

DEPARTMENT: Planning

BY: Eric Jay Toll
PHONE: 966-0302

RECOMMENDED ACTION AND JUSTIFICATION:

Board action on the SilverTip Resort Planned Development, Specific Plan Amendment #99-1, Zoning Amendment #99-1, Planned Development #99-1, Conditional Use Permit #267, Land Division Application #1511 for 15.73 acres of RC-PD zoning, 29.07 acres of SFR-1-PD, 125 hotel units, 30 cabin units, 30 transient occupancy use approvals, 4 parcels.

Please see attached information.

BACKGROUND AND HISTORY OF BOARD ACTIONS:

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

Financial Impact? () Yes () No	Current FY Cost: \$	Annual Recurring Cost: \$
Budgeted In Current FY? () Yes () No () Partially Funded		
Amount in Budget: \$		List Attachments, number pages consecutively
Additional Funding Needed: \$		
Source:		
Internal Transfer		
Unanticipated Revenue	_____ 4/5's vote	
Transfer Between Funds	_____ 4/5's vote	
Contingency	_____ 4/5's vote	
() General () Other		

CLERK'S USE ONLY:

Res. No. See No Ord. No. 1000
 Vote - Ayes: _____ Noes: _____
 Absent: _____
 Approved
 Minute Order Attached No Action Necessary

COUNTY ADMINISTRATIVE OFFICER:

_____ Requested Action Recommended
 No Opinion
 Comments:

The foregoing instrument is a correct copy of the original on file in this office.
 Date: _____
 Attest: MARGIE WILLIAMS, Clerk of the Board
 County of Mariposa, State of California
 By: _____
 Deputy

CAO: RH

AGREEMENT OF INDEMNITY

This Agreement is entered into between the County of Mariposa ("County") and PacificUS Real Estate Group Inc. ("Developer") and effective upon the 2nd day of December 2003.

WHEREAS, the Developer has filed applications with the County for the approval of certain land use entitlements (the "Requested Entitlements") for a development project known as the SilverTip Resort Village Project ("Project"), which were the subject of public hearings; and

WHEREAS, the County has concluded the preparation of various environmental documents, staff reports, exhibits, approvals and other entitlements and decisions pertaining to the Requested Entitlements; and

WHEREAS, the various Project approvals will inure to the substantial economic benefit of the Developer; and

WHEREAS, the Developer is willing to assist the County in the event that a legal challenge is filed against various approvals granted by the County for the Project;

NOW, THEREFORE, County and Developer agree as follows:

1. Developer agrees to defend, indemnify, and hold harmless the County and its agents, officers and employees (the "Indemnified Parties") from any claim, action, or proceeding against the Indemnified Parties to attack, set aside, void, or annul the Requested Entitlements and/or certification of CEQA review approved by County or its officers, agents or employees concerning the Requested Entitlements and other proceedings, or to impose personal liability against such officers, agents or employees resulting from their involvement in any and all proceedings or actions taken by County in connection with the processing of the Requested Entitlements, specifically including any claim for attorney fees, costs of court, or expenses of litigation claimed by or awarded to any party from County in such litigation (the "Indemnity Obligations"), by legal counsel engaged and selected by Developer.
2. County agrees that it shall promptly notify Developer of any claim, action or proceeding giving rise to an Indemnity Obligation. In addition, County shall reasonably cooperate in the defense of an Indemnity Obligation. If an Indemnified Party fails to provide the foregoing prompt notification, or fails

to reasonably cooperate in the defense, Developer shall not thereafter be responsible to defend, indemnify or hold harmless such Indemnified Party.

3. Notwithstanding the foregoing, the County reserves the right, at its sole discretion to elect to participate in the defense of any such claim, action, or proceeding, with counsel of its own choosing, provided that it shall bear its own attorney's fees and costs, and defend the action in good faith.

4. As part of the cooperation to be provided in respect to the defense of any Indemnity Obligation, (i) all Indemnified Parties shall reasonably consider any request for a written conflict waiver that may be reasonably requested by the selected legal counsel to facilitate a joint defense of all Indemnified Parties in the proceedings; (ii) all Indemnified Parties shall confer with Developer concerning any offer that such Indemnified Party receives with respect to settlement of a matter that is the subject of the Indemnity Obligations, (iii) no Indemnified Party shall enter into any agreement in settlement of such matters without the written consent of Developer, (iv) Developer shall not settle any of the claims against an Indemnified Party without such party's written consent; and (v) no Indemnified Party shall unreasonably withhold its consent to settlement of such claim, action or proceeding, provided, however, no Indemnified Party shall be required to consent to any settlement of such claim, action or proceeding that imposes any financial liability upon such party unless Developer agrees to fully assume, pay and discharge such liability at no cost to such Indemnified Party and provides County with adequate security to ensure that such liability will be fully paid and discharged by Developer. In addition, no Indemnified Party shall be required to consent to any portion of a settlement of such claim, action or proceeding, that does not directly pertain to the Project site, other than the payment of a financial liability as specified in Subsection (v).

5. Notwithstanding any term or provision herein to the contrary, Developer shall have no Indemnity Obligations to pay any amount for punitive or exemplary damages that may be awarded, even if County agrees to pay such portion of a judgment on behalf of its employees (Government Code Section 825).

6. County and Developer agree to mediate any dispute or claim arising between them out of this Agreement, before resorting to arbitration or court action. Mediation fees, if any, shall be divided equally among the parties involved. If, for any dispute or claim to which this section applies, any party

commences an action without first attempting to resolve the matter through mediation, or refuses to mediate after a request has been made, then that party shall not be entitled to recover attorneys fees even if they would otherwise be available to that party in any such action.

7. County and Developer agree that any dispute or claim in law or equity arising between them out of this Agreement which is not settled through mediation shall be decided by neutral binding arbitration. The arbitrator shall be a retired judge or justice, or an attorney with at least 10 years of CEQA and/or land use experience, unless the parties mutually agree to a different arbitrator, who shall render an award in accordance with substantive California law. The parties shall have the right to discovery in accordance with California Code of Civil Procedure Section 1283.05. In all other respects, the arbitration shall be conducted in accordance with Title 9 of Part II of the California Code of Civil Procedure. In any action, proceeding or arbitration proceeding, the prevailing party shall be entitled to reasonable attorneys fee and costs from the nonprevailing party, except as provided in Section 6. Judgement upon the award of the arbitrator(s) shall be entered into any court having jurisdiction. Interpretation of this agreement to arbitrate shall be governed by the Federal Arbitration Act.

8. Developer's obligations under this Agreement shall survive the termination of this Agreement.

COUNTY OF MARIPOSA

Date: 12-2-03

Attest: Margie Williams
~~County Clerk~~ of the Board

By: Bob Rickman
Its: Chairman of the Board

DEVELOPER

Date: Dec 2, 2003

PacificUS Real Estate Group, Inc., a California corporation

By: [Signature]
Its President

Date: _____

By: _____
Its Secretary

APPROVED AS TO FORM:

Jeffrey G. Lee
County Counsel

RECEIVED

DEC 04 2003

Mariposa County Planning Dept.

ASSISTANT SECRETARY'S CERTIFICATE

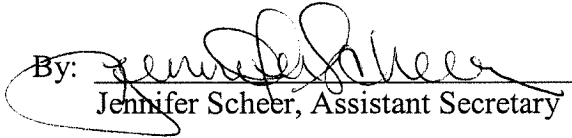
I, Jennifer Scheer, certify that I am the duly elected Assistant Secretary of PacificUS Real Estate Group, a California corporation (the "Corporation") and that the following resolutions were unanimously adopted by the Board of Directors of the Corporation on September 23, 2003:

NOW, THEREFORE, BE IT RESOLVED, that it is in the best interest of the Corporation, to enter into an Agreement of Indemnity with the County of Mariposa ("County"), whereby the Corporation agrees to indemnify the County, its officers, agents and/or employees against any claims, actions, or proceedings arising in connection with their approval of the Corporation's requested entitlements and/or certification of the CEQA review for the SilverTip Resort Village project located in Fish Camp, Mariposa County, California; and

RESOLVED FURTHER, that Paul J. Giuntini, as President of the Corporation, is authorized and directed to execute the Agreement of Indemnity, and any other necessary related documents in connection therewith, on behalf of the Corporation.

DATED: September 24, 2003

PACIFICUS REAL ESTATE GROUP,
a California corporation

By: 
Jennifer Scheer, Assistant Secretary



COUNTY of MARIPOSA

P.O. Box 784, Mariposa, CA 95338 (209) 966-3222

BOB PICKARD, CHAIR
GARRY R. PARKER, VICE-CHAIR
LEE STETSON
DOUG BALMAIN
JANET BIBBY

DISTRICT V
DISTRICT IV
DISTRICT I
DISTRICT II
DISTRICT III



MARIPOSA COUNTY BOARD OF SUPERVISORS

MINUTE ORDER

TO: ERIC TOLL, Planning Director
FROM: MARGIE WILLIAMS, Clerk of the Board *MW*
SUBJECT: ADOPTION OF SILVERTIP RESORT PLANNED DEVELOPMENT
Resolution Nos. 03-442; 03-443; 03-444; 03-445; 03-446; 03-447 and Ordinance No. 1000

THE BOARD OF SUPERVISORS OF MARIPOSA COUNTY, CALIFORNIA,

ADOPTED THIS Order on December 2, 2003

ACTION AND VOTE:

Eric Toll, Planning Director;

A) Board Action on the SilverTip Resort Planned Development, Specific Plan Amendment #99-1, Zoning Amendment #99-1, Planned Development #99-1, Conditional Use Permit #267, Land Division Application #1511 for a 15.73 Acres of RC-PD Zoning, 29.07 Acres of SFR-1-PD, 137 Hotel Units, 30 Cabin Units, 30 Transient Occupancy Use Approvals, 4 Parcels (Continued from 11-4-03) (**NOTE:** agenda was corrected on December 1, 2003, to reflect 137 hotel units versus 125)

BOARD ACTION: Eric Toll advised of three pages of errata that were distributed to add to this package to correct a typographical error and to correct the acreage labels for the land use classification maps. Eric reviewed the seven recommended actions. Eric and Attorney Bill Abbott, special counsel, responded to questions from the Board relative to certifying the Environmental Impact Review (EIR); and relative to the Conditional Use Permit only referencing an exterior swimming pool – however, there is language in the documents relative to draining an exterior and interior pool. Ron Coleman, applicant, advised that there is an interior pool and an exterior pool planned for the project. Staff responded to additional questions from the Board as to whether there are any existing septic systems to be removed or abandoned, and relative to the process; and relative to the status of the Board's request for more detailed information on the employee housing. Eric advised that details of housing for twenty employees will be included in the development agreement which will come back to the Board for ratification. Staff responded to a question from the Board relative to the parking requirements. The Board took the following actions relative to the SilverTip Resort. (M)Parker, (S)Balmain, Res. 03-442 was adopted certifying the EIR and adopting findings, a Mitigation Monitoring and Reporting Program, and Statements of Overriding Consideration/Ayes: Balmain, Bibby, Parker, Pickard; Noes: Stetson.

(M)Parker, (S)Balmain, Res. 03-443 was adopted approving Specific Plan Amendment No. 99-1 amending the Fish Camp Town Planning Area Specific Plan to change its land use classification map, as

recommended. Supervisor Bibby read a portion from the Fish Camp Specific Plan relative to the guiding principles and the goals and objectives to support the goals for planning for the community. Supervisor Stetson stated he felt there could be different points of view. Supervisor Pickard stated he supports a SilverTip Resort project, but can't support this project as proposed. He stated he feels the community is looking for a scaled down version and one that is viable and sustainable; and he advised that these same concerns apply for each of the following actions. Ayes: Balmain, Bibby, Parker; Noes: Stetson, Pickard.

(M)Parker, (S)Balmain, reading was waived and Ord. 1000 was adopted approving Zoning Amendment No. 99-1 amending the uncodified ordinance implementing the Fish Camp Town Planning Area Specific Plan to change its zoning district map as recommended/Ayes: Balmain, Bibby, Parker; Noes: Stetson, Pickard.

(M)Parker, (S)Balmain, Res. 03-444 was adopted conditionally approving Use Permit No. 267 for the SilverTip Resort Village, as recommended/Ayes: Balmain, Bibby, Parker; Noes: Stetson, Pickard.

(M)Parker, (S)Balmain, Res. 03-445 was adopted conditionally approving the Planned Development Permit No. 99-1 for the SilverTip Resort Village, as recommended/Ayes: Balmain, Bibby, Parker; Noes: Stetson, Pickard.

(M)Parker, (S)Balmain, Res. 03-446 was adopted conditionally approving the Land Division Application No. 1511 to create four parcels as shown on the tentative map, as recommended/Ayes: Balmain, Bibby, Parker; Noes: Stetson, Pickard.

(M)Stetson, (S)Parker, Res. 03-447 was adopted approving and authorizing the Chairman to sign the Indemnification Agreement with PacificUS for the SilverTip Resort Village project/Ayes: Unanimous.

Eric Toll advised that there are over 11,000 pages in the administrative record for this project that is being cataloged for the attorneys involved in this matter, and he commended the Board for its efforts.

cc: Jeff Green, County Counsel
File

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WHEREAS, the County has concluded the preparation of various environmental documents, staff reports, exhibits, approvals and other entitlements and decisions pertaining to the Requested Entitlements; and

WHEREAS, the various Project approvals will inure to the substantial economic benefit of the Developer; and

WHEREAS, the Developer is willing to assist the County in the event that a legal challenge is filed against various approvals granted by the County for the Project;

NOW, THEREFORE, County and Developer agree as follows:

1. Developer agrees to defend, indemnify, and hold harmless the County and its agents, officers and employees (the "Indemnified Parties") from any claim, action, or proceeding against the Indemnified Parties to attack, set aside, void, or annul the Requested Entitlements and/or certification of CEQA review approved by County or its officers, agents or employees concerning the Requested Entitlements and other proceedings, or to impose personal liability against such officers, agents or employees resulting from their involvement in any and all proceedings or actions taken by County in connection with the processing of the Requested Entitlements, specifically including any claim for attorney fees, costs of court, or expenses of litigation claimed by or awarded to any party from County in such litigation (the "Indemnity Obligations"), by legal counsel engaged and selected by Developer.
2. County agrees that it shall promptly notify Developer of any claim, action or proceeding giving rise to an Indemnity Obligation. In addition, County shall reasonably cooperate in the defense of an Indemnity Obligation. If an Indemnified Party fails to provide the foregoing prompt notification, or fails

to reasonably cooperate in the defense, Developer shall not thereafter be responsible to defend, indemnify or hold harmless such Indemnified Party.

3. Notwithstanding the foregoing, the County reserves the right, at its sole discretion to elect to participate in the defense of any such claim, action, or proceeding, with counsel of its own choosing, provided that it shall bear its own attorney's fees and costs, and defend the action in good faith.

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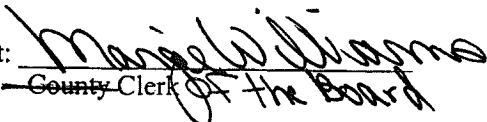
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COUNTY OF MARIPOSA

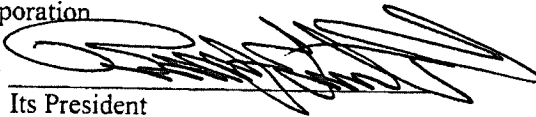
Date: 12-2-03

By: 
Its: Chairman of the Board

Attest: 
~~County Clerk~~ of the Board

DEVELOPER

Date: Dec 2, 2003

PacificUS Real Estate Group, Inc., a California corporation
By: 
Its President

Date: _____

By: _____
Its Secretary

APPROVED AS TO FORM: 
County Counsel

RECEIVED

DEC 04 2003

Mariposa County Planning Dept.

ASSISTANT SECRETARY'S CERTIFICATE

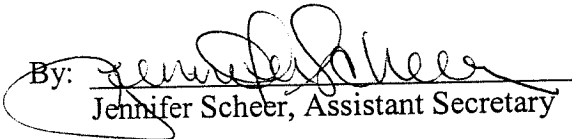
I, Jennifer Scheer, certify that I am the duly elected Assistant Secretary of PacificUS Real Estate Group, a California corporation (the "Corporation") and that the following resolutions were unanimously adopted by the Board of Directors of the Corporation on September 23, 2003:

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RESOLVED FURTHER, that Paul J. Giuntini, as President of the Corporation, is authorized and directed to execute the Agreement of Indemnity, and any other necessary related documents in connection therewith, on behalf of the Corporation.

DATED: September 24, 2003

PACIFICUS REAL ESTATE GROUP,
a California corporation

By: 
Jennifer Scheer, Assistant Secretary