



# COUNTY OF SANTA CRUZ

## PLANNING DEPARTMENT

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

**TOM BURNS, PLANNING DIRECTOR**

February 12, 2010

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

**Agenda Date: March 24, 2010**

**Item #: 7**

**Time: After 9 AM**

**APN: 038-151-89**

**Application: 09-0139**

**Subject: A public hearing to consider an appeal of the Zoning Administrator's decision to approve application 09-0139; a proposal to construct an approximately 2,544 square foot, two story single family dwelling with an elevator, three foot six inch high retaining wall and to grade approximately 160 cubic yards.**

Members of the Commission:

### **BACKGROUND**

Application 09-0139, a request to construct a new dwelling adjacent to a coastal bluff, was originally heard by the Zoning Administrator on January 15, 2010. Based on the staff findings and conditions of approval, the proposal was approved by the Zoning Administrator on that date (Exhibit B to Attachment 1). An appeal was filed on January 28, 2010 by Wittwer & Parkin, LLP on behalf of Patrick and Laura Murphy, (hereafter "appellants") owners of the parcel adjacent and to the west of the proposed development (Attachment 1). After consideration of the applicant's appeal, staff recommends that your Commission uphold the Zoning Administrator's approval of Application 09-0139.

The subject property is a vacant parcel, located at the top of a coastal bluff and is approximately 8,276 square feet in gross site area. The subject parcel was granted an Unconditional Certificate of Compliance under Permit #01-0068 on June 10, 2003. In March of 2005 a Coastal Development Permit was issued to allow the demolition of an existing deck and elevator shaft located on the adjacent property to the east, which had been built over the shared property line.

On September 17, 2007, the current property owner applied for a Coastal Development Permit for the construction of a single-family dwelling. The proposal included substantial grading within the required 100-year geologic setback in order to create a flatter yard area and to enhance ocean views. That application was denied by the Zoning Administrator, without prejudice, due to the proposed grading within the geologic setback. Following a re-design of the proposed dwelling, the current application was submitted on April 16, 2009.

## **PROJECT DESCRIPTION**

The applicant seeks to construct an approximately 2,544 square foot, two-story, single-family dwelling with an elevator, three foot six inch retaining wall within the front setback, and to grade about 160 cubic yards, 16 cubic yards of which will occur within the coastal bluff setback. The project is located within the Aptos Planning Area.

The proposal includes earthwork within the geologic setback for the purposes of providing positive drainage away from the coastal bluff. Additionally, design changes to the dwelling itself have improved the compatibility of the proposed house with the surrounding neighborhood and beach below.

## **ANALYSIS AND DISCUSSION OF APPEAL ISSUES**

The grounds of this appeal, as described in the letter of appeal dated January 28, 2010 (Exhibit 1A) are that the application "proposes development on a substandard, illegal parcel." The appellant additionally asserts that proposal violates County standards for height and number of stories, results in potential instability of the slope and that the project requires additional review under the California Environmental Quality Act (CEQA).

### *Parcel Legality*

The appellant asserts that the 2003 Unconditional Certificate of Compliance was granted unlawfully and that the subject application cannot be approved without a Coastal Development Permit for the legality determination. It is the position of staff that the issuance of the Unconditional Certificate in 2003, to which no appeal was filed, and subsequent issuance of a Coastal Development Permit in 2005 have effectively settled the issue of parcel legality. Therefore the legality of the subject lot was not revisited as a part of the current development application. It is worth noting, however, that the issuance of an Unconditional Certificate of Compliance does not constitute "development" as defined in Section 13.20.040 of the County Code and therefore does not require a Coastal Development approval per Section 13.20.050 of the County Code.

It should also be noted that on April 14, 2009, the appellant file a lawsuit challenging the legality of the Unconditional Certificate of Compliance that was issued in 2003.

### *Site Standards for Height and Number of Stories*

The appellants assert that the project violates the 28-foot height limit for residential structures and exceeds the two-story limitation for residential structures located within the Urban Services Line.

As discussed during the Zoning Administrator Hearing on January 15, 2010, the structure complies with the 28-foot height requirement as shown in the northern elevation on Plan Sheet 4 (Exhibit 1.D, . Further, a condition of approval requires a roof plan, including spot elevations, at the time of building application submittal. The elevations must demonstrate that the new structure conforms to the height limit prior to the issuance of a building permit. Staff has checked the dormer that the appellant asserts is overheight and does not agree with the assertion.

With respect to the number of stories, the County Code states that basements, attics and underfloor areas are not considered stories. The appellants contend that the County Code does not permit the separation of the garage from the basement, which consists of the elevator, storage, and lobby, because the two areas are located at the same level. Section 13.10.700-B of the County Code defines a basement as "the space below the bottom of the floor framing (joists or girders that directly support the floor sheathing) and the basement floor." Further the definition states that more than 50% of the basement exterior perimeter wall area must be below grade and no more than 20% of the perimeter exterior wall may exceed 5 feet – 6 inches above the exterior grade.

There is nothing in the basement definition that precludes two areas located at the same level from being defined differently, based on the extent to which the areas are located below exterior grade. In the case of the subject proposal, the portion of the bottom level labeled "garage" does not meet the criteria to be labeled a "basement," while the areas to the rear (south) at the same level, labeled "elevator", "basement elevator lobby," and "basement storage" are entirely sub-grade and do qualify as a basement. Further, these areas are separated from the garage by a partition and are characterized by uses that are different from that of the garage. Therefore the rear portion of the bottom level is not considered a story, for planning purposes, and the house meets the definition of a two-story house. The Zoning Administrator concurred with this interpretation of the ordinance.

Finally, given that the proposed dwelling conforms to the 28-foot height limit, neither the view from the Oakhill Drive nor from the beach, would be impacted by the determination regarding the basement definition.

#### Geologic Hazard/Stability Concerns

The appellant states that the proposed project threatens the integrity of the coastal bluff and neighboring parcels, asserting that the 33-foot bluff setback recommended by the project geologic is not adequate. The appeal letter references an unsigned geologic assessment of the subject site, which was performed by the appellant's geologist on January 8, 2010. The appellant's geologist states that the 100-year setback "may be greater than 33 feet..." and disputes the issuance of an "exception" to the required setback for purposes of site grading.

The geologic report prepared for the site by Rogers Johnson (project geologist) has been reviewed and approved by the County Geologist. The review and approval of the 33-foot setback by two registered geologists provides an adequate degree of assurance that the proposed single-family dwelling will not be subject to geologic hazards and is in compliance with the County Geologic Hazards Ordinance (Chapter 16.10).

Section 16.10.070(h)2(i) of the County Code exempts earthwork within the geologic setback that consists of "minor leveling, of the scale typically accomplished by hand, necessary to create beneficial drainage patterns...that does not excavate into the face or base of the bluff" from the provisions of the Geologic Hazards Ordinance concerning Coastal Bluffs. The amount of earthwork proposed within the setback is therefore exempt and does *not* require the issuance of an exception to any provision of the ordinance. The proposed work within the setback is a benefit to the site and to surrounding properties in that it addresses ongoing drainage problems and will

contribute to the stability of the coastal bluff by directing all surface runoff away from the bluff and toward the street.

Finally, the appellant asserts that the project site is prone to earthquake hazards, which will be exacerbated by the construction of the proposed single-family dwelling. Nothing in the geologic and geotechnical reports prepared for the site substantiates the claim that the proposed dwelling increases any earthquake-related risk to the site or surrounding properties.

#### Environmental Review under CEQA

The appellant asserts that the Zoning Administrator's decision to certify the CEQA Class 3 Categorical Exemption was made in error. As stated in the CEQA Guidelines, the Class 3 Exemption applies to small construction or development projects *except where the project may impact on an environmental resource of hazardous or critical concern* (Exhibit 1F).

While the parcel contains areas defined as coastal bluff, the proposed development is located within the area determined to be stable over the 100-year lifetime of the structure and, as conditioned, is not expected to impact the bluff. Further, the drainage improvements that are a part of the proposed development will have a positive effect on the stability of the bluff, rather than a negative impact.

#### **SUMMARY**

The issues raised by the appellant are the same as those presented to the Zoning Administrator prior to the January 15, 2010 hearing and they focus on legality of the parcel, the incompatibility with the zoning ordinance (regarding standards for height and number of stories), geologic hazards and the basis for granting the Categorical CEQA Exemption.

These issues were fully explored in the staff report, in the technical documents that support the application, and during the Zoning Administrator public hearing. The result was a decision by the Zoning Administrator that the project is in compliance with the Zoning Ordinance and other County Codes and that the CEQA exemption was appropriate.

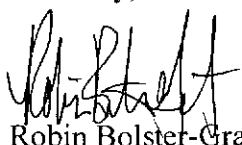
#### **RECOMMENDATION**

The proposed project is consistent with County General Plan policies and ordinances, and staff recommends that the Planning Commission take the following action:

- Uphold the Zoning Administrator's certifications of the CEQA Exemption and approval of Application 09-0139.
- Deny the appellant's appeal.



Sincerely,



Robin Bolster-Grant  
Project Planner  
Development Review

Reviewed By: \_\_\_\_\_



Paia Levine  
Principal Planner  
Development Review

Exhibits:

- 1A. Appeal letter by Wittwer & Parkin, LLP, dated January 28, 2010.
- 1B. Staff report to the Zoning Administrator, originally heard on 8/21/09.
- 1C. Letter from Hydro-Geo Consultants, Inc., dated January 11, 2010
- 1D. Project Plans
- 1E. Correspondence
- 1F. CEQA Guidelines, Section 15
- 1G. Letter from Joe Hanna, County Geologist, dated March 2, 2010

**Application Number: 09-0139**

**Staff Report to the Planning Commission**

**Replacement Exhibit 1A  
(Replaces pages 6-73)**

Jonathan Wittwer  
William P. Parkin  
Ryan D. Moroney

**WITTWER & PARKIN, LLP**

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SANTA CRUZ, CALIFORNIA 95060  
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OF COUNSEL  
Gary A. Patton

January 14, 2010

**HAND DELIVERED**

Mr. Steven Guiney  
Zoning Administrator  
Santa Cruz County Planning Department  
701 Ocean Street, 4<sup>th</sup> Floor  
Santa Cruz, CA 95060

**RE: Application 09-0139 – Set For Hearing on Friday, January 15, 2010  
APN 038-151-89; Oak Hill Road**

Dear Mr. Guiney:

This office represents Patrick and Laura Murphy with respect to the above referenced application which requests a Coastal Development Permit, a Residential Development Permit and a Preliminary Grading Approval (the "Project"). Our clients oppose the proposed Project because it proposes development on a substandard, illegal parcel. In addition, the Project will result in potential instability of the slope thereby endangering adjacent homes, including the Murphy's home. Finally, given the geological hazards posed by the Project's location and the unusual circumstances associated with the subject parcel, environmental review is required under the California Environmental Quality Act ("CEQA" Public Resources Code § 21000 *et seq.*).

All of the permits requested are "discretionary," and there is no automatic "right" to the grant of the permits sought. The staff report presented to you recommends approval of Application 09-139. We believe that the application should be denied based on the rationale provided in the staff report for the prior project proposal (07-0548), attached hereto as **Exhibit A** and hereby incorporated by reference, and for the reasons discussed herein. We strongly urge you to DENY Application 09-0139.

**The Project Proposes Development on a Substandard, Illegal Parcel**

The "history" provided in the staff report indicates Assessor's Parcel 038-151-85 was only recognized by the County of Santa Cruz as a separate parcel in 2003 through the granting of a Certificate of Compliance. However, that Certificate of Compliance was granted unlawfully,

Don Bussey  
Re: Application 09-139  
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Page 2

and was granted without a Coastal Development Permit (CDP) and without consulting the Coastal Commission. And, despite the County's description of the Certificate of Compliance as being "Unconditional," it was truly a "Conditional" Certificate of Compliance. (Conditional Certificates of Compliance, even if lawfully issued, still require a Coastal Development Permit.) Demolition of structures and improvements were required, and the County required the recordation of Acknowledgments of Nonconforming structures on the illegal "lot" that is the subject of this application and the adjacent lot from which it was split. The Staff Report even states that there is already a four foot encroachment on this parcel from preexisting construction on an adjacent property. In fact, the granting of that Certificate of Compliance is the subject of a current lawsuit by our clients against the County and the project applicant. *See, Exhibit B, First Amended Petition and Complaint*, filed January 4, 2010, attached hereto and incorporated by reference. Without a CDP for the "parcel," the Project cannot be approved or proceed.

Assuming for the sake of argument that this is a separate parcel with appropriate CDP approval, it is obvious that any building and development on this parcel must be closely conditioned to ensure the public health, safety, and welfare. The physical stability of the site and adjacent properties is of paramount concern, particularly since geologic failures on the property could have such adverse impacts on other properties nearby.

#### **The Proposed Project Threatens the Integrity of the Coastal Bluff and Neighboring Parcels**

The County Code contains an entire section, § 16.10, regulating development within geological *hazard* areas, including on coastal bluffs.<sup>1</sup> In fact, Section 16.10.070(h) imposes specific restrictions on development on coastal bluffs, including the requirement that the developer record a Declaration of Geological Hazards with the County Recorder. Likewise, the County General Plan and LCP contains an entire subsection setting forth policies and programs to deal with the hazards of development on Coastal Bluffs. *See, County General Plan sections 6.2.10 - 6.2.21.*

The County Geologic Hazard ordinance requires a coastal bluff setback which the County determines will provide a stable site for 100 years. In this case, it has been determined that the setback requirement is a minimum of 33 feet. Our geotechnical consultant has indicated that the 100 year set back should be at least 40 feet or more given site specific evidence. *See, Exhibit C,*

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<sup>1</sup> A coastal bluff is defined as: "A bank or cliff along the coast subject to coastal erosion processes. Coastal bluff refers to the top edge, face, and base of the subject bluff." County Code § 16.10.040(j) (underline added).

*Preliminary Geologic Assessment*, prepared by Hydro-Geo Consultants, Inc, attached hereto and incorporated by reference. In any case, the County Code does not allow grading within the coastal bluff setback, unless an exception is granted and there can be no legitimate reason for any grant of exception in this case.<sup>2</sup>

According to the Staff Report, the Applicant proposes to perform grading in the 100 year setback, but then concludes that no exception is needed because it is minor leveling that will be done by hand. While the grading has been reduced since the proposal that was before the Zoning Administrator on January 16, 2009, the proposed contouring within the bluff setback is still problematic and consists of more than minor leveling since it will be up to a foot deep throughout the setback area. Even if the proposed grading was excepted, the proposed grading and drainage "improvements" may allow surface water to seep more rapidly into the soil and contribute to the destabilization of the bluff by removing less pervious surface soils. See, **Exhibit C**. Moreover, the fact remains that a residential structure can be built on the property without the need for any grading. All water currently flows towards the street from the bluff's edge because the current grade of the property is away from the bluff's edge. Thus, there is no reason to allow the Applicant to perform any grading, even of a minor nature, within the 100 year setback.

Moreover, the Project site is also prone to earthquake hazards. The Loma Prieta Earthquake triggered significant landslides along the entire face of the bluff along Seacliff State Beach and Las Olas Drive with head scarps 20 to 30 feet high and tension cracks that cut through several building foundations at the top of the cliff. See, **Exhibit C**. See, also, **Exhibit D**, *California Geology April Edition*,<sup>3</sup> including Photos 4 and 6. And, pictures taken on or around December 21, 2009, below the proposed home and attached hereto as Exhibit E, show failure at the toe of the bluff at Las Olas Drive. Also, attached as Exhibit F is a photo of the home next door to the proposed home (i.e., the home that crosses the property boundary and is part of the property from which the project site was split) sitting precariously close to the bluff's edge. Any

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<sup>2</sup> It should be noted that while the geotechnical consultant recommended some mitigation measures, such as a "pin pile" retaining structure, to prevent bluff failure, we believe many of these mitigations may be illegal under the County Code. The Geotechnical consultant is not a planner or lawyer. However, the opinion is being provided as further evidence that building a residence on this site is hazardous. Moreover, the opinion reiterated that an exception to the geologic setback should not be granted.

<sup>3</sup> *Coastal Landslides caused by the October 17, 1989 Earthquake*, Plant & Griggs, April 1990  
California Geology, Department of Earth Sciences UCSC.

compromise of the bluff from the proposed home will only exacerbate the current condition of the area.

### **The Proposed Project Requires Environmental Review under CEQA**

The Staff Report asserts that the proposed Project is exempt from environmental review based on CEQA's Class 3 Categorical Exemption for small construction or development projects pursuant to CEQA Guidelines § 15303. However, Class 3 Categorical Exemptions are qualified by the requirement that the project location be considered when determining whether this exemption applies, particularly where the project may impact an environmental resource of *hazardous* concern. CEQA Guidelines § 15300.2(a).<sup>4</sup> See, also, *Salmon Protection & Watershed Network v. County of Marin* (2004) 125 Cal. App. 4th 1098. Likewise, a categorical exemption may not be used where there is a reasonable possibility that the proposed activity will have a significant effect on the environment based on *unusual circumstances*, such as those that exist here. CEQA Guidelines § 15300.2(c)<sup>5</sup>

In sum, the particularly sensitive location of the proposed Project in a geologic hazard zone requires that it be subject to environmental review under CEQA. We have presented evidence that the geologic setback was not properly determined and that there are hazards associated with building a structure on this site. Additionally, the unique circumstances presented by these geotechnical and other issues, likewise excepts the Project from a Class 3 Categorical Exemption.

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

<sup>5</sup> (c) Significant Effect. A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.

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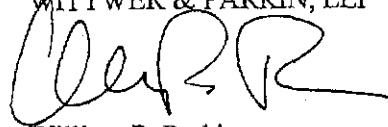
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**Conclusion - Application 09-139 Should be DENIED.**

The proposals before the Zoning Administrator represent an attempt to build beyond the restraints of normal County regulations on what is already a "problem" property. The applicant requests an exception to the required coastal bluff setback exposes other persons and properties to potential peril. Accordingly, we urge denial of the application.

Thank you for your attention to our views in this matter.

Very truly yours,  
WITTWER & PARKIN, LLP



William P. Parkin

cc: Don Bussey, County of Santa Cruz  
Robin Bolster-Grant, Project Planner (via E-mail)  
Chris Cheleden, Esq., Assistant County Counsel (via E-mail)  
Ed Newman, Esq. (via E-mail)  
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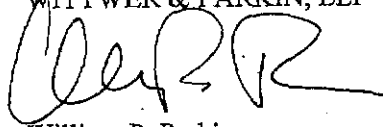
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Very truly yours,  
WITTWER & PARKIN, LLP



William P. Parkin

cc: Don Bussey, County of Santa Cruz  
Robin Bolster-Grant, Project Planner (via E-mail)  
Chris Cheleden, Esq., Assistant County Counsel (via E-mail)  
Ed Newman, Esq. (via E-mail)  
Dan Carl, California Coastal Commission



## Staff Report to the Zoning Administrator

Application Number: 07-0548

**Applicant:** Tracy Johnson  
**Owner:** Brian Arthur  
**APN:** 038-151-89

**Agenda Date:** January 16, 2008  
**Agenda Item #:** 7.  
**Time:** After 10:00 a.m.

**Project Description:** Proposal to construct a 3,083 square foot two-story single family dwelling with an elevator, a four-foot retaining wall within the front yard setback, grade approximately 168 cubic yards, and approximately an additional 43 cubic yards within the 100-year geologic setback.

**Location:** Property located on the south side of Oak Hill Road (between 735 and 749 Oak Hill Road), approximately 380 feet west of the intersection with Seacliff Drive.

**Supervisory District:** Second District (District Supervisor: Ellen Pirie)

**Permits Required:** Coastal Development Permit, Residential Development Permit for a retaining wall exceeding three (3) feet within the required front yard setback, Preliminary Grading Approval and an Exception to Chapter 16.10, the Geologic Hazard Ordinance.

**Technical Reviews:** Geologic and Geotechnical Reports

### Staff Recommendation:

- Certification that the proposal is exempt from further Environmental Review under the California Environmental Quality Act.
- DENIAL of Application 07-0548, based on the attached findings.

### Exhibits

- |   |  |
|---|--|
| A. Project plans  | September 10, 2008   |
| B. Findings   | J. Geotechnical Engineering Report   |
| C. Conditions   | review letter, dated 12/20/05  |
| D. Categorical Exemption (CEQA determination)                   | K. Excerpts of Conclusions and Recommendations from Geologic Investigation prepared by Rogers E. Johnson & Associates, dated 10/24/2005 (report on file) |
| E. Assessor's parcel map  | L. Excerpts of Discussion, Conclusions and Recommendation from Geotechnical Investigation prepared   |
| F. Zoning & General Plan map                                    |  |
| G. Location Map   |  |
| H. Printout, Discretionary application comments, dated 11/25/08 |  |
| I. Urban Designer comments, dated                               |  |

County of Santa Cruz Planning Department  
701 Ocean Street, 4<sup>th</sup> Floor, Santa Cruz CA 95060

EXHIBIT

A

- |    |  |  |
|----|--|--|
|    | by Haro, Kasunich & Associates, Inc., dated 11/2005 (report on file).                                    | 16.10.070(h)1(ii) and 16.10.040(s), dated 10/22/08                         |
| M. | Letter of Request for an Exception by Rogers E. Johnson and Associates, dated 10/20/08                   | O. Memo from County Geologist, dated 11/27/08                              |
| N. | Project Geotechnical Engineer letter of recommendation for approval of exception to County Code Sections | P. Evaluation of brick retaining wall letter, Mike Van Horn, dated 8/22/08 |
|    |  | Q. Comments & Correspondence   |

#### Parcel Information

Parcel Size:	8,276 square feet
Existing Land Use - Parcel:	Vacant
Existing Land Use - Surrounding:	Single
Project Access:	Oak Hill Road
Planning Area:	Aptos
Land Use Designation:	R-UL (Urban Low Density Residential)
Zone District:	R-1-10 (Single family residential - 10,000 square feet per unit)
Coastal Zone:	<input checked="" type="checkbox"/> Inside <input type="checkbox"/> Outside
Appealable to Calif. Coastal Comm.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

#### Environmental Information

Geologic Hazards:	Coastal bluff, instability has been identified in the technical reports
Soils:	Soil 179 (Watsonville Loam)
Fire Hazard:	Not a mapped constraint
Slopes:	Coastal Bluff, over 70% slope at rear of property
Env. Sen. Habitat:	Not mapped/no physical evidence on site
Grading:	211 cubic yards
Tree Removal:	No trees proposed to be removed
Scenic:	Mapped resource
Drainage:	Proposed drainage adequate
Archeology:	Not mapped/no physical evidence on site

#### Services Information

Urban/Rural Services Line:	<input checked="" type="checkbox"/> Inside <input type="checkbox"/> 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

#### History

The subject parcel (formerly APN 038-151-85) was determined to be a legal parcel and granted an Unconditional Certificate of Compliance under Permit 01-0068 on June 10, 2003. In March 2005, Coastal Development Permit 04-0531 permitted the demolition of an existing deck and elevator shaft attached to a single family dwelling on the adjacent parcel that encroached onto the subject parcel, a portion of this dwelling still encroaches. Building permit #140419 for the

demolition work was finalized on May 5, 2005.

Geologic and Geotechnical reports were reviewed and accepted by the County Geologist in December 2005 which established a coastal bluff setback and building envelope for a single family dwelling. On January 14, 2008 building permit #148760 was finalized, which allowed the demolition of an existing carport that had collapsed, as part of this permit no grading or removal of existing retaining walls was allowed.

The County Planning Department accepted an application for a Coastal Development Permit, Residential Development Permit for a retaining wall exceeding three (3) feet within the required front yard setback, Preliminary Grading Approval and an Exception to Chapter 16.10 Geologic Hazard Ordinance on September 17, 2007.

### Project Setting

The property is located at the top of a coastal bluff on the south side of Oak Hill Road (between 735 and 749 Oak Hill Road), approximately 380 feet west of the intersection with Seacliff Drive. The south end of the parcel is the coastal bluff, immediately above Las Olas Drive. The coastal bluff is a slope in excess of 70 % grade. Three retaining walls of approximately four feet in height are located on the subject property, one of which goes under the neighboring structure at the point where the structure encroaches on the subject parcel. A letter from the structural engineer clarified that the retaining wall is not attached to the neighboring structure (Exhibit P). A 48" redwood tree is located within the northeastern most point of the property and will be retained. A line of mostly two story homes exist on either side of the vacant parcel along Oak Hill Road and a line of two story homes exists below the bluff across Las Olas Drive.

### Zoning Consistency

The subject property is a 8,786 square foot lot, located in the R-1-10 (Single family residential - 10,000 square feet per unit) zone district, a designation which allows residential uses. The proposed Single Family Dwelling is a principal permitted use within the zone district.

	R-1-10 Standards	Proposed Residence
Front yard setback	20 feet	20 feet
Rear yard setback	15 feet	100+/- **
Side yard setback	5 feet and 5 feet*	5 feet and 5 feet
Building Height	28 feet	28 feet
Number of Stories	2	2
Lot Coverage	30%	22%
Floor Area Ratio	50 %	48%
Parking	3 bedrooms-3 spaces	3 spaces-two covered, one in driveway

\* County Code 13.10.323 site standards allows for 5 and 5 foot side yard setbacks when the parcel width is less than 60 feet.

\*\* 100-year geologic setback line is approximately 33 feet from the top of slope as established by Geologic and Geotechnical reports.

The proposed Single Family Dwelling is two stories, which are stepped up the slope from Oak Hill Road. The proposed garage qualifies as a story (County Code 13.10.700-S), as it does not meet the definition of a basement (County Code 13.10.700-B). A deck area was originally proposed in between the garage and the top floor, that would have qualified it as a three story home. A three-story home is not allowed within the urban services line without a variance, for which findings could not be made. The applicant revised the plans to include a sloping roof area in the portion between the top floor and the bottom floor.

#### **Local Coastal Program Consistency**

##### Land Use Designation

The General Plan/Local Coastal Program Land Use Designation of the parcel is R-UL (Urban Low Density Residential), implemented by the R-1-10 (10,000 square foot minimum-single family residence) zone district. The proposed single-family dwelling complies with the purposes of this Land Use Designation, as the primary use of the site will be residential.

##### Exception to Geologic Hazard Ordinance Required

The proposed single family dwelling is located at the top of a coastal bluff. Geologic and Geotechnical reports established a 100- year geologic setback line 33 feet landward of the edge of the bluff and set the building envelope as required by General Plan/LCP 6.2.12. The original geologic and geotechnical reports demonstrate that the building envelope would provide a stable site for 100-year lifetime (County Code 6.2.12). However, the project also includes grading within the 33 foot setback. The grading has not been fully evaluated and it may have adverse impacts on the stability of the coastal bluff (Exhibit O). Further, grading is not allowed within the setback from the coastal bluff and an exception to the Geologic Hazard Ordinance 16.10, would be required for the grading to be approved.

As part of the proposal, the applicant is seeking an exception (Exhibits M & N) to the Geologic Hazard Ordinance 16.10.070 Permit conditions (h) to allow grading within the 25-foot and 100 year setbacks to remove approximately 43 cubic yards of material. In order to grant an exception (County Code 16.10.100) each of four findings must be made. For supplemental information to the following discussion, see memo from County Geologist, Joe Hanna (Exhibit N).

The first finding requires that a hardship, as defined in Section 16.10.040(2)) exists. The definition of hardship is as follows:

*Hardship. For the purposes of administering Section 16.10.100, means the exceptional hardship that would result from failure to grant the requested Exception. The specific hardship must be exceptional, unusual, and peculiar to the property involved. Economic or financial hardship alone is not exceptional. Inconvenience, aesthetic considerations, personal preferences, or the disapproval of neighbors also cannot qualify as exceptional hardship, as these problems can be resolved through means other than granting an Exception, even if those alternative means are more expensive, require a property owner to build elsewhere, or put the parcel to a different use than originally intended or proposed.*

This finding cannot be made, in that the applicant does not demonstrate that a hardship as



defined in Section 16.10.040 (2j) will exist if the exception is not granted. Grading 3 to 5 feet of the bluff is not necessary to develop the parcel as the conclusions of the applicant's consulting geologist report indicate (Exhibit K, Rogers E. Johnson & Associates, 10/24/2005). Furthermore, coastal bluff retreat issues are common to hundreds of homes along the Santa Cruz coast and are not exceptional, unusual, and peculiar to this property.

The second finding is that the project is necessary to mitigate a threat to public health, safety, or welfare. The excavation of a few feet of the crest of the bluff will have little positive impact on the amount or rate of coastal bluff retreat and in fact may have unforeseen adverse affects on the stability of the bluff. An effective alternate solution would be to construct a retaining system with the capacity to stabilize the entire slope. The grading approach is therefore not necessary to mitigate the threat to public health and safety.

The third finding states that the request is for the smallest amount of variance from the provisions of this Chapter as possible. This finding cannot be made in that the applicant's consultants have not analyzed alternatives to their proposal. Most of the benefits of the grading can be accomplished with on site control drainage without the excavation within the 25 foot setback. In addition, if there is mitigation required beyond drainage control, a retaining wall is an option. Both drainage control and a retaining wall can be accomplished without an exception to Chapter 16.10.

The fourth and final finding states that adequate measures will be taken to ensure consistency with the purposes of this Chapter and the County General Plan. This finding cannot be made, in that the grading on the bluff is inconsistent with Section 6.2.11 and 6.2.12 of the General Plan, which specifies the setback from coastal bluffs and the requirement for full geologic investigation. It is also inconsistent with Section 8.6.6 and 5.10.3 of the General Plan, in that the grading will alter the bluff and increase the visibility of the home from the beach below.

In conclusion, the County Geologist states that excavating into the bluff as proposed will not substantially mitigate coastal bluff retreat and in fact may have an adverse effect. Secondly, alternative methods to control drainage have not been assessed. If mitigation of a geologic hazard is the goal then the applicant should consider options that do not require an exception to the code, such as a bluff top retaining wall. Retaining walls at the top of the bluff have a proven ability to control the retreat of the bluffs, such as the wall recently installed on the neighboring property at 745 Oak Hill.

#### **Design Review**

The proposal is located within the Coastal Zone and therefore must comply with County Code 13.20 and 13.11 design review standards. The Urban Designer evaluated the proposed single family dwelling and found that it does not comply with the requirements of the County Design Review Ordinance (Exhibit I). The home is not visually compatible with the existing character of the neighborhood in that the majority of the surrounding development is made of horizontal or vertical wood exteriors. This proposal uses primarily stucco with stone used at the lower area of the front facade. The large rounded window at the rear facade is out of character with the overall design of the residence, and it adds to the lack of compatibility with the neighboring residences as seen from the beach. In addition, the combination of the roof forms result in a structure that

does not have a unified scheme. There are large areas of the front facade that have no fenestration.

The proposal is also required to minimize site disturbance and retain the natural state of the bluff as required per County Code 13.20.130. The applicant is seeking an exception to the geologic ordinance to grade within the geologic setback, and therefore will not be maintaining the natural state of the bluff or minimizing grading. The proposed grading also increases the visual impact of the new development from the beach below, which is not consistent with General Plan/Local Coastal Policies 8.6.5 or 8.6.6, which require that development maintain a relationship with the natural environment and be low-profile, and that natural landforms such as bluffs be protected.

### **Residential Development Permit**

The proposal also includes a retaining wall that will exceed the three-foot maximum within the required front yard setback and requires a Residential Development Permit. The proposed retaining wall will not affect sight distance for exiting the property, Oak Hill is a narrow paved road that serves three properties beyond this parcel.

The four foot retaining wall will be made of concrete that will be conditioned to be left unfinished and unpainted, or be stained/painted a muted natural earth tone. Retaining walls are often found in residential neighborhoods throughout Santa Cruz County and therefore it will not be out of character. The design of the retaining wall will not utilize an excessive quantity of materials or energy in its construction or maintenance, in that the retaining wall is a relatively insignificant structure that is accessory to the residential use allowed by R-1-10 (Single family residential - 10,000 square feet per unit) zone district on the property.

The design and location of the retaining wall will not adversely impact the available light or the movement of air to properties or improvements in the vicinity, in that the retaining wall shall not exceed the six foot height limit that would be allowed in other locations (not abutting a right-of-way) without a discretionary approval or a building permit. The location of the retaining wall on the property and the design does not contain any corners or pockets that would conceal persons with criminal intent.

### **Conclusion**

As proposed, the project is not consistent with all applicable codes and policies of the Zoning Ordinance and General Plan/LCP with the exception of the Residential Development Permit for the four foot retaining wall within the front yard setback. Please see Exhibit "B" ("Findings") for a complete listing of findings and evidence related to the above discussion.

### **Staff Recommendation**

- Certification that the proposal is exempt from further Environmental Review under the California Environmental Quality Act.
- **DENIAL** of Application Number 07-0548, based on the attached findings.

Application #: 07-0548  
APN: 038-151-89  
Owner: Brian Arthur

Page 7

**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](http://www.co.santa-cruz.ca.us)**

Report Prepared By: Maria Perez  
Santa Cruz County Planning Department  
701 Ocean Street, 4th Floor  
Santa Cruz CA 95060  
Phone Number: (831) 454-5321  
E-mail: [maria.perez@co.santa-cruz.ca.us](mailto:maria.perez@co.santa-cruz.ca.us)

### Coastal Development Permit Findings

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

This finding cannot be made, in that the development is not consistent with the design criteria. Regarding the design of the structure, General Plan policy 8.4.1 requires that new infill development on vacant land be consistent with the existing residential character of the neighborhood. The proposed materials, stucco and stone, do not meet criteria for neighborhood compatibility in that they are not consistent with the wood siding found in the majority of neighboring homes. Regarding site design, the proposal is not minimizing grading in accordance with General Plan policy/LCP 6.3.9, and will alter the coastal bluff, which is a natural landform that should be retained in its natural state in accordance with General Plan policies/LCP 8.6.5 and 8.6.6.

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

This finding cannot be made in that General Plan policy/LCP 6.2.10 requires all development to be sited and designed to avoid or minimize hazards. The proposed grading, which is "development" according to County Code 16.10.040(m), does not mitigate the hazard to the downslope neighbors on Las Olas Drive. The excavation of a few feet of the crest of the bluff will have little positive impact on the amount or rate of coastal bluff retreat, and in fact may have unforeseen adverse affects on the stability of the bluff. Mitigation of the hazard can be accomplished through alternate methods, such as a bluff top retaining wall, which would not require an exception to the Geologic Hazard Ordinance 16.10.

General Plan policy/LCP 6.2.11 requires a full geologic report for all development activities within coastal hazard areas, including within a 100-feet of a coastal bluff. This finding cannot be made in that the original geologic report did not include a full assessment of the proposed grading within 100 feet of the coastal bluff and the potential impacts on the surrounding parcels, including those downslope on Las Olas Drive.

General Plan policy/LCP 6.2.12 requires that all development activities occur a minimum of 25 feet from the top of edge of the bluff. This finding cannot be made in that the proposed grading is within the 33 foot bluff top setback. Grading on a coastal bluff is considered development per definitions of "development" (County Code 16.10.040(s)10) and "coastal hazard area" (County Code 16.10.040(m)).

General Plan policy/LCP 8.6.6 requires that ridgetops and natural prominent landforms such as cliffs, bluffs, dunes, rock outcroppings be protected from development. The finding cannot be made in that the grading will alter the coastal bluff, which is a natural landform that should be retained in its natural state. While a hazard has been identified by the project geologist, there are alternative methods of mitigating the hazard that do not require an exception to the geologic hazard ordinance and which may not require alteration of the natural landform. In addition, a building envelope was established by the Geologic and Geotechnical Investigations that is set back 33 feet from the edge of the coastal bluff to provide 100-year lifetime and does not require

**EXHIBIT C**

any grading within the geologic setback.

General Plan policy/LCP 5.10.3 requires minimizing disruption of landforms by grading or inappropriate landscaping, and requires that structures be designed to protect public vistas. This finding cannot be made in that, the grading will alter the natural state of the bluff which helps screen the proposed structure from the public state beach below. The grading will exacerbate the visual impact of the proposed structure.

### 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 cannot be made, in that the project is located at the top of a coastal bluff and the applicant proposes to grade within the geologic setback. The project Engineering Geologist states that the bluff will fail, however, the grading of the bluff will not mitigate for the hazard.

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 cannot be made, in that the proposed location of the Single Family Dwelling and the conditions under which it would be operated or maintained will not be consistent with all pertinent County ordinances, specifically Chapter 16.10.070(h), 13.20 and 13.11. The applicant seeks to grade within the geologic setback and specific findings for the activity cannot be made (Exhibit O). The grading will increase the visual impact of the proposed development, and is also inconsistent with General Plan policies/LCP 8.6.5 and 8.6.6. The design of the structure is not compatible with the neighborhood, see Finding #5.

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 cannot be made, in that the proposed structure is not in conformance with Coastal Design Review Standards as outlined in Chapter 13.20 and 13.11. The home is not visually compatible with the existing character of the neighborhood in that the majority of the surrounding development is made of horizontal or vertical wood exteriors. This proposal uses primarily stucco with stone used at the lower area of the front facade. The large rounded window at the rear facade is out of character with the overall design of the residence, and it adds to the lack of compatibility with the neighboring residences as seen from the beach. In addition, the combination of the roof forms result in a structure that does not have a unified scheme. There are large areas of the front facade that have no fenestration.

**EXHIBIT C**

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 cannot be made, in that the proposed structure is not in conformance with Coastal Design Review Standards as outlined in Chapter 13.11.073. The design is not compatible with the existing character of the neighborhood in that the majority of the surrounding development is made of horizontal or vertical wood exteriors. The subject property is proposing stucco and stone exterior. In addition, the combination of the roof forms result in a structure that does not have a unified scheme. There are large areas of the front facade that have no fenestration. The large rounded window at the rear facade is out of character with the overall design of the residence. The window adds to the lack of compatibility with the neighboring residences as seen from the beach.

### **Geologic Hazard Exception Findings**

1. A hardship, as defined in Section 16.10.040(2j) exists.

This finding cannot be made, in that the applicant does not demonstrate that a hardship will exist as defined in Section 16.10.040 (2j) if the exception is not granted. Grading 3 to 5 feet of the bluff is not necessary to develop the parcel (Rogers E. Johnson & Associates, 10/25/05). Furthermore, coastal retreat issues are common to hundreds of homes along the Santa Cruz Coast and are not exceptional, unusual, and peculiar to this property.

2. The project is necessary to mitigate a threat to public health, safety, or welfare.

The excavation of a few feet of the crest of the bluff will have little positive impact on the amount or rate of coastal bluff retreat, and may have unforeseen adverse affects on the stability of the bluff. A true solution would be to construct a retaining system with the capacity to stabilize the entire slope. Various options that provide stability and which do not require an exception to Chapter 16.10 are available.

Finding 2 cannot be made, in that the proposed grading within the 25 foot and 100 year setbacks does not mitigate for the threat to public health and safety as it is not clear that the grading will significantly reduce the rate of coastal bluff retreat. Furthermore, the grading work may have unforeseen negative affects on the stability of the bluff.

3. The request is for the smallest amount of variance from the provisions of this Chapter as possible.

This finding cannot be made in that the applicant's consultants have not analyzed alternatives to their proposal. Most of the benefits of the grading can be accomplished with on site control drainage without the excavation within the 25 foot setback, and alternatively must evaluate if a

**EXHIBIT C**

bluff wall is the only alternative to control the geologic hazard.

4. Adequate measures will be taken to ensure consistency with the purposes of this Chapter and the County General Plan.

This finding cannot be made, in that the grading on the bluff is inconsistent with Section 6.2.12 of the General Plan and is inconsistent with Section 5.10.3 of the General Plan in that it will remove a part of the slope that would screen the home and reduce the visual impact of a home public beach below.

Approval Date: \_\_\_\_\_

Effective Date: \_\_\_\_\_

Expiration Date: \_\_\_\_\_

\_\_\_\_\_  
Don Bussey  
Deputy Zoning Administrator

\_\_\_\_\_  
Maria Perez  
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.

EXHIBIT C

## 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: 07-0548  
Assessor Parcel Number: 038-151-89  
Project Location: No Situs

**Project Description:** Proposal to construct a single family dwelling

**Person or Agency Proposing Project:** Tracy Johnson

**Contact Phone Number:** 831-722-5462

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

Specify type: 15270 Projects which are disapproved

- E. \_\_\_\_\_ Categorical Exemption

Specify type:

- F. **Reasons why the project is exempt:**

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

\_\_\_\_\_  
Maria Perez, Project Planner

Date: \_\_\_\_\_

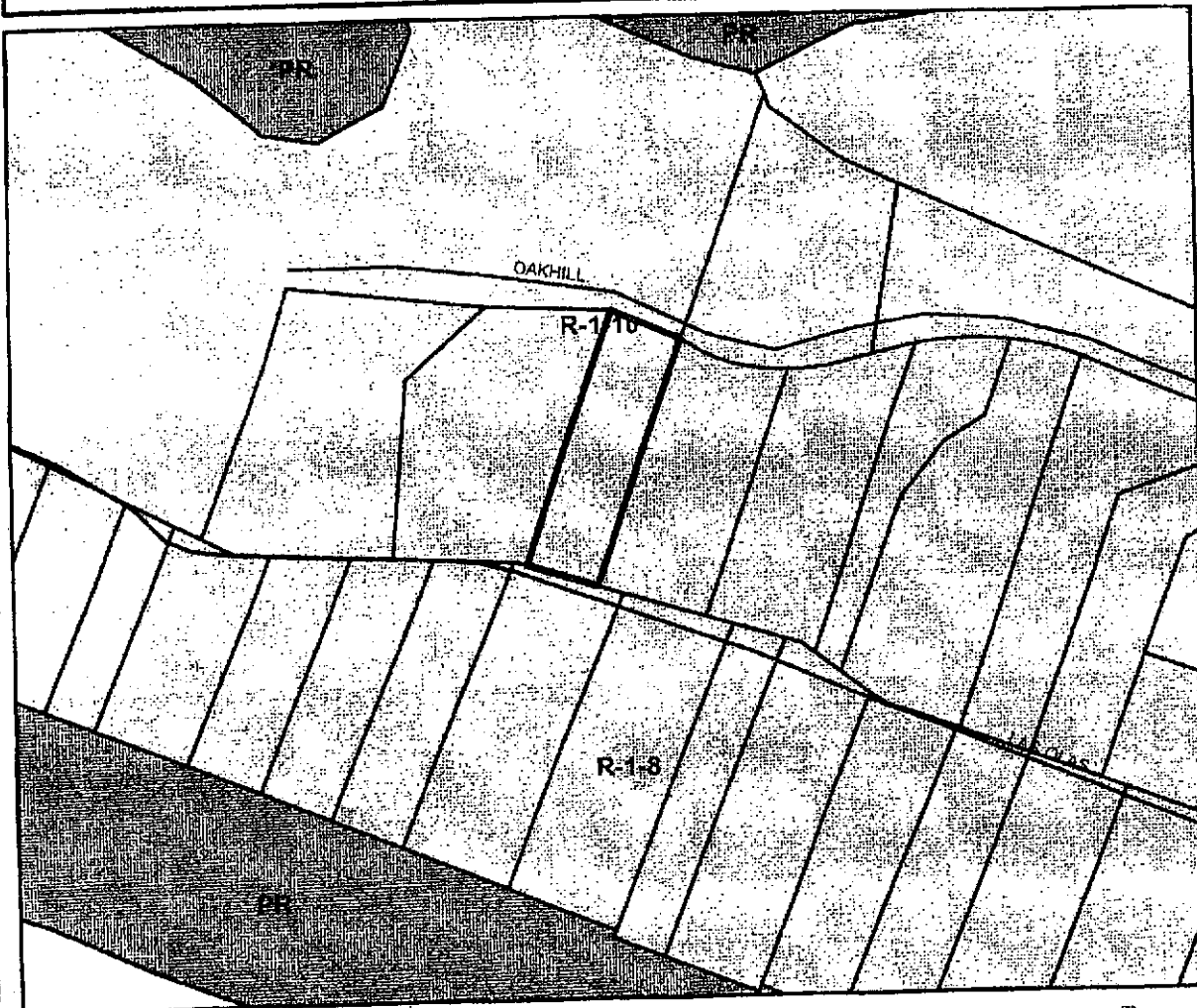
**EXHIBIT D**











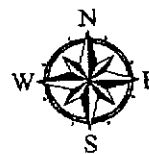


# Zoning Map



## LEGEND

-  APN: 038-151-89
-  Assessors Parcels
-  Streets
-  County Boundary
-  RESIDENTIAL-SINGLE FAMILY
-  PARK

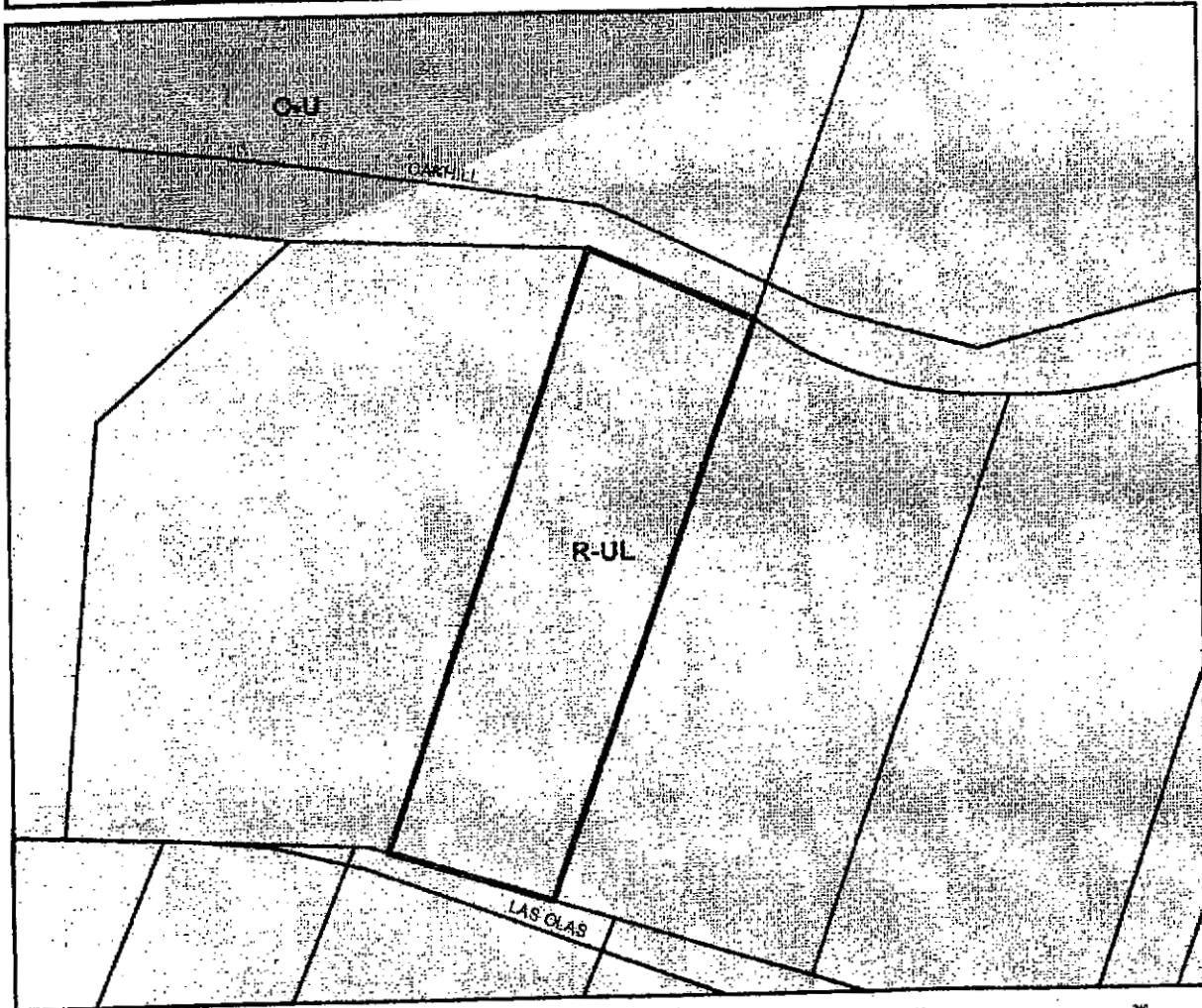


Map Created by  
County of Santa Cruz  
Planning Department  
December 2008

EXHIBIT F.4



# General Plan Designation Map



## LEGEND



APN: 038-151-89



Assessors Parcels



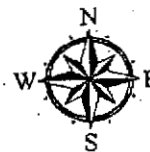
Streets



Residential - Urban Low Density



Urban Open Space

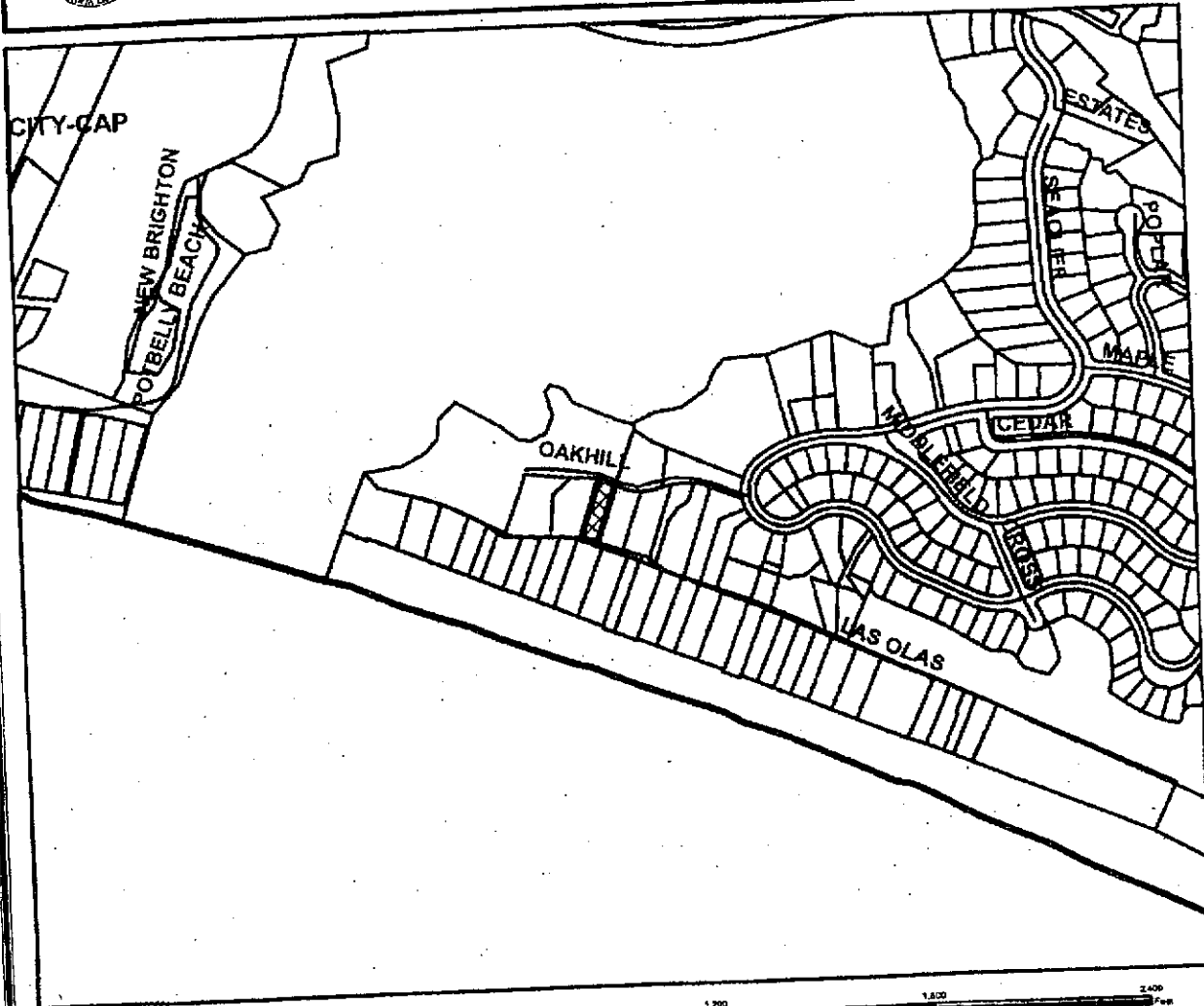


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December 2008






EXHIBIT F ◀

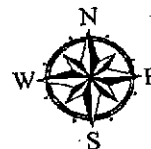


# Location Map



## LEGEND

-  APN: 038-151-89
-  Assessors Parcels
-  Streets
-  CAPITOLA
-  County Boundary



Map Created by  
County of Santa Cruz  
Planning Department  
December 2008

EXHIBIT G

**COUNTY OF SANTA CRUZ  
DISCRETIONARY APPLICATION COMMENTS**

Project Planner: Maria Perez  
Application No.: 07-0548  
APN: 038-151-89

Date: November 25, 2008  
Time: 10:06:00  
Page: 1

**Environmental Planning Completeness Comments**

===== REVIEW ON OCTOBER 5, 2007 BY CAROLYN I BANTI =====

1. Prior to the discretionary application being deemed complete, plan review letters from the geotechnical engineer and engineering geologist shall be submitted to Environmental Planning. The authors of the reports shall write the letters; the letters shall refer to the final set of reviewed plans by drawing and revision dates and shall state that the project plans conform to the reports' recommendations.

2. The proposed project includes grading within the 100-year setback for the structure. Grading is defined as development in Section 16.10.040(s) and must be set back beyond the 100-year lifetime setback per 16.10.070(ii). Please revise the project plan and scope as necessary.

3. Please include top-of-wall and bottom-of-wall elevations for all retaining walls. These elevations should be shown on the grading plans at the beginning, end, and transition points for the walls. ===== UPDATED ON OCTOBER 15, 2007 BY ANTONELLA GENTILE =====

4. Submit a letter from a certified arborist that evaluates the health of the 48 inch redwood tree and makes recommendations for its protection during construction. The letter should also address any potential effect that the proposed garden walls may have on the tree. ===== UPDATED ON JUNE 16, 2008 BY CAROLYN I BANTI =====

--- Completeness Comments --- Soils and Grading ---

Correspondence dated December 6, 2008 from the County to the applicant requested additional information regarding the removal of the existing retaining wall that may extend beneath the adjacent structure to the east. The revisions remove only a portion of the wall, and propose grading adjacent to the wall. Please submit a letter from a civil engineer that addresses: (a) whether the wall extends under the adjacent structure; if so, submit a foundation study for the adjacent residence that clearly states the extent of structural improvements necessitated by the proposed demolition and grading work (b) if the wall does not extend under the adjacent residence, the letter must confirm this and provide a statement that the alterations to the wall and adjacent grade do not threaten the structural integrity of the wall. =====  
UPDATED ON JUNE 19, 2008 BY ANTONELLA GENTILE =====

A plan review letter is required from the arborist prior to this application being deemed complete. The letter must reference the site plan and grading plan by final revision date and state that preservation of the tree is feasible and that the plans conform to the recommendations given in the arborist's report.

**Environmental Planning Miscellaneous Comments**

===== REVIEW ON OCTOBER 5, 2007 BY CAROLYN I BANTI =====

The following are Compliance Comments in regards to soils and grading issues:

1. All grading must be set back 2' from property lines per code section 16.20.160 (Table C). Please revise plans accordingly.

EXHIBIT H

Discretionary Comments - Continued

Project Planner: Maria Perez  
Application No.: 07-0548  
APN: 038-151-89

Date: November 25, 2008  
Time: 10:06:00  
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The following are Misc. Comments/Conditions of Approval in regards to soils and grading issues:

1. Prior to building permit issuance, the applicant shall submit an agreement between the property owner and the road association or other legal entity authorizing the proposed improvements associated with the widening of Oakhill Road.

2. Please include a construction detail of the proposed curbwall on the plans submitted with the building permit application. Note that the wall footings must be deep enough to maintain a distance of 5' between the face of the wall footing and the adjacent slope face per code section 16.20.160.

3. Building permit plans shall note the destination of off-hauled material. Please note that this material may only be delivered to County approved locations.

===== UPDATED ON OCTOBER 15, 2007 BY ANTONELLA GENTILE =====  
Although this parcel is mapped as Riparian Woodland, upon site visit no riparian resources were found. Please refund the Riparian Presite fee.

Please note that Significant trees on this parcel remain protected by the Significant Tree Ordinance. ===== UPDATED ON JUNE 16, 2008 BY CAROLYN I BANTI =====

--- Compliance Comments --- Soils and Grading ---

First review comments noted the apparent conflict between the proposed grading within the 100 year geologic setback and our Geologic Hazards Ordinance which prohibits such activity. In response, the applicant has provided plan review letters from the project geotechnical engineer and engineering geologist. The additional technical information has been reviewed, and findings cannot be made for an exception to the provisions of Chapter 16.10 as outlined in County Code Section 16.10.100. Please revise plans to remove the proposed grading within the geologic setback. See correspondence dated December 6, 2007 for additional details regarding allowable activities within this setback. ===== UPDATED ON JUNE 19, 2008 BY ANTONELLA GENTILE =====

Conditions regarding the redwood tree:

1. Arborist's recommendations shall be clearly stated on the plans.
2. Plans shall include contact information for the project arborist.
3. Submit 2 copies of the arborist's report with the building permit application.
4. A new plan review letter will be required from the project arborist once the building plans have been approved by all agencies. Wall foundations, as well as grading, shall be reviewed.
5. A pre-construction meeting shall be held onsite with the applicant, grading contractor, Environmental Planning staff, soils engineer, and arborist. Procedures, the staging area, tree protection measures and haul routes shall be discussed.
6. The arborist shall verify in writing that tree protection measures have been in-

Discretionary Comments - Continued

Project Planner: Maria Perez  
Application No.: 07-0548  
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Date: November 25, 2008  
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stalled per the report's recommendations prior to permit final.

Dpw Drainage Completeness Comments

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

===== REVIEW ON OCTOBER 5, 2007 BY TRAVIS RIEBER =====

1. Does this site currently receive runoff from adjacent/upslope property? (Specifically from the existing home along the east side of the property) If so, how will the project continue to accept this runoff without causing adverse impacts to the proposed structure or adjacent/downstream neighbors?

2. Please describe the offsite drainage path to a safe point of release. Include details such as specific drainage features, their condition and their capacity. Analysis should be performed by a licensed civil engineer.

3. Collecting runoff from impervious surfaces and directing it to the street is generally inconsistent with county efforts to hold runoff to pre-development rates.

Note: - Projects are required to maintain predevelopment runoff rates where feasible. Mitigating measures should be used on-site to limit increases in post-development runoff leaving the site. Best Management Practices should be employed within the development to meet this goal as much as possible. Such measures include pervious or semi-pervious pavements, runoff surface spreading, discharging roof and driveway runoff into landscaping, etc.

4. How will surface and subsurface runoff intercepted by the proposed retaining walls be controlled and directed to a safe point of release without causing adverse impacts to the proposed structure or adjacent/downstream neighbors? Please provide a cross section construction detail of the proposed retaining walls.

5. Does Oakhill Road currently have a roadside curb? If not, please clarify the need for changing the existing conditions.

Please call the Dept. of Public Works, Storm Water Management Section, from 8:00 am to 12:00 noon if you have questions. ===== UPDATED ON JUNE 3, 2008 BY TRAVIS RIEBER =====

1. More details are needed for the existing culvert. Provide a schematic showing the configuration of the culvert. What is the condition of the inlet and outlet? Is the outlet on private property? Demonstrate how overflow from a 25-year storm event will be conveyed to a reasonable safe point of release.

2. Please revise the tributary drainage area map to clearly show all areas draining toward the existing culvert. Add notes to the map to help clarify how the limits were defined. Show on the map the location of the inlet and outlet of the existing culvert.

3. Provide calculations demonstrating that the proposed roadside drainage swale has adequate capacity to convey a 25-year storm event to a reasonable safe point of release. ===== UPDATED ON SEPTEMBER 9, 2008 BY TRAVIS RIEBER =====  
Previous miscellaneous comments have not been addressed completely.

EXHIBIT H

Discretionary Comments - Continued

Project Planner: Maria Perez  
Application No.: 07-0548  
APN: 038-151-89

Date: November 25, 2008  
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1. More details are needed for the existing culvert. Provide a schematic showing the configuration of the culvert. What is the condition of the inlet and outlet? Is the outlet on private property? Demonstrate how overflow from a 25-year storm event will be conveyed to a reasonable safe point of release. Demonstrate that the overflow from a 25-year storm event will not cause adverse impacts to adjacent or downstream properties.

2. Please revise the tributary drainage area map to clearly show all areas draining toward the existing culvert. Add notes to the map to help clarify how the limits were defined. Show on the map the location of the inlet and outlet of the existing culvert.

3. Submit revised calculations based on the revised tributary drainage area map and the actual dimensions and configuration of the existing culvert from the site visit on 08 August 2008.

4. Provide calculations demonstrating that the proposed roadside drainage swale has adequate capacity to convey a 25-year storm event to a reasonable safe point of release.

5. Please deposit \$550.00 to public works to supplement the previously deposited amount to establish an at cost review account.

Note: All re-submittals shall be made through the Planning Department. Materials left with Public Works may be returned by mail, with resulting delays. ===== UP-  
DATED ON OCTOBER 28, 2008 BY TRAVIS RIEBER =====  
The drainage calculations dated 10/2/2008, sheet 8a dated 9/29/2008 and sheet 8 dated 3/17/2008 have been received and are approved for the discretionary application stage. See miscellaneous comments for issues to be addressed at the building application stage.

Dpw Drainage Miscellaneous Comments

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

===== REVIEW ON OCTOBER 5, 2007 BY TRAVIS RIEBER =====

1. Are the existing impervious areas on the site permitted? Please provide proof such as assessors records, old building permits, photos or aerial photos.

2. For fee calculations please provide tabulation of existing impervious areas and new impervious areas resulting from the proposed project.

Note: A drainage fee will be assessed on the net increase in impervious area.

===== UPDATED ON JUNE 3, 2008 BY TRAVIS RIEBER =====

For fee calculations please provide tabulation of existing impervious areas and new impervious areas resulting from the proposed project. Make clear on the plans by shading or hatching the limits of both the existing and new impervious areas. To receive credit for the existing impervious surfaces please provide documentation such as assessor-s records, survey records, aerial photos or other official records that will help establish and determine the dates they were built. ===== UPDATED ON SEPTEMBER 9, 2008 BY TRAVIS RIEBER =====



Discretionary Comments - Continued

Project Planner: Maria Perez  
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===== UPDATED ON OCTOBER 28, 2008 BY TRAVIS RIEBER =====  
See previous miscellaneous comments.

**Dpw Driveway/Encroachment Completeness Comments**

===== REVIEW ON OCTOBER 29, 2007 BY DEBBIE F LOCATELLI =====  
No Comment. project adjacent to a non-County maintained road.

**Dpw Driveway/Encroachment Miscellaneous Comments**

===== REVIEW ON OCTOBER 29, 2007 BY DEBBIE F LOCATELLI =====  
No comment.

**Dpw Road Engineering Completeness Comments**

===== REVIEW ON OCTOBER 2, 2007 BY ANWARBEG MIRZA =====  
NO COMMENT

**Dpw Road Engineering Miscellaneous Comments**

===== REVIEW ON OCTOBER 2, 2007 BY ANWARBEG MIRZA =====  
Please see miscellaneous comments for issues to be addressed prior to building permit issuance.

1. In order to evaluate access to the single-family dwelling, show how property obtains access road to the county road system and provide details of intersection of the Oak hill Rd. to County Road in plan view.

2. The driveway/access must meet County of Santa Cruz standards in the Design Criteria. Please refer the correct figure and show in plan view.

**Dpw Sanitation Completeness Comments**

===== REVIEW ON OCTOBER 4, 2007 BY CARMEN M LOCATELLI =====  
Sewer service is currently available.

**Dpw Sanitation Miscellaneous Comments**

===== REVIEW ON OCTOBER 4, 2007 BY CARMEN M LOCATELLI =====  
Proposed location of on-site sewer lateral(s), clean-out(s), and connection(s) to existing public sewer must be shown on the plot plan of the building permit application.  
Show all existing and proposed plumbing fixtures on floor plans of building application.

**Aptos-La Selva Beach Fire Prot Dist Completeness C**

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

Discretionary Comments - Continued

Project Planner: Maria Perez  
Application No.: 07-0548  
APN: 038-151-89

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===== REVIEW ON OCTOBER 9, 2007 BY ERIN K STOW =====  
DEPARTMENT NAME: Aptos/La Selva Fire Dept. APPROVED

**Aptos-La Selva Beach Fire Prot Dist Miscellaneous**

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

===== REVIEW ON OCTOBER 9, 2007 BY ERIN K STOW =====  
NO COMMENT

EXHIBIT H

## INTEROFFICE MEMO

APPLICATION NO: 07-0548 (third routing)

Date: September 10, 2008

To: Porcila Perez, Project Planner

From: Larry Kasparowitz, Urban Designer

Re: Review of new residence at Oak Hill Road, Aptos

Completeness Comments

- The roof height exhibit must be signed by and licensed Architect, Civil Engineer, or Surveyor.

Design Review Authority

13.20.130 The Coastal Zone Design Criteria are applicable to any development requiring a Coastal Zone Approval.

Design Review Standards

13.20.130 Design criteria for coastal zone developments

Evaluation Criteria	Meets criteria in code ( ✓ )	Does not meet criteria ( ✓ )	Urban Designer's Evaluation
<b>Visual Compatibility</b>			
All new development shall be sited, designed and landscaped to be visually compatible and integrated with the character of surrounding neighborhoods or areas		✓	The majority of the surrounding houses are wood -- either horizontal or vertical.
<b>Minimum Site Disturbance</b>			
Grading, earth moving, and removal of major vegetation shall be minimized.		✓	
Developers shall be encouraged to maintain all mature trees over 6 inches in diameter except where circumstances require their removal, such as obstruction of the building site, dead or diseased trees, or nuisance species.	✓		
Special landscape features (rock outcroppings, prominent natural landforms, tree groupings) shall be retained.		✓	The bluff should remain in it's natural state.

EXHIBIT I

<b>Ridgeline Development</b>			
Structures located near ridges shall be sited and designed not to project above the ridgeline or tree canopy at the ridgeline			N/A
Land divisions which would create parcels whose only building site would be exposed on a ridgetop shall not be permitted			N/A
<b>Landscaping</b>			
New or replacement vegetation shall be compatible with surrounding vegetation and shall be suitable to the climate, soil, and ecological characteristics of the area			N/A
<b>Rural Scenic Resources</b>			
<b>Location of development</b>			
Development shall be located, if possible, on parts of the site not visible or least visible from the public view.			N/A
Development shall not block views of the shoreline from scenic road turnouts, rest stops or vista points			N/A
<b>Site Planning</b>			
Development shall be sited and designed to fit the physical setting carefully so that its presence is subordinate to the natural character of the site, maintaining the natural features (streams, major drainage, mature trees, dominant vegetative communities)			N/A
Screening and landscaping suitable to the site shall be used to soften the visual impact of development in the viewshed			N/A
<b>Building design</b>			
Structures shall be designed to fit the topography of the site with minimal cutting, grading, or filling for construction			N/A
Pitched, rather than flat roofs, which are surfaced with non-reflective materials except for solar energy devices shall be encouraged			N/A
Natural materials and colors which blend with the vegetative cover of the site shall be used, or if the structure is located in an existing cluster of buildings, colors and materials shall repeat or harmonize with those in the cluster			N/A
<b>Large agricultural structures</b>			

The visual impact of large agricultural structures shall be minimized by locating the structure within or near an existing group of buildings			N/A
The visual impact of large agricultural structures shall be minimized by using materials and colors which blend with the building cluster or the natural vegetative cover of the site (except for greenhouses).			N/A
The visual impact of large agricultural structures shall be minimized by using landscaping to screen or soften the appearance of the structure			N/A
<b>Restoration</b>			
Feasible elimination or mitigation of unsightly, visually disruptive or - degrading elements such as junk heaps, unnatural obstructions, grading scars, or structures incompatible with the area shall be included in site development			N/A
The requirement for restoration of visually blighted areas shall be in scale with the size of the proposed project			N/A
<b>Signs</b>			
Materials, scale, location and orientation of signs shall harmonize with surrounding elements			N/A
Directly lighted, brightly colored, rotating, reflective, blinking, flashing or moving signs are prohibited			N/A
Illumination of signs shall be permitted only for state and county directional and informational signs, except in designated commercial and visitor serving zone districts			N/A
In the Highway 1 viewshed, except within the Davenport commercial area, only CALTRANS standard signs and public parks, or parking lot identification signs, shall be permitted to be visible from the highway. These signs shall be of natural unobtrusive materials and colors			N/A
<b>Beach Viewsheds</b>			
Blufftop development and landscaping (e.g., decks, patios, structures, trees, shrubs, etc.) in rural areas shall be set back from the bluff edge a sufficient distance to be out of sight from the shoreline, or if infeasible, not visually intrusive			N/A
No new permanent structures on open beaches shall be allowed, except			N/A

EXHIBIT I

where permitted pursuant to Chapter 16.10 (Geologic Hazards) or Chapter 16.20 (Grading Regulations)			
The design of permitted structures shall minimize visual intrusion, and shall incorporate materials and finishes which harmonize with the character of the area. Natural materials are preferred			N/A

**Design Review Authority****13.11.040** Projects requiring design review.

- (a) Single home construction, and associated additions involving 500 square feet or more, within coastal special communities and sensitive sites as defined in this Chapter.

**13.11.030** Definitions

- (u) "Sensitive Site" shall mean any property located adjacent to a scenic road or within the viewshed of a scenic road as recognized in the General Plan; or *located on a coastal bluff*, or on a ridgeline.

**Design Review Standards****13.11.072** Site design.

Evaluation Criteria	Meets criteria in code ( ✓ )	Does not meet criteria ( ✓ )	Urban Designer's Evaluation
<b>Compatible Site Design</b>			
Location and type of access to the site	✓		
Building siting in terms of its location and orientation	✓		
Building bulk, massing and scale		✓	<i>The applicant should draw the outline of the neighboring structures to scale on the front elevation.</i>
Parking location and layout	✓		
Relationship to natural site features and environmental influences	✓		
Landscaping	✓		
Streetscape relationship			N/A
Street design and transit facilities			N/A
Relationship to existing structures	✓		
<b>Natural Site Amenities and Features</b>			
Relate to surrounding topography	✓		
Retention of natural amenities	✓		
Siting and orientation which takes advantage of natural amenities	✓		

Ridgeline protection			N/A
<b>Views</b>			
Protection of public viewshed	✓		
Minimize impact on private views	✓		
<b>Safe and Functional Circulation</b>			
Accessible to the disabled, pedestrians, bicycles and vehicles			N/A
<b>Solar Design and Access</b>			
Reasonable protection for adjacent properties	✓		
Reasonable protection for currently occupied buildings using a solar energy system	✓		
<b>Noise</b>			
Reasonable protection for adjacent properties	✓		

## 13.11.073 Building design.

Evaluation Criteria	Meets criteria In code ( ✓ )	Does not meet criteria ( ✓ )	Urban Designer's Evaluation
<b>Compatible Building Design</b>			
Massing of building form		✓	
Building silhouette		✓	
Spacing between buildings			N/A
Street face setbacks	✓		
Character of architecture		✓	
Building scale	✓		
Proportion and composition of projections and recesses, doors and windows, and other features		✓	
Location and treatment of entryways	✓		
Finish material, texture and color	✓		
<b>Scale</b>			
Scale is addressed on appropriate levels	✓		
Design elements create a sense of human scale and pedestrian interest	✓		
<b>Building Articulation</b>			
Variation in wall plane, roof line, detailing, materials and siting	✓		
<b>Solar Design</b>			
Building design provides solar access that is reasonably protected for adjacent properties	✓		

EXHIBIT 1

Building walls and major window areas are oriented for passive solar and natural lighting	✓		
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**Urban Designers Comments**

- *The combination of roof forms adds to the appearance of bulk. The designer should seek to simplify the roof forms.*
- *The garage must be determined to see if it meets the test of a basement or there may possibly be a third story.*
- *Before the hearing, story poles should be provided.*
- *Glazing shall not be tinted or have films. Low-E clear glazing shall be used to reduce reflectance.*

6/11/2008



### DISCUSSIONS, CONCLUSIONS AND RECOMMENDATIONS

Based on the results of our investigation, the proposed project appears compatible with the site, provided the following recommendations are incorporated into the design and construction of the proposed project.

One of the primary purposes of our investigation was to work with the project engineering geologists, Rogers Johnson & Associates, to estimate the configuration of the coastal blufftop in 100 years in order to determine a blufftop setback line allowing for a project building envelope design life of at least 100 years.

The slope stability model used to determine the blufftop setback included 20 feet of recession of the blufftoe/bluff face preceding a design seismic failure of the blufftop. We have included a copy of the Geologic Map dated 5 October 2005 with this report showing the "100 Year Geologic Setback Line" and the "Geologically Stable Building Envelope". The delineated building envelope is about 32 feet landward of the existing blufftop.

The referenced parcel is one of about sixteen bluff parcels including Seacliff Beach State Park, which are situated above Las Olas Drive. Historically, bluff face failures or rockfall events have impacted the blufftoe and the adjacent Las Olas Drive. Rockfall

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mitigation recommendations for the referenced parcel are beyond the scope of this report. We recommend future owners of the parcel consult with a geotechnical engineer or engineering geologist experienced in rockfall mitigation regarding such measures.

The proposed residence may be founded upon a drilled pier and grade beam foundation system.

The following recommendations should be used as guidelines for preparing project plans and specifications:

#### Site Grading

1. The geotechnical engineer should be notified at least four (4) working days prior to any site clearing or grading so that the work in the field can be coordinated with the grading contractor, and arrangements for testing and observation can be made. The recommendations of this report are based on the assumption that the geotechnical engineer will perform the required testing and observation during grading and construction. It is the owner's responsibility to make the necessary arrangements for these required services.

2. Where referenced in this report, Percent Relative Compaction and Optimum Moisture Content shall be based on ASTM Test Designation D1557 current.
3. Areas to be graded should be cleared of all obstructions including loose fill, building foundations, trees not designated to remain, or other unsuitable material. Existing depressions or voids created during site clearing should be backfilled with engineered fill.
4. Cleared areas should then be stripped of organic-laden topsoil. Stripping depth should be from 2 to 4 inches. Actual depth of stripping should be determined in the field by the geotechnical engineer. Strippings should be wasted off-site or stockpiled for use in landscaped areas if desired.
5. Areas to receive engineered fill should be scarified to a depth of 6 inches, moisture conditioned, and compacted to at least 90 percent relative compaction. Portions of the site may need to be moisture conditioned to achieve suitable moisture content for compaction. These areas may then be brought to design grade with engineered fill.
6. Engineered fill should be placed in thin lifts not exceeding 8 inches in loose thickness, moisture conditioned, and compacted to at least 90 percent relative

compaction. The upper 12 inches of pavement and slab subgrades should be compacted to at least 95 percent relative compaction. The aggregate base below pavements should likewise be compacted to at least 95 percent relative compaction.

7. If grading is performed during or shortly after the rainy season, the grading contractor may encounter compaction difficulty, such as pumping or bringing free water to the surface, in the upper surface clayey and silty sands. If compaction cannot be achieved after adjusting the soil moisture content, it may be necessary to over-excavate the subgrade soil and replace it with angular crushed rock to stabilize the subgrade. We estimate that the depth of over-excavation would be approximately 24 inches under these adverse conditions.

8. Fills should be keyed and benched into firm soil in areas where existing slope gradients exceed 6:1 (horizontal to vertical). Subdrains will be required in areas where keyways or benches expose potential seepage zones.

9. The on-site soils generally appear suitable for use as engineered fill. Materials used for engineered fill should be free of organic material, and contain no rocks or clods greater than 6 inches in diameter, with no more than 15 percent larger than 4 inches.

10. We estimate shrinkage factors of about 15 percent for the on-site materials when used in engineered fills.
11. All permanent cut and fill slopes should be inclined no steeper than 2:1 (horizontal to vertical).
12. Following grading, all exposed slopes should be planted as soon as possible with erosion-resistant vegetation.
13. After the earthwork operations have been completed and the geotechnical engineer has finished his observation of the work, no further earthwork operations shall be performed except with the approval of and under the observation of the geotechnical engineer.

#### Foundations

14. The proposed residence may be supported on a drilled pier and grade beam foundation system. The foundation perimeter should be setback from the blufftop in conformance with the building envelope delineated on the project Geologic Map, Figure 2 in the Appendix of this report.

Drilled Piers

15. We recommend a drilled pier and grade beam foundation to support the proposed residence.
16. Drilled piers should be at least 18 inches in diameter and be embedded at least 10 feet below existing grades.
17. Piers constructed in accordance with the above may be designed for an allowable end bearing of 4 ksf.
18. For passive lateral resistance, an equivalent fluid pressure of 250 psf may be assumed to act against two pier diameters. The upper 3 feet of soil should be neglected when computing passive resistance.
19. Prior to placing concrete, all foundation excavations should be thoroughly cleaned. The foundation excavations must be observed by the geotechnical engineer or his representative prior to placing concrete.

Retaining Walls and Lateral Pressures

20. Retaining walls should be designed to resist lateral earth pressures, a seismic surcharge and any additional surcharge loads. Walls up to 12 feet high should be

designed to resist an active equivalent fluid pressure of 35 pcf for level backfills, and 50 pcf for sloping backfills inclined up to 2:1 (horizontal to vertical). Restrained walls should be designed to resist uniformly applied wall pressure of  $23H$  psf per linear foot of wall for level backfills. A seismic surcharge within the retaining wall active pressure zone of  $18H$  psf per linear foot of wall should also be used. The seismic surcharge should be applied at  $0.6H$  above the base of the active zone.

21. The above lateral pressures assume that the walls are fully drained to prevent hydrostatic pressure behind the walls. Drainage materials behind the wall should consist of Class 1, Type A permeable material (Caltrans Specification 68-1.025) or an approved equivalent. The drainage material should be at least 12 inches thick. The drains should extend from the base of the walls to within 12 inches of the top of the backfill. A perforated pipe should be placed (holes down) about 4 inches above the bottom of the wall and be tied to a suitable drain outlet. Wall backdrains should be plugged at the surface with clayey material to prevent infiltration of surface runoff into the backdrains.

#### Slabs-on-Grade

22. We recommend that proposed slabs-on-grade be supported on at least 12 inches of non-expansive engineered fill compacted to at least 95 percent relative compaction. Prior to construction of the slab, the subgrade surface should be proof-

rolled to provide a smooth, firm, uniform surface for slab support. The project design professionals should determine the appropriate slab reinforcing and thickness, in accordance with the anticipated use and loading of the slab. However, we recommend that consideration be given to a minimum slab thickness of 5 inches and steel reinforcement necessary to address temperature and shrinkage considerations. It is recommended that rebar in lieu of wire mesh be used for slab reinforcement. The steel reinforcement should be held firmly in the vertical center of the slab during placement and finishing of the concrete with pre-cast concrete dobies.

23. In areas where floor wetness would be undesirable, a blanket of at least inches of free-draining gravel should be placed beneath the floor slab to act as a capillary break. Capillary break material should be free-draining, clean, angular gravel such as ¾-inch drainrock. The gravel should be washed to remove fines and dust prior to placement on the slab subgrade. The vapor retarder should be a high quality membrane at least 10 mil thick and puncture resistant. An acceptable product for use as a vapor retarder is the Stego Wrap 10-mil Class A vapor retarder system manufactured by Stego Industries, LLC. Provided the Stego Wrap system is installed per manufacturers recommendations, the concrete may be poured directly upon the Stego Wrap Vapor Retarder. The primary considerations for installing the vapor retarder are: taping all seams; sealing all penetrations such as pipe, ducting, wire, etc; and repairing all punctures.



24. It should be clearly understood slabs are not waterproof, nor are they vapor-proof. The aforementioned moisture retardant system will help to minimize water and water vapor transmission through the slab; however moisture sensitive floor coverings require additional protective measures. Floor coverings must be installed according to the manufacturer's specifications, including appropriate waterproofing applications and/or any recommended slab and/or subgrade preparation. Consideration should also be given to recommending a topical waterproofing application over the slab.

25. Exterior concrete slabs-on-grade should be founded on firm, well-compacted ground. Reinforcing should be provided in accordance with the anticipated use and loading of the slab. The reinforcement should not be tied to the building foundations. These exterior slabs can be expected to suffer some cracking and movement. However, thickened exterior edges, a well-prepared subgrade including premoistening prior to pouring concrete, adequately spaced expansion joints, and good workmanship should minimize cracking and movement.

#### Flexible Pavements

26. Asphaltic concrete, aggregate base and subbase, and preparation of the subgrade should conform to and be placed in accordance with the Caltrans Standard Specifications, latest edition, except that the test method for compaction should be determined by ASTM D1557-Current.

27. To have the selected sections perform to their greatest efficiency, it is important that the following items be considered:

- A. Moisture condition the subgrade and compact to a minimum relative compaction of at least 95 percent, at about 2 percent over optimum moisture content.
- B. Provide sufficient gradient to prevent ponding of water.
- C. Use only quality materials of the type and thickness (minimum) specified. Base rock should meet Caltrans Standard Specifications for Class II Aggregate Base, and be angular in shape.
- D. Compact the base rock to a relative dry density of 95 percent.
- E. Place the asphaltic concrete during periods of fair weather when the free air temperature is within prescribed limits per Caltrans specifications.
- F. Provide a routine maintenance program.

Site Drainage

28. Thorough control of runoff is essential to the performance of the project.

29. Runoff must not be allowed to sheet flow over graded slopes. Berms or lined V-ditches should be constructed at the top of slopes to divert water toward suitable collection facilities.

30. Permanent subdrains may be required adjacent to pavements or building foundations where groundwater levels are near the surface. The location and depth of these drains will need to be determined in the field by the geotechnical engineer.

31. Surface drainage should include provisions for positive gradients so that surface runoff is not permitted to pond adjacent to foundations and pavements. Surface drainage should be directed away from the building foundations.

32. Full roof gutters should be placed around all eaves. Discharge from the roof gutters should be conveyed away from the downspouts by closed conduit to either: an approved energy dissipater; on site detention; or street drainage as determined by the project civil engineer.

33. The migration of water or spread of extensive root systems below foundations, slabs, or pavements may cause undesirable differential movements and subsequent damage to these structures. Landscaping should be planned accordingly.

**Plan Review, Construction Observation, and Testing**

34. Our firm should be provided the opportunity for a general review of the final project plans prior to construction so that our geotechnical recommendations may be properly interpreted and implemented. If our firm is not accorded the opportunity of

Project No. SC8970  
17 November 2005

making the recommended review, we can assume no responsibility for misinterpretation of our recommendations. We recommend that our office review the project plans prior to submittal to public agencies, to expedite project review. The recommendations presented in this report require our review of final plans and specifications prior to construction and upon our observation and, where necessary, testing of the earthwork and foundation excavations. Observation of grading and foundation excavations allows anticipated soil conditions to be correlated to those actually encountered in the field during construction.

**ROGERS E. JOHNSON & ASSOCIATES**  
CONSULTING ENGINEERING GEOLOGISTS  
41 Hangar Way, Suite B  
Watsonville, California 95075-2458  
e-mail: rogersjohnson@sbcglobal.net  
Ofc (831) 728-7200 • Fax (831) 728-7218

20 October 2008

Brian Arthur  
382 Belle Monte Avenue  
Aptos, California 95003

Job No. C07027-56

Subject: Request for Exception  
Oak Hill Road, Aptos, California  
Santa Cruz County APN 038-151-89  
Application # 07-0548

Dear Mr. Arthur:

As described in our geologic investigation for the subject site (Johnson, 2005), the property is situated atop a very steep, 100 foot high coastal bluff overlooking Las Olas Drive, Monterey Bay and a row of beachfront houses. The "100 year geologic setback line" designated by our firm lies 33 feet landward of the top of the bluff and our geologically suitable building envelope begins landward of the geologic setback line. This creates a zone between the top of the bluff and the building envelope in which the bluff is expected to fail during the economic lifetime of the development. Within this zone is an existing iron rail fence, brick retaining wall and loose surface soil. The eventual failure of the bluff creates a geologic hazard to persons, structures and property at its base and can impede the right-of-way on Las Olas Drive. Structures such as the brick wall and iron fence and loose soil within this zone increase the hazard.

The Santa Cruz County Planning Department (2007) cited "Issues of Consistency with County Regulations and Policies" with the development plans for this project with respect to site grading; specifically, grading within the "100 year setback" (County Code section 16.10.070(h)(1)(ii) and development within the "100 year setback" (County Code section 16.10.040(s). The purpose of this letter is to request an exception, as outlined in Section 16.10.100 of the Santa Cruz County Code which, if granted, will allow for the proposed mitigations within the 100 year geologic setback zone to be performed.

The construction plans (Tracy Robert Johnson, 2008) for the proposed residence include removing the existing fence and a portion of the brick retaining wall and regrading the surface soils within the 100 year setback zone. This will help improve site drainage and improve the stability of the bluff. These proposed actions will help mitigate the geologic hazard at the base of the bluff.

Bluff failure is already a significant geologic hazard in this area, particularly at the base of the bluff. The surface soil on the blufftop at the subject site is extensively burrowed, creating a conduit for rainwater or runoff to infiltrate the underlying loose, unconsolidated earth materials, which in turn decreases the stability of the bluff. As shown on the plans, creating an impermeable

EXHIBIT B

Brian Arthur  
20 October 2008

Job No. C07027-56  
Page 2

barrier on the ground surface within the 100 year setback zone will significantly reduce infiltration and eliminate burrowing.

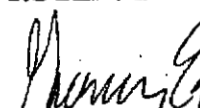
Removal of the fence, wall and surface soil will also reduce the hazard at the base of the bluff by lessening the driving force (mass) that contributes to blufftop failures.

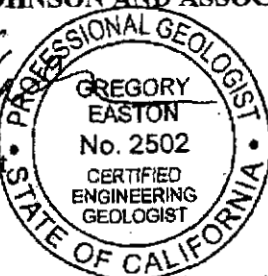
Left unmitigated, the iron fence, brick wall and loose soil existing at the blufftop within the 100 year setback zone will ultimately fail, which poses a hazard to persons, structures and property at the base of the bluff. In our opinion, the hazards posed by the iron fence, brick wall and loose soil can be easily mitigated by their careful removal.

Please call if you have questions.

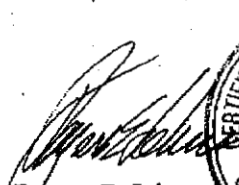
Sincerely,

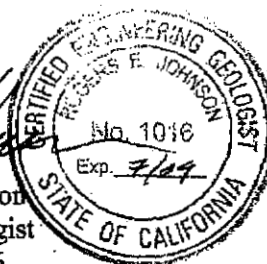
**ROGERS E. JOHNSON AND ASSOCIATES**

  
Gregory Easton  
Project Geologist  
C.E.G. No. 2502



GFE/REJ/gfe

  
Rogers E. Johnson  
Principal Geologist  
C.E.G. No. 1016



**References:**

Rogers E. Johnson and Associates, 2005, Geologic Investigation, Oswalt Property, Oak Hill Road, Aptos, California, Santa Cruz County APN 038-151-89, 24 October, 2005, unpublished consultants report, Job No. C05041-56.

Santa Cruz County Planning Department, 2007, Incomplete Application - Additional Information Required, Application #: 07-0548; Assessor's Parcel #: 038-151-89, Owner: Brian Arthur, 15 October 2007, 4p.

Tracy Robert Johnson, 2008, Grading Plan (sheet 6), Erosion Control and Stormwater Management Plan (sheet 8), and Sections & Details (sheet 11) for Brian Arthur, 17 March 2008, Job No. 0704RN, 11 Sheets.

**Copies:**

Addressee (1)  
Tracy Johnson (4)  
Haro, Kasunich and Associates, Inc., Attn: Rick Parks (1)

Rogers E. Johnson & Associates

EM



# COUNTY OF SANTA CRUZ

## PLANNING DEPARTMENT

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

December 20, 2005

Emily and Tom Oswalt, Trustees  
P.O. Box 310  
Aptos, CA 95001

**Subject:** Review of Engineering Geology Report, by Rogers E. Johnson dated October 24, 2005, Project # C05041-56 and Geotechnical Engineering Report by Haro, Kasunich and Associates, Inc. Dated November 2005, Project #: SC8970  
*APN 038-151-89, Application #: 05-0753*

Dear Emily and Tom Oswalt,

The purpose of this letter is to inform you that the Planning Department has accepted the subject reports and the following items shall be required:

1. All construction shall comply with the recommendations of the reports.
2. Final plans shall reference the reports and include a statement that the project shall conform to the reports' recommendations.
3. Before building permit issuance a *plan review letters* shall be submitted to Environmental Planning. The authors of the reports shall write the *plan review letters*. These letters shall state that the project plans conform to the reports' recommendations.
4. The Engineering Geologist must identify the location of the Coastal Bluff on their geologic map, and a copy of that map must be submitted with any future permit application. All further submittal to the County must include a site plan that has a representation of the site relief, the geologic acceptable development envelope, and the Coastal Bluff. A civil engineer must prepare this site plan and any grading plans.
5. The attached declaration of geologic hazards must be recorded before the issuance of the building permit issuance.

After building permit issuance the soils engineer *must remain involved with the project* during construction. Please review the *Notice to Permits Holders* (attached). In addition, the engineering geologist will need to approve in writing the location of the buildings footings and provide a

(over)  
**EXHIBIT J**


Review of Engineering Geology Report, By Rogers E. Johnson and Associates, Project # C05041-56, and Geotechnical Engineering, by Haro Kasunich and Associates, Report No.: SC8970  
APN: 038-151-89  
Page 2 of 5

final letter at the end of the project that indicates that all of the work complies with the recommendations to the report.

Our acceptance of the reports is limited to its technical content. Other project issues such as zoning, fire safety, septic or sewer approval, etc. may require resolution by other agencies.

Please call the undersigned at (831) 454-3175, or e-mail [joe.hanna@co.santa-cruz.ca.us](mailto:joe.hanna@co.santa-cruz.ca.us) if we can be of any further assistance.

Sincerely,

  
Joseph L. Hanna, CEG 1313  
County Geologist

Cc: Robert Loveland, Environmental Planning  
Haro, Kasunich and Associates, Inc, attention Rick Parks PE  
Rogers E. Johnson and Associates



coefficient (k) of 0.54. This is based on a predicted PGA of 0.64g (mean plus one standard deviation), a total bluff height of 99 feet and an estimated slide height of 37 feet, occurring within the marine terrace deposits and Aromas Sand.

Current Santa Cruz County standards require that the pseudostatic slope stability analysis show the site stable beyond a 1.2 factor of safety. Given this standard, a minimum seismic coefficient (k) of 0.15 should be used as suggested within Special Publication 117 (California Division of Mines and Geology, 1997).

#### *Aseismic Slope Stability*

The sea cliff is also subject to slope failure under aseismic conditions. Not all of the materials that are loosened by earthquakes fail as landslides; some remains on the bluff. This "earthquake weakening" together with weathering of the bluff can produce loose debris on the slope. Subsequent storms can mobilize this loose debris. Although generally smaller than seismically generated failures, storm generated landslides are an order of magnitude more common (a ten year cycle versus a hundred year cycle).

Our review of time sequential aerial photographs revealed numerous failures of the subject coastal bluff. Subsequent to construction of the seawall, these failures were primarily the result of over saturation of loose debris mantling the slope. Individual failures tended to be localized either within the upper bluff composed of the marine terrace deposits and the Aromas Sand or within the lower bluff composed of the Purisima Formation sandstone. A significant portion of the failures were relatively large, covering the entire width of the property.

During a site visit on August 10, 2005, we observed a relatively large, aseismic, joint controlled, block failure of the bluff at the subject property. The failure was restricted to the upper approximately 30 feet of the Purisima Formation sandstone and incorporated approximately 150 cubic yards of material. It spanned about a 30 foot width of bluff-face and was up to a maximum of 6 feet thick (measured perpendicular to the bluff-face).

#### **CONCLUSIONS and RECOMMENDATIONS**

1. The coastal bluff at the subject property is protected from surf erosion and as a consequence the rate of retreat of the toe of the bluff is very slow. However, the top of the bluff at the subject property will continue to retreat until the alluvial deposits reach their natural angle of repose, forming a stable slope. The ultimate configuration of the bluff top in 100 years is difficult to predict with accuracy. However, given our observations of the materials that underlie the bluff at the subject property we can establish a reasonable estimate. The Purisima Formation sandstone forming the base of the bluff may continue to fail in joint bounded blocks. Therefore we have estimated an additional 20 feet of additional block failure (measured perpendicular to the bluff-face, see Plate 2). The upper bluff deposits, which include the Aromas Sand and marine terrace deposits, will continue

to erode and fail until the angle of their slope is about 33 degrees (1.5:1 slope gradient). The projection of the 1.5:1 slope to the terrace surface from the contact in the cliff face of the upper bluff deposits with the underlying Purisima Formation sandstone defines the 100 year bluff top. This estimate assumes no significant shifts in climactic conditions causing an increased rate of erosion. All future construction on the bluff top should be located behind this 100 year geologic setback line (Plate 1).

2. The site is located in an area of high seismic activity and will be subject to strong seismic shaking in the future. Modified Mercalli Intensities of up to VIII are possible. The controlling seismogenic source for the subject property is the San Andreas fault, 12 kilometers to the northeast. The design earthquake on this fault should be  $M_w$  7.9. Expected duration of strong shaking for this event is about 31 seconds. Deterministic analysis for the site yields a mean peak ground acceleration plus one dispersion of 0.64g.
3. *Cosider* { If the project geotechnical engineer performs pseudostatic slope stability analysis of the coastal bluff backing the subject residence, they should utilize our geologic cross sections. Current practice suggests that a site-specific seismic coefficient (k) be used in the analysis when considering a factor of safety of greater than 1.0. Ashford and Sitar (2002) recommend a method for calculating a site-specific pseudostatic seismic coefficient (k) specifically for a coastal bluff top setting. Following their guidelines yields a coefficient (k) of 0.54. Current Santa Cruz County standards require that the pseudostatic slope stability analysis show the site stable beyond a 1.2 factor of safety. Given this standard, a minimum seismic coefficient (k) of 0.15 should be used as suggested within Special Publication 117 (California Division of Mines and Geology, 1997).
4. Drainage from improved surfaces, such as walkways, patios, roofs and driveways, at the top of the bluff should be collected in impermeable gutters or pipes and either carried to the base of the bluff via closed conduit or discharged into an established storm drain system that does not issue onto the bluff. At no time should any concentrated discharge be allowed to spill directly onto the ground adjacent to the existing residence. Any drain water on paved areas should not be allowed to flow toward the residence or toward the bluff top. The control of runoff is essential for control of erosion and prevention of ponding.
5. We request the privilege of reviewing all geotechnical engineering, civil engineering, drainage, and architectural reports and plans pertaining to the proposed development.

#### INVESTIGATION LIMITATIONS

1. The conclusions and recommendations contained herein are based on probability and in no way imply that the proposed development will not possibly be subjected to ground failure, seismic shaking or landsliding of such a magnitude that it overwhelms the site.

Project No. SC9551  
22 October 2008

MR. BRIAN ARTHUR  
382 Belle Monti Avenue  
Aptos, California 95003

Subject: Geotechnical Recommendation for Approval of Exception to County  
Code Sections 16.10.070(h)(1)(ii) and 16.10.040(s)

Reference: Blufftop Grading Within a Geologic Hazards Setback Area  
Adjacent to Proposed Arthur Residence Building Envelope  
APN 038-151-89  
Oak Hill Road  
Santa Cruz County, California

Dear Mr. Arthur:

A new residence is proposed to be constructed at the referenced coastal blufftop parcel adjacent Oak Hill Road in Santa Cruz County, California. Our Geotechnical Investigation for the proposed project is dated 25 November 2005. An engineering geology report for the project was prepared Rogers E. Johnson & Associates. The engineering geology report delineates a 100 year erosion setback line for the project site blufftop building envelope. The new residence must be placed landward of the 100 year erosion setback line.

A Grading Plan was developed for the proposed residence by the project civil engineer, Mr. Mike Van Horn, CE. The Grading Plan and Cross Section show the blufftop at the center of the parcel being cut down from about elevation 117 to elevation 114 feet. The blufftop will be cut to drain toward the center of the parcel with a shallow swale conveying the collected blufftop runoff landward. The 2005 Geologic and Geotechnical Investigations prepared for the development of the referenced parcel noted the bluff face will destabilize over time due to natural processes whether or not the new residence is constructed. Las Olas Drive is situated immediately adjacent the toe of the bluff with a beachfront residential development at the seaward perimeter of Las Olas Drive. Las Olas Drive has been historically impacted with landslide debris from the oversteepened bluff.

Our letter titled Geotechnical Review of Grading, Erosion Control, and Storm Water Management Plan with Supplemental Geotechnical Analyses, dated 30 April 2008 outlines our engineering opinion that removal of the top 3 feet of the blufftop will reduce the volume of soil that has the potential to impact Las Olas

EXHIBIT

N

Mr. Brian Arthur  
Project No. SC9551.1  
Oak Hill Road  
22 October 2008  
Page 2

Drive below as well as provide a positive increase to the slope stability of the bluff face by reducing the driving forces within the potential blufftop failure wedge

It is our understanding current Santa Cruz County regulations do not allow grading or development within a geologic hazards setback area. Pursuant to Santa Cruz County Code Chapter 16.10.100, we recommend an exception be granted to County Code Sections 16.10.070(h)(1)(ii) and 16.10.040(s) in order to allow the cutting of the blufftop in order to reduce the existing threat to public safety.

If you have any questions regarding this letter, please call our office.

Sincerely,

**HARO, KASUNICH AND ASSOCIATES, INC.**

Rick L. Parks  
GE 2603

*R*



RLP/dk

Copies: 1 to Addressee  
1 to Roger E. Johnson & Associates  
Attention: Greg Easton, C.E.G.  
3 to Tracy Robert Johnson - Residential Design and Planning  
Attention: Tracy Johnson

## MEMORANDUM

Date: November 27, 2008

To: Porcila Perez, Development Review Planner

From: Joe Hanna, County Geologist CEG 1313

Re: Proposed Exception to the Geologic Hazards Code  
APN 038-151-89, Application Number 07-0548

Rogers E. Johnson and Associates in their letter dated October 20, 2008 and Haro, Kasunich, and Associates in their letter dated October 22, 2008 state that the eventual failure of the bluff creates a geologic hazard to persons, structures and property below the proposed Arthur Home on Oak Hill Road. To resolve this hazard, the letters recommend an exception to the Geologic Hazards Code, Section 16.10.070 Permit conditions (h) to allow grading within the 25-foot and 100 year setbacks to remove 3 to 5 feet of the permeable soils that contribute potential infiltration of surface water. All of this work is shown on a plan prepared by the project Civil Engineer Mike Van Horn.

Previously, Rogers E. Johnson and Associates stated in their report dated October 24, 2005 that a home could be built on the property if the home was setback approximately 33 feet from the crest of the bluff. The report identified the vertical rock bluff face and rock slope stability as the control factor in bluff retreat. County staff accepted this report and its conclusions, and subsequent project approvals have been based upon this report.

I agree with the addendum reports in their conclusions that coastal bluff retreat poses a potential hazard to the occupants of the homes at the base of the slope as well as any vehicles or pedestrians that are on Las Olas Drive. Improving surface drainage may increase the length of time before the next bluff top failure occurs by decreasing pore pressure along the various fractures. I disagree that this minor excavation resolves the hazard, and the current information has not demonstrated that removing this material will significantly reduce the geological hazard. In fact a majority of the benefit of the proposed work is related to the drainage control and can be accomplished without the exception and related grading of the soils zone at the top of the bluff. My reasons for these conclusions are:

- i. The effect on stability of the removal of the relatively small amount of weight contributed by the soil on the crest of the slope is unclear. Depending upon the orientation of fractures within this rock, removal of weight from the crest of the slope may decrease resisting forces with a resulting decrease in slope stability after removal. A detailed kinematic analysis and related stability analysis would be necessary to assure that removals from crest would not adversely affect slope stability.
- ii. Clearly, the engineering geologist has indicated that adverse water conditions contribute to block slope failure. In as far as the site contributes to adverse water conditions, an effective drainage system can be installed on the existing ground surface with minimal excavation without the need for the exception.

EXHIBIT 0

- iii. The iron fence, and brick wall can be removed with little additional grading.
- iv. There are proven methods to control bluff retreat that do not require an exception to the Code. An example of one of these methods is the retaining wall with reinforced caisson or pier foundations completed on the Minott property at 745 Oak Hill Road (see Rogers E. Johnson September 17, 2007.)

**Exception:**

An exception to the geologic hazards Code is needed to allow the grading into the 25 foot setback per Section **16.10.070 Permit conditions (h) Coastal Beaches and Bluffs** which states in ii,

*"for all development, including that which is cantilevered, and for non-habitable structures, a minimum setback shall be established at least 25 feet from the top edge of the coastal bluff, or alternatively, the distance necessary to provide a stable building site over a 100-year lifetime of the structure, whichever is greater."*

To make an exception to section 16.10.070 (h) ii findings are required under section 16.10.100 (c) of the Geologic Hazards Codes. The difficulties in making these findings are as follows:

**Required Finding 1. - that hardship, as defined in Section 16.10.040(2)), exists**

This finding cannot be made, in that applicant does not demonstrate that a hardship will exist as defined in Section 16.10.040 (2)) if the exception is not granted. Grading 3 to 5 feet of the bluff is not necessary to develop the parcel as the conclusions of the Rogers E. Johnson 10/25/2005 report demonstrates. Furthermore, coastal bluff retreat issue are common to hundreds of homes along the Santa Cruz Coast and are not exceptional, unusual, and peculiar to this property.

**Required Finding 2. - the project is necessary to mitigate a threat to public health, safety, or welfare**

The excavation of a few feet of the crest of the bluff will have little impact on the amount or rate of coastal bluff retreat, and may have unforeseen adverse affects on the stability of the bluff. A true solution would be to construct a retaining system with the capacity to stabilize the entire slope.

Finding 2 cannot be made, in that the proposed grading within the 25 foot and 100 year setbacks does not mitigate for the threat to public health and safety as it is not clear that the grading will significantly reduce the rate of coastal bluff retreat. Furthermore, the grading work may have unforeseen affects on the stability of the bluff.

**Required Finding 3. - the request is for the smallest amount of variance from the provisions of this Chapter as possible**

This finding cannot be made, in that the applicant's consultants have not analyzed alternatives to their proposal. Most of the benefits of the grading can be accomplished with on site control drainage without the excavation within the 25 setback, and alternatively must evaluate if a bluff wall is the only alternative to control the geologic hazard.

**Required Finding 4. - adequate measures will be taken to ensure consistency with the purposes of this chapter and this Chapter and the County General Plan. (Ord. 3340, 11/23/82; 3598, 11/6/84; 4518-C, 3/8/99)**

This finding cannot be made, in that the grading on the bluff is inconsistent with Section 6.2.12 of the General Plan and is inconsistent Section 5.10.3 of the General Plan in that it will modify a public vista with an adverse change in the aesthetic character of the community.

**Conclusions:**

The following conclusion can be made concerning the current proposed additional grading:

1. Alternative methods of controlling drainage must be assessed. I believe that a drainage system set at grade with similar fabric as proposed by the Van Horn's grading plan would control drainage at least as well as the current proposal.
2. I cannot see how Finding 1 can be made for this project because a clear hardship, as defined in Section 16.10.040(2j), does not exist with regards to the applicant and the project.
3. Excavating a few feet into the bluff as proposed by the Consultants will not substantially mitigate coastal bluff retreat. Without a clear mitigation making Finding 2 is infeasible, as the Finding requires mitigation of the hazard. Similarly, Finding 3 is complicated as the condition assumes that the least amount of variance required to Code to accomplish the mitigation of a geologic hazard. If mitigation of a geologic hazard is the goal then the applicant should consider options that do not require an exception to the Code such as bluff top walls. These walls have a proven ability to control the retreat of bluff.
4. The consultants must also consider the design of the project in relationship to the adjacent properties and interplay bluff retreat on each parcel will have with the others.



Registered Civil and Geotechnical Engineer  
101 Forest Avenue, Santa Cruz, CA 95062-2622

soilsurgeon@cruzio.com  
cell (831) 234-5966

Tel. (831) 429-9364  
Fax (831) 429-9822

File Number: 12073

22 August 2008

Mr. Brian Arthur  
382 Belle Monti Avenue  
Aptos, CA 95003

Subject: Proposed Single Family Dwelling Development, APN 038-151-89  
Oakhill Road  
Santa Cruz County, California

### **Evaluation of Brick Retaining Wall**

Dear Mr. Arthur:

As requested by Mr. Tracy Johnson on your behalf, I have visited the subject site, observed the condition of the existing brick retaining wall, and I have observed the under floor area of the residence east/adjacent to the brick retaining wall. I am providing herein my conclusions regarding the stability of the brick retaining wall with respect to its proposed alterations to the affected site features.

It is my understanding the existing brick retaining wall, located within the geologic setback within the subject site, is planned to be reduced in length such that only the east most approximately nine to ten feet of the retaining wall is to remain following completion of the proposed improvements. The proposed plans also call for the reduction of the height of the backfill for a significant portion of the remaining brick wall.

I visited the subject site today, 22 August 2008. I observed the existing conditions of the brick retaining wall. The east most nine feet of the retaining wall is in relatively good condition and is slightly curved in plan view. The retaining wall does not extend under the residence to the east of the wall.

Additionally, at the home owner's permission, I observed the under floor area of the residence to the east of the wall and observed the foundation of this residence extends down to the base elevation of the brick retaining wall so that the residence's foundation does not depend upon the presence of the brick retaining wall for structural support of any kind.

Based on the above conditions and assumptions, I conclude the proposed alterations to the brick retaining wall and adjacent grade do not threaten the structural integrity of the wall.



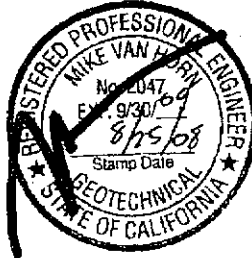
Mike Van Horn, Inc.

22 August 2008

File Number 12073

This concludes this letter. If you have any questions, please contact this office.

Sincerely Yours,



Mr. Mike Van Horn, CE 35615, GE 2047 (expires 9/30/09)

COPIES: 1 to Addressee  
3 to Tracy Johnson, Residential Design  
1 to File

1 William P. Parkin, State Bar No. 139718  
Jonathan Wittwer, State Bar No. 058665  
2 Gary Patton, State Bar No. 048998  
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5 Facsimile: (831) 429-4057  
office@wittwerparkin.com

6 Attorneys for Petitioners and Plaintiffs  
7 PATRICK AND LAURA MURPHY  
8  
9

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 FOR THE COUNTY OF SANTA CRUZ  
12  
13

14 PATRICK MURPHY, and LAURA  
MURPHY,

Case No. CV 163497

15 Petitioners and Plaintiffs,

16 v.

17 COUNTY OF SANTA CRUZ, and DOES 1  
18 THROUGH 15,

**FIRST AMENDED PETITION FOR  
WRIT OF MANDAMUS AND  
COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF, DAMAGES  
AND ATTORNEYS FEES**

19 Respondents and Defendants,

20 BRIAN ARTHUR, TOM F. OSWALT, as  
trustee for the Oswald Trust, and DOES 15  
21 THROUGH 30,

Date: January 14, 2010  
Time: 8:29 a.m.  
Dept.: 4

22 Real Parties in Interest and  
Defendants.  
23  
24  
25  
26  
27  
28

Honorable Timothy R. Volkmann

**EXHIBIT** B

1           1.     On June 10, 2003, the County of Santa Cruz (hereinafter "County" or  
2 "Respondents") improperly issued two Unconditional Certificates of Compliance recognizing  
3 two separate and distinct parcels ("Subject Parcels"), when only one legal parcel exists,  
4 concerning real property on a coastal bluff above Seacliff Beach located at 749 Oakhill Road  
5 (Assessor's Parcel Number 038-151-85) (hereinafter the "Property") in unincorporated Santa  
6 Cruz County. The Unconditional Certificates of Compliance were administratively approved  
7 without public notice or hearing even though improvements for the pre-existing home on the  
8 Property crosses the boundary line between the two parcels which were issued to Unconditional  
9 Certificates of Compliance on the Property. The County now recognizes a portion of the subject  
10 Property as a legally distinct parcel (with a new Assessor's Parcel Number being assigned-038-  
11 151-89) and thus the County allowed the illegal creation of two separate parcels.

12           2.     Said Certificates of Compliance were issued contrary to both state law and the  
13 County's own regulations. Because the Subject Parcels were not actually legally created, the  
14 County has improperly allowed the subdivision of property without a Minor Land Division  
15 Approval and a required Coastal Development Permit (appealable to and otherwise subject to the  
16 jurisdiction of the California Coastal Commission). By the procedure employed by the County,  
17 the Applicant avoided the scrutiny of the County Planning Commission and Coastal Commission  
18 and thwarted the Petitioners' and Plaintiffs' administrative appellate and due process rights.  
19 Such actions also violated the County's Local Coastal Program. The failure of the County to  
20 follow the law is a failure to proceed in a manner required by law, and thus is an abuse of  
21 discretion.

22           3.     By this Petition and Complaint, Petitioners and Plaintiffs allege that the purported  
23 parcels are not two separate, legal parcels, and ask the Court to mandate the Respondent County  
24 of Santa Cruz to take all necessary and appropriate actions to ensure that said Property is not  
25 recognized by or treated by the County as being comprised of separate legal parcels. Petitioners  
26

27 *First Amended Petition for Writ of Mandamus and Complaint for Declaratory and Injunctive Relief, Damages and Attorneys Fees*

1 and Plaintiffs further request declaratory relief that the purported parcels were not created in  
2 compliance with applicable state and local law, and thus are not separate, legal parcels and that  
3 the County be enjoined from treating them as such until and unless such division complies with  
4 the California Coastal Act, the Local Coastal Program, the Subdivision Map Act, and County  
5 regulations.

6  
7 **I**

8 **PARTIES**

9 4. Petitioners hereby incorporate by reference paragraphs 1 through 3 as if fully set  
10 forth herein.

11 5. Petitioners and Plaintiffs Patrick and Laura Murphy ("Petitioners") own real  
12 property in Santa Cruz County on Oakhill Road in the Seacliff area, adjacent to the Property.

13 6. Respondent and Defendant County of Santa Cruz is a political subdivision of the  
14 State of California with general jurisdiction over the division and use of land located within the  
15 unincorporated areas of Santa Cruz County, California. Notwithstanding its general jurisdiction  
16 over the division and use of land within Santa Cruz County, the County is subject at all times to  
17 applicable provisions of State law, which includes, specifically, the California Coastal Act  
18 (Public Resources Code Section 30000 *et seq.*). Pursuant to the California Coastal Act, the  
19 County has a State-approved Local Coastal Program which requires issuance of a Coastal  
20 Development Permit by the County prior to any division of land. The California Coastal  
21 Commission has appellate jurisdiction in the Coastal Zone where this parcel is located. Further,  
22 the County must follow the mandatory requirements of its own applicable regulations as it  
23 exercises its jurisdiction over the division and use of land within its jurisdictional boundaries.

24 7. The true names and capacities, whether individual, corporate or otherwise, of Does 1  
25 through 15, are unknown to Petitioners who therefore sue said Respondents by such fictitious  
26

27 *First Amended Petition for Writ of Mandamus and Complaint for Declaratory and Injunctive Relief, Damages and Attorneys Fees*

1 names and will seek leave to amend this First Amended Petition for Writ of Mandamus and  
2 Complaint for Declaratory and Injunctive Relief, Damages and Attorneys Fees (hereinafter "First  
3 Amended Petition and Complaint") when their identities have been ascertained.

4 8. Petitioners are informed and believe that at all times herein alleged, Respondents  
5 and each of them were the agents and employees of each of the remaining Respondents and while  
6 doing the things herein alleged, were acting within the course and scope of such agency and  
7 employment.

8 9. Real Party in Interest Brian Arthur ("Arthur") is the owner of Assessor's Parcel  
9 Number (APN) 038-151-89, which he claims to be a separate, legal parcel, and which he seeks to  
10 develop with a new single-family dwelling.

11 10. Real Party in Interest Tracy Johnson is an applicant for a proposed single-family  
12 dwelling on APN 038-151-89.

13 11. Real Party In Interest Tom F. Oswalt, as trustee of the Oswalt Trust, (Oswalt) is a  
14 previous owner of the Property, and he applied for and received the subject Unconditional  
15 Certificates of Compliance for the Property. However, Oswalt provided seller financing for the  
16 purchase of APN 038-151-89 by Arthur and still holds a Deed of Trust on APN 038-151-89.

17 12. Real Party in Interest Ron Powers was the applicant for the subject Unconditional  
18 Certificates of Compliance.

19 13. The true names and capacities, whether individual, corporate or otherwise, of  
20 Does 15 through 30, are unknown to Petitioners who therefore sues said Real Parties by such  
21 fictitious names and will seek leave to amend this Petition and Complaint when they have been  
22 ascertained.

23 14. Petitioners are informed and believe that at all times herein alleged, the remaining  
24 Real Parties in Interest and each of them is the agent and employee of each of the remaining Real  
25 Parties and while doing the things herein alleged, were acting within the course and scope of  
26

27 *First Amended Petition for Writ of Mandamus and Complaint for Declaratory and Injunctive Relief, Damages and Attorneys Fees*

1 such agency and employment.

2  
3 **II**

4 **STANDING**

5 15. Petitioners hereby incorporate by reference paragraphs 1 through 14 herein as if  
6 fully set forth herein.

7 16. Petitioners are owners of real property on Oak Hill Road and located adjacent to  
8 the Property. Petitioners are adjacent landowners and taxpayers in the County of Santa Cruz.  
9 Issuance of the subject Unconditional Certificates of Compliance adversely affects the interests  
10 of Petitioners. Petitioners are adversely affected by the County's noncompliance with its  
11 regulations, including the County Subdivision Ordinance, the Local Coastal Program ("LCP")  
12 and the County's noncompliance with the State Subdivision Map Act and the State Coastal Act.  
13 The subject Unconditional Certificates of Compliance adversely affect development on a coastal  
14 bluff and the environmental integrity of the County of Santa Cruz.

15 17. Jurisdiction of this court is invoked pursuant to California Code of Civil Procedure  
16 Sections 1085 and 1060, Public Resources Code Sections 30803 and 30804, the Constitution of  
17 the State of California, and other applicable law.

18  
19  
20 **III**

21 **GENERAL ALLEGATIONS**

22 18. Petitioners hereby incorporate by reference paragraphs 1 through 17 herein as if  
23 fully set forth herein.

24  
25 ///

26  
27 *First Amended Petition for Writ of Mandamus and Complaint for Declaratory and Injunctive Relief, Damages and Attorneys Fees*

1 *Application for Certificates of Compliance*

2 19. On February 5, 2001, Application No. 01-0068 was filed by Oswalt, Trustees,  
3 then the owner of the Property. The application sought Unconditional Certificates of  
4 Compliance to establish a separate legal parcel on the Property. The Development Permit  
5 Application is attached to this Petition and Complaint as **Exhibit A**. The Application shows on  
6 its face, and it is true in fact, that the Property is located within the California Coastal Zone, as  
7 established by the California Coastal Act.

8 20. Unconditional Certificates of Compliance are issued to recognize parcels that were  
9 legally created under the Subdivision Map Act at a prior date. Thus, in seeking such recognition  
10 of such parcels, the landowner avoids the need to apply for a division of the land under the  
11 Subdivision Map Act (and the County Subdivision Ordinance) or the California Coastal Act (and  
12 the County LCP).

13 21. On June 12, 2001, after having reviewed extensive materials related to the  
14 Application, and without any public notice or hearing, but acting on an administrative basis only,  
15 Santa Cruz County Principal Planner Cathy Graves determined that "Assessor's Parcel Number  
16 038-151-85 does not constitute two separate legal parcels and does not warrant the recording of  
17 either an Unconditional or Conditional Certificates of Compliance." The materials considered by  
18 the County include documents showing, among other things, that existing improvements were  
19 built across the boundary line which Oswalt sought to establish by his application for the subject  
20 Unconditional Certificates of Compliance. Indeed, the owners of the Property were only  
21 assessed property taxes by the County Assessor as one parcel, the owners represented in previous  
22 applications to the County that the Property only consisted of one parcel, and the home,  
23 driveway, decking, carport and elevator constructed on the Property straddle or straddled the  
24 boundary line in which Oswalt sought to establish, and said development exists or existed on  
25 both properties. For these reasons, under State law and the County's regulations, the Property  
26

1 was found to consist of one legal parcel. Nothing has occurred to support a different conclusion.

2 22. The determination denying the issuance of the Unconditional Certificates of  
3 Compliance was accepted by Santa Cruz County's Project Manager, Don Bussey, also on an  
4 administrative basis, and without a public notice or a hearing. A copy of the County  
5 determination was provided to legal counsel of Oswalt, and a copy of that determination letter is  
6 attached to this Petition and Complaint as **Exhibit B**. The County's determination letter advised  
7 Oswalt of their ability to appeal the decision to the Santa Cruz County Planning Director.

8 23. On June 26, 2001, acting through their attorney, Oswalt appealed the denial of  
9 Application No. 01-0068. A copy of the appeal letter is attached to this Petition and Complaint  
10 as **Exhibit C**.

11 24. In a letter dated July 3, 2001, Don Bussey, Project Manager, recommended denial  
12 of the appeal and "upholding the Zoning Administrators decision that: 1. Assessor's Parcel  
13 Numbers 038-151-85 constitutes only [one] legal parcel for land use and planning purposes." A  
14 copy of this letter recommending denial of the appeal is attached to this Petition and Complaint  
15 as **Exhibit D**.

16 25. On August 27, 2002, more than one year later, and again on an administrative  
17 basis, without a public notice or hearing, Glenda Hill, Santa Cruz County Principal Planner for  
18 Development Review, issued a letter to Oswalt's counsel stating that her letter "serves as a  
19 decision on the administrative appeal..." This letter granted the appeal, though it noted "a  
20 concern about the existing encroachment. You have indicated that the property owners are  
21 willing to correct the encroachment either through demolition or a lot line adjustment. I agree  
22 that one of these solutions is necessary." The letter from Principal Planner Glenda Hill also  
23 indicated that she would "direct Don Bussey, the staff planner, to prepare and record the  
24 unconditional certificates of compliance." A copy of this decision letter, granting the appeal, and  
25 indicating that Unconditional Certificates of Compliance would be issued, is attached to this  
26



1 Petition and Complaint as **Exhibit E**.

2 26. On June 9, 2003, almost an additional year later, in a memorandum from Glenda  
3 Hill to Don Bussey, Ms. Hill stated that "this memo is to clarify the wording of two sentences in  
4 the Appeal Determination letter for 01-0068, dated August 27, 2002, to wit: "You have indicated  
5 that the property owners are willing to correct the encroachment either through demolition or a  
6 lot line adjustment. I agree that one of the solutions is necessary. The word 'necessary' should  
7 not be construed as a condition of the appeal determination, as this is an Unconditional  
8 Certificate of Compliance. It is, rather, my opinion and suggestion." The memo further directed  
9 Mr. Bussey to "record the Unconditional Certificates of Compliance for APN 38-151-85, as  
10 approved under Permit No. 01-0068." This memorandum was issued on an administrative basis,  
11 without any public notice or public hearing, and is attached to this Petition and Complaint as  
12 **Exhibit F**.

13 27. Based on the directive contained in the June 9, 2003 memo, and as indicated  
14 earlier, the two Unconditional Certificates of Compliance were issued for the Property on the  
15 very next day, June 10, 2003. Copies of these Unconditional Certificates of Compliance are  
16 attached to this Petition and Complaint as **Exhibits G and H**.

17 28. By issuing these Certificates of Compliance, the County has taken the position  
18 that the Property the County currently identifies as APN 038-151-89 is a separate, legal parcel,  
19 and that the property so identified is no longer to be considered a portion of APN 038-151-85.  
20 The County administratively issued, without public notice or hearing or an opportunity to object,  
21 the subject Unconditional Certificates of Compliance in order to avoid the need to comply with  
22 the Subdivision Map Act or the Coastal Act and their respective County counterparts as alleged  
23 above. This process utilized by the County also meant that the California Coastal Commission  
24 did not receive notice of purported land division as it would have had the County instead held  
25 public hearings and approved a Coastal Development Permit. The Coastal Commission is  
26

27 *First Amended Petition for Writ of Mandamus and Complaint for Declaratory and Injunctive Relief, Damages and Attorneys Fees*

1 required to receive notice of all "Final Local Action" on Coastal Development Permits. Because  
2 the County administratively issued purported Unconditional Certificates of Compliance it  
3 illegally purported to divide land and create separate parcels so as to thwart and infringe on the  
4 public's rights to notice and an opportunity to be heard regarding such illegal land divisions.

5 29. This Petition and Complaint challenges the assertion that the Property contains  
6 two separate, legal parcels and that the real property identified as APN 038-151-89 is a separate,  
7 legal parcel, on the basis that the County could not legally issue and record the two  
8 Unconditional Certificates of Compliance without first complying with mandatory provisions of  
9 state and local law. Moreover, the County conditioned the approval. Thus, despite the County's  
10 arguments to the contrary, it actually issued Conditional Certificates of Compliance. While such  
11 Conditional Certificates were still illegal, their issuance also triggers the need for a Coastal  
12 Development Permit. By law, such Conditional Certificates require Coastal Development  
13 Permits.

14  
15 *Recent application to construct single-family dwelling on illegal parcels*

16 30. On September 17, 2007, by Application No. 07-0548, Arthur and Johnson  
17 submitted a Development Permit Application to the County to construct an approximately 3,042  
18 square foot, two-story single family dwelling on APN 038-151-89.

19 31. The County accepted and processed Application No. 07-0548. Petitioners and  
20 others appeared and opposed the application.

21 32. At the noticed Zoning Administrator public hearing held on January 16, 2009, at  
22 which Petitioner appeared and noted that the newly created parcel needs a Coastal Development  
23 Permit before the development proceeds, Mr. Don Bussey, acting as the County Zoning  
24 Administrator, discussed the development problems with APN 038-151-89, noting the fact that  
25 there is still an encroachment on the legally invalid parcel from the adjoining property, of which  
26

1 the purported parcel now identified as APN 038-151-89 was formerly a portion, and highlighting  
2 the significant geological issues involved. During said public hearing, Mr. Bussey stated that he  
3 had recommended against the creation of what the County is now identifying as APN 038-151-  
4 89.

5 33. Mr. Bussey's statement at the January 16, 2009 hearing caused Petitioners to learn  
6 of the subject Unconditional Certificates of Compliance for the first time, and to investigate  
7 County's processing of the Unconditional Certificates of Compliance Application that led to its  
8 recognition as a separate legal parcel, including the earlier administrative non-noticed and non-  
9 public proceedings that resulted in the County's decision to issue the two Unconditional  
10 Certificates of Compliance for the Property, and which was for purported parcel that the County  
11 now identifies as Assessor's Parcels Numbers 038-151-89. Petitioners discovered that these  
12 Unconditional Certificates of Compliance had not, in fact, ever been legally effective in creating  
13 new, separate, legal parcels because the County did not comply with mandatory provisions of the  
14 County LCP and the State Coastal Act. At a minimum, because no LCP was issued, no separate  
15 legal parcel was ever actually created as to APN 038-151-89.

16 34. Ultimately, Application No. 07-0548 was denied on January 16, 2009, "without  
17 prejudice," and Petitioners are informed and believe, and on that basis allege, that future  
18 applications will be made to develop the property now identified as APN 038-151-89 as if it were  
19 a lawfully created separate, legal parcel from APN 038-151-85, which it is not.

20 35. Petitioners promptly informed the County of the County's error in issuing and  
21 recording the two Unconditional Certificates of Compliance by a letter dated March 10, 2009, a  
22 copy of which is attached to this Petition and Complaint as **Exhibit I**, and specifically requested  
23 the County to "notify the current property owner that the creation of Assessor's Parcel 038-151-  
24 89 requires a CDP [Coastal Development Permit]; or, in the alternative, that you inform the  
25 Executive Director of the Coastal Commission by telephone of this dispute/question and request  
26

27 *First Amended Petition for Writ of Mandamus and Complaint for Declaratory and Injunctive Relief, Damages and Attorneys Fees*

1 an Executive Director's opinion, as required by the Coastal Act." Instead, by letter dated March  
2 17, 2009, the County has wrongly asserted that "the issuance of a Certificate of Compliance does  
3 not constitute 'development' for the purposes of the California Coastal Act." A copy of said  
4 letter is attached hereto as **Exhibit J**. Petitioners' response to the County's letter is attached  
5 hereto as **Exhibit K**.

6 36. The County has and continues to fail to take either of the actions requested by  
7 Petitioners and Plaintiffs in their letter of March 10, 2009, and Petitioners and Plaintiffs have no  
8 plain, speedy or effective remedy except by this action seeking an order of this Court.

9  
10  
11 **IV**

12 **[FIRST CAUSE OF ACTION]**

13 **Enforcement Against Violation of Santa Cruz County Code, Local Coastal Program and**  
14 **California Coastal Act [ PRC § 30804]**  
15

16 37. Petitioners hereby incorporate by reference paragraphs 1 through 36 herein as if  
17 fully set forth herein.

18 38. Although the County issued and recorded the subject Unconditional Certificates  
19 of Compliance on June 10, 2003 which purport to recognize and establish the real property  
20 identified as APNs 038-151-85 and 038-151-89 as separate, legal parcels, the County's action  
21 was legally ineffective to achieve this result, because the County failed to follow mandatory  
22 provisions of both local and state law in connection with its issuance of the subject  
23 Unconditional Certificates of Compliance.

24 39. The Property did not consist of two separate, legal parcels at the time the Certificates  
25 of Compliance were issued. Unconditional Certificates of Compliance can only be issued for  
26

1 parcels that are indeed pre-existing legally created parcels. In this case, the Property did not  
2 consist of two pre-existing legally created parcels.

3 40. Santa Cruz County Code Section 13.20.050 (a part of the County LCP) provides  
4 that any person wishing to undertake any "development," as that term is defined in Santa Cruz  
5 County Code Section 13.20.040, must first obtain a Coastal Zone Approval. "Development" as  
6 defined in County Code Section 13.20.040 includes any "change in the density or intensity of use  
7 of land, including but not limited to subdivision pursuant to the Subdivision Map Act  
8 (commencing with Section 66410 of the Government Code), and any other division of land,  
9 including lot splits," with some exceptions that do not apply to the property at issue here.

10 41. Furthermore, the Coastal Act requires a Coastal Development Permit for all  
11 divisions of land (with one exception not relevant here). Public Resources Code §§30106;  
12 30600. It further authorizes any person to maintain an action to enforce the duties imposed upon  
13 any local government by the act. Public Resources Code §30804. Moreover, assuming,  
14 *arguendo*, that a Certificate of Compliance could be issued, the subject certificates were  
15 "conditional" certificates of compliance requiring a Coastal Development Permit.

16 42. In this case, no Coastal Development Permit (or Coastal Zone Approval) was ever  
17 applied for or issued in connection with the issuance and recording of the two Unconditional  
18 Certificates of Compliance issued by the County on June 10, 2003, and they thus have no legal  
19 effect whatsoever in establishing the Property as having two lawfully created separate, legal  
20 parcels for land use and planning purposes.

21 43. By treating the Property as two separate, legal parcels without the requisite  
22 Coastal Development Permit, the County has and continues to abuse its discretion, and has and  
23 continues to fail to proceed in the manner required by law by violating the requirements of the  
24 County LCP and the California Coastal Act. Petitioners therefore seek a writ of mandamus  
25 directing the County to take all necessary and appropriate actions to ensure that APN 038-151-89  
26

27 *First Amended Petition for Writ of Mandamus and Complaint for Declaratory and Injunctive Relief, Damages and Attorneys Fees*

1 is not recognized by or treated by the County as being a lawfully created separate legal parcels  
2 prior to the issuance of a Coastal Development Permit. Petitioners seek to compel the County to  
3 comply with the County's own regulations and duties imposed upon the County by the Coastal  
4 Act and require Real Parties in Interest to apply for and obtain a Coastal Development Permit  
5 prior to further development of APN 038-151-89 as a lawfully created separate legal parcel and  
6 prior to accepting any future development application.

7 44. By failing to require Real Party in Interest to obtain a Coastal Development  
8 Permit prior to its issuance of the Certificates of Compliance, the County abused its discretion  
9 and failed to proceed in the manner required by law. A peremptory writ of mandate is necessary  
10 in this instance to avoid irreparable harm through recognition and treatment of the Property as  
11 having two separate legal parcels.

12  
13  
14 V

15 **SECOND CAUSE OF ACTION**

16 **Declaratory Relief**

17 45. Plaintiffs hereby incorporate by reference paragraphs 1 through 44 herein as if  
18 fully set forth herein.

19 46. An actual controversy has arisen between the Petitioners, Respondents, and Real  
20 Parties in Interest concerning their respective rights and duties in that the Petitioners contend that  
21 the Property does not contain two separate, legal parcels and that APN 038-151-89 is not a  
22 lawfully created separate legal parcel. The California Coastal Act authorizes any person to seek  
23 declaratory relief to prevent violations of the Act. Public Resources Code §30803.

24 47. Petitioners further contend that the purported parcels were not created and that the  
25 County's recognition of the Property as containing two separate legal parcels and recognition of  
26

27 *First Amended Petition for Writ of Mandamus and Complaint for Declaratory and Injunctive Relief, Damages and Attorneys Fees*

1 APN 038-151-89 as a lawfully created separate legal parcel, without the required governmental  
2 review and approval is unlawful. A Coastal Development Permit is required before the subject  
3 Unconditional Certificates of Compliance can have legal force and effect.

4 48. Petitioners therefore seek a judicial declaration that the Property does not contain  
5 two separate, legal parcels and that APN 038-151-89 is not a lawfully created separate legal  
6 parcel.

7  
8 VI

9 THIRD CAUSE OF ACTION

10 Failure to Perform a Mandatory Duty

11  
12 49. Plaintiffs hereby incorporate by reference paragraphs 1 through 48 herein as if  
13 fully set forth herein.

14 50. By letter dated March 10, 2009, the Petitioners requested that the County consult  
15 with the Coastal Commission's Executive Director concerning the County's unlawful treatment  
16 of the Property. Title 14 of the California Code of Regulations §13569 governs and states that

17  
18 (b) If the determination of the local government is challenged by the applicant  
19 or an interested person, or if the local government wishes to have a Commission  
20 determination as to the appropriate designation, the local government shall notify the  
21 Commission by telephone of the dispute/question and shall request an Executive  
22 Director's opinion....

23 These state regulations are mandatory, not discretionary. Yet, the County refused to consult the  
24 Coastal Commission as requested. Thus, the County has failed to perform a mandatory duty and  
25 a writ of mandate should issue compelling the County to consult with the Coastal Commission  
26 concerning this matter.

27 *First Amended Petition for Writ of Mandamus and Complaint for Declaratory and Injunctive Relief, Damages and Attorneys Fees*

VII

FOURTH CAUSE OF ACTION

Equitable Relief/injunction

51. Plaintiffs hereby incorporate by reference paragraphs 1 through 50 herein as if fully set forth herein.

52. The California Coastal Act authorizes any person to seek equitable relief to restrain violations of the Act. Public Resources Code §30803.

53. The County's past and present actions in treating the Property as constituting two separate, legal parcels and in recognizing APN 038-151-89 as a lawfully created separate legal parcel without a valid Coastal Development Permit constitutes a violation of the Coastal Act.

54. Plaintiffs possesses no speedy, adequate remedy at law, in that recognition of APN 038-151-89 as a separate legal parcel or development of the Property will permanently and forever harm, injure, degrade and impact the environmental values of the coastal bluff and surrounding areas in violation of the Coastal Act and the County's Local Coastal Program. Real Parties in Interest Arthur and Tracy Johnson threaten to proceed with development on the recognized parcel without a Coastal Development Permit for creation of said parcel. Further, Plaintiffs, as adjacent landowners, persons interested in protecting coastal and environmental resources, and taxpayers of the County of Santa Cruz, will suffer irreparable and permanent injuries if the County's treatment of the Property as a separate, legal parcel is not enjoined.

55. A stay and/or restraining order and preliminary and permanent injunction should issue restraining the County from continued recognition of the Property as two separate, legal parcels and/or the recognition of APN 038-151-89 as a lawfully created, separate legal parcel for land-use and planning purposes.

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*First Amended Petition for Writ of Mandamus and Complaint for Declaratory and Injunctive Relief, Damages and Attorneys Fees*



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VIII  
FIFTH CAUSE OF ACTION  
Violation of Due Process of Law

56. Petitioners hereby incorporate by reference paragraphs 1 through 55 herein as if fully set forth herein.

57. The Federal and State constitutional principle of due process requires that landowners and other affected parties be provided adequate notice and opportunity to be heard prior to any governmental action that may affect significant property rights. These principles are codified in Government Code §§ 65090 and 65091 and County Code Chapter 18.10.

58. Furthermore, because the County's approval in this case constitutes a quasi-adjudicatory acts, those persons affected by such land use decisions are constitutionally entitled to notice and an opportunity to be heard prior to issuance of the subject Certificates of Compliance. *Horn v. County of Ventura*, (1979) 24 Cal. 3d 605, 612.

59. In addition, the County's issuance of the Certificates of Compliance at issue in this case required a Coastal Development Permit (CDP) and any issuance of a CDP requires a notice and hearing pursuant to the Coastal Act and the County LCP.

60. In this case, the public and adjacent property owners were not provided with any notice or a public hearing on the County's review, approval and/or issuance of the subject Certificates of Compliance. This lack of notice and hearing constitutes a violation of the Federal and State constitutional requirements of due process, as well as State and County law. The public, and particularly the adjacent property owners, were legally entitled to an opportunity to review and comment on such actions affecting their property rights.

IX  
ATTORNEYS FEES

61. Petitioners hereby incorporate by reference paragraphs 1 through 61 herein as if fully set forth herein.

62. Petitioners are entitled to reasonable attorneys fees pursuant to the Federal and State Constitutional rights of equal protection and due process of law, including, but not limited 42 U.S.C. 1988.

63. In pursuing this action, Petitioners will confer a substantial benefit on the People of the State of California and therefore are entitled to recover from Respondents and Real Parties reasonable attorneys' fees and costs pursuant to Section 1021.5 of the Code of Civil Procedure, and other provisions of law.

64. In pursuing this action, Petitioners will enforce a duty imposed on the County by the California Coastal Act and restrain a continuing violation of the California Coastal Act. If successful, Petitioners request to recover from Respondents reasonable attorneys' fees pursuant to Public Resources Code §30824, and other provisions of law.

WHEREFORE, Petitioners pray for judgment as follows:

1. For a Peremptory Writ of Mandate directing the County to take all necessary and appropriate actions to ensure that the Property (consisting of APNs 038-151-85 and 038-151-89) is not recognized or treated by the County as being comprised of separate legal parcels or as a lawfully created, separate legal parcel for land-use and planning purposes;

2. For declaratory relief that the Property (consisting of APNs 038-151-85 and 038-

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*First Amended Petition for Writ of Mandamus and Complaint for Declaratory and Injunctive Relief, Damages and Attorneys Fees*

1 151-89) is not comprised of separate legal parcels and/or is not a lawfully created, separate legal  
2 parcel for land-use and planning purposes;

3 3. For a Peremptory Writ of Mandate ordering the County to consult with the Coastal  
4 Commission's Executive Director on this issues raised by this action pursuant to 14 CCR  
5 13569(b); .

6 4. For an order staying and enjoining Respondents from engaging in any activity  
7 which treats or otherwise recognizes the Property as having two separate parcels and from  
8 recognizing APN 038-151-89 as a lawfully created separate parcel for purposes of parcel legality  
9 and/or future applications for a single-family dwelling thereon;

10 5. For reasonable attorneys' fees under 42 U.S.C. 1988, California Code of Civil  
11 Procedure Section 1021.5, Public Resources Code Section 30824, and any other applicable  
12 provisions of law;

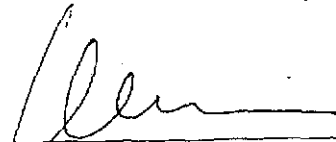
13 6. For damages according to proof;

14 7. For costs of suit; and,

15 8. For such other and further relief as the Court deems proper.

16  
17 Respectfully submitted,  
18 WITTWER & PARKIN, LLP

19  
20 Dated: December 21 2009

21 By:   
22 William P. Parkin  
23 Attorneys for Petitioners and Plaintiffs  
24 PATRICK AND LAURA MURPHY  
25  
26  
27  
28

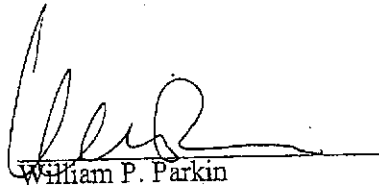
*First Amended Petition for Writ of Mandamus and Complaint for Declaratory and Injunctive Relief, Damages and Attorneys Fees*

VERIFICATION

I, WILLIAM P. PARKIN, say:

I am Attorney of Record for PATRICK and LAURA MURPHY, parties to this action.

I have read the First Amended Petition for a Writ of Mandamus and Complaint for Declaratory and Injunctive Relief and know the contents thereof. I am informed and believe that the matters therein are true and on that ground allege that the matters stated therein are true. This verification was not signed by a party to this action because Patrick and Laura Murphy are absent from the county where I have my office at the time this Petition for Writ of Mandamus was drafted and ready for filing. This verification was executed on December 22, 2009, at Santa Cruz, California.



William P. Parkin

EXHIBIT A

PLANNING DEPARTMENT

GOVERNMENTAL CENTER



COUNTY OF SANTA CRUZ

701 OCEAN STREET SANTA CRUZ, CALIFORNIA 95060

FAX (831) 454-2131

TDD (831) 454-2123

DEVELOPMENT PERMIT APPLICATION

PHONE: (831) 454-2130

PRINT DATE: 06/26/2001

APPLICATION NO.: **01-0068**

APPLICATION DATE: 02/05/2001

PARCEL NO. 038-151-85  
SITUS ADDRESS 749 OAKHILL RD APTOS 95003

PROJECT DESCRIPTION:

Proposal to establish the legality of a parcel. Requires an Unconditional Certificate of Compliance. Property located on the south side of Oak Hill Road, about 300 feet west from Seacliff Drive.

DIRECTIONS TO PROPERTY: SEACLIFF DRIVE SOUTH, RIGHT ON OAK HILL ROAD TO 749 OAK HILL ROAD.

OWNER: OSWALT EMILY & TOM F TRUSTEES  
APPLICANT: BOSS, WILLIAMS, ATTN: SUZANNE YOST  
BUS. PHONE: (831)426-8484

749 OAK HILL ROAD APTOS CA 95003  
P.O. BOX 1822 SANTA CRUZ CA 95061

APPLICATION FEES:	RECEIPT: 00052722	DATE PAID: 02/05/2001
APPLICATION INTAKE B		89.00
UNCOND CERT OF COMPL/PARCEL LEGAL - ACP		1500.00 #13270
*** TOTAL ***		1589.00 ***

APPLICATION FEES:	RECEIPT: 00056113	DATE PAID: 06/26/2001
APPEAL ADMINISTRATIVE		195.00 #13270
APPEAL ADMINISTRATIVE		-195.00 #13270
FLAT FEE CONVERTED TO AT COST		195.00 #13270
*** TOTAL ***		195.00 ***

*programmer will correct*

PARCEL CHARACTERISTICS FOR: 03815185  
ZONE DISTRICT(S): SINGLE-FAMILY RESIDENTIAL - 10,000 SQUARE FOOT MINIMUM SITE AREA  
GENERAL PLAN LAND USE DESIGNATION(S): URBAN LOW RESIDENTIAL  
PLANNING AREA: APTOS  
URBAN SERVICES LINE: WITHIN USL  
COASTAL ZONE: WITHIN COASTAL ZONE  
GENERAL PLAN RESOURCES & CONSTRAINTS: RW  
GENERAL PLAN RESOURCES & CONSTRAINTS: SCENIC  
ASSESSOR LAND USE CODE: SINGLE RESIDENCE  
DISTRICT SUPERVISOR: Ellen Pirie  
PARCEL SIZE: 20081.2 SQUARE FEET (EMIS ESTIMATE)

THIS PARCEL SIZE HAS BEEN CALCULATED BY EMIS, THE COUNTY'S GEOGRAPHIC INFORMATION SYSTEM, AND IS AN ESTIMATE ONLY. IF A MINIMUM PARCEL SIZE IS REQUIRED TO MEET COUNTY STANDARDS, YOU MAY NEED TO OBTAIN A SURVEY TO DEMONSTRATE THAT YOU HAVE SUFFICIENT LAND AREA.

ORIGINAL - OFFICE

ACTUAL CONDITIONS ON THIS PROPERTY DO NOT COINCIDE WITH THE MAPPED RESOURCE/CONSTRAINT INFORMATION, WHICH IS SOMEWHAT GENERALIZED. THE APPLICATION OF SPECIFIC RESOURCE AND CONSTRAINT POLICIES IS DEPENDENT ON THE ACTUAL CONDITIONS ON THE PROPERTY AND IN THE AREA OF DEVELOPMENT.

THE DECISION ON YOUR PROJECT WILL BE MADE BY THE PLANNING DIRECTOR.

THE UNDERSIGNED PROPERTY OWNER(S) HEREBY AUTHORIZES THE FILING OF THIS APPLICATION, AND AUTHORIZES ON-SITE REVIEW BY AUTHORIZED STAFF. I CERTIFY TO THE BEST OF MY ABILITY THAT THE ABOVE AND ATTACHED INFORMATION IS TRUE AND CORRECT, AND THAT I HAVE READ AND UNDERSTOOD THE ABOVE INFORMATION.

SIGNATURE OF PROPERTY OWNER/OWNER'S AGENT

X *Barry Doyle for Bossa Williams et al*

SIGNATURE OF PROPERTY OWNER/OWNER'S AGENT

APPLICATION TAKEN BY

CATHY M. GRAVES, PLANNING DEPARTMENT

SUBMITTED AT 701 OCEAN STREET

\* NOTICE TO DEVELOPMENT PERMIT APPLICANT: \*

- \* You will be notified within five (5) working days of the name and phone number of your project planner. \*
- \* \*
- \* If your project is found to be extraordinarily complex, reviews normally charged a fixed development permit or technical \*
- \* review fee may be charged on an actual cost basis. This determination may be made either at application acceptance or \*
- \* during application review. Authority for these charges is found in the Planning Department Fee Schedule. \*
- \* \*
- \* Your application fees are not refundable, except as specified in the Planning Department Fee Schedule. \*
- \* \*
- \* If you have begun an activity or work requiring county review or approval without first obtaining a permit, you will be \*
- \* charged fees equal to the cost of investigation and resolution of the violation. Authority for these charges is found \*
- \* in Chapter 1.12 of the Santa Cruz County Code. \*
- \* \*
- \* You need to advise residents of property that Planning Department staff may be visiting the site. Site should be clearly \*
- \* marked/staked for staff inspection. Incomplete directions or marking will delay review of the project. \*
- \* \*

ORIGINAL - OFFICE

EXHIBIT B



PLANNING DEPARTMENT

GOVERNMENTAL CENTER



COUNTY OF SANTA CRUZ

701 OCEAN STREET - SANTA CRUZ, CALIFORNIA 95060  
FAX (831) 454-2131 TDD (831) 454-2123 PHONE (831) 454-2580

Ms. Susan Yost  
P. O. Box 1822  
Santa Cruz, CA  
95061

June 12, 2001

SUBJECT: Application No. 01-0068  
APN: 038-151-85  
Lands of Oswalt

Proposal and Property Location

The proposal is a request to establish the legality of two parcels of about 8,825 +- gross square feet and about 12,900 +- gross square feet, each known as a portion of Assessor's Parcel Number 038-151-85. This requires a Lot legality Determination/ Certificate of Compliance. The property is located at 749 Oak Hill Road, Aptos.

Analysis and Discussion

Assessor's Parcel Number 038-151-85 was evaluated as to whether the two parcels in question could be presumed to be lawfully created pursuant to Government Code Section 66412.6 and entitled to an Unconditional Certificate of Compliance pursuant to Government Code Section 66499.35 and Santa Cruz County Code Sections 14.01.109, 14.01.110 and 14.01.111.

The chain of title submitted by the applicant indicates that the Assessors' Parcel Number comprises three separate deed descriptions, with the two parcels in question described within separate deed instruments and have been described separately since at least 1938/ 1941.

Lot A	335 OR 61	May 12, 1938	Monterey Bay Finance Co. To Sherman
	407 OR 433	August 13, 1941	California Pacific Title Company to Grover
Lot B	874 OR 36	July 7, 1952	Mc Fadden to Grover

The property has an existing two story sfd constructed in 1938 (per Assessor's records). Several building permits were applied for over the years (From a review of the record, it appears that most of those permits voided for lack of inspections.). It is important to note that a building permit was applied for and issued for an addition in 1981 ( see Building Application 1898; Building Permit Number 67984), with that application representing the property as one large lot (no lot line shown separating the parcels) and clearly indicating an improvement being built over the property line (not an inadvertent encroachment, rather a significant encroachment of the dwelling) of what was then noted as APN 038-151-05 and 038-151-23.

According to the Residential Building Record of the Santa Cruz County assessor's office, in 1988, the owner (Grover) formally requested that the property receive only one tax bill. Based upon a conversation with Assessor's office staff, a written request from the owner would have been required at that time (per personal communication with Jessie Mudgett of the Assessor's Office staff on 5/29/01) for that office to combine the two APN's (038-151-05 and 038-151-23) into only one APN (038-151-85). The Assessor's Records also clearly note that "the two parcels had been valued as one site in the past".

County Code Section 14.01.109(a) states that a parcel qualifies for an Unconditional Certificate of Compliance if:

The real property in question complies with the provisions of the Subdivision Map Act and County Ordinances enacted pursuant thereto as follows:

**(1) The subject property was conveyed by a separate document as a separate parcel on or before January 20, 1972.**

*The separate deed instruments describing the 3 individual parcels were first recorded in 1938, 1941 and 1952 ( 335 OR 61 recorded May 12, 1938; 407 OR 433 recorded August 13, 1941; 874 OR 36 recorded July 7, 1952).*

**(2) The parcel in question complied with the provisions of the Subdivision Map Act at the time of its creation.**

*No evidence exists that indicates that the parcels in question did not comply with the provisions of the State Map Act at the time they were created.*

**(3) At the time the contract, deed or other document creating the subject parcel was signed, the subject parcel complied with the applicable County ordinances then in effect, including (without limitation) the parcel size required by the then applicable zone district.**

*At the time of creation, the parcels did not conflict with any applicable ordinance (pre dated zoning).*

**(4) The parcel in question has not been combined by the owner, and is not subject to merger.**

*The improvement on the parcel 038-151-85 significantly encroaches over the proposed property line (the encroachment is over 10 feet) and the owner at that time (1981) had full knowledge of the encroachment. In addition, on September 10, 1988, the owner requested one tax number (see previous discussion). Because of the significant encroachment which cannot be resolved through a lot line adjustment, County Code Section 14.01.110 (a) 5, stipulates that these parcels be considered combined by action of owner (Note: A lot line adjustment and a Site Area Variance would be required to address the encroachment.). Further, the owner in 1988 would have had to submit a written request to the County Assessor to combine the two assessors parcel numbers into one such that only one tax bill is received (per Assessor's office staff). Given these facts, the parcel has been combined by action of the owner (see County Code Section 14.01.110 (a) 5 and 14.01.110 (a) 2).*

### Summary Conclusion

Based upon the maps, deeds, evidence submitted and other parcel related files, the parcels do not meet the criteria contained within section 14.01.109 of the County Code and the applicable sections of the State Map Act to be considered as individual parcels.

### Recommendation

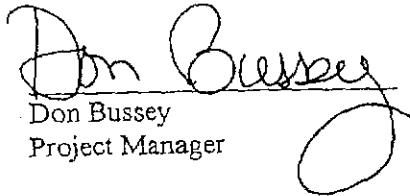
Therefore, based upon a preponderance of evidence, the following determinations are recommended:

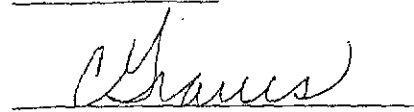
- Assessor's Parcel Number 038-151-05 and 23 were combined into one APN by action of the owner.
- Assessor's Parcel Number 038-151-85 does not constitute two separate legal parcels and does not warrant the recording of either an Unconditional or Conditional Certificates of Compliance.

ACCEPT STAFF RECOMMENDATION

✓

REVERSE STAFF RECOMMENDATION

  
Don Bussey  
Project Manager

  
Cathy Graves  
Principal Planner

Date: 6-12-01

### EXHIBITS:

038-151-05

1. Chain of Title for ~~028-304-68~~ and 69 with associated maps
2. Copy of Assessors Maps
3. Copy of the Assessor's Residential Building Record
4. Copy of Building Application 1898 Cover Sheet and Plot Plan
5. Copy of various Building records and inspection cards.

### APPEALS

In accordance with Section 18.10.300 et seq of the Santa Cruz County Code, the applicant may appeal an action or decision taken on a Level III project such as this one. Appeals of decisions of the Supervising Planner are made to the Planning Director. All appeals shall be made in writing and shall state the nature of the application, your interest in the matter, and the basis upon which the decision is considered to be in error. Appeals must be made no later than fourteen (14) calendar day following the date of action from which the appeal is being taken and must be accompanied by the appropriate appeal filing fee.

EXHIBIT C

LAW OFFICES OF

**BOSSO, WILLIAMS, SACHS,  
ATAK & GALLAGHER**

AND

**PETER L. SANFORD**

AN ASSOCIATION OF PROFESSIONAL CORPORATIONS

ROBERT E. BOSSO  
LLOYD R. WILLIAMS  
PHILIP M. SACHS  
CHARLENE B. ATAK  
JOHN M. GALLAGHER  
PETER L. SANFORD  
CATHERINE A. PHILIPOVITCH  
PASCHA R. STEVENS  
MICHELLE E. ANDERSON  
EDWARD L. CHUN  
SUZANNE P. YOST

MAILING ADDRESS P.O. BOX 1822  
LOCATION 133 MISSION STREET, SUITE 250  
SANTA CRUZ, CA 95061-1822  
TELEPHONE (831) 426-8484  
FACSIMILE (831) 423-2839

PETER L. SANFORD, APC \*  
SAN JOSE OFFICE:  
333 W. SANTA CLARA ST. #512  
SAN JOSE, CA 95113  
TEL: (408) 286-9700  
FAX: (408) 286-9403  
PLEASE REPLY TO SANTA CRUZ

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

June 26, 2001

VIA HAND-DELIVERY

Alvin James, Planning Director  
County of Santa Cruz Planning Dept.  
701 Ocean St., 4th Floor  
Santa Cruz, CA 95060

Re: Application No. 01-0068 for Unconditional COCs  
APN 38-151-85  
Property Owners: Tom and Emily Oswalt

Dear Mr. James:

This office represents Tom and Emily Oswalt, owners of APN 38-151-85. The Oswalts appeal the decision denying Application No. 01-0068 for unconditional certificates of compliance. Enclosed is a check in the amount of \$195 made payable to the County of Santa Cruz, representing the appeal fee.

The bases of the appeal are as follows:

**I. The Combination Ordinance was Not Enacted until 1984 — After the Elevator was Installed.**

The County's Combination Ordinance, which provides that contiguous parcels under common ownership shall be deemed combined by action of the owner if certain criteria are met, was first enacted in 1984. A copy of Ordinance No. 3524, adopted on June 19, 1984, is attached hereto as **Exhibit A** for your reference. The elevator in question (which is located across the common boundary) was installed in 1981 — 3 years before the first parcel combination ordinance was enacted. It would be an unlawful deprivation of property rights for the County to apply the parcel combination ordinance retroactively to improvements that already existed as of the date of enactment of the combination ordinance. Additionally, it would amount to an *ex post facto* law, in violation of the United States Constitution.

2

Therefore, the County cannot contend that the parcels have been combined on the basis of the construction of the elevator across the common property line in 1981.

In 1979, the County adopted a parcel merger ordinance. A copy of Ordinance 2672, adopted on May 8, 1979, is attached hereto as **Exhibit B** for your reference. The parcel merger ordinance provided that contiguous parcels under common ownership shall be merged where a dwelling or commercial structure or portion thereof has been built across the common boundary line, and which has thereafter been taxed as one building site. (Former County Code §13.08.102(b)(5) — Section II of Ordinance 2672). Thereafter, as part of Ordinance No. 3524, adopted in 1984, the County provided that "[a]ny parcels or units of land otherwise subject to the merger provisions of Section 14.01.102.2(a) for which a Notice of Merger had not been recorded on or before January 1, 1984, shall be deemed not to have merged if on January 1, 1984:

1. The parcel meets each of the following criteria:

- (i) Comprises at least 5,000 square feet in area.
- (ii) Was created in compliance with applicable laws and ordinances in effect at the time of its creation.
- (iii) Meets current standards for sewage disposal and domestic water supply.
- (iv) Has no slope stability or other geologic hazards which cannot be mitigated to an acceptable degree for development.
- (v) Has legal access which is adequate for vehicular and safety equipment access and maneuverability.
- (vi) The parcel would be consistent with the applicable General Plan and any applicable specific plan, other than minimum lot size or density standards.

"2. And, with respect to such parcel, none of the following conditions exist:

- (i) On or before July 1, 1981, one or more of the contiguous parcels or units of land is enforceably restricted open-space . . .
- (ii) On July 1, 1981, one or more of the contiguous parcels or units of land is timberland . . .
- (iii) On July 1, 1981, one or more of the contiguous parcels or units of land is located within 2,000 feet of the site on which an existing commercial mineral resource extraction use is being made . . .;

(iv) On July 1, 1981, one or more of the contiguous parcels or units of land is located within 2,000 feet of a future commercial mineral extraction site . . .

(v) Within the coastal zone, . . . , one or more of the contiguous parcels or units of land has, prior to July 1, 1981, been identified or designated as being of insufficient size to support residential development . . .

The foregoing ordinance is consistent with the State Subdivision Map Act, which contains very similar provisions. (Gov. C. §66451.30).

In this case, if the parcels were "merged" under Ordinance No. 2672, they were "unmerged" by Ordinance No. 3524. It is undisputed that:

- No notice of merger was recorded prior to January 1, 1984.
- The parcels in question are each over 5,000 square feet.
- The parcels were created in compliance with all applicable laws and ordinances in effect at the time of their creation (which was prior to the enactment of Santa Cruz County zoning laws, and in full compliance with any subdivision laws).
- As of January 1, 1984, the parcels met the applicable standards for sewage disposal and domestic water supply.
- As of January 1, 1984, the parcels had no slope stability or other geologic hazards which could not be mitigated to an acceptable degree for development.
- As of January 1, 1984, the parcels had legal access which is adequate for vehicular and safety equipment access and maneuverability.
- As of January 1, 1984, the parcels would have been consistent with the applicable General Plan and any applicable specific plan, other than minimum lot size or density standards.
- The parcels were not restricted to open-space on or before July 1, 1981.
- The parcels were not timberland as of July 1, 1981.
- The parcels were not within 2,000 feet of an existing commercial mineral resource extraction site as of July 1, 1981.
- The parcels were not within 2,000 feet of a future commercial mineral extraction site as of July 1, 1981.
- The parcels were not identified as being of insufficient size to support residential development in any land use plan prior to July 1, 1981, or in any coastal development permit decision or approved land use plan work program, or approved issue identification.

Based on the foregoing, the parcels were "deemed not to have merged." The parcel combination ordinance enacted in 1984 (and any subsequent ordinance) cannot be applied retroactively to the subject parcels.

## II. The Owner Did Not Combine the Parcels after 1984.

The Assessor's Records indicate that on September 10, 1988 the parcels were combined by owner. The County Assessor prepared a letter, which was attached to the supplemental submittal that we made on May 18, 2001, which explains: "Although the written parcel record noted that former parcels 05 and 23 were combined at the owners request in 1988, we have no written record of this request." (A copy of the Assessor's Letter is attached hereto as **Exhibit C** for your reference). Further discussions with the Assessor's Office confirms that the Assessor's Office would have required any such combination to be on a special form and payment of a fee would have also been required. No such form is included in the Assessor's file today. Additionally, the date on which the alleged combination by owner occurred (September 10, 1988) was a Saturday.

The parcel combination ordinance provides that parcels may be combined for subdivision purposes if they have been combined into one assessor's parcel number upon request of the owner unless: 1) the owner demonstrates to the satisfaction of the Planning Director that "no significant financial, land use or planning benefit resulted from the combination into one assessor's parcel;" and 2) the Planning Director finds that any financial benefit resulting from the combination was not significant, and the owner pays all assessment district, county service area, and similar charges that would have applied had the parcels not been combined into one assessor's parcel. (County C. §14.01.110(a)(2)). In this case, the owner would have obtained absolutely no significant financial, land use or planning benefit from the combination into one assessor's parcel number. The owner was not seeking a permit at the time of the alleged combination. The reason for this requirement in the Code is to ensure that the owner does not inadvertently combine the parcels for subdivision purposes while intending to simply combine the parcels for purposes of receiving one tax bill. Since the parcels had previously been taxed as one building site, the owner would not have received any significant tax benefit as a result of the combination. The Assessor's Records show that the values for the two parcels were simply added together on the sheet with the new assessor's parcel number.



The lack of a written record signed by the owner requesting a combination, coupled with the fact that the owner did not receive any significant financial, land use or planning benefit, undermines any contention that the parcels were combined by the owner.

**III. In Any Event, the Parcel Combination Ordinance is Preempted by the State Subdivision Map Act.**

The State Subdivision Map Act ("SMA") provides that "except as is otherwise provided for in [Article 1.5 of the SMA], two or more contiguous parcels or units of land which have been created under the provisions of this division, or any prior law regulating the division of land, or a local ordinance enacted pursuant thereto, or which were not subject to those provisions at the time of their creation, shall not be deemed merged by virtue of the fact that the contiguous parcels or units are held by the same owner, and no further proceeding under the provisions of this division or a local ordinance enacted pursuant thereto shall be required for the purpose of sale, lease, or financing of the contiguous parcels or units, or any of them." (Gov. C. §66451.10(a)). Article 1.5 of the SMA provides "the sole and exclusive authority for local agency initiated merger of contiguous parcels." (Gov. C. §66451.10(b)).

The SMA authorizes local agencies to adopt ordinances which provide for the merger of contiguous parcels under common ownership where certain requirements are satisfied (pertaining to the developability of the parcels). (Gov. C. §66451.11). The procedure that the local agency must follow to declare a merger is very specific. (See Gov. C. §66451.13 et seq.). If a local agency has not followed that procedure, it cannot require merger of contiguous parcels. (Gov. C. §§66451.11, 66451.13). In Morehart v. County of Santa Barbara (1994) 7 Cal. 4th 725, 758-759, the court held that the SMA's merger provisions impliedly preempt any local zoning ordinance's requirement that parcels not eligible for merger under Government Code Section 66451.11 be nonetheless merged as a condition to issuance of a development permit.

In this case, the County's parcel combination ordinance is impliedly preempted by the SMA's merger provisions because the County ordinance provides that parcels are deemed combined (i.e. the same as being deemed merged) if they are held under common ownership and the owner requests one tax bill. The only circumstances under which a local agency can provide that contiguous parcels under common ownership are "deemed combined" or

Alvin James, Planning Director  
June 26, 2001  
Page 6

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"subject to merger" are where the parcels meet the criteria set forth in Government Code section 66451.11.

Based on the foregoing, we respectfully submit that the applicants' appeal should be GRANTED, and the requested unconditional certificates of compliance should be ISSUED.

Very truly yours,



Catherine A. Philipovitch

Enc.

cc: Tom and Emily Oswalt  
Don Bussey  
Skip Pearson

ORDINANCE AMENDING THE SANTA CRUZ COUNTY CODE  
RELATING TO THE COMBINATION AND MERGER OF PARCELS

The Board of Supervisors of the County of Santa Cruz do ordain  
as follows:

SECTION I

Section 13.10.510 of the Santa Cruz County Code is hereby  
amended by adding subsection (h) to read as follows:

(h) Pre-existing Parcels. The use of land permitted for the  
district in which the land is located shall be permitted on a  
building site of less area, width, depth, or frontage than that  
required by the regulations for such district if such land was a  
separate lot or parcel under separate ownership of record or was  
shown on a map of a recorded subdivision on the date said  
district regulation became applicable to said lot or parcel;  
provided that such land has not been combined or merged with a  
contiguous lot or parcel pursuant to the provisions of the Santa  
Cruz County Code now contained in Sections 14.01.102.1 through  
14.01.102.4.

SECTION II

Section 13.10.530 of the Santa Cruz County Code is repealed.

SECTION III

Section 14.01.102 of the Santa Cruz County Code is hereby  
amended to read:

14.01.102 APPLICABILITY.

This chapter shall not apply to:

(a) Exemptions.

1. The financing or leasing of apartments, offices, stores,  
or similar space within apartment buildings, industrial  
buildings, commercial buildings, mobile home parks, trailer  
parks, or recreational vehicle parks;
2. Mineral, oil, gas, or agricultural leases;
3. Land dedicated for cemetery purposes under the Health  
and Safety Code of the State of California;
4. Financing or leasing of second dwelling units pursuant  
to the provisions of Section 13.10.681 of the Santa Cruz  
County Code. This chapter shall apply to the sale or  
transfer of such second dwelling units.

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(b) Status of Parcels Previously Created. Except as otherwise provided in Sections 14.01.102.1 through 14.01.102.4, two or more contiguous parcels or units of land which have been legally subdivided in any manner shall not merge by virtue of the fact that such contiguous parcels or units are held by the same owner, and no further proceedings under the provisions of the Subdivision Map Act or this chapter shall be required for the purpose of sale, lease, or financing of such contiguous parcels or units or any of the above.

#### SECTION IV

The Santa Cruz County Code is hereby amended by adding Section 14.01.102.1 to read:

14.01.102.1 COMBINATION OF PARCELS BY ACTIONS OF THE OWNER.

Contiguous parcels or units under common ownership shall be deemed combined by the owner thereof under any of the following circumstances:

- (a) Lots or parcels which have been included in an owner's affidavit combining the lots or parcels and recorded in the Office of the County Recorder;
- (b) Lots or parcels which have been combined into one assessor's parcel number by the Assessor upon the request of the owner;
- (c) Lots or parcels which have been required to be combined as a condition of approval of a minor land division, parcel redivision, boundary adjustment, or other discretionary approval, and such approval has been accepted by the owner;
- (d) Lots or parcels or portions thereof which have been conveyed as one parcel by metes and bounds description describing the perimeter of such contiguous lots or parcels or portions thereof.
- (e) Lots or parcels on which a dwelling or commercial structure or portion thereof has been built across the common boundary line of such lots or parcels except when the encroachment was of such a minor and inadvertent nature that it could be eliminated through a boundary adjustment.

Lots or parcels which have been combined by actions of the owner as provided in this section shall thereafter be subject to all of the provisions of this chapter.

#### SECTION V

Section 14.01.102.2 of the Santa Cruz County Code is hereby amended to read:

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200

14.01.102.2 MERGER OF PARCELS PRIOR TO JULY 1, 1984.

(a) Criteria for Merger Prior to July 1, 1984. Except as hereinafter provided in subsection (b) below, contiguous parcels or units which met the following criteria for merger prior to July 1, 1984, shall be deemed to have merged:

1. Any contiguous lots in a pre-1937 substandard subdivision ("paper subdivision") as hereinafter defined, which are held by the same owner on or after April 15, 1977, shall be deemed merged if:

(i) At least one of such lots did not meet the then current minimum parcel size specified by the zoning applicable to the property; and

(ii) At least one of such lots was undeveloped.

2. A pre-1937 substandard subdivision ("paper subdivision") for purposes of this section, means a subdivision which has been determined by resolution of the Board of Supervisors to have all the following characteristics as of January 1, 1977:

(i) The subdivision was created by subdivision map recorded prior to August 27, 1937;

(ii) The subdivision is located outside of the urban service area as delineated on urban service area maps approved by the Board of Supervisors;

(iii) At least 50% of the lots in the subdivision do not meet the current minimum parcel size specified by the zoning applicable to the property;

(iv) At least 50% of the lots in the subdivision are not developed;

(v) At least 50% of the total length of the road rights-of-way in the subdivision are less than 40 feet in width;

(vi) The street system which serves the subdivision lot has not been improved (i.e., with asphalt, concrete, sealcoat or oil and screenings) or is not within the designated rights-of-way; and

(vii) Public utilities have not been developed to serve the entire subdivision.

3014

(b) Criteria for Non-merger. Any parcels or units of land otherwise subject to the merger provisions of Section 14.01.102.2(a) for which a Notice of Merger had not been recorded on or before January 1, 1984, shall be deemed not to have merged if on January 1, 1984:

1. The parcel meets each of the following criteria:

- (i) Comprises at least 5,000 square feet in area.
- (ii) Was created in compliance with applicable laws and ordinances in effect at the time of its creation.
- (iii) Meets current standards for sewage disposal and domestic water supply.
- (iv) Has no slope stability or other geologic hazards which cannot be mitigated to an acceptable degree for development.
- (v) Has legal access which is adequate for vehicular and safety equipment access and maneuverability.
- (vi) The parcel would be consistent with the applicable General Plan and any applicable specific plan, other than minimum lot size or density standards.

2. And, with respect to such parcel, none of the following conditions exist:

- (i) On or before July 1, 1981, one or more of the contiguous parcels or units of land is enforceably restricted open-space land pursuant to a contract, agreement, scenic restriction, or open-space easement, as defined and set forth in Section 421 of the Revenue and Taxation Code.
- (ii) On July 1, 1981, one or more of the contiguous parcels or units of land is timberland as defined in subdivision (f) of Section 51100, or is land devoted to an agricultural use as defined in subdivision (b) of Section 51201.
- (iii) On July 1, 1981, one or more of the contiguous parcels or units of land is located within 2,000 feet of the site on which an existing commercial mineral resource extraction use is being made, whether or not the extraction is being made pursuant to a use permit issued by the local agency.
- (iv) On July 1, 1981, one or more of the contiguous parcels or units of land is located within 2,000 feet of a future commercial mineral extraction site as shown on a plan for which a use permit or other permit authorizing commercial mineral resource extraction has been issued by the local agency.

3-0-2  
6/8

(v) Within the coastal zone, as defined in Section 30103 of the Public Resources Code, one or more of the contiguous parcels or units of land has, prior to July 1, 1981, been identified or designated as being of insufficient size to support residential development and where the identification or designation has either (1) been included in the land use plan portion of a local coastal program prepared and adopted pursuant to the California Coastal Act of 1976 (Division 20 of the Public Resources Code), or (2) prior to the adoption of a land use plan, been made by formal action of the California Coastal Commission pursuant to the provisions of the California Coastal Act of 1976 in a coastal development permit decision or in an approved land use plan work program or an approved issue identification on which the preparation of a land use pursuant to the provisions of the California Coastal Act is based.

For purposes of this section, "mineral resource extraction" means gas, oil, hydrocarbon, gravel, or sand extraction, geothermal wells, or other similar commercial mining activity.

(c) Notices of Merger. The Planning Director shall record a Notice of Merger for any parcels merged pursuant to the provisions of this section. At least 30 days prior to recording such a Notice of Merger, the Planning Director shall advise the owner of the affected parcels, in writing, of the intention to record the Notice and specify a time, date, and place at which the owner may present evidence to the Planning Director as to why such notice should not be recorded.

The Planning Director shall cause to be recorded on or before January 1, 1986, a Notice of Merger for any parcel merged pursuant to the provisions of this Section prior to January 1, 1984. After January 1, 1986, no parcel otherwise subject to the merger provisions of this section shall be considered merged unless such Notice of Merger is recorded.

(d) Application by Owner for Hearing on Determination of Status. If a Notice of Merger has not been recorded against affected parcels prior to January 1, 1984, the owner may file an application for a hearing on determination of status. Upon receipt of an application together with the application fee established by resolution, and such other information as the Director may deem necessary to determine the status of the parcels, the Director shall set a hearing and make a determination that the affected parcels have merged or, if meeting the criteria of subsection (b) above for non-merger, are deemed not to have merged. If the Director determines that the parcels meet the standards for non-merger, the Director shall issue to the owner and record with the County Recorder a notice of the status of the parcels which shall identify each parcel and declare that the parcels are unmerged pursuant to this section. If the Director determines that the parcels have merged and do not meet the criteria for non-merger specified in subsection (b) above, the Director shall issue to the owner and record with the County Recorder, a Notice of Merger.

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307

SECTION VI

The Santa Cruz County Code is hereby amended by adding Section 14.01.102.3 to read:

14.01.102.3 MERGER OF PARCELS AFTER JULY 1, 1984. On or after July 1, 1984, two or more contiguous parcels or units of land held by the same owner shall be subject to merger if any one of the contiguous parcels or units held by the same owner does not conform to standards for minimum parcel size under the Santa Cruz County Zoning Ordinance applicable to the parcels or units of land, and if all of the following requirements are satisfied:

(a) At least one of the affected parcels is undeveloped by any structure for which a building permit was issued or for which a building permit was not required at the time of construction or is developed only with an accessory structure or accessory structures, or is developed with a single structure, other than an accessory structure, that is also partially sited on a contiguous parcel or unit.

(b) With respect to any affected parcel or unit, one or more of the following conditions exists:

(i) Comprises less than 5,000 square feet in area at the time of determination of merger and is located in a substandard subdivision fitting the criteria for a "paper subdivision" set forth in Section 14.01.102.2;

(ii) Was not created in compliance with applicable laws and ordinances in effect at the time of its creation;

(iii) Does not meet current standards for sewage disposal and domestic water supply, and it is determined by the Director of Environmental Health that such parcel or unit will not be able to meet the minimum criteria for sewage disposal and water supply in the foreseeable future;

(iv) It has been determined by the Planning Director from a geologic investigation or other geologic report to have slope stability or other geologic hazards which cannot be mitigated to an acceptable degree for development.

(v) It has been determined by the Planning Director to have no legal access which is adequate for vehicular and safety equipment access and maneuverability.

(vi) It has been determined by the Planning Director to be incapable of being developed because of conflicts with applicable General Plan provisions, other than minimum lot size or density standards.

-6-      **EXHIBIT A**



For purposes of determining whether contiguous parcels are held by the same owner, ownership shall be determined as of the date that a Notice of Intention to determine status is recorded.

(c) The requirements of subsection (b) above shall not apply if one of the following conditions exists:

(i) On or before July 1, 1981, one or more of the contiguous parcels or units of land is enforceably restricted open-space land pursuant to a contract, agreement, scenic restriction, or open-space easement, as defined and set forth in Section 421 of the Revenue and Taxation Code.

(ii) On July 1, 1981, one or more of the contiguous parcels or units of land is timberland as defined in subdivision (f) of Section 51100, or is land devoted to an agricultural use as defined in subsection (b) of Section 51201.

(iii) On July 1, 1981, one or more of the contiguous parcels or units of land is located within 2,000 feet of the site on which an existing commercial mineral resource extraction use is being made, whether or not the extraction is being made pursuant to a use permit issued by the local agency.

(iv) On July 1, 1981, one or more of the contiguous parcels or units of land is located within 2,000 feet of a future commercial mineral extraction site as shown on a plan for which a use permit or other permit authorizing commercial mineral resource extraction has been issued by the local agency.

(v) Within the coastal zone, as defined in Section 30103 of the Public Resources Code, one or more of the contiguous parcels or units of land has been identified or designated as being of insufficient size to support residential development and where the identification or designation has either (i) been included in the land use plan portion of a local coastal program prepared and adopted pursuant to the California Coastal Act of 1976 (Division 20 of the Public Resources Code), or (ii) prior to the adoption of a land use plan, been made by formal action of the California Coastal Commission pursuant to the provisions of the California Coastal Act of 1976 in a coastal development permit decision or in an approved land use plan work program or an approved issue identification on which the preparation of a land use plan pursuant to the provisions of the California Coastal Act is based.

For purposes of paragraphs (iii) and (iv) of this subdivision, "mineral resource extraction" means gas, oil, hydrocarbon, gravel or sand extraction, geothermal wells, or other similar commercial mining activity.

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SECTION VII

The Santa Cruz County Code is hereby amended by adding Section 14.01.102.4 to read:

14.01.102.4 PROCEDURE TO DETERMINE STATUS OF PARCELS.

(a) Notice of Intention to Determine Status. Whenever the Director believes that real property is subject to merger pursuant to the provisions of Section 14.01.102.2 or Section 14.01.102.3, the Director shall cause to be mailed by certified mail to the then current record owner of the property a Notice of Intention to Determine Status notifying the owner that the affected parcels may be merged pursuant to standards set forth in Section 14.01.102.2 and Section 14.01.102.3 and advising the owner of the opportunity to request a hearing on the determination of status and to present evidence at the hearing that the property does not meet the criteria for merger. The Director shall cause the Notice of Intention to Determine Status to be filed for record with the County Recorder on the date that the notice is mailed to the property owner.

(b) Hearing to Determine Status. Upon receiving a request for hearing on determination of status, the Director shall set a hearing within 30 days of the receipt of the property owner's request and advise the property owner by certified mail of the time, date, and place of the hearing. The hearing may be postponed or continued with the mutual consent of the Director and the property owner. At the conclusion of the hearing, the Director shall make a determination whether the affected parcels are to be merged or are not to be merged and shall so notify the owner of the determination. Any determination of merger shall be recorded within 30 days after conclusion of the hearing.

(c) Determination of Status Without a Hearing. If within the 30 day period provided, the owner does not file a request for a hearing in accordance with subsection (b) above, the Director may, at any time thereafter, make a determination that the affected parcels are to be merged or are not to be merged. Any determination of merger shall be recorded by the Director no later than 90 days following the mailing of the Notice of Intention to Determine Status.

(d) Release of Notice of Intention to Determine Status. If in accordance with subsection (b) or (c) above, the Director determines that the subject property shall not be merged, the Planning Director shall cause to be recorded a release of the Notice of Intention to Determine Status, and shall mail a clearance letter to the then current owner of the property.

SECTION VIII

This ordinance shall take effect 30 days after final passage.

PASSED AND ADOPTED this 19th day of June, 1984,  
by the Board of Supervisors of the County of Santa Cruz by the  
following vote:

AYES: SUPERVISORS Forbus, Patton, Moore, Cucchiara, Levy

NOES: SUPERVISORS None

ABSENT: SUPERVISORS None

*Rodney Levy*  
Chairman of the Board of Supervisors

ATTEST: *Stephen M. Jung*  
Clerk of said Board

APPROVED AS TO FORM:

*Dwight L. Herr*  
DWIGHT L. HERR  
County Counsel

DISTRIBUTION: Planning  
County Counsel

cf

ORDINANCE NO. 2672

AN ORDINANCE AMENDING SECTIONS 13.04.212 and 13.08.102  
OF THE SANTA CRUZ COUNTY CODE

The Board of Supervisors of the County of Santa Cruz do ordain  
as follows:

SECTION I

Subsection (a) of Section 13.04.212 of the Santa Cruz County  
Code is hereby amended to read:

(a) A use of land permitted for the district in which the land is located shall be permitted on a building site of less area, width, depth, or frontage than that required by the regulations for such district if such land was a separate lot or parcel under separate ownership of record or was shown on a map of a recorded subdivision on the date said district regulations became applicable to said lot or parcel; provided, however, that the following contiguous lots and parcels shall not be exempt under this section from such current zoning regulations and shall be deemed to be merged for purposes of this Chapter:

1. Lots or parcels which have been included in an owner's affidavit combining the lots or parcels and recorded in the Office of the County Recorder;
2. Lots or parcels which have been combined into one Assessor's Parcel Number by the Assessor upon the request of the owner.
3. Lots or parcels which have been required to be combined as a condition of approval of a minor land division, partial redivision, boundary adjustment or other discretionary permit;
4. Lots or parcels or portions thereof which have been conveyed as one parcel by a metes and bounds description describing the perimeter of such contiguous lots or parcels or portions thereof, and which has thereafter been taxed as one building site;
5. Lots or parcels on which a dwelling or commercial structure or portion thereof has been built by the owner of such lots or parcels across the common boundary line of those lots or parcels, and which has thereafter been taxed as one building site;
6. Any contiguous lots or parcels created by a parcel map or subdivision map recorded on or after January 1, 1977, which are held by the same owner at any time after one year following the date that the parcel map or subdivision map was recorded shall be deemed merged if:

(i) At least one of such parcels or lots does not meet the current minimum parcel size specified by the zoning applicable to the property; and

**EXHIBIT B**

(ii) At least one of such parcels or lots is undeveloped.

7. Any contiguous lots in a pre-1937 substandard subdivision ("paper subdivision") which are held by the same owner on or after April 15, 1977, shall be deemed merged if:

(i) At least one of such lots does not meet the current minimum parcel size specified by the zoning applicable to the property; and

(ii) At least one of such lots is undeveloped.

8. A pre-1937 substandard subdivision ("paper subdivision") for purposes of this section means a subdivision which has been determined by Resolution of the Board of Supervisors to have all the following characteristics as of January 1, 1977:

(i) The subdivision was created by a Subdivision Map recorded prior to August 27, 1937;

(ii) The subdivision is located outside of the urban service area as delineated on urban service area maps approved by the Board of Supervisors;

(iii) At least 50% of the lots in the subdivision do not meet the current minimum parcel size specified by the zoning applicable to the property;

(iv) At least 50% of the lots in the subdivision are not developed;

(v) At least 50% of the total length of the road rights-of-way in the subdivision are less than 40 feet in width;

(vi) The street system to serve the subdivision lots has not been improved (i.e. with asphalt, concrete, seal coat, or oil and screenings) or is not within the designated rights-of-way; and

(vii) Public utilities have not been developed to serve the entire subdivision.

## SECTION II

Subsection (b) of Section 13.08.102 of the Santa Cruz County Code is hereby amended to read:

(b) Notwithstanding the definition of "Subdivision" contained in this Chapter, two or more contiguous parcels or units of land which have been legally subdivided in any manner shall not merge by virtue of the fact that such contiguous parcels or units are held by the same owner, and no further proceedings under the provisions of the Subdivision Map Act or this Chapter shall be required for the purpose of sale, lease, or financing of such contiguous parcels or units or any of them; except that the following contiguous parcels or units shall be merged:

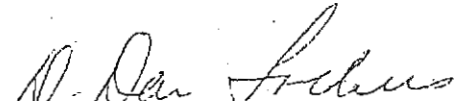
1. Lots or parcels which have been included in an owner's affidavit combining the lots or parcels and recorded in the Office of the County Recorder;
2. Lots or parcels which have been combined into one Assessor's Parcel Number by the Assessor upon the request of the owner;
3. Lots or parcels which have been required to be combined as a condition of approval of a minor land division, partial redivision, boundary adjustment or other discretionary permit;
4. Lots or parcels or portions thereof which have been conveyed as one parcel by a metes and bounds description describing the perimeter of such contiguous lots or parcels or portions thereof, and which has thereafter been taxed as one building site;
5. Lots or parcels on which a dwelling or commercial structure or portion thereof has been built across the common boundary line of such lots or parcels, and which has thereafter been taxed as one building site.
6. Any contiguous lots or parcels created by a parcel map or subdivision map recorded on or after January 1, 1977, which are held by the same owner at any time after one year following the date that the parcel map or subdivision map was recorded shall be deemed merged if:
  - (i) At least one of such parcels or lots does not meet the current minimum parcel size specified by the zoning applicable to the property; and
  - (ii) At least one of such parcels or lots is undeveloped.
7. Any contiguous lots in a pre-1937 substandard subdivision ("paper subdivision"), as determined by the Board of Supervisors pursuant to Section 13.04.212(a)(1) of the Santa Cruz County Code, which are held by the same owner on or after April 15, 1977, shall be deemed merged if:
  - (i) At least one of such lots does not meet the current minimum parcel size specified by the zoning applicable to the property; and
  - (ii) At least one of such lots is undeveloped.

### SECTION III

This ordinance shall take effect 30 days after the date of adoption. The Board of Supervisors hereby declares that the amendments made by this ordinance are declaratory of existing law rather than a change in the law.

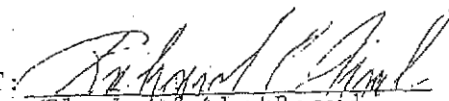
PASSED AND ADOPTED this 8th day of May, 1979,  
by the following vote:

AYES:	SUPERVISORS	LIDDICOAT, LIBERTY, MATTHEWS, PATTON, FORBUS
NOES:	SUPERVISORS	NONE
ABSENT:	SUPERVISORS	NONE



D. DAN FORBUS, Chairman  
Board of Supervisors

ATTEST:

  
Clerk of the Board

Approved as to form:

  
DWIGHT L. HERR  
Chief Deputy County Counsel

DLH/lac

DISTRIBUTION:

Community Resources Agency  
County Counsel  
Assessor

-4-

EXHIBIT B



## COUNTY OF SANTA CRUZ

ROBERT C. PETERSEN, ASSESSOR  
701 OCEAN STREET  
SANTA CRUZ, CA 95060  
(831) 454-2002 FAX: (831) 454-2495

March 14, 2001

Santa Cruz County Planning Department  
701 Ocean St., 4<sup>th</sup> Floor  
Santa Cruz, CA. 95060

RE: Application No. 01-0068  
APN: 38-151-85  
Lands of Oswalt

Attn: Don Bussey

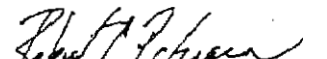
Dear Don:

Cathy Philipovitch, attorney for Suzanne Yost, provided me your February 15, 2001 letter to Ms. Yost regarding this parcel.

In the letter you asked two questions pertinent to the Assessor's Office. The answer to both question 1 and 5 follows:

Although the written parcel record noted that former parcels 05 and 23 were combined at the owners request in 1988, we have no written record of this request.

Very truly yours,

  
ROBERT C. PETERSEN

ASSESSOR

EXCELLENCE

INTEGRITY

SERVICE

**EXHIBIT C**

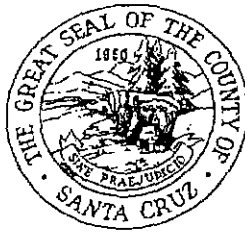


**EXHIBIT** D

PLANNING DEPARTMENT

GOVERNMENTAL CENTER

701 OCEAN



COUNTY OF SANTA CRUZ

STREET - SANTA CRUZ, CALIFORNIA 95060  
FAX (831) 454-2131 TDD (831) 454-2123 PHONE (831) 454-2580

Zoning Administrator  
County of Santa Cruz

July 3, 2001

Subject: Level III Appeal of Application No. 01-0068  
APN: 038-151-85  
Lands of Oswalt

Proposal and Property Location

The applicant applied for a lot legality determination regarding the legality of 2 parcels known as portions of Assessor's Parcel Number 038-151-85. This required a lot legality determination / Certificate of Compliance. The matter before you is the appeal of the determination that the parcels in question do not constitute separate legal parcels for land use and planning purposes (Attachment 1).

The Property is located on the south side of Oak Hill Road (749 Oak Hill) about 300 feet west of Seacliff Drive, Seacliff.

Appeal Issues

Staff has separated the appeal letter into two sections. The following address issues raised within the letter of Appeal dated June 26, 2001 (Attachment 2).

A Combination by Action of Owner Ordinance was not in effect in 1981

The appellant states that the County's Combination Ordinance (County Code Section 14.01.102.1) "was first enacted in 1984", and therefore, this standard cannot be applied. In fact, the County Code contained wording regarding the combination or merging of property since 1978 with the adoption of Ordinance #2402 which amended section 13.04.212 (a Section of the Zoning Ordinance) of the County Code. That section was further amended in 1979 with the adoption of Ordinance #2672 which was the operational ordinance in effect on the day the building permit was applied for and when it was issued (Attachment 3). Specifically contained within that ordinance was the statement that parcels "shall be deemed merged for the purposes of this Chapter:" when

"5. Lots or parcels on which a dwelling or commercial structure or portion thereof has been built by the owner of such lots or parcels across the common boundary line of those lots or parcels, and which has thereafter been taxed as one building site;"

From the record, it is clear that Mr. Grover (the owner of record in 1981) had full knowledge of the location of the lot lines. Further, Mr. Grover signed the "Owner Builder Verification" form which was attached to the building plans which clearly shows a significant encroachment over the lot line of over 9 feet (Attachment 4; also see survey map).

In summary, a version of the Combination by Action of Owner ordinance was in effect at the time the owner (Sherwood and Kathy Grover) applied for Building Permit #1898 in June of 1981.

*The Owner did not combine the parcels after 1984*

The appellant alleges that the owner did not combine the parcels after 1984. The Assessor's Office Residential Building Record for this site clearly notes "comb 38-151-05 & 23 by owner - 9-10-88" (Attachment 5). Further, Assessor's Staff have indicated that a written request would have been required from the owner prior to any combination and that they do not retain these written requests.

County Code Section 14.01.110 9 (a) 2 states that the parcels shall be considered combined when "Parcels which have been combined into one assessor's parcel number by the Assessor upon the request of the owner...". No evidence has been submitted by the applicant to address sections 14.01.110 (a) 2 (a) or (b).

Staff concluded based upon a preponderance of the evidence that the properties were combined into one tax number upon the request of the owner.

#### Analysis and Discussion

Assessor's Parcel Numbers 038-151-85 was evaluated as to whether portions of that parcel were presumed to be lawfully created pursuant to Government Code Section 66412.6 and entitled to a Certificate of Compliance pursuant to Government Code Section 66499.35 and Santa Cruz County Code Section 14.01.109 and 110.

The real property in question does not comply with the provisions of the Subdivision Map Act and County Ordinances enacted pursuant thereto for the issuance of an Unconditional Certificate of Compliance in that:

- (1) The subject properties were conveyed by a separate document as a separate parcel on or before January 21, 1972; and
- (2) The parcels in question did comply with the provisions of the Subdivision Map Act at the time of creation; and
- (3) At the time the deed creating the subject parcels was signed, the subject parcel did comply with the applicable County ordinances then in effect, including (without limitation) the parcel size required by the then applicable zone district.
- 4) The parcel in question was combined by the owner, and is not subject to merger.

Based upon a preponderance of the evidence submitted, the parcels do not meet the criteria contained within section 14.01.109 of the County Code and the applicable sections of the State Map Act to be considered as individual parcels.

Therefore, Assessor's Parcel Number 038-151-85 constitutes only one legal parcel and does not warrant the recording of an Unconditional Certificate of Compliance.

#### Recommendation

Denial of the Appeal and upholding the Zoning Administrators decision that:

1. Assessor's Parcel Numbers 038-151-85 constitutes only legal parcel for land use and planning purposes.

Prepared By: Don Bussey  
Don Bussey, Project Manager

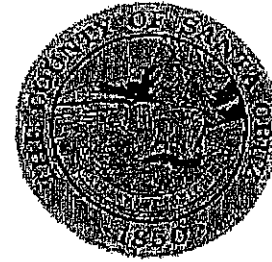
Date: July 3, 2001

Attachments

1. Staff Report and Action dated June 12, 2001
2. Letter of Appeal dated June 26, 2001
3. Excerpts from the 1981 Zoning Ordinance.
4. Building Permit Application #1898 and Building Permit #0058Q
5. Copy of a portion of the Residential Building Record for this Parcel Number 038-151-85
6. Chain of Title (on file with the Planning Department)
7. Survey Map of Property (on file with the Planning Department)
8. Assessor's Map
9. Copy of Application 98-0702

**EXHIBIT E**

COUNTY OF SANTA CRUZ  
INTER-OFFICE CORRESPONDENCE



DATE: June 9, 2003

TO: Don Bussey

FROM: Glenda Hill, AICP *gh*

SUBJECT: Clarification of Statement in Appeal Determination Letter  
01-0068 APN 38-151-85

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This memo is to clarify the wording of two sentences in the Appeal Determination letter for 01-0068, dated August 27, 2002, to wit:

*You have indicated that the property owners are willing to correct the encroachment either through demolition or a lot line adjustment. I agree that one of the solutions is necessary.*

The word "necessary" should not be construed as a condition of the appeal determination, as this is an Unconditional Certificate of Compliance. It is, rather, my opinion and suggestion.

Please record the Unconditional Certificates of Compliance for APN 38-151-85, as approved under Permit No. 01-0068

EXHIBIT E



# COUNTY OF SANTA CRUZ

## PLANNING DEPARTMENT

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

August 27, 2002

Catherine A. Philipovitch  
Bosso, Williams, Sachs, Atack & Gallagher  
and Peter L. Sanford  
P.O. Box 1822  
Santa Cruz, CA 95061-1822

**SUBJECT: DETERMINATION ON APPEAL OF UNCONDITIONAL CERTIFICATE  
OF COMPLIANCE APPLICATION NO. 01-0068, APN 38-151-85**

Dear Ms. Philipovitch:

This letter serves as the decision on the administrative appeal of the determination that the above property does not qualify for unconditional certificates of compliance due to combination of the parcels by action of the owners. The Planning Director, Alvin James, has authorized me to make the determination of the merits of the appeal.

The unconditional certificate of compliance was not approved administratively because it appeared that the alleged parcels had been combined by action of the owners. This conclusion was based on a notation on the Assessor's records for the parcel noting the date of combination and the plot plan of an issued building permit submitted by the owners showing the parcels as one lot with proposed improvements located over the shared property line.

The appeal letter you submitted stated the bases of the appeal to be that the combination ordinance was not enacted until after the encroaching improvement was installed, the owners did not combine the parcels, and that the County's Combination Ordinance is preempted by the State Subdivision Map Act.

After reviewing the application file, the letter of appeal, and consulting with County Counsel, I am granting your appeal and, thereby, directing that unconditional certificates of compliance be prepared and recorded to recognize two parcels. I am basing my decision on the following conclusions:

1. The building permit showing the parcel(s) as one parcel and allowing the encroachment was approved in 1981. The Planning Department should have required the combination of the parcels at that time; however, I found no evidence of the requirement;
2. The alleged combination noted in the Assessor's records occurred on a Saturday. While County staff do work weekends occasionally, the notation was irregular;

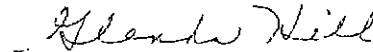


3. No written record of the combination request is on file with the Assessor. While the owners may have, indeed, requested the combination, the existing proof of this action is not compelling;
4. Even if the owners did request the combination of the parcels, County Code Section 14.01.110(a)2 states that the parcels shall not be deemed combined if "the owner demonstrates to the satisfaction of the Planning Director that no significant financial, land use or planning benefit resulted from the combination into one assessor's parcel". My research found no financial, land use or planning benefit would have been derived by combining the parcels in 1988, in that no planning or building applications were submitted at that time nor were there property transfers;
5. Even though there is an existing encroachment over the property line, I have determined that it is "of such a minor and inadvertent nature that it could be eliminated through a boundary adjustment" (Section 14.01.110(a)5.)

I do have a concern about the existing encroachment. You have indicated that the property owners are willing to correct the encroachment either through demolition or a lot line adjustment. I agree that one of these solutions is necessary.

I will direct Don Bussey, the staff planner, to prepare and record the unconditional certificates of compliance. If you have any questions about my decision, please feel free to contact me at 454-3216.

Sincerely,



Glenda Hill, AJCP  
Principal Planner  
Development Review

Cc: Tom and Emily Oswalt  
01-0068 File ✓

EXHIBIT G

WHEN RECORDED RETURN TO:  
Santa Cruz County Planning Department  
701 Ocean Street  
Santa Cruz, CA 95060  
Attn: Don Bussey  
#01-0068  
APN: 038-151-85 (a)

17-Ju 2003 2003-0058477

Has not been compared with  
original  
SANTA CRUZ COUNTY RECORDER

UNCONDITIONAL CERTIFICATE OF COMPLIANCE

WHEREAS, Emily Oswalt and Tom F. Oswalt, as Trustees of the Oswalt Trust dated May 25, 1999 are the property owners or vendee of such owners of certain real property located in the County of Santa Cruz, State of California, known as a portion of Santa Cruz County Assessor's Parcel Number 038-151-85, and more particularly described in Exhibit "A" attached hereto and incorporated herein by reference; and

WHEREAS, pursuant to an application for Parcel Legality Status Determination, the County of Santa Cruz has determined that such real property is determined to be a legal parcel;

NOW, THEREFORE an Unconditional Certificate of Compliance is hereby issued for the above-described parcel.

FURTHERMORE, THIS CERTIFICATION OF COMPLIANCE SHALL NOT CONSTITUTE A DETERMINATION THAT SAID PARCEL IS BUILDABLE OR IS ENTITLED TO A BUILDING PERMIT OR OTHER DEVELOPMENT APPROVAL WITHOUT COMPLIANCE WITH THE PROVISIONS OF ALL OTHER SANTA CRUZ COUNTY ORDINANCES AND REGULATIONS.

THIS CERTIFICATE OF PARCEL COMPLIANCE RELATES ONLY TO ISSUES OF COMPLIANCE OR NONCOMPLIANCE WITH THE SUBDIVISION MAP ACT AND LOCAL ORDINANCES ENACTED PURSUANT THERETO. THE PARCEL DESCRIBED HEREIN MAY BE SOLD, LEASED OR FINANCED WITHOUT FURTHER COMPLIANCE WITH THE SUBDIVISION MAP ACT OR ANY LOCAL ORDINANCE ENACTED PURSUANT THERETO. DEVELOPMENT OF THE PARCEL MAY REQUIRE ISSUANCE OF A PERMIT OR PERMITS, OR OTHER GRANT OR GRANTS OF APPROVAL.

DATED 6/10/03  
COUNTY OF SANTA CRUZ

By: Glenda Hill  
Glenda Hill  
PRINCIPAL PLANNER

STATE OF CALIFORNIA  
COUNTY OF SANTA CRUZ

On 6/11/03 before me Bernice Romero, Notary Public, personally appeared Glenda Hill personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the person or the entity upon behalf of which the person acted executed the instrument.

Witness my hand and official seal

Signature Bernice Romero

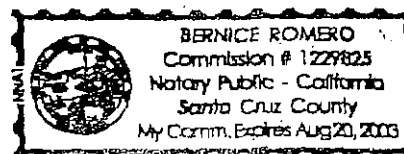


EXHIBIT A

SITUATE IN THE COUNTY OF SANTA CRUZ, STATE OF CALIFORNIA AND  
DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE EASTERLY BOUNDARY LINE OF LANDS  
CONVEYED BY SANTA CRUZ LAND TITLE COMPANY TO C. E. MCFADDEN  
ET UX BY DEED RECORDED JANUARY 6, 1930 IN VOLUME 164, PAGE 281,  
OFFICIAL RECORDS OF SANTA CRUZ COUNTY, AT THE POINT OF  
INTERSECTION WITH THE SOUTHERLY LINE OF A 24.00 FOOT ROAD AS  
RESERVED IN DEED, SANTA CRUZ LAND TITLE COMPANY, GRANTOR TO  
MONTEREY BAY FINANCE CO., GRANTEE, DATED DECEMBER 31, 1929 AND  
RECORDED JANUARY 6, 1930 IN VOLUME 164, PAGE 279, OFFICIAL  
RECORDS OF SANTA CRUZ COUNTY; RUNNING THENCE SOUTH 18° 39'  
WEST 173.31 FEET TO THE SOUTHEASTERLY CORNER OF SAID LANDS OF  
MCFADDEN; THENCE EASTERLY ALONG THE NORTHERLY LINE OF BEACH  
LAND OF SANTA CRUZ LAND TITLE COMPANY, SOUTH 73° 24' EAST 50.03  
FEET TO THE SOUTHWESTERLY CORNER OF LAND OF JACOB HARDER, JR.  
ET UX; THENCE NORTH 18° 39' EAST ALONG THE WESTERLY LINE OF SAID  
LAND OF HARDER 165.68 FEET TO THE SOUTHERLY LINE OF SAID 24.00  
FOOT ROAD; THENCE WESTERLY ALONG SAID LAST MENTIONED LINE  
50.63 FEET TO THE POINT OF BEGINNING.

BEGINNING AT THE SOUTHEASTERN CORNER OF LANDS CONVEYED BY  
MONTEREY BAY FINANCE CO., A CORPORATION, ET AL TO MARJORIE T.  
SHERMAN BY DEED DATED APRIL 6, 1938 AND RECORDED MAY 2, 1938 IN  
VOLUME 353, PAGE 61, OFFICIAL RECORDS OF SANTA CRUZ COUNTY;  
THENCE SOUTH 73° 24' EAST 25.015 FEET TO A STATION; THENCE NORTH  
18° 39' EAST 167.00 FEET, MORE OR LESS, TO THE SOUTHERN BOUNDARY  
OF A 24.00 FOOT ROAD AS RESERVED IN THE DEED, SANTA CRUZ LAND  
TITLE COMPANY, GRANTOR TO MONTEREY BAY FINANCE CO., GRANTEE,  
DATED DECEMBER 31, 1929 AND RECORDED JANUARY 6, 1930 IN VOLUME  
164, PAGE 279, OFFICIAL RECORDS OF SANTA CRUZ COUNTY; THENCE  
WESTERLY ALONG THE SOUTHERN LINE OF SAID ROAD 26.32 FEET, MORE  
OR LESS, TO THE NORTHEASTERN CORNER OF THE FIRST MENTIONED  
LANDS AS CONVEYED TO MARJORIE T. SHERMAN; THENCE ALONG THE  
EASTERN BOUNDARY OF LANDS OF SAID MARJORIE T. SHERMAN SOUTH  
18° 39' WEST 165.68 FEET TO THE PLACE OF BEGINNING.

*A portion of APN 038-151-85*

EXHIBIT H

17-Jun 2003 2003-0058476

Has not been compared with  
original

SANTA CRUZ COUNTY RECORDER

WHEN RECORDED RETURN TO:  
Santa Cruz County Planning Department  
701 Ocean Street  
Santa Cruz, CA 95060  
Attn: Don Bussey  
#01-0068  
APN: 038-151-85 (b)

UNCONDITIONAL CERTIFICATE OF COMPLIANCE

WHEREAS, Emily Oswalt and Tom F. Oswalt, as Trustees of the Oswalt Trust dated May 25, 1999 are the property owners or vendee of such owners of certain real property located in the County of Santa Cruz, State of California, known as a portion of Santa Cruz County Assessor's Parcel Number 038-151-85, and more particularly described in Exhibit "A" attached hereto and incorporated herein by reference; and

WHEREAS, pursuant to an application for Parcel Legality Status Determination, the County of Santa Cruz has determined that such real property is determined to be a legal parcel;

NOW, THEREFORE an Unconditional Certificate of Compliance is hereby issued for the above-described parcel.

FURTHERMORE, THIS CERTIFICATION OF COMPLIANCE SHALL NOT CONSTITUTE A DETERMINATION THAT SAID PARCEL IS BUILDABLE OR IS ENTITLED TO A BUILDING PERMIT OR OTHER DEVELOPMENT APPROVAL WITHOUT COMPLIANCE WITH THE PROVISIONS OF ALL OTHER SANTA CRUZ COUNTY ORDINANCES AND REGULATIONS.

THIS CERTIFICATE OF PARCEL COMPLIANCE RELATES ONLY TO ISSUES OF COMPLIANCE OR NONCOMPLIANCE WITH THE SUBDIVISION MAP ACT AND LOCAL ORDINANCES ENACTED PURSUANT THERETO. THE PARCEL DESCRIBED HEREIN MAY BE SOLD, LEASED OR FINANCED WITHOUT FURTHER COMPLIANCE WITH THE SUBDIVISION MAP ACT OR ANY LOCAL ORDINANCE ENACTED PURSUANT THERETO. DEVELOPMENT OF THE PARCEL MAY REQUIRE ISSUANCE OF A PERMIT OR PERMITS, OR OTHER GRANT OR GRANTS OF APPROVAL.

DATED 6/10/03  
COUNTY OF SANTA CRUZ

By: Glenda Hill  
Glenda Hill  
PRINCIPAL PLANNER

STATE OF CALIFORNIA  
COUNTY OF SANTA CRUZ

On 6/11/03 before me Bernice Romero, Notary Public, personally appeared Glenda Hill personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the person or the entity upon behalf of which the person acted executed the instrument.

Witness my hand and official seal

Signature Bernice Romero

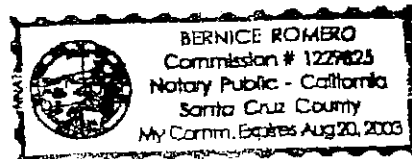


EXHIBIT A

SITUATE IN THE COUNTY OF SANTA CRUZ, STATE OF CALIFORNIA AND  
DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEASTERN CORNER OF LAND CONVEYED TO, C. E. MCFADDEN ET UX BY DEED RECORDED IN VOLUME 164 AT PAGE 281, OFFICIAL RECORDS OF SANTA CRUZ COUNTY; THENCE FROM SAID POINT OF BEGINNING ALONG THE EASTERN BOUNDARY OF SAID LANDS NORTH 19° 39' EAST 173.31 FEET, MORE OR LESS, TO A 1/2" IRON PIPE ON THE SOUTHERN BOUNDARY OF A 24 FOOT RIGHT OF WAY AT THE NORTHWESTERN CORNER OF LAND CONVEYED TO SHERWOOD B. GROVER BY DEED RECORDED IN VOLUME 489 AT PAGE 377, OFFICIAL RECORDS OF SANTA CRUZ COUNTY; THENCE LEAVING SAID BOUNDARY NORTH 65° 07' WEST 50.3 FEET TO A 1-1/2" IRON PIPE; THENCE PARALLEL WITH THE EASTERN BOUNDARY OF SAID LAND OF MCFADDEN SOUTH 18° 39' WEST 177 FEET, MORE OR LESS, TO THE SOUTHERN BOUNDARY OF SAID LAND; THENCE ALONG THE SOUTHERN BOUNDARY OF SAID LANDS SOUTH 73° 24' EAST 50.01 FEET TO THE POINT OF BEGINNING.

*A portion of APN 038-151-85*

EXHIBIT I



Jonathan Wittwer  
William P. Parkin  
Jennifer M. Bragar  
Ryan D. Moroney

**WITTWER & PARKIN, LLP**  
147 SOUTH RIVER STREET, SUITE 221  
SANTA CRUZ, CALIFORNIA 95060  
TELEPHONE: (831) 429-4066  
FACSIMILE: (831) 429-4067  
E-MAIL: [office@wittwerparkin.com](mailto:office@wittwerparkin.com)

OF COUNSEL  
Gary A. Patton

March 10, 2009

**HAND DELIVERED**

Mr. Tom Burns, Planning Director  
Santa Cruz County Planning Department  
701 Ocean Street, Room 400  
Santa Cruz, CA 95060

**RE: Request for Proper Processing of Certificate of Compliance Under Coastal Act  
Unconditional Certificate of Compliance for APN 038-151-85, 89; 749 Oakhill**

Dear Mr. Burns:

This office represents Patrick and Laura Murphy, property owners on Oak Hill Road in the Seacliff area. We recently wrote to the Zoning Administrator on behalf of the Murphys, urging denial of Application 07-0548. That application sought various approvals for a single-family home for Assessor's Parcel 038-151-89.

In 2003, the County administratively deemed Assessor's Parcel 038-151-89 to be a separate parcel from Assessor's Parcel 038-151-85. This was done through the issuance of an Unconditional Certificate of Compliance without any public notice or hearing.<sup>1</sup> During the Zoning Administrator hearing on Application 07-0548, which was held on January 16, 2009, there was some discussion about the legal status of Assessor's Parcel 038-151-89. We have now been able to fully investigate this matter, stimulated in part by a brief discussion of parcel legality that took place at the Zoning Administrator's hearing, and we have concluded that Assessor's Parcel 038-151-85 has not, in fact, achieved legal status despite the fact that the County has issued an Unconditional Certificate of Compliance for the parcel.

The Certificate of Compliance was issued even though there were/are physical encroachments of the house, driveway, deck, elevator and carport that are associated with and inextricably linked to APN 038-151-85. The two parcels were and are not separate legal parcels. It is also interesting to note that the County issued a demolition permit to allow improvements to be removed from the newly created parcel. These were significant improvements even though

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<sup>1</sup> It should be noted that the 038-151-89 is a new Assessor's Parcel Number created after the County issued an Unconditional Certificate of Compliance.

Mr. Tom Burns  
APN 038-151-85, 89  
March 10, 2009  
Page 2

when issuing the Certificate of Compliance the Planning Department stated that the encroachments were of a "minor and inadvertent nature..." This process has been highly suspect and was clearly intended to circumvent the vigorous requirements of the Coastal Act, public notice and hearing, and appellate rights to the Coastal Commission. It should be noted that for separate reasons, the Zoning Administrator did, in fact, deny Application 07-0548, as recommended by planning staff, and as we had requested. However, the legal status of the parcel will continue to be an issue because the applicant will likely resubmit plans for a home on the site.

Assessor's Parcel 038-151-89 is not a separate legal parcel because recognizing the parcel as a separate parcel would have required the issuance of a Coastal Development Permit (CDP), and then the filing with the Coastal Commission of a Final Local Action Notice (FLAN), enabling an appeal of County's action to the Coastal Commission. It should also be noted that the request for an Unconditional Certificate of Compliance was first denied by the Planning Department, but was reversed by an administrative appeal. The Coastal Commission staff should have been informed of the County's creation of this new lot. Moreover, an action is not final for purposes of the Coastal Act until a FLAN is filed, and the time for an appeal has run. Public Resources Code § 30603(d); 14 CCR § 13571. Issuance of a Certificate of Compliance is not, in and of itself, enough to establish the legality of the parcel for a piece of property within the Coastal Zone.

Because no CDP was ever processed, and because no FLAN ever filed with the Coastal Commission, the legality of Assessor's Parcel 038-151-89 has not been properly established. The purpose of this letter is to raise this issue with the County, and to request, on behalf of the Murphys, that the proposed Unconditional Certificate of Compliance be promptly and properly processed under the Coastal Act. The following are some of the reasons that support our conclusion that the 2003 Unconditional Certificate of Compliance failed to establish that Assessor's Parcel 038-151-89 is a separate, legal parcel.

1. The issuance of a Certificate of Compliance for Assessor's Parcel 038-151-89 qualifies as "development" under the definition of development contained in the Coastal Act (PRC § 30106), and there is no exclusion from the resulting requirement for a CDP. Specifically, "development" means any "change in the density or intensity of use of land, including, but not limited to, subdivision . . . , and any other division of land, including lot splits . . ." The County cannot circumvent this requirement for a CDP by issuing an Unconditional Certificate of Compliance. Otherwise, the County could thwart the requirements of the Coastal Act with impunity. This is particularly true where there is no public notice or hearing of the County's action creating the new parcel.

Mr. Tom Burns  
APN 038-151-85, 89  
March 10, 2009  
Page 3

2. The Legislature's stated intent was to grant the Coastal Commission permit jurisdiction with respect to any changes in the density or intensity of use of land, including any division of land. Section 30106 by its terms recognizes that a subdivision of land or a lot split can result in changes in the density or intensity of use of property, and a Certificate of Compliance can, as here, have the same effect. *La Fe v. County of L.A.*, 73 Cal. App. 4th 231, 242 (Cal. Ct. App. 1999). That is because the Certificate of Compliance statute (Govt. C. § 66499.35) provides that on request of a property owner, a city or county must determine whether the property complies with the Subdivision Map Act or ordinances enacted pursuant to the act. If it does not comply, the city or county may record either a certificate of compliance or a conditional certificate of compliance. *Morehart v. County of Santa Barbara*, 7 Cal. 4th 725, 734 (Cal. 1994). Both the statute and the courts make clear that the facts must be liberally construed to support the Commission's jurisdiction (PRC § 30009; *California Coastal Com. v. Quanta Investment Corp.* 113 Cal. App. 3d at p. 609 (conversion of existing apartment units into a stock cooperative form of ownership was a "division of land" and hence "development").

3. Because the Unconditional Certificate of Compliance issued by the County in 2003 was a "development" approval, a CDP was necessary. Such a permit was never applied for or issued. Hence, the County has not properly processed the application for issuance of a Certificate of Compliance, the issuance of which requires a CDP and is appealable to the Coastal Commission. Because of this procedural failure, the parcel is not, currently, a separate legal parcel capable of development.

Since it is our conclusion that Assessor's Parcel 038-151-89 is not a separate, legal parcel from 038-151-85 capable of development, we request that the County promptly inform the property owner of that fact, and request that the owner apply for a CDP for the parcel. If the County disagrees with our analysis, as outlined in this letter, and believes that Assessor's Parcel 038-151-89 is a separate, legal parcel, then I hereby request you to notify the Coastal Commission by telephone of the dispute/question and request an Executive Director's opinion.

Title 14 of the California Code of Regulations § 13569 governs "Determination of Applicable Notice and Hearing Procedures" with respect to the California Coastal Act. That section provides as follows:

"The determination of whether a development is categorically excluded, non-appealable or appealable for purposes of notice, hearing and appeals procedures shall be made by the local government at the time the application for development within the coastal zone is submitted. This determination shall be made with reference to the certified Local Coastal

Mr. Tom Burns  
APN 038-151-85, 89  
March 10, 2009  
Page 4

Program, including any maps, categorical exclusions, land use designations and zoning ordinances which are adopted as part of the Local Coastal Program. Where an applicant, interested person, or a local government has a question as to the appropriate designation for the development, the following procedures shall establish whether a development is categorically excluded, non-appealable or appealable:

(a) The local government shall make its determination as to what type of development is being proposed (i.e. categorically excluded, appealable, non-appealable) and shall inform the applicant of the notice and hearing requirements for that particular development. The local determination may be made by any designated local government employee(s) or any local body as provided in local government procedures.

(b) If the determination of the local government is challenged by the applicant or an interested person, or if the local government wishes to have a Commission determination as to the appropriate designation, the local government shall notify the Commission by telephone of the dispute/question and shall request an Executive Director's opinion;

(c) The executive director shall, within two (2) working days of the local government request (or upon completion of a site inspection where such inspection is warranted), transmit his or her determination as to whether the development is categorically excluded, non-appealable or appealable:

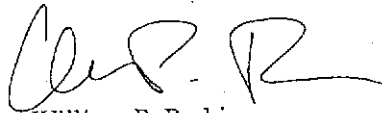
(d) Where, after the executive director's investigation, the executive director's determination is not in accordance with the local government determination, the Commission shall hold a hearing for purposes of determining the appropriate designation for the area. The Commission shall schedule the hearing on the determination for the next Commission meeting (in the appropriate geographic region of the state) following the local government request."

Again, this letter is our request, on behalf of the Murphys, that you promptly notify the current property owner that the creation of Assessor's Parcel 038-151-89 requires a CDP; or, in the alternative, that you inform the Executive Director of the Coastal Commission by telephone of this dispute/question and request an Executive Director's opinion, as required by the Coastal Act. I also respectfully request that you notify this office of your intent with regards to this issue. If I do not hear from you by close of business on Monday, March 16, 2009, as to whether you have informed or will inform the property owner that the parcel requires a CDP, or whether you have sought or will seek a determination of the Executive Director of the Coastal Commission, then I will assume you have no intention of doing so and will advise my clients accordingly.

Mr. Tom Burns  
APN 038-151-85, 89  
March 10, 2009  
Page 5

Thank you for your attention to this matter. If you have any questions, please feel free to contact me.

Very truly yours,  
WITTWER & PARKIN, LLP



William P. Parkin

cc: Don Bussey, Zoning Administrator  
Dan Carl, California Coastal Commission  
Clients

EXHIBIT J



✓ JW — BP — JB — RM — G.P RECEIVED MAR 27 2009

## COUNTY OF SANTA CRUZ

### PLANNING DEPARTMENT

701 OCEAN STREET, SUITE 400, SANTA CRUZ, CA 95060  
(831) 454-2580 FAX: (831) 454-2131 TDD: (831) 454-2123  
TOM BURNS, DIRECTOR

Wittwer & Parkin LLP  
147 South River Street  
Suite 221  
Santa Cruz, CA  
95060

March 17, 2009

Subject: Situs: 749 Oakhill  
APN: 038-151-89 and 90

Dear Mr. Parkin:

This letter is in response to your letter dated March 10, 2009 regarding the Unconditional Certificates of Compliance issued for these lots.

As you are aware, an application for a lot legality/ Certificate of Compliance to recognize both these properties was submitted to the County in 2001. Initially, it was determined that only one legal lot existed. However, on appeal it was determined that the owner had not combined the property into one lot by their actions and the encroachment was of such a minor and inadvertent nature that it could be eliminated through either demolition or a boundary adjustment. This action resulted in the recording of an Unconditional Certificate of Compliance for each lot in June 2003.

Your question as to whether a Coastal Development Permit is required for an Unconditional Certificate of Compliance has been raised in the past. We have requested an Executive Directors determination on this issue in the past and have been advised by the Coastal Commission that no Coastal Development Permit was required since the issuance of an Unconditional Certificate of Compliance has been determined by the State Coastal Commission to not be development under the Coastal Act. Because it is not development under the Coastal Act, no FLAN is required. The County concurs with this determination.

I believe this answers your inquiry. Should you have further questions, feel free to contact me.

Sincerely,

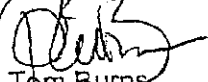
  
Tom Burns  
Planning Director

EXHIBIT K



Jonathan Wittwer  
William P. Parkin  
Jennifer M. Bragar  
Ryan D. Moroney

**WITTWER & PARKIN, LLP**

147 SOUTH RIVER STREET, SUITE 221  
SANTA CRUZ, CALIFORNIA 95060  
TELEPHONE: (831) 429-4066  
FACSIMILE: (831) 429-4067  
E-MAIL: [office@wittwerparkin.com](mailto:office@wittwerparkin.com)

OF COUNSEL  
Gary A. Patton

April 13, 2009

**HAND DELIVERED**

Mr. Tom Burns, Planning Director  
Santa Cruz County Planning Department  
701 Ocean Street, Room 400  
Santa Cruz, CA 95060

**RE: Request for Proper Processing of Certificate of Compliance Under Coastal Act  
Unconditional Certificate of Compliance for APN 038-151-85, 89; 749 Oakhill**

Dear Mr. Burns:

Thank you for your letter of March 17, 2009 concerning the above referenced matter.


For clarification, we requested that you consult with the Executive Director of the Coastal Commission about the issuance of a specific Certificate of Compliance. Your response was that you have discussed Certificates of Compliance previously with the Commission and that in your view they agree with you that, in general, the issuance of an Unconditional Certificate of Compliance does not constitute development. Our inquiry was with respect to the specific facts of this case, not Certificates of Compliance in general. Please let me reemphasize our point. We do not believe that when a parcel located in the Coastal Zone has been recognized by the County, and that parcel was never a legal parcel to begin with, that the County's action of simply recognizing it is adequate to create a new parcel. Otherwise, the County could avoid the requirements of the Coastal Act. The law does not countenance such a result.

In any event, we requested that you consult with the Commission's Executive Director regarding the specific matter referenced above, and you declined to do so. However, it is our position that the way the regulation is structured, it is a mandatory duty on your part to actually consult the Executive Director. 14 CCR § 13569(b). I understand from your letter that our request for you to consult with the Executive Director has been denied. Therefore, we have no choice but to advise our clients to take legal action.

Mr. Tom Burns  
Re 749 Oakhill Rd.  
April 13, 2009  
Page 2

If you have any questions, please feel free to contact me.

Very truly yours,  
WITTWER & PARKIN, LLP

  
Jonathan Wittwer

cc: Don Bussey, Zoning Administrator  
Dan Carl, California Coastal Commission  
Clients



## Staff Report to the Zoning Administrator

Application Number: **09-0139**

**Applicant:** Robert Goldspink  
**Owner:** Brian Arthur  
**APN:** 038-151-89

**Agenda Date:** January 15, 2010  
**Agenda Item #:**  
**Time:** After 10:00 a.m.

**Project Description:** Proposal to construct an approximately 2,544 square foot, two story single family dwelling including a 450 square foot attached garage, elevator, a three foot six inch high retaining wall within the required 20 foot front yard setback and approximately 160 cubic yards of grading.

**Location:** Project located on the south side of Oakhill Road approximately 380 feet west of the intersection with Seacliff Drive (between 735 and 749 Oakhill Road).

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

**Permits Required:** Coastal Development Permit, Residential Development Permit

**Technical Reviews:** Preliminary Grading Approval, Design Review

### Staff Recommendation:

- Certification that the proposal is exempt from further Environmental Review under the California Environmental Quality Act.
- Approval of Application 09-0139, based on the attached findings and conditions.

### Exhibits

A.	Project plans		Johnson & Associates, dated
B.	Findings		10/24/05 (report on file)
C.	Conditions	I.	Excerpts of Discussion, Conclusion
D.	Categorical Exemption (CEQA		and Recommendation from
	determination)		Geotechnical Investigation prepared
E.	Assessor's, Location, Zoning and		by Haro, Kasunich & Associates,
	General Plan Maps		Inc., dated 11/2005 (report on file)
F.	Comments & Correspondence	J.	Evaluation of Culvert Analysis and
G.	Geotechnical Engineering Report		Brick Retaining Wall by Mike Van
	review letter, dated 12/20/05		Horn, dated 8/15/08 and 8/22/08
H.	Excerpts of Conclusions and	K.	Plan Review letters from
	Recommendations from Geologic		Engineering Geologist and
	Investigation prepared by Rogers E.		Geotechnical Engineer

County of Santa Cruz Planning Department  
701 Ocean Street, 4<sup>th</sup> Floor, Santa Cruz CA 95060

L. Arborist Report by Nature First,  
dated 11/8/07

### Parcel Information

Parcel Size: 5,100 square feet (net site area)  
Existing Land Use - Parcel: Vacant  
Existing Land Use - Surrounding: Single-Family Residential  
Project Access: Oakhill Drive  
Planning Area: Aptos  
Land Use Designation: R-UL (Urban Low Density Residential)  
Zone District: R-1-10 (Single family residential - 10,000 square feet minimum)  
Coastal Zone: ☒ Inside ☐ Outside  
Appealable to Calif. Coastal Comm. ☒ Yes ☐ No

### Environmental Information

Geologic Hazards: Coastal bluff instability – proposed development outside of 100-year setback  
Soils: Soil 179 (Watsonville Loam)  
Fire Hazard: Not a mapped constraint  
Slopes: > 70% slope associated with coastal bluff to the rear of the lot  
Env. Sen. Habitat: Not mapped/no physical evidence on site  
Grading: 160 cubic yards  
Tree Removal: No trees proposed to be removed  
Scenic: Mapped Resource  
Drainage: Existing drainage adequate  
Archeology: Not mapped/no physical evidence on site

### Services Information

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

### History

The subject parcel was granted an Unconditional Certificate of Compliance under Permit #01-0068 on June 10, 2003. In March 2005, Coastal Development Permit 04-0531 was approved to allow the demolition of an existing deck and elevator shaft located on the adjacent property to the east, which had been constructed over the shared property line. According to surveyed plans, a portion of the adjacent dwelling continues to encroach approximately four feet onto the subject site.

On December 12, 2005, the County Geologist accepted Engineering Geology and Geotechnical Reports, which established the appropriate 100-year coastal bluff setback and building envelope for a single-family dwelling.

On September 17, 2007 the current property owner applied for a Coastal Development Permit, a Residential Development Permit, Preliminary Grading Approval and an Exception to the County Geologic Hazard Ordinance (#07-0548) to allow the construction of a new single-family home and to allow site grading to encroach into the 100-year geologic setback. Application 07-0548 was denied without prejudice by the Zoning Administrator on January 16, 2009 primarily due to the proposed grading encroachment. The design of the proposed dwelling was also determined to be incompatible with the homes in the neighborhood with respect to the roof forms, the selection of building materials and the overall architectural style.

Application 07-0548 was denied without prejudice. County Code Section 18.10.135 allows for immediate re-application and therefore the current application was made on April 16, 2009. The proposed design has been modified to conform to County policies and codes and the grading has been significantly reduced from what was previously proposed.

### **Project Setting**

The property is located at the top of a coastal bluff on the south side of Oakhill Road. The bluff is located at the southern end of the parcel, immediately above Las Olas Drive. Three retaining walls of approximately four feet in height are located on the subject property, one of which goes under the neighboring structure to the east at the point at which the structure encroaches onto the subject lot. A letter submitted from a structural engineer under the previous application (#07-0548) verified that the retaining wall is not attached to the neighboring structure (Exhibit J). A 48" redwood tree on the property shall be retained. The surrounding neighborhood is developed with one and two-story single family dwellings, both along Oakhill Road and at the base of the bluff across Las Olas Drive.

### **Zoning & General Plan Consistency**

The subject property is a parcel of approximately 8,276 square feet in gross site area and 5,100 square feet in net site area after the deduction of the coastal bluff. The site is located in the R-1-10 (Single family residential - 10,000 square feet minimum) zone district, a designation which allows residential uses. The proposed single-family dwelling is a principal permitted use within the zone district and the project is consistent with the site's (R-UL) Urban Low Density Residential General Plan designation.

	<b>R-1-10 Site Standards</b>	<b>Proposed Residence</b>
Front Yard Setback	20 feet	20 feet
Rear Yard Setback	15 feet	100 +/- **
Side Yard Setback	5 and 5 feet*	5 and 5 feet
Building Height	28 feet	28 feet
Number of Stories	2	2
Lot Coverage	40%***	33%
Floor Area Ratio	50%	49.8%
Parking	3 spaces	3 spaces (two covered; one tandem in driveway)

\* County Code Section 13.10.323 allows for 5 and 5 foot side yard setbacks for parcels less than 60 feet wide.

\*\* 100-year Geologic Setback established by approved Geologic and Geotechnical reports is located approximately 33 feet from the top of the break in slope

\*\*\* Per Ordinance 5042, effective 6/10/09, lot coverage increased from 30% to 40% in the Coastal Zone.

The proposed single-family dwelling is two stories with an attached garage. The house is stepped up the slope from Oakhill Road. The garage counts as a story (County Code 13.10.700-B) as it does not meet the definition of a basement. The elevator, elevator lobby and basement storage areas located on the garage level meet the definition of a basement area and do not qualify as a story. Additionally, the storage area located above the garage does not meet the definition of a story as it is not connected to the floor above. Therefore the proposed dwelling conforms to the two-story limit applied within the Urban Services Line.

### **Local Coastal Program Consistency**

The proposed new single-family dwelling conforms to 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. Developed parcels in the area contain primarily two-story single-family dwellings. The architectural styles vary in the area. Exterior materials in the vicinity include the use of wood shingles, horizontal wood siding and stucco exteriors. Similarly, roof styles and fenestration vary throughout the neighborhood as well. The design submitted fits within the range of styles exhibited in the area, with uniform roof planes, a modest degree of articulation providing visual interest, and the use of colors and materials that soften the overall appearance of the new dwelling. The design proposed as a part of the original Coastal Development application (#07-0548) was found to be incompatible with the neighborhood due in part to the inclusion of a south-facing large round window, a lack of cohesive roof geometry and a lack of north-facing fenestration. The current design includes major revisions, which address the previous shortcomings and results in a compatible overall appearance. Specifically, the large window has been eliminated, a more interesting fenestration scheme has been incorporated along the north façade and the rooflines have been modified to reflect a more unified presentation. Another modification to the original design includes the use of different exterior colors for the first and second stories, which will differentiate and break up an the otherwise monolithic appearance of stucco.

The project site is not identified as a priority acquisition site in the County's Local Coastal Program. While the site is located between the shoreline and the first public road, there is no public access from Oakhill Drive. Therefore the proposed project will not interfere with public access to the beach, ocean, or other nearby body of water.

## **Coastal Bluff**

The proposed single-family dwelling is located at the top of a coastal bluff. Geologic and geotechnical reports (Exhibits H, I) established a 100-year geologic setback line 33 feet landward of the edge of the bluff and set the building envelope as required by General Plan Policy 6.2.12. The technical reports demonstrate that the building envelope would provide a stable site for 100-year span. The current proposal includes approximately 16 cubic yards of grading within the 33-foot bluff setback. While grading is generally not allowed within the 100-year setback to the coastal bluff, Section 16.10.070(h)2(i) of the County Code defines grading as any earthwork "...other than minor leveling, of the scale typically accomplished by hand, necessary to create beneficial drainage patterns...that does not excavate into the face or base of the bluff." The proposed earthwork will facilitate the establishment of positive drainage away from the bluff and a condition of approval is included to require the grading within the 100-year setback to be performed by hand. Therefore an exemption to the Geologic Hazards Ordinance is not required.

Additionally, portions of the existing retaining wall and walkways will be removed. An evaluation of the impact of the removal of portions of the wall was performed by a civil engineer (Exhibit J), who concluded that the alterations to the brick retaining wall and small amount of earthwork do not threaten the structural integrity of the wall. The evaluation also found that the adjacent residence does not depend upon the presence of the brick retaining wall for any structural support; therefore removal of portions of the wall are not expected to have a negative impact on the adjacent residence.

No additional structures or hardscape are proposed for the bluff side of the dwelling. Drainage calculations have been provided to demonstrate that the post-development runoff rates do not exceed pre-development rates.

All work performed within the bluff setback will conform to the recommendations of the project geotechnical engineer and engineering geologist. The County Geologist has reviewed and approved the technical reports for this site (Exhibit H). Additionally, the plans have been reviewed and approved by the Drainage Section of the Department of Public Works.

## **Design Review**

The proposed new single-family dwelling complies with the requirements of the County Design Review Ordinance, in that the proposed project will incorporate site and architectural design features as uniform roof forms and fenestration that complement the architectural styles of the surrounding homes. The north elevation presents a nicely articulated street presence, largely screened by the presence of a 48-inch redwood tree at the eastern portion of the lot. The cross gable design and gently arched windows and roof elements soften the overall appearance from the north, while the fenestration and tube and glass railing at the beach-facing south elevation are entirely consistent with surrounding designs along the bluff.

## Scenic Resources

The proposed dwelling will be visible from the public beach and from Las Olas Drive to the south. General Plan Policy 5.10.7 allows the placement of new permanent structures on when the structures constitute infill on existing lots of record *where compatible with the pattern of existing development*. The proposed dwelling presents a façade to the beach that is of similar bulk and mass as the existing adjacent structures. The photo simulation depicts a southern elevation that is broken up by vertical elements and balanced fenestration. The proposed color scheme consists of muted earth tones and is similar to the color of the vegetated coastal bluff in the foreground. The color allows the structure to blend in with the natural environment to a large degree, particularly when compared to the relatively stark white color of the existing dwelling immediately to the east.

A condition of approval has been included which will require the glazing to be non-reflective. The overall impact of the proposed dwelling on the view from the beach will be less than significant based on the size, design and color of the structure.

## Residential Development Permit

The proposal includes the construction of a retaining wall that will exceed the three-foot maximum height limit within the front yard setback and requires a Residential Development Permit. The proposed retaining wall is located uphill from the traveled roadway and will not affect sight distance for entering and exiting the property. There is no pedestrian area on this side of Oakhill with which the wall would interfere. The three foot, six inch retaining wall will be made of concrete and finished with stucco and painted to match the color of the house.

In conjunction with the proposal made under application # 07-0548, the project was reviewed by a certified arborist in order to assess possible impacts of the proposed retaining wall and other improvements to the 48-inch redwood tree on the property (Exhibit L). All tree protection measures recommended by the project arborist are included as required conditions of approval and include a pre-construction meeting with contractors and written verification by the arborist that all pre-construction measures have been implemented.

## 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

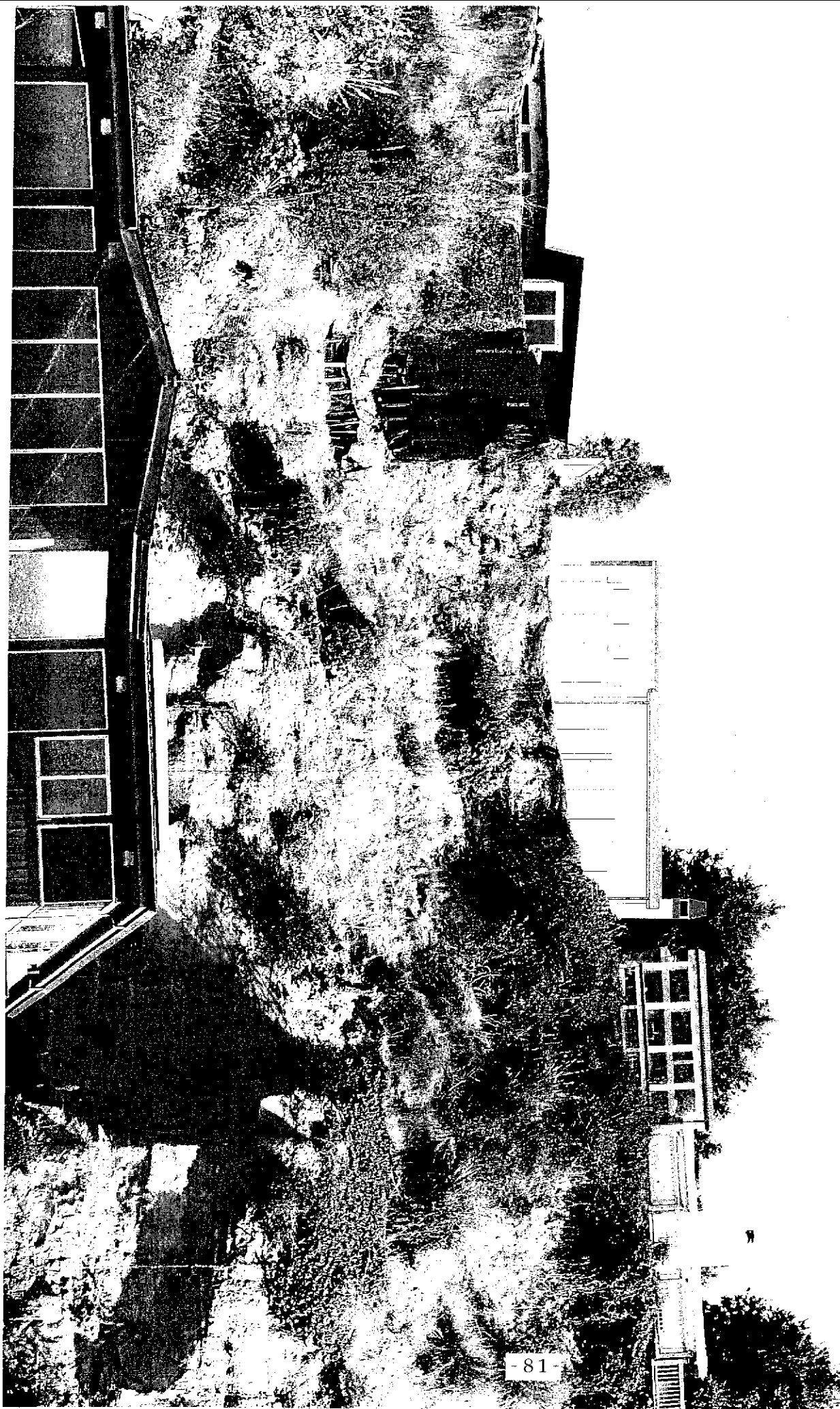
- Certification that the proposal is exempt from further Environmental Review under the California Environmental Quality Act.
- **APPROVAL** of Application Number **09-0139**, based on the attached findings and conditions.



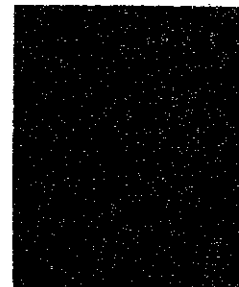
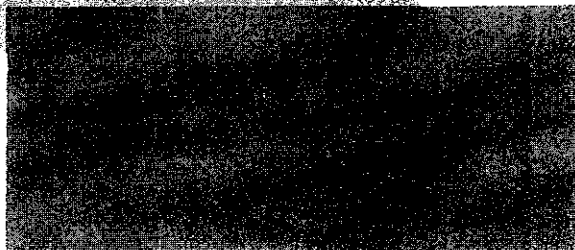
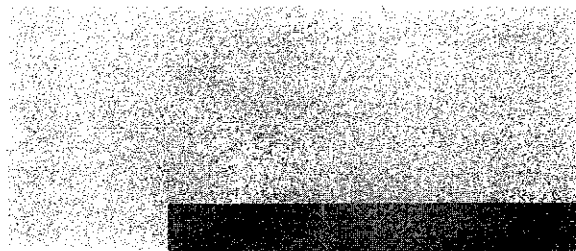
**Supplementary reports and information referred to in this report are on file and available for viewing at the Santa Cruz County Planning Department, and are hereby made a part of the administrative record for the proposed project.**

**The County Code and General Plan, as well as hearing agendas and additional information are available online at: [www.co.santa-cruz.ca.us](http://www.co.santa-cruz.ca.us)**

Report Prepared By: Robin Bolster-Grant  
Santa Cruz County Planning Department  
701 Ocean Street, 4th Floor  
Santa Cruz CA 95060  
Phone Number: (831) 454-5357  
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APPROVED  
 → COLOR FOR  
 EXTERIOR  
 WALLS FACING  
 THE BEACH



GREEN SLATE  
 3 LBS 3685

- |   |   |
|---|---|
| <b>A. Roof</b>                          | Elk composition roofing, color: Antique Slate   |
| <b>B. Walls, generally</b>              | Elastomeric acrylic stucco top coat, Dryvit color to match Kelly Moore 'Keystone' #186  |
| <b>C. Garage &amp; Step walls</b>       | Elastomeric acrylic stucco top coat, Dryvit color to match Kelly Moore 'Wood Moss' #197 with heavier texture than rest of house |
| <b>D. Exterior Doors &amp; Windows</b>  | White   |
| <b>E. Gutters &amp; Downspouts</b>      | Copper  |
| <b>F. Porch Canopy</b>                  | Stainless steel frame with frosted glass canopy   |
| <b>G. Fascias, Soffits &amp; Struts</b> | Painted wood, color: white  |
| <b>H. West Stair Balustrade</b>         | Powder-coated, galvanized wire mesh with tube posts and handrail, color: white  |
| <b>I. South Deck Balustrade</b>         | Powder-coated tube posts and handrail, color: white, with glass panels  |
| <b>J. Steps &amp; Landings</b>          | Colored, rock-salt concrete, color: Davis 'Slate Green'   |
| <b>K. Driveway</b>                      | Colored, stamped concrete, color: Davis 'Slate Green'   |

## Arthur Residence

### EXTERIOR MATERIALS AND COLORS

Robert J Goldspink Architect 8042 Soquel Drive Aptos CA 95003  
 tel [831] 688 8950 fax [831] 688 4402

April, 6th 2009  
 - 82 -

EXHIBIT B

FILLIET

## 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 R-1-10 (Single family residential - 10,000 square feet minimum), a designation which allows residential uses. The proposed new single-family dwelling is a principal permitted use within the zone district, consistent with the site's (R-UL) Urban Low Density Residential 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 no such easements or restrictions are known to encumber the project site.

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

This finding can be made, in that the development is consistent with the surrounding neighborhood in terms of architectural style; the site is surrounded by lots developed to an urban density; the colors are similar to that of the vegetated coastal bluff below and are thus complementary to the site. The new dwelling will incorporate a cross gable design with the front gable hipped and the second story stepped back from the street so as to avoid a monolithic and imposing appearance. Additionally, two complementary but different exterior paint colors will be used at the street side in order to provide differentiation in the use of a stucco exterior. The street view is further mitigated by the presence of a 48-inch redwood tree and planting area at the eastern side of the lot.

Varied roof planes, deck and fenestration provide visual interest at the street front, while the window design and tube and glass railing at the beach-facing south elevation are generally consistent with surrounding designs along the bluff. The portion of the dwelling that is visible from the beach is consistent in shape and height with the silhouettes of the houses on either side. Additionally, the proposed color blends in well with the color and appearance of the bluff below. The overall effect is an entirely compatible presentation from both the Oakhill street front and from the beach below. The glazing for the windows facing the beach and Las Olas Drive are conditioned to be of non-reflective material only to further prevent any visual impact to the viewshed.

**EXHIBIT B**

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 while the project site is located between the shoreline and the first public road, there is no available beach access from the subject parcel. Consequently, the new single-family dwelling 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 neighborhood. The proposed two-story dwelling is consistent with the size and design of the adjacent dwellings as well as the dwellings located along Las Olas Drive at the base of the coastal bluff. Additionally, residential uses are allowed uses in the R-1-10 (Single family residential - 10,000 square feet minimum) zone district of the area, as well as the General Plan and Local Coastal Program land use designation. Developed parcels in the area contain single-family dwellings of primarily two-story construction. Size and architectural styles vary widely in the area, and the design submitted is not inconsistent with the existing range, utilizing a blend of traditional elements such as hipped, cross gabled roof design, eave overhangs and arched window elements.

The south-facing elevation presents a modest façade, which is in scale with the adjacent dwellings and incorporates vertical elements and balanced fenestration to further soften the apparent bulk and mass of the structure from the beach and from Las Olas Drive. The proposed color scheme complements and blends in with the natural hues of the vegetated coastal bluff below so that the overall appearance will harmonize with the existing structures in the vicinity and will not represent a negative impact to the view from the beach.

**EXHIBIT JB**

## 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 residential uses. Though the structure is located approximately 33 feet from the coastal bluff, the dwelling will not encroach into the 100-year geologic setback line established by the engineering geologist for the project. All recommendations made by the engineering geologist and geotechnical engineer (Exhibits H, I) have been incorporated into the required conditions of approval of this permit.

Proposed drainage improvements will ensure that all drainage be directed away from the bluff face, potentially lengthening the life and preserving the stability of the bluff in order to protect the health, safety and welfare of the residents of the subject dwelling and surrounding properties.

No structures are proposed to be built within the required 100-year bluff setback and the minimal amount of grading done to improve the drainage will be done by hand. Per the recommendations made by the project geotechnical engineer, the house will be constructed on a pier and grade beam foundation. Construction will comply with prevailing building technology, the California Building Code, and the County Building ordinance to insure the optimum in safety and the conservation of energy and resources. The proposed single-family dwelling will not deprive adjacent properties or the neighborhood of light, air, or open space, in that the structure will conform to all required site standards for the zone district.

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 new single-family dwelling and the conditions under which it would be operated or maintained will be consistent with all pertinent County ordinances and the purpose of the R-1-10 (Single family residential - 10,000 square feet minimum) zone district in that the primary use of the property will be one new single-family dwelling that meets all current site standards for the zone district.

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 residential use is consistent with the use and density requirements specified for the Urban Low Density Residential (R-UL) land use designation in the County General Plan.

The proposed new single-family dwelling 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 new single-family dwelling will not adversely shade adjacent properties, and will meet current setbacks for the zone district that ensure access to light, air, and open space in the neighborhood.

The project consists of infill development, which is compatible with the surrounding structures in terms of height, mass and bulk and design and therefore complies with General Plan Policy 5.10.7 (Visual Resources- Open Beaches and Blufftops). The proposed dwelling will be painted a sage green, which blends in with the vegetation located on the bluff below. The ocean-facing windows shall be restricted to the use of non-reflective glazing material further reducing the visual impact of the new house.

The proposed new single-family dwelling 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 new single-family dwelling will comply with the site standards for the R-1-10 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.

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 new single-family dwelling is to be constructed on an existing undeveloped lot. The expected level of traffic generated by the proposed project is anticipated to be only 1 peak trip per day, such an increase will not adversely impact existing roads and intersections in the surrounding area.

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 new single-family dwelling is consistent with the land use intensity and density of the neighborhood. Surrounding dwellings are characterized predominately by two-story structures of similar bulk and mass.

EXHIBIT B

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 new single-family dwelling 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. The new dwelling incorporates several design features such as hipped, cross-gabled roof design, articulation at the street front and fenestration that provides visual interest. The proposal has been reviewed and approved by the County Urban Designer.



## Conditions of Approval

Exhibit A: 12 Sheets, prepared by Robert Goldspink Architect, dated 3-10-09, (Sheets 1-7, 12 & 13 revised 9-18-09), Sheet 11 revised 3-25-09, Topographic Map prepared by Robert L. DeWitt, dated 8-27-07.

- I. This permit authorizes the construction of a new 2,544 square foot single-family dwelling, with 450 square foot attached garage and 3'-6" tall retaining wall within the front yard setback. This approval does not confer legal status on any existing structure(s) or existing use(s) on the subject property that are not specifically authorized by this permit. Prior to exercising any rights granted by this permit including, without limitation, any construction or site disturbance, the applicant/owner shall:
  - A. Sign, date, and return to the Planning Department one copy of the approval to indicate acceptance and agreement with the conditions thereof.
  - B. Obtain a Building Permit from the Santa Cruz County Building Official.
    1. Any outstanding balance due to the Planning Department must be paid prior to making a Building Permit application. Applications for Building Permits will not be accepted or processed while there is an outstanding balance due.
  - C. Obtain a Grading Permit from the Santa Cruz County Building Official.
  - D. Submit proof that these conditions have been recorded in the official records of the County of Santa Cruz (Office of the County Recorder) within 30 days from the effective date of this permit.
- II. Prior to issuance of a Building Permit the applicant/owner shall:
  - A. Submit final architectural plans for review and approval by the Planning Department. The final plans shall be in substantial compliance with the plans marked Exhibit "A" on file with the Planning Department. Any changes from the approved Exhibit "A" for this development permit on the plans submitted for the Building Permit must be clearly called out and labeled by standard architectural methods to indicate such changes. Any changes that are not properly called out and labeled will not be authorized by any Building Permit that is issued for the proposed development. The final plans shall include the following additional information:
    1. One elevation shall indicate materials and colors as depicted on the "Exterior Materials and Colors" sheet submitted by the project architect (dated April 6, 2009). If there is a significant conflict between the color shown on the sheet and the written description on the sheet, the color sample provided shall be considered the approved colors.

**EXHIBIT B**

**EXHIBIT C**

- a. The north-facing exterior shall incorporate two complementary, but distinct colors to differentiate the first and second stories.
  2. Non-reflective glazing material shall be used for all windows that are visible from the beach.
  3. Grading, drainage, and erosion control plans that include the following information:
    - a. All grading performed within the 100-year geologic setback shall be done by hand.
    - b. A maximum excavation at the crest of the slope at the blufftop must not exceed 6 inches.
    - c. Grading plans shall include all grading volumes and calculations, a destination for off-hauled material, existing and proposed contours and top-of-wall/bottom-of-wall elevations for all retaining walls.
  4. Submit a landscape plan showing the planting of drought-resistant landscaping.
  5. No deck, patios, spas, or other surfaced areas or structures shall be allowed within the 100-year geologic setback.
  6. No portion of the structure may encroach into the 100-year geologic setback, with the exception of eaves and gutters, which may encroach 3 feet into the setback. Any such encroaching eaves must be sloped and may not be used as an extension of a deck or other living space.
  7. The building plans must include a roof plan and a surveyed contour map of the ground surface, superimposed and extended to allow height measurement of all features. Spot elevations shall be provided at points on the structure that have the greatest difference between ground surface and the highest portion of the structure above. This requirement is in addition to the standard requirement of detailed elevations and cross-sections and the topography of the project site which clearly depict the total height of the proposed structure. Maximum height is 28 feet.
  8. Details showing compliance with fire department requirements.
- 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.

**EXHIBIT B**

**EXHIBIT C**

- C. Meet all requirements of and pay Zone 6 drainage fees to the County Department of Public Works, Stormwater Management. Drainage fees will be assessed on the net increase in impervious area.
- D. Meet all requirements of and pay fees to the County Department of Public Works, Sanitation Section.
- E. Meet all requirements and pay any applicable plan check fee of the Aptos/La Selva Fire Protection District.
- F. Submit 3 copies of a soils report prepared and stamped by a licensed Geotechnical Engineer.
- G. Submit 3 copies of the Engineering Geology Report prepared and stamped by a licensed Engineering Geologist.
- H. Submit a Tree Protection and Tree Preservation plan that incorporates all recommendations made by the project arborist in her letter of November 8, 2007 (Exhibit L).
- I. Submit a plan review letter from a certified arborist, which states that the final building and grading plans conform to the recommendations made in the assessment prepared for the site. Construction must adhere to the following mitigation measures.
- J. Submit plan review letters from the project engineering geologist and geotechnical engineer stating that the final grading, drainage and erosion control plans are in conformance with the recommendations made in the approved technical reports prepared for the project.
- K. Pay the current fees for Parks and Child Care mitigation for 3 bedroom(s). Currently, these fees are, respectively, \$1,000 and \$109 per bedroom.
- L. Pay the current fees for Roadside and Transportation improvements for *one dwelling unit*. Currently, these fees are, respectively, \$2,740 and \$2,740 per unit. (*Revised by the Zoning Administrator on 1/15/10*).
- M. Provide required off-street parking for 3 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.
- N. 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.

- O. Complete and record a Declaration of Restriction to maintain a non-habitable basement. **You may not alter the wording of this declaration.** Follow the instructions to record and return the form to the Planning Department.
  - P. Complete and record a Declaration of Geologic Hazard. **You may not alter the wording of this declaration.** Follow the instructions to record and return the form to the Planning Department.
- 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. All inspections required by the building permit shall be completed to the satisfaction of the County Building Official.
  - C. The project must comply with all recommendations of the approved soils reports.
  - D. Pursuant to Sections 16.40.040 and 16.42.100 of the County Code, if at any time during site preparation, excavation, or other ground disturbance associated with this development, any artifact or other evidence of an historic archaeological resource or a Native American cultural site is discovered, the responsible persons shall immediately cease and desist from all further site excavation and notify the Sheriff-Coroner if the discovery contains human remains, or the Planning Director if the discovery contains no human remains. The procedures established in Sections 16.40.040 and 16.42.100, shall be observed.
- IV. Operational Conditions
- A. 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.
  - B. *Parking during construction shall not obstruct traffic along Oakhill Road. The road shall be kept free of dirt and debris during construction. (Revised by Zoning Administrator on 1/15/10)*
  - C. *Limit all construction to the time between 8:00 am and 6:00 pm weekdays, excluding holidays. Hours may be revised or extended if needed to complete grading in advance of adverse weather conditions. Notice must be provided to neighbors prior to any change in construction hours (Revised by Zoning Administrator on 1/15/10).*

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

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

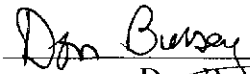
**Please note: This permit expires three years from the effective date listed below unless a building permit (or permits) is obtained for the primary structure described in the development permit (does not include demolition, temporary power pole or other site preparation permits, or accessory structures unless these are the primary subject of the development permit). Failure to exercise the building permit and to complete all of the construction under the building permit, resulting in the expiration of the building permit, will void the development permit, unless there are special circumstances as determined by the Planning Director.**

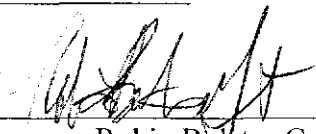
Application #: 09-0139  
APN: 038-151-89  
Owner: Brian Arthur

Approval Date: January 15, 2010

Effective Date: January 29, 2010

Expiration Date: January 29, 2013

  
\_\_\_\_\_  
Don Bussey  
Deputy Zoning Administrator

  
\_\_\_\_\_  
Robin Bolster-Grant  
Project Planner

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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: 09-0139

Assessor Parcel Number: 038-151-89

Project Location: No Situs

**Project Description:** Proposal to construct an approximately 2,322 square foot single-family dwelling with 450 square foot attached garage, elevator, and 3'-6" retaining wall located within the required 20-foot front yard setback.

**Person or Agency Proposing Project:** Robert Goldspink

**Contact Phone Number:** (831) 688-8950

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

Specify type:

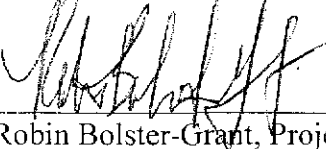
E. ☒ **Categorical Exemption**

Specify type: Class 3 - New Construction or Conversion of Small Structures (Section 15303)

F. **Reasons why the project is exempt:**

Construction of a single-family dwelling in a residential zone.

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

  
\_\_\_\_\_  
Robin Bolster-Grant, Project Planner

Date: 1/9/10

**FOR TAX PURPOSES ONLY:**

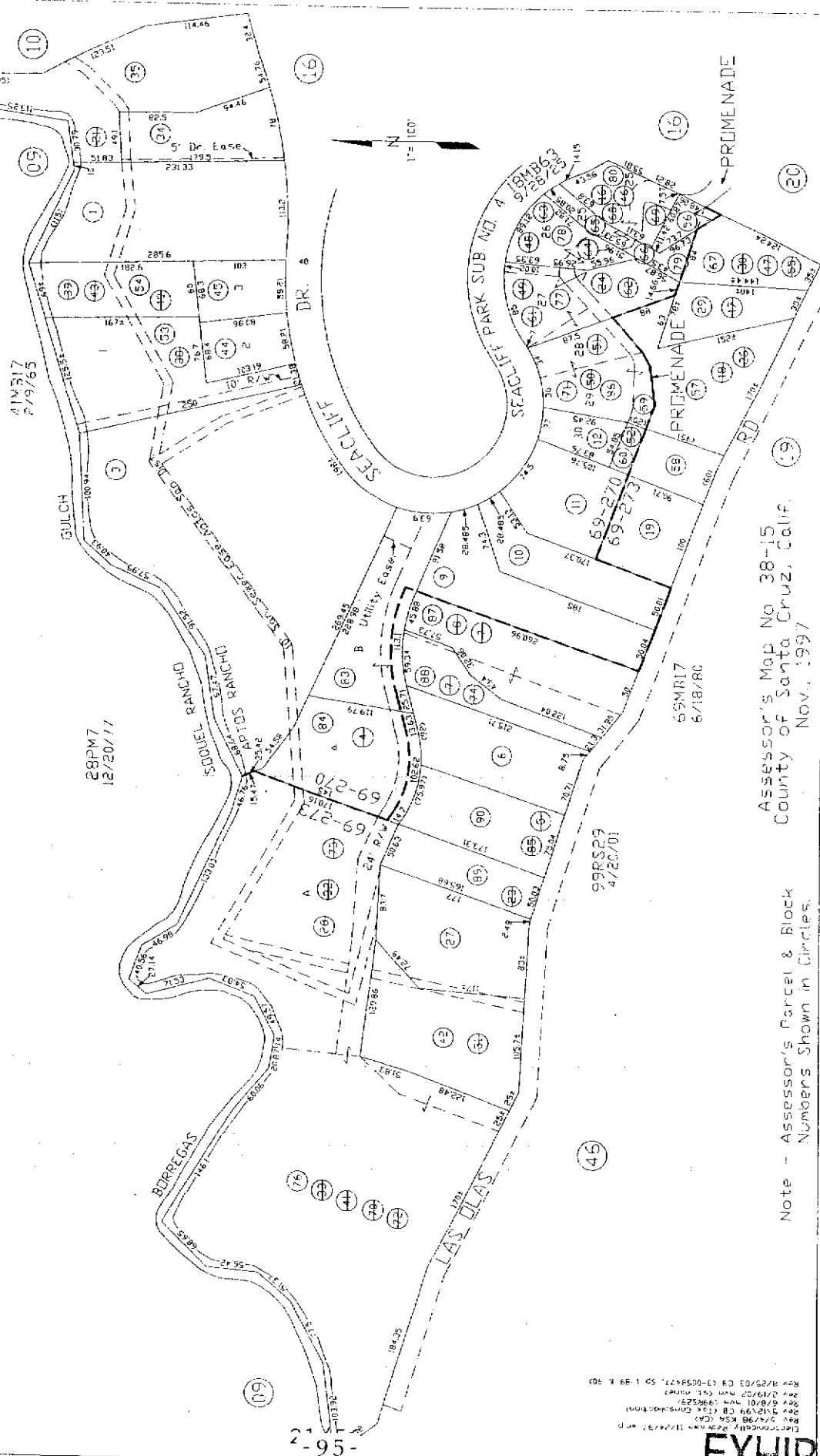
THE ASSESSOR MAKES NO GUARANTEE AS TO MAP ACCURACY NOR ASSUMES ANY LIABILITY FOR OTHER USES. NOT TO BE REPRODUCED. ALL RIGHTS RESERVED.  
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**APTOS RANCHO**

POR. NW 1/4 SEC 13, T.11S., R.1W., M.D.B. & M.

Box Area Code  
 69-270 69-273

38-15



Assessor's Map No 38-15  
 County of Santa Cruz, Calif.  
 Nov., 1997

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

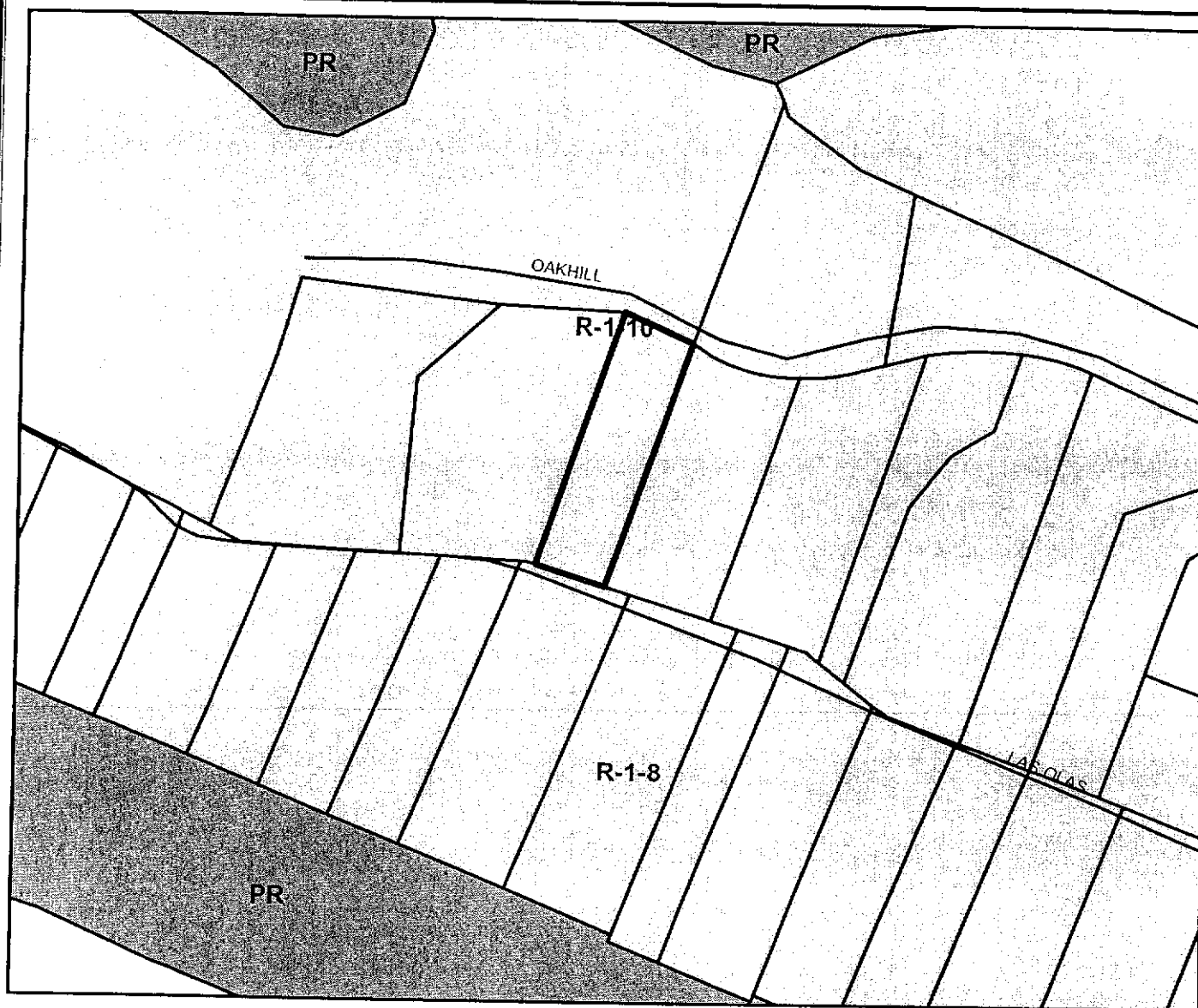
**EXHIBIT B**

Reviewed by Santa Cruz County Assessor 11/14/97 and  
 approved for recording by Santa Cruz County Assessor  
 11/14/97. The map was prepared by Santa Cruz County  
 Assessor's Office. The map is for informational purposes  
 only and does not constitute a warranty of any kind.  
 Santa Cruz County Assessor's Office  
 11/14/97





# Zoning Map



## LEGEND



APN: 038-151-89



Assessors Parcels



Streets

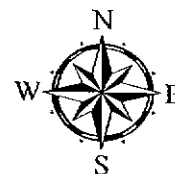


County Boundary

RESIDENTIAL-SINGLE FAMILY



PARK



Map Created by  
County of Santa Cruz  
Planning Department  
December 2008

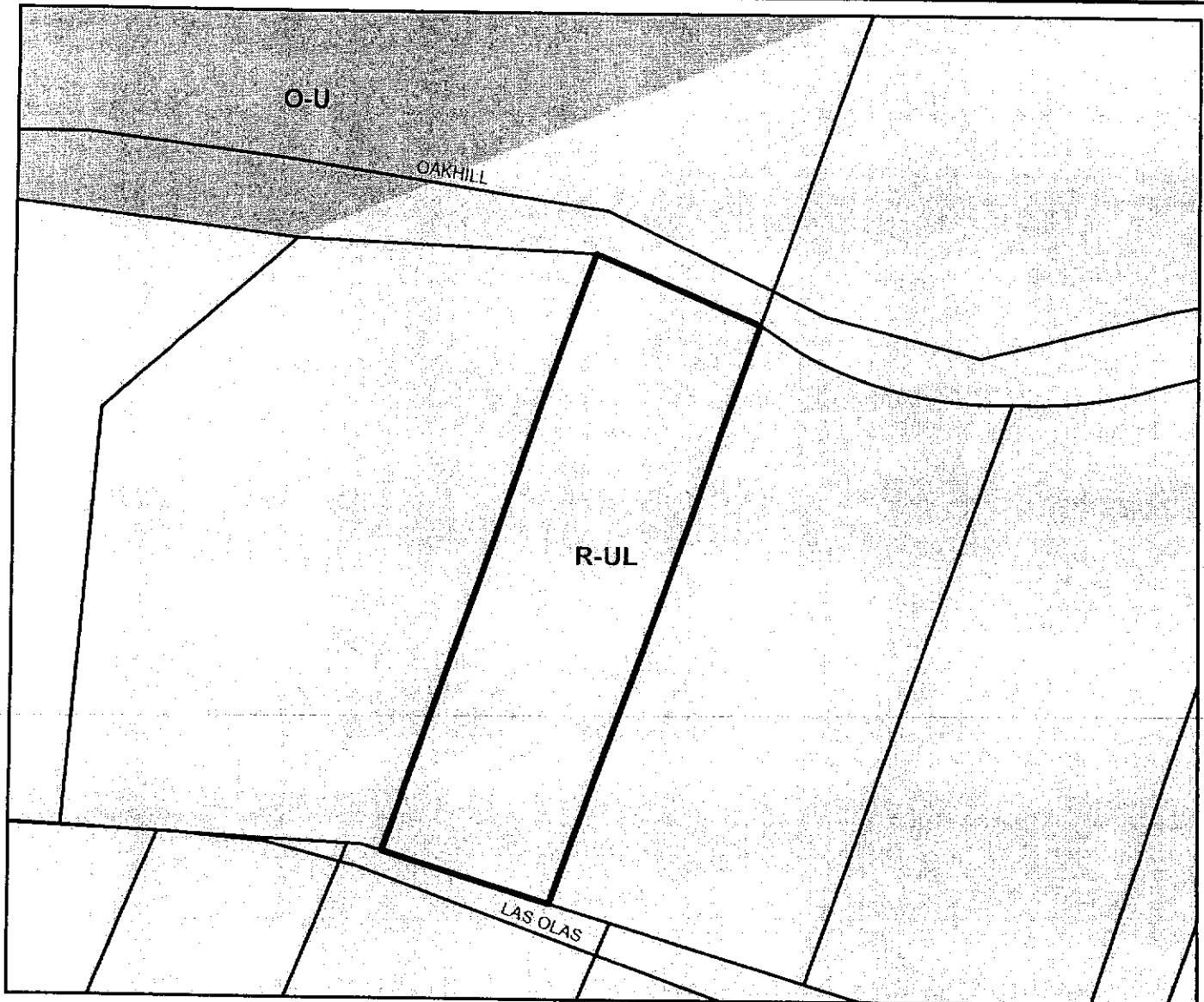
2096-

EXHIBIT B


EXHIBIT B





# General Plan Designation Map




## LEGEND

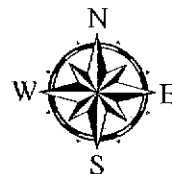
 APN: 038-151-89

 Assessors Parcels

 Streets

 Residential - Urban Low Density

 Urban Open Space



Map Created by  
County of Santa Cruz  
Planning Department  
December 2008

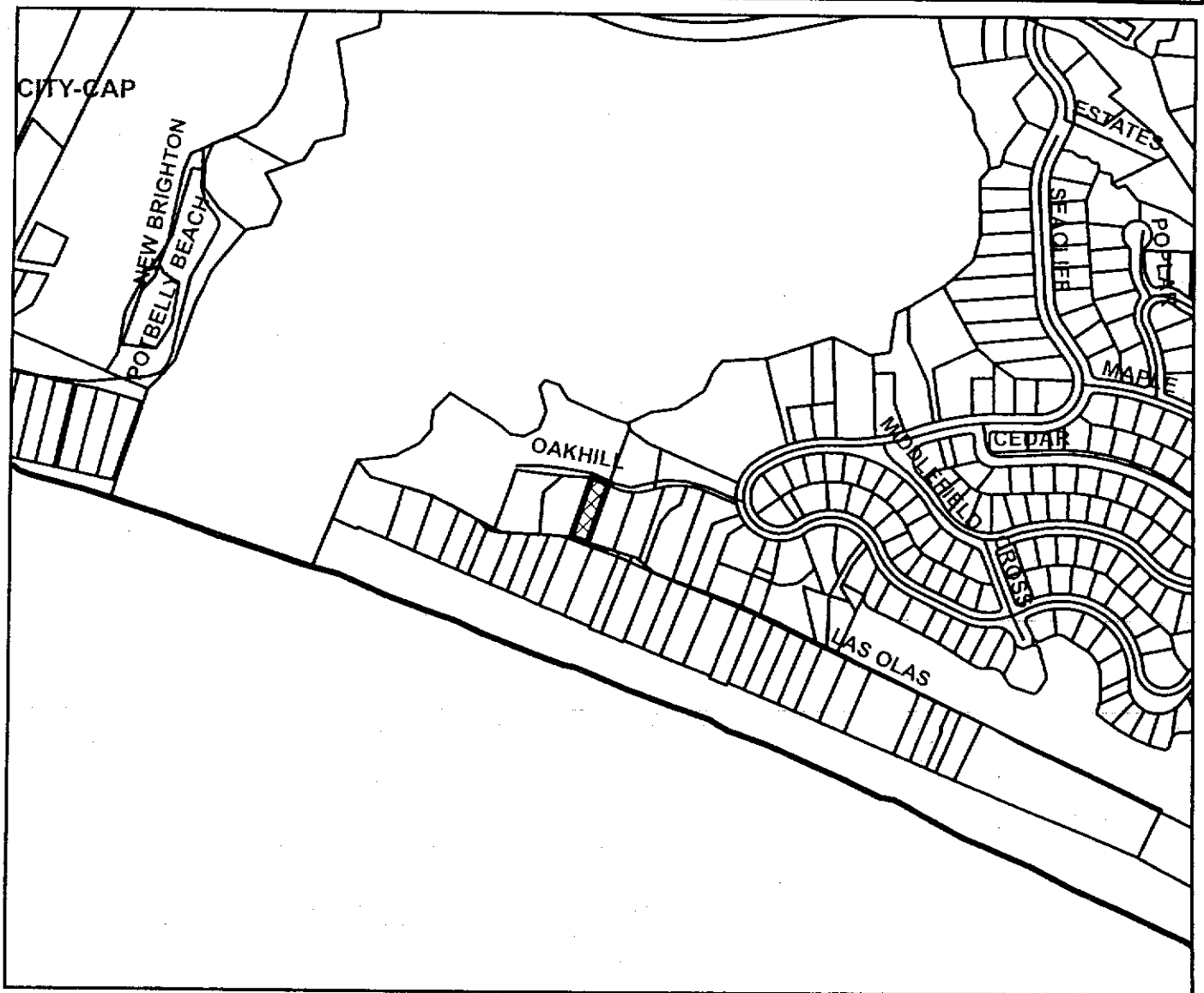
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EXHIBIT B






EXHIBIT E

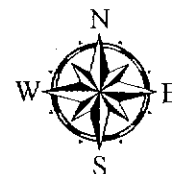


# Location Map



## LEGEND

-  APN: 038-151-89
-  Assessors Parcels
-  Streets
-  CAPITOLA
-  County Boundary



Map Created by  
County of Santa Cruz  
Planning Department  
December 2008

C O U N T Y   O F   S A N T A   C R U Z  
Discretionary Application Comments

Project Planner: Robin Bolster  
Application No.: 09-0139  
APN: 038-151-89

Date: December 24, 2009  
Time: 11:12:23  
Page: 1

**Environmental Planning Completeness Comments**

===== REVIEW ON JULY 20, 2009 BY ANTONELLA GENTILE =====

1. Please label the 100-year geologic setback on the site plan. ===== UPDATED ON  
OCTOBER 22, 2009 BY ANTONELLA GENTILE =====  
Project complete per Environmental Planning.

**Environmental Planning Miscellaneous Comments**

===== REVIEW ON JULY 20, 2009 BY ANTONELLA GENTILE =====

Miscellaneous comments:

1. A minimum amount of grading will be allowed outside of the 100-year geologic envelope for the purpose of directing drainage toward the street rather than over the slope.
2. Although this site is mapped as Riparian Woodland, upon site visit no riparian resources were found.
3. Prior to approval of this application, submit a plan review letter from the project arborist that references the site plan and grading and drainage plan and states the the plans conform to the recommendations in the arborist's report dated 11/8/07 submitted with application 07-0548.

Conditions

Prior to building permit issuance:

1. Plans shall be prepared in conformance with the geology report prepared by Rogers E. Johnson dated October 24, 2005 and all updates, the geotechnical engineering report by Haro, Kasunich and Associates dated November 2005 and all updates and the arborist's report dated 11/8/07 by Nature First and all updates.
2. Plans shall include references to the geology report/updates, the geotechnical engineering report/updates, and the arborist's report/updates.
3. Apply for a grading permit at the time of building permit application submittal. Grading plans shall include all grading volumes and calculations, a destination for off-hauled material, existing and proposed contours, and top-of-wall and bottom-of-wall elevations for all retaining walls.
4. Provide an erosion control plan.
5. Provide updates and plan review letters from the geotechnical engineer, the geologist, and the project arborist.
6. Submit 2 copies of all technical reports for inclusion with the building permit plans.

Prior to permit final:

Discretionary Comments - Continued

Project Planner: Robin Bolster  
Application No.: 09-0139  
APN: 038-151-89

Date: December 24, 2009  
Time: 11:12:23  
Page: 2

1. A pre-construction meeting shall be held onsite prior to the commencement of construction. Environmental Planning staff, the geotechnical engineer, the contractor, the applicant, and the arborist shall attend. Please note this on the building permit plans.
2. Final letters shall be required from the geologist, the geotechnical engineer, the arborist, and the civil engineer or architect who prepares the grading plans.
3. A final grading, drainage, and erosion control inspection shall be conducted by Environmental Planning staff. ===== UPDATED ON OCTOBER 22, 2009 BY ANTONELLA GENTILE =====  
A plan review letter is required from the arborist at this time to confirm that the recommendations from the arborist are reflected on the plans.

See above for conditions.

**Dpw Drainage Completeness Comments**

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

===== REVIEW ON JULY 14, 2009 BY TRAVIS RIEBER =====

1. Please submit the Civil Engineering Calculations, demonstrating the adequacy of the offsite drainage path, from discretionary application 07-0548 dated 10/2/08 for review.
2. What type of surfacing is being proposed for the driveway? The county would prefer the use of semi-impervious surfacing (paver blocks, base rock, gravel, pervious concrete) where feasible.

The applicant is encouraged to discuss the above comments with the reviewer to avoid unnecessary additional routings. A \$210.00 additional review fee shall be applied to all re-submittals starting with the third routing.

Please call the Dept. of Public Works, Storm Water Management Section, from 8:00 am to 12:00 noon if you have questions. ===== UPDATED ON OCTOBER 21, 2009 BY TRAVIS RIEBER =====

The plans with revisions dated 9/18/2009, Civil Engineering Computations dated 10/2/2008 and Evaluation of Culvert Analysis dated 8/15/2008 have been received and are approved for the building application stage. Please see miscellaneous comments for issues to be addressed at the building application stage.

**Dpw Drainage Miscellaneous Comments**

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

===== REVIEW ON JULY 14, 2009 BY TRAVIS RIEBER =====

1. Please provide a cross section construction detail of the proposed driveway surfacing.
2. For fee calculations please provide tabulation of new impervious and semi-impervious (gravel, base rock, paver blocks, pervious pavement) areas resulting from the

Discretionary Comments - Continued

Project Planner: Robin Bolster  
Application No.: 09-0139  
APN: 038-151-89

Date: December 24, 2009  
Time: 11:12:23  
Page: 3

proposed project. Make clear on the plans by shading or hatching the limits of both the existing and new impervious areas. To receive credit for the existing impervious surfaces to be removed please provide documentation such as assessor-s records, survey records, aerial photos or other official records that will help establish and determine the dates they were built.

Note: A drainage fee will be assessed on the net increase in impervious area. Reduced fees are assessed for semi-pervious surfacing (50%) to offset costs and encourage more extensive use of these materials.

3. A civil engineer has to inspect the drainage improvements on the parcel and provide public works with a letter confirming that the work was completed per the plans. The civil engineer-s letter shall be specific as to what got inspected whether invert elevations, pipe sizing, the size of the mitigation features and all the relevant design features. Notes of -general conformance to plans- are not sufficient. An as-built plan may be submitted in lieu of the letter. Upon approval of the project a hold will be placed on the permit to be released once a satisfactory letter is received. ===== UPDATED ON OCTOBER 21, 2009 BY TRAVIS RIEBER =====  
See previous miscellaneous comments

**Aptos-La Selva Beach Fire Prot Dist Completeness C**

===== REVIEW ON JULY 9, 2009 BY ERIN K STOW =====  
DEPARTMENT NAME:Aptos/La Selva Fire District APPROVED

**Aptos-La Selva Beach Fire Prot Dist Miscellaneous**

===== REVIEW ON JULY 9, 2009 BY ERIN K STOW =====  
NO COMMENT



# COUNTY OF SANTA CRUZ

## PLANNING DEPARTMENT

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

**TOM BURNS, PLANNING DIRECTOR**

December 20, 2005

Emily and Tom Oswalt, Trustees  
P.O. Box 310  
Aptos, CA 95001

**Subject:** Review of **Engineering Geology Report**, by Rogers E. Johnson dated October 24, 2005, Project # C05041-56 and **Geotechnical Engineering Report** by Haro, Kasunich and Associates, Inc. Dated November 2005, Project #: SC8970  
**APN 038-151-89, Application #: 05-0753**

Dear Emily and Tom Oswalt,

The purpose of this letter is to inform you that the Planning Department has accepted the subject reports and the following items shall be required:

1. All construction shall comply with the recommendations of the reports.
2. Final plans shall reference the reports and include a statement that the project shall conform to the reports' recommendations.
3. Before building permit issuance a *plan review letters* shall be submitted to Environmental Planning. The authors of the reports shall write the *plan review letters*. These letters shall state that the project plans conform to the reports' recommendations.
4. The Engineering Geologist must identify the location of the Coastal Bluff on their geologic map, and a copy of that map must be submitted with any future permit application. All further submittal to the County must include a site plan that has a representation of the site relief, the geologic acceptable development envelope, and the Coastal Bluff. A civil engineer must prepare this site plan and any grading plans.
5. The attached declaration of geologic hazards must be recorded before the issuance of the building permit issuance.

After building permit issuance the soils engineer *must remain involved with the project* during construction. Please review the *Notice to Permits Holders* (attached). In addition, the engineering geologist will need to approve in writing the location of the buildings footings and provide a

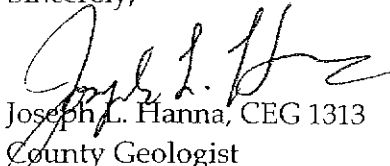
Review of Engineering . . . . .ogy Report, By Rogers E. Johnson and . . . . .ssocaite, Project # C05041-56, and Geotechnical Engineering, by Haro Kasunich and Associates, Report No.: SC8970  
APN: 038-151-89  
Page 2 of 5

final letter at the end of the project that indicates that all of the work complies with the recommendations to the report.

Our acceptance of the reports is limited to its technical content. Other project issues such as zoning, fire safety, septic or sewer approval, etc. may require resolution by other agencies.

Please call the undersigned at (831) 454-3175, or e-mail [joe.hanna@co.santa-cruz.ca.us](mailto:joe.hanna@co.santa-cruz.ca.us) if we can be of any further assistance.

Sincerely,

  
Joseph L. Hanna, CEG 1313  
County Geologist

Cc: Robert Loveland, Environmental Planning  
Haro, Kasunich and Assoicates, Inc, attention Rick Parks PE  
Rogers E. Johnson and Associates



coefficient (k) of 0.54. This is based on a predicted PGA of 0.64g (mean plus one standard deviation), a total bluff height of 99 feet and an estimated slide height of 37 feet, occurring within the marine terrace deposits and Aromas Sand.

Current Santa Cruz County standards require that the pseudostatic slope stability analysis show the site stable beyond a 1.2 factor of safety. Given this standard, a minimum seismic coefficient (k) of 0.15 should be used as suggested within Special Publication 117 (California Division of Mines and Geology, 1997).

### *Aseismic Slope Stability*

The sea cliff is also subject to slope failure under aseismic conditions. Not all of the materials that are loosened by earthquakes fail as landslides; some remains on the bluff. This "earthquake weakening" together with weathering of the bluff can produce loose debris on the slope. Subsequent storms can mobilize this loose debris. Although generally smaller than seismically generated failures, storm generated landslides are an order of magnitude more common (a ten year cycle versus a hundred year cycle).

Our review of time sequential aerial photographs revealed numerous failures of the subject coastal bluff. Subsequent to construction of the seawall, these failures were primarily the result of over saturation of loose debris mantling the slope. Individual failures tended to be localized either within the upper bluff composed of the marine terrace deposits and the Aromas Sand or within the lower bluff composed of the Purisima Formation sandstone. A significant portion of the failures were relatively large, covering the entire width of the property.

During a site visit on August 10, 2005, we observed a relatively large, aseismic, joint controlled, block failure of the bluff at the subject property. The failure was restricted to the upper approximately 30 feet of the Purisima Formation sandstone and incorporated approximately 150 cubic yards of material. It spanned about a 30 foot width of bluff-face and was up to a maximum of 6 feet thick (measured perpendicular to the bluff-face).

### CONCLUSIONS and RECOMMENDATIONS

1. The coastal bluff at the subject property is protected from surf erosion and as a consequence the rate of retreat of the toe of the bluff is very slow. However, the top of the bluff at the subject property will continue to retreat until the alluvial deposits reach their natural angle of repose, forming a stable slope. The ultimate configuration of the bluff top in 100 years is difficult to predict with accuracy. However, given our observations of the materials that underlie the bluff at the subject property we can establish a reasonable estimate. The Purisima Formation sandstone forming the base of the bluff may continue to fail in joint bounded blocks. Therefore we have estimated an additional 20 feet of additional block failure (measured perpendicular to the bluff-face, see Plate 2). The upper bluff deposits, which include the Aromas Sand and marine terrace deposits, will continue to

to erode and fail until the angle of their slope is about 33 degrees (1.5:1 slope gradient). The projection of the 1.5:1 slope to the terrace surface from the contact in the cliff face of the upper bluff deposits with the underlying Purisima Formation sandstone defines the 100 year bluff top. This estimate assumes no significant shifts in climactic conditions causing an increased rate of erosion. All future construction on the bluff top should be located behind this 100 year geologic setback line (Plate 1).

2. The site is located in an area of high seismic activity and will be subject to strong seismic shaking in the future. Modified Mercalli Intensities of up to VIII are possible. The controlling seismogenic source for the subject property is the San Andreas fault, 12 kilometers to the northeast. The design earthquake on this fault should be  $M_w$  7.9. Expected duration of strong shaking for this event is about 31 seconds. Deterministic analysis for the site yields a mean peak ground acceleration plus one dispersion of 0.64g.
3. If the project geotechnical engineer performs pseudostatic slope stability analysis of the coastal bluff backing the subject residence, they should utilize our geologic cross sections. Current practice suggests that a site-specific seismic coefficient (k) be used in the analysis when considering a factor of safety of greater than 1.0. Ashford and Sitar (2002) recommend a method for calculating a site-specific pseudostatic seismic coefficient (k) specifically for a coastal bluff top setting. Following their guidelines yields a coefficient (k) of 0.54. Current Santa Cruz County standards require that the pseudostatic slope stability analysis show the site stable beyond a 1.2 factor of safety. Given this standard, a minimum seismic coefficient (k) of 0.15 should be used as suggested within Special Publication 117 (California Division of Mines and Geology, 1997).
4. Drainage from improved surfaces, such as walkways, patios, roofs and driveways, at the top of the bluff should be collected in impermeable gutters or pipes and either carried to the base of the bluff via closed conduit or discharged into an established storm drain system that does not issue onto the bluff. At no time should any concentrated discharge be allowed to spill directly onto the ground adjacent to the existing residence. Any drain water on paved areas should not be allowed to flow toward the residence or toward the bluff top. The control of runoff is essential for control of erosion and prevention of ponding.
5. We request the privilege of reviewing all geotechnical engineering, civil engineering, drainage, and architectural reports and plans pertaining to the proposed development.

#### INVESTIGATION LIMITATIONS

1. The conclusions and recommendations contained herein are based on probability and in no way imply that the proposed development will not possibly be subjected to ground failure, seismic shaking or landsliding of such a magnitude that it overwhelms the site.

## DISCUSSIONS, CONCLUSIONS AND RECOMMENDATIONS

Based on the results of our investigation, the proposed project appears compatible with the site, provided the following recommendations are incorporated into the design and construction of the proposed project.

One of the primary purposes of our investigation was to work with the project engineering geologists, Rogers Johnson & Associates, to estimate the configuration of the coastal blufftop in 100 years in order to determine a blufftop setback line allowing for a project building envelope design life of at least 100 years.

The slope stability model used to determine the blufftop setback included 20 feet of recession of the blufftoe/bluff face preceding a design seismic failure of the blufftop. We have included a copy of the Geologic Map dated 5 October 2005 with this report showing the "100 Year Geologic Setback Line" and the "Geologically Stable Building Envelope". The delineated building envelope is about 32 feet landward of the existing blufftop.

The referenced parcel is one of about sixteen bluff parcels including Seacliff Beach State Park, which are situated above Las Olas Drive. Historically, bluff face failures or rockfall events have impacted the blufftoe and the adjacent Las Olas Drive. Rockfall

mitigation recommendations for the referenced parcel are beyond the scope of this report. We recommend future owners of the parcel consult with a geotechnical engineer or engineering geologist experienced in rockfall mitigation regarding such measures.

The proposed residence may be founded upon a drilled pier and grade beam foundation system.

The following recommendations should be used as guidelines for preparing project plans and specifications:

#### Site Grading

1. The geotechnical engineer should be notified at least four (4) working days prior to any site clearing or grading so that the work in the field can be coordinated with the grading contractor, and arrangements for testing and observation can be made. The recommendations of this report are based on the assumption that the geotechnical engineer will perform the required testing and observation during grading and construction. It is the owner's responsibility to make the necessary arrangements for these required services.

2. Where referenced in this report, Percent Relative Compaction and Optimum Moisture Content shall be based on ASTM Test Designation D1557 current.
3. Areas to be graded should be cleared of all obstructions including loose fill, building foundations, trees not designated to remain, or other unsuitable material. Existing depressions or voids created during site clearing should be backfilled with engineered fill.
4. Cleared areas should then be stripped of organic-laden topsoil. Stripping depth should be from 2 to 4 inches. Actual depth of stripping should be determined in the field by the geotechnical engineer. Strippings should be wasted off-site or stockpiled for use in landscaped areas if desired.
5. Areas to receive engineered fill should be scarified to a depth of 6 inches, moisture conditioned, and compacted to at least 90 percent relative compaction. Portions of the site may need to be moisture conditioned to achieve suitable moisture content for compaction. These areas may then be brought to design grade with engineered fill.
6. Engineered fill should be placed in thin lifts not exceeding 8 inches in loose thickness, moisture conditioned, and compacted to at least 90 percent relative

compaction. The upper 12 inches of pavement and slab subgrades should be compacted to at least 95 percent relative compaction. The aggregate base below pavements should likewise be compacted to at least 95 percent relative compaction.

7. If grading is performed during or shortly after the rainy season, the grading contractor may encounter compaction difficulty, such as pumping or bringing free water to the surface, in the upper surface clayey and silty sands. If compaction cannot be achieved after adjusting the soil moisture content, it may be necessary to over-excavate the subgrade soil and replace it with angular crushed rock to stabilize the subgrade. We estimate that the depth of over-excavation would be approximately 24 inches under these adverse conditions.

8. Fills should be keyed and benched into firm soil in areas where existing slope gradients exceed 6:1 (horizontal to vertical). Subdrains will be required in areas where keyways or benches expose potential seepage zones.

9. The on-site soils generally appear suitable for use as engineered fill. Materials used for engineered fill should be free of organic material, and contain no rocks or clods greater than 6 inches in diameter, with no more than 15 percent larger than 4 inches.

10. We estimate shrinkage factors of about 15 percent for the on-site materials when used in engineered fills.
11. All permanent cut and fill slopes should be inclined no steeper than 2:1 (horizontal to vertical).
12. Following grading, all exposed slopes should be planted as soon as possible with erosion-resistant vegetation.
13. After the earthwork operations have been completed and the geotechnical engineer has finished his observation of the work, no further earthwork operations shall be performed except with the approval of and under the observation of the geotechnical engineer.

#### **Foundations**

14. The proposed residence may be supported on a drilled pier and grade beam foundation system. The foundation perimeter should be setback from the blufftop in conformance with the building envelope delineated on the project Geologic Map, Figure 2 in the Appendix of this report.

**Drilled Piers**

15. We recommend a drilled pier and grade beam foundation to support the proposed residence.
16. Drilled piers should be at least 18 inches in diameter and be embedded at least 10 feet below existing grades.
17. Piers constructed in accordance with the above may be designed for an allowable end bearing of 4 ksf.
18. For passive lateral resistance, an equivalent fluid pressure of 250 psf may be assumed to act against two pier diameters. The upper 3 feet of soil should be neglected when computing passive resistance.
19. Prior to placing concrete, all foundation excavations should be thoroughly cleaned. The foundation excavations must be observed by the geotechnical engineer or his representative prior to placing concrete.

**Retaining Walls and Lateral Pressures**

20. Retaining walls should be designed to resist lateral earth pressures, a seismic surcharge and any additional surcharge loads. Walls up to 12 feet high should be



designed to resist an active equivalent fluid pressure of 35 pcf for level backfills, and 50 pcf for sloping backfills inclined up to 2:1 (horizontal to vertical). Restrained walls should be designed to resist uniformly applied wall pressure of  $23H$  psf per linear foot of wall for level backfills. A seismic surcharge within the retaining wall active pressure zone of  $18H$  psf per linear foot of wall should also be used. The seismic surcharge should be applied at  $0.6H$  above the base of the active zone.

21. The above lateral pressures assume that the walls are fully drained to prevent hydrostatic pressure behind the walls. Drainage materials behind the wall should consist of Class 1, Type A permeable material (Caltrans Specification 68-1.025) or an approved equivalent. The drainage material should be at least 12 inches thick. The drains should extend from the base of the walls to within 12 inches of the top of the backfill. A perforated pipe should be placed (holes down) about 4 inches above the bottom of the wall and be tied to a suitable drain outlet. Wall backdrains should be plugged at the surface with clayey material to prevent infiltration of surface runoff into the backdrains.

#### Slabs-on-Grade

22. We recommend that proposed slabs-on-grade be supported on at least 12 inches of non-expansive engineered fill compacted to at least 95 percent relative compaction. Prior to construction of the slab, the subgrade surface should be proof-

rolled to provide a smooth, firm, uniform surface for slab support. The project design professionals should determine the appropriate slab reinforcing and thickness, in accordance with the anticipated use and loading of the slab. However, we recommend that consideration be given to a minimum slab thickness of 5 inches and steel reinforcement necessary to address temperature and shrinkage considerations. It is recommended that rebar in lieu of wire mesh be used for slab reinforcement. The steel reinforcement should be held firmly in the vertical center of the slab during placement and finishing of the concrete with pre-cast concrete dobies.

23. In areas where floor wetness would be undesirable, a blanket of at least inches of free-draining gravel should be placed beneath the floor slab to act as a capillary break. Capillary break material should be free-draining, clean, angular gravel such as ¾-inch drainrock. The gravel should be washed to remove fines and dust prior to placement on the slab subgrade. The vapor retarder should be a high quality membrane at least 10 mil thick and puncture resistant. An acceptable product for use as a vapor retarder is the Stego Wrap 10-mil Class A vapor retarder system manufactured by Stego Industries, LLC. Provided the Stego Wrap system is installed per manufacturers recommendations, the concrete may be poured directly upon the Stego Wrap Vapor Retarder. The primary considerations for installing the vapor retarder are: taping all seams; sealing all penetrations such as pipe, ducting, wire, etc; and repairing all punctures.

24. It should be clearly understood slabs are not waterproof, nor are they vapor-proof. The aforementioned moisture retardant system will help to minimize water and water vapor transmission through the slab; however moisture sensitive floor coverings require additional protective measures. Floor coverings must be installed according to the manufacturer's specifications, including appropriate waterproofing applications and/or any recommended slab and/or subgrade preparation. Consideration should also be given to recommending a topical waterproofing application over the slab.

25. Exterior concrete slabs-on-grade should be founded on firm, well-compacted ground. Reinforcing should be provided in accordance with the anticipated use and loading of the slab. The reinforcement should not be tied to the building foundations. These exterior slabs can be expected to suffer some cracking and movement. However, thickened exterior edges, a well-prepared subgrade including premoistening prior to pouring concrete, adequately spaced expansion joints, and good workmanship should minimize cracking and movement.

#### Flexible Pavements

26. Asphaltic concrete, aggregate base and subbase, and preparation of the subgrade should conform to and be placed in accordance with the Caltrans Standard Specifications, latest edition, except that the test method for compaction should be determined by ASTM D1557-Current.

27. To have the selected sections perform to their greatest efficiency, it is important that the following items be considered:

- A. Moisture condition the subgrade and compact to a minimum relative compaction of at least 95 percent, at about 2 percent over optimum moisture content.
- B. Provide sufficient gradient to prevent ponding of water.
- C. Use only quality materials of the type and thickness (minimum) specified. Base rock should meet Caltrans Standard Specifications for Class II Aggregate Base, and be angular in shape.
- D. Compact the base rock to a relative dry density of 95 percent.
- E. Place the asphaltic concrete during periods of fair weather when the free air temperature is within prescribed limits per Caltrans specifications.
- F. Provide a routine maintenance program.

#### Site Drainage

28. Thorough control of runoff is essential to the performance of the project.

29. Runoff must not be allowed to sheet flow over graded slopes. Berms or lined V-ditches should be constructed at the top of slopes to divert water toward suitable collection facilities.

30. Permanent subdrains may be required adjacent to pavements or building foundations where groundwater levels are near the surface. The location and depth of these drains will need to be determined in the field by the geotechnical engineer.

31. Surface drainage should include provisions for positive gradients so that surface runoff is not permitted to pond adjacent to foundations and pavements. Surface drainage should be directed away from the building foundations.

32. Full roof gutters should be placed around all eaves. Discharge from the roof gutters should be conveyed away from the downspouts by closed conduit to either: an approved energy dissipater; on site detention; or street drainage as determined by the project civil engineer.

33. The migration of water or spread of extensive root systems below foundations, slabs, or pavements may cause undesirable differential movements and subsequent damage to these structures. Landscaping should be planned accordingly.

#### **Plan Review, Construction Observation, and Testing**

34. Our firm should be provided the opportunity for a general review of the final project plans prior to construction so that our geotechnical recommendations may be properly interpreted and implemented. If our firm is not accorded the opportunity of

Project No. SC8970  
17 November 2005

making the recommended review, we can assume no responsibility for misinterpretation of our recommendations. We recommend that our office review the project plans prior to submittal to public agencies, to expedite project review. The recommendations presented in this report require our review of final plans and specifications prior to construction and upon our observation and, where necessary, testing of the earthwork and foundation excavations. Observation of grading and foundation excavations allows anticipated soil conditions to be correlated to those actually encountered in the field during construction.



Registered Civil and Geotechnical Engineer  
101 Forest Avenue, Santa Cruz, CA 95062-2622

soilsurgeon@cruzio.com  
cell (831) 234-5966

Tel. (831) 429-9364  
Fax (831) 429-9822

File Number: 12073

15 August 2008

Mr. Brian Arthur  
382 Belle Monti Avenue  
Aptos, CA 95003

Subject: Proposed Single Family Dwelling Development, APN 038-151-89  
Oakhill Road  
Santa Cruz County, California

### **Evaluation of Culvert Analysis**

Dear Mr. Arthur:

As requested by Mr. Tracy Johnson on your behalf, I am providing a more detailed evaluation of the culvert drainage system presently assumed to receive surface runoff from your property and other properties within the tributary area of the culvert receiving inlet.

A visit to the subject site was performed on 08 August 2008. The culvert drainage system was observed, documented, and photographed at that time. Refer to the attached photographs. The culvert drainage system consists of the following elements. Please note the following quantities are approximate due to restrictions in site access. The culvert runs from the inlet on the south side of Oakhill Road under Oakhill Road to the base of the north road bank. This portion of the culvert is an approximately 12-inch diameter CMP. The culvert then transitions into an approximately 16-inch diameter ADS flume with a semi-circular cross section supported by a redwood box. The culvert then transitions into an approximately 16-inch wide by six inch deep, rectangular, redwood flume. The redwood flume transitions into an approximately 18-inch CMP which runs down into the gully and into very heavy brush. The culvert appears to be in good condition and appears to be functioning adequately at this time with no indications of failure, leakage or other inadequate features.

Based on the above culvert dimensions, I conclude the assumptions provided in my previous drainage calculations<sup>1</sup> for the culvert are very conservative, are an adequate analysis, and indicate the culvert has sufficient capacity to accept the addition post-development runoff from the proposed project impermeable features.

<sup>1</sup> Mike Van Horn, Inc., Civil Engineering Computations, (Santa Cruz, CA, 4.28.08), File Number 12073, Application Number 07-0548.

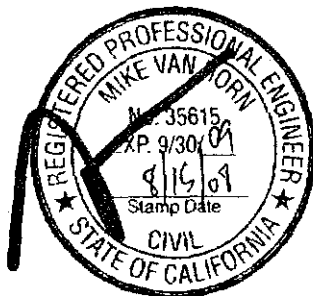
Mike Van Horn, Inc.

File Number 12073

15 August 2008

This concludes this letter. If you have any questions, please contact this office.

Sincerely Yours,



Mr. Mike Van Horn, CE 35615, GE 2047 (expires 9/30/09)

COPIES: 1 to Addressee  
3 to Tracy Johnson, Residential Design  
1 to File



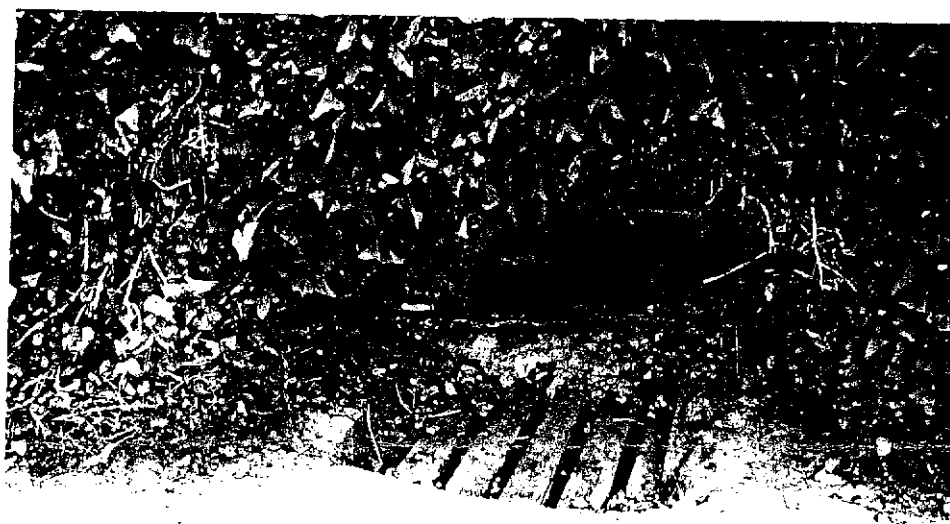


Figure 1 – Culvert Inlet: Redwood Box in Good Condition

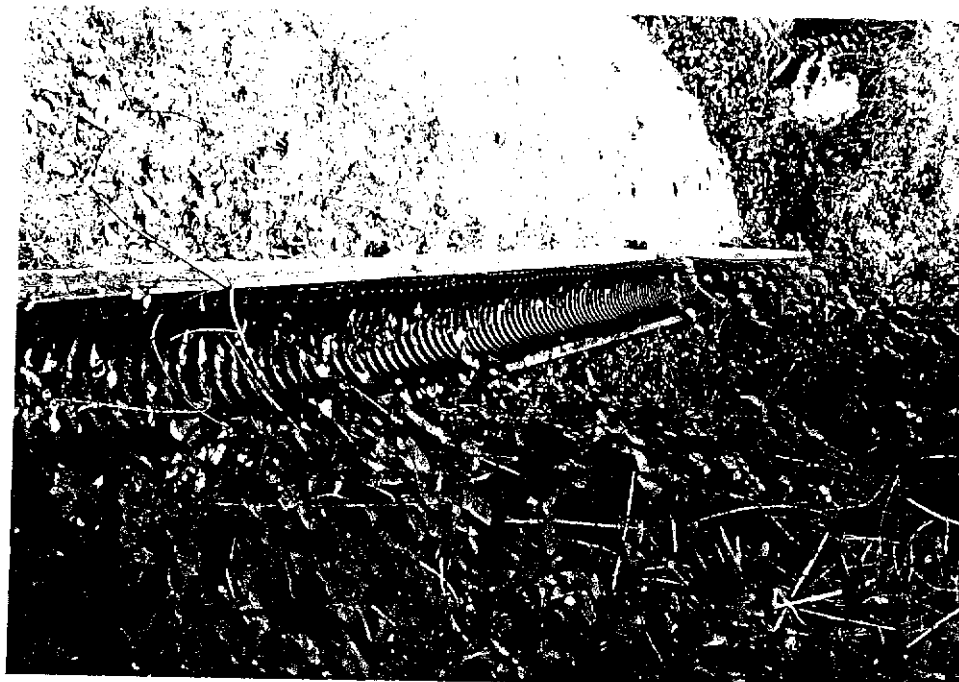


Figure 2 – Culvert at ADS in Redwood Box



Figure 3 – Culvert ADS Transition to Redwood Flume Box



Figure 4 – Culvert Transition to Gully CMP



# MIKE VAN HORN, INC.

Registered Civil and Geotechnical Engineer  
101 Forest Avenue, Santa Cruz, CA 95062-2622

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File Number: 12073

22 August 2008

Mr. Brian Arthur  
382 Belle Monti Avenue  
Aptos, CA 95003

Subject: Proposed Single Family Dwelling Development, APN 038-151-89  
Oakhill Road  
Santa Cruz County, California

## **Evaluation of Brick Retaining Wall**

Dear Mr. Arthur:

As requested by Mr. Tracy Johnson on your behalf, I have visited the subject site, observed the condition of the existing brick retaining wall, and I have observed the under floor area of the residence east/adjacent to the brick retaining wall. I am providing herein my conclusions regarding the stability of the brick retaining wall with respect to its proposed alterations to the affected site features.

It is my understanding the existing brick retaining wall, located within the geologic setback within the subject site, is planned to be reduced in length such that only the east most approximately nine to ten feet of the retaining wall is to remain following completion of the proposed improvements. The proposed plans also call for the reduction of the height of the backfill for a significant portion of the remaining brick wall.

I visited the subject site today, 22 August 2008. I observed the existing conditions of the brick retaining wall. The east most nine feet of the retaining wall is in relatively good condition and is slightly curved in plan view. The retaining wall does not extend under the residence to the east of the wall.

Additionally, at the home owner's permission, I observed the under floor area of the residence to the east of the wall and observed the foundation of this residence extends down to the base elevation of the brick retaining wall so that the residence's foundation does not depend upon the presence of the brick retaining wall for structural support of any kind.

Based on the above conditions and assumptions, I conclude the proposed alterations to the brick retaining wall and adjacent grade do not threaten the structural integrity of the wall.

Mike Van Horn, Inc.

File Number 12073

22 August 2008

This concludes this letter. If you have any questions, please contact this office.

Sincerely Yours,



Mr. Mike Van Horn, CE 35615, GE 2047 (expires 9/30/09)

COPIES: 1 to Addressee  
3 to Tracy Johnson, Residential Design  
1 to File

**ROGERS E. JOHNSON & ASSOCIATES**  
CONSULTING ENGINEERING GEOLOGISTS  
41 Hangar Way, Suite B  
Watsonville, California 95076-2458  
e-mail: rogersjohnson@sbcglobal.net  
Ofc (831) 728-7200 • Fax (831) 728-7218

30 April 2008  
First Revision 2 May 2008  
Second Revision 15 April 2009

Brian Arthur  
382 Belle Monte Avenue  
Aptos, California 95003

**Job No. C07027-56**

**Subject:** Geologic Plan Review of Proposed Single-Family Dwelling  
Oak Hill Road, Aptos, California  
Santa Cruz County APN 038-151-89

Dear Mr. Arthur:

We have reviewed the plan set for the above-referenced subject parcel. The plans, prepared by Robert Goldspink, the project architect were received by our office on 13 April 2009. The plans include a sheet by Mike Van Horn, the project civil engineer (sheet 11). We specifically reviewed sheets 6 (Sections A & B), 8 (Grading and Drainage), 10 (Offsite Drainage), 11 (Sections and Details) and 12 (Site Section C) for conformance with the recommendations in our Geologic Investigation (REJA, 2005).

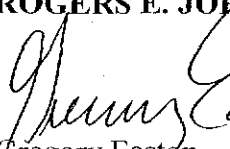
The plans depict the proposed single-family dwelling, supported by piers, behind the 100-year geologic setback line depicted on Plate 1 of our report (REJA, 2005). Minor grading near the blufftop is proposed to achieve positive drainage toward Oak Hill Road. Drainage for the proposed development is controlled and directed towards Oak Hill Road, away from the bluff top.

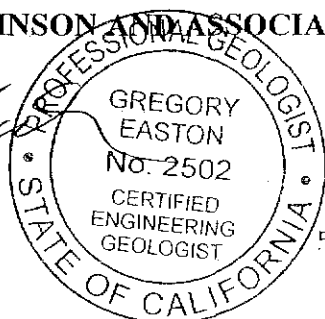
The plans are geologically acceptable and in general conformance with our geologic report (REJA, 2005).

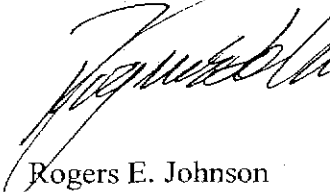
If you have any questions or comments, please contact us at your convenience.

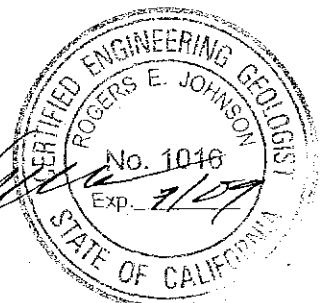
Sincerely,

**ROGERS E. JOHNSON & ASSOCIATES**

  
Gregory Easton  
Project Geologist  
C.E.G. No. 2502



  
Rogers E. Johnson  
Principal Geologist  
C.E.G. No. 1016



**EXHIBIT B**  
**EXHIBIT K**

**Copies:** Addressee (1)  
Robert Goldspink (4)  
Haro, Kasunich and Associates, Inc., Attn. Rick Parks (1)

**References:**

Robert J. Goldspink Architect, 2009, development plans for Arthur Residence, Oak Hill Road, Aptos, California, 12 sheets, dated 10 March 2009.

Mike Van Horn, 2008, Sections and Details, for Brian Arthur, New Single Family Dwelling, Oak Hill Road, Aptos, California, Sheet 11, dated 14 March 2008, revised 25 March 2009.

Rogers E. Johnson and Associates, 2005, Geologic Investigation, Oswalt Property, Oak Hill Road, Aptos, California, Santa Cruz County APN 038-151-89, prepared 24 October, 2005, unpublished consultants report, Job No. C05041-56.

Project No. SC9551  
16 April 2009

MR. BRIAN ARTHUR  
382 Belle Monti Avenue  
Aptos, California 95003

Subject: Geotechnical Review of Project Plans

Reference: Proposed Blufftop Residence  
APN 038-151-89  
Oak Hill Road  
Santa Cruz County, California

Dear Mr. Arthur:

This letter outlines our review of the geotechnical aspects of the Architectural and Civil Engineering project plan sheets for the proposed blufftop residence at the referenced parcel.

Our Geotechnical Investigation for the proposed project is dated 25 November 2005.

The project plan sheets were prepared by Robert Goldspink Architect and Mike Van Horn, Inc (MVH). Specifically we reviewed the following plan sheets:

- a. Sheet 1 – Site Plan dated 3/10/09;
- b. Sheet 2 – Upper and Lower Floor Plans dated 3/10/09;
- c. Sheet 3 – Garage Floor Plan dated 3/10/09;
- d. Sheet 4 – Elevations North & East dated 3/10/09;
- e. Sheet 5 – Elevations South & West dated 3/10/09;
- f. Sheet 6 – Sections A & B dated 3/10/09 showing conceptual caisson and grade beam foundation system;
- g. Sheet 7 – Roof Plan dated 3/10/09;
- h. Sheet 8 – Grading & Drainage dated 3/10/09 showing proposed blufftop swale to convey runoff away from bluff face;
- i. Sheet 9 – Erosion Control & Grading/Drainage Notes w/ Landscape Plan dated 3/10/09;
- j. Sheet 10 – Offsite Drainage dated 3/10/09;
- k. Sheet 11 – Sections & Details (MVH) revised 3/25/09;
- l. Sheet 12 – Site Section C dated 3/10/09;
- m. Sheet 13 – Floor Area Calculations dated 3/10/09 w/no geotechnical aspects; and
- n. Sheet T – Partial Topographic Map dated 8/27/07 by Robert L. DeWitt & Associates.

EXHIBIT 1B

Mr. Brian Arthur  
Project No. SC9551  
Oak Hill Road  
16 April 2009  
Page 2

It is our opinion the geotechnical aspects of the aforementioned plan sheets were prepared in general conformance to our geotechnical recommendations.

We will work with the project architect and structural engineer during the design of the pier and grade beam system to support the proposed residence and associated retaining walls.

If you have any questions regarding this letter, please call our office.

Very truly yours,

HARO, KASUNICH AND ASSOCIATES, INC

Rick L. Parks  
GE 2603



RLP/sq  
Copies:

1 to Addressee  
3 to Robert Goldspink Architect





*Professional Tree Care  
& Management, Inc.*

November 8, 2007

Brian Arthur  
382 Belle Monti Avenue  
Aptos, CA 95003

Re: 735 Oak Hill, Aptos

Dear Brian,

Thank you for providing Nature First Professional Tree Care & Management with the opportunity to review your project. Following are our recommendations and prices:

**Findings:**

**Species:** *Sequoia sempervirens*  
**Common name:** coast redwood  
**DBH (diameter breast height):** 4.4 feet  
**Canopy spread:** 50 feet

The redwood tree is located in the southeast corner of the property and there is a multi-leader or co-dominant top in the tree. A utility pole is located adjacent to the tree and P.G. & E has cleared the power lines creating an oddly-shaped canopy.

The property is sloped with an existing driveway and a demolished carport situated along the highest point of the property. The large redwood is surrounded by low growing vegetation. A brick retaining wall is located approximately 10-12 feet below the tree.

**Intent:**

The intent of the plan is to build a new home. The blueprint calls for a twenty-foot cut into the property from the street and installation of a driveway using pavers with sand and brick. A garden retaining wall is scheduled to be installed approximately five feet away from the highest side of the redwood tree and wrap half circle toward the street. The wall is forming a garden planter to be installed at the main entrance.

November 6, 2007

Brian Arthur

Page 2

**Purpose:**

The purpose of this report is to address the preservation and management of specified trees during construction. The following goals are intended to provide consistent care for the trees:

- a. Insure and promote preservation of the existing tree canopy.
- b. Provide standards of maintenance and care.
- c. Establish criteria for determining when a tree is unsafe.
- d. Provide standards for the replacement of trees that are scheduled for removal.
- e. Increase the survivability of trees during and after construction by providing standards and best management practices.

**Recommendations:**

The excavation of the driveway is going to create a grade change. The health of the tree is not to be compromised. In addition, the installation of the footings for the garden wall will require trenching to a depth of twelve to fourteen inches. It appears that most of the digging will be performed at the drip line of the redwood tree and all trenching is to be done by hand. The roots of the tree are most likely growing beyond the drip line, but with proper tree protection and a preservation plan, the work can be executed. Deep root fertilization of the tree is required due to the impact of the grade change and construction. Recommend the redwood tree to be pruned upon completion and nitrified mulch applied over the root zone.

The following steps shall be incorporated in the Tree Protection and Preservation plan:

- a. Verification of tree protection - the arborist shall verify in writing that all pre-construction conditions have been met.
- b. A pre-construction meeting of the contractors is to be held on site to review procedures, tree protection measures and haul routes, and staging areas.
- c. Strict adherence to the enclosed construction guidelines.

*See attached conditions which are hereby made a part of this estimate and agreement.*

*Full payment is due upon completion unless prior arrangement have been made.*

November 6, 2007

Brian Arthur

Page 3

Please feel free to call the office if you have any questions. We look forward to serving you.

Sincerely,

A handwritten signature in cursive script that reads "Mimi Scoppettone". The signature is written in dark ink and is positioned above the printed name and title.

Mimi Scoppettone  
Certified Arborist WE-1555A



P.O. Box 4553, Mountain View, CA 94040-4553

(850) 428-6569 - FAX: (850) 428-0589

January 11, 2010  
Project 10667-A

Wittwer & Parkin, LLP  
147 South River Street, Suite 221  
Santa Cruz, California 95060  
Attention: Mr. William Parkin

Subject: Preliminary Geologic Assessment  
Proposed Single-Family Parcel  
Oak Hill Road (APN 38-151-89)  
Aptos, Santa Cruz Co., California

Dear Bill,

At your request we visited the subject property on January 8, 2010, studied stereo-paired and oblique aerial photographs, and reviewed the available geologic data listed in the references at the end of this letter report.

#### BACKGROUND INFORMATION

The subject property is an undeveloped, rectangular shaped, 0.2 acre lot that is approximately 50 feet wide and 170 feet long. It is a substandard size lot for this area. The western portion of this parcel consists of a 100 foot bluff with a very steep slope of approximately 60 degrees that overlooks Las Olas Road and Seacliff State Beach in Santa Cruz County, California. The upper surface of the captioned property slopes to the east, toward Borregas Creek that flows along Oak Hill Road, approximately 250 feet from the site.

The bluff at this property has eroded several feet further eastward than the adjacent parcels to the north and south have; there also appears to be less vegetation on the face of the bluff below this lot suggesting active slope instability.

EXHIBIT C

of the paved driveway on this site, located approximately 40 feet from the top of the bluff, is cracked and has moved approximately 1 inch. This may have occurred during the 1989 earthquake.

#### FINDINGS

Based on the above information, it is our opinion that the potential "100 year grading" and building setback is greater than the recommended 33 feet and should be at least 40 feet or more as suggested by the crack in the on-site brick retaining wall and a 45 degree upward projection from the base of the bluff.

We do not agree that an "exception" should be made from this setback for site grading. In our opinion, there is a greater potential to destabilize the bluff from the vibrations and weight of the grading equipment than the slight advantage that may be gained by removing some weight from the top of the bluff with heavy equipment.

We also question the feasibility of diverting and "improving" the drainage by grading at the captioned site. Boring logs in this area (Haro, Kasunich and Associates, 1997) indicate that the surface soil is more clayey and less pervious than the underlying material. Consequently, if the clayey surface material at this site is removed, it may allow surface water to seep more rapidly into the soil and contribute to the destabilization of the bluff.

Surface water diverted to a sump or French drain around the proposed residence could also more rapidly infiltrate into the soil and saturate the surrounding terrace sediments. High water conditions in the adjacent Borregas Creek may also contribute to high groundwater levels at this site. These conditions could reduce the stability of the bluff face by seepage and erosion along the contact between the highly fractured underlying sandstone that is unstable and slopes toward the beach and the generally loose terrace sediments.

#### REFERENCES

Blake, T.F., Hollingsworth, R.A., and Stewart, J.P., 2002, Recommended Procedures for Implementation of the DMG Special Publication 117 Guidelines for Analyzing and Mitigating Landslide Hazards in California: Southern California Earthquake Center.

Bloyd, R.M., 1981, Approximate Ground-Water-Level Contours, April 1981 For the Soquel-Aptos Area, Santa Cruz County, California: U.S. Geological Survey, Open-File Report 81-680.

Brabb, E.E. (Compiler), 1989, Geologic Map of Santa Cruz County, California: U.S. Geological Survey, Miscellaneous Investigations Series Map I-1905.

Griggs, G.B. and Plant, N., 1998. Coastal-Bluff Failures in Northern Monterey Bay Induced by the Earthquake (pp. C33 – C50); in The Loma Prieta, California Earthquake of October 17, 1989 – Landslides: U.S. Geological Survey, Professional Paper 1551-C.

Haro, Kasunich and Associates, 2007, Geotechnical Investigation for 745 Oak Hill Road, APN 038-151-06, Santa Cruz County, California:

Hickey, J.J., 1968, Hydrogeologic Study of the Soquel-Aptos Area, Santa Cruz County, California: U.S. Geological Survey, Water Resources Division, Open-File Report.

International Code Council, 2008, 2007 California Building Code, Title 24, Part 2, Volume 2 of 2.

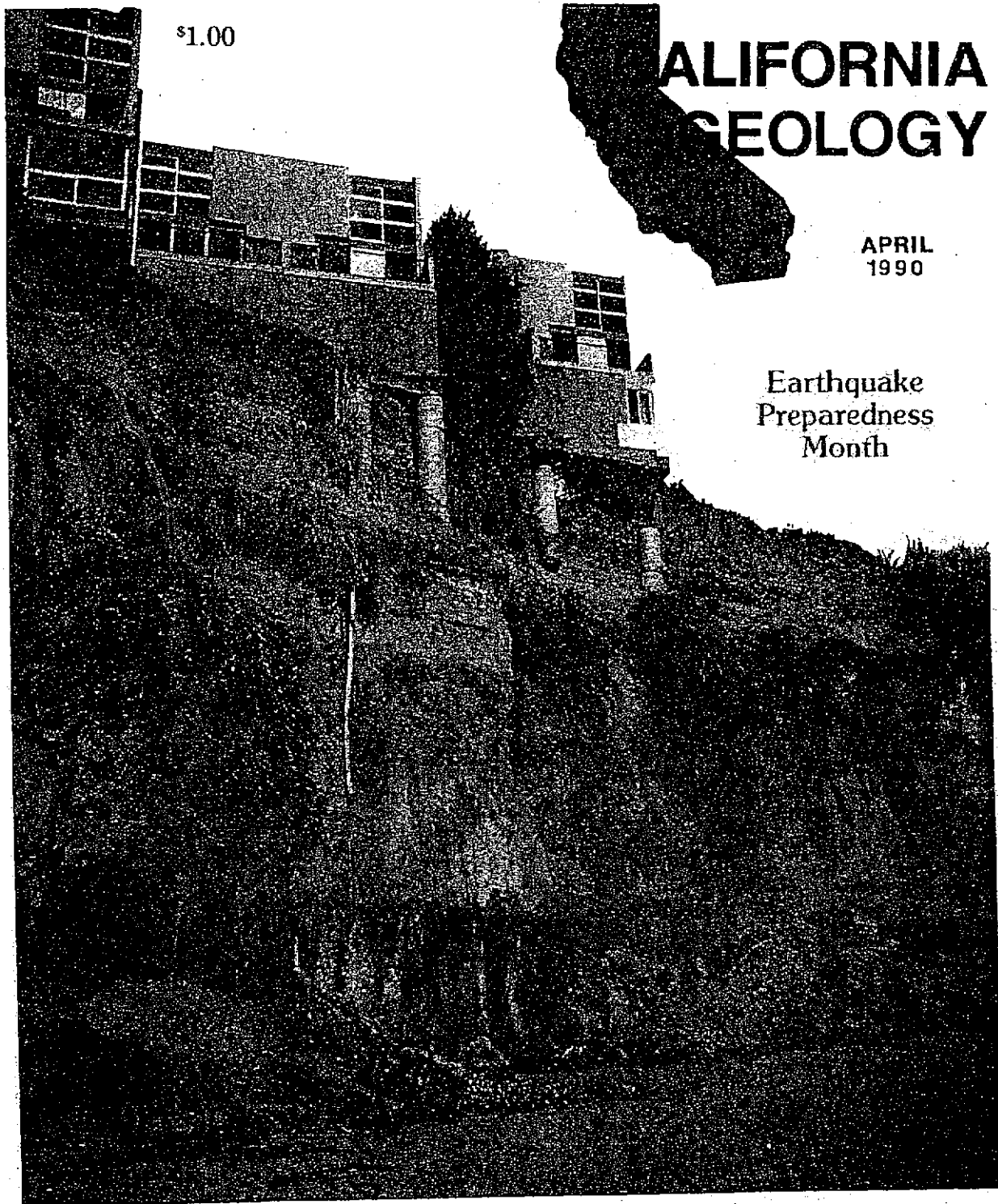
Manson, M.W., Keefer, D.K., and McKittrick, M.A., 1992, Landslides and Other Geologic Features in the Santa Cruz Mountains, California, Resulting From the Loma Prieta Earthquake of October 17, 1989: California Division of Mines and Geology, Open-File Report 91-05.

\$1.00

# CALIFORNIA GEOLOGY

APRIL  
1990

Earthquake  
Preparedness  
Month



CALIFORNIA  
DEPARTMENT  
OF CONSERVATION

Division of Mines and Geology

Understanding California's Geology

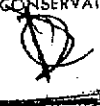
Our Resources – Our Hazards

GEORGE DEUKMEJIAN, Governor  
STATE OF CALIFORNIA

GORDON K. VAN VLECK, Secretary  
THE RESOURCES AGENCY

RANDALL M. WARD, Director  
DEPARTMENT OF CONSERVATION

EXHIBIT



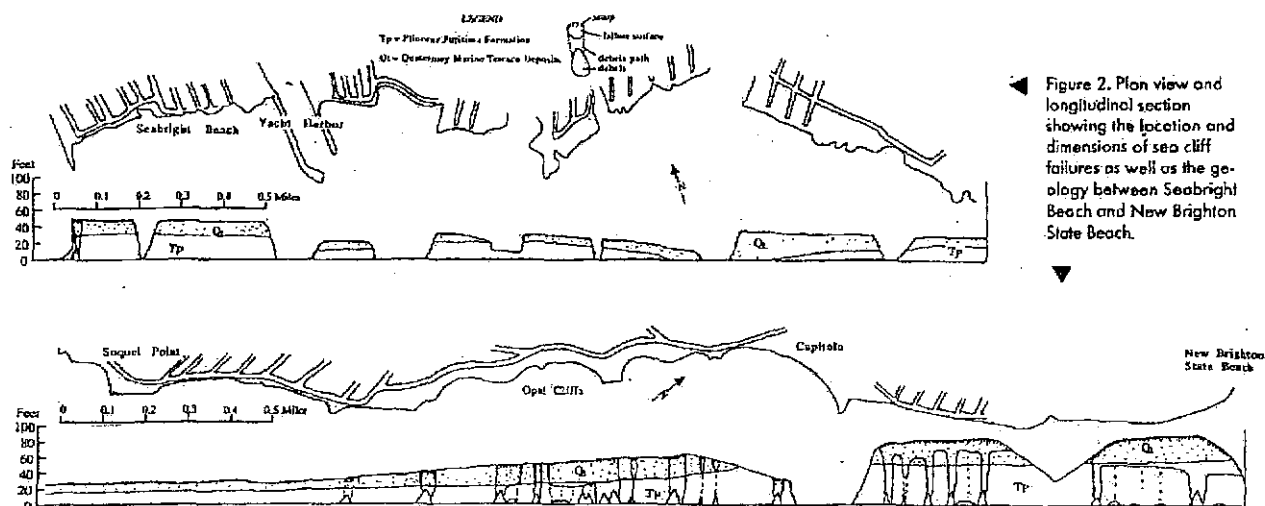


Figure 2. Plan view and longitudinal section showing the location and dimensions of sea cliff failures as well as the geology between Seabright Beach and New Brighton State Beach.

of coastal protection structures has slowed erosion of the coastline by marine processes in some areas, mass failure continues to take place along both protected and unprotected bluffs. Thus, scientists, planners, and developers find that recent events continue to push the limits of coastal erosion landward.

Hydraulic impact and scour are responsible for erosion at the base of the sea cliffs wherever coastal protection structures or wide protective beaches are absent. Typically, the cliffs are undercut over time with subsequent failure of the overlying material. As this material falls into the surf zone, it is broken down by continued wave action and carried away (Griggs and Johnson, 1979).

Sea cliffs over-steepened by wave induced erosion at their base are also susceptible to mass failure during heavy rainfall as a result of elevated groundwater conditions. Such failures are common in bedrock along joints\* or other weak planes, and within the overlying, less consolidated marine terrace deposits, alluvium, or soils. Sea cliffs protected from marine erosional processes commonly develop a talus slope at their base whereas the upper portions remain steep. Heavy rainfall may induce failure in both the talus slopes and along the exposed upper portion of the cliff. For example, intense rainstorms in January 1982 caused widespread failure along the cliffs of northern Monterey Bay between New Brighton State Beach and Rio Del Mar. These storms endangered cliff top structures and damaged or destroyed beach houses (Griggs, 1982).

\*See Glossary, p. 83

Large earthquakes, such as the October 17, 1989 event, are also capable of producing sea cliff failure. For example, in the October 8, 1865 (approximate 6.5 magnitude) Santa Cruz Mountains earthquake, the *Santa Cruz Sentinel* (1865) reported that overhanging cliffs fell into graded roads, "below Sequel the high cliffs crumbled into the sea," and "a continuous cloud of dust rose along the cliffs between Castro's Landing (now called Rio Del Mar) and Santa Cruz." During the great 1906, 8.3 magnitude earthquake "much earth fell from bluffs near the town" (Capitola) (Lawson, 1908). It is apparent that large earthquakes can cause instantaneous cliff retreat and also weaken sea cliffs through seismic shaking, forming cracks and fissures, thereby increasing the susceptibility of the cliffs to subsequent failure.

#### EFFECTS OF THE OCTOBER 17, 1989 EARTHQUAKE ON COASTAL BLUFFS

Three key strong-motion stations operated by the Division of Mines and Geology provided the first quantitative records for an earthquake which affected coastal bluffs (Shakal and others, 1989). Prior to October 1989, engineering geologists who studied coastal bluff stability were limited to descriptive interpretations of strong motion in the near-field, or had to extrapolate instrumental data tens of miles from an epicenter to the cliff site. By fortuitous circumstances, the epicenter, the coastal cliffs, and the strong motion instruments were all close to each other for the Loma Prieta earthquake. This provides a new and unique data set which will be helpful for quantitative analysis of coastal bluffs elsewhere.

These new strong-motion data for coastal Santa Cruz County are summarized on Table 1. It is significant for coastal bluff stability that vertical ground motion of about 0.40g to 0.60g occurred along the coastline in the near-field. It is inferred that horizontal ground motion was on the order of 0.47g to 0.64g for near-field coastal cliffs. The intensity of shaking was VIII on the Modified Mercalli scale. The duration of strong motion which affected cliff stability was on the order of 10 to 15 seconds.

On November 1, 1989, a team of geologists videotaped and photographed the coastline between Bolinas and Monterey, California from an airplane and noted many landslide scars, particularly between Capitola and Moss Landing (Figure 1). The videotape facilitated subsequent mapping of individual slides onto a topographic base map (1 inch = 100 feet).

TABLE 1. NEAR-FIELD STRONG MOTION Loma Prieta Earthquake of October 17, 1989			
Location of Station	Epicentral Distance	Acceleration	
Corralitos SMIP	4.4 mi	90°	0.50g
		Up	0.47g
		360°	0.64g
Capitola SMIP	5.6 mi	90°	0.47g
		Up	0.60g
		360°	0.54g
Santa Cruz SMIP	9.9 mi	90°	0.44g
		Up	0.40g
		360°	0.47g

Data from Shakal and others, (1989).





Photo 2. Large coastal landslide near Daly City. Note the proximity of cliff top houses to the head scarp.

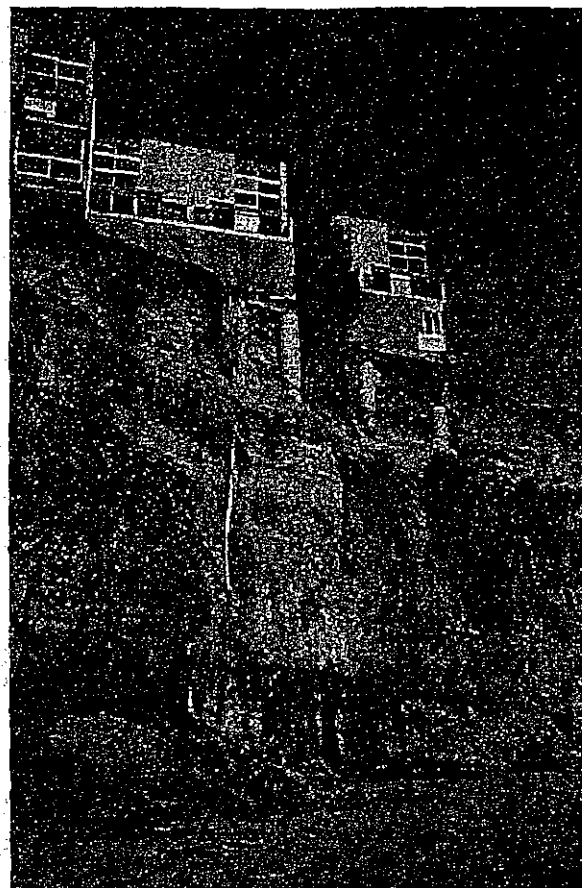


Photo 3. Bluffs east of Capitola. Collapse of terrace deposits and underlying, extensively jointed siltstone further undermined the previously exposed foundation of this apartment building.

thick and thin to the east. Seawalls and revetments, which protect the beach front development, isolate the base of the cliff from marine erosion; the upper portions of the cliffs continue to fail periodically.

Seismic shaking initiated two types of failure here. Translation\* (uniform movement) along a joint or weathering surface produced many large slides up to 180 feet wide (60 m wide) that originated in the upper 36 feet (12 m) of the sea cliff (Photo 4). The scarps of these slides tend to cut vertically through the Quaternary terrace deposits and then flatten as they approach the Purisima Formation (Figure 5). Deep tension cracks cut through the terrace deposits (Photo 5) and soils 3-18 feet (1-6 m) landward of many of the scarps; depth of cracks tends to increase with the size of the scarp (Figure 6). Some intact blocks and much loose soil cascaded down the face of the cliff, forming 60 foot (20 m) high conical talus cones that partially buried some automobiles and blocked access to homes (Photo 6).

\*See Glossary, p. 83



Photo 4. Extensive sea cliff failure above Los Olas Drive. Failure occurred in the upper 36 feet (12 m) of the cliff and loose material cascaded down the steep slope. Note the many houses both above and below the landslide that are jeopardized by slope failure.

Photo 6. View facing east along Las Olas Drive. Material from a failure in the upper part of the bluff cascaded down the slope and blocked the road. Note the telephone pole broken by the landslide.



The second type of earthquake failure, larger translational slides, several feet deep and up to 90 feet wide, occurred in the upper 30-45 feet (10-15 m) of the cliff face where near-vertical cliff tops existed before the earthquake. These failures were similar to the failures in the sandstone member of the Purisima Formation (Figure 5). A 3-9 foot (1-3 m) vertical scarp cut through the more cohesive soils that were undercut by downslope failure of underlying, less cohesive soils. Large intact blocks, 3-6 feet (1-2 m) thick, and loose sand from the upper portion of the cliff cascaded down the slope and tension cracks up to 30 feet (10 m) formed landward of the scarps.

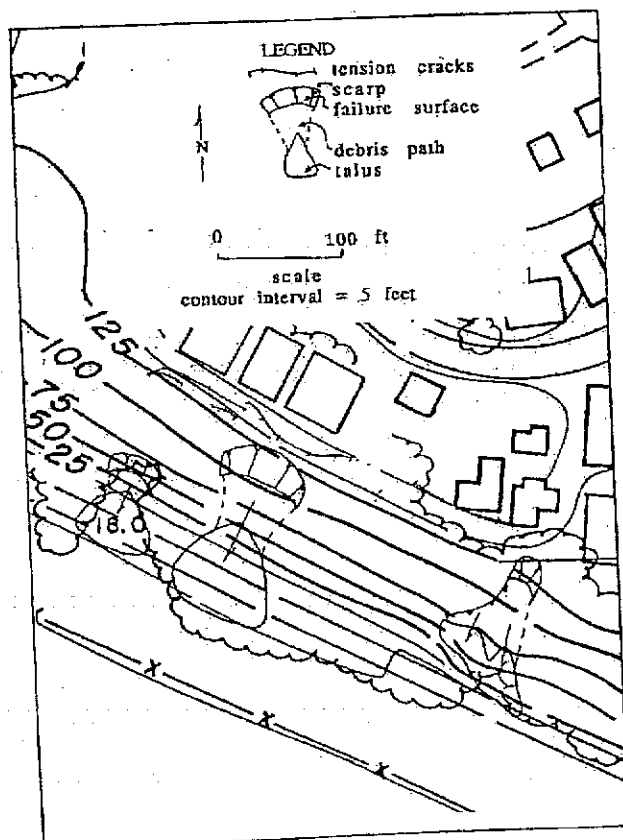


Figure 6. Details of sea cliff failures and tension cracks. Note the prevalence of tension cracks near the large failure.

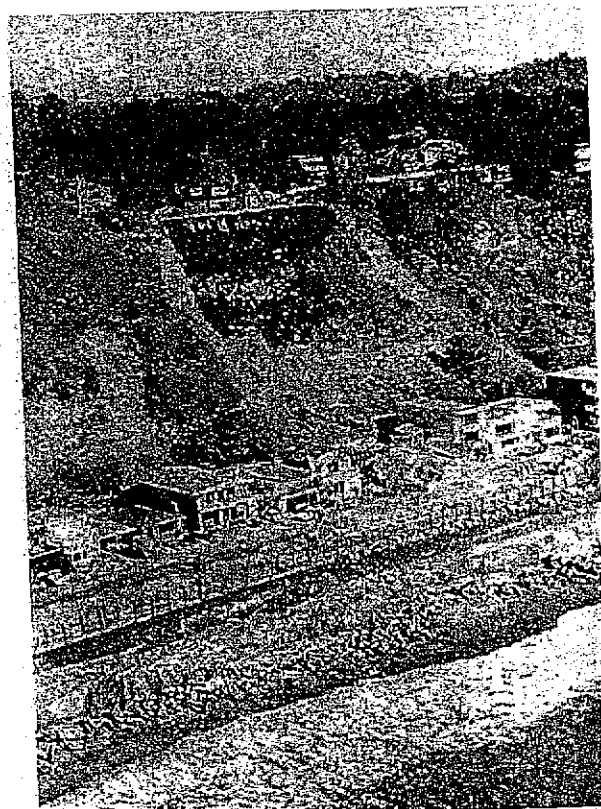


Photo 7. Slope failure in 1982 that destroyed a house on Beach Drive. This type of sea cliff failure is very similar to that caused by the October 17, 1989 earthquake.

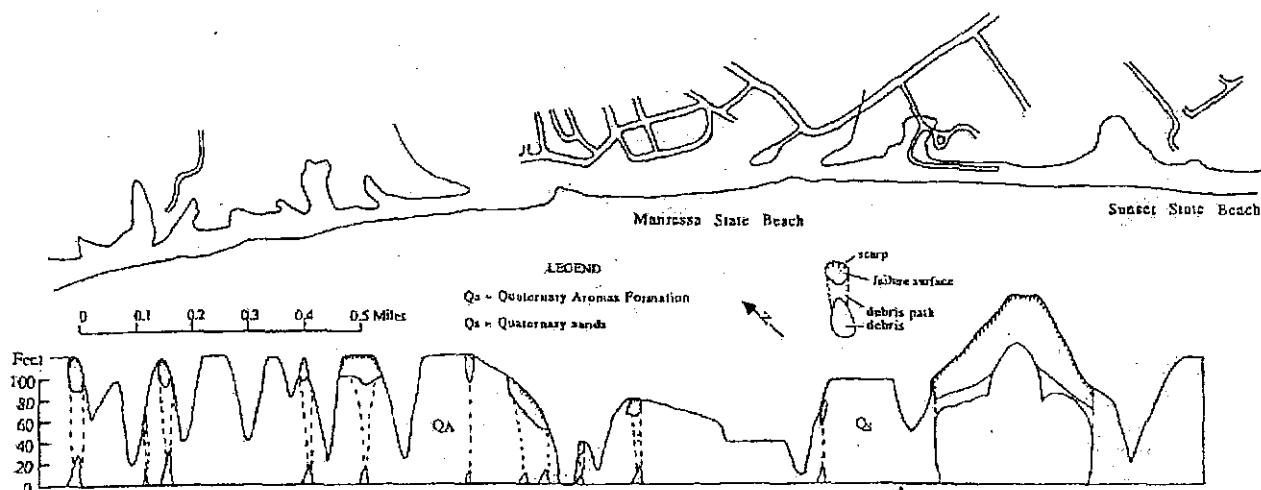


Figure 9. Plan view and longitudinal section showing the location and dimensions of sea cliff failures and geology between Rio Del Mar and Sunset State Beach.

waves; constructive interference\* then amplified the incoming seismic energy, increased the dynamic stresses, and caused rock or soil failure. However, the size of the ground surface structure that can reflect incoming seismic waves must be on the same order as the seismic wavelength (Harp and others, 1981). Thus, variations of the topography with dimensions of tens of miles will interact with long seismic waves. On the other hand, sea cliffs which are tens of feet high will not respond to long wavelengths. Therefore, the repeated failure along the coastal promontories and narrow ridges is probably due to the lack of lateral support during the intense shaking rather than to topographic amplification.

#### IMPACT ON FUTURE LAND-USE DECISIONS

Seismically induced coastal bluff failure was common up to 47 miles (75 km) from the epicenter of the 7.1 magnitude October 17 earthquake. The cliff failure in developed areas of the coast posed risks to structures on the bluff top as well as the private and public structures on the beach below. One death occurred on a beach north of Santa Cruz when a section of weak bedrock in a cliff collapsed onto a sunbather.

The two geologic hazards consistently identified at coastal sites in consulting reports are seismically induced slope failure and slope failure induced by excess water. Soil properties and slope configuration are commonly used in site-specific slope stability analysis. Study of historical stereo aerial photographs can indicate where and when slope failure has taken

place in the past and aid in relating these failures to either seismic or rainfall events.

For example, the aerial photographs of the northern Monterey Bay coastline extend back to 1928 and show the changes over a period of 60 years. These photographs clearly show periodic shallow failure or sloughing of the bluffs and widespread bluff failures that occur after heavy precipitation. Most often, the failures are initiated in the bluff top terrace deposits and may extend all the way to the base of the bluff. Where the thickness of the failed material is great enough, the steep slopes produce flows that damage and destroy the homes below. The inci-

dents of bluff failure of this type are relatively common, occurring every 10-15 years on the average.

If large scale, deep-seated bluff failure occurred during the 1906 earthquake, or in the two magnitude 6.0 events that occurred on the offshore San Gregorio fault in 1926, it might be expected that some evidence would be present in the 1928 aerial photographs. The photos, however,

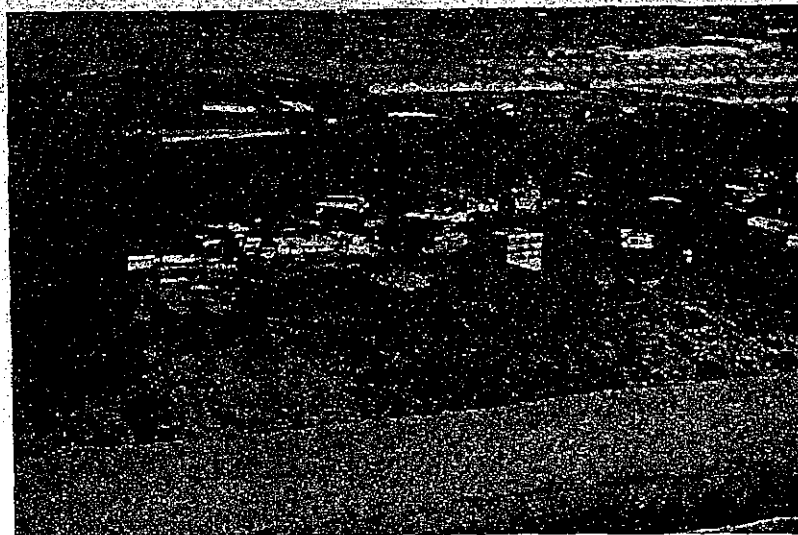
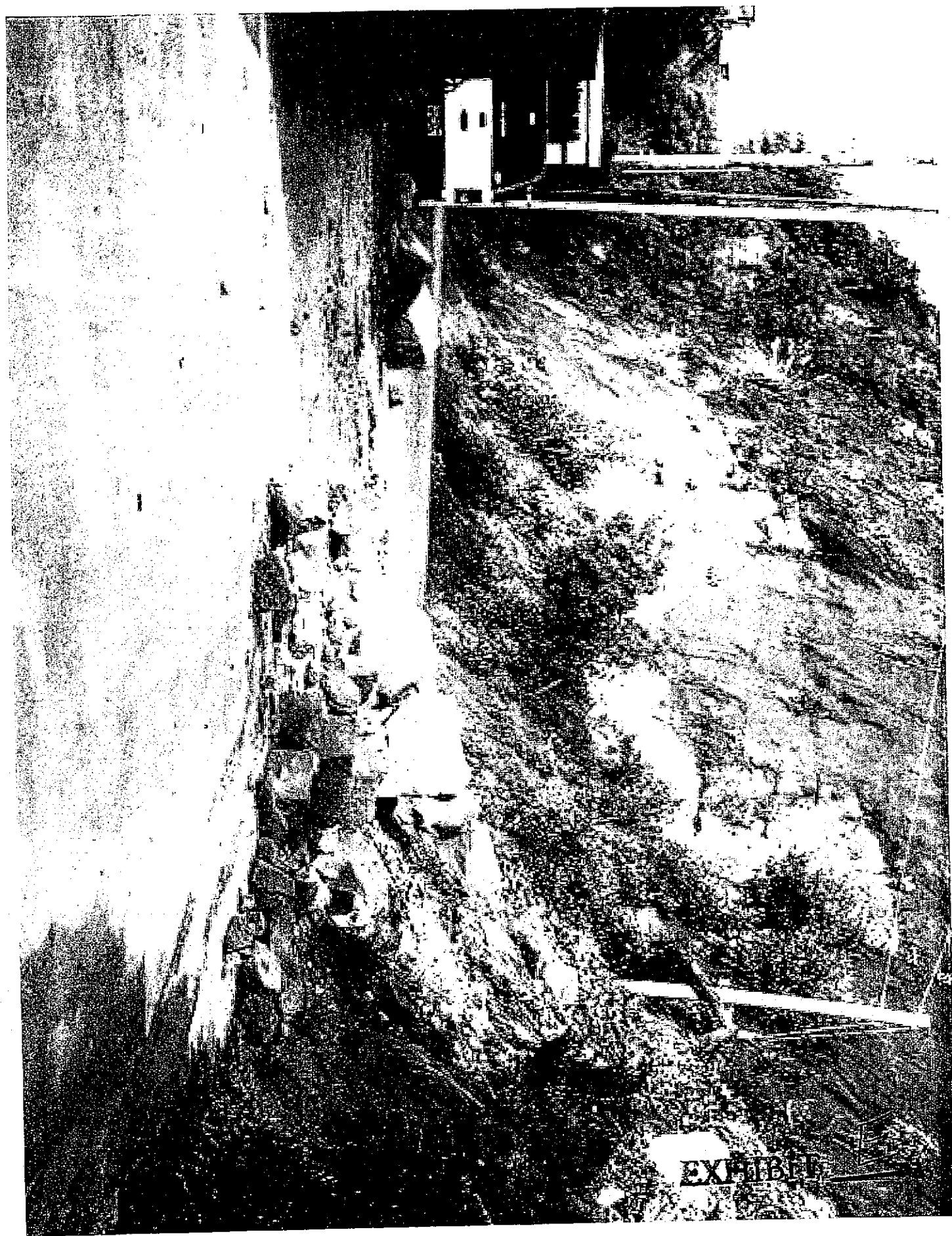
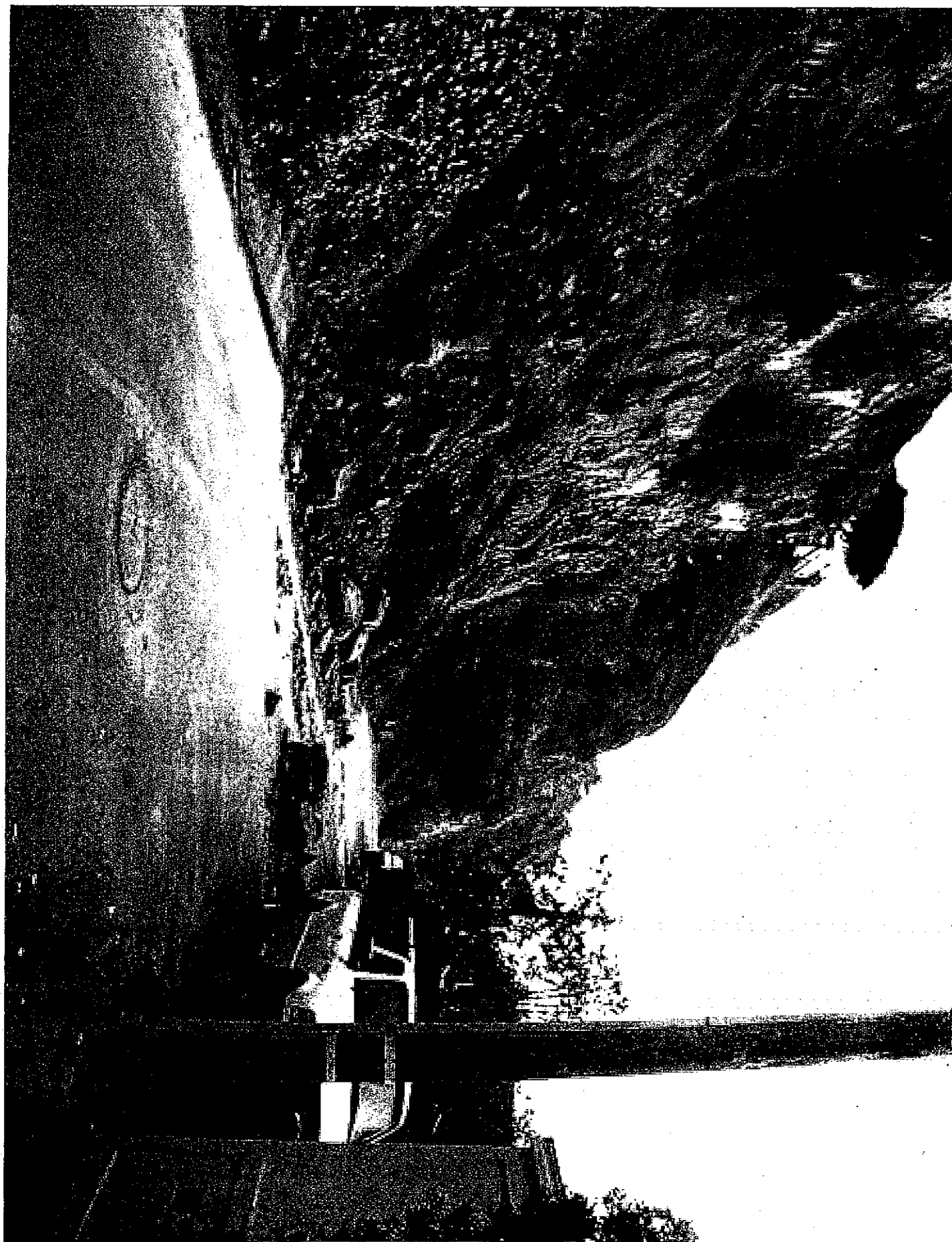


Photo 9. Large dry sand flows above Sunset State Beach. One of the bluff top houses will be moved farther back from the edge of the cliff.

\*See Glossary, p. 83







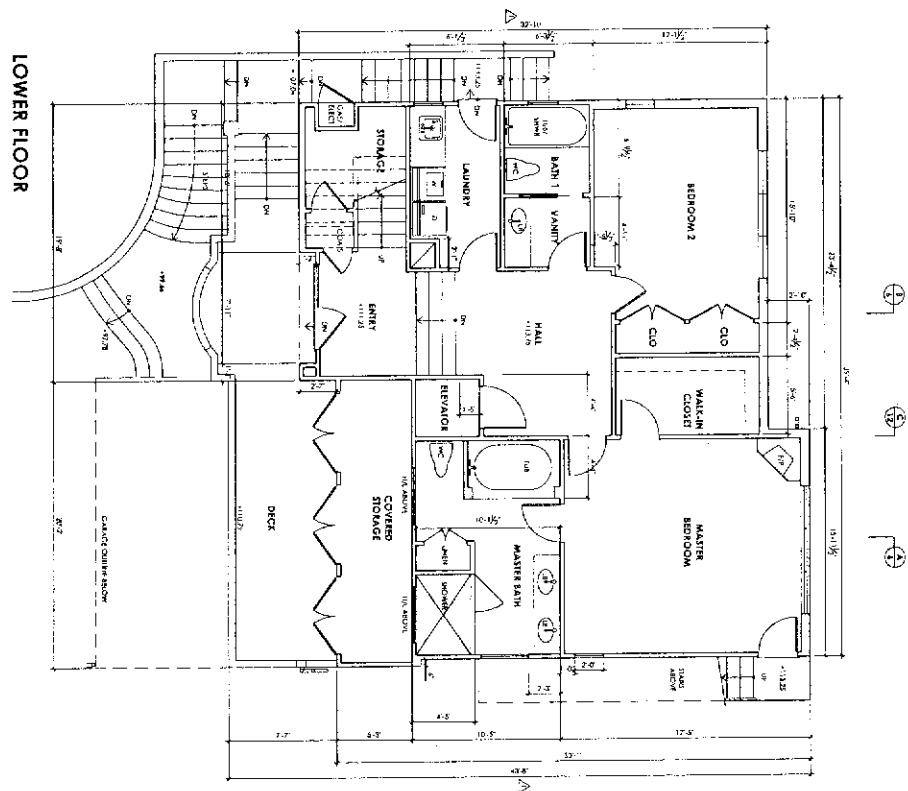
## ARTHUR RESIDENCE

Brian Arthur  
 604 Hill Road  
 Spots, TX 75854 No. 5000  
 409.624.1548  
 ROBERT L. GOLDSPIK ARCHITECT  
 C. 12.796  
 2012 Square Feet - 1400 CA. 1984  
 2012 Square Feet - 1400 CA. 1984  
 2012 Square Feet - 1400 CA. 1984  
 2012 Square Feet - 1400 CA. 1984

Upper and Lower  
 Floor Plans

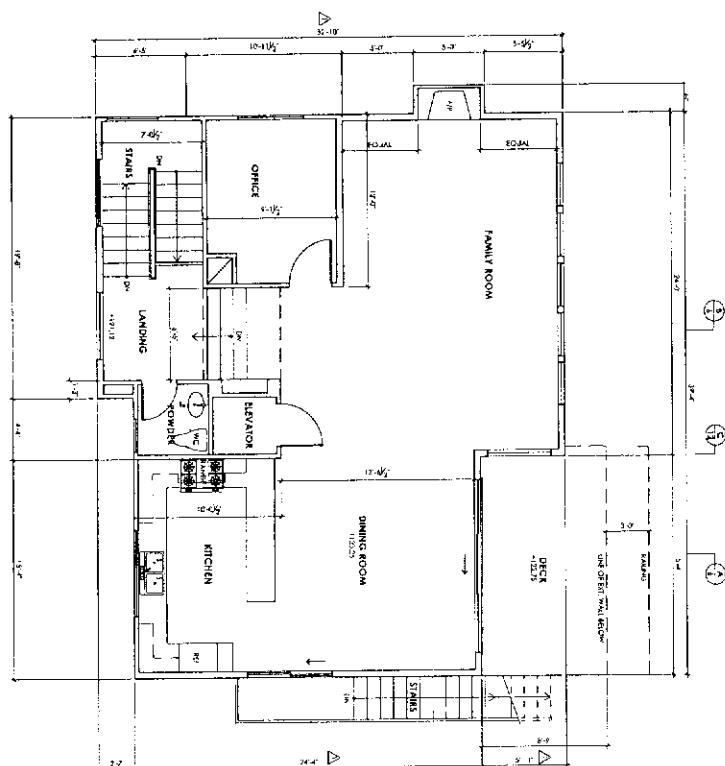
2

## LOWER FLOOR



## UPPER FLOOR

1/8" = 1'-0" typical



REVISIONS  
 1. 11.10.08 Revisions (see notes)

EXHIBIT 10

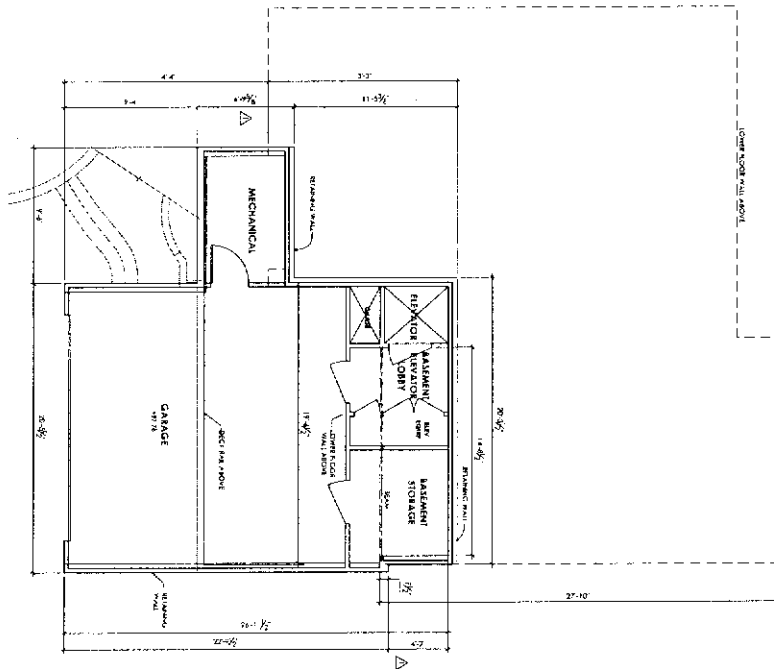
ARTHUR RESIDENCE

Brian Arthur  
 Oak Hill Road  
 Menlo Park, CA 94025  
 415.351.1515  
 ROBERT J. GOLDSTEIN ARCHITECT  
 C11796  
 4445 Seward Drive  
 Menlo Park, CA 94025  
 650.325.8414  
 650.325.8414  
 650.325.8414

Garage Floor Plan

3

△ GARAGE FLOOR PLAN  
 1/4" = 1'-0"

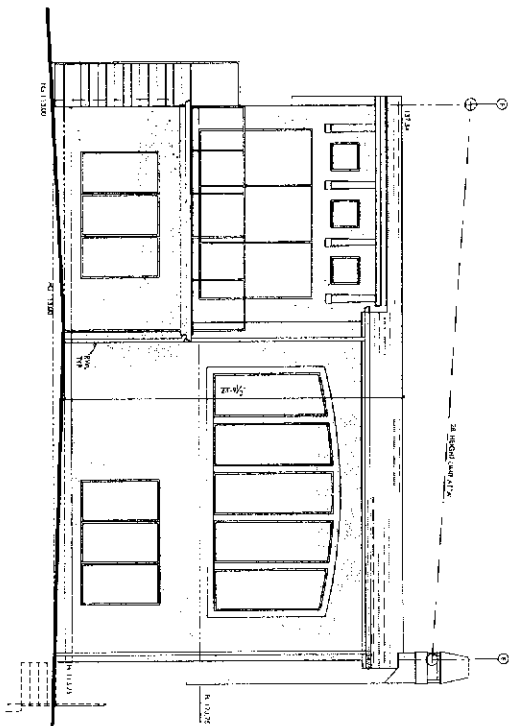




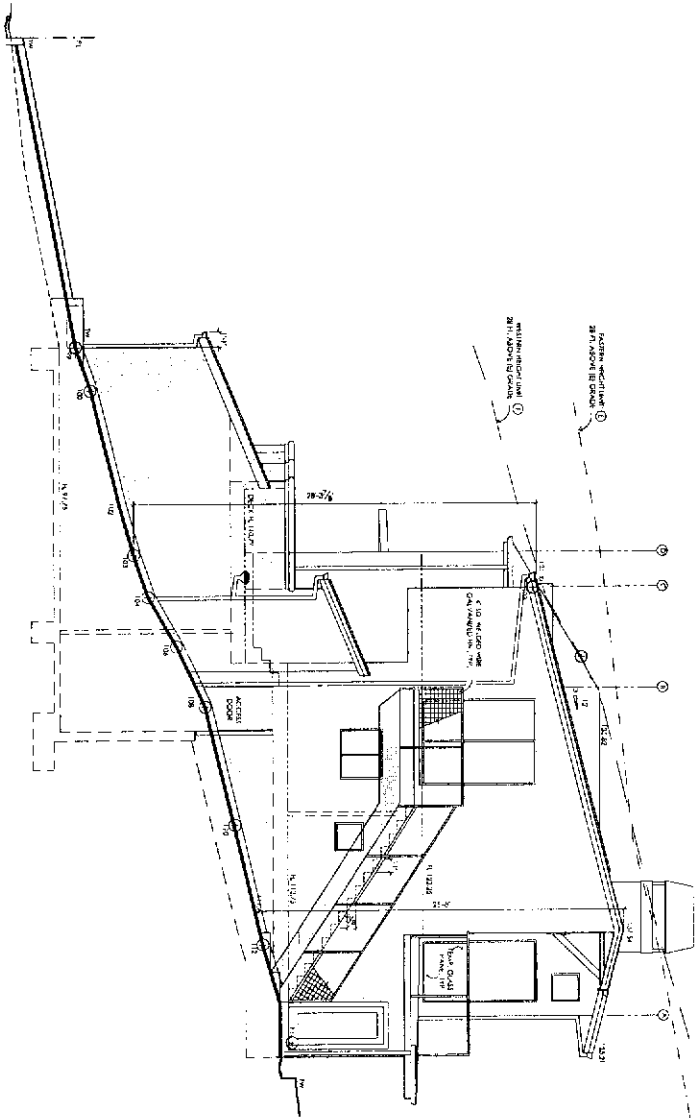
[illegible][illegible]

**Brian Arthur**  
Oak Hill Road  
Aptos, CA 95026 No Shus  
APR 03A-15-149  
ROBERT A. GOLDSPIRIG ARCHITECT  
C 11,796  
2823 Sequest Drive Aptos CA 95026  
tel (831) 687-1810 fax (831) 688-8801  
Robert@brianspillage.com  
date : 01-10-09

REVISIONS  
 1. 1/15/01 2nd floor window to left of main door floor level



**SOUTH ELEVATION**  
 1/4" = 1'-0"



**WEST ELEVATION**  
 1/4" = 1'-0"

**ARTHUR RESIDENCE**

**Brian Arthur**  
 Oak Hill Road  
 Agoura, CA 91301 No. 3004  
 APR 88-11-89  
 ROBERT A. GOLDMAN ARCHITECT  
 C. 112794  
 1001 Sunset Drive, Agoura, CA 91301  
 Tel: (805) 444-4444 Fax: (805) 444-4444  
 Email: brian@brianarthur.com  
 Date: 10/18/99

**Elevations-South and West**

**SECTION A (through garage)**  
SCALE: 1/4"=1'-0"

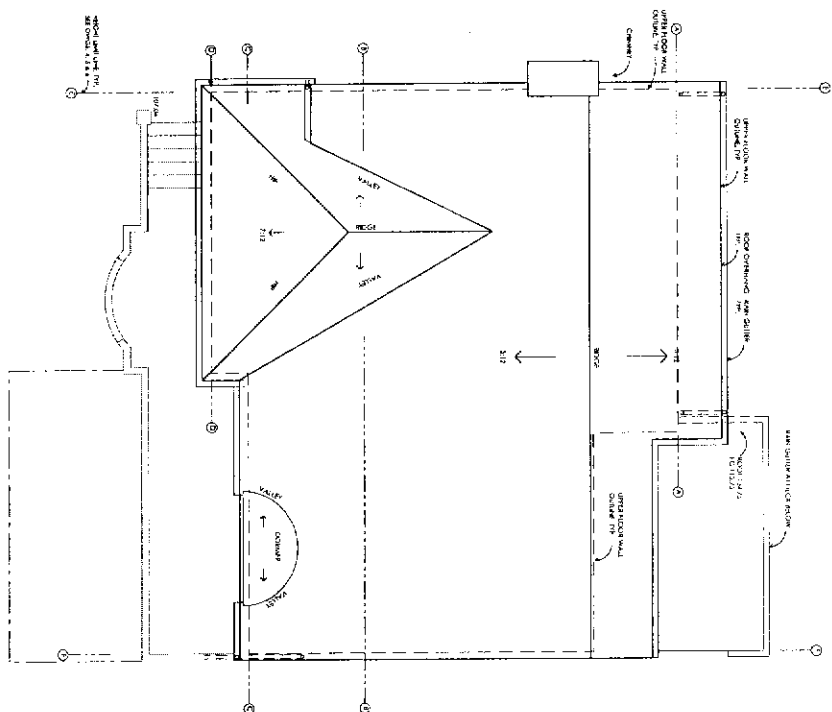
**Brian Arthur**  
Oak Hill Road  
Apex, CA 95020 No Show

APN 052-15-13  
ROBERT A. GOLDSPIRKA ARCHITECT  
C 12,796

8847 Sunset Drive      Apex, CA 95061  
Tel: (916) 368-9339 / Fax: (916) 368-4105  
E: [RAAGoldspirka@aol.com](mailto:RAAGoldspirka@aol.com)

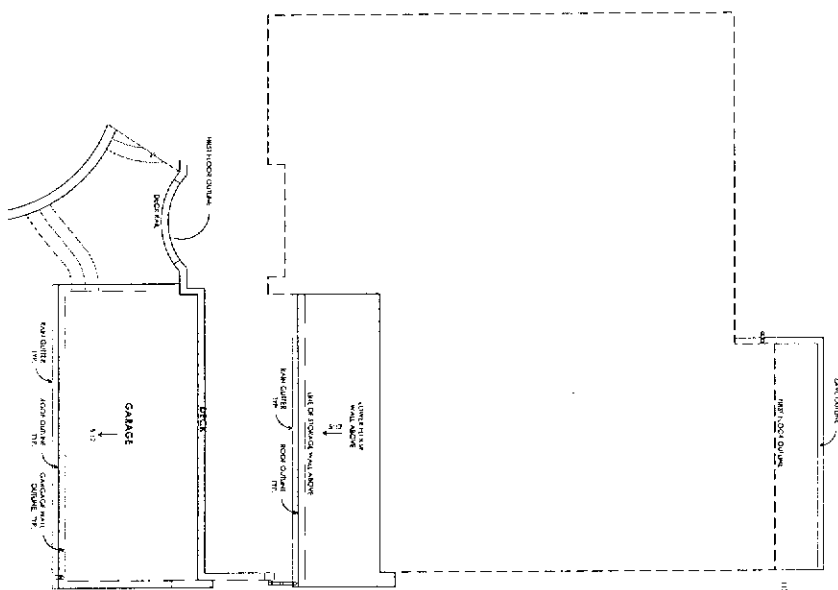
date : 02.19.02

9



UPPER ROOF PLAN

### Roof Plan Notes



**LOWER ROOF PLAN at garage & deck**

1/4" = 1'-0" Typ



ARTHUR RESIDENCE

**Brian Arthur**  
Cust Merit Road  
Aptos, CA 95061 No. 90444

APN 034-151-89  
ROBERT J. GOLDSPIRK ARCHITECT  
C 12, 195

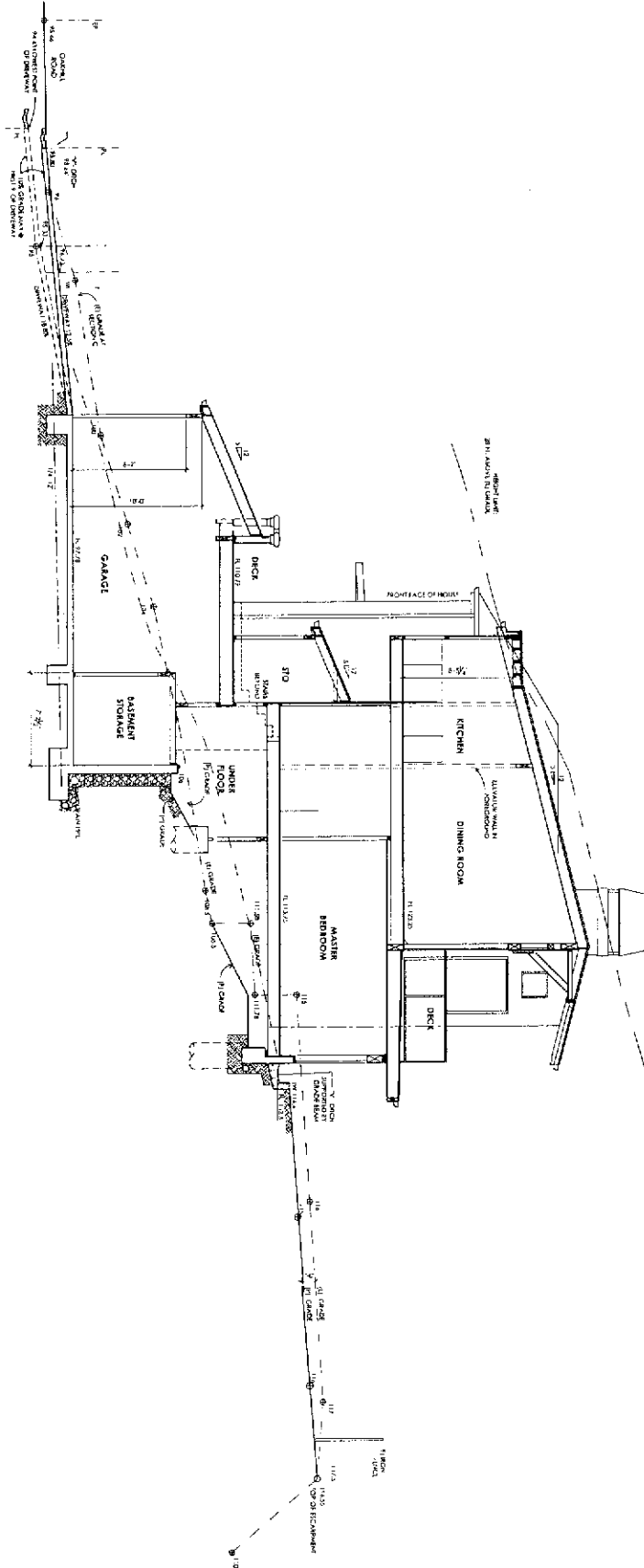
8642 Siegfried Dörner, 1 April 1950  
 1001 (153) 664-8350 Jan 18 1950 664-6105  
 RobertCrischlag@att.net  
 Date: 01-16-99

*Roof Plan*

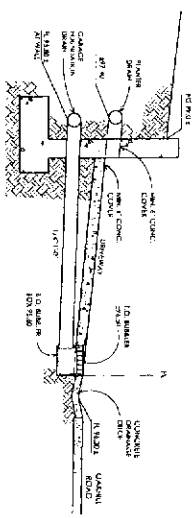
REVISIONS  
 1. 11-18-97 Building Area is compared to lot records.  
 Foot areas are changed to comply with records.

EXHIBIT D

SECTION C  
 SCALE 1/8" = 1'-0"



DETAIL A  
 SCALE 1/2" = 1'-0"



ARTHUR RESIDENCE

Brian Arthur  
 Oak Hill Road  
 Agoura, CA 91301-1504  
 478 868-1549  
 ROBERT J. GOLDSBY ARCHITECT  
 C-12576  
 8641 Laurel Drive, Suite 101, CA 91301  
 (818) 444-4444 (918) 444-4444  
 brian@brianarthur.com  
 Date: 11-18-97

Site Section C



**ROBERT J GOLDSPINK ARCHITECT**

February 10th 2010

Robin Bolster-Grant, Planning Department  
County of Santa Cruz  
701 Ocean Street  
Santa Cruz CA 95060

**Arthur Residence  
Oakhill Road Aptos  
APN 038-151-89 No Situs Appln # 09-0139**

Dear Robin,

Thank you for making a copy of the appeal submitted by Wittwer & Parkin, dated 1.28.10. I have reviewed the document and set out my responses, as follows:

**1. Legal status of parcel**

It is my understanding that the land is a legal building lot. The County approved an Unconditional Certificate of Compliance for this parcel on 6.10.03

**2. Building height and number of stories**

I believe Mr. Parkin has misread the architectural drawings. This is understandable as the relationship of the various parts of the roof to the ground plane is not simple. For this reason, we prepared roof height lines A through F to show how each part of the roof relates to the grade immediately below. Please refer to Drawings 4 through 7, dated 3.10.09. The basement storage and elevator area behind the Garage is completely below grade. It is separate from the Garage and meets all of the County requirements for a "basement"; I believe it has been correctly classified as a "basement". There are no provisions in the County Code to disallow a "basement" because it is adjacent an area that is not so classified.

**3. Integrity of the bluff**

Currently, there is an area at the center of the site that drains towards the bluff. The minor grading approved by the ZA enables us to reverse the direction of drainage and comply with County regulations, particularly 16.10.70.(h).2.(i), requiring storm water to be directed away from the bluff. The Code provides for minor grading of the area between the bluff top and the 100-year setback to achieve this positive drainage provided it is carried out by hand and is kept to a minimum.

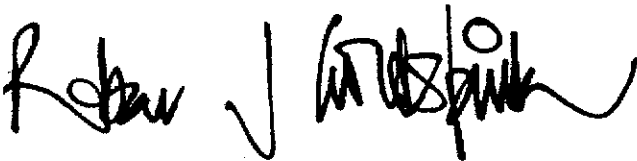
The area to be graded is approx. 752 sf [approx. 45.6% of the setback area] and the graded volume is approx. 16 cy i.e. an average grade reduction of approx. 6". The maximum depth of grading will be 12", the minimum needed to achieve positive drainage away from the bluff top. As you can see, the grading is very modest and will not be "throughout the setback area" as alleged.

The 100-year bluff setback was established by Haro, Kasunich & Associates, geotechnical engineers, in collaboration with Rogers Johnson Associates, geologists. Both of these engineers have extensive experience of coastal bluff properties; their professional opinions are second to none.

**4. CEQA**

I believe County staff have correctly reviewed and processed the CEQA review and findings.

Sincerely,



Robert J Goldspink

cc Brian Arthur

8042C Soquel Drive Aptos CA 95003 tel [831] 688 8950 fax [831] 688 4402 RobertGoldspink@aol.com

**Robin Bolster**

**From:** foglady1@hotmail.com on behalf of Katharine Minott [kpminott@gmail.com]  
**Sent:** Monday, January 11, 2010 10:35 AM  
**To:** Robin Bolster  
**Cc:** Ellen Pirie; kpminott@gmail.com  
**Subject:** APN 038 151 89 on Oak Hill Drive, Aptos

**Katharine P. Minott**  
**745 Oak Hill Road • Aptos CA 95003**

**TO:**

Project Planner: Robin Bolster-Grant  
 Email: [pln111@co.santa-cruz.ca.us](mailto:pln111@co.santa-cruz.ca.us)

**REGARDING:**

Application: 09-0139  
 Undersized lot between 735 and 749 OAK HILL RD., APTOS  
 APN(S): 038-151-89  
 Sup. Dist: 2

Property located on the south side of Oak Hill Road (between 735 and 749 Oak Hill Road) approximately 380 feet west of the intersection with Seacliff Drive.

January 11, 2010

Dear Robin,

As a bluff-top neighbor, living two doors east of the proposed project at 749 Oak Hill Road in Aptos, I have deep reservations about the project as Mr. Brian Arthur has presented it so far. There are serious legal issues, which require legal discussion and many remedies to "fix" the property site before a Coastal Development Permit could possibly be entertained.

1. The first point seems moot: this small lot and fabricated address (749) should never have been allowed to become a sub-divided lot for a livable structure. The small lot was meant to house an accessory garage or tool shed for the house to which it had belonged.
2. Allowing the sub-division to proceed rather than be automatically nullified immediately created the "main house" to be a non-conforming structure on the west side-yard setback. Thus, unnecessarily, creating a reverberating sequence of expensive bluff and home structure issues that have yet to be remedied by neighbors on the east side.
3. Additionally, the legality of the subdivision has not been verified.
4. Why is there an *Exception to Chapter 16.10* about Geologic Hazards? The proposed drainage plan for 749 Oak Hill is an example of a PATHETIC preventative and minimalist drainage plan. A much needed aggressive drainage infrastructure should be designed by an civil engineer working in conjunction with a geologic soils engineer to design a pump and drainage system to deflect ALL water away from the bluff and side-



yards belonging to 749 Oak Hill Rd.

When one bluff-top property liquefies and slides, the softening impact on the neighboring bluff land is impartial to property lines and adversely weakens the bluffs belonging to each one of us.

Please refer to photographs taken by next door neighbors, Ms. Love and Ms. Robinson which illustrate how steep the bluff decline is in front of the Hill lot and the enormous amount of mud/dirt that abruptly fell from his property below, onto Las Olas Drive only a few days ago.

This particular lot at 749 Oak Hill is historically notorious for its sharp and abrupt down slope and the large amount of rock and mudflow it disgorges during wet winters. The rock flows have not only caused damage to the homes below on Las Olas Dr, but the attendant fissures have loosened the upper bluff slope along Oak Hill Drive.

When the 749-lot lets loose its weight of wet sand and mudstone, it leaves not only its own occupant vulnerable to erosion, but all neighboring homes become equally fallible to extensive loss of bluff property.

The proposed drainage is not an adequate remedy. The minimal parameter trough described is an anemic and under-designed drainage solution for the proposed project.

A landscape plan designed and engineered by a licensed arborist and a landscape architect should be required to use drought tolerant native plants to restore the bluff and inhibit future mud-flow.

5. The narrowness of 749 Oak Hill Road in front of the project appears less wide than a fire-road and poses a possible health safety risk to permit access and turn-around space for emergency vehicles.

Additionally, the entire length of power, cable and other electrical lines from my 745 Oak Hill Road home through the Applicants property and to the north-west end of the road at the Hanchett house, should be moved to the opposite side of the street.

This will require an easement, but it is a far more prudent planning stipulation than the Applicant's unsafe and current method to justify the continuance of hanging all of his electrical and utility wires by cutting away a square-ish swath of redwood branches for the wires to loop through.

The various ATT, PGE and Comcast wires, other abandoned cable wires and the transformers are a mess and should all be cleaned up and, ideally, trenched underground.

The onus is on the Coastal Commission, the Planning Department and the ZA to determine:

1. The legality of the property's subdivision.
2. To ensure this vulnerable stretch of coastal bluff is re-engineered to inhibit runoff.

3. To remedy the visual blight and hazards of the mish-mash of power lines in the tree branches.
4. The reality of emergency trucks being able to get into the site and to have the radius to extricate themselves.

It is my opinion the facts will not bear up under scrutiny and the Zoning Administrator will DENY the Applicant's proposal.

Best wishes,

Katharine P. Minott

*Master of Urban and Regional  
Planning  
San José State University*

## 15300.2. Exceptions

- (a) Location. Classes 3, 4, 5, 6, and 11 are qualified by consideration of where the project is to be located -- a project that is ordinarily insignificant in its impact on the environment may in a particularly sensitive environment be significant. Therefore, these classes are considered to apply all instances, except where the project may impact on an environmental resource of hazardous or critical concern where designated, precisely mapped, and officially adopted pursuant to law by federal, state, or local agencies.
- (b) Cumulative Impact. All exemptions for these classes are inapplicable when the cumulative impact of successive projects of the same type in the same place, over time is significant.
- (c) Significant Effect. A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.
- (d) Scenic Highways. A categorical exemption shall not be used for a project which may result in damage to scenic resources, including but not limited to, trees, historic buildings, rock outcroppings, or similar resources, within a highway officially designated as a state scenic highway. This does not apply to improvements which are required as mitigation by an adopted negative declaration or certified EIR.
- (e) Hazardous Waste Sites. A categorical exemption shall not be used for a project located on a site which is included on any list compiled pursuant to Section 65962.5 of the Government Code.
- (f) Historical Resources. A categorical exemption shall not be used for a project which may cause a substantial adverse change in the significance of a historical resource.

**Note:** Authority cited: Section 21083, Public Resources Code; References: Sections 21084 and 21084.1, Public Resources Code; *Wildlife Alive v. Chickering* (1977) 18 Cal.3d 190; *League for Protection of Oakland's Architectural and Historic Resources v. City of Oakland* (1997) 52 Cal.App.4th 896; *Citizens for Responsible Development in West Hollywood v. City of West Hollywood* (1995) 39 Cal.App.4th 925; *City of Pasadena v. State of California* (1993) 14 Cal.App.4th 810; *Association for the Protection etc. Values v. City of Ukiah* (1991) 2 Cal.App.4th 720; and *Baird v. County of Contra Costa* (1995) 32 Cal.App.4th 1464

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

Public Resources Code Section 21084 provides several additional exceptions to the use of categorical exemptions. Pursuant to that statute, none of the following may qualify as a categorical exemption: (1) a project which may result in damage to scenic resources, including but not limited to, trees, historic buildings, rock outcroppings, or similar resources within a scenic highway (this does not apply to improvements which are required as mitigation for a project for which a negative declaration or EIR has previously been adopted or certified); (2) a project located on a site included on any list compiled pursuant to Government Code section 65962.5 (hazardous and toxic waste sites, etc.); and (3) a project which may cause a substantial adverse change in the significance of a historical resource.

## 15303. New Construction or Conversion of Small Structures

Class 3 consists of construction and location of limited numbers of new, small facilities or structures; installation of small new equipment and facilities in small structures; and the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure. The numbers of structures described in this section are the maximum allowable on any legal parcel. Examples of this exemption include, but are not limited to:

- (a) One single-family residence, or a second dwelling unit in a residential zone. In urbanized areas, up to three single-family residences may be constructed or converted under this exemption.

(b) A duplex or similar multi-family residential structure, totaling no more than four dwelling units. In urbanized areas, this exemption applies to apartments, duplexes and similar structures designed for not more than six dwelling units.

(c) A store, motel, office, restaurant or similar structure not involving the use of significant amounts of hazardous substances, and not exceeding 2500 square feet in floor area. In urbanized areas, the exemption also applies to up to four such commercial buildings not exceeding 10,000 square feet in floor area on sites zoned for such use if not involving the use of significant amounts of hazardous substances where all necessary public services and facilities are available and the surrounding area is not environmentally sensitive.

(d) Water main, sewage, electrical, gas, and other utility extensions, including street improvements, of reasonable length to serve such construction.

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

(f) An accessory steam sterilization unit for the treatment of medical waste at a facility occupied by a medical waste generator, 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.

**Note:** Authority cited: Section 21083, Public Resources Code; Reference: Sections 21084 and 21084.2, Public Resources Code.

**Discussion:** This section describes the class of small projects involving new construction or conversion of existing small structures. The 1998 revisions to the section clarify the types of projects to which it applies. In order to simplify and standardize application of this section to commercial structures, the reference to occupant load of 30 persons or less contained in the prior guideline was replaced by a limit on square footage. Subsection (c) further limits the use of this exemption to those commercial projects which have available all necessary public services and facilities, and which are not located in an environmentally sensitive area.

## MEMORANDUM

Date: March 2, 2010

To: Robin Bolster-Grant

From: Joe Hanna  09-0139

Re: Appeal of Zoning Administrators Decision Approving 09-0139

I have reviewed the unsigned Preliminary Geologic Assessment from Hydro-Geo Consultants dated January 11, 2010. The report is a assessment of the previous work by Engineering Geology Report, by Rogers E. Johnson dated October 24, 2005, Project # C05041-56 and Geotechnical Investigation report by Haro, Kasunich and Associates, Inc. dated November 2005, Project #: SC8970 for Application #: 05-0753. Hydro-Geo Consultants makes a series of assertions about the previous work. Their assessment is used as a basis for the appeal, and therefore I have reviewed the assessment along with the original reports to evaluate if the critic supports sustaining the appeal. As a side note, State Law requires that all of these reports be signed, and typically County staff would not consider an unsigned report. I have made an exception to our practice and have reviewed the report assuming that it represents the opinion of the engineering geologist. My conclusions are as follows:

1. Hydro-Geo states in the second paragraph of the third page states, *"it is our opinion that the potential "100 year grading" and building setback is greater tha(n) the recommended 33 feet and should be 40 feet or more as suggested by the crack in the on-site brick retaining wall and a 45 degree upward project form the base of the bluff."*

The statement combines four issues: a ground crack, the grading, the calculated setback, and the Building Code setback. The issue of grading is answered in item 2. The answers to the other questions are presented in this section.

**Ground Cracking and setbacks:** The recommended 33-foot setback was determined by conservative calculations of slope stability, and an adequate evaluation of the site geology. The Hydro-Geo letter report adds nothing to his evaluation. The retaining wall's cracking is likely unrelated to the slope stability. The wall is substandard and old, and there are many similar explanations for the cracking. I have observed no evidence of slope movements forty feet back from the bluff.

**California Building Code Requirements:** The Hydro-Geo Report improperly applies the setback requirements of the 2007 California Building Code (hereafter CBC). The setbacks referred to in the CBC (Sections 1805.3 and 1805.3.2) pertain to the footing setbacks from slopes. Per Section 1895.3.2, the bottom of footings are to be located behind an imaginary 45 degree plane projected upward from the tope of the slope – the structure its self is not required to be setback from the plane.

Nevertheless, based upon the cross-section shown on Plate 2 of the Engineering Geology Report, by Rogers E. Johnson and Associates dated October 24, 2005, projection of the 45 degree plane

upward from the toe of the bluff to the ground surface behind the bluff defines setback that is only 26 feet from the bluff, and less restrictive than the Rogers E. Johnson and Associates setback of 33 feet. Furthermore, Section 1805.3.2 of the CBC allows for alternative setbacks based upon consideration of material, height of slope, slope gradient, load intensity and erosion characteristics of the slope material. These were considered in the project technical reports.

I am unclear how Hydro-Geo has applied the 2007 CBC setbacks since they have not provided any cross-sections or any additional information.

2. Hydro-Geo's states in the third paragraph of the third page, *"We do not agree that an "exception" should be made from the setback for site grading. In our opinion, there is a greater potential to destabilize the bluff from vibrations and weight of the grading equipment than the slight advantage that may be gained by removing some weight from the top of the bluff with heavy equipment."*

No exception is needed. The exception request by the applicant was for another project that was denied. The only grading that will be allowed on the slope is the shaping of the slope by hand to remove fill and develop a beneficial drainage pattern. This grading is specifically exempted in Section 16.10.070 (h) Coastal Bluffs and Beaches 2. (1), and is necessary on Coastal Bluffs to prevent water from flowing over the bluff to reduce erosion. The small amount of grading now proposed will not removed the soils zone, will be completed by hand, and is necessary to redirect drainage away from the edge of the bluff. This type of minor regrading has been required on hundreds of projects with only beneficial impacts.

3. Hydro-Geo states in the third paragraph of the third page, *"Surface water diverted to a sump or French drain around the proposed residence could also more rapidly infiltrate into the soil and saturate the surrounding terrace sediments."*

No water is being diverted to a sump or French drain. The site drainage will be captured on the ground surface, and controlled on this property with an engineered drainage system with no increase in the amount or intensity anywhere on the property. Subsurface drains will collect and control whatever subsurface drainage is present on the site.

4. Hydro-Geo states in the third paragraph of the fourth page *"High water conditions in the adjacent Borregas Creek may also contribute to high groundwater levels at this site."*

No evidence is presented in the Hydro-Geo report that supports a conclusion that Borregas Creek will influence the stability of the Coastal Bluff. There is little evidence of seepage along the bluff that is of a pattern or magnitude that would indicate that Borregas Creek affects the ground water conditions at this site. Furthermore, none of the large number of engineering geology or geotechnical reports that have been prepared for development of the coast near this project have conclude or suggested that Borregas Creek has any influence on this bluff's stability.

5. Hydro-Geo states in the first paragraph of the fourth page *"We believe that the recommendations of Haro, Kasunich, and Associates to install a "pin pile" retaining structure along the face of the bluff would provide a good solution from mitigation the unstable slope condition in the upper portion of the bluff at the site."*

Haro, Kasunich and Associates has not recommended a pin pile wall for this site. As indicated in the project consulting reports, the designated building envelope has been determine to compensate for

Appeal of Zoning Administrators Decision Approving 09-0139

100 years of erosion and slope instability to avoid the necessity of constructing a pin pile wall. The 2007 report by Haro, Kasunich and Associates was prepared for a property at 745 Oak Hill Road where the home is located within a few feet of the coastal bluff, and bluff retreat correspondingly undermined the stability of the home's foundations necessitating the repair.

A 33' setback, as was designated for the project , avoids the need to the construction a wall. We still believe even with all of the new information from the Hydro-Geo report that there is no need to modify the project.

## **Additions to the Staff Report for the Planning Commission**

**Item 7: 09-0139**

**Late Correspondence**



**Josephine F. Little**  
**753 Oakhill Road, Aptos, CA 95003**

March 13, 2010

To: County of Santa Cruz Planning Commission  
Robin Bolster-Grant, Project Planner

Re: Wednesday, March 24, 2010, Morning Agenda #7  
Application: 09-0139(\*\*); APN: 038-151-89

I am writing in opposition to the Zoning Administrator's approval of a proposal to construct a 2,544 square foot structure between 735 and 749 Oakhill Road, Aptos.

Background: I have been a permanent resident at 753 Oakhill Road for 32 years, in the house built by my late husband, H.B. Little, in 1965. Our house was the last one built from the ground up (rather than remodeled) on this street. We have known the owners of all the properties on Oakhill Road for many decades. The property in question at 749 Oakhill Road was owned by the Grover family. They never considered the property two lots. The house and garage were connected across what has become the lot line, and dividing the property into two has led to many problems for both parcels. Had I been given the opportunity, I would definitely have objected to the lot division.

Some of my specific objections to the matter before you follow:

Drainage: Following the damage from the earthquake in 1989, it was necessary for us to redesign the entire ocean side area of our property. At that time, with the guidance of erosion specialist John Kucinich, we installed an extensive and effective drainage system that has prevented further erosion. Not only did we make sure to carry the ocean side drainage away from the cliff, but we also made sure that the drainage was directed to the County drainage system on the road.

From what I am able to ascertain from Mr. Arthur's plans available to me, adequate drainage is not part of the plan, nor are provisions for carrying the water to the main drain once it reaches the road.

Erosion: Because we have resided at 753 Oakhill Road for half a century, we have seen the inevitable erosion of the cliff on which we live. In some places on adjacent property it has eroded as much as ten feet.

John David, of Prime Landscaping, maintains our portion of the cliff. He has on file photographs that show that a van-sized portion of the cliff at the address in question fell to the street below between October 14, 2009 and January 28, 2010. I think that an onsite inspection of the property would make it this clear. It is inconceivable to me that building a new 2,544 square foot residence on this fragile sandstone cliff wouldn't compromise the whole area, let alone the property at issue.

Staff Recommendations: It's my understanding that in a memo dated January 16, 2008, the staff recommended against granting a permit for this project on several grounds. It doesn't appear to me that the staff's recommendations were mitigated enough to be overturned by the Zoning Administrator at the last hearing. I don't see how the mere reduction of the soil removed in grading, or the siding on the house, would have a significant effect on the overall conclusion that a house of this size was prudent, safe or appropriate to this fragile cliff-side lot.

Notice: In addition, the Notice of Public Hearing for March 24 was titled "No Situs, Aptos". I find this notice deceptive, as all previous notices identified the property as a specific lot "between 735 and 749 Oakhill Road." Many could have overlooked this purported notice because they didn't think it referred to any property that concerned them.

I hope my concerns will be addressed at the meeting on March 24, which I plan to attend.

Sincerely,

Josephine F Little

Cc:

Ellen Pierie

City National Bank

Frank Minuti

Laura and Pat Murphy

William Parkin, Esq.

Gwynn Hanchett

Katharine Minott, Esq.

Amy Love and Marilee Robinson