



# County of Santa Cruz

## PLANNING DEPARTMENT

701 OCEAN STREET, 4<sup>TH</sup> FLOOR, SANTA CRUZ, CA 95060  
 (831) 454-2580 FAX: (831) 454-2131 TDD: (831) 454-2123

ALVIN D. JAMES, DIRECTOR

Agenda Date: June 13, 2000

May 19, 2000

Board of Supervisors  
 County of Santa Cruz  
 701 Ocean Street  
 Santa Cruz, CA 95060

**Subject: Jurisdictional hearing to consider the Planning Commission's decision to uphold the Zoning Administrator's denial of application 99-0528, a proposal to amend Coastal Development Permit 97-0093 (proposal to recognize the construction of a two story single family dwelling, 158 cubic yards of grading, a domestic water well, a generator shed, a 5,000 gallon water tank, a 200 gallon propane tank and a 500 gallon propane tank on a parcel of land where a lot line adjustment is proposed in order to locate another "as-built" single family dwelling and habitable accessory structure on APN 62-211-28) by recognizing the construction of an additional two story single family dwelling, including the reduction of the required 200' agricultural buffer setback to the southern property line and to convert the existing previously approved single family dwelling to a habitable accessory structure and to recognize less than 1000 cubic yards of grading to improve the driveway. Requires a Coastal Development Permit, Agricultural Buffer reduction and Grading-Preliminary Review.**

**Property located about 1.5 miles southeast of Smith grade at the end of an unnamed right of way which intersects with Smith Grade about 1.5 miles from Empire Grade.**

Members of the Board:

On February 18, 2000, at a noticed public hearing, the Zoning Administrator considered application 99-0528, a proposal to recognize the construction of a new, 3,071 square foot single family dwelling and the conversion of a previously approved, 2,729 square foot single family dwelling to a Habitable Accessory Structure. After receiving public testimony and evaluating the project, the Zoning Administrator denied the application (**Attachment 1**).

The Zoning Administrator's decision was appealed to the Planning Commission by the applicant (David Subocz) on February 25, 2000 (**Attachment 2**). On April 26, the Planning Commission held a public hearing and received testimony from the public (**Attachments 3 & 4**). After closing the hearing, the Commission discussed the appeal. After consideration of

the project, appeal and testimony from the public, the Commission moved to uphold the Zoning Administrator's decision to deny the application (**Attachment 5**). 0588

The property owner appealed the action of the Planning Commission on May 8, 2000 (**Attachment 6**).

## **DISCUSSION**

County Code Section 18.10.340 specifies that your Board may take jurisdiction of an appeal if it finds that any of the following criteria are met:

1. There was an error or abuse of discretion on the part of the Commission, Zoning Administrator, or other officer; or
2. There was a lack of a fair and impartial hearing; or
3. That the decision appealed from is not supported by the facts presented and considered at the time the decision appealed from was made; or
4. There is new evidence relevant to the decision which could not have been presented at the time the decision appealed from was made; or
5. There is either error, abuse of discretion, or some other factor which renders the act done or determination made unjustified or inappropriate to the extent that further hearing before the Board is necessary.

The jurisdictional process places the burden of proof on the appellant to convince your Board to take jurisdiction by demonstrating that one or more of the jurisdictional criteria have been met. As your Board is aware, the criteria are narrow in scope. Our report and analysis is necessarily limited to the appellant's letter. Your Board should consider this material, plus any testimony given by the appellants at the jurisdictional hearing in reaching your decision. Should your Board decide to take jurisdiction of the appeal, you may either (1) Grant a review limited to the administrative record; or (2) Rehear the entire matter de novo. Your Board may also choose to deny taking jurisdiction, but act to refer the matter back to the Planning Commission for their reconsideration.

The letter of appeal presents the argument that the Planning Commission erred in upholding the Zoning Administrator's decision to deny application 99-0528 as the application should have been automatically approved under various provisions of the Permit Streamlining Act (hereafter PSA) and the California Environmental Quality Act (hereafter CEQA).

The appellant's letter cites California Government Code section 65950(a) which requires that any project must be approved or disapproved by the lead agency within a number of specified time frames (**Attachment 7**). Referring to sub-paragraph (4), the appellant goes on to make the claim that the application must be granted as a matter of law, since the County failed to

meet the guideline contained in this sub-paragraph. The appellant's argument is based on the contention that the County of Santa Cruz made the required environmental determination at the intake of the application. The basis of this statement is the assumption that single family dwellings are categorically exempt from CEQA and that the County acknowledged this assumption by charging the applicant for an Environmental Exemption at intake. This fee is to cover staff costs in making a determination as to whether or not a project is subject to further review under CEQA; if it is not, the project is considered categorically exempt. There are a number of errors in this approach that invalidate the appellant's argument:

1. The application is not for a single family dwelling; it is for a single family dwelling and a large Habitable Accessory Structure (exceeding 640 square feet). Under Section 13.10.322(b), such a project must be processed as a discretionary application. In addition, under Chapter 13.20, even a solitary single family dwelling in this location would be considered as a discretionary approval, rather than a ministerial one.

This distinction is critical as the first part of the appellant's argument is valid only if State law provides that certain classes of projects are automatically excluded from CEQA's provisions. This is the only determination that will be made at intake of any project. Section 15268 (**Attachment 8**) of the CEQA guidelines states that projects which are ministerial in nature are excluded from CEQA's provisions and thus automatically exempt. In this case, however, the project is not ministerial in nature and is therefore subject to CEQA.

2. If, as in this case, a project is clearly subject to CEQA and not automatically excluded, the determination then has to be made as to what type of review is necessary under CEQA's provisions. As your Board is aware, a project can be considered minor enough to be issued a Categorical Exemption, or go to Environmental Review to decide whether a Negative Declaration, Mitigated Negative Declaration or Environmental Impact Report will be required to address potential impacts. In no case is this decision made at the counter; in fact Section 15060 (**Attachment 9**) of the CEQA guidelines specifically rules out such an action.

There are very good reasons for this approach, as impacts cannot be fully evaluated until after the application has been evaluated for completeness and the site has been visited. To make a CEQA determination before that time could result in an incorrect determination. Because of this, Counter staff make a preliminary determination at intake as to what appears the most likely outcome of the forthcoming environmental assessment and charges the appropriate fee. The project is then assigned to a Planner who completes the next stage of the review process. Because of the code section cited and the intent of CEQA to provide a thorough evaluation of a specific project, the argument that the environmental determination was made at the Zoning Counter is groundless.

3. Once the application has been declared complete, the staff planner makes another evaluation as to what form of environmental review is appropriate and proceeds on that determination. This determination could be changed after the more thorough review carried out by the staff planner with input from interested agencies. As a result of this review, the initial determination could be changed to require Environmental Review for a project which would normally be considered Categorical Exempt. The CEQA guidelines themselves contain a section (15300.2) (**Attachment 10**) that describes under what circumstances a project that would normally be Categorical Exempt could be required to go through Environmental

Review.

The formal determination of whether a project is Categorically Exempt or whether it must go through a more in-depth environmental review, is made by the final decision maker, be it the Zoning Administrator, Planning Commission or your Board. This is in keeping with longstanding County policy, whereby staff makes a recommendation to the approving body and said body then moves to approve or deny the application. Following this, the project planner files a Notice of Exemption with the Clerk of the Board. According to the CEQA guidelines, the Notice may not be filed until the project has been approved. Based on this practice, which is consistent with all relevant State codes, the provisions and timelines of Government Code section 65950(a)4 would begin on the day the decision making body renders it's determination on the project, including the environmental document.


4. Finally, had the appellant demonstrated a valid claim under the provisions of Government Code section 65950, the application could not be deemed automatically approved. For an application to be approved automatically, the property owner and/or applicant must exercise one of the remedies available under Government Code section 65956 (**Attachment 11**). No party has filed such an action and therefore, the project cannot be considered automatically approved. The property owners have presented a demand (**Attachment 12**) that the permit be issued because the County did not act in a timely manner and in accordance with State law. The record shows, however, that the permit was acted on within the time frames required by State law and there is no basis for automatic approval or issuance of the permit.

#### CONCLUSION AND RECOMMENDATION

The Planning Commission considered all relevant comments, ordinances and General Plan policies and based their decision to uphold the Zoning Administrator's denial of 99-0528 on their evaluation that the proposal, as submitted, is not consistent with the Zoning Ordinance or General Plan/LCP. The decision to uphold the Zoning Administrator's decision and thereby deny the project is justified and supported by the facts presented for consideration and found in the administrative record.

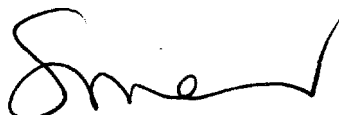
It is therefore, RECOMMENDED, that your Board not take jurisdiction of this appeal of the denial of Application 99-0528, based on the fact that the appellant has not established sufficient grounds for the Board to take jurisdiction for further review.

Sincerely,



Alvin D. James  
Planning Director

RECOMMENDED:



SUSAN A. MAURIELLO  
County Administrative Officer

cc: David Subocz 328 Ingalls Street, Santa Cruz, CA 95060  
Kathleen Waidhofer 1099 Smith Grade Road, Santa Cruz, CA 95060

Attachments:

1. Zoning Administrator's Action Agenda of February 18, 2000
2. Appeal letter of February 25, 2000 from David Subocz
3. Planning Commission staff report of April 26, 2000
4. Planning Commission Agenda of April 26, 2000
5. Planning Commission Minutes of April 26, 2000
6. Appeal letter of May 8, 2000 from David Subocz
7. Calif. Government Code Section 65950
8. CEQA guidelines Section 15268
9. CEQA guidelines 15060
10. CEQA guidelines 15300.2
11. Calif. Government Code 65956
12. Demand letter from Kathleen Waidhofer, dated 9 May 2000
13. Project plans

Santa Cruz County Zoning Administrator's Agenda  
 February 18, 2000  
 Page 4

0592

Proposal to construct a second dwelling unit and detached non-habitable garage where a single-family dwelling exists. Requires a Residential Development Permit. Located on the west side of Ruins Creek Road (at 650 Ruins Creek Road), about 100-feet west of Nelson Road.,

OWNER: MORGAN MARSHA ANN TRUSTEE

APPLICANT: MORGAN MARSHA ANN TRUSTEE

SUPERVISORIAL DIST: 5

PROJECT PLANNER: DAVID JOHNSTON, 454-3097

APPROVED PER STAFF FINDINGS AND REVISED CONDITIONS.

**10. 99-0528 (\*) 1089 SMITH GRADE SANTA CRUZ APN(S): 062-211-32**

Proposal to amend Coastal Development Permit 97-0093 (Proposal to recognize the construction of a two story single family dwelling, 158 cubic yards of grading, a domestic water well, a generator shed, a 5,000 gallon water tank, a 200 gallon propane tank and a 500 gallon propane tank on a parcel of land where a lot line adjustment is proposed in order to locate another "as built" single family dwelling and a habitable accessory structure on APN 62-2 1 1-28) to recognize the construction of an additional two story single family dwelling, including the reduction of the required 200' Agricultural Buffer setback to the southern property line and to convert the existing previously approved single family dwelling to a habitable accessory structure and to recognize less than 1000 cubic yards of grading to create a building pad and improve the driveway. Requires a Coastal Development Permit amendment, Agricultural Buffer Reduction and Grading Preliminary Approval. Property located about 1.5 miles southeast of Smith Grade Road at the end of an unnamed right of way which intersects with Smith Grade about 1.5 miles from Empire Grade.

OWNER: WAIDHOFER KATHLEEN BARBARA M/W S/S

APPLICANT: DAVID SUBOCZ

SUPERVISORIAL DIST: 5

PROJECT PLANNER: DAVID JOHNSTON - 454-3097

DENIED WITHOUT PREJUDICE.

**APPEAL INFORMATION**

Denial or approval of any permit by the Zoning Administrator is appealable to the Planning Commission. The appeal must be filed with the required appeal fee within 14 calendar days of action by the Zoning Administrator. To file an appeal you must write a letter to the Planning Commission and include the appeal fee. For more information on appeals, please see the "Planning Appeals" brochure located in the planning Department lobby, or contact the project planner.

**APPEALS OF COASTAL PROJECTS**

\*

This project requires a Coastal Zone Permit which is not appealable to the California Coastal Commission. It may be appealed to the Planning Commission; the appeal must be filed within 14 calendar days of action by the Zoning Administrator.

William de Ess Studios  
328C Ingalls Street  
Santa Cruz, CA 95060  
tele (831) 426-8941  
FAX (831) 469-0276

0593

February 25, 2000

County of Santa Cruz Planning Department  
701 Ocean Street, Room 400  
Santa Cruz, CA 95060  
tele (831) 454-2580  
FAX (831) 454-2131

Re: Application 99-0528  
APN: 062-2 11-32

As applicants for Kathleen Waidhofer, we hereby file an appeal to the Zoning Administrator's decision of February 18, 2000 to deny approval of the above referenced application.

Our request is based on the following:

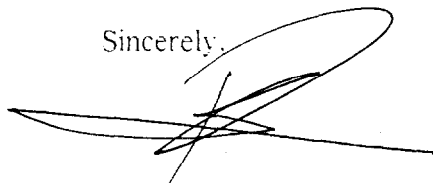
An agricultural buffer zone reduction was required in order to approve Application 99-0528. However, the staff planner for the project pulled Application 99-0528 from the APAC agenda for the hearing scheduled for February 17, 2000, despite the fact that the item was properly noticed and posted. In doing so, the application could not be approved, as a determination precedent to the Zoning Administrator's approval was disallowed. Given the requirement for a decision within 210 days of the date of the application, the Zoning Administrator could not continue the item. In effect, the Zoning Administrator could only deny the project, with this outcome predetermined prior to the Zoning Administrator's public hearing of February 18, 2000.

We presented an argument against all findings within the staff report used to support a recommendation for denial. Therefore, we contend that the Zoning Administrator's determination was unfair, and did not give adequate consideration to our presentation.

The project description in the final draft of the staff report contains factual errors. We believe that as a direct result of these errors, the Zoning Administrator may have interpreted these representations in a manner that was prejudicial to the application. In addition, that same rendering of opinion could have predisposed the public to the same end, thereby denying the applicants a platform of impartiality.

Under the laws of the State of California and the County's own ordinances, the application must be granted as a matter of law. Therefore, we request that the appeal bypass the Planning Commission and go directly to the Board of Supervisors.

Sincerely,



David Subocz

CC: Kathleen Waidhofer, Richard Klein, Don Bussey, David Johnston

5 7  
EXHIBIT J



# County of Santa Cruz 0594

---

## PLANNING DEPARTMENT

701 OCEAN STREET - 4<sup>TH</sup> FLOOR, SANTA CRUZ, CA 95060  
(831) 454-2580 FAX: (831) 454-2131 TDD: (831) 454-2123

ALVIN D. JAMES, DIRECTOR

March 22, 2000

Agenda: April 26, 2000

Planning Commission  
County of Santa Cruz  
701 Ocean Street  
Santa Cruz, CA 95060

**SUBJECT: PUBLIC HEARING TO CONSIDER AN APPEAL OF THE ZONING ADMINISTRATOR'S DENIAL OF A PROPOSAL TO AMEND COASTAL DEVELOPMENT PERMIT 97-0093 (PROPOSAL TO RECOGNIZE THE CONSTRUCTION OF A TWO STORY SINGLE FAMILY DWELLING, 158 CUBIC YARDS OF GRADING, A DOMESTIC WATER WELL, A GENERATOR SHED, A 5,000 GALLON WATER TANK, A 200 GALLON PROPANE TANK AND A 500 GALLON PROPANE TANK ON A PARCEL OF LAND WHERE A LOT LINE ADJUSTMENT IS PROPOSED IN ORDER TO LOCATE ANOTHER "AS-BUILT" SINGLE FAMILY DWELLING AND HABITABLE ACCESSORY STRUCTURE ON APN 62-211-28) BY RECOGNIZING THE CONSTRUCTION OF AN ADDITIONAL TWO STORY SINGLE FAMILY DWELLING, INCLUDING THE REDUCTION OF THE REQUIRED 200' AGRICULTURAL BUFFER SETBACK TO THE SOUTHERN PROPERTY LINE AND TO CONVERT THE EXISTING PREVIOUSLY APPROVED SINGLE FAMILY DWELLING TO A HABITABLE ACCESSORY STRUCTURE AND TO RECOGNIZE LESS THAN 1000 CUBIC YARDS OF GRADING TO IMPROVE THE DRIVEWAY. REQUIRES A COASTAL DEVELOPMENT PERMIT, AGRICULTURAL BUFFER REDUCTION AND GRADING-PRELIMINARY REVIEW. APPLICATION NUMBER 99-0528; APPLICANT AND APPELLANT: DAVID SUBOCZ; PROPERTY LOCATED ABOUT 1.5 MILES SOUTHEAST OF SMITH GRADE AT THE END OF AN UNNAMED RIGHT OF WAY WHICH INTERSECTS WITH SMITH GRADE ABOUT 1.5 MILES FROM EMPIRE GRADE.**



Members of the Planning Commission:

On February 18, 2000, at a noticed public hearing, the Zoning Administrator considered application 99-0528. After receiving public testimony and discussing various issues relating to the project, the Zoning Administrator denied the application. A copy of the staff report is included. Also included is the Action Agenda for the February 18 meeting, which is attached as **Exhibit I**. The Zoning Administrator's decision was appealed by the applicant on February 25, 2000, pursuant to the provisions of County Code Section 18.10.330. A copy of the appeal letter is attached as **Exhibit J**. This matter is now before your Commission for consideration.

## BACKGROUND

Application 99-0528 was made on July 23, 1999 to amend an earlier Coastal Development Permit (97-0093), which was to recognize the construction of a single family dwelling. The amendment requested recognition of an additional single family dwelling and conversion of the previously approved dwelling to a Habitable Accessory Structure.

The staff planner processing 99-0528, and who had previously processed 97-0093, determined that the latter application had expired due to failure of the applicant to meet the timelines in that approval. Application 97-0793 had been approved with reduced deadlines due to its status as a Code Enforcement action. Both applications were subsequently reinstated by the Planning Director on January 19, 2000.

## DISCUSSION

In his letter of February 25, 2000, the applicant has raised three issues of appeal:

*1. An agricultural buffer zone reduction was required in order to approve Application 99-0528. However, the staff planner for the project pulled application 99-0528 from the APAC agenda for the hearing scheduled for February 17, 2000, despite the fact that item was properly noticed and posted. In doing so, the application could not be approved, as a determination precedent to the Zoning Administrator's approval was disallowed. Given the requirement for a decision within 210 days of the date of the application, the Zoning Administrator could not continue the item. In effect, the Zoning Administrator could only deny the project, with this outcome predetermined prior to the Zoning Administrator's public hearing of February 18, 2000.*

The Zoning Administrator removed the item from the APAC (Agricultural Policy Advisory Commission) agenda for a number of reasons, foremost of which was the inherent conflict with approvals. APAC decisions are appealable only to the Board of Supervisors and have the same appeal period as other projects. Had APAC acted on the project on February 17 and the Zoning Administrator the following day, two dissimilar appeal periods would have gone into affect. Further, it is unclear as to how an appeal of a project acted on in this way would be heard, given the differing administrative guidelines. Contrary to the appellant's position, it was the Zoning Administrator's conclusion that, had APAC acted on the project, that action would preclude the him from taking action the following day, as the appeal period for APAC's action would still be in

effect.

0596

In answer to the second part of this objection, the Zoning Administrator was in no way forced to deny the application by the failure of APAC to take action. In cases where more than one approval is necessary for a project, the highest approving body decides whether to approve or deny the project as a whole and acts on all approvals concurrently (see 18.10.123, **Attachment K**). In cases where APAC is involved, this means that body makes a recommendation to the Zoning Administrator, who then makes a final decision whether to approve or deny the proposal. Additionally, whenever a project is being recommended for denial, as in this case, supporting reviews, such as technical reviews, environmental review and APAC review, may be skipped. If the approving body overturns the staff recommendation and approves the project, the application is either conditionally approved or remanded for review, both of which options were available in this case. The difficulty imposed by the processing timelines could have been overcome by the property owners agreeing with staff to voluntarily extend the timeline, an action which surely would have occurred if approval of the project had been forthcoming.

*2. We presented an argument against all findings within the staff report used to support a recommendation for denial. Therefore, we contend that the Zoning Administrator's determination was **unfair** and did not give adequate consideration to our presentation.*

Staff acknowledges that the applicant spoke to each of the issues raised in the staff report. It was the Zoning Administrator's determination that the responses did not overcome the findings made in the staff report and this was the basis for the denial.

*3. The project description in the final draft of the staff report contains factual errors. We believe that as a direct result of these errors, the Zoning Administrator may have interpreted these representations in a manner that was prejudicial to the application. In addition, that same rendering of opinion could have predisposed the public to the same end, thereby denying the applicants a platform of impartial@*

The applicant's chronology is attached as **Exhibit L**. Staff acknowledges that there are some differences between them and is willing to accept the applicant's chronology as generally accurate.

The Zoning Administrator's decision was not prejudiced by the minor factual errors contained in the project description. His determination was based on his evaluation of how well the project complied with County codes and policies as detailed in the findings of the staff report, rather than the project description. This decision was rendered after obtaining public testimony, including a presentation by the applicant. Further, staff does not feel that the description denied the applicants a platform of impartiality in the public's eye, as only one person spoke against the project and that after the applicant had made his presentation.

## SUMMARY

Coastal Development application 99-0528 is not in conformance with Sections 8.3.3 (Rural Development) and 8.6.6 (Building Design) of the General Plan/LCP and 13.10.6 11 (Accessory

Structure) of the Zoning Ordinance (**Exhibit M**). The two structures cannot be considered clustered as they are at least 2,000 feet apart from one another as well as being visually isolated; trees have been removed from around the upper structure, bringing it into conflict with ridgetop development policies and the upper unit cannot be found to be appurtenant, subordinate and incidental to the proposed dwelling because of the distance between them, the similarity in size, they are visually isolated from one another, accessed by different driveways and architecturally very dissimilar.

The Zoning Administrator's decision is not tainted by an error or abuse of discretion. The Zoning Administrator conducted a fair and impartial public hearing and considered all relevant testimony and facts presented at the hearing. No new evidence has become available that would alter the decision of the Zoning Administrator.

### **RECOMMENDATION**

It is therefore RECOMMENDED that your Commission deny the appeal and uphold the decision of the Zoning Administrator to deny application 99-0528.

Sincerely,

Dave Johnston  
Project Planner  
Development Review

Martin Jacobson  
Principal Planner  
Development Review

### **Exhibits**

- A. Project plans
- B. Findings
- C. Zoning map
- D. General Plan map
- E. Agricultural resource map
- F. Critical fire hazard area map
- G. Groundwater recharge map
- H. Archaeological resource map
- I. APAC staff report (not completed)
- J. Letter of Appeal
- K. Ordinance Section 18.10.123
- L. Applicant's chronology of events
- M. General Plan Sections 8.3.3 & 8.6.6 and Ordinance Section 13.10.611

COUNTY OF SANTA CRUZ  
PLANNING DEPARTMENT

Date: February 18, 2000  
Agenda Item: No. 10  
Time: After 10:00 a.m. 0598

### STAFF REPORT TO THE ZONING ADMINISTRATOR

APPLICATION NO.: 99-0528

APN: 62-21 1-32

APPLICANT: David Subocz

OWNER: Kathleen Waidhofer

**PROJECT DESCRIPTION:** Proposal to amend Coastal Development Permit 97-0093 (Proposal to recognize the construction of a two story single family dwelling, 158 cubic yards of grading, a domestic water well, a generator shed, a 5,000 gallon water tank, a 200 gallon propane tank and a 500 gallon propane tank on a parcel of land where a Lot Line Adjustment is proposed in order to locate another "as-built" single family dwelling and Habitable Accessory Structure on APN 62-21 1-28) to recognize the construction of an additional two story single family dwelling, including the reduction of the required 200' Agricultural Buffer setback to the southern property line and to convert the existing previously approved single family dwelling to a Habitable Accessory Structure and to recognize less than 1000 cubic yards of grading to improve the driveway. Requires a Coastal Development Permit, Agricultural Buffer reduction and Grading-Preliminary review.

**LOCATION:** Property located at the end of a private right of way, approximately 1 mile south of Smith Grade. The intersection of the right of way and Smith Grade is about 1.75 miles west of Empire Grade.

**FINAL ACTION DATE:** February 18, 2000

**PERMITS REQUIRED:** An Amendment to Coastal Development Permit 97-0093, Preliminary Grading Approval, and an Agricultural Buffer reduction

**ENVIRONMENTAL DETERMINATION:** CEQA does not apply to denied projects

**COASTAL ZONE:** Xyes\_\_no

#### PARCEL INFORMATION

**PARCEL SIZE:** approximately 44 acres

**EXISTING LAND USE:** PARCEL: Low density residential

**SURROUNDING:** Low density residential, agriculture, vacant

**PROJECT ACCESS:** Private right of way off Smith Grade

**PLANNING AREA:** Bonny Doon

**LAND USE DESIGNATION:** Mountain Residential

**ZONING DISTRICT:** Special Use (SU)

**SUPERVISORIAL DISTRICT:** 3

#### ENVIRONMENTAL INFORMATION

<u>Item</u>	<u>Comments</u>
a. Geologic Hazards	a. Two small mapped landslides
b. Soils	b. USDA Soil Type 169, Santa Lucia shaly clay loam primarily
c. Fire Hazard	c. Partially Critical Fire Hazard
d. Slopes	d. 5% to 15% at building site, falling off to more than 50% beyond
e. Env. Sen. Habitat	e. None mapped

Applicant: David Subocz  
 Application No. 99-0528  
 APN: 62-2 1 1-32

0599

- |                       |  |
|-----------------------|--|
| f. Grading            | f. 240 cubic yards to improve driveway and level building site |
| g. Tree Removal       | g. Unknown, site cleared and building in place                 |
| h. Scenic             | h. None mapped   |
| i. Drainage           | i. Sheet flow off ridge to SE and NW                           |
| j. Traffic            | j. Insignificant   |
| k. Roads              | k. Existing  |
| l. Parks              | l. Adequate  |
| m. Sewer Availability | m. Septic  |
| n. Water Availability | n. Private well  |
| o. Archeology         | o. Mapped, no survey completed                                 |

### SERVICES INFORMATION

W/in Urban Services Line: yes Xno

Water Supply: Private well

Sewage Disposal: Septic

Fire District: California Department of Forestry and Fire Protection

Drainage District: Out of Zone

### PROJECT DESCRIPTION

This application is the continuation of a series of approvals deriving from code enforcement action commencing in 1995. In October of 1995, Code Enforcement responded to a complaint regarding unpermitted construction on the parcel adjacent to this one (that APN is 62-21 1-3 1, previously 62-21 1-28). At that time, both parcels were under the ownership of John Grinder. During the inspection, Code Enforcement found an unpermitted single family dwelling and large Habitable Accessory structure and posted a red tag. That dwelling (hereafter Unit A) and accessory structure, turned out to be on the this parcel rather than 62-2 1 1-28. Subsequently, Mr Grinder applied for a Lot Line Adjustment to relocate the property line so that the buildings would be on 62-21 1-28. The application (96-0554, submitted 8/23/96) also included a Coastal Development Permit to recognize the dwelling and accessory structure. In the course of reviewing 96-0554, a second illegal dwelling was discovered on 62-2 1 1-29 (now 62-2 11-32). An additional Coastal Development Permit (97-0093) was submitted on 2/06/97 to recognize that dwelling (hereafter Unit B).

Application 96-0554 was approved on 6/05/98 and the corresponding building permit was issued 11/16/99. 97-0093 was approved on 6/19/98. Two building permit applications have been submitted to recognize the structures on 62-2 1 1-3 1, but neither has been approved..

In June 1999, Code Enforcement received another complaint, indicating a second dwelling was now under construction on 62-21 1-32. Upon investigation, Code Enforcement found workmen building another house at the southern end of the property (hereafter Unit C). The purpose of this application is to recognize Unit C as the main unit and convert Unit B to a Habitable Accessory Structure.

### SITE DESCRIPTION

The property, about 44 acres in area, consists primarily of a north to south trending ridge. The ridge also slopes gently along it's top, from north to south. The side slopes fall off approximately 300-350' feet to drainages below. The parent material is shale and the ridge is heavily forested along the side slopes. The ridgetop itself is more open, containing fewer trees. Grading has been done to improve what appear to

be existing roads and a Grading Permit application has been submitted. Access to the parcel is via an unimproved right of way from Smith Grade.

Unit B, proposed to be converted to a Habitable Accessory Structure, is located near the north end of the parcel. It has apparently been completed and is a two story, 2 bedroom, 2,729 square foot residence. Approximately 2000 feet to the south, at the opposite end of the property is the partially completed Unit C. It is proposed to be a 2 story, 3 bedroom 3,071 square foot single family dwelling. Of the two, the previously approved Unit B is the most visible, Unit C being mostly screened by trees. Also on the property are the minor structures noted in the application description, two corrals and a number of travel trailers which appear to be occupied.

The parcel is currently zoned SU or Special Use, with a General Plan Designation of Mountain Residential. It is flanked to the south and east by Type 3 agricultural land, zoned Timber Production (TP) and Commercial Agriculture-Open Space (CA-O) respectively. The parcel is in a Least Disturbed Watershed and portions are overlain by Archeological and Critical Fire Hazard Designations.

Please see Exhibit "B" ("Findings") for a complete listing of findings and evidence related to the above discussion.

#### RECOMMENDATION

Staff recommends the following:

1. Deny the application as submitted.

#### EXHIBITS

- A. Project Plans (11 sheets, prepared by William de Ess Studios, dated July 23, 1999.
- B. Findings
- C. Zoning Map
- D. General Plan map
- E. Agricultural Resource Map
- F. Critical Fire Hazard Area
- G. Groundwater Recharge Map
- H. Archeological Resource map
- ~~I. APAC staff report~~

SUPPLEMENTARY REPORTS AND INFORMATION REFERRED TO IN THIS REPORT ARE ON FILE AND AVAILABLE FOR VIEWING AT THE SANTA CRUZ COUNTY PLANNING DEPARTMENT, AND ARE HEREBY MADE A PART OF THE ADMINISTRATIVE RECORD FOR THE PROPOSED PROJECT.

Applicant: David Subocz  
Application No. 99-0528  
APN: 62-21 1-32

### **COASTAL DEVELOPMENT PERMIT FINDINGS:**

1. THAT THE PROJECT IS A USE ALLOWED IN ONE OF THE BASIC ZONE DISTRICTS, OTHER THAN THE SPECIAL USE (SU) DISTRICT, LISTED IN SECTION 13.10.170(d) AS CONSISTENT WITH THE GENERAL PLAN AND LOCAL COASTAL PROGRAM LUP DESIGNATION.

The parcel is zoned 'SU' which is consistent with all General Plan Designations according to 13.10.170(d). The General Plan designation of the parcel is Mountain Residential which allows residential units and associated structures. Accessory structures, however, are not a principal permitted use in the Coastal Zone.

2. THAT THE PROJECT DOES NOT CONFLICT WITH ANY EXISTING EASEMENT OR DEVELOPMENT RESTRICTIONS SUCH AS PUBLIC ACCESS, UTILITY, OR OPEN SPACE EASEMENTS.

The proposal is consistent with this finding in that there are no known easements or development restrictions affecting this parcel.

3. THAT THE PROJECT IS CONSISTENT WITH THE DESIGN CRITERIA AND SPECIAL USE STANDARDS AND CONDITIONS OF THIS CHAPTER PURSUANT TO SECTION 13.20.130 et seq.

The following finding was made under application 97-0093 and applies to the upper structure (Unit B) which, is now proposed to be converted to a Habitable Accessory Structure:

"The project is consistent with the conditions, standards and design criteria pursuant to Section 13.20.130 in that the structures to be recognized will be visually compatible with the surrounding area. The structures complement the design and materials of each other while being screened from view by the existing land forms and vegetation. The natural materials and required muted colors of the development blend with the vegetative of the area while also repeating and harmonizing with other existing homes and accessory structures in the general area."

As there will be no change to the exterior of this structure, the finding is still valid.

The partially completed structure which is proposed to become the main dwelling (Unit C) is located at the southern terminus of the ridge and is screened on the east, west and south by a dense stand of Douglas-fir. The policies in 13.20.130 require that development be compatible with the character of the surrounding area; be accomplished through minimized site disturbance; if on a ridgetop not project above the ridgeline or tree canopy; be, if possible, on portions of the site least likely to block public views; not block views from scenic stops, rest stops or vista points; be designed to fit the natural character of the site; maintain natural features of the site, utilize pitched roofs of non-reflective materials and use colors and materials which blend with the vegetative cover of the site.

Applicant: David Subocz  
Application No. 99-0528  
APN: 62-21 1-32

0602

Page 5 of 11

The proposal is consistent with the following aspects: it is consistent with other dwellings in the vicinity in that there are a wide mix of colors, styles and finishes to be found nearby; site disturbance, grading and destruction of natural features have been minimized in that the grading has not exceeded 250 cubic yards; the building site is not visible from any known public vista points, the proposed design utilizes a pitched roof with non-reflective fiberglass shingles.

The proposal is potentially incompatible with the following aspects: the building may project above the treeline; the proposed colors may be incompatible with the natural color and vegetative cover of the site.

Because no visual analysis has been submitted to address these issues, this finding cannot be made for the southerly structure (Unit C).

4. THAT THE PROJECT CONFORMS WITH THE PUBLIC ACCESS, RECREATION, AND VISITOR-SERVING POLICIES, STANDARDS AND MAPS OF THE GENERAL PLAN AND LOCAL COASTAL PROGRAM LAND USE PLAN, SPECIFICALLY CHAPTER 2: FIGURE 2.5 AND CHAPTER 7, AND, AS TO ANY DEVELOPMENT BETWEEN AND NEAREST PUBLIC ROAD AND THE SEA OR THE SHORELINE OF ANY BODY OF WATER LOCATED WITHIN THE COASTAL ZONE, SUCH DEVELOPMENT IS IN CONFORMITY WITH THE PUBLIC ACCESS AND PUBLIC RECREATION POLICIES OF CHAPTER 3 OF THE COASTAL ACT COMMENCING WITH SECTION 30200.

The property is not located between the shoreline and the first public road. Consequently, the proposal will not interfere with public access to the beach, ocean or any nearby body of water. Further, the project site is not identified as a priority acquisition site in the County Local Coastal Program.

5. THAT THE PROPOSED DEVELOPMENT IS IN CONFORMITY WITH THE CERTIFIED LOCAL COASTAL PROGRAM.

LCP policies relating to land use, water resources, visual resources, archeological resources, and community design are applicable to this proposal.

The proposal conforms to LCP policies relating to land use in that the dwelling and accessory uses are allowed in this zone district and General Plan designation.

The proposal conforms to LCP policies relating to water resources in that it complies with all design requirements applied to development in Least Disturbed Watersheds; surface water has been protected by the submittal of a drainage and erosion plan with the grading application. The proposal is potentially inconsistent in that horses are kept in paddocks near slopes with no provisions for filtering runoff from those areas.

The proposal conforms to LCP visual policies in that the parcel is not in a designated scenic



Applicant: David Subocz  
 Application No. 99-0528  
 APN: 62-2 1 1-32

0603

Page 6 of 11

area, nor does it appear to be visible from public roads or vista points and because there are significant around the lower building site. This proposal is potentially inconsistent in that the natural buffer around the upper building site has been removed by the property owner.

The project is inconsistent with the archeological policies in that the parcel is in a mapped sensitive area but no surveys have been completed.

The project is consistent with community design policies in that ~~in the required 200' setback to adjoining lands zoned for commercial agriculture and all other~~ site standards have been met; the proposal complies with all requirements of site and circulation design; the proposed design is consistent with other residential developments in the vicinity and the design and placement of the buildings is clearly consistent with all objectives of building design with the exception of 8.6.6(b,c & d).

The proposal is inconsistent with the following community design standards:

### 8.3.3 Rural Development

*Encourage clustering of rural building envelopes, particularly in areas of development constraints such as high erosion hazard or areas of protected resources such as timber, watersheds, and groundwater recharge in order to maximize resource protection, environmental compatibility and the preservation of open space. Within the clustered building envelopes, require adequate spacing of residential units, depending on visibility and terrain, to maintain the rural character.*

The proposed buildings are at opposite ends of the parcel, at least 2,000 feet from each other, clustering has not been proposed. Further, the parcel is in an area of high erosion hazards, as identified by maps on file with the Santa Cruz County Planning Department and is located in a Least Disturbed Watershed, a protected resource.

### 8.6.6 Building Design

*(b) Prohibit the removal of tree masses when such removal would erode the silhouette of the ridgeline form. Consider the cumulative effects of tree removal on the ridgeline silhouette.*

A number of trees have been removed from around the existing building (Unit B) to the north. This removal has had the effect of opening up the vista in both directions and has probably altered the ridgeline silhouette. Further, the removal of these trees indicates that more would probably be removed at the lower site and for the same reasons. The cumulative effect of these removals would be to alter the ridge silhouette in probable conflict with this policy.

*(c) Restrict the height and placement of buildings and structures to prevent their projection above the ridgeline or treeline. . . .*

Applicant: David Subocz  
Application No. 99-0528  
APN: 62-21 1-32

Page 7 of 11

As stated in Finding 3 above, no visual analysis has been submitted to resolve this issue and it may be that the building will project above the treeline.

*(d)Require exterior materials to blend with the natural landforms and tree backdrops.*

The proposed colors (Teton blue body, light gray trim, dark gray roof) may be visually incompatible with the natural browns and greens of the site. Again, no visual analysis has been submitted to address this issue.

Because of the inconsistencies and potential inconsistencies outlined above, this finding cannot be made.

Applicant: David Subocz  
Application No. 99-0528  
APN: 62-2 1 1-32

0605

Page 8 of 11

**DEVELOPMENT PERMIT FINDINGS:**

1. THAT THE PROPOSED LOCATION OF THE PROJECT AND THE CONDITIONS UNDER WHICH IT WOULD BE OPERATED OR MAINTAINED WILL NOT BE DETRIMENTAL TO THE HEALTH, SAFETY, OR WELFARE OF PERSONS RESIDING OR WORKING IN THE NEIGHBORHOOD OR THE GENERAL PUBLIC, OR BE MATERIALLY INJURIOUS TO PROPERTIES OR IMPROVEMENTS IN THE VICINITY.

The location of the dwelling and habitable accessory structure and the conditions under which they would be operated or maintained will not be detrimental to the health, safety, or welfare of persons residing or working in the a neighborhood or the general public, and will not result in inefficient or wasteful use of energy, and will not be materially injurious to properties or improvement in the vicinity in that the project is located in an area designated for residential use and is not encumbered by physical constraints to development. Construction will comply with prevailing building technology, the Uniform Building Code, and the County Building ordinance to insure the optimum in safety and the conservation of energy and resources.

Policies and ordinances relating to sewage disposal and water supply have been reviewed and approved by Environmental Health. Fire and access standards have been reviewed and approved by the California Department of Forestry and Fire Protection. Site geologic and geotechnical concerns have been addressed by Environmental Planning. A soils report was required for the northern structure and no similar requirement was placed on the southern unit.

2. THAT THE PROPOSED LOCATION OF THE PROJECT AND THE CONDITIONS UNDER WHICH IT WOULD BE OPERATED OR MAINTAINED WILL BE CONSISTENT WITH ALL PERTINENT COUNTY ORDINANCES AND THE PURPOSE OF THE ZONE DISTRICT IN WHICH THE SITE IS LOCATED.

The project site is located in the "SU" zone district. The proposal to build a dwelling and convert the existing dwelling to a habitable accessory structure is consistent with the uses, densities and site standards allowed in that zone district per 13.10.323 and 13.10.382. Ordinances relating to sewage disposal and water supply have been reviewed and found consistent by Environmental Health; fire safety and access by the California Department of Forestry and Fire Protection; drainage, grading, erosion control and soils by Environmental Planning.

Accessory structures are regulated by 13.10.611. This proposal is not consistent with the purposes of that section, as follows:

13.10.61 1(c)1.

*Any accessory structure shall be clearly appurtenant, subordinate and incidental to the main structure or main use of the land as specified in the purposes of the appropriate zone district.....*

The structure is not appurtenant, subordinate and incidental to the main unit. As proposed, the

EXHIBIT 5B-7

Applicant: David Subocz  
Application No. 99-0528  
APN: 62-2 1 1-32

0606

Page 9 of 11

two structures will be located 2000 feet apart, will be accessed by different driveways and will not be in sight distance of each other. Further, they are not visually linked when viewed from a distance. Lastly, the buildings are very close in volume (3071 versus 2729 square feet) and completely different in architectural style

There are a number of other restrictions on habitable accessory structures which 13.10.6 11 allows to be exceeded as long as a public hearing is held before the Zoning Administrator. The restrictions exceeded by this proposal are: a habitable accessory structure cannot exceed 640 square feet , one story or 17' in height; a habitable accessory structure shall not contain a toilet, a habitable accessory structure cannot be more that 100' from the main dwelling or accessed from a separate driveway or have a drain size over 1.5 inches.

The intent of these restrictions is twofold; to reduce the chances of the habitable accessory structure being converted to a full dwelling without permits and to ensure that the development remains appurtenant, subordinate and incidental to the main use. An exception process exists to allow minor deviations from the strict letter of the regulation when appropriate and as long as the original intent is adhered to. In this case, the exceptions would be necessary, not as minor departures from the regulations, but as necessary to gain approval for a structure that would need few or none of them if it were in fact, appurtenant, subordinate and incidental to the main use. Additionally, the location and size of the structure, as well as the exceptions requested, result in a structure that could very easily be converted to a second dwelling unit.

3. THAT THE PROPOSED USE IS CONSISTENT WITH ALL ELEMENTS OF THE COUNTY GENERAL PLAN AND WITH ANY SPECIFIC PLAN WHICH HAS BEEN ADOPTED FOR THE AREA.

General Plan policies relating to land use, water resources, visual resources , archeological resources, and community design are applicable to this proposal.

The proposal conforms to General Plan policies relating to land use in that the dwelling and accessory uses are allowed in this zone district and General Plan designation.

The proposal conforms to General Plan policies relating to water resources in that it complies with all design requirements applied to development in Least Disturbed Watersheds; surface water has been protected by the submittal of a drainage and erosion plan with the grading application. The proposal is potentially inconsistent in that horses are kept in paddocks near slopes with no provisions for filtering runoff from those areas.

The proposal conforms to General Plan visual policies in that the parcel is not in a designated scenic area, nor does it appear to be visible from public roads or vista points and because there are significant around the lower building site. This proposal is potentially inconsistent in that the natural buffer around the upper building site has been removed by the property owner.

The project is inconsistent with the archeological policies in that the parcel is in a mapped sensitive area but no surveys have been completed.

Applicant: David Subocz  
 Application No. 99-0528  
 APN: 62-21 1-32

The project is consistent with community design policies in that ~~APAC has allowed a reduction in the required 200' setback to adjoining lands zoned for commercial agriculture and all other~~ site standards have been met; the proposal complies with all requirements of site and circulation design; the proposed design is consistent with other residential developments in the vicinity and the design and placement of the buildings is clearly consistent with all objectives of building design with the exception of 8.6.6(b,c & d).

The proposal is inconsistent with the following community design standards:

### 8.3.3 Rural Development

*Encourage clustering of rural building envelopes, particularly in areas of development constraints such as high erosion hazard or areas of protected resources such as timber, watersheds; and groundwater recharge in order to maximize resource protection, environmental compatibility and the preservation of open space. Within the clustered building envelopes, require adequate spacing of residential units, depending on visibility and terrain, to maintain the rural character.*

The proposed buildings are at opposite ends of the parcel, at least 2,000 feet from each other, clustering has not been proposed. Further, the parcel is in an area of high erosion hazards, as identified by maps on file with the Santa Cruz County Planning Department and is located in a Least Disturbed Watershed, a protected resource.

### 8.6.6 Building Design

*(b) Prohibit the removal of tree masses when such removal would erode the silhouette of the ridgeline form. Consider the cumulative effects of tree removal on the ridgeline silhouette.*

A number of trees have been removed from around the existing building to the north. This removal has had the effect of opening up the vista in both directions and has probably altered the ridgeline silhouette. Further, the removal of these trees indicates that more would probably be removed at the lower site and for the same reasons. The cumulative effect of these removals would be to alter the ridge silhouette in probable conflict with this policy.

*(c) Restrict the height and placement of buildings and structures to prevent their projection above the ridgeline or treeline. . . .*

As stated in Finding 3 above, no visual analysis has been submitted to resolve this issue and it may be that the building will project above the treeline.

*(d) Require exterior materials to blend with the natural landforms and tree backdrops.*

The proposed colors (Teton blue body, light gray trim, dark gray roof) may be visually incompatible with the natural browns and greens of the site. Again, no visual analysis has been

Applicant: David Subocz  
Application No. 99-0528  
APN: 62-21 1-32

0608

Page 11 of 11

submitted to address this issue.

Because of the inconsistencies and potential inconsistencies outlined above, this finding cannot be made.

4. THAT THE PROPOSED USE WILL NOT OVERLOAD UTILITIES AND WILL NOT GENERATE MORE THAN THE ACCEPTABLE LEVEL OF TRAFFIC ON THE STREETS IN THE VICINITY.

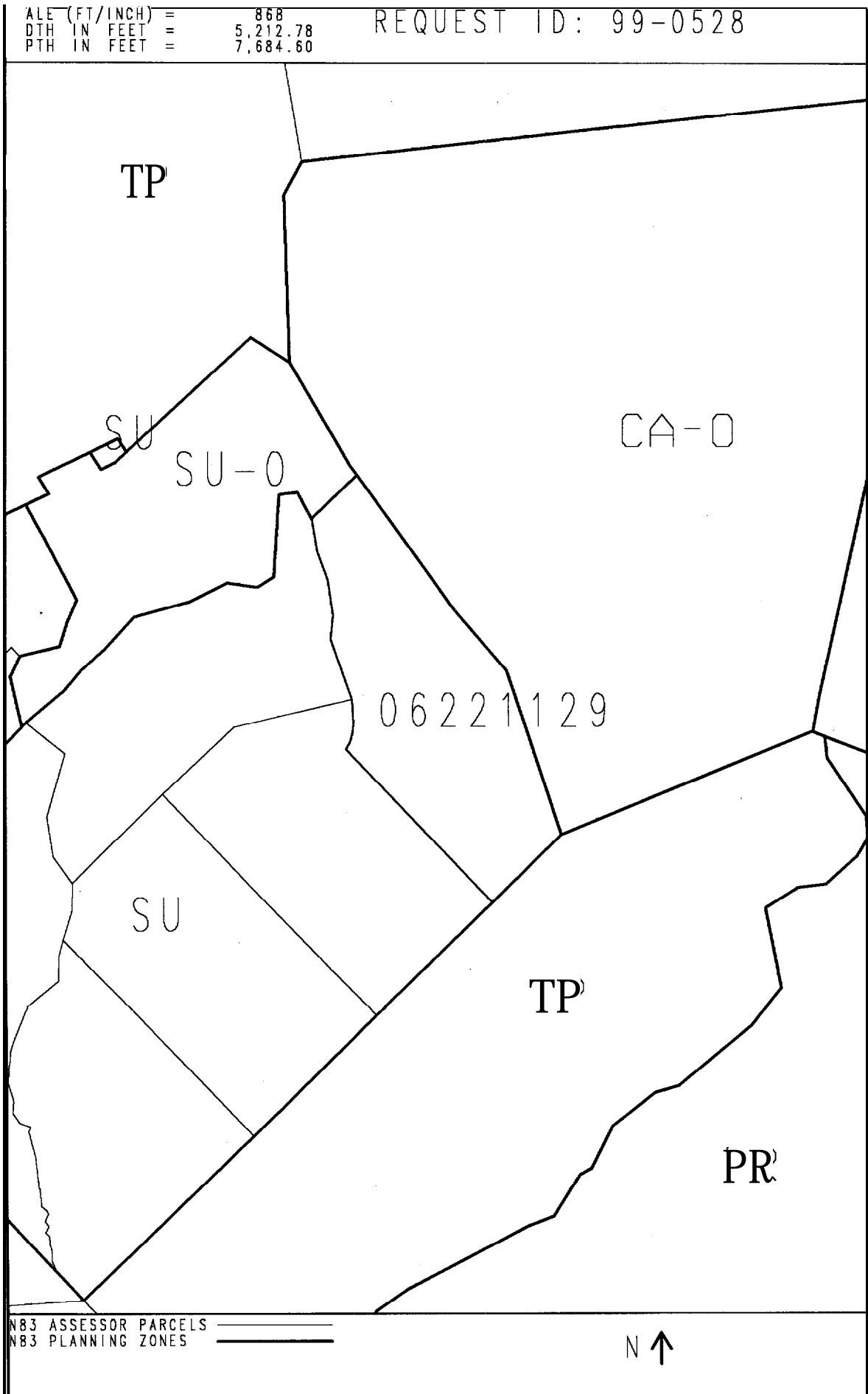
The use will not overload utilities and will not generate more than the acceptable level of traffic on the streets in the vicinity in that the proposed use consists of a single dwelling and habitable accessory structure. The amount of utility use and traffic generated by these structures will be within the levels planned for by the General Plan.

5. THAT THE PROPOSED PROJECT WILL COMPLEMENT AND HARMONIZE WITH THE EXISTING AND PROPOSED LAND USES IN THE VICINITY AND WILL BE COMPATIBLE WITH THE PHYSICAL DESIGN ASPECTS, LAND USE INTENSITIES, AND DWELLING UNIT DENSITIES OF THE NEIGHBORHOOD.

The proposed structures complement and harmonize with existing land uses, densities and the building designs are compatible with other parcels in the vicinity. The area consists of large parcels zoned for low density residential use, timber harvesting and agriculture. Structures in the area show great diversity in size, condition, color and architectural style. The project is equivalent to other area parcels in terms of use and density and is not inconsistent in terms of building appearance as there is no common theme in the area.

ALE (FT/INCH) = 868  
DTH IN FEET = 5,212.78  
PTH IN FEET = 7,684.60

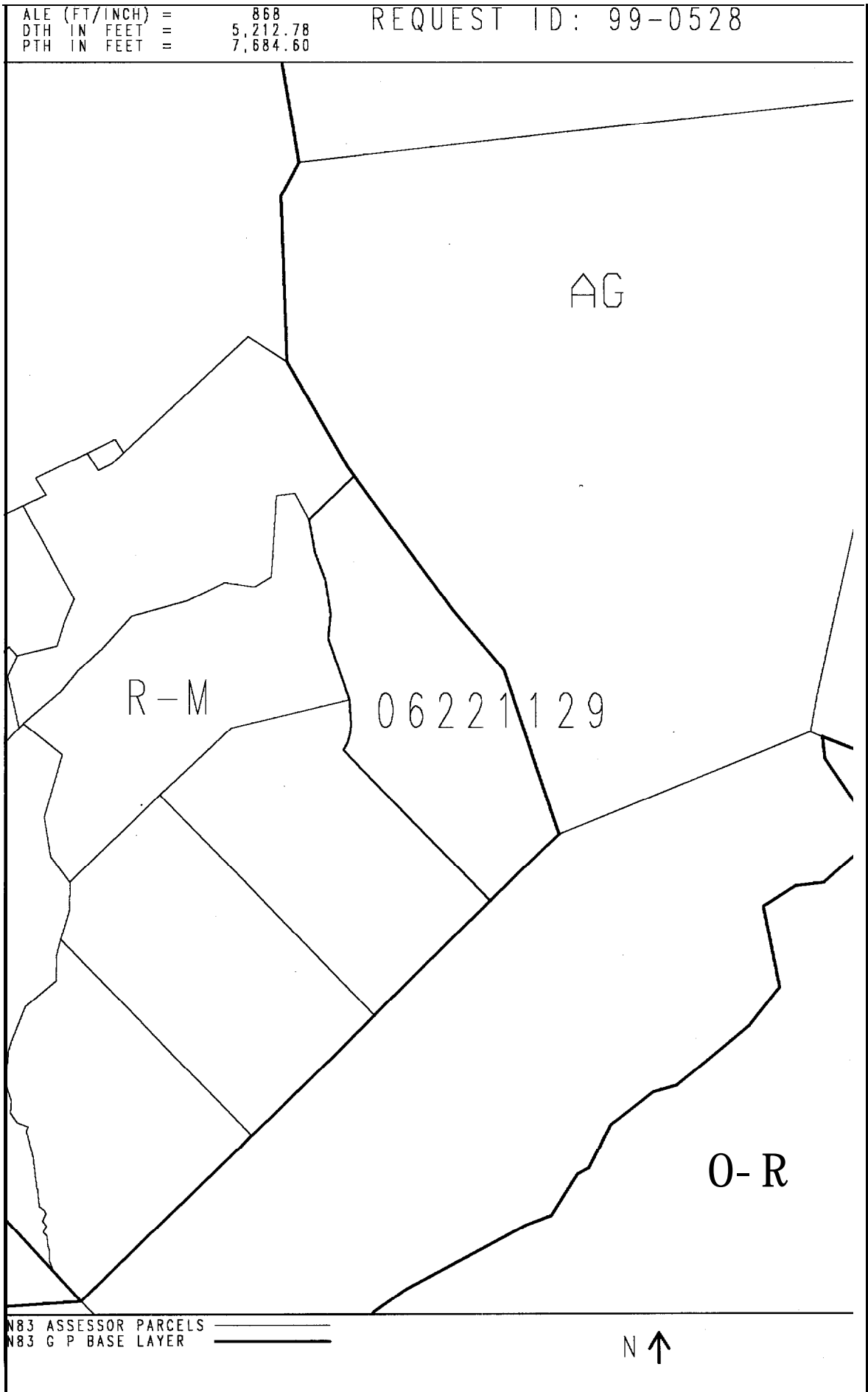
REQUEST ID: 99-0528



N83 ASSESSOR PARCELS  
N83 PLANNING ZONES

N ↑

5 7  
EXHIBIT C





SCALE (FT/INCH) = 868  
WIDTH IN FEET = 5,212.78  
TH IN FEET = 7,684.60

REQUEST ID: 99-0528

AG-3

06221129

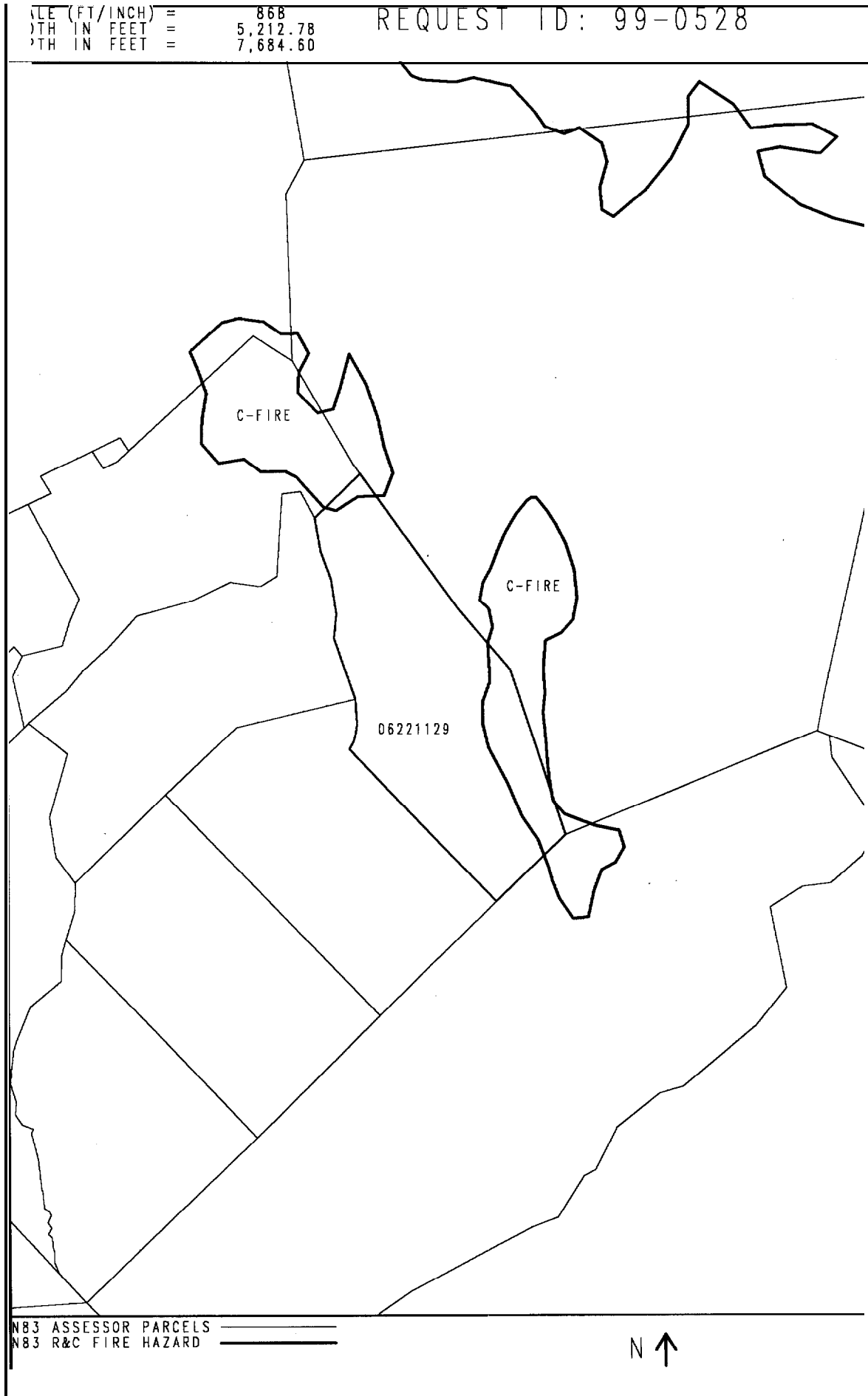
83 ASSESSOR PARCELS  
83 R&C AG RESOURCES

N ↑

5 ?  
EXHIBIT E

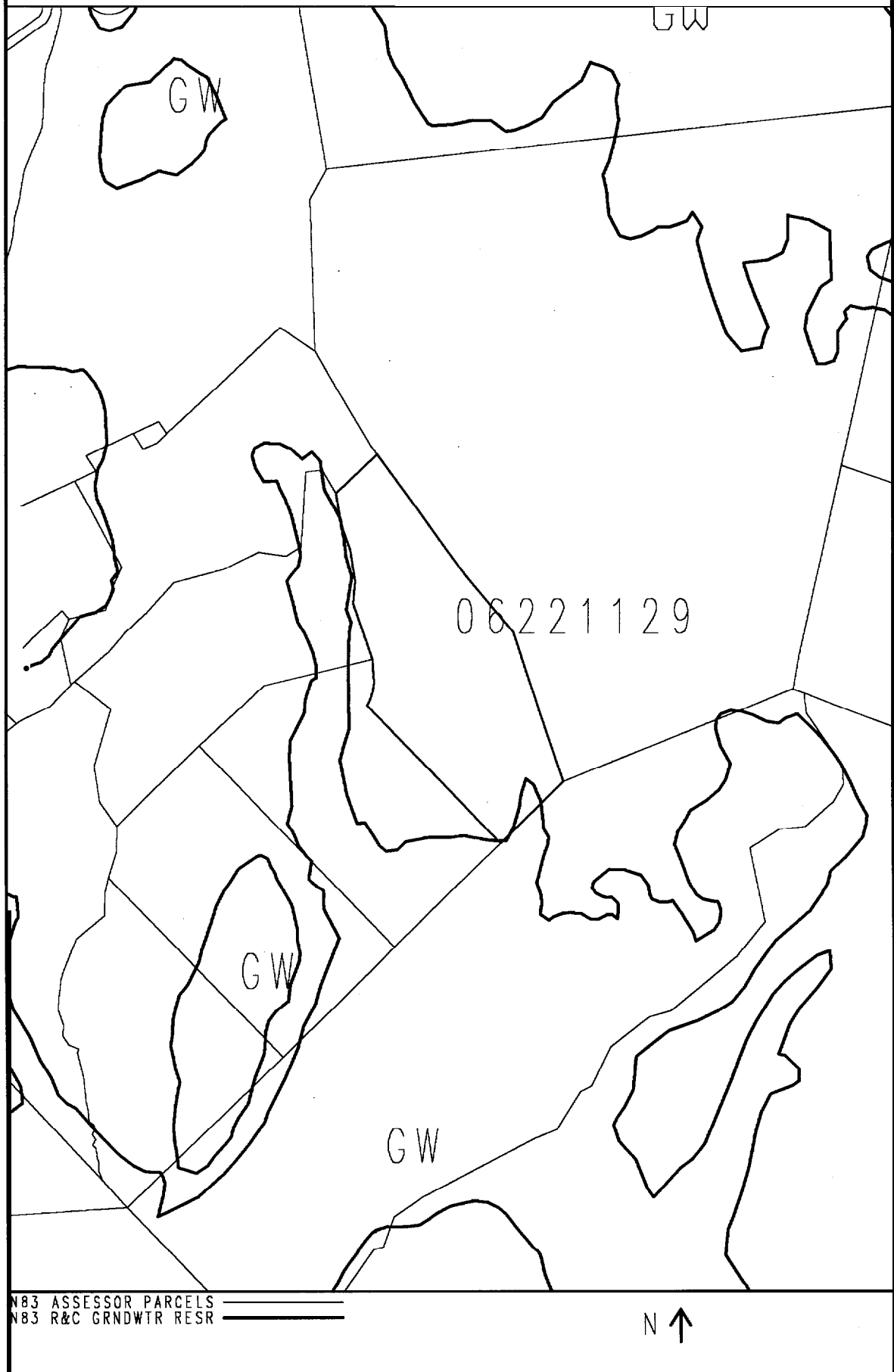
SCALE (FT/INCH) = 868  
WIDTH IN FEET = 5,212.78  
DEPTH IN FEET = 7,684.60

REQUEST ID: 99-0528



SCALE (FT/INCH) = 977  
WIDTH IN FEET = 5,864.37  
DEPTH IN FEET = 8,645.18

REQUEST ID: 99-0528



N83 ASSESSOR PARCELS  
N83 R&C GRNDWTR RESR

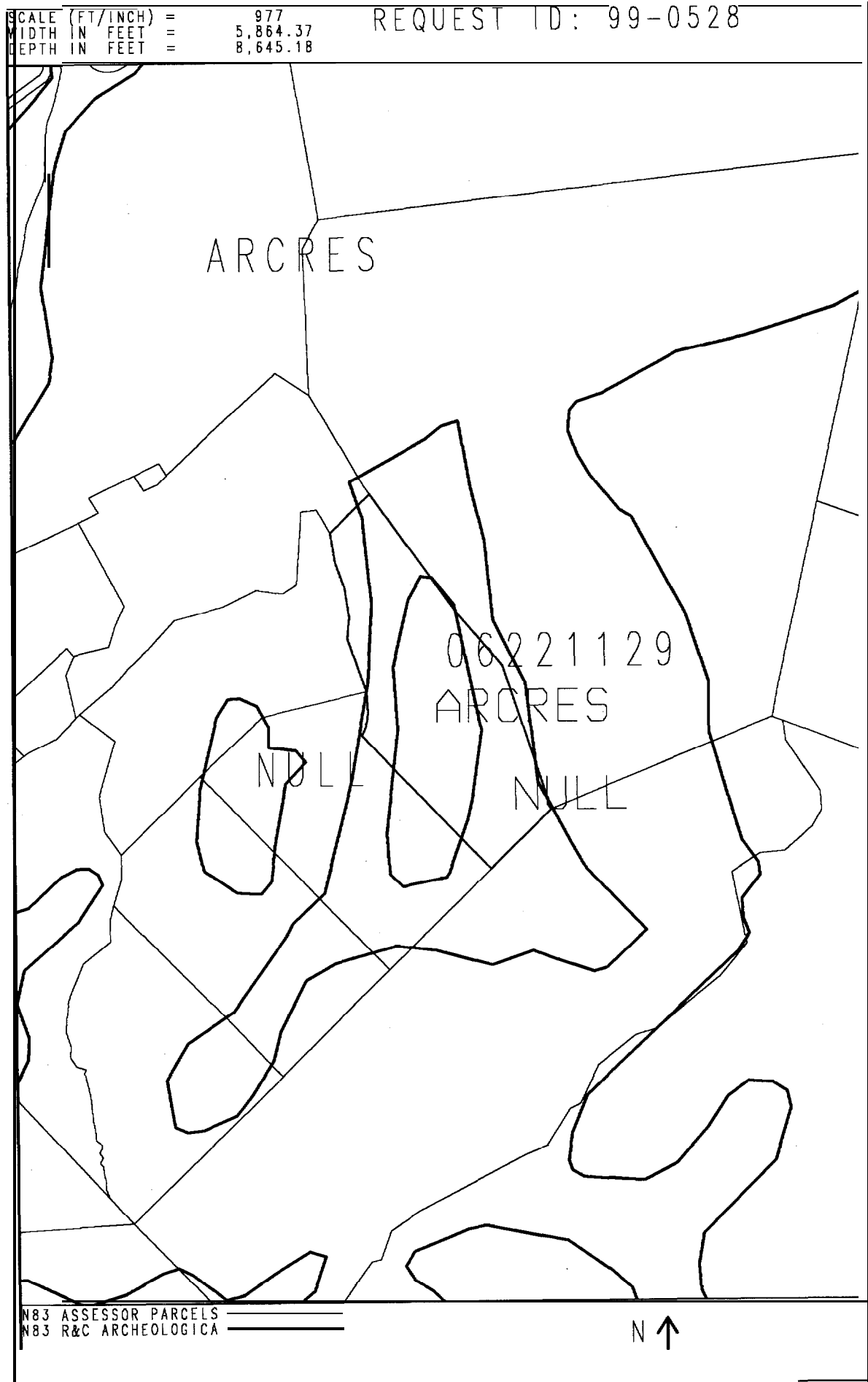
N ↑

5 7

EXHIBIT G

SCALE (FT/INCH) = 977  
WIDTH IN FEET = 5,864.37  
DEPTH IN FEET = 8,645.18

REQUEST ID: 99-0528



0615

Santa Cruz County Zoning Administrator's Agenda  
 February 18, 2000  
 Page 4

Proposal to construct a second dwelling unit and detached non-habitable garage where a single-family dwelling exists. Requires a Residential Development Permit, Located on the west -side of Ruins Creek Road (at 650 Ruins Creek Road), about 100-feet west of Nelson Road.

OWNER: MORGAN -MARSHA ANN TRUSTEE

APPLICANT: MORGAN MARSHA ANN TRUSTEE

SUPERVISORIAL DIST: 5

PROJECT PLANNER: DAVID JOHNSTON, 454-3097

APPROVED PER STAFF FINDINGS AND REVISED CONDITIONS.

**10. 99-0528 (\*) 1089 SMITH GRADE SANTA CRUZ APN(S): 062-211-32**

Proposal to amend Coastal Development Permit 97-0093(Proposal to recognize the construction of a two story single family dwelling, 1.58 cubic yards of grading, a domestic water well, a generator shed, a 5,000 gallon water tank, a 200 gallon propane tank and a 500 gallon propane tank on a parcel of land where a lot line adjustment is proposed in order to locate another "as built" single family dwelling and a habitable accessory structure on APN 62-211-28) to recognize the construction of an additional two story single family dwelling, including the reduction of the required 200' Agricultural Buffer setback to the southern property line and to convert the existing previously approved single family dwelling to a habitable accessory structure and to recognize less than 1000 cubic yards of grading to create a building pad and improve the driveway. Requires a Coastal Development Permit amendment, Agricultural Buffer Reduction and Grading Preliminary Approval. Property located about 1.5 miles southeast of Smith Grade Road at the end of an unnamed right of way which intersects with Smith Grade about 1.5 miles from Empire Grade.

OWNER: WAIDHOFER KATHLEEN BARBARA M/W S/S

APPLICANT: DAVID SUBOCZ

SUPERVISORIAL DIST: 5

PROJECT PLANNER: DAVID JOHNSTON - 454-3097

DENIED WITHOUT PREJUDICE.

**APPEAL INFORMATION**

Denial or approval of any permit by the Zoning Administrator is appealable to the Planning Commission. The appeal must be filed with the required appeal fee within 14 calendar days of action by the Zoning Administrator. To file an appeal you must write a letter to the Planning Commission and include the appeal fee. For more information on appeals, please see the "Planning Appeals" brochure located in the planning Department lobby, or contact the project planner.

**APPEALS OF COASTAL PROJECTS**

\* This project requires a Coastal Zone Permit which is not appealable to the California Coastal Commission. It may be appealed to the Planning Commission; the appeal must be filed within 14 calendar days of action by the Zoning Administrator.

EXHIBIT<sup>5</sup> 1-7

0616

**William de Ess Studios**  
328C Ingalls Street  
Santa Cruz, CA 95060  
tele (831) 426-8941  
FAX (831) 469-0276

February 25, 2000

County of Santa Cruz Planning Department  
701 Ocean Street, Room 400  
Santa Cruz, CA 95060  
tele (831) 454-2580  
FAX (831) 454-2131

Re: Application 99-0528  
APN: 062-211-32

As applicants for Kathleen Waidhofer, we hereby file an appeal to the Zoning Administrator's decision of February 18, 2000 to deny approval of the above referenced application.

Our request is based on the following:

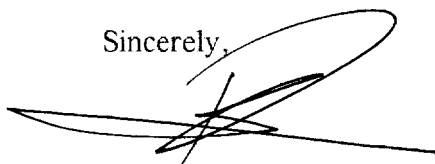
An agricultural buffer zone reduction was required in order to approve Application 99-0528. However, the staff planner for the project pulled Application 99-0528 from the APAC agenda for the hearing scheduled for February 17, 2000, despite the fact that the item was properly noticed and posted. In doing so, the application could not be approved, as a determination precedent to the Zoning Administrator's approval was disallowed. Given the requirement for a decision within 210 days of the date of the application, the Zoning Administrator could not continue the item. In effect, the Zoning Administrator could only deny the project, with this outcome predetermined prior to the Zoning Administrator's public hearing of February 18, 2000.

We presented an argument against all findings within the staff report used to support a recommendation for denial. Therefore, we contend that the Zoning Administrator's determination was unfair, and did not give adequate consideration to our presentation.

The project description in the final draft of the staff report contains factual errors. We believe that as a direct result of these errors, the Zoning Administrator may have interpreted these representations in a manner that was prejudicial to the application. In addition, that same rendering of opinion could have predisposed the public to the same end, thereby denying the applicants a platform of impartiality.

Under the laws of the State of California and the County's own ordinances, the application must be granted as a matter of law. Therefore, we request that the appeal bypass the Planning Commission and go directly to the Board of Supervisors.

Sincerely,



David Subocz

5 7

CC: Kathleen Waidhofer, Richard Klein, Don Bussey, David Johnston

EXHIBIT J

(Ord. 4496-C. 8/4/98)

0617

18.10.122 PROCESSING LEVELS. The level of processing required for

-----  
each possible type of development is set forth in this and other County ordinances establishing the processing level for the permit or approval sought (See Chapters 12, 13, 14 and 16 of the County Code).  
(Ord. 3604, 11/6/84; 3639, 3/26/85; 4044, 1/9/90)

18.10.123 CONCURRENT APPROVALS.  
-----

(a) Concurrent Action. When more than one approval is required

-----  
for a permit, or more than one permit is required for a project, or when a time extension for more than one permit is applied for, all the required approvals, permits or extensions shall be applied for, processed, and acted upon concurrently, except in the following cases:

1. No building permit, or permit extension shall be issued until all required Development Permits, or Development Permit Extensions have been issued. At Levels I (no plans) through IV (Public Notice), Development Permit approvals are applied for concurrently with a Building Permit. At Levels V (Zoning Administrator) through VII (Board of Supervisors), Building Permits shall not be applied for until after all Development and/or Land Division Permits have been obtained. An exception may be approved by the Planning Director, which approval shall only be granted upon written agreement that fees paid for such application and any other applicant incurred costs are at the sole risk of the applicant.

2. When a project involves a General Plan/Local Coastal Program Amendment and/or a Specific Plan approval or amendment, the property shall concurrently be rezoned to a consistent zone district, and required Development and/or Land Division Permits may or may not be concurrently processed, as appropriate. However, in the Coastal Zone, final permit approval may not be granted until the Coastal Commission has approved the Local Coastal Program amendment.

3. Coastal Zone Notices of Exclusion may be issued at the time of project application but shall not become effective until all other approvals and permits required for the project have been obtained. (See Coastal Zone Regulations Ordinance Section 13.20.080 for further regulations regarding Notices of Exclusion.)

4. When a project involves a designated historic resource, applications for permit approvals shall not be accepted until the Historic Resources Commission approval and/or recommenda-

0618

tion, as required by Section 16.42.040 has been granted, and documentation of such action is submitted with the permit applications, except where the Planning Director specifically authorized the acceptance of a permit application for processing concurrently with the Historic Resources Commission review and action pursuant to Section 16.42.050(b). (Ord. 4103, 12/11/90)

(b) Processing Level. When more than one permit, permit  
-----

extension or approval is required for any one project, all the required permits, approvals and extensions for that permit shall, when appropriate, be concurrently acted upon at the highest processing level required for any of the required permits, approvals or permit extensions for the project.

(c) Permit Extension. Where a building permit extension is  
-----

applied for pursuant to subsection 12.10.070(e), and additional extensions for other types of permits are required to permit the work authorized by the building permit to be done, all of said extensions shall be applied for and acted upon concurrently subject to subsections (a) and (b) above. (Ord. 3604, 11/6/84; 4044, 1/9/90)

#### 18.10.124 HEARING PROCEDURES -----

(a) Consent Agenda. Public hearing items may, at the discretion  
-----

of the approving body, be placed on a Consent Agenda. Unless removed from the Consent Agenda, the items on the Consent Agenda may be summarily approved or disapproved pursuant to staff recommendations, conditions and findings. Any item on the Consent Agenda shall be removed to the Regular Agenda upon request of a member of the public, the applicant, or any member of the approving body. An item must be in the Regular Agenda in order for public testimony to be taken.

(b) Referral to Next Level. At the discretion of the approving  
-----

body, any permit approval or appeal of any permit approval may be referred to the next higher level if, in the opinion of the approving body, the project merits more extensive review. Appeals pending before the Planning Director may be referred to the Zoning Administrator or Planning Commission.

(c) Continuances. Any matter may be continued from time to time.  
-----

Re-noticing shall be done as prescribed in Section 18.10.223(d). (Ord. 4044, 1/9/90)

**EXHIBIT K**



**Subject: Re: revision to co history of projects****Date:** Wed, 08 Mar 2000 09:44:19 -0800**From:** reggiecs@cruzio.com**To:** reggiecs@cruzio.com*Attn: Dave Johnston  
Appl # 99-0528*

County of Santa Cruz Planning Department  
Attn: David Johnston  
Application: 99-0528  
APN: 062-211-32

In October of 1995, Code enforcement responded to a complaint regarding unpermitted construction on parcel 062-211-32 (formerly 062-211-29) under the ownership, at that time, of John Grinder. During the inspection, the Code Enforcement officer was unable to gain full access to parcel 32. The Code Enforcement officer proceeded to red-tag two completed structures he was able to access: a single-family dwelling (1077 Smith Grade) located on parcel 062-211-32 and a habitable accessory structure (1079 Smith Grade) located on parcel 062-211-31 (formerly 062-211-28) and under the ownership, at that time, of Judith Delozier. It was unknown to the Code Enforcement officer that these two structures had been previously enrolled in the "Construction Legalization Program" along with a proposed lot line adjustment to place the single-family dwelling (1077 Smith Grade) on the same parcel as the habitable accessory structure (1079 Smith Grade). Code Enforcement records indicate that the owner's applicant met with David Laughlin of Code Enforcement and gave satisfactory evidence that these two structures were in fact in the program; All enforcement proceedings were suspended at that time. The owner of parcel 062-211-31, Judith Delozier, filed for a development permit (96-0554) on 8/23/96 as a continuation of the Construction Legalization Program. Application 96-0554 was accepted to recognize the single-family dwelling (1077 Smith Grade) and the habitable accessory structure (1079 Smith Grade); This application also included a lot line adjustment to place the SFD (1077 Smith Grade) on parcel 31 and a proposal for a new two-story, single-family dwelling (1099 Smith Grade), to be located on parcel 32. It was later determined by the staff planner that the new two-story, single family dwelling (1099 Smith Grade) proposed for parcel 32 would require a separate development permit. The owner of parcel 32, John Grinder, filed for a development permit (97-0093) for the proposed two-story, single-family dwelling (1099 Smith Grade). Application 97-0093 was accepted on 2/6/97 for the proposed two-story, single-family dwelling (1099 Smith Grade); Application 97-0093 was processed concurrently with application 96-0554, with approval for 97-0093 contingent on the lot line adjustment being proposed under application 96-0554.

On 2/10/97 the applicant for the owner of parcel 32 informed the staff planner for application 97-0093 that the exterior shell of the proposed two-story, single-family dwelling (1099 Smith Grade) had been completed. On 2/12/97 the staff planner inspected parcel 32; There were no inspections made by Code Enforcement at that time, no stop work notices or red-tags posted, and no subsequent requests by Code Enforcement to access or inspect the site.

Application 96-0554 was approved on 6/5/98; Application 97-0093 was approved on 6/14/98. On 6/29/98 the ownership of parcel 31 changed from Judith Delozier to Eric Pucelik. A building permit application for all structures on parcel 31 was filed on 8/3/98. A building permit application for all structures on parcel 32 was filed on 9/14/98. On 5/14/99 the ownership of parcel 32 changed from John Grinder to Kathleen Waidhofer. On 7/19/99 the lot line adjustment was finalized. On 11/16/99 building permits were issued for all structures on parcel 31.

5 7

EXHIBIT L

Building permits are still pending for the two-story, single-family dwelling (1099 Smith Grade).

0620

In June 1999, Code Enforcement received another complaint, indicating a second dwelling was now under construction on parcel 32. Upon investigation, Code Enforcement found workmen building another house on the southern end of the property. The purpose of this application is to recognize the partially completed structure (1089 Smith Grade) as the main unit and convert the two-story, single-family dwelling (1099 Smith Grade) to a habitable accessory structure.

David,

I am using the addresses assigned to each structure by Lorraine Cliff of Emergency Services. These are, in fact, the final approved addresses for each structure referenced. I hope this "brief" history helps. I can provide all the documentation necessary to confirm these facts. Let me know if you need anything else. I do appreciate the level of confusion and misinformation generated by these applications and events. Hopefully, this will all be resolved soon.

Thanks,

David Subocz

## Program

0621

- a. Establish a Master Plan Area Combining District or similar mechanism to provide for coordinated site and circulation design in designated areas. Include in the requirements for the combining district the intent and purpose behind the commercial and residential master plan areas. (Responsibility: Planning Department, Redevelopment Agency)

### Objective 8.3 Development Clustering

To encourage cluster design for residential development in rural and protected use areas for sites where natural amenities, resources and open space can be retained or enhanced; or in urban **areas** where cluster design could be used to increase outdoor amenities in higher density development.

## Policies

### 83.1 Clustering for Environmental Protection

Require development clustering where clustering of units **is** essential to meet the intent of the General Plan and **LCPLand** Use Plan to preserve protected use **areas** such as scenic areas, riparian corridors, coastal lagoons and **marshes, or other natural features.** [See **Conservation and Open Space Element** and sections regarding protection of Agriculture and Timber.]

### 83.2 Urban Development

Encourage development clustering in urban areas to achieve maximum open space for recreational use, for the design of focal points, and to promote energy-efficient and cost-efficient site planning.

### 833 Rural Development

Encourage clustering of **rural** building envelopes, particularly in areas of development constraints such as high erosion hazard or areas of protected **resources** such as timber, watersheds, and groundwater recharge, in order to maximize resource protection, environmental compatibility, and the preservation of open space. Within **the** clustered building envelopes, require adequate spacing of residential units, depending on visibility and terrain, to maintain the rural character. (See clustering requirements for Timber Production Lands, section 5.12.)

**Objective 8.6 Building Design**

0622

To encourage building design that addresses the neighborhood and community context; utilizes scale appropriate to adjacent development; and incorporates design elements that are appropriate to surrounding uses and the type of land use planned for the area.

**Policies****8.6.1 Maintaining a Relationship Between Structure and Parcel Sizes**

Recognize the potential for significant impacts to community character from residential structures which **are** not well-proportioned to the site; and require residential structures to have a direct relationship to the parcel size as per **the Residential Site and Development Standards ordinance**.

**8.6.3 Residential Development Standards Ordinance**

Require **all** residential structures to comply with the Residential Development Standards ordinance which includes maximum structural height and minimum structural setbacks. Unnecessary grading for the purpose of meeting height restrictions is prohibited.

**8.6.3 Story Limitation**

Residential structures shall be limited to two stories in urban areas and on parcels smaller than one acre in the rural areas except where explicitly stated in the Residential Site and Development Standards ordinance.

**8.6.4 Review of Large Dwellings**

**Recognize that** large single residences may have significant adverse visual impacts on the community and **require** new single family residences larger than 7,000 square feet in floor area and additions larger than 10 percent of residential structures larger than 7,000 square feet in floor area to be consistent with all design criteria of the Visual Resources section of the General Plan and LCP Land Use Plan and the Zoning ordinance.

**8.6.5 Designing With the Environment**

Development shall maintain a complementary relationship **with** the natural environment and shall be **low-profile** and stepped-down on hillsides.

**8.6.6 Protecting Ridgetops and Natural Landforms**

**(LCP)** Protect ridgetops and prominent natural landforms such as cliffs, bluffs, dunes, rock outcroppings, and other significant natural features **from** development. In connection with discretionary review, apply the following criteria:

- (a) Development on ridgetops shall be avoided if other developable land exists on the property.
  - (b) Prohibit the removal of **tree** masses when such removal would erode the silhouette of the ridgeline form. Consider the cumulative effects of tree removal on the ridgeline silhouette.
  - (c) Restrict the height and placement of buildings and structures to prevent their projection above the ridgeline or treeline. Restrict structures and structural projections adjacent to prominent natural land **forms**. **Prohibit** the creation of new parcels which would require structures to project above the ridgeline, **treeline** or along the edge of prominent natural landforms. (See Visual Resources section within the Conservation and Open Space chapter.)
  - (d) Require exterior materials and colors to blend with the natural **landform** and **tree** backdrops.
- With respect to the issuance of administrative permits, advise all applicants that they should design and site **their** structures to conform to the above policies.

0623

13.10.611 ACCESSORY STRUCTURES.

(a) Purpose. It is the purpose of this Section to provide for the orderly regulation of accessory structures allowed as a use in any zone district, to insure that accessory structures are subordinate and incidental to the main structure or main use of the land, and to provide notice to -future and current property owners that illegal conversion \*of any accessory structure is subject to civil penalties.

(b) Application Requirements.

1. The proposed use of the structure shall be specified.
2. Applications for habitable accessory structures shall be processed as specified in the use chart for appropriate zone district.

(c) Restriction on Accessory Structures.

1. Any **accessory** structure shall be clearly appurtenant, subordinate and incidental to the main structure or main use of the land as specified in the purposes of the appropriate zone district, with the exception that a non-habitable accessory structure not exceeding 12 feet in height or 600 square feet in size shall be allowed in the absence of a main structure or main use of the land.
2. No habitable and no non-habitable accessory structure shall have an electrical meter separately from the main dwelling, and no accessory structure **may** have electricity in the absence of a main dwelling, except as may be approved pursuant to the use charts for the zone district or a Level V use approval.
3. Plumbing and electrical equipment appropriate to the use of the structure may be installed. No electrical service exceeding **100A/220V/single** phase may be installed to an accessory structure incidental to a residential use unless a Level V use approval is obtained.
4. **No** habitable accessory structure incidental to a residential use shall be located more than 100 feet from the main dwelling, or be accessed by a separate driveway **or right-of-way**, or be constructed on a slope greater than 30% unless a Level V Use Approval is obtained. Furthermore, a guest house can only be constructed and occupied on property where the property owner is a resident of the main structure. (Ord. 4324A, 8/9/94)

0624

5. The number of habitable accessory structure shall be limited to one per parcel unless a Level V use approval is obtained.
6. No accessory structure shall be mechanically heated, cooled, humidified, or dehumidified unless the structure or the conditioned portion thereof meets the energy conservation standards of the California Administrative Code, Title 24, as adopted by Chapter 12.20 of this Code.
7. An accessory structure shall not have a kitchen or food preparation facilities and shall not be rented, let or leased as an independent dwelling unit.
8. **Any** building permit for the construction of or conversion to an independent dwelling unit shall require an allocation for one housing unit as provided in Section **12.02.030** and shall comply with the dwelling density allowed for the zone district **in which** the parcel is located, except as provided by **13.10.681**.

**(d) Reaquired Conditions**

Any building or development permit issued for the construction or renovation of a non-habitable accessory structure shall include a condition requiring an agreement not to convert the structure into a dwelling unit or into any structure for human habitation in violation of this Code, and any building or development permit issued for the construction or renovation of a habitable accessory structure shall include a condition requiring an agreement not to convert the structure into a dwelling unit or into any other independent habitable structure in violation of this Code. Each agreement required by this subsection shall provide the recovery by the County of reasonable attorney fees and costs in bringing any legal action to enforce the agreement together with recovery of any rents collected for the illegal structure *or*, in the alternative, for the recovery of the reasonable rental value of the illegally converted structure *or*, in the alternative, for the recovery of the reasonable rental value of an illegally converted structure from the date of conversion. The amount of any recovery of rents or of the reasonable rental value of an illegally converted structure shall be deposited in the County's Affordable Housing Fund. The agreement shall be written so as to be binding on future owners of the property, include a reference to the deed under which the property was acquired by the present owner, and shall be filed with the County Recorder. Proof that the agreement has been recorded shall be furnished to the County

0625

prior to the granting of any building permit permitting construction on the property.

2. As a condition of approval, permits for accessory structures shall provide for inspection as follows:
  1. The structure may be inspected for condition compliance twelve months after approval, and at any time thereafter at the discretion of the Planning Director. Construction of or conversion to an accessory structure pursuant to an approved permit shall entitle County employees or agents to enter and inspect the property for such compliance without warrant or other requirement for permission.  
(Ord. 3632, 3/26/85; 3996, 6/6/89; 4099, 12/11/90; 4496-C, 8/4/98)

#### 13.10.613 HOME OCCUPATIONS.

- (a) Purposes. The purposes of regulations for home occupations are:

1. To allow persons to carry on limited income-producing activities on their residential property.
2. To protect nearby residential properties from potential adverse effects of the allowed activity by not allowing home occupations that would create excessive noise, traffic, public expense or any nuisance.

- (b) Restrictions on Home Occupations.

1. The home occupation shall be carried on entirely within the dwelling, or in an accessory structure normally allowed in the zone district in which the site is located.
2. There shall be no visible or external evidence of the home occupation other than one unlighted sign not exceeding one square foot in area, which shall be affixed to the dwelling or building in which the home occupation is conducted. If both the dwelling and the building are set back more than 40 feet from the front property line, the sign may be affixed to the mailbox. No outdoor storage, operations or activity is allowed unless a Level V Use Approval is obtained, in which case the allowed outdoor use shall be completely screened from

5 7



0626

BRUCE DAU, Chairperson  
DAVE MOELLER, Secretary

SANTA CRUZ COUNTY AGRICULTURAL POLICY  
ADVISORY COMMISSION  
REGULAR MEETING

MINUTES - FEBRUARY 17, 1999

**Members Present**

Bruce Dau, Chairman  
Sam Earnshaw  
Don Hagerty  
Lud McCrary

**Staff Present**

Cathleen Carr  
Pat Tabula  
Dave Moeller

**Others Present**

David Subocz  
Miguel Podolsky

**Members Absent**

Peter Navarro

1. The meeting was called to order by Chairperson Dau at 1:35 p.m.
2. (a) Approval of December 16, 1999 minutes. Motion by Commissioner Earnshaw, seconded by Commissioner Hagerty to approval minutes of December 16, 1999 meeting.  
  
Motion passed unanimously.
- (b) Additions/corrections to agenda: Correction included in packet (Item 7 removed from agenda)
3. **Review of APAC's Correspondence:**
  - (a) Letter from Campbell Associates regarding deletion of item #7. Dave Moeller questioned how notification is sent when item is removed. Commissioner Dau moved this procedural question to end of agenda.
  - (b) Letter from Law office of Richard A. Klein regarding deletion of item #7
  - (c) Letter from Mardi Wormhoudt, Chair, Board of Supervisors to Richard Hawley, Executive Director, Greenspace, regarding pitch canker.



**4. Commissioner's Presentations:** None**5. Oral Communications:** RE: APN 62-2 11-29

David Subocz, applicant, delivered letter from Richard A. Klein, attorney for Kathleen Waidhofer, owner, regarding removal of this item from the agenda. Commissioner Dau asked that this discussion be moved to last item of agenda.

**6. APN: 046-091-23** (Applicant: Anthony Lee and Karen Biasini). Proposal to construct a single family dwelling. Requires an Agricultural Buffer Setback Determination to reduce the required 200 foot buffer setback to about 80 feet from the south property line to the proposed single family dwelling and garage. Property located on the west side of Lily Way about 300 yards north of the intersection of Lily Way and Zils Road.

Cathleen Carr gave staff presentation and recommended approval.

Miguel Podolsky, Architect, asked that the six foot high solid fence requirement be reduced from the 210 linear feet in length to 100-125 linear feet plus vegetative barrier along the property line.

Motion by Commissioner Hagerty, seconded by Commissioner McCrary to recommend approval with 150 foot fence and vegetative screening.

Motion passed.

**7. Continued items:**

- (a) Dave Moeller raised question on how interested parties are notified when an item is removed from the agenda. Cathleen Carr informed Commission that there is not a general policy.
- (b) Regarding item #7: David Subocz addressed the Commission about the process that has taken place in requesting an Agricultural Buffer Setback Determination to reduce the required 200 foot buffer setback. He informed the Commission that the applicants have already paid for the determination, yet no decision will be made by APAC today and tomorrow they will appear before the Zoning Administrator, who in turn cannot make a decision all because item #7 was pulled from today's APAC agenda.

Commissioner Dau informed Mr. Subocz that the only thing the Commission can do is to recommend the applicant be given the option of requesting a refund of the fee.

Motion by Commissioner Hagerty, seconded by Commissioner McCrary to allow applicant to request refund.

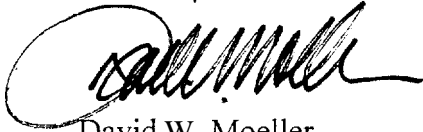
Commissioner Eamshaw abstained.

Motion passed.

- (c) Commissioner McCrary voiced his concerns regarding State Parks policy on “no grazing” on donated lands. A discussion followed with Commissioner Dau suggesting a letter be written to the Board of Supervisors expressing APAC’s opinion on this issue. Maybe discuss further at next months meeting.
- (d) APAC annual report for 1999 is due. Dave Moeller advised the Commissioners that the report has been prepared and would be delivered to the Board of Supervisors Administrative Assistant tomorrow.

There being no further business, the meeting was adjourned at 3: 10 p.m.

Respectfully submitted,



David W. Moeller  
Executive Secretary

DWM:pt

Santa Cruz County Planning Commission Agenda  
 April 26, 2000  
 Page 2

OWNER: HANSON AGGREGATES  
 APPLICANT: LARRY APPLETON  
 SUPERVISORIAL DIST: 5  
 PROJECT PLANNER: BRUCE LACLERGUE **454-3112**

**H-2. 99-0528 NO SITUS APN(S): 062-211-32**

Consideration of an Appeal of the Zoning Administrator's denial of a proposal to amend Coastal Development Permit 97-0093 (proposal to recognize the construction of a two story single family dwelling, 158 cubic yards of grading, a domestic water well, a generator shed, a 5,000 gallon water tank, a 200 gallon propane tank and a 500 gallon propane tank on a parcel of land where a lot line adjustment is proposed in order to locate another "as-built" single family dwelling, including the reduction of the required 200' agricultural buffer setback to the southern property line and to convert the existing previously approved single family dwelling to a habitable accessory structure and to recognize less than 1000 cubic yards of grading to improve the-driveway. Requires a Coastal Development Permit, Agricultural Buffer Reduction and Grading-Preliminary Review. Property located about 1.5 miles southeast of Smith Grade at the end of an unnamed right-of-way which intersects with Smith Grade about 1.5 miles from Empire Grade.

APPLICATION NUMBER: 99-0528  
 OWNER:: WAIDHOFER  
 APPLICANT& APPELLANT: SUBOCZ  
 SUPERVISORIAL DIST: 5  
 PROJECT PLANNER: DAVE JOHNSTON, 454-3097

**H-3. 99-0730 NO SITUS APN(S): 70-011-30**

Consider an appeal of the Zoning Administrator's approval of a proposal to construct a detached, 1196 square foot second unit and a detached 1280 square foot non-habitable garage. Requires a Residential Development Permit. Location 650 Ruins Creek Road, about 1.5 miles northwest of Scotts Valley.

APPLICATION: 99-0730  
 OWNER: MARSHA MORGAN  
 APPLICANT: KAREN KAPLAN  
 SUPERVISORIAL DIST: 5  
 PROJECT PLANNER: DAVE JOHNSTON **454-3097**

**APPEAL INFORMATION**

Denial or approval of any permit by the Planning Commission is appealable to the Board of Supervisors. The appeal must be filed with the required appeal fee within 14 calendar days of action by the Planning Commission. To file an appeal you must write a letter to the Board of Supervisors and include the appeal fee. For more information on appeals, please see the "Planning Appeals" brochure located in the planning Department lobby, or contact the project planner.

**COMMISSIONER SHEPHERD:** How Long will quarry be in operation?

0630

**COMMISSIONER HOLBERT:** Four to Seven years.

**DAVE HUMPHREY:** Felton Quarry/Hanson aggregates **XXX** for questions. Support use of treated water. Line is in place.'

**RACHEL LATHER:** To address reclamation plan. Open space uses to include replanting of slopes & quarry and removal of ponds. At least 10 years of reclamation.

**BRUCE LACLERGUE:** Staff at county also working with NASA for sites suitable for natural recharge in percolation ponds or injection wells.

**LARRY APPLETON:** Hanson aggregates. Clarification of issues regarding existing pipeline and technical issues.

**MOTION**

COMMISSIONER SHEPHERD MOVED TO APPROVE STAFF RECOMMENDATION WITH URGING TO COMPLETE WATER RECYCLING PROGRAM AS QUICKLY AS POSSIBLE. SECONDED BY COMMISSIONER MESSER.

VOICE VOTE

MOTION CARRIED AND SO ORDERED. PASSED 5-0.

**ITEM H-2**

CONSIDERATION OF AN APPEAL OF THE ZONING ADMINISTRATOR'S DENIAL OF A PROPOSAL TO AMEND COASTAL DEVELOPMENT PERMIT 97-0093 (PROPOSAL TO RECOGNIZE THE CONSTRUCTION OF A TWO STORY SINGLE FAMILY DWELLING, 158 CUBIC YARDS OF GRADING, A DOMESTIC WATER WELL, A GENERATOR SHED, A 5,000 GALLON WATER TANK, A 200 GALLON PROPANE TANK AND A 500 GALLON PROPANE TANK ON A PARCEL OF LAND WHERE A LOT LINE ADJUSTMENT IS PROPOSED IN ORDER TO LOCATE ANOTHER "AS-BUILT" SINGLE FAMILY DWELLING, INCLUDING HE REDUCTION OF THE REQUIRED 200' AGRICULTURAL BUFFER SETBACK TO THE SOUTHERN PROPERTY LINE AND TO CONVERT THE EXISTING PREVIOUSLY APPROVED SINGLE FAMILY DWELLING TO A HABITABLE ACCESSARY STRUCTURE AND TO RECOGNIZE LESS THAN 1000 CUBIC YARDS OF GRADING TO IMPROVE THE DRIVEWAY. REQUIRES A COSTAL DEVELOPMENT PERMIT, AGRICULTURAL BUFFER REDUCTION AND GRADING-PRELIMINARY REVIEW. PROPERTY LOCATED ABOUT 1.5 MILES SOUTHEAST OF SMITH GRADE AT THE END OF AN UNNAMED RIGHT-OF-WAY WHICH INTERSECTS WITH SMITH GRADE ABOUT 1.5 MILES FROM EMPIRE GRADE.

APPLICATION NUMBER: 99-0528

OWNER : WAIDHOFER

APPLICANT& APPELLANT: SUBOCZ

SUPERVISORIAL DIST:5

PROJECT PLANNER: DAVE JOHNSTON, 454-3097

**DAVE JOHNSTON:** Background, location of units, options for approval. Slides of both structures and parcel areas where proposal is not consistent with general plan policies: clustering, visual connection, removal of trees on ridge line, zoning-accessory structures subordinate to main unit.

**COMMISSIONER SHEPHERD:** What would limit be on accessory structure if approval was obtained prior to construction.

**DAVE JOHNSTON:** Reasons for appeal. Conclusion and recommendation.

**COMMISSIONER OSMER:** 3 alternates, what can be done today? 2<sup>nd</sup> unit option would be separate from today's action.

**COMMISSIONER MESSER:** We address substance of appeal, rather than other alternatives. Commission should discuss merits of appeal.

DISCUSSION WITH COMMISSION AND COUNTY COUNCIL REGARDING EXTENT OF JURISDICTION AND ITEMS FOR DISCUSSION.

**COMMISSIONER RUTH:** What reduction was requested in agriculture buffer.

**DAVE JOHNSTON:** Separated by 300 feet elevation, likely that buffer would be approved.

### PUBLIC HEARING OPENED

**DAVID SUBOCZ:** Requesting that structure be habitable accessory structure (art studio) not guest house. Argument against findings. Unfair to re-visit prior approval regarding visual issues. Permit streamlining act issues, 30 day review period was not honored and some issues (such as visual study) could have been done if requested in timely manner. Clustering is encouraged, not required.

**MIRIAM BUMIS:** Rural Bonny Doon association supports planning department support of ordinance and policies. Feel Zoning Administrator action was appropriate.

**JOHN GRINDER:** Father of Kathleen Waidhofer. Why was item removed from Agriculture Policy Advisory Commission agenda? Could Zoning Administrator have approved? Contends it was approved under permit streamlining act.

**GREG SHUR:** California State Parks. Supports Zoning Administrator decision. Close to Greg Whale and Wilder Ranch. Removal of vegetation has impact on wild life corridors, especially with illegal construction.

**DAVID SUBOCZ:** No reference to biotic resources in staff report.

### PUBLIC HEARING CLOSED

**COMMISSIONER HOLBERT:** Distressing when owner builds first requests approval after. Feels that Zoning Administrator discussion should be upheld.

**COMMISSIONER OSMER:** Permits are not such an issue, but violation of zoning ordinance shows disrespect for community and laws. Zoning Administrator was correct in decision and nothing has been presented to change that.

**COMMISSIONER SHEPHERD:** Agrees with Denise Holbert and Dennis Osmer, also finds objections to Zoning Administrator.

### MOTION

COMMISSIONER HOLBERT MOVED TO DENY APPEAL AND UPHOLD ZONING ADMINISTRATOR DENIAL. SECONDED BY COMMISSIONER OSMER.

VOICE VOTE

MOTION CARRIED AND SO ORDERED. PASSED 5-0.

### ITEM H-3

CONSIDER AN APPEAL OF THE ZONING ADMINISTRATOR'S APPROVAL OF A PROPOSAL TO CONSTRUCT A DETACHED, 1196 SQUARE FOOT SECOND UNIT AND A DETACHED 1280 SQUARE FOOT NON-HABITABLE GARAGE. REQUIRES A RESIDENTIAL DEVELOPMENT PERMIT. LOCATION 650 RUINS CREEK ROAD, ABOUT 1.5 MILES NORTHWEST OF SCOTTS VALLEY.

APPLICATION: 99-0730  
OWNER: MARSHA MORGAN  
APPLICANT: KAREN KAPLAN  
SUPERVISORIAL DIST: 5  
PROJECT PLANNER: DAVE JOHNSTON, 454-3097

**DAVE JOHNSTON:** Description of project and zoning restrictions. Garage does not require discretionary permit. Unit located 35' from rear prop line. Size, height, complies with zoning. Complies with all zoning and General Plan policies. Discussed issues raised by appeal letter.

### **OPEN PUBLIC HEARING**

**KAREN KAPLAN:** Detailed opposition to location and XXXXXX of second unit, XXXXXX hazards, privacy, and resources.

**Ms. SARKESIAN:** Spoke in support of project. Well designed and thought out. Read letter from another adjacent neighbor in support of project.

**JAY WILLIAMS:** Lives south of Marsh Morgan supports project and stresses that Mogan has been a good neighbor.

**MARSHA MORGAN:** History of project, discussion with planning and process of siting second unit. Setbacks conditions requiring increased setbacks (required by Zoning Administrator) and conditions that removed sliding glass door (wants) both conditions

0633

William de Ess Studios  
416 Rigg Street  
Santa Cruz, CA 95060  
tele (831) 426-8941  
FAX (831) 469-0276

May 8, 2000

County of Santa Cruz Planning Department  
701 Ocean Street, Room 400  
Santa Cruz, CA 95060  
tele (831) 454-2580  
FAX (831) 454-2131

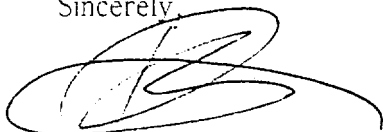
Re: Application 99-0528  
APN: 062-211-32

As applicants for Kathleen Waidhofer, we hereby file an appeal to the Planning Commission's decision of April 26, 2000 to deny approval of the above referenced application.

Our request is based on the following:

Under the laws of the State of California, Permit Streamlining Act, the above referenced application is deemed approved as stated in our previous appeal of the Zoning Administrator's decision of February 18, 2000. Specifically, State of California Government Code Section 65950(a) states that any "public agency that is the lead agency for a development project shall approve or disapprove the project within whichever of the following periods is applicable... (4) sixty days from the determination by the lead agency that the project is exempt from the California Environmental Quality Act.... Since single-family dwellings are categorically exempt from CEQA, and this determination is stated on the receipt for the above referenced application, the application must be granted as a matter of law. Therefore, we request that the Board of Supervisors consider this appeal as a request for the "paper copy" of the above referenced application that is currently being withheld by the Planning Department.

Sincerely,



David Subocz

## GOVERNMENT CODE SECTION 65950-65957.5

65950. (a) Any public agency that is the lead agency for a development project shall approve or disapprove the project within whichever of the following periods is applicable:

(1) One hundred eighty-days from the date of certification by the lead agency of the environmental impact report if an environmental impact report is prepared pursuant to Section 21100 or 21151 of the Public Resources Code for the development project.

(2) Ninety days from the date of certification by the lead agency of the environmental impact report if an environmental impact report is prepared pursuant to Section 21100 or 21151 of the Public Resources Code for the development project and all of the following conditions are met:

(A) The development project is affordable to very low or low-income households, as defined by Sections 50105 and 50079.5 of the Health and Safety Code, respectively.

(B) Prior to the application being deemed complete for the development project pursuant to Article 3 (commencing with Section 65940), the lead agency received written notice from the project applicant that an application has been made or will be made for an allocation or commitment of financing, tax credits, bond authority, or other financial assistance from a public agency or federal agency, and the notice specifies the financial assistance that has been applied for or will be applied for and the deadline for application for that assistance, the requirement that one of the approvals of the development project by the lead agency is a prerequisite to the application for or approval of the application for financial assistance, and that the financial assistance is necessary for the project to be affordable as required pursuant to subparagraph (A).

(C) There is confirmation that the application has been made to the public agency or federal agency prior to certification of the environmental impact report.

(3) Sixty days from the date of adoption by the lead agency of the negative declaration if a negative declaration is completed and adopted for the development project.

(4) Sixty days from the determination by the lead agency that the project is exempt from the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) if the project is exempt from the California Environmental Quality Act.

(b) Nothing in this section precludes a project applicant and a public agency from mutually agreeing in writing to an extension of any time limit provided by this section pursuant to Section 65957.

(c) For purposes of this section, "lead agency" and "negative declaration" shall have the same meaning as those terms are defined in Sections 21067 and 21064 of the Public Resources Code, respectively.

65950.1. Notwithstanding Section 65950, if there has been an extension of time pursuant to Section 21100.2 or 21151.5 of the Public Resources Code to complete and certify the environmental impact report, the lead agency shall approve or disapprove the



-0635

**Note:** Authority cited: Sections 2 1 OS3 and 2 1087, Public Resources Code; Reference: Section 2 1080.1 O(a), Public Resources Code.

**Discussion:** This section is necessary to make it clear that CEQA does not apply at all to the actions of the Office of Planning and Research in granting an extension of time to a city or county for the preparation and adoption of one or more elements of a local general plan.

### **15267. Financial Assistance to Low or Moderate Income Housing**

CEQA does not apply to actions taken by the Department of and Community Development to provide financial assistance for the development and construction of residential housing for persons and families of low or moderate income, as defined in Section 50093 of the Health and Safety Code. The residential project which is the subject of the application for financial assistance will be subject to CEQA when approvals are granted by another agency.

**Note:** Authority cited: Sections 2 1083 and 2 1087, Public Resources Code; Reference: Section 2 1080.1 O(b), Public Resources Code.

**Discussion:** This section identifies and interprets the exemption granted to the financial assistance activities of the state Department of Housing and Community Development which involve the development and construction of residential housing for persons of low or moderate income. The section notes that this exemption is not an exemption for the project which receives the funds. CEQA will apply to the approvals of the housing project by other agencies.

### **15268. Ministerial Projects**

(a) Ministerial projects are exempt from the requirements of CEQA. The determination of what is “ministerial” can most appropriately be made by the particular public agency involved based upon its analysis of its own laws, and each public agency should make such determination either as a part of its implementing regulations or on a case-by-case basis.

(b) In the absence of any discretionary provision contained in the local ordinance or other law establishing the requirements for the permit, license, or other entitlement for use, the following actions shall be presumed to be ministerial:

- (1) Issuance of building permits.
- (2) Issuance of business licenses.
- (3) Approval of final subdivision maps.
- (4) Approval of individual utility service connections and disconnections.

(c) Each public agency should, in its implementing regulations or ordinances, provide an

identification or itemization of its projects and actions which are deemed ministerial under the applicable laws and ordinances.

0636

(d) Where a project involves an approval that contains elements of both a ministerial action and a discretionary action, the project will be deemed to be discretionary and will be subject to the requirements of CEQA.

**Note:** Authority cited: Sections 21083 and 21087, Public Resources Code; Reference: Section 21080 (b)(1), Public Resources Code; *Day v. City of Glendale*, 51 Cal. App. 3d 817.

**Discussion:** This section provides an interpretation of the exemption for ministerial projects. The term “ministerial” is defined in Section 15369. This section provides additional explanation. The key point is that the determination of whether a particular project is ministerial must be based on an examination of the law or ordinance authorizing the particular permit. The problem is that ordinances vary. Ordinances in adjacent counties requiring permits for the same kind of activity may provide different kinds of controls over the activity. In one county, the ordinance may be ministerial, and in the other the permit may be discretionary and therefore subject to CEQA. The section identifies four types of permits or licenses which are normally ministerial in most jurisdictions. The section creates a presumption that these activities are ministerial unless evidence is presented showing that there are discretionary provisions in the relevant local ordinance.

The section encourages public agencies to identify their ministerial permits in their implementing procedures. This approach will simplify the administration of the process in the individual agency. This section also codifies the ruling in *Day v. City of Glendale* cited in the note and other court decisions which have held that where a project approval involves elements of both ministerial action and discretionary action, the project will be deemed to be discretionary and therefore subject to CEQA.

The court in *Friends of Westwood, Inc. v. Los Angeles* (1986) 191 Cal. App. 3d 259, provided guidance, and held that the legislative history of CEQA indicates that the term ‘Ministerial’ is limited to those approvals which can be legally compelled without substantial modification or change. “It is enough that the [agency] possesses discretion to require changes which would mitigate in whole or part one or more of the [significant or potentially significant] environmental consequences an EIR might conceivably uncover.”

## 15269. Emergency Projects

The following emergency projects are exempt from the requirements of CEQA.

(a) Projects to maintain, repair, restore, demolish, or replace property or facilities damaged or destroyed as a result of a disaster in a disaster stricken area in which a state of emergency has been proclaimed by the Governor pursuant to the California Emergency Services Act, commencing with Section 8550 of the Government Code. This includes projects that will remove, destroy, or significantly alter an historical resource when that resource represents an imminent threat to the public of bodily harm or of damage to adjacent property or when the project has received a determination by the State Office of Historic Preservation pursuant to Section 5028(b) of Public Resources Code.

**Title 14. California Code of Regulations****Chapter 3. Guidelines for Implementation of the  
California Environmental Quality Act**

0637

---

**Article 5. Preliminary Review of Projects and Conduct of Initial Study .****Sections 15060 to 15065**

*(Note: Newly revised language is underlined; deleted language is stricken through. The numbered sections have been adopted by the Secretary of Resources as part of the California Code of Regulations. The discussions after each section are provided by the Governor's Office of Planning and Research; they are not in the California Code of Regulations.)*

---

**15060. Preliminary Review**

(a) A ~~public~~ lead agency is allowed 30 days to review for completeness applications for permits or other entitlements for use. While conducting this review for completeness, the agency should be alert for environmental issues that might require preparation of an EIR or that may require additional explanation by the applicant. Accepting an application as complete does not limit the authority of the lead agency to require the applicant to submit additional information needed for environmental evaluation of the project. Requiring such additional information after the application is complete does not change the status of the application.

(b) Except as provided in Section 15111, the lead agency shall begin the formal environmental evaluation of the project after accepting an application as complete and determining that the project is subject to CEQA. ~~Accepting an application as complete does not limit the authority of the lead agency to require the applicant to submit additional information needed for environmental evaluation of the project.~~

(c) Once an application is deemed complete, a lead agency must first determine whether an activity is subject to CEQA before conducting an initial study. An activity is not subject to CEQA if:

(1) The activity does not involve the exercise of discretionary powers by a Public agency;

(2) The activity will not result in a direct or reasonably foreseeable indirect physical change in the environment;=

(3) The activity is not a project as defined in Section 15378.

(d) If the lead agency can determine that an EIR will be clearly required for a project, the agency may skip further initial review of the project and begin work directly on the EIR process described in Article 9, commencing with Section 15080. In the absence of an initial study, the lead agency shall still focus the EIR on the significant effects of the project and indicate briefly its reasons for determining that other effects would not be significant or potentially significant.

**15300.2. Exceptions**

0638

(a) Location. Classes 3, 4, 5, 6, and 11 are qualified by consideration of where the project is to be located -- a project that is ordinarily insignificant in its impact on the environment may in a particularly sensitive environment be significant. Therefore, these classes are considered to apply all instances, except where the project may impact on an environmental resource of hazardous or critical concern where designated, precisely mapped, and officially adopted pursuant to law by federal, state, or local agencies.

(b) Cumulative Impact. All exemptions for these classes are inapplicable when the cumulative impact of successive projects of the same type in the same place, over time is significant ~~for example, annual additions to an existing building under Class 1~~

(c) Significant Effect. A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.

(d) Scenic Highways. A categorical exemption shall not be used for a project which may result in damage to scenic resources, including but not limited to, trees, historic buildings, rock outcroppings, or similar resources, within a highway officially designated as a state scenic highway. This does not apply to improvements which are required as mitigation by adopted negative declaration or certified EIR.

&Hazardous Waste Sites. A categorical exemption. shall not be used for a project located on a site which is included on any list compiled pursuant to Section 65962.5 of the Government Code.

(f) Historical Resources. A categorical exemption shall not be used for a project which may cause a substantial adverse change in the significance of a historical resource.

**Note:** Authority cited: Sections 2 1083 and 2 1087, Public Resources Code; References: Sections 2 1084 and 2 1084.1, Public Resources Code; *Wildlife Alive v. Chickering* (1977) 18 Cal.3d 190; *League for Protection of Oakland's Architectural and Historic Resources v. City of Oakland* (1997) 52 Cal.App.4th 896; *Citizens for Responsible Development in West Hollywood v. City of West Hollywood* (1995) 39 Cal.App.4th 925; *City of Pasadena v. State of California* (1993) 14 Cal.App.4th 810; *Association for the Protection etc. Values v. City of Ukiah* (1991) 2 Cal.App.4th 720; and *Baird v. County of Contra Costa* (1995) 32 Cal.App.4th 1464

**Discussion:** In *McQueen v. Mid-Peninsula Regional Open Space* (1988) 202 Cal. App. 3d 1136, the court reiterated that categorical exemptions are construed strictly, shall not be unreasonably expanded beyond their terms, and may not be used where there is substantial evidence that there are unusual circumstances (including future activities) resulting in (or which might reasonably result in) significant impacts which threaten the environment.

Public Resources Code Section 2 1084 provides several additional exceptions to the use of categorical exemptions. Pursuant to that statute, none of the following may qualify as a categorical exemption:

- (1) a project which may result in damage to scenic resources, including but not limited to, trees, historic buildings, rock outcroppings, or similar resources within a scenic highway (this does not apply to improvements which are required as mitigation for a project for which a negative declaration or EIR has previously been adopted or certified);
- (2) a project located on a site included on any list

65955. The time limits established by this article shall not apply to applications to appropriate water where such applications have been protested pursuant to Chapter 4 (commencing with Section 1330) of Part 2 of Division 2 of the Water Code, or to petitions for changes pursuant to Chapter 10 (commencing with Section 1700) of Part 2 of Division 2 of the Water Code.

0639

65956. (a) If any provision of law requires the lead agency or responsible agency to provide public notice of the development project or to hold a public hearing, or both, on the development project and the agency has not provided the public notice or held the hearing, or both, at least 60 days prior to the expiration of the time limits established by Sections 65950 and 65952, the applicant or his or her representative may file an action pursuant to Section 1085 of the Code of Civil Procedure to compel the agency to provide the public notice or hold the hearing, or both, and the court shall give the proceedings preference over all other civil actions or proceedings, except older matters of the same character.

(b) In the event that a lead agency or a responsible agency fails to act to approve or to disapprove a development project within the time limits required by this article, the failure to act shall be deemed approval of the permit application for the development project. However, the permit shall be deemed approved only if the public notice required by law has occurred. If the applicant has provided seven days advance notice to the permitting agency of the intent to provide public notice, then no earlier than 60 days from the expiration of the time limits established by Sections 65950 and 65952, an applicant may provide the required public notice using the distribution information provided pursuant to Section 65941.5. If the applicant chooses to provide public notice, that notice shall include a description of the proposed development substantially similar to the descriptions which are commonly used in public notices by the permitting agency, the location of the proposed development, the permit application number, the name and address of the permitting agency, and a statement that the project shall be deemed approved if the permitting agency has not acted within 60 days. If the applicant has provided the public notice required by this section, the time limit for action by the permitting agency shall be extended to 60 days after the public notice is provided. If the applicant provides notice pursuant to this section, the permitting agency shall refund to the applicant any fees which were collected for providing notice and which were not used for that purpose.

(c) Failure of an applicant to submit complete or adequate information pursuant to Sections 65943 to 65944, inclusive, may constitute grounds for disapproving a development project.

(d) Nothing in this section shall diminish the permitting agency's legal responsibility to provide, where applicable, public notice and hearing before acting on a permit application.

65956.5. (a) Prior to an applicant providing advance notice to an environmental agency of the intent to provide public notice pursuant to subdivision (b) of Section 65956 for action on an environmental permit, the applicant may submit an appeal in writing to the governing body of the environmental agency, or if there is no

Alvin James  
 Head of Planning Department  
 County of Santa Cruz  
 Santa Cruz, California 95060  
 Telephone (831) 454 2580  
 Fax (831) 454 2131

0640

Kathleen Waidhofer  
 508 Shasta Park County  
 Scotts Valley, CA 95066

Re: Application 99 - 0528  
 APN: 062-211-32

*Yes  
 - DJ? BOS 6/13?*

9 May 2000

Dear Alvin James:

This letter constitutes a formal demand for the issuance by your Department of the paper copy of the above referenced permit that is currently being withheld by the Planning Department. More specifically, State of California Government Code Section 65950(a) states that:

"Any public agency that is the lead agency for a development project shall approve or disapprove the project within whichever of the following periods is applicable... (4) sixty days from the determination by the lead agency that the project is exempt from the California Environmental Quality Act (Division 13, (commencing with section 21000) of the Public Resources Code) if the project is exempt from the California Environmental Quality Act..."

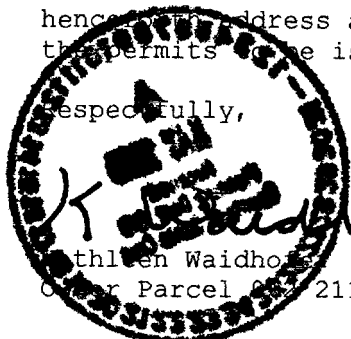
Since single-family dwellings are categorically exempt from CEQA, and this determination is stated on the receipt for the above referenced application, the application must be granted as a matter of law.

We therefore demand the issuance of our permit filed 23 July 1999 and deemed complete 30 days subsequent on the 22nd of August 1999 and subsequently deemed approved on the 21st of October 1999 as a matter of law.

This letter shall constitute our paper copy of the development permit in lieu of a paper copy from your department if your paper copy of the development permit is not received by us at the above address within 10 calendar days of the date of this letter.

Please note the change of address in the heading of this letter and henceforth, address all correspondence to me to this address including the permits to be issued by you.

Respectfully,



*Kathleen Waidhofer*  
 Kathleen Waidhofer  
 Parcel 062-211-32 (29)