few feet. Eastwood Park is a small community facility that is not particularly accessible (i.e. not on a major arterial road). As was discussed in Item 2, above, statements related to the permanent restroom being more appealing to the homeless are unsubstantiated and based on conjecture. At no time has the appellant provided any evidence supporting the claim that a permanent restroom would result in an increased homeless presence. The applicants are proposing to install a locking mechanism on the door that will automatically prohibit access to the restroom after sunset – a feature that does not currently exist on the portable restroom. The applicant has also agreed to have the restroom inspected and cleaned five days per week and the project has been conditioned such that if the self-locking mechanism were ever disabled, it will be the TCSD's responsibility to manually lock the facility until such time as the lock could be repaired. The County has installed permanent restrooms in at least seven other parks in Marin County, and has had no reports of additional homeless presence due to such facilities. Staff finds the claims related to increased negative impacts to be unsubstantiated.

6. *There has been s disregard for public input. This encompasses requests to: A) repair structures already in place. B) size (width) and composition (materials) of ADA path to be installed. C.) Move path away from field. D) discuss and review the installation of permanent restroom. E) refusal to incorporate surface that discourage skateboarding as was demanded at public meetings for park design. F) Provide information about maintenance schedules for park and permanent restroom. G)provide cost information for permanent restroom – failed to perform cost analysis though directed to do so by Board of Directors.”*

Many of the above statements relate to the internal decision making processes of the TCSD that led up to the park improvement project that is being proposed. As discussed in Item 4, above, the CDA is not involved with TCSD's meetings or decision-making processes. The TCSD submitted an application for the redevelopment of Eastwood Park. TCSD, as a community services district authorized and charged with, among other things, development and maintenance of park facilities, is a valid applicant to bring this project forward. Details of their processes are irrelevant to the CDA's review. Staff's duty is to review the proposal for conformity with the Countywide plan, Tamalpais Community Plan, and Development Code. After a thorough review and analysis, staff concluded that the project was indeed consistent with the policies and regulation of the above documents. As such, staff recommends approval of the project. However, because some of the individual points above relate to the design of the project, the discussion below will address in part this particular basis of appeal.

A) *Repair structures already in place.*

Eastwood Park is owned in fee by the TCSD and managed by its own Parks and Recreation Department. The County of Marin does not directly control issues such as maintenance of Eastwood Park. Prior issues relating to decisions on maintenance of the existing park are presumably reflected in the project for which the TCSD is applying.

B) *Size (width) and composition (materials) of ADA path to be installed.*

Staff extensively reviewed the size, location, and composition of the proposed pathway. Staff ultimately approved the design as proposed because its primary function is to comply with the Americans with Disability Act (ADA), which requires that an accessible pathway be provided that inter-connects the parking area, the playground area, and the restroom facility. Additionally, ADA requirements mandate that the path be constructed of a material that provides for a stable, firm, and slip resistant surface. Given that the proposed trail must also traverse a change in grade, and be constructed in a manner that holds up over time, the applicant proposed that the pathway be constructed of asphalt (AC), as asphalt and concrete are the best (perhaps only) materials that meet the above requirements, while also minimizing maintenance costs. The TCSD also submitted a study conducted by the United States Forest Service (see Attachment 9), which showed that few alternative trail surfacing materials hold up well enough over time to still allow usage by a wheelchair confined individual. Staff also discussed this issue with Rocky Burks of the Department of Public Works, the County's specialist on ADA compliance issues. Mr. Burks confirmed that concrete and asphalt are the only ADA compliant materials that will hold up over time. Two other materials that can also provide for a firm, stable, and slip resistant surface - terra pave and decomposed granite - require significant additional maintenance. Maintenance issues related to such materials are exacerbated when the pathway is situated upon a slope, as is the case in Eastwood Park.

C) *Move path away from field.*

The proposed location of the pathway is a function of compliance with the Americans with Disabilities Act. The ADA requires a pathway that would inter-connect the parking area, the playground, and the restroom. The proposed design accomplishes this goal while minimizing the amount of paved surface.

D) *Discuss and review the installation of permanent public restroom.*

Please see the discussion related to the restroom in Item 2, above.

E) *Refusal to incorporate surface that discourage skateboarding as was demanded at public meetings for park design.*

By their very nature, surfaces that meet the ADA requirement of being stable, firm, and slip resistant are going to be potentially conducive to skateboarding. The appellant has provided staff with no feasible alternative material that would both meet ADA requirements and simultaneously prevent skateboarding, nor is staff aware of such a material. There is presently no prohibition of skateboarding at Eastwood Park. If the appellant would like such a prohibition, they have the right to lobby the TCSD to implement restrictions on skateboarding.

F) *Provide information about maintenance schedules for park and permanent restroom.*

The applicant has stated that the restroom will be maintained on a daily basis, Monday through Friday. This daily maintenance requirement has been incorporated as a condition of approval in the recommended resolution.

G) *Provide cost information for permanent restroom – failed to perform cost analysis though directed to do so by Board of Directors.”*

This relates to an internal TCSD decision and has no bearing on the County’s review process.

SECTION II: PROJECT APPROVAL

NOW, THEREFORE, BE IT RESOLVED that the Marin County Planning Commission hereby denies the Hasson appeal and sustains the Community Development Agency’s conditional approval of the TCSD (Eastwood Park) Design Review subject to the following conditions:

Marin County Community Development Agency - Planning Division

1. Pursuant to Marin County Code Section 22.42.060, the TCSD (Eastwood Park) Design Review DM 05-86 approves the redevelopment of site improvements to Eastwood Community Park, many of which have been designed so that the park will comply with the Americans with Disabilities Act. The improvements include a new five foot wide walking trail, play equipment, grading, play area fencing, irrigation and drainage, turf and trees, and a permanent unisex restroom (to be located in the same location as the existing portable restroom facility) as well as other site improvements as shown on the approved plan sets. The permanent restroom would contain a locking mechanism that disables access to the restroom after sunset. The subject property is located at the intersection of Eastwood Way and Glenwood Ave in Mill Valley and is further identified as **Assessor's Parcels 049-074-25**.
2. EXCEPT AS MODIFIED BY CONDITIONS OF APROVAL, plans submitted for a building permit shall substantially conform to plans identified as “Exhibit A,” entitled, “Construction Documents for Eastwood Park Landscape Improvements,” consisting of 5 sheets prepared by Abey Arnold Associates, dated April 29, 2005, with revisions dated July 22, 2005 and marked “Exhibit A” and on file with the Marin County Community Development Agency, except as modified by the conditions listed herein.
3. BEFORE ISSUANCE OF A BUILDING PERMIT, the applicant shall revise the site plan or other first sheet of the office and job site copies of the Building Permit plans to list these conditions of approval as notes.
4. If archaeological, historic, or prehistoric resources are discovered during construction, construction activities shall cease, and the Community Development Agency staff shall be notified so that the extent and location of discovered materials may be recorded by a qualified archaeologist, and disposition of artifacts may occur in compliance with State and Federal law. 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 staff advancing appropriate mitigations to protect the resources discovered. No work at the site may recommence without approval of the Community Development Agency staff. All future development of the site must be consistent with findings and recommendations of the archaeological report as approved by the Community Development Agency staff. If the report identifies significant resources, amendment of the permit may be required to implement mitigations to protect resources. Additionally, the identification and subsequent disturbance of an Indian midden requires the issuance of an excavation permit by the Department of Public Works in compliance with Chapter 5.32 (Excavating Indian Middens) of the County Code.
5. All construction activities shall comply with the following standards:

- a. Except for such non-noise generating activities, including but not limited to, painting, sanding, and sweeping, construction activity is only permitted between the hours of 7:00 a.m. and 5:00 p.m., Monday through Friday, and 9:00 a.m. and 4:00 p.m. on Saturday. No construction shall be permitted on Sundays or the following holidays (New Year's Day, Martin Luther King Day, Presidents' Day, Memorial Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving, Christmas). If the holiday falls on a weekend, the prohibition on noise-generating construction activities shall apply to the ensuing weekday during which the holiday is observed. At the applicant's request, the Community Development Agency staff may administratively authorize minor modifications to these hours of construction.
 - b. It shall be the responsibility of the applicant to ensure that all construction materials and equipment are stored on-site (or secured at an approved off-site location) and that all contractor vehicles are parked in such a manner as to permit safe passage for vehicular, pedestrian, and bicycle traffic at all times.
6. All utility connections and extensions (including but not limited to electric, communication, and cable television lines) serving the development shall be undergrounded from the nearest overhead pole from the property, where feasible as determined by the Community Development Agency staff.
7. The applicant/owner hereby agrees to defend, indemnify, and hold harmless the County of Marin and its agents, officers, attorneys, or employees from any claim, action, or proceeding, against the County or its agents, officers, attorneys, or employees, to attack, set aside, void, or annul an approval of Design Review # DM 05-86 for park improvements, for which action is brought within the applicable statute of limitations. This indemnification shall include, but not be limited to, damages, fees, and/or costs awarded against the County, if any, and the cost of suit, attorney's fees, and other costs, liabilities, and expenses incurred in connection with such proceedings, whether incurred by the applicant/owner, the County, and/or the parties initiating or bringing such proceeding.
8. BEFORE FINAL INSPECTION, the applicant shall submit a Statement of Completion, signed by a certified or licensed landscape design professional, verifying that all approved and required landscaping has been installed in accordance with the approved landscape plan and Chapter 23.10 of the Marin County Code, where applicable.
9. Any changes or additions to the project shall be submitted to the Community Development Agency in writing for review and approval before the contemplated modifications may be initiated. Construction involving modifications that do not substantially comply with the approval, as determined by the Community Development Agency staff, may be required to be halted until proper authorization for the modifications are obtained by the applicant.
10. The permanent restroom structure on site shall be equipped with a mechanism that automatically locks the restroom door from sunset until sunrise. The applicant shall on a daily basis (Mon-Fri) inspect the restroom to ensure that it is clean and that the locking mechanism is fully functional. If the locking mechanism is disabled, it shall be the responsibility of the applicant to ensure that the door is manually locked between sunset and sunrise until such time as the automatic lock functionality can be repaired or replaced.
11. BEFORE COMMENCEMENT OF CONSTRUCTION for any of the work identified above, the applicant shall install temporary 4 foot plastic construction fencing around the dripline of existing trees greater than 2 inches DBH (diameter at breast height) that are within 20 feet of any proposed 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. The applicant shall submit a copy of the temporary fencing plan and site photographs confirming installation of the fencing to the Community Development Agency. The contractor shall be responsible for maintaining the fencing and

excluding construction activities from these zones. If access cannot be avoided an intact four inch layer of mulch or shredded redwood bark shall be maintained in the tree protection zone.

12. Prior to issuance of building permits, the applicant shall submit a creek protection plan for review and approval by Planning staff. The plan shall include measures that will be used to protect the creek and riparian corridor from pollutants and runoff during the construction process. It shall be the applicants responsibly to ensure that the creek protection measures remain in place throughout the construction process.

Marin County Department of Public Works - Land Use and Water Resources Division

12. Prior to Issuance of a Building Permit, the applicant shall:
 - a) Clearly show path of travel from site arrival points (handicap parking stalls, bus stops & sidewalks, if any) and between buildings, and indicate special components of accessible routes (striping, signage, ramps, slopes, etc.) All proposed accessibility improvements shall comply with State of California Title 24.
 - b) Provide a more detailed drainage plan. Clearly show on site plan proposed drainage paths and pipes along with their sizes.
 - c) Prior to final inspection, DPW engineer to inspect modifications for accessible parking and path of travel.
 - d) An encroachment permit shall be required for work within the road right-of-way.

Marin County Fire Department

13. BEFORE FINAL INSPECTION, the applicant shall provide confirmation from the Fire Marshal that all requirements of the Marin County Fire Department have been met.

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 28, 2007, 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 \$700.00 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 8, 2005.**

SECTION V: VOTE

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the County of Marin, State of California, on the 28th day of November, 2005, by the following vote to wit:

AYES:

NOES:

ABSENT:

STEVE THOMPSON, CHAIRMAN
MARIN COUNTY PLANNING COMMISSION

Attest:

Kim Shine
Recording Secretary