

COUNTY OF SANTA CRUZ

PLANNING DEPARTMENT

701 OCEAN STREET, SUITE 310, SANTA CRUZ, CA 95060
(831) 454-2580 FAX: (831) 454-2131 TDD: (831) 454-2123
ALVIN JAMES, DIRECTOR

BOARD OF SUPERVISORS AGENDA: MARCH 12, 2002 @ 7:30 p.m.

March 6, 2002

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

SUBJECT: CONTINUED PUBLIC HEARING TO CONSIDER:

1. PLANNING COMMISSION'S DENIAL OF APPLICATION #98-0148 TO CONSTRUCT 12 SEMI-DETACHED AND 46 DETACHED TOWNHOUSES IN THREE PHASES, ON A COMMON PARCEL WITH A MINIMUM RESTRICTED COMMON AREA OF 3,000 SQUARE FEET MINIMUM PER DWELLING UNIT; THREE NEW ROADS; "BOWMAN COURT", "BOWMAN CIRCLE", AND AN EMERGENCY ACCESS DRIVE; FIVE PARKING AREAS TALLING 28 SPACES; DRAINAGE SYSTEMS DISCHARGING TO AN EXISTING POND AND TO AN EXISTING GULLY ALONG PORTER GULCH CREEK; TWO RETAINING WALLS UP TO FOUR FEET IN HEIGHT AND ONE RETAINING WALL UP TO EIGHT FEET IN HEIGHT; AND AN OVERLOOK. GRADING ON PARCEL 037-251-21 CONSISTS OF 4,800 CUBIC YARDS OF CUT AND FILL, AND GRADING ON PARCEL 037-251-22 CONSISTS OF 5,200 CUBIC YARDS OF CUT AND FILL. THE REAR OF BOTH PARCELS WOULD BE RETAINED AS OPEN SPACE. THE PROJECT REQUIRES A SUBDIVISION, ROADWAY/ROADSIDE EXCEPTIONS, A RIPARIAN EXCEPTION FOR THE DRAINAGE SYSTEMS RELEASING INTO THE RIPARIAN CORRIDOR, AND PRELIMINARY GRADING APPROVAL; AND

2. THE DEVELOPER'S REVISED PROPOSAL TO CONSTRUCT (4) SEMI-DETACHED TOWNHOUSES AND (29) DETACHED HOMES, IN TWO PHASES, ON A COMMON PARCEL WITH A MINIMUM RESTRICTED COMMON AREA OF 3,000 SQUARE FEET MINIMUM PER DWELLING UNIT; TWO NEW PRIVATE STREETS AND AN EMERGENCY ACCESS DRIVE; FOUR PARKING AREAS TOTALING (19) SPACES; DRAINAGE SYSTEMS DISCHARGING INTO AN EXISTING GULLY ALONG PORTER GULCH CREEK; TWO RETAINING WALLS UP TO FOUR FEET IN HEIGHT AND ONE RETAINING WALL UP TO SIX FEET IN HEIGHT. GRADING ON APN 037-251-21 CONSISTS OF 7,690 CUBIC YARDS OF CUT AND FILL, BALANCED ON THE SITE. THE REAR (RIPARIAN WOODLAND) OF THE PARCEL, AN AREA TOTALING 8.5 ACRES, TO BE MAINTAINED AS OPEN SPACE. A PROPOSED LOT LINE ADJUSTMENT

BETWEEN APN 037-251-21 AND 037-251-22 RESULTS IN THE TRANSFER OF 5.05 ACRES TO APN 037-251-22. THE PROJECT REQUIRES A SUBDIVISION, ROADWAY/ROADSIDE EXCEPTIONS, RIPARIAN EXCEPTION, PRELIMINARY GRADING APPROVAL, AND A LOT LINE ADJUSTMENT. PROPERTY LOCATED ON THE NORTH SIDE OF CABRILLO COLLEGE DRIVE AND SOUTH SIDE OF SOQUEL DRIVE, JUST EAST OF ATHERTON DRIVE, IN APTOS; AND:

3. A REVISED PROPOSAL TO CONSTRUCT (28) DETACHED TOWNHOUSES, IN PHASES, ON A COMMON PARCEL WITH A MINIMUM RESTRICTED COMMON AREA OF 3,000 SQUARE FEET MINIMUM PER DWELLING UNIT; ONE NEW ROAD "BOWERS COURT" (ACCESS TO CABRILLO COLLEGE DRIVE ACROSS APN 037-241-39); EMERGENCY ACCESS; ON-SITE PARKING AREAS; DRAINAGE SYSTEMS DISCHARGING TO AN EXISTING GULLY ALONG PORTER GULCH CREEK; RETAINING WALLS FOUR TO SEVEN FEET IN HEIGHT; AND A LOT LINE ADJUSTMENT TRANSFERRING 3.4 ACRES FROM AND RETAINING 5.017 ACRES OF APN 037-251-21 AS PARCEL A, AND INCREASING APN 037-251-22 FROM 9.4 TO 12.8 ACRES AS PARCEL B. GRADING CONSISTS OF 6,060 CUBIC YARDS OF CUT AND FILL, BALANCED ON THE SITE. THE PROJECT REQUIRES A SUBDIVISION, LOT LINE ADJUSTMENT, ROADWAY/ROADSIDE EXCEPTIONS, A RIPARIAN EXCEPTION FOR THE DRAINAGE SYSTEMS RELEASING INTO THE RIPARIAN CORRIDOR, AND PRELIMINARY GRADING APPROVAL. PROPERTY IS LOCATED ON THE NORTH AND WEST SIDES OF CABRILLO COLLEGE DRIVE, SOUTH OF SOQUEL DRIVE, EAST OF ATHERTON DRIVE IN APTOS.

Members of the Board:

On March 4th, 2002 staff received a revised lot line adjustment proposal for Atherton Place which retains the adjacent open space property with the 26 single-family residential units on the south parcel (Cabrillo College Drive frontage), where previously this area was proposed to be combined with the northern parcel in order to more closely approximate density levels associated with the General Plan designation, Residential Urban High (Attachment 1 and blueprints). It is not possible to route these plans to all reviewing agencies to evaluate this revised proposal before the March 12th continued hearing. Should your Board determine that this latest proposal is an alternative that you wish to evaluate, then staff may be directed to do so on March 12th.

At the February 26th hearing, the applicant was required to provide a maintenance program for the riparian area, which the Atherton Place Homeowner's Association would assume (Attachment 4). This has been prepared and is attached for your review (Attachment 2), along with the revised site plan and lot line adjustment. The access easement condition III.D.7 has been revised (Attachment 3) to require the property owner to enter into an agreement with the County in compliance with the provisions of County Code Section 14.01.513 should the acquisition of the off-site property interest required for the access road from the southern portion of the project onto Cabrillo College Drive not be completed prior to the filing of the final map. These latest two submittals shall become a part of the list of attachments of the February 26th staff report, Item No. 58, pages 18-19.

While staff has not had time to fully evaluate this proposal, the net effect of the most recent request by the developer to adjust the lot line:

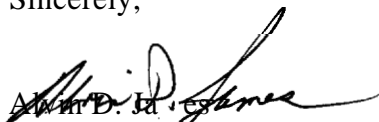
- 1) decreases the net density level of the proposed development well below the minimum General Plan density level for that parcel, and
- 2) could reduce the unit potential that could be built on Parcel A.

In addition, in the event your Board wishes to consider this latest alternative, staff recommends that you direct the Department to evaluate the proposed conditions included in the February 26th proposal for applicability.

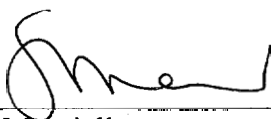
It is, therefore, recommended that your Board:

Consider all materials submitted to date and determine whether a sufficient basis exists to make a decision regarding the project, or direct staff to complete an evaluation of the latest submittal and report back to your Board on March 19th.

Sincerely,


Alvin D. James
Planning Director

RECOMMENDED



Susan A. Mauriello
County Administrative Officer

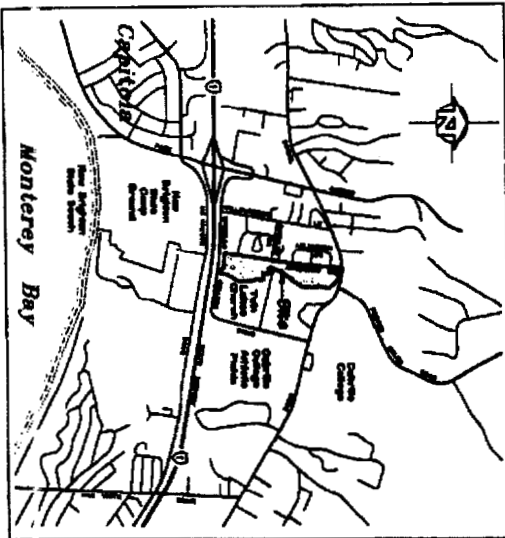
Attachments:

1. Site Plan, Landscape Plan, Lot Line Adjustment (5 sheets, Blueprints)
2. Atherton Place Grassland and Riparian Maintenance Plan, Kathleen Lyons, Biotic Resources Group, dated 3/4/02
3. Revised Condition III.D.7, access easement
4. Minute Order, Item No. 058, February 26, 2002

cc: Brad Bowman, First Federal, 25 16 Samaritan Drive, Suite K, San Jose, CA 95124
Richard Beale, Land Use Planning, Inc. 100 Doyle St., Suite E, Santa Cruz 95060
Charlene B. Attack, Law Offices of Bosso, Williams P.O. Box 1822, Santa Cruz CA 95061
Wendy Richardson, 6362 Baseline Drive, Aptos CA 95003
Ken Hart, Environmental Coordinator, County of Santa Cruz
Tom Bums, Redevelopment Director, County of Santa Cruz
Rahn Garcia, County Counsel
Bud Carney, City of Capitola, 420 Capitola Ave., Capitola CA 95010

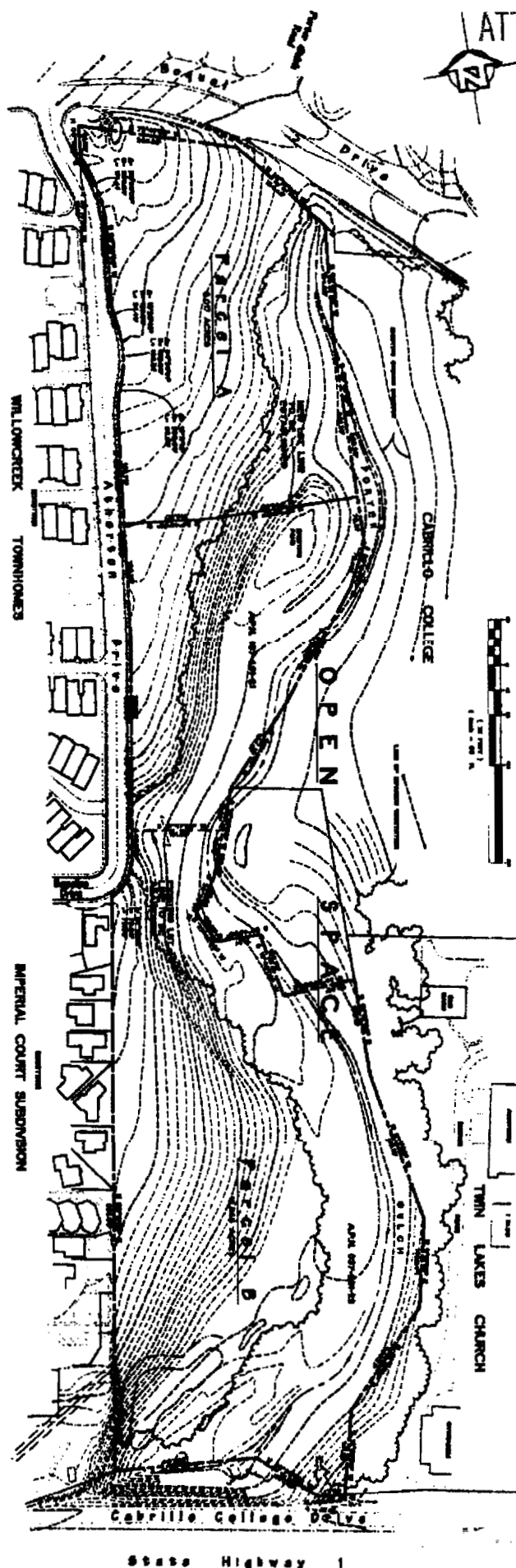
2.30

ATTACHMENT 1



Vicinity Map

Lot Line Adjustment



Project Data

Overview

PROJECT: LOT LINE ADJUSTMENT, 1/2 AC
 1/2 AC, 1/2 AC, 1/2 AC, 1/2 AC
 1/2 AC, 1/2 AC, 1/2 AC, 1/2 AC

Existing Zoning

1/2 AC, 1/2 AC, 1/2 AC, 1/2 AC
 1/2 AC, 1/2 AC, 1/2 AC, 1/2 AC

Existing Lines

Notes

Parcel Areas

Before Adjustment

1/2 AC, 1/2 AC, 1/2 AC, 1/2 AC
 1/2 AC, 1/2 AC, 1/2 AC, 1/2 AC

Total

17,000 Acres

Parcel Areas

After Adjustment

1/2 AC, 1/2 AC, 1/2 AC, 1/2 AC
 1/2 AC, 1/2 AC, 1/2 AC, 1/2 AC

Total

17,000 Acres

ATTACHMENT 2

**ATHERTON PLACE DEVELOPMENT
APTOS, CALIFORNIA****GRASSLAND AND RIPARIAN MAINTENANCE PLAN****GOALS AND APPROACH**

Implementation of the Grassland and Riparian Maintenance Plan addresses actions to preserve and manage the native grassland areas, the riparian corridor and the riparian buffer area on the Atherton Place Development site. This will be accomplished by implementing the following actions on the project site:

- Preservation of undisturbed grasslands along the slopes of the development area.
- Management of the grassland to benefit native plant species.
- Installation of permanent protective fencing around the upper portion of the grassland to prohibit unauthorized access to the grassland, riparian setback area and riparian corridor.
- Implementation of a program to control the spread of invasive, non-native plant species within the grassland as shown on Figure A-1 (attached).
- Implementation of a program to remove inorganic debris from the riparian corridor and riparian buffer area.

The successful implementation of these measures, conducted prior to and concurrent with the residential development and occupancy, will meet the project goal of the protection and management of the native grassland and riparian corridor.

IMPLEMENTATION TECHNIQUES AND PROCEDURES**Permanent Protective Fencing**

The upper edge of the grassland (including the adjacent riparian woodland) will be permanently fenced to prevent unauthorized access into the area.

Permanent fencing (e.g., wooden post and welded wire fence, or equivalent) will be installed along the edge of the southern development area, a minimum of 20 feet upslope of the native grass stands. A 10-foot wide maintenance access area, with gate, will be established in one location to allow equipment (e.g., a mower) to access the grassland. The fencing shall be erected prior to the start of site development activities. The condition and integrity of the fencing will be periodically checked and maintained in perpetuity by the Homeowner's Association.

The Homeowner's Association will place interpretive signs in prominent locations on the protective fencing to educate area residents and visitors on the presence of the preserved area, use restrictions of the areas and the protected status of the sensitive habitats (i.e., native grasslands and adjacent riparian woodland).

Native Grassland Management

ATTACHMENT 2

The implementation of a management regime that favors native grassland plant species will be used to manage and rehabilitate the preserved grassland areas, such that, over time, the area will display a higher percentage of native species. This will be accomplished by seasonally mowing the grassland.

Mowing of the preserved grasslands will be conducted a minimum of three times a year by the Homeowner's Association. Mowing will occur in the spring, late summer and fall of each year. In the spring, mowing will occur before annual weeds produce viable seed (i.e., typically March). In the summer, mowing will occur after the native grasses have released their seed (i.e., typically June). In the fall, the grassland will be mowed to reduce the amount of cover by annual non-native species. At each mowing, the grassland will be mowed 4-6" high. Cut materials will be removed from the site during Years 1 and 2. The removal of the cut materials will minimize the addition of annual non-native grass seeds into the soil seed bank and remove thatch and other organic debris. The mowing may also stimulate perennial native grass tillering and promote perennial grass seedling establishment. The fall mowing is expected to enhance perennial grass re-growth and provide light and space for emerging seedlings.

To assist the perennial grasses in spreading their seeds, cut material from these species will be left on site. A memorandum of understanding regarding the mowing regime will be established with the Central Fire Department.

Control of Invasive, Non-Native Plant Species

Invasive, non-native plant species will be removed from the grassland to reduce the levels of infestation. The developer will remove non-native plant species in the early spring months prior to and/or concurrent with the first phase of site development work. Thereafter, populations of invasive non-native plant species will be controlled by the Homeowner's Association through the seasonal mowing program and hand removal by crews each spring season, as necessary.

Removal of Inorganic Debris from Riparian Corridor and Riparian Buffer Area

Inorganic debris (trash) will be periodically removed from the riparian corridor and riparian buffer area. This will be accomplished by hand labor; all trash will be removed from the site and deposited at the County landfill.

IMPLEMENTATION SCHEDULE

Protective fencing will be installed concurrent with site development. Seasonal mowing of the grassland removal of trash from the riparian corridor and riparian buffer area will begin in the spring following approval of the Tentative Map.

The grasslands will be mowed annually, a minimum of three times during the year. During the first 3 years, mowing will be conducted under the direction of a qualified biologist. The biologist will identify the appropriate timing of the mowing (i.e., early mowing prior to flowering of non-native grasses, a second mowing after seed set by native grass species, etc.).

Trash will be removed from the riparian corridor and riparian buffer area a minimum of twice a year.

ELEMENTS OF THE PLAN

The primary goal of the plan is to maintain and enhance the native grassland resources on the site and to remove inorganic debris (trash) from the riparian corridor and riparian buffer area. This will be accomplished through the following plan elements:

1. Document the success of the grassland management program and recommend remedial actions if needed. A 3-Year monitoring program will be implemented. Monitoring will insure that the managed areas will be likely to proceed toward the long-term goal of preserving and enhancing the site's native grassland resources. The baseline condition of the grassland is 90-100% non-native grass and forb plant species, except for the stands of native grasses as depicted on Figure A-1. Invasive non-native plant species, such as French broom, coroneaster, pampas grass, periwinkle or ivy, constitutes less than 5% of the plant cover within the grassland. The native grass stands have the following baseline conditions:
 - Stand 1: 50-60% cover of purple needlegrass, remainder is non-native grasses and forbs.
 - Stand 2: 10-20% cover of purple needlegrass, remainder is non-native grasses and forbs.
 - Stand 3: 60% cover of wild rye, remainder is non-native grasses and forbs.
 - Stand 4: 60% cover of California oatgrass, remainder is non-native grasses and forbs.
2. Monitoring will be performed by a qualified biologist (approved by the County Planning Department) hired by the Homeowners Association. Monitoring will be conducted concurrently with maintenance activities as described above.
3. During the 3-Year monitoring period, the grassland shall show a trend of decreasing amounts of non-native plant species, such as rattlesnake grass and wild oat. The existing native grass stands shall exhibit, at a minimum, a distribution and percent cover similar to that identified in 1999.
4. The proposed grassland mowing regime and/or future grazing program is expected to increase, over time, the amount of suitable habitat for native plant species. If declines in populations of native species appear due to the mowing or grazing regime, the practices will be altered, as applicable.
5. Invasive non-native plant species shall show a trend of decreasing cover by Year 3, with a maximum of 5% cover by Year 3.
6. During the 3-Year monitoring period, all inorganic trash will have been removed from the riparian corridor and riparian buffer area.
7. Monitoring of the grassland by the Homeowner's Association will consist of a minimum of two (2) periodic reconnaissance-level surveys per year for a period of 3 years.

REMEDIAL ACTIONS AND CONTINGENCY MEASURES

Remedial actions will be taken if, during the 3-Year monitoring period, habitat management efforts do not meet the established success criteria, or site conditions change substantially from the proposed plan. Remedial actions may include alterations to mowing regime, increased maintenance activities to remove trash from the riparian corridor and riparian buffer area and emergency actions.

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ATTACHMENT 2

REPORTING

Yearly monitoring reports will be prepared in January following each of the monitoring years (beginning in January 2001). The reports will document the results of the monitoring and maintenance activities. Monitoring will document in writing the findings of the year's maintenance, highlight problems and successes, dates of maintenance, who performed the monitoring, and other appropriate information.

The report will recommend remedial actions to be undertaken if the project is not meeting stated performance criteria. Reports shall be submitted to the County by January 31 following each monitoring year as listed below:

Year 1	Report due January 31 of Year 2
Year 2	Report due January 31 of Year 3
Year 3	Report due January 31 of Year 4

COST OF IMPLEMENTING AND MONITORING

The Homeowners Association will be responsible for committing funds to implement the grassland management program. A yearly cost estimate, beginning in Year 1, is provided in Table 1. The estimate excludes the capital costs for the fencing and signs, as the project applicant will install these concurrent with site development. The cost estimate includes year-end reports. The costs are in 2002 labor and direct expense rates. The applicant is responsible for beginning invasive plant species removal. This plan will be included in the HOA.

HOMEOWNER'S ASSOCIATION DOCUMENTATION

In order to clearly convey the requirements of the Grassland Maintenance and Mowing Plan to future property owners, the Homeowner's Association documentation shall specifically state the Homeowner's Association's responsibility for the following:

- Implementation of the grassland maintenance and mowing plan;
- Control of invasive, non-native plant species;
- Maintenance of the biotic reserve fence;
- Removal of trash from the riparian corridor and riparian buffer area;
- Installation and maintenance of interpretive signs; and,
- On-going employment of a County-approved biologist to implement the monitoring program and to prepare remedial actions as necessary.

ATTACHMENT 2

Table 1. Cost Estimate for Yearly Implementation of the Grassland Management Program, Atherton Place Project, Aptos, CA

Task	Yearly Cost Estimate
Seasonal Mowing (3 times)	\$1,000
Hand Removal of Invasive Plant Species	1,000
Site Maintenance	1,000
Site Monitoring and Reporting	500
County Review of Annual Report	290
Subtotal	\$3,790.00
Contingency (20%)	758
TOTAL	\$4,548.00

COUNTY OF SANTA CRUZ
PLANNING DEPARTMENT
MEMORANDUM

DATE: March 6, 2002

TO: Joan Van der Hoeven, Project Planner

FROM: Paia Levine, Deputy Environmental Coordinator

SUBJECT: Atherton Place Riparian Maintenance Plan #98-0148

I have reviewed the Grassland and Riparian Maintenance Plan dated 'March 4, 2002 for Atherton Place. The plan is acceptable with the caveat that the "control of non-native invasive plant species" recommendations be applied to the riparian corridor as well as to the grassland.

Condition III.D. 7

7. Acquire all rights of way and easements and make all dedications thereof as needed for construction of required improvements. If acquisition of the off-site property interest required for the access road onto Cabrillo College Drive has not been completed prior to the filing of the final map, the owner shall enter into an agreement with the County in compliance with the provisions of County Code Section 14.01.513 to acquire the interest. The owner shall reapply for approval of Phase II of the land division should the owner or the County fail to acquire the necessary off-site easement for the access road onto Cabrillo College Drive. ~~Any and all costs incurred by the County of Santa Cruz to obtain title to any property in the event that condemnation proceedings are necessary to implement this condition, shall be paid in full by the applicant/subdivider prior to the recording of the Final Map.~~

ADD

DELETE

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C O U N T Y O F S A N T A C R U Z
S T A T E O F C A L I F O R N I A

ATTACHMENT 4



AT THE BOARD OF SUPERVISORS MEETING
On the Date of February 26, 2002

REGULAR AGENDA Item No. 058

Continued public hearing to consider Planning Commission's denial of Application #98-0148 to construct 12 semi-detached and 46 detached townhouses in three phases on a common parcel with a minimum "Restricted Common Area" of 3,000 square feet minimum per dwelling unit; three new roads: "Bowman Court", Bowman Circle" and an emergency access drive; five parking areas totaling 28 spaces; drainage systems discharging to an existing pond and to an existing gully along Porter Gulch Creek; two retaining walls up to four feet in height and one retaining wall up to eight feet in height; and an overlook. Grading on Parcel 037-251-21 consists of 4,800 cubic yards of cut and fill, and grading on Parcel 037-251-22 consists of 5,200 cubic yards of cut and fill. The rear of both parcels would be retained as open space. The project requires a Subdivision, Roadway/Roadside Exceptions, a Riparian Exception for the drainage systems releasing into the Riparian Corridor, and Preliminary Grading Approval; and

Public hearing to consider the developer's revised proposal to construct four semi-detached townhouses and (29) detached townhouses, in two phases, on a common parcel with a minimum restricted common area of 3,000 square feet minimum per dwelling unit; two new private streets and an emergency access drive; four parking areas totaling (19) spaces; drainage systems discharging into an existing gully along Porter Gulch Creek; two retaining walls up to four feet in height and one retaining wall up to six feet in height, grading on APN 037-251-21 consists of 7,690 cubic yards of cut and fill, balanced on the site. The rear (Riparian Woodland) of the parcel, an area totaling 8.5 acres, would be maintained as open space. The proposed lot line adjustment between APN 037-251-21 and 037-251-22 results in the transfer of 5.05 acres to APN 037-251-22. The project requests a Subdivision, Roadway/Roadside Exceptions, Riparian Exception, Preliminary Grading approval, and a Lot Line Adjustment. Property located on the south side of Cabrillo College Drive and south side of Soquel Drive, just east of Atherton Drive, in Aptos;

CONTINUED PUBLIC HEARING TO MARCH 12, 2002 AT 7:30 P.M. with additional directive: staff return with information on the maintenance of the easement by the Homeowners' Association, the standards of maintenance, as well as enforcement provisions and the condition for access easement

Continued public hearing to consider Planning Commission's denial of Application #98-0148 to construct 12 semi-detached and 46 detached townhouses in three phases on a common parcel with a minimum "Restricted Common Area" of 3,000 square feet minimum per dwelling unit; three new roads: "Bowman Court", "Bowman Circle" and an emergency access drive; five parking areas totaling 28 spaces; drainage systems discharging to an existing pond and to an existing gully along Porter Gulch Creek; two retaining walls up to four feet in height and one retaining wall up to eight feet in height; and an overlook. Grading on Parcel 037-251-21 consists of 4,800 cubic yards of cut and fill, and grading on Parcel 037-251-22 consists of 5,200 cubic yards of cut and fill. The rear of both parcels would be retained as open space. The project requires a Subdivision, Roadway/Roadside Exceptions, a Riparian Exception for the drainage systems releasing into the Riparian Corridor, and Preliminary Grading Approval; and

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Upon the motion of Supervisor Wormhoudt, duly seconded by Supervisor Almquist, the Board, by unanimous vote, continued public hearing to March 12, 2002 at 7:30 p.m.; with additional directive: staff return with information on the maintenance of the easement by the Homeowners' Association, the standards of maintenance, as well as enforcement provisions and the condition for access easement

cc:

CAO

County Counsel

✓ Planning Department

Joan Van der Hoeven, Planning Department

Brad Bowman, First Federal

Richard Beale, Land Use Planning, Inc.

Charlene B. Attack, Law Offices of Bosso, Williams

Wendy Richardson

Ken Hart, Environmental Coordinator

239a

Tom Burns, Administrator, Redevelopment Agency
Rahn Garcia, County Counsel
Bud Carney, City of Capitola

I HEREBY CERTIFY THAT THE FOREGOING INSTRUMENT
IS A CORRECT COPY OF THE ORIGINAL ON FILE IN THE
OFFICE ATTEST MY HAND AND SEAL THIS 15th DAY
OF March 2002
SUSAN A MAURIELLO, COUNTY ADMINISTRATIVE OFFICER
AND EX-OFFICIO CLERK OF THE BOARD OF SUPERVISORS
OF THE COUNTY OF SANTA CRUZ, CALIFORNIA.

[Signature]
DEPUTY



COUNTY OF SANTA CRUZ

PLANNING DEPARTMENT

701 OCEAN STREET, SUITE 310, SANTA CRUZ, CA 95060
(831) 454-2580 FAX: (831) 454-2131 TDD: (831) 454-2123
ALVIN JAMES, DIRECTOR

BOARD OF SUPERVISORS AGENDA: FEBRUARY 26,2002 @ 7:30 p.m.

February 14,2002

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

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2. THE DEVELOPER'S REVISED PROPOSAL TO CONSTRUCT (4) SEMI-DETACHED TOWNHOUSES AND (29) DETACHED HOMES, IN TWO PHASES, ON A COMMON PARCEL WITH A MINIMUM RESTRICTED COMMON AREA OF 3,000 SQUARE FEET MINIMUM PER DWELLING UNIT; TWO NEW PRIVATE STREETS AND AN EMERGENCY ACCESS DRIVE; FOUR PARKING AREAS TOTALING (19) SPACES; DRAINAGE SYSTEMS DISCHARGING INTO AN EXISTING GULLY ALONG PORTER GULCH CREEK; TWO RETAINING WALLS UP TO FOUR FEET IN HEIGHT AND ONE RETAINING WALL UP TO SIX FEET IN HEIGHT. GRADING ON APN 037-251-21 CONSISTS OF 7,690 CUBIC YARDS OF CUT AND FILL, BALANCED ON THE SITE. THE REAR (RIPARIAN WOODLAND) OF THE PARCEL, AN AREA TOTALING 8.5 ACRES, TO BE MAINTAINED AS OPEN SPACE. A PROPOSED LOT LINE ADJUSTMENT

BETWEEN APN 037-251-21 AND 037-251-22 RESULTS IN THE TRANSFER OF 5.05 ACRES TO APN 037-251-22. THE PROJECT REQUIRES A SUBDIVISION, ROADWAY/ROADSIDE EXCEPTIONS, RIPARIAN EXCEPTION, PRELIMINARY GRADING APPROVAL, AND A LOT LINE ADJUSTMENT. PROPERTY LOCATED ON THE NORTH SIDE OF CABRILLO COLLEGE DRIVE AND SOUTH SIDE OF SOQUEL DRIVE, JUST EAST OF ATHERTON DRIVE, IN APTOS; AND:

3. A REVISED PROPOSAL TO CONSTRUCT (26) DETACHED TOWNHOUSES, IN PHASES, ON A COMMON PARCEL WITH A MINIMUM RESTRICTED COMMON AREA OF 3,000 SQUARE FEET MINIMUM PER DWELLING UNIT; ONE NEW ROAD "BOWERS COURT" (ACCESS TO CABRILLO COLLEGE DRIVE ACROSS APN 037-241-39); EMERGENCY ACCESS; ON-SITE PARKING AREAS; DRAINAGE SYSTEMS DISCHARGING TO AN EXISTING GULLY ALONG PORTER GULCH CREEK; RETAINING WALLS FOUR TO SEVEN FEET IN HEIGHT; AND A LOT LINE ADJUSTMENT TRANSFERRING 6.481 ACRES FROM AND RETAINING 2.965 ACRES OF APN 037-251-22 (PARCEL B), AND INCREASING APN 037-251-21 (PARCEL A) FROM 8.436 TO 14.917 ACRES. GRADING CONSISTS OF NO MORE THAN 5628 CUBIC YARDS OF CUT AND FILL, BALANCED ON THE SITE. THE PROJECT REQUIRES A SUBDIVISION, LOT LINE ADJUSTMENT, ROADWAY/ROADSIDE EXCEPTIONS, A RIPARIAN EXCEPTION FOR THE DRAINAGE SYSTEMS RELEASING INTO THE RIPARIAN CORRIDOR, AND PRELIMINARY GRADING APPROVAL. PROPERTY IS LOCATED ON THE NORTH AND WEST SIDES OF CABRILLO COLLEGE DRIVE, SOUTH OF SOQUEL DRIVE, EAST OF ATHERTON DRIVE IN APTOS.

Dear Members of the Board:

Background:

On April 11, 2001, the Planning Commission took action to deny Application #98-0148, a proposal to construct 12 semi-detached and 46 detached homes on the north side of Cabrillo College Drive and the south side of Soquel Drive, just east of Atherton Drive. At the public hearing held on March 14, 2001, the Planning Commission determined that the project could not be approved as proposed due to environmental impacts, that the site is unsuitable for the density of the project as proposed, and that the scale of proposed grading conflicts with General Plan policies, and type of housing proposed raises General Plan consistency issues.

A letter of Appeal was filed on April 12, 2001 and an evening hearing was held on May 8, 2001 and continued to June 5. At the June 5 hearing, project revisions were discussed that would better utilize the site as well as reduce both grading and traffic impacts associated with project density. The applicant was directed to show progress in efforts to obtain an easement for access over an adjacent, privately owned parcel and the revised project referred back to the Environmental Coordinator for review of traffic impacts associated with the project. The revised project was reviewed by the Environmental Coordinator and a Mitigated Negative Declaration was issued on October 31, 2001. The Environmental Coordinator determined that additional traffic studies were not necessary. The project was set for hearing January 8, 2002 to accommodate an evening agenda date.

At the January 8th meeting, a revised project with 33 units and grading totaling 7,690 cubic yards was considered. After reviewing the revised report and hearing public testimony, your Board directed staff to return at 7:30 p.m. on February 26th, 2002 with draft conditions for approval for parcels 8-33 as proposed, and to answer whether density credits might be transferred to the new owner of the parcel adjacent to Soquel Drive (APN 037-251-21), and options for the application of covenants on the vacant parcel by the current owner. Further clarification of the Lot Line adjustment and strategies for a phased approach to the entire parcel were to be included, as well as prior direction that the Redevelopment Agency continue to work with the developer (Minute Order Item 55, Staff Report, Attachment 3).

Revised project plans were received by the Planning Department on January 22, 2002 and re-routed to reviewing agencies for comment. Project revisions included a reduction in the number of homes from 33 to 28. On February 20, 2002, the applicant submitted an additional revision of which further reduced the number of homes to 26 consistent with your Board's January 8th request.¹ Grading was reduced to 6,060 cubic yards for the 28 unit project², and one of the proposed roads eliminated from the project. The applicant has not yet obtained the required access over APN 037-241-39 for the 19 homes on the southern portion of the project. The revised staff report to address the Board's previous directions and proposed conditions for approval are attached. (Attachment 2)

Consideration of Alternative Development Opportunities:

1. In response to your Board's directive, staff explored the feasibility of transferring density credits from one parcel to another. This concept is commonly known as Transfer of Development Rights (TDR). Under **TDR**, potential development can be relocated from areas where proposed land use or environmental impacts are considered undesirable (the "donor" site) to another ("receiver") site chosen on the basis of its ability to accommodate additional units of

¹ The February 20, 2002 submittal included additional proposed project revisions. Specifically, the applicant now proposes to adjust the lot line of the Project so that it immediately borders the proposed development area as shown on the map included as Attachment 10. The proposed development area, designated on the map as Parcel B, would consist of 2.965 acres. It would include the northerly-most seven units to be developed in the first phase with a small park immediately to the south and the 19 homes on the southern portion connected by a 5 foot-wide landscaped strip of land between the two developed areas.

Twenty-two of the 27 foot-wide fire access facility would be located entirely on Parcel B. The remaining five feet is the connecting link between the northerly seven-unit development and the southerly 19 units described in the previous paragraph. It is proposed to be located on Parcel A. The property owner is proposing to reserve right of ways over the secondary and primary access serving the project. The property owner is also proposing that the proposed development's Homeowners Association retain an easement and financial responsibility for the ongoing maintenance of the adjacent riparian and buffer areas.

² The applicant has not submitted revised grading calculations based upon elimination of the two additional units. However, assuming the average volume of earthwork per lot to be 216 cubic yards as estimated in the January 22nd submittal, the amount of grading are estimated to be reduced from 6060 cubic yards to 5,628.

development beyond that for which it was zoned, with minimal environmental, social, and aesthetic impacts.

Utilization of TDR's is not included in Santa Cruz County ordinances. However, if the riparian area were removed from the parcel with the proposed **26** homes (southern parcel, APN **037-251-22**) and combined with the riparian area of the northern parcel (APN **037-251-21**) the total **8.5** acres of open space could be included with the northern parcel to benefit from development density credit as per General Plan policy **5.11.2**. Full density credit may be granted to that portion of the property outside the riparian corridor that is in the required buffer setback as per General Plan policy **5.2.6**. The reduction in area for APN **037-251-22** to **2.965** acres would result in a project density of one unit per approximately **4,100** square feet, a substantial improvement from the previous proposal.

The letter to County Counsel from Charlene Atack dated **2/5/02** proposes deed restrictions to the northern parcel such that future development of Parcel A (APN **037-251-21**) shall be required to be at no less than the density consistent with the designation of Urban High Residential of the General Plan, unless the parcel is re-zoned or the General Plan amended (Staff Report, Attachment **4**). This voluntary restriction on Parcel **A**, if accepted as a condition of approval by your Board, would provide assurance that approval of the development on Parcel B will not preclude a future development on Parcel A at a density level consistent with the General Plan.

At present, four affordable units are required to be constructed on Parcel B as a part of the proposed development. The applicant is requesting the opportunity to satisfy this requirement on Parcel A should a tentative map be approved for APN **037-251-21** or a non-profit housing developer purchase the parcel prior to the occupancy of the four affordable units on Parcel B. This issue is discussed below.

2. Clarification of the Lot Line Adjustment. The proposed lot line adjustment now transfers **6.481** acres from APN **037-251-22** (Parcel B) to APN **037-251-21** (Parcel A) resulting in two parcels of **2.965** and **14.917** acres respectively (Attachment **1**). This increase in the amount retained by the vacant Parcel B subsequent to Board direction at the January 8th meeting, enhances the suitability of the that site for future development of higher density housing adjacent to major traffic arterial Soquel Drive. The proposed lot line adjustment is consistent with County Code Section **14.01.107.4(c)** in that the lot line adjustment does not result in a greater number of parcels than originally existed, the lot line adjustment conforms with the zoning ordinance, and neither parcel is reduced below the minimum size required by the zoning designation.

3. The phased approach to the proposed development. The applicant is proposing two phases for development: Phase One includes the development of parcels **1-7** adjacent to Atherton Drive with off-site improvements including line of sight improvements at the corner of Atherton Drive and Soquel Drive, bus stop construction in front of Sesnon House, and installation of curb, gutter and sidewalk along Soquel Drive. Phase Two would include development of parcels **10-28** and acquisition of rights to access Cabrillo College Drive across APN **037-241-39**, installation of sight distance improvements at the intersection of Willowbrook Lane and Cabrillo College Drive, and any requirements by the Department of Public Works pursuant to the completed plan line study for Cabrillo College Drive.

Potential for connecting proposed and future projects

Because of concerns expressed about the density of the proposed project being below the density range of the County's General Plan, there was considerable discussion at the January 8th meeting about the ultimate density for the developer's combined properties in the area. It had been suggested by the developer that when the current proposed project is looked at in conjunction with the potential development on the vacant site to the immediate north (a site also held by the developer), the two sites together could achieve a total number of housing units consistent with the General Plan density for both properties. The question addressed by the Board was how to ensure that the upper site could indeed be built in a fashion that would accomplish that goal. Staff was therefore directed to explore means for accomplishing a "linkage" of development of the two sites.

It is important to be aware of the potential CEQA issues that could be raised if such a linkage is not properly structured. If an approach is selected that too closely links the fate of one project to the other, it might be possible for issues to be raised about creating a "phased project" under CEQA, thereby triggering the need to perform the CEQA analysis on both projects at the initial stage. Since the full project build out at **RM - 3** density would be for a minimum of 85 units and the original CEQA analysis only considered the impact of a **58** unit project, supplemental environmental evaluation, particularly traffic analysis, may be required.

There are several approaches that can be taken to provide for some linkage between the two areas:

- **Option 1: Require a Project Redesign to Utilize the Whole Site**

The only approach which would provide your Board with a "guarantee" that affordable housing be developed on the northern site and that the combined parcels be developed at a density level consistent with the current General Plan density range would be that a development plan for both properties be brought through the land use process at one time. This would avoid any concerns regarding **CEQA** issues suggested above and would provide the Board the maximum latitude in guaranteeing that the minimum densities of the General Plan are achieved for the entirety of the developer's land holdings. This approach is straightforward and would require that the Board uphold the Planning Commission's denial of the project and reject subsequent revisions and work with the developer to submit a revised project application for the entire site.

- **Option 2: Coordinated Development of Two Sites**

Another approach would be to request the applicant to expedite development of the northern parcel. That project sponsor could be the current owner, a non-profit or a for-profit housing developer. Discussions have been underway between the developer, RDA and Mid Peninsula Housing Coalition, a non-profit, for several months. To date, however, no agreement has been reached. If development were expedited, the Board could consider a phased development approach and condition the pending project's approval upon the achievement of specified

milestones, related to the development of the northern parcel. This would have to conform to CEQA and would create numerous complexities and coordination difficulties.

- **Option 3: Using Deed Restrictions To Encourage General Plan Conformity**

A proposal offered by the owners' representatives is to provide a deed restriction on the northern site (Parcel A) to require that future development applications on the site would be within the General Plan densities. The ultimate approval of the project would be a discretionary action on the part of the Board. In addition, it is proposed that the previous lot line adjustment be amended to add the area outside of the development envelope of the current proposal to Parcel A. This would not only improve the density level of the current development relative to the General Plan, but would also promote the notion that the current proposed development would not impede future build out of Parcel A. The owner also proposes permit conditions to ensure that the development ultimately constructed on Parcel A is not unduly burdened with the responsibility and cost of maintaining the riparian and related habitat areas.

The developer's attorney has worked with County Counsel to suggest specific language that would provide for a future project on Parcel A at a density consistent with the General Plan. The language is as follows:

Prior to the filing of the final map for the subdivision, Owner shall record a Declaration of Restrictions and provide Planning Staff with proof of recordation, that the newly adjusted vacant parcel which is not part of the proposed subdivision, is transferred to a third party with the following deed restriction:

All future development proposals for this parcel shall be at a density that is no less than the lowest end of that density range set by the Urban High Residential designation of the **1994 General Plan/Local Coastal Program Land Use Plan**, unless the land use designation for the parcel is revised by amendment of the **General Plan/Local Coastal Program Land Use Plan**. This restriction shall be binding upon all purchasers, and each and every successor in interest thereto and shall run with the land affected thereby. This restriction shall be enforceable whether or not this restriction is cited in future deeds or in any other document at time of transfer. This restriction shall be enforceable by the County of Santa Cruz.

Regarding maintenance of the riparian habitat and open space areas located on Parcel A as identified on the Lot Line Adjustment Exhibit dated February 20, 2002 (Attachment 10), County Counsel has proposed, in reference to that exhibit, that the following language be added to Condition III.F.7 of the Conditions of Approval in the attached Staff Report for Atherton Place Development (Attachment 2):

[Prior to beginning of the paragraph in Condition III.F.7, add the words:

6

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Maintenance of Adjacent Riparian and Buffer Easement Area. The Homeowners Association shall pay for and maintain the riparian and buffer area located adjacent to the easterly boundary line of the project as shown and labeled on the attached map entitled "lot line adjustment" by Thacher & Thompson, Architects, dated February 20, 2002.

Affordable Housing

At 26 units, the proposed development contains an obligation for four inclusionary units that have been identified on the plans submitted by the developer. However, the developer, in their most recent submission, has also requested that their four unit inclusionary housing obligation be allowed to be met offsite, on the northern parcel (Parcel A), as a part of a development which is yet to be determined. This request is premature.

Under existing codes, the County could allow the developer to partner with a non profit agency for the creation of housing on another site, including the northern parcel. This approach would be consistent with the policy requirement within County Code Chapter 17.10 for enhanced affordability, allowing satisfaction of affordable housing requirements through a nonprofit partnership project. Another provision of the code provides that in lieu fees could be paid to satisfy the inclusionary requirement. At the previous Board meeting, the Board expressed a clear preference that the inclusionary provisions of the Code be met and that the use of in lieu fees would be inappropriate. The developer agreed that the use of the in lieu fees provisions would not be pursued, leaving open the possibility of transferring their inclusionary housing obligation to another site. Again, given that there is no current development proposal for the northern site, it is proposed that the inclusionary units continue to be reflected on the project plan and if an alternative approach is requested, that the matter return to the Board.

Emergency Access and Site Configuration

The developer has asked for inclusion of language in the conditions of approval that indicates that the owners intend to reserve right of ways over the secondary and primary access serving the Project. Since the developer currently owns the entire site, he could reserve whatever easements he deems appropriate through private deed restriction. It is proposed that all easements be clearly reflected in the conditions.

However, this does not address the need to obtain access across property not owned by the developer. It should be noted that, if the developer is not able to obtain access to property needed to provide access to the 19 homes located on the southern portion of the property, the project is conditioned to require the Developer to reapply.

Conclusion:

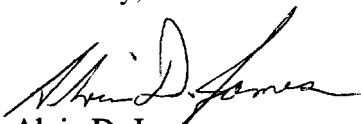
- (a) Your Board cannot approve the proposed project and provide assurance that the combined parcels are developed at a density level within the current General Plan density range;


- (b) If your Board intends to increase the probability that the northern portion (Parcel A) is developed at a density range within those set forth in the General plan, you could approve the approach suggested by the developer (option 3) to require a deed restriction for the northern parcel (Parcel A). This restriction would prescribe that future development applications are submitted in conformity with those requirements, however the ultimate disposition of Parcel A would be subject to County discretion at a future date. Nonetheless, this would state the Board's intent and demonstrate the "linkage" that is intended if this application is to proceed. Findings and conditions for approval of the most recent proposal for a 26-unit project are included for your Board's consideration in the staff report identified as Attachment 2.

It is, THEREFORE, recommended that your Board:

1. Consider Application #98-0148 for a 26 unit development on the southern parcel (identified as Parcel B on the February 20, 2002 site plan submittal) and the associated findings and conditions (Attachment 2); and
2. Consider certifying the Mitigated Negative Declaration in connection with the approval.

Sincerely,


Alvin D. James
Planning Director

RECOMMENDED : 
Susan A. Mauriello
County Administrative Officer

Attachment: Board of Supervisors Staff Report dated February 26, 2002

cc: Brad Bowman, First Federal, 2516 Samaritan Drive, Suite K, San Jose, CA 95124
Richard Beale, Land Use Planning, Inc. 100 Doyle St., Suite E, Santa Cruz 95060
Charlene B. Attack, Law Offices of Bosso, Williams P.O. Box 1822, Santa Cruz CA 95061
Wendy Richardson, 6362 Baseline Drive, Aptos CA 95003
Ken Hart, Environmental Coordinator, County of Santa Cruz
Tom Burns, Redevelopment Director, County of Santa Cruz
Rahn Garcia, County Counsel
Bud Carney, City of Capitola, 420 Capitola Ave., Capitola CA 95010

COUNTY OF SANTA CRUZ
PLANNING DEPARTMENT

Date: February 26, 2002
Time: After 7:30 p.m.

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STAFF REPORT TO THE BOARD OF SUPERVISORS

APPLICATION NO.: 98-0148

APN: 037-251-21 & -22

APPLICANT: Richard Beale Land Use Planning

OWNERS: Atherton Place Development LLC

PROJECT DESCRIPTION: Proposal to construct (26) detached homes, in two phases, on a common parcel with a minimum "restricted common area" of 3,000 square feet minimum per dwelling unit; a new private street: "Bowers Court" (access to Cabrillo College Drive across APN 037-241-39) and an emergency access drive; (2) parking areas totaling (9) spaces; drainage systems discharging to an existing gully along Porter Gulch Creek; and retaining walls from four to seven feet in height. Grading on Parcel B (APN 037-251-22) consists of no more than 5,628 cubic yards of cut and fill. The rear (riparian woodland) of the parcel, an area totaling 6.92 acres, would be combined with an area similar in character and location on Parcel A (APN 037-251-21) totaling 1.33 acres. The entire 8.25 acres would be maintained as open space. The proposed Lot Line Adjustment between APN 037-251-21 and 037-251-22 results in the transfer of 6.481 acres from APN 037-251-22 (Parcel B) to APN 037-251-21 (Parcel A) resulting in Parcel B being 2.965 acres and Parcel A being 14.917 acres.

LOCATION: Property located on the side of Cabrillo College drive and the south side Soquel Drive, just east of Atherton Drive.

PERMITS REQUIRED: Subdivision, Roadway/Roadside Exceptions, Riparian Exception for the drainage systems releasing to the riparian corridor; preliminary grading approval, and a Lot Line Adjustment.

ENVIRONMENTAL DETERMINATION: Negative Declaration with Mitigations.

COASTAL ZONE: ____ yes **X** no

PARCEL INFORMATION

PARCEL SIZE: 17.882 acres total.

APN 037-251-21 (Parcel A) is 8.436 acres and would be 14.917 acres after the proposed lot line adjustment; the 1.33 acres designated as open space/riparian area on this parcel would be combined with the 6.92 acres previously a part of Parcel B designated as open space/riparian area for a total of 8.25 acres of open space/riparian area;

APN 037-251-22 (Parcel B) is 9.446 acres and would be 2.965 acres after the proposed lot line adjustment;

EXISTING LAND USE:

PARCEL: Vacant

SURROUNDING: Single- and Multi-Family Residential; Neighborhood Parks; Cabrillo College; and the Twin Lakes Baptist Church.

PROJECT ACCESS: Atherton Drive to Bowman Court **and** Cabrillo College Drive to Bowers Court across APN 037-241-39 (under separate ownership).

PLANNING AREA: Soquel

LAND USE DESIGNATION: Urban High Density Residential (R-UH) 2,500 to 4,000 square feet of net developable parcel area per unit for attached housing, 3,500 to 4,000 square feet of net developable parcel area per unit for creation of new single-family residential lots &

Urban Open Space (0-U)

ZONING DISTRICT: "RM-3" (Multi-Family Residential; minimum 3,000 square feet/unit)

SUPERVISORIAL DISTRICT: Second District

ENVIRONMENTAL INFORMATION

<u>Item</u>	<u>Comments</u>
a. Geologic Hazards	a. No mapped hazards.
b. Soils	b. USDA Soil Type 133, Elkhorn Sandy Loam, 2-9% slope USDA Soil Type 174, Tierra-Watsonville Complex, 15 - 30% slopes. USDA Soil Type 177, Watsonville Loam, 2 - 15% slopes. USDA Soil Type 179, Watsonville Loam, thick surface, 2-15% slopes. Soils report submitted, reviewed and accepted.
c. Fire Hazard	c. Low
d. Slopes	d. No development on slopes greater than 30 percent.
e. Env. Sen. Habitat	e. Biotic reports for on-site flora and fauna submitted, reviewed and accepted. Biotic mitigations required. Required open space of 6.92 acres includes: coast live oak woodland, willow riparian woodland, coyote brush scrub, non-native and all native grasslands, eucalyptus, Monterey Pine, and seasonal wetland habitats
f. Grading	f. Balanced grading on site: 5,628 cubic yards of cut and fill on Parcel 037-251-21.
g. Tree Removal	g. Three trees over 6", d.b.h. are proposed to be removed: two 24" oaks, and one walnut. Replacement at a 3:1 ratio required. One willow on access parcel to be replaced with 24-inch box specimen.
h. Scenic	h. Mapped as Scenic Resource. Landscaping mitigates visibility from the designated scenic corridor, Highway 1.
i. Drainage	i. Within Zone 5 Drainage District. Increased drainage directed to Porter Gulch.
j. Traffic	j. Traffic Studies submitted, reviewed and accepted. Payment of TIA fees, and on- and off-site traffic mitigations required.
k. Roads	k. One new private road and an emergency access drive to be constructed.
l. Parks	l. Park fees are required.
m. Sewer Availability	m. Sewer service is available for the proposed development. Sewer will be extended to serve all lots.
n. Water Availability	n. Municipal water is available from the Soquel Creek Water District, for both domestic use and fire protection. Water will be extended to serve all lots.
o. Archeology	o. Not located within a mapped Archeological Resource Area.

Applicant: Richard Beale for Atherton Place Development LLC
 Application No. 98-0148
 APN: 037-251-21 & -22

STAFF REPORT

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SERVICES INFORMATION

W/in Urban Services Line: X yes ___no
 Water Supply: Soquel Creek Water District
 Sewage Disposal: Santa Cruz County Sanitation District
 Fire District: Central Fire Protection District
 Drainage District: Zone 5 Drainage District

ANALYSIS & DISCUSSION

Background

On March 12, 1998, the County Planning Department accepted application No. 98-0148 for a Subdivision, Roadway/Roadside Exceptions, Riparian Exception for the drainage systems releasing to the riparian corridor, and a preliminary grading approval. In accordance with the California Environmental Quality Act (CEQA) and the County Environmental Review Guidelines, the project was considered by the County Environmental Coordinator on December 15, 1999 and March 21, 2000. A Negative Declaration with Mitigations was issued on April 13, 2000.

The project was denied by the Planning Commission on April 11, 2001 due to the physical unsuitability of the site for the density of the development as designed, which applied an essentially single-family residential model to physically constrained parcels zoned for mixed, multi-family development. The Planning Commission found that this design resulted in excessive grading that was inconsistent with General Plan policies. A letter of Appeal was filed on April 12, 2001 and an evening hearing before the Board set for May 8, 2001. The project appealed was the original proposal for 58 units.

The Board hearing was continued to June 5, 2001. At the June 5 hearing, potential project revisions were discussed that would reduce the number of housing units from **58** to 33 units and reduce grading from 10,000 cubic yards to 7,690 cubic yards. A new access road was proposed that would connect the southern portion of the development to Cabrillo College Drive, for the purpose of attempting to avoid new traffic impacts on neighboring development. The applicant was directed to show what efforts have been made to obtain an easement for the new exit road onto Cabrillo Drive and the Planning Department was directed to return the revised project to the Environmental Coordinator to determine if a new traffic study would be required. The revised project was reviewed by the Environmental Coordinator and a Mitigated Negative Declaration issued on October 31, 2001. The Environmental Coordinator determined that additional traffic studies were not necessary. On December 11, 2001 a continued public hearing was scheduled for January 8, 2002.

At the January 8th Board meeting, it was proposed that Lots 1 through 7 be deleted from the project to retain a greater portion of flat topography on APN 037-251-21 which would be more amenable to development which would be consistent with the RM-3 zoning at some future time, while a lower density would be accommodated on the more environmentally sensitive southern portion of the project site, APN 037-251-22. Planning staff was directed to draft conditions of approval for the project and to return to the Board on February 26th (Minute Order Item **55**, Attachment 3).

Project Setting & Surroundings

The property is approximately 17.8 acres in area and is in the Soquel Planning area. The site spans two contiguous parcels, APN 037-251-21 and -22. The parcels are located on the north and west sides of Cabrillo College Drive and the south side of Soquel Drive, just east of Atherton Drive, in the Soquel Planning Area. Both parcels are currently undeveloped. The most level areas of the parcels occur along their western frontages to Atherton Drive. The parcels are vegetated primarily with meadow grasses and mature evergreen trees. The rear (eastern edge) of the parcels slopes down towards Porter Gulch Creek and is mapped as riparian woodland.

The property is proposed to be reconfigured via lot line adjustment such that APN 037-251-21 (Parcel A) would be 14.917 acres and APN 037-251-22 (Parcel B) would be 2.965 acres. The project site proposed for development is the 2.965 acres comprising (Parcel B).

Surrounding development includes multi-family residential, neighborhood parks, commercial, Cabrillo College, and the Twin Lakes Baptist Church.

Project Description

■ The applicant requests approval to construct twenty six detached homes, in two phases, on a common parcel with a minimum "restricted common area" of 3,000 square feet minimum per dwelling unit; a new private street: Bowers Court and an emergency access drive connecting Atherton Drive to Bowers Court; two parking areas totaling 9 spaces; drainage systems discharging to an existing gully along Porter Gulch Creek; and retaining walls ranging from four to seven feet in height. Grading consists of no more than 5,628 cubic yards of cut and fill, balanced on the site. The rear (riparian woodland) of both parcels, as presently configured, totals 8.25 acres and would be maintained as open space. A lot line adjustment would transfer 6.481 acres from APN 037-251-22 (Parcel B, fronting on Cabrillo College Drive) to APN 037-251-21 (Parcel A, fronting on Soquel Drive), resulting in two parcels of 2.965 acres and 14.917 acres respectively. The entire riparian/open space would become a part of Parcel A. The proposed development would take place on Parcel B.

Construction phasing includes:

Phase I (Lots 1-7): 7 detached homes;

Phase II (Lots 10-28): 19 detached homes.

26 TOTAL

As part of the proposed subdivision, the applicant proposes construction of a new private street, Bowers Court, and an emergency access drive connecting Atherton Drive to Bowers Court. Bowers Court and the Atherton Road frontage would be improved with curb, gutter and sidewalk. Off-site improvements include the sight distance improvements at the southwest corner of Atherton Drive and Soquel Drive and at the north side of the intersection of Cabrillo College Drive at Willowbrook Lane.

General Plan & Zoning Consistency

The project site has a General Plan land use designation of "R-UH" (Urban High Density Residential) and "O-U" (Urban Open Space). A map of General Plan designations is included as Attachment 7. The "O-U" designation identifies those lands within the Urban Services Line that are not appropriate for development due to the presence of environmental constraints, in this case, the riparian area associated with Porter Gulch. No development is proposed within this area. The "R-UH" designation allows a density range, 10.9 to 17.4 units per net developable acre, which corresponds to a requirement of 2,500 square feet to 4,000 square feet of net developable parcel area per dwelling unit, and 3,500 square feet to 4,000 square feet of net developable parcel area for the creation of new lots.

This land use designation provides higher density residential development in areas within the Urban Services Line that have a full range of urban services. Housing types appropriate to the Urban High Density designation may include small detached houses, "zero lot line" houses, duplexes, townhouses, garden apartments, and congregate senior housing. Although the proposed homes are characterized by the applicant as townhomes, due to the parcel configuration and surrounding common area, the development would appear to consist of single-family homes, with front setbacks of 20 feet, setbacks of five feet on each side, and rear setbacks of 15 feet.

As proposed, the 26-unit development would result in a density of approximately 4,100 square feet of net developable parcel area per unit. While this density is still below the General Plan density, which corresponds to 3,500 square feet to 4,000 square feet of net developable parcel area for the creation of new lots, represents a substantial improvement over previous proposals for this project. General Plan Policy 2.10.4 specifically does not preclude an applicant from voluntarily filing an initial application for development at less than the lowest allowed density. The lower density provides a buffer for the environmentally sensitive riparian area adjacent to the proposed development that is also supportive of General Plan policies that promote protection of natural resources. Therefore, the proposed project is consistent with the goals of the General Plan.

The objective of the Urban Open Space designation is to preserve areas, which are not suited to development due to the presence of natural resources or physical development hazards. In the case of the proposed development, the "O-U" designation is intended to preserve the riparian corridor and buffer adjacent to Rodeo Creek and to locate development away from slopes in excess of 30 percent, which occur within the riparian corridor, and away from native grass preservation areas. All proposed building envelopes are located outside the riparian corridor and buffer, and no disturbance of that area is proposed, with the exception of minor excavation to install two drainage outlets into the riparian corridor, which also serves as the drainage facility for the area. This work requires approval of a Riparian Exception.

The project is in the "RM-3" Zone District (Multi-Family residential; minimum of 3,000 square feet of net developable land area per dwelling unit). The proposed division of land complies with the zoning ordinance as the property is intended for residential use. The height, setbacks, lot coverage and floor area ratio will be consistent with the minimum zoning ordinance requirements. Although the average

lot size proposed would be larger than the required 3,500 – 4,000 square feet of net developable area, density is determined by the General Plan designation, not by the zoning. The project is also consistent with County Code Section 17.10.030, Inclusionary Housing Requirements for Residential Projects, in that 15 percent of the project or four units are designated to be constructed and sold as affordable under Chapter 17.10 of the County Code.

All of the proposed new dwellings meet development standards for the "RM-3" zone district. Each home meets the required setbacks of 15 feet from the front parcel boundary, 20 feet to the garage, 15 feet from the rear parcel boundary and 5 feet from the side parcel boundaries. The proposed dwellings cover less than 40 percent of the total developable area, and the proposed floor area ratio is less than 50 percent. The site plan and proposed architectural plans are included in Attachment 1 by Thatcher & Thompson, Architects.

Design Review Issues

Because the project is a land division located inside the Urban Services Line, it is subject to the provisions of County Code Chapter 13.11; Site, Architectural and Landscape Design Review. A primary purpose of the Design Review ordinance, as defined by General Plan Objective 8.1, is to achieve functional high quality development through design review policies that recognize the diverse characteristics of the area, maintain design creativity, and preserve and enhance the visual fabric of the community. Because the proposed project is an urban infill development, the applicant has submitted a perspective drawing and architectural floor plans and elevations (Attachment 1, Sheet A11).

The applicant proposes to construct (26) detached homes on one common parcel. Each homeowner would have a private open space easement, a minimum of 3,000 square feet, surrounding each residence consistent with County Code Section 13.10.323(f). The front yard and common area landscaping would be maintained by the Home Owners Association. Residents would be free to landscape the fenced "rear yard" to their personal preference.

Architectural floor plans and elevations for the proposed homes are included in Attachment 1. The site and landscape plan and a perspective drawing is included in Attachment 1. Homes are proposed to be two-story with a variety of siding and accent treatments. Proposed materials include stucco, horizontal wood siding, and wood shingles. Roofing materials are proposed to be composition shingle of a neutral color. The size of the proposed homes ranges from 1,360 square feet to 1,665 square feet (exclusive of garages). All plans include design features such as porches and varied rooflines for additional visual interest. Color combinations are interspersed throughout the development. The proposed project is consistent with Section 13.11.073 of the County Code as it relates to the compatibility of the design of the homes with the adjacent area.

The proposed development is consistent with Section 13.11.072 of the County Code as it relates to site design, as the site plan relates to the topography and natural site amenities. The revised proposal reduces the amount of grading proposed to not more than 5,628 cubic yards of cut and fill, balanced on the site¹. Textured surface retaining walls from four to seven feet in height complement the

¹ The applicant has not submitted revised grading calculations based upon elimination of the two additional units. However, assuming the average volume of earthwork per lot to be 216 cubic yards as estimated in the January 22nd submittal, the amount of grading could be reduced further from 6060 cubic yards to **5,628**.

proposed home design and usable open space. The proposed homes would be located on the most level portion of the site, and the housing type is consistent with the adjacent single-family development.

The proposed development is consistent with Section 13.11.075 of the County Code, relating to landscaping. Street trees are proposed that meet the requirements of the County Urban Forestry Master Plan. The Landscape Plans specify a mix of 15-gallon size street trees, including Flowering Plum, Golden rain Tree, Brisbane Box, and Strawberry Tree. Landscape Plans also includes a variety of shrubs and groundcover throughout the development, and a densely planted vegetative privacy screen along the western boundary of the southern parcel comprised of Strawberry Trees and tall-growing shrubs. Native coast live oaks and redwoods are planted at the southern extremity of the proposed development to mitigate project visibility from the scenic corridor of Highway One.

Roadway and Roadside Improvement Issues

Project frontage exists along Atherton Drive and Cabrillo College Drive, public roads. Proposed driveway access to the 7 homes of Phase I would be directly off Atherton Drive. Bowers Court would be accessed from Cabrillo College Drive by way of an easement over APN 037-241-39, 2505 Cabrillo College Drive, which is owned by the Imperial Star. Although negotiations are in progress, the owner of this parcel has not yet granted an easement for the proposed road. Board Minute Order dated June 5, 2001 directed the developer to show that efforts have been made to obtain an easement to provide access to Bowers Court for the 19 detached units that would use this access point.

Bowers Court is proposed as a 40-foot wide right-of-way with separated sidewalk (with 3.5 foot planting strip) on both sides for most lengths of the proposed roadway and a 24-foot paved roadway. The western side of the 12-foot turf block emergency access road provides a vegetative screen between the road and existing residential development. A right-of-way less than 56 feet in width requires a roadway exception.

The applicant submitted comparative cross-sections which show the full roadway/roadside cross-section required by County Design Standards, and the roadway/roadside cross-section as proposed; and a letter from the project landscape architect demonstrating that the proposed, reduced width landscape strip will support the plantings specified.

Given that County Code Section 15.10.050(f)(4) allows for exceptions to roadway and roadside improvements when the improvements would be located in an environmentally sensitive area as shown on file with the Planning Department, and because construction of full improvements would cause impacts which could not be mitigated on the lands surrounding the open space area, the exception request is in conformance with County policies.

Alternative Access Issues

To date, the applicant has not established that the alternative access from the project site to Cabrillo College Drive has been acquired. The proposed road over APN 037-241-39 would serve a total of nineteen single-family dwellings.

To date, the applicant has not demonstrated that an easement has been obtained from the owner of APN 037-241-39. Pursuant to Section 1240.030 of the Code of Civil Procedure the power of eminent domain may be exercised if findings are made that the public interest and necessity require the project, the project is planned or located in a manner that will be most compatible with the greatest public good and the least private injury, and the property to be acquired is necessary for the project.

At this time, it is difficult to determine whether eminent domain requirements could be satisfied for the proposed project.

Affordable Housing Issues

The proposed project would construct 26 homes on 2.965 acres of developable area, deducting land for roads and open space/riparian areas, for a residential density of one unit per approximately 4,100 square feet. This project is proposed on one of two adjacent parcels with designation for a density of up to 17.4 units per acre, and where a project of at least 85 units could be constructed. This site is one of the few remaining undeveloped Urban High density parcels in the county. The Board of Supervisors is currently considering a number of actions in response to related to the current affordable housing crisis, including the severe shortage of affordable units in the County and the high rents and sales prices of market-rate units.

The applicant identified the required four inclusionary units, however, they have also asked to have the projects' inclusionary housing requirement shifted to Parcel B. We believe the proposal is premature. Every effort should be made to ensure that the current development proposal does not preclude future utilization of Parcel A to its highest potential for the creation of affordable housing.

Environmental Review

The revised project with reduced grading and lower density was reviewed by the Environmental Coordinator on September 10, 2001. A Mitigated Negative Declaration was issued on October 31, 2001. Required mitigation measures include: installation of protective fencing adjacent to riparian and native grass areas; pre-construction biologic studies to determine the presence of Loggerhead shrike, Yellow warbler or raptor bird nests; installation of drainage improvements to be monitored by the project biologist to protect riparian areas; temporary fencing to be installed to protect riparian and native grass areas; erosion control plans are to be implemented; drainage discharges shall not contaminate natural water courses; a mowing plan for the native grasses shall be implemented; the project acoustic consultant shall verify that noise levels for units 21 & 22 (closest to Highway One) comply with General Plan limits; sight-distance improvements at Cabrillo College and Willowbrook Drives and at Atherton and Soquel Drives shall be implemented, stop signs shall be installed at Cabrillo College Drive/Bowers Court; and Transportation Improvement Area fees are to be levied for the project. No comments were received from the regional or state clearinghouses on the Initial Study.

Major Environmental Issues

Major environmental issues related to this project include biotic resources, noise and traffic.

Biotic Resources:

Focused biotic studies were conducted on the subject properties. No special status plant species are present on site. Three types of birds of special concern, Loggerhead shrike, Yellow warbler, and various species of raptors, may be present on site. Pre-construction surveys are required to determine if any nests of these birds are present, and additional mitigation measures apply if nesting are found.

Additionally, approximately 8.25 acres of the 14.917 acre property adjacent to the project site would be maintained as open space. This area includes coast live oak woodland, willow riparian woodland, coyote brush scrub, non-native and native grasslands, eucalyptus, Monterey Pine, and seasonal wetland habitats. Measures to protect these habitats include: measures to minimize disturbance of the riparian buffer and corridor during installation of the drainage infrastructure and site grading; 3:1 tree replacement for three, mature trees to be removed; maintenance and enhancement of native grassland area; and pre-treatment of drainage to be received by Porter Gulch.

Noise:

The project site is located within the noise corridors of Soquel Drive to the north and Highway 1 to the south. The County General Plan Noise Element requires all new residential development to conform to a noise exposure standard of 60 dB Ldn (day/night average noise level) for outdoor noise and 45 dB Ldn for indoor noise. Acoustical measurements taken on site found elevated outdoor noise levels for the southerly-most parcels nearest Highway 1. The project acoustical engineer recommended enclosed "outdoor" living spaces for these parcels. The project architect has added glazed greenhouse spaces on the rear of the impacted parcels. Interior noise level standards can be met by using industry-standard building materials.

Traffic:

Focused traffic studies were conducted for the proposed project. The traffic impact of the 26 homes is estimated to be no more than 280 vehicle trips per day. The County threshold for acceptable level of service is LOS D, with LOS A representing free-flow conditions and LOS F representing forced flow conditions. The results of the traffic study indicate that all intersections will operate at a level of service of LOS D or better after the project is developed.

Traffic-related mitigation for this project includes the payment of earmarked TIA fees at the rate of \$4,000.00 per unit to be used to fund construction of intersection improvements. Additional required off-site traffic improvements include lengthening the sight distance at the southwest corner of Atherton Drive and Soquel Drive, and at the north side of Cabrillo College Drive at Willowbrook Lane, and construction of a bus stop on Soquel Drive at the Sesnon House.

Grading:

Grading plans and volumes were submitted for the proposed project. Although the environmental effects of the proposed grading could be adequately mitigated, environmental review does not address a project's consistency with General Plan policies, other than to require mitigation of impacts. No

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more than 5,628 cubic yards of cut and fill, balanced on the site are proposed.

Public Correspondence:

Staff received a large volume of public correspondence in opposition to the initial project from surrounding neighbors on the initial project reviewed by the Board on May 8, 2001.

Conclusion

Required findings can be made to approve this application. The project is consistent with the General Plan in that the project complies with the recommended density of 3,500 square feet to 4,000 square feet of net developable parcel area for the creation of new lots. The proposed approximately 4,100 square feet per unit project density maximizes housing opportunities on the site while minimizing adverse impact on adjacent environmentally sensitive habitat. The revised project is also consistent with General Plan policy 6.3.9, which requires projects to be designed so as to minimize grading. Grading has been reduced to at least 5,628 cubic yards of cut and fill, balanced on the site. The proposed access road, Bowers Court, connecting to Cabrillo College Drive must be acquired by the developer. The appropriateness of utilizing eminent domain for acquisition of land for the alternative access is not known at this time.

Please see Attachment 2 (Findings) for a complete listing of findings and evidence related to the above discussion.

RECOMMENDATION

1. Consider Application #98-0148 for a 26 unit development on the southern parcel (identified as Parcel B on the February 20, 2002 site plan submittal) and the associated findings and conditions (Attachment 2); and
2. Consider certifying the Mitigated Negative Declaration in connection with the approval.

ATTACHMENTS

1. Project Plans:
 Architectural Plans prepared by Thatcher & Thompson, Sheets A1-A-2, dated 8/14/01; Sheets A3-A11 dated 6/20/01; Bowers Court Extension & Parking Plan Sheet A-12 dated 11/5/01;
 Landscape Plans, prepared by Gregory Lewis, Sheets L1-L2 dated 8/14/01;
 Tentative Map and Preliminary Improvement plans prepared by Ifland Engineers, Sheets 1-8 dated 8/15/01
 Lot Line Adjustment, Ifland Engineers dated 8/15/01

(Originals on file with the Planning Department)

2. Planning Department Staff Report of February 26, 2002
3. Board Minute Order , Item No. **055**, dated January 8, 2002.
4. Letter of Charlene Attack re-deed restrictions, dated 2/05/02
5. Revised density calculations by Ifland Engineers dated 2/06/02
6. Public Works Traffic Engineering memo dated 2/05/02
7. Letter of John D. Hurd, President, Cabrillo College dated 1/29/02
8. General Plan and Zoning Maps
9. Planning Department Staff Report of January 8, 2002 with Attachments on file with the Planning Department.
10. Letter From Charlene Attack to Board of Supervisors, dated February 20, 2002 with attached conditions and exhibits.
11. Public Correspondence

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.

SUBDIVISION FINDINGS

1. THAT THE PROPOSED SUBDIVISION MEETS ALL REQUIREMENTS OR CONDITIONS OF THE SUBDIVISION ORDINANCE AND THE STATE SUBDIVISION MAP ACT.

The proposed division of land meets all requirements and conditions of the County Subdivision Ordinance and the State Map Act in that the project meets all of the technical requirements of the Subdivision Ordinance.

2. THAT THE PROPOSED SUBDIVISION, ITS DESIGN, AND ITS IMPROVEMENTS, ~~ARE~~ CONSISTENT WITH THE GENERAL PLAN, AND THE ~~AREA~~ GENERAL PLAN OR SPECIFIC PLAN, IF ~~ANY~~.

The proposed subdivision is consistent with the General Plan policy regarding infill development in that the proposed architectural style and density of the proposed development area is consistent with the adjacent single-family development of the Imperial Star, while the riparian area is left in a protected status consistent with the Urban Open Space General Plan designation. The subdivision is not in a hazardous area, the preservation of open space protects the most environmentally sensitive portions of the property, and the project is sited in an area designated for this type of development, although not the proposed density of development.

The proposed division of land, its design, and its improvements, is consistent with the General Plan. The proposed density of approximately 4,100 square feet per net developable parcel area per unit is in substantial compliance with the minimum General Plan density range designation for the location. The proposed density level, although slightly below the General Plan density goal, will minimize impact on the adjacent sensitive riparian habitat. The project creates twenty-six homes and is located in the Residential, Urban High Density (R-UH) and Urban Open Space (O-U) General Plan designations, which allows a density of one dwelling for each 2,500 to 4,000 square feet of net developable parcel area. The proposed project density is approximately 4,100 square feet per net developable parcel area. General Plan Policy 2.10.4 allows the developer to voluntarily file an initial application for development at less than the lower limit of the density range, but does not require that the decision making body approve the lower density. Development within the R-UH density range of 2,500-4,000 square feet is limited by environmental constraints associated with the parcel including sensitive grasslands, riparian areas, slopes more than 30 percent, freeway noise impacts, and

scenic corridor protection standards. Up to 85 units could be constructed on the entire project site given the net developable land available and using the minimum threshold density specified by the General Plan. The project would be consistent with existing patterns of some development in the project vicinity such as Willowbrook Village condominiums, and would increase opportunities for affordable housing on a large, existing multi-family zoned property.

The project is consistent with the General Plan in that the full range of urban services is available and will be extended to the new parcels created, including municipal water and sewer service. The subdivision is on an existing street, which can potentially provide satisfactory access to the project once access to Cabrillo Drive over APN 037-241-39 has been obtained for the 19 southern lots. However, APN 037-241-39 is currently under separate ownership. The applicant has not, as yet, demonstrated the ability to acquire an appropriate easement for proposed access to Bowman Court. Also, acquisition of sufficient acreage to accommodate access improvements for the project via the County's use of Eminent Domain has not been evaluated for feasibility. A separate process pursuant to Section 1240.030 of the Code of Civil Procedure exists for determining feasibility.

The proposed subdivision is similar to the pattern and density of some surrounding development, is near commercial shopping facilities and recreational opportunities, and, with proposed road improvements, will have adequate and safe vehicular access. The revised project is now consistent with General Plan grading policies in that grading has been significantly reduced from the original project submittal of 10,000 cubic yards to no more than 5,628 cubic yards, including a reduction in the access roads required.

Retention of 8.25 acres of open space is on the adjacent Parcel A is consistent with the Urban Open Space designation of the General Plan. General Plan policy 5.11 aims to preserve in open space those uses that are not suited to development due to the presence of natural resource values, i.e. the riparian corridors and buffer areas.

3. **THAT THE PROPOSED SUBDIVISION COMPLIES WITH ZONING ORDINANCE PROVISIONS AS TO USES OF LAND, LOT SIZES AND DIMENSIONS AND ANY OTHER APPLICABLE REGULATIONS.**

The proposed division of land complies with the zoning ordinance provisions as to uses of land, lot sizes and dimensions and other applicable regulations in that the use of the property will be residential in nature, lot sizes meet the minimum dimensional standards for the "RM-3" Zone District where the project is located, and all setbacks will be consistent with the zoning standards. The proposed new dwellings will comply with the development standards in the zoning ordinance as they relate to setbacks, maximum parcel coverage, minimum site width

and minimum site frontage. Density is determined by the General Plan and not by the zoning classification.

4. THAT THE SITE OF THE PROPOSED SUBDIVISION IS PHYSICALLY SUITABLE FOR THE TYPE AND DENSITY OF DEVELOPMENT.

The site of the proposed subdivision is physically suitable for the type of development in that no challenging topography affects the portion of the site to be developed adjacent to Atherton Drive, and subsequent to the proposed lot line adjustment, the majority of the parcel shall remain in open space in perpetuity consistent with the Urban Open Space General Plan designation. The development area is adequately shaped to ensure efficiency in the conventional development of the property, and the proposed site plan offers an arrangement and shape that insures development without the need for variances or site standard exceptions. No environmental constraints exist which would necessitate that the area remain completely undeveloped, although 8.25 acres of the adjacent 14.917 acre Parcel A must remain as open space due to environmental constraints such as slope, native grasslands, riparian areas, and the scenic corridor.

5. THAT THE DESIGN OF THE PROPOSED SUBDIVISION OR TYPE OF IMPROVEMENTS WILL NOT CAUSE SUBSTANTIAL ENVIRONMENTAL DAMAGE NOR SUBSTANTIALLY AND AVOIDABLY INJURE FISH OR WILDLIFE OR THEIR HABITAT.

The design of the proposed division of land and its improvements will not cause environmental damage nor substantially and avoidably injure fish or wildlife or their habitat. No mapped or observed sensitive habitat or threatened species impede development of the site as proposed.

The project received a mitigated Negative Declaration on April 13, 2000, and a second revised mitigated Negative Declaration on October 31, 2001 pursuant to the California Environmental Quality Act and the County Environmental Review Guidelines (Initial Studies on file with the Planning Department).

6. THAT THE PROPOSED SUBDIVISION OR TYPE OF IMPROVEMENTS WILL NOT CAUSE SERIOUS PUBLIC HEALTH PROBLEMS.

The proposed division of land or its improvements will not cause serious public health problems in that municipal water and sewer are available to serve all proposed parcels, and these services will be extended as part of the improvement plan for the subdivision. Noise

impacts associated with traffic volumes along adjacent Highway One are required to be mitigated for Lots 21 and 22 by a combination of design elements in the building shells. Impacts associated with increases in traffic volume in the neighborhood, estimated at an additional 280 trips per day, are to be mitigated with off-site improvements and the payment of Transportation Improvement Area fees.

7. THAT THE DESIGN OF THE PROPOSED SUBDIVISION OR TYPE OF IMPROVEMENTS WILL NOT CONFLICT WITH EASEMENTS, ACQUIRED BY THE PUBLIC AT LARGE, FOR ACCESS THROUGH, OR USE OF PROPERTY WITHIN THE PROPOSED SUBDIVISION.

The design of the proposed division of land and its improvements will not conflict with public easements for access in that no easements are known to encumber the property. Access to all lots will be from existing public roads or from the proposed new private road, Bowers Court.

Access to Bowers Court is proposed as an easement over APN 037-241-39 at 2505 Cabrillo College Drive. The Subdivision Map Act in Government Code Section 66462.5 expressly authorizes a County to condition a subdivision on the provision of off-site improvements, including, if necessary, all costs involved in an eminent domain action. The County Code expressly provides for such off-site improvement agreements for subdivisions in Section 14.01.513 and for other development projects in Section 18.10.240(d). The authority of a jurisdiction to use eminent domain is limited by the provisions of the Code of Civil Procedure, Section 1240.010 – 050. Secondary access from Bower Court to Atherton Drive is provided by the proposed project.

8. THE DESIGN OF THE PROPOSED SUBDIVISION PROVIDES, TO THE EXTENT FEASIBLE, FOR FUTURE PASSIVE OR NATURAL HEATING OR COOLING OPPORTUNITIES.

The design of the proposed division of land provides to the fullest extent possible, the ability to use passive and natural heating and cooling in that the resulting parcels are oriented in a manner to take advantage of solar opportunities. All proposed residences are conventionally configured and meet the minimum setbacks as required by the zone district for the property and County code.

9. THE PROPOSED DEVELOPMENT PROJECT IS CONSISTENT WITH THE DESIGN STANDARDS AND GUIDELINES (SECTIONS 13.11.070 THROUGH 13.11.076) AND ANY OTHER APPLICABLE REQUIREMENTS OF THIS CHAPTER.

The proposed development is consistent with the Design Standards and Guidelines of the

County Code. The proposed development density, although complying with the standards for the "RM-3" zone district, does not meet the minimum General Plan density threshold for the Urban High Density Residential (R-UH) land use designation. The reduced density may be justified, however, since it will minimize adverse impact on the adjacent sensitive riparian habitat area and preserve open space. The project is also consistent with some adjacent single-family residential development.

Homes are proposed to be two-story with a variety of siding and accent treatments. Proposed materials include stucco, horizontal wood siding, and wood shingles. Roofing materials are proposed to be composition shingle and shall be a neutral color. The proposed paint palette is earth tones for the wall, trim and accent colors. The size of the proposed homes ranges from 1,330 square feet to 1,665 square feet (exclusive of the garage). All plans include design features such as porches and varied roof lines for additional visual interest.

The proposed project has been designed to complement and harmonize with some of the existing and proposed land uses in the vicinity. The adjacent neighborhood is a mixed-use area with both detached single-family residences and high-density condominiums. It will be compatible with the physical design aspects, land use intensities, and dwelling unit densities of the single-family residences in the neighborhood.

The proposed development is consistent with Section 13.11.072 of the County Code as it relates to site design. The current proposal reduces the amount of grading relative to the previous proposal which was 10,000 cubic yards, no more than 5,628 cubic yards by reducing the number of houses from 58 to 26 houses and by eliminating Bowman Court, a private road.

The current proposal would still result in a need for retaining walls from four to seven feet in height to accommodate the proposed home design and usable open space. The proposed homes would be located on the most level portion of the site so that the housing type would result in the appearance of a more conventional single-family development. The new development preserves the integrity of existing land use patterns of the immediately adjacent single-family residential development of the Imperial Courts subdivision, while preserving the open space amenity of the riparian corridor of Porter Gulch, consistent with General Plan policy 5.2.

Street trees are proposed that meet the requirements of the County Urban Forestry Master Plan. The Landscape Plans specify a mix of 15-gallon size street trees, including Flowering Plum, Golden Rain Tree, Brisbane Box, and Strawberry Tree. Native coast live oaks and redwoods shall be planted along the southernmost extremity of development to mitigate visual impacts from the Highway One scenic corridor. The Landscape Plans also includes a variety of shrubs and groundcover throughout the development, and a densely planted vegetative

privacy screen along the western boundary of the southern parcel comprised of Strawberry Trees and tall-growing shrubs.

ROADWAY/ROADSIDE EXCEPTION FINDINGS

Section 15.10.050(f) Santa Cruz County Code

1. IMPROVEMENTS *ARE* NOT APPROPRIATE BECAUSE THE REQUIRED IMPROVEMENTS WOULD ENCROACH ON PRIVATE PROPERTY IN WHICH THE COUNTY WOULD NOT HAVE *AN* INTEREST SUFFICIENT TO ALLOW THE IMPROVEMENT TO BE CONSTRUCTED OR INSTALLED (COUNTY CODE SECTIONS 15.10.050(f)5).

Bowers Court is proposed as a 40-foot wide right-of-way with separated sidewalk on both sides for most lengths of the proposed roadway and a 24-foot paved roadway. There shall be a vegetative screen between the proposed and existing residential development along the emergency access road between the Bowers Court cul-de-sac and Atherton Drive. A right-of-way less than 56 feet in width requires a roadway exception. Additionally, elimination of a segment of separated sidewalk and a landscaping strip less than 4 feet in width requires a roadside exception. The applicant submitted comparative cross-sections which show the full roadway/roadside cross-section required by County Design Standards, and the roadway/roadside cross-section as proposed; and a letter from the project landscape architect demonstrating that the proposed, reduced width landscape strip will support the plantings specified.

Bowers Court is proposed to gain access to Cabrillo Drive by means of access across APN 037-241-39. The Subdivision Map Act in Government Code Section 66462.5 expressly authorizes a County to condition a subdivision on the provision of off-site improvements, including, if necessary, all costs involved in an eminent domain action. The County Code expressly provides for such off-site improvement agreements for subdivisions in Section 14.01.513 and for other development projects in Section 18.10.240(d). The County has previously utilized such agreements for the acquisition of right-of-ways for development projects.

County Code Section 15.10.050(f)(4) allows for an exception to roadway and roadside improvement standards when the improvements would be located in an environmentally sensitive area as shown by information on file with the Planning Department, where construction of full improvements would cause impacts which could not be satisfactorily

mitigated if the project is developed to a density which approaches the zoning of "RM-3" on the lands outside of the open space area.

An emergency access road is proposed as a 12-footwide turf block right-of-way which would connect Bowers Court with Atherton Drive (see Attachment A, Island Sheet 4 of 8). The west side of this emergency access will be landscaped to provide a visual screen for the existing residential development. Removable bollards would be placed at both ends of the emergency access.

To date, the applicant has not provided evidence that an easement has been obtained from the owner of adjacent parcel No. 037-241-39, for the proposed road that would connect Bowers Court with Cabrillo College Drive. Although the County does have authority to acquire, through eminent domain, land for road construction, there are certain requirements for exercise of that authority. Pursuant to Section 1240.030 of the Code of Civil Procedure (Attachment 12) the power of eminent domain may be exercised only if the public interest and necessity require the project, the project is planned or located in a manner that will be most compatible with the greatest public good and the least private injury, and the property to be acquired is necessary for the project.

It cannot be determined at present if the above requirements could be satisfied for the proposed project. The proposed road easement, for which eminent domain may be required, would serve a total of nineteen single-family dwellings.

RIPARIAN EXCEPTION FINDINGS (County Code Section 16.30.060(d))

1. THAT THERE ARE SPECIAL CIRCUMSTANCES OR CONDITIONS AFFECTING THE PROPERTY.

The special circumstance that affects this property is the location of the adjacent riparian corridor which serves as the drainage collector for this area. The only development and disturbance proposed within the riparian corridor and biotic reserve is the installation and maintenance of a drainage system.

2. THAT THE EXCEPTION IS NECESSARY FOR THE PROPER DESIGN AND FUNCTION OF **SOME** PERMITTED OR EXISTING ACTIVITY ON THE PROPERTY.

This exception is necessary for the proper design and function of the drainage system.

3. THAT THE GRANTING OF THE EXCEPTION WILL NOT BE DETRIMENTAL TO THE PUBLIC WELFARE OR INJURIOUS TO OTHER PROPERTY DOWNSTREAM OR IN THE AREA IN WHICH THE PROJECT IS LOCATED.

Granting this exception will not be detrimental to the public welfare or injurious to downstream properties as all drainage from the project will be diverted to the natural course utilized in the area, thereby directing run-off away from neighboring properties.

4. THAT THE GRANTING OF THE EXCEPTION IS IN ACCORDANCE WITH THE PURPOSE OF CHAPTER 16.30 OF THE COUNTY CODE, AND WITH THE OBJECTIVES OF THE GENERAL PLAN AND ELEMENTS THEREOF.

The granting of this exception is in accordance with the purpose of Chapter 16.30, to minimize impacts to the riparian corridor as placement of the storm drain within the riparian corridor and buffer has been sited avoid significant riparian vegetation. In addition, the exception is consistent with Chapter 16.30, in that a purpose of the Riparian Corridor Protection Ordinance is to protect these areas for the transportation and storage of floodwaters.

LOT LINE ADJUSTMENT FINDINGS (County Code Section 14.01.107.4(c))

1. THE LOT LINE ADJUSTMENT WILL NOT RESULT IN A GREATER NUMBER OF PARCELS THAN ORIGINALLY EXISTED.

The proposed lot line adjustment will occur between two existing parcels, APN's 037-251-21 and -22, both vacant parcels. The proposed transfer will not result in the creation of an additional parcel or an additional building site.

2. THE LOT LINE ADJUSTMENT CONFORMS WITH THE COUNTY ZONING ORDINANCE (INCLUDING, WITHOUT LIMITATION, COUNTY CODE SECTION 13.10.673) AND THE COUNTY BUILDING ORDINANCE (INCLUDING, WITHOUT LIMITATION, COUNTY CODE SECTION 12.01.070).

In accordance with County Code Sections 13.10.300 and 13.10.320, the proposed lot line adjustment is consistent with the Single-family Residential (RM-3) zoning designation which requires a minimum 3,000 square foot parcel size required by the zone district. The lot line

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adjustment transfers approximately 6.481 acres of land from APN 037-251-22 to APN 037-251-21, resulting in two parcels of 14.917 acres (APN 037-251-21) and 2.965 acres (APN 037-251-22). The proposed project for 26 dwelling units is consistent with the county zoning ordinance in that the 2.965 acre site will be developed at an average approximately 4,100 square feet per parcel per unit, which exceeds the minimum 3,000 square foot parcel size. No development has been proposed for the 14.917 acre Parcel A (APN 037-251-21) at this time.

3. NO AFFECTED PARCEL MAY BE REDUCED OR FURTHER REDUCED BELOW THE MINIMUM PARCEL SIZE REQUIRED BY THE ZONING DESIGNATION, ABSENT THE GRANT OF A VARIANCE PURSUANT TO COUNTY CODE SECTION 13.10.230.

County Code Section 13.10.323 requires minimum developable lot size in the RM-3 zone district to be 3,000 square feet. The transfer of 6.481 acres of land from APN 037-251-22 reduces that parcel from 9.446 acres to 2.965 acres and increases APN 037-251-21 from 8.436 acres to 14.917 acres, leaving both parcels above the minimum 3,000 square feet per dwelling unit required by the RM-3 zone district. The proposed 26-unit subdivision on APN 037-251-22 is consistent with the minimum parcel size in that the net developable parcel size is approximately 4,100 square feet per parcel per dwelling unit. No development has been proposed for APN 037-251-21.

CONDITIONS OF APPROVAL

Subdivision, Roadway/Roadside Exceptions & Riparian Exception No.: 98-0148

Tract No. 1409, Atherton Place Subdivision

Applicant: Richard Beale Land Use Planning

Property Owners: Atherton Place Development LLC

Assessor's Parcel No.: 037-251-21 & -22

Property Location: On the north side of Cabrillo Drive and the south side of Soquel Drive, just east of Atheron Drive.

Planning Area: Soquel

Exhibits:

- A. Project Plans:

Architectural Plans prepared by Thatcher & Thompson, Sheets A0-A11, dated 1-18-02;
Tentative Map and Preliminary Improvement plans prepared by Ifland Engineers, Sheet s1-8
dated 01/16/02; Sight Distance Study Sheet SD-1 dated 1/16/02;
Lot Line Adjustment by Ifland Engineers, Sheet 1 dated 1/15/02;
Landscape Plans, prepared by Gregory Lewis, Sheets L1-L2 dated 1/23/02.

All correspondence and maps relating to this land division shall carry the land division number and tract number noted above.

PROJECT ENTITLEMENTS. This Permit authorizes the construction of 26 detached townhomes in two phases, construction of a new private street "Bowers Court", two parking areas, drainage systems and retaining walls; a preliminary grading approval for no more than 5,628 cubic yards of cut and fill balanced on site; and a lot line adjustment transferring 6.481 acres resulting in APN 037-251-21 becoming 14.917 acres and 037-251-22 becoming 2.965 acres.

I. Prior to exercising any rights granted by this Approval:

- a) The owner shall sign, date and return one copy of the Approval to indicate acceptance and agreement with the conditions thereof
- b) The Lot Line adjustment shall be recorded. File deed(s) of conveyance with the County Recorder. Parcels/portions of parcels to be combined must be in identical ownership. The deed(s) of conveyance for the lot line adjustment must contain the following statement after the property description:

The purpose of the deed is to combine the above-described portion of Assessors Parcel Number 037-251-21 with Assessors Parcel Number 037-251-22, as approved by the County of Santa Cruz (14 days after permit approval date) under Application #98-0148. This Conveyance may not create a separate parcel, and is null and void unless the property is combined as stated.

11. A Final Map for this land division must be recorded prior to the expiration date of the tentative map and prior to sale, lease or financing of any new lots. The Final Map shall be submitted to the County Surveyor (Department of Public Works) for review and approval prior to recordation. No improvements, including, without limitation, grading and vegetation removal, shall be done prior to recording the Final Map unless such improvements are allowable on the parcel as a whole (prior to approval of the land division). The Final Map shall meet the following requirements:

- A. The Final Map shall be in general conformance with the approved tentative map and shall conform with the conditions contained herein. All other State and County laws relating to improvement of the property, or affecting public health and safety shall remain fully applicable.
- B. This development shall result in no more than twenty-six(26) total units.
- C. Net area shall be shown to the nearest square foot.
- D. The following items shall be shown on the Final Map:
1. Building footprints located according to the approved Tentative Map
 2. A minimum average net developable area of 3,000 square feet per unit .
 3. The Owner's Certificate shall include:
 - a. **An** irrevocable offer of dedication to the County of Santa Cruz for the right-of-way and improvements shown on the tentative map. If this offer of dedication is accepted by the County, this road would be County maintained. Unless the right-of-way and improvements are accepted, the Homeowners' Association shall be responsible for all maintenance.

Right-of-way width for "Bowers Court" shall be a minimum of 40 feet, and the road section shall be 24 feet. The approved roadway/roadside exception allows a right-of-way less than 56 feet, elimination of separated sidewalk along the west side of the entrance, and a landscape strip less than 4 feet in width.

 - b. **An** easement for public use of the access road ("Bowers Court") shown on the tentative map, to expire when the offer of dedication is accepted by the County.
 - c. **An** easement for drainage infrastructure of the maintenance thereof on and across the open space and areas of common drainage improvements, specifically for lots 2-7 and 11-21.
 - d. In order to prevent conflicts with adopted General Plan policies regarding noise, the foilowing elements are necessary to meet County requirements for a maximum interior noise of 45 dBA Ldn and outdoor protected areas of 60 DBA Ldn:

1. Rear deck enclosures as shown on Exhibit "A", Sheets A3, and A4 and as specified in General Notes, Project Acoustical Requirements #2. (CEQA G).

E. The following requirements shall be noted on the Final Map as items to be completed prior to obtaining a building permit on lots created by this land division:

1. Lots shall be connected for water service to Soquel Creek Water District.
2. Lots shall be connected for sewer service to Santa Cruz County Sanitation District.
3. All future construction of the lots shall conform to the Architectural Floor Plans and Elevations, and the Site Analysis as stated or depicted in Exhibit "A" and shall also meet the following additional conditions:
 1. No changes in the placement of windows that face directly towards existing residential development as shown on the architectural plans, shall be permitted without review and approval by the Planning Commission.
 2. Exterior finishes shall incorporate wood siding, including horizontal wood siding, and/or stucco. T-1-11 type siding is not allowed. Exterior color combinations shall be interspersed throughout the development.
 3. Notwithstanding the approved preliminary architectural plans, all future development shall comply with the development standards for the "RM-3" zone district. No residence shall exceed a 40% lot coverage, or a 50% floor area ratio, or other standard as may be established for the zone district. In the case of this project, because all land is held in common ownership, lot coverage and FAR are calculated as the applicable total development square footage as the numerator and the total net developable area as the denominator.
4. A final Landscape Plan for the entire site specifying the species, their size, and irrigation plans and meeting the following criteria:
 - a. Turf Limitation. Turf area shall not exceed 25 percent of the total

landscaped area. Turf area shall be of low to moderate water-using varieties, such as tall or dwarf fescue.

- b. **Plant Selection.** At least 80 percent of the plant materials selected for non-turf areas (equivalent to 60 percent of the total landscaped area) shall be well-suited to the climate of the region and require minimal water once established (drought tolerant). Native plants are encouraged. Up to 20 percent of the plant materials in non-turf areas (equivalent to 15 percent of the total landscaped area), need not be drought tolerant, provided they are grouped together and can be irrigated separately.
- b. **Soil Conditioning.** In new planting areas, soil shall be tilled to a depth of 6 inches and amended with six cubic yards of organic material per 1,000 square feet to promote infiltration and water retention. After planting, a minimum of 2 inches of mulch shall be applied to all non-turf areas to retain moisture, reduce evaporation and inhibit weed growth.
- c. **Irrigation Management.** All required landscaping shall be provided with an adequate, permanent and nearby source of water which shall be applied by an installed irrigation, or where feasible, a drip irrigation system. Irrigation systems shall be designed to avoid runoff, overspray, low head drainage, or other similar conditions where water flows onto adjacent property, non-irrigated areas, walks, roadways or structures.

The irrigation plan and an irrigation schedule for the established landscape shall be submitted with the building permit applications. The irrigation plan shall show the location, size and type of components of the irrigation system, the point of connection to the public water supply and designation of hydrozones. The irrigation schedule shall designate the timing and frequency of irrigation for each station and list the amount of water, in gallons or hundred cubic feet, recommended on a monthly and annual basis.

Appropriate irrigation equipment, including the use of pressure regulators, automated controllers, low volume sprinkler heads, drip or bubbler irrigation systems, rain shutoff devices, and other equipment

shall be used to maximize the efficiency of water applied to the landscape. Plants having similar water requirements shall be grouped together in distinct hydrozones and shall be irrigated separately.

Landscape irrigation should be scheduled between 6:00 p.m. and 11:00 a.m. to reduce evaporative water loss.

5. All planting shall conform to the landscape plan shown as part of Exhibit A. The following specific landscape requirements apply:
 - a. Street trees, including Golden Rain, Flowering Plum, Brisbane Box, Strawberry Tree and CA Live Oak shall be planted as per Exhibit A. A drip irrigation system shall be installed in the required landscape strip, which may be connected to the adjacent individual lot. The species, quantities and placement shall conform to Exhibit A, Landscape Plans, prepared by Gregory Lewis.
 - b. Street trees shall be installed according to provisions of the County Design Criteria.
 - c. Notes shall be added to the final improvement plans that indicate the manner in which existing trees, which will be retained, shall be protected during construction. Include a letter from a licensed arborist verifying that the protection measures are adequate to protect the trees during construction of drainage improvements within the riparian buffer and corridor to prevent damage to the root zones of trees to be maintained.
 - d. To mitigate impacts from the loss of three mature trees, prior to public hearing the landscape plan shall be revised to show the placement of (3) fifteen gallon and (6) five gallon Coast Live Oaks (*Quercus agrifolia*) within the riparian woodland.
 - e. In order to mitigate the loss of the Chinese curly leafed willow on the proposed access road, one 24-inch box CA Live oak shall be planted in that vicinity adjacent to the road.

6. All future development on the lots shall comply with the requirements of the project geotechnical report.
7. Submit a written statement signed by **an** authorized representative of the school district in which the project is located confirming payment in full of all applicable developer fees and other requirements lawfully imposed by the school district in which the project is located.
8. Any changes between the approved Tentative Map, including but not limited to the attached exhibits for preliminary grading, drainage, erosion control, preliminary improvement plans, architectural and landscaping plans, must be submitted for review and approval by the decision-making body. Such proposed changes will be included in a report to the decision making body to consider if they are sufficiently material to warrant consideration at a public hearing noticed in accordance with Section 18.10.223 of the County Code. Any changes that are on the final plans that in any way do not conform to the project conditions of approval shall be specifically illustrated on a separate sheet and highlighted in yellow on any set of plans submitted to the County for review.
9. Construction of the access road onto Cabrillo College Drive.

III. Prior to recordation of the Final Map, the following requirements shall be met:

- A. Pay a Negative Declaration filing fee of \$1,275.00 to the Clerk of the Board of the County of Santa Cruz as required by the California Department of Fish and Game mitigation fees program.
- B. Submit a letter of certification from the Tax Collector's Office that there are no outstanding tax liabilities affecting the subject parcels.
- C. Meet all requirements of the Santa Cruz County Sanitation District as stated in the District's letter dated May 1, 1998, including, without limitation, the following standard conditions:
 1. Submit and secure approval of an engineered sewer improvement plan providing sanitary sewer service to each parcel.

2. Pay all necessary bonding, deposits, and connection fees.
- D. Submit and secure approval of engineered improvement plans from the Department of Public Works for all roads, curbs and gutters, storm drains, erosion control, and other improvements required by the Subdivision Ordinance, noted on the attached tentative map and/or specified in these conditions of approval. A subdivision agreement backed by financial securities (equal to 150% of engineer's estimate of the cost of improvements), per Sections 14.01.510 and 511 of the Subdivision Ordinance, shall be executed to guarantee completion of this work. Phase One improvements (including line of sight improvements at Soquel Drive/Atherton Place and curb, gutter and sidewalk along Soquel Drive) shall be installed prior to construction of units 1-7, and Phase 2 improvements shall be installed prior to construction of Units 10-28 (including line of sight improvements at Cabrillo College Drive and Willowbrook Lane). A Plan Line study from Cabrillo College Drive to Park Avenue is required, with TIA fee credit extended for plan line costs (Attachment 6). Improvement plans shall meet the following requirements:
1. All improvements shall meet the requirements of the County of Santa Cruz Department of Public Works Design Criteria Manual except as modified in these conditions of approval. The improvement plans shall include a bus stop and bus turn out on Soquel drive at the Sessnon House.
 2. A detailed erosion and sediment control plan for the subdivision shall be integrated with the improvement plans and shall be submitted to the Planning Department, Environmental Planning Section, for review and approval prior to submittal to the Department of Public Works and approval of the Final Map. In order to prevent erosion, off site sedimentation, and pollution of creeks, the erosion control plan shall be revised to include the following items: a clearing and grading schedule that limits grading to the period of April 15 - October 15, clearly marked disturbance envelope, revegetation specifications, silt barrier installed to protect the riparian area, temporary road surfacing and construction entry stabilization, sediment barriers around drain inlets, etc. [CEQA D]
 3. A landscape plan for areas designated on the tentative map shall be submitted for Planning Department review and approval prior to submittal to the Department of Public Works. Wherever irrigation for landscaping is required, stub outs for water service shall be shown on the improvement plans. The

landscape plan shall be compared to the utility plan to prevent placement conflicts. No change in the landscape plan shall be granted without County review.

4. A full soils engineering investigation has been reviewed and accepted by the County Planning Department. A plan review letter from the geotechnical engineer shall be submitted with the plans, stating that the plans have been reviewed and found to be in compliance with the recommendations of the geotechnical report.
5. Engineered drainage plans shall be reviewed and approved by the Zone 5 drainage district. In order to offset the incremental addition of drainage to Porter Gulch the applicant shall pay drainage improvement fees to Drainage Zone 5. A plan review letter from the Geotechnical engineer accepting the final drainage plan is required and must confirm that the plan will not cause any erosion or stability problems on site or downstream from the site.
6. All new utilities shall be constructed underground. All facility relocations, upgrades or installations required for utilities service to the project shall be noted on the improvement plans. All preliminary engineering for such utility improvements is the responsibility of the developer.
7. Acquire all rights of way and easements and make all dedications thereof as needed for construction of required improvements. The owner shall reapply for approval of the land division should the owner or the County fail to acquire the necessary off-site easement for the access road onto Cabrillo College Drive. Any and all costs incurred by the County of Santa Cruz to obtain title to any property in the event that condemnation proceedings are necessary to implement this condition, shall be paid in full by the applicant/subdivider prior to the recording of the Final **Map**.
8. All improvements shall comply with applicable provisions of the Americans With Disabilities Act and/or Title 24 of the State Building Regulations.
9. To prevent drainage discharges from carrying silt, grease, and other contaminants into Sesnon Pond or Porter Gulch, the silt and grease trap(s) and detention systems shown on the improvement plans shall be maintained by the Homeowners Association according to the following monitoring and maintenance schedule: [CEQAE]

- a. The trap(s) shall be inspected to determine if they need cleaning or repair prior to October 15 of each year;
 - b. The applicant shall provide manufacturer's recommended maintenance procedures for the "Stormceptor" model to Department of Public Works staff;
 - c. A brief annual report shall be prepared by the inspector to at the conclusion of the October inspection and submitted to the Drainage Section of the Department of Public Works within 5 days of inspection. The report shall specify any repairs that have been done or that are needed for the trap to function well.
10. The following details shall be included on the final improvement plans:
- a. Street lighting design and placement.
 - b. Roadside/Roadway Exceptions shall be permitted as described in Condition II.D.3.a.
 - c. **A** permanent split rail or welded wire fence placed along the boundary line of the biotic reserve, to be in place prior to final clearance of the project by the Planning Department.
 - d. **An** operational conditional note as follows: "Ground disturbance within the riparian area for the drainage pipes and dissipaters shall occur between April 15th and October 15th, erosion control and replanting shall be in place prior to October 15th, and the work shall comply with the conditions given in the riparian exception".
 - e. **A** note on the improvement plans indicating that there are restrictions regarding bird populations and referring to the required pre-construction survey. [CEQA A]
 - f. To prevent accidental incursion into the riparian buffer, riparian corridor, and areas of native grass, the improvement plans shall clearly show temporary, four foot chain link fencing placed along the boundary of the riparian buffer and a minimum of twenty feet outward

from the edge of native grass areas. Fencing shall be in place prior to the start of grading and construction activities and shall remain until subdivision improvements are completed, revegetation is in place and the improvement bond is released by the Department of Public Works. [CEQA C]

g. In order to increase traffic safety the owner/applicant shall, prior to public hearing, revise the project plans as follows: [CEQA H]

1. The entrances on "Atherton Drive" and "Bowers Court" to reflect County design criteria for driveways (no curb returns);
- ii. Place stop signs at each end of "Bowers Circle"/Atherton Drive;
- iii. Improve sight distance at the southwest corner of Atherton Drive and Soquel Drive and at the north side of Cabrillo College Drive at Willowbrook as shown on Ifland, Sheet SD-1, 1-16-02.

E. Engineered improvement plans for all water line extensions required by the Soquel Creek Water District shall be submitted for the review and approval of the water agency.

F. A Homeowners Association (**HOA**) shall be formed to administer the Covenants, Conditions, and restrictions (CC&Rs) for this subdivision and assume responsibility for maintenance of all areas under common ownership including streets and emergency access roads. A final copy of the CC&Rs containing all revisions required by the California Department of Real Estate shall be provided to the Planning Department for review and approval prior to recordation. The CC&Rs shall include the following project-specific requirements:

1. To minimize erosion problems on the biotic reserve, pedestrian and pet access shall be prohibited.
2. The exterior elevations contained in Exhibit "A" shall be incorporated onto the CC&Rs.

3. All requirements of the Conditions of this permit shall be included in the CC&Rs.
 4. All common area landscaping, landscaping within the separated sidewalk, and associated irrigation required by these conditions of approval shall be maintained by the HOA.
 5. All fencing within the subdivision shall remain graffiti-free at all times.
 6. The silt and grease trap associated with the storm drain system shall be maintained by the HOA as specified by condition of approval III(D)(10).
 7. In order to preserve native grass areas and encourage the spread of native grasses into grasslands dominated by non natives, the HOA shall: [CEQA F]
 - a. Adhere to the maintenance and mowing plan, prepared by the project biologist, that includes spring and fall mowing schedule, and also includes an estimate of the cost of implementing the plan;
 - b. Provide language in the HOA Agreement that specifies how the maintenance and mowing plan will be funded and implemented by the Association.
- G. All requirements of the Central Fire District shall be met as set forth in the District's letter dated March 24, 1998.
- H. Park dedication in-lieu fees shall be paid for twenty-six (26) new single-family dwelling units. On February 26, 2002 these fees were \$800.00 per bedroom, but are subject to change. Park fees are waived for the four affordable units.
- J. Transportation improvement fees shall be paid for twenty-six (26) new single-family dwelling units. On February 26, 2002 these fees were \$2,000 per unit, but are subject to change. (CEQA I)
- K. Roadside improvement fees shall be paid for twenty-six (26) new dwelling units. On February 26, 2002, these fees were \$2,000 per unit, but are subject to change.
- L. Child Care Development fees shall be paid for twenty-six (26) new single-family dwelling units. On February 26, 2002 these fees were \$109 per bedroom, but are

subject to change.

M. Enter into a Certification and Participation Agreement with the County of Santa Cruz to meet the Affordable Housing Requirements specified by Chapter 17.10 of the County Code. Four units (Units **2**, **13**, **22** and **28**) are shown on the tentative map as the designated affordable units. These units will be the designated affordable units and they shall be constructed within the project site unless the Board of Supervisors exercises its discretion and approves the use of an alternative authorized under Section 17.10.030 (c) of the Santa Cruz County Code.

N. Owner shall record a Declaration of Restrictions and provide Planning Staff with proof of recordation, that the newly adjusted vacant parcel which is not part of the proposed subdivision, is transferred to a third party with the following deed restriction:

All future development proposals for this parcel shall be at a density that is no less than the lowest end of that density range set by the Urban High Residential designation of the 1994 General Plan/Local Coastal Program Land Use Plan, unless the land use designation for the parcel is revised by amendment of the General Plan/Local Coastal Program Use Plan. This restriction shall be binding upon all purchasers, and each and every successor in interest thereto and shall run with the land affected thereby. This restriction shall be enforceable whether or not this restriction is cited in future deeds or in any other document at time of transfer. This restriction shall be enforceable by the County of Santa Cruz. This parcel may not be encumbered in a manner that would be inconsistent with this restriction.

IV. All subdivision improvements shall be constructed in accordance with the approved improvement plans and in conformance with the requirements of the subdivision agreement recorded pursuant to condition III.D. The construction of subdivision improvements shall also meet the following conditions:

- A. All work adjacent to or within a County road shall be subject to the provisions of Chapter 9.70 of the County Code, including obtaining an encroachment permit where required. Where feasible, all improvements adjacent to or affecting a County road shall be coordinated with any planned County-sponsored construction on that road.
- B. No land clearing, grading or excavating shall take place between October 15 and April 15 unless a separate winter erosion-control plan is approved by the Planning Director.

- C. No land disturbance shall take place prior to issuance of building permits (except the minimum required to install required improvements, provide access for County required tests or to carry out other work specifically required by another of these conditions).
- D. Pursuant to Sections 16.40.040 and 16.42.100 of the County Code, if at any time during site preparation, excavation, or other ground disturbance associated with this development, any artifact or other evidence of an historic archaeological resource or a Native American cultural site is discovered, the responsible persons shall immediately cease and desist from all further site excavation and notify the Sheriff-Coroner if the discovery contains human remains, or the Planning Director if the discovery contains no human remains. The procedures established in Sections 16.40.040 and 16.42.100, shall be observed.
- E. Construction of improvements shall comply with the requirements of the project geotechnical report. The geotechnical engineer shall inspect the completed project and certify in writing that the improvements have been constructed in conformance with the geotechnical report.
- F. To minimize noise, dust, and nuisance impacts on surrounding properties to insignificant levels during construction, the owner/applicant shall, or shall have the project contractor, comply with the following measures during all construction work:
 - 1. Limit all construction to the time between 8:00 A.M. and 5:00 P.M. weekdays, unless a temporary exemption to this time restriction is approved in advance by the Planning Department to address an emergency situation.
 - 2. Each day it does not rain, wet all exposed soil frequently enough to prevent significant amounts of dust from leaving the site. Street sweeping on adjacent or nearby streets may be required to control the export of excess dust and dirt.
 - 3. The owner/developer shall designate a disturbance coordinator to respond to citizen complaints and inquiries from area residents during construction. A 24-hour contact number shall be conspicuously posted on the job site. The name, phone number and nature of the disturbance shall be recorded by the disturbance coordinator. The disturbance coordinator shall investigate complaints and take remedial action, if necessary, within 24 hours of receipt of the complaint or inquiry. Unresolved complaints received by County staff from area residents may result in the prescription of additional Operational Conditions.

4. Saw cuts within the traveled roadway, which cause temporary depressions in the surfacing prior to repair, shall be leveled with temporary measures and signage shall be posted noting such.
- G. All required subdivision improvements shall be installed and inspected prior to final inspection clearance for any new structure on the subdivision lots.
 - H. The project engineer who prepares the grading plans must certify that the grading was completed in conformance with the approved tentative map or the engineered improvement plans.
 - I. A preconstruction meeting between the developer and the Department of Public Works shall be held to conduct a survey of the existing condition of Atherton Drive. This survey shall be submitted in written form to the Planning Department prior to any site disturbance. Prior to final of the last residence, a postconstruction survey of Atherton Drive shall be prepared in the same manner. Damage done to Atherton Drive which can reasonably be attributed to the construction activity of this project shall be repaired by the developer under the direction of and specification by the Department of Public Works. Capital improvement bonds will be held for these repairs. Bonds shall be released by the Department of Public Works upon completion and acceptance of any required repairs.
 - J. In order to mitigate disturbance to three types of bird that are of special concern, Loggerhead shrike (*Lanius Ludovicianus*) , Yellow warbler (*Dendroicapetechia brewsteri* } and various species of raptor, the following shall occur: (CEQA A.)
 1. Between thirty days and twenty one days prior to the start of disturbance on the property the project biologist shall conduct pre-construction surveys to determine whether any nests of the above types of birds are present. The biologist shall submit this survey to the Environmental Coordinator for review at least 14 days prior to site disturbance.
 - a. If nest(s) are found, the location shall be plotted on the improvement plans along with a 200 foot radius no-disturbance zone around each nest. To avoid accidental incursion into the no disturbance zone chain link fencing with "no entry" signs shall be installed on the perimeter of the zone. Prior to site disturbance, the applicant/owner shall arrange for field inspection by Environmental

Planning staff to verify proper installment of the fencing. The no-disturbance zone signs and fencing shall remain in place until the Environmental Coordinator approves written documentation from the project biologist that certifies that the young in the nest(s) have fledged and the nest(s) are no longer active; If none of the above listed birds are nesting on site, the owner/applicant shall obtain written acceptance of the survey and permission to begin site disturbance from the Environmental Coordinator.

2. Prior to site disturbance the applicant/owner shall organize a pre-construction meeting on site among the contractor, Department of Public Works inspector, and Environmental Planning staff to ensure that all parties are aware of restrictions to mitigate impacts to birds.

K. To minimize disturbance in the riparian buffer and corridor the following shall occur: (CEQA B)

- 1 The proposed location of the drainage pipes and dissipaters shall be staked in the field and shall be inspected by the project biologist prior to any ground disturbance. The project biologist shall submit a letter to Environmental Planning staff verifying that the drainage works are located such that the minimum possible amount of vegetation is being removed and that no mature trees are being removed. The biologist shall calculate the amount of lost vegetation and shall provide a plan for replacement at 3:1 of in-kind native species. Non-native vegetation need not be replaced;
2. Ground disturbance for the installation of drainage pipes and dissipaters shall not occur after October 1st. Erosion control and replanting shall be in place prior to October 15th.

V. All future development on lots created by this subdivision shall comply with the requirements set forth in Condition II.E.

VI. In the event that future County inspections of the subject property disclose non-compliance with any Conditions of this Approval or any violation of the County Code, the owner shall pay to the County the full cost of such County inspections, including any follow-up inspections and/or necessary enforcement actions, up to and including Approval revocation.

- VII. As a condition of this development approval, the holder of this development approval ("Development Approval Holder"), is required to defend, indemnify, and hold harmless the COUNTY, its officers, employees, and agents, from and against any claim (including attorneys' fees), against the COUNTY, its officers, employees, and agents to attack, set aside, void, or annul this development approval of the COUNTY or any subsequent amendment of this development approval which is requested by the Development Approval Holder.
- A. COUNTY shall promptly notify the Development Approval Holder of any claim, action, or proceeding against which the COUNTY seeks to be defended, indemnified, or held harmless. COUNTY shall cooperate fully in such defense. If COUNTY fails to notify the Development Approval Holder within sixty (60) days of any such claim, action, or proceeding, or fails to cooperate fully in the defense thereof, the Development Approval Holder shall not thereafter be responsible to defend, indemnify, or hold harmless the COUNTY if such failure to notify or cooperate was significantly prejudicial to the Development Approval Holder.
- B. Nothing contained herein shall prohibit the COUNTY from participating in the defense of any claim, action, or proceeding if both of the following occur:
1. COUNTY bears its own attorney's fees and costs; and
 2. COUNTY defends the action in good faith.
- C. Settlement. The Development Approval Holder shall not be required to pay or perform any settlement unless such Development Approval Holder has approved the settlement. When representing the County, the Development Approval Holder shall not enter into any stipulation or settlement modifying or affecting the interpretation or validity of any of the terms or conditions of the development approval without the prior written consent of the County.
- D. Successors Bound. "Development Approval Holder" shall include the applicant and the successor(s) in interest, transferee(s), and assign(s) of the applicant.
- E. Within 30 days of the issuance of this development approval, the Development Approval Holder shall record in the office of the Santa **Cruz** County Recorder an agreement that incorporates the provisions of this condition, or this development approval shall become null and void.

VIII. Mitigation Monitoring Program

The mitigation measures listed under this heading have been incorporated into the conditions of approval for this project in order to mitigate or avoid significant effects on the environment. As required by Section 21081.6 of the California Public Resources Code, a monitoring and reporting program for the above mitigations is hereby adopted as a condition of approval for this project. This monitoring program is specifically described following each mitigation measure listed below. The purpose of this monitoring is to ensure compliance with the environmental mitigations during project implementation and operation. Failure to comply with the conditions of approval, including the terms of the adopted monitoring program, may result in permit revocation pursuant to Section 18.10.462 of the Santa Cruz County Code.

A. Mitigation Measure: Protection of Birds [Conditions III.D.10.e, IV.J.1 & IV.J.2]

Monitoring Program: Prior to commencement of any site disturbance, the project site will be field surveyed for three types of birds that are of special concern: Loggerhead shrike (*Lanius Ludovicianus*), Yellow warbler (*Dendroica petechia brewsteri*) and various species of raptor. Failure to conduct these studies prior to the commencement of any site disturbance will result in the suspension or delay of issuance of any grading or building permit. If nests are found, a 200-foot radius no disturbance zone shall be established around each nest. No-disturbance zone signs and fencing shall remain in place until the Environmental Coordinator approved written documentation from the project biologist that certifies that the young have fledged and the nests are no longer active. If none of the above listed birds are nesting on site, the owner/applicant shall obtain written acceptance of the survey and permission to begin site disturbance from the Environmental Coordinator. Inspections will be conducted to verify that all construction has been performed in accordance with the recommendations of the biotic report and the approved plans. Correction notices ~~will~~ be issued in the event of noncompliance.

B. Mitigation Measure: Protection of Riparian Buffer and Corridor/Drainage Infrastructure [Conditions IV.K.1]

Monitoring Program: Prior to commencement of any site disturbance, the proposed location of the drainage infrastructure will be staked in the field for the project biologist's review and approval. The project biologist shall submit a letter to Environmental Planning staff verifying that the drainage works are located such that the minimum possible amount of vegetation is being removed and that no mature

trees are being removed. The biologist shall calculate the amount of lost vegetation and shall provide a plan for replacement at a ratio of 3:1 of in-kind native species. Failure to obtain the approval of the project biologist prior to the commencement of any site disturbance will result in the suspension or delay of issuance of any grading or building permit. Inspections will be conducted to verify that all construction has been performed in accordance with the recommendations of the biotic report and the approved plans. Correction notices will be issued in the event of noncompliance.

C. Mitigation Measure: Protection of Riparian Buffer and Corridor/Construction Impacts [Condition III.D.10.f]

Monitoring Program: Prior to commencement of any site disturbance, protective fencing shall be erected along the boundary of the riparian corridor and a minimum of twenty feet outward from the of the native grass land. Failure to erect the protective four-foot chain link fencing prior to the commencement of any site disturbance will result in the suspension or delay of issuance of any grading or building permit. Inspections will be conducted to verify that all construction has been performed in accordance with the recommendations of the biotic report and the approved plans. Correction notices will be issued in the event of noncompliance.

D. Mitigation Measure: Erosion Control [Condition III.D.2]

Monitoring Program: Prior to recordation of the Final Map, the improvement plans will be reviewed and accepted by the Environmental Planning Section of the Planning Department and the County Surveyor. The improvement plans will include a clearing and grading schedule that limits grading to the period of April 15 – October 15, clearly marking the disturbance envelope, re-vegetation specifications, silt barriers installed to protect the riparian area, temporary road surfacing and construction entry stabilization, and sediment barriers around drain inlets. Inspections will be conducted to verify that the construction of all subdivision improvements is performed in accordance with the approved plans. Correction notices will be issued in the event of noncompliance.

E. Mitigation Measure: Protection of Riparian Areas/Drainage Discharge Quality [Condition III.D.9]

Monitoring Program: The **HOA** will maintain the "Stormceptor" silt and grease traps, and submit yearly maintenance reports to the Department of Pubic Works. Correction notices will be issued in the event of noncompliance.

F. Mitigation Measure: Native Grassland Maintenance [Conditions III.F.7.a & b]

Monitoring Program: The existing native grass stands which include purple needlegrass (*Nassella pulchra*), wild rye (*Elymus glaucus*) and California oatgrass (*Danthonia californica*) shall be protected from construction disturbance with four-foot tall chain link fencing placed at a minimum of 20-feet from the outward edge of the native grass stands. The open space grassland areas shall be perpetually maintained with seasonal mowing to encourage the growth of native grasses and forbs. Mowing shall be conducted in the spring and fall, mowing grass to four inches. The maintenance program shall be written by the project biologist and approved by the Environmental Coordinator and shall be funded by the Homeowner's Association. Annual reports shall be submitted to the Planning Department. Correction notices will be issued in the event of noncompliance.

G. Mitigation Measure: Acoustical Standards [Condition II.D.3.d]

Monitoring Program: Prior to obtaining a building permit for Units 21 and 22, the acoustical engineer shall submit a plan check letter verifying that the interior and exterior spaces will meet the noise thresholds specified by the General Plan. Inspections will be conducted to verify that all construction has been performed in accordance with the recommendations of the acoustical report and the approved plans. Furthermore, construction activity shall be limited to weekdays 8:00 AM - 5:00 PM. Correction notices will be issued in the event of noncompliance.

H. Mitigation Measure: Traffic Safety [Conditions III.D.10.g.i - iii]

Monitoring Program: Prior to occupancy, all required on- and off-site traffic improvements shall be complete. Inspections will be conducted by the Department of Public Works to verify that all improvements have been installed in accordance with the approved plans. Correction notices will be issued in the event of noncompliance.

I. Mitigation Measure: Incremental Traffic Impacts [Conditions III.F.8, 11J & III.K]

Monitoring Program: Prior to filing a Tentative Map, all required Transportation Area Improvement Fees will be paid in full to be used as a fair share contribution towards future traffic improvements. Correction notices will be issued in the event of noncompliance.

**AMENDMENTS TO THIS LAND DIVISION APPROVAL SHALL BE
PROCESSED IN ACCORDANCE WITH CHAPTER 18.10 OF THE COUNTY CODE.**

This Tentative Map is approved subject to the above conditions and the attached map, and expires 24 months after the 14-day appeal period. The Final Map for this division, including improvement plans if required, should be submitted to the County Surveyor for checking **at least 90 days** prior to the expiration date and in no event later than 3 weeks prior to the expiration date.

cc: County Surveyor

Approval Date: ____ / ____ / 2002

Effective Date: ____ / ____ 12002

Expiration Date: ____ / ____ 12004

. COUNTY OF SANTA CRUZ
STATE OF CALIFORNIA



AT THE BOARD OF SUPERVISORS MEETING

On the Date of January 8, 2002

REGULAR AGENDA Item No. 055

0288

(Zontinued public hearing to consider Planning Commission's denial of Application #98-0148 to construct 12 semi-detached and 46 detached townhouses (in three phases on a common parcel with a minimum "Restricted Common Area" of 3,000 square feet minimum (per dwelling unit; three new roads: "Bowman Court", "Bowman Circle" and an emergency access drive; five (parking areas totaling 28 spaces; drainage systems (discharging to an existing pond and to an existing (gully along Porter Gulch Creek; two retaining walls up (to four feet in height and one retaining wall up to (eight feet in height; and an overlook. Grading on (Parcel 037-251-21 consists of 4,800 cubic yard of cut (and fill, and grading on Parcel 037-251-22 consists of (5,200 cubic yards of cut and fill. The rear of both (parcels would be retained as open space. The project (requires a Subdivision, Roadway/Roadside Exceptions, a (Riparian Exception for the drainage systems releasing (into the Riparian Corridor, and Preliminary Grading (Approval; and
(Public hearing to consider the developer's revised (proposal to construct four semi-detached townhouses (and (29) detached townhouses, in two phases, on a (common parcel with a minimum restricted common area of (3,000 square feet minimum per dwelling unit; two new (private streets and an emergency access drive; four (parking areas totaling (19) spaces; drainage systems (discharging into an existing gully along Porter Gulch (Creek; two retaining walls up to four feet in height (and one retaining wall up to six feet in height, (grading on APN 037-251-21 consists of 7,690 cubic (yards of cut and fill, balanced on the site. The rear (Riparian Woodland) of the parcel, an area totaling (8.5 acres, would be maintained as open space. The (proposed lot line adjustment between APN 037-251-21 (and 037-251-22 results in the transfer of 5.05 acres (to APN 037-251-22. The project requests a Subdivision, (Roadway/Roadside Exceptions, Riparian Exception, (Preliminary Grading approval, and a Lot Line (Adjustment, Property located on the south side of (Cabrillo College Drive and south side of Soquel Drive, (just east of Atherton Drive, in Aptos;

State of California, County of Santa Cruz-ss.

I, Susan A. Mauriello, Ex-officio Clerk of the Board of Supervisors of the County of Santa Cruz, State of California, do hereby certify that the foregoing is a true and correct copy of the order made and entered in the Minutes of said Board of Supervisors. In witness thereof I have hereunto set my hand and affixed the
of said Board of Supervisors.

Page 1 of 4

COUNTY OF SANTA CRUZ

STATE OF CALIFORNIA

P.T THE BOARD OF SUPERVISORS MEETING

On the Date of January 8, 2002

REGULAR AGENDA Item No. 055



0289

(corrections to staff report dated January 8, 2002 are as follows: (a) page 4, Construction phasing includes: (Phase I (Lots 1-14): should read: "2" affordable, semi detached homes; "12" market-rate, detached homes (b) (page 8, the referenced attachment should be (Attachment 11) (c) page 11, the first line should read: eminent domain, which "may" not serve a public interest (d) page 12, the number at the bottom center of page should be "85" and (e) page 13, the number at the bottom center of the page should be "86" ((1) motion to accept the new revision as proposed (including acceptance of the negative declaration and the request for a lot line adjustment; motion failed ((2) motion to continue to February 26, 2002 at 7:30 P.M. the hearings on the denial of the original application and the revised proposal; with an additional directive that the Planning staff draft conditions of approval for parcels 8 through 33 as proposed, answer as to whether you can transfer the density credits to the new owner, and list options in terms of the covenants that can be put on the vacant parcel while it is still owned by the current developer; clarified that the Board would be advised of any issues raised by the lot line and strategies for a phased approach to the entire parcel, as well as, the prior direction that the Redevelopment Agency continue to work with the developer...

Continued public hearing to consider Planning Commission's denial of Application #98-0148 to construct 12 semi-detached and 46 detached townhouses in three phases on a common parcel with a minimum "Restricted Common Area" of 3,000 square feet minimum per dwelling unit; three new roads: "Bowman Court", "Bowman Circle" and an emergency access drive; five parking areas totaling 28 spaces; drainage systems discharging to an existing pond and to an existing gully along Porter Gulch Creek; two retaining walls up to four feet in height and one retaining wall up to eight feet in height; and an overlook. Grading on Parcel 037-251-21 consists of 4,800 cubic yard

State of California, County of Santa Cruz-ss.

I, Susan A. Mauriello, Ex-officio Clerk of the Board of Supervisors of the County of Santa Cruz, State of California, do hereby certify that the foregoing is a true and correct copy of the order made and entered in the minutes of said Board of Supervisors. In witness thereof I have hereunto set my hand and affixed the seal of said Board of Supervisors.

Page 2 of 4

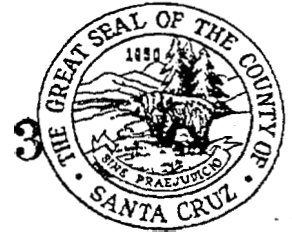
39

'COUNTY OF SANTA CRUZ
STATE OF CALIFORNIA

AT THE BOARD OF SUPERVISORS MEETING

On the Date of January 8, 2002

ATTACHMENT



REGULAR AGENDA Item No. 055

0290

of cut and fill, and grading on Parcel 037-251-22 consists of 5,200 cubic yards of cut and fill. The rear of both parcels would be retained as open space. The project requires a Subdivision, Roadway/Roadside Exceptions, a Riparian Exception for the drainage systems releasing into the Riparian Corridor, and Preliminary Grading Approval; and

Public hearing to consider the developer's revised proposal to construct four semi-detached townhouses and (29) detached townhouses, in two phases, on a common parcel with a minimum restricted common area of 3,000 square feet minimum per dwelling unit; two new private streets and an emergency access drive; four parking areas totaling (19) spaces; drainage systems discharging into an existing gully along Porter Gulch Creek; two retaining walls up to four feet in height and one retaining wall up to six feet in height, grading on APN 037-251-21 consists of 7,690 cubic yards of cut and fill, balanced on the site. The rear (Riparian Woodland) of the parcel, an area totaling 8.5 acres, would be maintained as open space. The proposed lot line adjustment between APN 037-251-21 and 037-251-22 results in the transfer of 5.05 acres to APN 037-251-22. The project requests a Subdivision, Roadway/Roadside Exceptions, Riparian Exception, Preliminary Grading approval, and a Lot Line Adjustment, Property located on the south side of Cabrillo College Drive and south side of Soquel Drive, just east of Atherton Drive, in Aptos; corrections to staff report dated January 8, 2002 are as follows: (a) page 4, construction phasing includes Phase I (Lots 1-14) should read: "2" affordable, semi-detached homes; "12" market-rate, detached homes (b) page 8, the referenced attachment should be (Attachment 11) (c) page 11, the first line should read: eminent domain, which "may" not serve a public interest (d) page 12, the number at the bottom center of page should be "85" and (e) page 13, the number at the bottom center of the page should be "86"

Motion made by Supervisor Pirie, duly seconded by Supervisor Beautz, to accept the new revision as proposed including acceptance of the negative declaration and the request for a lot line adjustment; motion failed; with Supervisors Wormhoudt, Campos and Almquist voting "no";

Upon the motion of Supervisor Almquist, duly seconded by Supervisor Wormhoudt, the Board, with Supervisors Pirie and Beautz voting

State of California, County of Santa Cruz-ss.

I, Susan A. Mauriello, Ex-officio Clerk of the Board of Supervisors of the County of Santa Cruz, State of California, do hereby certify that the foregoing is a true and correct copy of the order made and entered in the Minutes of said Board of Supervisors. In witness thereof I have hereunto set my hand and affixed the seal of said Board of Supervisors.

Page 3 of 4

COUNTY OF SANTA CRUZ

STATE OF CALIFORNIA



0291

AT THE BOARD OF SUPERVISORS MEETING

On the Date of January 8, 2002

REGULAR AGENDA Item No, 055

"no", continued to February 26, 2002 at 7:30 P.M. the hearings on the denial of the original application and the revised proposal, with an additional directive that the Planning staff draft conditions of approval for parcels 8 through 33 as proposed, answer as to whether you can transfer the density credits to the new owner, and list options in terms of the covenants that can be put on the vacant parcel while it is still owned by the current developer; clarified that the Board would be advised of any issues raised by the lot line and strategies for a phased approach to the entire parcel, as well as, the prior direction that the Redevelopment Agency continue to work with the developer.

cc:

Brad Bowman
Richard Beale, Land Use Planning, Inc.
Charlene B. Attack, Law Offices of Bosso, Williams
Wendy Richardson
Ken Hart, Environmental Coordinator, County of Santa Cruz
Tom Burns, Redevelopment Director, County of Santa Cruz
County Counsel

State of California, County of Santa Cruz-ss.

I, Susan A. Mauriello, Ex-officio Clerk of the Board of Supervisors of the County of Santa Cruz, State of California, do hereby certify that the foregoing is a true and correct copy of the order made and entered in the minutes of said Board of Supervisors. In witness thereof I have hereunto set my hand, and affixed the seal of said Board of Supervisors.

Page 4 of 4

by Sharon Mitchell, Deputy Clerk, ON January 16, 2002.

39

LAW OFFICES OF
**BOSSO, WILLIAMS, SACHS,
 ATACK & GALLAGHER
 AND PETER L. SANFORD**
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0292
 ATTACHMENT 4

ROBERT E. BOSSO
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• CERTIFIED SPECIALIST IN TAXATION
 LAW, THE STATE BAR OF CALIFORNIA,
 BOARD OF LEGAL SPECIALIZATION

February 5, 2002

Rahn Garcia
 County Counsel
 Santa Cruz county
 701 Ocean Street
 Santa Cruz, CA 95060

**Re: Redesigned Project - Deed Restrictions for Vacant Parcel
 Atherton Place - Application # 98-0148**

Dear Rahn:

The Board of Supervisors requested that the Applicant propose conditions which would require overall project density within the General Plan range and provide for construction on site of the affordable housing units in a timely manner. On behalf of the Applicant, I suggest that the following be added to the Conditions of Approval:

1. **Density.** Prior to filing of the final map for the subdivision, Owner shall provide Planning Staff with proof in the form of a copy of a recorded deed that the newly adjusted vacant parcel (the "Vacant Parcel"), which is not part of the subdivision, is transferred to a third party with the following deed restriction:

All future development of this parcel shall be at no less than that density consistent with the designation of Urban High Residential of the General Plan and the applicable zoning unless the parcel is re-zoned or the General Plan is amended. This restriction shall be binding upon all purchasers, and each and every successor in interest thereto and shall run with the land affected thereby. This restriction shall be enforceable whether or not this restriction is cited in future deeds or in any other document at time of transfers.

February 5, 2002

Page 2

0293

2. Construction of Affordable Units for Atherton Project. Owners agrees that the required affordable housing units for this subdivision will be constructed on the Atherton Project site or on the Vacant Parcel in the following manner:

Owner shall designate four (4) affordable housing units to be constructed on the Atherton Project site. In the event that prior to occupation of all of the four (4) affordable housing units either: (1) a tentative subdivision map is approved by the County for the Vacant Parcel; or (2) the Vacant Parcel is transferred to a non-profit housing developer, Owner shall have the option of satisfying the obligation of providing those affordable units not yet occupied by developing the remaining affordable housing units on the Vacant Parcel or transferring the obligation to develop said housing units on the Vacant Parcel to said agency. Said obligation shall be in addition to any such units required by the County for the development of the Vacant Parcel. County agrees to diligently process a development application for development of the Vacant Parcel.

In addition, there was a question from one Board member with regard to transfer of density credit. While the applicant is willing to agree to such a transfer, it is my understanding that there is no County provision allowing for such a transfer.

I look forward to discussing your comments on these conditions at your earliest convenience.

Very truly yours,


Charlene B. Attack

CBA:kj

Ifland Engineers, Inc.
 Civil Engineering & Structural Design
 1100 Water Street
 Santa Cruz, CA 95062
 831.426.5313 Fax 831.426.1769
 www.iflandengineers.com

FAX COVER SHEET

0294

Number of pages including cover sheet: 1

TO: Rich Beale
RE: Atherton Place
FAX PHONE: 425-1565

FROM: Glen H. Ifland
PROJECT #: 97278
DATE: February 5, 2002

REMARKS: ☐ Urgent ☒ For your use ☒ As requested ☐ Please Comment

Confidential: The information contained in this facsimile transmission is intended only for the addressee. Any use, review, dissemination, distribution or copying of this transmission by anyone other than the addressee is strictly prohibited.

Area Breakdown

Parcel A - 218,573 Sq. Ft. (5.017 Ac.)
 Parcel B - 560,399 Sq. Ft. (12.865 Ac.)
778,972 Sq. Ft. (17.882 Ac.)

Parcel B Breakdown

Open Space 301,251 Sq. Ft. (6.916 Ac.)
 Gross Developable Land 259,162 Sq. Ft. (5.959 Ac.)
 Area of Bowers Court (within Parcel B only) 24,837 Sq. Ft. (0.510 Ac.)
 Area of sloped in excess of 30% 17,474 Sq. Ft. (0.40 Ac.)

Net Developable Land = 216,851 Sq. Ft. (4.976 Ac.)


216,851 ÷ 28 lots = 7,745 Sq. Ft. per lot

COUNTY OF SANTA CRUZ
INTER-OFFICE CORRESPONDENCE

ATTACHMENT 6

DATE : February 5, 2002 0295

TO: Joan Van der Hoeven, Planning Department

FROM: Jack Sohriakoff, Department of Public Works 

SUBJECT: ATHERTON PLACE, ADDITIONAL COMMENTS, 28 LOT SUBDIVISION, TRACT 1409, APPLICATION NUMBER 98-0148, APN:037-251-21 AND -22

The Transportation and Road Planning Engineering section has reviewed the revised plans dated January 16, 2002, for the above referenced project and makes the following comments.

1. The proposed access road from Cabrillo College Drive requires an exception request to be approved by the Board of Supervisors. Staff cannot recommend approval of the proposed roadway since it does not meet current design criteria standards. The exception request process requires the cross-sections to be included on the plans indicating the standard requirements and the proposed section. These sections must be on the same page so the approving body can readily compare the differences. If the roadway is approved without meeting current design criteria standards, it is recommended that the roadway be privately maintained by the homeowners.
2. The project applicant proposes to accommodate parking with perpendicular parking stalls adjacent to the new street. This is not recommended due to public health and safety reasons. Other subdivisions have provided a standard parking lot within the subdivision to offset the lack of on-street parking. If the applicant is granted an exception to the roadway standards and on-street parking is not accommodated, it is recommended that a standard parking lot be designed for the additional parking.
3. The project applicant now proposes to access Cabrillo College Drive which is a County maintained roadway and has a functional classification as a collector street. Cabrillo College Drive immediately south of Soquel Drive has recently been realigned and improved with sidewalks and bike lanes.

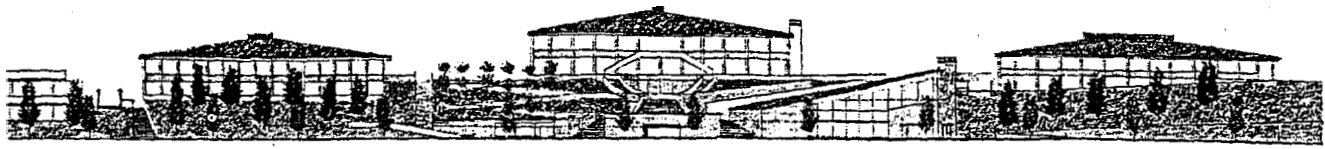
The rest of Cabrillo College Drive from Twin Lakes Church 'to Park Avenue does not have roadside improvements or bike lanes. It is recommended that the project applicant be required to conduct a plan line study of Cabrillo College Drive from Park Avenue to the recently constructed portion. Although the plan line is normally recommended to be approved by the Board of Supervisors prior to determining a complete application for the project proposal, this particular timeline, however, is not appropriate for the project since it is already deemed as a complete application. County Code allows two alternative timelines for a plan line to be approved by the Board of Supervisors: prior to the first public hearing for the subdivision; and, prior to filing the final map. If there is an issue with time constraints associated with taking the project application to a public hearing before the Board of Supervisors, it would **be** appropriate to condition the project to do the plan line prior to filing the final map.

4. The project applicant is required to provide frontage improvements along Soquel Drive including curb, gutter, and sidewalk. These improvements are critical to completing the pedestrian network in this area. The current plan does not show these improvements. Previous plan submittals did include these improvements as part of the subdivision.
5. It is recommended that all previously proposed improvements to increase the sight distance at the intersections of Soquel Drive/Atherton Drive and Cabrillo College Drive/Willowbrook Lane be required as a condition of this project.
6. The Aptos Transportation Improvement Area (TIA) fees are required for all newly created lots. The current Aptos TIA fee is \$2000 per lot for transportation improvements, and \$2000 per lot for roadside improvements. The plan line for Cabrillo College Drive would be eligible for TIA fee credit at the current rate of \$2.00 per lineal foot of roadway.

Other specific previous comments regarding this project may be applicable. Please contact me or Greg Martin, Civil Engineer, at extension 2160 if you have any questions.

JRS:abc

ATHERA



Cabrillo College • *Celebrating 40 Years of Excellence*

ATTACHMENT

7

January 29, 2002

0298

Santa Cruz County Board of Supervisors
701 Ocean Street, Rm. 500
Santa Cruz, CA 95060

Members of the Board of Supervisors:

Like employees at other public institutions in Santa Cruz County, faculty and staff at Cabrillo College face increasing difficulty in finding affordable housing within commuting distance to the college. In many cases, highly-qualified candidates for faculty positions have withdrawn their applications once they discover the availability and cost of housing. We are also **finding** it difficult to attract and retain management and staff positions at all levels, given the housing situation.

The Atherton Place property, immediately adjacent to the college's Aptos campus, has received significant attention from the Board of Supervisors in recent months. Because of its proximity to the college, this property would obviously be an ideal location for housing for Cabrillo faculty and staff. While the college is not able to participate financially to this end with a direct budget appropriation, we may be able to participate through other financial mechanisms or sources. We have discussed our need and interest with the current owner of the property as well as non-profit developers, including Mid-Peninsula Housing Coalition. At this time the project is not yet moving in a direction that would provide a housing option for any Cabrillo faculty and staff.

Providing moderately-priced housing, either for rent or purchase, with priority given to Cabrillo faculty and staff, would be a "win-win" for the college and the county and the residents we both serve. Faculty **and** staff would be able to walk to work as well as walk to the Cabrillo Child-Care Center to drop off pre-school children. Traffic on Highway One and other county roads would be reduced, as well as pressure on limited campus parking.

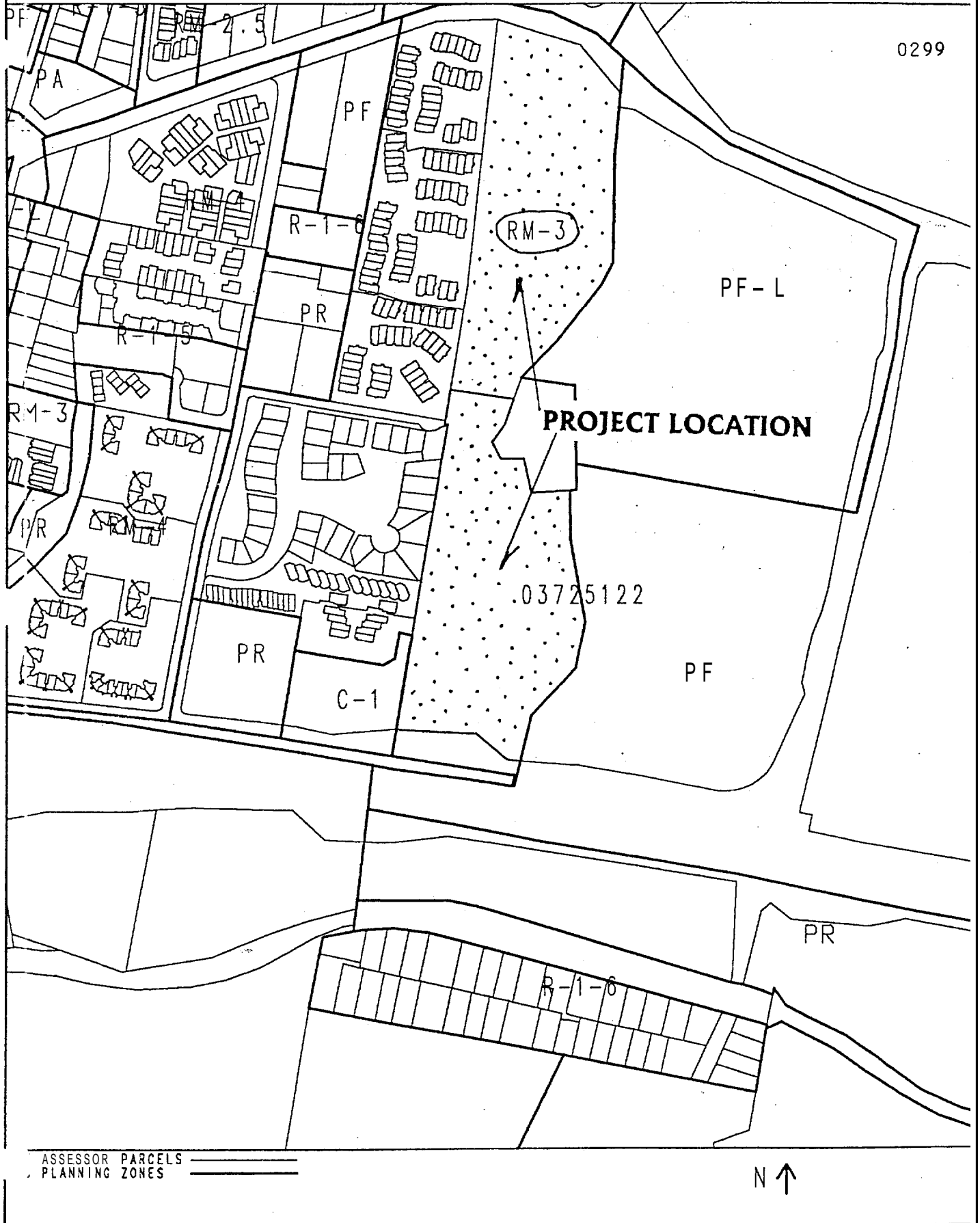
As you consider proposals for the development of the Atherton Place property, we urge you to work toward a solution that would result in a "win-win" for the community and the college. I would be pleased to work with the Board of Supervisors and/or whomever you suggest to achieve this end.

Sincerely,

John D. Hurd
President

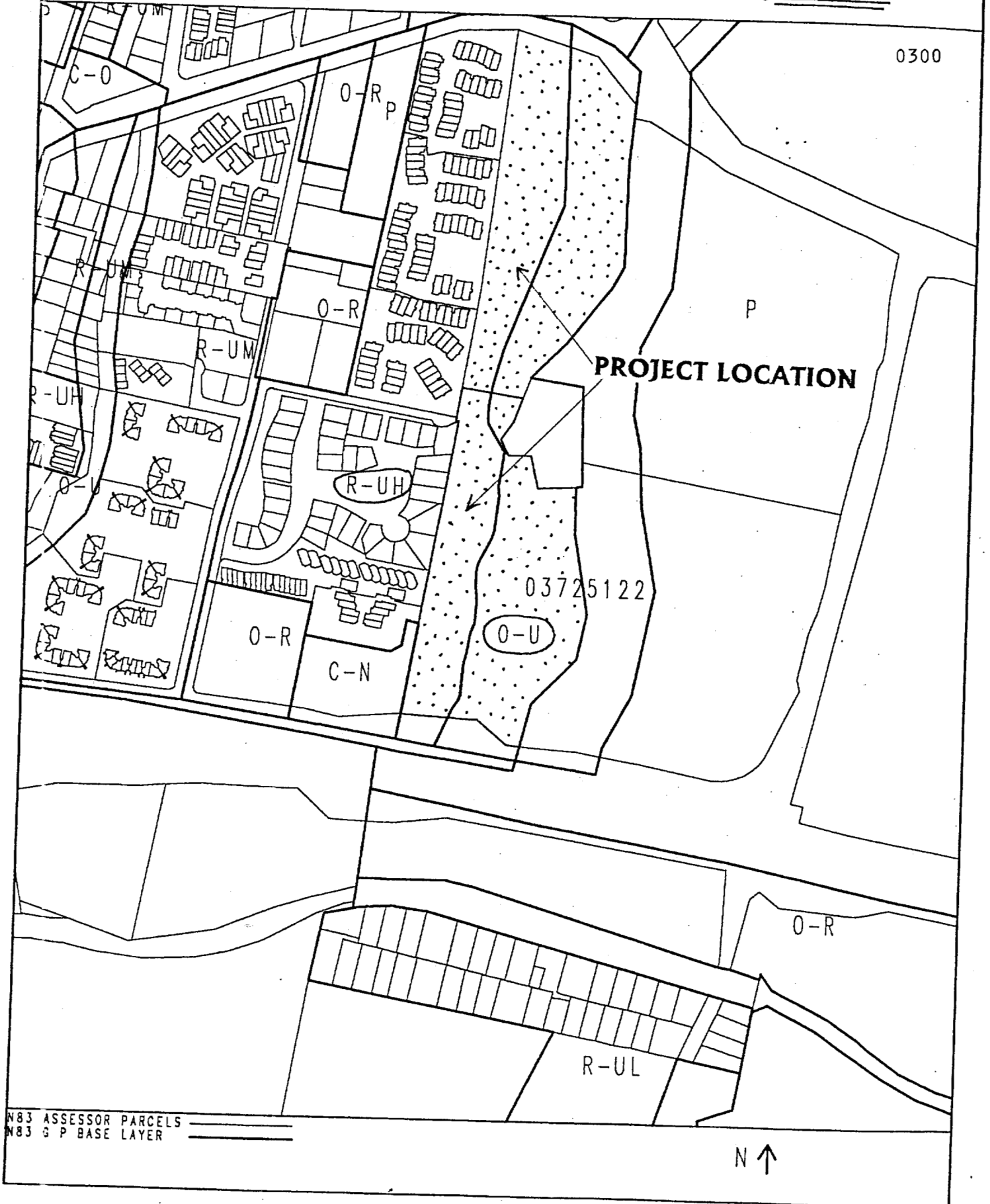
SCALE (FT/INCH) = 401
 WIDTH IN FEET = 2,973.75
 DEPTH IN FEET = 3,547.02

REQUEST ID: zoning



SCALE (FT/INCH) = 401
 WIDTH IN FEET = 2,973.75
 DEPTH IN FEET = 3,547.02

REQUEST ID: gen plan



0301

ROBERT E. BOSSO
 LLOYD R. WILLIAMS
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* CERTIFIED SPECIALIST IN TAXATION
 LAW, THE STATE BAR OF CALIFORNIA,
 BOARD OF LEGAL SPECIALIZATION

February 20, 2002

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

**Re: Redesigned Project - Proposed Option
 Atherton Place - Application # 98-0148**

Dear Chairperson and Board Members:

On behalf of the Project Applicant, I am confirming in writing a proposal offered at the previous hearing for the Board's further consideration. The proposal is to adjust the lot line of the Project immediately around the development area as shown on the map attached hereto. The Project would continue to maintain the riparian and buffer area immediately adjacent to the Project on its easterly boundary and reserve right of ways to the Project as further described in the attached conditions.

If you have any questions or require further information, please contact me or Rich Beale.

Very truly yours,



Charlene B. Attack

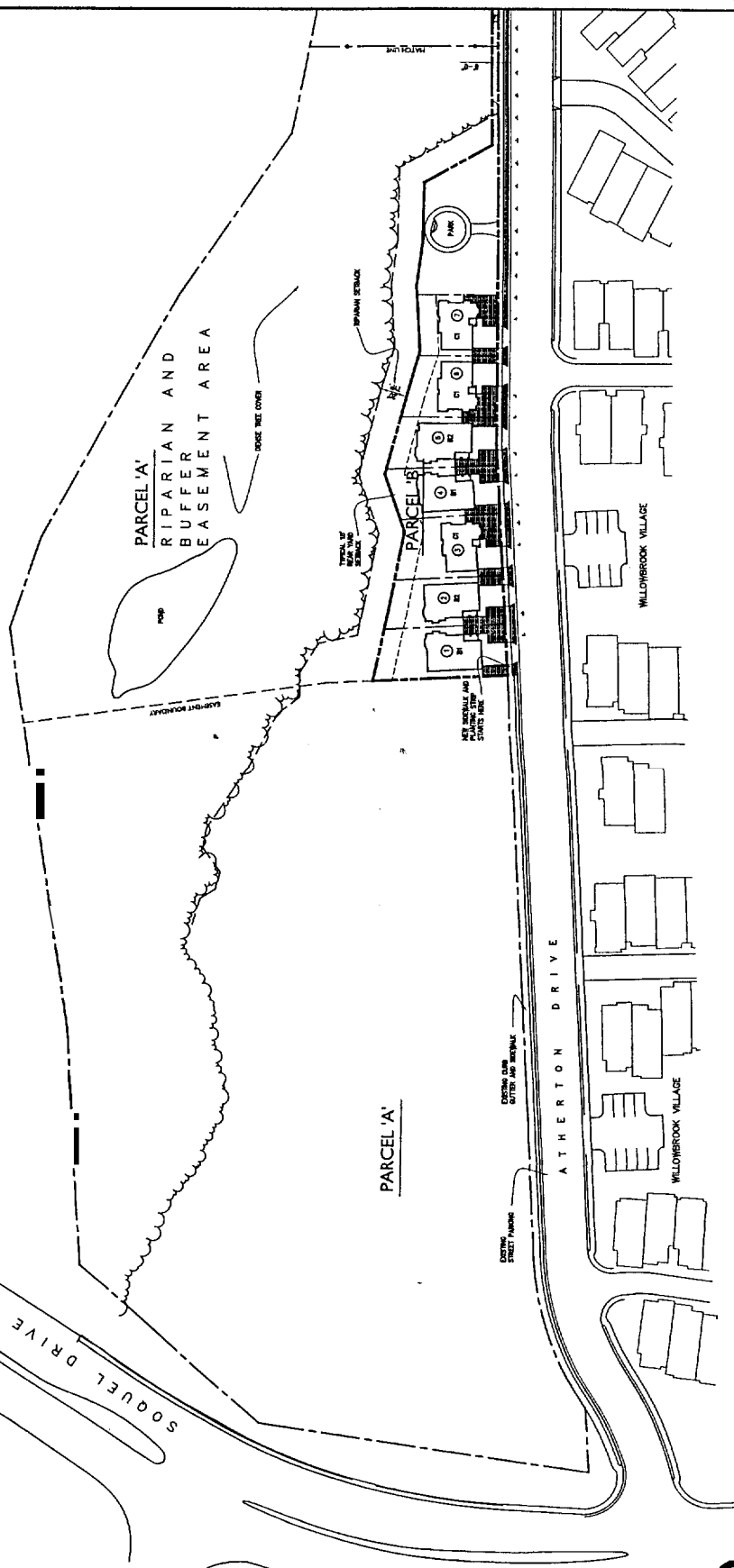
CBA/kj
 attachments

Conditions for Proposal

Maintenance of Adjacent Riparian and Buffer Easement Area - The Homeowners' Association shall pay for and maintain the riparian and buffer area located adjacent to the easterly boundary line of the Project as shown and labeled on the attached map as "Riparian and Buffer Easement Area" and meet all obligations and requirements set forth in the conditions of approval for the Project pertaining to said area.

Right of Ways - Owners shall reserve right of ways over the secondary and primary access serving the Project.

PARCEL AREAS	
BEFORE ADJUSTMENT	
A.P.N. 037-251-21	8,436 Acres
A.P.N. 037-251-22	9,446 Acres
Total	17,882 Acres
PARCEL AREAS	
AFTER ADJUSTMENT	
PARCEL A	14,917 Acres
PARCEL B	2,965 Acres
Total	17,882 Acres



ATHERTON PLACE
6260 SOQUEL DRIVE, APTOS, CALIFORNIA
LOT LINE ADJUSTMENT



**THACHER &
THOMPSON
ARCHITECTS**
800 WASHINGTON STREET
SANTA CRUZ, CA 95060
813.437.3919
www.thacher.com

ISSUING DATE	FEBRUARY 28, 1962
CONSTRUCTION RELEASE	
CLIENT NAME	BOWENSON/HAN
PROJECT NAME	ATTENTION PLACE W 30
DISPOSITION	DATE
BLK 1 LOT 100	2/1/62

DISCLAIMER

The following is a disclaimer of the author of the article. The author is not responsible for the accuracy of the information contained in the article. The author is not responsible for the accuracy of the information contained in the article. The author is not responsible for the accuracy of the information contained in the article.

A!

2-17-02

ATTACHMENT 11

0305

Board of Supervisors
701 Ocean St.
Santa Cruz, CA 95060

This is to voice my opposition to project # 98-0146: Altierum Plm. Development. I am concerned about the impact on drainage, open space, traffic and noise. — and the fact that the Planning Commission is against it.

Alternative methods of providing affordable housing need to be looked at — which are within walking distance to town and for public transportation.

Thank you for your attention to this.

Sincerely,

Rick MacLean
9930 Monroe Ave
Aptos, CA 95003
831-685-3708

Feb. 16, 2002

ATTACHMENT 11

Board of Supervisors
701 Ocean St.
Santa Cruz CA 95060

0306

RE: Project #98- 4

Atherton Place Development,
APN: 037-251-21 & 22

to Board of Supervisors:

1. oppose noise
2. Please preserve the riparian corridor,
3. Highway 1 & parking are serious problems.
4. Choose alternate sites for low income housing, within walking distance of shopping centers.
- Save this area for urban open space.

Thank you,

Carol Long

ATTACHMENT 1
Jukka Naukkarinen
624 National st
Santa Cruz, Ca 95062
1/26/2002 0307

Board of Supervisors
701 Ocean
Santa Cruz, Ca 95060

Subject: Project #98-0146
Atherton Place Development, LLC
Apn: 037-251-21+22

Dear Board of Supervisors:

- 1) Please discontinue the project on humanitarian grounds
- 2) Please protect the last remnants of the riparian corridor, Porter Gulch Stream, New Brighton State Beach from pollution.
- 3) Once the open space is gone, it is gone forever and cannot be replaced.
- 4) The said open space is important for entire counties ecosystem

Yours truly
Jukka Naukkarinen

Jukka NAUKKARINEN

Board of Supervisors
701 Ocean St. 5th Floor
Santa Cruz, CA 95060

January 29, 2002

ATTACHMENT

ATTACHMENT 1
0308

RE: Project # 98-0146
Atherton Place Development, LLC
APN: 037-251-21 & 22

Dear Board of Supervisors:

I am extremely concerned about the land, river and pond at Atherton Place. Santa Cruz County NEEDS to have wildlife habitats and places where people can enjoy peace and solitude. The beauty of this area is in its open places. Everyone who lives here knows that! We do not live here because we want crowded areas, full of people, with no wildlife. We have seen our crowded traffic situations become unbearable in the past 10 years, both on Hwy 1 and on city streets. Hwy 1 doesn't need more traffic, nor does Soquel Ave. I absolutely oppose project #98-0146 and demand that you protect the riparian corridor, Porter Gulch stream and New Brighton State Beach from pollution. Please choose alternate sites for low-income housing projects that are walking distance to shopping and metro stations.

89 Thank you, Michelle Newman 2018 Bobwhite Lane
Santa Cruz, CA 95065

150 Lions Field Dr.
Santa Cruz, CA 95065
January 14, 2001

0309

Bd of Supervisors
701 Ocean Street
Santa Cruz, CA 95060

Dear Bd. of Supervisors:

I am concerned about project # 98-0146
APN: 037-251-21 and 22 Atherton Place Development.
This project is planned for 17 acres of beautiful land
that is habitat for birds, animals, frogs, insects.
It is a steep hillside that will have to be
terraced. There is no parking in that area and traffic
is already heavy. Please deny the building permit
to these developers.

If we need housing build it on flat areas
where you can build up. The golf park by the freeway
"Par 3" would be an excellent area for houses.

STOP THIS HOUSING DEVELOPMENT.

Sincerely,
Diane Conell
Santa Cruz Co. Resident

County Board of Supervisors
701 Ocean St., Suite 500
Santa Cruz, CA 95060-4069

ATTACHMENT 1
0310

Dear Board of Supervisors:

We are concerned about the Atherton Place project and the plan for construction of homes on natural wildland. The project **is** planned for a steep hillside where construction would require terraces with eventual erosion **and** water runoff problems. It is a unique and irreplaceable wildlife habitat that should be saved as wildland. It is one of the **only** places left for the birds, deer, and the red-legged frog. Housing should be built on land where nature is already spoiled like the **Par 3** golf course beside the freeway. There is already overcrowding; of cars in the Atherton Project area from the temple and Cabrillo College. We urge you to **stop this** development.

We would like to save this area for a byway from Nisene **Marks** State Park to the Sea. We need to **save** areas **of** adjoining natural land in our county.

Thank you
Sincerely,

1. Diana Duque 1992 Serenata Ct. Santa Cruz CA 95065
NAME ADDRESS
2. Elison Harlow 1669 Nelson Rd #7 Scotts Valley 95066
3. Donna Shaw 5005 Garnet St. Capitola, Ca. ~~95066~~ ⁹⁵⁰⁶⁷
4. Catherine O'Kelly 505 Bethany Dr. Scotts Valley CA 95066
5. CAROLYN R. MITCHELL 1555 MERRILL ST, #10 SANTA CRUZ, CA 95062
NAME ADDRESS
Carolyn R. Mitchell

6. FRIITA ZETTERBERG 4300 Sequoia Dr. #91
NAME ADDRESS
Beth Zetterberg Sequoia, CA 95073
7. LYNORA L'WIRE 3033 Wisteria Wy APTOS, CA 95003

TELEPHONE MESSAGES FOR ALL MEMBERS OF THE BOARD REGARDING
ATHERTON PLACE PROPOSED DEVELOPMENT

0311

Diana Rose
147 Bar Harbor Court
Aptos, CA 95003

Comment: Opposed to the Atherton Place development

Bob Dinga
147 Bar Harbor Court
Aptos, CA 95003

Comment: Opposed to the Atherton Place development

Beatrice Di Duca
6250 Cobblestone Ct.
Aptos, CA 95003-3182

0312

February 10, 2002

Santa Cruz County Board of Supervisors
Santa Cruz County Government Building, Room 525
701 Ocean Street
Santa Cruz, California

Regarding: Atherton Place Development

I have lived at Willowbrook Village since **1987**. **I** was told when **I** purchased my town house that the property along Atherton that is to be ruined with bastard architecturally designed high-density housing, was **DONATED BY THE LAST DESCENDANT OF THIS HISTORICAL PIECE PROPERTY TO THE BAPTIST CHURCH AND FOR THEIR USE ONLY**.

I have requested information over and over again regarding this matter and have been completely ignored. **How** did it happen that this property became available to be sold **off** by the Baptist Church? Did the Church change it's name **so** that they could effectively get rid of it for money in their pockets instead? When property **is** donated to a church - how can that be set aside without some political maneuvering, or those little legalities that smother us, and allow such a travesty to happen?.

Along with that, this is one of the few park-like areas remaining in Santa Cruz County, that if anything it should be developed **as** a park. This area is a refuge for owls, a variety of birds, beautiful flora and fauna, and now you will allow it to be ruined because **of** greed?

Housing **in** Santa Cruz County is at an all time low? **Good**. We don't need anymore population or traffic congestion than we already have. The developers want to build single family homes expected to **sell** from **\$350,000** to **\$500,009**? In today's market that means cheap housing that **in** time will further ruin this area. Will these "cheap" homes be purchased by the developers to be used as rentals? Further filling their pockets?

When **I** cast my vote for Supervisor Pirie, **I** did **so** assuming she would be a great supporter **of** open spaces and development **of** park areas, and not of additional housing that will ultimately ruin this entire area, and many other similar areas.

I would appreciate a response from someone especially explaining how this property fell out of the hands of the Baptist Church.

0313

Very truly yours,

A handwritten signature in cursive script, appearing to read "Beatrice Di Duca".

Beatrice Di Duca

CC: Willowbrook Village Homeowners Association
Board of Directors, Diana Hunter, Charles Summers, Reed Geisreiter,
Pricilla Weiss and Terrel Hoffman

SANSON & LOCKE-PADDON LLP

ATTORNEYS AT LAW

311 BONITA DRIVE
P. O. Box 1076
APTOS, CALIFORNIA 95001-1076
FAX 831-688-6232
PHONE 831-688-2064

RALPH SANSON

WILLIAM F. LOCKE-PADDON
CERTIFIED SPECIALIST ESTATE PLANNING,
TRUST & PROBATE LAW, THE STATE BAR OF
CALIFORNIA BOARD OF LEGAL SPECIALIZATION

DEBRA A. KERR
CERTIFIED PARALEGAL

CLAIRE E. SWETLAND
CERTIFIED PARALEGAL

March 6, 2002

SANTA CRUZ COUNTY BOARD OF SUPERVISORS
701 OCEAN STREET
SANTA CRUZ CA 95060

Re: Public Hearing on application of Atherton Place continued to March 12, 2002
Our client: The Imperial Star, a California corporation
Our file: 20694

Dear Chairperson and Board Members:

Representatives of Atherton Place ("Atherton") and The Imperial Star ("Imperial") are meeting late Wednesday, March 6th to try to negotiate a mutually acceptable agreement. I am submitting this letter prior to that meeting in the hope that it will be included in your agenda packet for the continued hearing on March 12th. The purpose of the letter is: (1) to explain the negotiations between Atherton and Imperial from Imperial's perspective; (2) to explain why so-called "fair market value" is not a fair or reasonable price in the context of this transaction; and (3) to ask that your Board not approve the tentative map on a condition that will eliminate any incentive for Atherton to pay more than Atherton would be required to pay if the property were condemned. My hope is that Atherton and Imperial will reach a mutually acceptable agreement by March 12th, in which case this letter will no longer be relevant to your Board's deliberations.

History of the Negotiations

The Imperial Star is a corporation with 65 shareholders, of which 42 are Santa Cruz County residents. It acquired the subject property more than 30 years ago. At that time, it renovated the commercial building where the Bangkok West restaurant is now located and sometime thereafter in the 1970s, it built the Imperial Court tennis club which it owns and operates.

In 1999, Mr. Bowman and Mr. Beale sought a right of way across The Imperial Star property for emergency vehicle access. Negotiations broke down when Mr. Bowman's then attorney proposed an easement agreement drafted with what I and Imperial's Board of Directors regarded as a cavalier disregard of Imperial's legitimate concerns.

When Ms. Attack first contacted me last summer, I advised her that Imperial's Directors were not interested in selling and were reluctant to incur attorneys' fees in connection with new

negotiations because they felt they had been burned in the prior negotiations with the same developer. My subsequent correspondence with Ms. Attack reflected the desire of Imperial's Directors that negotiations focus on Imperial's concerns and not just those of the developer. I was never advised that correspondence between myself and Ms. Attack regarding our negotiations was being submitted to your Board. In retrospect, I believe that Ms. Attack's letters were written to convey to your Board the impression that the price and terms proposed by Imperial were unreasonable.

Imperial did not realize that your Board was considering condemning access for Atherton until after your January 6th hearing when it learned that condemnation had been discussed at that hearing. The Directors asked me to contact Supervisor Pirie to find out what was going on. When I spoke with Supervisor Pirie, she implied that she understood that Imperial had been negotiating in bad faith because the asking price for the access was \$500,000.

Imperial is and has been willing to sell for \$250,000 net after taxes. While \$500,000 seems like a lot of money, Imperial's income tax basis in the property is so low that, as a practical matter, the entire proceeds of any sale would be subject to income tax at Imperial's combined state and federal corporate rate of 42% so that Imperial would only realize \$290,000 after taxes from a \$500,000 sales price. Imperial asked for \$500,000 in anticipation that it would ultimately settle for \$431,000 in order to realize \$250,000 from the sale after taxes.

The problem was that the County never told Imperial that it was considering condemning if Imperial was unwilling to negotiate a deal with Atherton. A sale under threat of condemnation does not require recognition of income tax if the proceeds are reinvested in commercial real property within three years. When it became apparent last month that the sale was actually under threat of condemnation, Imperial reduced its asking price to \$278,000. Under threat of condemnation, Imperial is willing to accept \$250,000, subject to the conditions set forth in the attached document titled "Proposed Terms and Conditions."

Atherton never suggested a price it would be willing to pay until February 21, when, during a meeting with Supervisor Pirie, Mr. Beale and myself, Ms. Attack said Atherton would pay \$150,000 which is the "fair market value" of the property as determined by Atherton's appraiser, plus an unspecified sum to be negotiated in recognition of the savings that would be realized if condemnation was not required.

"Fair market value" is not a fair or reasonable price under these circumstances.

The term "fair" in the phrase "fair market value" suggests that a price other than fair market value must by definition be "unfair" to one of the parties to the transaction, but that is not the case. The term "fair market value" is a legal term of art. Its definition is set forth on the enclosed page 15 from Atherton's appraisal as follows, "The highest price on the date of valuation that would be agreed to by a seller who is willing, to sell but who is under no particular

or urgent necessity for so doing and who is not obligated to sell, and a buyer who is ready, willing and able to buy but who is under no particular necessity for so doing. . ." (Emphasis added) The definition is taken verbatim from the jury instruction for determining fair market value in a condemnation proceeding.

The two assumptions fundamental to the definition of "fair market value" namely, that Imperial is a "willing seller" and Atherton has no "particular need" for the access, do not apply to this situation. Imperial would prefer not to sell and Atherton has an obvious "particular need" to acquire the access. Such being the case, so called "fair market value" based on those assumptions is not relevant. It is entirely appropriate for Imperial (who would prefer not to sell) to ask Atherton (who has a particular need to buy) to pay a price exceeding "fair market value" by an amount sufficient to overcome Imperial's reluctance to sell. It is disingenuous for Atherton to suggest that such is not the case.

Approval of the Tentative Map on Conditions III.D.7 Recommended by Staff
would
Eliminate Atherton's Incentive to Negotiate with Imperial

Government Code §66462.5 provides that: (a) the County may not postpone or refuse approval of a final map because the subdivider fails to meet a "tentative map condition" requiring offsite improvements on land that does not belong to the subdivider or the County; (b) "In such cases, the county . . . shall, within 120 days of the filing of the final map, acquire by negotiation or commence" condemnation proceeding to acquire the property required for the offsite improvements; and (c) if the County fails to acquire by negotiation or commence condemnation with 120 days, the condition requiring offset improvements is "conclusively deemed to be waived." A copy of §66464.5 is enclosed.

Condition of Approval III.D.7 proposed in the staff report at the February 26th hearing requires Atherton to "Acquire all rights of way and easement and make all dedications thereof as needed for construction of required improvements. The owner shall reapply for approval of the land division should the owner or the county fail to acquire the necessary off-site easement for the access road onto Cabrillo College Drive.

It appears that the portion of Condition III.D.7 which reads, "The owner shall reapply for approval of the land division should the owner of the property fail to acquire the necessary off-site easement for the access road on to Cabrillo College Drive," when read with the requirement that Atherton build the access road across the Imperial property, is really, in the language of §66462.5, "a tentative map condition" requiring the subdivider to construct an offsite improvement. If such is the case, then the provisions of Government Code §66462.5 would override Condition III. D.7 insofar as Condition III.D.7 is inconsistent with 566462.5 effectively committing your Board to condemn the access for Atherton if Atherton and Imperial fail to reach agreement. That commitment would constitute a gross abuse of discretion under the principals

announced in Redevelopment Agency v Norm's Slauson, 173 Cal. App.3d 1121, 219 Cal.Rptr. 365 (1985) cited with approval in Santa Cruz County Redevelopment Agency v. Izant 37 Cal.App.4th 141, 43 Cal.Rptr. 366 (1995). Further, it would relieve Atherton of any incentive to agree to a price greater than condemnation value based on so called "fair market value" (plus a portion of the cost that would be saved if condemnation is not required) even though that price is manifestly unfair to Imperial.

Conclusion and Requests

I hope Atherton and Imperial can resolve this situation by agreement prior to your continued hearing on March 12th. If an agreement is not reached by March 12th, then, Imperial asks that you take into account that Imperial has offered to sell at a price and on terms and conditions that are fair under these circumstances. The question is whether your Board will use the threat of condemnation to coerce Imperial into selling for less than \$250,000 or on more onerous terms than those on which it has offered to sell.

If your Board is otherwise inclined to approve the tentative map, then, in order to avoid the irreversible commitment to condemnation implicit in Government Code §66462.5, Imperial requests that your Board postpone your vote for three weeks to give Atherton and Imperial the opportunity to negotiate an agreement.

Sincerely,



Ralph Sanson

RS:ces

cc: Each Supervisor
The Imperial Star
Charlene Attack, Esq.
County Counsel, Rahn Garcia

PROPOSED TERMS AND CONDITIONS

Property to be Conveyed

A fee interest in that portion of the Imperial property designated "ALTERNATIVE EXTENSION TO CABRILLO COLLEGE DRIVE" (hereinafter "Alternative Extension") together with that portion of the Imperial property which lies between the southerly boundary of the Alternative Extension and the northern boundary of the Atherton property.

Conditions

1. The Alternative Extension be developed as a road maintained which is either part of the County road system or by the owner of the Atherton property for the benefit of the owner of the Imperial property.
2. Imperial to have access to the road where indicated on the diagram, the right to close off the existing entrance to Cabrillo College Drive and the right to reconfigure its parking area as indicated on the diagram.
3. All damage to Imperial's parking lot and landscaping caused by Atherton's work to be repaired.
4. Imperial's sign to be moved to a location between the northerly edge of the Alternative Extension and the parking area.
5. A fence or wall to be erected on the Imperial property along the boundary between the Imperial property and the Alternative Extension from the entrance to the Imperial property to the boundary of the Atherton Property sufficient to shield the Alternative Extension from the commercial activity on the Imperial property between the existing commercial building and the northerly edge of the Alternative Extension.
6. Imperial to be permitted to expand its parking in the area from the line designated on the enclosed diagram "edge of Existing Parking" to a location adjacent to the northern edge of the Alternative Extension.
7. The utility easements across the Imperial property be relocated to the new road.

Definitions

"Fair Market Value" - The highest price on the date of valuation that would be agreed to by a seller who is willing to sell but who is under no particular or urgent necessity for so doing and who is not obliged to sell, and a buyer who is ready, willing and able to buy but who is under no particular necessity for so doing, each **dealing** with the **other** with full knowledge of all the uses and purposes for which the property is reasonably adaptable and available.¹

Some property types have no relevant market value in which case the fair market value is the value determined by any method of valuation that that is just and reasonable.²

"Fee Simple Estate" - Absolute ownership unencumbered by any other interest or estate, subject only to the limitation imposed by the governmental powers of taxation, eminent domain, police power, and escheat.³

"Highest and Best Use"- The reasonably probable and legal use of vacant land or ~~an im~~proved property, which is physically possible, appropriately supported, financially feasible, and that results in the highest value. The four criteria the highest and best use must meet are legal permissibility, physical possibility, financial feasibility and maximum profitability.-'

¹BAJI 11.73, California Jury Instructions - Civil, Eighth Edition, 1994, page 84.

²*ibid.*

³*The Dictionary of Real Estate Appraisal, Third Edition*, Appraisal Institute, 1993

⁴*ibid.*

PROCEDURE

Div. 2

Stats.1937, c. 670, p. 1871. § 20.

8 66462.5

Cross References

California housing and infrastructure finance agency, authority to set aside security reserve in conjunction with construction loan in lieu of security otherwise required. see Health and Safety Code § 51054.

Local agency, defined. see Government Code § 66420.

Notes of Decisions

County charter 3
Developer's liability 1
Security 2

lic improvement which requires relocation of existing utility equipment. private party bears the necessary relocation costs. Pacific Gas & Elec. Co. v. Dame Const. Co., Inc. (App. 1 Dist. 1987) 236 Cal.Rptr. 351, 191 Cal.App.3d 233.

1. Developer's liability

Developer whose development of land was conditioned by county on widening of road was required to bear costs of moving electric distribution line which ran alongside the road. whether the beneficiaries of the move was viewed as being developer or that portion of the public which would purchase homes in the development. Pacific Gas & Elec. Co. v. Dame Const. Co., Inc. (App. 1 Dist. 1987) 236 Cal. Rptr. 351, 191 Cal.App.3d 233.

Where private party, on its own initiative and not that of government, develops parcel of land and thereby creates or aggravates need for pub-

2. Security

In subdivisions of five or more parcels, security must be given by the subdivider to insure construction of the required improvements. 62 Ops.Atty.Gen. 175 (1979).

3. County charter

A county charter amendment may not prohibit the county from approving a development project unless a demonstrable method exists for financing the roads, schools, water, and sewer facilities necessary to serve the project. 79 Op. Atty.Gen. 149, July 8, 1996.

§ 66462.5. Incomplete offsite improvements: property acquisition by local entity; time limit; waiver of conditions; agreement for completion; costs

A city, county, or city and county shall not postpone or refuse approval of a final map because the subdivider has failed to meet a tentative map condition which requires the subdivider to construct or install offsite improvements on land in which neither the subdivider nor the local agency has sufficient title or interest, including an easement or license, at the time the tentative or final map is filed with the local agency, to permit the improvements to be made. In such cases, the city, county or city and county shall, within 120 days of the filing of the final map, pursuant to Section 66457, acquire by negotiation or commence proceedings pursuant to Title 7 (commencing with Section 1230.010) of Part 3 of the Code of Civil Procedure to acquire an interest in the land which will permit the improvements to be made, including proceedings for immediate possession of the property under Article 3 (Commencing with section 1255.410) of Chapter 6 of such title. In the event a city, county, or city and county fails to meet the 120-day time limitation, the condition for construction of offsite improvements shall be conclusively deemed to be waived. Prior to approval of the final map the city, county, or city and county may require the subdivider to enter into an agreement to complete the improvements pursuant to Section 66462 at such time as the city, county, or city and county acquires an interest in the land which will permit the improvements to be made.

Nothing in this section precludes a city, county, or city and county from requiring a subdivider to pay the cost of acquiring offsite real property interests required in connection with a subdivision.

LAW OFFICES OF
**BOSSO, WILLIAMS, SACHS,
ATAK & GALLAGHER
AND PETER L. SANFORD**
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SANTA CRUZ, CA 95061-1822
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#612
SAN JOSE, CA 95113
TEL: (408) 286-9700
FAX: (408) 286-9403
PLEASE REPLY TO SANTA CRUZ

* CERTIFIED SPECIALIST IN TAXATION
LAW, THE STATE BAR OF CALIFORNIA.
BOARD OF LEGAL SPECIALIZATION

March 7, 2002

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

Re: Atherton Place - Application #98-0148

Dear Chairperson and Board Members:

This letter is to report on the progress to date in negotiating the access across the Imperial Star property. As Mr. Sanson wrote his letter of March 6, 2002, Rich Beale and I had a meeting with Mr. Sanson and his client, Mr. Jue. They presented us with a new site plan to review. We confirmed that Atherton is willing to meet all conditions as requested by Imperial Star. We exchanged comments on the appraisal price and agreed to a future meeting to address the new site plan and price.

Very truly yours,



Charlene B. Atak

CBA:kj
cc: Scott Loichinger
cc: Ralph Sanson
cc: Rahn Garcia

AGENDA ITEM #39