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

February 28,2006

Agenda Date: March 8,2006

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:

This item is an appeal of the Zoning Administrator's 11/18/05 decision to approve the above listed application and was heard before your Commission on 1/11/06. At that time, you decided to hear the appeal but continued consideration of the appeal to 2/22/06 and directed staff to assemble all of the information available regarding the site and the development permit proposal. Your Commission also directed staff to meet with the applicant and appellant. The item was subsequently continued from the 2/22/06 agenda at the applicant's request.

As requested by your Commission, this report provides a history of activities on the parcel. A discussion of the issues raised by the appellant in the appeal letter submitted on 12/2/05 follows. Additional concerns that have been identified by County staff since the Zoning Administrator's action on 11/18/05 are also presented.

This application was submitted on 12/22/04 to recognize an existing commercial building and associated improvements. The building itself is the subject of a lengthy Code Compliance case because of construction and additions without benefit of development or building permits.

History

A detailed chronology of the grading, violation, and permits issued on the subject property is included as Exhibit 2A.

In summary, a sanitary sewer line was installed along the slope above Borregas Creek between late 1960 and 1961. The sewer line and manhole covers along this section of Borregas Creek were subsequently buried by grading activity which was performed soon after installation (in the early 1960s) possibly in association with the construction of Highway One or the frontage road (McGregor Drive). In 1967 a building permit was issued for a garden sales building and a number of attached shade structures and greenhouses for a plant nursery (Aptos Gardens). The greenhouse area was expanded between 1967 and 1972 without benefit of permits - this is the

general footprint upon which the current proposal is based. Between 1965 and 1989 a small amount of additional fill was placed between the structure and Borregas Creek, with evidence of erosion in later photographs. The plant nursery was converted into a bird aviary during this time.

Starting in the early 1990s, a series of complaints regarding additional grading and construction were made. Site visits by County staff indicated that the greenhouse structures had been converted to buildings, a large deck had been constructed, and additional fill had been placed in the riparian comdor. The tenant of the property, Brent Byard, was conducting commercial uses without the required permits from the illegally converted structure. Further complaints were received by the County regarding commercial activity on the property. No permits were obtained for the commercial uses or the structures. The current co-owner, Randy Zar, purchased an interest in the property in the mid 1990s. Mr. Zar made an agreement with the Department of Public Works to uncover the buried sewer manhole and to construct retaining walls and a temporary access road. This work was performed under Riparian Exception 96-0396, issued to the Department of Public Works by the Planning Department.

From the mid 1990s until 2003-2004, no permits were obtained for additional commercial activities (including a drinking water company, a deli/grocery store, and trailer/mobile home repair business) and portions of the structure were illegally converted to residential units. The lack of compliance with applicable codes and County requirements resulted in a court judgment in 2004 which ordered a cessation of all residential uses and required the property owners to obtain all required permits for the commercial uses and conversion of the greenhouse structures to buildings. At this time, the Zar family acquired ownership of the entire property, eliminating Byard's interest in the property. All residential units were vacated as a result of the Zar acquisition.

The Zar family has since cleaned up the property and an application was made for a Commercial Development Permit (04-0650) to recognize the commercial building and establish the allowed commercial uses. This Commercial Development Permit application was approved by the Zoning Administrator and is now before your Commission on appeal.

Appeal of Zoning Administrator's Action

The attorney for the neighboring property owner (appellant) raised the following issues in the appeal letter, dated 12/2/05 (Attachment 1 to Exhibit 2H). Each issue is addressed below in the same order as raised in the appellant's letter.

Soil Stability & Grading Activity

The appellant has stated that earthwork was 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. Despite this determination, the Zoning Administrator addressed the neighbor's concerns and included a condition of approval to require 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, were intended to address any slope stability issues that may exist on the subject property.

In response to the Zoning Administrator's request for a geotechnical report prior to building permit issuance, the applicant requested estimates from geotechnical engineers, prior to choosing a firm to prepare the required report. Although their review of the site was preliminary, and soils borings were not taken, the geotechnical engineers noted what appears to be a significant soil stability issue on the project site. This information was relayed by a geotechnical engineer to the County geologist by telephone shortly after the final action was appealed.

Further analysis has since been performed by the County Geologist, who has identified evidence of additional earthwork and potential slope failures on the subject property (Exhibit 2C). The extent of the potential slope failures will require additional geotechnical review in order to identify the appropriate measures to stabilize the project site. Additionally, any grading or additional disturbance needed to remedy stability issues below the existing retaining walls will require a Riparian Exception for the additional encroachment into the riparian corridor of Borregas Creek.

Fairness and Impartiality of the Public Hearing,

The appellant has stated that the public hearing was not held in a fair and impartial manner.

The Zoning Administrator held the public hearing according to established procedures. The applicant was provided an opportunity to testify, and the neighbor and other members of the public were allowed a similar duration of time to testify as well. After hearing the testimony of the neighbor, the applicant was given an opportunity to rebut and clarify points raised by the neighbor and the neighbor's representative. The public hearing was then closed.

In order to clarify points raised by the applicant and the neighbor's representative, the Zoning Administrator asked questions of Environmental Planning staff regarding the prior earthwork. The Zoning Administrator amended the conditions of approval based on the testimony at the public hearing. Therefore, staff does not believe that this issue would be an appropriate reason for supporting the appeal.

CEOA Exemption

The appellant has stated that the proposed project is not eligible for a categorical exemption from the California Environmental Quality Act.

Staff believes that the project is exempt from further environmental review under the California Environmental Quality Act (CEQA). Either a Class 1 (Existing Facilities) exemption or a Class 3 (Small Structures) exemption would apply to the proposed development. Both categorical exemptions would allow a commercial structure up to 10,000 square feet in size within an urbanized area if all urban services are available and the site is not environmentally sensitive.

In this case, the proposed development is considered as being located within an existing disturbed area even though portions of the project site contain a riparian resource. This is due to

the fact that a prior Riparian Exception (96-0396) was issued for grading and retaining walls within the riparian comdor of Borregas Creek. This work was performed under the direction of the Department of Public Works to uncover a sanitary sewer manhole which had been previously buried on the project site. This earthwork, which was performed for utilities purposes, was exempt from the requirement of a grading permit or other review. This grading activity was ministerial in nature and was, therefore, exempt from the requirements of the California Environmental Quality Act.

The possibility that additional work occurred within the riparian corridor after the work authorized by Riparian Exception 96-0396 was completed and signed off (or that additional work may be required within the riparian comdor to stabilize the site) does not necessarily disqualify the proposed development from an exemption to the California Environmental Quality Act. Planning Department staff will assess potential impacts to the riparian comdor which may be necessary to stabilize the project site and determine if the project requires further review, or is exempt, per the provisions of the California Environmental Quality Act.

Variance and Coastal Development Permit Findings

The appellant has stated that the necessary findings could not be made for the Variance and the Coastal Development Permit.

The findings were reviewed by the Zoning Administrator and considered as appropriate and valid for the project site and the proposed development given the limited area of the commercial site and the requirement to minimize additional impacts to the riparian corridor. However, if the sewer line is located below the existing building (see discussion below), it would not be in harmony with zoning objectives (Variance Finding **#2)** to allow the construction of a building over an existing sanitary sewer line. Additional investigation is necessary to determine the exact location of the existing sanitary sewer line relative to the building and other improvements on the subject property.

Additional Concerns

Sanitary Sewer Line Location

Although the earthwork authorized by Riparian Exception was for the purpose of uncovering a sanitary sewer manhole, the location of this main sewer line relative to the existing building is still not known. From the information available from the Department of Public Works (Exhibit 2F) it appears as though the sewer line may pass under the southern portion of the building and tie into a second manhole which has yet to be uncovered. Further analysis using cameras, sound, or other locating devices will be necessary to determine the exact location of the existing sanitary sewer main and the second manhole cover relative to the existing building on the project site.

If the building has been constructed over the sanitary sewer line, those portions of the building above the sewer line would likely need to be removed in order to ensure access to the sewer line for maintenance or repair. Although the prior nursery use of the property may have resulted in temporary structures (such as decks, green houses, and screened plant storage and display areas) located over the sewer line, the installation of a permanent building over the sewer line is not in conformance with Department of Public Works standards.

Parking Area

The majority of the parking for the proposed commercial use is located within the County right of way for McGregor Drive. The permit conditions envisioned the property owner needing to acquire the land from the County to have adequate on-site parking outside of the vehicular right of way in order to justify the size of the commercial building. From the more recent analysis performed by the County Geologist (after the Zoning Administrator's action) it appears as though a portion of the parking area may be located on unstable fill material. If this material cannot be properly supported without cutting the slope back into the parking area, the parking for the proposed commercial development would likely need to be reduced. If the parking is reduced in order to stabilize the project site, the scale of the commercial use (and the associated square footage of the commercial building) will need to be reduced accordingly.

Summary

The issues raised by the appellant were appropriately addressed by the Zoning Administrator prior the decision to approve the application on 11/18/05, based upon the available information. Since that time, however, additional site specific information regarding additional earthwork and the stability of the soils on the project site has been received. Further geotechnical analysis will be required to determine the best methods to stabilize the project site and parking area. Additionally, the location of the sewer line relative to the existing building must be determined in order to make ***an*** appropriate recommendation regarding the variance.

While the overall project may have merit, it is not possible to make that determination without additional technical information. The stability of the project site and the location of the sanitary sewer line will determine the amount of commercial space and associated parking that is appropriate on the subject property. As a result of the receipt of additional information relative to these two issues, a reduction in the overall size of the proposed commercial development may be necessary. Until that information is available, it is not possible to recommend an action relative to the proposed project.

Recommendation

Planning staff recommends that your Commission **CONTINUE** the public hearing for Application Number **04-0650** to a future date, pending receipt of the following information for review by County staff, and direct staff to re-notice the public hearing:

1. A geotechnical investigation per the guidelines in the memorandum prepared by the County Geologist, dated 1/30/06.

2. A determination of the existing sanitary sewer main line relative to the existing improvements on the project site.

3. Revised plan sets with the sewer main line and any existing easements for the sanitary sewer clearly displayed.

Sincerely,

Randall Adams
Project Planner
Development Review

Reviewed By: _____
Cathy Graves
Principal Planner
Development Review

Exhibits:

2A. Grading, Violation, and Permit History
2B. Letter to the Planning Commission, 2/22/06, with Exhibits.
2c. Memorandum from Joseph Hanna, County Geologist, dated 1/30/06.
2D. **Letter** from Haro, Kasunich & Associates, dated 1/27/06.
2E. Letter from appellant, Kent Washbum, dated 1/18/06.
2F. Sanitary Sewer System Diagram, Department of Public Works.
2G. Exhibit from Riparian Exception 96-0396.
2H. Letter to the Planning Commission, 1/11/06 agenda date, with attachments.

Zar/McGregor - Grading, Violation and Permit History

APN 038-061-06 One property before parcel was split to create existing Zar and First Alarm properties.

1960-61	Sewer Line: Sewer line installed (October 1960 date on plans for sewer line installation)
1962	Building Permit(s) #: 1594 & 1474 issued to Eva Bernard for relocating a building to be used as a real estate office. This structure was located on what is now the First Alarm property and is not associated with the existing construction on the Zar property.
1963	Grading: Initial grading of subject property and adjacent parcel (possibly in conjunction with freeway construction or the construction of McGregor Drive) prior to 1963 as determined from aerial photographs. Most of the grading occurred around the parking area. Sewer manholes likely buried during this time.
1965	Grading: Some additional grading near McGregor Drive between 1963 and 1965 evident in aerial photographs.
6/13/67	Building Permit(s)#: 3732 & 4617 to erect a garden sales area ***5*** feet from property line, install 1 hour fire wall on an existing structure which is closer than 5 feet to the property line, and install plastic over existing lath house and walkway. These buildings wer built on the current Zar property for an existing nursery use (Aptos Gardens). Nurseries were an allowed use in the zone district with no use permit required. APN 038-061-06 was divided into APNs 038-061-07 & 08 prior to this date by deed. Although the BP was issued on APN 038-061-06, the property line referred to is the boundary between parcels -07 & -08.

APN 038-061-07 Subject property (after division from larger parcel)

9112/67	Assessor Records: 926 square feet of office and greenhouse and 887 square feet of covered area. There is 405 square feet of office, 521 square feet of greenhouse and 887 square feet of covered area indicated on appraiser drawing.
1/9/73	Assessor Records: 1,189 square feet of office and greenhouse and 887 square feet of covered area. Increase of 261 square feet **of** greenhouse, identified in 1973 appraisal.
1989	Grading: Small amount of grading between buildings and Borregas Creek between 1965 and 1989. Erosion of fill evident in later aerial photographs.
12/27/91	Building Permit #: 101649 issued for relocating a gas meter for a bird aviary.
1/29/93	Code Compliance: Complaint received. Construction of 2,044 square foot commercial building and a 400 square foot deck without permits.
7/14/93	Code Compliance: Brent Byard (lessee) states that an application will be made for a produce stand. The trucks will be moved when space opens in Aptos Warehouse (approx 2 weeks). The structure did not appear to be habitable but the tenant stated that it had been habitable in the past.
10/26/93	Code Compliance: Complaint received. Substantial development in riparian corridor including parking lot built on fill material, retaining walls, and deck.
11/22/93	Assessor Records: Byard's purchase property.
11/29/93	Grading: Department of Fish and Game concerned regarding 11 truckloads of dirt and debris that were dumped into riparian corridor.
11/30/93	Code Compliance: Site visit identified extensive fill with asphalt and concrete debris on slope between existing building and Borregas Creek. Correction notice issued requiring a Grading Permit and Riparian Exception application by 12/30/93, further grading was also prohibited.

EXHIBIT 2A

10/94	Grading: Phone call from complainant regarding additional grading and a retaining wall under construction within the riparian comdor.
6/95	Code Compliance: Phone calls from complainant stating that structure was converted to residential uses.
10/10/95	Code Compliance: Re-roofing permit held up due to environmental violation. Byard operating Napa Springs Water Company from existing structure.
10/16/95	Code Compliance: Staff conducted a site inspection and verified environmental violations; partial foundation upgrade and/or replacement and deck. Also, identified the addition completed in 1972, with no permit on file. Staff agreed to approve a re-roof permit to protect the structure, with a hold to be placed on the permit until all environmental violations are resolved.
11/1/95	Building Permit #: 111076 issued for re-roofing on existing single-family dwellingicommercial building. This was an over the counter permit that required no routing.
5/15/96	Assessor Records: Randy Zar purchases interest in property.
6/25/96	Discretionary Permit: Application 96-0396 made by the Department of Public Works for a Riparian Exception to uncover existing sewer manhole buried on the property.
7/1/96	Discretionary Permit: Riparian Exception 96-0396 issued with approximately 50 cubic yards of grading and 3 foot high retaining walls authorized to construct an access road and to uncover and raise the existing sanitary sewer manhole.
1996-1997	Grading: In order to access the sanitary sewer manhole, more than 50 cubic yards of earth were required to be removed and replaced. Additional fill material may have been placed in the parking lot area during this time. Several retaining walls constructed as well.
11/14/96	Building Permit #: 111076 (for re-roofing) voided for lack of compliance - permit expired.
6/12/97	Discretionary Permit: Riparian Exception 96-0396 finaled. Department of Public Works project to raise manhole complete.
1997-1998	Code Compliance: Deli/grocery store operating without permits.
11/30/98	Code Compliance: Complaint received. Conversion of existing building to a single family dwelling without permits.
11/28/00	Code Compliance: Complaint received. Tenant has placed a single wide mobile home trailer on the property. 12' x 32' modular mobile trailer.
11/21/01	Code Compliance: Site inspection. Trailer on property. Byard stated that he refurbishes the trailers on site and then sells them. There were no utility connections to the trailer at the time of the inspection.
2/27/01	Code Compliance: Complaint received. Conversion of structure to multiple residential units.
3/13/01	Code Compliance: Site inspection. Evidence of construction to convert to multiple units. Interior inspection refused. Trailer on site connected to utilities.
11/21/01	Code Compliance: Site inspection. Zar and Byard present. Interior inspection identified 4 complete residential units plus two additional rooms with bathrooms.
9/25/03	Code Compliance: Site inspection. Small addition to enclose a concrete patio at the rear of the existing structure (approx. 8 x 10-12 feet). An inflatable dough boy pool was also installed on the project site.
6/4/04	Code Compliance: Complaint received. Interior work without a permit. Complaint determined to not be valid. Work was only interior remodeling and cleanup which did not require a permit.

EXHIBIT 2A

8/24/04	Code Compliance: Court judgment. Superior Court Judge Robert Atack ruled that all residential uses must cease and tenants must vacate by 9/30/04. Settlement agreement generated for commercial uses to obtain all required development and building permits.
11/15/04	Assessor Records: Byard transfers all remaining interest in property to Zar family.
12/22/04	Discretionary Permit: Intake for Coastal and Commercial Development Permit application 04-0650. Application lacked required number of plans. Plans and fees submitted later for a formal application date of 1/3/05.
2/1/05	Discretionary Permit: Application incomplete. Additional information/clarification required on plans and to satisfy Department of Public Works Drainage and Road Engineenng requirements.
5/27/05	Discretionary Permit: Application incomplete. Additional information/clarification required on plans and to satisfy Department of Public Works Drainage and Road Engineering requirements.
8/25/05	Discretionary Permit: Application complete.
10/7/05	Discretionary Permit: Zoning Administrator hearing. Item continued to 11/18/05.
11/18/05	Discretionary Permit: Zoning Administrator hearing. Coastal and Commercial Development Permit application 04-0650 approved with revised findings and conditions, including the requirement of a geotechnical (soils) report with a slope stability analysis prior to the issuance of a Building Permit.
12/2/05	Discretionary Permit: Coastal and Commercial Development Permit 04-0650 appealed by attorney representing neighboring property owner Jarl Saal.
12/05	Discretionary Permit: Applicant's representative contacts geotechnical engineers to evaluate site. Issues of slope instability are identified. This information is conveyed to County geologist by telephone. Further review of project site by County geologist identifies slope instability and extensive grading work within riparian corridor.
1/11/06	Discretionary Permit: Planning Commission hearing. Recommendation to remand back to Zoning Administrator to consider new information regarding slope instability and the location of the sanitary sewer line relative to the existing building. Commission determines that they must hear the appeal and continues the item to 2/22/06 for a full report.
1/13/06	Discretionary Permit: Site inspection with County geologist and civil engineer. Retaining walls appear to be failing on project site and soil slumps appear to exist on the slope between the walls and Borregas Creek.

EXHIBIT 2A

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

February 13,2006

Agenda Date: February **22,2006**

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:

This item is an appeal of the Zoning Administrator's 11/18/05 decision to approve the above listed application and was heard before your Commission on 1/25/06. At that time, your Commission decided to hear the appeal *after* consulting with County Counsel regarding appeal procedures, and the actual public hearing was continued until today's agenda.

Request **for** Continuance

The applicant's representative has been out of state due to a family emergency and has not been able to prepare materials in response to the appellant's concerns in time for this meeting of your Commission. The applicant requests a continuance to 3/8/06 so that he can meet with planning staff and his representative can prepare a response to these issues.

Recommendation

1. Planning Department staff recommends that your Commission CONTINUE the public hearing for Application Number **04-0650** to March 8th, 2006.

Sincerely,

Randall Adams
Project Planner
Development Review

Reviewed By:

Cathy Graves
Principal Planner
Development Review

Exhibits:

1A. Letter requesting continuance, prepared by Randy Zar, dated 2/13/06.

EXHIBIT 7B

February 13,2006

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

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

Dear Members of the Commission

I am requesting that you continue this matter for the reasons stated in this letter. You first heard this appeal at your hearing of January 11,2006. At that time you continued your consideration of this appeal to your meeting of February 22, 2006. You also directed Planning staff to meet with me and members of my project team prior to completion of the next staffreport for this item. Prior to January 11. I was scheduled to be out of the country for three weeks beginning January 25. Planning staff would not meet with us prior to my January 25 departure even though we had requested to meet prior to that date. Therefore, I left my planning consultant, Kim Tschantz, in charge of matters in my absence.

I understand a meeting was finally scheduled for Planning staff to meet with Mr. Tschantz on February 7. Unfortunately. Mr. Tschantz had an unexpected family emergency and had to leave the state on February 4. I have just returned from my trip on February 10 This situation makes it impossible for Planning staff to meet with us in a meaningful way prior to preparation of the staff report for the February 22 hearing. For these reasons, I am requesting that the Planning Commission continue this matter to one of its meetings in March 2006. Thank you very much for your consideration.

Very truly yours,

Randy Zar, Trustee.
Aviar living trust

cc: Randall Adams
Kim Tschantz
Dave Imai

EXHIBIT 2B

COUNTY OF SANTA CRUZ | Planning Department

MEMORANDUM

Date: Monday, January 30, 2006
To: Randall Adams, Planner
From: Joe Hanna, County Geologist, CEG 1313
Re: Zar Property

The following are conclusions based upon site reconnaissance, file research, and aerial photographs.

1. The time frame for the basic elements of the grading that has occurred on this property is as follows:

    a. The initial site grading occurred before 1963 with most of the grading occurring around the parking area.
    b. Some additional grading occurred on the property before 1965 near McGregor Drive.
    c. A small amount of grading occurred between 1965 and 1989 between the buildings and Borregas Creek as identified through the viewing of four aerial photos. The fill is already starting to rill in some of the aerial photos.
    d. Between 1989 and the mid-1990's a small fill pad was constructed between the building and Borregas Creek.
    e. Additional grading occurred between the structures and Borregas Creek since the mid 1990's.

2. Several episodes of grading have occurred in and around the time the sewer manhole was raised and included the construction of several retaining walls. Repairs to the retaining walls have occurred within the last two or so years.

3. The whole length of the Borregas Creek embankment on the Zar property is unstable. Slopes range in gradient form 3/4:1 to approximately 1½:1, and the slope failures range from a few feet to nearly 6 feet or more in depth.

4. None of the new on site retaining walls meet appropriate engineering standards, and most have visible signs of distress. In addition to the shallow failures, the walls do not function properly to restrain the brow of the slope, and the brow of the new fill slope is creeping, and/or settling. In response to these forces, the retaining vertical beams have tilted, and near the manhole, the retaining wall lagging is failing as well.

EXHIBIT 2C

5. The majority of the fill appears to be between the structure and Borregas Creek. Some additional grading appears to have occurred beneath the structure, but I cannot determine the amount of grading beneath the structure.

Conclusions:

Substandard grading and retaining wall construction have resulted in unstable slopes adjacent to Borregas Creek. The characteristics of the subsurface conditions beneath the existing building are unclear.

Consequently, the geotechnical engineering investigation and analysis must first assess the existing site conditions to develop a strategy to repair the slope, and, if necessary, stabilize the structure. After this strategy is developed, a meaningful slope stability analysis can be completed. The stability analysis must assume that the improvements are in place to assure that the repair strategy will work.

The repair strategy must include the following:

1. All of the retaining walls must be replaced with permitted engineered retaining walls.
2. The fill along the face of the fill slope must be stabilized to reduce the amount of slope failure.
3. The toe of the fill will need to be protected from water erosion.
4. The geotechnical engineer must complete a geotechnical analysis that demonstrates both deep and surficial slope stability after the site has been repaired.
5. An engineered grading plan, erosion control plan, and planting plan must be developed for the repair strategy plan.

A note regarding the need for a Riparian Exception: The riparian corridor would be marked from the bottom of the remaining wall lagging. Essentially, the riparian area would be set outside the area of petmanent disturbance. Work along the creek below the wall would require a riparian exception.

EXHIBIT 2C

HARO, KASUNICH AND ASSOCIATES, INC.

CONSULTING GEOTECHNICAL & COASTAL ENGINEERS

Project No.SC7503
27 January 2006

TOM BURNS, PLANNING DIRECTOR
RANDALL ADAMS
SANTA CRUZ COUNTY PLANNING DEPARTMENT
701 Ocean Street
Santa Cruz, California 95060

Subject: Geotechnical Assessment of Fillslope
Bounding east side of Drainage Ravine

Reference: 1111 Estates Drive and McGregor Drive
Santa Cruz County, California

Dear Mr. Burns and Mr. Adams:

At the request of our client, Jarl Saal we would like to present our observations and conclusions regarding the fillslope which bounds the ravine adjacent to the reference properties. We have worked with Mr. Saal and been to the property off and on for the past six years.

Fifteen months ago Mr. Saal commissioned us to begin a geotechnical investigation of the fillslope which bounds his property and his neighbor's property off McGregor Drive. WE had outlined the scope of work that would allows us to bring a rubber tired power driven auger exploratory drill rig to the back of his building on his vacant lot adjacent to the top of the slope. We were in the process of getting permission to drill along the top of the ravine in the County right-of-way, in a paved parking area. adjacent to McGregor Drive. The purpose of this subsurface exploration was to determine the depth and consistency of the oversteepen fill soil adjacent the drainage ravine west of the reference properties. Visual observations from field reconnaissances of tha fillslope indicate a large volume of fill has been placed on the east side of the drainage gully. The fill has an approximate gradient steeper than 1:1. The fill is approximately 20 feet (±) deep. A number of slump slides dot the face of the fill slope. In order to determine the consistency and extent of the oversteepen fill wedge, exploratory borings must be drilled just off of McGregor Drive on the Santa Cruz County right-of-way easement as well as in the back of 111 Estates Drive adjacent to the top of the fill slope. We must also drill on the fill slope with hand augers or portable drilling equipment. Cross-sectional profiles from the flow line at the bottom of the drainage gully to the top of the fill slope and across portions of the reference properties and then the County's easement must be prepared. Appropriate laboratory work will then be performed on select samples of the fill material to aid in stability analysis of the fill slope, This will allow us to

EXHIBIT 2D

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determine the critical geometry of the fill wedge and present measures to stabilize the fill for long term performance. Stabilization measures may include over-excavation and redensification of existing fill materials to proper compaction at a flatter gradient and/or using reinforcing such as tensor grids to allow steeper fill slope gradient. Retaining structures at the base or at the top of the fill slope may be necessary to accommodate flattening the slope gradients and attaining compaction requirements.

At present tension cracks can be seen in the parking pavement area within the County right-of-way indicating lateral movement of the fiil and the wood retaining walls constructed at the top of the fillslope adjacent to the parking lot. We had been working with Rich Strauss of Earthworks, a general grading contractor to assess stabilization feasibility related to construction and to estimate cost to stabilize the fillslope. We had met with the Santa Cruz County Sanitary District to determine locations of the sanitary sewer line which crosses the upper regions of the ravine in proximity of the unstable fill. Due to administrative complications and the onset of continuous winter rains, the geotechnical investigation was postponed until further notice by Mr. Saal.

Based on our history with Mr. Saal's property, our initial observations and evaluation of the fillslope on the east side of the ravine, and discussions with Earthworks regarding stabilization we extend the following professional opinions and recommendations:

1. It will be necessary to investigate the fill wedge along the east side of the 'ravine. This can be accomplished with deep exploratory borirrgs a i the top in the vacant lot behind Mr. Saal's commercial building and in the paved parking area, County right-of-way. These borings may be as deep as 25 to 40 feet. A portable drill rig will ?hen be carried onto the slope in select areas to determine the depth of fill and consistency of fill in the lower bounds of the oversteepen fillslope.

2. Cross-sectional profiles across the fill should be constructed to aid in determining the volume and stabiiity of the fill wedge. These cross-sections will also allow an evaluation of how best to remediate and stabilize the fillslope permanently.

3. Some geotechnical slope stability analysis will be done to try to determine the gradients that can be reconstructed either from the base of the fill or utilizing retaining walls to maintain long term stability.

EXHIBIT 2D

4. A geotechnical investigation presenting the results of field and laboratory work and the geotechnical evaluation with recommendations and design parameters can then be utilized by a civil engineer to prepare a stabilization plan. The cost of the geotechnical engineering work will be in the range of $7,500.00 to $10,000.00. Civil engineering profiles (survey work) and a final plan could cost as much as $10,000.00 to $15,000.00.

5. Based on our visual observations, the fillslope is deep, it encompasses the ravine from the frontage road to beyond the vacant lot of Jarl Saal's and is unstable as evident by the tension cracks in the pavement and recent slump sliding which has occurred since multiple periods of fill placement.

6. The civil engineering plan should also present drainage improvements along the top *to* collect accumulated storm water and carry it to the bottom of the ravine in a controlled manner to maximize long term stability.

We have been informed that the County is contemplating sale of the excess right of way area which we have described above as showing clear signs of failure. We do not see how the County can possibly contemplate liability free sale of this property or resolution of red tag issues involving the person who appears to admit he placed the fiil there, paves it over, and then used it without permission as his parking area, without a clear answer to the geotechnical questions raised by the history and current failure profile at the site.

If you have any questions, please call our office.

Very truly yours,

HARO, KASUNICH ASSOCIATES, INC.

John E. Kasunich
G.E. 455

JEK/dk

Copies: 1 to Each Addressee
2 to Jarl Saal

EXHIBIT 2D

KENT G. WASHBURN
ATTORNEY AT LAW

VOICE: (831) 458-9777
FAX: (831) 159-6127

kentgwashburn@compuserve.com

123 Jewell St.
SANTA CRUZ. CALIFORNIA 95060

January 18,2006

Mr. Tom Burns, Planning Director
Mr. Randall Adams, Staff Planner
County of Santa Cruz
701 Ocean St.
Santa Cruz. Ca. 95060

Re: 2000 McGregor Dr., Application

Dear Mr. Bums and Mr. Adams:

One of the strongest messages I heard from the Planning Commissioners last Wednesday is that they are very concerned about the lack of clarity in the evidence in this matter. They seemed to be directing staff, the applicant and the appellant all to work together to identify issues and come up with as much solid information and agreement as possible, as opposed to mere allegations, in advance of the February hearing.

For the moment the most important way we can cooperate in carrying out the will of the commission, it seems to me, is for me and my client to be full participants in the process. It sounded to me both on the record Wednesday and after the hearing that Mr. Tschantz and his client would prefer to have a series of closed-door meetings with staff from which my client and I are excluded. I believe, to the contrary, that only by careful collaboration of all parties in stating their positions and cooperating to test the evidence, will there be a) intelligent definition of the issues and b) comprehensive marshalling of the facts. To avoid the kind of conflict that clearly frustrated the commission last Wednesday all must be invited in to the table, not just staff and the applicant.

My client and I will do all possible to make ourselves available on short notice to meet with you and any other county representatives to take the next steps. Please include us ASAP.

The second purpose of this letter is to list the main problems and issues at this juncture as we see them, and to give some recommendations for making progress toward the truth. Here they are:

1. Is there evidence that a large quantity of fill was placed on the applicant's property and the adjoining part of the McGregor Dr. right of way in violation of the law after the riparian exception work was done? The conflict in the evidence could not be stronger. Zar and his wife categorically deny it. but not under oath. My client and the three witnesses whose statements we submitted categorically affirm it *under penalty of perjury.*

EXHIBIT 2E

We recommend that my client and his witnesses meet with planning staff and the county geologist on the site to point out where they saw the unengineered fill placed after the riparian exception was signed off. By having all parties together in one place – literally on the site – the chances for missed communication and ambiguity will be reduced insofar as it is in our power to do so. We will try to coordinate such a meeting at staffs convenience.

2. Is there evidence of slope failure and soil instability on **a)** the applicant's property and b) the portion of the County's McGregor Dr. right of way he has been allowed to take over as his parking lot? In my opinion both properties must be addressed. It is clear that the application cannot be successful unless Mr. Zar acquires the portion of the right of way, so we cannot do a meaningful job of laying out the issues and needed information for the commission without checking to see if there are signs of soil problems on that parcel as well as Zar's.

3. Is there evidence that the applicant has taken over **a** portion of the County right of way and made extensive alterations to it in violation of the law without any encroachment or other permits from the Public Works Department? It is clear from the materials submitted by the applicant and the statements made at the hearings that he is responsible for whatever was done.

4. Does the evidence – including but not limited to aerial photographs, building permit records, Santa Cruz County Planning Department enforcement files, and Santa Cruz County Assessor's records - show that the **1963** building permit for an 800 square foot structure which Zar claims as being for his structure was actually for **a** demolished structure that was actually on the appellant's parcel? We believe the best way to address this would be to have a meeting in your offices in the very near future, and to include Jessie Mudgett of the Assessor's office and Kevin Fitzpatrick of Code Enforcement to sort out what the records, diagrams and photos mean.

5. Does the evidence show that the county sewer line or **a** lateral thereof runs underneath the structure? I believe the best way to address this is to ask Public Works to designate someone to search their files completely and come up with all the evidence they can about the location, and then to make that available to all sides for analysis and comment.

6. What percentage of the *existing structure* and other improvements on the Zar property was built ***as it now*** *exists* with the county permits required by law at the time of construction? It should be easy to tell from ground level and aerial photos and the Assessor's records just when the building acquired its present configuration and when the other amenities were added. We believe it will show that very, very little of the structure and surrounding site *as if now exists* was built with permits. This bears directly on whether it is possible in all intellectual honesty to give this project an "existing facilities" categorical CEQA exemption. The facilities cannot be said to be pre-existing for CEQA purpose if they were built after CEQA took effect and in violation.

I will be in touch very shortly to try to schedule the first meeting.

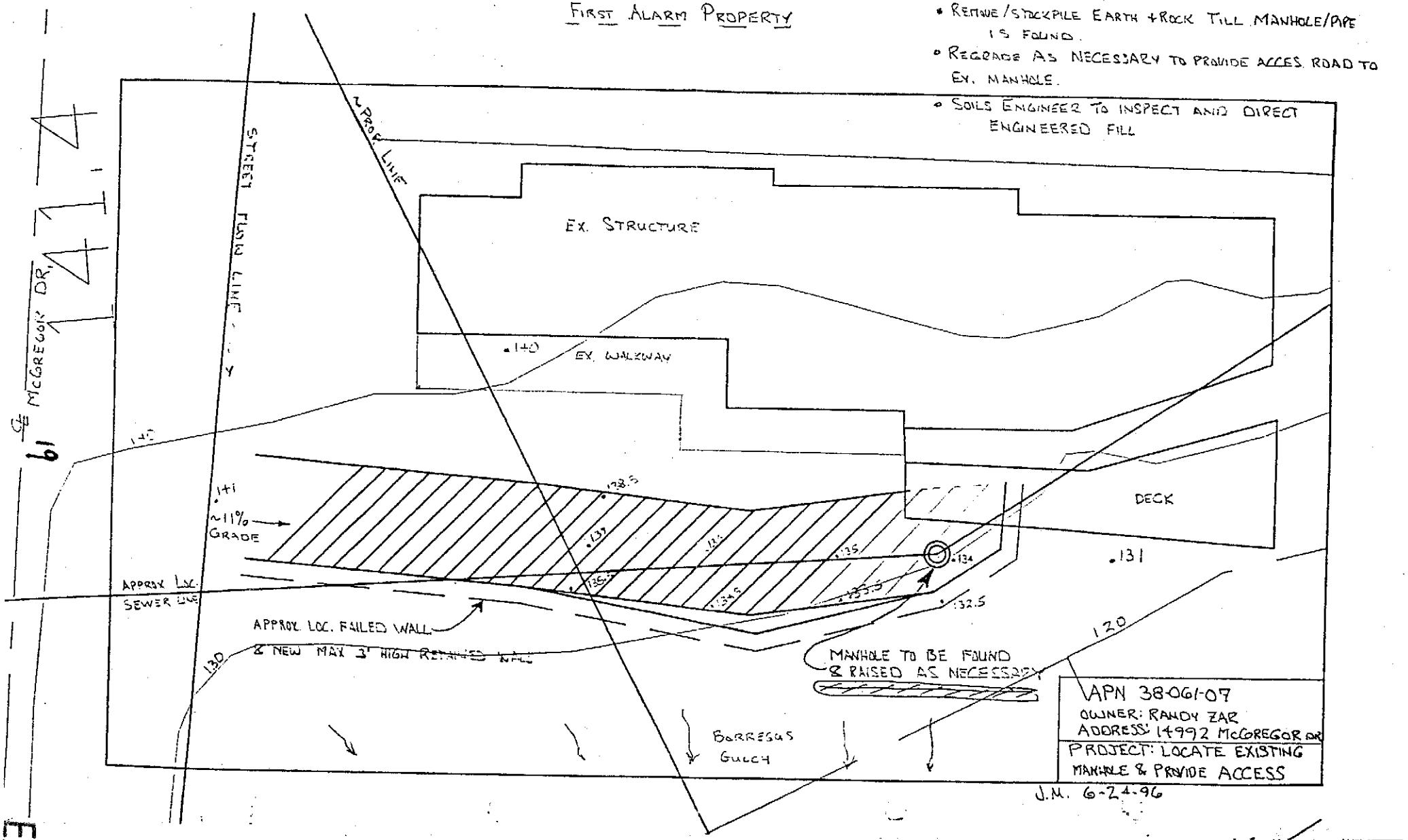
Very truly yours,

Kent G. Washburn

CC: Mr. Imai

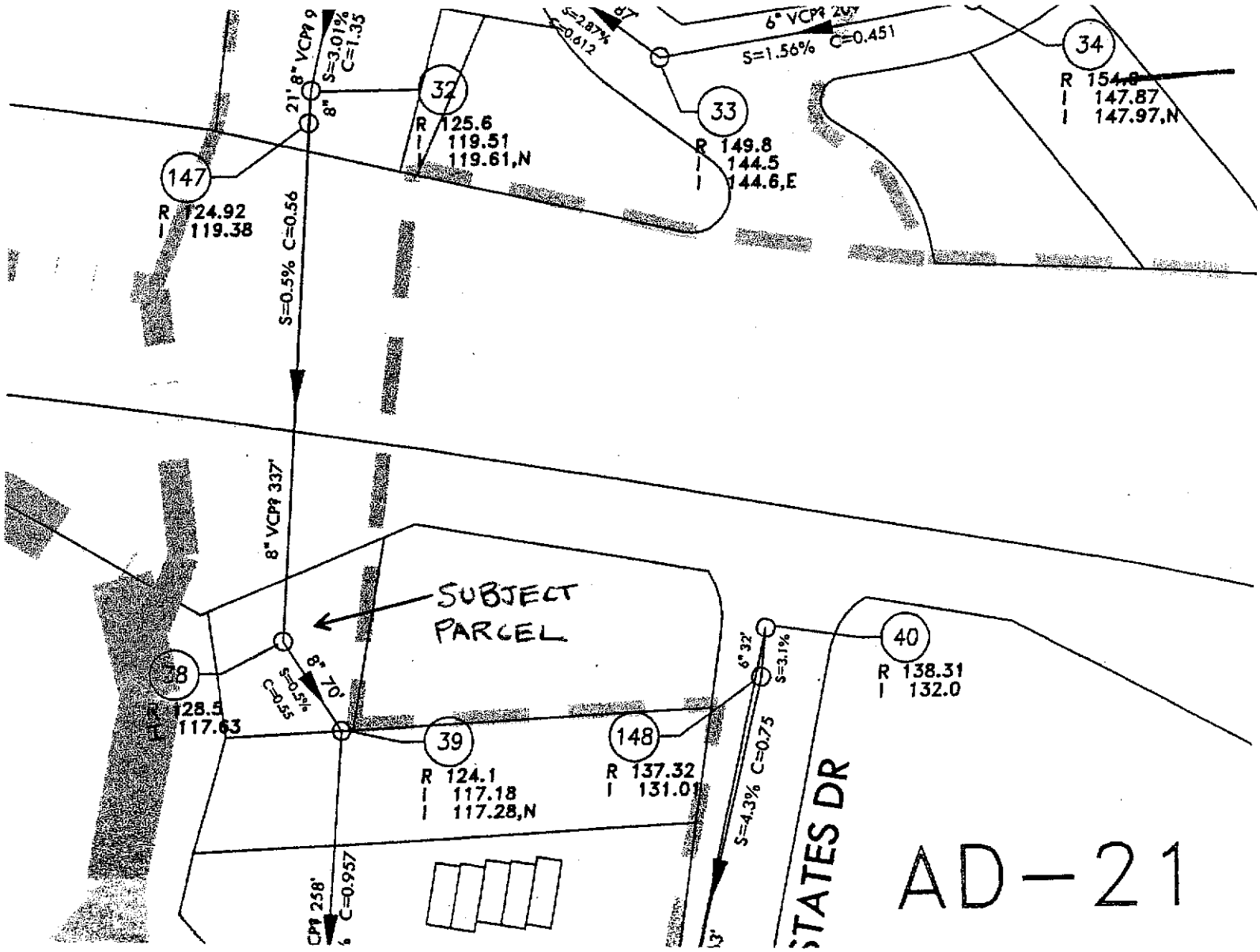
EXHIBIT 2E

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



RIPARIAN EXCEPTION 96-0396

EXHIBIT 2F



SEWER SYSTEM DIAGRAM

EXHIBIT 16

COUNTY OF SANTA CRUZ
PLANNING DEPARTMENT

Planning Commission
Date: 3/8/06
Agenda Items #: 7.1
Time: **After** 9:00 a.m.

Item 7.1: 04-0650

STAFF REPORT
TO THE PLANNING COMMISSION

EXHIBIT 2H

Letter to the Planning Commission, 1/11/06 agenda date, with attachments

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
Don Bussey
Deputy Zoning Administrator
County of Santa Cruz

Attachments:

1. Appeal letter, prepared by Kent Washbum, dated 12/2/05.
2. Letter from neighbor's representative, prepared by Kent Washbum, dated 11/17/05.
3. Letter from applicant's representative, prepared by Kim Tschantz, dated 11115105.
4. Staff report to the Zoning Administrator, originally heard on 10/7/05 and continued to 11/18/05.

KENT G. WASHBURN
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123 Jewell Street
SANTA CRUZ, CALIFONIA. 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 Rorregas 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.

ATTACHMENT 1

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.

ATTACHMENT 1

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 rhe law if equally situated and law ahiding 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 rhe 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

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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 pian 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 declaratioes are accompanied by the unsworn tetter of a fourth expert.

Several things are noteworthy about these three deciarations.

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 tot he **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 coopetation in information gathering, it is important to summarize the history of violations so that the decision maker has a complete picture.

Tab 3 ofthe accompanying documents contains reams of reports and memoranda in which various county employees document *the* history of violarions, 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 ofresidential trailers on site w/o permits in violation of zoning
- further recent retaining wall and drainage work in riparian comdor 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* far 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 applicatiaa 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 I943 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 buiit, 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 partakes more ofjustifying 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 wen to say that they have no value information.

Thus the public remains completely in the dark about one ofthe 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 io 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 staff report 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 O. 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 & + Hano Kusumoto 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 niade 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 die laws of the Stale of California that the foregoing is true and correct and is executed at Santa Cruz Count. Ca. on Oct. 25, 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 1was 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 or. 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, 1 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 hnw 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. 1observed 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

Jeff Mill

ATTACHMENT 2

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 soils 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 yam ago I obscrvcd a very large soil placement project taking place dong 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 ut good construction practice, for example, io use that kind of equipment to place and compact engineered fill because it is so difficult and time consuming top achieve proper compaction with it, It EM 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 ares adjacent io McGregor Dr. to the level of McGregor Dr. This area I am describing is now occupied by a parking lot I rm told is actually on tho 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 tinder 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@cypressenv.com

November 15,20005

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 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 Washbum 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 staffreport. 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 ofviolations 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

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 though with obtaining Building Permit and building inspections for renovation of the commercial building on the site.

- 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.

- 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 h i 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 fill 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 finaled 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 sbown on Exhibit A of the permit. This storage area shall be visually screened at all times as shown on Exhibit A.**

ATTACHMENT 3

- Conditions I, II.A.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 fmdings that support reducing the rear yard setback for the main part of the building while fmding it problematic to for the 163 sq. ft. addition. In other words, the Variance fmdings 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 *size* 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. ft. addition.

Buffers and harriers currently exist which protect adjoining parcels from any potential impacts or land use conflicts that could he generated hy the 163 sq. ft. addition. Therefore a reduction of the rear yard setback to 5feet ***will*** *not he 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. ft. 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 fmdings in the approval *of* this project.

Sincerely,

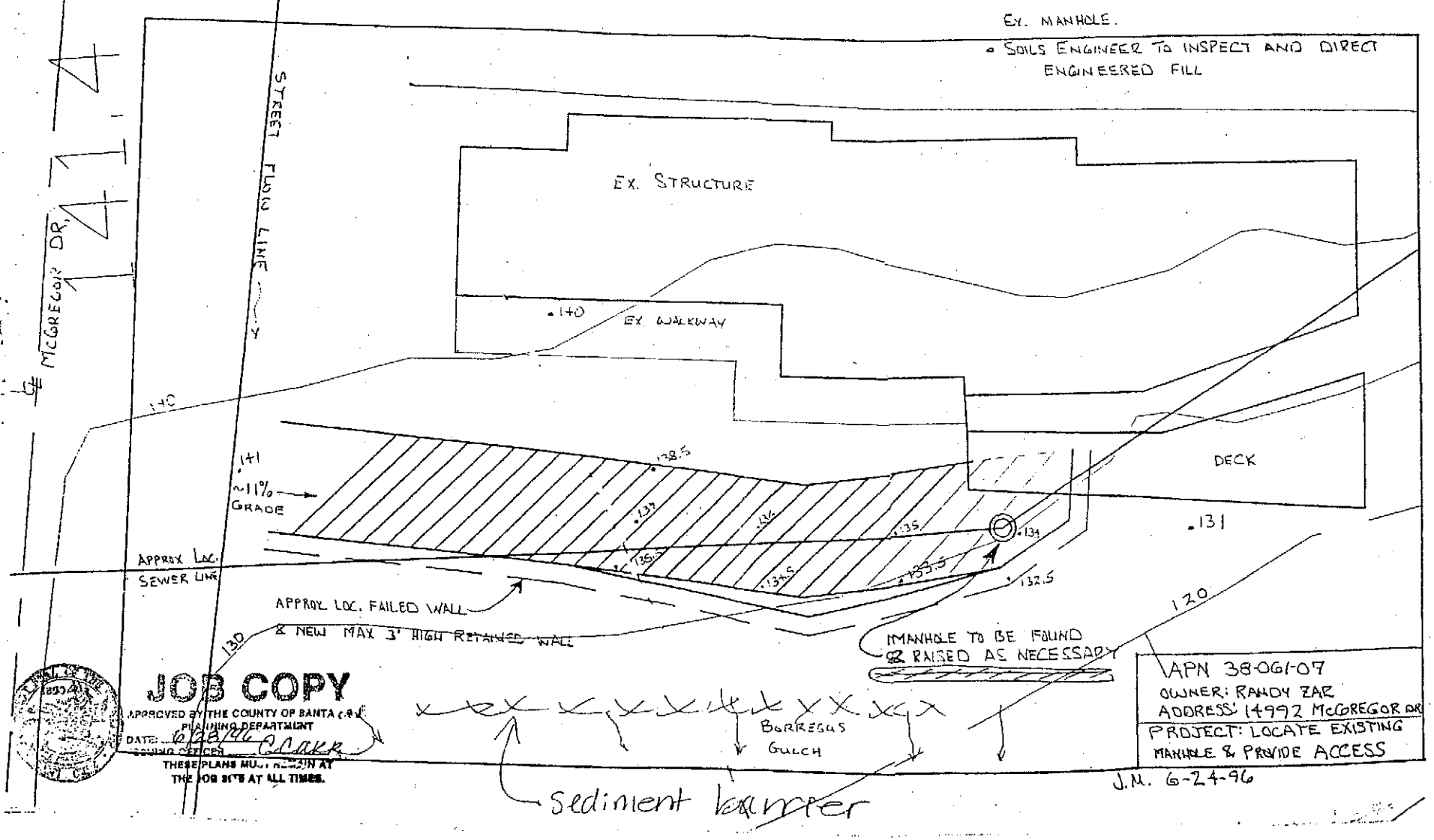
Kim Tschantz, MSP, CEP

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 fmdings

cc: Randy Zar
Alvin Zar
David Imai

EXHIBIT A

PERMIT NO. 96-0396



TO

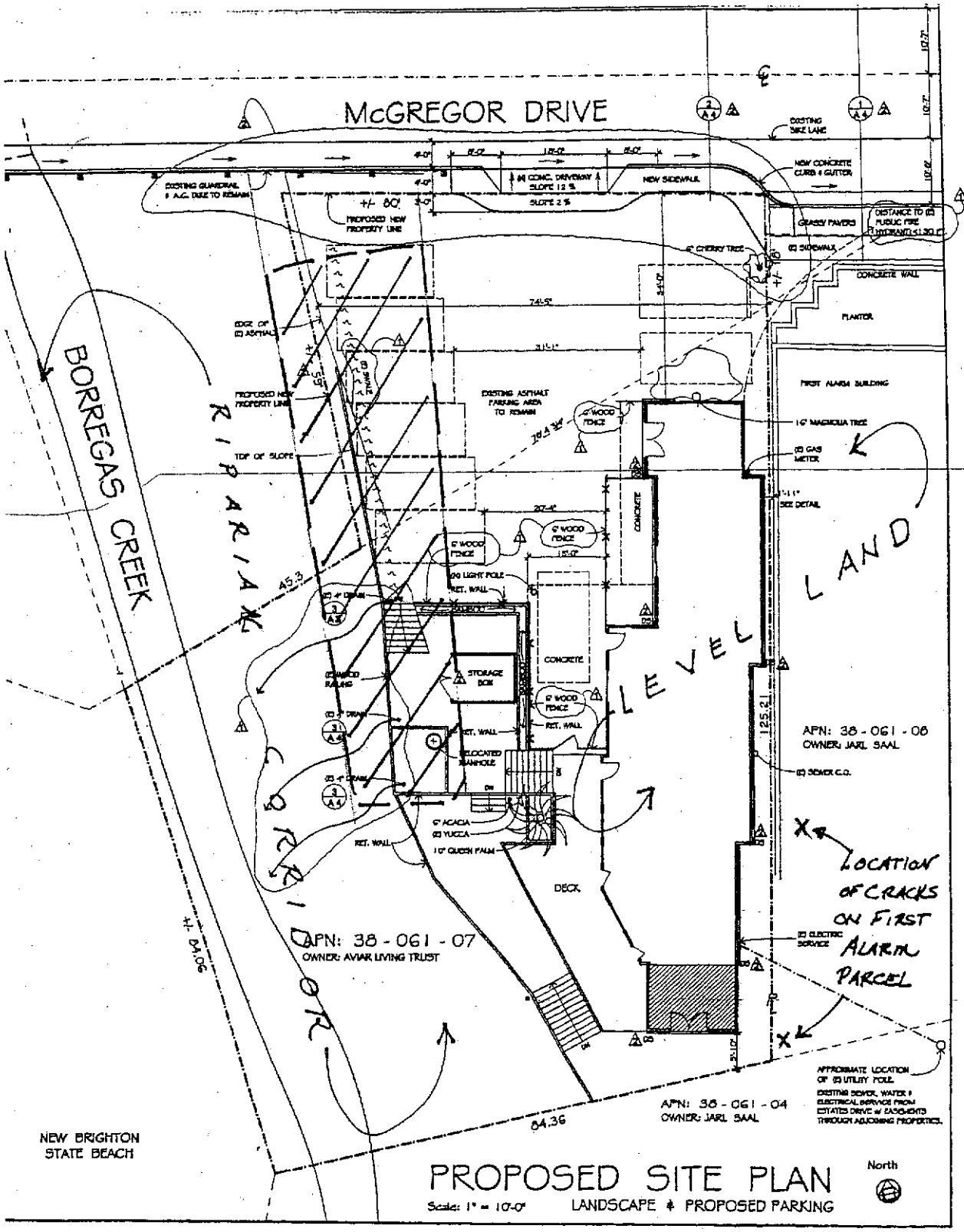
22

ATTACHMENT 3

Exhibit A

Site Plan Showing Disturbance Zone under Permit 96-0396
and Location of Cracks on First Alarm Parcel

Exhibit B



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

North

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.

GRADING AREA COMPLETED IN 1991

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

SHEET A1a OF 8 SHEETS

ATTACHMENT 3

Reynolds Associates Geotechnical & Civil Engineers

962234-S61-G6
17 April 1996

Mr. Randy Zar
P.O. Box 1282
Aptos, CA 95001

Subject: 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 sail. 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 place 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.

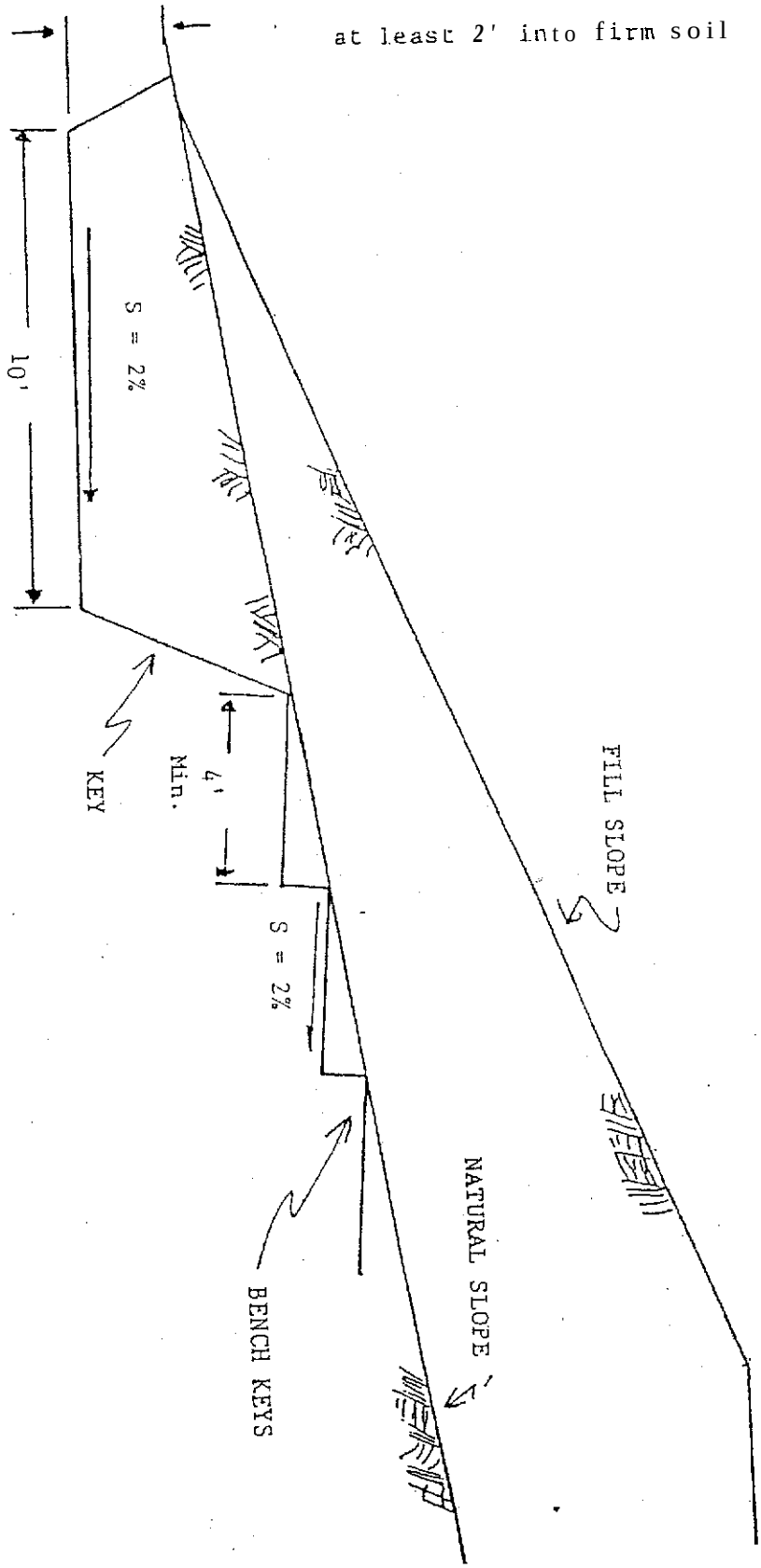
Very truly yours,
REYNOLDS, ASSOCIATES

John R. Scott

REGISTERED PROFESSIONAL ENGINEER
JOHN R. SCOTT
NO. C54591
Exp. 12-31-99
CIVIL
STATE OF CALIFORNIA

JRS: js

Copies: 4 to Mr. Randy Zar



Reynolds Associates

FIGURE NO. **1-Keyway** Detail

Reynolds Associates
Geotechnical & Civil Engineers

Exhibit D

962234-S61-G6
27 May 1997

Mr. Randy Zar
P.O. Box 1282
Aptos, CA 95001

Subject: 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 testinq associated with the new retaining wall construction was outside the scope of the services provided by our office.

Should you have any further question's, please contact this office.

Very truly yours,
REYNOLDS ASSOCIATES

John R. Scott

REGISTERED PROFESSIONAL ENGINEER
JOHN R. SCOTT
NO. C54591
Exp. 12-31-99
CIVIL
STATE OF CALIFORNIA

JRS:js
Copies: 4 to Mr. Randy Zahr

805 East Lake Avenue, Watsonville, CA 95076 • (408) 722-5377 • Fax (408) 722-1133
Monterey (406) 375-8540 • Salinas (408) 754-2033

TABLE I

Summary of Laboratory Test Results

Sample NO.	Dcscription	Max. Dry Density p. c. f.	Opt. Moisture Content %
1	Grey brown SILT w/gravels ½" to 1½"	132.5	6.5
2	Light brown Sandy SILT w/gravels ¼" to 1"	116.4	13.8
3	Brown Silty SAND w/ grey binder & some gravels	121.2	12.h

TABLE II

Summary of Field Density Test Results

est Go.	Date	Location & Description	Lift	Mcisture Content %	Dry Density p.c.f.	Relative Compaction %	Soil Typ & Remark
1	7118	Center of Key & fill	+2.0	14.7	119.3	90.0	[1]
2	7/25	Center of Key & fill West side	+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 ESG	14.2	113.9	97.1	[2]
5	7/30	New pakring 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 ESG	11.4	109.6	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]

ATTACHMENT 3

COUNTY OF SANTA CR

Exhibit E

INTER-OFFICE CORRESPONDENCE

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

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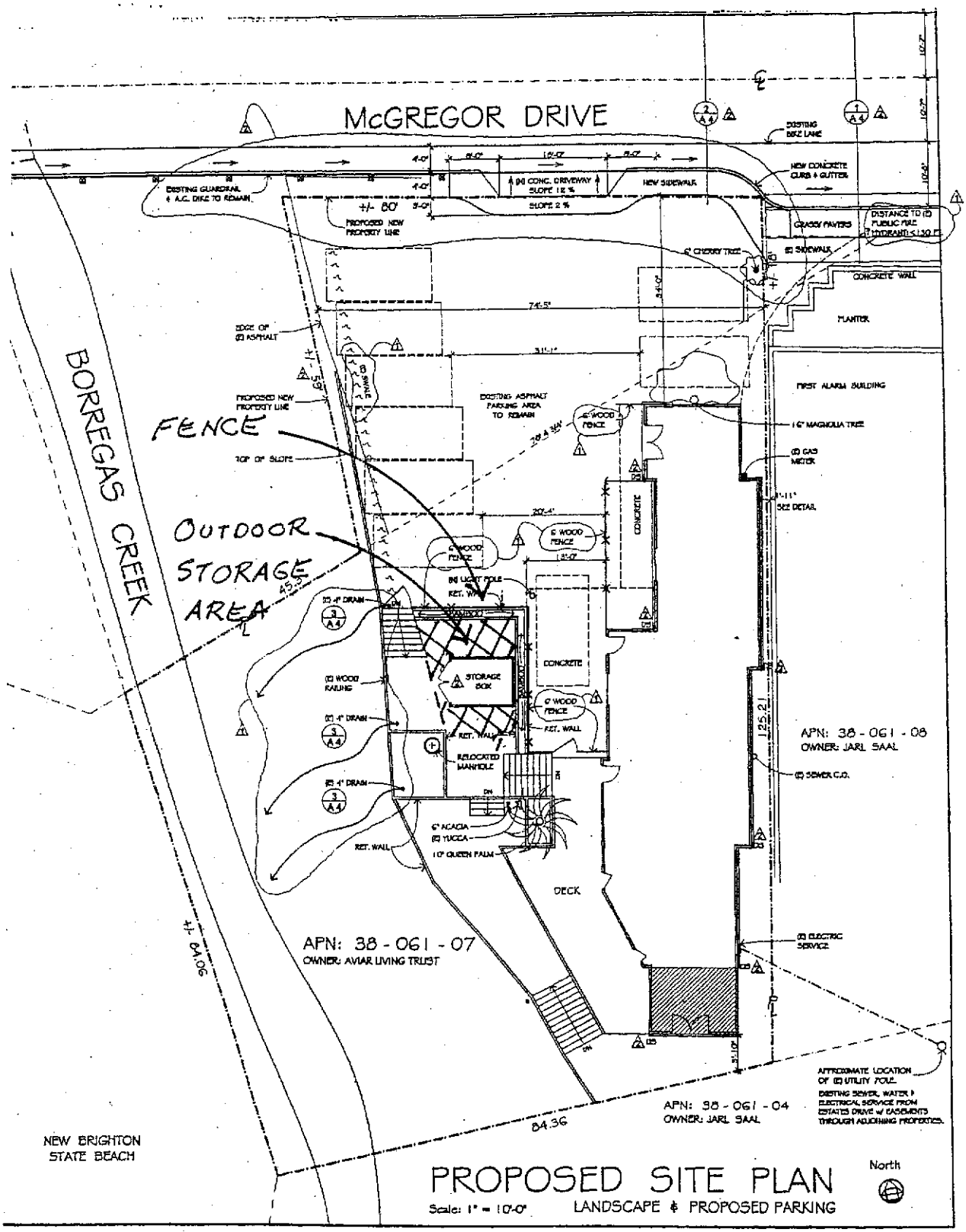
expiration Exception permit
96-0396 apn 038-061-07
is now finaled

cc: owner

ATTACHMENT 3

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

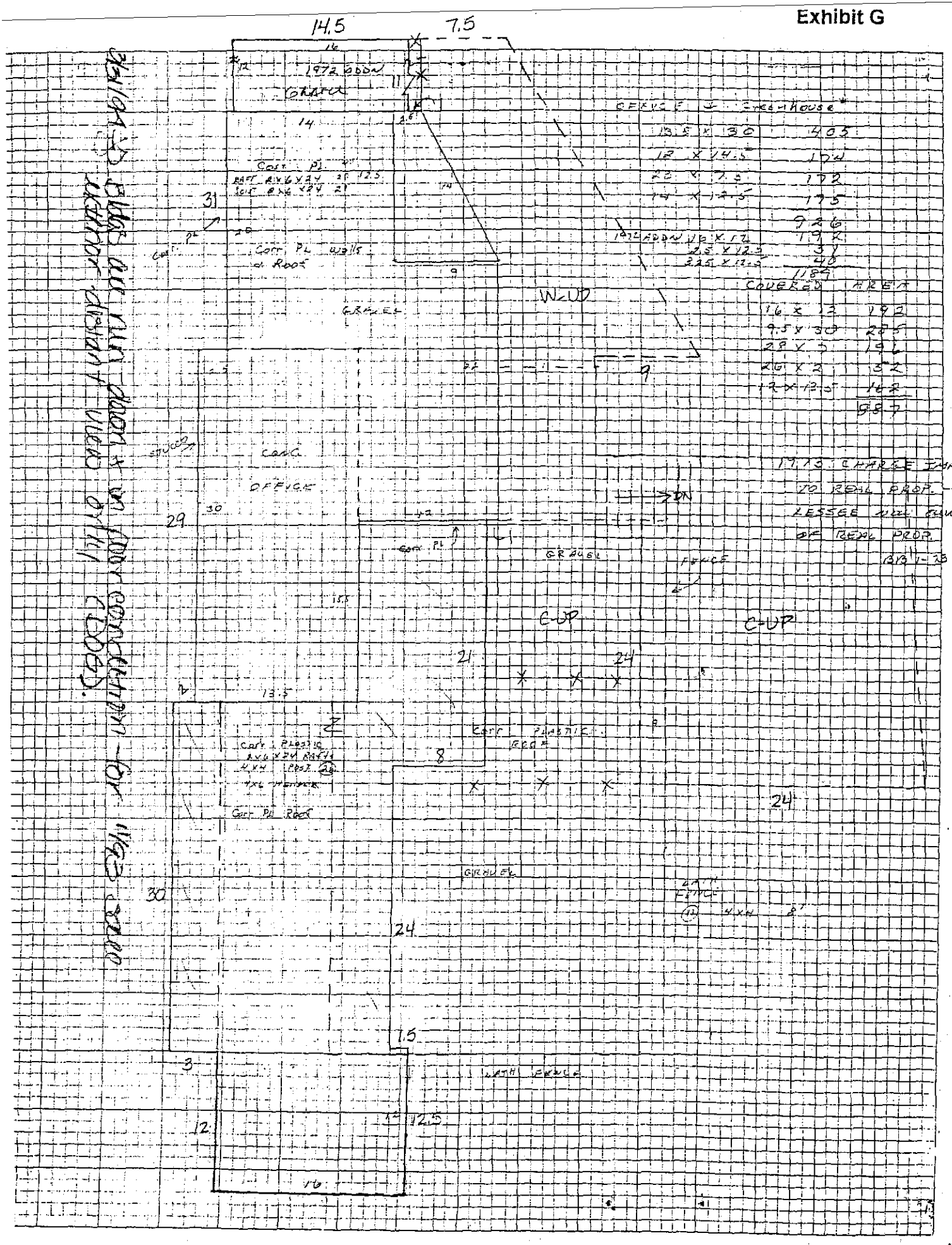
Existing BUILDING at
2000-2004 McGREGOR DRIVE
APTOS, CA. 95003
APN: 038-061-07

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

SHEET A1a OF 8 SHEETS

ATTACHMENT 3

Exhibit G



34

ATTACHMENT 3

MISCELLANEOUS BUILDING RECORD

~~BERNARD, EVA~~ — ~~PO BOX 93 APTOS~~

ADDRESS ESTATES DR @ FRONTAGE Rd.

PARCEL 38-061-87

SHEET 21 OF 21 SHEETS

ATTACHMENT 3

DESCRIPTION OF BUILDINGS

Bldg. No.	Structure	Size	Found.	Wall & Exterior	Roof Type	Roof Cover	Floor & Interior Detail	Second Story or Loft	Year Built	Est. Tot. Life Yrs.
1	OFFICE & Green hse		CONC	PART 2x4x16 V-RUSTIC Corr PL. STUCCO	2x6x24 SHED	T & G.	GRAVEL CONC Corr PL. STUCCO 3 walls	(Hist Cost) (4000)	1968	or 30
2.	COVERED AREA		N/S	2x6 4x4 (12) OPEN	2x6x24 HIP	Corr PL	Gravel		"	or 30

~~REFERENCE ONLY~~

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"

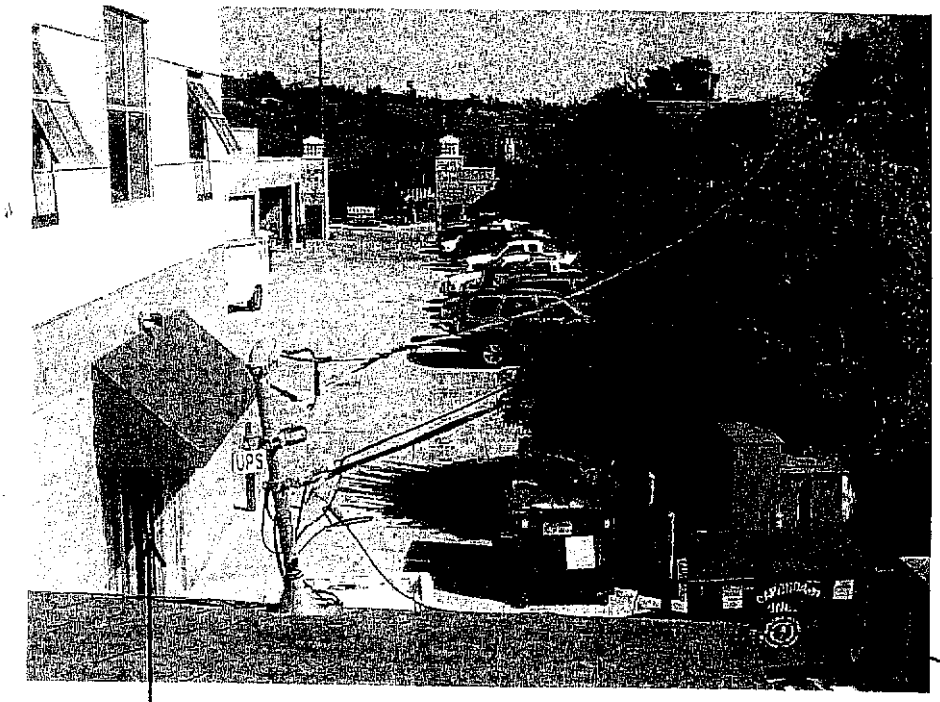
COMPUTATION

Appraiser-Date		BB 9-13-67	1967 INDEX			BB 1-9-73	1972 INDEX			BB 2-13-78	1977 INDEX			MK 12/16/87			
Bldg. No.	Area	Unit Cost	Cost	% Good	R.C.N. L.N.D.	Unit Cost	Cost	% Good	R.C.N. L.N.D.	Unit Cost	Cost	% Good	R.C.N. L.N.D.	Unit Cost	Cost	% Good	R.C.N. L.N.D.
1	~~926~~ 1189	2.50	2315	100	2315	2.50	2972	88	2600	6.00	7132	72	5000	87 Rdc			9640
2	887	1.00	887	100	887	1.25	1108	88	1000	2.50	2217	72	1500				
														87-S			2500
						TO	REAL PROP. TO BO 1-9-72										
Total					3202				3600				6500				

Appraiser-Date		3/31/94	1993 S														
Bldg. No.	Area	Unit Cost	Cost	% Good	R.C.N. L.N.D.	Unit Cost	Cost	% Good	R.C.N. L.N.D.	Unit Cost	Cost	% Good	R.C.N. L.N.D.	Unit Cost	Cost	% Good	R.C.N. L.N.D.
1	1189				4000												
2	887				1000												
Total					5000												

~~REFERENCE ONLY~~

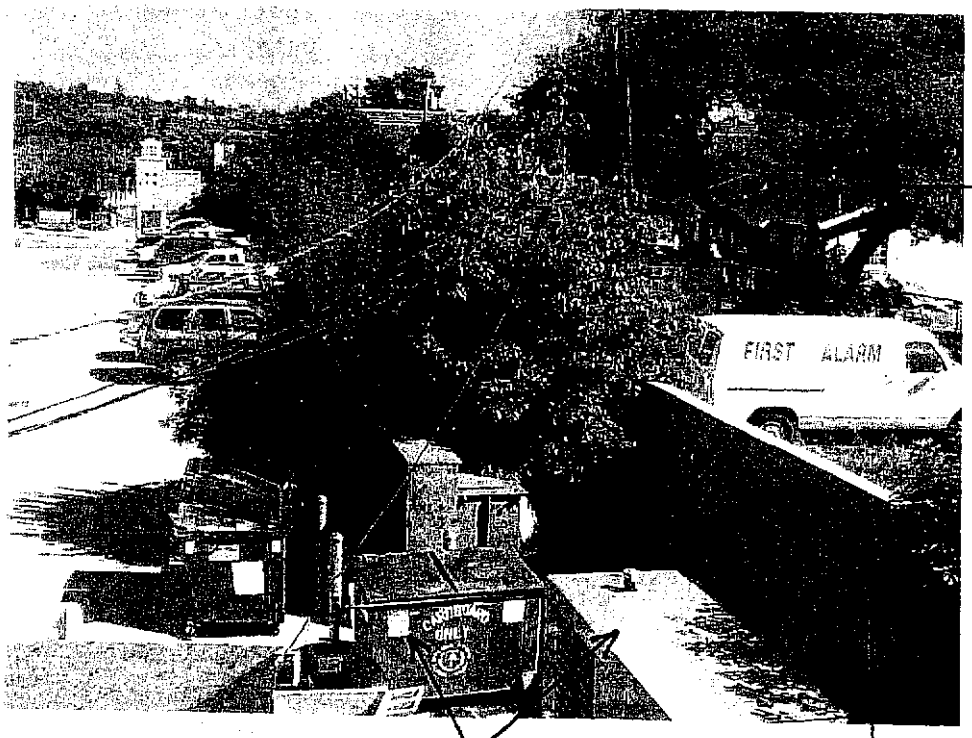
View *of* 30 foot rear yard setback area *of* the First Alarm parcel **EXHIBIT H**



Trash area

Main building entry

Residential parcel

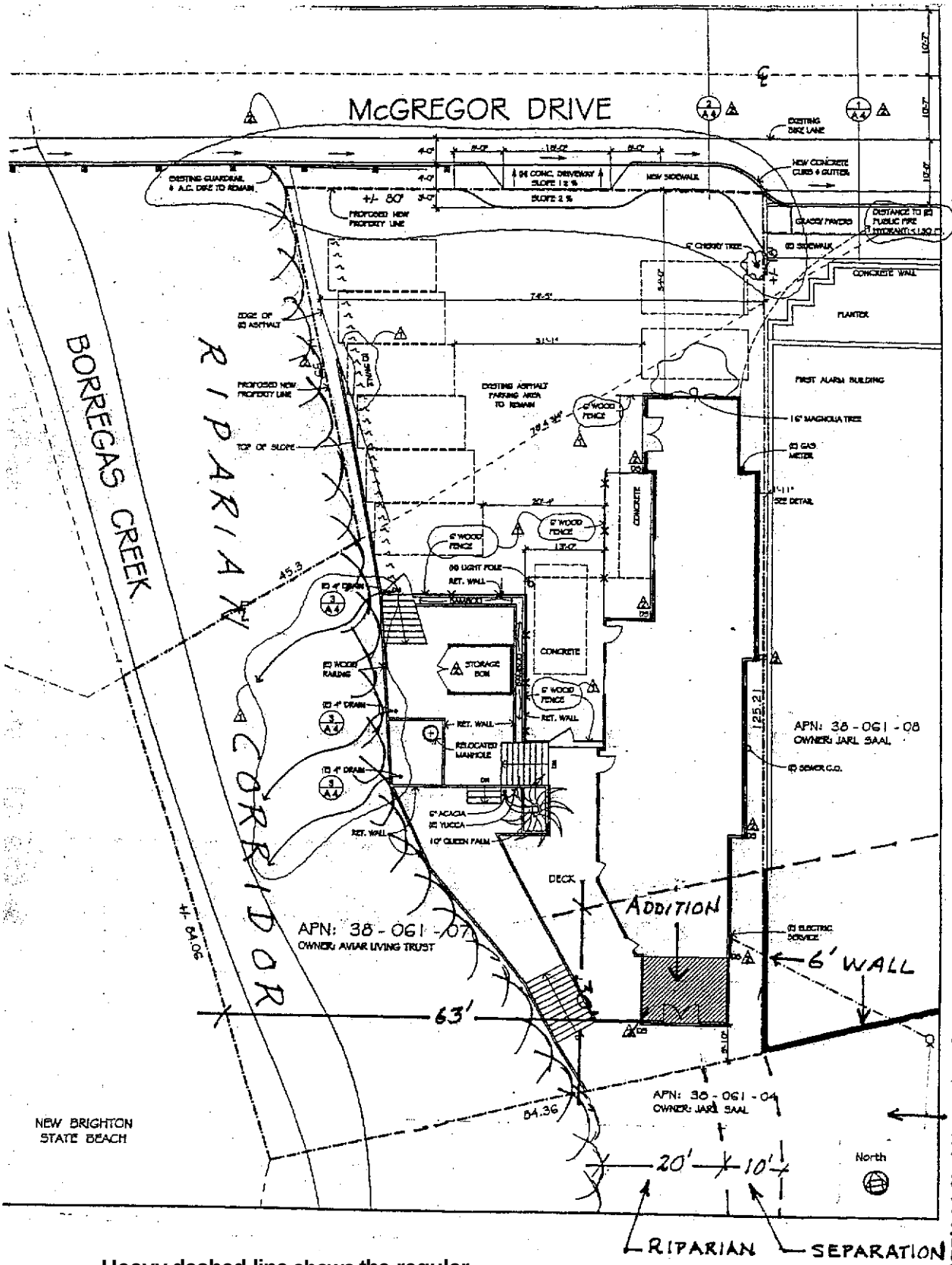


Trash **area** and generator

Wall at property line

Site Plan Showing Buffering Between the Project and Adjoining Parcels

Exhibit I



OWNER:
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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

SHEET A1a OF 8 SHEETS

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.

ATTACHMENT 3

Application No.: 04-0650
APN: 038-061-07
Owner: Alvin Zar, et al

EXHIBIT J

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 constraned by the ripaian corridor and associated steep slopes, at the west side ofthe 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 4Q0sq. **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 not any other adjoining parcel.

3. THAT THE GRANTING OF SUCH VARIANCES SHALL NOT CONSTITUTE A GRANT OF SPECIAL PRIVILEGES INCONSISTENTWITH 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 ofthe riparian comdor and the encroachment ofthe existing structure into the 30 foot yard setback will allow a *similar* level of commercial use as found on similarly zoned parcel ofthe 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, etal.
APN: 038-061-07

Agenda Date: 11/18/85
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)

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

Permits Required: Coastal Development Permit, Commerical 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
B. Findings
C. Conditions
D. Categorical Exemption (CEQA determination)
E. Assessor's parcel map
F. Zoningmap
G. Comments & Correspondence

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 comdor
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 comdor 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 Ahandonment - 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** parkmg 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 comdor, 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 incompliance 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 whch 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

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

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 fmding 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.

Application #: 04-0650
APN: 038-061-07
Owner: Alvin Zar, etal.

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 comdor, 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.

EXHIBIT B
ATTACHMENT 4

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.

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 13.11.070 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 applicantlowner 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 thispermit. (Added at ZA 11/18/05)*

11. Prior to issuance of a Building Permit the applicantlowner 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 (TJA) 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 &om 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 Octo'ber 15 of each year, at minimum intervals of one year. 4 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~~ ~~F~~ *(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 imgation 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 parkmg 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 I I N 8/05)*

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, it 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 Bolder 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'sfees 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. 'SuccessorsBound. "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 Proiect** 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. X Categorical 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.

_____ Date: 4/18/05
Randall Adams, Project Planner

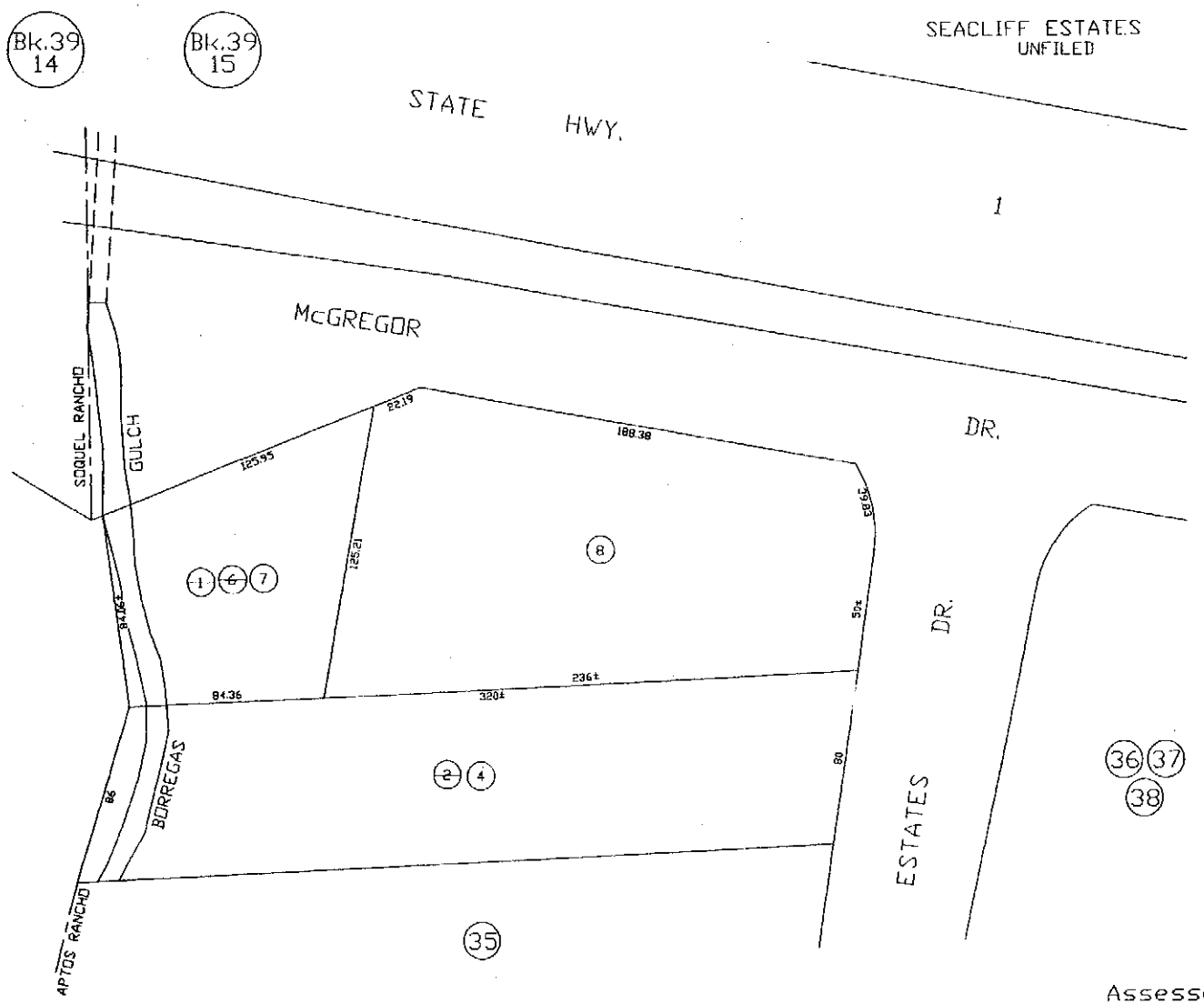
EXHIBIT D
ATTACHMENT 4

FOR TAX PURPOSES ONLY

APTOS RANCHO
POR. SECS. 12 & 13, T.11S., R1W., M.D.B. & M.

Tax Area Code
69-273

38-06



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

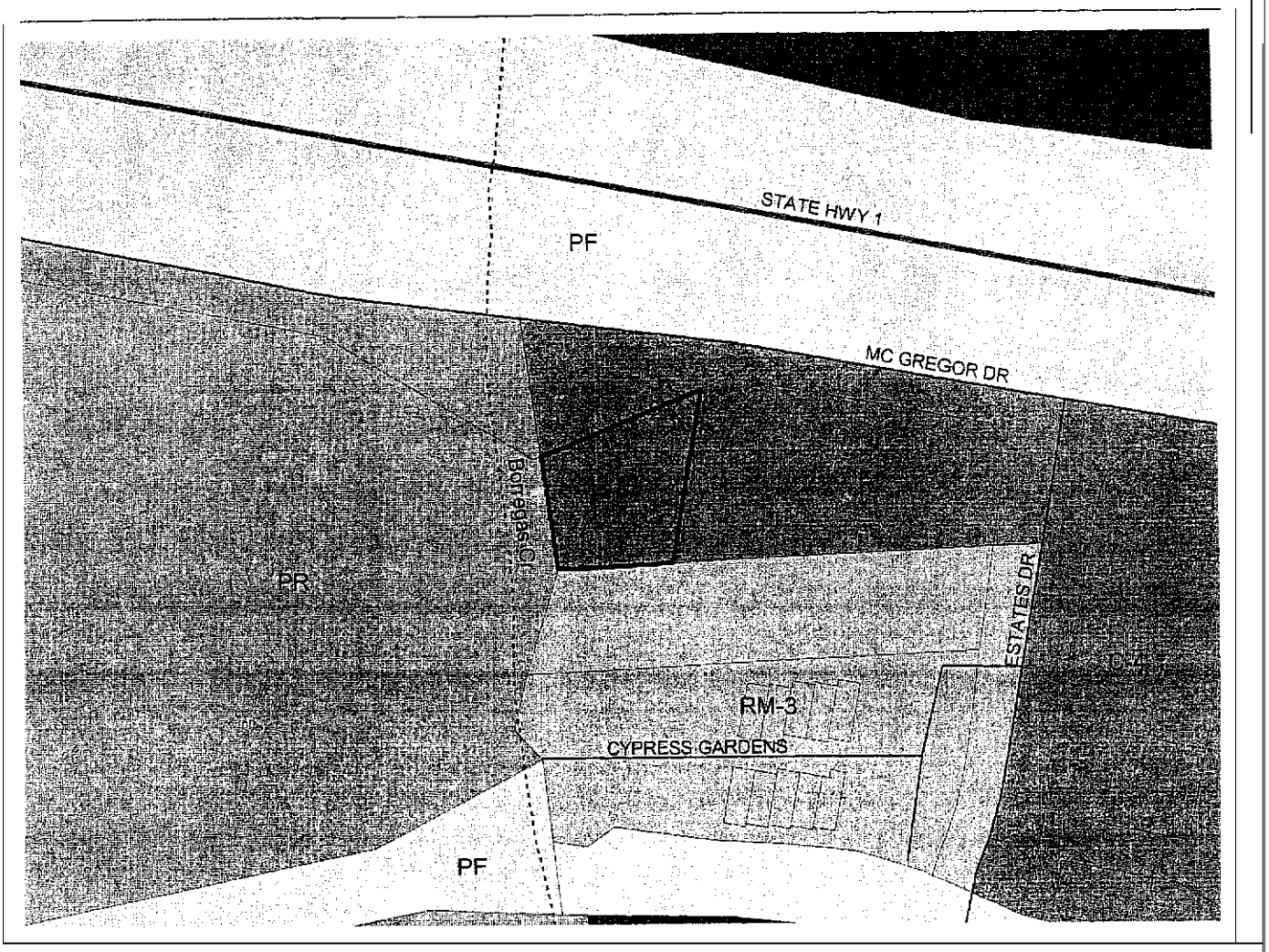
Assessor's Map No. 38-
County of Santa Cruz,
Oct, 1997

Electronically Redrawn 10/28/97 wtp
Rev 4/30/98 KSA (CA)
Rev 4/26/01wm (changed page refs)

56

EXHIBIT E
ATTACHMENT 4

Zoning Map



200 0 200 400 600 Feet

Legend

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

N

Map created by Santa Cruz County Planning Department: January 2005

EXHIBIT F

COUNTY OF SANTA CRUZ
DISCRETIONARY APPLICATION COMMENTS

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 RCBIN 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 constructa 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 buiiding permits. This application is to recognize the existing commercial use but not the structure. Building permits for the structure will be required after the Develcpment Permit *is* approved. This fully addresses the posted violation of a use witout a developoent permit. (KMF)

Code Compliance Miscellaneous Comments

LATEST COMMENTS HAVE NOT YET EEEN 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 orovide a drainage plan that describes how ail of the proposed or unpermitted impervious areas are to drain. Describe the downstream flow paths (on and

EXHIBIT G
ATTACHMENT 4

off-site) and demonstrate that they are adeuuate 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 arid driveway areas must go through water quality treatment pricr 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 ret 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 stornwater management staff is available from 8-12 Monday through Friday,

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

========== UPDATE3 ON MAY 10, 2005 BY ALYSON B TOM ========== Application with plans revised on 4/25/05 has been recieved. 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 nc notes on the site plan describing where tlie 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 iniet 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 recieved and is complete with regards to drainage for the discretionary stage. The application now includes adding water quality treatment for the parkingldriveway runoff and per converasation 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 ana rock section without impacting adjacent properties. Please see miscellaneous comments for issues to be addressed prior to building pernit issuance.

Dpw Drainage Miscellaneous Comments

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

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

EXHIBIT G
ATTACHMENT 4

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

1) Please add nates to the plans describing the runoff path for the roof discharge of the unpermitted section *of* buil1ding

2) Please submit a copy *of* a notorized, 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 ti-e 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 Moeday 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 transition shall be necessary from the end of the sidewalkthe pavement.

If you have any questions please contact Greg Martin at 831-454-2811. ========== UPDATED 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* he 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 ofthe 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

EXHIBIT G
ATTACHMENT 4

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

========= REVIEW ON JANUARY 24, 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 72. Plars 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 EEEN 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 **TOD:** *(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 an 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-cast" 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	770.00
Total	$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, om 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

~~1972 additions~~ 263sf Office Area 405sf Greenhouse 521sf

Open Area 887sf

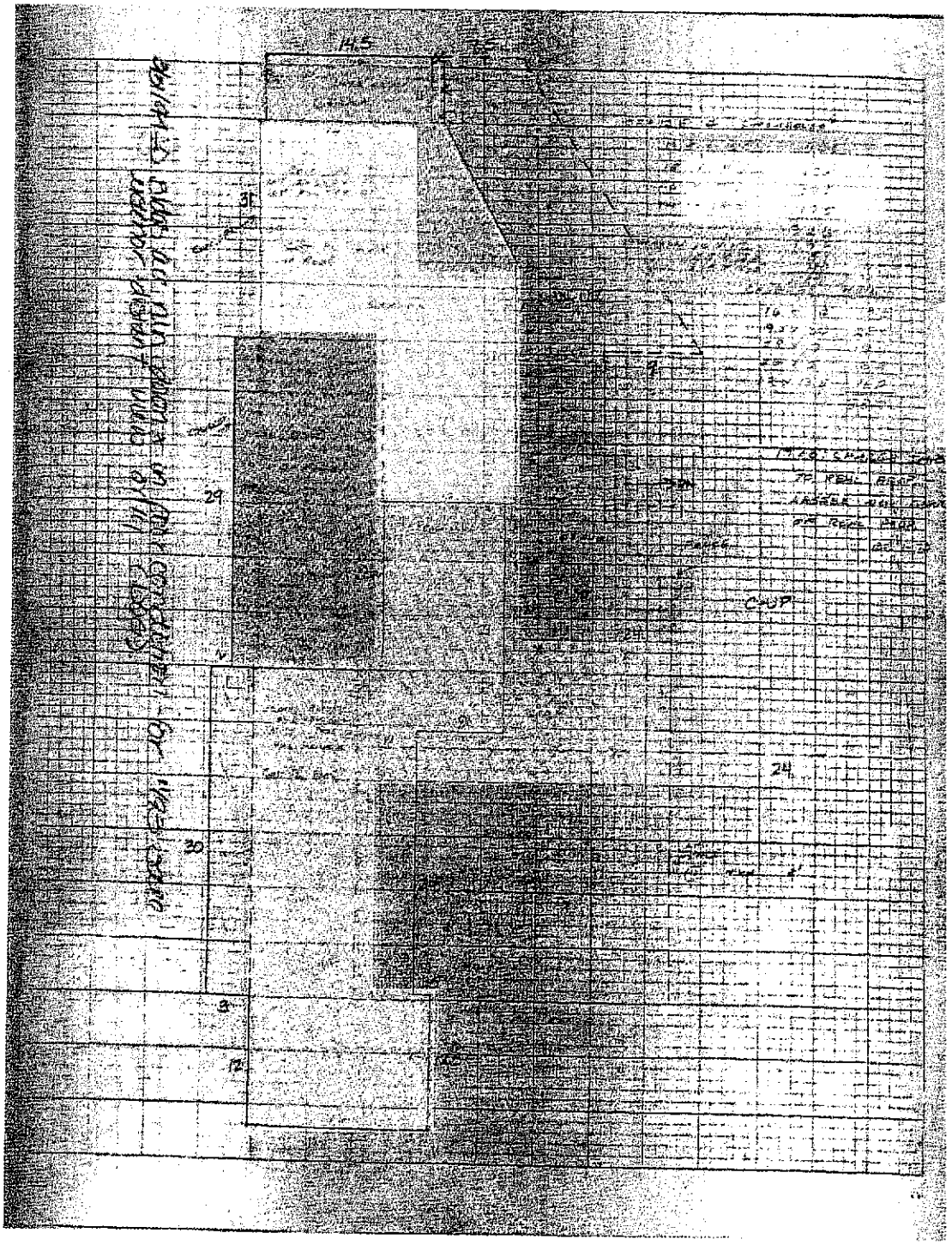


EXHIBIT G

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.

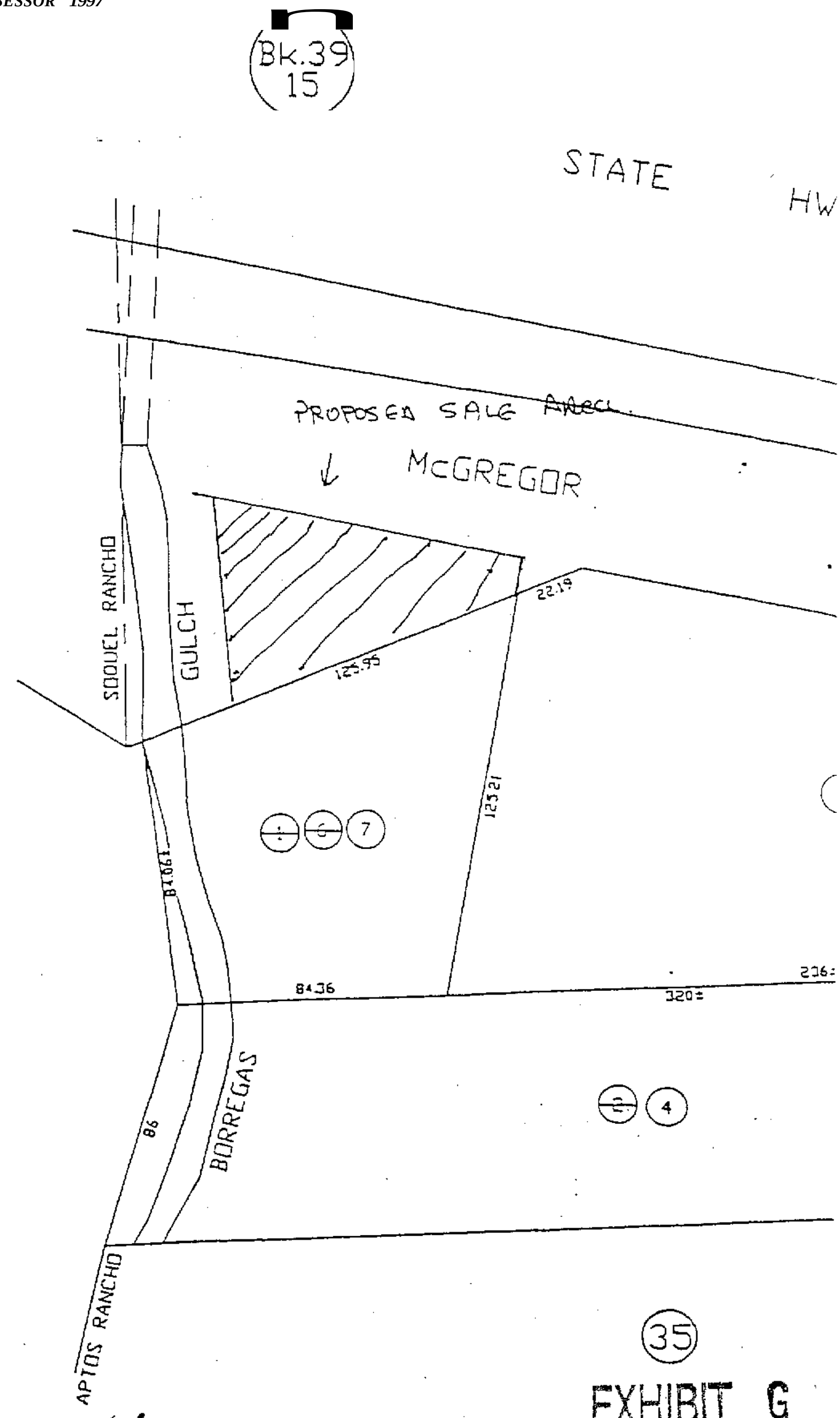
SCL
Attachments

EXHIBIT G
ATTACHMENT 4

FOR TAX PURPOSES ONLY

APTOS RA

PUR. SECS. 12 & 13, T.1



tronically Redrawn 10/28/97 wrlp

66

EXHIBIT G

ATTACHMENT 4

COUNTY OF SANTA CRUZ

INTER-OFFICE CORRESPONDENCE

Date: April 33, 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

EXHIBIT G
ATTACHMENT 4

FOR TAX PURFUSES ONLY

THE ASSESSOR MAKES NO GUARANTEE AS TO MAP ACCURACY NOR ASSUMES ANY LIABILITY FOR OTHER USES. NOT TO BE REPRODUCED. ALL RIGHTS RESERVED.

APTOS RA

POR. SECS. 12 & 13, T.1

Bk.39
15

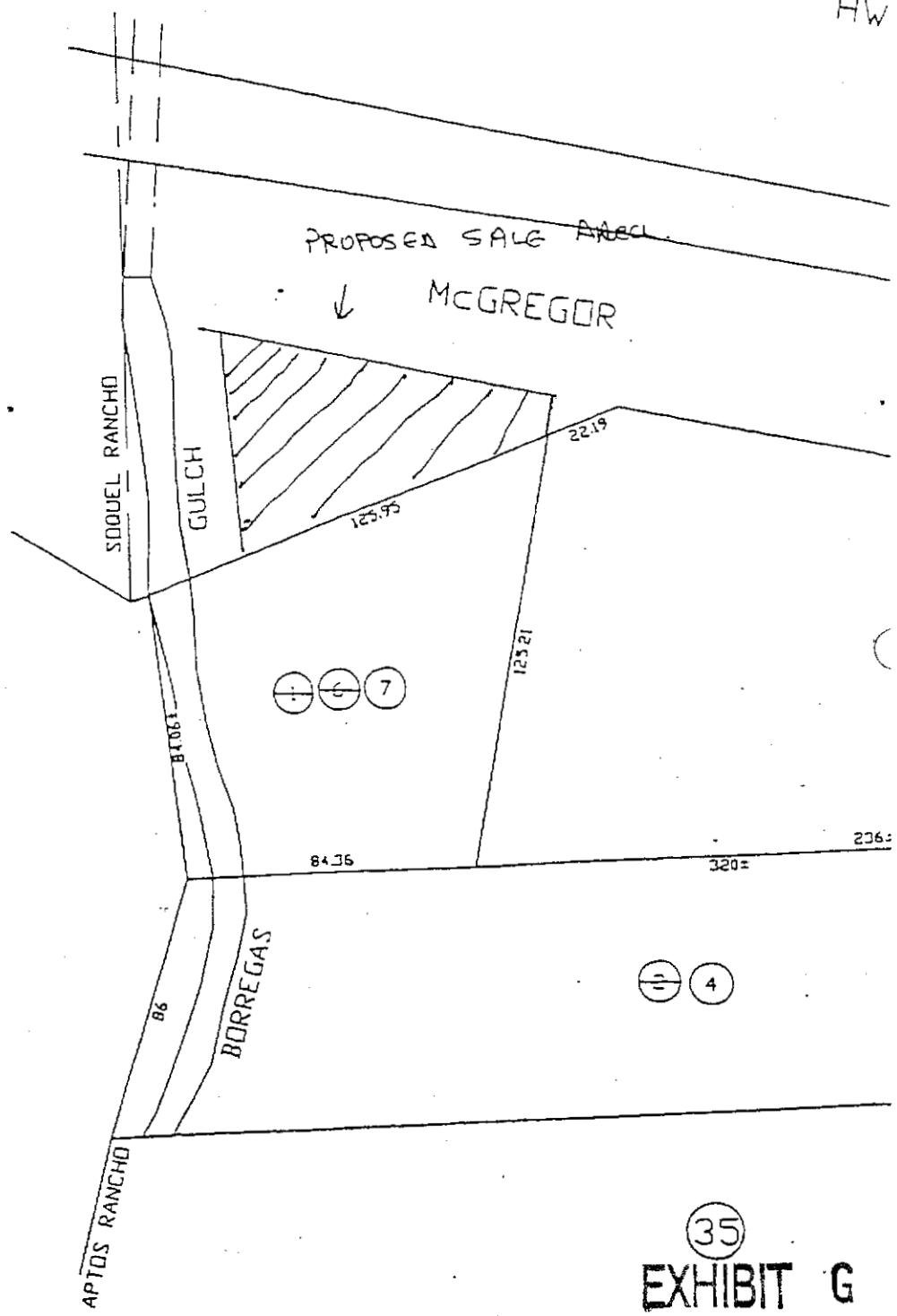


EXHIBIT G

Note - Assessor

ATTACHMENT 4

Electronically Redrawn 10/28/97 wrlp

COUNTY OF SANTA CRUZ

INTER-OFFICE CORRESPONDENCE

DATE: May 4,2004

TO: Scott Loichinger, Real Property, DPW

FROM: Mark Deming, Planning

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 (APN 038-061-07) is Service Commercial, with a zoning of C-4. Tine 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 wilt make the property more conforming to the General Plan and zoning designation.

cc: Cathy Graves

EXHIBIT G

ATTACHMENT 4

COUNTY OF SANTA CRUZ
PLANNING DEPARTMENT

Planning Commission
Date: 1/11/06
Agenda Items #: 10
Time: After 9:00 a.m.

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@sbcglobal.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 Coinmission,

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. Washbum: 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. Washbum'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. Washbum and Mr. Saal remain the appellants.

Many of Mr. Washbum'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. Washbum 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 Fitzpatriclc 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 neverprovided 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. Washbum'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 facro* 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' 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-o-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 finaled 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 comdor is totally vegetated with both native and non-native species. Otherwise, it is a natural stream comdor 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 55% 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 1562 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 5,157 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 typicallyrequire 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 Washbum 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. Washbum'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 Washbum 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, modem 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

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 Tschantz
Randall Adams
Kent Washbum
051220pc.wp

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

I, David Y. Imai, deciare 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 1474/1594 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.

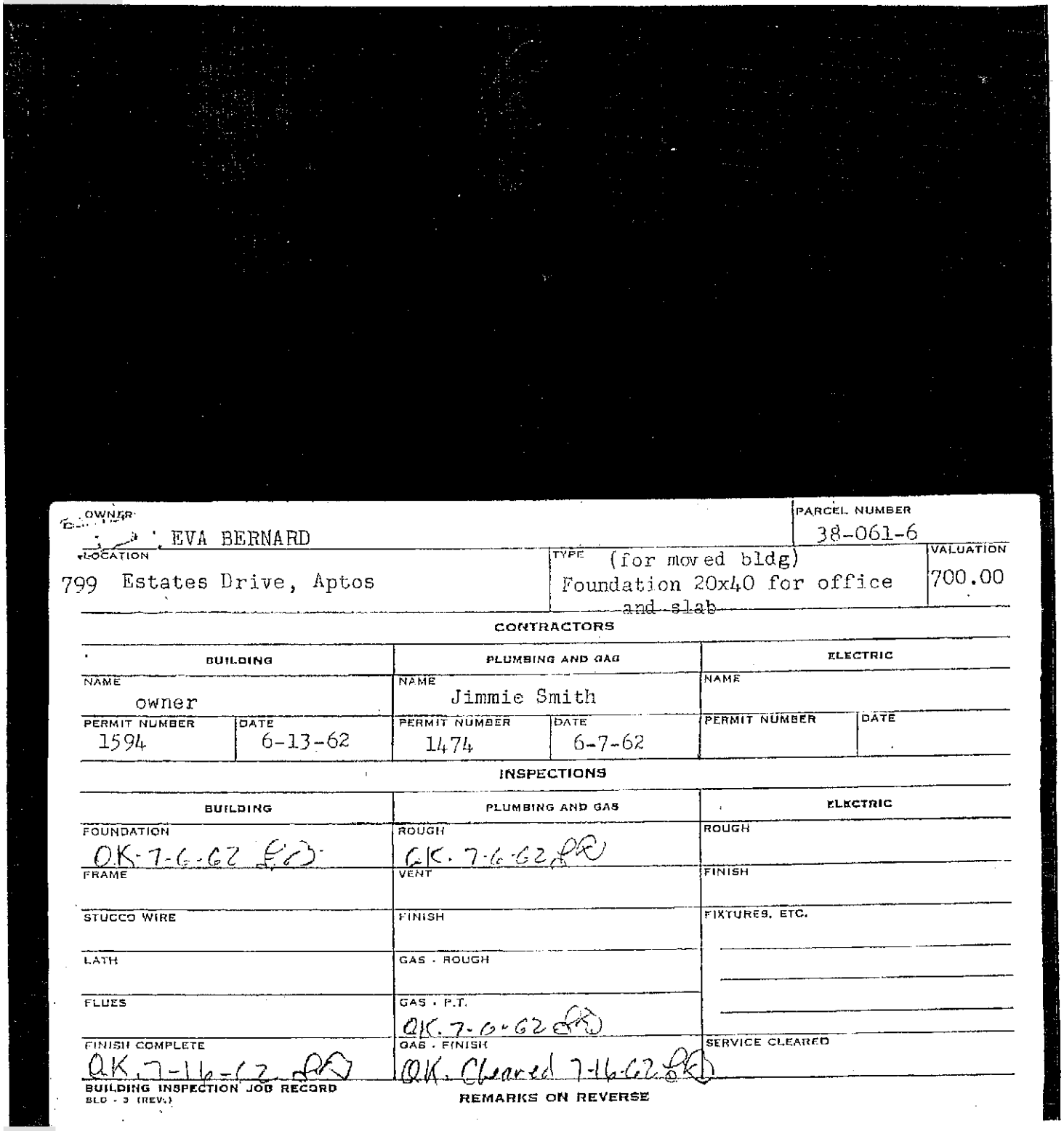
8. Attached hereto as exhibit "F" is a true and correct copy of Section 15301 of the California Environmental Quality Act Guidelines regarding Class 1 categorical exemptions for a project consisting of minor alterations of an existing facility, including negligible expansion of use.

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

DATED: 12/28/05

DAVID Y. IMAI
Attorney for ZAR/AVIAR TRUST

EXHIBIT “A”



OWNER: EVA BERNARD

PARCEL NUMBER: 38-061-6

LOCATION: 799 Estates Drive, Aptos

TYPE: (for moved bldg) Foundation 20x40 for office and slab

VALUATION: 700.00

CONTRACTORS

BUILDING		PLUMBING AND GAS		ELECTRIC	
NAME: owner		NAME: Jimmie Smith		NAME:	
PERMIT NUMBER: 1594	DATE: 6-13-62	PERMIT NUMBER: 1474	DATE: 6-7-62	PERMIT NUMBER:	DATE:

INSPECTIONS

BUILDING	PLUMBING AND GAS	ELECTRIC
FOUNDATION: O.K. 7-6-62 [illegible]	ROUGH: O.K. 7-6-62 [illegible]	ROUGH:
FRAME:	VENT:	FINISH:
STUCCO WIRE:	FINISH:	FIXTURES, ETC.:
LATH:	GAS - ROUGH:	
FLUES:	GAS - P.T.: O.K. 7-6-62 [illegible]	
FINISH COMPLETE: O.K. 7-16-62 [illegible]	GAS - FINISH: O.K. Cleared 7-16-62 [illegible]	SERVICE CLEARED:

BUILDING INSPECTION JOB RECORD
BLD - 3 (REV.)

REMARKS ON REVERSE

82

OWNER
A. N. LENHART

PARCEL NUMBER
38-061-6

LOCATION
Frontage Rd. near Estates Dr., Patos

TYPE
erect garden sales area 5' from property line & install 1hr. fire-resistive wall on exist. structure which is closer than 5'
install plastic over lath house and walkway

VALUATION
4,000
200

CONTRACTORS

BUILDING	PLUMBING AND GAS	ELECTRIC
NAME: L. G. Thompson	NAME: P. G. PLUMBING	NAME: Owner
PERMIT NUMBER: 3732 / 4617	PERMIT NUMBER: 4490	PERMIT NUMBER: 3861 / 4617
DATE: 6-13-67 / 8-14-67	DATE: 8-4-67	DATE: 6-21-67 / 8-14-67

INSPECTIONS

BUILDING	PLUMBING AND GAS	ELECTRIC
FOUNDATION: Also for patio OK 6-19-67 WB. OK 7-21-67 LB.	ROUGH	ROUGH: partial OK 8-4-67 LB
FRAME	VENT	FINISH: OK 8-15-67 HJ
STUCCO WIRE: OCR. 7-31-67 LB. OK 7-27-67 LB.	FINISH	FIXTURES, ETC.: OK 8-15-67 HJ
LATH	GAS - ROUGH: OK 8-23-67 LB.	Core insp. 8-10-67 HJ.
FLUES	GAS - P.T.: OK 8-23-67 LB.	
FINISH COMPLETE: OK 10-16-68 LB	GAS - FINISH: OK 8-29-67 LB	SERVICE CLEARED: OK 8-15-67 HJ

BUILDING INSPECTION JOB RECORD
BLD - 3 (REV.)

REMARKS ON REVERSE

A. N. LENHART

ROOM 224
1543½ PACIFIC AVENUE
PHONE 426-5121, EXT. 257

COUNTY OF SANTA CRUZ
DEPARTMENT OF PUBLIC WORKS
Building Inspection Division

3732

Owner: A. N. Lenhart
434 - Ewell
Aptos

Applicant: L. G. Thompson

Location of Job: Frontage Rd. Nr. Estates Dr. Aptos

BUILDING

Contractor: L. G. Thimpson 194401 Lic. No.

Assessor's Parcel No. 38-061-6

Code Area

Permit to E ect Garden Sales Area 5' From Property Line and Install 1 Hr. Fireresistive wall on existing structure which is closer than 5' to prp. Line

Valuation $ 4,000.00

Bldg. Fee $ 22.50

SEWER CONNECTION

Ref. B.P.# _____ Date _____

Contractor

District

Annexation required?

If "Yes", date petition filed

Type of service, units, etc.:

Annexation $

Connection

Inspection

Other

Total $

PLUMBING & GAS

Ref. B.P.# _____ Date _____

Contractor

Permit $

Fixtures

Water Heater

Water Piping

Gas – Min. 5

Gas – Over 5

Appliance tags:
Over 50M BTU

Under 50M BTU

Permit issued subject to receipt of permission to use adjoining sanitary facilities

Total $

ELECTRIC

Ref. B.P.# _____ Date _____

Contractor

Permit $

Lights

Fixtures

Switches

Plugs

Range

Oven

Dryer

Water Heater

Space Heater

Motors

Power Pole

Total $

DRIVEWAY OR ROAD OPENING – Road No. _____

Ref. B.P.# _____ Date _____

Contractor

Insurance

Driveway $

Road opening — Length — Width — Depth

Other

Total $

Total Fees Received $ 22.50

By _____ Cashier's validation

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

83

CPW-47

EXHIBIT "B"

BUILDING PERMIT

SANTA CRUZ COUNTY PLANNING DEPARTMENT
701 OCEAN STREET • SANTA CRUZ, CA • 95060
408·425·2751 • FAX 408·458·7139

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.

POUR NO CONCRETE UNTIL THE BELOW HAVE BEEN INSPECTED AND SIGNED OFF

SOILS REPORT ____
SETBACKS ____
FOUNDATION ____
SLAB ____
MASONRY ____
CASSIONS ____
GRADE BEAMS ____
HOLDDOWNS ____

DO NOT INSTALL SUBFLOOR UNTIL THE BELOW HAVE BEEN INSPECTED AND SIGNED OFF

UF FRAMING ____
UF PLUMBING ____
UF MECHANICAL ____
UF GAS PT ____
UF INSULATION ____

DO NOT COVER WALLS OR CEILINGS UNTIL THE BELOW INSULATION HAS BEEN INSPECTED AND SIGNED OFF

SHEAR ____
HOLDDOWNS ____
ROUGH FRAME ____
ROUGH PLUMBING ____
ROUGH MECH ____
ROUGH ELECT ____
GAS PT ____
ROUGH FIRE SPRK ____
UNDERGROUND FIRE SPRK ____

DO NOT COVER WALLS OR CEILINGS UNTIL THE BELOW INSULATION HAS BEEN INSPECTED AND SIGNED OFF

WALL ____
CEILING ____
ROOF ____
SHEET ROCK ____
STUCCO WIRE ____
SCRATCH COAT ____

DO NOT OCCUPY BUILDING UNTIL THE BELOW HAS BEEN SIGNED AND UTILITIES HAVE BEEN CLEARED

STRUCT FINAL ____
PLUMB FINAL ____
ELECT FINAL ____
MECH FINAL ____
FIRE SPRK FINAL ____
FIRE AGENCY FINAL ____

SWIMMING POOLS

STEEL ____
BONDING ____
ROUGH PLUMB ____
ROUGH ELECT ____
PREPLASTER FENCE ____
GAS PT ____
FINAL ____

OTHER

TPF ____
PROGRESS ____
SERV. UPGRADE ____
GAS METER ____
DEMOLITION ____

JOB COPY (TO BE POSTED AT JOB SITE)

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

APPLICATION NO: [illegible] PERMIT NO: 101649 TYPE: [illegible] [illegible] 12/27/[illegible]

ASSESSOR'S PARCEL NO: 038-06[illegible]-07

SITUS: [illegible] [illegible] 95003

PERMIT DESCRIPTION: [illegible]
RELOCATE AND RECONNECT GAS METER FOR [illegible] [illegible] SITE WITH [illegible]

OWNER: [illegible]
P.O. BOX 16[illegible]
CAPITOLA [illegible] [illegible]5010

COMMENTS
THIS PERMIT IS VOID IF [illegible] [illegible] [illegible] [illegible] [illegible] ILLEGAL.

HOLD [illegible] [illegible] [illegible]

85

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 CROSS-ACTION.	No. CV 141816

DEPOSITION OF KEVIN FITZPATRICK

Aptos, California

June 29, 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.

states.

MR. IMAI: The witness had an opportunity to qualify and answer how he wished when he answered the question.

MS. COSTA: Well, I --

MR. IMAI: So I don't know if you want to testify or no;, but I'll -- the question has been asked and it's been answered.

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

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

Q. Correct.

A. Yes.

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

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

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

A. Yes.

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

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

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

A. That is correct.

Q. And what parts were not enclosed?

A. I need tc review.

Q. Please.

A. There was 405 -- excuse me. There were 405 square feet of enclosed office area, ~herewere 521 square feet of greenhouse area, and there was 867 square foot described as open area.

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

A. *Yes.*

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

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

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

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

A. That is correct.

Q. So at some point you're saying that the flooring was changed?

A. That is correct.

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

A. Yes.

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

A. I do not.

Q. Do you know who did?

A. I do not.

Q. Do you know when it was made?

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

MR. IMAI: Do we have -- here.

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

A. Yes, I do.

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

A. I don't believe I was.

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

A. I would have to research my notes.

Q. Would You like to do that now?

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

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

MS. COSTA: Let the record reflect that he is looking thxough his planning file.

(Recess taker.)

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

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

A. Yes.

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,"

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

A. Yes, I do.

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

A. if yo,: -- If you divide the cost, 2315, by the wit cost of 2.50 as of 9/12/67, i believe you're going to come up with close to 926.

Q. Do you Know why this would have beer, scratched off as 1189 -- rather as showing 1189 under the 1967 heading and not designated somewhere under the '73 heading?

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

Q. So if there's a change made at some point down the road, they go back arid change the square footage for all prior assessments, ever. those that were of smaller *square* footage than the subsequent change?

P. That is --

Q. Do you know?

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

Q. Okay.

A. The assessor's office.

Q. Going further to the right under chis same computation scbheading, there's also a -- it says "1977

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

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

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

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

Q. Uh-huh. Going to this diagram?

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

Q. I see.

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

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

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

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

A. 2-and-a-half at the top, yes.

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

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

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

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

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

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

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

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

A. Correct, as constructed then.

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

A. Thai's correct.

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

A. In terms of square footage.

Q. Yeah, square footage. So why does that make the eatire structEre i1~e~ a?i

MS. COSTA: The question has been asked and answered. He ~ ~ . asdit was constructed back then, it " a ~ permitted as constructed back then and permitted. It's an entirely different structure right now. He's already answered that.

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

MS. COSTA: I appreciate you wanting to try to

Q. Do you know what the dates of ownership were for Mr. O'Neill and Mr. Kiderowski?

A. It locks like Mr. Kiderowski bought it in August of 1978 and owned it through May of 1987, and Mr. O'Neill owned it from Fay of 1987 through November of 1993.

Q. Okay. Going back tc Exhibit 2, the second page, front of the second page says "Commercial Building Record" at ;he top and describes parcel 38-061-07. Do you know how the data *or.* this page was obtained?

A. I don't know exactly.

Q. The — the bottom section of this page says "Computation" as a subheading, and it says "1995S," and it indicates an area, a square foctage area apparently of *2,944.* Go you *see* that?

A. Yes, I do.

Q. Do you know how that was arrived at?

A. Generally it would be from an appraisal visit, an assessment.

Q. Do you know how they obtained the square footage? is it just by asking the owners cr did they actually measure it off or how?

A. I dcn't know that answer.

Q. And you've never actually -- you or anybody working with you on your investigation, have you ever measured it off, the square footage of the buiiding?

A. I believe I did measure it off.

Q. And you came to the 2,076?

A. I might have come down to -- well, somewhere between 2,044 and 2,076.

Q. You don't remember exactly?

A. I don't remember exactly.

Q. All right. Let's do this: I'm looking ai the documents whiz?. the county produced pursuant to our Request for Production Set 1 in this action, and I see that there was some notes, handwritten notes produced to us. It says "Zar" at the tcp. I'll show them to you.

MS. COSTA: Which ones?

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

MS. COSTA: is this when you made a copy of the code enforcement file, you obtained tnese?

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

MS. COSTA: You did?

MR. IMAI: Yeah.

THE WITNESS: I don't recognize it.

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

A. That's not my writing, no.

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

A. Possibly Dave Laughlin.

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

A. I'm sorry. Would you repeat chat?

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

A. Yes.

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

A. Yes, I do understand that.

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

A. Yes.

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

A. Yes.

Q. So is it your understanding that this permit would not necessarily be limited in square footage to r4e previous permit Number 1594?

A. That is correct.

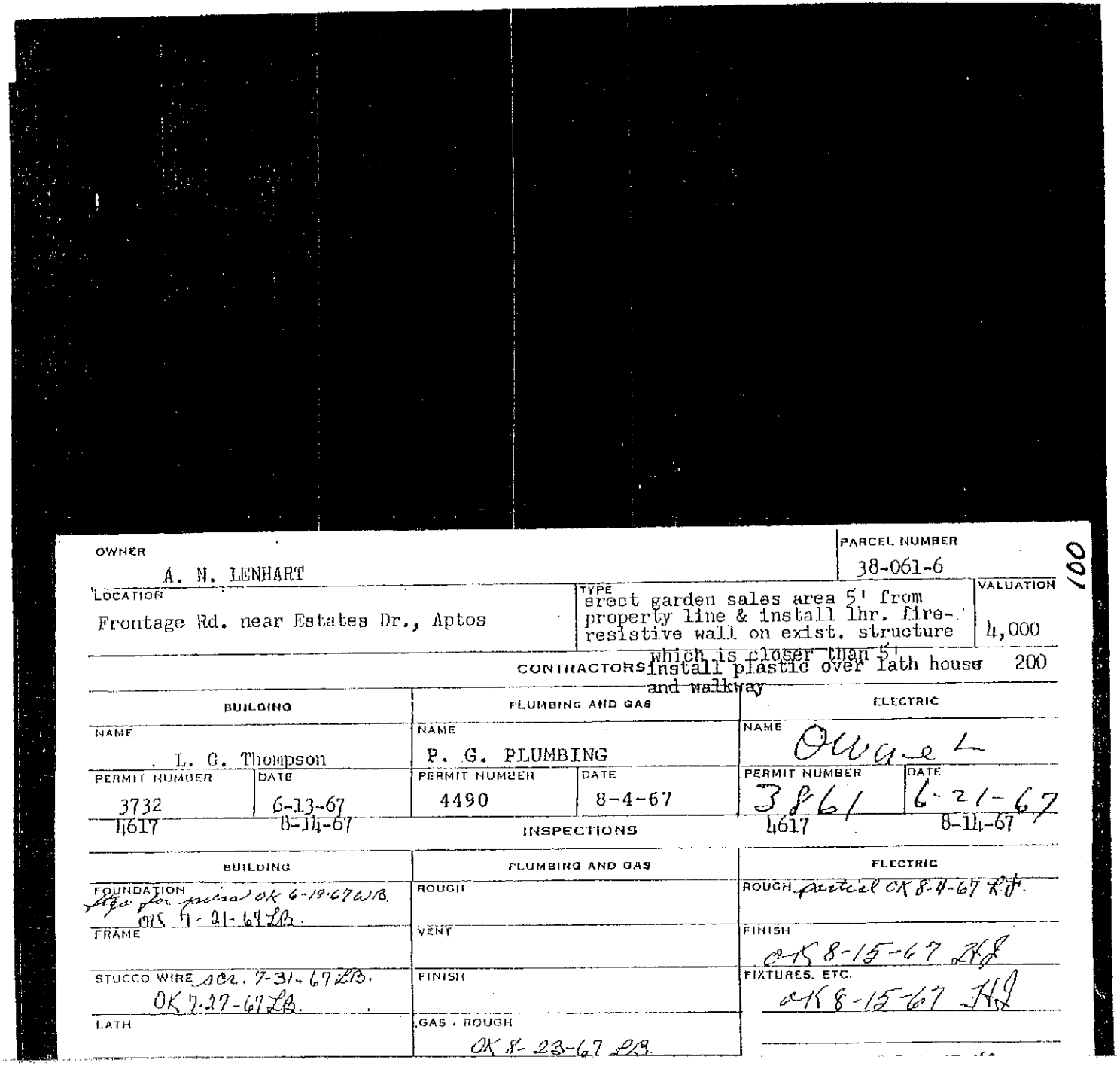
MR. IMAI: Next in order.

(Deposition Exhibit 7, marked and indexed.)

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

A. Yes.

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



OWNER
A. N. LENHART

PARCEL NUMBER
38-061-6

100

LOCATION
Frontage Rd. near Estates Dr., Aptos

TYPE
erect garden sales area 5' from property line & install 1hr. fire-resistive wall on exist. structure which is closer than 5'
install plastic over lath house and walkway

VALUATION
4,000
200

CONTRACTORS

BUILDING		PLUMBING AND GAS		ELECTRIC	
NAME		NAME		NAME	
L. G. Thompson		P. G. PLUMBING		Owen L	
PERMIT NUMBER	DATE	PERMIT NUMBER	DATE	PERMIT NUMBER	DATE
3732 4617	6-13-67 8-14-67	4490	8-4-67	3861 4617	6-21-67 8-14-67

INSPECTIONS

BUILDING	PLUMBING AND GAS	ELECTRIC
FOUNDATION ftgs. for patio OK 6-19-67 WB OK 7-21-67 LB.	ROUGH	ROUGH partial OK 8-4-67 RF.
FRAME	VENT	FINISH OK 8-15-67 HJ
STUCCO WIRE OK. 7-31-67 LB. OK 7-27-67 LB.	FINISH	FIXTURES, ETC. OK 8-15-67 HJ
LATH	GAS - ROUGH OK 8-23-67 RB	

Lenhart
Ewell

Applicant: L. G. Thompson

Frontage Rd. Nr. Estates Dr. Aptos

BUILDING

L. G. Thimpson 194401 Lic. No.

Assessor's Parcel No. 38-061-6

Code Area

t Garden Sales Area 5' From Property Line
Install 1 Hr. Fireresistive wall on existing
cture which is closer than 5' to prp. line

Valuation $ 4,000.00

Bldg. Fee $ 22.50

SEWER CONNECTION

Date

units, etc.:

$

PLUMBING & GAS

Ref. B.P.# Date

Contractor

Permit		$
Fixtures		
Water Heater		
Water Piping		
Gas – Min. $		
Gas – Over $		
Appliance tags: Over 50M BTU		
Under 50M BTU		

Permit issued subject to receipt of permission to use adjoining sanitary facilities

Total $

ELECTRIC

Ref. B.P.# Date

Contractor

Permit		$
Lights		
Fixtures		
Switches		
Plugs		
Range		
Oven		
Dryer		
Water Heater		
Space Heater		
Motors		
Power Pole		

Total $

ROAD OPENING – Road No.

Date

$

Length Width Depth

$

Total Fees Received $ 22.50

By Cashier's validation

JOB 1347 22920 A I –

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

Thompson

Signature of Applicant Date

BUILDING INSPECTOR'S DIVISION

EXHIBIT 7 MRN 6/29/04

COMMERCIAL BUILDING RECORD

14997 McGreanr Dr

PARCEL 58-061-01
1 1

DESCRIPTION OF BUILDING

CLASS & SHAPE: D6.OB

CONSTRUCTION: Light | Sub-Standard | Standard | Heavy | Special

ARCHITECTURE: 1 Stories

TYPE

USE	DESIGN
Apartment	
Garage	
Hotel	
Market	
Office	
X Store	
Theatre	
X 2 Res units	

FOUNDATION: Concrete | Brick | Reinforced | Light | Heavy

STRUCTURAL: Frame | Concrete | Brick | Reinforced | Pilasters | Cl. Bond Beam | Curtain Walls | Partitions: | Wall "x | Party Wall | X Conc. Floor | Sub Floor

EXTERIOR (F L R B): Unfinished | S.C. Brick | Br. | Terra Cotta | X X X X Stucco | Siding

ROOF: Flat | Trusses | X Gable | Steel Deck | X Composition Shgl | Tile | Trim

FRONT: Flat | Recessed | Transom: | Plate Glass in | Sheet Glass in | Metal | Wood | Bulkhead: | Back Trim: | Lighting | Drop Ceiling

LIGHTING — Wiring: K.T. | Conduit | Bx. | X Cable

Fixtures: Few | Cheap | Avg. | Med. | Many | Good | X Recessed

PLUMBING: Poor | Good | X Sprinklers | Fixtures | X Water Heater | Gas | Electric | Water Softener

AIR CONDITION: Heating | Cooling | Forced | Clean'g | Gravity | Humid. | Wall Unit | Floor Unit | Zone Unit | Central" | Steam | Hot Water | Oil Burner | M-B.T.U.

ROOM AND FINISH DETAIL

ROOMS	B	1	2	3	Typ.	Top.	Floor Finish Material	Floor Finish Grade	TRIM	Interior Finish Walls	Interior Finish Ceilings
Store		1					Conc			SR	SR
Office											
Lobby											
Hall											
Lavatory											
Living		2					WW Indoor/outdoor			SR	SR
Dining											
Bed		2					WW	"		SR	SR
Kitchen		1"									

BATH & LAVATORY DETAIL

Fl.	No.	Finish Floors	Finish Walls	Wc.	Lo.	Tub	Ur.	Type	Grade	Shower St.	O.T.	G.D.	Finish
1	2	Tile	SR	1	1					1			FB
1	1	Conc	SR	1	1								

SPECIAL FEATURES

Refrigeration:

CONSTRUCTION RECORD

Permit No.	For	Amount	Date	EFFEC. YEAR	APPR. YEAR	Age	Remain'g Life	Table	%	Cond	Arch. Attr.	Func. Plan	Con-form	Storage Space Cupb'd	Closet	Work-m'nship

NORMAL % GOOD — RATING (E,G,A,F,P)

COMPUTATION

19955 — 19965-975

Appraiser & Date: CC 4/29/91 — CC 7/24/91

Unit	Area	Unit Cost	Cost	Unit Cost	Cost	Unit Cost	Cost	Unit Cost	Cost	Unit Cost	Cost	Unit Cost	Cost	Unit Cost	Cost	Unit Cost	Cost
M-Unit	2044	55.50	113442	Keroll	125000												
Heat	2044	3.00	6132														
W-UD	516	12.00	6192														
C-UP	975			4.00	3900												
TOTAL			125766														
NORMAL % GOOD																	
R.C.L.N.D.			125000 (L)		128900												

SBE-DAS AH 530B 3-54 Ray White & Son, Sacramento

102

MISCELLANEOUS BUILDING RECORD

~~Lenhart~~ Bernard, Eva — ~~PO Box 93 Aptos~~

ADDRESS Estates Dr @ Frontage Rd.

PARCEL 38-061-6, 7 — SHEET 2 / OF 2 / SHEETS

DESCRIPTION OF BUILDINGS

Bldg. No.	Structure	Size	Found.	Wall & Exterior	Roof Type	Roof Cover	Floor & Interior Detail	Second Story or Loft	Year Built	Est. Tot. Life Yrs.
1	Office & Green hse		Conc	Part 2x4x16 Corr Pl. V-Rustic, Stucco	2x6x24 Shed	T&G	Gravel Conc, Corr Pl. Stucco 3 walls	(Hist Cost $4000)	1968	or 30
2.	Covered area		MS	Open	2x6x24 Hip	Corr Pl	Gravel		"	or 30

~~REFERENCE ONLY~~

COMPUTATION

Bldg. No.	Area	Unit Cost (BB 9-12-67, 1967 INDEX)	Cost	% Good	R.C.N. L.N.D.	Unit Cost (BB 1-9-73, 1972 INDEX)	Cost	% Good	R.C.N. L.N.D.	Unit Cost (BB 2-13-78, 1977 INDEX)	Cost	% Good	R.C.N. L.N.D.	Unit Cost (12/16/87)	Cost	% Good	R.C.N. L.N.D.
1	~~926~~ 1184	2.50	2315	100	2315	2.50	2972	88	2600	6.00	7132	72	5000	87 Roll			9640
2	887	1.00	887	100	887	1.25	1108	88	1000	2.50	2217	72	1500				
														87-S			2500
Total					3202				3600				6500				

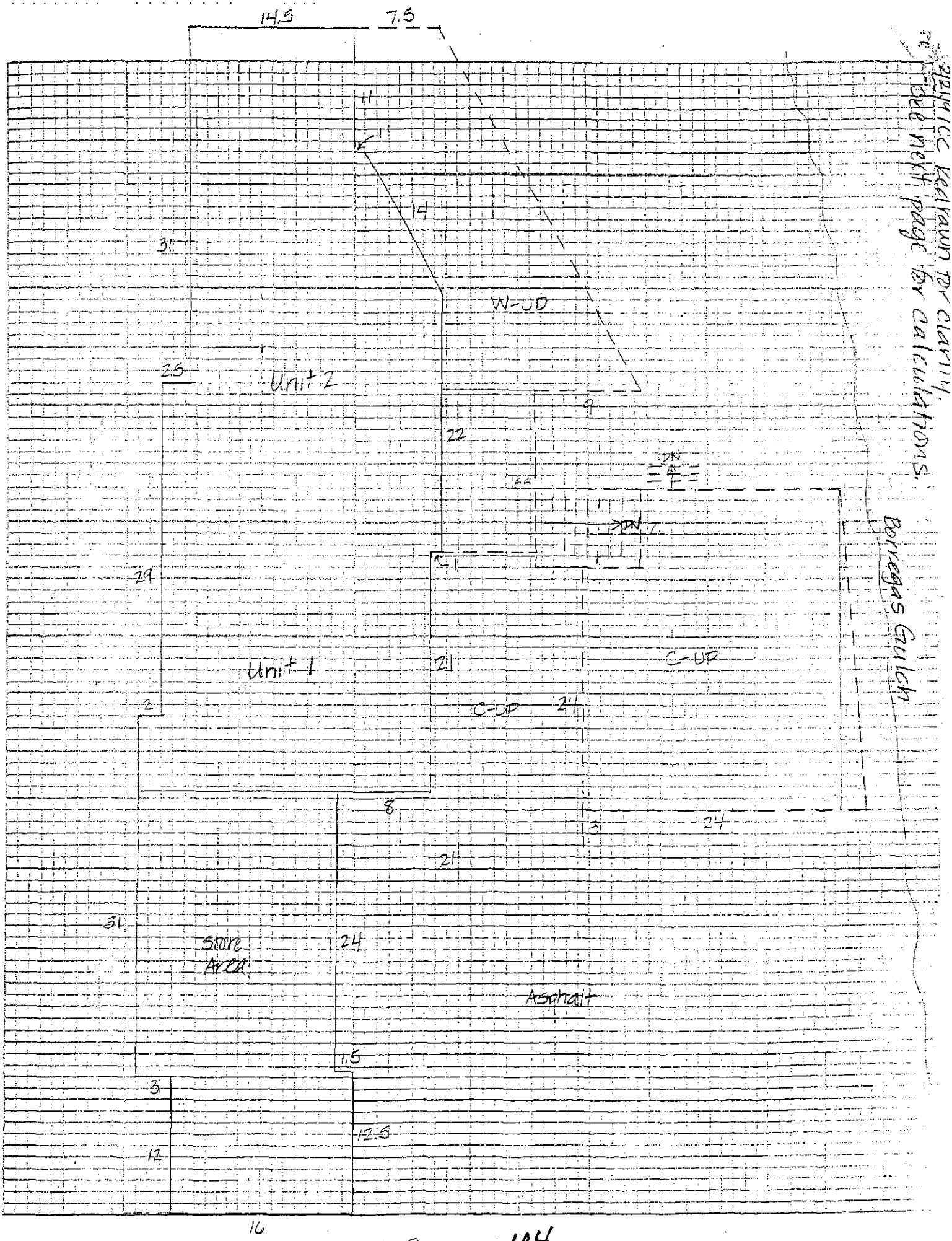
To real prior to AD 1-9-72

Bldg. No.	Area	Unit Cost (3/31/94, 1993 S)	Cost	% Good	R.C.N. L.N.D.	Unit Cost	Cost	% Good	R.C.N. L.N.D.	Unit Cost	Cost	% Good	R.C.N. L.N.D.	Unit Cost	Cost	% Good	R.C.N. L.N.D.
1	1184				4000												
2	887				1000												
Total					5000												

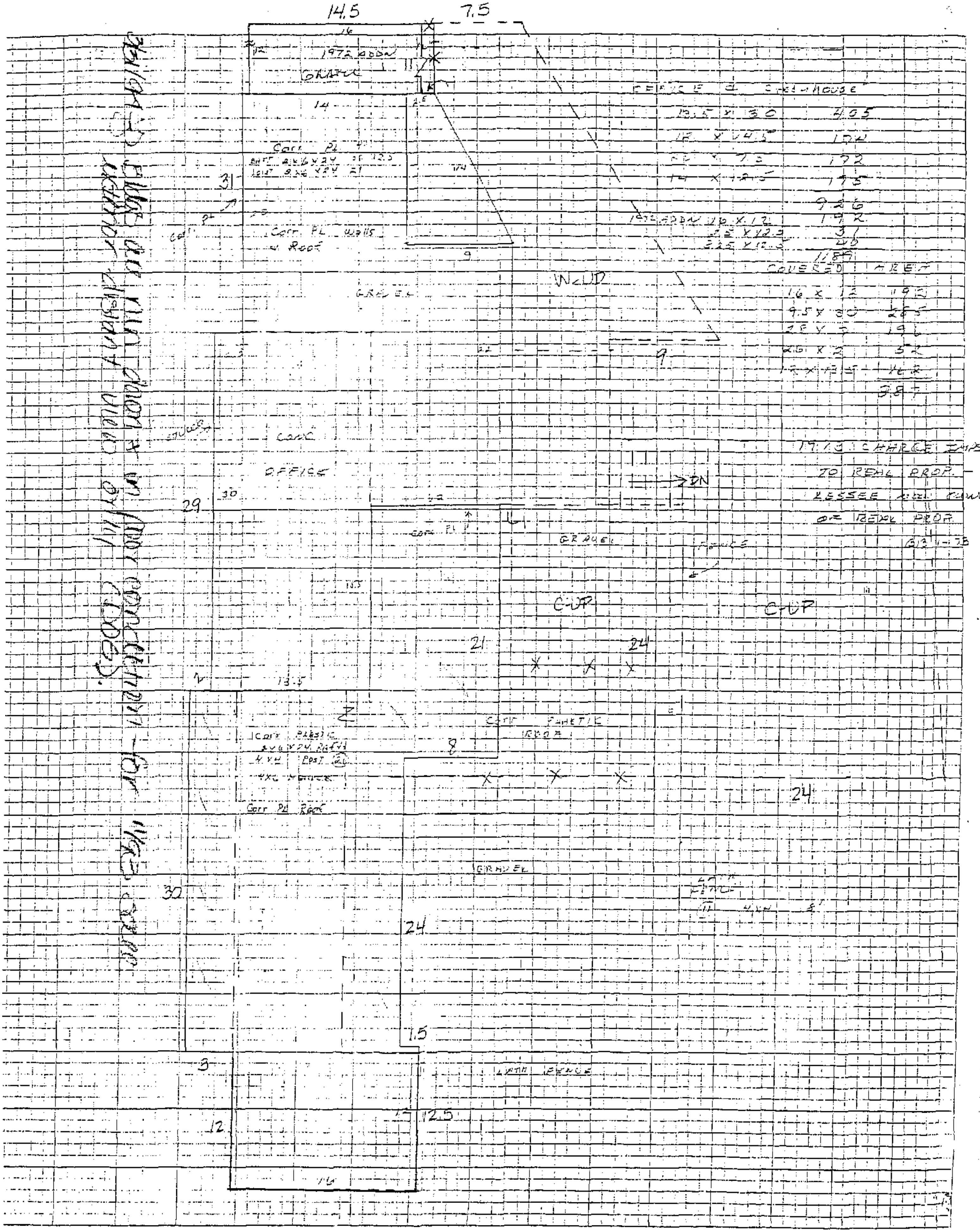
~~REFERENCE ONLY~~

103

SBE-DAS AH 530E 3-'54 RaySon, Ray White & Son — Sacramento



Revised per clarity, see next page for calculations.


14.5
7.5
1972 ADDN
OFFICE & CHECKHOUSE
13.5 x 30 405
COVERED AREA
CONC
OFFICE
GRAVEL
C-UP
Corr Pl Roof
GRAVEL
LATH FENCE
1973 CHARGE IMPS
TO REAL PROP.
LESSEE NOT OWNER
OF REAL PROP.

901

OWNER: EVA BERNARD

PARCEL NUMBER: 38-061-6

LOCATION: 799 Estates Drive, Aptos

TYPE: (for moved bldg) Foundation 20x40 for office and slab

VALUATION: 700.00

CONTRACTORS

BUILDING		PLUMBING AND GAS		ELECTRIC	
NAME: owner		NAME: Jimmie Smith		NAME:	
PERMIT NUMBER: 1594	DATE: 6-13-62	PERMIT NUMBER: 1474	DATE: 6-7-62	PERMIT NUMBER:	DATE:

INSPECTIONS

BUILDING	PLUMBING AND GAS	ELECTRIC
FOUNDATION: O.K. 7-6-62 EC	ROUGH: O.K. 7-6-62 EC	ROUGH:
FRAME:	VENT:	FINISH:
STUCCO WIRE:	FINISH:	FIXTURES, ETC.:
LATH:	GAS - ROUGH:	
FLUES:	GAS - P.T.: O.K. 7-6-62 EC	

EXHIBIT 4 MM 6/29/04

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 a?Law
123 Jewell Street
Santa Cruz, California
95060

Dear Mr. Washbum:

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 requesi 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 inspecrion 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 ciient'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

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 Mi. 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 trial last summer and as a result were able to remove Mr. Byard from the property and extinguish his ownership. No residences have been mainrained 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 Sling 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
CC: R.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.

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

Mr. Saal's chief complain: 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 complain: 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 even 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 whish 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 #e suit filed by Mr. Saal against Reber Construction, in which settling and soii 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)(I)). 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 costiy, 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 *my* expert inspection of that area during the Reber matter, I suspect that it was precisely that.

///

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 action. 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):	TELEPHONE NO.:	FOR COURT USE ONLY
Ralph W. Boroff Esq. (Bar # 59164) BOROFF, JENSEN, KLEIN & SMITH 55 River Street, Suite 230 Santa Cruz, California 95060	(831) 458-0502 FAX NO.: (831) 426-0159	FILED OCT 15 2001 CHRISTINE PATTON, CLERK BY Diane Hogan DEPUTY, SANTA CRUZ COUNTY
ATTORNEY FOR (Name): Jaarl Saal Dba First Alarm, Plaintiff		

Insert name of court and name of judicial district and branch court, if any:

Superior Court of California, County of Santa Cruz

PLAINTIFF/PETITIONER: Jaarl Saal dba First Alarm

DEFENDANT/RESPONDENT: The Aviar Recovable Living Trust, et al.

CASE NUMBER: CV 140751

REQUEST FOR DISMISSAL

- [ ] Personal Injury, Property Damage, or Wrongful Death
  - [ ] Motor Vehicle
  - [ ] Other
- [ ] Family Law
- [ ] Eminent Domain
- [X] Other (specify): Nuisance, Injunctive Relief

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

1. TO THE CLERK: Please dismiss this action as follows:
   a. (1) [ ] With prejudice (2) [X] Without prejudice
   b. (1) [ ] Complaint (2) [ ] Petition
   (3) [ ] Cross-complaint filed by (name): on (date):
   (4) [ ] Cross-complaint filed by (name): on (date):
   (5) [ ] Entire action of all parties and all causes of action
   (6) [X] Other (specify):* All causes of action as to defendants Rebecca R. Zar, The Aviar Revocable Living Trust, Alvin Zar Sr., Randy Zar. As to defendant Brent Byard, the first cause of action ONLY.

Date: October 12, 2001

Ralph W. Boroff
(TYPE OR PRINT NAME OF [X] ATTORNEY [ ] PARTY WITHOUT ATTORNEY)

(SIGNATURE)

Attorney or party without attorney for:
[X] Plaintiff/Petitioner [ ] Defendant/Respondent
[ ] Cross-complainant

* 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.

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

(TYPE OR PRINT NAME OF [ ] ATTORNEY [ ] PARTY WITHOUT ATTORNEY)

(SIGNATURE)

Attorney or party without attorney for:
[ ] Plaintiff/Petitioner [ ] Defendant/Respondent
[ ] Cross-complainant

** 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(i) or (j).

(To be completed by clerk)

3. [ ] Dismissal entered as requested on (date):
4. [/] Dismissal entered on (date): OCT 15 2001 as to only (name): Graham
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) 662-3407
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 :

1). 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. Sad'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

Reynolds Associates
Geotechnical & Civil Engineers

962234-S61-G6
27 May 1997

Mr. Randy Zar
P.O. Box 1282
Aptos, CA 95001

Subject: 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 ASSOCIATES

John R. Scott

REGISTERED PROFESSIONAL ENGINEER
JOHN R. SCOTT
NO. C54591
Exp. 12-31-99
CIVIL
STATE OF CALIFORNIA

JRS:js
Copies: 4 to Mr. Randy Zahr

115

TABLE I

Summary of Laboratory Test Results

ıple).	Description	Max. Dry Density p.c.f.	Opt. Moisture Ccntent %
	Grey brown SILT w/gravels ½" to 1½"	132.5	6.5
	Light brown Sandy SILT w/gravels ¼" to 1"	116.4	12 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 G fill	+2.0	14.7	119.3	9c.o	[1]
7/25	Center of Key E fill West side	+8.0	13.4	121.3	91.5	[1]
7/30	Center of fill area parking lot	-5.@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 pakring Lot Key fill Center	-4.0 BSG	14.8	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	SO.0	[3]
8/13	North edge Parking lot	-1.0 ESG	13.1	109.8	93.1	[3]
8/15	South end 10' west of Manhole	-1.0 BSG	13.1	i12.0	96.3	[2]
8/15	Center of Parking lot	-1.0	12.4	109.8	94.3	[2]

PLANNING DEPARTMENT

COUNTY OF SANTA CRUZ

GOVERNMENTAL CENTER

701 OCEAN STREET ROOM 400 SANTA CRUZ, CALIFORNIA 95060
(408) 454-2580 FAX (408) 454-2131 TDD (408) 454-2125

June 28, 1996

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

SUBJECT: RIPARIAN EXCEPTION PERMIT -- LEWEL 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.

PROJECT: APN 038-061-07 APPLICATION: 96-0396

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 ana 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 ana disposed of at an approved site.

4. All work shall conform to the plans marked Exhibit A. Tne 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. Tne 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 ana site grading.

8. Erosion control measures must be in place at all times during construction. All disturbed soils shail 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 038-0( )7 APPLICATION: 96-0396

RIPARIAK EXCEPTION FINDINGS

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

   An existing Sewer line lies within the riparian corridor at this site. The manhoie 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 ne beneficial to downstream properties in that a problemztic 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 WSH 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 lint! 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 454-3168.

Sincerely,

RACHEL LATHER
Principal Planner/Senior Civil Engineer
Environmental Planning Section

BY: Cathleen Carr 7/1/96
Cathleen Carr Date
Resource Planner

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 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

COUNTY OF SANTA CRUZ

GOVERNMENTAL CENTER

701 OCEAN STREET ROOM 400 SANTA CRUZ, CALIFORNIA 95060
(408) 454-2580 FAX (408) 454-2131 TDD (408) 454-2122

June 28, 1996

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

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

PROJECT DESCRIPTION: Proposal to remove fill and an unpermitted retaining wail 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 appiication has been reviewed as follows: Several site visits and conTerences with Pianning, 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 tne sewer line which currently is partially clogged in the vicinity of McGregor Drive. The prooerty 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.

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

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 disturhance.

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 **pernit** 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 tne direction of Sanitation District Staff,

6. All fill placement shall be under the direction of the project soil engineer. The prcjeci soils engineer shall test compaction for all fill ana submit compaction test reports to Environments? Planning - attention Cathleen Carr.

7. A sediment barrier shall be in place at all times between the arroyo and site grading.

E. Erosion control measures must be in place ai 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 warks prohibited between October 15 and April 15

1 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 went 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 anti 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: 96-0395

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 NSCESSARY FOR THE PROPER DESIGN AND FUNCTION OF SOME PERMITTED OR EXISTING ACTIVITY ON THE PROPERTY;

The removal of the fiil over the mannole and reconstruction ai a service rcac *is* necessary to service and maintain rhe 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;

Tne granting of this exception will be beneficia! 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 nistoric filling and that a violation that is damaging tne 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 Pian 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 EXCEPTIDN PERMIT -- LEVEL III
PROJECT: APN 038-061-07 APPLICATION: 96-0396

Staff Recommendation:

The Environmental Planning Principal Pianner has acted on your appiication 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 7/1/96
Cathleen Carr Date
Resource Planner

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 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 appeel 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 Pianning Director. All appeals shall be made in writing and shail state the nature of the application and the basis upon which tne 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

ARTJCLE 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 section11343.4(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) andNotefiled 10-6-2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

14 CA ADC s 15301

END OF DOCUMENT

COUNTY OF SANTA CRUZ
PLANNING DEPARTMENT

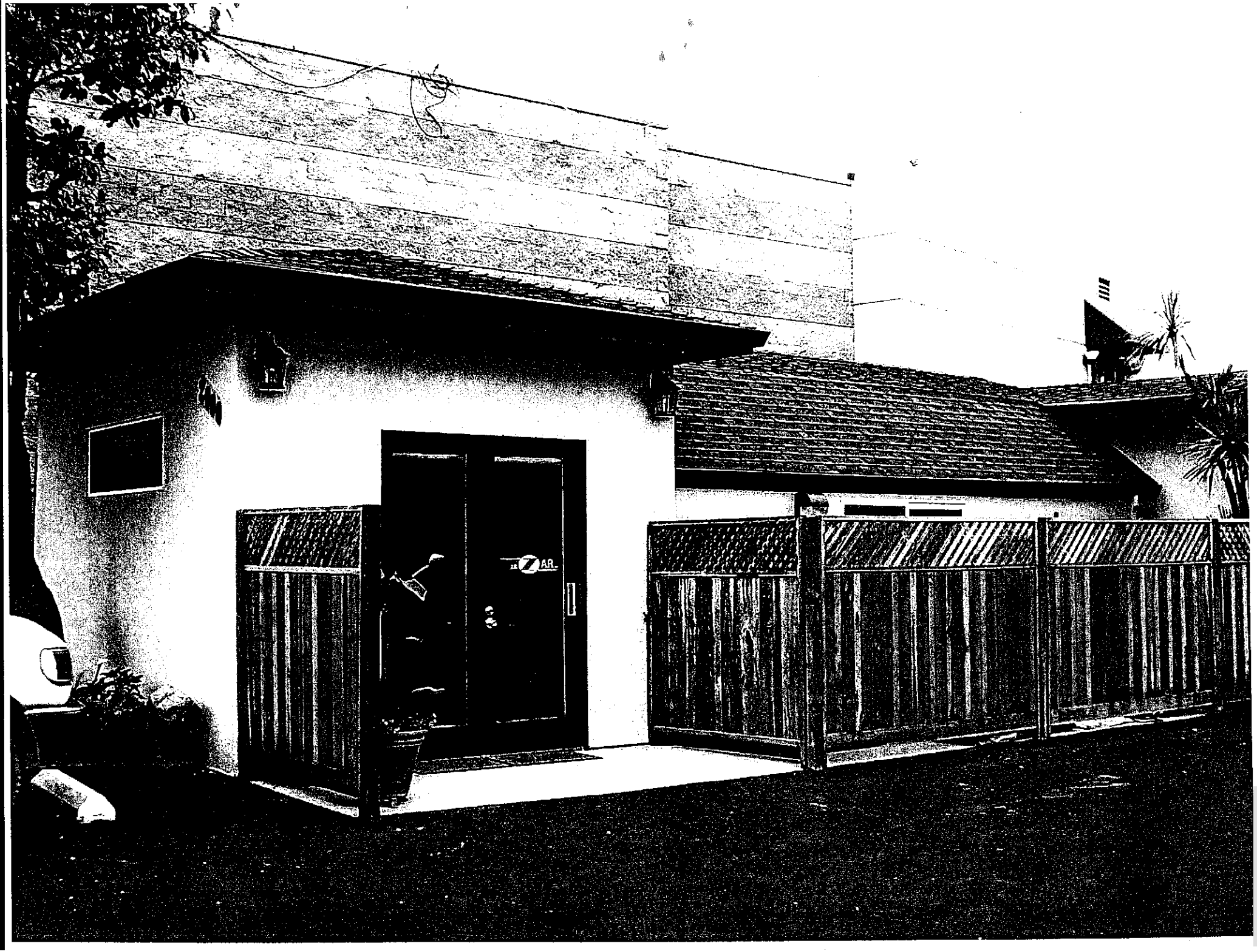
Planning Commission
Date: 1/11/06
Agenda Items #: 10
Time: After 9:00 a.m.

ADDITIONS TO THE STAFF REPORT FOR THE PLANNING COMMISSION

Item 10: 04-0650

MATERIALS SUBMITTED BY SPEAKER DURING THE PUBLIC HEARING

1/11/06



Time Line of Zero slope failures for 2000 McGregor Drive, Aptos

Sewer line was put in before the freeway around 28 feet below grade in the parking lot and 23 feet below grade at the manhole. The sewer line follows the same line as the retaining wall and the slope. From the manhole it doglegs up about **45** degrees towards the rear of property line. The point I am trying to make is the sewer line is in front of the building by the slope.

In or around the 1950's the Sewer Line was installed along with the manhole located on the McGregor property. When the Manhole was installed it was a large excavation to install, not just a trench. We are talking a solid concrete bottom 23 feet below grade and located along the slope side and center of the building.

1960's The building was built No failure anywhere that I have seen

1980's Floods No problems.

1989 Earthquake No problems, No Red tags, No Yellow tags and No Landslides

1992 Jarl Builds First Alarm two feet from our building No Problem

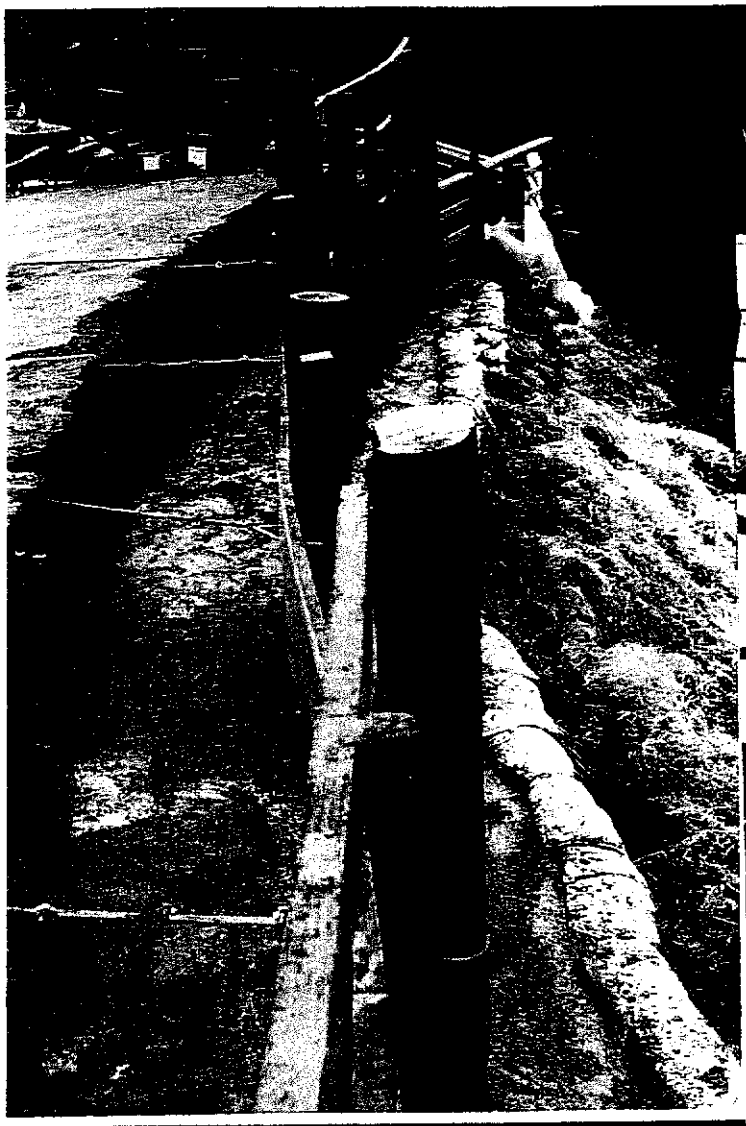
1996 The County Sanitation project was done. No Problems

2006 No Problems There is **no** sign of structural cracking of our building.

I am trying to make the point that the same area of the slope that is coming under scrutiny has had no problems for approx the last 56 years. If any slope failure had happened the sewer line would have been compromised.

Grading To Find Manhole, Recompaction

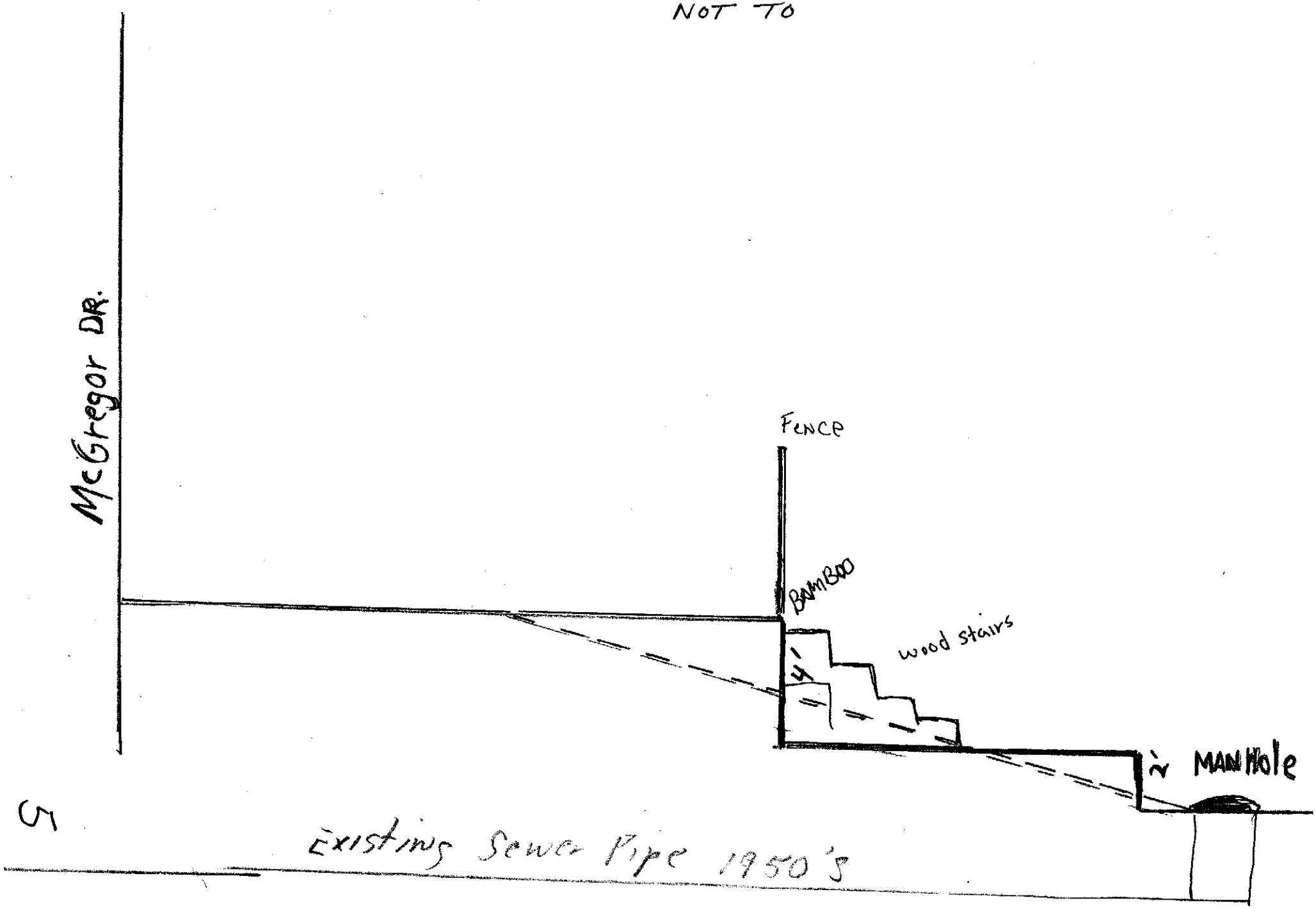
1996 Sanitation Project Permit #96-0396

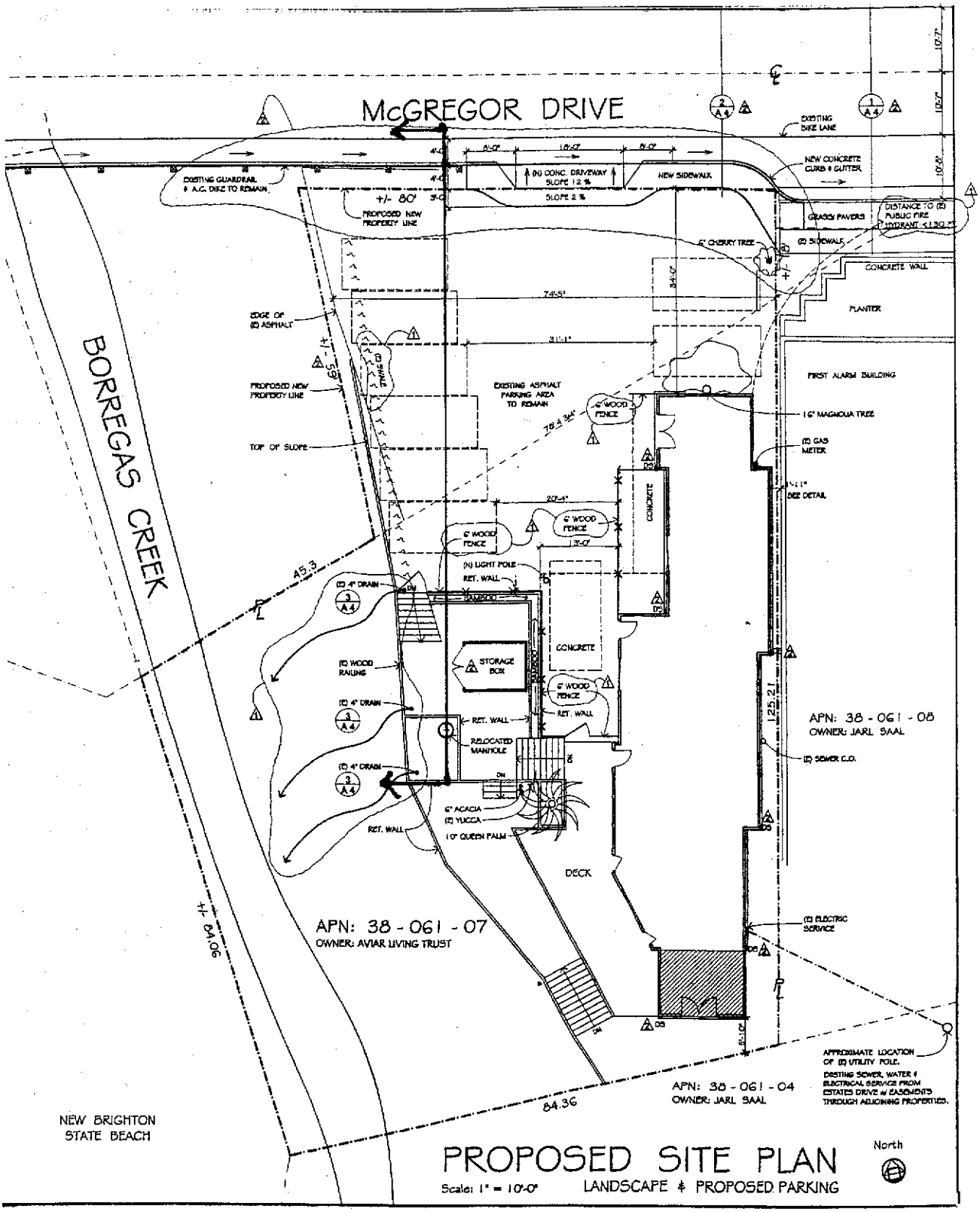


Concrete Grade Beam, Drain work, Drain Rock, Dead Men

1996 Sanitation Project Permit #96-0396

Section
NOT TO





PROPOSED SITE PLAN

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

ORIGINAL BUILDING PERMIT: 3732
1967 PERMIT #3732 TO A.N. LENHART

ORIGINAL GRADING & RIPARIAN EXCEPTION PERMIT: JUNE 24, 1996
PERMIT #96-0396

1994) TO REMAIN.

EXISTING FIRE ALARM SYSTEM INSTALLED BY FIRST ALARM (DEC. 16, 1994) TO REMAIN.
SEE PAGE A2 FOR FIRE NOTES.

DATA

EXISTING LOT SIZE:	10454 SQ. FT.
~~EXISTING LOT SIZE~~	10454 SQ. FT.
PROPOSED ADDITION TO ~~PROPOSED ADDITION TO~~ LOT APN# 036-061-07:	2945 SQ. FT.
PROPOSED TOTAL LOT SIZE:	13399 SQ. FT.
~~PROPOSED TOTAL LOT SIZE:~~	~~13333 SQ. FT.~~
ZONING:	B
TYPE OF CONSTRUCTION:	V
~~TYPE~~ OF CONSTRUCTION:	V
BUILDING	2042 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

SHEET A1a OF 8 SHEETS