



Staff Report to the Agricultural Policy Advisory Commission

Application Number: **141095**

Applicant: Powers Land Planning
Owner: Maria and Taurino Gomez
APN: 051-101- 15, 20

Date: 2/12/2015
Agenda Item #: 7
Time: 1:30 p.m.

Project Description: Proposal to construct farm worker housing within 200 feet of adjacent agricultural resource parcels (38 feet south from APN 051-101-19, 97 feet north from 051-101-22, and 106 feet east from APN 051-101-77). Requires an Agricultural Buffer Reduction Determination, Combined Geology/Soils Report Review, and an Archaeological Report Review.

Location: Northeast side of Minto Road, approximately a ½ mile east from Green Valley Road within the Pajaro Valley Planning area.

Permits Required: Agricultural Buffer Setback Reduction

Staff Recommendation:

- Determine that the proposed agricultural buffer reduction, as shown on the revised project plans (Exhibit A), meets the special circumstances required for a agricultural buffer reduction, based on the attached findings and revised conditions;
- Determine that the proposed agricultural buffering and site fencing are necessary, as shown on the plans (Exhibit A), based on the attached findings and revised conditions.

Exhibits

- A. Revised Project Plans
- B. Findings
- C. Revised Conditions
- D. November 20, 2014 Staff Report
- E. County Counsel Opinion
- F. County Code Section 16.50.095

Analysis and Discussion

As your Commissioners will recall, this agricultural buffer reduction application was considered by your Commission on November 20, 2014 at a duly noticed public hearing. The applicant is requesting an agricultural buffer reduction to 38 feet to the west; 97 feet to the east; and, 106 feet to the south from APN 051-101-19; 051-101-22; 051-101-77, respectively, to the west, east, and south.

Following consideration of the staff report and public testimony, your Commission continued this application so that the APAC authority provided under the County Code and recently adopted State Law regarding agricultural employee housing could be clarified. Due to the recent changes to the State Employee Housing Act, County Counsel was requested to clarify the Commissions questions (Exhibit E) until the Planning Department completes revisions to the agricultural ordinance to update regulations for agricultural employee (farmworker) housing to be consistent with state law. A summary of these issues is provided.

General APAC Authority

APACs authority is established by Santa Cruz County Code Chapter 2.82 and authorizes the APAC to make buffer setback reduction determinations, recommendations regarding land divisions proposed on CA zoned land, recommendations regarding proposed amendments to the agricultural resources map, as well as functions established by County Code Chapter 13.14 related to the minimum agricultural parcel sizes for land divisions. More detailed functions of APAC are enumerated in county code sections 16.50.095, addressing agricultural buffer reductions and land divisions, and 16.20.195, addressing agricultural grading.

Approval or denial of an agricultural buffer reduction is not an authority of APAC, but is an authority provided to the Planning Director under County Code Chapter 18.10 following completion of the determination by the APAC.

County Authority to Regulate Agricultural Housing and to Impose Agricultural Buffers

As previously expressed to your Commission, the State Employee Housing Act, Health and Safety Code section 17000 et seq., regulates agricultural employee housing and deems farm worker housing, either group quarters up to 36 beds or up to 12 units, an agricultural land use and exempts it from development permits except development permits that are required for any other agricultural activity in the same zone district. Other approvals may be required if required of other agricultural activities in the same zone district.

As agricultural buffers are required for other agricultural activities such as agricultural processing facilities in the same agricultural zone, agricultural buffers may be required for the proposed employee housing.

APAC Authority to Condition Approval of Agricultural Buffer Reduction

County Code Section 16.50.095 authorizes APAC to make a determination of whether special

circumstances exist to support an agricultural buffer reduction. Special circumstances include whether significant topographic differences between uses eliminate the need for a reduction; or, that there is substantial vegetation or a physical barrier between uses that eliminates the need for the 200 foot buffer; or, the imposition of the 200 foot buffer would hinder infill development or otherwise create a project incompatible with the surrounding residential development.

APAC is also authorized to make a determination regarding the need for buffering barriers. This includes landscape buffering and fencing as deemed appropriate and consistent with the code.

Under 16.50.095, APAC is not authorized to condition agricultural buffer reductions. However, the APAC staff does typically include Planning Department conditions of approval as a means to show Commissioners the intended decision of the Planning Department, reflecting the direction of the APAC determination.

APAC Authority to Impose On-site Buffers from Proposed Housing

County authority related to farmworker housing under County Code 16.50.095 (F) usually requires an on-site buffer between farmworker housing and on-site agricultural operations. However, the applicant has notified the County that he intends to construct agricultural employee housing as allowed and defined under the State Employing Housing Act. State law specifically states that local regulations related to labor camps (Farmworker Housing), and agricultural employee housing, are superseded by State law. Since the on-site buffers only apply to farmworker housing and to no other uses allowed in the same zone district, County Farmworker Housing regulations are superseded by state law. Thus, an on-site buffer cannot be applied to the proposed employee housing.

APAC Authority to Require Conditions of Approval on Buffer Reduction

Under the authority of 16.50.095, APAC is precluded from imposing conditions of approval regarding compliance with state law such as State agricultural employee certification or declaration of restriction requiring compliance with state law. Furthermore, provided that the applicant states that the project is intended to qualify for a permit to operate pursuant to State Law, evaluation of the housing under the farm worker housing regulations by the County would be superseded by State Law. However, pursuant to County Code Section 16.50.090(C), a statement of agricultural acknowledgement is required for setback reductions in general and would be required as a condition of approval by the Planning Department.

Use of Employee Housing by Non-Employees

The Employee Housing Act provides multiple definitions of employee housing, which are carefully described by County Counsel in the attached opinion (Exhibit E). In general, employee housing may be for temporary, seasonal, or permanent employees. There is no requirement that the employee housing be occupied by agricultural employees who work on the site or that employee housing occupants be employed by the property owner. Housing provided for agricultural employees is also allowed for nonemployees provided that at least five employees live in the housing.

Can APAC Reject an Application if the Project is not Regulated by the State as Employee Housing

As stated previously, APAC authority is limited to whether the proposed special circumstances exist to support an agricultural buffer reduction and not whether the proposed use is regulated by the state as employee housing. The state law only requires that the applicant intends to qualify under state law. Counsel has indicated that the County cannot require that the applicant prove compliance under state law to be entitled to treatment as an agricultural use.

Conclusion

As discussed during the preceding hearing, special circumstances do exist to warrant a reduction to the required 200 foot buffer. These relate to existing geologic hazards, location of overhead utility line easements, and location of existing agricultural activities on site. However, with consideration of existing agricultural activities associated with the adjoining agricultural use, and as enumerated by APAC during the preceding hearing, the applicant revised the plans to provide a minimum 100 foot buffer (113 feet from APN 051-101-19 and 100 feet from APN 051-101-22) to allow application of agricultural pesticides by the adjacent agricultural property owners, as required by Federal Law. This resulted in a reduction from seven to six housing units. In addition, and in consideration of input from APAC regarding necessary landscape buffering and site fencing, the revised plans include solid board fencing along the west and east property line that extends from the front property line to the rear of the proposed residences and existing chain link fencing with wood or vinyl slats along the front property line. However, staff recommends a solid board fence along the entire front property line, with exception of driveway locations. See the revised plans (Exhibit A), attached findings (Exhibit B) and revised conditions of approval (Exhibit C).

Recommendation

- Determine that the proposed agricultural buffer reduction from 200 feet to 113 feet from APN 051-101-19, 100 feet from 051-101-22, and 106 feet from APN 051-101-77 meets the special circumstances of County Code 16.50.095(D), based on the attached findings and conditions;
- Determine that the proposed agricultural landscape buffering and site fencing are necessary for the agricultural buffer reduction, as shown on the plans (Exhibit A) and revised by staff pursuant to the attached findings and conditions.

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.

The County Code and General Plan, as well as hearing agendas and additional information are available online at: www.co.santa-cruz.ca.us

Report Prepared By: Sheila McDaniel

Santa Cruz County Planning Department
701 Ocean Street, 4th Floor
Santa Cruz CA 95060
Phone Number: (831) 454-2255
E-mail: sheila.mcdaniel@co.santa-cruz.ca.us

Report Reviewed By: Steven Guiney, AICP
Principal Planner
Development Review

1. Parcel Owner/Address: Taurino & Maria Gomez, 1325 Willow Creek Road, Walworth, CA 95076	2. Project Description: Residential Planning P.O. Box 2001 Aptos, CA 95001 831 650-7461	3. Site APN: 051-014-1230	4. Site Area: 14.8 acres (approx)	5. Easement Areas: - One (1) 30 foot wide right-of-way at the front of parcel. - Easement for water line easements at the front of the parcel.	6. Occupancy Type: R-1 Comminution Type: Vn YN	7. Zoning: CA	8. Subdivis: Front - 20' Rear - 20' Sides - 20'	9. Proposed Bldg Coverage: 11,000 sq.ft., or 17% total.	10. Property lines and topographic information as shown from "Topographic Map for Miguel Gomez" dated 4-1-14 by M&J Cost Engineers, Job #1010.	12. Parking Required: 2 parking stalls required 3 spaces 2 spaces for future expansion Total 4 spaces required Total 12 spaces total as shown.	No.	Revision/Issue	Date
											A	County Plan Review	7/8/14
											A	County Plan Review	12/15/14

200 Minto Road
Watsonville, CA
APN 051-101-15820

Taurino & Maria Gomez
135 Willow Creek Street
Watsonville, CA. 95076

Project	GAMMAZ-01	Sheet A 1 of 2
Date	4/23/14	
Scale	1"=50'-0"	

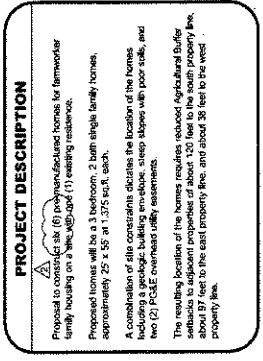
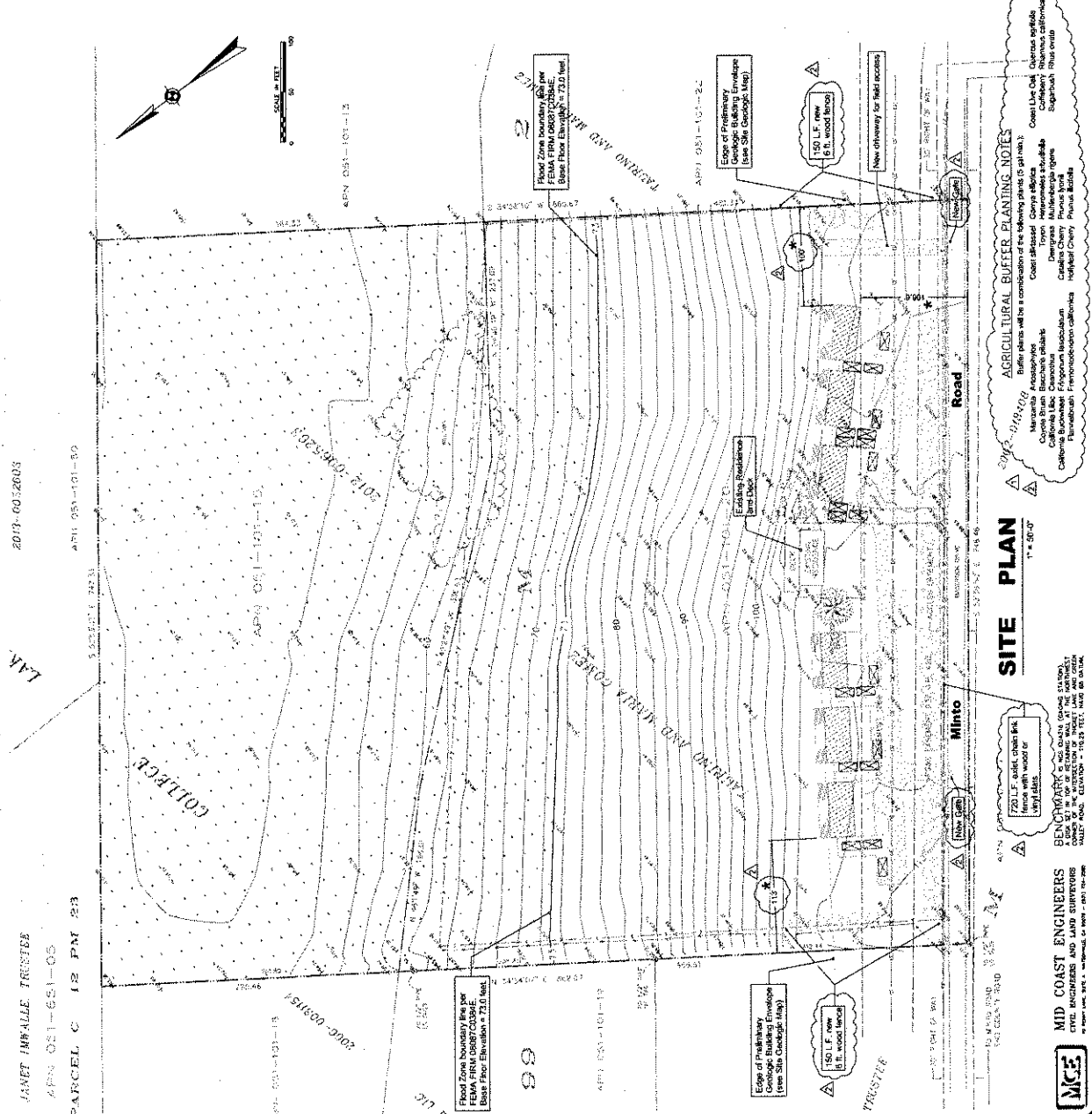


Diagram of a rectangular site plan for a school playground. The site dimensions are 100' wide and 150' deep. The layout includes:

- Wood Deck** (shaded area on the left)
- Hosing Unit, 25' x 55'**
- Fenced Yard** (indicated by a dashed line)
- Parking Space, 8.5' x 15'** (containing a car icon)
- Driveway, min. 16' wide**
- Water Tanks (two @ 5,000 gal. each)**

- > 113' to the west
- > 100' to the east
- > 106.6' to the south

@ FOUND MONUMENT AS INDICATED
 PRT POWER POLE
 SPOT ELEVATION (TYPICAL)
 OVERHEAD ELECTRICAL LINE
 FENCE LINE
 SWALE FLOW LINE
 INDICATES FLOOD ZONE AS PER
 FEMA FORM 0603070304E. MAY IT
 BE USED FOR FLOOD ELEVATION IN
 3-1/2 FEET
 DISTANCES IN FEET AND DECIMALS THEREOF



**Required Findings for Agricultural Buffer Setback Reduction
County Code Section 16.50.095(D)**

1. Significant topographical differences exist between the agricultural and non-agricultural uses which eliminates or minimizes the need for a 200 foot agricultural buffer setback; or
2. Permanent substantial vegetation (such as a Riparian Corridor or Woodland protected by the County's Riparian Corridor or Sensitive Habitat Ordinances) or other physical barriers exist between the agricultural and non-agricultural uses which eliminate or minimize the need for a two hundred (200) foot agricultural buffer setback; or
3. A lesser setback is found to be adequate to prevent conflicts between the non-agricultural development and the adjacent agricultural development and the adjacent agricultural land, based on the establishment of a physical barrier (unless it is determined that the installation of a barrier will hinder the affected agricultural use more than it would help it, or would create a serious traffic hazard on a public or private right of way) or the existence of some other factor which effectively supplants the need for a two hundred (200) foot agricultural buffer setback; or
4. The imposition of a two hundred (200) foot agricultural buffer setback would preclude building on a parcel of record as of the effective date of this chapter, in which case a lesser buffer setback distance may be permitted, provided that the maximum possible setback distance is required, coupled with a requirement for a physical barrier (e.g. solid fencing and/or vegetative screening) to provide the maximum buffering possible, consistent with the objective of permitting building on a parcel of record.

The subject property is constrained by a floodplain along the rear third of the property, state and county geologic fault zones establish a limited building envelope, and PG&E utility easements limit development of farm worker housing to a very small portion of the property. The imposition of a two hundred foot agricultural buffer setback would preclude building on this parcel altogether. A solid board fence is proposed along the west and east property line to just beyond the proposed residences. A solid board fence is recommended along the entire front property line. In addition, landscape plans provide landscaping buffer plantings to provide a barrier. The project is conditioned to require additional plantings to provide a solid barrier along the east and west property line as well as the entire front property line (except where driveways are shown) to ensure adequate separation from surrounding agriculture and potential noise, dust, spray, etc.

Required Finding for Agricultural Buffer Setback Reduction on Commercial Agriculture (CA) Zoned Land County Code Section 16.50.095(E)

1. In the event that an agricultural buffer setback reduction is proposed and the proposed non-agricultural development is located on Type 1, Type 2, or Type 3 commercial agricultural land, the non-agricultural development shall be sited so as to minimize possible conflicts between the agricultural use on the subject parcel; and the non-agricultural development shall be located so as to remove as little land as possible from production or potential production.

The proposed agricultural employee housing is defined under the State Employee Housing Act as an agricultural use and is therefore exempt from application of on-site agricultural buffer setbacks to on agricultural activities. Notwithstanding, the proposed farm-worker housing is located as far from the existing arable acreage and adjoining agricultural properties as feasible given site constraints, including a floodplain and riparian corridor along the rear third of the property, state and county geologic fault zones throughout the property, and PG&E utility easements along the front of the property, which limits development of farm worker housing to a very small portion of the property. Furthermore, the proposed project removes as little agricultural land as feasible given the site constraints.

Conditions of Approval

- I. This permit authorizes an Agricultural Buffer Setback reduction for the proposed residential use from 200 feet to 113 feet south from APN 051-101-19, 100 feet north from 051-101-22, and 106 feet east from APN 051-101-77. This approval does not confer legal status on any existing structure(s) or existing use(s) on the subject property that are not specifically authorized by this permit. Prior to exercising any rights granted by this permit, including, without limitation, any construction or site disturbance, the applicant/owner shall:
 - A. Sign, date, and return to the Planning Department one copy of the approval to indicate acceptance and agreement with the conditions thereof.
 - B. Obtain a Building Permit from the Santa Cruz County Building Official.
 1. Any outstanding balance due to the Planning Department must be paid prior to making a Building Permit application. Applications for Building Permits will not be accepted or processed while there is an outstanding balance due.
- II. Prior to issuance of a Building Permit the applicant/owner shall:
 - A. Submit final architectural plans for review and approval by the Planning Department. The final plans shall be in substantial compliance with the plans marked Exhibit "A" on file with the Planning Department. Any changes from the approved Exhibit "A" for this development permit on the plans submitted for the Building Permit must be clearly called out and labeled by standard architectural methods to indicate such changes. Any changes that are not properly called out and labeled will not be authorized by any Building Permit that is issued for the proposed development. The final plans shall include the following additional information:
 1. A development setback of a minimum of 200 feet to 113 feet southeast from APN 051-101-19, 100 feet northwest from 051-101-22, and 106 feet northeast from APN 051-101-77.
 2. Final plans shall include a vegetative buffer along the east, west, and south property line. Plant species shall be consistent with the Planning Department recommended agricultural buffer plant list. Plans shall include a six foot tall solid board fence along the east and west property line, extending north beyond the residences. Plans shall include a six foot solid board fence along the entire south property line along Minto Road, with exception of site driveways. The shrubs utilized shall attain a minimum height of six feet upon maturity. Species type, plant sizes and spacing shall be indicated on the final plans for review and approval by Planning Department staff.

EXHIBIT C

- B. The owner shall record a Statement of Acknowledgement, as prepared by the Planning Department, and submit proof of recordation to the Planning Department. The statement of Acknowledgement acknowledges the adjacent agricultural land use and the agricultural buffer setbacks.
- III. All construction shall be performed according to the approved plans for the building permit. Prior to final building inspection, the applicant/owner must meet the following conditions:
- A. The agricultural buffer setbacks shall be met as verified by the County Building Inspector.
 - B. The required vegetative and/or physical barrier shall be installed. The applicant/owner shall contact the Planning Department's Agricultural Planner, a minimum of three working days in advance to schedule an inspection to verify that the required barrier (vegetative and/or other) has been completed.
 - C. All inspections required by the building permit shall be completed to the satisfaction of the County Building Official and/or the County Senior Civil Engineer.
- IV. Operational Conditions
- A. The vegetative and physical barrier shall be permanently maintained.
 - B. All required Agricultural Buffer Setbacks shall be maintained.
 - C. 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, up to and including permit revocation.
- V. 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

EXHIBIT C

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.

Minor Variations to this permit which do not affect the overall concept or density may be approved by the Planning Director at the request of the applicant or staff in accordance with Chapter 18.10 of the County Code.

Please note: This permit expires three years from the effective date listed below or if additional discretionary permits are required for the above permitted project, this permit shall expire on the same date as any subsequent approved discretionary permit(s) unless a building permit (or permits) is obtained for the primary structure described in the development permit (does not include demolition, temporary power pole or other site preparation permits, or accessory structures unless these are the primary subject of the development permit). Failure to exercise the building permit and to complete all of the construction under the building permit, resulting in the expiration of the building permit, will void the development permit, unless there are special circumstances as determined by the Planning Director.

Approval Date: _____

Effective Date: _____

Expiration Date: _____

Appeals: Any property owner, or other person aggrieved, or any other person whose interests are adversely affected by any act or determination of the Agricultural Policy Advisory Commission under the provisions of County Code Chapter 16.50, may appeal the act or determination to the Board of Supervisors in accordance with chapter 18.10 of the Santa Cruz County Code.

EXHIBIT C



Staff Report to the Agricultural Policy Advisory Commission

Application Number: **141095**

Applicant: Powers Land Planning
Owner: Maria and Taurino Gomez
APN: 051-101- 15, 20

Date: 11/20/2014
Agenda Item #: 8
Time: 1:30 p.m.

Project Description: Proposal to construct farm worker housing within 200 feet of adjacent agricultural resource parcels (38 feet south from APN 051-101-19, 97 feet north from 051-101-22, and 106 feet east from APN 051-101-77). Requires an Agricultural Buffer Reduction, Combined Geology/Soils Report Review, and an Archaeological Report Review.

Location: Northeast side of Minto Road, approximately a ½ mile east from Green Valley Road within the Pajaro Valley Planning area.

Permits Required: Agricultural Buffer Setback Reduction

Staff Recommendation:

- Approval of Application 141095, based on the attached findings and conditions.

Exhibits

- | | |
|------------------|--------------------------------------|
| A. Project plans | D. Assessor's, Location, Zoning, and |
| B. Findings | General Plan maps |
| C. Conditions | E. Comments & Correspondence |

Parcel Information

Parcel Size:	APN 15- 5.6 acres, APN 20- 9.1 acres (Development proposed on this parcel)
Existing Land Use - Parcel:	Row Crops
Existing Land Use - Surrounding:	Agriculture-Orchards
Project Access:	Minto Road
Planning Area:	Pajaro Valley
Land Use Designation:	AG (Agriculture)
Zone District:	CA (Commercial Agriculture)
Supervisory District:	4 (District Supervisor: XX)
Within Coastal Zone:	<input type="checkbox"/> Inside <input checked="" type="checkbox"/> Outside
Appealable to Calif. Coastal Comm.	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

Archaeological Resources
were not found

A presence/absence study was completed and resources

Services Information

Inside Urban/Rural Services Line: ☐ Yes ☒ No
Water Supply: Pajaro Valley Water Management Agency
Sewage Disposal: Septic
Fire District: Pajaro Valley Fire Protection District
Drainage District: Zone 7

Analysis and Discussion

The proposed project is to construct seven pre-manufactured homes for farm worker family housing on a 9.1 acre site containing one existing single family dwelling and organic row crops. The applicant is also proposing a separate driveway located on the side of the property to service the existing agricultural fields to ensure that agricultural operations are not interrupted by the proposed housing.

As your commission is probably aware, California Health & Safety Code 17021.6 deems farm worker housing, either group quarters up to 36 beds or up to 12 units, as an agricultural land use and exempts it from development permits except development permits that are required for any other agricultural activity in the same zone district. An agriculture buffer reduction is required for the proposed farm worker housing as this approval is required for all habitable uses within 200 feet of agricultural resource lands.

The housing is proposed as three bedroom, two bath dwellings and each unit is approximately 1,375 square in size. The proposed building site is within 200 feet of Commercial Agricultural land to the west, east, and south. The applicant is requesting a reduction in the 200 foot agricultural buffer setback to 38 feet to the west; 97 feet to the east; and, 106 feet to the south from APN 051-101-19; 051-101-22; 051-101-77, respectively.

The parcel is located outside the Urban Services Line within an established rural agricultural area in the Pajaro Valley Planning area. The subject property is characterized by flat topography along Minto Road and slopes steeply to the northeast toward College Lake (APN 15), which is located at the northeastern edge of the property. A single residential dwelling is located at the edge of the existing row crops, approximately 120 feet north of the property line. The parcel is located within the Agriculture (AG) General Plan designation and the implementing zone district is (CA) Commercial Agriculture. Commercial Agriculture zoned land is situated within 200 feet at the west, south, and east side of the parcel at Assessor's Parcel Number 051-101-19; 051-101-22; 051-101-77. Organic apple orchards are farmed immediately to the northwest and west of the property. The family owned parcel adjacent to the south of the property grows certified organic apples and blackberries.

The property contains a floodplain and riparian corridor associated with College Lake, a seasonal lake, two geologic faults, overhead utility lines, and mapped archaeological resource. An archaeological report review confirmed the absence of archaeological resources and the geologic/soils report identified the available building envelope and required design recommendations for the structures. Both reports were accepted by Environmental Planning.

EXHIBIT D

A reduced agricultural buffer is recommended due to the fact that the property has an extremely limited building envelope resulting from physical constraints including overhead utilities along the front property line, steep slopes with row crops toward the central rear of the property, a flood plain with associated riparian corridor area at the rear of the site, two geologic fault lines across the property, which do not allow sufficient building area for allowed development meeting the required 200 foot setback from the adjacent Commercial Agriculture zoned properties.

An existing six foot wire fence is located along the front and sides of the property to College Lake. The applicant is proposing clusters of agricultural buffer plantings along the property frontage, except proposed driveway locations, to reduce the impact of agricultural activities on the proposed residential use, and to protect the agricultural interests on the Commercial Agriculture zoned parcel(s) in the vicinity of the property. The ordinance requires a solid hedge along impacted properties. The project is conditioned to provide a solid hedge along the full extent of residential development except in the area of the proposed driveways. The applicant will also be required to record a Statement of Acknowledgement regarding the issuance of a building permit in an area determined by the County of Santa Cruz to be subject to Agricultural-Residential use conflicts.

Recommendation

- Staff recommends that your Commission **APPROVE** the Agricultural Buffer Reduction from 200 feet to about 38 feet; 97 feet; 106 feet feet to the single-family dwelling from the adjacent CA zoned property known as APN 051-101-19; 051-101-22; 051-101-77, proposed under Application # 141095, based on the attached findings and recommended conditions.

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.

The County Code and General Plan, as well as hearing agendas and additional information are available online at: www.co.santa-cruz.ca.us

Report Prepared By: Sheila McDaniel
Santa Cruz County Planning Department
701 Ocean Street, 4th Floor
Santa Cruz CA 95060
Phone Number: (831) 454-2255
E-mail: sheila.mcdaniel@co.santa-cruz.ca.us

Report Reviewed By: Steven Guiney, AICP
Principal Planner
Development Review

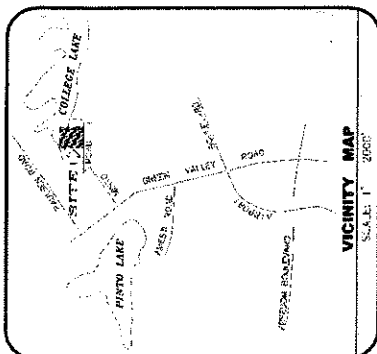
EXHIBIT D

1. Parcel Owner/Address: Tanner & Marie Gonsel 1325 Wilbur Creek Street Washouak, CA 95076	2. Project Representative: P.O. Box 100 Aptos, CA 95001 831 890-7461	3. Site APN: 051-101520	4. Site Area: 14.8 acres (per acre)	5. Estimated Areas: - One (1) 36' foot wide right-of-way at the front of parcel - One (1) 36' foot wide right-of-way at the rear of parcel - All other areas are in the interest of the parcel.	6. Occupancy Type: R-1 Construction Type: Type IVa	7. Zoning: CA	8. Setbacks: Front: 20' Rear: 20' Side: 20'	9. Proposed Bldg Coverage: 11,000 sq. ft. or 1.1% total.	10. Property Use and topographic information as shown from "Topographic Map for Magnus Gonsel" dated 4-11-11 by Met Cost Engineering, Job #13105.	12. Parking Required: 3 bedroom units required 3 spaces 1000 sq. ft. garage required 1 space require 24 spaces total as shown.	13. Review Date: 7/8/14	County Plan Review
---	---	-------------------------	-------------------------------------	--	---	---------------	--	---	---	---	----------------------------	--------------------

**Farm Worker House
Preliminary Plans**
200 Mintto Road
Watsonville, CA.
APN 051-101-15&20

ON THE LANDS OF:
Taurino & Maria Gomez
135 Willow Creek Street
Watsonville, CA. 95076

4/10/1	Gomez-01	A	1 of 2
4/22/14			
1 st 52 nd			

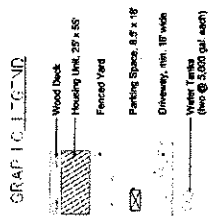


Proposed to construct seven (7) pre-manufactured homes for farmworker families housing on a site with one (1) existing residence.

Proposed homes will be a 3 bedroom, 2 bath single family homes, approximately 25' x 25' at 1,275 sq. ft. each.

Construction of site constraints dictates the location of the homes combination of site constraints requires the location of the homes containing a geologic building envelope, steep slopes plus poor soil, and two (2) P.U.E. (unmet URB) services.

The resulting location of the homes requires reduced Agricultural Buffer for the homes. The resulting location of the homes requires reduced Agricultural Buffer of about 125' but the site is not proposed to be used for agriculture, and about 97' set to the east property line, and about 35' set to the west property line.



★ DISTANCES & ADJACENT
ACROSS "RAILY VARIETIES"
 > 38" to the west
 > 50" to the east
 > 100' to the south

2017年12月

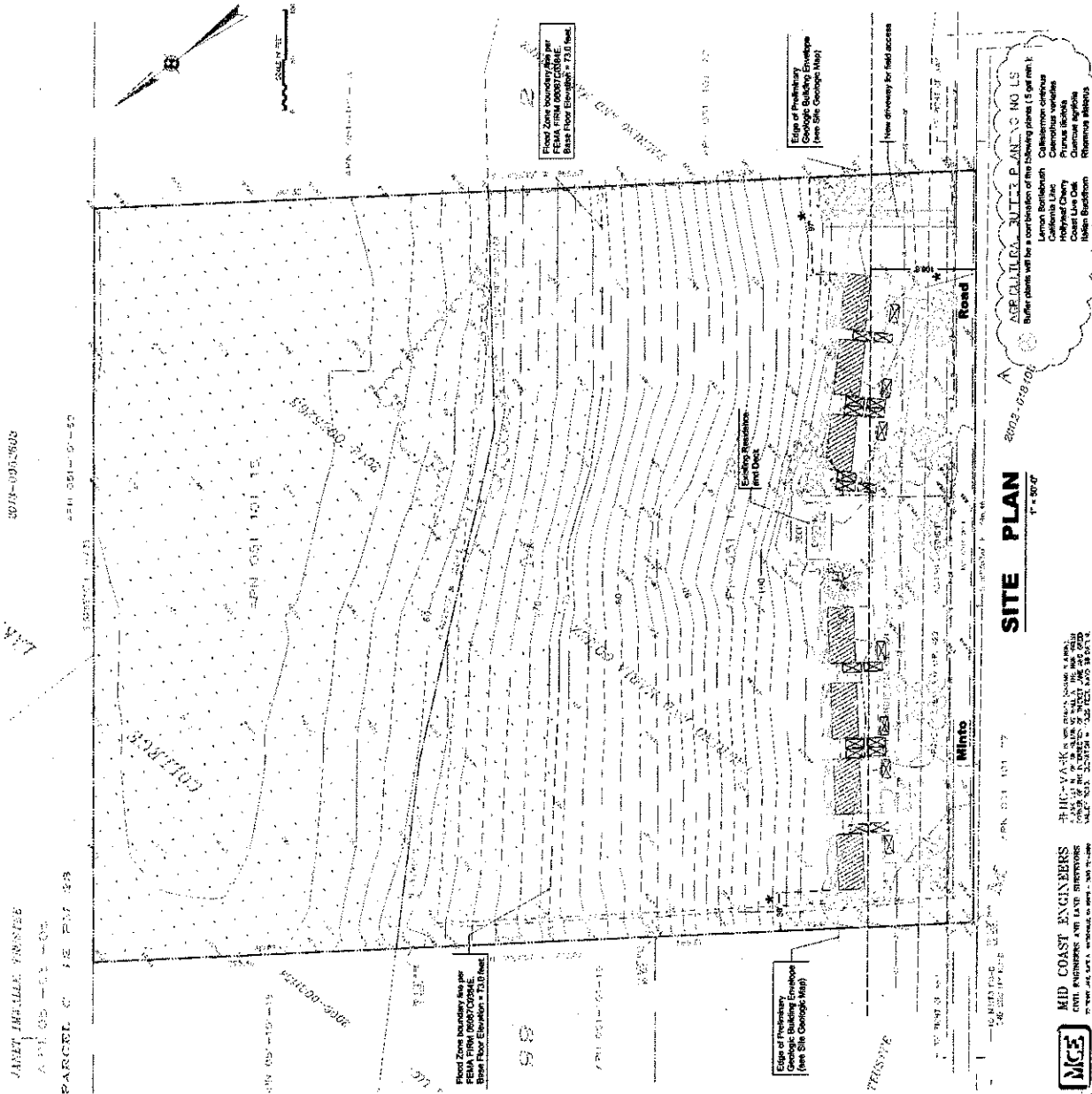
[illegible]

EXHIBIT D

**Required Findings for Agricultural Buffer Setback Reduction
County Code Section 16.50.095(D)**

1. Significant topographical differences exist between the agricultural and non-agricultural uses which eliminates or minimizes the need for a 200 foot agricultural buffer setback; or
2. Permanent substantial vegetation (such as a Riparian Corridor or Woodland protected by the County's Riparian Corridor or Sensitive Habitat Ordinances) or other physical barriers exist between the agricultural and non-agricultural uses which eliminate or minimize the need for a two hundred (200) foot agricultural buffer setback; or
3. A lesser setback is found to be adequate to prevent conflicts between the non-agricultural development and the adjacent agricultural development and the adjacent agricultural land, based on the establishment of a physical barrier (unless it is determined that the installation of a barrier will hinder the affected agricultural use more than it would help it, or would create a serious traffic hazard on a public or private right of way) or the existence of some other factor which effectively supplants the need for a two hundred (200) foot agricultural buffer setback; or
4. The imposition of a two hundred (200) foot agricultural buffer setback would preclude building on a parcel of record as of the effective date of this chapter, in which case a lesser buffer setback distance may be permitted, provided that the maximum possible setback distance is required, coupled with a requirement for a physical barrier (e.g. solid fencing and/or vegetative screening) to provide the maximum buffering possible, consistent with the objective of permitting building on a parcel of record.

The subject property is constrained by a floodplain along the rear third of the property, state and county geologic fault zones establishing a limited building envelope, and PG&E utility easements limiting development of farm worker housing to a very small portion of the property. The imposition of a two hundred foot agricultural buffer setback would preclude building on this parcel altogether. A wire mesh fence exists along the property line and landscape plans provide landscaping buffer plantings to provide a barrier. The project is also conditioned to require additional plantings to provide a solid barrier along the front property line to ensure adequate separation from surrounding agriculture and potential noise, dust, spray, etc.

EXHIBIT D

Required Finding for Agricultural Buffer Setback Reduction on Commercial Agriculture (CA) Zoned Land County Code Section 16.50.095(E)

1. In the event that an agricultural buffer setback reduction is proposed and the proposed non-agricultural development is located on Type 1, Type 2, or Type 3 commercial agricultural land, the non-agricultural development shall be sited so as to minimize possible conflicts between the agricultural use on the subject parcel; and the non-agricultural development shall be located so as to remove as little land as possible from production or potential production.

The proposed farm-worker housing is located as far from the existing arable acreage and adjacent agricultural uses as feasible and removes as little agricultural land as feasible given the existing floodplain, riparian corridor, available geological envelope, and overhead utility easement.

Required Findings for Development on Land Zoned Commercial Agriculture or Agricultural Preserve County Code Section 13.10.314(A)

1. The establishment or maintenance of this use will enhance or support the continued operation of commercial agriculture on the parcel and will not reduce, restrict or adversely affect agricultural resources, or the economic viability of commercial agricultural operations, of the area.

Under State law farm worker housing is considered an agricultural activity enhancing and supporting agricultural operations by providing affordable housing for agricultural workers and will support the continued operation of commercial agriculture on the parcel and will therefore not reduce, restrict or adversely affect agricultural resources of the parcel by location of the improvements to minimize loss of agricultural fields as much as feasible.

2. The use or structure is ancillary, incidental or accessory to the principal agricultural use of the parcel or no other agricultural use of the parcel is feasible for the parcel; or the use consists of an interim public use which does not impair long-term agricultural viability, or consists of a permanent public use that will result in the production of recycled wastewater solely for agricultural irrigation and that limits and mitigates the impacts of facility construction on agriculture consistent with the requirements of Section 13.10.635; or

Farm worker housing is considered a principal agricultural activity under State law and is exempt from development permits with exception of an agricultural buffer reduction for habitable structures within 200 feet of agricultural uses. The proposed farm worker housing has been sited within the available building envelope given geologic faults, floodplain and associated riparian corridor, and overhead utility lines, and is situated in a location that minimizes impacts to existing and surrounding agricultural activity as much as feasible.

3. Single family residential uses will be sited to minimize conflicts, and that all other uses will not conflict with commercial agricultural activities on site, where applicable, or in

EXHIBIT D

the area.

As proposed, the farm worker housing has been sited within the available buildable area given limited geologic building envelope, floodplain and associated riparian corridor, and overhead utility lines, and is situated in a location that minimizes impacts to existing and surrounding agricultural activity as much as feasible.

4. The use will be sited to remove no land from production (or potential production) if any non-farmable potential building site is available, or if this is not possible, to remove as little land as possible from production.

The proposed farm worker housing is proposed in the only available buildable portion of the site due to flood plan and riparian corridor, geologic faults, and overhead utilities and therefore limits removal of farm land as much as feasible.

EXHIBIT D

Conditions of Approval

- I. This permit authorizes an Agricultural Buffer Setback reduction from the proposed residential use to APN (051-101-19; 051-101-22; 051-101-77). This approval does not confer legal status on any existing structure(s) or existing use(s) on the subject property that are not specifically authorized by this permit. Prior to exercising any rights granted by this permit, including, without limitation, any construction or site disturbance, the applicant/owner shall:
 - A. Sign, date, and return to the Planning Department one copy of the approval to indicate acceptance and agreement with the conditions thereof.
 - B. Obtain a Building Permit and Grading Permit from the Santa Cruz County Building Official.
 1. Any outstanding balance due to the Planning Department must be paid prior to making a Building Permit application. Applications for Building Permits will not be accepted or processed while there is an outstanding balance due.
- II. Prior to issuance of a Building Permit the applicant/owner shall:
 - A. Submit final architectural plans for review and approval by the Planning Department. The final plans shall be in substantial compliance with the plans marked Exhibit "A" on file with the Planning Department. Any changes from the approved Exhibit "A" for this development permit on the plans submitted for the Building Permit must be clearly called out and labeled by standard architectural methods to indicate such changes. Any changes that are not properly called out and labeled will not be authorized by any Building Permit that is issued for the proposed development. The final plans shall include the following additional information:
 1. A development setback of a minimum of 38 feet; 97 feet; 106 feet feet from the single-family dwelling to the adjacent Commercial Agriculture zoned parcel APN 051-101-19; 051-101-22; 051-101-77.
 2. Final plans shall show the location of the vegetative buffering barrier (and any fences/walls used for the purpose of buffering adjacent agricultural land) which shall be composed of drought tolerant shrubbery. The shrubs utilized shall attain a minimum height of six feet upon maturity. Species type, plant sizes and spacing shall be indicated on the final plans for review and approval by Planning Department staff.
 - B. The owner shall record a Statement of Acknowledgement, as prepared by the Planning Department, and submit proof of recordation to the Planning Department. The statement of Acknowledgement acknowledges the adjacent agricultural land use and the agricultural buffer setbacks.

EXHIBIT D

III. All construction shall be performed according to the approved plans for the building permit. Prior to final building inspection, the applicant/owner must meet the following conditions:

- A. The agricultural buffer setbacks shall be met as verified by the County Building Inspector.
- B. The required vegetative and/or physical barrier shall be installed. The applicant/owner shall contact the Planning Department's Agricultural Planner, a minimum of three working days in advance to schedule an inspection to verify that the required barrier (vegetative and/or other) has been completed.
- C. All inspections required by the building permit shall be completed to the satisfaction of the County Building Official and/or the County Senior Civil Engineer.

IV. Operational Conditions

- A. The vegetative and physical barrier shall be permanently maintained.
- B. All required Agricultural Buffer Setbacks shall be maintained.
- C. 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, up to and including permit revocation.

V. 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:

EXHIBIT D

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.

Minor Variations to this permit which do not affect the overall concept or density may be approved by the Planning Director at the request of the applicant or staff in accordance with Chapter 18.10 of the County Code.

Please note: This permit expires three years from the effective date listed below or if additional discretionary permits are required for the above permitted project, this permit shall expire on the same date as any subsequent approved discretionary permit(s) unless a building permit (or permits) is obtained for the primary structure described in the development permit (does not include demolition, temporary power pole or other site preparation permits, or accessory structures unless these are the primary subject of the development permit). Failure to exercise the building permit and to complete all of the construction under the building permit, resulting in the expiration of the building permit, will void the development permit, unless there are special circumstances as determined by the Planning Director.

Approval Date: _____

Effective Date: _____

Expiration Date: _____

Appeals: Any property owner, or other person aggrieved, or any other person whose interests are adversely affected by any act or determination of the Agricultural Policy Advisory Commission under the provisions of County Code Chapter 16.50, may appeal the act or determination to the Board of Supervisors in accordance with chapter 18.10 of the Santa Cruz County Code.







EXHIBIT D

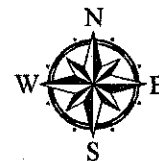


Location Map



LEGEND

-  APN: 051-101-20
-  APN: 051-101-15
-  Assessors Parcels
-  Street
-  State Highways
-  Lakes

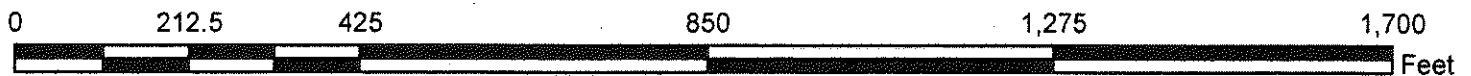
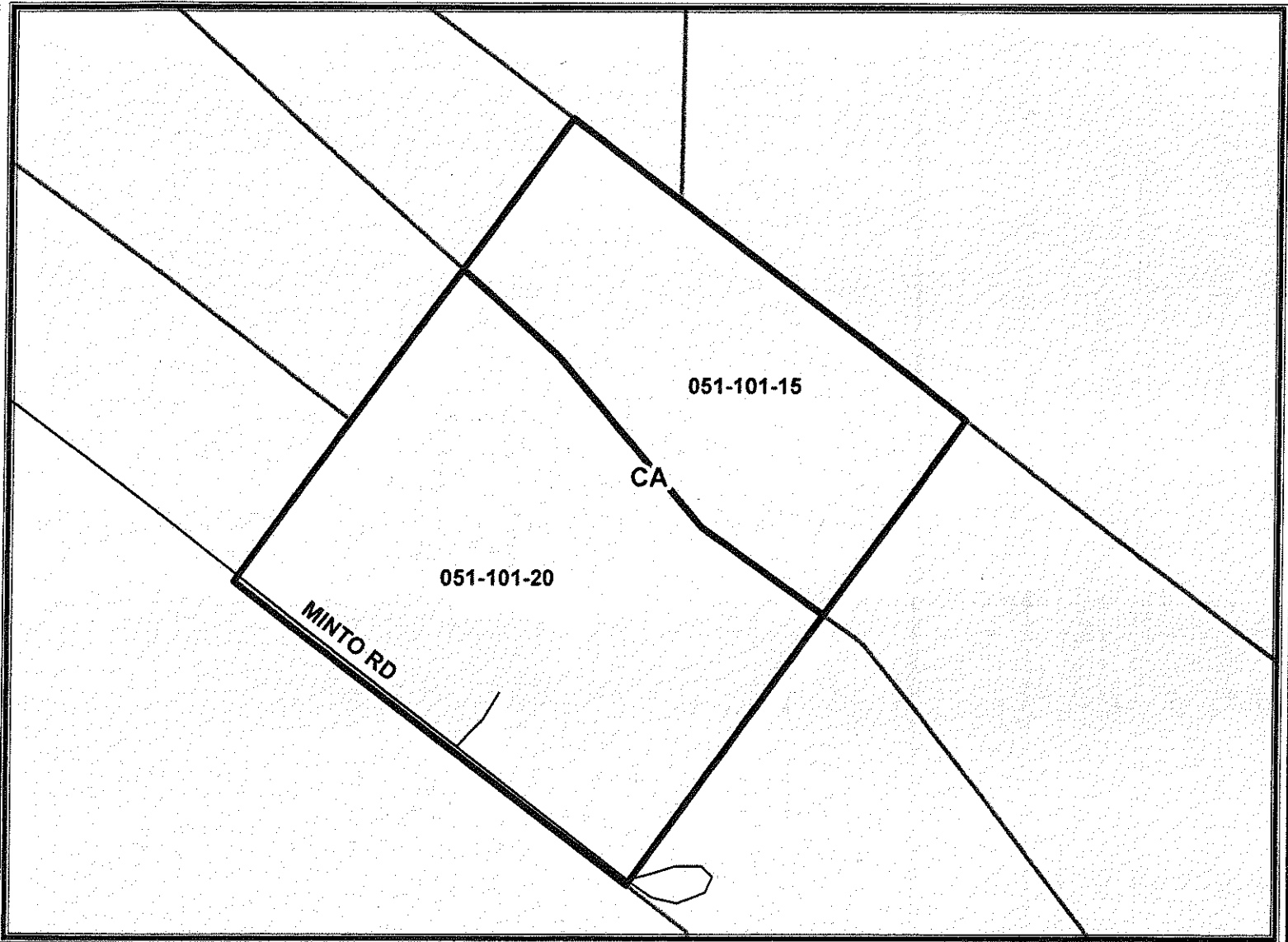


Map Created by
County of Santa Cruz
Planning Department
October 2014




EXHIBIT D



Zoning Map



LEGEND

-  APN: 051-101-20
-  APN: 051-101-15
-  Assessors Parcels

 Street

AGRICULTURE COMMERCIAL

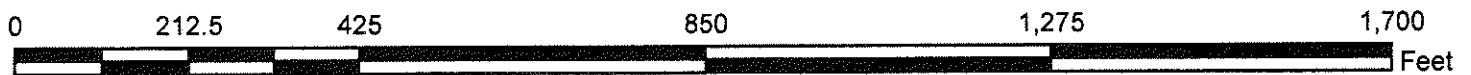
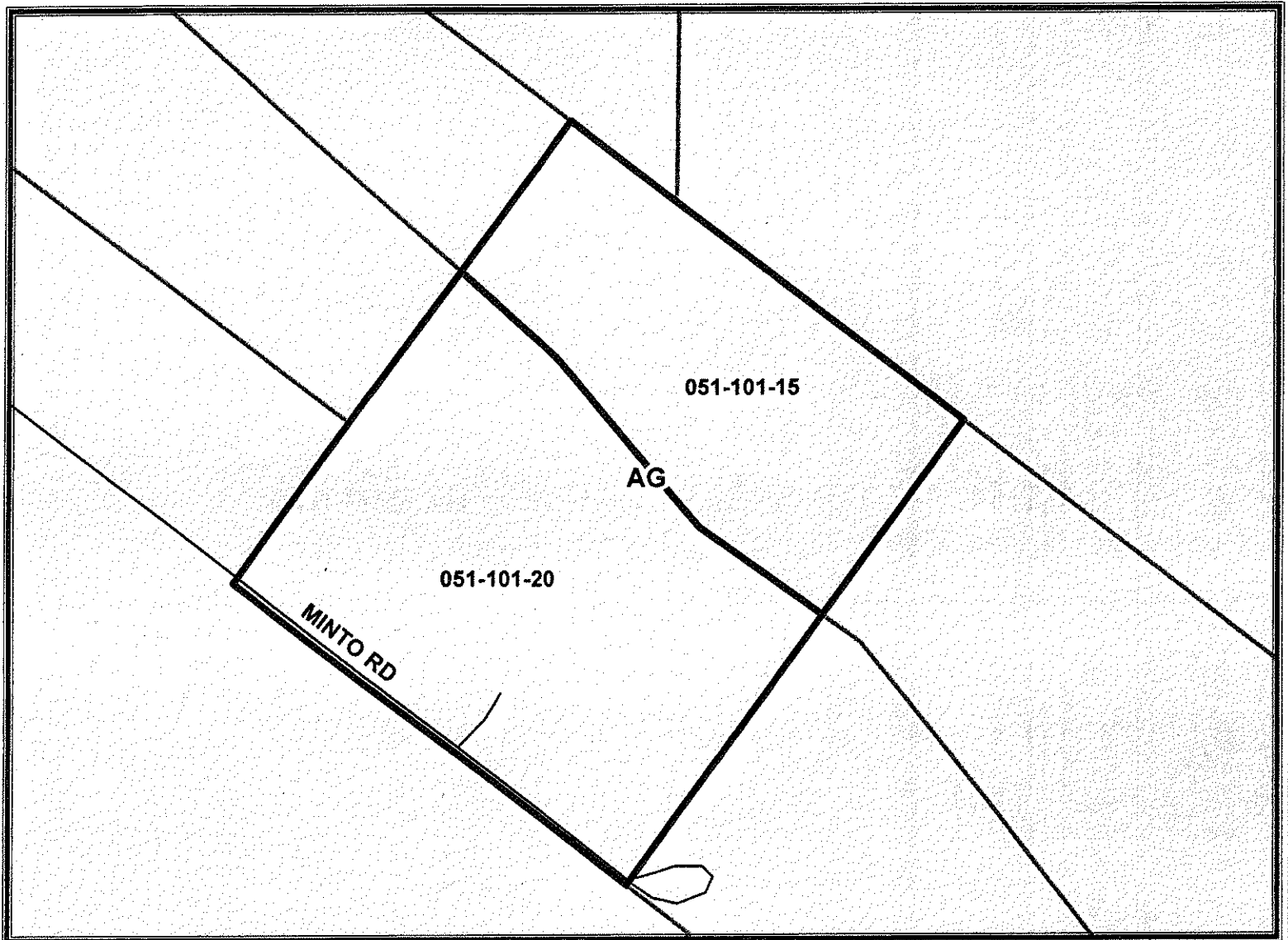


Map Created by
County of Santa Cruz
Planning Department
October 2014






EXHIBIT D 1



General Plan Designation Map



LEGEND

-  APN: 051-101-20
-  APN: 051-101-15
-  Assessors Parcels
-  Street
-  Agriculture



Map Created by
County of Santa Cruz
Planning Department
October 2014

EXHIBIT D

COUNTY OF SANTA CRUZ
INTER-OFFICE CORRESPONDENCE

DATE: January 26, 2015

TO: Agricultural Policy Advisory Commission

FROM: T. Brooke Miller, Assistant County Counsel

SUBJECT: Application for Agricultural Buffer Setback Reduction for Employee Housing Project

BACKGROUND

An application has been submitted for the development of a seven-unit housing project on property zoned Commercial Agriculture (CA) for agricultural employee housing ("Project"). The County has imposed, and the Project applicant has requested, a reduction to the 200-foot agricultural barrier setback requirement, further discussed herein.

QUESTIONS PRESENTED

This office was requested to address the following questions:

1. What is the authority of APAC, generally?
2. What is the authority of the County to regulate employee housing?
3. Can the County impose an agricultural buffer setback requirement on the Project?
4. Can the APAC condition approval of a reduction to the agricultural setback requirement?
5. Can the APAC require certification that the Project is subject to regulation under State law as a condition of approval of a reduction to the agricultural setback requirement, or record a declaration of restriction to the same effect?
6. Does State law require that employee housing be used only for employees of the owner who work on-site?
7. Can the APAC reject an application for a reduction to the agricultural setback requirement if the Project is not regulated by the State as employee housing?
8. Can the County require an agricultural buffer setback between employee housing and on-site agricultural uses?

EXHIBIT E

DISCUSSION

1. Authority of APAC, Generally

The Agricultural Policy Advisory Commission ("APAC") was created by Santa Cruz County Code (SCCC) Chapter 2.82. The powers and duties of the APAC are specified in SCCC Section 2.82.050, which states:

The Commission shall exercise the following responsibilities:

- (A) Advise and assist the Board of Supervisors by providing information on the County's agricultural industry, and evaluating matters referred to the Commission by the Board;
- (B) Review, in cooperation with the Planning Department, proposed development projects having the potential to affect agricultural lands, as designated on the County's Agricultural Resources Map. Such review shall consist of buffer setback determinations, recommendations regarding land division proposals for Type 1a agricultural land, and recommendations regarding proposed amendments to the agricultural land type designations as shown on the Agricultural Resources Map. The Commission shall also perform the functions specified in Chapter 13.14 SCCC.

In addition to these duties and those specified in SCCC Chapter 13.14, APAC is delegated certain authority under SCCC Sections 16.50.095 (discussed herein) and 16.20.195.

2. Authority of the County, Generally, to Regulate Employee Housing

State law, the Employee Housing Act, Health and Safety Code section 17000 *et seq.* ("Act"), regulates the building standards and health and safety requirements applicable to "employee housing," defined in the Act generally to include any housing accommodations maintained in connection with any place of work by an employer for 5 or more employees. (*See* Health & Saf. C., § 17008.) In the case of housing for agricultural workers, "employee housing" also includes temporary or seasonal housing accommodations located in a rural area that are *not* maintained in connection with any specific work place, and which are provided by someone other than an "agricultural employer" as defined in the Labor Code. (*Id.*)

The Act expressly states that, except as otherwise stated therein, it supersedes any local ordinance or regulations applicable to labor camps. (*See* Health & Saf. C., § 17020.) However, the Act reserves to local jurisdictions "local use zone requirements, local fire zones, property line, source of water supply and method of sewage disposal requirements," *except* as provided in Sections 17021.5 and 17021.6 of the Act. (Health & Saf. Code, § 17021.)

Section 17021.6(b) states, in relevant part:

(b) Any employee housing consisting of no more than 36 beds in a group quarters or 12 units or spaces designed for use by a single family or household shall be deemed an agricultural land use for the purposes of this section. For the purpose of all local ordinances, *employee housing shall not be deemed a use that implies that the employee housing is an activity that differs in any other way from an agricultural use.* No conditional use permit, zoning variance, or other zoning clearance shall be required of this employee housing *that is not required of any other agricultural activity in the same zone.* (Health & Saf. Code, § 17021.6(b), emphasis added.)

All new construction and rehabilitations require construction permits from the local jurisdiction. (25 CCR 652, Health & Saf. Code, § 17021.) In addition, under the language of Section 17021.6(b), *supra*, other approvals may be required, *if required of another agricultural activity in the same zone.*

3. County's Authority to Impose Agricultural Buffer

SCCC Section 16.50.095(B) provides:

(B) All development for *habitable uses* within 200 feet of the property line of any parcel containing Type 1, Type 2, or Type 3 commercial agricultural land shall:

(1) Provide and maintain a 200-foot buffer setback between Type 1, Type 2 or Type 3 commercial agricultural land and nonagricultural uses involving habitable spaces, including dwellings, habitable accessory structures and additions thereto; *and commercial, industrial, recreational, or institutional structures, and their outdoor areas designed for public parking and intensive human use[.]* (Emphasis added.)

Pursuant to Section 17021.6(b), *supra*, employee housing “shall not be deemed a use that implies that the employee housing is an activity that differs in any other way from an agricultural use.” However SCCC Section 16.50.095(B) states that, in addition to “*nonagricultural uses*,” “commercial, industrial, recreational or institutional structures. . . designed for intensive human use” are also subject to the buffer requirement. Since these uses are not characterized as non-agricultural uses, an argument can be made that employee housing, as an agricultural use, is subject to the agricultural buffer requirement under SCCC Section 16.50.095(B).

Moreover, the County also requires agricultural buffers for other agricultural uses within the agricultural zone districts, such as buildings used for labor operations relating to agricultural processing and storage facilities. (SCCC § 13.10.632(B)(5).) Therefore, the buffer is “required of another agricultural activity in the same zone” and may be applied to employee housing, notwithstanding Section 17021.6(b).

4. APAC's Authority to Condition Approval of Reduction of Agricultural Buffer

SCCC Section 16.50.095(C) states that, outside the Coastal Zone, the 200-foot buffer requirement set forth in SCCC Section 16.50.095(B), *supra*, may be reduced to a setback of less than 200 feet *if*:

- (1) The proposed land division site is:
 - (a) Located within the urban services line,
 - (b) Suitable for development at buildout level within the carrying capacity of the area; and
- (2) The Agricultural Policy Advisory Commission (APAC) finds that one or more of the following special circumstances exist:
 - (a) Significant topographic differences exist between the agricultural and nonagricultural uses which minimize or eliminate the need for a 200-foot setback; or
 - (b) Permanent substantial vegetation (such as a riparian corridor or woodland permanently protected by the County's riparian corridor or sensitive habitat ordinances) or other physical barriers exist between the agricultural and nonagricultural uses which minimize or eliminate the need for a 200-foot setback; or
 - (c) The imposition of the 200-foot agricultural buffer setback would, in a definable manner, hinder: infill development or the development of a cohesive neighborhood, or otherwise create a project incompatible with the character and setting of the existing surrounding residential development; and
- (3) APAC determines the need for agricultural buffering barriers based upon an analysis of the adequacy of the existing buffering barriers, the density of the proposed land division and the proposed setback reduction, in the event that APAC finds that one or more of the above special circumstances exist; and
- (4) The approving body finds that the proposed reduction of the agricultural buffer setback(s) will not hinder or adversely affect the agricultural use of the commercial agricultural lands located within 200 feet of the proposed development.

There is no authority set forth in the SCCC which would allow APAC to condition approval of a reduction in the 200-foot agricultural buffer setback. APAC's only authority with respect to the agricultural buffer is to determine whether any of the above "special circumstances" exists, and then to determine the need for agricultural buffering barriers, based on the factors stated in County Code, in the event that such "special circumstances" exist.

5. APAC's Authority to Require Certification or Recording of a Declaration that the Project is Subject to State Law as Employee Housing as a Condition of Approval of Agricultural Buffer Setback Reduction

As discussed *supra*, the SCCC does not authorize APAC to condition approval of a reduction of the 200-foot agricultural buffer.

Moreover, Section 17021.6(b) of the Act, *supra*, states: "For the purpose of all local ordinances, *employee housing* shall not be deemed a use that implies that the employee housing is an activity that differs in any other way from an agricultural use. No conditional use permit, zoning variance, or other zoning clearance shall be required of this *employee housing* that is not required of any other agricultural activity in the same zone. (Health & Saf. Code, § 17021.6(b), emphasis added.) Section 17021.6(a) states: "The owner of any employee housing *who has qualified or intends to qualify* for a permit to operate pursuant to this part may invoke this section." (Health & Saf. Code, § 17021.6(a), emphasis added.) Thus, an owner who *intends* that housing accommodations be permitted pursuant to the Act for use as employee housing is entitled to treatment of the project as an agricultural activity. No certification that the project is subject to or permitted pursuant to the Act is required. The owner need only "invoke" Section 17021.6 by stating that the project is intended to qualify for a permit to operate pursuant to the Act.

For these reasons the APAC also lacks authority to require recording of a declaration or deed notice relating to use of the Project for employee housing pursuant to the Act.

However, SCCC Section 16.50.095(B)(3) requires recordation of notices for any *habitable* uses within 200 feet of the property line of a parcel containing commercial agricultural land:

(B) All development for habitable uses within 200 feet of the property line of any parcel containing Type 1, Type 2, or Type 3 commercial agricultural land shall:

(3) Comply with SCCC 16.50.090(C) and/or 14.01.407.5 pertaining to recording deed notices of adjacent agricultural use. Such deed notice shall contain a statement acknowledging the required permanent provision and maintenance of the agricultural buffer setbacks and any required barriers (e.g., fencing or vegetative screening).

If this requirement is imposed on other agricultural uses within the CA zone (for example, buildings used for labor operations relating to agricultural processing and storage facilities), it can also be applied to the Project.

6. Use of Employee Housing by Non-Employees

"Employee housing" is defined in the Act as: "any portion of any housing accommodation, or property upon which a housing accommodation is located, if all of the following factors exist:

(1) The accommodations consist of any living quarters, dwelling, boardinghouse, tent, bunkhouse, maintenance-of-way car, mobilehome, manufactured home, recreational vehicle, travel trailer, or other housing accommodations, maintained in one or more buildings or one or more sites, and the premises upon which they are situated or the area set aside and provided for parking of mobilehomes or camping of five or more employees by the employer.

(2) The accommodations are maintained in *connection with any work or place where work is being performed*, whether or not rent is involved.” (Health & Saf. C., § 17008(a).)

“Employee housing” also includes: “any portion of any housing accommodation or property upon which housing accommodations are located, if all of the following factors exist:

(A) The housing accommodations or property are located in any *rural area*, as defined by Section 50101.

(B) The housing accommodations or property are *not maintained in connection with any work or workplace*.

(C) The housing accommodations or property are provided by *someone other than an agricultural employer*, as defined in Section 1140.4 of the Labor Code.

(D) The housing accommodations or property are used by *five or more agricultural employees of any agricultural employer or employers* for any of the following:

(i) *Temporary or seasonal residency*.

(ii) Permanent residency, if the housing accommodation is a mobilehome, manufactured home, travel trailer, or recreational vehicle.

(iii) Permanent residency, if the housing accommodation is subject to the State Housing Law and is more than 30 years old and at least 51 percent of the structures in the housing accommodation, or 51 percent of the accommodation if not separated into units, are occupied by agricultural employees.” (Health & Saf. C., § 17008(b), emphasis added.)

Under these definitions, “employee housing” includes: (1) housing provided by an employer in connection with a workplace but in which non-employees reside (as long as at least 5 employees also reside in the housing); and (b) temporary or seasonal housing used by five or more agricultural employees of someone other than the owner of the housing (who may not be an

agricultural employer), where the housing is located in a rural area and is not connected with any work or work place.

Moreover, for purposes of the exemption from local zoning authority under Section 17021.6(b), the definition of employee housing is even broader; that Section states: "The permitted occupancy in employee housing in a zone allowing agricultural uses shall include agricultural employees who do not work on the property where the employee housing is located." (*Id.*)

Therefore, at least for purposes of the exemption of employee housing projects from local land use authority, there is no requirement that the housing be used only by employees who work on the site; moreover in general there is no requirement that employee housing be only for employees of the owner of the housing, if it otherwise meets one of the definitions above.

7. APAC's Authority to Reject Application for Reduction of Agricultural Buffer Setback for a Project not Qualifying as Employee Housing under the Act

As discussed above, the authority of the APAC with regard to consideration of reduction of the agricultural buffer setback requirement is limited to consideration of whether any of the specified "special circumstances" exists, and to determine the need for agricultural buffering barriers in the event that such "special circumstances" exist. (*See* SCCC Section 16.50.095.) Therefore the APAC is not authorized to reject an application for reduction of an agricultural buffer setback because a project does not qualify as State-regulated employee housing.

Moreover, as noted above, Section 17021.6(a) states that the owner of employee housing who *intends* to qualify for a permit to operate under the Act can invoke that Section. Therefore, local authorities cannot require that employee housing *actually* qualify for a permit under the Act in order to be entitled to treatment as an "agricultural use" for purposes of local ordinances.

8. Authority of County to Impose On-Site Buffers

In addition to the agricultural buffer setback requirements under SCCC Section 16.50.095(B), SCCC Section 16.50.095(F) provides:

Notwithstanding the provisions of subsection (B) of this section, *farm worker housing developments* located on Type 1, Type 2, or Type 3 commercial agricultural land shall provide a buffer between habitable structures and outdoor areas designed for human use and areas engaged in agricultural production located on the same parcel. Said buffer shall be 200 feet if feasible; and if a 200-foot buffer is not feasible, then the maximum buffering possible shall be provided, utilizing physical barriers, vegetative screening and other techniques as appropriate. (Emphasis added.)

However, as noted above, the Act expressly states that, except as otherwise stated therein, it supersedes any local ordinance or regulations applicable to labor camps (which has the same meaning as employee housing). (*See* Health & Saf. C., § 17020.) Since the requirement

under SCCC 16.050.095(F) applies only to "farm worker housing developments," it is superseded by State law and cannot be imposed on employee housing.

16.50.095 Agricultural buffer setbacks.

(A) The purpose of the agricultural buffer setback requirements is to prevent or minimize potential conflicts between either existing or future commercial agricultural and habitable land uses (i.e., residential, recreational, institutional, commercial or industrial). This buffer is designed to provide a physical barrier to noise, dust, odor, and other effects which may be a result of normal commercial agricultural operations such as: plowing, discing, harvesting, spraying or the application of agricultural chemicals and animal rearing.

(B) All development for habitable uses within 200 feet of the property line of any parcel containing Type 1, Type 2, or Type 3 commercial agricultural land shall:

(1) Provide and maintain a 200-foot buffer setback between Type 1, Type 2 or Type 3 commercial agricultural land and nonagricultural uses involving habitable spaces, including dwellings, habitable accessory structures and additions thereto; and commercial, industrial, recreational, or institutional structures, and their outdoor areas designed for public parking and intensive human use, except that if an existing legal dwelling already encroaches within the 200-foot buffer setback, proposed additions thereto, habitable accessory structures or private recreational facilities, none exceeding 1,000 square feet in size, shall be exempt from this subsection so long as they encroach no further than the existing dwelling into the buffer setback and an appropriate vegetative and/or other physical barrier for all existing and proposed development, as determined necessary, either exists or is provided and maintained. For the purposes of this section, outdoor areas designed for intensive human use shall be defined as surfaced ground areas or uncovered structures designed for a level of human use similar to that of a habitable structure. Examples are dining patios adjacent to restaurant buildings and private swimming pools. The 200-foot agricultural buffer setback shall incorporate vegetative or other physical barriers as determined necessary to minimize potential land use conflicts.

(2) Provide and maintain a buffer setback distance of at least 200 feet where the subdivision of land results in residential development at net densities of one or more dwelling units per acre adjacent to Type 1, Type 2, Type 3 commercial agricultural land, with vegetative screening or other physical barriers as appropriate.

(3) Comply with SCCC 16.50.090(C) and/or 14.01.407.5 pertaining to recording deed notices of adjacent agricultural use. Such deed notice shall contain a statement acknowledging the

required permanent provision and maintenance of the agricultural buffer setbacks and any required barriers (e.g., fencing or vegetative screening).

(C) Outside of the Coastal Zone, notwithstanding the provisions of subsection (B) of this section, an agricultural buffer setback distance of less than 200 feet may be established for subdivision developments involving habitable uses on proposed parcels adjacent to lands designated as an agricultural resource by the County's General Plan maps; provided, that:

(1) The proposed land division site is:

(a) Located within the urban services line,

(b) Suitable for development at buildout level within the carrying capacity of the area; and

(2) The Agricultural Policy Advisory Commission (APAC) finds that one or more of the following special circumstances exist:

(a) Significant topographic differences exist between the agricultural and nonagricultural uses which minimize or eliminate the need for a 200-foot setback; or

(b) Permanent substantial vegetation (such as a riparian corridor or woodland permanently protected by the County's riparian corridor or sensitive habitat ordinances) or other physical barriers exist between the agricultural and nonagricultural uses which minimize or eliminate the need for a 200-foot setback; or

(c) The imposition of the 200-foot agricultural buffer setback would, in a definable manner, hinder: infill development or the development of a cohesive neighborhood, or otherwise create a project incompatible with the character and setting of the existing surrounding residential development; and

(3) APAC determines the need for agricultural buffering barriers based upon an analysis of the adequacy of the existing buffering barriers, the density of the proposed land division and the proposed setback reduction, in the event that APAC finds that one or more of the above special circumstances exist; and

(4) The approving body finds that the proposed reduction of the agricultural buffer setback(s) will not hinder or adversely affect the agricultural use of the commercial agricultural lands located within 200 feet of the proposed development.

(D) Notwithstanding the provisions of subsection (B) of this section an agricultural setback distance of less than 200 feet may be established for developments involving habitable uses on existing parcels of record when one of the following findings is made in addition to the required finding in subsection (E) of this section:

(1) Significant topographic differences exist between the agricultural and nonagricultural uses which eliminates or minimizes the need for a 200-foot agricultural buffer setback; or

(2) Permanent substantial vegetation (such as a riparian corridor or woodland protected by the county's riparian corridor or sensitive habitat ordinances) or other physical barriers exist between the agricultural and nonagricultural uses which eliminate or minimize the need for a 200-foot agricultural buffer setback; or

(3) A lesser setback distance is found to be adequate to prevent conflicts between the nonagricultural development and the adjacent agricultural development and the adjacent agricultural land, based on the establishment of a physical barrier (unless it is determined that the installation of a barrier will hinder the affected agricultural use more than it would help it, or would create a serious traffic hazard on a public or private right-of-way) or the existence of some other factor which effectively supplants the need for a 200-foot agricultural buffer setback.

(4) The imposition of a 200-foot agricultural buffer setback would preclude building on a parcel of record as of the effective date of the ordinance codified in this chapter, in which case a lesser buffer setback distance may be permitted; provided, that the maximum possible setback distance is required, coupled with a requirement for a physical barrier (e.g., solid fencing and/or vegetative screening) to provide the maximum buffering possible, consistent with the objective of permitting building on a parcel of record.

(E) In the event that an agricultural buffer setback reduction is proposed and the proposed nonagricultural development is located on Type 1, Type 2 or Type 3 commercial agricultural land, the nonagricultural development shall be sited so as to minimize possible conflicts between the agricultural land use located on the subject parcel; and the nonagricultural development shall be located so as to remove as little land as possible from production or potential production.

(F) Notwithstanding the provisions of subsection (B) of this section, farm worker housing developments located on Type 1, Type 2, or Type 3 commercial agricultural land shall provide a buffer between habitable structures and outdoor areas designed for human use and areas engaged in agricultural production located on the same parcel. Said buffer shall be 200 feet if feasible; and if a 200-foot buffer is not feasible, then the maximum buffering possible shall be provided, utilizing physical barriers, vegetative screening and other techniques as appropriate.

(G) Proposals to reduce the required 200-foot agricultural buffer setback for additions to existing residential construction (dwellings, habitable accessory structures and private recreational facilities not otherwise exempted by subsection (B)(1) of this section) and for the placement of agricultural caretakers' mobile homes on agricultural parcels shall be processed as a Level 4 application by Planning Department staff as specified in Chapter 18.10 SCCC with the exception that:

(1) A notice that an application to reduce the buffer setback has been made shall be given to all members of the Agricultural Policy Advisory Commission at least 10 calendar days prior to the issuance of a pending action on an agricultural buffer determination; and

(2) Where a reduction in the buffer setback is proposed, the required notice of pending action shall be provided to the applicant, to all members of the Agricultural Policy Advisory Commission, to owners of commercial agricultural land within 300 feet of the project location, and to members of the Board of Supervisors, not less than 10 days prior to the issuance of the permit. There shall not be a minimum number of property owners required to be noticed; and

(3) Buffer determinations made by Planning Department staff are appealable by any party directly to the Agricultural Policy Advisory Commission. Such appeals shall include a letter from the appellant explaining the reason for the appeal and the current administrative appeal processing fee.

(H) All other proposals to reduce the agricultural buffer setback shall be processed as a Level 5 application as specified in Chapter 18.10 SCCC with the exception that:

(1) The required notice that an application has been made to reduce the agricultural buffer setback shall be provided only to owners of commercial agricultural land within 300 feet of the proposed project, not less than 10 days prior to the public hearing scheduled to consider the project. There shall not be a minimum number of property owners required to be noticed; and

(2) All determinations shall be made by the Agricultural Policy Advisory Commission at a scheduled public hearing.

(f) An agricultural buffer setback shall not be required for repair or reconstruction of a structure damaged or destroyed as the result of a natural disaster for which a local emergency has been declared by the Board of Supervisors, when:

(1) The structure, after repair or reconstruction, will not exceed the floor area, height or bulk of the damaged or destroyed structure by 10 percent; and

(2) The new structure will be located in substantially the same location, but no closer to the agricultural land than was the original structure. [Ord. 4921 §§ 26, 27, 2008; Ord. 4753 § 3, 2003; Ord. 4496-C § 96, 1998; Ord. 4311 § 1, 1994; Ord. 4284 § 1, 1993; Ord. 4037 § 3, 1989; Ord. 4030 § 5, 1989; Ord. 3447 § 1, 1983; Ord. 3336 § 1, 1982].