

## CALIFORNIA COASTAL COMMISSION

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# W 10a

September 2, 2010

TO: Coastal Commissioners

FROM: Charles Lester, Deputy Director  
Ruby Pap, District Supervisor  
Larry Simon, Federal Consistency Coordinator

RE: **Appeal No. A-2-MAR-10-022** (Tony Magee and Dillon Vision LLC, CP-09-39),  
17990 Shoreline Highway, Marshall, Marin County. Filed: June 1, 2010. 49 Days:  
Waived.

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**Recommendation:** Staff recommends that the Commission determine that **no substantial issue** exists with respect to the grounds on which appeal A-2-MAR-10-022 was filed. Staff recommends a **YES** vote on the following motion and resolution:

***Motion & Resolution.** I move that the Commission determine and resolve that: Appeal Number A-2-MAR-10-022 does not present a substantial issue with respect to the grounds on which the appeal has been filed under Coastal Act Section 30603 regarding consistency with the certified Local Coastal Program and/or the public access policies of the Coastal Act.*

Passage of this motion and resolution will result in a finding of no substantial issue and adoption of the findings below. The local action will become final and effective. The motion passes only by an affirmative vote of the majority of the appointed Commissioners present.

## **1. Findings.**

### **1.1. Project Description and History**

On May 11, 2010, Marin County approved coastal permit CP-09-39 for establishment of an agricultural operation at 17990 Shoreline Highway, Marshall, Marin County (**Exhibit 1**), consisting of livestock (sheep) production over 50 acres of land, hop cultivation over six acres of land, production of crops for sale at local farmers' markets on 2.3 acres of land, and a six-acre vineyard for brandy production. The approved project comprises three barns (1,792 sq.ft., 15-ft-high equipment barn; 896 sq.ft., 15-ft.-high open-sided hop barn; and 1,456 sq.ft., 15-ft.-high

brandy barn), a 3,165 sq.ft., 22-ft-high single-family residence with attached 648 sq.ft. garage, a 960-sq.ft. shed adjacent to the equipment barn, two open-sided 7-ft.-high sheep shelters, an 8.5-ft.-high greenhouse, five 4,950-gallon water tanks, a septic system leach field, and a new water well. An 850-foot-long driveway would be constructed off an existing private driveway that parallels Highway 1 and would provide access to the brandy barn, equipment barn, and the single family residence. The residence and non-agricultural uses would be located on less than 1% of the total land area and clustered near existing development near State Highway 1 (**Exhibits 2-4**).

The applicant also included in the project application a conveyance to the County of an “Affirmative Agricultural Conservation Easement and Declaration of Restrictions” that provides for a variety of perpetual uses and restrictions as follows:

1. The terms of the Easement include the imposition of a perpetual obligation for the active conduct of agricultural production within a designated Agricultural Production Zone that would be delineated and recorded in accordance with the Agricultural management Plan.
2. The terms of the Easement establish a process whereby an outside agricultural operator may lease the subject property at reasonable rates in the event the owner of the property is unable or unwilling to continue active agricultural production on the property.
3. The terms of the Easement establish permitted and prohibited uses, and practices to which the property owner would be bound to adhere to.
4. Finally, the Easement would extinguish all residual residential development potential on the property.

In addition, the County conditioned coastal permit CP-09-39 (Project Condition No. 8) such that that “Prior to final inspection of the residence, the applicant shall submit an offer for an Agricultural Conservation Easement and Declaration of Restrictions, using the model Agricultural Conservation Easement approved by the Marin County Board of Supervisors, with provisions for a variety of perpetual uses and restrictions.”

Pursuant to Coastal Act Section 30603(a)(4), this approval is appealable to the Commission because the approved project involves development approved by a coastal county (i.e., the proposed single family residence) that is not designated as the principal permitted use in the Coastal, Agricultural Production Zone (C-APZ-60) in the certified zoning ordinance.

The subject 150-acre property is located on the east side of State Highway 1 in the unincorporated community of Marshall east of Tomales Bay. The project is zoned C-APZ-60 (Coastal Agricultural Production Zone, Planned District, one primary dwelling unit per 60 acres maximum density). The property is currently undeveloped agricultural land, save for remnant dirt access roads that supported historic cattle grazing, a partially silted-in farm pond behind an earthen dam on the lower reach of the blue-line stream on the property, perimeter and interior livestock fencing, a water well, and a small hops cultivation field. The properties to the east and south are undeveloped agricultural land. The Appellant’s property to the north includes a single-family residence, several out-buildings, and a swimming pool located in the southeast corner of the property; an olive tree grove is located further east on that property. The dominant vegetation on the southwest-trending hillside of the subject parcel is native and non-native

grassland, coastal scrub, and mixed evergreen riparian forest. A blue-line stream runs through the central portion of the property and is bordered by riparian forest. The area adjacent to the farm pond and several other areas on the property show evidence of aquatic and emergent wetland plant communities. Two intermittent watercourses are tributary to the blue-line stream in the southern half of the parcel. Elevation ranges from 491 feet in the northeast corner of the parcel to 20 feet at the Highway 1 frontage.

### **1.2. Appeal Contentions**

The Appellants, Scott Kivel and Lia Lund, assert that the County's approval is inconsistent with and raises substantial issues concerning Local Coastal Program (LCP) policies regarding: (1) potential environmental impacts from livestock fencing along the blue-line stream and wetland areas, and from the brandy barn and associated operations adjacent to the stream conservation area; (2) adverse traffic impacts associated with brandy barn operations; (3) adverse visual impacts from the proposed equipment barn and access road; (4) adequacy of water for the proposed project; (5) improperly granting a Master Plan waiver to the project; and (6) improperly granting a CEQA review exemption to the project.

### **1.3. Analysis**

Coastal Act Section 30625(b) requires the Commission to hear an appeal unless it determines that no substantial issue exists with respect to the grounds on which the appeal has been filed.<sup>1</sup> Commission staff visited the subject property on August 2, 2010. The Commission analyzed the County's Final Local Action Notice for the development (**Exhibit 5**), the County record, the Appellant's claims (**Exhibit 6**), and the relevant requirements of the LCP (**Exhibit 7**). The appeal raises no substantial issue with respect to the LCP as follows.

**Appeal Contention No. 1 (streams and wetlands).** LUP Unit II Natural Resource Policy 3 (Streams and Riparian Habitats) requires that buffers to protect streams from the impacts of adjacent uses shall be established, and that stream buffers shall include the area covered by riparian vegetation on both sides of the stream and the area 50 feet landward from the edge of the riparian vegetation. The policy states that in no case shall the stream buffer be less than 100 feet in width, on either side of the stream, as measured from the top of the stream banks, and that no development is allowed in streams or in stream buffer areas. LUP Unit II Natural Resource Policy 4 (Wetlands) requires that wetlands be preserved and that a buffer strip 100 feet in width, minimum, as measured landward from the edge of the wetland, shall be established along the periphery of all wetlands.

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<sup>1</sup> The term "substantial issue" is not defined in the Coastal Act or its implementing regulations. In previous decisions on appeals, the Commission has generally been guided by the following factors in making substantial issue determinations: the degree of factual and legal support for the local government's decision; the extent and scope of the development as approved or denied by the local government; the significance of the coastal resources affected by the decision; the precedential value of the local government's decision for future interpretations of its LCP; and whether the appeal raises only local issues or those of regional or statewide significance.

With respect to the Appellant's assertion that the project is inconsistent with the stream protection policies due to proposed fencing adjacent to stream and wetland areas, the County record evidences that on the subject property, the streams, riparian areas, and stream buffer areas have been documented and mapped. The County record also includes a site assessment that confirms that all approved development (including sheep grazing) would be located outside of the Stream Conservation and Wetland Buffer Areas, and would not impact sensitive habitat areas or special status species.

The LUP Unit II Natural Resource Policy 3 (Streams and Riparian Habitats) does not allow development in wetlands or wetland buffer areas, and no development was approved by the County in those areas on the property. The LCP also does not allow grazing within wetlands, specifically stating in LUP Unit II Natural Resources Policy 4 (Wetlands) that "no grazing or other agricultural uses shall be permitted in wetlands except in those reclaimed areas presently used for such activities." The County record contains no evidence that the wetlands on the property were reclaimed and used for the historic cattle grazing operation on April 1, 1981, when LCP Unit II was adopted by the Coastal Commission. As a result, the County conditioned the coastal permit to require the applicant to revise the Agricultural Management Plan for the property to state that no grazing activity will occur within the Stream Conservation or Wetland Conservation Areas on the property, unless the applicant submits evidence that livestock grazing was occurring in the wetlands on approximately April 1, 1981.

With respect to the Appellant's assertion that the project is inconsistent with the stream protection policies due to the proposed brandy barn and related distillation and visitor operations, the County record evidences that the structure and all related operations would be located outside of all stream, wetland, and riparian protection areas on the subject property. The brandy production lees (grape stems, skins, and leaves) would be used as compost on-site. Wastewater would be segregated, and high strength waste would be collected and stored in a tank within 100 feet of the barn to be used for on-site fertilization. The balance of the liquid waste would be disposed in the farm's septic system. The County record also evidences that the facility would be served by the proposed septic system, which has been reviewed by the Environmental Health Service, and is found to be consistent with all applicable Marin County codes and State regulations. The County conditioned the coastal permit to require the applicant to receive final approval from the State Water Resources Control Board for the wastewater disposal plans for the brandy facility prior to issuance of the building permit for the brandy barn. In part to further protect sensitive habitat adjacent to the brandy barn, the County also conditioned the coastal permit to require that prior to the lifting of holds on project building permits (including for the brandy barn), all County Fire Department requirements for access, defensible space, and fire protection water supply will be met.

Therefore, the Commission finds that with respect to Appeal Contention No. 1, the County has a high degree of legal and factual support for its approval, because the approved structures, development, and agricultural operations would be located outside of all stream, wetland, and riparian protection areas on the property. The approved brandy barn operations will be subject to final approval by the State Water Resources Control Board and the Marin County Fire Department to ensure, in part, that operations would not adversely affect the adjacent stream

conservation area. Although the approved project includes installation of permanent and seasonal livestock fencing to keep sheep out of stream conservation areas and wetland buffer areas, this fencing would be installed outside of these environmentally sensitive areas and is designed to allow wildlife to cross over and/or through the fencing to reach the water sources on the property. Therefore, the Commission finds that the appeal raises no substantial issue regarding the conformity of the approved development project with LUP Unit II Natural Resources Policy 3 (Streams and Riparian Habitats) and LUP Unit II Natural Resources Policy 4 (Wetlands).

**Appeal Contention No. 2 (road access and capacity).** LUP Unit II Public Services Policy (General Policy 1) requires that adequate public services, including road access and capacity, are available to serve the approved development. With respect to the Appellant's assertion that the project is inconsistent with the road access and capacity policies of the LCP due to the operations of the proposed brandy barn, the County record contained a April 2009 traffic study submitted by the applicant (prepared by Transpedia Consulting Engineers) which determined that the entrance to the property (and to the brandy barn) would provide adequate sight distance along State Highway 1, that the 350-foot sight distance from the entrance road at Highway 1 to the north or south exceeds the Caltrans minimum sight standard of 250 feet, and that the approved project would contribute an insignificant amount of traffic. The County record thus evidences that the brandy facility would not result in a use that could result in significant adverse impacts to the public due to increased traffic congestion at this location. In part to that end, the County also conditioned the coastal permit such that brandy produced on the site can be sold and distributed at the brandy barn during on-site, reservation-only educational tours, limited to a maximum of three tours per week, between the hours of 11:00 am and 3:00 pm, with a maximum tour of eight adults only. The minimal level of visitation by the general public to the brandy barn (governed by the condition of the County's coastal permit) will not adversely affect traffic patterns on Highway 1 at or adjacent to the subject property, and adequate road access and capacity is available to serve the proposed development. Therefore, the Commission finds that the County has a high level of legal and factual support for its approval and that the appeal raises no substantial issue regarding the conformity of the approved development project with LCP Unit II Public Services Policy (General Policy 1).

**Appeal Contention No. 3 (visual resources).** LUP Unit II New Development and Land Use Policy 3 (Visual Resources) requires that the height, scale, and design of new structures shall be compatible with the character of the surrounding natural or built environment. Visual Resource Policy 3 also states that structures shall be designed to follow the natural contours of the landscape and sited so as not to obstruct significant views as seen from public viewing places. LUP Unit II Agriculture Policy 5a states that development shall be sited close to existing roads and shall minimize impacts on visual resources. The Appellant contends that the proposed equipment barn would rise high above a prominent knoll on the property, would be visible from many locations across and from Tomales Bay and from Highway 1, would obstruct significant views of the Marshall hills, and would not follow the natural contours of the property. The Appellant also asserts that the proposed access road would be visible from points on Tomales Bay and beyond, and would require a cut and fill operation discouraged by County policy.

The County analyzed the potential visual resource impacts through the use of story poles for all proposed structures and visual simulations from public vantage points at Marconi Center Meadow Trail, Mt. Vision Road parking lot at Perth Fire Lane in Point Reyes National Seashore, Hearts Desire Beach in Tomales Bay State Park (west side of Tomales Bay), northbound Highway 1, and the California State Parks Boat Launch (east side of Tomales Bay). The approved structures would be sited away from ridgelines and clustered near existing adjacent development (the single-family residence, swimming pool, and outbuildings on the adjacent property to the north), thereby preserving a majority of the open grasslands and mixed woodlands on the subject parcel. The approved structures are also located over 3,500 feet from a visually prominent ridgeline. The approved equipment barn would be sited at approximately 98 feet, which is roughly the same elevation as the appellant's residence that is located approximately 200 feet to the north. The approved road follows the natural contours of the hillside and terminates at approximately 100 feet in elevation. The County conditioned the coastal permit to require that all flashing, metal work, and trim on proposed structures, including the equipment barn, shall be painted or coated with an appropriately subdued, non-reflective color.

The County record evidences that the approved project is most visible from northbound Highway 1 for a distance of approximately 400 feet. During this time the structures would be observable but for the most part are broken up by mature trees along Highway 1 and on the slope up to the private driveway. The location of the equipment barn and the road will not obstruct significant views as seen from public viewing places. The approved road is the preferred access alternative to structures on the northern side of the property as it would minimize grading and the need for retaining walls, and would avoid unnecessary site disturbance and modifications to the existing dirt farm road in order to protect wetland, stream, and riparian protection areas. The approved structures, including the equipment barn, are also designed to be in keeping with the rural community character.

The Commission finds that while the approved development would introduce agricultural operations across a relatively undeveloped landscape, the activity is consistent with the agricultural zoning attached to the property and furthers the LCP goals to protect and support agriculture in this area of Marin County. Views of the lower, southwestern portion of the property from Highway 1 will be only slightly modified due to the placement of structures and planting of screening vegetation to hide those structures. Views of the property from Tomales Bay and from across the bay at locations in Point Reyes National Seashore will be affected to only a minor degree by the introduction of several structures and screening vegetation. Therefore, the Commission finds that the County has a high degree of legal and factual support for its approval and the appeal raises no substantial issue regarding the conformity of the approved development with LUP Unit II Visual Resources Policy 3 and Unit II Agriculture Policy 5a.

**Appeal Contention No. 4 (water supply).** LUP Unit II Agriculture Policy 4d (Development Standards and Requirements) requires that adequate water supply be available to service approved development after provision has been made for existing and continued agricultural operations. With respect to the Appellant's assertion about whether there is adequate water to

serve the approved development, the County found that there are three springs on the property, two of which would be used for watering the sheep. The existing water well would serve all agricultural needs on the southern end of the property. The Marin County Community Development Agency - Environmental Health Services/Water Division reviewed the proposed project for conformance with Chapter 7.28 of the Marin County Code (Domestic Water Supply) and determined that based on the information provided by the applicant, which includes well yield data and plans that show the location of all existing and proposed new wells, the existing well can accommodate all proposed uses and meet fire and safety requirements. The County conditioned the coastal permit to require that prior to issuance of any building permit, the applicant must submit an application to Marin County Community Development Agency/ Environmental Health Services to operate one or both wells in a domestic water system, and obtain a valid domestic water system permit. The condition also states that a detailed water system map will be required for the water system permit and that domestic water storage tank(s) capacity shall be in addition to fire control requirements. The Commission acknowledges the County's determination that the existing well can provide adequate supplies of water to support the approved agricultural operation and to meet fire and safety requirements on the property. The Commission also finds that the applicant's proposal to construct a second well on the northwestern side of the property to supply the brandy barn, equipment barn, and residence will eliminate the need to install a water line from the existing well across the blue-line stream and through the riparian forest that borders the stream corridor. The approved well would be located in the same fault zone where the existing well draws water; the applicant's drilling consultant has concluded that that the proposed well would be similarly productive. Therefore, the Commission finds that the County has a high degree of legal and factual support for its approval, and the appeal raises no substantial issue regarding the conformity of the proposed development project with LUP Unit II Agriculture Policy 4d (development standards and requirements for adequate water supplies).

**Appeal Contention No. 5 (master plan waiver).** The Appellants contend that the County failed to require the applicant to submit a master plan for the proposed project and, in addition, ignored its own code requirement in granting a waiver from the master plan requirement. The Appellants contend that the approved project, in particular the brandy barn and distillery operation, is not "minor and incidental in nature" and is therefore not eligible for a waiver from the master plan requirement, and that the County avoided addressing master plan findings required by the LCP. Marin County Interim Zoning Code Section 22.56.026 states that the requirement for a master plan can be waived by the County Planning Director when:

- A. *One single-family dwelling unit is proposed for construction on a legal building site;*
- B. *A tentative map requiring a parcel map for four parcels or less is proposed, except in C-APZ districts;*
- C. *The planning director determines that a proposed development is minor or incidental in nature and within the intent and objectives of the local coastal plan.*

The Marin County Board of Supervisors found that a waiver from the Master Plan requirement could be granted based on the conditional approval because:

1. the proposed project would result in one appropriate-sized primary single-family residential development, a principally permitted use in the governing C-APZ zoning district pursuant to MCC Section 22.57.032.21;
2. the proposed development is minor and incidental in nature and within the scope of the local coastal plan pursuant to MCC 22.56.026(C)1;
3. the project, as conditioned, would implement the goals and policies of the Marin Countywide Plan, and the Local Coastal Program, Unit II, with respect to site design, preservation of natural resources, agricultural lands, and visual resources;
4. the proposed project and submittal materials allow for the review and action of the full development potential of the subject property, and all residual development potential would be relinquished with a recorded Agricultural Conservation Easement;
5. all requirements of the Master Plan application for the proposed residential development including, but not limited to, siting, design, preliminary grading, drainage, infrastructure, and access and parking, as well as the agricultural use of the land and consistency with the C-APZ development standards have been reviewed by the County through the Coastal Permit, Design Review, and Use Permit applications for consistency with MCC Chapters 22.571 (Coastal District Regulations), 22.821(Design Review), and 22.881 (Use Permits);
6. the Master Plan requirement applies only to the subject parcel as no other contiguous parcel is under the same ownership;
7. the project's Agricultural Management Plan has been reviewed by the Marin County Agricultural Advisory Committee, which has found that the proposed agricultural activities utilize the maximum potential of the agricultural lands and the project to be reasonable;
8. the project is consistent with the LCP, Unit II Agricultural Resources Policies in that all residential development is clustered on less than 5% (approximately 4%) of the gross acreage to retain the maximum amount of land for agricultural production;
9. the project is sited to minimize impacts on natural and scenic resources;
10. the residential development is sited in close proximity to State Route One; and
11. the project does not result in a loss of potential agricultural lands and provides for permanent protection, stewardship, and preservation of agricultural lands and the long-term potential agricultural use of said lands through the conveyance to the County of an Agricultural Conservation Easement.

The Commission acknowledges that the County's interpretation of LCP master plan requirements and waiver provisions is one permissible interpretation of its LCP, given that the

approved development can be considered minor and incidental to the extent it is accessory to the primary agricultural land use and because other provisions of the certified LUP and zoning independently require the substantive analysis relevant to the appellants contentions. As discussed above, the appellants' contentions do not raise a substantial issue of consistency of the approved project with the substantive provisions of the certified LCP. The project as designed and conditioned by the County comprises development accessory to the primary agricultural use, would extinguish residential development potential on the parcel through the Affirmative Agricultural Easement, limits and clusters development in support of agriculture operations (e.g., driveway, residence) to the southwest corner of the property adjacent to Highway 1 and existing development, and is within the intent and objectives of the Marin County LCP. Further, the County's decision to waive the master plan requirement does not raise issues of regional or statewide concern as its decision to utilize the waiver procedure involves this single property. The Commission therefore finds that the Appellant's procedural contention that the master plan waiver was improperly granted does not raise a substantial issue regarding consistency of the approved project with the agricultural provisions of the certified LCP.

**Appeal Contention No. 6 (CEQA).** The Appellants contend that the County unlawfully relied upon the "small structures" categorical exemption to avoid subjecting the project to any environmental review whatsoever. The Appellants argue that due to the sensitive environmental resources on the property and the various project development components, there is the reasonable possibility of a significant effect on the environment from project implementation and, as a result, the project does not qualify for an exemption from the California Environmental Quality Act (CEQA).

The County contends that CEQA Guidelines exempt the "construction and location of limited numbers of new small facilities or structures" and that examples of this exemption include but are not limited only to one single-family residence and accessory (appurtenant) structures. The County cited Marin County Interim Code Section 22.57.030I (C-APZ: Coastal Agricultural Production Zone Districts) which states in part that "The principle use of lands in the C-APZ districts shall be agriculture. Development shall be accessory, incidental, or in support of agricultural land uses ..."

The County reviewed and approved the proposed Agricultural Management Plan and determined that the primary use of the property would be agriculture, and all proposed structures would be accessory to the agricultural operation. The County also determined that the construction of appurtenant agricultural improvements and a single-family residence are "minor and incidental" because they are accessory to the primary agricultural land use. As a result, the County found that the proposed structures fall under the types of structures covered by the CEQA categorical exclusion. The County also contends that a CEQA categorical exclusion is appropriate because the project would not result in any potentially significant impacts to the environment, as it is designed to avoid sensitive habitat areas and special status species, and that no development would occur in areas that contain known archaeological resources.

The Commission finds that the Appellant's contention that the County acted improperly in issuing a categorical exemption from CEQA does not raise a substantial issue regarding project

consistency with the policies of the certified LCP because the Commission is limited to reviewing the conformity of the local government's actions to the certified Local Coastal Program or to the public access policies of the Coastal Act. (§ 30603 subd. (b)(1).) The Coastal Commission lacks jurisdiction to review a local government's compliance with CEQA in situations in which the Commission finds no substantial issue and declines to assert jurisdiction over the project. Requiring the Coastal Commission to conduct a CEQA review of project alternatives and mitigation measures would be incompatible with the statutory process and would effectively require the Coastal Commission to engage in de novo review of every appeal, despite the Coastal Act's express authorization for the Commission to decline jurisdiction of appeals that fail to raise a substantial issue relating to conformity with a local coastal program.

#### **1.4. Subsequent Project Changes.**

Marin County's Community Development Agency determined on June 1, 2010, that the following proposed changes to the project submitted by the applicant "are in substantial conformance to the County's approval" on May 11, 2010, of coastal permit application CP-09-39: (1) resiting the southwest sheep shelter approximately 100 feet downslope and closer to Highway 1, behind existing vegetation and additional vegetation to be planted to screen the structure from off-site public views; (2) resiting the greenhouse downslope toward the west behind existing vegetation and closer to Highway 1 to screen the structure from off-site public views; (3) planting additional vegetation to screen the Hop Barn from off-site public views; and (4) lowering the Equipment Barn three feet into the ground and shifting its location downslope to achieve a net decrease in building elevation by 5.5 feet. The County determined that with these changes the project remains consistent with the LCP, structures will continue to be located outside of sensitive coastal habitats (including stream and wetland conservation areas), and the revised locations will further reduce the visibility of the structures from off-site public views. These project changes are not included in Marin County coastal permit CP-09-39 that was appealed to the Commission, and therefore they are not evaluated in this staff report. However, the Commission notes that only one of the aforementioned project changes (i.e., lowering and resiting the Equipment Barn) involves an element of the project that was appealed to the Commission, and the approved modification further reduces the potential visual impact of the approved equipment barn.

#### **1.5. Conclusion.**

The County record contains sufficient factual and legal support to approve the coastal development permit for the proposed development. No significant coastal resources will be adversely affected by the approval, and no adverse precedent will be set for future interpretations of the LCP. The appeal does not raise issues of regional or statewide significance. For the reasons stated above, the Commission finds that Appeal Number **A-2-MAR-10-022** does not present a substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency of the approved development with the certified Local Coastal Program and/or the public access policies of the Coastal Act.

**Exhibits:**

1. Location Map
2. Site Development Plan
3. Equipment Barn Elevation
4. Brandy Barn Elevation
5. County of Marin Notice of Final Action and Board of Supervisors Resolution No. 2010-36
6. Appeal from Scott Kivel and Lia Lund
7. Relevant Marin County LCP Policies
8. Letter from Marin Agricultural Land Trust
9. Letters from Linda Emme
10. Letter from Robert Epstein, representing Scott Kivel and Lia Lund
11. Letters from Larry Kennings, representing Tony Magee

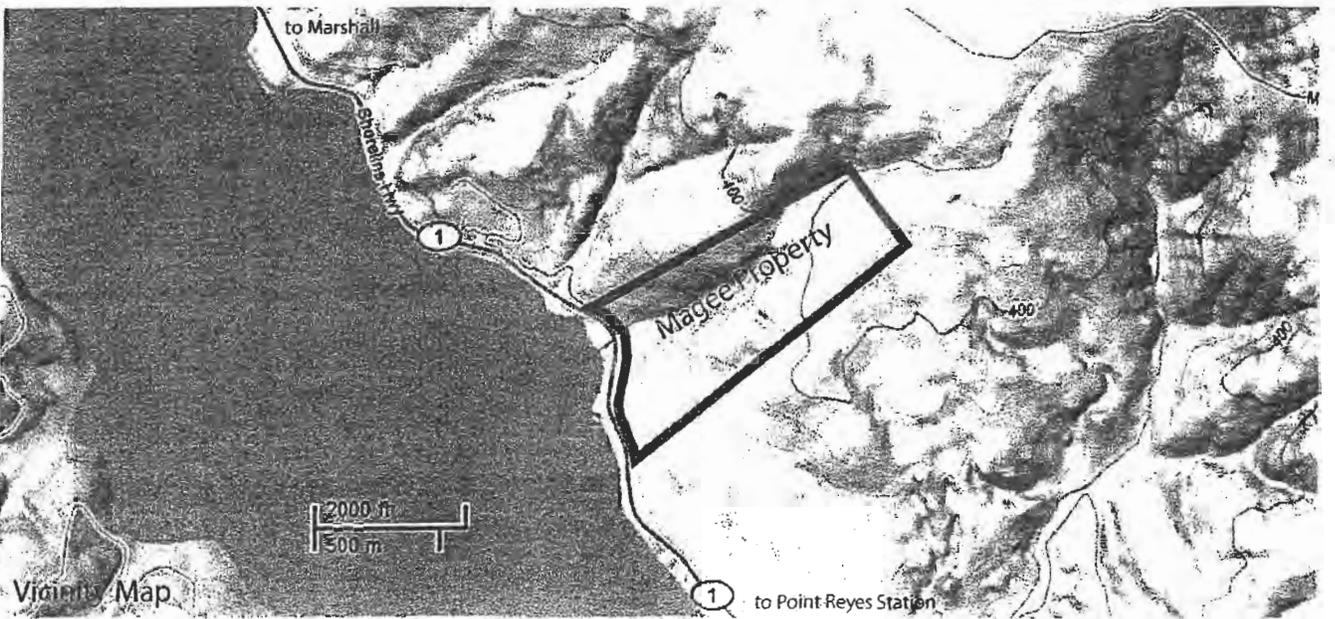
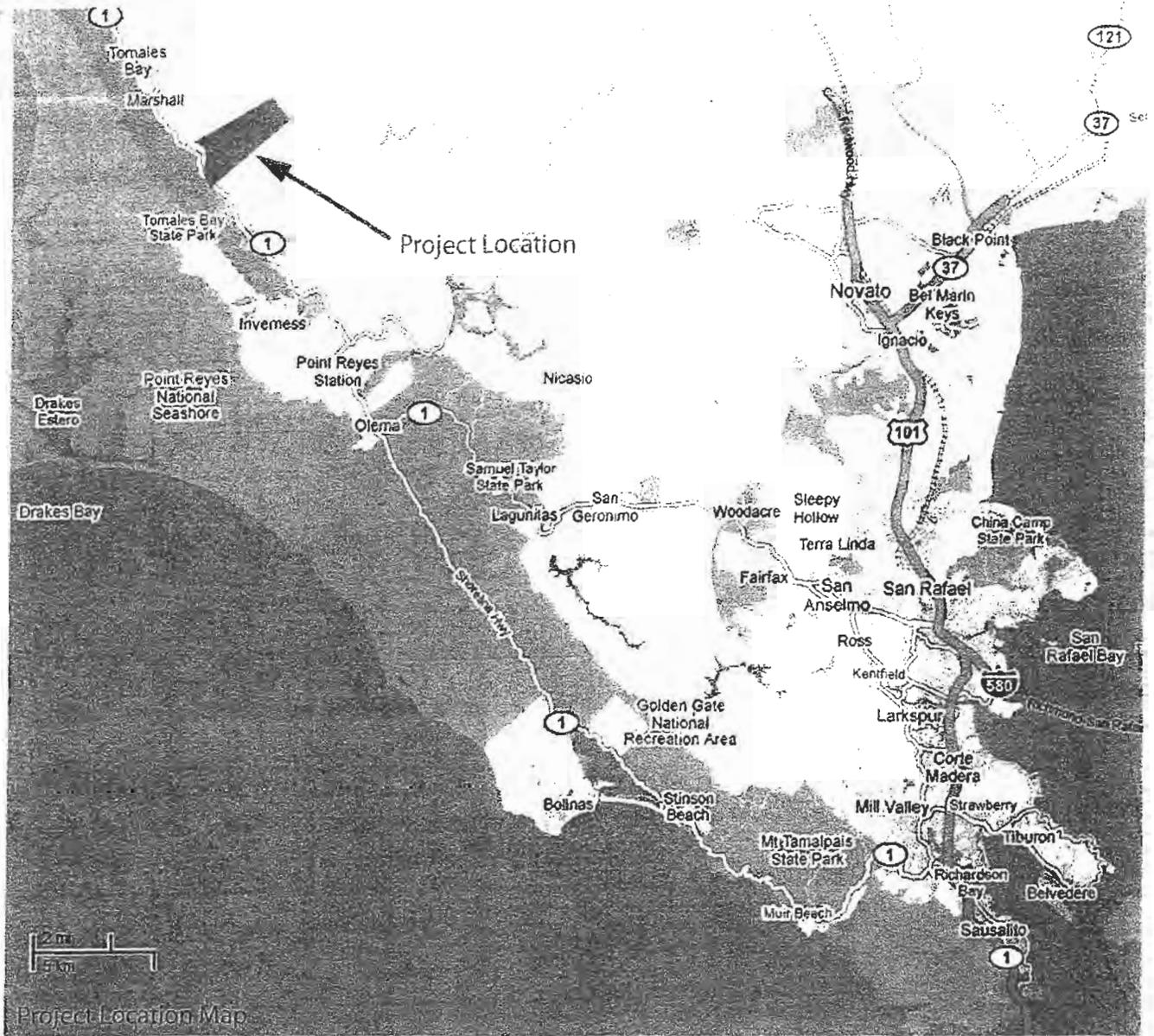


Figure 1: Project Location Map





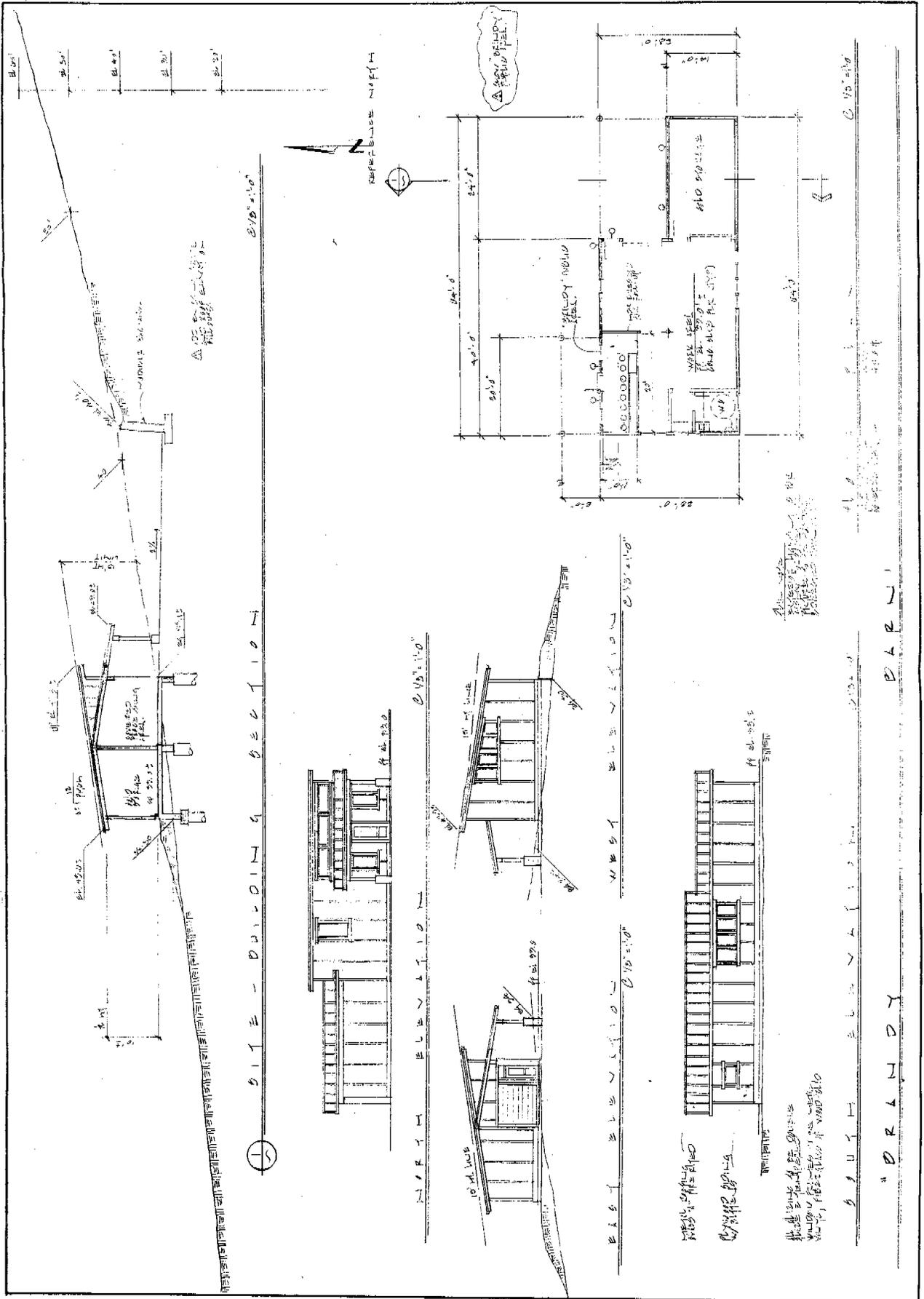


Exhibit No. 4  
A-2-MAR-10-022 (Magee & Dillon Vision LLC)  
Brandy Barn Elevation  
Page 1 of 1

RECEIVED

2-MAR-09-001

MAY 18 2010

CALIFORNIA  
COASTAL COMMISSION

MARIN COUNTY  
COMMUNITY DEVELOPMENT AGENCY

BRIAN C. CRAWFORD, DIRECTOR

NOTICE OF FINAL LOCAL (BOARD OF SUPERVISORS) DECISION

Pursuant to Coastal Act Section 30603(d), Coastal Commission Regulations Section 13571, and LCP Policy and/or Implementation Plan Section

SENT BY CERTIFIED MAIL

California Coastal Commission  
45 Fremont Street, #2000  
San Francisco, CA 94105

Attention: Coastal Planner

Applicant's Name: Tony Magee  
PO Box 575  
Pt Reyes Station CA 94956

Coastal Permit Number: Coastal Permit 09-39

Assessor's Parcel Number: 106-220-20

Project Location: 17990 State Route One, Marshall

Determination: Approved With Conditions  
(Minutes of the May 11, 2010, Board of Supervisors' hearing are attached specifying action and applicable Conditions 1 - 41.)

Decision Date: May 11, 2010

County Appeal Period: May 18, 2010

Local review is now complete.

This permit IS appealable to the California Coastal Commission (see Marin County Code Section 22.56.080 attached); please initiate the California Coastal Commission appeal period.

If you have any questions regarding this project, please contact Veronica Corella at 499-6276.

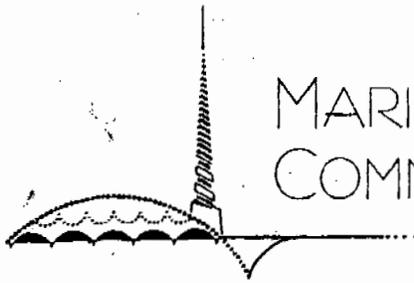
Sincerely,

  
Veronica Corella-Pearson  
Planner

Attachment: Resolution

3501 Civic Center Drive, Room 308 - San Rafael, CA 94903-4157 - 415-499-6269 - Fax 415-499-7880

<http://www.co.marin.ca.us/depts/CD/main/index.cfm>



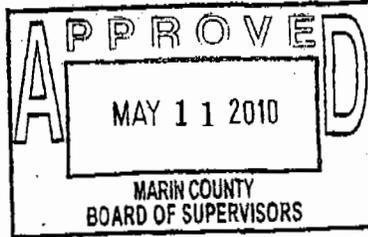
# MARIN COUNTY COMMUNITY DEVELOPMENT AGENCY

BRIAN C. CRAWFORD, DIRECTOR

RECEIVED  
MAY 18 2010  
CALIFORNIA  
COASTAL COMMISSION

May 11, 2010

Marin County Board of Supervisors  
3501 Civic Center Drive  
San Rafael, California 94903



**SUBJECT:** Kivel Appeal of the Planning Commission's Conditional Approval of the Dillon Vision LLC (Brader-Magee) Coastal Permit, Design Review and Use Permit  
17990 State Route 1, Marshall  
Assessor's Parcel 106-220-20

Dear Supervisors:

**RECOMMENDATION:**

On April 12, 2010, the Planning Commission unanimously granted conditional approval of the Dillon Vision LLC (Brader-Magee) Coastal Permit, Design Review and Use Permit application to construct a new residence and establish an agricultural operation on an approximately 150-acre vacant lot in Marshall. On behalf of the Planning Commission, staff recommends that the Board deny the appeal filed by Scott Kivel and sustain the Planning Commission's decision by conditionally approving the project.

**BACKGROUND SUMMARY:**

On April 12, 2010, the Planning Commission made findings to approve the project because it preserves and promotes agricultural land uses in West Marin, avoids potentially significant environmental impacts, minimizes visual and community character impacts, and is consistent with regulatory requirements contained in the Marin Countywide Plan (CWP), Local Coastal Program, Unit II (LCP), and the Marin County Interim Zoning Ordinance (Interim Code). The Planning Commission found that the project qualifies for a Master Plan waiver because the primary land use would be agriculture, development on the property would be in support of and appurtenant to agriculture, and an Affirmative Agricultural Easement would relinquish all residual residential development potential on the property and ensure that agricultural uses are maintained.

**PROJECT DESCRIPTION:**

Tony Magee, applicant, has proposed to establish an agricultural operation that consists of livestock production, hop cultivation, production of crops for sale at local farmers' markets, and viticulture including limited brandy production. Included in the project is a proposal to construct the following improvements: a single-family residence; three barns; two sheep shelters; five 4,950-gallon dark green water tanks; and a greenhouse. (Please refer to Table 1 for a summary of the development characteristics.) Currently the property is accessed by existing farm roads and the project includes the construction of a new road along the northerly property line to serve the equipment barn and residence. Also proposed is a new well located near the northern property line for agricultural and domestic use, and three 250-gallon propane tanks near the equipment barn, residence, and brandy barn. All of the proposed structures have been

sited outside of the stream, wetland, and riparian protection areas. (Please refer to the project plans that are included as Attachment 4.)

Table 1: Summary of Development Characteristics

	Floor Area (Square Feet)	Coverage (Square Feet)	Maximum Height (Feet)
<b>Residence</b>			
Single-family Residence Attached Garage	3,165 648		22
<b>Agricultural Structures</b>			
Brandy Barn	1,456	496	14.8
Equipment Barn Shed	1,792	960	15 13.5
Hops Shelter	N/A	896	15
Sheep Shelters # 1 and # 2	N/A	1,500	7
Greenhouse	N/A	600	8.5
<b>Land Use</b>			
Hop Cultivation	N/A	6 +/- acres	
Grazing	N/A	50 +/- acres	
Vineyard	N/A	6 acres	
Greenhouse and Crop Garden	N/A	2.3 acres	
Hopyard	N/A	6 acres	

## APPEAL

Scott Kivel, owner of adjoining property located at 18400 State Route 1, Marshall, filed an appeal asserting the following: 1) the project does not qualify for a Categorical Exemption from CEQA under Section 15303, Class 3; 2) the project does not meet the requirements for a Master Plan waiver; and 3) the Local Coastal Program, Unit II findings regarding Water Supply, Visual Resources, and Community Character cannot be made. The following presents a response to the issues raised in the appeal.

## ANALYSIS:

- The appellant asserts that the Planning Commission inappropriately used the Categorical Exemption in Section 15303, Class 3 from CEQA. The appellant states that this section is for "single-family residences and accessory structures," and "the equipment barn, brandy barn, and hop barn cannot be classified as accessory to a single-family home, and that the residence must be accessory to the agricultural use."***

California Environmental Quality Act Guidelines, Section 15303, Class 3 (New Construction or Conversion of Small Structures) exempts the "construction and location of limited numbers of new, small facilities or structures." Examples of this exemption include but are not limited only to, one single-family residence and accessory (appurtenant) structures.

Marin County Interim Code Section 22.57.0301 (C-APZ: Coastal Agricultural Production Zone Districts) states, in part, that "The principal use of lands in the C-APZ districts shall be agriculture. Development shall be accessory, incidental, or in support of agricultural land uses..." The project applicant submitted a development application for the establishment of an agricultural operation. The Planning Commission reviewed and approved the proposed Agricultural Management Plan and determined that the primary use of the property would be agriculture, and all proposed structures

would be accessory to the agricultural operation. The Planning Commission also determined that the construction of appurtenant agricultural improvements and a single-family residence are "minor and incidental" because they are accessory to the primary agricultural land use. Consequently, the proposed structures fall under the types of structures covered by the Categorical Exemption.

The Planning Commission acted appropriately in issuing a Categorical Exemption from CEQA because the project does not result in any potentially significant impacts. Section 15378 of the CEQA Guidelines requires that the whole of the action is considered during the review process. The project qualifies for an exemption because the project has been carefully designed to avoid sensitive habitat areas, special status species, and no development would occur in areas that contain known archaeological resources. Finally, the appellant has not provided any evidence based upon factual data that the project would result in significant impacts to the environment.

2. ***The appellant asserts that the project requires a Master Plan because the waiver requirements under Section 22.56.026I do not apply to the project since more than one single-family dwelling unit is proposed and the project cannot be classified as "minor or incidental in nature."***

The Planning Commission found that a Master Plan waiver can be granted and determined the project to be "minor and incidental in nature and within the intent and objectives of the local coastal plan" pursuant to Interim Code Section 22.56.026(C)I. This determination was made on the basis that the project as conditioned entails the following components: 1) agriculture would be the primary use of the property and the project would preserve 95% of the land for agriculture; 2) the conveyance of an Affirmative Agricultural Easement to the County would relinquishing all residual residential development potential on the property; 3) the residence and non-agricultural uses would be located on less than 1% of the total land area and clustered near existing development; and 4) all development is proposed outside of wetland, stream, and riparian protection areas. The other findings for Master Plan waiver are not required to be made so long as at least one finding is relevant to the project.

3. ***The appellant asserts that the Planning Commission failed to adequately address the findings of Section 22.56.130I(A)(1) Water Supply, and Section 22.56.130I(O) Visual Resources and Community Character of the Marin County Interim Code. The appellant states that the Planning Commission failed to address any of the requirements for a new domestic well, and that the proposed equipment barn and driveway is "located atop a prominent ridge" and impede public views, and that reuse of an existing road would best preserve visual resources.***

Marin County Interim Code Section 22.56.130.A (Water Supply) states that "coastal project permits shall be granted only upon a determination that water service to the proposed project is of an adequate quantity and quality to serve the proposed use," that "individual water wells shall be allowed within the zone in conformance with Chapter 7.28 (Domestic Water Supply) of the Marin County Code," and that "wells or water sources shall be at least one hundred feet from all property lines." The Environmental Health Services, Water Division has reviewed the proposed project for conformance with Chapter 7.28 of the Marin County Code and has determined that based on the information provided by the applicant, which includes well yield data and plans that show the location of all existing and proposed new wells, the existing well can accommodate all proposed uses and meet fire and safety requirements. As an added measure, a new well would also be used to serve the development on the northerly portion of the property. The new well would not be located in an area that has coastal resources and would be over 100 feet from all property lines.

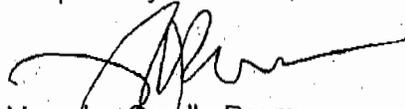
Marin County Interim Code Section 22.56.130I (O) states that "development shall be designed and sited as not to impair or obstruct existing coastal views from Highway 1." It also states that "structures

shall be designed to follow the natural contours of the landscape and sited so as not to obstruct significant views as seen from public viewing places." The section makes no reference to development located "atop a prominent ridge." The subject property ranges in elevation from 20 to 490 feet above sea level. The siting of the equipment barn is at approximately 98 feet, which is roughly the same elevation as the appellant's residence that is located approximately 200 feet to the north. The road follows the natural contours of the hillside and terminates at approximately 100 feet in elevation. No part of the development is located between Highway 1 and Tomales Bay. The Planning Commission found that the location of the equipment barn and road do not obstruct significant views as seen from public viewing places, and that use of the proposed new road is preferable as it would avoid unnecessary site disturbance and modifications to the existing road in order to protect wetland, stream, and riparian protection areas and to reduce site disturbance.

#### CONCLUSION:

The Planning Commission acted appropriately in its decision to approve with conditions the Dillon Vision LLC (Brader-Magee) Coastal Permit, Design Review and Use Permit since the primary land use will be agriculture. The applicant has proposed an agricultural operation that enhances the viability of Marin County farms and ranches and promotes sustainable agriculture. Further, development has been designed to reduce site disturbance, to avoid potential impacts to sensitive habitat areas and special status species, and to be in keeping with the rural agricultural character of the community.

Respectfully submitted,



Veronica Corella-Pearson  
Planner

Reviewed by:



Brian C. Crawford, AICP  
Director

#### Attachments:

1. Resolution recommending denial of the Kivel Appeal and sustaining the Planning Commission's conditional approval of the Dillon Vision LLC (Brader-Magee) Coastal Permit, Design Review and Use Permit
2. Kivel Petition for Appeal
3. Location Map
4. Letter from Linda Emme, received 4/30/10

*Note:* In order to conserve paper resources, the following documents have been provided only to the Board of Supervisors. These documents are available for public review at the Community Development Agency, Planning Division during regular business hours: Monday through Friday, 8:00 am to 4:00 pm.

5. Project Plans
6. Visual Simulations
7. Minutes and Resolution from the Planning Commission Hearing of April 12, 2010
8. Staff Report (with attachments) from the Planning Commission Hearing of April 12, 2010

**RESOLUTION NO. 2010-36**  
**RESOLUTION OF THE MARIN COUNTY BOARD OF SUPERVISORS**  
**APPROVING WITH CONDITIONS THE DILLON VISION (BRADER-MAGEE)**  
**COASTAL PERMIT, DESIGN REVIEW, AND USE PERMIT**  
**17990 STATE ROUTE 1, MARSHALL**  
**ASSESSOR'S PARCEL 106-220-20**  
\*\*\*\*\*

**SECTION I: FINDINGS**

I. WHEREAS, the applicant is requesting Coastal Permit, Design Review, and Use Permit approvals to establish a new agriculture operation and to construct a new single-family residence and garage, equipment barn, brandy production barn, two sheep shelters, green house, and hop barn on the 149.76-acre parcel. The property would be managed for the following agricultural uses: livestock production, hop production, grape and limited brandy production, and crops for local farmers' markets. A new road would be constructed near the northwestern entrance, off of the private access road, and would traverse the northern property line to serve the equipment barn and residence. All buildings are proposed outside of the stream, wetland, and riparian protection areas. Also proposed is a new well located near the northern property line, five 4,950-gallon water tanks for fire suppression, agricultural use, and domestic use, and three 250-gallon propane tanks near the equipment barn, residence, and brandy barn. The proposed structures would maintain the following setbacks from the nearest property lines: 1) residence, side (north) 223 feet; 2) equipment barn, side (north) 71 feet; 3) brandy barn, front (west) 86 feet; 4) sheep shelter #1, side (south) 133 feet; 5) sheep shelter #2, front (west) 166 feet; and 6) hopyard shelter, side (south) 289 feet. The total area of residential development would be less than 1 acre, which is less than one percent of the total area of the 149.76 acre lot. The table below indicates the area calculations for the proposed structures and agricultural uses.

Table 1: Summary of Development Characteristics

	Floor Area (Sq.Ft.)	Coverage (Sq.Ft)	Maximum Height (Feet)
<b>Residence</b>			
Single-family Residence	3,165		22
Attached Garage	648		
<b>Agricultural Structures</b>			
Brandy Barn	1,456	496	14.8
Equipment Barn	1,792		15
Shed		960	13.5
Hops Shelter	N/A	896	15
Sheep Shelters # 1 and # 2	N/A	1,500	7
Greenhouse	N/A	600	8.5
<b>Land Use</b>			
Hop Cultivation	N/A	6 +/- acres	
Grazing	N/A	50 +/- acres	
Vineyard	N/A	6 acres	
Greenhouse and Crop Garden	N/A	2.3 acres	
Hopyard	N/A	6 acres	

### Residential Development

The applicant proposes construction of a new residence that would be accessory to the agricultural use of the property. The new residence would step up the hillside and would be clustered near the equipment barn and brandy shelter, within an area of approximately 6 acres in the northwestern portion of the property. The residence would be finished in batten-board/shiplap wood siding that would be dark tan in color, and the window trim and roof would be dark green. The roofing would be metal, and treated to be non-reflective.

### Agricultural Operation

The applicant proposes the following agricultural uses: hop production, livestock production, grape and brandy production, and crop production. The brandy barn and equipment barn would be finished in colors and materials similar to the proposed residence, and all exterior lighting would be downward directed and hooded. The equipment barn would be used to store implements and equipment for the agricultural operations, and would have an equipment shop. The equipment barn would be 1,792 square feet in size with a 960 square foot shed. Within the covered open area would be chicken coops. The equipment barn would maintain a maximum height of 15 feet above grade.

### *Hopyard*

The hopyard would occupy approximately 6 acres along the southern property line and would contain the hops shelter and processing area. The open-sided, 896 square foot shelter would attain a maximum height of 15 feet above grade and would utilize a green non-reflective metal roof. The structure would be sited near the existing agricultural road on the southern end of the property.

### *Vineyard and Brandy Production*

The vineyard would be located near the northern property line and would occupy approximately 6 acres. The applicant proposes to cultivate English Dessert Wine Grapes near the northern property line, on the south-facing slope. Approximately 3,000 vines would be planted, and it is anticipated that it would take several years before the vines would produce grapes suitable for fermentation. The grapes grown on site would be distilled and aged to produce an estate brandy. Anticipated yield would be 100 cases per year. All products would be sold regionally. Products would also be sold on-site during reservation-only public tours. The appointment-only tours would be scheduled on Saturdays for a maximum of three per week, between the hours of 11:00 am and 3:00 pm. Each tour would be limited to a maximum of eight adults. No on-site consumption is proposed. The brandy barn would have approximately 140 square feet of retail space located within it. The production of brandy would be seasonal. The lees (stems, skins and leaves) would be used as compost on-site. Wastewater would be segregated, and high strength waste would be collected and stored in a polytank within 100 feet of the building, to be used for on-site fertilization. The liquid waste would be disposed of in the farm's septic system. The brandy barn would be located approximately 100 feet from State Route One. The barn would be approximately 1,456 square feet in size, with 496 square feet of covered area, and would attain a maximum height of 14.8 feet above grade.

### *Livestock Production*

Approximately 50 acres of land would be used for sheep grazing. The applicant proposes to introduce a flock of 25 "feeder sheep" that would be sold in the summer of the following year. Gradually they would increase their inventory with two rams, and plan to have a flock of 25

ewes for lambing. The flock would be rotated through five different paddocks, and feed would be supplemented during the dry season.

The applicant proposes to install temporary livestock fencing seasonally during the portion of the year when erosion and waste runoff potential is highest. The fencing would be located 100 feet from the edge of all wetlands on the property. The applicant proposes to allow the livestock to forage in and around the wetlands on the property during the dry season. The applicant also proposes short term, intensive (every two to three years) grazing in selected riparian areas surrounding the blueline stream on the property.

The sheep would be moved into either of the two sheep shelters at night, which would be predator proof. Two to four horses would reside on the property for moving livestock. Chickens would be free range, and would be cooped in the shed adjacent to the equipment barn.

#### *Crop Production*

The applicant proposes to utilize approximately 2.3 acres of the site for crop production, located on the central, western edge of the property. The site would be accessed by existing farm roads. Produce would be cultivated for local farmers' markets, and a green house would be constructed. The greenhouse would be a 20-foot by 30-foot, tube framed structure with a polyfilm cover. Approximately 600 artichoke plants would be located in the southern grassland area, as would other crops that would be determined at a later date.

#### *Site Improvements*

Site improvements include construction of: (1) an approximately 850 foot long driveway off a private driveway that parallels State Route One, leading to the equipment barn and residence; (2) a sewage disposal system; (3) five 4,950-gallon water storage tanks; (4) a new well near the northern property line; and (5) underground utilities. Coastal Permit approval is requested for a new domestic well. The existing well would be used for all agricultural activities. In addition, a new septic field would be installed near the northern property line and all sewage produced from the brandy facility, equipment barn, and residence would be pumped uphill to this location. The new driveway would be constructed of a coarse aggregate base and out-sloped to a grass-lined swale which would allow for runoff to infiltrate on-site. The road would result in a balanced amount of cut and fill. The total cut and fill for the equipment barn, residence, and brandy barn would be 1,710 and 1,230 cubic yards respectively, the remaining soil would be distributed on site. A drainage plan has also been provided, which shows that all runoff from impervious surfaces would be collected and dispersed on-site.

#### *Agricultural Management*

The project proposes three main agricultural activities on-site. In planning their agricultural operation, the applicant involved the expertise of the following entities: Colorado State University Hop Cultivation Program, the Oregon Hop Growers Guild, Marin County Agricultural Commissioner, and other agricultural producers in the area. Based on their research, the applicant developed an Agricultural Management Plan. The plan would be implemented utilizing the labor of Tony Magee and Clarissa Brader, and one additional skilled agricultural worker. During the harvest season, up to five temporary employees may be needed.

The applicant would use the existing seasonal farm roads around the property. During the wet season, when the roads are inoperable, travel around the property would be by horses. Movement through the stream and wetland buffer areas would only be for agricultural

purposes. The applicant would fence a majority of the stream and riparian areas, and wetland buffer areas, in addition to 1,100 feet of perimeter fencing on the western boundary along State Route One, and replacing existing fencing as necessary. The applicant has already installed 2,300 lineal feet of pasture fencing along the southern edge of the western riparian wetland edge. The applicant has developed a structured rotational grazing calendar, which would be modified as needed during the seasons based on observations and experience. There are three springs on the property, two of which would be utilized for watering the sheep. The existing well would serve all agricultural needs on the southern end of the property. Corrals would also be constructed adjacent to the sheep barns.

#### *Agricultural Conservation Agreement*

The applicant has proposed to convey to the County an Agricultural Conservation Easement and Declaration of Restrictions, with provisions for a variety of perpetual uses and restrictions as summarized below.

1. The terms of the Easement include the imposition of a perpetual obligation for the active conduct of agricultural production within a designated Agricultural Production Zone that would be delineated and recorded in accordance with the Agricultural Management Plan.
2. The terms of the Easement establish a process whereby an outside agricultural operator may lease the subject property at reasonable rates in the event the owner of the property is unable or unwilling to continue active agricultural production on the property.
3. The terms of the Easement establish permitted and prohibited uses, and practices to which the property owner would be bound to adhere to.
4. Finally, the easement would extinguish all residual zoning potential on the property.

Provisions contained in the Easement to enforce the above terms include the right of the County to inspect, observe, and study the subject property with respect to the Baseline Data, to monitor the owners' compliance with the terms of the Easement, including the uses and practices, the right to prevent any activity on, or use of, the property that is inconsistent with the purposes of the Easement, and, should the owners fail to utilize the property for agricultural production or fail to select an agriculture production operator, the County may pursue obtaining an operator and/or enter into a lease on behalf of the Owners. Leased lands could be managed as grazing range for livestock, at a sustainable level based on the Marin County Agriculture Commissioner's guidelines for the available forage present and the residual matter required for prudent stewardship of the land.

The subject property is zoned C-APZ-60 (Coastal, Agricultural Production Zone, Planned District, one primary dwelling unit per 60 acres maximum density). The property is located at 17990 State Route 1, Marshall and is further identified as Assessor's Parcel 106-220-20.

- II. WHEREAS, the Marin County Planning Commission held a duly noticed public hearing on April 12, 2010 to consider the merits of the project, and hear testimony in favor of and in opposition to the project and voted (7-0) to grant conditional approval of the project based on the project's compliance with policies of the Marin Countywide Plan, Local Coastal Program, Unit II, East Shore Community Plan, and the Marin County Interim Code.

- III. WHEREAS, on April 19, 2010, Robert F. Epstein on behalf of Scott Kivel, filed a timely appeal of the Planning Commission's decision asserting that the Planning Commission erred in granting project approval because: 1) the proposed project does not qualify for a Categorical Exemption from CEQA under Section 15303, Class 3; 2) the project does not meet the requirements for a Master Plan waiver; and 3) the Local Coastal Program, Unit II findings regarding Water Supply, and Visual Resources and Community Character cannot be made.
- IV. WHEREAS, the Marin County Board of Supervisors held a duly noticed public hearing on May 11, 2010 to consider the merits of the project and hear testimony in favor of, and in opposition to, the project.
- V. WHEREAS, the Marin County Board of Supervisors finds that the proposed project is Categorically Exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15303, Class 3 of the CEQA Guidelines, which allows for the construction of small facilities or structures, and their associated equipment, including single-family residences and accessory structures, provided that their construction would not result in significant amounts of grading and vegetation removal that could result in potentially significant impacts on the environment. All proposed development is located outside of wetland, stream and riparian protection areas. No special status species were found within the proposed project areas, and no impacts to sensitive habitat areas would occur. No development would occur in areas that contain known archaeological resources, and the project would not result in a significant increase in traffic, or result in traffic hazards. In addition the Board of Supervisors has determined that the residence and agricultural structures are accessory to the agricultural use of the property, and the project was determined by the Board of Supervisors to be "minor and incidental in nature."
- VI. WHEREAS, the Marin County Board of Supervisors finds that the project is consistent with the Marin Countywide Plan for the following reasons. The proposed project is consistent with the Countywide Plan's Agricultural (C-AG-1, one unit per 31 to 60 acres) land use designation for the property because it would result in a conforming residential density below one unit per 60 acres. The project proposes one dwelling unit that would be located on less than 5% of the total land area. The applicant would reside in the residence and manage all labor on the property (Policy AG-1.1 and 1.6). The residence would be located within 600 feet of the equipment and brandy barn, and within a site that could not be utilized for crop production or grazing, leaving the remaining land for agricultural related structures and agricultural activities (Policy AG-1.6). The applicant would also enter into an Agricultural Conservation Easement that would relinquish the residual development potential on the property and would preserve all useable agricultural lands (Policy AG-1.2, AG-1.3, AG-1.8). The Agricultural Management Plan proposes a project that includes small-scale row crop production for local farmers' markets, and diversified agricultural activities (Policy AG-2.3), which assists to ensure the continued economic viability of the county agricultural industry (Policy AG-2.4, AG-2.5 and AG-2.6). The applicant has provided a Site Assessment that confirms that all development would be located outside of the Stream and Wetland Conservation Areas, and would not impact sensitive habitat areas or special status species (BIO-1.1, BIO-3.1, BIO-2.1, BIO-2.2, BIO-2.3, BIO-2.7, and BIO-4.1, and BIO-4.2). The applicant has provided engineering plans that demonstrate that all surface runoff would be infiltrated on-site, and the project would not result in increased sedimentation and pollution to the watershed (Policy WR-1.1 through 1.4). The project has been sited in an area deemed suitable from a geotechnical perspective. The new driveway would be constructed in an area that would not require large retaining walls, or excessive grading and site alterations (EH-2.1). The proposed Vegetation Management Plan

identifies vegetation that would be removed or reduced to minimize the fire hazard potential (EH-4.1 and 4.2). The applicant has also provided an archeological report, and all proposed development is located away from known archaeological resources, and there is no potential for impacts to known archaeological sites (HAR-1.3).

VII. WHEREAS, the Marin County Board of Supervisors finds that the project is consistent with the relevant policies of the East Shore Community Plan because the proposed project would ensure that all development is outside of sensitive habitat areas, and would preserve the entire southern portion of the property, which is the best suited for grazing. In addition, the residence has been sited in a location that would not conflict with the public's and applicant's ability to access agricultural structures, and structures would be sited way from ridgelines and clustered near existing adjacent development, thereby preserving a majority of the open grasslands and mixed woodlands. All development would be sited outside of sensitive habitat areas, and the project has been designed to not result in adverse effects to water resources. The applicant has provided a detailed Agricultural Management Plan that demonstrates the applicant's ability to maintain the property for the production of food and fiber. Also provided was a traffic study that determined that the entrance to the property would provide adequate sight distance along State Route One, and the project would contribute an insignificant amount of traffic.

VIII. WHEREAS, the Marin County Board of Supervisors finds pursuant to Marin County Code Section 22.56.026I, that a waiver from the Master Plan requirement is granted based on the conditional approval because: (1) the proposed project would result in one appropriate-sized primary single-family residential development, a principally permitted use in the governing C-APZ zoning district pursuant to MCC Section 22.57.032.2I; (2) the proposed development is minor and incidental in nature and within the scope of the local coastal plan pursuant to MCC 22.56.026(C)I; (3) the project, as conditioned, would implement the goals and policies of the Marin Countywide Plan, and the Local Coastal Program, Unit II, with respect to site design, preservation of natural resources, agricultural lands, and visual resources; (4) the proposed project and submittal materials allow for the review and action of the full development potential of the subject property, and all residual development potential would be relinquished with a recorded Agricultural Conservation Easement; (5) all requirements of the Master Plan application for the proposed residential development including, but not limited to, siting, design, preliminary grading, drainage, infrastructure, and access and parking, as well as the agricultural use of the land and consistency with the C-APZ development standards have been reviewed by the County through the Coastal Permit, Design Review, and Use Permit applications for consistency with MCC Chapters 22.57I (Coastal District Regulations), 22.82I (Design Review), and 22.88I (Use Permits); (6) the Master Plan requirement applies only to the subject parcel as no other contiguous parcel is under the same ownership; (7) the project's Agricultural Management Plan has been reviewed by the Marin County Agricultural Advisory Committee, which has found that the proposed agricultural activities utilize the maximum potential of the agricultural lands and the project to be reasonable; (8) the project is consistent with the LCP, Unit II Agricultural Resources Policies in that all residential development is clustered on less than 5% (approximately 4%) of the gross acreage to retain the maximum amount of land for agricultural production; (9) the project is sited to minimize impacts on natural and scenic resources; (10) the residential development is sited in close proximity to State Route One; (11) the project does not result in a loss of potential agricultural lands and provides for permanent protection, stewardship, and preservation of agricultural lands and the long-term potential agricultural use of said lands through the conveyance to the County of an Agricultural Conservation Easement.

IX. WHEREAS, the Marin County Board of Supervisors finds that the proposed project is consistent with the mandatory findings to approve a Coastal Permit (Marin County Code Section 22.56.130I) and finds that this project conforms to the requirements of Local Coastal Program, Unit II, as follows:

A. Water Supply:

The Marin County Community Development Agency – Environmental Health Services has reviewed the well reports for the existing well, and has determined that it could adequately serve all the proposed uses. A proposed second well would serve all development near the northern property line, would reduce the pressure on the existing well, and would be reviewed during the building permit stage to ensure that it could supplement the existing well adequately to serve the project.

B. Septic System Standards:

The Marin County Community Development Agency - Environmental Health Services has reviewed the septic system and leachfield design plans and has conditionally approved the plans, based on the applicant receiving approval of the septic design plans for the brandy facility from the State Regional Water Quality Control Board.

C. Grading and Excavation:

The project would result in 1,710 cubic yards of cut and 1,230 cubic yards of fill for the equipment barn residence and brandy barn. The balance of the cut would be utilized throughout the property, and would result in a balance achieved on-site. The conditions of approval require an Erosion and Siltation Control Plan that addresses pre- and post-construction activities. The proposed project has been designed to fit the site's topography and existing soil, geological, and hydrological conditions so that grading, cut and fill, and site disturbance have been kept to the minimum amount necessary to preserve the natural landforms and to allow structures to blend into the existing topography.

D. Archaeological Resources:

The applicant has provided an Archaeological Report that confirms that the project as approved would not disturb known archaeological sites. Conditions of project approval require that, in the event that cultural resources are uncovered during site preparation, all work be stopped immediately, and the services of a qualified consulting archaeologist be engaged to assess the value of the resource and to develop appropriate mitigation measures

E. Coastal Access:

The property is located on the east side of State Route One, and on the west side of the Highway and to the north of the property, are lands owned by the State of California that provide safe public access points to baylands. Potential future public access would not be impacted by the proposed project. Due to public safety issues and protection of the viable agricultural production of the property, the County is not requiring the dedication of a public access trail.

F. Housing:

Construction of a new single-family residence and associated improvements would increase the housing stock in Marshall.

G. Stream and Wetland Resource Protection:

The property contains one unnamed blue line stream, and there are two springs near the northern property line. A Site Assessment was conducted and return visits were made to assess the springs during various times of the year. During a large storm event, the spring closest to the northeastern property line had water flowing out of the spring box and running within a swale, until it reached the existing access road. It was determined that there is no visible channel associated with the swale, and there is no wetland or riparian vegetation. It was further determined that it is not representative of a creek, drainage, or other waterway. The stream, riparian areas, and stream buffer have been documented. The stream protection policies of the LCP, Unit II do not allow development in streams or in stream buffer areas. The applicant does not propose development in a stream or stream buffer area. In addition, a condition of approval would prohibit grazing of livestock within the Stream Conservation Area on the property.

A Site Assessment was conducted by a qualified biologist, and wetlands that meet the California Coastal Commission's definition have been identified and the wetland protection area has been documented. There are seven identified wetlands on the property. The LCP, Unit II does not allow development in wetlands or wetland buffer areas. No development in wetlands or wetland buffer areas is proposed.

The applicant has proposed grazing during the dry season within wetland areas on the property. The LCP does not allow grazing within wetlands, specifically stating in LCP, Unit II Natural Resources policy 4.c that "no grazing or other agricultural uses shall be permitted in wetlands except in those reclaimed areas presently used for such activities." No evidence has been submitted that the wetlands on the property were reclaimed and used for the historic cattle grazing operation on April 1, 1981, when LCP Unit II was adopted by the Coastal Commission. Therefore staff has recommended a condition of approval that would require that the applicant revise the Agricultural Management Plan to state that no grazing activity would occur within the wetlands on the property, unless the applicant submits evidence that livestock grazing occurred in the wetlands on approximately April 1, 1981.

H. Dune Protection:

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

I. Wildlife Habitat Protection:

The Natural Resources Map for Unit II of the Local Coastal Program indicates that the property is not located in a mapped area containing rare and endangered wildlife. A search of the California Natural Diversity Database (CNDDDB), prepared by the California Department of Fish and Game, was conducted. A list was created of 19

special status wildlife species with potential to be located within the vicinity. Of the 19 species, it was found that 16 special status species had habitat that could occur on the property. The Site Assessment determined that the un-named blue-line stream provides suitable habitat for the California red-legged frog, foothill yellow-legged frog and western pond turtle. It was also determined that there is potential for California freshwater shrimp, Coho salmon, steelhead, and Tomales roach to inhabit the stream. Currently Coho salmon, and Steelhead are not known to occur on the property. The other special status species are known to occur in the area, and their habitat would be protected by the wetland and stream buffer areas, where no development is proposed. It was further determined that the project would not result in adverse impacts to these habitat areas or to known special status wildlife species populations because the proposed development would provide adequate setbacks from sensitive habitat areas and the project incorporates an Erosion and Sediment Control Plan and Drainage Plan. A Manure Management Plan would also be required, as will details on pre- and-post erosion control measures, which would eliminate point source pollution that could degrade waterways.

J. Protection of Native Plant Communities:

The Natural Resources Map for Unit II of the Local Coastal Program indicates that the property is not located in a mapped area containing rare and endangered plants. A review of the California Natural Diversity Data Base, prepared by the State Department of Fish and Game, indicates that the property is not located in an area of designated special status plant species. A search of the California Natural Diversity Database (CNDDDB), prepared by the California Department of Fish and Game, was conducted. A list was created of 28 special status plant species with potential to be located within the vicinity. Of the 28 plant species, it was found that 12 had habitat that could occur on the property. The site was surveyed for all special status species with potential habitat, and none were observed. Surveys were conducted throughout the property in March, April, May, July and September of 2008. In March and June of 2009, the proposed development area was resurveyed. None of the targeted special status plant species were observed near the location of the house, access road, and other proposed structures. Approximately 20 plants of Marin checker lily (California Native Plant Society, List 1B) were identified near the pond, just southwest of the southern end of the dam, but they are not located within an area proposed for development.

K. Shoreline Protection:

The development site is not located within a coastal bluff area, and is not located within an area with a stability zone of 3 or 4.

L. Geologic Hazardous Areas:

The development site is not located in an area of geologic hazards as indicated on Geologic Hazards Map for Unit II of the Local Coastal Program, and is located 980 feet from the delineated boundaries of the San Andreas Fault zone as identified on the Alquist-Priolo Special Studies Zone Map.

M. Public Works Projects:

The proposed project does not involve improvements to Highway 1 or other public roadways and would not create distraction from the scenic characteristics of the roadway. The applicant has provided a traffic study, which determined that the entrance to the property would provide adequate site distance along State Route One, and the project would contribute an insignificant amount of new traffic. The project has been reviewed by the Department of Public Works, which has found all roadway improvements to be feasible, and an Erosion and Sediment Control Plan that incorporates pre- and post-construction activities would be required to ensure that the construction of a new road would not adversely impact waterways and wetlands. The applicant has also provided a Drainage Plan and all runoff from impervious surfaces would be collected and dispersed on site, away from sensitive habitat areas. The project would be served by an existing and new well, and a new septic system and would not require the expansion of public services.

N. Land Division Standards:

No land division or property line adjustment is proposed as part of this project. The applicant has agreed to enter into an Agricultural Conservation Easement, which would relinquish the development potential for one remaining residential unit under the C-APZ-60 on the subject property.

O. Visual Resources and Community Character:

Impacts to visual resources were analyzed through the use of story poles that were constructed for all proposed structures, and visual simulations were provided from the following public vantage points: Marconi Center Meadow Trail, Mt. Vision Road parking lot at Perth Fire Lane in the Point Reyes National Seashore, Hearts Desire Beach in Tomales Bay State Park (west side of Tomales Bay), northbound Hwy 1, and the California State Parks Boat Launch (east side of Tomales Bay). The applicant has demonstrated that the siting, size, height, and mass of the proposed residence and agricultural structures would not obstruct significant views and visual resources as seen from public viewing points. The structures have been designed to be in keeping with the rural community character, and the residence has been designed to be compatible with the natural contours of the landscape. In accord with Marin County Code Section 22.56.130(O), a condition of approval requires that all new utility lines serving the project site be placed underground.

P. Recreation/Commercial/Visitor Facilities:

The proposed project would not provide commercial or recreational facilities, and the subject property is not governed by VCR (Village Commercial Residential) zoning regulations, which require a mixture of residential and commercial uses.

Q. Historic Resource Preservation:

The project site not located within a historic preservation area.

X. WHEREAS, the Marin County Board of Supervisors finds that the proposed project is consistent with the following mandatory findings to approve a Design Review application (Marin County Code Section 22.82.040) for the following reasons

**A. It is consistent with the countywide plan and any applicable community plan and local coastal program;**

Please refer to Sections IV and V for policy consistency findings.

**B. The proposed development will properly and adequately perform or satisfy its functional requirements without being unsightly or creating substantial disharmony with its locale and surroundings;**

The project as conditioned would perform its functions without being unsightly, creating disharmony with the local and surrounding, or interfering with the development or use of adjacent properties and public lands. As mentioned above in Section I, the project components have been located to allow for agriculture to be the primary use of the property. The project components, as conditioned, are consistent with the Design Standards of MCC 22.57.024I because development has been clustered in the most geologically stable portion of the property, in an area that minimizes visual impacts, and to minimize disruption of agricultural uses. Structures are located over 3,500 feet from a visually prominent ridgeline. The project has been designed in conformance with the recommendations of the provided Geotechnical Report, and the Department of Public Works has reviewed the project for conformance with the requirements of Title 24 in regards to roads and driveways design. Roads have been located in an area that would minimize grading and the need for retaining walls. A Vegetation Management Plan has been provided, and the project would be reviewed during the building permit stage to ensure compliance with all codes regarding fire hazards. All buildings meet the height restrictions for the subject zoning district, and the applicant has provided grading and drainage plans that as condition would control pre- and post-construction activities.

**C. The proposed development will not impair, or interfere with the development, use, or enjoyment of other property in the vicinity, or the orderly and pleasing development of the neighborhood as a whole, including public lands and rights-of-way;**

The project is most visible from northbound traffic on State Route One, for a distance of approximately 400 feet. During this time, the structures would be observable, but for the most part are broken up by mature trees along the highway and on the slope up to the private driveway. The applicant has provided visual simulations and erected story poles of all proposed structures. The visual simulations demonstrated that the structures would have minimal visibility from the Marconi Center Meadow Trail, Hearts Desire Beach, and the Mount Vision Road parking lot at Perth Fire Lane. As a result of the review of the visual simulations and story poles, the applicant revised the site design location by moving the access for the garage to the eastern elevation of the residence, and removing the balcony and its overhanging roofing on the western elevation. This allows for the residence to follow the natural contours of the hillside behind it and to complement the natural landscape. The agricultural structures are sited in an area that is easily accessible to the owners and to the visiting public. The

nearest residence to the property is 100 feet from the property line and 200 feet from the equipment barn. There is a significant amount of vegetation that has been planted along the property line on the adjacent parcel, as well as on the subject parcel. The vegetation is beginning to mature, and within the foreseeable future it should be able to screen headlight activity. In addition, the neighboring residence on APN 106-210-72 faces the west and has no windows or decks towards the subject property.

- D. The proposed development will not directly, or in a cumulative fashion, 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 proposed project is located entirely on the subject property and would not impact further investments in the vicinity, since the project would generate an insignificant amount of new traffic and would not interfere with agricultural operations on other properties.

- E. The proposed development will be properly and adequately landscaped with maximum retention of trees and other natural material;**

The project does not propose the removal of any trees or major vegetation. No landscape plan has been provided. The residence would be located in an area where the existing vegetation does not provide adequate landscaping to allow for the residence to fully integrate into the natural setting, rendering it inconsistent with this finding. Therefore a condition of approval has been added that requires a landscape plan. The landscape plan would require the integration of native Marin County evergreen shrubs and trees along the northern, western, and southwestern elevations of the residence, rendering it consistent.

- F. The proposed development will minimize or eliminate adverse physical or visual effects which might otherwise result from unplanned or inappropriate development, design or juxtaposition. Adverse effects may include, but are not limited to, those produced by the design and location characteristics of:**

- 1. The scale, mass, height, area, and materials of buildings and structures;**

The proposed structures meet all height requirements of the subject zoning district, and the applicant proposes colors and materials that are in keeping with the natural environment. As mentioned in C above, the residence has been designed to follow the natural contours of the hillside behind it and to complement the natural landscape.

- 2. Drainage systems and appurtenant structures;**

The applicant has provided a drainage plan that shows that all runoff would be collected and distributed to infiltrate on-site. The road has been designed so that retaining walls would not be needed.

- 3. Cut and fill or the reforming of the natural terrain, and structures appurtenant thereto such as retaining walls and bulkheads;**

The project has been designed to minimize the amount of cut and fill. The project as designed proposes 1,710 cubic yards of cut, and 1,230 cubic yards of fill. The remaining soil would be distributed on-site. All retaining walls for structures would face inward, and would have minimal visibility to the public.

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

The proposed project is located entirely on the subject parcel and would be conditioned to ensure that proposed construction would not be located within rights-of-way or affect the movement of people or vehicles. The project would not impede the safe movement of wildlife.

**5. Other developments or improvements which may result in a diminution or elimination of significant sun and light exposure, views, vistas and privacy.**

As noted in B and C above, the project would not result in the loss of light, views, or privacy to adjacent residences.

**G. The proposed development may contain roof overhang, roofing material, and siding material that are compatible both with the principles of energy-conserving design and with the prevailing architectural style in the neighborhood.**

The applicant has proposed a structure that would meet the Green Building Residential Certification Rating of "Platinum" and the project would be required to meet Title 24 and Ordinance 3492 during the building permit review.

XI. WHEREAS, the Marin County Board of Supervisors finds that the proposed project is consistent with the mandatory findings to approve the Use Permit application (Marin County Code Section 22.88.020.3I) as stated below.

**The establishment, maintenance or conducting of the use for which a use permit is sought will not, under the particular case, be detrimental to the health, safety, morals, comfort, convenience, or welfare of persons residing or working in the neighborhood of such use and will not, under the circumstances of the particular case, be detrimental to the public welfare or injurious to property or improvements in the neighborhood.**

The proposed brandy facility and greenhouse are subject to Use Permit approval in accordance with MCC 22.57.033.9I. These facilities would not be a detriment to the public or neighborhood because the brandy facility would have limited, reservation-only public tours with no tastings. No buses or vans would be allowed, and no signage is proposed. The appointment-only tours would be limited to a maximum of three per week, between the hours of 11:00 am and 3:00 pm, and each tour would be limited to a maximum of eight adults ages 21 and over only. On-site sales would be allowed. The total square footage of the retail sales area would be approximately 140 square feet, and the total size of the brandy barn would be 1,456 square feet. The greenhouse would be a 20-foot by 30-foot, tube framed structure with a polyfilm cover and no public sales would occur at that site.

A traffic study was provided that concluded that brandy tours would result in an average of 15 new trips per week, which would result in a maximum increase of 0.59% in the daily volume of traffic. Traffic data for the last 7 years was reviewed, and it was found that there have only been two collisions reported at this location, and no recurring patterns were found. The sight distance from the access road at State Route One to the north or south is greater than 350 feet and exceeds the Caltrans minimum sight standards of 250 feet.

Therefore, the brandy facility would not result in a use that could result in adverse impacts to the public due to increased traffic congestion. Further, the brandy barn is sited to be easily accessible to those residing and working on the property and those visiting the site.

The greenhouse and brandy barn are located entirely on the subject property and outside of all sensitive habitat areas. The conditions of approval would require the applicant to provide a permit from the State Department of Alcohol and Beverage Control, and at the building permit stage all structures would be reviewed to ensure compliance with all State requirements for handicapped accessibility, and fire regulations. The facility would be served by the proposed new septic system, which has been reviewed by the Environmental Health Service, and is found to be consistent with all applicable Marin County Codes and State regulations, and the conditions of approval require that the applicant receive final approval from the State Water Resources Control Board for the wastewater disposal plans for the brandy facility prior to construction. In addition EHS has found that the existing well exceeds the estimated water demand for the project, and the proposed second well, located in a different location, may reduce stress on the aquifer and does not pose a concern.

XII. WHEREAS, the Marin County Board of Supervisors denies the Kivel Appeal for the following reasons:

***The appellant asserts that the Planning Commission inappropriately used the Categorical Exemption in Section 15303, Class 3 from CEQA. The appellant states that this section is for "single-family residences and accessory structures," and "the equipment barn, brandy barn, and hop barn cannot be classified as accessory to a single-family home, and that the residence must be accessory to the agricultural use."***

California Environmental Quality Act Guidelines, Section 15303, Class 3 (New Construction or Conversion of Small Structures) exempts the "construction and location of limited numbers of new, small facilities or structures." Examples of this exemption include but are not limited only to, one single-family residence and accessory (appurtenant) structures.

Marin County Interim Code Section 22.57.0301 (C-APZ: Coastal Agricultural Production Zone Districts) states, in part, that "The principal use of lands in the C-APZ districts shall be agriculture. Development shall be accessory, incidental, or in support of agricultural land uses..." The project applicant submitted a development application for the establishment of an agricultural operation. The Planning Commission reviewed and approved the proposed Agricultural Management Plan and determined that the primary use of the property would be agriculture, and all proposed structures would be accessory to the agricultural operation. The Planning Commission also determined that the construction of appurtenant agricultural improvements and a single-family residence are "minor and incidental" because they are accessory to the primary agricultural land use. Consequently, the proposed structures fall under the types of structures covered by the Categorical Exemption.

The Planning Commission acted appropriately in issuing a Categorical Exemption from CEQA because the project does not result in any potentially significant impacts. Section 15378 of the CEQA Guidelines requires that the whole of the action is considered during the review process. The project qualifies for an exemption because the project has been carefully designed to avoid sensitive habitat areas, special status species, and no development would occur in areas that contain known archaeological resources. Finally, the appellant has not provided any evidence based upon factual data that the project would result in significant impacts to the environment.

***The appellant asserts that the project requires a Master Plan because the waiver requirements under Section 22.56.026I do not apply to the project since more than one single-family dwelling unit is proposed and the project cannot be classified as "minor or incidental in nature."***

The Planning Commission found that a Master Plan waiver can be granted and determined the project to be "minor and incidental in nature and within the intent and objectives of the local coastal plan" pursuant to Interim Code Section 22.56.026(C)I. This determination was made on the basis that the project as conditioned entails the following components: 1) agriculture would be the primary use of the property and the project would preserve 95% of the land for agriculture; 2) the conveyance of an Affirmative Agricultural Easement to the County would relinquishing all residual residential development potential on the property; 3) the residence and non-agricultural uses would be located on less than 1% of the total land area and clustered near existing development; and 4) all development is proposed outside of wetland, stream, and riparian protection areas. The other findings for Master Plan waiver are not required to be made so long as at least one finding is relevant to the project.

***The appellant asserts that the Planning Commission failed to adequately address the findings of Section 22.56.130I(A)(1) Water Supply, and Section 22.56.130I(O) Visual Resources and Community Character of the Marin County Interim Code. The appellant states that the Planning Commission failed to address any of the requirements for a new domestic well, and that the proposed equipment barn and driveway is "located atop a prominent ridge" and impede public views, and that reuse of an existing road would best preserve visual resources.***

Marin County Interim Code Section 22.56.130.A (Water Supply) states that "coastal project permits shall be granted only upon a determination that water service to the proposed project is of an adequate quantity and quality to serve the proposed use," that "individual water wells shall be allowed within the zone in conformance with Chapter 7.28 (Domestic Water Supply) of the Marin County Code," and that "wells or water sources shall be at least one hundred feet from all property lines." The Environmental Health Services, Water Division has reviewed the proposed project for conformance with Chapter 7.28 of the Marin County Code and has determined that based on the information provided by the applicant, which includes well yield data and plans that show the location of all existing and proposed new wells, the existing well can accommodate all proposed uses and meet fire and safety requirements. As an added measure, a new well would also be used to serve the development on the northerly portion of the property. The new well would not be located in an area that has coastal resources and would be over 100 feet from all property lines.

Marin County Interim Code Section 22.56.130I (O) states that "development shall be designed and sited as not to impair or obstruct existing coastal views from Highway 1." It also states that "structures shall be designed to follow the natural contours of the landscape and sited so as not to obstruct significant views as seen from public viewing places." The section makes no reference to development located "atop a prominent ridge." The subject property ranges in elevation from 20 to 490 feet above sea level. The siting of the equipment barn is at approximately 98 feet, which is roughly the same elevation as the appellant's residence that is located approximately 200 feet to the north. The road follows the natural contours of the hillside and terminates at approximately 100 feet in elevation. No part of the development is located between Highway 1 and Tomales Bay. The Planning Commission found that the location of the equipment barn and road do not obstruct significant views as seen from public viewing places,

and that use of the proposed new road is preferable as it would avoid unnecessary site disturbance and modifications to the existing road in order to protect wetland, stream, and riparian protection areas and to reduce site disturbance.

**SECTION II: CONDITIONS OF PROJECT APPROVAL**

NOW, THEREFORE, BE IT RESOLVED that the Marin County Board of Supervisors hereby approves the Dillon Vision (Brader-Magee) Coastal Permit, Design Review, and Use Permit pursuant to Marin County Code Chapters 22.57I (Coastal Permit), 22.82I (Design Review) and 22.88I (Use Permit), subject to the following conditions:

Marin County Community Development Agency, Planning Division

1. This Coastal Permit, Design Review, and Use Permit approval authorizes the construction of the following agricultural and residential improvements.

Approval for the construction of a new single-family residence and garage, equipment barn, brandy production barn, two sheep shelters, green house, and hop barn on the 149.76-acre parcel. The lot will be managed for the following agricultural uses: livestock production, hop production, grape and limited brandy production, and crops for local farmers' markets. A new road will be constructed near the northwestern entrance, off of the private access road, and will traverse the northern property line, and will serve the equipment barn and residence. Also approved is a new well located near the northern property line, five 4,950 gallon water tanks for fire suppression, agricultural use, and domestic use, and three 250-gallon propane tanks near the equipment barn, residence, and brandy barn. The proposed structures will maintain the following setbacks from the nearest property lines: 1) residence, side (north) 223 feet; 2) equipment barn, side (north) 71 feet; 3) brandy barn, front (west) 86 feet; 4) sheep shelter #1, side (south) 133 feet sheep; 5) hopyard shelter, side (south) 289 feet; and 6) shelter #2, front (west) 166 feet. The below chart summarizes the approved size of all new structures.

Table 1: Summary of Development Characteristics

	Floor Area (Sq.Ft.)	Coverage (Sq.Ft)	Maximum Height (Feet)
<b>Residence</b>			
Single-family Residence	3,165		22
Attached Garage	648		
<b>Agricultural Structures</b>			
Brandy Barn	1,456	496	14.8
Equipment Barn	1,792		15
Shed		960	13.5
Hops Shelter	N/A	896	15
Sheep Shelters # 1 and # 2	N/A	1,500	7
Greenhouse	N/A	600	8.5
<b>Land Use</b>			
Hop Cultivation	N/A	6 +/- acres	
Grazing	N/A	50 +/- acres	
Vineyard	N/A	6 acres	
Greenhouse and Crop Garden	N/A	2.3 acres	
Hopyard	N/A	6 acres	

### Residential Development

The residence will be finished in batten-board/shiplap wood siding that will be dark tan in color, and the window trim and roof will be dark green.

### Agricultural Operation

The brandy barn and equipment barn will be finished in colors and materials similar to the proposed residence, and all exterior lighting will be downward directed and hooded. The equipment barn will be used to store implements and equipment for the agricultural operation. The hops shelter and sheep shelters will have non-reflective metal roofing colored green.

### Brandy Production

Use Permit approval is granted to allow for the grapes grown on site to be distilled and aged to produce an estate brandy that can be sold and distributed during on-site, reservation-only educational tours. The only educational tours permitted by this approval are those associated with the brandy facility. The appointment-only tours are limited to a maximum of three tours per week, between the hours of 11:00 am and 3:00 pm, with a maximum per tour of eight adults (only) ages 21 and over. No on-site consumption is allowed.

### Site Improvements

Site improvements include construction of: (1) an approximately 850 foot long driveway off a private driveway that parallels State Route One, leading to the equipment barn and residence; (2) a sewage disposal system; (3) five 4,950-gallon water storage tanks; (4) new well near the northern property line; and (5) underground utilities. Coastal Permit approval is granted for the new domestic well. The existing well will be used for agricultural activities, and the proposed new well will serve the residence, brandy barn, equipment barn, and vineyard. In addition, a new septic field is approved to be installed near the northern property line, and all sewage produced from the brandy facility, equipment barn, and residence will be pumped uphill to this location. The new driveway will be constructed of a coarse aggregate base and out-sloped to a grass-lined swale that will allow for water infiltration.

The property is located at 17990 State Route One, Marshall, and is further identified as Assessor's Parcel 106-22-20.

2. Plans submitted for a Building Permit shall substantially conform to plans identified as "Exhibit A," entitled, "Brader-Magee Farm" prepared by ILS Associates, dated August 24, 2009 and received on October 16, 2009, consisting of 14 sheets, and with plans prepared by Ronald L. Casassa, entitled "Brader-Magee Farm," dated May 19, 2009, and received on October 16, 2009, consisting of 16 sheets, with revisions received on January 6, 2010, consisting of 5 sheets, and on file with the Marin County Community Development Agency.
3. PRIOR TO ISSUANCE OF ANY 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. PRIOR TO ISSUANCE OF A GRADING PERMIT, the proposed berm shown on plans prepared by ILS Associates shall be eliminated. All references to the berm on Sheets 2 through 4, and 6 shall be removed from building permit plans. All road grading shall be consistent with the natural contours of the landscape, and fill shall not be placed near the adjacent property at APN 106-210-72 or within the Stream Conservation or Wetland Conservation Areas.

5. PRIOR TO FINAL INSPECTION OF THE RESIDENCE,, the applicant must receive a Final Inspection approval of the equipment barn and a sheep shelter.
6. PRIOR TO FINAL INSPECTION OF THE RESIDENCE, the applicant shall revise the Agricultural Management Plan (Agriculture Production and Stewardship Plan for 17990 Shoreline Highway at Marconi Cove, May 2009) to state that no grazing activity will occur within the Stream Conservation or Wetland Conservation Area on the property, unless the applicant submits evidence that livestock grazing was occurring in the wetlands on approximately April 1, 1981.
7. All agricultural uses on the proposed property shall be in substantial conformance with the uses approved in the Revised Agricultural Management Plan.
8. PRIOR TO FINAL INSPECTION OF THE RESIDENCE, the applicant shall submit an offer for an Agricultural Conservation Easement and Declaration of Restrictions, using the model Agricultural Conservation Easement approved by the Marin County Board of Supervisors, with provisions for a variety of perpetual uses and restrictions. The terms of the Easement include: 1) the imposition of a perpetual obligation for the active conduct of agricultural production within a designated Agricultural Production Zone that will be delineated and recorded in accordance with the Revised Agriculture Management Plan and in conformance with mandatory agricultural provisions; 2) affirmative rights and interests conveyed, whereby an outside agricultural operator may lease the subject property at reasonable rates in the event the owner of the property is unable or unwilling to continue active agricultural production on the property; 3) establishment of permitted and prohibited uses, and practices to which the property owner will be bound to adhere; and 4) extinguishment of all residential potential under zoning on the property. Should the owners fail to utilize the property for agricultural production or fail to select an agriculture production operator, the County may pursue obtaining an operator and/or enter into a lease on behalf of the Owners. Leased lands will be managed as grazing range for livestock, at a sustainable level based on the Marin County Agriculture Commissioner's guidelines for the available forage present and the residual matter required for prudent stewardship of the land.
9. PRIOR TO FINAL INSPECTION OF THE BRANDY BARN, the applicant shall provide written verification from the State Department of Alcohol and Beverage Control granting approval for the on-site sale of alcohol.
10. All flashing, metal work, and trim shall be painted or coated with an appropriately subdued, non-reflective color.
11. PRIOR TO ISSUANCE OF A BUILDING PERMIT FOR THE RESIDENCE, the applicant shall submit a Landscape and Irrigation Plan to the Community Development Agency Director for review and approval that integrates the use of coastal native evergreen shrubs and trees along the northern, western, and southwestern elevations of the residence. The plan shall incorporate vegetation that is a minimum container size of 24 inches, and all plantings shall be labeled by their scientific and common names.
12. 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.

13. All construction activities shall comply with the following standards:
  - a. Construction activity is only permitted between the hours of **7:00 a.m. and 6:00 p.m., Monday through Friday, and 9:00 a.m. and 5:00 p.m. on Saturday.** No construction shall be permitted on Sundays and the following holidays: New Year's Day, President's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day. Loud noise-generating construction-related equipment (e.g., backhoes, generators, jackhammers) can be maintained, operated, or serviced at the construction site from 8:00 a.m. to 5:00 p.m. Monday through Friday only. Minor jobs (e.g., painting, hand sanding, sweeping) with minimal or no noise impacts on the surrounding properties are exempted from the limitations on construction activity. 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.
14. It shall be the responsibility of the applicant to store all construction materials and equipment at the site (or secured at an approved off-site location) in such a manner as to permit safe passage for vehicular traffic at all times. Every effort shall be made by the holder of the building permit to strictly limit the number of vehicles used to transport workers and materials to the site to the minimum number necessary.
15. BEFORE FINAL INSPECTION OF THE RESIDENCE, the applicant shall install all landscaping and an automatic drip irrigation system in accordance with the approved landscape plan. The applicant shall call for a Community Development Agency staff inspection of the landscaping at least five working days before the anticipated completion of the project. Failure to pass inspection will result in withholding of the Final Inspection and imposition of hourly fees for subsequent reinspections.
16. BEFORE FINAL INSPECTION, the applicant shall submit a signed Statement of Completion confirming that the project has been designed and constructed in compliance with all of the measures that were used to meet the "Platinum" rating under the Marin Green Home: New Home Green Building Residential Design Guidelines.

17. BEFORE FINAL INSPECTION OF THE RESIDENCE, the Community Development Agency shall record this Notice of Decision, including all conditions of project approval, with the Marin County Recorder's Office to advise future property owners of the special use/development restrictions.
18. 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.
19. 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 this application, for which action is brought within the applicable statute of limitations.
20. 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.
21. The Dillon Vision (Brader-Magee) Use Permit is subject to revocation procedures contained in Chapter 22.88.0401 of the Marin County Code in the event any of the terms of this approval are violated or if the uses are conducted or carried out in a manner so as to adversely affect the public health, safety, morals, comfort, convenience, or welfare of the County.

Marin County Community Development Agency, Environmental Health Services (EHS) Food Service

22. PRIOR TO ISSUANCE OF A BUILDING PERMIT, the applicant shall submit complete, easily readable plans drawn to scale and specifications to the Environmental Health Services for review, and shall receive plan approval before starting any new construction or remodeling of a tasting room or any facility for use as a retail food facility.

Marin County Community Development Agency, Environmental Health Services (EHS) Sewage

23. Applicant to submit a complete Report of Waste Water Discharge to the State Regional Water Quality Control Board, (Blair Allen), for the waste water generated by the Brandy production.

24. PRIOR TO ISSUANCE OF A BUILDING PERMIT FOR THE BRANDY BARN, the RWQCB must also approve the Brandy production waste disposal plan.

Marin County Community Development Agency, Environmental Health Services (EHS) Water

25. PRIOR TO ISSUANCE OF ANY BUILDING PERMIT, the applicant must submit an application to EHS to operate one or both wells in a domestic water system, and obtain a valid domestic water system permit. A detailed water system map will be required for the water system permit. Domestic storage tank(s) capacity shall be IN ADDITION TO fire control requirements.

26. Fencing requirements shall be determined during an on site inspection of the wells. The minimum distance between the fence and well source (25' to 100 ft.) can be determined during the new well's sanitary seal inspection.

27. PRIOR TO FINAL INSPECTION, the water system must be completed and inspected.

Department of Public Works – Land Use & Water Resources

28. All improvements shall conform to Title 24 of the Marin County Code or as approved by DPW and the Fire Department. Site plans shall be drawn to scale acceptable to the County (generally 1"=20' or greater).

BEFORE ISSUANCE OF A BUILDING PERMIT, the applicant shall comply with the following:

29. Plot proposed easements, if any, on the site plan.

30. Parking requirements for the brandy barn shall comply with MCC 24.04.340 and MCC 24.04.360. Include a table summarizing proposed uses and the minimum required parking spaces based on the aggregate of individual uses.

31. If brandy bar will be open to the public the following items will apply.

- a. Revise accessible parking stall location to comply with federal and state guidelines.
- b. Add the following note on the site plan, "Accessible path of travel as indicated on plan is a barrier free access route without any abrupt level changes exceeding ½ inch beveled at 1:2 max slope, or vertical level changes not exceeding ¼ inch max and at least 48-inches wide. Surface is slip resistant, stable, firm, and smooth. Cross slope does not exceed 2% and slope in the direction of travel is less than 5% unless otherwise indicated."
- c. Add the following note on the site plan, "Contractor to verify that all barriers in the path of travel have been removed or will be removed under this project, and path of travel complies with CBC 1133B."
- d. Provide accessible parking stall signs
- e. Provide "Tow-Away" signs along with the contact information.
- f. Plans must clearly show the path of travel.
- g. Provide a continuous bank of detectable warning surface where a walk crosses or adjoins a vehicular way, and the walking surface is not separated by curbs, railings, or other elements.
- h. The minimum improved width of a driveway serving non-residential uses shall be eighteen feet. MCC 24.04.260 (d).

32. Driveways over eighteen percent shall be surfaced with PCC and given a broomed or otherwise roughened finish MCC 24.04.300. Applicant shall consider utilizing pervious material where slopes are under eighteen percent.

33. Submit a manure management plan and fertilizer control plan in accordance with the best management practices. For additional information you may reference the following links:  
[www.mcstoppp.org](http://mcstoppp.org) less toxic pest control,  
<http://mcstoppp.org/acrobat/Horse%20Manure%20Mangement.PDF>

34. Specify the total area of site disturbance on the site plan. If the area exceeds 1 acre, provide a copy of the Notice of Intent filed with the State Water Resources Control Board.

35. A separate building permit is required for site retaining walls with a height of 4 feet or taller or 3 feet when backfill areas is sloped or has a surcharge (measured from the bottom of footing to the top of the wall).
36. A registered engineer shall design the site retaining walls, drainage and grading plans. Plans must have the engineer's signature and stamp.
37. Provide engineering calculations for the retaining walls, calculations shall show a minimum of 1.5 factor of safety for sliding and overturning.
38. Provide a cross-sectional details for the proposed walls.
39. Submit an Erosion and Siltation Control Plan which addresses both interim (during construction) and final (post construction) control measures. MCC 24.04.625 and 24.04.627.

Marin County Fire Department

40. All conditions must be met to comply with California Public Resources Code Section 4290 and 4291, and the 2001 California Fire Code Sections 901.2 - 902.2.4.2, 903, and 16, and 17 of Appendix II-A, including access, addressing, defensible space, and fire protection water supply, propane tank installation (Note that if a gate is contemplated, Fire Department approval for gates on the access road and/or driveway is required. If the gate is locked in any fashion, a MCFD Knox rapid entry system is mandatory).
41. Fire Department holds will be placed on the building permit for this project. The defensible space must be in-place prior to releasing the Fire Department foundation inspection hold. The building department will not inspect the foundation before the fire department has released the hold. The final hold will be lifted when all Fire Department requirements are met, including payment of all required fees.

**SECTION III: VESTING AND PERMIT DURATION**

NOW, THEREFORE, BE IT FURTHER RESOLVED that the Dillon Vision (Brader-Magee Coastal Permit, Design Review, and Use Permit approvals must be vested by complying with the conditions of approval and by securing a building permit and other permits for all of the approved work and by substantially completing the improvements in accordance with the secured permits by May 11, 2012, or all rights granted in this approval shall lapse unless the applicant applies for an extension and pays fees at least 30 days before the expiration date above and the Deputy Zoning Administrator approves it. An extension of up to four years may be granted for cause pursuant to Section 22.56.050I, 22.82.130I, and 22.88.050I of the Marin County Interim Code.

The Dillon Vision (Brader-Magee) Use Permit shall be valid for the remaining life of the brandy barn and greenhouse, so long as the current owner or subsequent owners of the subject property comply with the conditions of project approval. In the event that the terms of the Dillon Vision Use Permit are violated or that the approved uses are carried on in such a manner as to adversely affect the health, welfare, or safety of persons residing in the neighborhood, the Dillon Vision Use Permit could be revoked or suspended in accordance with the terms and provisions of Chapter 22.88I of the Marin County Interim Code.

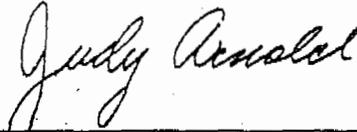
**SECTION V: VOTE**

**PASSED AND ADOPTED** at a regular meeting of the Board of Supervisors of the County of Marin held on this 11th day of May, 2010, by the following vote:

AYES: SUPERVISORS Harold C. Brown, Jr., Charles McGlashan, Steve Kinsey, Judy Arnold

NOES: NONE

ABSENT: SUPERVISOR Susan L. Adams



\_\_\_\_\_  
PRESIDENT, BOARD OF SUPERVISORS

SECRET  
\_\_\_\_\_  
CLERK



\_\_\_\_\_  
CLERK



A-2 MAR-10-022

# Ragghianti|Freitas LLP

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JUN 01 2010

CALIFORNIA  
COASTAL COMMISSION  
NORTH CENTRAL COAST

June 1, 2010

Via Hand Delivery

Chairperson Bonnie Neely and Commissioners  
California Coastal Commission  
45 Fremont Street  
Suite 2000  
San Francisco, CA 94105-2219

**Re: Appeal of Resolution of the Marin County Board of Supervisors  
Resolution No. 2010-36 Approving With Conditions The Dillon  
Vision (Brader-Magee) Coastal Permit, Design Review, And Use  
Permit  
17990 State Route 1, Marshall (Assessor's Parcel 106-220-20)**

Dear Chairperson Neely and Commissioners:

On behalf of our clients, Scott Kivel and Lia Lund, we hereby appeal the above-referenced Resolution adopted by the Marin County Board of Supervisors. We respectfully request that the Commission grant our appeal and revoke the discretionary land use permits granted by the County to the project applicant.

The subject property is an environmentally sensitive habitat consisting of 150 acres of undeveloped rolling hills in Marshall, visible from many locations around and on Tomales Bay as well from Highway 1. (Photographs and maps of the subject property are attached hereto as **Exhibit A.**) A pristine blue line stream that courses through the entire property empties into the Bay immediately across Highway 1 from the property. (The stream and wetlands on the property are depicted on the attached **Exhibit B.**) The County has allowed the project applicant to *fence the stream and adjacent wetlands* -- thus inhibiting wildlife access to the area. **The property is a habitat for the California red-legged frog, foothill yellow-legged frog and western pond turtle, and there is even potential for freshwater shrimp, Coho salmon, and steelhead at the site.**

RODRIGO D. DIAS  
RILEY F. HURD III  
SARAH N. LÉGER  
ERIC STERNBERGER  
RICHARD T. FRANCESCHINI

DAVID F. FEINGOLD  
ROBERT F. EPSTEIN  
PATRICK M. MACIAS  
HERBERT M. ROWLAND  
GARY T. RABALA

OF COUNSEL:  
JOHN RALPH THOMAS, JR.

Exhibit No. 6

A-2 MAR-10-022 (Magee & Dillon Vision LLC)  
Appeal from Scott Kivel and Lia Lund

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The project is an unprecedented commercial brandy production facility covering approximately 10,000 square feet of property in seven separate structures including, but not limited to, two barns, a residence, five 5,000 gallon water tanks, and a commercial septic system designed to pump distillery effluent upslope to a distant holding tank before it is discharged into the soil.

Inexplicably, the County *waived* its own master plan requirement set forth in the Unit II Local Coastal Plan ("LCP"). By failing to subject the project to legally-required master plan and environmental review, the County ensured that its administrative record lacks sufficient evidence to support numerous findings mandated by the LCP.

We respectfully request that the Commission hear this appeal because the County's action has created a substantial issue concerning conformance with the LCP. Cal. Pub. Res. Code § 30603(b)(1).

**A. The Project.**

The project involves new construction of the following buildings and other improvements:

**1. A New Barn That Would Stand Out In Sharp Relief Above The Currently Undeveloped Grassland Hills.**

The applicant has sited his proposed new barn near the crest of a prominent knoll, so that the upper portion of the 15-foot tall structure would be easily visible from Tomales Bay, Highway 1, and locations across Tomales Bay in Inverness. The applicant refused to consider moving the barn slightly down slope, which would effectively hide the barn from public view. The barn would cover more than 2700 square feet of the property.

**2. A New Paved Roadway Atop A Grassland Knoll That Would Afford The Applicant A Grand Entrance While Unnecessarily Subjecting The Community To A Public View Of All Vehicles Accessing The Residence.**



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There is an existing farm road on the property that runs directly to the site of the proposed residence and also accesses the two proposed barns. The existing road is entirely hidden from public view, but the applicant does not want to use that road for access to the new structures. Instead, the applicant sought and obtained permission to construct an entirely new paved road that would climb a steep knoll and then run along the northern property boundary, across the flow of a seasonal seep. As viewed from Tomales Bay, the new road would cut into the hillside in an unnatural line, substantially disturbing the viewshed.

**3. A Second Barn Located Immediately Adjacent To A Stream Conservation Area Is Proposed To Host As Many As 24 Public Visitors Every Week For Brandy "Sniffing" Tours.**

Though the applicant has presented no evidence that he can successfully grow grapes in this windy and foggy location where there is no history of such a crop, the County has permitted the applicant to manufacture brandy and to market it to consumers who will be invited to visit the property three days a week. There is evidence in the administrative record, discussed below, that grape growing on the property will not succeed. If so, then the alternative would be to transport grapes to the site on trucks, thus converting the proposed agricultural operation to a commercial use. The brandy production and public tours are designed to be housed in a second barn -- located immediately adjacent to the stream conservation area -- that would cover more than 2,000 square feet of additional property.

**4. A Single-Family Residence.**

The applicant proposes to construct a new residence that would cover more than 3,800 square feet of property.

**5. Other Structures Will Be Strewn In Various Locations On The Property.**

In addition to the above, the applicant proposes to construct five 5,000 gallon water tanks; a hops shelter, two sheep shelters, a greenhouse covering a total of nearly 3,000 square feet of property; a commercial septic system designed



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to pump and discharge distillery effluent as well as human waste; and a new well at a still-undefined location.

**B. The County Unlawfully Granted The Project A Master Plan Waiver, Improperly Relying Upon The Offer Of A Conservation Easement Which The LCP Clearly States Should Be *Part Of An Approved Master Plan, Not A Substitute For It.***

The LCP plainly states that a permanent conservation easement is a required *condition* of an approved master plan:

**"Conditions. As *part* of the approval of a master plan, the following conditions *shall* be required:**

a. Development shall be located close to existing roads and shall be sited to minimize impacts on scenic resources, wildlife habitats and streams, and adjacent agricultural operations.

**b. Permanent conservation easements over that portion of the property not used for physical development or services shall be required to promote the long-term preservation of these lands."**

(LCP at p. 99, emphasis added.)

In stark contradiction to this requirement, the County granted a master plan waiver in *exchange* for a conservation easement designed to prohibit development on the property other than the proposed brandy manufacturing facilities and single family residence. Multiple statements made on the record reflected County staff's fundamental misunderstanding on this point. Apparently, staff believes that an applicant's grant of a conservation easement warrants a waiver from the master plan requirement.

In the course of its failure to impose a required master plan upon the project, the County also ignored its own Code requirement for a master plan waiver. The County Code requires that prior to granting a master plan waiver, a finding must be made -- based on evidence in the administrative record -- that



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the proposed project is "*minor and incidental*" in nature. See, Marin County Code Section 22.56.026I. Of course, there is no plausible means that such a finding could be made in connection with the proposed brandy distillery operation. **The County's solution was simply to ignore its own requirement.**

By unlawfully waiving master plan approval, the County avoided confronting the following master plan findings required by the LCP, none of which could be made for the proposed project:

"All land divisions and developments in the APZ shall require an approved master plan showing how the proposed division or development would affect the subject property. In reviewing a proposed master plan and determining the density of permitted units, the County shall make all of the following findings:

\*\*\*\*\*

b. The development is necessary because agricultural use of the property is no longer feasible. The purpose of this standard is to permit agricultural landowners who face economic hardship to demonstrate how development on a portion of their land would ease this hardship and enhance agricultural operations on the remainder of the property. *[The project sponsor, Tony Magee, is the owner of Lagunitas Brewery, a \$25 million commercial brewery. There was no discussion of "economic hardship" in connection with this application, nor could there be any such assertion made with a straight face.]*

\*\*\*\*\*

d. Adequate water supply, sewage disposal, road access and capacity and other public services are available to service the proposed development after provision has been made for existing and continued agricultural operations . . . . *[See discussion below at Section C.3.]*

\*\*\*\*\*

f. The proposed . . . development will have no significant adverse impacts on environmental quality or natural habitats, including stream or riparian habitats and scenic resources. In all cases, LCP policies on streams and natural resources shall be met. *[See discussion below at C.1.]*



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(LCP at p. 98-99)

In summary, the County incorrectly failed to demand an LCP-required master plan, and compounded its error by also failing to make locally required Code findings for a master plan waiver.

**C. The County's Decision To Grant Permission To The Project Raises Substantial Issues Concerning Numerous LCP Policies.**

**1. The County Failed To Study Any Potential Environmental Impacts That Would Be Caused By The Proposed Fencing Along The Blue Line Stream And The Brandy Barn Located Adjacent To The Stream Conservation Area.**

The administrative record reflects that the subject property is a habitat for the California red-legged frog, foothill yellow-legged frog and western pond turtle, and that there is even potential for freshwater shrimp, Coho salmon, and steelhead. The County conducted *no* environmental study of the potential impacts that would be caused by the applicant's proposed construction of livestock fencing adjacent to the stream and wetlands area. **Thus, there is no information in the record concerning when and how the fencing proposed for the stream conservation area would obstruct deer, rabbits, and other wildlife from accessing the stream and wetlands.**

In addition, the proposed brandy barn is located immediately adjacent to the stream conservation area. As with the proposed fencing, there is no information concerning how the noise and other impacts from the brandy manufacturing and tourism operation would impact the adjacent wildlife.

The following LCP policies are implicated by the County's complete abdication of its obligation to preserve natural resources within Unit II:

- "The protection of natural resources in the coastal zone is a major emphasis of the Coastal Act." (LCP at p. 63)



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- "Tomales Bay has a record of coliform contamination during the rainy season when freshwater runoff is greatest. There are numerous sources of coliform in the Bay, including . . . domestic animals and septic systems." (Id., p. 64)
- "Streams and creeks are sensitive habitats for many species of birds and fish." (Id., p. 65)
- "Other issues of particular concern in relation to streams in Unit II are sedimentation and water pollution, both in the streams themselves and downstream . . . As a result, habitats are damaged by streambank erosion, the trampling of vegetation, sedimentation to streams, and contamination through runoff." (Id., p. 67)
- "Other sensitive habitats include habitats of rare or endangered species and unique plant communities. Development in such areas may only be permitted when it depends upon the resources of the habitat area. Development adjacent to such areas shall be set back a sufficient distance to minimize impacts on the habitat area. Public access to sensitive habitat areas, including the timing, intensity, and location of such access, shall be controlled to minimize disturbance to wildlife. **Fences . . . which significantly inhibit wildlife movement, especially access to water, shall be avoided.**" (Id., p. 75, emphasis added)

The County's failure to study the project's impacts on natural resources creates a substantial issue concerning conformance of the application with the LCP.

### **2. This Project Would Create Adverse Visual Impacts Directly In Conflict With The LCP In A Viewshed That Includes The Point Reyes National Seashore.**

The LCP contains substantial policies designed to protect the unblemished hills of Marshall, as follows:



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- "[T]he visual character of the east side of Tomales Bay . . . is largely open grasslands. Much of this area is visible from Highway 1 and other public viewing points across Tomales Bay, including the Point Reyes National Seashore. Clustered development or reduced densities would better protect the scenic quality of this area." (*Id.*, p. 90)
- "Tomales Bay and adjacent lands in the Unit II coastal zone form a scenic panorama of unusual beauty and contrast. The magnificent visual character of Unit II lands is a major attraction to the many tourists who visit the area, as well as to the people who live there. **New development in sensitive visual areas, such as along the shoreline of Tomales Bay and on the open rolling grasslands east of the Bay, has the potential or significant adverse visual impacts unless very carefully sited and designed.**" (p. 194, emphasis added)
- "The height, scale, and design of new structures shall be compatible with the character of the surrounding natural or built environment. Structures shall be designed to follow the natural contours of the landscape and sited so as not to obstruct significant views as seen from public viewing places." (p. 206a)

As discussed above, the applicant has unnecessarily sited the proposed equipment barn such that it would rise high above a prominent knoll on the currently pristine grasslands on the property. The proposed new structure would be visible from many locations across Tomales Bay, on the Bay, and from Highway 1. Though the visual simulations provided by the applicant were not subjected to environmental review, and were on their face insufficient, they nevertheless reflected the bald fact that this unblemished knoll would be crowned by a structure that would not "follow the natural contours" and would obstruct significant views of the Marshall hills. To the contrary, the roofline of the proposed residence is sited below the ridge line so that it is less visible. There is no reason why the roof line of the equipment barn could not similarly be lowered to an elevation so that the structure would be substantially less obvious when viewed from Tomales Bay.



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The applicant admits that he intends to access the vineyard by using the existing farm road on the property, but he does not intend to improve that road. Instead, he has proposed a new road sited at the highest possible elevation. The applicant argued that improvement of the existing farm road -- which is totally hidden from public view -- would require a cut and fill operation that is discouraged by County policy. **No engineering calculations were submitted to support this theory.** Instead, the County simply adopted the applicant's assertion as the sole "evidence" supporting its approval of the proposed new road to be sited atop the grassland knoll, where the vehicles and headlights of the applicants and his guests would be visible from points on Tomales Bay and beyond.

The existing farm road directly accesses the proposed residence, and with a modest relocation of the equipment barn downslope, it would access that structure as well. In this case, the policy discouraging cut and fill conflicts with the policy discouraging visual impacts. The administrative record contains no factual basis to support the County's favoring of one policy over another.

It should be noted that the applicant's story poles were blown down by the winds on several occasions and were returned to their position only after substantial delay and complaints lodged by the appellants with County staff. *We respectfully request that Coastal Commission staff require that the story poles remain in position through the Coastal Commission's issuance of its final decision on this matter so that the Commissioners will be afforded an opportunity to personally view the adverse view impacts.*

### 3. **There Are Substantial Questions Concerning Whether There Is Adequate Water To Serve The Project.**

There remains confusion on the record and in the County's resolution concerning whether the existing well at the site has sufficient water to serve the project. A second well is planned, but, remarkably, was not required to be sited prior to the County's project approval. Accordingly, there is no evidence that a second well would be successful in generating water. The findings in support of the Board's Resolution initially state that the existing well would serve the proposed agricultural uses. However, the Resolution then contains the following contradictory statements:



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The Marin County Community Development Agency -- Environmental Health Services has reviewed the well reports for the existing well, and has determined that it could adequately serve all the proposed uses. A proposed second well would serve all development near the northern property line, would reduce the pressure on the existing well, *and would be reviewed during the building permit stage to ensure that it could supplement the existing well adequately to serve the project.*

Board Resolution at p. 7, § IX A (emphasis added). The administrative record is thin concerning the County's review of the (allegedly) available water, and the conflicting statements quoted above -- which suggest that the existing well is sufficient and yet conversely state that a second well is necessary -- reflect that this key issue did not receive the scrutiny required by the following provisions in the LCP:

"Two factors need review in assessing the ability of a water system to meet water needs at buildout: the availability of water from the supply source, e.g., streams and wells, and the production capacity of the built system. In areas dependent upon individual on-site wells, information on groundwater yield is necessary. Once the condition of the source and the production capacity of the built system are known, a determination can be made that the supply is adequate, marginal, or inadequate to serve buildout, and an appropriate policy response can be developed." (LCP, p. 138)

"[T]here appears to be very little potential for developing additional water supplies on the east side of Tomales Bay. Available information strongly suggests that there is not adequate water to serve buildout. In addition, the potential for contamination of on-site wells from septic effluent is high." (*Id.*, pp. 165-166)

"Prior to the issuance of a coastal development permit, the County shall make the finding, **based on information provided by environmental documents**, staff analysis, and the applicant, that adequate public services and resources (i.e. water supply, sewage disposal, and road access and capacity) are available to serve the proposed development. Lack of



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available services or resources shall be grounds for denial of the project or for a reduction in the density otherwise indicated in the land use plan." (p. 187, emphasis added)

As discussed further below, the County conducted no environmental review, so there are no "environmental documents," and thus there is no basis, to make the above-quoted finding regarding adequate resources. The existing well is on the far southern boundary of the property on a steep hill. Apparently, the County is approving the applicant's piping of the water across the blue line stream, as that would be the only means to bring water to the residence and barn structures. So far as we are aware, there were no design plans submitted for such pipeline construction proposed to be routed through the stream and wetlands.

In addition, concerning "road access and capacity," there is a significant possibility that the project would create adverse traffic impacts if and when grapes are required to be transported by truck to the property and when as many as 24 total weekly visitors would be encouraged to visit the site to participate in brandy sniffing tours. The northbound approach to the property immediately follows a sharp blind turn. As noted in the LCP, ". . . sections of [Highway 1] in the . . . Point Reyes Station and Marshall areas are near their 'peak capacity' on weekends . . ." (*Id.*, p. 90) The project is certainly located at one such section of the highway. Slowing and stopped visitors' vehicles will create a risk of collision northbound, and southbound vehicles that seek to enter the property will be required to stop for the speeding traffic, thus creating a southbound risk. While a traffic study was submitted, as with all the other environmental representations made by the project applicant, it was not subjected to formal environmental review, in particular, peer review. In particular, the existing California state parks plan is to develop Marconi Cove -- located directly across Highway 1 from the proposed development -- as a marina and camping facility. The traffic study reflected no evaluation of how the traffic generated by the project would impact the traffic generated by the planned open public use of the neighboring property.

**D. The County Unlawfully Relied Upon The "Small Structures" Categorical Exemption To Avoid Subjecting The Project To Any Environmental Review Whatsoever.**



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The County conducted no environmental review of this project whatsoever. By County staff's own admission at the Board of Supervisors hearing, the representations made by the applicant and his paid consultants concerning environmental impacts were subjected to no peer review. Instead, the County gave the applicant a "free pass" by adopting the Class 3 categorical exemption from the California Environment Quality Act ("CEQA"). See, Cal. Pub. Res. Code § 15303.<sup>1</sup>

Under CEQA, the categorical exemption should not have been applied by the County because there is an *exception* to the exemption, due to the "reasonable *possibility* that the activity will have a significant effect on the environment due to unusual circumstances." Cal. Pub. Res. Code § 15300.2(c) (emphasis added). Unusual circumstances plainly are present -- a blue line creek, seven identified wetlands on the property, in short, a pristine environmentally sensitive site -- this is far from a single family residence proposed in a subdivision. The following are just a few examples that reflect the existence of a reasonable "possibility" of a significant effect on the environment:

- The County staff report states that "It is anticipated that it would take several years before the vines would produce grapes suitable for fermentation." There is no evidence in the record as to who "anticipated" the "fact" that grapes can successfully grow on the site, nor is there any mention of the purported evidence upon which this shaky opinion was based. An excellent letter in the administrative record from a Marshall resident, Linda Emme, reflects her decades of horticultural experience in the vicinity of the property, and she confirms that it is extremely unlikely that the grape growing enterprise could succeed. Grapes would necessarily be required to be trucked onto the site in order for the brandy

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<sup>1</sup> The Class 3 exemption is designed for "construction and location of limited numbers of new, small facilities or structures . . ." Cal. Pub. Res. Code § 15303. Examples include "one single-family residence" and "accessory structures including garages, carports, patios, swimming pools, and fences. Id. Garages, carports, patios: such modest structures are accessory to a single family residence. This is clearly the intent of the statute. There is nothing in the Class 3 exemption that suggests that it applies to agricultural uses and structures, *or that the exemption can be used to exempt agricultural structures that are accessory to a residential use.*



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to be produced. This impact was not discussed in the staff report nor was it mentioned by the County Supervisors in their resolution of approval. When the Planning Commission reviewed the project, one of the Commissioners sensibly suggested that for the time being the proposed brandy barn should be built as the equipment barn, and the equipment barn should be deferred unless and until the applicant can prove, through his actual onsite experience, that brandy grape growing is viable. Regrettably, this idea was ignored.

- At the bottom of page 3 of the Board's resolution, it states that "Movement through the stream and wetland buffer areas would only be for agricultural purposes." The next sentence goes on to state that the applicant will fence a "majority" of the stream and riparian areas. There is no explanation of where or what area is proposed to be fenced. It is reasonable to conclude that there is a reasonable *possibility* that wildlife habitat, such as deer, will be fenced from the accessing the stream.

In short, this project presents various unusual circumstances, thereby creating a reasonable possibility of a significant effect on the environment. Accordingly, even if the Section 15303 categorical exemption were somehow interpreted to be lawfully extended to this level of development, an exception to the exemption would apply, and CEQA review must occur. See, SPAWN v. County of Marin (2004) 125 Cal. App. 4th 1098.

In addition to Section 15300.2 (c), other exceptions to the categorical exemption likely apply to this project. These exceptions include Public Resource Code Section 15300.2 (a) and (f). Subsection (a) states that exemptions are not proper in **areas of particular environmental sensitivity**. Subsection (f) states that exemptions cannot be used when a project **may create an adverse change in a historical resource**. Evidence in the administrative record reflects that the project site is both particularly environmentally sensitive and likely to contain historical resources.

In summary, this project was improperly exempted from environmental review. This fundamental mistake ensured that the County's action could not possibly have complied with the LCP.



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**E. Conclusion.**

Comments made from the dais at the Board of Supervisors hearing suggest that the County's decision was based on political whim, rather than sound and independent judgment. Supervisor Kinsey noted (incorrectly) that the appellants were the only persons objecting to the project, as if the Board's function were to weigh the volume of opposition, rather than apply the law. Moreover, the administrative record contains several letters submitted by Catherine Caulfield, who for many years served as the executive director of the West Marin Environmental Action Committee, who stated substantial objections to the project including an objection to the master plan waiver; as well as written objections from Frederick Smith, current executive director of the West Marin Environmental Action Committee (who also contested the master plan waiver); Bridger Mitchell of Inverness (also objecting to the master plan waiver); and Linda Emme, a longtime neighbor whose property is located on the same private access road as the subject property.

The Coastal Commission appeal process is designed for exactly this sort of case, in which the local agency has inexplicably abandoned its regulatory function, exposing the public and the environment to substantial risks of adverse impacts that would be created by proposed new development. We are appreciative that this avenue of review is available to us, because we believe it appropriate for the concerns stated in our appeal to be addressed at an administrative level.

Thank you for your careful consideration of this appeal of the Marin County Board of Supervisor's unlawful action. (A copy of the Board's Resolution is attached hereto as **Exhibit C.**) We are ready and willing to address the Commission to respond to any questions and concerns that it may have.

Very truly yours,

Robert F. Epstein



Ragghianti|Freitas LLP

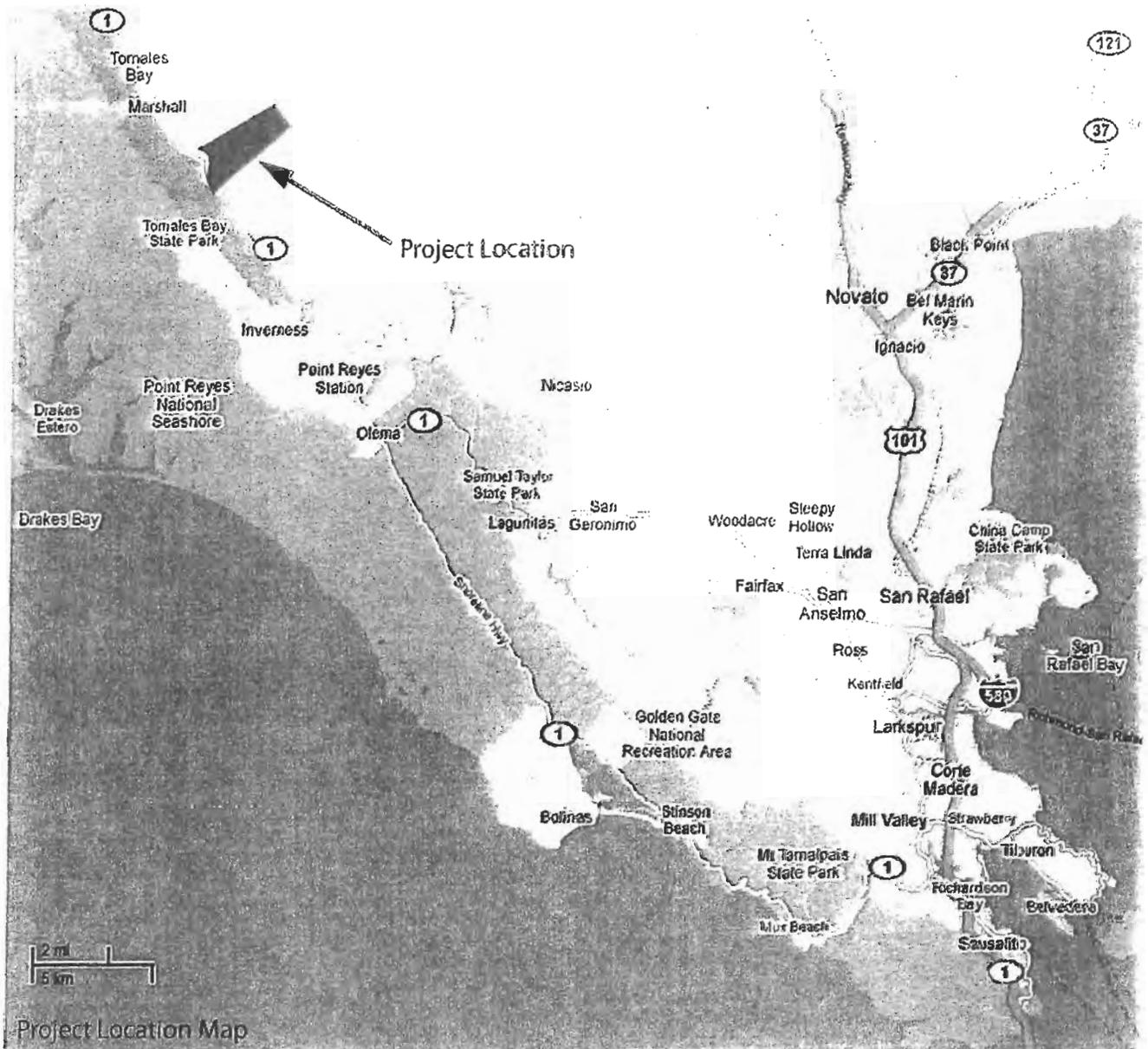
Chairperson Bonnie Neely and Commissioners

June 1, 2010

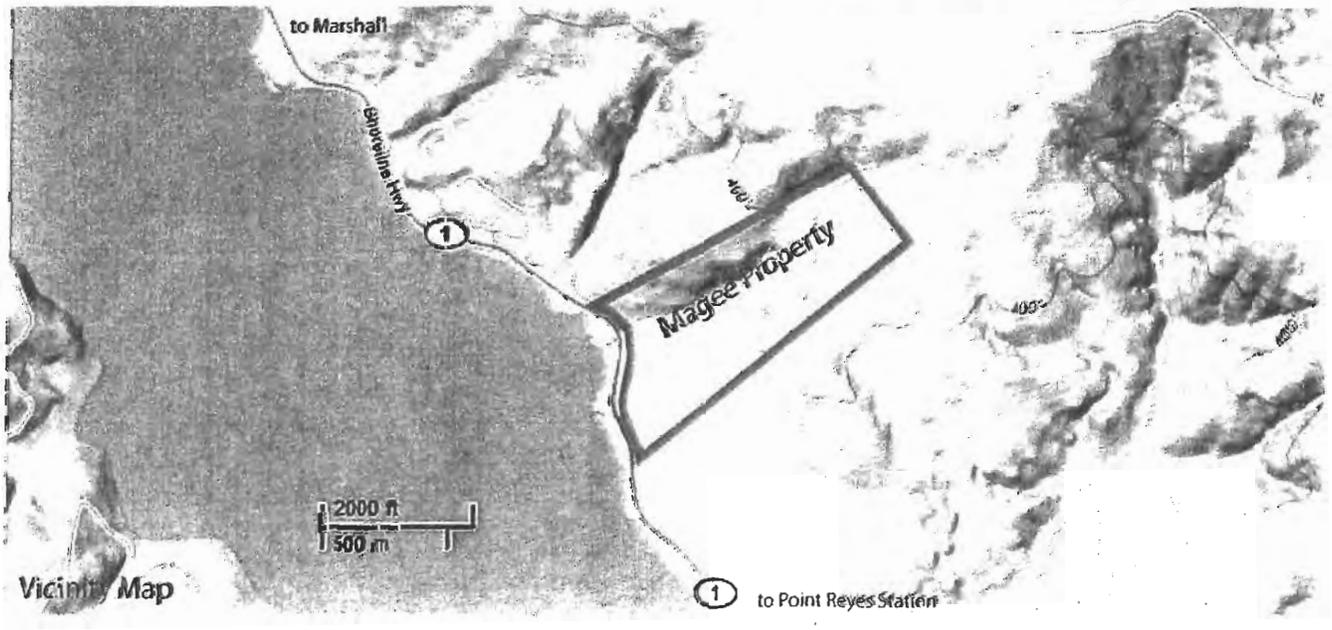
Page 15

cc: Mr. Scott Kivel and Ms. Lia Lund  
Clerk, Marin County Board of Supervisors  
Mr. Larry Kennings

# Exhibit A



Project Location Map

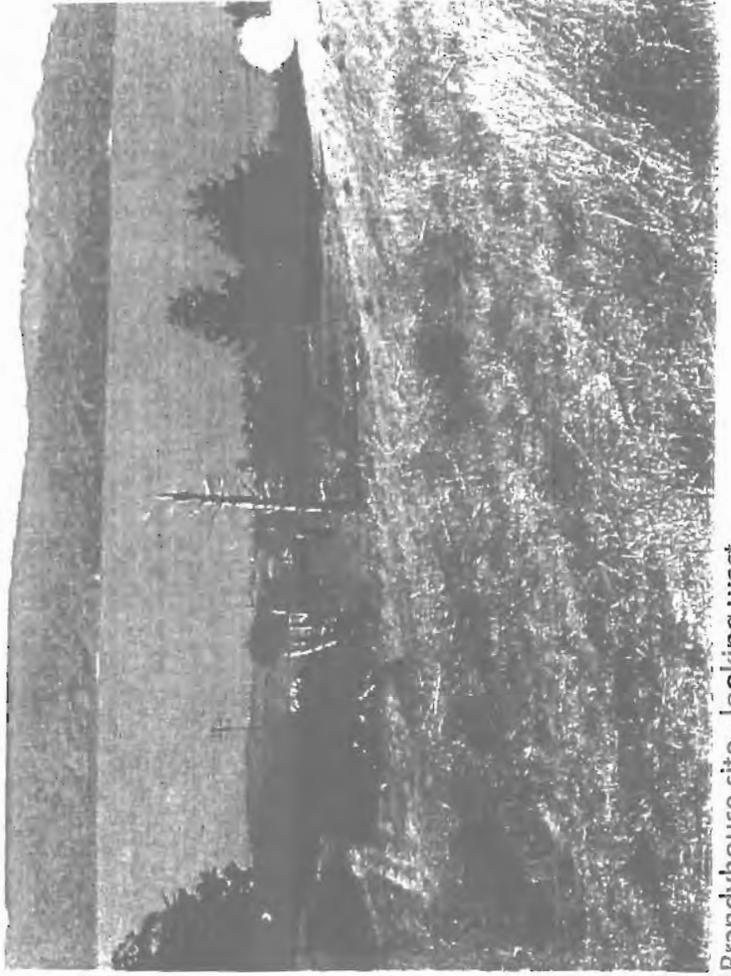


Vicinity Map

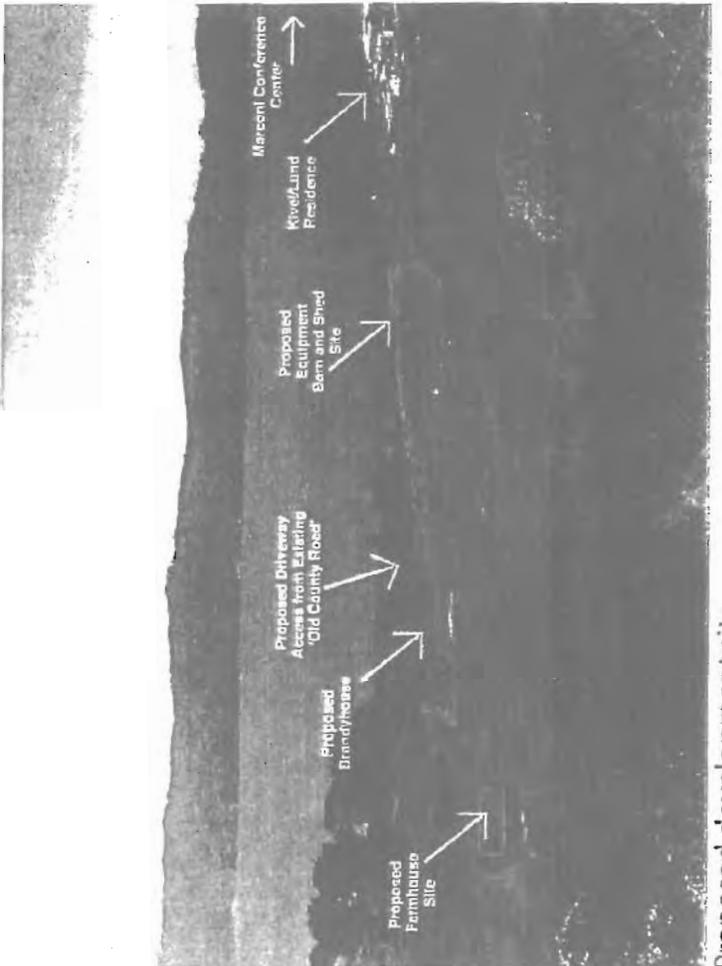
Figure 1: Project Location Map



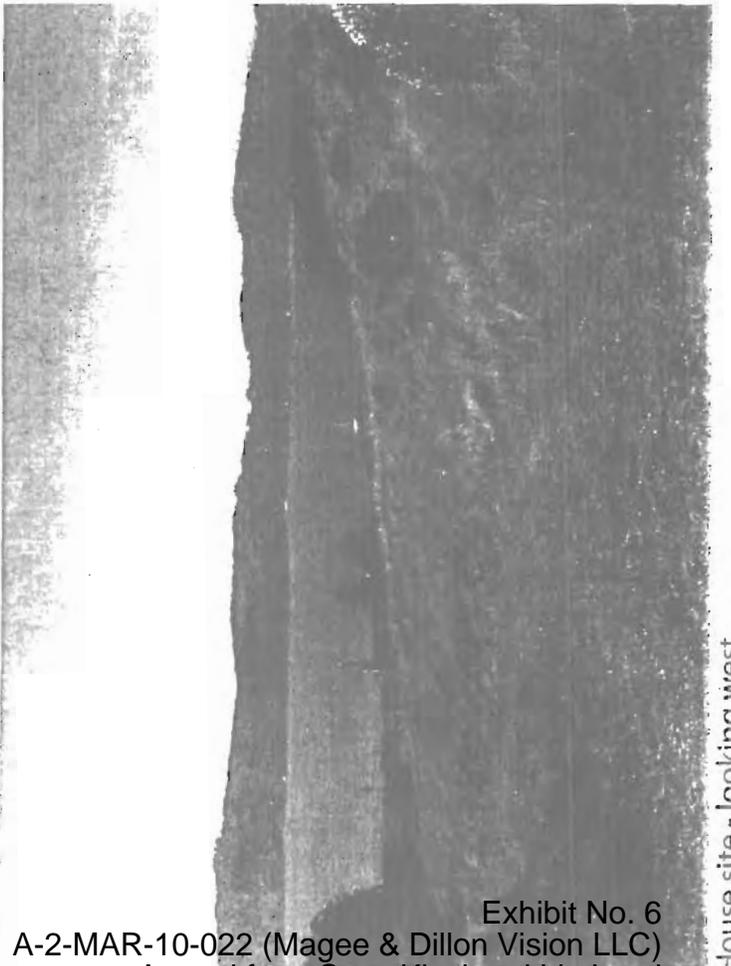
Site entrance at Shoreline Highway



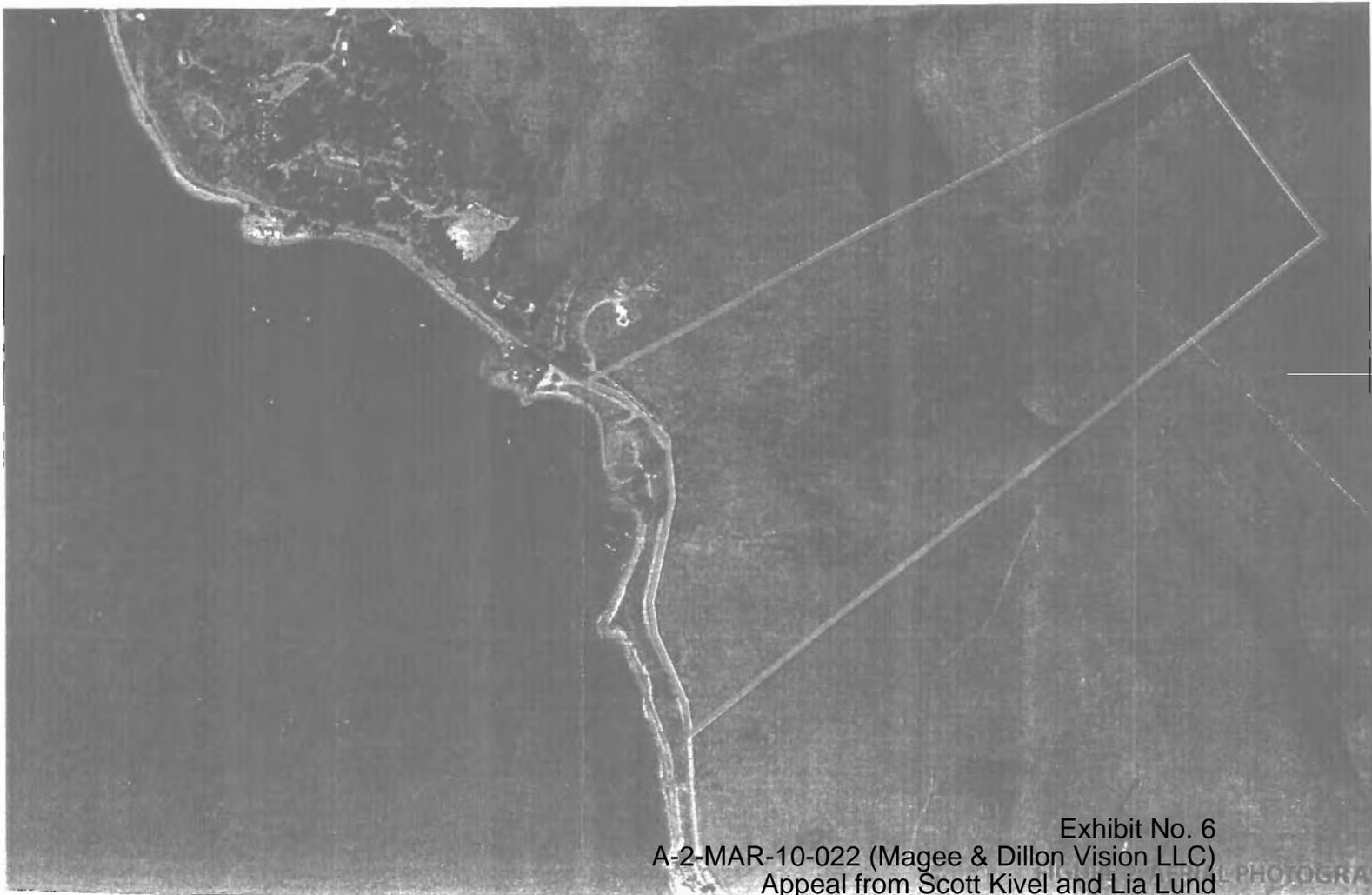
Brandyhouse site - looking west



Proposed development site



House site - looking west



# Exhibit B

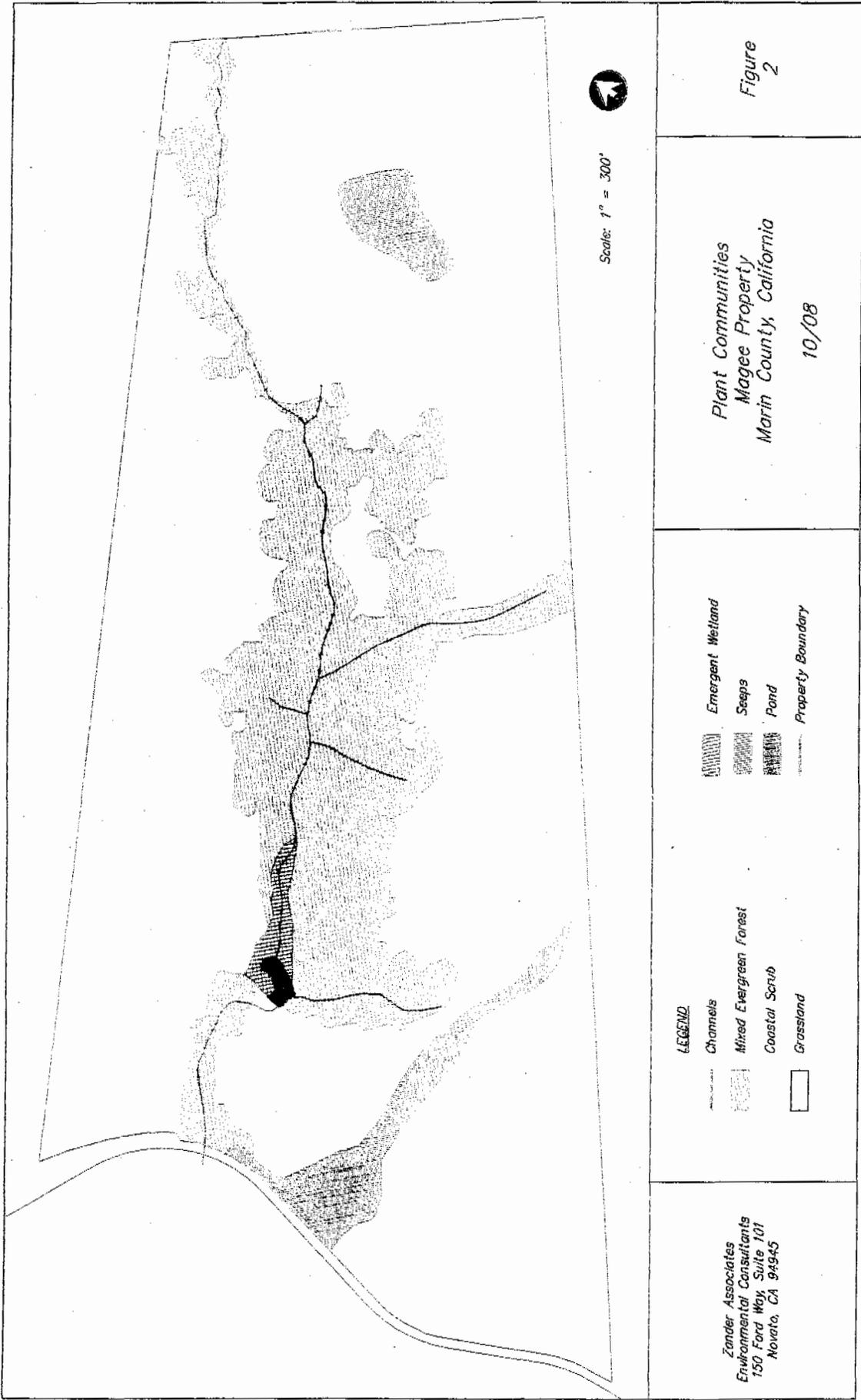


Figure 2

Plant Communities  
 Magee Property  
 Marin County, California  
 10/08

**LEGEND**

Channels	Emergent Wetland
Mixed Evergreen Forest	Seeps
Coastal Scrub	Pond
Grassland	Property Boundary

Zander Associates  
 Environmental Consultants  
 150 Ford Way, Suite 701  
 Novato, CA 94945

# Exhibit C

Resolution No. 2010-36 of Marin County Board of Supervisors

(In the interest of conserving paper, see Exhibit No. 3 of this Staff Report,  
which includes a copy of Resolution No. 2010-36)

# Supplemental Letter Submitted by Appellants



Ragghianti|Freitas LLP

RECEIVED

JUL 26 2010

CALIFORNIA COASTAL COMMISSION

ATTORNEYS AT LAW
874 FOURTH STREET, SUITE 10, SAN RAFAEL, CA 94901-3246
TELEPHONE 415.453.9433 FACSIMILE 415.453.8269
WWW.RFLAWLLP.COM

July 23, 2010

Via facsimile and first class mail

Ms. Renée Ananda
California Coastal Commission
45 Fremont Street #2000
San Francisco, CA 94105-2219

Re: Appeal of Resolution of the Marin County Board of Supervisors
Resolution No. 2010-36 Approving With Conditions The Dillon
Vision (Brader-Magee) Coastal Permit, Design Review, And Use
Permit
17990 State Route 1, Marshall (Assessor's Parcel 106-220-20)

Dear Ms. Ananda:

In support of the pending appeal that we filed on behalf of our clients,
Scott Kivel and Lia Lund, we hereby submit this supplemental letter concerning
additional questions that have arisen and that we request be considered. This
letter is focused specifically on the brandy distillery process, which was the
subject of virtually no explanation or consideration in the County proceedings.

The proposed distillery would be located immediately adjacent to the
stream conservation area, such that the distillery will be 100 feet from the blue
line creek that runs through the property and empties into Tomales Bay.
Marconi Cove, a part of Tomales Bay State Park, is located immediately across
Highway One from the proposed distillery. The shore of Tomales Bay is about
175 feet from the distillery operation.

The applicable LCP Policies.

The following LCP policies are implicated by the facts discussed in this
letter:

- "The protection of natural resources in the coastal zone is a major
emphasis of the Coastal Act." (LCP at p. 63)

RODRIGO D. DIAS DAVID F. FEINGOLD
RILEY F. HURD III ROBERT F. EPSTEIN
SARAH N. LÉGER PATRICK M. MACIAS OF COUNSEL
ERIC STERNBERGER HERBERT M. ROWLAND JOHN RALPH THOMAS, JR.
RICHARD T. FRANCESCHINI GARY T. RAGGHIANI

Exhibit No. 6
A-2-MAR-10-022 (Magee & Dillon Vision LLC)

Appeal from Scott Kivel and Lia Lund

Page 24 of 28



Ms. Renée Ananda  
July 23, 2010  
Page 2

- "Streams and creeks are sensitive habitats for many species of birds and fish." (Id., p. 65)
- "Other issues of particular concern in relation to streams in Unit II are sedimentation and water pollution, both in the streams themselves and downstream . . . As a result, habitats are damaged by streambank erosion, the trampling of vegetation, sedimentation to streams, and contamination through runoff." (Id., p. 67)

**The Brandy Distillation Process Has Been Ignored Thus Far In The Project Review.**

The name brandy comes from the Dutch word *brandewijn*, meaning "burnt wine." The name is apt as most brandies are made by applying heat, originally from open flames, to wine. The heat drives out and concentrates the alcohol naturally present in the wine. Because alcohol has a lower boiling point (172°F, 78°C) than water (212°F, 100°C), it can be boiled off while the water portion of the wine remains in the still. Heating a liquid to separate components with different boiling points is called heat distillation. The low-boiling point liquids distilled from wine include almost all of the alcohol, a small amount of water, and many of the wine's organic chemicals. It is these chemicals that give brandy its taste and aroma.

Thus, to manufacture brandy, a fermented liquid is boiled at a temperature between the boiling point of ethyl alcohol and the boiling point of water. The resulting vapors are collected and cooled. The cooled vapors contain most of the alcohol from the original liquid along with some of its water. To drive out more of the water, the distillation process can be repeated several times depending on the alcohol content desired. The fine brandy maker's objective is to capture the alcohol and agreeable aromas of the underlying fruit, **and to leave all of the off-tastes and bitter chemicals behind in the waste water. The waste products from brandy production include the solids from the wine production and the liquids left over from the still.**

Heat, used to warm the still, is the other main raw material required for brandy production. Typically, stills are heated with natural gas.



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Ms. Renée Ananda

July 23, 2010

Page 3

**The project applicant has offered no meaningful information as to how the brandy is proposed to be distilled and, most importantly, how the waste will be processed on site.**

In particular, the following questions remain unanswered:

- The applicant has provided no information concerning the equipment that will be operated in the brandy barn. How many boilers will be used? What size will they be? Where will they be located? What are the potential noise impacts? How will chemicals used in the distillation process be stored?
- The distillation process requires a substantial amount of water. How much will be used? How will the use of water devoted to the distillery adversely impact the other uses on the site as well as the neighbors' water table?
- What will be the water temperature for the "cooling" water for the boilers? How will that water be stored, temperature-regulated, and discharged on site?
- How much steam vapor will the boilers generate? How will that steam generation be handled on site?
- How will the liquid and solid chemical residue from the distillery process be stored and disposed on site?
- What methods are proposed to address the odors caused by the distillation process? What are the potential adverse air pollution impacts?
- How many propane tanks will be required to generate the heat necessary for the distillery? What size will the tanks be and where will they be located? What methods will be employed to address the fire hazard presented by the propane use and the boilers? How frequently will propane trucks be required to refill the tanks?



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Ms. Renée Ananda

July 23, 2010

Page 4

- What bottling equipment will be used? Where will it be located? How much noise will it generate?
- The applicant has represented that the distillery process and the "farming" will be typically handled by a single worker. It remains unclear how one worker could manage an entire distillery operation.
- The applicant claims that he will produce only 100 cases annually, which would appear unlikely to enable recovery of the initial investment in the distillery. How can the applicant realistically be prevented from distilling additional product once the distillery is constructed? Additional grapes can be transported to the site and a distillery certainly can be operated continuously. This suggests that the distillery operation -- which received a permit under the guise of an agricultural use -- is likely to evolve into a commercial operation. No schedule has been proposed that would limit the hours of the distillery operation. Even if there were such a schedule, there would be no realistic means for enforcement.

The County of Marin entirely ignored the issues discussed above concerning the applicant's proposal to manufacture and bottle brandy on-site. The County's sole decision concerning the distillery -- other than granting it a permit -- was to delegate regulation of wastewater disposal *only* to the Regional Water Quality Control Board. Other issues concerning noise, propane gas and chemical use and storage, etc., will likely not be addressed by RWQCB and were not considered by the County.

In summary, the location of a distillery on the subject site, given the environmental sensitivity of the location, would likely violate the LCP policies referenced above. One reasonable alternative might be for the distillery to be located elsewhere -- perhaps in Point Reyes Station -- where there are other commercial buildings and commercial operations. There is no evidence that the County ever considered such an alternative.

For the reasons previously stated, and those offered herein, we respectfully request that the Commission grant our appeal and revoke the permits granted to the applicant.



Ragghianti|Freitas LLP

Ms. Renée Ananda  
July 23, 2010  
Page 5

Very truly yours,

A handwritten signature in black ink, appearing to read 'RF Epstein', with a long horizontal flourish extending to the right.

Robert F. Epstein

cc: Mr. Scott Kivel and Ms. Lia Lund  
Clerk, Marin County Board of Supervisors  
Mr. Larry Kennings

## **Relevant Marin County Certified Unit II LUP Policies:**

### **Natural Resources:**

3. Streams and Riparian Habitats. The policies contained in this section shall apply to all streams in the Unit I coastal zone, perennial or intermittent, which are mapped by the United States Geological Survey (U.S.G.S.) on the 7.5 minute quadrangle series.

...

c. Stream Buffers. Buffers to protect streams from the impacts of adjacent uses shall be established for each stream in Unit II. The stream buffer shall include the area covered by riparian vegetation on both sides of the stream and the area 50 feet landward from the edge of the riparian vegetation. In no case shall the stream buffer be less than 100 feet in width, on either side of the stream, as measured from the top of the stream banks.

4. Wetlands. Wetlands in the Unit II coastal zone shall be preserved and maintained, consistent with the policies in this section, as productive wildlife habitats, recreational open space, and water filtering and storage areas. Land uses in and adjacent to wetlands shall be evaluated as follows:

...

c. No grazing or other agricultural uses shall be permitted in wetlands except in those reclaimed areas presently used for such activities.

d. A buffer strip 100 feet in width, minimum, as measured landward from the edge of the wetland, shall be established along the periphery of all wetlands . . . .

### **Agriculture.**

1. General policy. Marin County intends to protect the existing and future viability of agricultural lands in its coastal zone, in accordance with Sections 30241 and 30242 of the Coastal Act. The County's LCP policies are intended to permanently preserve productive agriculture and lands with the potential for agricultural use, foster agricultural development, and assure that non-agricultural development does not conflict with agricultural uses or is incompatible with the rural character of the County's coastal zone. These policies are also intended to concentrate development in suitable locations, ensure that adequate public services are available to serve new development, and protect coastal wildlife, habitat, and scenic resources, in accordance with Sections 30240, 20250, and 30251 of the Coastal Act.

2. Agricultural Production Zone. To implement the goals stated in Policy #1 above, the County shall adopt a planned district zone for all privately owned lands in the Unit II coastal zone currently zoned A-60 or other agricultural zoning district, such as A-20, which are outside of the community expansion boundaries identified in the LCP. Agricultural lands in Unit I which are zoned A-60 shall also be included. The planned district zone shall be known as the Agricultural Production Zone (APZ) and shall have a maximum density of 1 unit per 60 acres. The actual density of permitted development may be less and shall be determined based on the standards in Policy #4 below. The County recognizes that parcel sizes of 60 acres are too small, generally, to independently support existing agricultural operations in the coastal zone. However, 60-acre densities, when combined with the protective standards in Policy #4, do on balance adequately protect agriculture on the coast. The APZ should be reviewed in 5 years to determine its effectiveness, and necessary changes considered at that time.
3. Intent of the Agricultural Production Zone. The intent of the Agricultural Production Zone is to preserve lands within the zone for agricultural use. The principal use of lands in the APZ shall be agricultural. Development shall be accessory, incidental, or in support of agricultural land uses, and shall conform to the policies and standards in #4 and #5 below.
4. Development standards and requirements. All land divisions and developments in the APZ shall require an approved master plan showing how the proposed division or development would affect the subject property. In reviewing a proposed master plan and determining the density of permitted units, the County shall make all of the following findings:
  - a. The development would protect and enhance continued agricultural use and contribute to agricultural viability.
  - b. The development is necessary because agricultural use of the property is no longer feasible. The purpose of this standard is to permit agricultural landowners who face economic hardship to demonstrate how development on a portion of their land would ease this hardship and enhance agricultural operations on the remainder of the property.
  - c. The land division or development would not conflict with the continuation of agriculture on that portion of the property which *is* not developed, on adjacent parcels, or those within one mile of the perimeter of the proposed development.
  - d. Adequate water supply, sewage disposal, road access and capacity and other public services are available to service the proposed development after provision has been made for existing and continued agricultural operations. Water diversions or use for a proposed development shall not adversely impact stream habitats or significantly reduce freshwater inflows to Tomales Bay, either individually or cumulatively.

- e. Appropriate public agencies are able to provide necessary services (fire protection, police protection, schools, etc.) to serve the proposed development.
  - f. The proposed land division and/or development will have no significant adverse impacts on environmental quality or natural habitats, including stream or riparian habitats and scenic resources. In all cases, LCP policies on streams and natural resources shall be met.
  - g. Development consists of permitted and conditional uses as authorized in the APZ.
5. Conditions. As part of the approval of a master plan, the following conditions shall be required:
- a. All development shall be clustered to retain the maximum amount of land in agricultural production or available for agricultural use. Development, including all land converted from agricultural use such as roads and residential support facilities, shall be clustered on no more than five percent of the gross acreage, to the extent feasible, with the remaining acreage to be left in agricultural production and/or open space. Development shall be located close to existing roads and shall be sited to minimize impacts on scenic resources, wildlife habitat and streams, and adjacent agricultural operations.
  - b. Permanent conservation easements over that portion of the property not used for physical development or services shall be required to promote the long-term preservation of these lands. Only agricultural uses shall be allowed under the easements. In addition, the County shall require the execution of a covenant not to divide for the parcels created under this division so that they are retained as a single unit and are not further subdivided.
  - c. The creation of a homeowner's or other organization and/or the submission of agricultural management plans may be required to provide for the proper utilization of agricultural lands and their availability on a lease basis or for the maintenance of community roads or mutual water systems

**Public Services.**

- 1. General Policy. Prior to the issuance of a coastal development permit, the County shall make the finding, based on information provided by environmental documents, staff analysis, and the applicant, that adequate public services and resources (i.e. water supply, sewage disposal, and road access and capacity) are available to serve the proposed

development. Lack of available services or resources shall be grounds for denial of the project or for a reduction in the density otherwise indicated in the land use plan.

### **New Development and Land Use.**

#### **3. Visual Resources.**

- a. The height, scale, and design of new structures shall be compatible with the character of the surrounding natural or built environment. Structures shall be designed to follow the natural contours of the landscape and sited so as not to obstruct significant views as seen from public viewing places.
- b. Development shall be screened with appropriate landscaping; however such landscaping shall not, when mature, interfere with public views to and along the coast. The use of native plant material is encouraged . . . .

## **Relevant Marin County Certified Zoning Provisions:**

### **Chapter 22.56.026: Coastal Master Plan Districts**

The following C districts shall be subject to the requirements of Chapter 22.45 in addition to the requirements of this chapter:

C-ARP C-RSP C-RMP C-CP C-APZ C-RSPS C-RMPC C-RCR

All coastal project permits in coastal master plan districts, including approval of a master plan, are appealable under Section 30603(a) of The Coastal Act. The conceptual land uses approved in any master plan shall not be considered subject to appeal to the California Coastal Commission upon issuance of any subsequent coastal project permit within the master plan district.

The requirements of Chapter 22.45 may be waived by the Planning Director when:

- A. One single family dwelling unit is proposed for construction on a legal building site.
- B. A tentative map requiring a parcel map for four parcels or less is proposed, except in C-APZ districts.
- C. The Planning Director determines that a proposed development is minor or incidental in nature and within the intent and objectives of the Local Coastal Plan.

In granting a waiver from the requirements of Chapter 22.45, the Planning Director may designate such conditions therewith as will, in the opinion of the Planning Director,

secure substantially the objectives of the regulation or provision for which such waiver is granted.

If Master Plan requirements are waived, a proposal shall be submitted which meets the requirements of Chapter 22.82 (Design Review).

### **Chapter 22.57.030: C-APZ Districts (Coastal Agricultural Production Zone Districts)**

**22.57.031: Purpose:** The purpose of the Agricultural Production Zone is to preserve lands within the zone for agricultural use. The principal use of lands in the C-APZ Districts shall be agricultural. Development shall be accessory, incidental, or in support of agricultural land uses, and shall conform to the policies and standards as set forth herein.

#### **22.57.032: Principal Permitted Uses**

The following uses are permitted in all C-APZ Districts subject to an approved Master Plan:

1. Agricultural Uses. For the purposes of the Coastal Agricultural Production Zone, agricultural uses shall be defined as uses of land to grow and/or produce agricultural commodities for commercial purposes, including:
  - a. Livestock and poultry: cattle, sheep, poultry, goats, rabbits, horses unless they are the primary animals raised.
  - b. Livestock and poultry products: milk, wool, eggs.
  - c. Field, fruit, nut, and vegetable crops: hay, grain, silage, pasture, fruits, nuts, and vegetables.
  - d. Nursery products: nursery crops, cut plants.
2. One single-family dwelling per parcel. Parcel is defined as all contiguous assessor's parcels under common ownership (unless legally divided as per Title 20, Marin County Code).
3. Accessory structures or uses appurtenant and necessary to the operation of agricultural uses, other than dwelling units of any kind; but, including barns, fences, stables, corrals, coops and pens, and utility facilities.

#### **22.57.035: Development Standards and Requirements.**

All development permits in the C-APZ shall be subject to the following standards and requirements:

1. All development shall be clustered to retain the maximum amount of land in agricultural production or available for agricultural use. Developments, including all land converted from agricultural use such as roads and residential support

facilities, shall be clustered on no more than five percent of the gross acreage, to the extent feasible, with the remaining acreage to be left in agricultural production and/or open space. Development shall be located close to existing roads and shall be sited to minimize impacts on scenic resources, wildlife habitat and streams, and adjacent agricultural operations.

2. Permanent conservation easements over that portion of the property not used for physical development or services shall be required to promote the long-term preservation of these lands. Only agricultural uses shall be allowed under the easements. In addition, the County shall require the execution of a covenant not to divide the parcels created under this division so that they are retained as a single unit and are not further subdivided . . . .

# MARIN AGRICULTURAL LAND TRUST

August 30, 2010

California Coastal Commission  
45 Fremont Street, Suite 2000  
San Francisco, CA 94105-2219

Re: Appeal No. A-2-MAR-10-22 (Magee & Dillon Vision LLC, Marshall)

Dear Coastal Commissioners:

This letter expresses Marin Agricultural Land Trusts' support for Marin County Resolution No. 2010-36 approving with conditions the Dillon Vision (Brader-Magee) Coastal Permit, Design Review, and Use Permit, and to urge the Commission to find that no substantial issue exists with respect to the grounds on which the referenced appeal was filed.

Over the past 30 years MALT has worked to permanently protect Marin County farmlands from subdivision and nonagricultural development. We currently hold conservation easements on 65 farms and ranches totaling 42,000 acres, approximately 40% of agriculturally zoned land in Marin County in ownerships of 150 acres or more. MALT easements protect 31 properties and 15,578 acres wholly or partly within Marin's Coastal Zone Unit II. All of these conservation easements prohibit subdivision and nonagricultural development, prohibit any activities or uses that significantly degrade soil or water quality, and permanently preserve these properties for agricultural use.

The 149-acre Brader-Magee parcel is constrained by size (the average size of agricultural properties in the County is about 600 acres), slope, and 85 acres of environmentally sensitive areas designated as Stream Conservation Area and Wetland Protection Area. The applicants have gone to extremes to protect these sensitive areas while developing plans for agricultural uses on a difficult property. The County's extensive and careful analysis of the project and its conditions of approval ensure that the project is consistent with the very stringent policies and regulations of the Local Coastal Program, Countywide Plan and local Community Plan. Subsequent to the County's approval, the applicant voluntarily made additional changes to the project at the request of the Environmental Action Committee of West Marin. These additional changes were also approved by the County.

We believe the Dillon Vision LLC (Brader-Magee) project as finally approved is entirely consistent with the Marin Countywide Plan, East Shore Community Plan, Local Coastal Program Unit II and with the California Coastal Act. We urge the Commission to find that no substantial issue exists with respect to the grounds on which the referenced appeal was filed.

Sincerely,



Robert Berner  
Executive Director

Cc: Tom Lai, County of Marin CDA

Post Office Box 809  
Point Reyes Station  
California 94956

415-663-1158

FAX 663-1099

malt.org

## BOARD OF DIRECTORS

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Robert Berner  
*Executive Director*

Founded In 1980 by

Ellen Straus &

Phyllis Faber

FROM :

FAX NO. :8053821385

Sep. 09 2010 02:27PM P2

Linda Emme

lindaemme@dock.net  
415 663-8633

Mr. Larry Simon  
California Coastal Commission  
45 Fremont Street Ste. 2000  
San Francisco, CA 94105-2219

CALIFORNIA COASTAL COMMISSION  
*received 8/9/10*

August 9, 2010

Re: Supplemental Comment on the Appeal by Scott Kivel and Lia Lund of Resolution of the Marin County Board of Supervisors Resolution No. 2010-36 Approving With conditions The Dillon Vision (Brader-Magee) coastal Permit, Design Review, and Use Permit, 17990 State Route 1, Marshall, Assessor's Parcel 106-220-20

Dear Mr. Simon,

Four Marin Independent Journal newspaper articles about Mr. Magee dating from 11/21/2009 to 04/29/2010, with pictures of Mr. Magee on his property, all begin with headlines stating that Magee "wants brandy distillery on Marshall property" or "Planners OK Marshall brandy distillery", etc. Yet, Mr. Magee has not provided the Fire Marshall with information indicating his use of the Brandyhouse or Material Safety Data Sheets for producing brandy ethanol. According to Phoenicia Thomas, of the Marin County Fire Chief's office, Fire Marshal Scott Alber "is waiting for additional information before he makes his final requirements for the distillery." Lynn Osgood, who approved Magee's vegetation plan, said that they have requested information on the Brandyhouse from Magee, but he has not provided it. She also told me that I shouldn't worry "because you can put out an ethanol fire with water", a common misconception that could prove deadly for West Marin.

Likewise, in a casual conversation with a member of the Point Reyes Fire Department, it was discovered that they have little knowledge of the requirements for fighting an ethanol fire. Five excellent short videos from the University of Illinois Fire Service Institute show precisely what hap-

pens when water is added to an ethanol fire and how ineffective it is to use the standard AFFF foam. The URL is:

<http://www.fsi.illinois.edu/content/virtual%20campus/quickHit-Media/ethanol/index.cfm>.

High ethanol liquids have the same Class 1B hazardous rating as gasoline. However, absent high volumes of water, an ethanol fire can only be fought using a special alcohol resistant ATC foam. Unlike gasoline fires, and due to the nature of ethanol fire, firefighters cannot use the AFFF foam for which they have been trained and their equipment has been designed. The use of aerial equipment would be severely limited, thus removing an important means of attack for Marin County firefighters.

In the Staff Report to the Marin County Planning Commission for Coastal Permit, Design Review and Use Permit, the word distillery is never used, only "Brandy Production." Is Magee trying to skirt the fire codes for a distillery? They can be quite expensive. Sweetwater Distillers, Inc. in Petaluma were required to install a steel room to contain the still and any possible ethanol spills. In Marshall, an ethanol spill and fire could set off a wildland fire.

If such a critical issue as fire control in a distillery was ignored by the Planning Commission, it shows that the whole process was deficient and possibly defective. The Planning Commission has opened the West Marin coast to a major fire hazard and set a precedent for an unregulated distillery. That a distillery, with MSDS lacking, was approved by both the Marin County Planning Commission and Marin County Supervisors shows that they were negligent in approving this project.

I ask that you categorically deny the Brader-Magee application due to fatal defects.

Absent a categorical denial, I request that this application be returned with a request for clarification of the misrepresentations and lapses such as:

- The Brandyhouse description must specify that it is a distillery and a Use Permit be applied for as the industrial use that it is

FROM :

FAX NO. :8053821385

Sep. 09 2010 02:28PM P4

- Specific provisions for fire pre-planning and suppression,  
water quality and air quality monitoring
- A specific limitation on the importation of grapes, fruit or wine  
for processing in his distillery, such as brandy  
production be limited specifically to the grapes grown  
on his property
- A specific limitation on the hours of operation
- A specific limitation on the hours of sales
- Liability bonds and indemnification for the surrounding homes  
for any fire damage resulting from the distillery

In that the mission of the CA Coastal Commission is to protect and conserve the coast, it seems that protecting it from unnecessary wildland fire is well within it's scope. Also, proper planning for any future hazardous distilleries for brandy or ethanol gasoline distillation on agricultural lands should be a high priority.

Moreover, many studies show that "business as usual" will lead to a high increase in global temperatures and rising ocean waters which will flood the coast and communities such as Marshall. The water level is already rising as the ice in the polar regions and Greenland melt. Brandy is so carbon intensive that it is 'black as oil' - the equivalent of 6-10 bottles of wine are distilled into one bottle of brandy using carbon-intensive propane gas. Also, possibly the wine or grapes have been trucked in from an inland area where grapes actually do grow. Then, people will drive all the way to Marshall to buy the brandy. Dr. James Hansen, Director, NASA Goddard Institute for Space, in *Storms of my Grandchildren*, writes that one quarter of every gallon of gasoline that we burn will still be in the atmosphere, heating the earth, five hundred years from now. We are trying to protect our coastal waters from oil drilling, but with this project we are approving carbon-intensive business-as-usual on the coast. It does not make sense.

FROM :

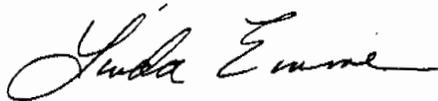
FAX NO. :8053821385

Sep. 09 2010 02:29PM P5

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Thank you for allowing me the opportunity to comment on this appeal.

Sincerely,



Linda Emme

18050 State Route 1

Marshall, CA 94940

Additional informative videos:

1) Firefighters Not Prepared for Ethanol Fires

<http://www.youtube.com/watch?v=XxI3d1iofts>

2) Ethanol Fire Training - AR Foam Application Quick Clip (E95)

[http://www.youtube.com/watch?v=0u8\\_Dirk5J4](http://www.youtube.com/watch?v=0u8_Dirk5J4)

Cc: Lyn Scholz, Clerk, Marin County Board of Supervisors

Marin county Fire Chief Ken Massucco

Scott Alber, Fire Marshal for Prevention and Code

Requirements

(415)449-6566

Tonya Hoover, Acting State Fire Marshall

Linda Emme

lindaemme@dock.net  
415 663-8633

Delivered by hand on July 26, 2010 and by Certified Mail

Ms. Renee Ananda  
California Coastal Commission  
45 Fremont Street Ste. 2000  
San Francisco, CA 94105-2219

**RECEIVED**

**JUL 28 2010**

**CALIFORNIA  
COASTAL COMMISSION**

July 26, 2010

Re: Comment on the Appeal by Scott Kivel and Lia Lund of Resolution of the Marin County Board of Supervisors Resolution No. 2010-36 Approving With conditions The Dillon Vision (Brader-Magee) coastal Permit, Design Review, and Use Permit, 17990 State Route 1, Marshall, Assessor's Parcel 106-220-20

Dear Ms. Ananda,

It came to my attention recently that what Mr. Magee has presented to the Marin Planning Commission and Board of Supervisors, as agricultural "Brandy Production" is, in reality, an industrial brandy distillery producing a Class 1-B flammable liquid. His application was carefully worded and did not use the term "distillery". For some time, he succeeded in shifting the focus away from an issue that may complicate his application. After extensive research, I am now quite concerned about the possible fire hazards that an industrial distillery presents in this isolated coastal location. My property is contiguous to the Dillon Vision (Brader-Magee) property and I would be adversely affected if his distillery caught fire.

In contrast to the one paragraph on brandy production included in Magee's application, Attachment A shows a 32-page application to the Rohnert Park Planning Commission for a Use Permit for a Micro Distillery. In addition to a site plan, the Rohnert Park application includes a floor plan, equipment and procedure reference materials and, most important, two six-page Material Safety Data Sheets clearly stating that they will be producing an ethyl alcohol solution that is a flammable liquid. The

MSDS states on page 35, #15, Regulatory Information, "SARA 311 312: Acute Health: Yes; Chronic Health: No; Fire: Yes; Reactivity: No." To put out an ethyl alcohol (ethanol) fire, emergency responders must have appropriate fire-suppression equipment suitable to the situation. Magee provided no such information because he did not openly state that he is planning to operate a high ethanol distillery.

The Marin Planning Department was remiss in not requiring Magee to produce this appropriate fire hazard information and apply for a Use Permit for an Industrial Distillery. As it stands presently, he can build an industrial still and produce a flammable liquid with no fire plan and no safety procedures for the handling and storage of the ethanol. In addition, he will be using and storing large amounts of highly flammable propane gas to run his still – another fire hazard.

Magee's Brandyhouse will have significant quantities of final product – the highest in ethanol content - stored for aging and bottling. Brandy is 70-80% ethanol. The flash point (the lowest temperature at which the liquid will ignite) for a high ethanol spirit such as brandy is at or below room temperature (68-70 degrees), which is also our normal daytime summer outdoor temperature. (For more information on ethanol fires, see Attachment B, The Trouble with Ethanol.) Under certain conditions, ethanol can self ignite. Bill Owen, president of the American Distilling Institute, called a carboy (a jug used in distilleries) filled with high alcohol spirits a "bomb." (See Attachment C.) Ethanol can also be ignited through sparks generated by motors, switches or electronics. Or, Magee's brandy could be ignited by a grass fire like the one that swept across his land last summer – caused by a spark from a motorcycle that crashed on Highway 1.

In a well-designed distillery, the chance of fire is minimized to meet local fire codes. However, this unique location does not offer the fire fighting safeguards and utilities (water and sewer) that you would find in a municipality. Also, Magee has not indicated that he has considered any such safety measures because he has not even acknowledged that he is building a distillery, even though he has stated that he is going to produce brandy.

In Marshall, the first responder for fire protection is the Tomales Fire

Department, which is partially staffed by volunteers. It is located nine miles north of Marshall on Highway 1, a narrow, winding coastal road that is often crowded with heavy, mixed-use traffic ranging from pedestrians and bicyclers to slow tourist traffic to eighteen-wheeled milk trucks. The response time at best is fifteen minutes. The secondary responder is Point Reyes, which is located seven and a half miles to the south on Highway 1, an equally winding stretch of road with many

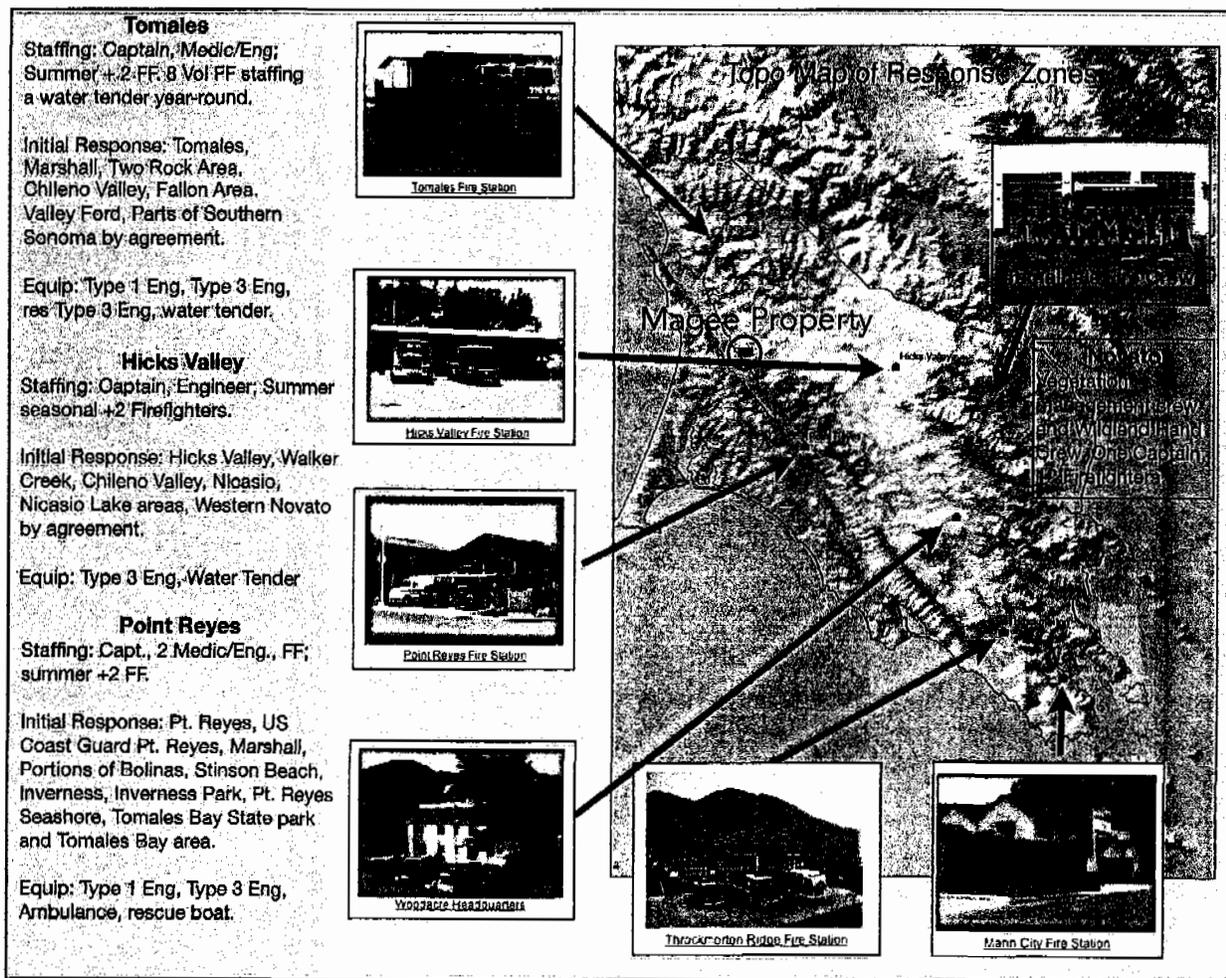


Figure 1: Marin County Fire Station Locations in West Marin and location of the Magee's property (in circle) in Marshall at Marconi Cove.

35 mph curves and few pull-outs. Again, the response time at best is fifteen minutes. See the map in Figure 1, from the Marin County Fire Department Standards of Cover, 2010, for fire station locations.



particularly when major water supplies, such as a municipal water system, are not available as in Marshall.

When fighting an ethanol fire, water is not an option unless in very large quantities to drown the fire. In fact, adding smaller amounts of water to an ethanol fire, such as using a sprinkler system, can result in higher temperatures, exacerbating the fire fighting efforts. The recommended method for fighting ethanol fires is to use special ATC foam, as opposed to the normal AFF foam. ATC foam may require special mixing and discharge equipment and trained personnel which may not be part of the local fire fighting equipment or training – further increasing the odds that even a minor ethanol based fire could lead to a major wildland fire such as the Mount Vision Fire of 1995 that burned over 12,000 acres. Also, because ethanol fires must be fought with ATC foam, aerial equipment cannot be used to fight the source fire, reducing the options available to fire fighters in fighting an ethanol fire in a remote location.

Neither the Tomales Fire Department, nor the Point Reyes Fire Department could reach the Magee location in time to prevent a flashover fire from occurring. Obviously, such a major hazard to the entire community requires adequate pre-planning and pre-positioning of equipment, personnel and supplies – none of which has been addressed in the current application.

Magee may say that he has an excellent safety record at his beer distillery, but the alcohol concentration in beer is only 5-10% - so low that it is difficult to ignite at room temperature. Brandy - at 70-80% is another story. A paper from Purdue University Cooperative Extension Service says, "... beer is so low in alcohol content that it is useless as a fuel and must be further concentrated to obtain mixtures that will ignite and burn. For this reason a distillation column is used to produce a higher alcohol concentration... Since both ethanol and gasoline are classified as Class I-B flammable liquids, the same safety considerations given to the production, storage and handling of gasoline must also be used with ethanol." Please see Attachment D.

Given the isolated and unique location of Marshall, nine miles south of Tomales, and seven and a half miles north of Point Reyes, along a

narrow, winding road with no secondary access, and with no municipal water and sewer systems, it would seem that Marshall is not a safe location for a distillery producing ethanol brandy. Even the lowest fire risk has to be looked at carefully because of the distance and response times from local fire departments. When fire-fighting concerns are addressed, it is easy to see why distilleries, even micro-distilleries, are normally located in industrial areas of municipalities such as Petaluma and Rohnert Park and industrial use permits required.

Magee may have misrepresented his intentions by asserting to the East Shore Planning Group, the Marin Planning Commission and the Marin Supervisors, that he will be making small amounts of brandy from his own grapes. It is yet to be seen whether or not he can successfully grow grapes on his salty, wind-swept property, yet he has already been given a Use Permit to build and run his distillery. He planted a test plot of hops, but not grapes, so we do not know how well grapes will grow on his property. I personally have a twelve-year old native grape vine that has never produced a single grape. However, let us assume that he can grow grapes in salt air and that his planned production of six acres may produce enough grapes for 100 cases of brandy, as he has stated.

Economically, this equation does not make sense when one considers the cost of setting up a distillery. To produce anything more than brandy tests (for which he needs a license), he will have to obtain

- An Alcohol License through the CA Department of Alcoholic Beverage Control (roughly \$50,000)
- A Distilled Spirits Permit through the Alcohol and Tobacco Tax and Trade Bureau or TTB (formerly the Federal Alcohol, Tobacco and Firearms)
- A high-quality copper still (priced at \$44,000 and up)
- Fermentation tanks
- Tanks or casks for aging the brandy
- Bottling equipment, etc.

The cheapest used pot still, which is energy intense and costly to run, that I could find on the Internet was for sale for \$44,000. In an article for American Distiller, Steve McCarthy is interviewed by author Alan Moen (see Attachment E.) McCarthy estimates a distillery start-up at \$500,000. In an article included at the end of Attachment A, p. 39, Bill Owen, president of the American Distilling Institute, said, "There aren't a lot of people who can come up with the \$1.5 million required to take the gamble."

Magee will be spending somewhere between \$100,000-1,500,000 to set up his distillery. With that kind of investment, it is unlikely that he will produce only 100 cases, three or four years after he has built his Brandyhouse when his grapes actually fruit. My reading of the Conditions of his Use Permit, is that it does not limit him to using *only* his own grapes. Therefore, it is likely that he will purchase and truck in grapes or wine and run a much larger operation with increased fire danger as well as increased noise, traffic and waste products. Magee already has a reputation for making excellent beer and he will have a ready market for artisan brandy – if it is made in a legally permitted distillery, in an appropriate industrial location.

However, Marshall's unique location - isolated, mid-way between two fire departments, without municipal services and utilities, on an already overcrowded coastal highway, on agricultural land unsuited for the noise, pollution and the fire-hazard of a distillery – is not the appropriate location for such a distillery. Magee has not produced any information about his proposed distillery, or even named it for what it is. As a distillery producing and storing a Class 1-B flammable liquid, it is an industrial use of agricultural lands next to ecologically sensitive areas and pristine Tomales Bay with millions of oysters, clams and mussels.

By allowing this project to proceed, a precedent could be set for industrial ethanol micro-distilleries and larger distilleries on coastal agricultural lands. There are presently approximately 207 micro-distilleries in the U.S. and the trend is growing (see Attachment A, p. 39.) While many people

may enjoy artisan brandy, the Marshall community and the surrounding ranches of Marin will be faced with an increased risk of a major wildland fire hazard.

Thank you for allowing me the opportunity to comment on this appeal.

Sincerely,

A handwritten signature in cursive script that reads "Linda Emme". The signature is written in black ink and is positioned above the typed name.

Linda Emme  
18050 State Route 1  
Marshall, CA 94940

Cc: Lyn Scholz, Clerk, Marin County Board of Supervisors  
Tonya Hoover, Acting State Fire Marshall



Ragghianti|Freitas LLP

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JUL 26 2010

CALIFORNIA COASTAL COMMISSION

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WWW.RFLAWLLP.COM
July 23, 2010

Via facsimile and first class mail

Ms. Renée Ananda
California Coastal Commission
45 Fremont Street #2000
San Francisco, CA 94105-2219

Re: Appeal of Resolution of the Marin County Board of Supervisors
Resolution No. 2010-36 Approving With Conditions The Dillon
Vision (Brader-Magee) Coastal Permit, Design Review, And Use
Permit
17990 State Route 1, Marshall (Assessor's Parcel 106-220-20)

Dear Ms. Ananda:

In support of the pending appeal that we filed on behalf of our clients,
Scott Kivel and Lia Lund, we hereby submit this supplemental letter concerning
additional questions that have arisen and that we request be considered. This
letter is focused specifically on the brandy distillery process, which was the
subject of virtually no explanation or consideration in the County proceedings.

The proposed distillery would be located immediately adjacent to the
stream conservation area, such that the distillery will be 100 feet from the blue
line creek that runs through the property and empties into Tomales Bay.
Marconi Cove, a part of Tomales Bay State Park, is located immediately across
Highway One from the proposed distillery. The shore of Tomales Bay is about
175 feet from the distillery operation.

The applicable LCP Policies.

The following LCP policies are implicated by the facts discussed in this
letter:

- "The protection of natural resources in the coastal zone is a major
emphasis of the Coastal Act." (LCP at p. 63)

RODRIGO D. DIAS DAVID F. FEINGOLD
RILEY F. HURD III ROBERT F. EPSTEIN
SARAH N. LÉGER PATRICK M. MACIAS OF COUNSEL:
ERIC STERNBERGER HERBERT M. ROWLAND JOHN RALPH THOMAS, JR.
RICHARD T. FRANCESCHINI GARY T. RAGGHIANI, INC. DAVID P. FREITAS (RET.)

JUL 26 2010

CALIFORNIA  
COASTAL COMMISSION

## Ragghianti|Freitas LLP

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- "Streams and creeks are sensitive habitats for many species of birds and fish." (Id., p. 65)
- "Other issues of particular concern in relation to streams in Unit II are sedimentation and water pollution, both in the streams themselves and downstream . . . As a result, habitats are damaged by streambank erosion, the trampling of vegetation, sedimentation to streams, and contamination through runoff." (Id., p. 67)

**The Brandy Distillation Process Has Been Ignored Thus Far In The Project Review.**

The name brandy comes from the Dutch word *brandewijn*, meaning "burnt wine." The name is apt as most brandies are made by applying heat, originally from open flames, to wine. The heat drives out and concentrates the alcohol naturally present in the wine. Because alcohol has a lower boiling point (172°F, 78°C) than water (212°F, 100°C), it can be boiled off while the water portion of the wine remains in the still. Heating a liquid to separate components with different boiling points is called heat distillation. The low-boiling point liquids distilled from wine include almost all of the alcohol, a small amount of water, and many of the wine's organic chemicals. It is these chemicals that give brandy its taste and aroma.

Thus, to manufacture brandy, a fermented liquid is boiled at a temperature between the boiling point of ethyl alcohol and the boiling point of water. The resulting vapors are collected and cooled. The cooled vapors contain most of the alcohol from the original liquid along with some of its water. To drive out more of the water, the distillation process can be repeated several times depending on the alcohol content desired. The fine brandy maker's objective is to capture the alcohol and agreeable aromas of the underlying fruit, and to leave all of the off-tastes and bitter chemicals behind in the waste water. The waste products from brandy production include the solids from the wine production and the liquids left over from the still.

Heat, used to warm the still, is the other main raw material required for brandy production. Typically, stills are heated with natural gas.



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**The project applicant has offered no meaningful information as to how the brandy is proposed to be distilled and, most importantly, how the waste will be processed on site.**

In particular, the following questions remain unanswered:

- The applicant has provided no information concerning the equipment that will be operated in the brandy barn. How many boilers will be used? What size will they be? Where will they be located? What are the potential noise impacts? How will chemicals used in the distillation process be stored?
- The distillation process requires a substantial amount of water. How much will be used? How will the use of water devoted to the distillery adversely impact the other uses on the site as well as the neighbors' water table?
- What will be the water temperature for the "cooling" water for the boilers? How will that water be stored, temperature-regulated, and discharged on site?
- How much steam vapor will the boilers generate? How will that steam generation be handled on site?
- How will the liquid and solid chemical residue from the distillery process be stored and disposed on site?
- What methods are proposed to address the odors caused by the distillation process? What are the potential adverse air pollution impacts?
- How many propane tanks will be required to generate the heat necessary for the distillery? What size will the tanks be and where will they be located? What methods will be employed to address the fire hazard presented by the propane use and the boilers? How frequently will propane trucks be required to refill the tanks?



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Ms. Renée Ananda

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- What bottling equipment will be used? Where will it be located? How much noise will it generate?
- The applicant has represented that the distillery process and the "farming" will be typically handled by a single worker. It remains unclear how one worker could manage an entire distillery operation.
- The applicant claims that he will produce only 100 cases annually, which would appear unlikely to enable recovery of the initial investment in the distillery. How can the applicant realistically be prevented from distilling additional product once the distillery is constructed? Additional grapes can be transported to the site and a distillery certainly can be operated continuously. This suggests that the distillery operation -- which received a permit under the guise of an agricultural use -- is likely to evolve into a commercial operation. No schedule has been proposed that would limit the hours of the distillery operation. Even if there were such a schedule, there would be no realistic means for enforcement.

The County of Marin entirely ignored the issues discussed above concerning the applicant's proposal to manufacture and bottle brandy on-site. The County's sole decision concerning the distillery -- other than granting it a permit -- was to delegate regulation of wastewater disposal *only* to the Regional Water Quality Control Board. Other issues concerning noise, propane gas and chemical use and storage, etc., will likely not be addressed by RWQCB and were not considered by the County.

In summary, the location of a distillery on the subject site, given the environmental sensitivity of the location, would likely violate the LCP policies referenced above. One reasonable alternative might be for the distillery to be located elsewhere -- perhaps in Point Reyes Station -- where there are other commercial buildings and commercial operations. There is no evidence that the County ever considered such an alternative.

For the reasons previously stated, and those offered herein, we respectfully request that the Commission grant our appeal and revoke the permits granted to the applicant.



Ragghianti|Freitas LLP

Ms. Renée Ananda  
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Very truly yours,

A handwritten signature in black ink, appearing to read 'RF Epstein', written over a horizontal line.

Robert F. Epstein

cc: Mr. Scott Kivel and Ms. Lia Lund  
Clerk, Marin County Board of Supervisors  
Mr. Larry Kennings



## LAK ASSOCIATES, LLC

3030 Bridgeway, Suite 103, Sausalito, CA 94965  
tel: (415) 331-4551 fax: (415) 331-4573 info@lakassociates.com

July 29, 2010

Chairperson Bonnie Neely and Commissioners  
California Coastal Commission  
45 Fremont Street, Suite 200  
San Francisco, CA 94105-2219

Subject: **Appeal of Resolution No. 2010-36 by the Marin County Board of Supervisors Approving the Dillon Vision (Brader-Magee) Coastal Permit, Design Review, and Use Permit. 17990 State Route 1, Marshall (Assessor's Parcel 106-220-20)**

Dear Chairperson Neely and Commissioners:

You have received a letter from the attorneys representing the subject property's next door neighbors, Scott Kivel and Lia Lund, presenting an appeal of the above referenced Resolution passed unanimously by the Marin County Board of Supervisors after the application was unanimously approved by the Marin County Planning Commission.. The applicant, Tony Magee, has noted several significant errors and misleading statements. On his behalf, we have listed both the attorney's original text and Mr. Magee's response. We respectfully request that you consider this material when reviewing the appeal.

### ***RESPONSE TO EPSTEIN LETTER 6/1/2010***

1. *Page 1, Second Paragraph, 3rd sentence: "A pristine blue line stream that courses through the entire property empties into the Bay immediately across Highway 1 from the property."*

**Response: This characterization of the creek as pristine is inaccurate. The stream channel was changed in the 1970's and there is an earthen dam and man-made pond located in the drainage. In addition, the stream flow is carried through a culvert under Highway 1 onto and across another property before reaching the Bay.**

2. *Page 1, Second Paragraph, 5<sup>th</sup> sentence: "The County has allowed the project applicant to fence the stream and adjacent wetlands—thus inhibiting wildlife access to the area."*

**Response: This statement is false. The approved fence would be stock tight. The only purpose for the fence is to prevent sheep from grazing in the stream buffer zone. There are several areas that are open to wildlife movement.**



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3. *Page 1, Second Paragraph, last sentence: "The property is a habitat for the California red-legged frog, foothill yellow-legged frog and western pond turtle, and there is even potential for freshwater shrimp, Coho salmon, and steelhead at the site."*

**Response:** This statement is misleading. While the habitat conditions exist, none of these species were observed on the property during numerous visits to the site by a qualified biologist. The applicant has acknowledged that unobserved species may be present and this underscores the importance of the proposed 100% avoidance of any development in the 100-foot setbacks for all of the WCA/SCA zones.

4. *Page 2, First Paragraph, 1<sup>st</sup> sentence: "The project is an unprecedented commercial production facility covering approximately 10,000 square feet of property in seven separate structures...."*

**Response:** This statement is false. The approved project is a new agricultural operation, supported by a new single-family residence and garage, equipment barn, brandy production barn, two sheep shelters, green house and hop barn. The characterization ignores the specific uses and functions of the seven structures. Two of the structures are open-sided sheep shelters, one is an open-sided equipment and work shelter, one is an equipment service building and barn, and only one pertains to the brandy project.

5. *Page 2, Item 1. "A New Barn That Would Stand Out In Sharp Relief Above The Currently Undeveloped Grassland Hills."*

**Response:** This statement is incorrect. According to an agreement with the Environmental Action Committee of West Marin, the applicant has agreed to lower the height of the roofline by five and one-half feet by moving it approximately ten feet down-slope and by cutting it deeper into the hillside.

6. *Page 2, paragraph under Item 1: "The applicant has sited his proposed new barn near the crest of a prominent knoll, so that the upper portion of the 15-foot tall structure would be visible from Tomales Bay, Highway 1, and locations across Tomales Bay in Inverness."*



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**Response:** This statement is misleading and made moot by the applicant's agreement to relocate the barn. A review of the site topography shows that the proposed location for the barn is not on a "prominent knoll". The proposed barn is at the same elevation as the appellant's residence (109 ft) and the actual ridge line is behind it at approximately 450 feet to the north. The proposed barn would be visible only from selected locations along Highway 1 and barely visible from the Inverness side of Tomales Bay as shown by the highly accurate visual impact simulations approved by the county.

7. *Page 2, paragraph under Item 1, 2<sup>nd</sup> sentence: "The Applicant refused to consider moving the barn slightly down, slope, which would effectively hide the barn from public view."*

**Response:** This statement is false. The applicant has agreed to move the barn down slope approximately 10'.

8. *Page 2, paragraph under Item 1, 3<sup>rd</sup> sentence: "The barn would cover more than 2700 square feet of the property."*

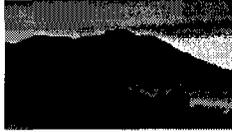
**Response:** This statement is false. The proposed barn is 1,790 square feet in size.

9. *Page 2, Item 2: "A New Paved Roadway Atop A Grassland Knoll That Would Afford The Applicant A Grand Entrance While Unnecessarily Subjecting the Community To A Public View Of All Vehicles Accessing The Residence."*

**Response:** This statement is misleading. As shown by the site topography, the proposed driveway would not be located on a "knoll". The driveway entrance begins on a side street off of Hwy 1 and would not be visible from Hwy 1. Additionally, as is shown in the traffic study that accompanies the proposal, the average number of trips generated by a single-family residence in Marin County is approximately 10 trips per day, with one trip being during the PM peak hours. The driveway would also be shielded from public view by tree screens.

10. *Page 3, first paragraph, 3<sup>rd</sup> sentence: "Instead, the applicant sought and obtained permission to construct an entirely new paved road that would climb a steep knoll and then run along the northern property boundary, across the flow of a seasonal seep."*

**Response:** This statement is misleading. The existing road is not a developed road, does not currently meet county requirements, and would require complete



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rebuilding due to the narrow existing width and geological constraints. Substantial grading would be required to widen and 'bench' the hillside road bed. This heavy grading would occur immediately adjacent to the 100' SCA set-back. Furthermore, the road would run continuously parallel to the SCA set-back, contrary to the LCP requirements. Utilizing the alignment of this farm road would also require extensive amounts of visible retaining walls above and below the roadway due to geotechnical constraints. The proposed upper location specifically also avoids the identified seasonal seep.

11. Page 3, first paragraph, last sentence: *"As viewed from Tomales Bay, the new road would cut into the hillside in an unnatural line, substantially disturbing the viewshed."*

**Response:** This statement is false. The proposed driveway alignment runs with the existing contours, requiring minimal grading and no retaining walls. Tree and shrub screens will shield the driveway from public view.

12. Page 3, paragraph under Item 3, 1<sup>st</sup> sentence: *"Though the applicant has presented no evidence that he can successfully grow grapes in this windy and foggy location where there is no history of such a crop, the County has permitted the applicant to manufacture brandy and to market it to consumers who will be invited to visit the property three days a week."*

**Response:** This statement is false. The brandy sniffing operation would be limited to two days per weekend, on a reservation only schedule, limited to three or less groups of eight adults per day. The plan to engender the expense of the vineyard site has been made with the benefit of professional viticulture consultation.

13. Page 3, paragraph under Item 3, 3<sup>rd</sup> sentence: *"If so, then the alternative would be to transport grapes to the site on trucks, thus converting the proposed agricultural operation to a commercial use."*

**Response:** This statement is false. The applicant does not propose to truck in grapes if the planted grapes fail to produce suitable yields. If, in fact after considerable expense, the vineyard were to prove unworkable, other row crops would be developed and processed for packaging and sale in the associated agricultural building.

14. Page 3, paragraph under Item 3, last sentence: *"The brandy production and public tours are designed to be housed in a second barn—located immediately adjacent to the*



California Coastal Commission  
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*stream conservation area—that would cover more than 2,000 square feet of additional property.”*

**Response:** This statement is false. The proposed brandy barn would be located outside, and away from, the SCA, and would occupy 1,456 square feet.

15. *Page 3, Item 5: “Other Structures Will Be Strewn In Various Locations On The Property.”*

**Response:** This statement is misleading. According to the agreement with the EAC, the lower sheep shelter would be located in a grazing pasture close to Highway 1 behind tree screening. The greenhouse structure is situated adjacent to the planned vegetable cultivation area. The hop barn would be located directly adjacent to the hop growing area and positioned behind existing tree screens. A second sheep shelter will be located in an area concealed by a knoll adjacent to the upper grazing area. The on-site sewage disposal system would be underground.

16. *Page 3-4, last paragraph—continuing at top of Page 4: “..and a new well at a still-undefined location.”*

**Response:** This statement is false. The site of the second well is clearly noted on Figure 3, Site Plan. Marin County Environmental Health Services has approved the drilling of the second well.

17. *Page 4, last full paragraph: “In stark contradiction to this requirement, the County granted a master plan waiver in exchange for a conservation easement designed to prohibit development on the property other than the proposed brandy manufacturing facilities and single family residence.”*

**Response:** This statement is false. The county’s decision to waive the master plan requirement came well before the Planning Commission hearing. The applicant had always planned to provide an agricultural easement on the property. The easement was not part of any negotiation regarding the uses of the property. It was the specific form of the Conservation Easement (Affirmative) that was agreed to following the Planning Commission hearing’s unanimous approval and before the hearing by the Board of Supervisors. As all of the objectives of the Master Plan have been accomplished, there is nothing more to be attained from the county’s point of view by requiring a “Master Plan”. In fact, the ability for the Planning Director to waive the requirements for a Master Plan is codified under Section 22.56.026I of the County’s Zoning Ordinance.



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California Coastal Commission

July 29, 2010

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18. Page 4-5, last line, continuing to partial paragraph top of page 5, reference to the brandy barn: "...a finding must be made—that the proposed project is minor and incidental in nature."

**Response:** This statement is misleading. The proposed project is completely agricultural in nature and is consistent with the C-APZ designation. The brandy barn is minor compared to the physically dominant agricultural use, sheep grazing, hop and vegetable cultivation. The brandy making facility would occupy 1,456 square feet of the site, which is 149.76 acres in size.

19. Page 5, second full paragraph: "All land divisions and developments in the APZ shall require an approved master plan showing how the proposed division or development would affect the subject property."

**Response:** The County has determined that the proposed project presents a master plan for the entire 149.76 acres. The proposed development is clustered near State Route 1; the remainder of the parcel is designated for either agricultural uses or habitat protection. No portion of site is unplanned. The conservation easement would prohibit further division or development of the agricultural or the habitat protection areas. The county has further determined that all of the goals of a Master Plan have been met through the planning process as it exists. Pursuant to Marin county Code Section 22.47.010.21, the Master Plan requirement may be waived if it is determined that all requirements of the Master Plan application can be achieved through the review process for the Coastal Permit, Design Review and Use Permit applications, and if the residual residential potential has been exhausted. The Agricultural Conservation Easement would exhaust all future development potential and would include provisions for the county to lease the agricultural lands if the owners are unable to, or fail to utilize the property for agricultural production.

20. Page 5, third full paragraph regarding "hardship": "The development is necessary because agricultural use of the property is no longer feasible. The purpose of this standard is to permit agricultural landowners who face economic hardship to demonstrate how development on a portion of their land would ease this hardship and enhance agricultural operations on the remainder of the property."

**Response:** This statement is misleading. The applicant is not seeking project approval due to hardship, quite the opposite; he is seeking to return fallow agricultural land to production. The appellant seeks to confuse the issue by



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**suggesting that the applicant's personal business interests somehow have a relationship to the agricultural uses of the subject property.**

21. *Page 6, first paragraph, top of page: "In summary, the County incorrectly failed to demand an LCP-required master plan, and compounded its error by also failing to make locally required Code findings for a master plan waiver."*

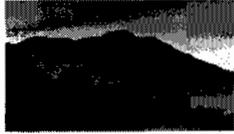
**Response: This statement is false. The county correctly determined that the proposed project met the required elements of a master plan, and the findings cited by the appellant are made. The proposed project does, in fact, show how the total site would be eventually used, no hardship relief is needed, adequate water supply, sewage disposal, road access and capacity, and other public services are available, no significant adverse environmental impacts would occur, and the LCP stream and natural resources policies are incorporated in the development plan.**

22. *Page 6, paragraph C.1.: "The County Failed To Study Any Potential Environmental Impacts That Could Be Caused By The Proposed Fencing Along The Blue Line Stream And The Brandy Barn Located Adjacent To The Stream Conservation Area."*

**Response: This statement is erroneous and misleading. The proposed fencing is intended to prohibit only the sheep from entering the sensitive habitat areas. The fencing would be wire with a five-inch square pattern, four feet high, not solid construction. The creek is accessible. There is open access through the hop yard area, which represents approximately 30% of the east-west depth of the property, and also from the western edge of the creek outlet and the eastern end of the creek entry to the property. The northern edge is unfenced along the entire length.**

23. *Page 6, fifth paragraph: "In addition, the proposed brandy barn is located immediately adjacent to the stream conservation area. As with the proposed fencing, there is no information concerning how the noise and other impacts from the brandy manufacturing and tourism operation would impact the adjacent wildlife."*

**Response: This statement is misleading. The brandy barn operation would be inside a closed building, with any seasonal noise suppressed by the structure. The brandy manufacturing operation would generate less noise than other agricultural operations in West Marin, such as the local dairies. The limited tours of the facility would be restricted to weekend daytime hours and would generate less noise than the typical weekend traffic on State Route 1.**



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24. *Page 7, fourth bullet, last sentence: "Fences...which significantly inhibit wildlife movement, especially access to water, shall be avoided."*

**Response:** This statement is erroneous and misleading. It is clear that the appellant is unfamiliar with agricultural fencing techniques. As stated above, the sheep fencing will be low enough for larger wildlife to jump, and open at several places to allow smaller wildlife to pass. The coastal zone natural resources, which include the stream habitat and seeps, are recognized and protected, and seasonal runoff is controlled. The applicant commissioned seasonal plant and animal surveys, resulting in a constraints analysis that influenced the site plan to avoid habitats of rare or endangered species and unique plant communities.

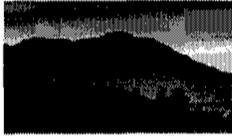
25. *Page 8, first bullet paragraph, top of page: "Clustered development or reduced densities would better protect the scenic quality of this area."*

**Response:** The policy recommends, but does not require, clustered development. The proposed project presents a clustered development in one corner of the site, utilizing less than 5% of the 149 acre parcel to protect the overall visual quality of the area.

26. *Page 8, second bullet, last sentence: "New development in sensitive visual areas, such as along the shoreline of Tomales Bay and on the open rolling grasslands east of the Bay, has the potential for significant adverse visual impacts unless very carefully sited and designed."*

**Response:** This is a statement, not a policy. However, the applicant took this statement very seriously, and used it as a guideline for the proposed project. The building sites were carefully selected low on the property, using the existing contours to minimize the visual impacts as much as possible. This resulted in the proposed development being clustered along with the appellant's residence. In addition, the existing vegetation is utilized as screening elements. Where the existing vegetation was limited, additional plant materials were installed to enhance the screen effect. The building architecture, including the colors and materials, reflect the agricultural character of other structures along the shoreline.

27. *Page 8, third bullet: "The height, scale, and design of the new structures shall be compatible with the character of the surrounding natural and built environment. Structures shall be designed to follow the natural contours of the landscape and sited so as not to obstruct significant views as seen from public viewing places."*



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**Response:** The proposed project adheres to this policy. See response above.

28. Page 8, last paragraph, first sentence: *"As discussed above, the applicant has unnecessarily sited the proposed equipment barn such that it would rise high above a prominent knoll on the currently pristine grassland on the property."*

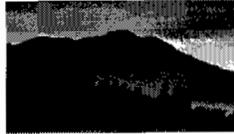
**Response:** This statement is false. The applicant, in his agreement with the Environmental Action Committee of West Marin, has agreed to move the proposed location of the equipment barn 10 feet down slope, which would lower the height of the barn by five and one-half feet. No significant views would be obstructed. In addition, the grassland area has been grazed for many years, and is far from being pristine.

29. Page 9, first paragraph, last sentence: *"Instead, the County simply adopted the applicant's assertion as sole "evidence" supporting its approval of the proposed new road to be sited atop the grassland knoll, where the vehicles and the headlights of the applicants and his guests would be visible from points on Tomales Bay and beyond."*

**Response:** This statement is an exaggeration. The proposed driveway alignment resulted from the detailed biological assessments that were performed on the property over the course of twelve months. The proposed driveway would be accessible from the same side-road exit from State Route 1 currently used by the appellant. The proposed driveway would be screened from the appellant's property and State Route 1 by rows of trees, placed specifically for that purpose.

30. Page 10, second paragraph, second sentence: *"The administrative record is thin concerning the County's review of the (allegedly) available water, and the conflicting statements quoted above—which suggest that the existing well is sufficient and yet conversely state that a second well is necessary—reflect that this key issue did not receive the scrutiny required by the following provisions in the LCP:"*

**Response:** This statement is false and misleading. Environmental Health Services reviewed the well data prepared by technical experts specializing in analyzing well production, and was satisfied that the existing well does produce sufficient water for the proposed project, including the domestic and agricultural demands. The existing well is located on the south side of the drainage, thereby requiring distribution lines crossing the drainage channel and the buffer areas. Developing a second well on the north side of the drainage would eliminate the requirement for facilities crossing the channel and the riparian areas (SCA and WCA).



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31. *Page 10, third paragraph, second sentence: "Once the condition of the source and the production capacity of the built system are known, a determination can be made that the supply is adequate, marginal, or inadequate to serve buildout, and an appropriate policy response can be developed."*

**Response:** This statement is an indication of the water policies included in the LCP. Environmental Health Services has determined that the water supply for the proposed project is adequate to serve both the proposed domestic and agricultural uses.

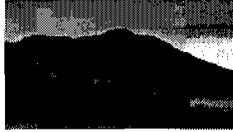
32. *Page 10, fourth paragraph: "[T]here appears to be very little potential for developing additional water supplies on the east side of Tomales Bay. Available information strongly suggests that there is not adequate water to serve buildout."*

**Response:** This statement is anecdotal and is taken from out of context in an attempt to reinforce a weak argument lacking professional consultation. Taken on a site-specific basis, there is adequate water to serve the proposed project, as shown by the applicant's existing drilled well testing data, as approved by Environmental Health Services. The statement refers to "buildout" projections included in other planning documents, not the development of the subject property.

33. *Page 10, last paragraph, first sentence: "Prior to the issuance of a coastal development permit, the County shall make the finding, based on information provided by environmental documents, staff analysis, and the applicant, that adequate public services and resources (i.e. water supply, sewage disposal, and road access and capacity) are available to serve the proposed development."*

**Response:** This statement is also taken out of context. The appellant is attempting to assert that "environmental documents" are special documents required under CEQA, whereas any survey, study, report or assessment of the project or the project site that is technical in nature may be considered an environmental document. For the proposed project, the well report, as well as the biological assessment or the geotechnical report are environmental documents. Environmental Health Services determined that the water supply was adequate, and, along with the Regional Water Quality Control Board, that the proposed on-site sewage disposal system was satisfactory.

34. *Page 11, first full paragraph, first sentence: "As discussed further below, the County conducted no environmental review, so there are no "environmental documents," and thus there is no basis, to make the above-quoted finding regarding adequate resources."*



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**Response: As before, the appellant is confused over the definition of “environmental documents”. Please see above response.**

35. *Page 11, second paragraph, first sentence: “In addition, concerning road access and capacity,” there is a significant possibility that the project would create adverse traffic impacts if and when grapes are required to be transported by truck to the property and when as many as 24 total weekly visitors would be encouraged to visit the site to participate in brandy sniffing tours.”*

**Response: This statement is totally false and intentionally misleading. There are no data or technical analyses that indicate that there is “a significant possibility that the project would create adverse traffic impacts”. Actually, the reverse is true. The traffic analysis, an environmental document, prepared for the proposed project concluded that no significant adverse impacts would result if the project were developed. The proposed project does not include transporting grapes to the property. Any grapes used to produce brandy would be grown on-site. In addition, the reservation-only tours would be spread over an eight-hour period, limited to a total of 24 persons during that time period, in small van-type vehicles holding up to a maximum of eight individuals.**

36. *Page 11, second paragraph, third sentence: “As noted in the LCP,”...sections of [Highway 1]in the...Point Reyes Station and Marshall areas are near their ‘peak capacity’ on weekends...” The project is certainly located at one such section of the highway.”*

**Response: This statement is manipulated and misleading. The LCP refers to the named urbanized areas where development is the most concentrated, not the general area so named. The proposed project is neither in Point Reyes Station nor in the central Marshall area. The proposal’s traffic analysis, based on a thorough review of recorded traffic conditions, including accident reports, concluded exactly the opposite of the appellant’s claim. The appellant’s assertion that visitors’ vehicles will create a risk of collision is pure speculation and not based in fact. It should be clearly noted that the appellant uses the very same exit from State Route 1, and any group of visitors to his property would be subject to the same conditions and claims.**

37. *Page 12, third paragraph (bullet), third sentence: “An excellent letter in the administrative record from a Marshall resident, Linda Emme, reflects her decades of horticultural experience in the vicinity of the property, and she confirms that it is extremely unlikely that the grape growing enterprise could succeed.”*



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**Response:** This statement is false and misleading. Ms. Emme is an interested local resident and professional color consultant, currently employed in an administrative role at a local oyster farm. Her academic background does not include scientific training in horticulture, botany or biology. She does not professionally manage or own a commercial agricultural operation on any lands in this area. She has limited amateur horticultural experience at best. Hers is a personal opinion, so stated in her letter, with no scientific basis. She is not an expert on grapes, or grape growing.

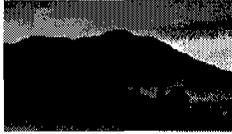
38. *Page 13, third full paragraph, last sentence: "Evidence in the administrative record reflects that the proposed site is both particularly environmentally sensitive and likely to contain historic resources."*

**Response:** This statement is false and misleading. The proposed project included a comprehensive constraints analysis as part of the application. The project applicant submitted several environmental documents, including biological assessments and cultural resource surveys, that concluded that no area proposed for development contained sensitive either biological nor historic resources. Sensitive areas were limited, mapped accordingly, and avoided in the development of the proposed project.

39. *Page 14, first paragraph, second sentence: "Supervisor Kinsey noted (incorrectly) that the appellants were the only persons objecting to the project, as if the Board's function were to weigh the volume of opposition, rather than apply the law."*

**Response:** This statement is false and misleading. Supervisor Kinsey's remarks were correct. The appellant was the only voiced opinion opposing the proposed project to attend the Board hearing on the appeal. Other groups had raised concerns earlier in the process and those concerns were thoughtfully addressed and so were resolved constructively.

In support of Mr. Kinsey's comments, it should be noted that during the course of the conceptual phase of the project, the applicant met with and discussed the project numerous times with every relevant community and non-profit group, and individuals, with interests in the East Shore area. Included in these discussions were Don Neubacher of the Golden Gate National Seashore, Roy MacNamee of the California State Parks, Fred Smith of the Environmental Action Committee of West Marin, various members of the East Shore Planning Group, Stacy Carlsen the Marin County Agricultural Commissioner, Gordon Bennett of the Sierra Club, Catherine Caufield, the Tomales Bay Watershed Council, Supervisor Kinsey's staff, Bob Berner of MALT, as well as numerous individuals involved in ranching in west



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**Marin. The comments received during these discussions were incorporated into the project application in ways that constructively answered all concerns that were relevant. Supervisor Kinsey's comments reflect this extensive effort to work with the community and highlight the isolated nature of the complaints of the sole appellant.**

We appreciate your consideration of these comments. We welcome the opportunity to discuss them with you, or the Commission's staff, to express our concerns regarding the faulty appeal petition.

Very sincerely yours,

Larry Kennings  
Planning Consultant for Tony Magee

Cc: Ruby Pap  
Renee Ananda



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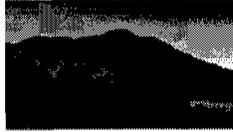
Mr. Larry Simon  
California Coastal Commission  
45 Fremont Street, #200  
San Francisco, CA 94105-2219

Subject: **The Dillon Vision (Brader-Magee) Coastal Permit, Design Review, and Use Permit.**  
**17990 State Route 1, Marshall (Assessor's Parcel 106-220-20)**

Dear Mr. Simon:

The attorneys for Scott Kivel and Lia Lund recently sent a letter to the Coastal Commission staff containing questions regarding the project listed above, focused specifically on the applicant's proposed brandy distillation process. On behalf of the applicant, Mr. Tony Magee, we have provided the following answers:

1. "The applicant has provided no information concerning the equipment that will be operated in the brandy barn."
  - "How many boilers will be used?" **One.**
  - "What size will they be?" **100 gallons.**
  - "Where will they be located?" **Inside the building.**
  - "What are the potential noise impacts?" **There is no noise produced by the distilling process.**
  - "How will chemicals used in the distillation process be stored?" **No chemicals are necessary or used in the distillation process.**
2. "The distillation process requires a substantial amount of water."
  - "How much will be used?" **The distillation process does not require large amounts of water. Water is used in the distillation process only to cool the distillate in the still and before it is collected. This water is contained in a recirculating loop, passing through a small refrigeration compressor before returning to the loop. Water will be added to the distilled brandy to reduce the alcohol volume. This water will be purified water, not well water.**
  -



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- “How will the use of water devoted to the distillery adversely impact the other uses on the site as well as the neighbors’ water table?” **The loop may contain a captive volume of 50 gallons of water. There will be no adverse impact to the other uses on the site or the neighbors’ water table.**
- 3. “What will be the water temperature for the “cooling” water for the boilers?” **A low pressure boiler will be used. The cooling water temperature will be 60F degrees.**
- 4. “How will the water be stored, temperature-regulated, and discharged on site?” **No water will be discharged on-site as a result of the distillation process.**
- 5. “How much steam will the boilers generate?” “How will the steam generation be handled on-site?” **No steam vapor will be generated by the distillation process.**
- 6. “How will the liquid and solid chemical residue from the distillery process be stored and disposed on site?” **No chemicals are necessary or used in the process. There are no new compounds created by the distillation process. Any after-process solids that remain are components of the original wine and will be used to fertilize the vineyard. The depleted wine liquid will be pumped to the on-site sewage disposal system.**
- 7. “What methods are proposed to address the odors caused by the distillation process?” “What are the potential adverse air pollution impacts?” **There are no odors generated by the distillation process. Distillation is, by necessity, a closed process. There will be no open flame; the heat exchanger will be contained.**
- 8. “How many propane tanks will be required to generate the heat necessary for the distillery?” “What size will the tanks be and where will they be located?” “How frequently will propane trucks be required to refill the tanks?” **A single standard 200 gallon propane tank will supply the small steam generator. It will be located adjacent to the brandy barn parking area. The tank will be refilled from time to time, coordinated with the propane delivery requirement for the residence. The distillation season is a two month period.**
- 9. “What methods will be employed to address the fire hazard presented by the propane use and the boilers?” **The propane will be stored outside the building according to the current fire protection standards. There boiler will be a contained system, with no open flame.**
- 10. “What bottling equipment will be used?” “Where will it be located?” “How much noise will it generate?” **The brandy will be filled into bottles using a traditional hand-filling devise commonly used by small wineries, located inside the brandy barn. The**



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**filling is entirely manual. No motors are required. No other machinery is necessary. No noise will be generated.**

11. "The applicant has represented that the distillery process and the "farming" will be typically handled by a single worker. It remains unclear how one worker could manage an entire distillery operation." **The distillery will be run by one person, Mr. Magee. Other family members may participate in the crush season and in the seasonal bottling activities. The "single worker" will manage the hop yard, vineyard, and the sheep and lambing operations.**

The brandy barn distilling operation will subject to a Use Permit from Marin County. As part of the application for the Use Permit, the applicant will submit all the required documents, including building plans and process specifications. If you have any questions regarding the proposed distilling process, please contact Mr. Magee at 707/769-4495.

Very sincerely yours,

Larry Kennings  
Planning Consultant

Cc: Ruby Pap