



COUNTY OF SANTA CRUZ

PLANNING DEPARTMENT

701 OCEAN STREET - 4TH FLOOR, SANTA CRUZ, CA 95060
(831) 454-2580 FAX. (831) 454-2131 TDD (831) 454-2123

TOM BURNS. PLANNING DIRECTOR

December 16, 2005

Agenda Date: January 11, 2006

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

Subject: A public hearing to consider an appeal of the Zoning Administrator's decision to approve application 04-0650; a proposal to recognize an existing commercial building and to establish a Master Occupancy Program to allow commercial service uses.

Members of the Commission:

The above listed project for a Commercial Development Permit was reviewed at the 10/7/05 Zoning Administrator hearing. At that hearing, the attorney representing the neighbor requested additional time to prepare written materials related to the proposed development. The hearing was continued to 11/18/05 allow for the neighbor's representative to perform additional research and to prepare additional documentation.

The attorney representing the neighbor provided additional information during the week of the rescheduled public hearing. The applicant's representative provided additional information during this time, as well. Planning Department staff and the Zoning Administrator reviewed the additional information and modified the conditions for the proposed development prior to granting an approval for this item on 11/18/05. The Zoning Administrator heard and considered each of the concerns stated by the neighbor and his representing attorney prior to modifying the project conditions and taking final action on this proposal. The neighbor did not feel that each of the concerns were adequately addressed and an appeal of the Zoning Administrator's decision was formally made on 12/2/05 by the attorney representing the neighboring property owner.

Soil Stability & Environmental Concerns

The appellant has stated that earthwork has been improperly performed on the applicant's property and that the neighboring property may have been adversely affected.

The Zoning Administrator considered this issue and discussed the prior earthwork (performed under Riparian Exception 96-0396) with Environmental Planning staff. Based on the evidence presented at that time, it was determined that the prior earthwork and associated improvements were installed as required by County staff and that the prior earthwork was not a component of the current proposal. Even with this determination, the Zoning Administrator addressed the neighbor's concerns and required the preparation of a geotechnical report with a slope stability

analysis prior to the approval of a building permit for the proposed commercial building. The preparation and review of ~~this~~ report, and the requirements imposed by such a review, was intended to address any slope stability issues that may exist on the subject property.

Additional Information Received

In response to the Zoning Administrator's request for a geotechnical report prior to building permit issuance, the applicant had the subject property analyzed by geotechnical engineers. Although their analysis was preliminary, and soils borings were not taken, the geotechnical engineers were able to determine that a significant soil stability issue exists on the project site. This information was relayed from the project applicant to the County geologist by telephone shortly after the final action was appealed.

In order to determine what measures are necessary to stabilize the site, further geologic and geotechnical reviews will be necessary. This additional information was not available to Planning Department staff or the Zoning Administrator when the final action was taken on 11/18/05. If Planning Department staff (or the Zoning Administrator) had this additional information at the time that the review was conducted the staff recommendation (and final action by the Zoning Administrator) would have differed and additional geologic and geotechnical review would have been required.

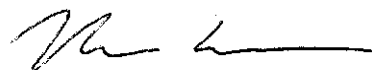
Summary

The issues raised by the appellant were addressed by the Zoning Administrator prior the decision to approve the application on 11/18/05. Since that time, additional site specific information regarding the stability of the soils on the project site has been received. Further geologic and geotechnical analysis will be required to determine the best methods to stabilize the project site. Given the need for further review, the Zoning Administrator would like another opportunity to review this application and to modify the findings and/or conditions as necessary.

Recommendation

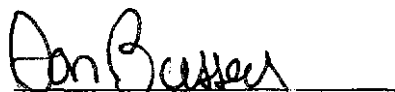
Planning Department staff recommends that your Commission **REMAND** Application Number 04-0650 back to the Zoning Administrator for reconsideration.

Sincerely,



Randall Adams
Project Planner
Development Review

Reviewed By:


Don Bussey
Deputy Zoning Administrator
county of santa Cruz

Attachments:

1. Appeal letter, prepared by Kent Washburn, dated 12/2/05.
2. Letter from neighbor's representative, prepared by Kent Washburn, dated 11/17/05.
3. Letter from applicant's representative, prepared by Kim Tschantz, dated 11/15/05.
4. Staff report to **the** Zoning Administrator, originally heard on 10/17/05 and continued to 11/18/05.

KENT G. WASHBURN
ATTORNEY AT LAW

VOICE (831) 458-9771
FAX: (831) 459-6127

kentgwashburn@compuserve.com

123 Jewell Street
SANTA CRUZ, CALIFORNIA. 95060

2005 DEC 2 AM 11 55

December 2, 2005

Santa Cruz County Planning Commission
701 Ocean St.
Santa Cruz, Ca. 95060

Re: Notice of Appeal/Application # 04-0650 038-061-07

Dear Commission:

I represent Jarl Saal. Mr. Saal hereby appeals the decision of the Zoning Administrator on November 18, 2005 to approve the above-referenced application.

Mr. Saal is beneficially interested in this matter in that he owns two parcels adjoining the subject property. One of his parcels, at 1111 Estates Dr. is improved with the First Alarm building which serves the private security needs of so many local individuals, agencies, and businesses.

- There are signs of cracking in the improvements on Mr. Saal's First Alarm property, along its boundary with the parcel of the applicant.

- There is significant evidence that this may be the result of unauthorized construction and unengineered soil placement on the applicant's property.

- There is significant evidence of environmental degradation in the Borregas Creek arroyo, both on, and downstream of, the applicant's parcel. Mr. Saal owns the parcel immediately downstream from the applicant.

- There is significant evidence, in the form of *sworn statements* from three disinterested local professionals, including the former county employee who was responsible for inspecting work on the applicant's parcel, evidence which the Zoning Administrator disregarded, of the unsupervised and unpermitted placement of hundreds, and perhaps thousands, of cubic yards of unengineered fill on county right of way property and on the applicant's own parcel.

The decisions taken by the Zoning Administrator are appealed because they constituted:

- a prejudicial abuse of discretion,
- there was not a fair and impartial hearing,
- the decision made was not supported by the facts, did not follow the law, and rested in part on mere speculation.

The fairness and impartiality of the hearing is challenged on two grounds in particular:

- after the public hearing was closed and the appellant's opportunity to respond to evidence had been cut off, the Zoning Administrator invited and permitted new testimony but refused to give the appellant a chance to question or rebut that new testimony
- county staff members were present to supply information to the Zoning Administrator, but they refused, despite express requests from appellant, to consider or respond to the evidence that was presented by the appellant.

The following grounds of appeal are asserted as to the particular determinations the ZA made:

As to the **CEQA Notice of Exemption** the applicant was not eligible for a categorical exemption as "existing facilities" because all the evidence showed that about 95% of the "existing structure" was built totally without permits. It stands the entire logic of land use approval completely on its head to say that the careful application of CEQA analysis to an illegally built 2,400 square foot structure built after CEQA was enacted can be avoided altogether because the applicant and his predecessors were so bold as to build the structure in violation of CEQA and all other applicable law! The clear intent of categorical exemption under CEQA, as declared by both the Legislature and the appellate courts, was to exempt "existing facilities" whose actual development came **before** CEQA. Since all the evidence shows that this structure was built largely without permits **after** CEQA then CEQA must be applied. No other categorical exemption applies either.

As to the **Variance**, the necessary findings could not be made and should not have been made on the basis of the evidence presented. The variance seeks to legalize unpermitted construction which invades the setbacks from the riparian corridor and the underdeveloped residential parcel to the rear owned by Mr. Saal. The key fact is that the offending portion of the structure was built without permits. Thus the first finding, that the variance is needed because of special circumstances which would otherwise deprive the property of privileges enjoyed by others, cannot be made. In reality it is illegal construction on the property within county mandated setbacks which makes a variance needed.

The other variance findings cannot be made either. It is a grant of special privilege to exempt unlawful construction from the strictures met by owners who developed in conformity with the law. It is not harmonious with the purposes or intent of the law to permit illegal commercial development to encroach on the setbacks for adjoining residential land because it is sure to impact the level of future use and developability of the adjoining residential land; when commercial use invades the setbacks then either the future residents deal with noise intrusion or the future residential development is cut back to provide more setback on its side of the line.

Coastal Development findings could not and should not have been made. The project:

- conflicts with residential and riparian setbacks,
- affects a parcel where existing environmental and grading violations are unaddressed,
- does not meet normal site coverage and other design criteria.

Development Permit approval was improper because:

- the proposed site coverage and impervious surfaces result in site overdevelopment,
- the proposed development conflicts with significant riparian & open space policies,
- it conflicts with General Plan standards on development proportional to usable area.

In summary please let me say a few candid words about the process and my client's position. This is not a vendetta or grudge match on our part though other will try to make it seem so; my client recognizes that the applicant has as much right to beneficial use of his property as my client does, and we are not proceeding under the illusion that such use can or should be prevented or delayed.

Instead our position is that starting from the standpoint of the more than twelve year history of building, zoning, coastal, grading, environmental health and General Plan violations, nobody should be bending over backwards to smooth the applicant's path or exempt him from the standards applicable to those who obey the law. We invite cynical disrespect for the law if equally situated and law abiding applicants receive unequal treatment. What does it do when a deliberate violator, even if some of the violations were "inherited" from a predecessor or spearheaded by a former partner, receives special treatment? It can only be expected to severely damage confidence in the integrity of the entire decision-making process.

All the declarations of legislative intent for CEQA, the Subdivision Map Act, and the other leading land use standards of the State of California, to say nothing of the appellate court decisions which construe them, speak in terms of good-faith reasoned analysis on the basis of gathering and considering all relevant information. The decision we challenge would turn that around 180 degrees

Three sworn statements from a) disinterested professionals with b) direct knowledge of what was done to this parcel by c) the applicant himself d) after the riparian exemption was signed off were submitted into the record. Taken together they show that hundreds if not thousands of yards of fill were imported and placed, largely on county property and spilling into a protected riparian corridor, with no proper engineering or supervision.

Good faith reasoned analysis and informed decision making required that this extremely reliable information and the serious questions it raised be addressed *before* giving the applicant CEQA. variance, development, and coastal sign offs. Giving the approval first, before the information is known, hands the applicant an approval which may be contradicted when the soils analysis is completed. More important, handing the applicant an approval before the soils information is in violates both the letter and spirit of the law by depriving the appellant and all other interested members of the public of a significant right afforded them by the law, the right to take a meaningful part in the process by analyzing and responding in public debate to such key information as a report on hundreds or thousands of yards of illegally placed soils. Approval before information is gathered truncates, and even prevents, such informed public debate and decision making. The only way to respect the spirit and letter of land use law is to withdraw the approval of 04-0650 until all the facts are in and have been made known to applicant, appellant and county staff, so that due deliberation and informed decision making, not a rush to judgment, results.

Sincerely yours,



ATTACHMENT 1

KENT G. WASHBURN
ATTORNEY AT LAW

VOICE: (831) 458-9777
 FAX: (831) 459-6127

kentgwashburn@compuserve.com

123 Jewell St.
 SANTA CRUZ, CALIFORNIA 95060

November 17, 2005

Mr. Don Bussey
 Zoning Administrator
 701 Ocean St.
 County of Santa Cruz, Ca. 95060

Re: 2000 McGregor Dr. APN 038-061-07 Application # 04-0650

Dear Mr. Bussey:

Several **weeks** ago I was contacted by the applicant's neighbor to analyze this application **and** the **staff** report which recommended its approval. I believe Supervisor Pirie had previously been approached by both the applicant and opponents of the project, especially in regard to possible purchase of the adjoining county right of way. When she learned that I had been retained to **look** into the matter she asked me to be sure to forward my conclusions to her attention. Hence this letter **is** copied to her. My apologies to **all**, including the applicant, **because** the press of court business **has** made the time between this letter and the hearing **on** November **18** **so** short.

I. Executive Summary

The **parcel** and its owner have **an** extensively documented, twelve plus year history of some of the most egregious, consistent, and bold violations of county building, zoning **and** environmental regulations ever **seen** in a parcel of this size in Santa **Cruz** County! They now **seek** to legitimize these violations through the present application.

My client and **other** neighbors of this parcel oppose the application because it rests on:

- false statements, concealment of the truth and a refusal to cooperate in essential fact finding,
- failure** to **expose** the site improvements to the **same** scrutiny a law abiding applicant faces,
- issuance of a variance to legitimize illegal construction,
- failure to address **the** environmental impacts of illegal activity by the owners of this site,
- hypothetical acquisition of public property the applicant **has** damaged and **wrongfully** used.

For these reasons the application should be denied outright or at least deferred until the applicant cooperates at **his own** expense in finding **out** the truth.

II. Foundational Misrepresentations

The touchstone of the application is site plan sheet **A 1**, dated December **22, 2004** and revised as of July 27, 2005. It is divided into two halves, the existing site plan and the proposed site plan. On the existing site plan there is a note which states "Note: all features represented on this **plan** are existing and permitted except 160 sq. ft. room (shown hatched)." A second note just below the first one states "All impervious areas on this plan are existing and permitted except 160 sq. ft. room. See permit numbers and dates below."

These statements are false. The county's enforcement files contain detailed review of the permit history showing that the one building permit mentioned was in 1967 for some minor changes to a small nursery building. Over the years that roughly 400 sq. ft. office building was gradually and without benefit of any building permits whatsoever turned into a 2042 sq. ft. building as shown on the plans.

The statements are false in their indication that the riparian exception of 1996 authorized all the impervious surfaces shown on the plan sheet. In point of fact that riparian exception was not issued to the property owner, but rather to the County of Santa Cruz Public Works. The purpose of that riparian exception was not to address the legitimacy of the various improvements on this site, which Public Works had no jurisdiction whatsoever to seek or obtain, but rather to facilitate locating and resetting a manhole and sewer line which had been buried by past illegal grading on this site around 1993.

III. Significant New Evidence

Enclosed under **Tab 1** of the attached materials is a set of three separate declarations under penalty of perjury on the subject of post-riparian exception grading violations. The declarations are accompanied by the unsworn letter of a fourth expert.

Several things are noteworthy about these three declarations.

1. They come from totally disinterested parties, not partisan experts hired by my client.
2. Each man is an expert in a some aspect of soils placement or testing: one is an engineer another an engineering contractor, and the third is a soils technician.
3. Each man had direct knowledge of the parcel in question at the time in question: one tested the riparian exception soils work, the second refused to sign it off, and the third thinks he contributed excess soil to the site.

The three witnesses conclusively rebut the suggestion that the applicant's site work was completely tested and legitimized by the 1996 riparian exception and has remained unaltered since. It is respectfully submitted that such categorical and reliable contradiction of the key statements on which this application rests requires that the application be stopped in its tracks until a) the applicant's property and b) the portion of county right of way the applicant has turned into his parking area can be tested at applicant expense for the quality of the underlying soil placement, and the results interpreted.

IV. Applicant Refusal of Cooperation

Tab 2 contains an exchange of letters between the applicant and the undersigned. The applicant was **asked** for voluntary cooperation in soil testing *at my client's sole expense* in light of the evidence that was coming to light. The applicant refused, and attempted to justify the denial on the theory that the applicant **is** the victim **of** a baseless vendetta,

Also under **Tab 2** are county records showing past broken promises to comply by the applicant and such resistance of the legitimate exercise of inspection authority that two levels of inspection warrants had to be obtained and the present applicant had to be forced to the brink of a Superior Court **trial** before agreeing to **make** this application.

V. Past History of Violations

As discussed below **this** application seeks special treatment of various kinds. In light of the false statements in the application, the clear evidence **from** the witnesses, and the refusal of cooperation in information gathering, it **is** important to summarize the history of violations so that **the** decision maker has a complete picture.

Tab 3 of the accompanying documents contains reams of reports and memoranda in which various county employees document the history of violations, largely by applicant and his former partner. The following is a bullet-point summary of these violations:

- turning a small nursery office and shed with covered plant sales area into a finished 2042 sq. ft. commercial structure without permits
- dumping of many truckloads of concrete and soil onto and down the Borregas Creek Canyon embankment in or before 1993, causing serious erosion and siltation
- covering county sewer line manholes with unengineered fill
- illegal residential uses inside allegedly commercial structure in violation of C 4 zoning
- illegal food service **establishment** opened in violation of C 4 zoning
- food service establishment with no permit and numerous environmental health violations
- lengthy (more than one year) refusal to close food service or bring into compliance
- unpermitted encroachment onto & appropriation of county right of way for parking area
- placement of unengineered fill on site w/o permits after riparian exception **work** completed
- construction of deck in riparian corridor without permits
- installation of residential trailers on site w/o permits in violation of zoning
- further recent retaining wall and drainage work in riparian corridor without permits
- converting commercial structure in C 4 zone to unpermitted office uses
- construction of an illegal substandard shed which encroached on the adjacent parcel to the rear and **was** used for human habitation.

The **staff report** practically ignores these violations **and** describes this as **an** application to "recognize" or "**retain**" an existing structure as if its existence was somehow legitimate **and** deserved **recognition** or retention. The failure to list, frankly discuss, and deal with the violation is fatal to objective consideration of the application at this time.

The whole idea of the public hearing system in the land **use** context is for decisions to be made in the open and the full *scrutiny* of the **press** and any citizen who wishes to participate

When there is an omission of this magnitude – a twelve **year** effort to enforce compliance over multiple violations – it is impossible to fulfill the true purpose of public decision making without considering the whole, unpleasant truth.

VI. Current Application

The foregoing summary of the history and the supporting documents ~~are~~ essential to an intelligent, fact **and** policy-based evaluation of the application as opposed to some conclusory decision not to fully enforce the law against the applicant.

On its face the staff report says that this application seeks to “recognize” an existing commercial building. Nowhere in the staff report is there any discussion as to how site development standards would or should apply to this ~~site~~ if the owner were coming in with a vacant parcel he **seeks** to develop. There should be at least some effort to compare the existing conditions to what the law would allow a law-abiding applicant to develop on a similar site.

One interpretation of applicant’s position, and this could be incorrect, is to see it as saying that since the building and improvements are already there and ~~are~~ upslope of the work which the County was permitted to do under its 1996 riparian exception, it **is** fine to **just** treat **these** improvements **as** if they were legitimately in existence. I have looked at the riparian exception ~~file~~ and it did not address the applicant’s improvements. It **was** an exception sought by the county at county expense to fulfill a county purpose. Other than the work expressly addressed in **the work** authorization, nothing on the site was legitimized. **A** far more principled approach would be to require **staff** to include in the report an analysis of the application as if it were a new one, applying the same riparian setbacks, site coverage, circulation and parking standards **as** a law abiding applicant would have to meet for new development on such a constrained site.

County law **requires** a thirty foot setback of all commercial development from the boundary of a residential parcel. Staff recommends that this be cut in half to accommodate the applicant’s illegally constructed building. Once again the history of this parcel and applicant, and the current failure to a) tell or b) cooperate in discovery of the truth call into most serious question whether **this** is a site or application deserving of special treatment. The staff report is artfully phrased on this point, but **when** the facts are boiled down it comes to this: in breaking the **law** to build without permits in the first place the applicant or his partner or predecessor ignored the rear yard site setback standards too, and the applicant now does not want to suffer the expense or inconvenience of complying. It is not at all as the staff report suggests a function of ~~the site’s~~ constraints – the parcel easily could have been developed with a smaller building with proper setbacks in better overall proportion to the developable **square** footage of the lot. Rather the variance is sought and recommended after the **fact** to legitimize one of a long list of individually and cumulatively egregious violations. The variance therefore would be a grant of special privilege to a property that was deliberately developed without permits and proper setbacks. The variance should **be** denied.

The staff report glosses over the Coastal Plan consistency ~~issues~~ as if visual impacts were the **sole** question. The County’s enforcement file as far back **as** 1993 shows without a

doubt that illegal activity on this site has caused major deterioration of the riparian habitat of Borregas Canyon. This issue of substance must be assessed and addressed in order to state there is or will be LCP compliance. especially where John Kasunich and other reliable witnesses are telling the county that the signs of slope failure continue to this day.

The history of *this* parcel and applicant are relevant to another issue that seems to be glossed over in the staff report – the “master occupancy program.” The staff report recognizes that even if the applicant should succeed in acquiring the adjacent portion of McGregor Dr. the parking for such a large building will be marginal. As detailed in tab 3 above and the county’s enforcement file the history of this parcel is full of structures and uses which were built, used and maintained in complete defiance of the law. What reason is there, in view of the misleading statements on which this application is based and the refusal to cooperate in fact gathering, to suppose that the applicant will limit himself or his future tenants only to uses which need the bare minimum parking proposed? None.

If the site were being used for approved C 4 zone purposes now it might be possible to argue that the applicant might continue to do so in the future. The staff report is silent on this issue, so it is not possible for the public and/or opponents of this project to be sure. The staff report should be extensively revised to discuss the present uses, compare them to what is allowed in this zone, and explain why the county should – or does – allow unlawful uses to continue while an application that is supposed to “cure” violations is being processed.

VII. McGregor Drive County Right of Way

One of the more significant and telling omissions from the staff report is the fact that the area proposed for abandonment has been encroached upon, improved without permits and used for parking purposes for many years by the applicant without any encroachment permit or other government approval. The complete failure to address this aspect of the past history is further suggestion that the staff analysis partake more of justifying a predetermined conclusion than a reasoned, objective, and complete, fact and policy-based evaluation.

Since the last hearing October 7 the undersigned has diligently sought from the County Public Works Department any and all information about the proposed abandonment, including the price. At first it took days to hear back from staff. Then it took time to locate the file. Next County Counsel’s approval for me to look at the file was needed. When I was shown what was supposed to be the file it contained a few form notices and responses and drawings. There was no reference of any kind whatsoever to the issue of valuation. Weeks ago I wrote a pointed confirming letter pointing out the dearth of valuation information. There has been no reply at all, not even to say that they have no value information.

Thus the public remains completely in the dark about one of the lynchpins of this proposal – acquisition of the necessary area for parking. It is impossible for the Zoning Administrator to fulfill his duties of reasoned, fact and policy based analysis without such information. It is also impossible for the public hearing process to fulfill the intended purpose of open decision making that withstands court scrutiny if such key facts are not dealt with.

The applicant, seemingly supported by staff. wants the county to put the car - or cart -

before the horse and approve the site and structure for commercial use before car parking availability is known. **On** behalf of my clients I would respectfully submit that in view of the **past** history of this parcel and applicant it would be most unwise to baptize what has been done with approval before the key requirement can be met. Where there has been **so** much delay and bootlegging of uses it would **make** far more policy sense to see if the parking can be gained first before approving a **plan** that totally depends on it.

VIII. Conclusion

The applicant's desire to solve his problems as quickly and cheaply as possible is perfectly understandable. In view of the egregious string of violations which was first identified more than 12 years ago and still remains unresolved while the property continues to be used unlawfully, troubling and unresolved obstacles to objective approval remain.

1. It is obvious that the truth **is** not known about the amount of fill or degree of stability of that fill brought to the site **after the riparian exception**. It is respectfully submitted that soil testing in **the** area proposed for abandonment and the portion of the site adjacent thereto must be required and the results known and interpreted before an intelligent approval can be given.

2. A manifestly incomplete staff report should be rewritten to address such issues **as** the rear setback variance, the riparian setback, current uses, damage to and wrongful occupancy of the county right of way, and **the** degree to which the County-sought riparian exception actually addressed or legitimized the applicant's building or improvements in addition to the sewer line. The staffreport does not even discuss the degree to which present use of the site violates C 4 zoning or why those **uses** have not been terminated.

3. Action should be **deferred on** this application until after the abandonment is decided,

This has been **as** difficult and unpleasant a letter to write **as** it no doubt **has** been to read. Hopefully **most** if not all people who will participate in the hearing process at the county or coastal commission levels, the road abandonment process, or **any** court review will at least endorse the beneficial use of land and regret the necessity for enforcing **rules** and regulations. Nevertheless to **the** extent our land use system has and **maintains** its objective integrity, an application such **as** this cannot simply be rushed Forward before deaf ears and blind eyes. If **anything** it ought to be subjected to much stricter scrutiny because of all the violations, The applicant will doubtless seek to distract the **scrutiny** from where it belongs - **on a complete** look at this property, past and present, before a decisions are made. My clients are confident **that** if, but only if, such scrutiny is given, it will yield a reasonable result.

Very truly yours,



Kent Q. Washburn

Cc: Supervisor Pirie, Mr. Imai, Mr. **Adams**, client

I, Dennis Hurley, say:

1. I am a resident of Santa Cruz County, Ca. I have personal knowledge of the following.
2. I have been employed full time in the profession of soils engineering in the Santa Cruz County area for approximately sixteen consecutive years. During that time i have specialized in field work for a number of the leading **soils** engineers and engineering firms in the Santa Cruz area: Myron Jacobs, Reynolds & Associates, Don Tharp & + Hans Kusowich .Associates and Mike Kleames of Pacific Crest. I began in the lower levels of field work and have risen to the position of Field Engineer. sometimes known as Senior Engineering **Soils** Technician.
3. My expertise is in the field operations portion of the soils engineering profession. (I should make it clear that I myself am not a **soils** engineer: I perform skilled field work for the engineer.) The work I do can be divided into the following main categories:
 - a. making field observations, conducting tests, and gathering data for the soils engineer to **use** in formulating a plan to accomplish the **work** for which he was hired,
 - b. further observations, tests, data gathering and work observation to ensure contractor compliance with the soil engineer's specifications and the requirements of any government entities with jurisdiction.
4. My professional field responsibilities have always placed a premium on skilled observation, careful taking and recording of data, and accurate recollection. If my observations, measurements or other data collection are sloppy or vague **there** is a high chance that the soils engineer's **work** will be defective and the structure **will** fail.
5. I was asked by Jarl Saal and his attorney Kent G. Washburn to visit 2000 McGregor Dr., APN 038-061-07 on Thursday, October 13,2005 at 11:30 a.m. I was asked to do so because in my capacity as a soils field technician while employed with Reynolds and Associates in the 1996-97 time frame, I was assigned to perform extensive work on that precise parcel of property in conjunction with a riparian exception permit that had been approved by the County of Santa Cruz for the parcel in question. My duties for the Reynolds firm on that project included pre-construction observation and testing, construction observation, and post-completion verification of compliance. My recollection is that the riparian exception work was completed to the satisfaction of our firm and the county and signed off.
6. I made the October 13,2005 visit as requested. Mr. Saal, Mr. Washburn and I observed the property at 2000 McGregor From two separate angles, from the Saal parcel at the "rear" of 2000 McGregor and from the "front." the excess county land along McGregor Dr. which has been paved over for parking. As far as I know our observations did not involve crossing the boundary onto 2000 McGregor. Along with the visual observations I made, I was shown a copy of the one-page site plan submitted by the property owner which claims

that all features as shown are existing and permitted with the exception of a small, cross-hatched portion of ~~the~~ rear of the structure.

7, The site which I observed on October 13, 2005 ~~was~~ and is radically different from the ~~site~~ as I observed it at the conclusion of the work authorized for the county riparian exception back in 1996-97.

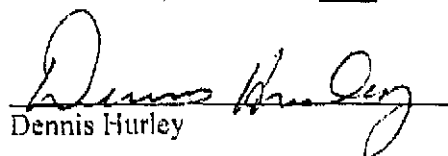
8. My conclusion from ~~comparing~~ the October 13 site conditions with what I remember seeing when I was the field technician for the soils engineer responsible for the work is that ~~a~~ very large quantity of soil has been imported to the site and now underlies the parking area that has been installed on county property.

9. On October 13 I ~~made~~ two observations of what I believe to be signs of failure in ~~the~~ parking lot area. (I say this on ~~the~~ basis of my practical experience in the field and with ~~the~~ caveat that I ~~am~~ not a soils or geotechnical engineer.)

- a. One such set ~~of~~ observations consists of signs of soil erosion and slumping on the ~~banks~~ of the riparian corridor below ~~the~~ parking lot.
- b. The other observation ~~is~~ that there are multiple lines of parallel cracking in several different locations in the paved parking ~~lot~~ area on county property.

Taken together and based on my experience these are signs of improper underlying soil placement or drainage and potential ~~failure~~, and should be investigated by ~~a~~ licensed professional to ~~assess~~ the extent and causes of problems underlying these observations and to recommend remedial measures.

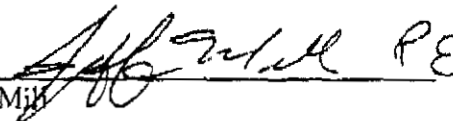
I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and ~~is~~ executed at Santa Cruz County, Ca. on Oct. 25th, 2005.


Dennis Hurley

I, Jeff Mill, say:

1. I have personal knowledge of the facts stated herein.
2. I hold an engineering degree from the University of California. I was employed for about ten years in the Santa Cruz County Public Works Department,
3. In the course of my duties with Public Works I was assigned to a project near McGregor Dr. in Aptos, Ca. There was a sewer line across this property and the manhole had been buried by fill. Because the project was on the edge of the Borregas Creek riparian corridor the County applied for and authorized a riparian exception to correctly place and engineer fill and a retaining wall in the vicinity of the manhole and the sewer line.
4. The scope of work specified in the riparian exception was done and signed off by County Planning. I did not sign off the site for Public Works, however, because it became apparent to me that the owner was going to far exceed the scope of work that had been authorized by the riparian exception.
5. I returned to the project location after the planning department sign-off. To the best of my recollection it was about 10 days later, I observed that large quantities of additional fill had been brought to the site in the intervening time and an additional retaining wall had been constructed. This added fill and new retaining wall were not within the scope of the riparian exception. It should be possible to accurately calculate how much was brought in because the riparian exception plans showed a slope of about 10% but the finished grade after the excess fill was brought in was essentially level. I observed some signs of failure and inadequate drainage which the property owner later seemed to correct. The added fill was placed on or adjacent to the slopes down into the Borregas Creek canyon, and nearer to the as-traveled portion of McGregor Dr. than the authorized riparian exception work. This area is basically used for parking.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and is executed at Santa Cruz County, Ca. October 29, 2005.


Jeff Mill PE

I, Rick Straus, say:

1. I have personal knowledge of the facts stated herein.
2. I am the owner of a licensed general engineering contracting firm called Earthworks located at 310 A Kennedy Dr., Capitola, Ca. I have been involved full time professionally in general engineering construction since 1979 and have been the responsible managing officer of my own licensed general engineering contracting company since 1988.
3. My company does site work, soil preparation, and paving work throughout the Santa Cruz County area. Much of our business consists of soil excavation and placement under strict environmental regulation by government agencies and the supervision of mile engineers. In the course of my daily activities it is quite common for me when I pass a construction site to stop by and observe the kind of work we specialize in when it is being done by others. By doing so it is possible to make useful contacts and gain additional knowledge which I am then able to use in my own work.
4. About 8 years ago I observed a very large soil placement project taking place along McGregor Dr. between the First Alarm building and Borregas Creek canyon. I met a man who was operating an old wheel loader and seemed to be in charge of the placement of this large quantity of fill. Several things struck me about the work. It is not approved or good construction practice, for example, to use that kind of Equipment to place and compact engineered fill because it is so difficult and time consuming to achieve proper compaction with it. It can be done if the person is patient and careful enough, but it is not likely that people will be. The work was on the edge of the Borregas Creek canyon. The fill was being placed to raise the area adjacent to McGregor Dr. to the level of McGregor Dr. This area I am describing is now occupied by a parking lot I am told is actually on the county right of way. I believe that we may have contributed some of the soil that was placed there from a job we were doing that needed us to export soil.
5. I am not making this statement because of any animosity to the owner or special friendship with those who may oppose him. I was just asked to tell what I remember so that county officials and/or the courts can make their decisions based on the truth.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at Santa Cruz County, Ca. on Nov. 3, 2005.

Rick Straus
Rick Straus

CYPRESS ENVIRONMENTAL AND LAND USE PLANNING

P.O. BOX 1844

APTOS CALIFORNIA

Email: kimt@cvpressenv.com

November 15, 2005

Don Bussey, Deputy Zoning Administrator
Randall Adams, Assistant Planner
County of Santa Cruz Planning Department
701 Ocean Street, 4th floor
Santa Cruz, CA 95060

SUBJECT: Application 04-0650 (Randy Zar & Aviar Trust)

Dear Messrs. Bussey and Adams,

As you know, application 04-0650 for a Master Occupancy Program for commercial uses at 2000 McGregor Drive, Aptos, will be heard as a continued item at the Zoning Administrator meeting scheduled for November 18. Approval of the project will be one of the final steps in the long road of rehabilitating this property to make it a commercial site Aptos residents can appreciate. On behalf of the project applicants, Randy Zar and the Aviar Trust, I am responding to the issues raised in the letter from Kent Washburn, dated October 6, 2005 and commenting on certain items in the staff report. I hope you will carefully consider the comments below towards making a decision on this project.

Issues Raised by Kent Washburn

Mr. Kent Washburn is the attorney for Jarl Saal, the owner of the First Alarm property which adjoins the Zar/Aviar parcel. Mr. Washburn raises four issues in his letter to you dated October 6 regarding the project and the staff report. They are the bulleted statements below. The issues raised by Mr. Washburn are not germane to a determination for this project as I explain below each one of the bulleted statements.

- Significant omissions from the staff report about the history of violations on this parcel

The staff report does contain a historical land use summary of the parcel including a summary of land use violations that have occurred on the property in the past. I have been informed by Cathy Graves, Principal Planner, that the staff report was prepared with full input from Planning's Code Compliance staff regarding past zoning and building violations. It should be understood that the vast majority of building violations associated with converting the nursery business building to the current building were done prior to 1972, several years before Zar/Aviar purchased the property. Since purchasing the property, Mr. Zar has been

Environmental Planning and Analysis, Land Use Consulting and Permitting

engaged in a long and costly process of rectifying the building and zoning violations. Most of the violations are now resolved. The final step in this process is approval of application 04-0650 and follow through with obtaining Building Permit and building inspections for renovation of the commercial building on the site.

a Failure to analyze the conformity of this application with the riparian corridor policy

As discussed in the following paragraph, a Riparian Exception was approved for the subject property in 1996. Permit 96-0396, issued to the County Public Works Department on the Zar/Aviar parcel, allowed grading and installation of a retaining wall along the western edge of the Borregas Creek riparian corridor and its associated buffer area to provide access to a sewer manhole and help stabilize a portion of the slope of the corridor. Exhibit A of that permit is attached as Exhibit A to this letter. It shows the location of project work, Zar's main building and the uncovered deck on the parcel. The current project conforms to that shown by permit 96-0396 in that no new encroachments into the riparian corridor have occurred or will occur by the approval of Application 04-0650. This is consistent with the General Plan/Local Coastal Plan policies to protect riparian corridors.

a Failure to compare the as built structure and current slopes with conditions of the approval of the previous Riparian Exception granted in 1996

As noted above, the current project conforms to the approval of Permit 96-0396. I have learned more about Mr. Washburn's position on "slopes" from discussions with him and expect him to bring this issue up at the hearing; so let me respond to it in advance. Mr. Washburn and his client make the preposterous claim that minor wall cracking at two locations on the adjoining Saal/First Alarm property are due to grading of the slope on the Zar/Aviar property done under Permit 96-0396. They claim the grading done under Permit 96-0650 was not done according to the permit conditions and further want a full geotechnical analysis of the entire riparian slope on the Zar/Aviar parcel. The location of the wall cracks on the Saal property and previous grading work on the Zar/Aviar property are shown on Exhibit B. As shown on this exhibit, the 1997 grading work was not in the proximity of Mr. Saal's building. It should be noted that no wall cracking or ground instability has occurred on the Zar/Aviar property.

County records show that all work done under Permit 96-0396 was completed according to the required permit conditions within 11 months of permit approval. A geotechnical report was prepared by the civil engineering firm of Reynolds Associates for the project in 1996 (Exhibit C) and accepted by the County. Retaining wall construction and grading work for the project was inspected and approved by Reynolds Associates in May 1997 (Exhibit D). The project planner, Cathleen Carr, inspected the site in June 1997 and determined all permit conditions were successfully met (Exhibit E).

Mr. Washburn also states that Mr. Zar has done grading along this slope since final

inspections for Permit 96-0396, but he cannot provide any proof of such grading because there has not been any grading at the site since the permit was finalized in 1997. Clearly, this is an example of project opponent attempting to misuse the permit process by obfuscating the issues.

- Failure to gain meaningful access to County records

I understand Mr. Washburn's requests for copies of file records and plans have all been met by County staff.

Recommended Permit Conditions in the Staff Report

There are certain recommended permit conditions in the staff report that need to be revised to make this a viable commercial project in the "C-4" zone. They are discussed below

- Condition II.A.4 (Plans to be Prepared by a Civil Engineer)

This condition requires grading, drainage and erosion control plans to be prepared by a civil engineer. However, the project does not require these types of plans. Therefore, we ask that this condition be deleted or, as an alternative, revised to state: **If grading/erosion control or drainage and erosion control plans that are prepared, they shall be wet-stamped and signed by a Licensed civil engineer.** (Bold indicates added wording and strike-outs indicates deleted wording).

- Condition IV.A (Hours of Operation)

The recommended wording of this condition limits staff use of the building to the hours of 7:00 a.m. to 6:00 p.m. This is not consistent with most other service commercial uses and certainly not consistent with the adjoining First Alarm business which has 24 hour employee use. We ask that this condition be revised to state: **No use of equipment that can generate noise beyond the site and no deliveries can occur beyond the hours of 7:00 a.m. to 6:00 p.m.** We believe that this new wording retains the intent of the condition, while not unduly preventing minimal or occasional later hours office work at the site.

- Condition IV.A (No outdoor Storage)

This condition prevents any outdoor storage on this service commercial site. The property owner proposes using a minor area for outdoor storage of materials which is totally screened from off site views. This would restrict outdoor storage to inside the screened area shown on Exhibit F. We ask that this condition be revised to state: **Outdoor storage shall be limited to the screened area shown on Exhibit A of the permit. This storage area shall be visually screened at all times as shown on Exhibit A.**

- Conditions I IIA.2 & III.B (Variance to Rear Yard Setback/Removal of Building)

These conditions allow a Variance to reduce the required 30 foot rear yard setback to 16 feet but also require the demolition of a 163 square foot portion of the existing building that extends to about 5 feet from the rear property line. While the 163 sq. ft. portion of the building was constructed without a Building Permit, County Tax Assessor records show it was constructed in 1972 long before Mr. Zar purchased the property. (See Exhibit G).

The staff report provides findings to justify the granting a Variance to reduce the rear yard setback, but the recommended conditions limit the Variance to only a portion of the building. There is no language in the Variance findings that support reducing the rear yard setback for the main part of the building while finding it problematic to for the 163 sq. ft. addition. In other words, the Variance findings and corresponding permit conditions are contradictory. Unusual circumstances exist on the subject parcel and adjoining parcels that justify the granting of Variance to reduce the rear yard setback to at least 5 feet, as explained below.

The developable area of the site is unusually small for a "C-4" zoned parcel, yet the County has designated it for service commercial uses. The parcel is severely constrained by both sue and riparian corridor which limit any development on the site. Nevertheless, the County has zoned the property "C-4" (Service Commercial)—a zoning reserved for larger commercial uses which typically require large site areas for development (e.g. kennels; automobile sales; boat building; contractor shops). The total site area of the parcel is 10,454 sq. ft., just 454 sq. ft. more than the minimum parcel size for the "C-4" zone district. However, when the riparian corridor portion of the parcel is deducted, only a net developable area of 6,212 sq. ft. remains for any project. Even when the excess right-of-way is added to the site to provide parking, as proposed, the total net developable area only increases to 9,157 sq. ft. (Computation: 6,212 sq. ft. + 2,945 sq. ft. of R/W = 9,157 sq. ft.).

Reducing the setback to about 5 feet would allow commercial use and activity similar to that occurring on the adjoining "C-4" zoned parcel (First Alarm) and thereby would not constitute a special privilege to the Zar/Aviar project. Development Permit 91-0365 approved the First Alarm project with a building located 30 feet from the same rear property line but with a parking lot and other commercial activities up to the rear property line with no setback for these uses. Not only does regular traffic occur in the First Alarm parking lot 24 hours/day, but the main entrance to the building is located within the rear yard setback. In addition the trash area and a large generator are located just a few feet from the rear property line (Exhibit H). The office activities enclosed inside the 163 sq. ft. addition to the Zar building will generate far less impacts to the adjoining residential parcel than are now occurring by outdoor commercial related activities at First Alarm.

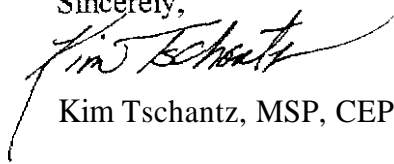
In allowing these uses in the rear yard setback, Permit 91-0365 also required First Alarm to construct a 6 foot high masonry wall along its rear property line; the same property line that separates First Alarm with an adjoining residential parcel. Mr. Zar would also be willing to

construct the same type of wall if allowed to retain the **163 sq. A.** addition

Buffers and barriers currently exist which protect adjoining parcels from any potential impacts or land use conflicts that could be generated by the 163 sq. ft. addition. Therefore a reduction of the rear yard setback to 5 feet will not be detrimental or injurious to these properties. The 6 foot masonry wall described above also extends along a segment of the side yard of the First Alarm parcel. It provides a substantial barrier between the rear yard of the Zar/Aviar parcel and the proximate portion of the First Alarm site (See Exhibit I). The riparian corridor provides a distance of 63 feet with mature trees between the **163 sq. ft.** addition and the parkland on the other side of the forested riparian corridor. The residentially zoned parcel to the rear to Zar/Aviar and First Alarm also contains a segment of the same riparian corridor. The riparian buffer required by the County's Riparian Corridor and Wetlands Protection Ordinance (Code Section **16.30**) results in the area directly adjacent to the common property line of Zar and the residential parcel being left in open space. This is further illustrated on Exhibit I. This situation underscores that fact that reduction of the rear yard setback to allow use of the **163 sq. A.** addition will not result in off-site impacts.

The purpose of Variances is to allow variations to the site standards for situations just like those which occur at and proximate to the project. I offer revised findings in Exhibit J. which have been prepared to acknowledge the information in the preceding paragraphs. (Bold and strike-out text to show new and deleted wording). We hope you will use these findings in the approval of this project.

Sincerely,



Kim Tschantz, MSP, CEP

Attachments: Exhibit A – Exhibit A of Permit **96-0396**

Exhibit B – Site Plan showing disturbance zone under Permit **96-0396** and location of cracks on First Alarm parcel

Exhibit C – Geotechnical report for Permit **96-0396**

Exhibit D – Geotechnical engineer's inspection letter for Permit **96-0396**

Exhibit E – County Planning final inspection memo for Permit **96-0396**

Exhibit F – Site Plan showing area proposed for outdoor storage

Exhibit G – Tax Assessor record showing date of construction of building addition

Exhibit H – Photo of commercial activities in the rear yard of First Alarm

Exhibit I – Site plan showing buffering between the project and adjoining parcels

Exhibit J – Revised Variance findings

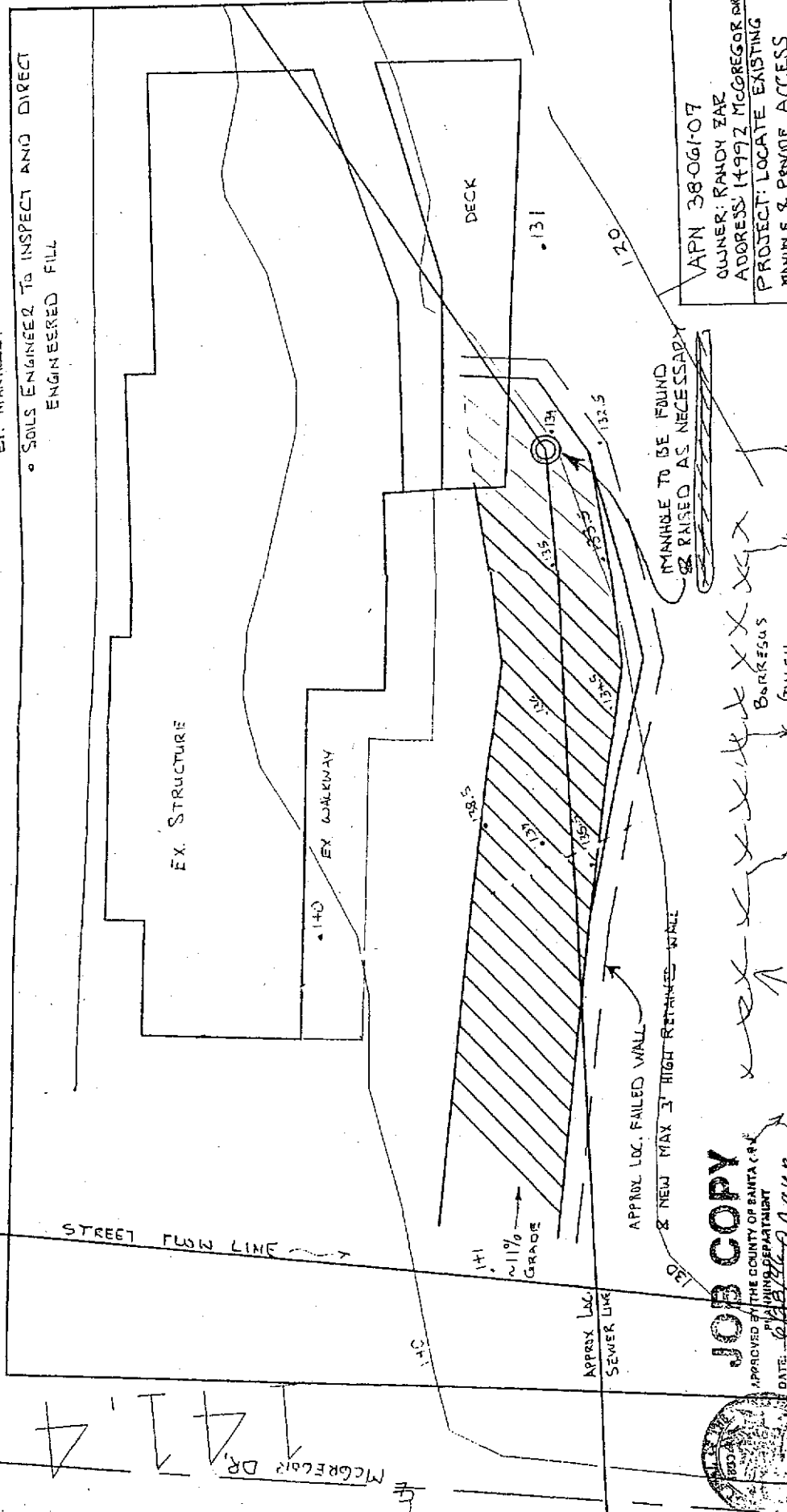
cc: Randy Zar
Alvin Zar
David Imai

EXHIBIT A

PERMIT NO. 960396

FIRST ALARM PROPERTY

- REMOVE FAILED WALL MATERIALS
- REMOVE/STOCKPILE EARTH + ROCK TILL MANHOLE/PIPE IS FOUND.
- REGRADE AS NECESSARY TO PROVIDE ACCESS ROAD TO EX. MANHOLE.
- SOILS ENGINEER TO INSPECT AND DIRECT ENGINEERED FILL



APN 38-061-07
OWNER: RANDY ZAR
ADDRESS: 14992 MCGREGOR DR
PROJECT: LOCATE EXISTING
MANHOLE & PROVIDE ACCESS

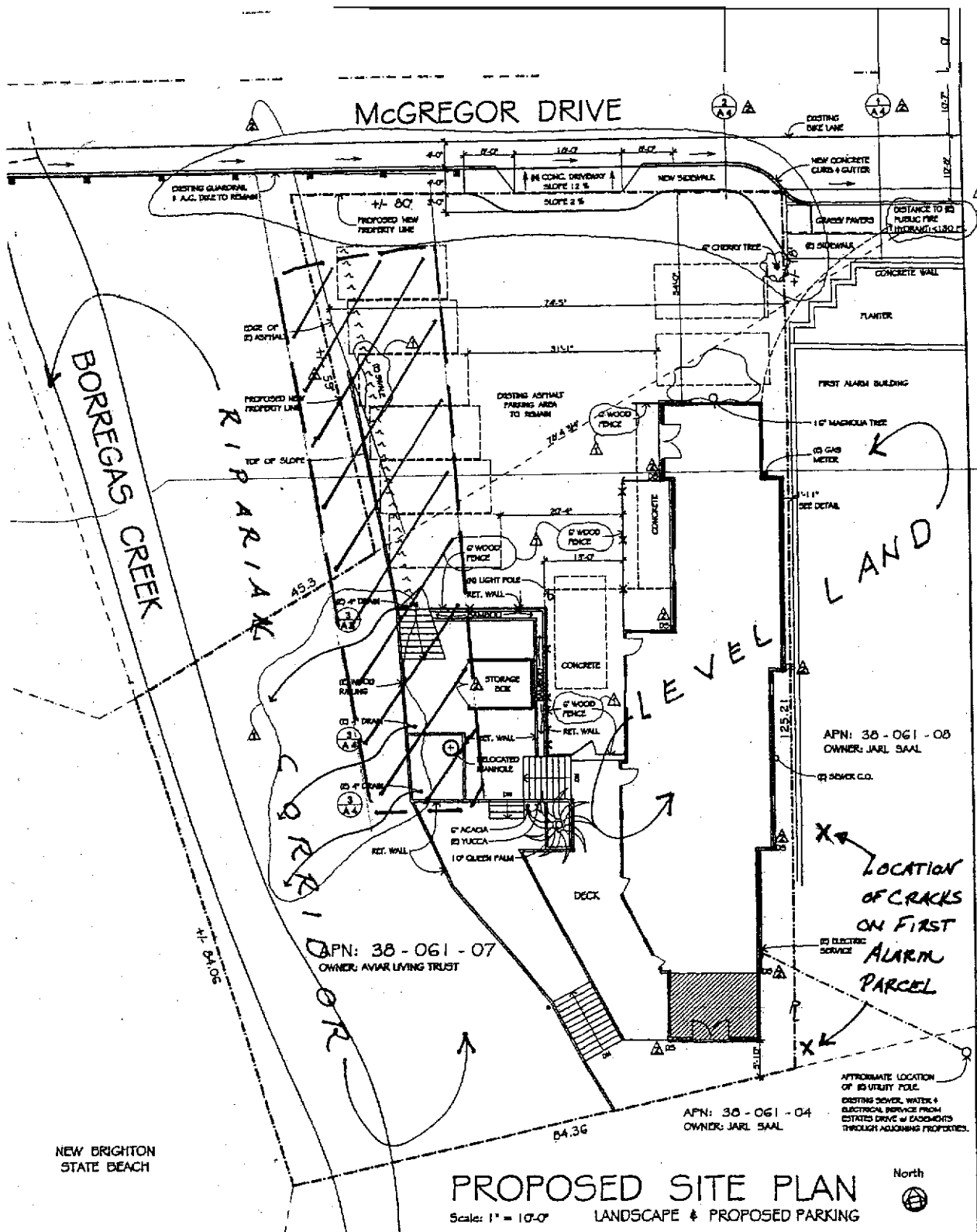
MANHOLE TO BE FOUND
& RAISED AS NECESSARY

xx xxxxxxxx
BORRESUS
GULCH

sediment barrier

JOB COPY





OWNER:
 AVIAR LIVING TRUST
 P.O. BOX 1282, APTOS, 95003
 PHONE: 831-685-1116
 RANDY ZAR, TRUSTEE
 CELL: 234-8858

PROPOSED
 SITE PLAN & DATA

Existing BUILDING at
 2000-2004 MCGREGOR DRIVE
 APTOS, CA. 95003
 APN: 038-061-07

DEC. 22, 2004
 APR. 25, 2005
 JULY 27, 2005
 OCT. 18, 2005
 (DATE OF LAST REVISION)

SHEET
 A1a
 OF 8 SHEETS

DATA	
EXISTING LOT SIZE:	10454 SQ. FT.
PROPOSED ADDITION TO LOT APN# 038-061-07:	2945 SQ. FT.
PROPOSED TOTAL LOT SIZE:	13399 SQ. FT.

962234-S61-G6
17 April 1996Mr. Randy Zar
P.O. Box 1282
Aptos, CA 95001Subject: Retaining Wall Failure
Zar Residence, McGregor Drive
Santa Cruz County, California

Dear Mr. Zar:

As requested, we have observed the near surface soil conditions in the vicinity of wood retaining wall failure on the subject site. The purpose of our investigation was to determine from a geotechnical standpoint the criteria for the repair and replacement of the existing slope and retaining wall.

It is our understanding that the slope failure occurred during the inclement weather experienced this winter. Based upon our observations, the failure appears to have been caused by saturated soil and excessive hydrostatic pressures behind the retaining wall which exceeded the passive resisting capabilities of the vertical posts. In addition, the embedment depth of the vertical members was probably inadequate due to the relatively loose fill and native soil which comprised approximately the upper five feet (5') of the embedment depth.

Our investigation included the drilling of one boring immediately to the south of the retaining wall, in order to determine the approximate depth of loose fill and the depth to competent native soil. The boring was advanced using hand operated equipment.

'Based upon our borings, there is approximately five feet (5') of loose fill and native soil underlain by medium dense yellow-orange sand with clay binder.

Based upon our investigation, we recommend the following criteria for the repair of the retaining wall and slope:

1. It is recommended that the existing fill on the slope below the retaining wall **be** removed **and** replaced as engineered fill, followed by the construction of a new retaining wall which will subsequently be backfilled.
2. The observation of any grading or placement of compacted fill at the site should be done **as** outlined in the recommendations of this report. These recommendations and/or specifications set

forth the minimum standards needed to satisfy the other requirements of this report.

3. The Geotechnical Engineer should be notified at least four (4) working days prior to any site clearing or grading operations on the property in order to coordinate his work with the Grading Contractor. This time will allow for the necessary laboratory testing (compaction curves) that should be completed prior to the start of grading operations.
4. Site preparation should initially consist of stripping all vegetation and debris from the slope below the wall. Based upon our boring, the existing fill soil on the slope is adequate to be replaced as engineered fill.
5. Should the use of imported fill soil be necessary on this project, this material should:
 - a. be free of organics and all deleterious materials,
 - b. be free of rocks in excess of two inches (2") in size,
 - c. have not more than 15% passing the 200 sieve,
 - d. have a sand equivalent of twenty (20) or more, and
 - e. have a resistance "R" Value in excess of thirty (30).
6. Initially a keyway should be excavated at the toe of the fill. It is anticipated that this keyway will be located approximately twenty feet (20') below the failed wall (approximately where the pile of oak branches are located). This keyway should have a minimum width of ten feet (10') and the downslope edge should have a minimum embedment depth of two feet (2') into the firm original ground as determined by the geotechnical engineer at the time of excavation, based upon our boring it is anticipated that the keyway will have a total depth of approximately seven feet (7'). The base of the keyway should be excavated at a negative gradient of 2% into the hillside.
7. Subsequent keyways should be constructed by benching into the native hillside as the fill section is progresses upslope. These bench keys should have a minimum width as required by the configuration of the new fill section and should be sloped between 1% to 2% into the hillside. These benches will effectively lead to the removal and replacement of the existing unsuitable fill soil and loose top soil on the slope.
8. The fill soil required to achieve the required elevation grades should be placed in uniform lifts not exceeding eight inches (8") in loose thickness or six inches (6") in compacted thickness, moisture conditioned to within 2% of the optimum

moisture content, and compacted to the minimum required compactive effort of 90%.

9. If this work is undertaken during or soon after the rainy season the on-site soils may be too wet to be used as compacted engineered fill.
10. The percentage of relative compactive effort must be based upon the maximum dry density obtained from a laboratory compaction curve performed in accordance with the procedure set forth in A.S.T.M. Test Procedure #D1557-78. This test will also establish the optimum moisture content.
11. The fill slopes should be graded no steeper than 2:1 (horizontal to vertical).
12. The use of heavy compaction equipment adjacent to the retaining wall after construction is not recommended. The volume of backfill to be placed behind the wall after its construction will be reduced if the fill slope is extended to the parking area elevation prior to the construction of the wall.
13. The following design criteria for the retaining wall are based on the use of granular material for backfill behind the wall. Should backfill soil consist of non-granular soil these criteria may need to be revised.
14. The retaining walls should be fully drained and may be designed to the following criteria:
 - a. Where walls are "flexible," i.e., free to yield in an amount sufficient to develop an active earth pressure condition (about 1/2% of height) design for an active pressure of 36 p.s.f./ft.
 - b. For resisting passive earth pressure having a 2:1 slope below the wall use 250 p.s.f./ft., of depth within the fill; and 350 p.s.f./ft., of depth within the underlying native soil. Neglect the upper two and one-half feet (2½') of embedment. Passive pressures can be considered to act over 1.5 times the pier diameter.
 - c. Any live or dead loading surcharge which will transmit a force to the wall, i.e. automobile loads.
 - d. The retaining wall should be designed for a peak average ground acceleration (PAGA) of 0.42g, and a repeatable high ground acceleration (RHGA) of 0.27g.

15. The above criteria are based on fully drained conditions existing behind the walls. Therefore, we recommend that either Class 2 Permeable Material, meeting CALTRAN Standard Specifications Section 68-1.025, or clean rounded/crushed pea-sized gravel (3/8" by No. 6) be placed behind the wall, for a minimum continuous width of twelve inches (12") and extend the full height of the wall to within one foot (1') of the ground surface. A layer of filter fabric (e.g., Mirafi 140N, or equal) should be placed underneath the bottom of the permeable material up the back face of the wall and over the top of the gravel followed by twelve inches (12") of compacted backfill. A four inch (4") diameter rigid perforated (perforations placed downward) plastic pipe should be installed within three inches (3") of the bottom of the granular backfill and be discharged to a suitable approved location. Suitable clean-outs should also be installed in the system.
16. The retaining wall drain and any other existing drains should discharge into energy dissipators located beyond the fill slope near the existing drainage swale.
17. After completion of the slope construction, proper erosion protection must be provided. This should include track rolling of the slope and the planting of the exposed surface slopes with erosion and drought resistant vegetation.
18. The fill slopes should be constructed so that surface water will not be allowed to accumulate above the slope face or drain over the top of the slope.
19. The recommended gradients do not preclude periodic maintenance of the slope, as minor sloughing and erosion may occur.
20. We respectfully request an opportunity to review the grading plans before bidding to ensure that the recommendations of this report have been included and to provide additional recommendations, if needed.

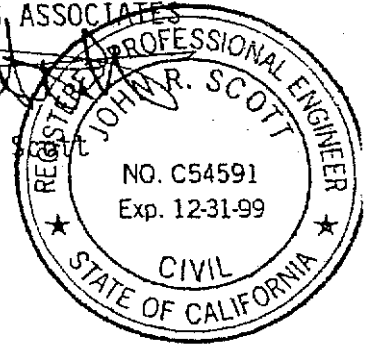
EXCLUSIONS OF WARRANTIES: Our services are to consist of professional opinion only. NO WARRANTY, EXPRESSED OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OF FITNESS FOR THE PURPOSE is made or intended in connection with our work or by the proposal for consulting or other services or by the furnishing of oral or written reports or findings. If the Owner (client) desires assurances against project failure, Owner agrees to obtain the appropriate insurance through his own insurance broker, which shall include a **waiver** of subrogation clause as to Reynolds Associates.

962234-S61-G6
17 April 1996

Should you have any further questions, please contact this office.

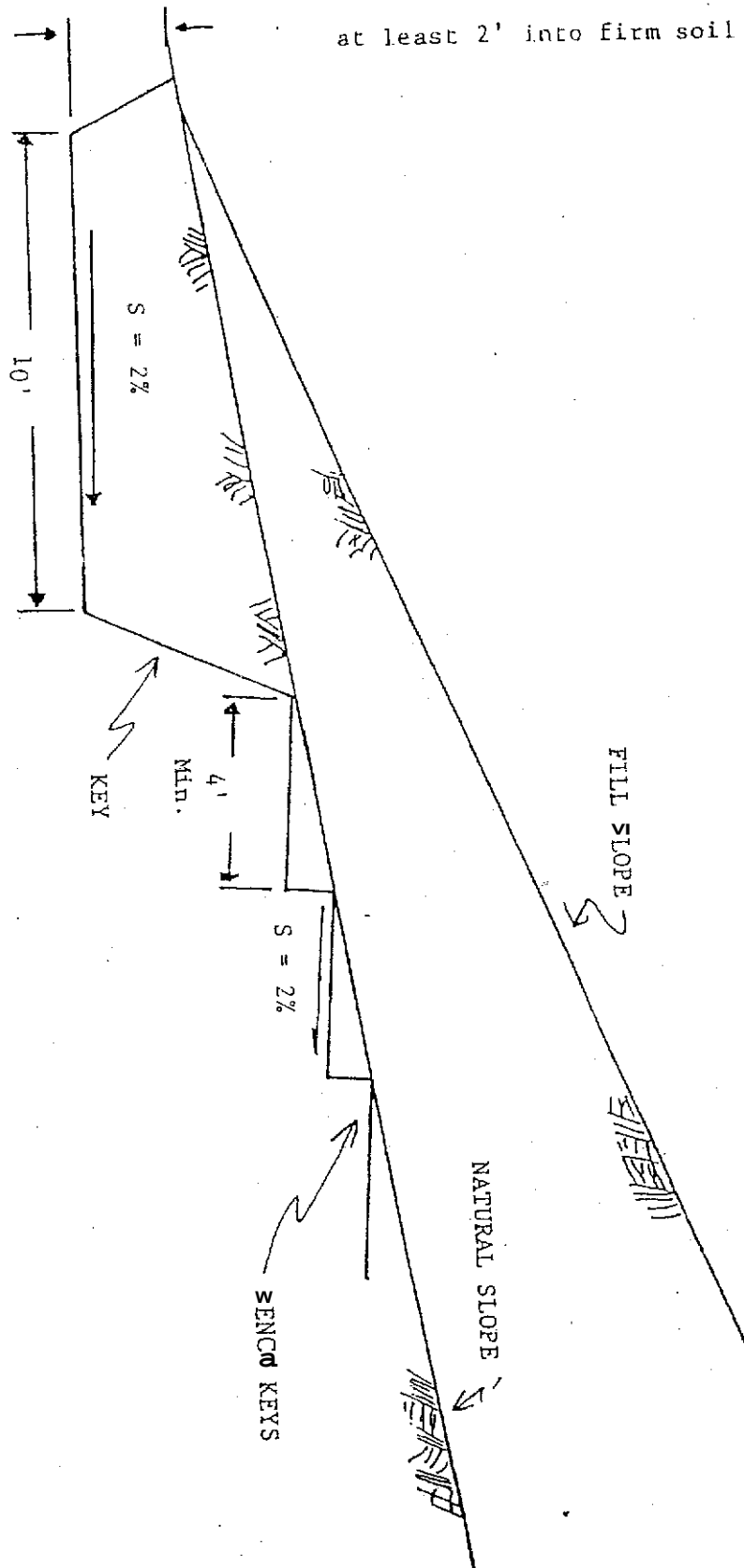
Very truly yours,
REYNOLDS ASSOCIATES

John R. Scott



JRS: js

Copies: 4 to Mr. Randy Zar



TYPICAL KEY AND BENCHES

not to scale

962234-S61-G6
27 May 1997Mr. Randy Zar
P.O. Box 1282
Aptos, CA 95001Subject: COMPACTION TEST RESULTS
Permit No. 96-0396, Residence, McGregor Drive
Santa Cruz County, California

Dear Mr. Zar:

As requested, we have observed the base keyway and have conducted testing services for the rough grading of the slope reconstruction on the subject site.

Field moisture/density tests were compared as a percentage of relative compactive effort to the laboratory tests performed upon the potential fill and native soils in accordance with test procedure ASTM #D1557-78. The results of the laboratory compaction curves and field in-place moisture/density tests are shown on the enclosed Tables I and II. In addition, the relative compactive effort is shown as a percentage of each of the field tests.

It is our opinion that the slope reconstruction has been adequately compacted and is completed. It should be noted that compaction testing associated with the finished driveway and parking area, and observation or testing associated with the new retaining wall construction was outside the scope of the services provided by our office.

Should you have any further questions! please contact this office.

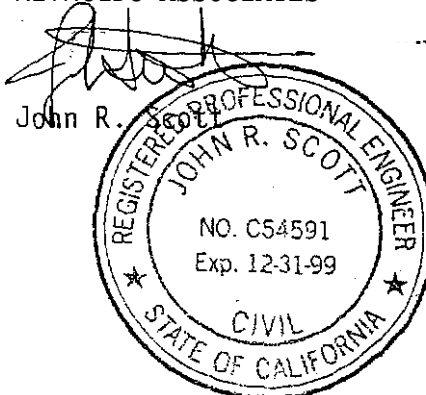
Very truly yours,
REYNOLDS ASSOCIATESJRS: js
Copies: 4 to Mr. Randy Zahr

TABLE I

Summary of Laboratory Test Results

Sample No.	Description	Max. Dry Density p.c.f.	Opt. Moisture Content %
1	Grey brown SILT w/gravels $\frac{1}{2}$ " to $1\frac{1}{2}$ "	132.5	6.5
2	Light brown Sandy SILT w/gravels $\frac{1}{4}$ " to 1"	116.4	13.8
3	Brown Silty SAND w/ grey binder & some gravels	121.2	12.6

TABLE II

Summary of Field Density Test Results

Test No.	Date	Location & Description	Lift	Moisture Content %	Dry Density p.c.f.	Relative Compaction %	Soil Type & Remark
1	7/18	Center of Key & fill	+2.0	14.7	119.3	90.0	[1]
2	7/15	Center of Key & fill West side	1.2.0	13.4	121.3	91.5	[1]
3	7/30	Center of fill area parking lot	-5.0 BSG	14.0	113.5	97.5	[2]
4	7/30	New parking Lot Key fill South end	-4.0 BSG	14.2	113.9	97.1	[2]
5	7/30	New parking Lot Key fill Center	-4.0 BSG	14.8	114.9	98.5	[2]
6	7/31	Center of Key & fill	+5.0	12.4	108.5	93.2	[2]
7	8/8	East of Manhole	-2.0 BSG	11.9	118.4	96.9	[3]
8	8/8	Center Parking North- west edge	-2.0 BSG	10.7	109.4	90.0	[3]
9	8/13	North edge Parking lot	-1.0 BSG	13.4	109.8	90.1	[3]
10	8/15	South end 10' west of Manhole	-1.0 BSG	13.4	112.0	96.3	[2]
11	8/15	Center of Parking lot	-1.0	13.4	109.8	94.3	[2]

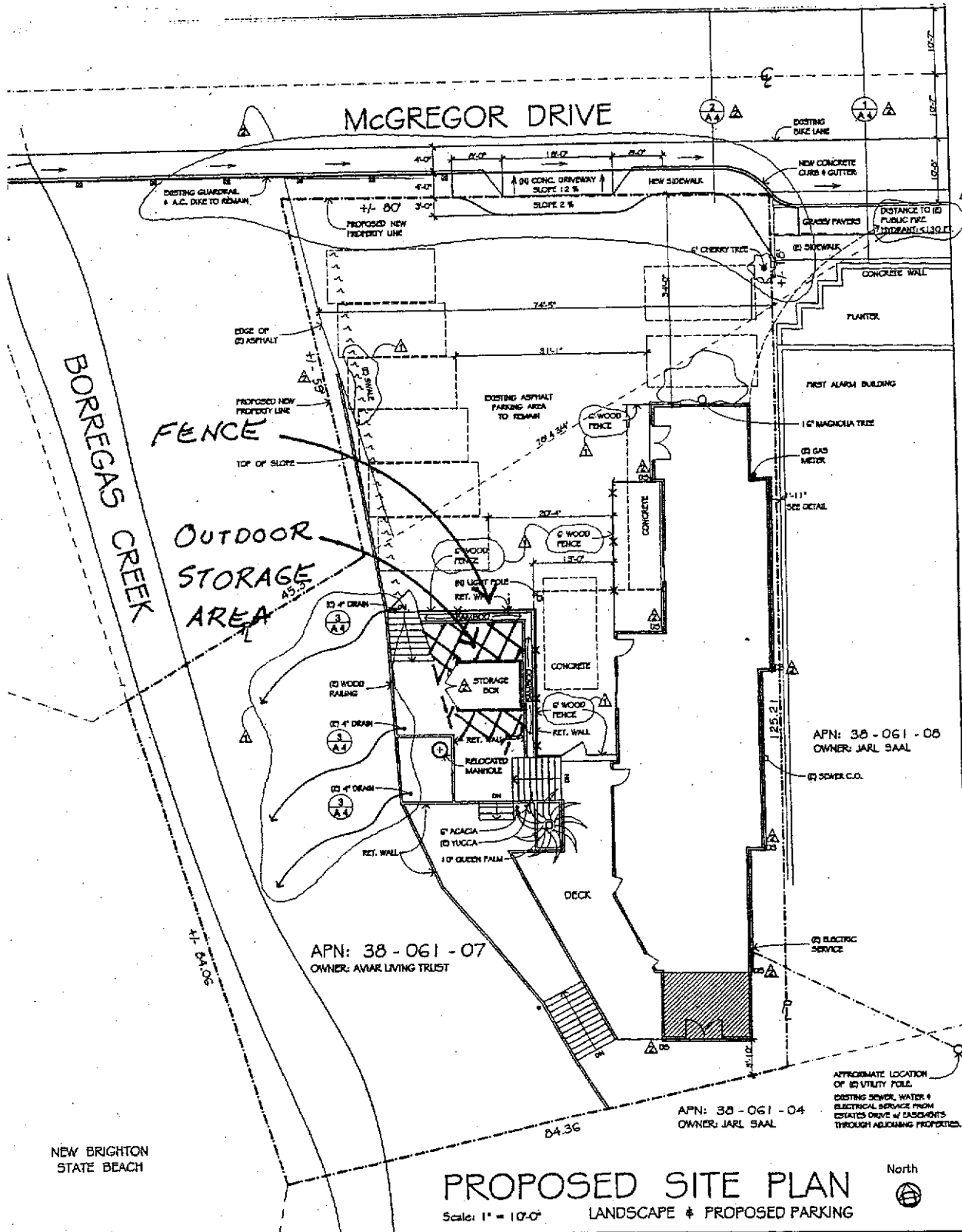
DATE: 6/12/97
TO: Code Compliance
FROM: Cathleen Carr, E.P.
SUBJECT: 96-0396 38-061-07

expirion Exception permit
96-0396 apr 038-061-07
is now finalized

cc OWNER

Site Plan Showing Area Proposed for Outdoor Storage

Exhibit F



PROPOSED SITE PLAN

Scale: 1" = 10'-0" LANDSCAPE & PROPOSED PARKING

DATA

EXISTING LOT SIZE: 10454 SQ. FT.

PROPOSED ADDITION TO LOT APN# 038-061-07: 2945 SQ. FT.

PROPOSED TOTAL LOT SIZE: 13399 SQ. FT.

OWNER:
AVIAR LIVING TRUST
P.O. BOX 1282, APTOS, 95003
PHONE: 831-685-1116
CELL: 234-8858
RANDY ZAR, TRUSTEE

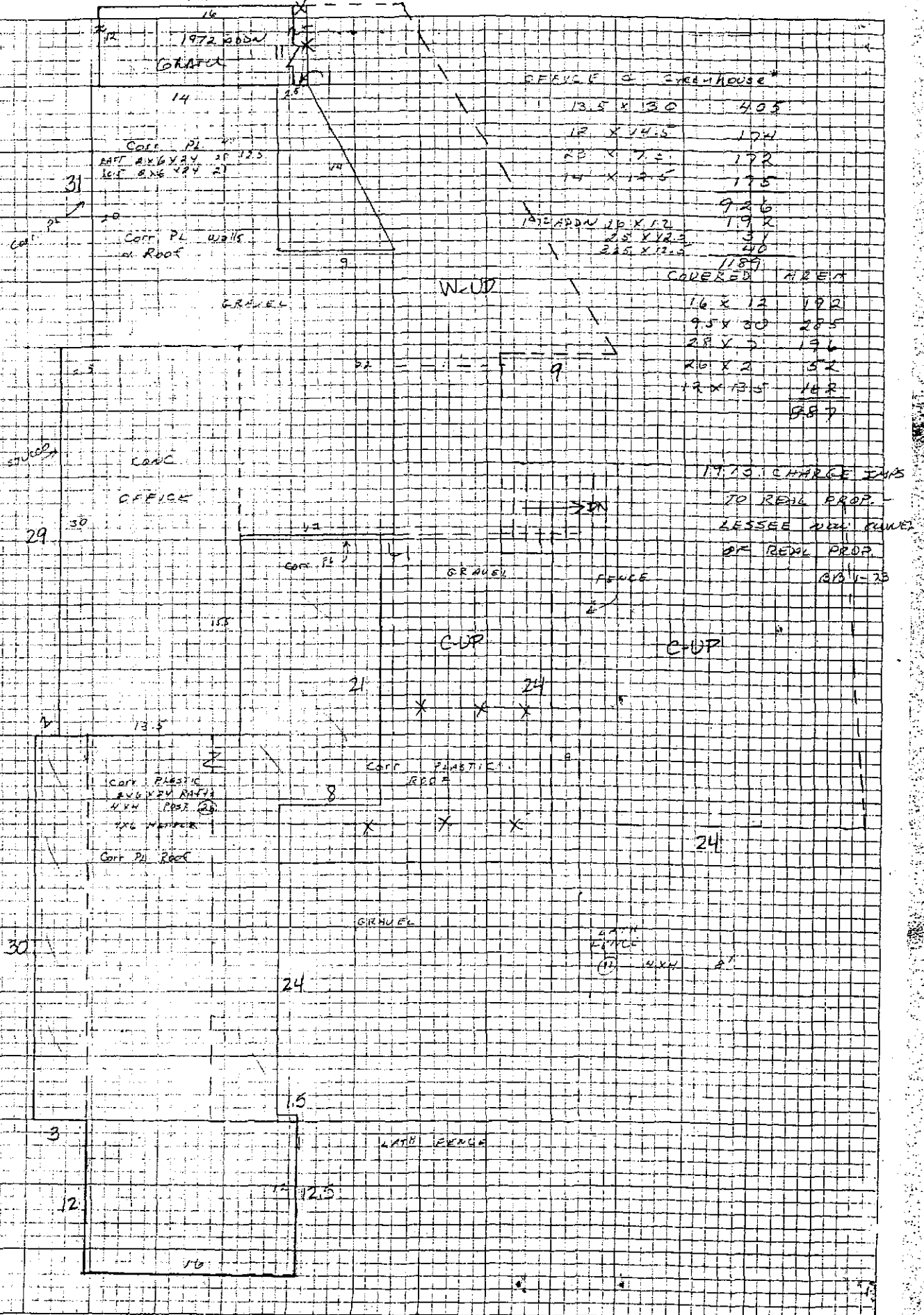
PROPOSED
SITE PLAN & DATA

Existing BUILDING at
2000-2004 MCGREGOR DRIVE
APTOS, CA. 95003
APN: 038-061-07

DEC. 22, 2004
APR. 25, 2005
JULY 27, 2005
OCT. 18, 2005
REVISIONS

SHEET
A1a
OF 8 SHEETS

3/3/1983 - Elites are run down & in poor condition for WGS since weather distant view only (DOGS).



3

ADDRESS ESTIMATES DR 9 Fernside Rd.

SHEET 2 OF 2 SHEETS

DESCRIPTION OF BUILDINGS

DESCRIPTION OF BUILDINGS										
Bldg. No.	Structure	Size	Found.	Roof		Floor & Interior Detail	Second Story or Loft	Year Built	Est. Tot. Life Yrs.	
				Type	Cover					
1	OFFICE & GREEN HSE		CONC	PAET AYNHYLE CORR. PL. SHED	SHED	GRAVEL COVER	corr. PL. STUCCO & WALL	(Net Cost) \$41000	1965	OR 30
2	COVERED AREA		MS	corr. PL. SHED	corr. PL.	Gravel			"	OR 30

Note added by Kim Tschantz:

These two columns show in 1973 the assessor's appraiser changes the floor area of bldg. #1 from 926 sq. ft. to 1,189 sq. ft. This is an increase of 163 sq. ft. The diagram on the other sheet shows the location of the "1972 addition"

COMPUTATION

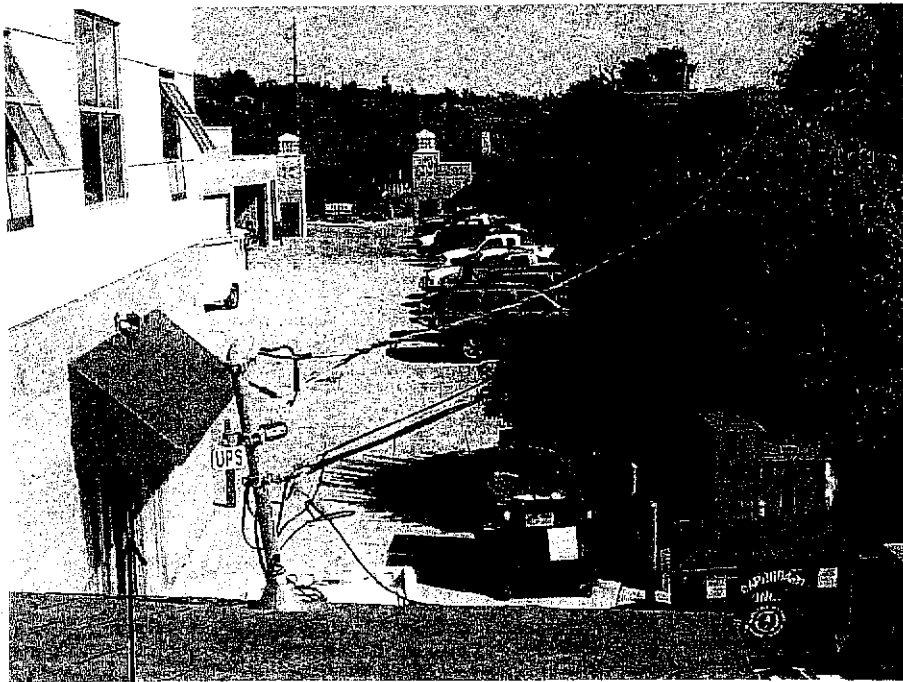
Appraiser - Date				1967 INDEX				1977 INDEX				1977 INDEX			
Bldg. No.	Area	Unit Cost	% Good	R.C.N. L.N.D.	Unit Cost	% Good	R.C.N. L.N.D.	Unit Cost	% Good	R.C.N. L.N.D.	Unit Cost	% Good	R.C.N. L.N.D.		
1	489	2.50	100	231.5	2.50	88	2600	6.00	7132	72	5000	87	9640		
2	887	1.00	887	887	1.25	88	1000	2.50	2217	72	1500				
Total				3202	3600				6500						
Bldg. No.	Area	Unit Cost	% Good <td>R.C.N. L.N.D.</td> <td>Unit Cost</td> <td>% Good</td> <td>R.C.N. L.N.D.</td> <td>Unit Cost</td> <td>% Good</td> <td>R.C.N. L.N.D.</td> <td>Unit Cost</td> <td>% Good</td> <td>R.C.N. L.N.D.</td>	R.C.N. L.N.D.	Unit Cost	% Good	R.C.N. L.N.D.	Unit Cost	% Good	R.C.N. L.N.D.	Unit Cost	% Good	R.C.N. L.N.D.		
1	1184			4000											
2	887			1000											
Total				5000											

35

ATTACHMENT

View of 30 foot rear yard setback area of the First Alarm parcel

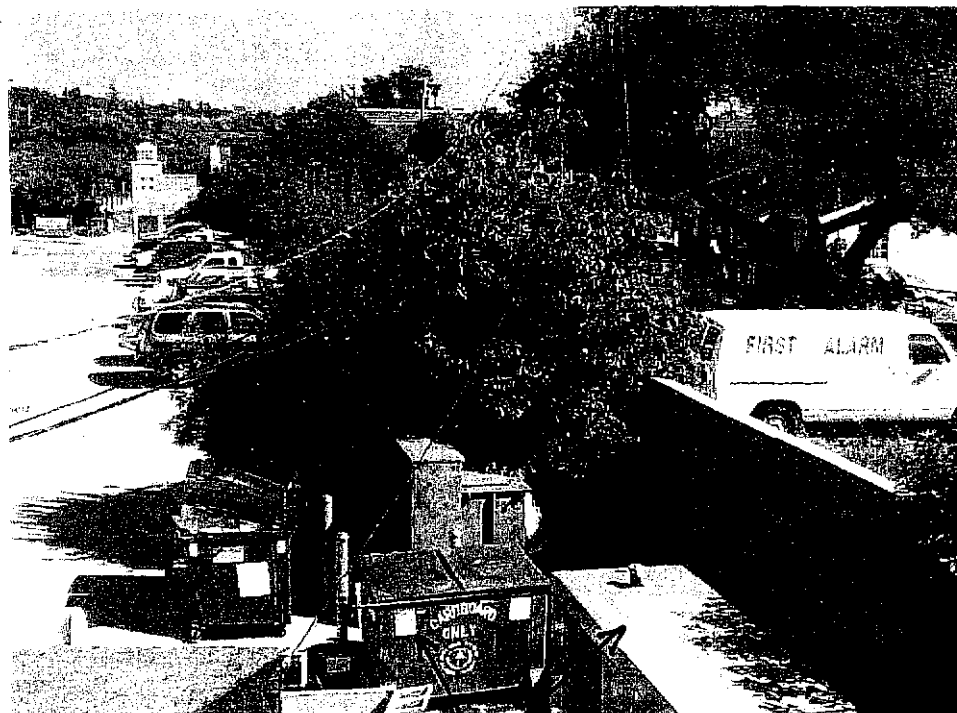
EXHIBIT H



Main building entry

Trash area

Residential parcel

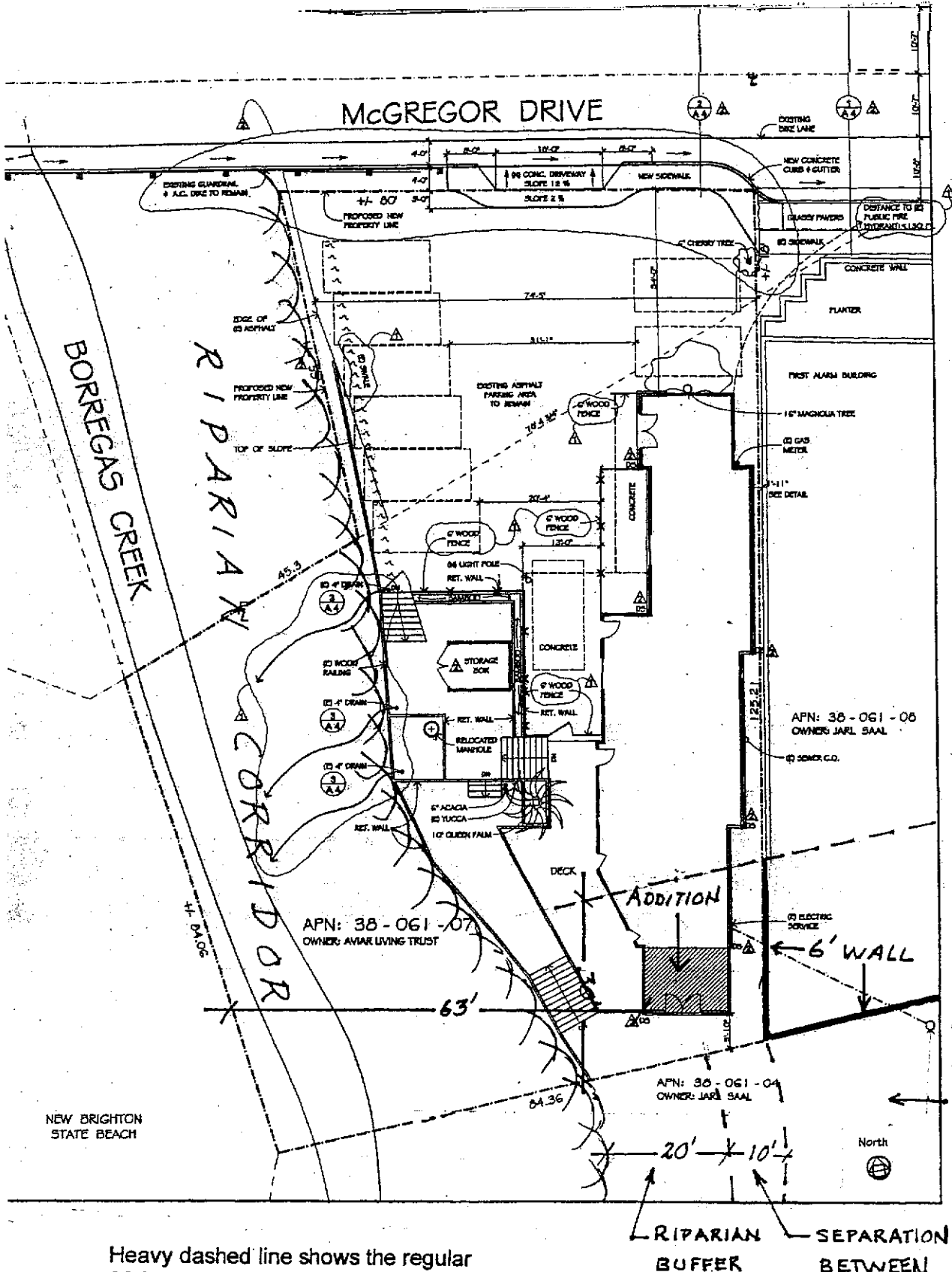


Trash area and generator

Wall at property line

Site Plan Showing Buffering Between the Project
and Adjoining Parcels

Exhibit I



Heavy dashed line shows the regular
30 ft. rear yard setback.

Residential parcel continues to the east
for an additional 236 ft. beyond the riparian
protection zones.

RIPARIAN
BUFFER

SEPARATION
BETWEEN
BUFFER +
BLDGs.

OWNER:
AVIAR LIVING TRUST
P.O. BOX 1282, APTOS, 95003
PHONE: 831-685-1116
CELL: 234-8858
RANDY ZAR, TRUSTEE

PROPOSED
SITE PLAN & DATA

Existing BUILDING at
2000-2004 MCGREGOR DRIVE
APTOS, CA. 95003
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OCT. 18, 2005

SHEET
A1a
OF 8 SHEETS

VARIANCE FINDINGS

1. THAT BECAUSE OF SPECIAL CIRCUMSTANCES APPLICABLE TO THE PROPERTY, INCLUDING SIZE, SHAPE, TOPOGRAPHY, LOCATION, OR SURROUNDINGS, THE STRICT APPLICATION OF THE ZONING ORDINANCE DEPRIVES SUCH PROPERTY OF PRIVILEGES ENJOYED BY OTHER PROPERTY IN THE VICINITY AND UNDER IDENTICAL ZONING CLASSIFICATION.

This finding can be made, in that the commercial development is constrained by the riparian corridor and associated steep slopes, at the west side of the project site. This riparian corridor results in a net developable area of approximately 6,212 square feet. Even if the excess right-of-way area is added to the site, as proposed, the net developable area would only increase to 9,157 sq. ft. The minimum parcel for a new "C-4" (Service Commercial) zoned parcel is **10,000** sq. ft. Both the General Plan/Local Coastal Plan and zoning designate this parcel for service commercial land uses.

2. THAT THE GRANTING OF THE VARIANCE WILL BE IN HARMONY WITH THE GENERAL INTENT AND PURPOSE OF ZONING OBJECTIVES AND WILL NOT BE MATERIALLY DETRIMENTAL TO PUBLIC HEALTH, SAFETY, OR WELFARE OR INJURIOUS TO PROPERTY OR IMPROVEMENTS IN THE VICINITY.

This finding can be made, in that the required 30 foot setback is intended to provide a separation between commercial and residential uses and the majority of commercial activities (including parking, loading and unloading) will be located at the front portion of the subject property. The location of the commercial development and use is sufficiently separated from the adjacent residential development to avoid commercial/residential use conflicts. The reduction of the rear yard setback **will** allow a use limited to a **400** sq. ft. extension of a one-story building. In addition, no development can occur on that portion of the adjacent residential parcel that adjoins the rear property line of the subject parcel due to the presence of a riparian corridor, riparian buffer and **10** foot separation between the buffer and building construction. These factors ensure that there will not be any negative impacts to the adjacent residential parcel nor any other adjoining parcel.

3. THAT THE GRANTING OF SUCH VARIANCES SHALL NOT CONSTITUTE A GRANT OF SPECIAL PRIVILEGES INCONSISTENT WITH THE LIMITATIONS UPON OTHER PROPERTIES IN THE VICINITY AND ZONE IN WHICH SUCH IS SITUATED.

This finding can be made, in that the useable area of the subject property is constrained due to the presence of the riparian corridor and the encroachment of the existing structure into the 30 foot yard setback will allow a similar level of commercial use as found on **similarly** zoned parcel of the same size. The granting of the variance to reduce the rear yard setback to about **5** feet will not constitute a grant of special privileges in that the adjoining commercial property contains a higher level of commercial activities within its 30 foot rear yard setback than will occur at the subject parcel.

(Note: Bold text indicates recommended new wording)



Staff Report to the Zoning Administrator

Application Number: **04-0650**

Applicant: Randy Zar
Owner: Alvin Zar, et al.
APN: 038-061-07

Agenda Date: 11/18/05
Agenda Item: 2
Time: After 8:30 am

Project Description: Proposal to recognize an existing commercial building and to establish a Master Occupancy Program to allow commercial service uses.

Requires a Coastal Development Permit, a Commercial Development Permit, and a Variance to reduce the required 30 foot rear yard to about 5 feet.

Location: Property located on the south side of McGregor Drive 200 feet west of the intersection with Estates Drive. (2000 McGregor Drive)

Supervisory District: 2nd District (District Supervisor: Ellen Pirie)

Permits Required Coastal Development Permit, Commercial Development Permit, Variance

Staff Recommendation:

- Approval of Application 04-0650, based on the attached findings and conditions.
- Certification that the proposal is exempt from ~~further~~ Environmental Review under the California Environmental Quality Act.

Exhibits

- | | | | |
|----|--|----|---------------------------|
| A. | Project plans | E. | Assessor's parcel map |
| B. | Findings | F. | Zoningmap |
| C. | Conditions | G. | Comments & Correspondence |
| D. | Categorical Exemption (CEQA determination) | | |

Parcel Information

Parcel Size:	10,454 square feet (+ 2,945 square feet of R/W)
Existing Land Use - Parcel:	Commercial businesses
Existing Land Use - Surrounding:	Commercial business, residential development, Highway One, and riparian/open space.

Project Access: McGregor Drive
Planning Area: Aptos
Land Use Designation: C-S (Service Commercial)
Zone District: C-4 (Commercial Service)
Coastal Zone: X Inside Outside
Appealable to Calif. Coastal Comm. X Yes No

Environmental Information

Geologic Hazards: Not mapped/no physical evidence on site
Soils: No report required
Fire Hazard: Not a mapped constraint
Slopes: 2-10 % at building site & 15-40% in riparian corridor
Env. Sen. Habitat: Riparian woodland (Borregas Creek)
Grading: No grading proposed
Tree Removal: No trees proposed to be removed
Scenic: Highway One scenic corridor
Drainage: Existing drainage adequate
Archeology: Not mapped/no physical evidence on site

Services Information

Urban/Rural Services Line: X Inside Outside
Water Supply: Soquel Creek Water District
Sewage Disposal: Santa Cruz County Sanitation District
Fire District: Aptos/La Selva Fire Protection District
Drainage District: Zone 6 Flood Control District

History

The subject property had been used as a commercial nursery which was an allowed use on the subject property at the time the nursery was established. Building Permits were issued to allow the nursery buildings and no use approval was required at that time. As the nursery was in operation some additional construction occurred, with no evidence of the required permits for such expansion. Over time, the nursery use transitioned to other commercial and residential uses, again without evidence of the required permits. The property owners' were notified of their lack of compliance with County regulations and, as a result of this action, the use of the property and structures has been modified to reflect the current proposal. The applicant is now seeking a development approval to recognize the existing commercial building and to establish a Master Occupancy Program for the commercial use of the property.

Project Setting

The subject property is located along McGregor Drive, a frontage road adjacent to the Highway One corridor to the north. Borregas Creek passes through the western half of the subject property, which significantly limits the development potential of the property. Vacant land is located to the west of Borregas Creek, with commercial development to the east and residential

development to the south of the subject property.

Zoning & General Plan Consistency

The subject property is an approximately 10,500 square foot lot, located in the C-4 (Commercial Service) zone district, a designation which allows commercial uses. The proposed commercial service development is composed of allowed uses within the zone district and the project, as conditioned, is consistent with the site's (C-S) Service Commercial General Plan designation.

Road Abandonment - McGregor Drive

The proposed development relies upon the abandonment of approximately 3000 square feet of excess right-of-way of McGregor Drive by the County to the property owner for parking purposes. This road abandonment is currently in process with the Department of Public Works. The staff recommendation for this application is based on the granting of the excess right-of-way to the property owner. If the County ultimately decides not to grant the excess right-of-way to the property owner, the proposed development would not be feasible as it is currently proposed.

Commercial Development Permit - Master Occupancy Program

The proposed commercial development is general in nature. The applicant is proposing to conduct commercial services allowed within the C-4 (Commercial Service) zone district. Three commercial units are within an existing commercial building (proposed to be recognized through this development application) and 9 parking spaces will be provided to serve the proposed commercial development.

Many of the uses allowed in the C-4 (Commercial Service) zone district may not be appropriate on the project site without further regulation, due to the limited parking available. The number of units further complicates the types and intensities of commercial uses that would be appropriate on the project site. It is recommended that the commercial uses be restricted to those which are small in scale and which do not have significant parking generation. Uses which do not require customers to visit the project site, or service/delivery vehicles to be stored on the project site are recommended. This results in a situation where the uses that are allowed in the C-4 zone district can be considered, if a strict parking program is observed. Staff recommends that the parking for each commercial unit be limited to no more than two vehicles for each unit (including service vehicles and/or employee parking) and each unit have one parking space available for customers and deliveries. This results in a total of 3 parking spaces for each unit and a total of 9 parking spaces which are all provided on the project site.

Variance

This application includes a variance request to encroach into the required 30 foot yard setback from the rear property line. A 30 foot setback is required from the rear property boundary due to the adjacent residentially zoned parcel. Due to the small size of the property and the location of the riparian corridor, it is appropriate to allow some reduction of the required setback. Portions of the prior commercial nursery were constructed in the required setback; but more recent additions have been built. Staff recommends that the newer additions be removed and the

structure be cut back to about 16 feet from the rear property boundary.

Local Coastal Program Consistency

The proposed commercial development is in conformance with the County's certified Local Coastal Program, in that the structure is sited and designed to be visually compatible, in scale with, and integrated with the character of the surrounding neighborhood. The project site is located between the shoreline and the first public road, with public beach access at New Brighton and Seacliff State Beaches, and is not identified as a priority acquisition site in the County's Local Coastal Program. Consequently, the proposed project will not interfere with public access to the beach, ocean, or other nearby body of water.

Design Review & Scenic Resources

The subject property is located within the viewshed of the Highway One scenic corridor. The proposed development is set back from the roadway and is adjacent to other existing commercial development. The proposed commercial development complies with the requirements of the County Design Review Ordinance and General Plan policies related to scenic resource protection, in that the existing structure uses muted natural tones and materials to blend with the surrounding development and landscape.

The existing sign located along the property frontage is not in compliance with the requirements of the sign ordinance (due to a height over 7 feet) and creates an unnecessary visual impact to the Highway One scenic corridor. It is recommended that this sign be removed and a revised sign plan submitted which complies with the requirements for signs in commercial zone districts.

Conclusion

As proposed and conditioned, the project is consistent with all applicable codes and policies of the Zoning Ordinance and General Plan/LCP. Please see Exhibit "B" ("Findings") for a complete listing of findings and evidence related to the above discussion.

Staff Recommendation

- **APPROVAL.** of Application Number **04-0650**, based on the attached findings and conditions.
- Certification that the proposal is exempt from further Environmental Review under the California Environmental Quality Act.

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: Randall Adams
Santa Cruz County Planning Department
701 Ocean Street, 4th Floor
Santa Cruz CA 95060
Phone Number: (831) 454-3218
E-mail: randall.adams@co.santa-cruz.ca.us

Coastal Development Permit Findings

- I. That the project is a use allowed in one of the basic zone districts, other than the Special Use (SU) district, listed in section 13.10.170(d) as consistent with the General Plan and Local Coastal Program LUP designation.

This finding can be made, in that the property is zoned C-4 (Commercial Service), a designation which allows commercial uses. The proposed commercial service development is composed of allowed uses within the zone district, consistent with the site's (C-S) Service Commercial General Plan designation.

2. That the project does not conflict with any existing easement or development restrictions such as public access, utility, or open space easements.

This finding can be made, in that the proposal does not conflict with any existing easement or development restriction such as public access, utility, or open space easements in that the development is sited away from the existing sanitary sewer line which passes through the property.

3. That the project is consistent with the design criteria and special use standards and conditions of this chapter pursuant to section 13.20.130 et seq.

This finding can be made, in that the development is consistent with the surrounding commercial development in terms of architectural style; the site is adjacent to other commercial development; the colors shall be muted natural tones and complementary to the site; the development site is not on a prominent ridge, beach, or bluff top.

4. That the project conforms with the public access, recreation, and visitor-serving policies, standards and maps of the General Plan and Local Coastal Program land use plan, specifically Chapter 2: figure 2.5 and Chapter 7, and, as to any development between and nearest public road and the sea or the shoreline of any body of water located within the coastal zone, such development is in conformity with the public access and public recreation policies of Chapter 3 of the Coastal Act commencing with section 30200.

This finding can be made, in that the project site is located between the shoreline and the first public road with public beach access at New Brighton and Seacliff State Beaches. Consequently, the commercial development will not interfere with public access to the beach, ocean, or any nearby body of water. Further, the project site is not identified as a priority acquisition site in the County Local Coastal Program.

5. That the proposed development is in conformity with the certified local coastal program.

This finding can be made, in that the structure is sited and designed to be visually compatible, in scale with, and integrated with the character of the surrounding commercial development. Additionally, commercial uses are allowed uses in the C-4 (Commercial Service) zone district of the area, as well as the General Plan and Local Coastal Program land use designation.

Variance Findings

1. That because of special circumstances applicable to the property, including size, shape, topography, location, and surrounding existing structures, the strict application of the Zoning Ordinance deprives such property of privileges enjoyed by other property in the vicinity and under identical zoning classification.

This finding can be made, in that the commercial development is constrained by the riparian corridor, and associated steep slopes, at the west side of the project site.

2. That the granting of the variance will be in harmony with the general intent and purpose of zoning objectives and will not be materially detrimental to public health, safety, or welfare or injurious to property or improvements in the vicinity.

This finding can be made, in that the required 30 foot setback is intended to provide a separation between commercial and residential uses and the majority of the commercial activities (including parking, loading, and unloading) will be located at the front portion of the subject property. The location of the commercial development and use is sufficiently separated from the adjacent residential development to avoid commercial/residential use conflicts.

3. That the granting of such variances shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such is situated.

This finding can be made, in that the usable area of the subject property is constrained due to the presence of the riparian comdor, and the encroachment of the existing structure into the 30 foot yard setback will allow a similar level of commercial use as found on similarly zoned parcels of the same size.

Development Permit Findings

1. That the proposed location of the project and the conditions under which it would be operated or maintained will not be detrimental to the health, safety, or welfare of persons residing or working in the neighborhood or the general public, and will not result in inefficient or wasteful use of energy, and will not be materially injurious to properties or improvements in the vicinity.

This finding can be made, in that the project is located in an area designated for commercial uses. Construction will comply with prevailing building technology, the Uniform Building Code, and the County Building ordinance to insure the optimum in safety and the conservation of energy and resources.

2. That the proposed location of the project and the conditions under which it would be operated or maintained will be consistent with all pertinent County ordinances and the purpose of the zone district in which the site is located.

This finding can be made, in that ~~the~~ proposed location of the commercial development and the conditions under which it would be operated or maintained will ~~be~~ consistent with all pertinent County ordinances and the purpose of the C-4 (Commercial Service) zone district in that the primary ~~use~~ of the property will be for commercial service uses and a parking program will be established to prevent parking or traffic impacts to adjacent properties.

3. That the proposed use is consistent with all elements of the County General Plan and with any specific plan which has been adopted for the area.

This finding can be made, in that the proposed commercial use is consistent with the use requirements specified for the Service Commercial (C-S) land use designation in the County General Plan.

The proposed commercial development will not adversely impact the light, solar opportunities, air, and/or open space available to other structures or properties, and meets all current site and development standards for the zone district as specified in Policy 8.1.3 (Residential Site and Development Standards Ordinance), in that the commercial development will not adversely shade adjacent properties, and will meet current setbacks with the exception ~~of~~ the proposed variances for the zone district that ensure access to light, air, and open space in the neighborhood. (Amended at ZA 11/18/05)

The proposed commercial development will not be improperly proportioned to the parcel size or the character of the neighborhood as specified in General Plan Policy **8.6.1** (Maintaining a Relationship Between Structure and Parcel Sizes), in that the proposed commercial development will comply with the site standards for the C-4 zone district (including ~~setbacks~~, lot coverage, floor area ratio, height, and number of stories) and will result in a structure consistent with a design that could be approved on any similarly sized lot in the vicinity. (Amended at ZA 11/18/05)

A specific plan has not been adopted for this portion of the County.

Application#: 04-0650

APN: 038-061-07

Owner: Alvin Zar, et al.

4. That the proposed use will not overload utilities and will not generate more than the acceptable level of traffic on the streets in the vicinity.

This finding can be made, in that the proposed commercial development is to be recognized in place of an existing prior commercial use. No increase in traffic generation or use of utilities will result from the proposed development.

5. That the proposed project will complement and harmonize with the existing and proposed land uses in the vicinity and will be compatible with the physical design aspects, land use intensities, and dwelling unit densities of the neighborhood.

This finding can be made, in that the proposed structure is located in a mixed neighborhood containing a variety of architectural styles, and the proposed commercial development is consistent with the land use intensity and density of the neighborhood.

6. The proposed development project is consistent with the Design Standards and Guidelines (sections 13.1 **1.070** through 13.11.**076**), and any other applicable requirements of this chapter.

This finding can be made, in that the proposed commercial development will be of an appropriate scale and type of design that will enhance the aesthetic qualities of the surrounding properties and will not reduce or visually impact available open space in the surrounding area.

Recording requested by:

COUNTY OF SANTA CRUZ

When recorded, return to:

Planning Department
Attn: Randall Adams
County of Santa Cruz
701 Ocean Street
Santa Cruz, CA 95060

Conditions of Approval

Development Permit No. 04-0650
Property Owner: Alvin Zar, etal.
Assessor's Parcel No.: 038-061-07

Exhibit A: Project plans, "Existing Building at 2000-2004 McGregor Drive", 8 sheets, dated 7/27/05.

- I. This permit authorizes the construction of a commercial building, and the installation of a parking area and associated improvements per the approved Exhibit "A" for this project; and a variance to reduce the required rear yard setback ~~from~~ 30 feet to about ~~16~~ 5 feet.
(Amended at ZA 11/18/05)

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 for *all structures on the site.* (Added at ZA 11/18/05)
- C. Obtain an Encroachment Permit from the Department of Public Works for all off-site work performed in the County road right-of-way.
- D. Obtain final water service approval from the Soquel Creek Water District.
- E. Obtain final sewer service approval from the Santa Cruz County Sanitation District.
- F. *Obtain clear title (or long term lease, of a term acceptable to County Planning staff, which includes a parking indenture) for the excess right of way from the County as note on Exhibit A.* (Added at ZA 11/18/05)
- G. *No grading which would require a permit is authorized by this permit.* (Added at ZA 11/18/05)

- 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. Identify finish of exterior materials and color of roof covering for Planning Department approval. Any color boards must be in 8.5" x 11" format.
 2. ~~Revised site plans, floor plans, and elevations which clearly depict the removal of the approximately 160 square foot addition that projects out about 11 feet to the rear (south) of the existing building. (Removed at ZA 11/18/05)~~
 3. A final sign plan for the proposed commercial building shall be submitted for staff review and approval. Signage for the proposed commercial building must comply with the current requirements of the County Code. The existing monument sign along the property frontage must be removed and the supporting pole taken down.
 4. Grading, drainage, and erosion control plans, that are prepared, wet-stamped, and signed by a licensed civil engineer. Grading and drainage plans must include estimated earthwork, cross sections through all improvements, existing and proposed cut and fill areas, existing and proposed drainage facilities, and details of devices such as back drains, culverts, energy dissipaters, detention pipes, etc. Verify that the detention facilities are adequate to meet County requirements for release rates.
 5. Engineered improvement plans for all on-site and off-site improvements. All improvements shall be submitted for the review and approval by the Department of Public Works.
 6. A lighting plan for the proposed development. Lighting for the proposed development must comply with the following conditions:
 - a. All site, building, security and landscape lighting shall be directed onto the site and away from adjacent properties. Light sources shall not be visible from adjacent properties. Light sources can be shielded by landscaping, structure, fixture design or other physical means. Building and security lighting shall be integrated into the building design.
 - b. All lighted parking and circulation areas shall utilize low-rise light standards or light fixtures attached to the building. Light standards to a maximum height of 15 feet are allowed.

- c. Area lighting shall be high-pressure sodium vapor, metal halide, fluorescent, or equivalent energy-efficient fixtures.
- 7. All rooftop mechanical and electrical equipment shall be designed to be an integral part of the building design, and shall be screened.
- 8. Utility equipment such as electrical and gas meters, electrical panels, junction boxes, and backflow devices shall not be located on exterior wall elevations facing streets unless screened from streets and building entries using architectural screens, walls, fences, and/or plant material.
- 9. Details showing compliance with fire department requirements.
- 10. *The wall at the south side of the structure shall have no opening or windows other than one solid door. (Added at ZA 11/18/05)*
- B. Submit four copies of the approved Discretionary Permit with the Conditions of Approval attached. The Conditions of Approval shall be recorded prior to submittal, if applicable.
- C. Meet all requirements of and pay all applicable fees to the Soquel Creek Water District.
- D. Meet all requirements of and pay all applicable fees to the Santa Cruz County Sanitation District.
- E. Meet all requirements of and pay Zone 6 drainage fees to the County Department of Public Works, Drainage. Drainage fees will be assessed on the net increase in impervious **area**.
- F. Meet all requirements and pay any applicable plan check fee of the Aptos/La Selva Fire Protection District.
- G.** Pay the current fees for Child Care mitigation for 910 square feet of general commercial space. Currently, these (Category II) fees are \$0.23 per square foot, but are subject to change.
- H. Pay the current Aptos Transportation Improvement Area (TIA) fees for Roadside and Transportation improvements. Currently, these fees can be calculated as follows, but are subject to change:
 - 1. The development is subject to Aptos Transportation Improvement (TIA) fees at a rate of \$400 per daily trip-end generated by the proposed use with a credit of 1.8 trips ends from the prior nursery use. The Department of Public Works Road Engineering staff will determine the appropriate number of trip ends for the **type** of proposed use, or will require a traffic report to establish the number of trip ends. The total TIA fee is to be split evenly between transportation improvement fees and roadside improvement fees.

- I. Provide required off-street parking for a minimum of 9 cars. Parking spaces must be 8.5 feet wide by 18 feet long and must be located entirely outside vehicular rights-of way. Parking must be clearly designated on the plot plan.
 - J. 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.
 - K. For any parking lot drain inlets, complete and file a silt and grease trap maintenance agreement with the Department of Public Works. The final plans shall specify the location of an EPA approved silt and grease trap on site, through which storm runoff must pass. The trap shall be inspected to determine if it needs cleaning or repair prior to October 15 of each year, at minimum intervals of one year. A brief **annual** report shall be prepared by the trap inspector at the conclusion of each inspection and submitted to the Drainage Section of the Department of Public Works within 5 days of the inspection. The report shall specify any repairs that have been done or that are needed to allow the trap to function adequately.
 - L. *A soils report for the project site including the former right of way area which includes a slope stability analysis shall be submitted to the County for review and acceptance. All recommendations of the approved report shall be incorporated into the project design. (Added at ZA 11/18/05)*
- 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. All site improvements shown on the final approved Building Permit plans shall be installed.
 - B. ~~The approximately 160 square foot addition that projects out about 11 feet to the rear (south) of the existing building must be removed and the resulting opening properly finished. (Removed at ZA 11/18/05)~~
 - C. All new utilities to serve the proposed development shall be installed underground.
 - 1. Pad-mounted transformers (as part of the underground electrical service distribution system) shall not be located in the front setback or area visible from public view, unless they are completely screened by walls and/or thick landscaping, and shall not obstruct views of traffic from tenant spaces or driveways, or views to monument signs. Underground vaults may be located in the front setback area for aesthetic purposes.
 - D. Back flow devices and other landscape irrigation valves shall not be located in the front setback or area visible from public view, unless they are completely screened by walls and/or thick landscaping, and shall not obstruct views of traffic from tenant spaces or driveways, or views to monument signs.

- E. All inspections required by the building permit shall be completed to the satisfaction of the County Building Official.
- F. 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.

IV. Operational Conditions

- A. **Master Occupancy Program:** Given the location of the project with respect to existing residential and commercial uses, only the uses listed below may be processed at Level 1, based on the parking available on site:

All of the uses listed in the in the current C-4 (Service Commercial) use charts with the parking restrictions listed below.

The following additional restrictions apply to all uses:

Parking is restricted to only 2 parking spaces for each of the three commercial units (including service vehicles and/or employee parking) and 1 parking space available for each unit for customers and deliveries. This results in a total of 3 parking spaces for each of the three commercial units, which is a total of 9 parking spaces which must all be provided on the project site.

Parking or storage of vehicles associated with the commercial service uses off of the subject property is not allowed. All parking of vehicles associated with the commercial services uses authorized by this permit must occur on the project site and may not occur on surrounding streets or parcels. *No trailers are allowed to be stored ~~or~~ parked on the project site. (Added at ZA 11/18/05)*

Businesses occupying any of the three commercial units must comply with the parking requirements as established by this Master Occupancy Program.

~~Hours of operation are limited to the hours between 7 AM and 6 PM. No commercial service related activities are allowed outside of these hours of operation. No use of equipment that can generate noise beyond the project site and/or no deliveries can occur beyond the hours of 7 AM to 6 PM. (Added at ZA 11/18/05)~~

Retail uses that are not ancillary to an approved commercial service use are prohibited.

All noise generated by or associated with the allowed commercial service uses may not exceed 65db at the property boundary.

~~No outdoor storage is permitted.~~ Outdoor storage is limited to screened areas surrounding the storage box shown on Exhibit A of this permit. All outdoor storage must be screened from public view. (Added at ZA 11/18/05)

- B. In the event that future County inspections of the subject property disclose noncompliance 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 permit revocation.
- C. *This permit will be reviewed if any lease agreement with the County of Santa Cruz of the excess right of way held by the County of Santa Cruz is terminated. (Added at ZA 11/18/05)*

- 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:
 - 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 ~~two~~ one years from the effective date unless you obtain the required permits and ~~commence construction~~. all final clearances shall be obtained in a timely manner. (Added at ZA 11/18/05)

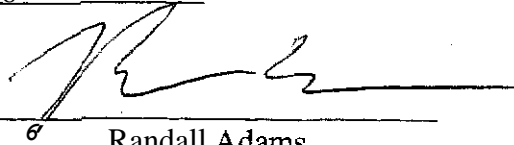
Approval Date: _____ 11/18/05 _____

Effective Date: _____ 12/2/05 _____

Expiration Date: _____ 12/2/06 _____



Don Bussey
Deputy Zoning Administrator



Randall Adams
Project Planner

Appeals: Any property owner, or other person aggrieved, or any other person whose interests are adversely affected by any act or determination of the Zoning Administrator, may appeal the act or determination to the Planning Commission in accordance with chapter 18.10 of the Santa Cruz County Code.

CALIFORNIA ENVIRONMENTAL QUALITY ACT

NOTICE OF EXEMPTION

The Santa Cruz County Planning Department has reviewed the project described below and has determined that it is exempt from the provisions of CEQA as specified in Sections 15061 - 15332 of CEQA for the reason(s) which have been specified in this document.

Application Number: 04-0650

Assessor Parcel Number: 038-061-07

Project Location: 2000 Mc Gregor Drive

Project Description: Proposal to recognize an existing commerical building and establish a master occupancy program.

Person or Agency Proposing Project: Randy Zar

Contact Phone Number: (831) 234-8858

- A. ☐ The proposed activity is not a project under CEQA Guidelines Section 15378.
B. ☐ The proposed activity is not subject to CEQA as specified under CEQA Guidelines Section 15060(c).
C. ☐ **Ministerial Project** involving only the use of fixed standards or objective measurements without personal judgment.
D. ☐ **Statutory Exemption** other than a Ministerial Project (CEQA Guidelines Section 15260 to 15285).

Specify type:

E. ☒ **Cateorical Exemption**

Specify type: Class 1 - Existing Facilities (Section 15301)

F. Reasons why the project is exempt:

Recognizing an existing commercial facility in an area designated for commercial uses

In addition, none of the conditions described in Section 15300.2 apply to this project.


Randall Adams, Project Planner

Date: 4/18/05

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APTOS RANCH
POR. SECS. 12 & 13, T.11S., R.1W., M.D.B. & M.

APTOS RANCHO

Tax Area Code
69-273

Assessor's Map No. 38-06
County of Santa Cruz, Calif
Oct, 1997

Note - Assessor's Parcel & Block Numbers Shown in Circles.

SEACLIFF ESTATES
UNFILEDSTATE
H.W.V

—

McGREGOR

DR.

DR.

ESTATES

BORREGAS

APTOS RANCH

SOQUEL RANCHO

פתרונות



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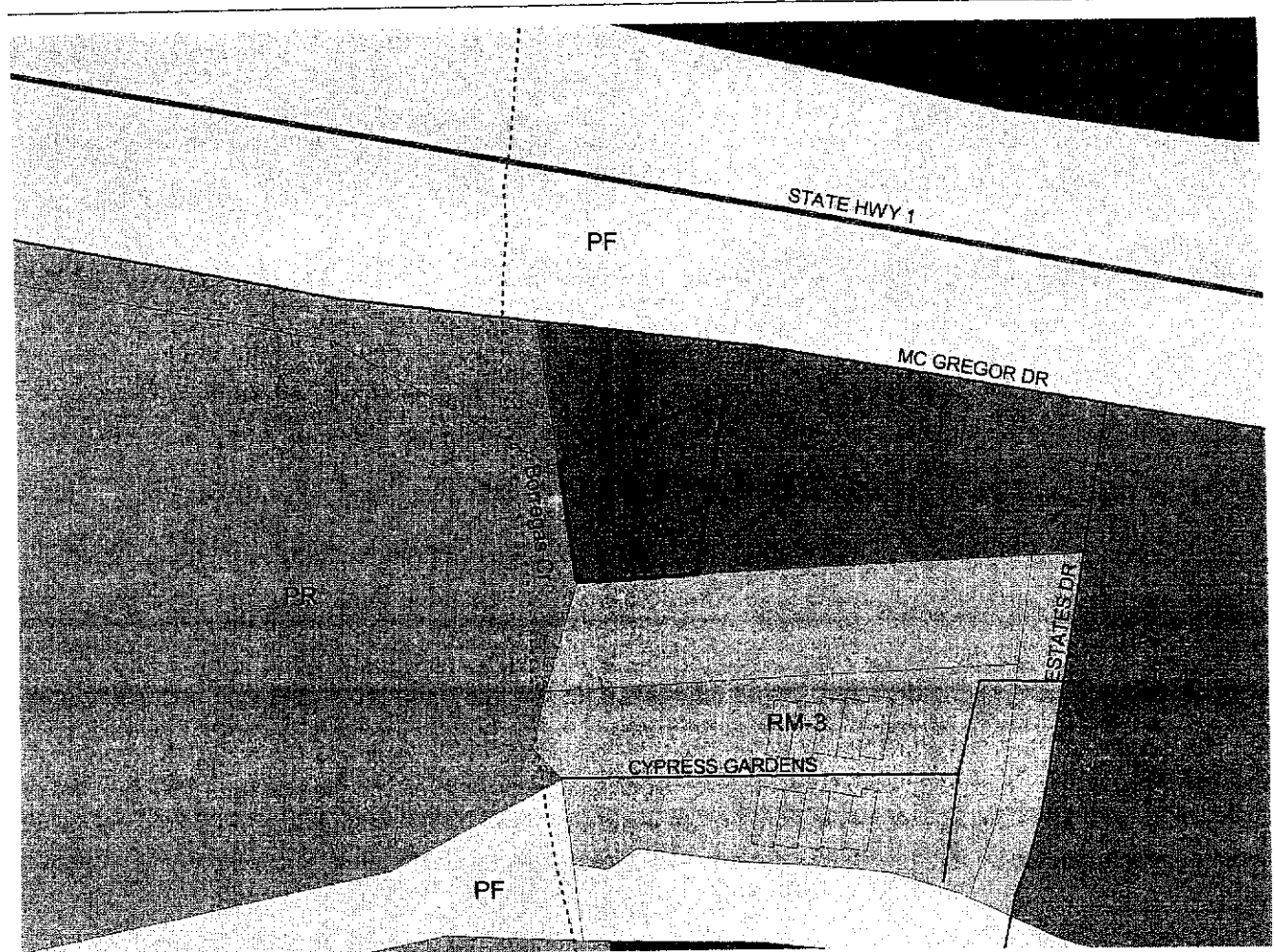
761



36 37



Zoning Map



Legend

	APN 038-061-07
	Parcel boundaries
	Streets
	State Highway
	Intermittent Stream
	R-1-10
	RM
	c-4
	VA
	PR
	PF



Map created by Santa Cruz County
Planning Department
January 2005

EXHIBIT F

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

Project Planner: Randall Adams
Application No.: 04-0650
APN: 038-061-07

Date: September 2, 2005
Time: 11:33:23
Page: 1

Environmental Planning Completeness Comments

===== REVIEW ON JANUARY 25, 2005 BY ROBIM M BOLSTER =====

Although the development covered by this application encroaches into the 30-foot riparian corridor, the Riparian Exception Permit (96-0396) granted to grade and construct a retaining wall, contained mitigation measures which adequately protected riparian resources. The current application does not propose any new development and thus does not constitute a negative impact to riparian resources.

Any new development within the corridor or buffer area will require a Riparian Exception.

Environmental Planning Miscellaneous Comments

===== REVIEW ON JANUARY 25, 2005 BY ROBIN M BOLSTER =====
NO COMMENT

Code Compliance Completeness Comments

LATEST COMMENTS HAVE **NOT** YET BEEN SENT TO PLANNER FOR THIS AGENCY

----- REVIEW ON JANUARY 4, 2005 BY KEVIN M FITZPATRICK -----
NO COMMENT

The present structure was built without building permits. This application is to recognize the **existing** commercial use but not the structure. Building permits for the structure will be required after the Development Permit is approved. This fully addresses the posted violation of a use without a development permit. (KMF)

Code Compliance Miscellaneous Comments

LATEST COMMENTS HAVE **NOT** YET BEEN SENT TO PLANNER FOR THIS AGENCY

===== REVIEW ON JANUARY 4, 2005 BY KEVIN M FITZPATRICK =====
NO COMMENT

As part of a settlement agreement the deck is recognized as legal. (KMF)

Dpw Drainage Completeness Comments

LATEST COMMENTS HAVE **NOT** YET BEEN SENT TO PLANNER FOR THIS AGENCY

===== REVIEW ON JANUARY 20, 2005 BY ALYSON B TOM ===== Plans dated 12/22/04 have been received. Please address the following:

1) Please clarify on the plans what features are permitted. All impervious surfaces (roof, concrete, asphalt, etc.) should be labelled either existing and **permitted**, existing and unpermitted, or proposed.

2) Please provide a drainage plan that describes how all of the proposed or unpermitted impervious areas are to drain. Describe the downstream flow paths (on and

Discretionary Comments - Continued

Project Planner: Randall Adams
Application No. : 04-0650
038-061-07

Date: September 2, 2005
Time: 11:33:23
Page: 2

off-site) and demonstrate that they are adequate to handle the added runoff. If the runoff from these areas will flow into the drains shown on the plans additional information describing where these drains lead and demonstrating that the facilities are in good working order and are adequate to handle the added runoff.

3) All runoff from parking and driveway areas must go through water quality treatment prior to discharge from the site. A recorded maintenance agreement will be required if a structural device is used for treatment.

4) Describe how this project minimizes proposed impervious areas and mitigates for any added impervious areas

5) Zone 6 fees will be assessed on the net increase in impervious area due to the project. For credit for existing, permitted impervious areas documentation demonstrating that the area was permitted (or installed/built prior to 1986) is required.

All submittals for this project should be made through the Planning Department. For questions regarding this review Public Works stormwater management staff is available from 8-12 Monday through Friday

Additional issues/details may be required at the building permit stage

===== UPDATED ON MAY 10, 2005 BY ALYSON B TOM ===== Application with plans revised on 4/25/05 has been received Please address the following:

1) Previous comment No. 2 has not been addressed. How will the proposed/unpermitted building area drain? The gutter system was shown on the roof details, but there are no notes on the site plan describing where the new/unpermitted roof area discharges.

2) Previous comment No. 3 has not been addressed. All runoff from parking/driveway areas should go through water quality treatment prior to discharge to the creek. The inlet to the most northerly 4-inch drain should be retrofitted to include water quality treatment such as the county standard silt and grease trap or other type of device. A recorded maintenance agreement for this device will be required prior to building permit issuance.

===== UPDATED ON AUGUST 2, 2005 BY ALYSON B TOM ===== Application with plans revised on July 27, 2005 has been received and is complete with regards to drainage for the discretionary stage. The application now includes adding water quality treatment for the parking/driveway runoff and per conversation with applicant on 8/2/05, roof runoff from the unpermitted section drains to a downspout and splashblock that overflows to the creek via a concrete and rock section without impacting adjacent properties. Please see miscellaneous comments for issues to be addressed prior to building permit issuance.

Dpw Drainage Miscellaneous Comments

LATEST COMMENTS HAVE NOT YET BEEN SENT TO PLANNER FOR THIS AGENCY

===== REVIEW ON JANUARY 20, 2005 BY ALYSON B TOM ===== See completeness comments.

Discretionary Comments - Continued

Project Planner: Randal Adams
Application No.: 04-0650
APN: 038-061-07

Date: September 2, 2005
Time: 11:33:23
Page: 3

===== UPDATED ON AUGUST 2, 2005 BY ALYSDN B OM ===== The following should be addressed prior to building permit issuance:

- 1) Please add notes to the plans describing the runoff path for the roof discharge of the unpermitted section of building.
- 2) Please submit a copy of a notarized, recorded maintenance agreement for the proposed silt and grease trap.
- 3) Please provide documentation that all of the paved areas on site are permitted. Zone 6 fees will be assessed on the net increase in permitted impervious area due to this project.

For questions regarding this review Public Works storm water management staff is available from 8-12 Monday through Friday. All submittals should be made through the Planning Department.

Dpw Road Engineering Completeness Comments

LATEST COMMENTS HAVE NOT YET BEEN SENT TO PLANNER FOR THIS AGENCY

===== REVIEW ON JANUARY 27, 2005 BY GREG J MARTIN =====
The project proposes perpendicular parking directly off of McGregor Drive. Perpendicular parking off an arterial such as McGregor Drive with its existing limited access and relatively high speeds is not recommended. A standard commercial driveway aligned with the existing curb face is recommended. A sidewalk should wrap around the back of the driveway ramp. asphalt concrete transirion shall be necessary from the end of the sidewalk to the pavement.

If you have any questions please contact Greg Martin at 831-454-2811. ===== UP-
DATED ON MAY 16, 2005 BY GREG J MARTIN =====
Previous comments still apply. ===== UPDATED ON AUGUST 15, 2005 BY GREG J MARTIN =====

The proposed plan shows a driveway 18 feet wide. The minimum width required is 24 feet. The existing guardrail shall need to be modified to accomodate a sidewalk transition to properly terminate the proposed sidewalk. A licensed civil engineer is required to evaluate and design the modifications. A four foot landscaping strip is recommended behind the sidewalk. The proposed plan is contingent upon acquisition of the underlying right-of-way from the County. The new right-of-way line shall go behind the sidewalk. ===== UPDATED ON AUGUST 15, 2005 BY GREG J MARTIN =====

Dpw Road Engineering Miscellaneous Comments

LATEST COMMENTS HAVE NOT YET BEEN SENT TO PLANNER FOR THIS AGENCY

===== REVIEW ON JANUARY 27, 2005 BY GREG J MARTIN =====
===== UPDATED ON MAY 16, 2005 BY GREG J MARTIN =====
===== UPDATED ON AUGUST 15, 2005 BY GREG J MARTIN =====

Environmental Health Completeness Comments

Discretionary Comments - Continued

Project Planner: Randall Adams
Application No. : 04-0650
APN: 038-061-07

Date: September 7, 2005
Time: 11:33:23
Page: 4

LATEST COMMENTS HAVE **NOT** YET BEEN SENT TO PLANNER FOR THIS AGENCY

===== REVIEW ON JANUARY 74, 2005 BY JIM G SAFRANEK =====
NO COMMENT

Environmental Health Miscellaneous Comments

LATEST COMMENTS HAVE NOT YET BEEN SENT TO PLANNER FOR THIS AGENCY

===== REVIEW ON JANUARY 24, 2005 BY JIM G SAFRANEK ===== EHS review fee is
\$231, not \$462, for Commercial Dev. w/ Public Services.

Aptos-La Selva Beach Fire Prot Dist Completeness C

LATEST COMMENTS HAVE **NOT** YET BEEN SENT TO PLANNER FOR THIS AGENCY

===== REVIEW ON MARCH 23, 2005 BY ERIN K STOW =====

DEPARTMENT NAME: Aptos/La Selva Fire Dept. APPROVED

The fire alarm system shall be evaluated and upgraded or repaired as necessary in accordance with the Uniform Fire Code Section 1007 and NFPA Pamphlet 77. Plans shall be submitted to the Aptos/La Selva Fire Department and approval obtained prior to submittal.

All Fire Department building requirements and fees will be addressed in the Building Permit phase.

Plan check is based upon plans submitted to this office. Any changes or alterations shall be re-submitted for review prior to construction.

Aptos-La Selva Beach Fire Prot Dist Miscellaneous

LATEST COMMENTS HAVE **NOT** YET BEEN SENT TO PLANNER FOR THIS AGENCY

===== REVIEW ON MARCH 23, 2005 BY ERIN K STOW =====
NO COMMENT

EXHIBIT G
ATTACHMENT 4



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
TOM BURNS, DIRECTOR

February 26, 2004

Randy Zar
2000 McGregor Drive
Aptos, CA 95003

Dear Mr. Zar,

Thank you for the opportunity to discuss methods to rectify the Code Compliance issues on your property located on McGregor Drive. As a result of that meeting, it is clear that there is a way to resolved the outstanding issues, based on:

- Bringing the uses into conformance with the C4 zone district, including removing residential uses from the property;
- Providing adequate parking on the site to meet the required needs of the remaining uses; and
- Meeting the setbacks and other site standards.

The purpose of this letter is to follow up on a couple of issues discussed at that meeting

You requested a fee estimate for processing an application for a Commercial Development permit to recognize a contractor's business office and associated storage. Commercial Development permit applications are processed "at-cost" which means that the Planning Department collects a deposit against which the actual cost of processing the application is billed. The actual costs include analysis, site visits, staff report production and other tasks that are necessary to complete the total processing of the permit, including the public hearing and any required follow-up for compliance with conditions of approval (should the application be approved).

The estimated fees as of today (fees are subject to change upon approval by the Board of Supervisors) are as follows:

Commercial Development Permit & Variance (deposit)	\$5,000.00
Environmental Health review fee	280.00
Application Intake "B"	136.00
Records Management Fee	15.00
DPW Road Planning review fee	750.00

DPW Drainage review fee
Total

770.00
\$6,951.00

Please note, however, that the deposit may or may not cover the actual cost to process the application. A review of recent Commercial Development Permits indicate that between \$5,000 and \$6,000 of staff time is required to process an application that includes almost all of the necessary information at the time of submittal. Missing or incomplete information at submittal will result in additional staff time and additional expense to the applicant.


In addition to the fees noted above, our records indicate that approximately \$8,500.00 of Code Enforcement charges have also accrued. It is our practice to require payment of those charges at the time an application is submitted.

There will also be fees associated with your building permit application, if the Commercial Development Permit is approved. Those fees can be calculated later, as the existing structure may be altered in response to issues raised during processing of the development permit. At building permit issuance, Capital Improvement fees will be assessed for the change in use and increase in building area, to a current size of 2,000 square feet. At this time, we estimate the following Capital Improvement fees would apply. As with all County fees, these fees are subject to change upon action by the Board of Supervisors.

- Drainage. Approximately \$900.00 based on 1,070 square feet of new impervious area.
- Roadway & Transportation Improvements. Approximately \$3,280.00, based on the change of use from plant nursery (1.8 trip ends for 1,810 s.f. @ \$400 per trip end) to industrial office (10 trip ends for 2,000 s.f. @ \$400 per trip end).
- Child Care. Approximately \$130.00 based on 1,070 square feet of new enclosed structures.

You indicated that you would be meeting with ~~Scott~~ Loichinger in Real Property to discuss acquisition of a portion of the McGregor Drive right-of-way. Clearly, a positive outcome from those discussions would greatly assist us in resolving the pending issues.

I *think* that it would be helpful if we met again, in two months, after you have had an opportunity to meet with Scott. Please call Bernice Romero, at 454-3137 to set up an appointment. I would like to meet again on or about April 26, 2004 to discuss your progress.

Sincerely,

Tom Burns
Planning Director

cc: David Imai
311 Bonita Drive
Aptos, CA 95003

200

1972 additions

263sf

Office Area

405sf

Greenhouse

521sf

Open Area

887sf

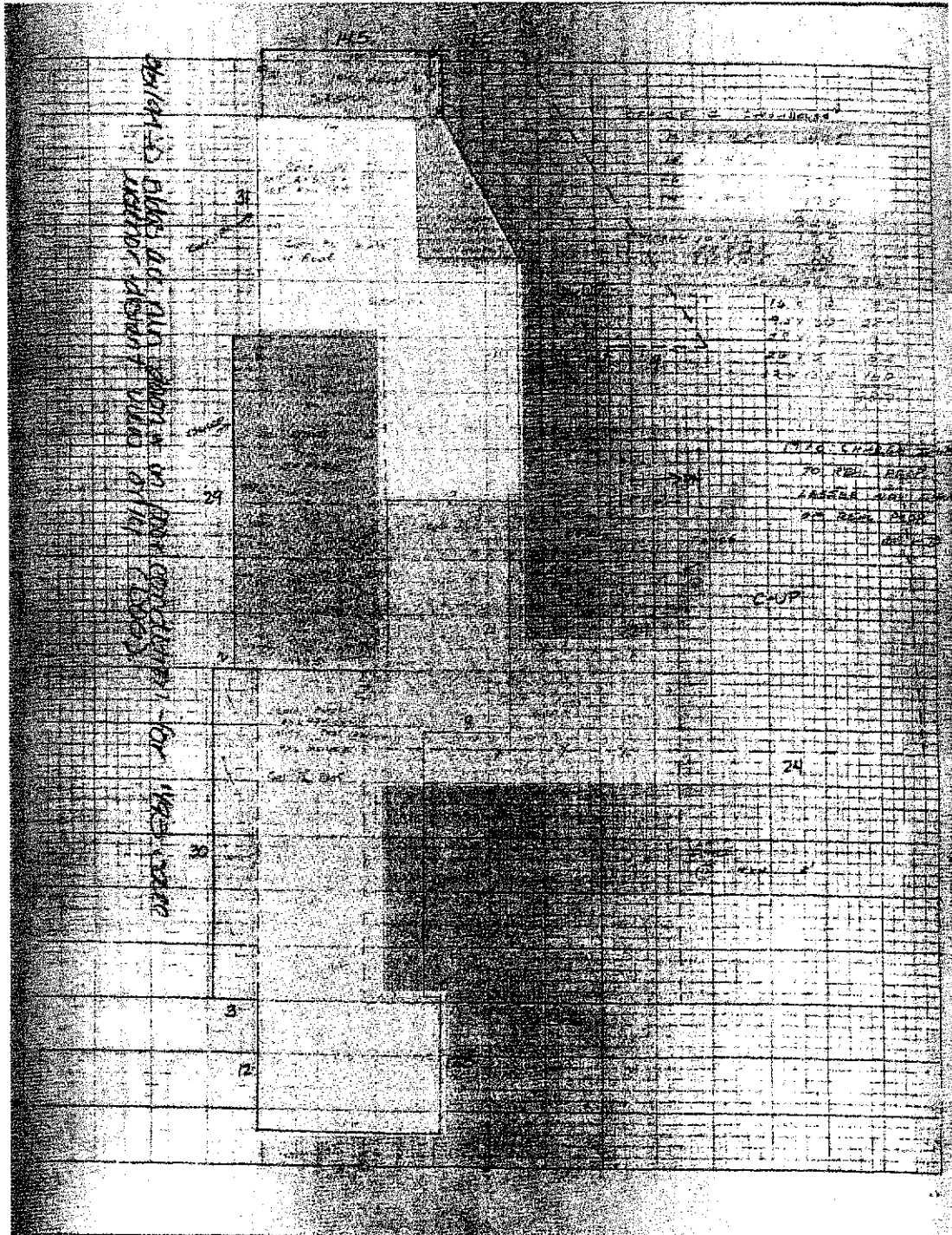


EXHIBIT G

ATTACHMENT 4

COUNTY OF SANTA CRUZ
INTER-OFFICE CORRESPONDENCE

Date: April 30, 2004

To: Mark Deming, Planning Department

From: Real Property, Scott Loichinger *SL*

Subject: MCGREGOR DRIVE ROAD RIGHT OF WAY - PROPOSED SALE AND ABANDONMENT
ADJACENT TO APN 038-061-07 - 2000-2004 MCGREGOR DRIVE, APTOS

The owners of the above referenced parcel have requested purchasing the excess right of way shown on the attached map. They have paved the area in question and use it for parking.

Please make a determination whether the sale is in conformance with the General Plan. We believe that it is categorically exempt from CEQA under exemption 12 (Surplus Government Property Sale).

Your help in expediting this matter would be appreciated.

SCL
Attachments

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APTOS R4

POR. SECS. 12 & 13, T.1

(BK.39
15)

STATE

HW

PROPOS EN SALG ~~ARECH~~

↓ MCGREGOR

SOLOUFE RANCH

43115

125.95

22.19

2521

84-36

320±

236-

05

28

BORREGAS

APTOS RANCHO

66

35

EXHIBIT G

NOT ATTACHMENT 4

COUNTY OF SANTA CRUZ

INTER-OFFICE CORRESPONDENCE

Date: April 30, 2004

To: Advanced Planning

From: Real Property, Scott Loichinger *SL*

Subject: MCGREGOR DRIVE ROAD RIGHT OF WAY - PROPOSED SALE AND ABANDONMENT
ADJACENT TO APN 038-061-07 - 2000-2004 MCGREGOR DRIVE, APTOS

We have received a request from the owner of the above referenced APN to acquire a portion of excess road right of way on McGregor Drive (see attached map). Please indicate on the attached maps or on the memo whether you have any objections to the sale or if the County should retain all or any portion of the right of way. Please notify us as soon as possible of your determination.

SCL
Attachments

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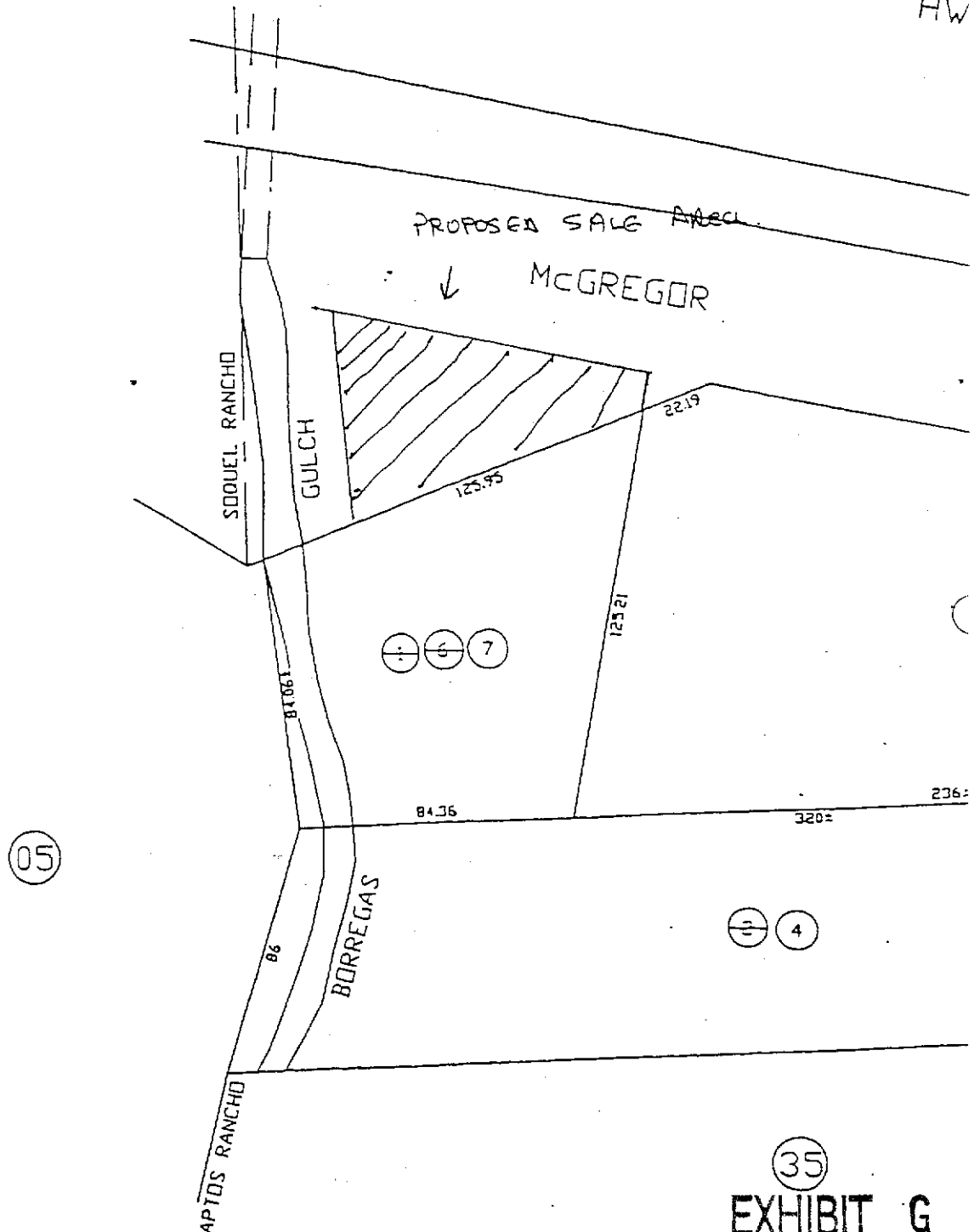
APTOS R4

PDR. SECS. 12 & 13, T.1

Bk.39
15

STATE

HW

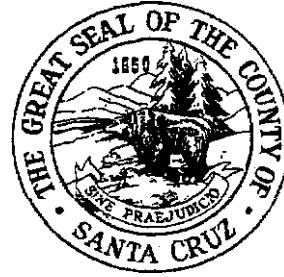


68

EXHIBIT G

Note - Assessor
ATTACHMENT 4

COUNTY OF SANTA CRUZ
INTER-OFFICE CORRESPONDENCE



DATE: May 4, 2004
TO: Scott Loichinger, Real Property, DPW
FROM: Mark Deming, Planning *MD*
SUBJECT: McGregor Drive Right of Way

The sale of this piece of property within the McGregor Drive Right of Way is consistent with the County General Plan. The land use designation of the adjacent property (AFN 038-061-07) is Service Commercial, **with** a zoning of C-4. The minimum parcel size in this zone district is 10,000 square feet. **Although** the parcel size exceeds this minimum (10,454 sf), much of the property is located with the Borregas Gulch riparian area and is unavailable for commercial **use**. The addition of the excess County property to the adjacent property will make the property more conforming to the General Plan and zoning designation.

**ADDITIONS TO THE STAFF REPORT
FOR THE PLANNING COMMISSION**

Item 10: 04-0650

ADDITIONAL CORRESPONDENCE

CYPRESS ENVIRONMENTAL AND LAND USE PLANNING

P.O. BOX 1844

APTOS CALIFORNIA

(831) 685-1006 kimt@cypressenv.com

December 23, 2005

Members of the Planning Commission
County of Santa Cruz
701 Ocean Street, 4th floor
Santa Cruz, CA 95060

SUBJECT: Application 04-0650 (Randy Zar & Aviar Trust)

Dear Members of the Commission,

I represent Randy Zar and the Aviar **Trust** who are the applicants for a commercial project on McGregor Drive, Aptos (05-0650). The appeal of the Zoning Administrator's approval of 04-0650 has been scheduled for your Commission's meeting of January 11, 2006. ***We are requesting a continuance of this item to your meeting of February 22, 2006.***

This request is being made for several reasons. **We** learned on December 21 that Planning staff was changing their recommendation on the project to one recommending its return to the Zoning Administrator for additional consideration of soils issues on the site. We also **learned** on the same day that staff has new concerns about soils issues that we believed were resolved during the Zoning Administer hearing on November **18**. It is important that the small project team have an opportunity to discuss these issues before the project is back in the public hearing arena. Due to the holidays and associated vacations, the project team cannot meet in a meaningful way until February **8**. In addition, the resurgence of soils issues requires the applicant to hire a geotechnical engineer. **We** do not believe that a geotechnical engineer can be hired and become minimally familiar with the site by the January 11 hearing date.

I will return from a brief vacation on December **30**. Please have Planning **staff** contact me if you have concerns regarding this request.

Sincerely,



Kim Tschantz, MSP, CEP

cc: Randy Zar
David Imai
Randall Adams

Environmental Planning and Analysis, Land Use Consulting and Permitting

DAVID Y. IMAI, ESQ.
ATTORNEY AT LAW

311 BONITA DRIVE
APTOS, CALIFORNIA
95003

TELEPHONE: (831) 662-1706
FACSIMILE: (831) 662-0561
EMAIL: davidimai@shcglobal.net

December 28, 2005

Re: Appeal re Application #04-0650 038-061-07
Applicant: Aviar Trust, Zar

Santa Cruz County Planning Commission
701 Ocean Street
Santa Cruz, California
95060

Dear Members of the Commission,

introduction

My office represents permit applicants Aviar Trust and Randy Zar regarding the above matter. I am writing regarding the Notice of Appeal filed by attorney Kent G. Washburn, who represents third party Jarl Saal. The appeal is taken from the Zoning Administrator hearing held November 18, 2005, in which Coastal Zone and Variance Permit was granted for property at 2001 MacGregor Drive Aptos, with conditions.

While Planning staff has decided to refund the appellant's appeal fees and is apparently recommending the project be remanded back to the Zoning Administrator, we nonetheless write to correct some misunderstandings in Mr. Washburn's letter and to make sure that the Commission has before it all the pertinent information regarding the property and this application. The project is currently under appeal under the provisions of County Code Section 18.10.330 and Mr. Washburn and Mr. Saal remain the appellants.

Many of Mr. Washburn's allegations were addressed by the letter from Kim Tschantz, Cypress Environmental and Land Use Planning, dated November 15, 2005 when the project was before the Zoning Administrator. I understand Mr. Tschantz' letter will be attached to the staff report to your Commission regarding this appeal. However, since Mr. Washburn has repeated his positions and added additional allegations in his letter of appeal, it is necessary to provide you with this letter to provide a record of the real facts regarding the project.

Background

History Of The Structure

Contrary to Mr. Saal's allegation, the building in question was not 95% "built totally without permits." In fact, Building Permits 1474/1594 and 3732 were issued for most of the footprint of the existing building in 1962 and 1967 respectively. (See Exhibit A). Plumbing Permit 101649 was issued in 1991 to relocate a gas line to the building (Exhibit B). This permit acknowledges there was a store on the parcel in 1991.

The County Planning Department's code inspector Kevin Fitzpatrick determined that permits for 1,813 sf of the existing footprint of the building were properly issued after he had closely reviewed the issued permits and relevant tax assessor's records. Mr. Fitzpatrick provided his analysis and conclusions under oath during deposition taken June 29, 2004. I provide herewith relevant portions of Mr. Fitzpatrick's deposition taken last year, along with exhibits thereto. (Exhibit C, p. 20:9-13) Admittedly, the building looks different than it did at the time of its completion in the 1960's, and the proposed usage is also different. Of course, this is the reason Mr. Zar submitted Application 04-0650. Nonetheless, the validity of 1,813 sf of the basic footprint of the building is not reasonably in dispute.

County Litigation Against The Property

My clients Randy Zar/Aviar Trust purchased a one-half interest in the subject property in or about 1996. The other co-owner of the land was Mr. Brent Byard. By contract, Byard had complete control of the back half of the property. Prior to 1996 Mr. Byard remodeled the structure which included converting the rear portion of the building to two residential units without permits. When my clients purchased a half interest in the property, Byard maintained residential tenants which were solely his responsibility and under his exclusive control. Mr. Zar had nothing to do with those tenants.

The County of Santa Cruz sued both Mr. Zar and Mr. Byard, for lack of building permits and for the unlawful maintenance of the residential units in contradiction to allowed uses in the "C-4" (Service Commercial) zone district. After discovery and investigation by the parties, it was agreed that valid Building Permits were issued for most of the footprint of the building in question in 1962 and 1967. A portion of the permitted building included a partially enclosed structure for nursery plants. The roofing and walls of this portion were altered without permit to enclose the structure. New non-permitted additions were no more than 263 square feet. Mr. Zar agreed to submit applications for permits for the changes to the building since 1967, and a settlement

agreement was signed by County which specifically recognized building permit no. 3732 issued in 1967.

The County's case went to trial in August of 2004 on the issue of Mr. Byard's illegal tenants (which he had refused to give up), and on Zar's cross action against Byard for indemnity against expenses and any penalties incurred as a result of Byard's tenants and other damages relating to his co-ownership. As a result of the judgment favoring Zar and County against Byard, Zar was able to remove the illegal tenancies and to gain sole ownership of the property. Mr. Zar is now attempting to obtain permits for the property, as per the settlement agreement with County.

Mr. Zar is in good faith in trying to bring the property into compliance, starting with the elimination of Mr. Byard's illegal tenants, and applying for a project that contains uses allowed in the "C-4" zone district.

The Appellants' Concerns

Alleged Damage To Saal Building

In 2001, When Mr. Saal first alleged that his building may have suffered cracks because of work on Mr. Zar's land, his attorney at the time was provided with a copy of a soils report prepared for a 1996 project on the Zar parcel and the subsequent inspection report showing adequate soil compaction at the top of the slope. Neither Mr. Saal nor his attorney took any action on his complaint and the statute of limitations on any such action has long passed. *Mr. Saal has **never provided any support for such a claim, and it has only ever been offered as conjecture.*** If Mr. Saal's complaint held any validity, it begs the question as to why he took no action, given that he has unsuccessfully sued the Zars no less than three times in the past on unrelated matters. Mr. Washburn was provided a copy of the August 8, 2001 letter and soils report prior to the Zoning Administrator's hearing on November 18, 2005 (Exhibit D).

It is also important to understand that at no time during the several County inspections that have occurred on the property during 1996-2005 has anyone ever observed evidence of similar cracking to the Zar building or soil settlement problems under the Zar building (which is the alleged cause of the cracking at the Saal building). Rational logic would dictate that any structural cracking caused by slope instability at the top of the Borregas Creek arroyo would not be limited to the First Alarm building constructed in 1992, but would also occur at the Zar building located between the First Alarm building and the arroyo slope.

Soil Placement on the Zar Parcel

Contrary to Mr. Washburn's statement, there has never been any evidence that structural problems with the First Alarm building have been caused by activities or natural processes on my client's property. As stated previously in this letter and supported by research done by County staff, the vast majority of unpermitted building construction did not include new foundation work or manipulation of the substrate, but rather new walls and roofing of a permitted partially enclosed structure. A retaining wall was also constructed at the top of the Borregas Creek arroyo on my client's property, but this violation was corrected during the implementation of Riparian Exception Permit 96-0396 (Exhibit E). All grading or related soils work that have occurred on the Zar property and the adjoining right-of-way in recent years was done under Riparian Exception 96-0396. This permit also included a *de facto* grading approval for the Sanitation District, a division of the County Public Works Department. County Code Section 16.20.050(k) exempts the Public Works from the need to obtain a Grading Permit for most grading work.

As discussed in Mr. Tschantz's November 15 letter, this Riparian Exception was approved in 1996 to allow the County Sanitation District to grade, refill and recompact a strip of land at the top of the arroyo on the County right-of-way and my client's parcel to locate a sewer manhole that had been buried for several years. A geotechnical report was prepared for the project as required by the Riparian Exception and the grading work was inspected by the geotechnical engineer as required by conditions 6 and 11 of the permit. The compaction test results (which are attached to the forementioned Tschantz letter) show that the excavation and refilling work was inspected by the project engineer. County Planning staff signed off the 1996 permit in June 1997 demonstrating that all requirements of that permit have been met. Now the appellant is attempting to re-open a permit that was finalized 8 years ago to frustrate the process on a current project unrelated to the previous Sanitation District project.

Environmental Degradation in Borregas Creek

The appellant fails to state what degradation problem he feels exists in Borregas Creek. This creek is an ephemeral stream in a naturally incised arroyo. The slope on both sides of this arroyo are extremely steep. Some erosional slumping has occurred on the slope, which is a process that can and does occur as part of a natural process. The stream corridor is totally vegetated with both native and non-native species. Otherwise, it is a natural stream corridor without any limitations to its functioning as a wildlife habitat, recipient of surface runoff and conveyance channel for flood waters.

CEOA Determination

As stated above, the appellants' contention that 95% of the existing structure was built without permits is not true. Section 15301 of the California Environmental Quality Act Guidelines allow a Class 1 categorical exemption for a project consisting of minor alterations of an existing facility, including negligible expansion of use. (See Exhibit F). Section 15301 provides 16 examples of types of projects that fit the Class 1 exemption from Environmental Review. They include:

- a) Interior or exterior alteration involving such things as interior partitions, plumbing and electrical conveyances; and
- b) Additions to existing structures provided the addition will not result in ~~an~~ increase of more than 50% the floor area or 2,500 square feet, whichever is less.

The project meets these two examples and therefore Planning staffs CEQA determination for a Class 1 Categorical Exemption is appropriate. The floor area of the entire structure is approximately 2,044 square feet. Expansion of the permitted building footprint was restricted to an approximately 263 foot addition to the rear of the building. The remainder of the building footprint was constructed in two phases under Building Permits that were issued by the County in 1962 and 1967 as discussed above. CEQA was enacted by the California legislature in 1970.

Variance Findings

Variance findings were made for this project as specified in County Code Section 31.10.230. The findings made in the Zoning Administrator staff report recognize that any project on the subject parcel would be severely constrained due to the physical characteristics of the parcel. These characteristics include a undevelopable riparian corridor covering approximately 4,242 square feet which reduce the net developable site area of the parcel to about 6,212 square feet. Even when the adjoining excess right-of-way area is added to the site, as proposed, the net site area is only increased to 9,157 square feet. Section 13.10.333 of the County Zoning Ordinance requires a minimum parcel size of 10,000 square feet for new "C-4" zoned properties. The types of uses allowed in the "C-4" (Service Commercial) zone are the types of commercial uses that typically require large site areas such as automobile sales, kennels, boat building and contractor shops. Clearly, the County's designation of the small site for "C-4" uses by both the Zoning Ordinance and the General Plan/Local Coastal Plan necessitates approval of a Variance to permit a viable "C-4" use. The Variance approval is limited to allowing building encroachment into the rear yard setback. Both the findings and Tschantz November 15 letter explain why this encroachment will not affect surrounding

properties and how it generates less off-site impacts than the approved site design of the adjoining First Alarm property.

Coastal Zone Findings

The Washburn letter makes several claims regarding a second set of findings made to approve the project. These claims are blatantly false. Similar to the Variance findings, findings for the approval of a Coastal Zone Permit for this project were made by Planning staff in accordance with County Code Section 13.20.110. Contrary to Mr. Washburn's letter, there are no residential setbacks associated with the project. The project proposes only commercial uses. There is no need for a Riparian Exception as the project will not place development within the Borregas Creek riparian corridor or buffer beyond that approved by Riparian Exception 96-0396 in 1996. The adopted site standards for the "C-4" zoning district (Section 13.10.333) do not include lot coverage standards. The project was reviewed by Planning staff for consistency with the County's Design Review Ordinance (Code Chapter 13.11).

Development Permit Findings

Similar to other claims made by the Washburn letter pertaining to findings, there is no substantiation provided for statements disagreeing with Development Permit findings made to approve the project. Planning staff made findings as required by Code Sections 13.10.220 and 18.10.230 to approve a Development Permit for the project. As stated in these findings, there are no conflicts with adopted County policies and standards as the Washburn letter purports. The project is consistent with the Riparian Exception approved in 1996. As shown on the project plans 41% of the parcel will be retained in open space to conserve the riparian corridor.

Conclusion

When Mr. Zar first bought into this property it was nearly a blighted site, with buildings in partial decay and badly in need of repair. He has since successfully removed unlawful residences at his own expense and made great improvements and repairs to the point that the structures are now clean, modern and ready for lawful usage within the parameters of the current zoning. The County of Santa Cruz, in settlement of their litigation has encouraged the current permit application and has agreed to recommend the necessary actions to allow granting of the permits.

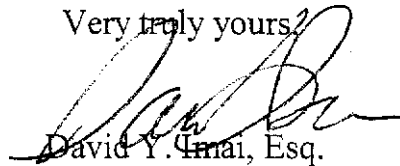
Mr. Saal is incorrect when he claims that the building was never permitted. To the contrary, it was stipulated during litigation that permits were issued for the basic

Planning Commission
December 20, 2005
Page 7

footprint of the vast majority of the building. Further, Mr. Saal has never, in five years, offered any shred of evidence that alleged damage to his building is related to the Zar property in any way. Granting permits for this building cannot be held to be a "prejudicial abuse of discretion" under any standard, and is fully supported by the facts.

Thank you for your attention.

Very truly yours,



David Y. Imai, Esq.

Exhibits: **A - Building Permit**
 B - Building Permit
 C - Portion of Fitzpatrick Deposition
 D - Letters To K. Washburn, R. Boroff regarding geotechnical report
& inspections
 E - Riparian Exception Permit 96-0396
 F - CEQA Guidelines, Section 15301

DYI:wp
CC: R. Zar
 Kim Tschank
 Randall Adams
 Kent Washburn
051220pc.wp

DECLARATION IN SUPPORT OF APPLICATION 04-0650 038-061-07

I, David Y. Imai, declare as follows:

1. I am an attorney at law duly licensed to practice before all the courts of the State of California, and am an attorney for ALVIN ZAR, Sr., TRUSTEES, RANDY ZAR, TRUSTEES, AVIAR REVOCABLE TRUST.
2. I make this declaration on facts known to me personally, except as to those matters stated on information and belief, and as to those matters I believe them to be true.
3. Attached hereto as exhibit "A" is a true and correct copy of Building Permits 147411594 and 3732 issued by the County of Santa Cruz for the property in issue in County of Santa Cruz application number 04-0650 038-061-07.
4. Attached hereto as exhibit "B" is a true and correct copy of Plumbing Permit 101649, issued in 1991 to relocate a gas line to the building in issue.
5. Attached hereto as exhibit "C" is a true and correct copy of relevant portions of County of Santa Cruz Code Compliance Officer Mr. Kevin Fitzpatrick's deposition taken June 29, 2004, along with exhibits thereto.
6. Attached hereto as exhibit "D" is a true and correct copy of a letter to Mr. Kent Washburn dated November 7, 2005 from myself, which had enclosed a copy of an August 8, 2001 letter to Mr. Ralph Boroff and a soils report regarding the subject property.
7. Attached hereto as exhibit "E" is a true and correct copy of Riparian Exception Permit 96-0396 regarding the subject property.
8. Attached hereto as exhibit "F" is a true and correct copy of Section 15301 of the California Environmental Quality Act Guidelines regarding Class 1 categorical exemptions for a project consisting of minor alterations of an existing facility, including negligible expansion of use.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

DATED: 12/28/05


DAVID Y. IMAI

Attorney for ZAR/AVIAR TRUST

EXHIBIT “A”

OWNER EVA BERNARD	LOCATION 799 Estates Drive, Aptos	TYPE (for moved bldg) Foundation 20x40 for office and slab	PARCEL NUMBER 38-061-6	VALUATION 700.00
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CONTRACTORS

BUILDING		PLUMBING AND GAS		ELECTRIC	
NAME	OWNER	NAME	PERMIT NUMBER	DATE	NAME
1594	OWNER	Jimmie Smith	1474	6-7-62	

INSPECTIONS

BUILDING		PLUMBING AND GAS		ELECTRIC	
FOUNDATION	FRAME	ROUGH	VENT	ROUGH	FINISH
OK-7-6-62	OK-7-6-62	OK-7-6-62	OK-7-6-62		
STUCCO WIRE		FINISH		FIXTURES, ETC.	
LATH		GAS - ROUGH			
FLUES		GAS - P.T.			
FINISH COMPLETE		GAS - FINISH		SERVICE CLEARED	
OK-7-16-62		OK-7-16-62		OK-7-16-62	

REMARKS ON REVERSE

BUILDING INSPECTION JOB RECORD
BLD - 3 (REV.)

OWNER A. N. LENHART		PARCEL NUMBER 38-061-6	
LOCATION Frontage Rd. near Estates Dr., Aptos		VALUATION 4,000	
TYPE erect garden sales area 5' from property line & install 1hr. fire-resistant wall on exist. structure		CONTRACTORS install plastic over lath house and walkway	
BUILDING		PLUMBING AND GAS	
NAME L. G. Thompson	NAME P. G. PLUMBING	ELECTRIC	
PERMIT NUMBER 3732	PERMIT NUMBER 4490	PERMIT NUMBER 3861	
DATE 6-13-67	DATE 8-4-67	DATE 6-21-67	
INSPECTIONS 8-11-67		4617	
BUILDING		PLUMBING AND GAS	
FOUNDATION <i>OK 6-19-67 W.B.</i>	ROUGH	ROUGH <i>OK 8-8-67 R.B.</i>	
FRAME <i>OK 7-21-67 W.B.</i>	VENT	FINISH <i>OK 8-15-67 W.B.</i>	
STUCCO WIRE <i>OK 7-27-67 W.B.</i>	FINISH	FIXTURES, ETC. <i>OK 8-15-67 W.B.</i>	
LATH	GAS - ROUGH	CORE <i>OK 8-10-67 W.B.</i>	
FLUES	GAS - P.T.	SERVICE CLEARED <i>OK 8-15-67 W.B.</i>	
FINISH COMPLETE <i>OK 10-16-68 W.B.</i>	GAS - FINISH	REMARKS ON REVERSE <i>OK 9-29-67 W.B.</i>	
BUILDING INSPECTION JOB RECORD BLO - 3 (REV.) A. N. LENHART			

1543 1/2 PACIFIC AVENUE
PHONE 426-5121, EXT. 257

Building Inspection Division

Owner: A. N. Lenhart 434 - Ewell Aptos	Applicant: L. G. Thompson	Location of Job: Frontage Rd. Nr. Estates Dr. Aptos
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BUILDING		Assessor's	38-061-6
Contractor	L. G. Thompson 194401	Parcel No.	

Permit to	Code Area
Erect Garden Sales Area 5' From Property Line and Install 1 Hr. Fireresistive wall on existing structure which is closer than 5' to prop. line	Valuation \$ 4,000.00
	Bldg. Fee \$ 22.50

SEWER CONNECTION	PLUMBING & GAS	ELECTRIC
Ref. B.P.# _____ Date _____	Ref. B.P.# _____ Date _____	Ref. B.P.# _____ Date _____
Contractor _____	Contractor _____	Contractor _____
District _____	Permit \$ _____	Permit \$ _____
Annexation required? _____	Fixtures _____	Lights _____
If "Yes", date petition filed _____	Water Heater _____	Fixtures _____
Type of service, units, etc.: _____	Water Piping _____	Switches _____
	Gas - Min. 5 _____	Plugs _____
	Gas - Over 5 _____	Range _____
	Appliance tags:	Oven _____
	Over 50M BTU _____	Dryer _____
	Under 50M BTU _____	Water Heater _____
Annexation \$ _____	Permit issued subject to receipt of permission to use adjoining sanitary facilities	Space Heater _____
Connection _____		Motors _____
Inspection _____		Power Pole _____
Other _____		
Total \$ _____	Total \$ _____	Total \$ _____

DRIVEWAY OR ROAD OPENING - Road No. _____

Ref. B.P.# _____ Date _____

Contractor _____

Total Fees Received \$ 22.50

By _____

Cashier's validation

Driveway	Length	Width	Depth	\$ _____
Road				
opening				
Other				
Total				\$ _____

Permits applied for as above are based on certain plans and specifications filed with the Department of Public Works and are subject to all county ordinances, state laws, and conditions stated on the reverse hereof, which conditions are hereby accepted.

L. G. Thompson
Signature of Applicant

Date _____

BUILDING INSPECTOR'S DIVISION

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EXHIBIT “B”

THIS PERMIT WILL BECOME VOID IF THE FIRST REQUIRED INSPECTION IS NOT COMPLETED WITHIN ONE YEAR OF THE DATE OF ISSUANCE AND A REQUIRED INSPECTION IS MADE WITHIN EACH YEAR THEREAFTER. PROPERTY LINES WILL BE CHECKED AT THE FIRST INSPECTION. A SURVEY MAY BE REQUIRED.

UTILITIES CANNOT BE CLEARED UNTIL THE AGENCIES CHECKED BELOW HAVE APPROVED THIS PROJECT.

177, 1-177.

EXHIBIT “C”

Certified copy

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SANTA CRUZ

COUNTY OF SANTA CRUZ, a political)
subdivision of the State of)
California,)

Plaintiff,)

vs.)

ALVIN ZAR, Sr. TRUSTEES, RANDY)
ZAR, TRUSTEES; AVIAR REVOCABLE)
TRUST, BRENT BYARD and DOES 1)
through 50, INCLUSIVE,)

Defendants)

AND RELATED CRCS-ACTION.)

No. CV 141816

DEPOSITION OF KEVIN FITZPATRICK

Aptos, California

June 23, 2004

Taken on behalf of the Defense at 311 Bonita Drive,
Aptos, California, before Melinda Nunley, CCR #9332, a
Notary Public within and for the County of Monterey, State
of California, pursuant to Notice.

McB
MCBRIDE & ASSOCIATES

1 states.

2 MR. IMAI: The witness has an opportunity to
3 qualify and answer how he wished when he answered the
4 question.

5 MS. COSTA: Well, I --

6 MR. IMAI: So I don't know if you want to testify
7 or not, but I'll -- the question has been asked and it's
8 been answered.

9 BY MR. IMAI: Q. The building itself, as far as
10 building permits, is legal at least up to 1813 square feet;
11 is that correct?

12 A. As of the date of that permit, as constructed
13 under permit 3732.

14 Q. Correct.

15 A. Yes.

16 Q. Okay. All right. And I'll let him qualify
17 this however you like, but given that that -- given that,
18 what is it about the building itself, other than the
19 residences, is the county complaining of?

20 A. The building was constructed under permit 3732 as
21 a garden sales area and described as plastic over lath
22 house, and the building now is a fully finished commercial
23 and residential building, block walls.

24 Q. Okay. Can you explain to me what the difference
25 is --

1 A. Yes.

2 Q. -- as what you describe what's permitted as to
3 what it is currently?

4 A. Yes. I would do it by example. San Lorenzo
5 Lumber on River Street has a garden area. If you look at
6 that garden area, there's a little area that has a roof
7 over it that is the sales area and the rest of it is
8 nursery area and greenhouse area. That's what this was
9 constructed as as Aptos Gardens. What it is now is a full
10 enclosed structure.

11 Q. So you're saying that the permitted square footage
12 of 1813 square feet was not completely enclosed at that
13 time?

14 A. That **is** correct.

15 Q. And what parts were not enclosed?

16 A. I need to review.

17 Q. Please.

18 A. There was 405 -- excuse me. There were 405 square
19 feet of enclosed office area, there were 521 square feet of
20 Greenhouse area, and there was 87 square foot described as
21 open area.

22 Q. I'm sorry. 405 square feet of office area?

23 A. Yes.

24 Q. This is at the time that the permits were issued?

25 A. This is at the time that the permits were final

1 A. I'm sorry. Would you repeat that again?

2 Q. Yeah. As a result of your inspection of the
3 building in question, I assume that you are alleging that:
4 the floor of the building is no longer gravel, correct?

5 A. That is correct.

6 Q. So at same point you're saying that the flooring
7 was changed?

8 A. That is correct.

9 Q. And that the change was unlawful -- unpermitted I
10 should say?

11 A. Yes.

12 Q. Do you have any information that any defendant in
13 this action made those changes?

14 A. I do not.

15 Q. Do you know who did?

16 A. I do not.

17 Q. Do you know when it was made?

18 A. I don't know when it was made.

19 MR. IMAI: Do we have -- here.

20 BY MR. IMAI: Q. I'm looking at page 1 of Exhibit
21 1, Determination of Appeal on Notice of Violation which was
22 drafted by you. The bottom of the first page, it says,
23 "The office and greenhouse area was increased from 926
24 square feet to 1,189 square feet as noted on the property
25 assessment on 1/9/73." Do you see that?

1 A. Yes, I do.

2 Q. How did you arrive at that conclusion? Strike
3 that. First of all, were you reviewing Exhibit 2, the back
4 of page 3 that says "Miscellaneous Building Record?" Were
5 you referring to this document when you made that
6 statement?

7 A. I don't believe I was.

8 Q. Okay. What were you referring to, if anything?

9 A. I would have to research my notes.

10 Q. Would you like to do that now?

11 MS. COSTA: Do you mean does he want to go back to
12 the office and research it? Because he does look at his
13 computer files too.

14 MR. IMAI: Well, I'm asking him if he has -- if he
15 believes he has the record which he relied on in making
16 that statement in his file today. If so, I'll give him all
17 the time he needs to find it.

18 MS. COSTA: Let the record reflect that he is
19 looking through his planning file.

20 (Recess taken.)

21 THE WITNESS: Yes it is. It's page 3 of the
22 assessor's records is what I was referring to with that.

23 BY MR. IMAI: Q. Meaning page 3 of Exhibit 2?

24 A. Yes.

25 Q. Which says "Miscellaneous Building Record"?

A. Yes.

Q. What is it about that document which led you to believe there was an increase in January of 1973 of Building Number 1 from 926 square feet to 1,189 square feet?

A. Under the second row of computation in the second column which says "1973," and then you go back to the first column where it has 926 feet crossed out and the new amount is 1,189 square feet.

Q. The -- I'm sorry. Go ahead.

A. If you divide the 2972 by 2.50, you should come close to the 1189.

Q. Where it says "cost"?

A. Yes.

Q. Why would that be divided by 50?

A. \$2.50. They do the cost and then they have a unit cost. The unit cost would be \$2.50.

(Recess taken.)

MR. IMAI: It does come very close to that. I just ran those numbers through a calculator. They came out to about 1,189 rounded off.

BY MR. IMAI: Q. This part of the document that you referred to where it says 926 scratched out to 1189, that's at the -- under the subheading "computation," and on the far left part of that subheading "Building Number 1,"

1 it says "area," but then it says "Appraiser Dace" above
2 that and it says "9/12/67." Do you see that?

3 A. Yes, I do.

4 Q. Wouldn't that indicate reasonably that -- that the
5 1189 square footage was existent in 1967?

6 A. if you -- if you divide the cost, 2315, by the
7 unit cos; of 2.50 as of 9/12/67, I believe you're going to
8 come up with close to 926.

9 Q. Do you know why this would have been scratched off
10 as 1189 -- rather as showing 1189 under the 1967 heading
11 and not designated somewhere under the '73 heading?

12 A. That would be best answered by the county
13 assessor. It appears that's how they do it.

14 Q. So if there's a change made at some point down the
15 road, they go back and change the square footage for all
16 prior assessments, even those that were of smaller square
17 footage than the subsequent change?

18 A. That is --

19 Q. Do you know?

20 A. It's a procedure of the assessors. I don't
21 know.

22 Q. Okay.

23 A. The assessor's office.

24 Q. Going further to the right under this same
25 computation subheading, there's also a -- it says "1977

1 Index" for an assessment apparently made in 1978, and it
2 looks like there's one that was made also on the far right
3 in December of 1987. Is it possible that those changes
4 could have been made -- changes to the square footage could
5 have been made in any of those years as well? I mean --

6 A. I don't think so because the change -- the change
7 came -- according to the cost and unit cost, the change
8 occurred in January 1973.

9 Q. Okay. Do you have an idea of what -- strike that.
10 Do you have an idea of where the additions to the square
11 footage were made?

12 A. Going to the Sack of page 3 in the assessor's
13 records --

14 Q. Uh-huh. Going to this diagram?

15 A. Yes, going to the diagram, I believe the addition
16 was at the top of the page where it says -- excuse me,
17 nineteen -- "1972 Addition."

18 Q. I see.

19 A. And I believe it to be the top rectangle and the
20 right triangle.

21 Q. It says -- looks like it's "16 by 12"?

22 A. "16 by 12" at the top, and the triangle I'm
23 referring to is 9 by 14 I believe.

24 Q. With a 2-and-a-half by -- at the top there, a
25 little --

1 A. 2-and-a-half at the to?, yes.

2 Q. Okay. I want you to tell me with as much detail
3 as you can muster specifically what it is that you are
4 alleging was improved upon this property from its permitted
5 state to its current state.

6 A. Specifically this property went from what was
7 permitted as a garden sales area that, according to the
8 records, had approximately 400 square feet of office, the
9 rest being greenhouse and open area, to a totally enclosed
10 what I would consider commercial building. It has the
11 normal construction of a building such as we're in here,
12 complete roof and complete walls, floor.

13 Q. Okay. Roof, walls, floor. We know that there was
14 at least roofing on some of the building and walls and
15 floor on some of the building as it existed in 1967, '68.
16 I'm asking for you to tell me specifically what it is that
17 is not permitted as it currently stands of those 3 things,
18 roof, walls and floor.

19 A. As the building currently stands, nothing out
20 there is permitted.

21 Q. Okay. In light of the fact that we have evidence
22 of permits for some roof, some walls, some floors, why is
23 none of it permitted?

24 A. Because it's a change. It's a change of use.
25 It's a change of structure. It's a change of building.

1 Although there may be some old framing left over here'and
2 there, it's a completely new structure, completely
3 finished.

4 Q. Well, in fact the records show that 1189 square
5 feet was permitted, correct, in 1967, correct?

6 A. Correct, as constructed then.

7 Q. At some point we know that additions were made to
8 the property, I guess it's the north end of the property,
9 in 1973, correct?

10 A. That's correct.

11 Q. So the only -- at least in terms of square
12 footage, the only thing that's different is those additions
13 that were made in 1973, correct?

14 A. In terms of square footage.

15 Q. Yeah, square footage. So why does that make the
16 entire structure illegal?

17 MS. COSTA: The question has been asked and
18 answered. He said as it was constructed back then, it was
19 permitted as constructed back then and permitted. It's an
20 entirely different structure right now. He's already
21 answered that.

22 MR. IMAI: Well, I'm trying to point out to him
23 that it's not an entirely different structure, that there
24 were --

25 MS. COSTA: I appreciate you wanting to try to

1 Q. Do you know wha; the dazes of ownership were for
2 Mr. O'Neill and Mr. Kiderowski?

3 A. It looks like Mr. Kiderowski bought it in August
4 of 1978 and owned it through May of 1.987, and Mr. O'Neill
5 owned it from May of 1987 through November of 1993.

6 Q. Okay. Going back to Exhibit 2, the second page,
7 front of the second page says "Commercial Building Record"
8 at the top ana describes parcel 38-061-07. 30 you know how
9 the data on this page was obtained?

10 A. I don't know exactly.

11 w. The -- the bottom section of this page says
12 "Computation" as a subheading, and it says "1995S," and it
13 indicates an area, a square footage area apparently of
14 2,044. Do you see that?

15 A. Yes, I do.

16 Q. Do you know how thar was arrived at?

17 A. Generailly it would be from an appraisal visit, an
18 assessment.

19 Q. Do you know how they obtained the square footage?
20 Is it just by asking the owners or did they actually
21 measure **it** off or how?

22 A. I don't know chat answer.

23 Q. And you've never actually -- you or anybody
24 working with you on your investigation, have you ever
25 neasurea it off, the square footage of the building?

1 A. I believe I did measure it off.

2 Q. And you came to the 2,076?

3 A. I might have come down to -- well, somewhere
4 between 2,044 and 2,075.

5 Q. You don't remember exactly?

6 A. I can't remember exactly.

7 Q. All right. Let's do this: I'm looking at the
8 documents which the counsly produced pursuant to our Request
9 for Production Set 1 in this action, and I see that there
10 was some notes, handwritten notes produced to us. It says
11 "Zar" at the top. I'll show them to you.

12 MS. COSTA: Which ones?

13 BY MR. IMAI: Q. Do you recognize the writing?

14 MS. COSTA: Is this when you made a copy of the
15 code enforcement file, you obtained these?

16 MR. IMAI: No, I got these from you.

17 MS. COSTA: You did?

18 MR. IMAI: Yeah.

19 THE WITNESS: I don't recognize it.

20 BY MR. IMAI: Q. So this is not your writing?

21 A. That's not my writing, no.

22 Q. And you don't know who it might be?

23 A. Possibly Dave Laughlin.

24 Q. I'm not going to ask you to speculate as to what
25 Mr. Laughlin might be thinking, but I'm going to read off

1 A. I'm sorry. Would you repeat that?

2 Q. Let me put it this way: Permit Number 1594 which
3 is Exhibit 4, do you see Exhibit 4 where it says typed "for
4 moved building"?

5 A. Yes.

6 Q. Do you understand that to mean that an existing
7 structure was relocated onto the property?

8 A. Yes, I do understand that.

9 Q. Going back to permit Number 3732, it says "erect a
10 Garden Sales Area," correct?

11 A. Yes.

12 Q. Do you understand that to mean that a new
13 structure was being built pursuant to this permit?

14 A. Yes.

15 Q. So is it your understanding that this permit would
16 not necessarily be limited in square footage to the
17 previous permit Number 1594?

18 A. That is correct.

19 MR. IMAI: Next in order.

20 (Deposition Exhibit 7, marked and indexed.)

21 BY MR. IMAI: Q. Next is number 4617. This is
22 dated 8/14/67. Do you see this?

23 A. Yes.

24 Q. It says "permit to install plastic cover over lath
25 house and walkway." The lath house that this is

OWNER
A. N. IENHART

PARCEL NUMBER
38-061-6

LOCATION
Frontage Rd. near Estates Dr., Aptos

TYPE
erect garden sales area 5' from
property line & install fire-
resistive wall on exist. structure

VALUATION
4,000

CONTRACTORS
install plastic over bath house
and walkway

BUILDING

NAME

PERMIT NUMBER
3732

DATE
6-13-67

INSPECTIONS
4617 8-14-67

NAME

PERMIT NUMBER
4490

DATE
8-4-67

INSPECTIONS
4617

PLUMBING AND GAS

NAME

PERMIT NUMBER
3861

DATE
6-21-67

INSPECTIONS
4617 8-14-67

ELECTRIC

BUILDING

FOUNDATION
OK 7-27-67

FRAME
OK 7-27-67

STUCCO WIRE
OK 7-27-67

LATH
OK 7-27-67

PLUMBING AND GAS

ROUGH
OK 7-27-67

VENT
OK 7-27-67

FINISH
OK 7-27-67

GAS, ROUGH
OK 7-27-67

ELECTRIC

ROUGH
OK 7-27-67

FINISH
OK 7-27-67

FIXTURES, ETC.
OK 7-27-67

OK 7-27-67

Lenhart
Ewell

Applicant:
L. G. Thompson

Frontage Rd. Nr. Estates
Dr. Aptos

BUILDING

L. G. Thompson 194401

Lic. No.

Assessor's 38-061-6

Parcel No.

Code Area

at Garden Sales Area 5' From Property Line
Install 1 Hr. Fireresistive wall on existing
structure which is closer than 5' to prop. line

Valuation \$ 4,000.00

Bldg. Fee \$ 22.50

SEWER CONNECTION	PLUMBING & GAS	ELECTRIC
Date	Ref. B.P.# Date	Ref. B.P.# Date
Contractor	Contractor	Contractor
Permit \$	Permit \$	Permit \$
Fixtures	Fixtures	Lights
Water Heater	Water Heater	Fixtures
Water Piping	Water Piping	Switches
Gas - Min. \$	Gas - Min. \$	Plugs
Gas - Over \$	Gas - Over \$	Range
Appliance tags:	Appliance tags:	Oven
Over 50M BTU	Over 50M BTU	Dryer
Under 50M BTU	Under 50M BTU	Water Heater
		Space Heater
		Motors
		Power Pole
	Permit issued subject to receipt of permission to use adjoining sanitary facilities	
	<i>[Signature]</i>	
\$	Total \$	Total \$

ROAD OPENING - Road No. _____

Date _____

Total Fees Received \$ 22.50

By *[Signature]*
Cashier's validation

Length	Width	Depth

ed for as above are based on certain plans and speci-
with the Department of Public Works and are subject
ordinances, state laws, and conditions stated on the
which conditions are hereby accepted.

[Signature]
Signature of Applicant

Date

BUILDING INSPECTOR'S DIVISION

EXHIBIT
7
men 6/29/04

PARCEL 58-061-01

SHEET 1 OF 1

1000

[illegible][illegible][illegible]

PARCEL 38-061-67

ADDRESS ESTATES DR @ FRONTAGE RD.

SHEET 2 OF 2 SHEETS

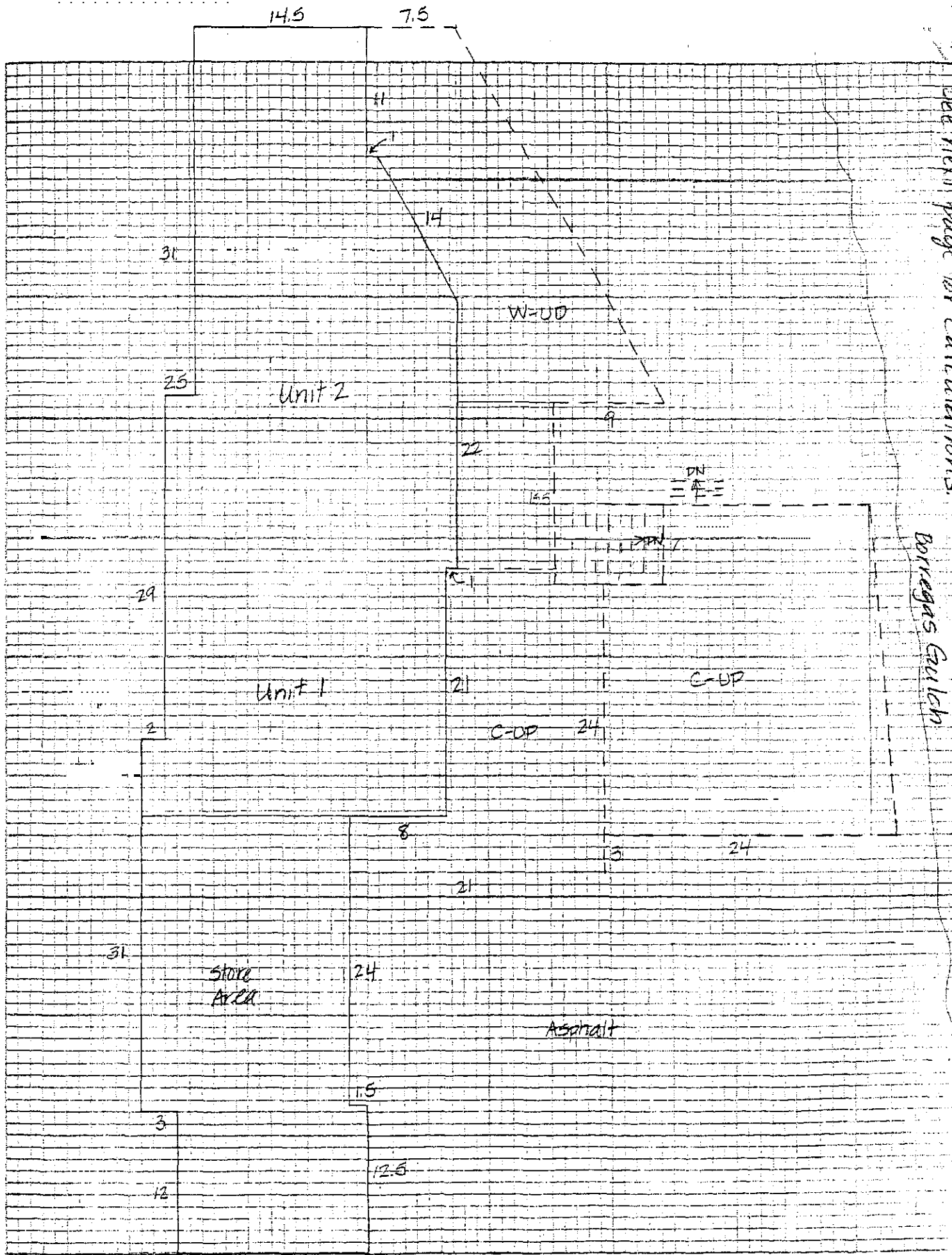
THE UNIVERSITY OF CHICAGO

1000

~~CONFIDENTIAL~~

RAYSON, RAY WHITE & SON -- SACRAMENTO

2/24/16 Redrawn for clarity.
See next page for calculations.



[illegible]

EXHIBIT “D”

DAVID Y. IMAI, ESQ.
ATTORNEY AT LAW

311 BONITA DRIVE
APTOS, CALIFORNIA
95003

TELEPHONE: (831) 662-1706
FACSIMILE: (831) 662-0561
EMAIL: davidimai@sbcglobal.net

November 7, 2005

Re: 2000 MacGregor Road

Kent G. Washburn
Attorney at Law
123 Jewell Street
Santa Cruz, California
95060

Dear Mr. Washburn:

Thank you for your letter of October 31 regarding your client Mr. Jarl Saal's interest in my client Randy Zar's attempt to obtain County permits regarding 2000 MacGregor Road.

At the outset, I would like to correct some misunderstandings about our telephone conversation which are cited in your letter. We take all allegations made against Mr. Zar or the property very seriously and will deal with them appropriately. That applies to the charges made in your letter, just as it applied to the three previous lawsuits brought by Mr. Saal against the Zars. All three of those actions ended in favor of the Zars, two by way of judgment and one which was voluntarily dismissed after Mr. Saal failed to produce any supporting evidence during a site inspection.

I mention these previous lawsuits not necessarily to suggest a "vendetta", but for a number of reasons. First, as you note, we are indeed refusing your request for destructive testing on my client's property. You have not provided any evidence to support your claim that damage to your client's property was due to any condition on Mr. Zar's land. I cannot imagine why we should allow drilling on the land merely to indulge an unsupported desire by Mr. Saal to hunt for a reason to sue him again.

More importantly, as I stated there has already been a site inspection of the properties during one of Mr. Saal's previous lawsuits. During that inspection Mr. Saal first mentioned his belief that his property was damaged by subsidence of my client's land, just as he alleges now per your letter. I provided Mr. Saal's then attorney Ralph Boroff with the County's permit and a soils report regarding the work done on the property. Although he did not divulge his specific reasons, Mr. Boroff dismissed the

K. Washburn
November 7, 2005
P. 2

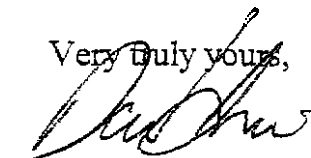
complaint and did not refile to include lack of subjacent support or damage to Saal's property. I include herewith a letter dated August 3, 2001 from me to Mr. Boroff in which these issues are discussed and a copy of the dismissal dated October 15, 2001. As you know, there is a three year statute of limitations for damage to realty under CCP sec. 388. Thus, not only is there no evidence justifying your request to drill on my client's land, your client would have no legal claim even if there were. Although he had full knowledge of any potential claim by at least August of 2001, Mr. Saal has chosen not to act until now, when Mr. Zar is attempting to clear permits on his property more than four years later.

Some of your other claims regarding illegal dwellings and zoning violations appear to be based on activities by the former co-owner of the building, Brent Byard. Mr. Byard had contractual rights to half of the property and did indeed maintain unpermitted tenants for a period. We sued him for indemnity against the County's suit and for other matters regarding his ownership. We prevailed at mal last summer and as a result were able to remove Mr. Byard from the property and extinguish his ownership. No residences have been maintained since then, and to my knowledge the County has had no any further complaint about that. By removing Mr. Byard and his tenants and by filing for permits at his great expense, Mr. Zar is attempting to bring the property into compliance. Conversely, I cannot see how Mr. Saal's intervention here helps to resolve any of the issues cited in your letter.

As I told you in our phone conversation, it is my practice to attempt informal resolution of any issues before a matter is forced into litigation. I believe such a policy is good for the client, and good for our small community in general. I sincerely hope that this matter does not become a "bloodbath", as you stated, but I do believe that Mr. Zar is on solid legal footing to defend this matter should legal action be taken. I ask that you assist me in avoiding another needless, time consuming and expensive litigation and contact me with suggestions as to how Mr. Saal's concerns might be assuaged in good faith outside of the court.

Thank you for your professional courtesy and cooperation.

Very truly yours,



David Y. Imai, Esq

DYI:wp
Enc. ltr, dismissal
CCR.Zar; K. Tschantz
051107kw

DAVID Y. IMAI, ESQ.
ATTORNEY AT LAW

311 BONITA DRIVE
APTOS, CALIFORNIA
95003

TELEPHONE: (831) 662-1706
FACSIMILE: (831) 662-3407
EMAIL: davidimai@gotnet.net

August 3, 2001

Re: Aptos Warehouse Complex, et. al. v. Zar, Aviar Trust
Santa Cruz County Superior Civil No. 140751

Ralph W. Boroff, Esq.
Boroff, Jensen, Klein & Smith
55 River Street, Suite 230
Santa Cruz, California
95060

Dear Mr. Boroff:

This letter will memorialize my understanding of the issues in *this* case, based on statements and observations made at the site inspection on Mr. Saal's and my client's properties yesterday.

The First Amended Complaint alleges under the **cause** of action for "Nuisance", paragraph 9, that sewage is being discharged onto plaintiff's property. Mr. Saal was unable to show us where this condition existed, and specifically retracted **this** allegation at the inspection yesterday. By my understanding, this charge is no longer operative.

The **cause** of action for "Trespass" alleges at paragraph 21 that "outbuildings" were constructed on plaintiff's land without consent. Mr. Saal and Mr. Byard acknowledged that **the building** in question was improved, and has been used exclusively by Mr. Byard with **Mr. Saal's** permission which was given some time ago. Mr. Saal claims that permission had been revoked. This issue is solely between Mr. Byard and Mr. Saal. Any oral or written contract regarding Mr. Byard's use of Mr. Saal's land has **nothing** to do with my clients.

Mr. **Saal's** identification of the "exposed electrical conditions" consisted of the extension cord **running** from the main building to the outbuilding described above, and is solely Mr. Byard's responsibility. Mr. Saal also claimed that the power lines running to the **main** building are a danger to his building. However, these lines predate the construction of Mr. Saal's building and therefore, as you know, cannot constitute a nuisance by law.

Ralph W. Boroff, Esq.
August 03, 2001
Page 2 of 3

There was no identification of any problematic "natural gas lines", as described at paragraph 8 of the FAC.

Mr. Saal's chief complaint against my clients appears to be that the riparian lateral support provided by fill created by my clients has somehow caused settling on his property, leading to cracks and leveling problems in his building. As you know, this complaint is not alleged in the complaint or the FAC anywhere, and was completely unheard of by me until yesterday.

It is difficult for me to comprehend how providing support to the riparian area could have caused soil movement on your client's property, which does not ever abut the filled area, but is instead separated and buttressed by my client's land. Nonetheless, in the spirit of informal resolution of these matters, I have agreed to provide to you with copies of permits which were obtained from the County when the riparian fill was done, along with a soils report. You have agreed to provide to me any documentation regarding the suit filed by Mr. Saal against Rebei Construction, in which settling and soil movement was apparently an issue.

In all honesty, and with as much objectivity as I can muster, I see absolutely nothing here which might constitute a viable claim against the Zars. Indeed, it is clear that some of the claims made in the FAC were made without the requisite good faith belief in their validity. I refer you to Code of Civil Procedure section 128.7 (b), which requires that, by signing a complaint, an attorney is certifying to the court that "his allegations and other factual contentions are warranted on the evidence" (CCP sec. 128.7(b)(4)), and "are not being presented primarily for an improper purpose, such as to harass or to cause unnecessary delay" (CCP sec. 128.7(b)(1)). It has already been admitted that, at least as to the claims of 'sewage discharge', the former rule has been violated. Based on my understanding of the history between the parties, I suspect that the latter rule has been violated as well.

With that in mind, I would advise that you look closely at whether you will pursue this new claim that the landfill caused soil movement on your client's land. Resolving that claim would be extremely costly, involving expert witness research and testimony on both sides. Mr. Saal admittedly based his claim solely on an undocumented off-hand remark made by an expert in the Reber case, with no indication that it was other than pure flippant speculation. Since my clients have never consented to any expert inspection of that area during the Reber matter, I suspect that it was precisely that.

Ralph W. Boroff, Esq
August 03, 2001
Page 3 of 3

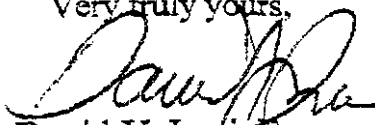
Moreover, given that Mr. Saal was apparently aware of his claim against my clients during ~~the~~pendency of the Reber litigation, the question must be asked why they were not joined in that action under CCP section 389(a), and whether ~~they~~ are properly parties to a wholly new acuo~~n~~. Without having done extensive research as of yet, I can think of numerous reasons why they are not, including ~~the~~ rule against double recovery and the requirement for compulsory joinder under CCP 389, above, among others.

Finally, since we were shown nothing at the inspection which could possibly constitute a "trespass" or a "nuisance" as to the interests of Aptos Warehouse, I must conclude that the same analysis and observations made above apply equally to their claims. Indeed, since Aptos Warehouse's property is separated from my client's property by the Saal property, I fail to see how any of the allegations could possibly be valid as to them.

At this point, we are happy to allow you to review our documents and would allow dismissal of the Zars and Aviar Trust ~~from~~the complaint without penalty. Unfortunately, I have ~~seen~~ nothing that would dissuade me from seeking sanctions should we be forced to respond to the FAC and incur costs litigating the matter. Hopefully, we can resolve these issues summarily, and without undue delay.

Thank you for your anticipated courtesy and cooperation.

Very truly yours,



David Y. Imai, Esq.

DYI:wp
CC: Randy Zar
010803rb.doc

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address): Ralph W. Boroff Esq. (Bar # 59164) BOROFF, JENSEN, KLEIN & SMITH 55 River Street, Suite 230 Santa Cruz, California 95060 ATTORNEY FOR (Name): Jaarl Saal dba First Alarm, Plaintiff <small>Insert name of court and name of judicial district and branch court, if any.</small> Superior Court of California, County of Santa Cruz PLAINTIFF/PETITIONER: Jaarl Saal dba First Alarm DEFENDANT/RESPONDENT: The Aviar Recovable Living Trust, et al.	FOR COURT USE ONLY <div style="font-size: 2em; font-weight: bold; text-align: center;">FILED</div> <div style="text-align: center;">OCT 15 2001</div> <div style="text-align: center;">CHRISTINE PATTON, CLERK BY Diane Hogan DEPUTY, SANTA CRUZ COUNTY</div>
REQUEST FOR DISMISSAL <input type="checkbox"/> Personal Injury, Property Damage, or Wrongful Death <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other <input type="checkbox"/> Family Law <input type="checkbox"/> Eminent Domain <input checked="" type="checkbox"/> Other (specify): Nuisance, Injunctive Relief	CASE NUMBER: <div style="text-align: right; font-weight: bold;">CV 140751</div>

— A conformed copy will not be returned by the clerk unless a method of return is provided with the document.

1. TO THE COURT: Please dismiss this action as follows:
- (1) ☐ With prejudice (2) ☒ Without prejudice
- b. (1) ☐ Complaint (2) ☐ Petition
- (3) ☐ Cross-complaint filed by (name):
- (4) ☐ Cross-complaint filed by (name):
- (5) ☐ Entire action of all parties and all causes of action
- (6) ☒ Other (specify): **All causes of action as to defendants Rebecca Zar, The Aviar Revocable Living Trust, Alvin Zar Sr., Randy Zar. (As to cause of action ONLY.**
- Date: **October 12, 2001**

Ralph W. Boroff
 (TYPE OR PRINT NAME OF ☒ ATTORNEY ☐ PARTY WITHOUT ATTORNEY)
 * If dismissal requested is of specified parties only, of specified causes of action only, or of specified cross-complaints only, so state and identify the parties, causes of action, or cross-complaints to be dismissed.

(SIGNATURE)
 Attorney or party without attorney for:
☒ Plaintiff/Petitioner ☐ Defendant/Respondent
☐ Cross-complainant

2. TO THE CLERK: Consent to the above dismissal is hereby given.
 Date:

(TYPE OR PRINT NAME OF ☐ ATTORNEY ☐ PARTY WITHOUT ATTORNEY)
 * If a cross-complaint—or Response (Family Law) seeking affirmative relief—is on file, the attorney for cross-complainant (respondent) must sign this consent if required by Code of Civil Procedure section 581(f)

(SIGNATURE)
 Attorney or party without attorney for:
☐ Plaintiff/Petitioner ☐ Defendant/Respondent
☐ Cross-complainant

(To be completed by clerk)

3. ☐ Dismissal entered as requested on (date):
4. ☒ Dismissal entered on (date): **OCT 15 2001** as to only (name): **as above**
5. ☐ Dismissal not entered as requested for the following reasons (specify):
6. ☐ a. Attorney or party without attorney notified on (date):
- b. Attorney or party without attorney not notified. Filing party failed to provide
 ☐ a copy to conform ☐ means to return conformed copy

PARTIAL

Date: **OCT 15 2001** **CHRISTINE PATTON** Clerk, by **Diane Hogan**, Deputy

DAVID Y. IMAI, ESQ.
ATTORNEY AT LAW

311 BONITA DRIVE
APTOS, CALIFORNIA
95003

TELEPHONE: (831) 662-1706
FACSIMILE: (831) 662-3401
EMAIL: davidimai@gotnet.net

August 8, 2001

Re: Aptos Warehouse Complex, et. al. v. Zar, Aviar Trust
Santa Cruz County Superior Civil No. 140751

Ralph W. Boroff, Esq.
Boroff, Jensen, Klein & Smith
55 River Street, Suite 230
Santa Cruz, California
95060

Dear Mr. Boroff:

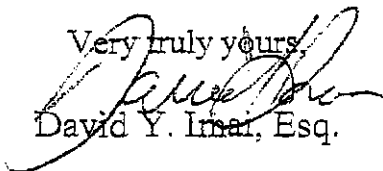
Per our discussion, and my letter of August 3, enclosed you will find copies of :

- 1j. Permit issued by the County of Santa Cruz regarding the construction and development of support for the riparian corridor abutting my clients' property;
- 2). Soils report from Reynolds Associates indicating their opinion that the slope reconstruction is "adequately compacted".

We note that we are not in any way obligated to "disprove" your case. We are providing these materials as a courtesy, in the hope that you will strongly consider them before deciding to proceed with Mr. Saal's allegation against the Zars regarding settling and compaction on his property.

I ask that you kindly respond to this, and my August 3 letter prior to August 31, which is the date now set for our response to your first amended complaint.

Thank you for your continuing courtesy.

Very truly yours,

David Y. Imai, Esq.

DYI:wp
Enc.
CC: Randy Zar
010808rb.doc



Geotechnical &
Civil Engineers

962234-S61-G6
27 May 1997

Mr. Randy Zar
P.O. Box 1282
Aptos. CA 05001

Subject: COMPACTION TEST RESULTS
Permit No. 96-0398, Residence. McGregor Drive
Santa Cruz County. California

Dear Mr. Zar:

As requested; we have observed the base keyway and have conducted testing services for *the* rough grading of the slope reconstruction on the subject site.

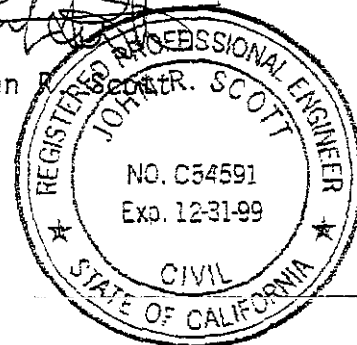
Field moisture/density tests were compared as a percentage of relative compactive effort to the laboratory tests performed upon the potential fill and native soils in accordance with test procedure ASTM #D1557-78. The results of the laboratory compaction curves and field in-place moisture/density tests are shown on the enclosed Tables I and II. In addition, the relative compactive effort is shown as a percentage of each of the field tests.

It is our opinion that the slope reconstruction has been adequately compacted and is completed. It should be noted that compaction testing associated with the finished driveway and parking **area**, and observation or testing associated with the new retaining wall construction was outside the scope of the services provided by our office.

Should you have any further questions, please contact this office.

Very truly yours,
REYNOLDS ASSOCIATES

John P. Scott



JRS:js
Copies: 4 to Mr. Randy Zahr

115

TABLE I

Summary of Laboratory Test Results

Sample No.	Description	Max. Dry Density p.c.f.	Opt. Moisture Content %
1	Grey brown SILT w/gravels $\frac{1}{2}$ " to $1\frac{1}{2}$ "	132.5	6.5
2	Light brown Sandy SILT w/gravels $\frac{1}{2}$ " to 1"	116.4	13.8
	Brown Silty SAND w/ grey binder & some gravels	121.2	12.6

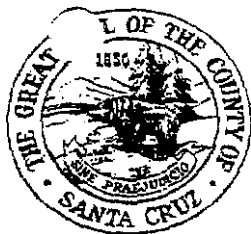
TABLE II

Summary of Field Density Test Results

Date	Location & Description	Lift	Moisture Content %	Dry Density p.c.f.	Relative Compaction %	Soil Typ & Remark
7/18	Center of Key & fill	+2.0	14.7	119.3	90.0	[1]
7/25	Center of Key & fill West side	+2.0	13.4	121.3	91.5	[1]
7/30	Center of fill area parking lot	-5.0 BSG	14.0	113.5	97.5	[2]
7/30	New parking Lot Key fill South end	-4.0 BSG	14.2	113.9	97.1	[2]
7/30	New parking Lot Key fill Center	-4.0 BSG	14.6	114.9	98.5	[2]
7/31	Center of Key & fill	+5.0	12.4	108.5	93.2	[2]
8/8	East of Manhole	-2.0 BSG	11.9	118.4	96.9	[3]
8/8	Center Parking North- west edge	-2.0 BSG	10.7	109.4	90.0	[3]
8/13	North edge Parking lot	-1.0 BSG	13.4	109.8	90.1	[3]
8/15	South end 10' west of Manhole	-1.0 BSG	13.4	112.0	96.3	[2]
8/15	Center of Parking lot	-1.0	13.4	109.8	94.3	[2]

PLANNING DEPARTMENT

GOVERNMENTAL CENTER



C O U N T Y O F S A N T A C R U Z

701 OCEAN STREET ROOM 400 SANTA CRUZ, CALIFORNIA 95060
(408) 441-2580 FAX (408) 450-2131 TDD (408) 454-2123

June 28, 1996

Department of Public Works
701 Ocean St.
Santa Cruz, CA 95060
ATTN: JEFF MILL

SUBJECT: RIPARIAN EXCEPTION PERMIT -- LEVEL III
PROJECT: APN: 038-061-07 APPLICATION: 96-0396

PROJECT DESCRIPTION: Proposal to remove fill and an unpermitted retaining wall from the riparian corridor to resolve a code violation by private property and to grade and fill approximately 50 cubic yards and **construct a 3** foot high retaining wall to create an access road to locate and raise an existing sewer manhole cover. Requires a Riparian Exception.

LOCATION: Property located on the south side of McGregor Drive about 200 feet west of Estates Drive at 14992 McGregor.

Your application has been reviewed as follows: Several site visits and conferences with Planning, Code Compliance and Sanitation District Staff.

Analysis and Discussion:

The property owner placed additional fill and constructed a retaining wall within the buffer and into the corridor of an arroyo to create a level parking area. The work was subsequently red-tagged by Code Compliance for a Riparian Violation. An existing sewer line ran underneath the fill at an undetermined location. The exact location and manhole access was unknown due to age and because the manhole had been buried under fill for a significant number of years. The Sanitation District needs to locate the manhole in order to maintain the sewer line which currently is partially clogged in the vicinity of McGregor Drive. The property owners' contractor will remove the unpermitted fill and failed retaining wall and excavate the historic fill to locate the manhole cover under the supervision and direction of Sanitation District Staff. All new encroachments into the corridor will be removed and the area restored to its historic condition, which will consist of an access road at approximately 11% grade and a raised manhole cover. All fill placement will be directed and tested by a soil engineer.

Findings to approve this Riparian Exception have been made according to County Code Section 16.30.060. The findings are attached.

Required Conditions:

1. Prior to exercising any rights granted by this permit including, without limitation, any construction or **site** disturbance, the applicant/owner shall sign, date and return to the Planning Department one **copy** of the approval to indicate acceptance and agreement with the conditions thereof.
2. Responsible party shall contact Environmental Planning (454-3168) prior to site disturbance.
3. The retaining wall and uncontrolled fill shall be removed from the riparian corridor and buffer areas and disposed of at an approved site.
4. All work shall conform to the plans marked Exhibit A. The new retaining wall shall not exceed 3 feet in height unless a building permit is obtained. Walls over 4 feet are not permitted unless a variation for this Riparian Exception is obtained.
5. All work shall be completed under the direction of Sanitation District Staff.
6. All fill placement shall be under the direction of the project soil engineer. The project **soils** engineer shall test compaction for all fill and submit compaction test reports to Environmental Planning - attention Cathleen Carr.
7. A sediment harrier shall be in place at all times between the arroyo and site grading.
8. Erosion control measures must be in place at all times during construction. All disturbed soils shall be **seeded** and mulched to prevent soil erosion and siltation in the watercourse.
9. All siough and spoils shall be removed from the corridor.
10. All works prohibited between October 15 and April 15.
11. A site inspection is required prior to final Planning Department approval of the proposed work; notify Environmental Planning at 454-3168 upon project completion for final inspection and clearance.
12. in the event that future County inspections of the subject property disclose noncompliance 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 permit revocation.
13. This permit shall expire one year after approval on June 28, 1997.

SUBJECT: RIPARIAN EXCEPTION PERMIT -- LEVEL III
PROJECT: APN C38-01 17 APPLICATION: 96-0396

RIPARIAN EXCEPTION FINDINGS

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

An existing sewer line lies within the riparian corridor at this site. The manhole has been covered by fill predating the riparian ordinance.

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

The removal of the fill over the manhole and reconstruction of a service road is necessary to service and maintain the sewer line.

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;

The granting of this exception will be beneficial to downstream properties in that a problematic sewer system can be maintained avoiding a potential sewage spill.

4. THAT THE GRANTING OF THE EXCEPTION, IN THE COASTAL ZONE, WILL NOT REDUCE OR ADVERSELY IMPACT THE RIPARIAN CORRIDOR, AND THERE IS NO FEASIBLE LESS ENVIRONMENTALLY DAMAGING ALTERNATIVE; AND

The granting of this exception will not reduce the corridor in that the sewer line is pre-existing and the former access road has been observed by historic filling and that a violation that is damaging the corridor will be resolved.

5. THAT THE GRANTING OF THE EXCEPTION IS IN ACCORDANCE WITH THE PURPOSE OF THIS CHAPTER, AND WITH THE OBJECTIVES OF THE GENERAL PLAN AND ELEMENTS THEREOF, AND THE LOCAL COASTAL PROGRAM LAND USE PLAN.

The granting of this exception is in accordance with the purpose of Chapter 16.30 and the objectives of the General Plan and local coastal program in that the exception is necessary for health and safety to maintain an existing sewer line in the corridor.

96-0396r/056

SUBJECT: RIPARIAN EXCEPTION PERMIT -- LEVEL 111
PROJECT: APN 038-061-07 APPLICATION: 96-0396

Staff Recommendation:

The Environmental Planning Principal Planner has acted on your application as follows:

XXX APPROVED (IF NOT APPEALED.)

 DENIED for the following reasons:

THIS PERMIT WILL EXPIRE ONE YEAR FROM THE DATE OF ISSUANCE.

If you have any questions, please contact Cathleen Carr 454-3168.

Sincerely,

RACHEL LATHER
Principal Planner/Senior Civil Engineer
Environmental Planning Section

BY: Cathleen Carr
Cathleen Carr
Resource Planner

7/1/96
Date

By signing this permit below, the owner agrees to accept responsibility for payment of the County's cost for inspections and all other action related to noncompliance with the permit conditions. This permit is null and void in the absence of the owner's signature below.

[Signature]
Signature of Owner/Agent

7/1/96
Date

cc: Code Compliance
Randy Zar

APPEALS

in accordance with Section 18.10.320 of the Santa Cruz County Code, the applicant may appeal an action or decision taken under the provisions of such County Code. Appeals of decisions of the Principal Planner of Environmental Planning on your application are made to the Planning Director. All appeals shall be made in writing and shall state the nature of the application and the basis upon which the decision is considered to be in error. Appeals must be made not later than ten (10) working days following the date of the action from which the appeal is being taken.

EXHIBIT “E”

PLANNING DEPARTMENT

GOVERNMENTAL CENTER



COUNTY OF SANTA CRUZ

701 OCEAN STREET ROOM 400 SANTA CRUZ, CALIFORNIA 95060
(408) 454-2580 FAX (408) 454-2131 TDD (408) 454-2123

June 28, 1996

Department of Public Works
701 Ocean St.
Santa Cruz, CA 95060
ATTN: JEFF MILL

SUBJECT: RIPARIAN EXCEPTION PERMIT -- LEVEL III
PROJECT: APN: 038-051-07 APPLICATION: 95-0396

PROJECT DESCRIPTION: Proposal to remove fill and an unpermitted retaining wall from the riparian corridor to resolve a code violation by private property and to grade and fill approximately 50 cubic yards and construct a 3 foot high retaining wall to create an access road to locate and raise an existing sewer manhole cover. Requires a Riparian Exception.

LOCATION: Property located on the south side of McGregor Drive about 200 feet west of Estates Drive at 14992 McGregor.

Your application has been reviewed as follows: Several site visits and conferences with Planning, Code Compliance and Sanitation District Staff.

Analysis and Discussion:

The property owner placed additional fill and constructed a retaining wall within the buffer and into the corridor of an arroyo to create a level parking area. The work was subsequently red-tagged by Code Compliance for a Riparian Violation. An existing sewer line ran underneath the fill at an undetermined location. The exact location and manhole access was unknown due to age and because the manhole had been buried under fill for a significant number of years. The Sanitation District needs to locate the manhole in order to maintain the sewer line which currently is partially clogged in the vicinity of McGregor Drive. The property owners' contractor will remove the unpermitted fill and failed retaining wall and excavate the historic fill to locate the manhole cover under the supervision and direction of Sanitation District Staff. All new encroachments into the corridor will be removed and the area restored to its historic condition, which will consist of an access road at approximately 11% grade and a raised manhole cover. All fill placement will be directed and tested by a soil engineer.

Findings to approve this Riparian Exception have been made according to County Code Section 16.30.060. The findings are attached.

Required Conditions:

1. Prior to exercising any rights granted by this permit including, without limitation, any construction or site disturbance, the applicant/owner shall sign, date and return to the Planning Department one copy of the approval to indicate acceptance and agreement with the conditions thereof.
2. Responsible party shall contact Environmental Planning (454-3168) prior to site disturbance.
3. The retaining wall and uncontrolled fill shall be removed from the riparian corridor and buffer areas and disposed of at an approved site.
4. All work shall conform to the plans marked Exhibit A. The new retaining wall shall not exceed 3 feet in height unless a building permit is obtained. Walls over 4 feet are not permitted unless a variation for this Riparian Exception is obtained.
5. All work shall be completed under the direction of Sanitation District Staff,
6. All fill placement shall be under the direction of the project soil engineer. The project soils engineer shall test compaction for all fill and submit compaction test reports to Environmental Planning - attention Cathleen Carr.
7. A sediment barrier shall be in place at all times between the arroyo and site grading.
8. Erosion control measures must be in place at all times during construction. All disturbed soils shall be seeded and mulched to prevent soil erosion and siltation in the watercourse.
9. All slough and spoils shall be removed from the corridor.
10. All works prohibited between October 15 and April 15.
11. A site inspection is required prior to final Planning Department approval of the proposed work; notify Environmental Planning at 454-3168 upon project completion for final inspection and clearance.
12. In the event that future County inspections of the subject property disclose noncompliance 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 permit revocation.
13. This permit shall expire one year after approval on June 28, 1997

SUBJECT: RIPARIAN EXCEPTION PERMIT -- LEVEL III
PROJECT: APN 038-061-07 APPLICATION: 96-0396

RIPARIAN EXCEPTION FINDINGS

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

An existing sewer line lies within the riparian corridor at this site. The manhole has been covered by fill predating the riparian ordinance.

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

The removal of the fill over the manhole and reconstruction of a service road is necessary to service and maintain the sewer line.

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;

The granting of this exception will be beneficial to downstream properties in that a problematic sewer system can be maintained avoiding a potential sewage spill.

4. THAT THE GRANTING OF THE EXCEPTION, IN THE COASTAL ZONE, WILL NOT REDUCE OR ADVERSELY IMPACT THE RIPARIAN CORRIDOR, AND THERE IS NO FEASIBLE LESS ENVIRONMENTALLY DAMAGING ALTERNATIVE; AND

The granting of this exception will not reduce the corridor in that the sewer line is pre-existing and the former access road has been observed by historic filling and that a violation that is damaging the corridor will be resolved.

5. THAT THE GRANTING OF THE EXCEPTION IS IN ACCORDANCE WITH THE PURPOSE OF THIS CHAPTER, AND WITH THE OBJECTIVES OF THE GENERAL PLAN AND ELEMENTS THEREOF, AND THE LOCAL COASTAL PROGRAM LAND USE PLAN.

The granting of this exception is in accordance with the purpose of Chapter 16.30 and the objectives of the General Plan and local coastal program in that the exception is necessary for health and safety to maintain an existing sewer line in the corridor.

96-0396r/056

SUBJECT: RIPARIAN EXCEPTION PERMIT -- LEVEL III
PROJECT: APN 038-061-07 APPLICATION: 96-0396

Staff Recommendation:

The Environmental Planning Principal Planner has acted on your application as follows:

XXX APPROVED (IF NOT APPEALED.)

 DENIED for the following reasons:

THIS PERMIT WILL EXPIRE ONE YEAR FROM THE DATE OF ISSUANCE.

If you have any questions, please contact Cathleen Carr 454-3166.

Sincerely,

RACHEL LATHER
Principal Planner/Senior Civil Engineer
Environmental Planning Section

BY: Cathleen Carr
Cathleen Carr
Resource Planner

7/1/96
Date

By signing this permit below, the owner agrees to accept responsibility for payment of the County's cost for inspections and all other action related to noncompliance with the permit conditions. This permit is null and void in the absence of the owner's signature below.

[Signature]
Signature of Owner/Agent

7/1/96
Date

cc: Code Compliance
Randy Zar

APPEALS

In accordance with Section 18.10.320 of the Santa Cruz County Code, the applicant may appeal an action or decision taken under the provisions of such County Code. Appeals of decisions of the Principal Planner of Environmental Planning on your application are made to the Planning Director. All appeals shall be made in writing and shall state the nature of the application and the basis upon which the decision is considered to be in error. Appeals must be made not later than ten (10) working days following the date of the action from which the appeal is being taken.

EXHIBIT “F”

14 CCR s 15301

Cal. Admin. Code tit. 14, s 15301

BARCLAYS OFFICIAL CALIFORNIA CODE OF REGULATIONS

TITLE 14. NATURAL RESOURCES

DIVISION 6. RESOURCES AGENCY

CHAPTER 3. GUIDELINES FOR IMPLEMENTATION OF THE CALIFORNIA
ENVIRONMENTAL

QUALITY ACT

ARTICLE 19. CATEGORICAL EXEMPTIONS

This database is current through 12/09/2005, Register 2005, No. 49

s 15301. Existing Facilities.

Class 1 consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination. The types of "existing facilities" itemized below are not intended to be all-inclusive of the types of projects which might fall within Class 1. The key consideration is whether the project involves negligible or no expansion of *an* existing use.

Examples include but are not limited to:

- (a) Interior or exterior alterations involving such things as interior partitions, plumbing, and electrical conveyances;
- (b) Existing facilities of both investor and publicly-owned utilities used to provide electric power, natural gas, sewerage, or other public utility services;
- (c) Existing highways and streets, sidewalks, gutters, bicycle and pedestrian trails, and similar facilities (this includes road grading for the purpose of public safety).
- (d) Restoration or rehabilitation of deteriorated or damaged structures, facilities, or mechanical equipment to meet current standards of public health and safety, unless it is determined that the damage ~~was~~ substantial and resulted from ~~an~~ environmental hazard such ~~as~~ earthquake, landslide, or flood;
- (e) Additions to existing structures provided that the addition will not result in an increase of more than:

(1) 50 percent of the floor area of the structures before the addition, or 2,500 square feet, whichever is less; or

(2) 10,000 square feet if:

(A) The project is in an area where all public services and facilities are available to allow for maximum development permissible in the General Plan and

(B) The area in which the project is located is not environmentally sensitive

(f) Addition of safety or health protection devices for use during construction of or in conjunction with existing structures, facilities, or mechanical equipment, or topographical features including navigational devices;

(g) New copy on existing on and off-premise signs;

(h) Maintenance of existing landscaping, native growth, and water supply reservoirs (excluding the use of pesticides, as defined in Section 12753, Division 7, Chapter 2, Food and Agricultural Code);

(i) Maintenance of fish screens, fish ladders, wildlife habitat areas, artificial wildlife waterway devices, streamflows, springs and waterholes, and stream channels (clearing of debris) to protect fish and wildlife resources;

(j) Fish stocking by the California Department of Fish and Game;

(k) Division of existing multiple family or single-family residences into common-interest ownership and subdivision of existing commercial or industrial buildings, where no physical changes occur which are not otherwise exempt;

(l) Demolition and removal of individual small structures listed in this subdivision;

(2) A duplex or similar multifamily residential structure. In urbanized areas, this exemption applies to duplexes and similar structures where not more than six dwelling units will be demolished.

(3) A store, motel, office, restaurant, and similar small commercial structure if designed for an occupant load of 30 persons or less. In urbanized areas, the exemption also applies to the demolition of up to three such commercial buildings on sites zoned for such use.

(4) Accessory (appurtenant) structures including garages, carports, patios, swimming pools, and fences.

(m) Minor repairs and alterations to existing dams and appurtenant structures under the supervision of the Department of Water Resources.

(n) Conversion of a single family residence to office use

(o) Installation, ~~in~~ *an* existing facility occupied by a medical waste generator, of a steam sterilization unit for the treatment of medical waste generated by that facility provided that the unit is installed and operated in accordance with the Medical Waste Management Act (Section 117600, et seq., of the Health and Safety Code) and accepts no offsite waste.

(p) Use of a single-family residence as a small family day care home, as defined in Section 1596.78 of the Health and Safety Code.

Note: Authority cited: Section 21083, Public Resources Code. Reference: Section 21084, Public Resources Code; Bloom v. McGurk (1994) 26 Cal.App.4th 1307.

HISTORY

1. Amendment of subsections (c), (k), (l)(1)-(3) and (o), and amendment of
Notefiled 5-27-97; operative 5-27-97 pursuant to
Government Code section 11343.4(d) (Register 97, No. 22).
2. Amendment of section and Notefiled 10-26-98; operative 10-26-98 pursuant to
Public Resources Code section 21087 (Register 98, No. 44).
3. Change without regulatory effect amending subsection (h) filed 2-1-2001
pursuant to section 100, title 1, California Code of Regulations (Register
2001, No. 5).
4. Change without regulatory effect amending subsection (k)(1) and Notefiled 10-
6-2005 pursuant to section 100, title 1, California Code of Regulations
(Register 2005, No. 40).
14 CAADC s 15301

END OF DOCUMENT

(C) 2005 Thomson/West. No Claim to Orig. U.S. Govt. Works.