



# 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**

April 30, 2007

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

**Agenda Date: May 23, 2007**

**Item #: 9**

**Time: After 9 AM**

**APN: 043-081-11, -12, 043-082-  
09, & -48**

**Subject: A public hearing to consider an appeal of the Zoning Administrator's decision to approve application 06-0037; a proposal to repair an existing retaining wall on a coastal bluff.**

Members of the Commission:

This application is a proposal to recognize the repair of an existing retaining wall on a coastal bluff.

### **Retaining Wall Repair**

The subject property is located within a single family residential neighborhood on the south side of Kingsbury Drive in the Rio Del Mar Area of Aptos. A coastal bluff is located at the rear of the property which is developed with a single family residence and detached garage. **An** existing retaining wall is located at the top of the coastal bluff to protect the existing residence.

The retaining wall was showing signs of failure and was in need of repair when this Coastal Development Permit application (06-0037) was made. During the review of this application the situation was determined to be an emergency and Emergency Coastal Development Permit 06-0535 was issued on 10/2/06 to authorize a repair of the existing retaining wall due to structural failure.

The repair to the existing retaining wall was completed under Emergency Coastal Development Permit 06-0535 and Building Permit 145400. As a result, this application (06-0037) is to recognize the emergency repair that was conducted on the property through the issuance of a regular Coastal Development Permit (per the requirements of County Code and the Local Coastal Program).

### **Neighbor Concerns**

Prior to the public hearing for this application, the Planning Department was contacted by an attorney representing one of the neighbors. The attorney submitted a letter describing a number of concerns, mostly related to the visual impact of the existing development on private views from residences across Kingsbury Drive, but also regarding improvements installed on the

existing residence, and signage placed along the frontage of Kingsbury Drive. Although the majority of the concerns were not related to the retaining wall at the rear of the subject property, staff attempted to address the issues raised in the staff report to the Zoning Administrator by recommending conditions that required the trimming of vegetation, obtaining permits for structural improvements, and removal of signage along the property frontage to achieve compliance with County Code.

### **Zoning Administrator Hearing**

This item was heard by the Zoning Administrator on 2/2/07 at a noticed public hearing. At the hearing, the applicant, the property owner, and the neighbors' attorney each presented testimony regarding the project. The Zoning Administrator reviewed the staff report and heard the testimony from all participating individuals, prior to revising the findings and conditions and taking final action to approve the application. **An** appeal of the Zoning Administrator's action prepared by the neighbors' attorney (Exhibit 1C) was submitted on 2/15/07.

### **Appeal Issues**

The appeal letter (Exhibit 1C) contains a large volume of text and attachments including the original version of the staff report to the Zoning Administrator (without the revisions made on 2/2/07) and a duplicate of the letter submitted by the appellant prior to the 2/2/07 public hearing. As discussed in the staff report to the Zoning Administrator, the primary issue appears to be related to the impact of existing vegetation on private views available to residences across Kingsbury Drive, but also regarding improvements installed on the existing garage (a "birdhouse" containing a video camera with motion sensor activated lights), and signage placed along the frontage of Kingsbury Drive. Although these issues are not directly related to the repair or replacement of portions of the existing retaining wall, they appear to be the primary elements of the appeal. The appeal letter also challenges the environmental determination, required per the California Environmental Quality Act, and questions the stability of the slope below the project site. Each issue is addressed separately below.

#### Existing Vegetation and Private Views

*The appellant has requested that the existing vegetation be removed to protect views from Kingsbury Drive and has stated that the vegetation is a health and safety hazard which constitutes a public nuisance.*

This issue is not directly related to the repair of the existing retaining wall on the subject property. However, as stated in the staff report to the Zoning Administrator (Exhibit 1D), Kingsbury Drive is not listed as a scenic roadway in the County General Plan and views from private residences are not protected by the County Code or General Plan. In all development permit proposals, views across private property are not protected unless the views are from a public park, beach, or a scenic roadway listed in the County General Plan.

The removal of vegetation to address issues raised by the appellant (including allergies and rat population) is overridden by the need to prevent destabilization of the slope due to vegetation removal. The County Geologist testified regarding this issue at the public hearing before the Zoning Administrator, and stated that the removal of the vegetation could destabilize the slope.

The County Geologist also stated that a phased revegetation plan (with oversight by technical experts) could replace the plantings over time by allowing new vegetation to establish as other vegetation is removed.

Based on the information provided by the County Geologist, Planning Department staff does not recommend a condition that will require alteration of the existing vegetation (even if replanting is proposed) in order to prevent compromising the stability of the slope on the subject property. However, a plan to revegetate the property could be implemented at the discretion of the property owner to remove the vegetation over time while replacing the existing vegetation with new plantings. Due to an inconsistency between one of the Development Review Findings and the conditions regarding the vegetation as amended by the Zoning Administrator, revised Development Permit Findings (Exhibit 1A) have been prepared for this project.

#### Improvements on Existing Structure

*The appellant has requested that the existing improvements (including "birdhouse", surveillance camera, and floodlights) be removed.*

This issue is not directly related to the repair of the existing retaining wall on the subject property. However, as stated in the staff report to the Zoning Administrator (Exhibit 1D), all structural modifications performed without benefit of the required permits (including the construction of roof top improvements and lighting) must be removed from the existing residential structures.

Due to the potential impacts to the public scenic viewshed (as viewed from the public beach below the subject property), project conditions require the removal of the structural improvements on top of the existing garage. Conditions were also included to ensure that lighting is directed downward and shielded to prevent fugitive light.

#### Signs

*The appellant has requested that the "sign circus" be removed from the subject property and the Kingsbury Drive right of way.*

This issue is not directly related to the repair of the existing retaining wall on the subject property. However, as stated in the staff report to the Zoning Administrator (Exhibit 1D), signage installed along the roadside is limited by County Code for residential properties.

Due to the length of the property frontage, the Zoning Administrator determined that two signs that do not exceed a combined total of 1 square foot in sign area would be allowed on the subject property. This allows the property owners to place up to two "No Trespassing" or "Private Property" signs along their property frontage.

#### CEOA Exemption

*The appellant has questioned the exemption from the California Environmental Quality Act for this project.*

As determined by Planning Department staff and the Zoning Administrator, either a Class 1 (Existing Facilities) or a Class 2 (Replacement or Reconstruction) Categorical Exemption to the California Environmental Quality Act would be applicable to this project. Staff has prepared a revised California Environmental Quality Act document with a Class 2 (Replacement or Reconstruction) Categorical Exemption (Exhibit 1B) for this project.

### Slope Stability

*The appellant has stated that this project does not properly address slope stability and is only a portion of what will be necessary to properly address slope stability issues on and below the subject property.*

The installation of retaining walls on a coastal bluff is intended to improve the stability of portions of the bluff and to protect existing improvements. This project is a repair of an existing wall and is not intended to increase the degree of protection provided by the existing wall below the residence on the subject property. Geologic and geotechnical reports have been submitted, reviewed, and accepted for this project, and the retaining wall repair has been constructed in conformance with the approved reports.

### **Summary**

Although the appellants' attorney has presented a substantial amount of material, the issues raised can best be summarized as an ongoing dispute between neighbors regarding the maintenance of vegetation on Kingsbury Drive. Other concerns raised by the neighbors' attorney were addressed by the Zoning Administrator prior the decision to approve the application on 2/2/07. Revised Development Permit Findings and CEQA documentation have been prepared to correct minor inconsistencies and further clarify the original action taken by the Zoning Administrator.

### **Recommendation**

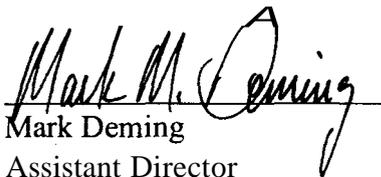
Planning Department staff recommends that your Commission take the following actions:

- 1) Accept the revised Development Permit Findings (Exhibit 1A).
- 2) Certify the revised Categorical Exemption from the California Environmental Quality Act (Exhibit 1B).
- 3) **UPHOLD** the Zoning Administrator's decision to **APPROVE** Application Number **06-0037**.

Sincerely,



Randall Adams  
Project Planner  
Development Review

Reviewed By:   
Mark Deming  
Assistant Director

County of Santa Cruz Planning Department

Exhibits:

- 1A. Revised Development Permit Findings
- 1B. Revised Categorical Exemption (CEQA determination)
- 1C. Appeal letter, prepared by Barney Elders, dated 2/15/07.
- 1D. Staff report to the Zoning Administrator, 2/2/07 public hearing (with revisions ~~from~~ 2/2/07).

## Development Permit Findings (Revised for 5/23/07 PC Hearing)

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. Construction will comply with prevailing building technology, the Uniform Building Code, and the County Building ordinance to insure the optimum in safety and the conservation of energy and resources. The proposed retaining wall repair will not deprive adjacent properties or the neighborhood of light, air, or open space, in that the project will consist of a repair of an existing retaining wall at the rear of the subject property.

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 retaining wall repair will be consistent with all pertinent County ordinances and the purpose of the R-1-6 (Single family residential - 6,000 square feet minimum) and PR (Parks, Recreation, and Open Space) zone district in that the primary use of the property will be one single family dwelling.

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 existing 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 retaining wall will not adversely impact scenic resources as specified in General Plan Policy 5.10.7 (Open Beaches and Blufftops), in that the proposed retaining wall will be adequately screened by vegetation to reduce the visual impact of the proposed development on the scenic beach viewshed. Private views from residences along Kingsbury Drive are not protected by the County General Plan and Kingsbury Drive is not a designated scenic road in the County General Plan.

~~The vegetation on the subject property will be maintained at no higher than 3 feet in height, as measured from the level of Kingsbury Drive, in order to comply with the requirements of County Code section 13.10.525 et. seq.~~

The signage located along the frontage of Kingsbury Drive will be removed, per the project conditions, in order to comply with County Code section 13.10.580et. seq.

Lighting will be shielded and directed downward onto the subject property to prevent fugitive light from adversely impacting scenic resources.

Application #: 06-0037  
APN: 043-081-11 & 12; 043-082-09 & 48  
Owner: Richard Andre trustee, etal.

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 a retaining wall is not a use that generates traffic and no increase in utilities consumption is anticipated.

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 existing single family residential development is consistent with the land use intensity and density of the neighborhood. The three parcels which make **up** the subject property are required to be combined into one parcel.

6. The proposed development project is consistent with the Design Standards and Guidelines (sections **13.1** 1.070 through 13.11.076), and any other applicable requirements of this chapter.

This finding can be made, in that the appearance of the existing retaining wall will be not be significantly modified will not result in a visual impact on surrounding land uses and the scenic beach viewshed.

# 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: 06-0037

Assessor Parcel Number: 043-081-11 & 12; 043-082-09 & 48

Project Location: 310 Kingsbury Drive

**Project Description: Proposal to repair an existing retaining wall on a coastal bluff.**

**Person or Agency Proposing Project: Kim Tschantz**

**Contact Phone Number: (831) 688-5928**

- 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 2 - Replacement or Reconstruction (Section 15302)

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

Proposal to construct a repair to an existing retaining wall (including replacement of portions of the existing wall).

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

\_\_\_\_\_  
Randall Adams, Project Planner

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

# **Appeal Letter**

**(Prepared by Barney Elders, dated 2/15/07, with attachments)**

**Application Number 06-0037  
Planning Commission Hearing  
5/23/07**

**Exhibit 1C**

**BARNEY ELDERS, ATTORNEY AT LAW**

SBN 49399

PO BOX 8544, SANTA CRUZ, CA 95064-8544

TEL (831) 459-8857 FAX (831) 425-1968

EMAIL: [elders@cruzio.com](mailto:elders@cruzio.com)

2007 FEB 15 PM 1 57

**NOTICE OF APPEAL TO THE PLANNING COMMISSION  
FROM ACTS AND DETERMINATIONS OF THE ZONING ADMINISTRATOR**

February 15, 2007

Planning Commission, County of Santa Cruz  
County of Santa Cruz  
Planning Department County of Santa Cruz  
Don Bussey, Zoning Administrator  
Tom Burns, Zoning Administrator  
Randall Adams, Planner  
County Government Center, Room 420  
701 Ocean St  
Santa Cruz, CA 95061-8544

**DELIVERY BY HAND**

re: Application No. 06-0037, 310 Kingsbury Drive  
& 319 Beach Drive Aptos APNs 043-081-11 & 12 &  
043-082-09 & 48; Owner ANDRE; Applicant TSCHANTZ

Ladies and Gentlemen:

**PLEASE TAKE NOTICE THAT** LESA STOCK, CHILI PEPPER LLC, and KINGSBURY NEIGHBORS An Association, acting by their duly authorized attorney BARNEY ELDERS, and BARNEY ELDERS on his own behalf as a member of the public, (collectively "appellants") hereby APPEAL to the PLANNING COMMISSION, COUNTY OF SANTA CRUZ, the acts and determinations of TOM BURNS, ZONING ADMINISTRATOR of the County of Santa Cruz, acting by his DEPUTY ZONING ADMINISTRATOR DON BUSSEY, made February 2, 2007 in the matter of Application No 06-0037, 310 Kingsbury Drive & 319 Beach Drive Aptos APNs 043-081-11 & 12, 043-082-09 & 48 including the approval of said application, the permit(s) issued upon that approval, the environmental determination certified in connection with said application (and the NOE issued thereupon), and all other acts and determinations identified in this NOTICE OF APPEAL. Appellants further APPEAL, the actions of the County and its agents on any related applications and permits including any permits issued or approved explicitly or implicitly by foregoing acts and determinations and including the permit issued pursuant to Application 06-0037, Emergency Coastal Development Permit No 06-0535 issued 10-2-06, building permit 145400 issued 10-11-06; and any permit obtained or action taken by the

owners of **310 Kingsbury Drive** that would interfere with the jurisdiction or discretion of the Planning Commission in this matter.

Appellants are each persons whose interests are adversely affected by the acts and determinations of the Zoning Administrator **as** described and stated herein. This APPEAL is made on all the grounds and bases set forth in this NOTICE OF APPEAL and on such grounds and bases as are provided by law and as are supported by the record in this matter and as may be provided in any supplemental or amendatory materials submitted with regard to this matter by appellants. This APPEAL and NOTICE OF APPEAL shall be based on this NOTICE OF APPEAL,, on all the files of the Planning Department related to this matter, and on such supplemental, amendatory, and other evidence, both oral and documentary, as may be submitted to the Planning Commission prior to or at the hearing on this APPEAL.

NOTICE of said APPEAL is hereby given to the persons and entities to whom this appeal letter and NOTICE OF APPEAL is addressed

TABLE OF CONTENTS

NOTICE OF APPEAL .....	Page 1
I. EXECUTIVE SUMMARY AND STATEMENT OF FACTS .....	3
II. STANDING .....	<b>19</b>
III. STATEMENT OF GROUNDS FOR APPEAL AND ACTIONS REQUESTED ...	20
IV. REQUEST TO AMEND NOTICE OF APPEAL .....	<b>39</b>
V. CONCLUSION .....	40
<b>ATTACHMENTS</b>	
*December 15, 2006 letter and attachments from Barney Elders to County of Santa Cruz	
*letter 14 January 1986 from Rogers E. Johnson & Associates Consulting Engineering Geologists <i>regarding 310 Kingsbury Drive</i>	
•letter dated March 1, 2006 from Randall Adams to Richard Andre et al that <i>describes the project as a "proposed retaining wall repair and revegetation"</i>	
*letter dated September 19, 2006 from Rogers E. Johnson & Associates Consulting Engineering Geologists to Richard and Ramona Andre	
'letter dated 25 May 2006 from Haro Kasunich Consulting Geotechnical & Coastal Engineers to Dick Andre <i>describing the nature of the work on the retaining wall at 310 Kingsbury</i>	
'letter dated January 11, 2007 from Rogers E. Johnson & Associates Consulting Engineering Geologists to Richard and Ramona Andre <i>describing the retaining wall work as a "renovation" and predicting bluff failure regardless of the retaining wall</i>	
*letter dated January 17, 2007 from Ifland Engineers to Dick Andre <i>stating that Andre refused to comply with the proposed design of the project by refusing to use pressure treated wood and predicting future failure of the entire structure</i>	
*letter from downhill neighbor Harrett W. Mannina Jr., Attorney, dated April 13, 2006 to Richard and Ramona Andre <i>observing that the proposed erosion plan is a "bandaid" fix for a more serious problem and asking why the Andres have failed to take necessary erosion control steps for over 5 years</i>	

\*Staff Report re Application Number 06-0037 regarding the 2/2/07 Zoning Administrator hearing

## I EXECUTIVE SUMMARY & STATEMENT OF FACTS

The record in this matter will show the following

Richard and Ramona Andre own 3 parcels situated on the edge of the Rio del Mar bluffs on Kingsbury Drive immediately south of the "Rio del Mar flats" The following map, FIGURE 1, indicates the location with a star ★

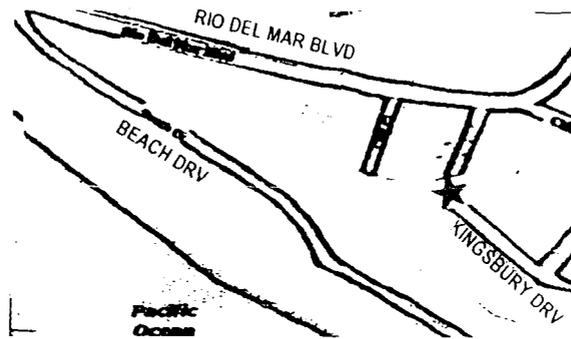


FIGURE 1

The Andres' 3 parcels on Kingsbury Drive may be referred to as Parcels 11, 12 and 48. The Andres' home is on Parcel 11. Parcels 12 and 48 are un-buildable and unimproved lots between Kingsbury Drive and the edge of the bluff. These parcels are zoned "Park" and are considered "Urban Open Space" under the General Plan. All the parcels are within the coastal zone. There is a **retaining wall** along a portion of parcels 12 and 48 which was installed about 1980 to protect the Andres house and garage. **As** long ago as 1986, a report in the Planning file from Rogers E. Johnson & Associates, Consulting Engineering Geologists, described the **retaining wall** as failing; and as a "serious condition requiring immediate attention" that "might provoke landsliding which could threaten houses, property, or human life below". A diagram of the parcels showing the approximate location of the **retaining wall**, follows at FIGURE 2

This repair of this retaining wall was the work applied for in early 2006 before geotechnical and erosion control studies expanded the scope of this project.

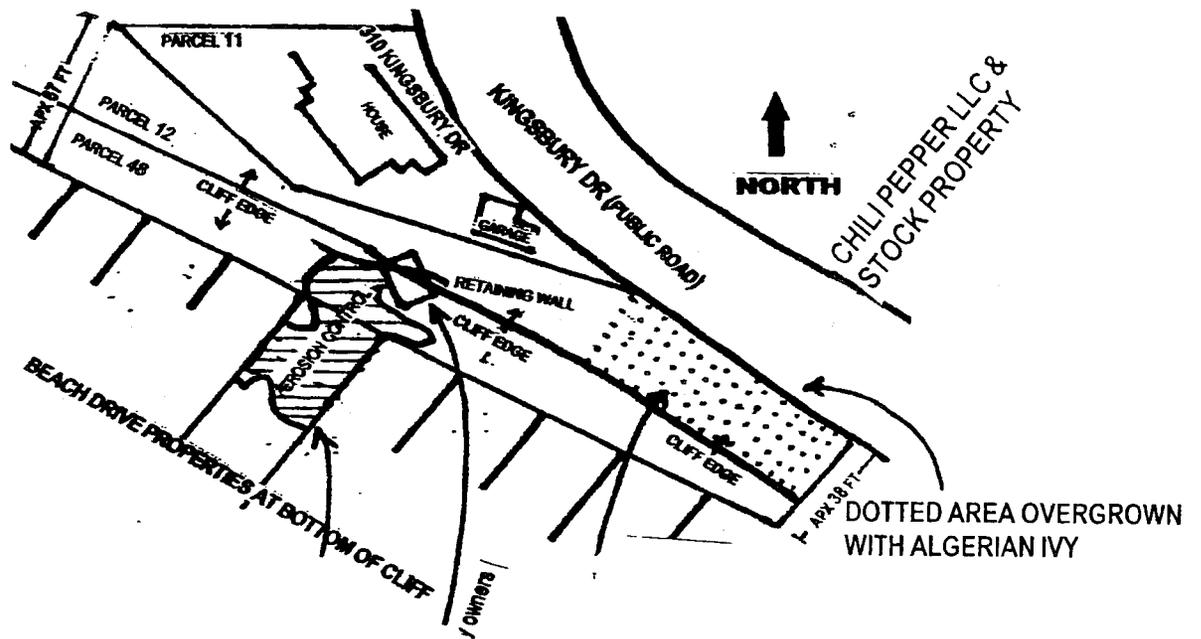


FIGURE 2



The bluff in this area is extremely steep and unstable. A diagram of the bluff appears at FIGURE 3, below. The retaining wall is shown at the top of this diagram.

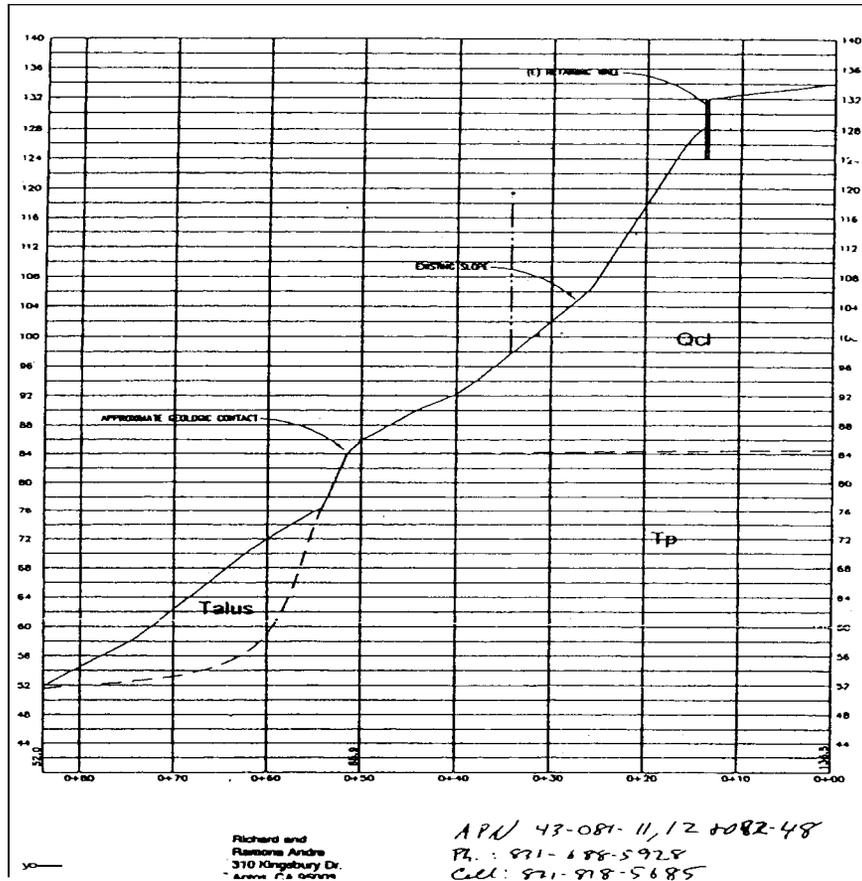


FIGURE 3

FIGURE 4 is a photograph of the Andres' house taken from Beach Drive below; and showing a portion of a retaining wall in front of their house:



**FIGURE 4**

Despite the serious nature of the failing retaining wall since 1986, the Andres did nothing to repair it until 2006, over 20 years after they knew the condition threatened their neighbors. In the meantime the Andres were investigated for several unrelated building code violations by the County as set forth in the attachments to appellants' December 15, 2006 letter to the Planning Department attached hereto and incorporated herein by reference.

Up until several years ago, the vegetation on parcel 12, including within the "dotted area" shown in figure 2, had been kept maintained by the Andres by periodic trimming; and a part of it in the "dotted area" was even landscaped in a parklike setting with low ground cover and a park bench,

much as a portion on the parcel to the south is trimmed to this day. As long as parcel 12 was maintained, it offered spectacular ocean vistas to the public and was enjoyed by various members of the public such as walkers, joggers, and sightseers. See FIGURE 5.

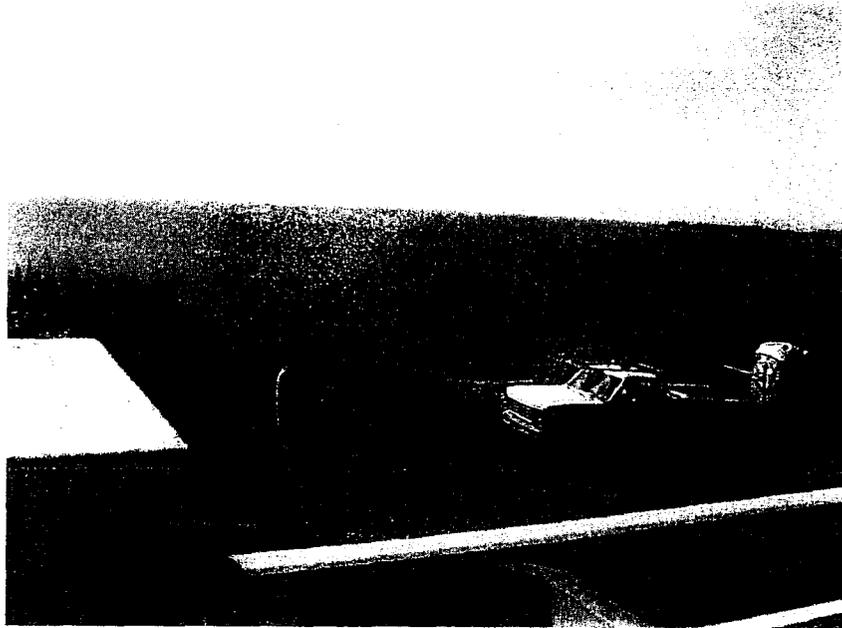


FIGURE 5

However, within the last few years the Andres began to believe, without justification, that people were trespassing on parcel 12 and damaging the weeds and other vegetation that grow on that parcel. **As** a result of their paranoia they let the vegetation on Parcel 12 grow wild to block entry to the parcel: to the point where Parcel 12 is now so overgrown the vegetation on it blocks all previously open scenic ocean vistas from Kingsbury Drive (although reference is made to "Parcel 12" in this Notice of Appeal where major landscaping problems exist, reference to "Parcel 12" in that context should be considered to apply to anywhere within the Kingsbury Drive right of way or within the 20 foot front setback of the property owned by the Andres adjacent to Kingsbury Drive, since the landscaping problems discussed in this Notice of Appeal

affect all such property) The Andres also put up *unpermitted* crude handmade signs complaining, for instance, about "tree killers" which signs blight the landscape, and the Andres installed an *unpermitted* birdhouse with a disguised surveillance camera and floodlights on top of their detached garage to surveill appellant STOCK who they thought was the "tree killer" The "birdhouse" is unattractive and interferes with coastal vistas, and the floodlights illuminate a public right of **way** and neighbors homes at night See FIGURE 6, on the next page, that illustrates these problems.

47

48



PHOTO-BIRDHOUSE & FLOODLIG...



PHOTO-SIGNS & WEEDS ON LOT



PHOTO-SIGNS6.jpg

**FIGURE 6**

In 2006 the Andres applied to repair a portion of their failing **retaining wall** in the area shown on figure 2. In connection with the repair application, the Andres were required to obtain a Coastal Development Permit; a Geologic Report; and a Geotechnical Report. An Erosion Control Plan was also required. **As** a result of the Erosion Control Plan the project was expanded to include "revegetation" to require the planting of erosion control landscaping (ground cover- *kikuyu grass*) The "revegetation plan" involved parcels 11, 12, and **48**, as well 3 downhill neighbors. See March 1, 2006 from Planner Randall Adams to Richard Andre. The geotechnical reports in the Planning Department file make it clear that the erosion and slide problems addressed by the **retaining wall** work is not limited to the small area of the retaining wall that the Andres sought to "repair" but that erosion and slide potential affects the entire 300 feet of bluff that they own, posing an imminent threat of slides, including the likelihood of undermining the Kingsbury Drive right of way. The project also requires work on the drainage system (Planner Adams stated in his oral staff report at the Zoning Administrator hearing "sounds like there'll be some repair of some of the drainage system on the site as well"):

Thus

1. The "repair" project expanded considerably in scope in the course of the project to include re-vegetation, landscaping, an erosion control plan, and repair of the drainage system' (the "repair" to the **retaining wall** is actually a repair to a part of the Andres' residence: Planner Adams, in his oral staff report, made it clear that the retaining wall was part of the residence-"this is to **repair** a portion of an existing retaining wall below an existing residence"). Moreover, the retaining wall

---

<sup>1</sup> **An EROSION CONTROL PLAN** involving re-vegetation, landscaping and drainage improvements is an integral part of this project: County Code 16.22.060(a) provides: Prior to issuance of a building permit, development permit or land division, an erosion control plan indicating proposed methods for the control of runoff, erosion, and sediment movement shall be submitted and approved. Erosion control plans may also be required by the Planning Director for other types of applications where erosion *can* reasonably be expected **to occur**. The erosion control plan may be incorporated into other required plans, provided it is identified **as** such Erosion control plans shall include, as a minimum, the ~~measures~~ required under Sections 16.22.070, 16.22.080, 16.22.090, and 16.22.100 of this chapter

was so deteriorated that the work on it is more in the nature of **replacement** than a **repair** (Rogers E. Johnson Consulting Geologist called it, in his September 19, 2006 letter, a "**renovation**");

2 The "project", **in this expanded form**, affects ALL of the Andres' parcels<sup>2</sup> (project originally involved 6 parcels but two neighbors were later eliminated from the plan...however this illustrates the scope of the problem in this area of Kingsbury Drive);

3. Due to the expanded scope of the "project", the permits for the project should rightfully have been **CONDITIONED** on addressing all issues of public interest, including safety, health and welfare; including unpermitted improvements (birdhouse, lights, signs, the "hedge" created by growing the vegetation next to the Kingsbury right of way), including blockage of public scenic vistas by the weeds on Parcel 12, including by the eradication of the invasive and non-native plants on Parcel 12; including improving slope stability along the entire 300 foot blufftop owned by the Andres, and protection of the public right of way at Kingsbury Drive from being undermined; including preventing the floodlights installed by the Andres from shining in drivers' eyes at night on Kingsbury Drive; and including trimming the vegetation on Parcel 12 to 3 feet in height or less to prevent a visual obstruction in the nature of a hedge that interferes with scenic vistas and drivers negotiating the road.

4. Given the broad scope of the project, it was, by definition, not a mere **repair** but a "**NEW DEVELOPMENT**" as defined by the Code Under the General Plan a "**development**" is the placement of any solid material (the renovation of the retaining wall); "**development activity**" is "an addition of any size to a structure" (which would have been inevitable given the scope of

---

<sup>2</sup> Planner **Adams**, in his oral report at the Zoning **Administrator hearing** stated: ""This application is **located** on an approximately 27744 square foot property **in 3 parcels**." **These parcels were ordered combined as a condition of the permit approval.** The fact that an improvement was on the **same property** was **significant** to Planner **Adams** with regard to the birdhouse improvement "With regard to ~~the~~ lights and camera and other improvements on the existing residence this is a **coastal permit** although its not associated with the retaining wall it's on the same subject property"

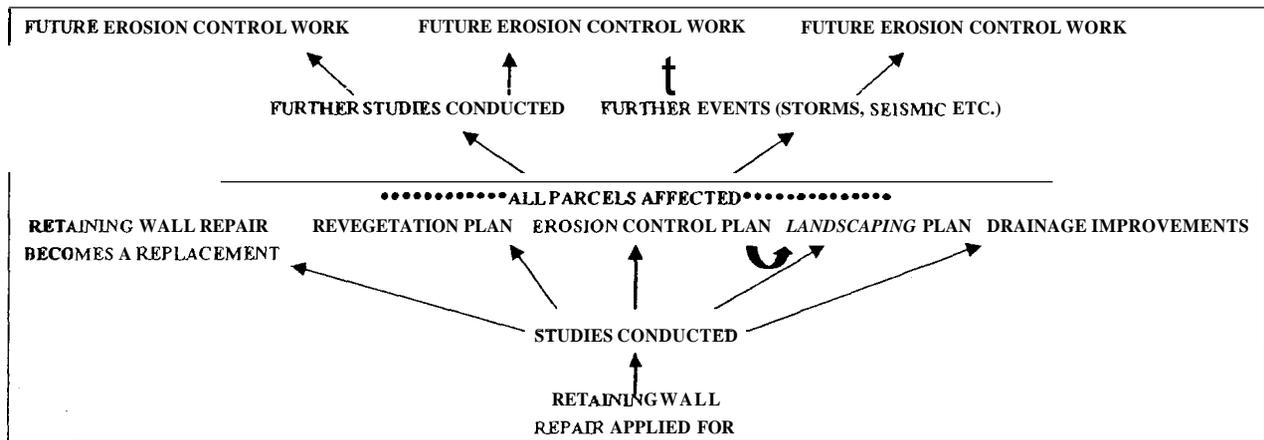
work to the retaining wall using the literal meaning of "any" and a "structure" is defined as a "retaining wall"), "development activity" also is defined as "retaining walls which require a building permit" (which is the case here), and "new development" is "any *development activity [retaining wall]* [that involves] improvement of any structure [retaining wall] in excess of fifty percent of the existing structure's [retaining wall's] fair market value" In this case, even though Planning failed to present information about the cost of the improvements to the retaining wall and associated work, it is clear that a 25 year old failing retaining wall has \$0 fair market value so that ANY work would be in excess of fifty percent of fair market value (note the permits here cost in excess of \$1 0,000) Therefore the retaining wall repair is "new development" The fact that the retaining wall project and associated work is "new development" within the Coastal Zone triggers a number of Local Coastal Plan provisions including LCP 5.10.6 that requires public ocean vistas to be retained *to the maximum extent possible* as a condition of a Coastal Development Permit; and LCP 5.10.9 that requires *restoration* of visually blighted conditions as a condition of a Coastal Development Permit;

5. Next, the project is cumulative in nature. A September 19, 2006 letter from Rogers E. Johnson & Associates Consulting Engineering Geologists, and many other items in the record, make it clear that the repair of the retaining wall under Application 06-0037 is but the first of a long and on-going series of repairs and work related to bluff instability, landslides and subsidence that will be required in the future for the Andres' property. The letter states:

As requested by Joe Hanna, County Geologist we are providing the following comments The proposed renovation of a 33 foot long segment of bluff top retaining wall will improve the stability of this segment of the bluff top *but it will not prevent future bluff failures* at the site *The upper 30 feet of the bluff... will continue to fail* until it reaches its natural angle of repose *We estimate the bluff top will ultimately recede an additional 20 to 30 feet* before the bluff stabilizes at its natural angle of repose

This means that the REAL "project" is the EXISTING repair and ALL the foreseeable **work** in the future

6. Perhaps, most importantly, in considering the *real* "project" **is**, the Planning Commission must consider not only the entire plan for the entire property **AS APPROVED**. but **must** also consider what the plan does NOT INCLUDE but which SHOULD have been included under law, by public policy, and by the reasonable exercise of discretion to protect public rights, life, health and safety Only when all items that were included or SHOULD HAVE BEEN INCLUDED in the project have been considered can the true nature, scope and definition of the "project" be understood. The Andres have tried to hide behind the device of calling the "project" just the *repair of a retaining wall*. But this is like saying getting in your car to go somewhere **is a trip**. In fact, the act of getting in the car is just the start of your **trip**: just as the repair of the retaining wall is just the start and a small piece of this *project*. The Andres project actually expanded in scope since the initial application for a "retaining wall repair" in early 2006 in the following manner illustrated by FIGURE 7.



**FIGURE 7: HOW THE ANDRES "PROJECT" EXPANDED**

The description of a "project" for some purposes, especially for CEQA, must take into account future work as well as ALL of the work that is immediately required.

Therefore, although the retaining wall, re-vegetation, landscaping, erosion control plan and drainage project continued to be *called* a "repair" of a retaining wall in the Planning Department files, it is a elementary principle of law, including under CEQA, that the scope and description of a project is not judged by the mere label applied to it: but that a project must be defined "the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment..."", Orinda Assn. v. Board of Supervisors (1986) 182 Cal.App.3d 1145, 1171, CEQA Guidelines Section 15378.

The significance of the *true scope* of a "project" being much broader than as described in an application or project description is, among other things: 1) it determines what planning rules should apply to the project whether General Plan, Local Coastal Plan, or Code provisions...a broader project invokes more rules and more comprehensive rules; 2) it influences the types of conditions that should be attached to a permit involving the project both in terms of the type of conditions (in response to the actual range of issues or problems related to the "project") and the area of the property that should be considered for such conditions; and 3) it is a critical factor under CEQA in determining what type of environmental review to conduct since a broader "project" will involve more environmental impacts and require more mitigations. So it is important to look beyond the mere label that describes a project and consider what the project really involves. This should be kept in mind while evaluating this appeal.

Apparently recognizing the complexity of the issues involved in this project, the County Planner in this matter, Randall Adams, to his credit, while not addressing all issues urged by the attached

December 15, 2006 letter, did attempt to address some of the issues such as the viewshed, birdhouse/surveillance camera/floodlights, and the "sign circus" by proposing the following conditions in the Staff Report as follows:

**\*VIEW**

\*page 8, condition II-B-2-a required: Landscape plans that identify the plant materials used to provide erosion control on the coastal bluff. a. Notes which clearly indicate that vegetation will be maintained to not exceed 3 feet in height, as measured from the elevation of Kingsbury Drive, within the required 20 foot front yard setback or within the Kingsbury Drive right of way.

\*page 9 condition IIIB required: All vegetation within the required 20 foot front yard setback along the property frontage or within the Kingsbury Drive right of way must be removed, or trimmed to remain 3 feet (or less) in height, within these areas.

\*page 10-condition IVA required: No vegetation in excess of 3 feet in height is allowed within the required 20 foot front yard setback or within the Kingsbury Drive right of way. Vegetation must be maintained to remain 3 feet (or less) in height within these areas.

\*The "trimming" of the vegetation was cited by the Staff Report as a fundamental basis for the following critical and required finding:

**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 [t]he vegetation on the subject property will be maintained at no higher than 3 feet in height, as measured from the level of Kingsbury Drive, in order to comply with the requirements of County Code section 13 10 525 et seq

**\*BIRDHOUSE, SURVEILLANCE CAMERA & LIGHTS**

\*page 8 condition IC required Provide evidence of legal construction or remove all structural alterations and rooftop floodlights that were installed on the existing structures

page 9 condition IID required. If evidence of legal construction has not been provided, all structural alterations and rooftop floodlights installed on the existing structures must be removed

\*page 10 condition IVC required All lighting the subject property must be shielded and directed downward onto the subject property Lights which are not shielded or that are directed to illuminate areas outside of the subject property are not allowed

**\*SIGNS**

\*page 9 condition IIIC required: All signs must be removed from the Kingsbury Drive right of way and the subject property, other than what is specifically allowed in County Code section 13 10.580 et. seq.

\*page 10 condition IVB required: No signage is allowed within the Kingsbury Drive right of way. No signage is allowed on the subject property within public view, other than what is specifically allowed in County Code section 13.10.580 et. seq.

The matter went to hearing before the Zoning Administrator on February 2, 2007. Present and testifying at the hearing were the Andres, their consultant Kim Tschantz, and appellants represented by the undersigned. At the hearing Planner Randall Adams presented his Staff Report and made the following comments:

1. BIRDHOUSE/SURVEILLANCE CAMERA/FLOODLIGHTS:

\*ZA: so do you want the birdhouse structure removed? is that what you're...

\*ADAMS: or considered under another, you know, if they wanted to; you know, we had no plans submitted for the birdhouse; its an alteration to a structure that's visible from down below and this was a coastal development application

\*ADAMS: I would suggest there are also better ways to camouflage a camera that don't need to be that structural

\*ZA: so you're recommending that they delete the birdhouse structure

\*ADAMS: remove it, correct....

[further dialogue]

\*ADAMS: ...both of those can just be added in to say 'remove birdhouse structure from attached garage'

\*ZA: **ok**

2. VIEW: Mr. Adams indicated that based on input from the County Geologist that he would delete all conditions related to trimming the vegetation. This was done without any prior notice to appellants even though it was apparently known some days earlier that the "vegetation conditions" would be eliminated. Mr. Adams stated at the hearing:

"it seemed that the vegetation along the roadway was over 3 feet in height. We do have policies involving fences and hedges along roadways and within front yard setbacks. And staff had originally recommended to maintain that vegetation no higher than 3 feet in height relative to the roadway. However, since this time the County Geologist has by...I discussed this with the County Geologist...Geologist is **not** in agreement with the staff's original recommendation and...and states that we should retain that vegetation to avoid, um, potential destabilization of the slope. With that staff recommends striking some conditions. . ."

Before opening the public hearing, the Zoning Administrator then called the County Geologist, Joe Hanna, to testify. The following comments ensued:

\*ZA: "OK. I'd just like to talk to the County Geologist real quick. So you can get outta here. If I understand correctly, Joe, the...your position is that it would be good to **retain**

that vegetation...and if they *do* want to do a re-veg or a landscape plan that it be *phased* and that you have some review...and the geotechnical engineer...have some review of that plan?"

**'HANNA:** "Correct. The idea of just cutting down vegetation on the top of a bluff will change the equilibrium of the site and cause problems. The hope would be that with a phased landscape plan or a plan that would change over time that the result would be less of an impact than an actual just coming and just trimming all the material down to 3 feet. The assumption would be that the new plan would...would select some of the species that are already there; retain those; eliminate some of the others; and...and as a result substitute new vegetation in the place of those that are removed. And the combination that would result no change in the amount of ah...infiltration at top of the bluff and, also hope...hopefully not cause any additional problems."

\*ZA: OK. All right. Thank you. OK this is the public hearing..."

This testimony was taken at the last minute without allowing appellants any opportunity to present other expert testimony. At the public hearing it was argued by appellants (as it had been in the December 15, 2006 letter) that trimming was not the same as "cutting down vegetation"; that the adjacent property had vegetation trimmed down to the ground without any "infiltration" problems; that re-vegetation should be ordered as a condition of the permit approval; that elimination of ANY "vegetation condition" would perpetrate the blockage of public scenic vistas and continue to violate other public rights and interests (see discussion at part III STATEMENT OF **FOUNDATIONS** FOR APPEAL AND **ACTIONS** REQUESTED, below) and was not necessary; and that a re-vegetation condition, much like that actually suggested by the County Geologist, could be ordered as a condition to the permit that would protect all relevant public interests. Notwithstanding there was no attempt the Zoning Administrator to fashion a reasonable compromise and the permit was approved (and the environmental determination approved) without including any vegetation condition; and without addressing any of a host of other public interest concerns raised in the December 15, 2006 letter.

Later, Mr. Hanna called the undersigned and stated the following.

"there are some trees that are goin' to probably come out as a result of the natural landscaping plan ultimately but, ah, we just don't wanna uniformly cut it to a certain

depth [??] it's just not. .it's not wise to do that...the acacias maybe should go...we may choose some other stuff to reduce its height and substitute some other things in there....its possible since there is sort of an adaptive landscaping that will probably be done over the next 60 days...that, ah, you know, and we should let them grow in there and let them get strong and then remove some of the others..."

Subsequent to the hearing the following tentative information came to light from an erosion control expert retained by appellants:

There are basically two plant species present. In the background are Acacia (either baileyana, melanoxlyn, or longiflora) a tree, and the foreground undulating mass is Algerian Ivy (Hedera canariensis) a GROUND COVER....[which is] is usually less than 3 feet tall....Algerian Ivy is extremely difficult to kill, even with herbicides. Mere pruning will not phase it. It must be grubbed out by tractor or hand tools, and return treatment is needed. Presently, the local Conservation District is removing ivy from the banks of Soquel Creek. The two plants are on most non-native invasive plant lists that are known for displacing the desirable native plants....Algerian Ivy is either strongly recommended against planting or can not be planted in LA [and Santa Clara] County because it is habitat for rats. It is ironic that in many of the beach bluff revegetation projects that have permitting requirements, the County has required that not only [that] native plants be installed, but the seed sources must be collected with the same ecotype as the proposed planting. It would seem that for this project, it would be an ideal opportunity for the County to promote native vegetation, or at least restrict or limit the propagation of invasive exotic plants. The area...is on a gently sloping bench above the beach bluff...cutting ~~the~~ ivy to 3 feet has a negligible effect on erosion, in fact, it may encourage horizontal growth...[and] much more appropriate planting should be installed.

This information and a further investigation and report is being pursued to be presented to the Planning Commission but has not been completed due to lack of available time before the appeals deadline expires. Appellants request that the Planning Commission consider and allow such additional reports and information as part of the hearing and determination of this appeal.

Also, since the Zoning Administrator hearing appellant STOCK has attempted to negotiate with the Andres, offering to help design an adaptive landscape plan to get rid of the Algerian Ivy and replace it, over time, with low growing erosion control plants; and offering to help

implement that plan as needed. The Andres have not responded to her efforts to help resolve this problem.

The issues raised in this matter by appellants, and additional facts supporting appellants grounds, are summarized by category in part III STATEMENT OF GROUNDS FOR APPEAL AND ACTIONS REQUESTED

## II STANDING

Santa Cruz County Code (hereinafter "County Code") **18 10 330(a)** provides that "any person *whose interests are adversely affected* by any act or determination of the zoning administrator under this chapter may appeal such act or determination to the Planning Commission<sup>3</sup>. Appeals from any action of the zoning administrator shall be taken by filing a written notice of appeal with the Planning Department not later than the fourteenth calendar day after the day on which the act or determination appealed from was made."<sup>4</sup>

Appellants CHILI PEPPER LLC and LESA STOCK are members of the public and the owner and occupant of 317 Kingsbury Drive, Aptos, CA across the street from Parcel 12 and whose interests are affected by each issue listed in Part III STATEMENT OF GROUNDS FOR APPEAL AND ACTIONS REQUESTED and otherwise in this Notice of Appeal including the fact that the view from 317 Kingsbury is blocked by the overgrowth on Parcel 12, appellant STOCK is affected by the rats that have been attracted to the overgrown Algerian Ivy and are invading the neighborhood; and she is very allergic to the mass of Algerian Ivy growing there. KINGSBURY NEIGHBORS is an association whose

---

<sup>3</sup> County Code 18 10 330(b) provides that "development approval may be appealed pursuant to sections **18 10 320 through 18 10 360**"

<sup>4</sup> County Code 18 10 310(d) provides that "[t]he time within which the notice of appeal shall be filed shall commence on the day following the day on which the act was taken or the determination was made. In the event the last day for filing an appeal falls on a non-business day of the County, the appeal may be timely filed on the next business day."

members are members of the public and owners of real property in the vicinity of Parcel 12 and are similarly affected.

BARNEY ELDERS is a member of the public whose interests are affected by all violations of public rights listed in this Notice of Appeal, and is attorney for CHILI PEPPER LLC, LESA STOCK and KINGSBURY NEIGHBORS

Each appellant files this Notice of Appeal directly or through counsel

### III STATEMENT OF GROUNDS FOR APPEAL AND ACTIONS REQUESTED

County Code 18 10 310(c) provides that the appellant shall state the following matters in a Notice Of Appeal Appellants submit the following in compliance with such requirements

A THE IDENTITY OF THE APPELLANT AND HIS INTEREST IN THE MATTER see part II, above, "STANDING"

B THE ACT OR DETERMINATION APPEALED FROM The acts and determinations appealed from are as follows<sup>5</sup>

- 1 The approval of application 06-0037<sup>6</sup>;
2. The approval of application 06-0037 without the "vegetation" conditions originally recommended by staff (II-B-2-a, IIIB and IVA in the original Staff Report and set forth ai page 10, above, under the heading VIEW) and by failing to order a substitute "re-vegetation condition";

---

<sup>5</sup> The actual ruling by the Zoning Administrator was: "Based on the findings modified by the Zoning Administrator, the conditions of approval as modified by staff and the zoning administrator, I'm going to approve this project and certify the environmental determination". The Zoning Administrator later signed the permit.

<sup>6</sup> Described by the Zoning Administrator as: "Item 4 is Application 06-0037 located at 310 Kingsbury Drive in Aptos and 319 Beach Drive in Aptos Parcel Number 043-081-11 and 12 and 043-082-09 & 043-082-48. Proposal to repair an existing retaining wall at coastal bluff. Requires a coastal development permit; geologic and geotechnical report reviews. Property located at south side of Kingsbury Drive about 200 feet west of the intersection of Florence Drive at 310 Kingsbury. The owner is Andre. The applicant is Kim Tschantz. The project manager is Randall Adams....This is in response to an emergency coastal permit that already has been issued and exercised."

- 3 The modifications of the "vegetation" conditions for application 06-0037 originally recommended by staff (by removing conditions II-B-2-a, IIIB and JVA) and by failing to order a substitute "re-vegetation condition";
4. The omission of an explicit condition requiring the birdhouse and surveillance camera to be removed;
5. The certification of the environmental determination; and
6. Any permits issued or approved explicitly or implicitly by foregoing acts and determinations including the permit issued pursuant to Application 06-0037, Emergency Coastal Development Permit No. 06-0535 issued 10-2-06; building permit 145400 issued 10-11-06; and any permit obtained or action taken by the owners of 310 Kingsbury Drive that would interfere with the jurisdiction or discretion of the Planning Commission in this matter.

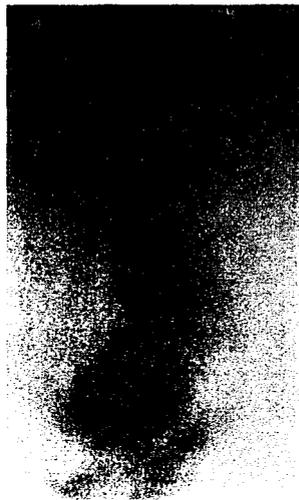
C. THE REASONS WHICH, IN THE OPINION OF THE APPELLANT, RENDER THE ACT DONE OR DETERMINATION MADE UNJUSTIFIED OR INAPPROPRIATE SUCH THAT THERE SHOULD BE AN ADDITIONAL HEARING ON THE APPLICATION INCLUDING ERROR; ABUSE OF DISCRETION; LACK OF A FAIR AND IMPARTIAL HEARING; OR THAT THE DECISION IS NOT SUPPORTED BY THE FACTS. (The grounds for appeal to the Board of Supervisors include the additional "grounds" of "significant new evidence" and a "*factor* which renders the act done or determination made unjustified or inappropriate")

This following discussion will include the reasons why a particular act or determination, including an omission, modification, approval, or finding, was unjustified or inappropriate; the bases on which the act or determination is considered unjustified or inappropriate including error, abuse of discretion, lack of a fair or impartial hearing, and/or lack of supporting facts, and what request is made by appellants relative thereto.

1 THE REMOVAL OF THE BIRDHOUSE AND SURVEILLANCE CAMERA SHOULD HAVE BEEN EXPLICITLY STATED IN THE CONDITIONS

The Andres built a "birdhouse" on top of a tall pole on top of their detached garage which is part of their residence; and put a surveillance camera in it that appears to be aimed at appellant

STOCK's home. The birdhouse and associated lights are shown at **FIGURE 4** at page **6** above; and at **FIGURE 6**, page **9**. At the Zoning Administrator hearing, the Andres and their representative both admitted on and off record that the birdhouse contains a surveillance camera that records 24/7 to a monitor in the Andres home. Mr. Andre would not agree to permit appellants to inspect the monitor to confirm that it was not pointed at appellant STOCK's home. In fact, based on a photograph taken head-on from appellant STOCK's second story deck to the birdhouse, the camera lens appears to be aimed directly into her home as shown at **FIGURE 8** on the next page.



**FIGURE 8**

At the Zoning Administrator hearing it was suggested that the condition concerning the birdhouse be changed from one which would require **removal of the birdhouse IF a permit was not produced** to a condition that **flatly required removal**. The following colloquy occurred:

\*ZA: so do you want the birdhouse structure removed? is that what you're.  
\*ADAMS: or considered under another, you know, if they wanted to; you know, we had no plans submitted for the birdhouse; its an alteration to a structure that's visible from down below and this was a coastal development application  
\*ADAMS: I would suggest there are also better ways to camouflage a camera that don't need to be that structural  
\*ZA: so you're recommending that they delete the birdhouse structure  
\*ADAMS: remove it, correct....  
[further dialogue]  
\*ADAMS: ...both of those [conditions] can just be added in to say 'remove birdhouse structure from attached garage'  
\*ZA: ok

The condition, as included in the permit, did NOT explicitly require removal (they state "*C Provide-evidence of legal construction or remove all structural alterations (birdhouse structure on top of garage) and rooftop floodlights that were installed on the existing structures. (Amended at ZA 2/2/07)*") and "D. *If evidence of legal construction has not been provided, all structural alterations and rooftop floodlights installed on the existing structures must be removed.*")

Given the Andres history of defying the County on code compliance matters, their long delays in repairing their retaining wall notwithstanding **the** clear danger to life and **property** to neighbors from its failed condition, and their willingness to harass their neighbors, this "birdhouse" condition should leave no room for interpretation or noncompliance. Mr. Adams is correct: the birdhouse, camera and floodlights should be ordered REMOVED. Period

Appellants contend that the conditions, as approved by the Zoning Administrator, do not reflect the oral determination at the hearing that the birdhouse should be removed and are therefore inappropriate and in error; that the birdhouse and floodlights create an improper visual impact in a scenic and coastal view area<sup>7</sup> and for those reasons should be removed (it should be noted that

---

<sup>7</sup> **At** the Zoning Administrator **hearing** Planner Adams characterized the area **as** scenic and said ""Also improvements on top of this residence **since it is the scenic area** that can be viewed from below....". He also stated ""This is a scenic area but the scenic area is determined to be as viewed from the public areas below the beach" (appellants disagree with the assertion that only views FROM beaches are protected since this **is** contradicted by the clear language of several provisions of the General Plan, LCP, and County Code). With regard to the **signs** he stated

the floodlights are not security lights such as many people have on their homes but are specifically installed to provide illumination for the surveillance system; and also shine into a public right of way and could be a hazard for motorists at night) and that it is error under the County Code and LCP **not** to order them removed; and that removal is a permit condition well within the County's discretion to impose for this permit. **Appellants request** that the condition be changed to provide as follows

"Birdhouse, pole, surveillance camera, floodlights, and related improvements on roof of garage shall be removed forthwith and no similar structures shall be erected on the property at any time This condition **does not** prevent owners from installing security motion sensor lights on the front of their house or garage if such lights are installed by permit and in compliance with all applicable law; and are shielded to prevent illumination of Kingsbury Drive and any other properties"

Other than this change to the "birdhouse" condition, both Planner Adams and the Zoning Administrator have indicated their faith in the wisdom of the conditions concerning removing the birdhouse, surveillance camera, floodlights and signs'; and appellants would concur with those actions

## 2. REQUIRED FINDINGS WERE NOT MADE:

a) County Code 13.20.110 requires that for a Coastal Development Permit the findings required for the issuance of a development permit in accordance with Chapter 1810 must be made These include those in County Code 1810230(a) as follows, which were not made in connection with approval of this application or issuance of the permit thereon

(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

---

"Also signs that do not comply with R-1-6 zone district requirements need to be removed. Typically one sign is allowed. . .The handwritten signs, the things **that may** not normally fit in a residential neighborhood. the staff doesn't feel are appropriate and probably should be removed"

<sup>8</sup> **It should be noted that the conditions still allow a no trespassing sign but the County sign ordinance 13.10.580 does not appear to allow even this.**

result in inefficient or wasteful use of energy, and will not be materially injurious to properties or improvements in the vicinity

(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

(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

(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

(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

b) County Code 13 01 130(a) provides "No discretionary land use project, public or private, shall be approved by the County unless it is **found** to be consistent with the adopted General Plan " No such specific finding was made in this matter.

c) The finding proposed in the Staff Report that was originally supported by the vegetation condition is no longer so supported and for that reason does not have a sufficient factual basis. The proposed finding and support for it were **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 [t]he vegetation on the subject property will be maintained at no higher than 3 feet in height, as measured from the level of Kingsbury Drive, in order to comply with the requirements of County Code section 13 10 525 et seq

This finding now stands on its own unsupported by sufficient other facts

Appellants contend that the failure to properly make these findings makes the acts and determination of the Zoning Administrator appealed herein illegal and void and the approval of the application and issuance of the permit thereon is therefore unjustified under law and inappropriate and in error. Appellants request that the no approval of the application be made unless, in addition to the other requests made in this Notice of Appeal, the foregoing findings are made and are demonstrated to be supported by facts in the record (if the Andres can do so)

3 THE VEGETATION WITHIN THE KINGSBURY RIGHT OF WAY AND WITHIN 20 FOOT FRONT SETBACK OF PARCELS 11 AND 12 SHOULD HAVE BEEN MADE SUBJECT TO A CONDITION THAT IT BE TRIMMED TO 3 FEET IN HEIGHT OR LESS, OR PREFERABLY RE-VEGETATED TO SUBSTITUTE NATIVE, LOW GROWING VEGETATION OF 3 FEET IN HEIGHT OR LESS

The vegetation on Parcel 12 completely blocks street level views of scenic ocean vistas to the public including appellants. These vistas were available to the public only a few short years ago. See FIGURE 6 at page 9 as compared to the view that would be possible if the vegetation were 3 feet high or lower at FIGURE 5, page 7. This is a scenic area enjoyed by many of the members of the public and also by appellants who can no longer enjoy the coastal views due to the actions of the Andres; and due to the fact that the "vegetation" conditions proposed by the Staff Report were stricken from the permit conditions inappropriately and without justification. Not including the "vegetation conditions" requiring the plants on Parcel 12 to be maintained 3 feet or less from the ground, either by trimming or revegetation; and allowing previous public views to be blocked (out of spite by the Andres) was unjustified and inappropriate particularly in view of the fact that the experts for the County and appellants agree that low growing, erosion-neutral landscaping can be easily implemented, and therefore the acts and determinations of the Zoning Administrator of approving the application and issuing the permit without such a condition violated the General Plan and Coastal Act and was an abuse of discretion; and is not supported by the facts in the record or adduced at the Zoning Administrator hearing.

Both the County Geologist and appellants expert, who will provide a more detailed report at the Planning Commission hearing, agree that the views could be restored with suitable erosion control landscaping that would be under 3 feet in height. Having the low growing vegetation would serve the additional purpose of allowing Parcel 12, which now cannot be inspected or monitored for erosion problems due to the overgrowth, to be monitored for slope stability and

factors that contribute to slope instability such as ponding and runoff. In the course of such monitoring appropriate stability measure could be taken such as additional retaining walls and drainage, that would protect neighbors on Beach Drive at the bottom of the bluff; and would prevent the undermining of Kingsbury Drive by the creep of erosion. Preventing slides onto Beach Drive has the additional benefit of preserving public access to the beach by means of Beach Drive that will otherwise be blocked by slides. Reducing the vegetation to a low height on Parcel 12 so access is possible to Parcel 12 and so the topography of the lot is visible is the *first step* in assessing erosion problems affecting Parcel 12, and trimming or re-vegetating the parcel to 3 feet in height or less actually helps that assessment and serves the purpose of protecting the public from erosion and slides.

In addition, the vegetation that the Andres have allowed to grow wild is made up primarily of **Algerian Ivy**. This plant is non-native, highly invasive, allergenic and a prime habitat for rats. Santa Clara County Vector Control and many other California counties have active eradication programs for Algerian Ivy because they are such magnets for rats. Santa Clara County has published a bulletin that states:

"Algerian Ivy (*Hedera canariensis*) is one of several plant species that harbor roof rats....Wherever possible these plants should be replaced with species that achieve the desirable effects of ground cover but will not contribute to the rat problem [Replacement plants] should...be low growing, not more than 10" in height; not be climbers; fruiting plants should not be used; plants should provide soil stabilization; plants should require a minimum of water; [and] once established plants should be properly maintained "

In this case, kikuyu grass, a low growing soil stabilizing plant, has been recommended in the erosion control plan for other areas. The overgrown ivy and acacia trees also have the potential in Summer to dry out and become a fire hazard.

In addition appellant STOCK is highly allergic to Algerian Ivy. When it was controlled on the site by the Andres this did not seem to be a problem. But since the Andres have let it grow wild and the mass has increased, Ms. STOCK gets sick from exposure to it. She has begged the Andres to control it for this reason among others. They have refused and seem to take pleasure in her distress.

The blockage of views and the inappropriate landscaping on Parcel 12 violate a wide range of laws and public policy, including the Local Coastal Plan. The following is a list of: 1. Other Grounds related to the vegetation on Parcel 12; and 2. A list of laws and public policy violated by the overgrown vegetation on Parcel 12. Appellants offer a proposed "vegetation condition" at the end of this part.

a. List Of Other Grounds Related To The Vegetation Problem

1) THE DEVELOPMENT WILL, AMONG OTHER THINGS, FAIL TO SATISFY THE CRITERIA IN COUNTY CODE 13.20.122 IN THAT IT WILL FAIL TO PROTECT PUBLIC VIEWS FROM A PUBLIC ROAD AND WILL NOT BE COMPATIBLE WITH THE ESTABLISHED PHYSICAL SCALE OF THE AREA. County Code 13.20.122 deals with grounds for appeal to the Coastal Commission. 13.20.122(4)(c)(2) provides that a ground for appeal to the Coastal Commission is that "The development will fail to protect **public views from any public road** or from a recreational area to and along the coast." Parcel 12 certainly provided a public view prior to the Andres allowing the vegetation to grow wild. The fact that the grounds for appeal include blocking views *from* public roads suggests that the Coastal Commission is not merely concerned with views *from* the beach. Although the "development" in its narrowest sense is the retaining wall, in a reasonable sense it is also anything that accompanies the retaining wall repair which, in this case, involves re-vegetation and landscaping; and also **any** reasonable conditions that should be imposed relating to the development. The "development" is anything within the discretion of the permitting agency to require. Also "development" under the General Plan includes "change in the density or intensity of use of land" and "refection of solid material" which could arguably include the unrestrained growth of previously maintained landscaping.

2) SUFFICIENT FINDINGS HAVE NOT BEEN MADE TO SUPPORT THE FINDINGS REQUIRED BY COUNTY CODE 13 20 110 INCLUDING BECAUSE THE PROJECT IS NOT CONSISTENT WITH THE DESIGN CRITERIA AND SPECIAL USE STANDARDS PURSUANT TO SECTION 13 20 130 ET SEQ INCLUDING 13 20 130(B), 13 20 130(D), AND 13 20 130(C)(2) These provisions of the County Code require the following

- \*13 20 130(b)1 All new development shall be landscaped to be visually compatible and integrated with the character of the surrounding neighborhoods
- \*13 20 130(b)4 new or replacement vegetation shall be compatible with the surrounding vegetation and to the climate, soil, and ecological characteristics of the area

\* 13 20 130(d) Beach Viewsheds The following Design Criteria shall apply to all projects located on bluffs and visible from beaches

1 In urban areas of the viewshed, site development shall conform to (c) 2 and 3

\* 13 20 130(c)(2) Site Planning Development shall be sited and designed to fit the physical setting carefully Screening and landscaping suitable to the site shall be used

3) THE APPROVALS BY THE ZONING ADMINISTRATOR AND PERMIT AS ISSUED AND CONDITIONED, WITHOUT THE ADDITIONAL CONDITIONS, MITIGATIONS AND COMPLIANCES REQUESTED BY APPELLANTS DOES NOT CONFORM TO THE STANDARDS SET FORTH IN THE CERTIFIED COUNTY OF SANTA CRUZ LOCAL COASTAL PLAN OR TO THE PUBLIC ACCESS POLICIES OF THE COASTAL ACT See below for an explanation of this ground

4) APPELLANTS DID NOT RECEIVE A FAIR OR IMPARTIAL HEARING IN THAT THE DECISION TO ELIMINATE THE "VEGETATION" CONDITION WAS KNOWN BY PLANNING BUT NOT DISCLOSED TO APPELLANTS UNTIL THE TIME OF THE HEARING DESPITE PRIOR REQUESTS AND ASSURANCES THAT SIGNIFICANT NEW INFORMATION WOULD BE PROVIDED. THE ZONING ADMINISTRATOR DID NOT GIVE APPELLANTS AN OPPORTUNITY TO REBUT THE TESTIMONY OF THE COUNTY GEOLOGIST WITH OTHER EXPERT TESTIMONY BECAUSE THE INPUT OF THE COUNTY GEOLOGIST REGARDING THE VEGETATION CONDITION, WHILE ANTICIPATED BY STAFF AND ZONING ADMINISTRATOR WAS NOT MADE KNOWN TO APPELLANTS See page 13 above for the factual basis for this ground Mr Bussey dismissed appellants concerns as a "neighbor squabble" and was not prepared to even consider that there were any legitimate public issues involved in the matter regarding views of landscaping Appellants never asked for the County to enforce any private rights and it is irrelevant that the enforcement of public rights might have some private benefit to them After all, appellants are members of the public trust

e) IT WAS AN ABUSE OF DISCRETION BY THE ZONING ADMINISTRATOR TO NOT QUERY THE ANDRES ABOUT THE COST OF THEIR RETAINING WALL, LANDSCAPING, AND DRAINAGE WORK, INCLUDING THE FEES CHARGED BY ROGERS JOHNSON, HARO KASUNICH, KENDALL CONTRACTORS, IFLAND ENGINEERS AND JOHN DAVID (Erosion Control Plan), AND KIM TSCHANTZ, TO ALLOW A DETERMINATION TO BE MADE WHETHER THE COST OF THE PROJECT WAS IN EXCESS OF 50% OF THE FAIR MARKET VALUE OF THE STRUCTURE AND WAS THEREFORE "NEW DEVELOPMENT" SUBJECT TO THE LCP VIEW CRITERIA IN THE GENERAL PLAN FOR "NEW DEVELOPMENT" See discussion at page 9 above regarding the significance of characterizing the retaining wall repair as "new development" Briefly, if the cost of the repair (probably in excess of \$50,000) exceeds 50% of the fair market value of the retaining wall (\$0 in 2006) the development is considered "new development" and requires public Ocean vistas to be retained *to the maximum extent possible* (General Plan and LCP 5 10 6), and requires *restoration* of visually blighted conditions (General Plan and LCP 5 10 9) Since the "project" involves all parcels and landscaping, and Parcel 12 once had wonderful public Ocean vistas that have been blocked intentionally by the Andres in allowing noxious Algerian Ivy to grow wild, it is logical and reasonable to require a condition that this situation be addressed as part of this project

b. List of Laws And Public Policy Affected By the Vegetation Condition Grouped By Subject

The following lists other requirements of law and public policy considerations that require the Algerian Ivy to be trimmed or replaced by low growing groundcover as a condition of this approving this application and of the resulting permit

1) Trimming or revegetation with low growing plants is required by ordinance

13 10 525(c)2 provides "no hedge shall exceed three feet in height if located in a front yard or other yard abutting a street", and even in Agricultural Zones where a Coastal Development Permit is required specific permission to install a fence or hedge higher than 3 feet must be obtained. *Also, even without this ordinance, the County can control the vegetation within the Kingsbury Drive right of way without the involvement of the Andres.*

2) General Plan and LCP consistency requires trimming or revegetation with low growing plants: The vegetation on Parcel 12 that has been allowed by the Andres to grow wild blocks views that were previously available to members of the public and in the context of this application and permit should have been addressed by conditions but were not as otherwise explained in this Notice of Appeal. This was inappropriate, unjustified, an abuse of discretion; and the elimination of the vegetation condition was not supported by the facts; and a "vegetation condition" requiring trimming or re-vegetating on Parcel 12 to a height of 3 feet or under is, in fact, required by the following provisions of the General Plan and Local Coastal Plan:

\*5 10 2 (LCP) Development Within Visual Resource Areas: Recognize that **visual resources** of Santa Cruz County possess diverse characteristics and that the resources **worthy of protection may include..ocean views...Require** projects to be evaluated against the context of their unique environment and regulate **.design to protect these resources...**

\*5 10.3(LCP) Protection of Public Vistas Protect significant public vistas as described in policy 5 10 2 [ocean views] from all publicly used roads by minimizing disruption of landform and aesthetic character caused by ..signs, [and] inappropriate landscaping

\*5.10.6 (LCP) Preserving Ocean Vistas Where public ocean vistas exist, require that these vistas be retained to the maximum extent possible as a condition of approval for any NEW DEVELOPMENT.

\*5.10.9 (LCP) Restoration of Scenic Areas: Require on-site restoration of visually blighted conditions as a mitigating condition of permit approval for NEW DEVELOPMENT.

\*5.10.12 (LCP) Development Visible from Urban Scenic Roads. In the viewsheds of urban scenic roads, require NEW discretionary DEVELOPMENT to improve the visual quality [through]...architectural design, landscaping and appropriate signage.

\*5 10 13 (LCP) Landscaping Requirements All grading and land disturbance projects visible from scenic roads shall conform to the following visual mitigation conditions:....(b) Incorporate ONLY CHARACTERISTIC OR INDIGENOUS PLANT SPECIES APPROPRIATE for the area.

\*5 10 18 (LCP) Signs Visible from Scenic Roads Actively discourage the placement of signs which will be visible from scenic roads

\*7.7.4 (LCP) Maintaining Recreation Oriented Uses. Protect the coastal blufftop areas and beaches from intrusion by nonrecreational structures and incompatible uses....

\* 13 20 130 Design criteria for coastal zone developments

(a) General 1 Applicability. The Coastal Zone Design Criteria are applicable to any development requiring a Coastal Zone Approval (a)(3)(iii) The project will be consistent with the Visual Resource Policies of the General Plan and Local Coastal Program Land Use Plan. (Ord. 4346, 12/13/94)

(b) Entire Coastal Zone. The following Design Criteria shall apply to projects sited anywhere in the coastal zone:

1. Visual Compatibility. All new development shall be sited, designed AND LANDSCAPED TO BE VISUALLY COMPATIBLE and integrated with the character of surrounding neighborhoods or areas.

3) The fact that Parcel 12 is zoned as "Park" requires trimming or revegetation with low growing plants (under 3 feet in height). Planner Adams, in his oral report at the Zoning Administrator hearing, stated: "[The property is] located in an R-1-6 single family residential zone district; in an urban low density residential general plan area; a portion of the site is zoned for parks, recreation and urban open space as it is a coastal bluff'. Views

are protected by the following provisions of the General Plan and Local Coastal Plan in Park zoned property.

\*PARKS AND RECREATION, AND PUBLIC FACILITIES Objective 7.7c: (LCP) To maintain or provide access, INCLUDING VISUAL ACCESS, **TO** every beach

\*7.7.1 (LCP) Coastal Vistas: Encourage pedestrian enjoyment of ocean areas and beaches by the development of vista points and overlooks...

\*7.1.3 (LCP) Parks, Recreation and Open Space Uses

"Allow low intensity uses which are compatible with the SCENIC VALUES and natural setting of the county for open space lands which are not developable, and allow commercial recreation, County, State and Federal parks, preserves, and biotic research stations, local parks and passive open space uses for park lands which are developable.

4) The fact that Parcel 12 is designated Urban Open Space by the General Plan requires trimming or revegetation with low growing plants (under 3 feet in height) by the following provisions of the General Plan and Local Coastal Plan:

\*5.11.1 (LCP) Designation of Urban Open Space Lands (0-U): Designate Urban Open Space (0-U) areas [including] (a) Coastal bluffs and beaches

\*5.1.3 (LCP) Development Within Urban Open Space Areas: **Consider development within** areas identified as Urban Open Space only when consistent with all applicable resource protection and hazard mitigation policies, and only in the following circumstances. . (b) For habitat restoration ....

\*5.11.4 (LCP) Mitigating Development impacts;' Require full mitigation of ALL POTENTIAL adverse impacts ASSOCIATED WITH developments located in Urban Open Space areas.

\*7.1.3 (LCP) Parks, Recreation and Open Space Uses

\*Allow low intensity uses which are compatible with the SCENIC VALUES and natural setting of the county for open space lands which are not developable; and allow commercial recreation, County, State and Federal parks, preserves, and biotic research stations, local parks and passive open space uses for park lands which are developable.

5) The current vegetation on Parcel 12 is a PUBLIC NUISANCE for the following reasons and therefore requires trimming or revegetation with low growing plants (under 3 feet in height). A public nuisance should be abated by the County (County Code 1.12.050,

16.50.025) and the failure to do so is unjustified, in error, and is an abuse of discretion not supported by the facts.

(a) Parcel 12 contains invasive and non-native plant species which are strongly discouraged under the following provisions of the General Plan and Local Coastal Plan:

\*5.1 14 (LCP) Removal of Invasive Plant Species. **Encourage the REMOVAL OF INVASIVE SPECIES** and their **REPLACEMENT** with characteristic native plants [and]...develop long-term plans for gradual conversion to native species providing equal or better habitat values

\*5.1 11 (LCP) Wildlife Resources Beyond Sensitive Habitats: For areas which may not meet the definition of sensitive habitat contained in policy 5.1 2, yet contain valuable wildlife resources (such as migration corridors or exceptional species diversity), protect these wildlife habitat values and species using the techniques outlined in policies 5 13 and 5.1.7 [which include (f) **Prohibit landscaping with invasive or exotic species** and encourage the use of characteristic native species]

\*6.3 7 Reuse of Topsoil and Native Vegetation Upon Grading Completion: **native vegetation should be used in replanting disturbed areas to enhance long-term stability.**

(b) Algerian Ivy is considered a "weed";

(c) The Algerian ivy is a habitat for and attracts rats which are a nuisance and health hazard to the neighborhood;

(d) The Algerian Ivy and acacia have the potential to dry out in Summer and become a fire hazard;

(e) Algerian Ivy is an allergen and health hazard to persons in the community;

(f) The Algerian Ivy and other unmaintained growth is being permitted by the Andres for the purpose of spite against appellants and the public,

6) The following required findings cannot be reasonably made without including a vegetation condition for the approval of this application and the resulting permit that requires trimming or revegetation with low growing plants (3 feet or less) on Parcel 12

a) \*FINDING 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.

The recreation and visitor serving aspect of Parcel 12 which is a County-designated urban open space and park has been ruined by the Andres intentionally allowing the invasive and non native Algerian Ivy to grow unrestrained

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

See comments in this Notice of Appeal, above, as to why the project is not consistent with the provisions of the General Plan, Local Coastal Plan, and County Code.

**Appellants request** that if the Planning Commission decides to approve the application and issue the permit that the following condition be added to the current permit and be required to be recorded against the property.

Owners of APNs 043-081-11, 043-081-12, and 043-082-48 as such parcels may exist or may be combined shall design and implement an adaptive landscaping plan that shall result, within a reasonable time not exceeding one (1) year, in all vegetation within the required 20 foot front yard setback of said parcels and within the Kingsbury Drive right of way to be no more than 3 feet in height (subject to the right of the County to also control the vegetation within the Kingsbury Drive right of way in this manner at its option and to control the vegetation within setback at owners cost should owners fail to comply with this condition). Once the adaptive landscape plan is so implemented all vegetation shall be maintained by said owners within the required 20 foot front yard setback of said parcels and within the Kingsbury Drive right of way to remain 3 feet (or less) in height within these areas. Such adaptive landscape plan shall be reviewed and approved by the project geotechnical engineer and the County geologist prior to and during implementation

**4 THE COUNTY IS IN A POSITION TO CONTRIBUTE TO INCREASED BLUFF STABILITY BY REQUIRING DRAINAGE AND RETAINING WALL IMPROVEMENTS ALONG THE ENTIRE LENGTH OF THE PARCELS 11, 12 AND 48 AS CONDITIONS OF APPROVAL OF THIS APPLICATION AND PERMIT**

The conditions for approval of this application and issuance of the resulting permit should have included far more protections for life, health and safety for stability of the blufftop, for protection of the homes and people below the bluff, and for a long term stabilization plan to protect Kingsbury Drive from being undermined. There is no doubt that there is a significant landslide problem involving all of the property the Andres own adjacent to Kingsbury Drive. The Andres are interested in protecting their house but they seem to have little regard for the risks that their property poses to the general public. In such cases we rely on our government to have vision and long term concern for public health, safety and welfare. There are many things the County could do by way of conditions to this application approval and permit to require the Andes to install additional retaining walls, additional drainage, and additional erosion control landscaping. Just because this has not been required for blufftop properties in the past does not mean that it should be ignored now. The measures that this would take, which were included in the attached December 15, 2006 letter (and particularly in the requests on the last two pages thereof), and which the Zoning Administrator did not address except for the retaining wall "repair" and a limited erosion control plan, would require the following.

- a) Further geotechnical investigation and reports that would include the entire 300 foot blufftop area, not just 33 feet of it.
- b) Further mitigations such as additional retaining walls, drainage measures, and erosion control landscaping:

As a result of not requiring further investigation, reports and mitigations, there is no reasonable basis for the required (but omitted) finding under 8.10.230(a)(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 be materially injurious to properties or improvements in the vicinity**", and FINDING 2 "That the project does not conflict with any existing easement or development restrictions such as public access, utility, or open space easements " is not supported by the facts in that a slide onto Beach Drive will clearly interfere with public access as would an undermining of Kingsbury Drive through slope slippage

The actions which were requested in the December 15, 2006 letter with regard to these issues are hereby incorporated herein by reference This process must necessarily start with more studies of the entire blufftop that should be required to be conducted and paid for by the Andres The General Plan, Local Coastal Plan, and County Code provisions relating to slope stability issues appear at EXHIBIT A to this Notice of Appeal The failure to consider and act upon the wider slope stability and erosion problems at this site by the Planning Department was inappropriate and an abuse of discretion; and adversely affected the rights of appellants in their expectation that private and public property would be protected from such hazards.

**5. CEQA REQUIRES, AT MINIMUM AN INITIAL STUDY FOR THIS PROJECT AND PROBABLY AN ENVIRONMENTAL IMPACT REPORT GIVEN THE TRUE SCOPE OF THE PROJECT AND THE CUMULATIVE AND ON-GOING NATURE OF PROBLEMS AFFECTING PARCELS 11, 12, AND 48**

At the hearing the Zoning Administrator ruled "Based on the findings modified by the Zoning Administrator, the conditions of approval as modified by staff and the zoning administrator, I'm going to certify the environmental determination" The Zoning Administrator later signed the permit on February 2, 2007 and Randall Adams signed the California Environmental Quality Act Notice of Exemption that same day claiming that the project was exempt under a Categorical Exemption as a Class 1 project as a "proposal to CONSTRUCT a retaining wall repair to protect

an **existing structure**" and that none of the conditions described in Section 15300.2 applied (Section 15300.2 is part of the "CEQA Guidelines which is in Title 14 of the California Code of Regulations).

In fact, as explained in the December 15, 2006 letter, attached hereto and incorporated herein by reference, even if the "project" under CEQA was limited to the retaining wall repair (which it is not since it involves a much greater scope of **work** including revegetation, landscaping, erosion control plan, and drainage systems etc.) that repair would not be exempt because it is either 1) not a "repair" but really a replacement given the scope of the work; or 2) because the "project" has cumulative environmental impacts if viewed in terms of the predictable additional projects to control erosion and landslides which must necessarily be done in the short or long term.

Therefore viewing the "project" under this application as an isolated *repair* "piecemeals" the project into a relatively small current project without regard to the many future projects that will be required and should be required now to prevent harm to life, health and safety (as explained above). "Piecemealing" is prohibited by CEQA...that is, the practice permitting one small part of work on property in sequence over time to prevent environmental review of the impacts of all of the **work**, combined.

There are two types of exemptions under CEQA: statutory and categorical. Statutory exemptions are projects specifically excluded from CEQA consideration as defined by the State Legislature. These exemptions are delineated in PRC § 21080 et seq. A statutory exemption applies to any given project that falls under its definition, regardless of the project's potential impacts to the environment.

Categorical exemptions operate very differently from statutory exemptions. Categorical exemptions are made up of classes of projects that *generally* are considered not to have potential

impacts on the environment. Categorical exemptions are identified by the State Resources Agency and are defined in the CEQA Guidelines (14 CCR Section 15300-15331). However, Section 15300.2 explains situations where a categorical exemption might not apply because it potentially would have an environmental impact.

The threshold issue, that was apparently not even considered by the Planning Department, is whether, if any exemption applies, it is a Class 1 exemption (existing facilities) or whether the scope of the work made the project a Class 2 exemption (a replacement or reconstruction). This is significant because work on existing facilities is NOT EXEMPT IF it involves more than "negligible or no expansion of use", if it had substantial damage resulting from an environmental hazard (landslide), or if it is located in an environmentally sensitive area (coastal bluff, open space, park) (these "exceptions to exceptions" are called "exclusions"). Work on replacement or reconstruction projects (Class 2) is NOT exempt and is excluded as an exemption IF there is a sensitive environment involved, cumulative impact, significant effect, or adverse impact to a scenic highway. The record in this case establishes that not only is the "project" much larger than just a repair to a retaining wall and therefore a major expansion by inclusion of revegetation, landscaping, erosion control plan and new drainage measures, but there are clearly defined cumulative impacts, the project is located in a sensitive area (blufftop), substantial damage from landslide had occurred, and the project is broad enough to both presently and cumulatively to involve a significant environmental impact. In such a case a categorical exemption may NOT be claimed but an Initial Study must be conducted that may lead to the requirement for a full Environmental Impact Report (see discussion in attached letter of December 15, 2006). Environmental determinations are not some kind of game to be dispensed with lightly. Santa Cruz County is distinguished by its wonderful environment and the bluffs and

oceanside are among the premier environmental features. The environment is already in trouble. Therefore, it is always better to err on the side of caution in making environmental determinations and this project, both in terms of its present scope and cumulative impacts, certainly is subject to various significant environmental impacts (again, see December 15, 2006 letter) that should be carefully considered by AT LEAST requiring an Initial Study. The act and determination of the Zoning Administrator in certifying the environmental determination in this matter that designed the project exempt was in error and not justified or appropriate. No evidence was even considered in deciding to apply this exemption. Nothing was studied, weighed, or evaluated so there was a lack of facts to support the environmental determination and an abuse of discretion since a decision cannot be made based on an absence of facts. Disregard of the environment hurts all members of the public. Appellants request that the environmental determination be set aside and that an Initial Study be required.

#### IV REQUEST TO **AMEND** NOTICE OF APPEAL

Appellants request that they, and each of them, be allowed to amend this Notice of Appeal as necessary before hearing by the Planning Commission; and that they be allowed to submit, and that the Planning Commission consider, additional and supplement evidence, both written and oral, both prior to and at the hearing by the Planning Commission on this matter. Appellants request that the Planning Department copy them on each and every document transmittal and communication regarding this matter including oral contacts with representatives of the Andres. Appellants request to be notified of witnesses to be presented at the Planning Commission hearing and the substance of their testimony including any materials on which they may rely in giving evidence prior to the hearing on this matter by the Planning Commission.

## V CONCLUSION

Reasonable conditions *can* be imposed for *any* permit that are either required by law, necessary to protect the public interest, or related to the permit. Such conditions *must* be imposed when necessary to implement a Local Coastal Program policy, General Plan policy, or code provision, as explained above in part III of this Notice of Appeal. The scope of conditions that are allowable is very broad and virtually unrestricted under current law. "Equal treatment" is not an excuse to make mistakes in permitting that have been made in the past for other permits. In the recent Supreme Court case of Lingle v Chevron 544 U S 528 (2005) it was made clear that unless a condition directly appropriates private property or completely eliminates the value of private property no "taking" is involved. Within these parameters conditions which merely restrict the use of property or require action by a property owner to protect the public interest are clearly allowed. Therefore there can be no legal prohibition in this case in imposing such reasonable conditions for issuance of this permit. The fact that the project affects all parcels and includes an Erosion Control Plan and **all** parcels are affected by the same problems (including ponding, runoff, drainage, and erosion), makes it obvious that conditions, such as the vegetation condition affecting the Kingsbury right **of** way and frontage, could logically and lawfully be applied to all parcels notwithstanding the location of the retaining wall repair. The fact that an emergency permit was obtained in this case and the work performed before the application 06-0037 for a Coastal Development Permit was considered is likewise not a reason for declining to protect public interests. The whole idea of requiring a "regular permit" as a condition for getting an emergency permit is that the emergency permit process does not allow adequate time for the County to fully evaluate the permit application. Thus the property owner gets an emergency permit with the obligation to later perform any conditions that may be reasonably imposed. The

County can't say "*well,they did the work so what's the point in imposing conditions later?*" If this were a proper approach the County might as well go out of the business of requiring permits for anything

Among the questions affecting this appeal that should be considered by the Planning Commission, an important one is "whether in imposing conditions the County should favor the convenience and interests of the property owner/applicant or favor the interests of the public"?

Who does the County have a higher duty to protect?

If the Planning Commission determines that the public interest is paramount over the interests of an individual property owner as long as the public interests served are consistent with law and public policy, the Planning Commission must choose the public every time for the greater good. Under this approach, the Planning Commission should necessarily conclude that the conditions urged by appellants are reasonable and necessary, and should take steps to devise and implement them, the least of which should be restoration of the "vegetation condition" to require the vegetation on Parcel 12 to be reduced and maintained to a height of 3 feet or less.

It makes no sense to rely on the Andres to voluntarily conduct trimming or revegetation of Parcel 12. They have demonstrated by their actions that they are prone to ignore the building code; that they have a grudge against their neighbors and the public by reason of their misplaced concern about trespassing and damage to the weeds on their property, and are allowing Parcel 12 to become overgrown intentionally.

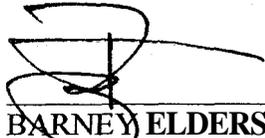
Since the Planning Commission must of necessity find that revegetation of Parcel 12 with low growing plants is required by law and good public policy, and because the County Geologist and appellants' expert actually *agree* that revegetation is safe and feasible by substituting low growing plants over time for the noxious invasive and non-native weeds currently growing on

Parcel 12, the Planning Commission should take the opportunity to craft and add a vegetation condition to any issuance of the permit as suggested by appellants.

The other possible conditions regarding studying and implementing further slope stabilization and the like, must be left to the discretion and good conscience of the Planning Commission. If the Commission could **go** back to the time before 310 Kingsbury was newly constructed, it may conclude that no house should be allowed on that part of the bluff at all. Given that the residence exists, the owners should still be required to do all that is feasible to protect their property and the health and safety of the public.

**DATED:** February 15, 2007

Respectfully Submitted,



---

**BARNEY ELDERS** Attorney for **LESA STOCK;**  
**CHILI PEPPER LLC;** and **KINGSBURY NEIGHBORS,**  
**An** Association; and acting pro per as a member of the public

## EXHIBIT A

### \*GEOLOGIC HAZARDS AND ISSUES IN THE GENERAL PLAN AND LOCAL COASTAL PLAN

\*5 4 14 (LCP) Water Pollution from Urban Runoff . Utilize erosion control measures .to reduce pollution from urban runoff.

\*PART 6.3 PROGRAMS: b Enforce the comprehensive Erosion Control ordinance requiring control of existing erosion problems as well as the installation of erosion, sediment, and runoff control measures in new developments.

\*6 2 1 (LCP) Geologic Hazards Assessments for Development On and Near Slopes: Require a geologic hazards assessment of all development, including grading permits, that is potentially affected by slopeinstability....

\*6 2.2 (LCP) Engineering Geology Report. Require an engineering geology report by a certified engineering geologist and/or a soils engineering report when the hazards assessment identifies potentially unsafe geologic conditions IN AN **AREA** Of proposed development

\*6 2 3 (LCP) Conditions for Development and Grading Permits. Condition development...on the recommendations of the Hazard assessment and other technical reports.

\*6.2.6 (LCP) Location of Structures and Drainage Considerations in Unstable Areas: ....Require drainage plans that direct runoff and drainage away from unstable slopes.

\*6.2.9 (LCP) Recordation of Geologic Hazards:....Require property **OWNERS** and public agencies to control landslide conditions which **THREATEN** structures or **ROADS**.

\*6.2.10 (LCP) Site Development to Minimize Hazards: Require all developments to be sited and designed to **AVOID** or minimize hazards as determined by the geologic hazards assessment or geologic and engineering investigations.

\*6.2 11 (LCP) Geologic Hazards Assessment in Coastal Hazard Areas: Require a geologic hazards assessment or full geologic report for all development activities within coastal hazard areas, including all development activity within 100-feet of a coastal **bluff** Other technical reports may be required if significant potential hazards are identified by the hazards assessment.

\*6.2.12 (LCP) Setbacks from Coastal Bluffs: All development activities, including those which are cantilevered, and non habitable structures for which a building permit is required, shall be set back a minimum of **25** feet from the top edge of the bluff.

\*6 2.15 (LCP) New Development on Existing Lots of Record: Allow development activities in areas subject to...bluff erosion on existing lots of record, within existing developed neighborhoods, under the following circumstances:

- (a) **A** technical report (including a geologic hazards assessment, engineering geology report and/or soil engineering report) demonstrates that the potential hazard can be mitigated over the 100-year lifetime of the structure
- (b) Mitigation of the potential hazard is not dependent on shoreline or coastal bluff protection structures, except on lots where both adjacent parcels are already similarly protected; and
- (c) The owner records a Declaration of Geologic Hazards on the property deed that describes the potential hazard and the level of geologic and/or geotechnical investigation conducted

\*6.2.19 (LCP) Drainage and Landscape Plans: Require drainage and landscape plans recognizing potential hazards on and **off** site to be approved by the County Geologist prior to the approval of development in the coastal hazard areas....

\*6.2.20 (LCP) Reconstruction of Damaged Structures on Coastal Bluffs- When structures located on or at the top of a coastal bluff are damaged as a result of coastal hazards, including slope instability and seismically; induced landslides, and where the loss is greater than **50** percent of the value, permit reconstruction if all applicable regulations can be met, including minimum setbacks. If the minimum setback cannot be met, allow only in-kind reconstruction, **AND ONLY IF THE HAZARD CAN BE MITIGATED TO PROVIDE STABILITY OVER A 100 YEAR PERIOD.**

\*6.3.3 (LCP) Abatement of Grading and Drainage Problems: Require, as a condition of development approval, abatement of any grading or drainage condition on the property which gives rise to existing or potential erosion problems.

\*6.3.4 (LCP) Erosion Control Plan Approval Required for Development: Require approval of an erosion control plan for all development, as specified in the Erosion Control ordinance. Vegetation removal shall be minimized and limited to that amount indicated on the approved development plans, but shall be consistent with fire safety requirements.

\*County Code 16.10.050 Requirements for geologic assessment.

\*(a) All development is required to comply with the provisions of this Chapter....

(b) Hazard Assessment Required....as specified in subsections (c) (d) **and** (e)...a full geologic report will be prepared according to the County Guidelines for Engineering Geologic Reports....**A** geologic hazards assessment shall also be required for development located in other areas of geologic hazard

(c) Geologic Report Required. A full geologic report shall be required....

2. Whenever a significant potential hazard is identified by a geologic hazards assessment....

(e) Additional Report Requirements. Additional information (including but not limited to full geologic, subsurface geologic, hydrologic, geotechnical or other engineering investigations and reports) shall be required when a hazard or foundation constraint requiring further investigation is identified.

\*County Code 16.10.070 Permit conditions.

\*The recommendations of the....full geologic **report**...shall be included as permit conditions....In addition, the requirements described below for specific geologic hazards shall become standard conditions for development

(e) Slope Stability.

1 Location All development activities shall be located away from potentially unstable areas

3. Drainage: Drainage plans designed to direct runoff away from unstable areas (as identified from the geologic hazards assessment or other technical report) shall be required.

6. Notice of Hazards: The developer and/or subdivider of a parcel or parcels in an area of geologic hazards shall be required to record a Declaration of Geologic Hazards with the County Recorder. The Declaration shall include a description of the hazards on the parcel, and the level of geologic and/or geotechnical investigation conducted.

7. Other Conditions: OTHER PERMIT CONDITIONS INCLUDING BUT NOT LIMITED TO PROJECT REDESIGN, building site elimination and the development of building and septic system envelopes, building setbacks and foundation and drainage requirements shall be required as deemed necessary by the Planning Director. .

(h) Coastal Bluffs and Beaches:

1. Criteria in Areas Subject to Coastal Bluff Erosion: Projects in areas subject to coastal bluff erosion shall meet the following criteria:

(i) for all development .demonstration of the stability of the site, in its current, pre-development application condition, for a minimum of 100 years as determined by either a geologic hazards assessment or a full geologic report

(ii) for all development. 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.

(iii) the determination of the minimum setback shall be based on the existing site conditions and shall not take into consideration the effect of any proposed protection measures, such as shoreline protection structures, retaining walls, or deep piers

(vi) The developer and/or the subdivider of a parcel or parcels in an area subject to geologic hazards shall be required, as a condition of development approval and building permit approval, to record a Declaration of Geologic Hazards with the County Recorder. The Declaration shall include a description of the hazards on the parcel and the level of geologic and/or geotechnical investigation conducted.

(vii) approval of drainage and landscape plans for the site by the County Geologist..

(ix) All other required local, state and federal permits shall be obtained.

\*County Code 16.22.060 Erosion control plan

\*(a) Prior to issuance of a building permit, development permit or land division, an erosion control plan indicating proposed methods for the control of runoff, erosion, and sediment movement shall be submitted and approved. Erosion control plans may also be required by the Planning Director for other types of applications where erosion can reasonably be expected to occur...Erosion control plans shall include, as a minimum, the measures required under Sections 16.22.070, 16.22.080, 16.22.090, and 16.22.100 of this chapter.

[16.22.070 Runoff control: Runoff from activities subject to a building permit, parcel approval or development permit shall be properly controlled to prevent erosion. The following measures shall be used for runoff control, **and** shall be adequate to control runoff from a ten-year storm...**(b) ALL RUNOFF should be detained or dispersed OVER NONERODIBLE VEGETATED SURFACES;**...**(c) Any concentrated runoff which cannot be effectively dispersed without causing erosion, shall be carried in nonerodible**

*channels or conduits to the nearest drainage course; (d) Runoff from disturbed areas shall be **detained or filtered...to prevent the escape of sediment** from the disturbed area; (e) **No earth or organic material shall be deposited or placed where it may be directly carried into a...body of standing water.***

*\*16.22.100 Overall responsibility: **It shall be the responsibility of the owner and the permittee to ensure that erosion does not occur from any activity during Of?AFTER project construction.*** Additional measures or modification of proposed measures may be required by the Planning Director prior to project approval. No grading or clearing may take place on the site prior to approval of an erosion control plan for that activity. Final certification of project completion may be delayed pending proper installation of measures identified in the approved erosion control plan.

(b)...The plans shall include the following information in writing and/or diagrams: 1. ...location of the proposed site. 2. Property lines and contours...details of terrain ...AREA drainage...proposed drainage channels...runoff control measures. 3. Measures for runoff control and erosion control to be constructed with, or as a part of, the proposed work All measures required under this chapter shall be shown. Function of erosion control measures shall be consistent with the provisions of this chapter;...**5.** Revegetation proposal for all surfaces exposed or expected to be exposed during development activities...

(d) For major development proposals, the erosion control plans shall be prepared by a registered professional authorized to do such **work** under state law. For these major projects, detailed plans of all surface and subsurface drainage devices, runoff calculations, and other calculations demonstrating adequacy of drainage structures shall be included.

**BARNEY ELDERS, ATTORNEY AT LAW**  
PO BOX 8544, SANTA CRUZ, CA 95061-8544  
TEL (831) 459-8857 FAX (831) 425-1968 EMAIL: [elders@cruzio.com](mailto:elders@cruzio.com)  
SBN 49399

December 15, 2006

ORIGINAL RECEIVED 12-15-06  
CA. SANTA CRUZ PLANNING DEPT  
DEC 15 PM 3 49

County of Santa Cruz, Planning Department  
701 Ocean Street, 4<sup>th</sup> Floor  
Santa Cruz, CA 95060  
ATN: Randall Adams, Planner ([PLN515@co.santa-cruz.ca.us](mailto:PLN515@co.santa-cruz.ca.us), 831-454-3218)

**DELIVERY BY HAND 12-15-06**

re: APPLICATION 06-0037-Richard & Ramona Andre application for coastal development permit involving retaining wall & erosion/drainage control at 310 Kingsbury Drive, Aptos; APN: 043-081-11 and -12; 043-082-09 and -48

Ladies and Gentlemen. Dear Mr. Adams:

I am writing on behalf of clients Chili Pepper LLC and Ms. Lesa Stock, owners of interests in 317 Kingsbury Drive, Aptos, CA, across the street from the subject properties; and also as a resident of Santa Cruz County and member of the public. I would like to express my concerns about the permit application in this matter; and **urge that the application be denied or expanded to address all issues raised in this letter (which affect both the public interest and nearby landowners). A summary of requested County actions appears starting at the bottom of page 12.**

This permit involves the alteration of 33 feet of a retaining wall<sup>1</sup> along apx. 308 feet of coastal bluff owned by applicants. While the 33 feet of retaining wall involved in the application is to be reinforced, inadequate attention has been paid in the application process to other slide-prone parts of the applicant's property and to other matters of public interest required by the General Plan, LCP, County Code, and CEQA. The issues can be summarized as follows:

1) Although an erosion control plan has been required in the area of the 33 foot retaining wall requiring a drainage plan, erosion control and landscaping plan, hazards along the other parts of the bluff top have **not** been addressed and may even be increased by the diversion of water and reinforcement of the 33 foot area: **the erosion control plan should be expanded;** 2) In particular, nothing has been done to even *investigate* the eastern 1/2 of parcels 12 and 48 which also likely pose erosion and slide hazards and which would threaten Kingsbury Drive as well as properties on Beach Drive below, primarily because those parts of parcels 12 and 48 have been allowed by applicants to become overgrown with invasive, non-native plants, preventing evaluation of the site: **the vegetation in this area needs to be cut, the soils issues investigated, and conditions imposed to address soils issues, including replanting that area with erosion-control ground cover; and addressing other General Plan/LCP/Code issues such as landscaping and public views;** 3) **Environmental review must be conducted** under CEQA; and 4) **Numerous policies of the LCP are being ignored** in this permit process; and additional permit conditions addressing LCP polices must be added to the permit to support findings of consistency with the LCP .

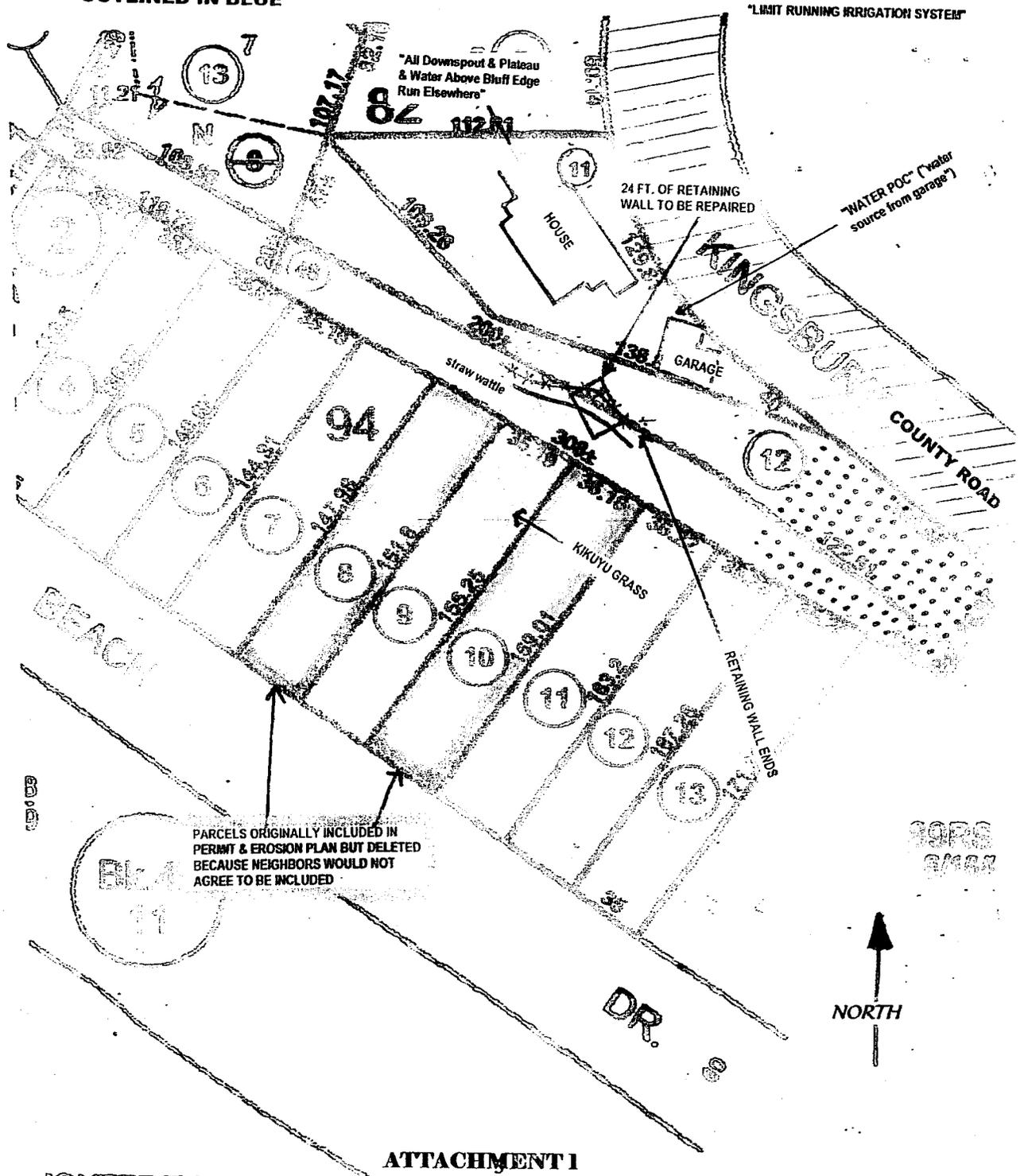
**Of particular note is the fact that applicants have allowed the eastern half of parcels 12 and 48 to become overgrown with invasive, non-native plants that block the public and neighbors' views in a protected- "scenic view corridor"** (see **Attachments 5 and 6** that illustrate the problem). More troubling is the fact that this lack of maintenance may be intentional. This violates the strong policies of the Local Coastal Plan (LCP) that public views of ocean vistas be protected and restored as a condition of any development (see **Attachment 7**). This vegetation must be cut flush to the ground to enable an erosion study to be conducted and replaced with low-growing, erosion-control ground cover that is maintained for erosion control, protection of public viewshed, fire control, and other reasons consistent with the LCP and County Code. This issue is further discussed in **this** letter and is marked with the **Ⓢ** symbol where such discussion occurs; or where view related policies are listed in **Attachment 7**.

**Attachments 1 and 2**, on the following two pages, illustrate the project area. **Attachment 1** is a parcel map showing project details taken from the plans submitted to the Planning Department. **Attachment 2** is a cross section of the bluff illustrating the extreme soils and slope problem there. These attachments, and the issues concerning this project, are discussed in greater detail starting at page 4.

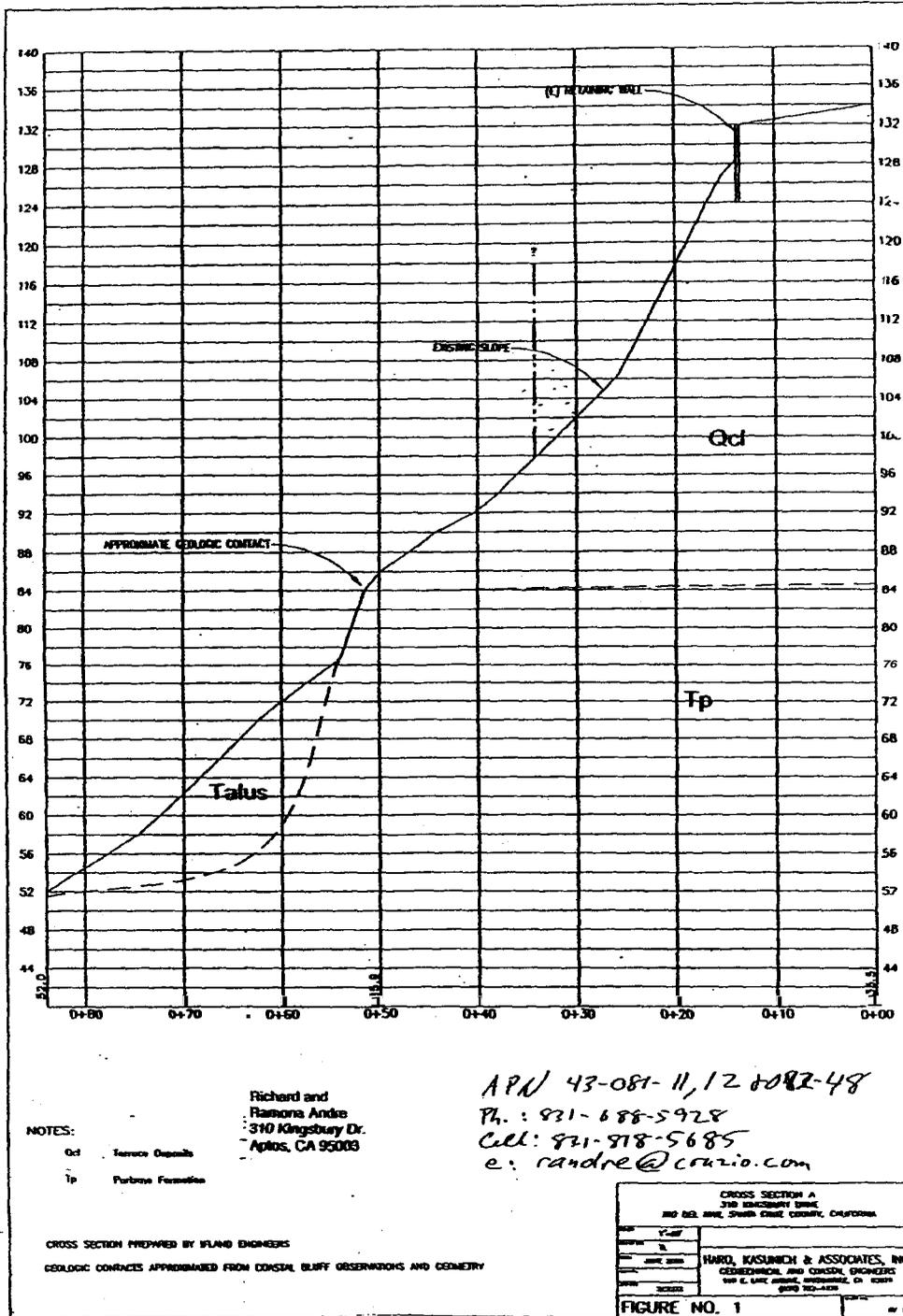
---

<sup>1</sup> Rogers E. Johnson & Associates describes the alteration as "33 feet" whereas the plans for the work identify a "24 foot" area

**LOTS INVOLVED IN PROJECT  
OUTLINED IN BLUE**



**ATTACHMENT 1**



**ATTACHMENT 2**

## 1. SETTING AND BACKGROUND:

This project is located on and below Kingsbury Drive in Aptos as shown by Attachment 1. Attachment 1 illustrates the following facts:

\*On 1-24-06 a coastal development permit application was submitted for this project. On 7-31-06 the application was amended to include parcels 11, 12, and 48. Later parcel 9 was added (the Planning Department file notes that "on 7-11-06 parcel 9 added to project for 'biotic restoration'). Completion of the application was delayed until late fall when on 8-16-06 an application for an emergency permit was submitted. Although it is questionable whether the project qualified for an emergency permit, one was issued 10-2-06 on conditions that "the applicant shall submit a completed application...for a regular permit"; and "erosion control must be implement[ed] immediately".

\*Application 06-0037 is described in a 9-19-06 letter in the Planning Department file from Rogers E. Johnson & Associates as a "renovation of a 33 foot long segment of bluff top retaining wall" that "will improve the stability of this segment of the bluff top...but...not prevent future bluff failures. The wall is designed to protect the upper 10 feet or so of the approximately 90 foot high bluff." An erosion control plan, along with a landscaping plan, is a proposed condition of permit issuance; as is combining parcels 11, 12, and 48 (see 8-30-06 letter from R Adams).

\*The erosion control plan required for this project combines landscaping and biotic restoration (recommending planting of kikuyu grass, straw wattles, and other erosion control measures involving landscaping)

\*The parcels currently involved in this application are 11, 12, 48 and 9. Parcels 11, 12 and 48 are located at the top of a steep coastal bluff over 100 feet high. The bluff is equally high and unstable along the entire approx. 308 foot length of parcels 12 and 48. At the southern edge of parcel 12 the bluff falls off precipitously to the beach front below where Beach Drive homes are located on the flats. Attachment 2 illustrates the extreme slope and slide potential in front of the applicant's property. Besides the steep slope, the soil toward the top of the bluff is unstable and is subject to erosion and slides as a result of ponding, water runoff, loads on the soil from man-made improvements, seismic events etc. This situation over time potentially affects the safety of neighbors below on Beach Drive, the structural integrity of the public road at the top of the bluff (Kingsbury Drive), and the residents along Kingsbury Drive across from parcel 12 who will be affected by any undermining of Kingsbury Drive that results from any failure of applicants to mitigate erosion, particularly in the eastern 1/2 of parcels 12 and 48 (the "dotted" area on Attachment 1);

\*Parcel 12 is where the 33' of retaining wall is located that is the subject of this application. The wall appears to protect only a small portion of applicants' bluff top even though the entire bluff that is part of parcels 12 and 48 suffers from the same instability. Part of the retaining wall may be on Parcel 48. Parcels 12 and 48 are undeveloped.

@\*Landscaping on the western 1/2 of parcel 12, next to applicants' house, is maintained to preserve the views of applicants: but applicants have allowed the eastern 1/2 (see dotted portion on Attachment 1), formerly maintained, to become overgrown with ivy and other invasive, non-native plants, possibly out of hostility toward neighbors on that part of Kingsbury. Applicants have posted numerous hand made signs in the eastern 1/2 of parcel 12 with expressions of their discontent about various issues. This part of Kingsbury Drive was previously a magnificent public ocean vista that is now blocked to the public Viewing by the overgrowth.

\*Parcel 12 is zoned PR (park). The General Plan designation is 0-U (urban open space).

**i** \*This entire **area of Kingsbury Drive is in** a "scenic view corridor" providing spectacular views of Monterey Bay and much enjoyed by walkers, bikers, and sightseers, prior to applicants allowing parcel 12 to become overgrown (the *applicat* **icn** *states "generalplan constraints: scenic"?*

\*The property is in the Coastal Zone and therefore requires a Coastal Development Permit.

\*According to a January, 1986 report in the Planning Department file, Rogers E Johnson & Assos, Engineering Geologists, inspected the property for slope stability problems. The report notes some issues that are a continuing theme for this property:

**\*SLOPE HAZARDS AT THE SUBJECT PROPERTY AFFECT THE ENTIRE BLUFF AND REQUIRE A FULL SYSTEMS SOLUTION:** the report notes that the retaining wall that supports "a portion of the cliff directly **behind** the house". The report notes that landslides occurred all along the bluff top in the **1982** storms "causing damage **to** properties at both the top and bottom of the cliffs." The 9-20-06 letter from Haro Kasunich **in** the Planning Department file describes the project in part **as** "repair existing bluff top" (not a **PORTION of** the bluff top) which **suggests** that the entire bluff should be remediated.

**\*IMPROPER LANDSCAPING IS A FACTOR IN SLOPE INSTABILITY:** The report states that a contributing factor in the 1982 landslides was a presence of "shallow **rooted** plants" on the bluffs. The 5-25-06 letter **from** Haro, Kasunich **in** the Planning Department files states "The neighbors which own much of the slope below the referenced property should re-establish **a** rigorous ground cover **this** Spring/Summer in preparation for next winter's rain season. We recommend that **an** erosion control matting in addition **to** seeding be appropriately stapled to the surface of the slope where it has become exposed **this** winter due to surficial erosion."

**\*EROSION CONTROL ALONG THE ENTIRE BLUFF TOP IS ESSENTIAL TO PROTECTION OF PERSONS AND PROPERTY:** The Rogers E. Johnson & Associates report cites other factors **that** affect slope stability including runoff (**water** running **down** the **face** of the bluff) **and** ponding (water soaking into the top of the bluff) **and** development (that tends to concentrate water flow...**i.e.**, partial **measures**, like the existing retaining wall, **can** actually divert water more forcefully to unprotected areas<sup>2</sup>). With regard to the ponding the Rogers E. Johnson & Assos. report states

"To reduce upslope infiltration, water should not be allowed to form temporary ponds on the property following rainstorms. Other low points **which** permit ponding should be identified during wet periods **and** regraded **or** filled."

Because of the overgrowth on **the eastern 1/2** of parcels **12 and 48**, there is **no** way to know **if** ponding is occurring there; and no attempt **has** been made **to** evaluate the eastern 1/2 of parcels **12 or 48** **in** **this** permit process, despite the fact that **the** pending application **affords** the County **an** opportunity to address **wider** threats to the safety of persons **and** property by the imposition of conditions. The **County** should welcome **this** opportunity to protect the public by imposing conditions, **rather than** resist it. The **County** originally required that parcels **8 and 10** along Beach Drive (**see** Attachment **1**) **join** in the landscaping **part** of the erosion control plan: but **on** 9-21-06 revised the project plans to change **the** permit conditions to include parcel 9 only due to the inconvenience of including parcels **8 and 9**. This illustrates **at** least **an** awareness **that** **an** expansion of the erosion control plan is a good idea.

**\*THE SOILS ISSUES ON PARCEL 12 THREATEN NOT ONLY HOMES BELOW BUT ALSO THREATEN KINGSBURY DRIVE:** The October 1986 Rogers E. Johnson report states "Controlling runoff

---

<sup>2</sup> A 5-1-95 report from Rogers E. Johnson Assos in the Planning Department file states "Development, of course, can exacerbate an already unstable slope by concentrating runoff and super saturating a specific area" and then goes on to recommend directing drainage into pipes to the bottom of the bluff.

from rainfall is extremely important on hillside homesites. This is especially true on the subject property where runoff erosion can accelerate **CLIFF RETREAT.**" This issue was again mentioned in a 1996 letter from Rogers E. Johnson Assos. in the Planning Department file that states a threat exists that "the bluff top **will ultimately recede an additional 20 to 30 feet** before the bluff stabilizes at its natural angle of repose." Erosion to the extent predicted by Rogers E. Johnson (30 feet or more) could potentially undermine Kingsbury Drive, particularly in the eastern ½ of lot 12 where lot 12 is narrower and closer to Kingsbury Drive (see the dotted areas on **Attachment 1**). Presumably proper erosion and drainage measures can retard or prevent this process; whereas doing nothing invites problems sooner.

**\*THIS PROJECT IS MORE THAN A SIMPLE REPAIR.** The Rogers E. Johnson Assos. letter in the Planning Department file describes the work on the 33 feet of retaining wall **as a renovation.** It would not qualify **as** a "repair" under the UBC. A 9-20-06 letter in the Planning Department file **from Haro Kasunich engineers** describes the project **as** "repair existing bluff top, soldier pile, tieback retaining **wall**" and states that the project includes adding whaler beams, new tieback anchors, and wood lagging. **As** such, the scope of the project is actually new construction which **supports the need** to impose more comprehensive conditions. Clearly, even the limited **scope** of work **on** the 33 feet of retaining **wall has potential to cause** significant environmental impacts.

## 2. ONLY STRONG PERMIT CONDITIONS CAN EFFECTIVELY ADDRESS THE ISSUES IN THIS MATTER:

Applicants have a history of code compliance issues with the County according to the permit histories for parcels 11 and 12, attached to this letter **as Attachments 3 and 4.**

There is a letter in the Planning Department file **from Harrett W. Mannina Jr.**, another interested party, that states "my question to you [applicants Richard and Ramona Andre] is why you have not yet commenced and completed the recommendations that were made by your Consulting Geotechnical & Coastal Engineers over five years ago".

In 1986 Rogers E. Johnson visited applicants' property and noted in a report that "there are some existing drainage control measures on the property .... However, these drainage measures have not been maintained".

Apparently applicants were also ordered in May, 1985 to combine parcels 11 and 12 as condition of a permit and did not do so.

Given this history, applicants may not voluntarily come forward to help their neighbors and the public by addressing the soils, drainage, erosion, landscaping, viewshed and **other** issues raised in this letter: so it is particularly incumbent on the County to address such issues by imposing permit conditions to the extent that it can lawfully be done.

## 3. THE EROSION CONTROL PLAN MUST BE EXPANDED TO INCLUDE **THE ENTIRE** PARCEL 043-081-12 UP TO KINGSBURY DRIVE (& PARCEL **48**) AND CONDITIONS **MUST** BE IMPOSED TO PREVENT **HAZARDS** TO THE BEACH DRIVE **NEIGHBORS** AT THE BOTTOM OF **THE** BLUFF AND TO KINGSBURY DRIVE

**An** erosion control plan is necessarily required for approval of this permit, see County Code 16.22.060 (at page 2 of **Attachment 8** to this letter). See also General Plan/LCP 6.3.4.

The letter from Mr. Mannina states "your proposed erosion plan...appears to be a band aid to your property without seriously addressing the dangers and possible catastrophic losses your [the **Andres**] eroding bluff poses to downhill properties".

The 9-19-06 letter from engineers Rogers E. **Johnson** & Associates in the Planning Department file echoes these concerns and describes the **work** proposed in this application **as** a "renovation of a 33 foot long segment of bluff top

retaining wall will improve the stability of **this** segment [i.e. 33 feet] of the bluff top. **The subject retaining wall will help retain** the upper section of the bluff but it will not prevent future bluff failures at the site."

Initially the County apparently did propose a broader erosion control plan by including parcels 8 and 10 at the bottom of the bluff but later removed them from the plan. The fact that the project was originally larger illustrates that the project affects a broader area than that covered under the current application.

The permit and related conditions should address the entire **308** feet of bluff to protect against drainage problems and erosion along the entire length of parcels 12 and **48**; and to address other public interest issues. Otherwise there will continue to be substantial threats to the downhill neighbors **from** the applicants' property. Any erosion or slides could also impair access by emergency vehicles on Beach Drive in the event of a significant bluff failure. There is no possibility that the erosion and drainage controls recommended to-date can address the extent of the geologic hazards associated with this application.

In order to expand the erosion control plan the County must expand the scope of the geologic and geotechnical studies to address the entire **308** feet of bluff top owned by applicants.

The County should also impose comprehensive drainage, erosion and landscaping conditions to protect Kingsbury Drive. As mentioned in section 1., above, the east end of parcels **12** and **48** (the "dotted area" on Attachment 1) are the closest parts of applicants' property to Kingsbury Drive **and** thus pose the most immediate threat to the roadway: yet **nothing** in the application **addresses** that part of those parcels. The studies in the Planning Department file confirm that drainage and ponding pose **serious** erosion threats. Yet the applicants have allowed the "dotted area" in Attachment **1** to become overgrown with invasive, non-native and downy plants whereas it was previously maintained and groomed. To even **ASSESS** the drainage, ponding or erosion **issues**, this vegetation in this area must be cut flush to the ground and the soils conditions studied. In its current condition, proper assessment of **this** part of parcels 12 and **48** is impossible and any problems are hidden. Once cut this area must be maintained to permit implementation of erosion control measures; to **allow** continued monitoring of the efficacy and status **of** those measures; and to allow maintenance. Once approach might be **to** replant the area with kikuyu (note that kikuyu is considered invasive but has been recommended for erosion control of this project. Where kikuyu is referenced in this letter possibly some less invasive native erosion control plant should be considered).

If **Kingsbury** Drive is undermined by a failure to control drainage and erosion on parcels 12 and **48**, what will the County do? In addition to a major expenditure of public funds **for** repair of the road, the County would have to **PAY APPLICANTS** to acquire enough of their property to build reinforcements for the road (or take property from the neighbors **on** the other side of the road). **This** would be an ironic outcome **if** the road could be protected **NOW** by requiring applicants **to** guard against erosion at their expense (**vs. that** of the public) **as a** condition of this application and permit. **An** expanded erosion control plan addressing the entire length of parcels 12 and **48** will help to stabilize the **edge of Kingsbury** Drive. It is important to note **that the** Kingsbury Drive public right-of-way does not include **the coastal bluff** and therefore, private erosion **control** maintenance of the bluff is critical to the long-term stability of the public street. **Because** the amount of projected recession has the potential to undermine Kingsbury Drive, this makes erosion control on **this** site even more critical to the general public. Even if **the** County and Coastal Commission cannot require a property **owner to** extend the retaining **wall** for the **PURPOSE** of stabilizing Kingsbury Drive, a complete erosion control plan **for** the affected property is well within the typical requirements of the County and Coastal Commission when issuing a repair for a coastal bluff revetment/retaining wall structure.

If the overgrown "dotted area" shown on Attachment **1** is cut flush and studied it will be an opportunity for the County **to** implement **five** other issues by the imposition **of** conditions that are in the public interest and encouraged by the General Plan, LCP and County ordinances:

- 1) The County should require removal of non-native invasive plants on the overgrown area of parcels **12** and **48**;
- 2) The County should require replacement of **these** non-native, invasive plants with erosion control plants like kikuyu, already recommended for parts of **this project**, to help with drainage **and** erosion. The County and Coastal

Commission routinely require removal of invasive species as part of mitigation measures for projects and the partial erosion control plan **from** Prime Landscaping already addresses invasive species removal: it **just** needs to be expanded. The complete erosion control plan will eliminate invasive species, such as the English ivy that currently exists on the site;

3) Removal of the overgrown weeds would also **protect against a possible fire hazard** that could spread to nearby trees, brush and homes;

**i** 4) Replacement **of** the overgrown plants should be done with low-growing ground-cover erosion-control plants that would also **restore the public viewshed** that **has been** ruined by applicants poor maintenance. Parcel 12 is in an area designated by the County as a "scenic view comdor" **and** is located at a comer of Kingsbury Drive that offers spectacular panoramic views of Monterey Bay frequented by walkers, bicyclists and sightseers that have been blocked at street level by the applicants failure to maintain **their** property (**see Attachments 5 and 6**). **An** expanded erosion control plan, will provide visual access to the **ocean** to the general public. Note that landscaping is already required as a condition of the erosion control plan: **so** further landscaping conditions including for erosion control, are clearly lawful and appropriate; **and**

5) Since applicants have **allowed the** vegetation on parcel **12 and 48** to grow **uncontrolled it has become infested with rats and other vermin that are** a problem for nearby neighbors when they migrate to the homes across Kingsbury Drive. **Replacement** and maintenance of the vegetation on **this site as requested** in this letter will also address this problem.

#### **4. THIS PROJECT REQUIRES ADDJTIONAL CONDITIONS AND REQUIREMENTS IN ORDER TO COMPLY WITH THE LOCAL COASTAL PROGRAM AND COASTAL ACT:**

Applicants' project requires the issuance **of a** coastal permit under the standards in the California Coastal Act. These standards are reflected, **as required** by law, in the County of Santa Cruz Local **Coastal** Program. Immediate, **as well as** cumulative, effects on coastal resources must be considered, (Pub. Res. Code § 30250(a) "New...development...shall be located.. where it will not have significant adverse effects, either individually or cumulatively, on coastal resources"). The CCA definition of "cumulative" is broader than under CEQA (Pub. Res. Code § 30105.5).

A complete erosion control plan, **as** discussed in section 3., above, will also assist in making findings of consistency with **the** development policies **of the** Coastal Act. The Coastal Permit 06-0037 must be consistent with such policies **to** be approved.

Currently such findings could not be made **due io** inconsistency and the failure **to** implement **the** LCP policies listed at **Attachment 7** (Coastal Act Requirements) which are part of the County of Santa Cruz General Plan and LCP.

In addition **to** satisfying LCP requirements, all land use regulations must be consistent with the General Plan and therefore must be interpreted in that context, see County Code 13.01.130.

**The development/project as framed by the current application, and without the additional conditions, mitigations and compliances requested m this letter and attachments, does not conform to the standard! set forth in the certified County of Santa Cruz LCP or to the public access policies of the Coastal Act.**

The applicable policies *are* grouped in Attachment 7 by **subject as follows**<sup>3</sup>; and their applicability to **this** permit application *are* self-explanatory **given** the background furnished in this letter. The County Code **also echoes** some of these policies **as** noted at Attachment 8 (**County Code Requirements**) which **also need to** be incorporated **into** the conditions of **this** permit. The following additional comments **are** made (references using **§ symbols are to the General Plan/LCP unless** designated as Code requirements or Coastal Act [Public Resources Code] provisions):

<sup>3</sup> Numbers accompanying references to "LCP" are to parts of the Santa Cruz County General Plan and certified Local Coastal Plan and the numbers refer to the General Plan element (2-LAND USE; 5-CONSERVATION AND OPEN SPACE; 6-PUBLIC SAFETY AND NOISE; 7-PARKS AND RECREATION, AND PUBLIC FACILITIES; with the numbers after the decimal point referring to specific polices

**i** a. View Protection/Landscaping: The **work to be done** under this application, even in its current limited scope, is subject to each and every one of the LCP policies in Attachment 7 and also require the permit to be expanded in scope with the permit conditions added **as requested** in **this** letter. Expanding the erosion control plan **as requested** would address many of these LCP policies. Under **LCP§5.10.2** a project must be **DESIGNED to protect public views**. **"Design"** is a broad term that includes every phase of a project. The LCP protections extend **to vistas as well as to signs and inappropriate landscaping** (e.g. invasive, non-native plants), see **LCP§5.10.3**. This requires removal of **the invasive, non-native species on the eastern ½ of parcel 12 and 48, as well as removal of the signs put up by applicants**. (see also **LCP§5.10.12 and 5.10.13** applicable to the landscaping required **under the Erosion Control Plan, and LCP§5.10.18** addressing signs). **LCP§5.10.6** mandates preserving **ocean vistas TO THE MAXIMUM EXTENT POSSIBLE**. See also County LCP provisions at **LUP 13.20.130(b)(1)**. The introduction to LCP-Chapter 7 makes it clear that access requirements include **VISUAL** access.

This is consistent with Coastal Act provision **30251** that provides:

The scenic and visual qualities **of coastal areas shall be considered and protected as** a resource of public importance. Permitted development shall be sited and **designed to protect views to and along the ocean and scenic coastal areas**, to minimize the alteration **of natural land forms**, to be visually compatible with **the character of surrounding areas, and**, where feasible, to **restore and enhance** visual quality in visually degraded areas.

Removing invasive species and allowing visual access **to the coast to be restored** where it is currently obscured **is** also clearly consistent **with this** policy. The degraded condition **of parcels 12 and 48** currently blocks important public views **and the maintenance of the landscaping on that parcel, as requested in this letter, will address not only view issues but also biotic, scenic, and erosion control issues.**

b. Invasive/Non-Native Plants: The removal of the invasive, non-native plants on parcels **12 and 48**, particularly **on the eastern ½ is also mandated by the LCP: see LCP§5.1.14, 5.1.11 and 6.3.7**. Because a landscaping plan is **already PART of the Erosion Control Plan**, it can **also** require consistency with the invasive plant policies.

This **is** consistent with Coastal Act **30240** which provides that for the protection **of biotic Resources** since proliferation of invasive **or non-native plant species can**, in turn, affect the animal species **in the environment**. The fact **that applicants are allowing the proliferation of invasive and Non-native vegetation on parcels 12 and 48** crowds out native species and **impairs animal species that depend on the native plants for survival**.

In **addition**, County Code **13.20.130** requires that when a landscaping plan is required (as with **the current erosion control plan**) **new or replacement vegetation must be compatible with the ecological characteristics of the area which requires the removal of invasive and non-native plants**.

In **addition**, under County Code **13.20.130** the project must **be designed to be consistent with the General Plan and LCP view policies and with the surrounding neighborhood and area**. It **should be noted that** applicants, near their house where **their views are involved, keep the bluff tops adjacent to their manicured and in a park-like condition**. This is a common practice in **the neighborhood**. **Yet** applicants block the public views and those of their **neighbors near the eastern half of lots 12 and 48 with overgrown, non-native and invasive plants**.

c. Water Quality: Proper drainage **on the entire extent of the apx. 308 feet of bluff top owned by applicants** is mandated by LCP **water** quality policies in Attachment **7** designed to prevent sediment **from the cliffs** fouling the beach and entering the **ocean**. **coastal Act 30231** requires development to "maintain the biological productivity and the quality **of coastal waters**" (**see corresponding LCP§5.4.14**). Without adequate drainage and erosion controls **on the**

entire length of parcels 12 and 48, and the expansion of drainage and erosion control on surrounding lots, runoff of dirt and silt will unnecessarily threaten the water quality of local coastal waters.

d. Protection of Urban Open Space: It is important to consider that parcel 12 is in an O-U General Plan designation: a fact not considered in the application process so far. This designation requires ANY development plan to be consistent with ALL resource protection, resource restoration, and hazard mitigation policies, LCP § 5.1.13, which would require addressing all issues raised in this letter AND the mitigation of all POTENTIAL adverse impacts which means that future impacts whether natural or man-made must be mitigated for the ENTIRE parcel.

e. Soils: The soils policies at pages 3 and 4 of Attachment 7, including LCP § 6.2.10, each apply to this project and are largely unaddressed. Note in particular that owners of property are required to control landslide conditions on their property that threaten public roads under LCP § 6.2.9; and that LCP § 6.3.3 requires abatement of ANY drainage condition ON THE PROPERTY which gives rise to existing or POTENTIAL erosion problems. Again, the entire extent of parcels 12 and 48 must be addressed. This is consistent with Coastal Act 30253 that provides "New development shall: (1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard. (2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area".

Under the SOILS part of Attachment 8, the County Code requirements should be reviewed to make sure all required information has been submitted. It appears that not all information required by Code sections 16.10.050 and 16.10.070 is included in the Planning Department file.

f. Parks, Recreation & Open Space: Parcel 12 is zoned "Park" which is what it was to some extent before applicants decided to let their vegetation grow wild on the eastern half. § 7.1.3 specifically requires that open space lands that are not developable must be made compatible with SCENIC VALUES. § 7.7.4 requires that blufftops be protected against INCOMPATIBLE uses that would include impairment of views and invasive, non-native plants.

**i** g. Public Access (Pub. Res. Code § 30252): If the bluff erodes physical access to both the coast and coastal view would be blocked either by undermining Kingsbury Drive or impairing Beach Drive below. Since "access" should include access to views, the proliferation of weeds and non-native plants on parcel 12 should be controlled and maintained; and low-growing plants that mitigate erosion, such as kikuyu should be required.

h. Fire Hazards: To the extent there is uncontrolled vegetation on the parcel 12, particularly downy plants, there is a threat of fire danger to the parcel and possibly to nearby homes which requires the vegetation to be cut and controlled and preferably replaced with an erosion control species such as kikuyu.

If these policies cannot be satisfied by application must be denied because the development does not conform to the standards set forth in the County's certified LCP and the public access policies of the Coastal Act. The scope of the permit should be expanded and conditions imposed to assure consistency:

The contents of the Planning Department files concerning the parcels subject to this application are incorporated herein by reference in support of the contentions regarding the LCP and public access issues.

## 5. AN INITIAL STUDY IS REQUIRED UNDER CEQA:

County Code 18.10.150 provides "All permits and approvals issued pursuant to this chapter shall be processed in accordance with County Environmental Review Guidelines and Rules and Regulations and with the California Environmental Quality Act and Guidelines."

CEQA (Pub. Res. Code §21000 et seq.) applies to discretionary "projects" proposed to be undertaken or requiring approval by State or local government-agencies. "Projects" are activities which have the potential to have a physical impact on the environment (Pub. Res. Code § 21065). Retaining walls and erosion control plans, by definition, have the potential for a physical impact on the environment; and discretionary review is mandated by County Code at Level V.

After determining that the activity is a "project" subject to CEQA, the County must determine if the "project" is exempt from CEQA.

Even though the emergency permit issued in 2006 was issued without any environmental review under CEQA and under an exception to the normal requirements of the LCP, the emergency permit was conditioned on obtaining a regular permit- The regular permit, now under consideration, is not exempted from CEQA or the LCP; and a final decision on the applicability of CEQA has been postponed until the final approval of the permit application.

No exemption under CEQA applies in this case. Even if an exemption did apply, exceptions would apply that require an Initial Study to be conducted (e.g. the project site is environmentally sensitive; there are likely to be successive projects that result in cumulative impacts; they are "unusual circumstances" [on a coastal bluff, note the observation by Rogers E. Johnson Assos. that the a structure on a property has the potential to divert or concentrate drainage, etc.]; and the project has a potential to damage scenic resources (again because of its unique location), see CEQA Guidelines 15300, 15300.2. These exceptions should also be considered in the context of what may apply under the CEQA Initial Study checklist.

An Initial Study must be conducted to identify the environmental impacts of the project and determine whether the identified impacts are "significant".

Based on the County's findings of "significance" it must decide whether to issue a negative Declaration if it finds no potential "significant" impacts; require a Mitigated Negative Declaration if it finds "significant" impacts but revises the project to avoid or mitigate those significant impacts; and otherwise must require an Environmental Impact Report (EIR) if it finds "significant" impacts.

In conducting the Initial Study it should be considered that this "project" involves cumulative impacts for three reasons. First, because the scope of this renovation is much more than a simple repair as explained, above. Second, because under LCP policies and County Code, the scope of this project, including the erosion control plan, must be expanded due to the fact that it should address the entire 308 feet of bluff of parcels 12 and 48; and because of the scope of potential impacts on public health and safety including the effects on the Beach Drive homes; on Kingsbury Drive; and because other issues important to the public are implicated by the issues raised in this letter. Third, because the consensus of all geologic and engineering experts is that the drainage and erosion issues affect the entire bluff top, not just 33 feet of it; and that there will be future problems with the bluff that Will have to be addressed.

Applicants may not segment, or "piecemeal", a project in a way that avoids environmental review by "chopping a large project into many little ones--each with a minimal potential impact on the environment--which cumulatively may have disastrous consequences." (Citizens Assn. for Sensible Development of Bishop Area v. County of Inyo (1985) 172 Cal. App. 3d 151, 165).

Potential "cumulative impacts" constitute a "mandatory finding of significance" which requires an EIR to be prepared. "Cumulative impacts" include:

- two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts
- \* "changes resulting from a single project or a number of separate projects"
- \* "change[s] in the environment which result **from** the incremental impact of the project when added **to** other closely related past, present, **and** reasonably foreseeable probable **future** projects. Cumulative impacts **can** result from **individually** minor but collectively significant projects **taking** place over a **period of time.**"
- \* Also, **if the** project, when considered with PROBABLE future projects, involves potentially significant environmental impacts, including degradation of the environment or threats **to** humans, a mandatory finding of significance is required,

See CEQA Guidelines § 15165.

Because this project **as** currently **framed** and conditioned, fails **to** include work **that** will clearly have **to** be done in the near future such **as** additional bluff drainage **and** erosion control, control and repair of slides, control of runoff and sedimentation, consideration of Beach Drive parcels other **than** parcel 9, landscaping, elimination of invasive **and** non-native plants and watershed issues (if the LCP is properly applied), risks to persons and property, and impacts on transportation from the effects on Kingsbury Drive (damage to which would affect traffic patterns, **street design/hazards, and** parking capacity) and Beach **Drive** (which could affect emergency vehicle **access**); **and** because even the limited scope of **this** project involves significant environmental impacts under the Initial Study Checklist on aesthetics (**substantial** adverse effect on scenic resources at the site **and** increase the use of adjacent recreational **areas** for enjoying **the coastal views**), water quality (alteration of drainage patterns resulting in **erosion, degradation of ocean** water quality from siltation), and conflicts **with** applicable land use plans including the general plan, CEQA and the County LCP, it is clear that **there are** sufficient present impacts to **require both an Initial Study and appropriate mitigations**; and that there will be projects required in the future that constitute cumulative impacts.

It may be **that** in developing **an** expanded erosion control plan and properly applying LCP Guidelines, sufficient **mitigations** may be developed to reduce necessity of **conducting** full environmental **review**. Prime Landscaping (John David) has **an** excellent reputation **as** a coastal bluff erosion control specialist **and** augmenting **an expanded** erosion control plan to include the **entire** parcels **12 and 48**, and implementing **all** applicable LCP policies, may well address many issues raised in this letter.

## 6. CONCLUSION

**In summary**, requiring **an** expanded erosion control plan and complying with LCP policies and CEQA is in the public interest; **and** are reasonable **and** appropriate requirements for a **coastal** bluff project. Including an expanded erosion control plan **and** appropriate permit **conditions to conform** the project **to the** LCP at the County stage will save additional time **and** expense to the applicant and Coastal **Commission staff** by avoiding **an** appeal to the Coastal Commission.

Applicant **owes** the neighbors and public a duty of care; and the County owes the neighbors and public an effort **to** impose lawful conditions on **any** development **of** applicants' property that will maximize the protection and interests of the public, including the neighbors, with **regard to** the issues raised in **this** letter.

Therefore, it is requested that the County take the following actions **in this** matter:

A. Conduct environmental review under CEQA as required by law and develop mitigation measures to address the issues raised in this letter (including the following), LCP compliance, and Code compliance;

B. Expand the scope ~~of the~~ permit and impose additional permit conditions to require an expanded erosion control plan, expanded geologic and geotechnical review, and LCP consistency to address the issues raised in this letter including the following;

C. All studies, reports, plans, conditions, mitigation measure, and consistency measures must address parcels 11, 12, and 48 as **ONE ENTIRE SYSTEM**. It ~~makes no sense~~ to assess and **address** a 33 foot portion of parcel 12 **while** related problems are happening or ready to happen on the applicants' football field size parcel on either side;

D. Require that ~~the~~ expanded erosion control plan address issues of drainage, erosion, sedimentation, landslide, and landscaping (groundcover) **on** the entire area of parcels 11, 12 and 48, **as well as** the effects of ~~that~~ plan **on** all affected Beach Drive properties at the bottom ~~of the~~ bluff;

E. Require that the geologic review/reports and geotechnical review/reports be expanded to address soils, drainage, erosion, and landslide issues for the entire parcel 12 **and** entire parcel 48, **as well as** parcel 11;

F. Require that ~~the~~ studies and reports, and expanded erosion control plan, specifically address drainage and erosion **issues**, including ponding and runoff, in the eastern 1/2 of parcels 12 and 48. To evaluate this area, ~~that has been allowed to become completely overgrown by applicants~~, it ~~must~~ be made visible.

**i** In order to do ~~this~~, the currently overgrown non-native and invasive plants should be cut flush **to** the ground to allow inspection for, **and installation** of, erosion and drainage control measures; and the current vegetation **should then** be replaced ~~with a suitable erosion-control/fire safe ground cover~~ that **must be** required to be maintained **so** that the terrain ~~remains~~ easily visible **to** allow ~~future~~ erosion control monitoring **and** maintenance; and also to restore and maintain the public viewshed, **address** current biotic **issues** (**non-native**, invasive species, ~~vermin/vector eradication & other~~ ecological issues) and prevent ~~the re-growth~~ of ~~invasive/non-native~~ species in the future, **address** ~~weed~~ abatement and **fire** control, and require ~~the~~ permanent removal of inappropriate signage and require a Level V sign and coastal permit for **any** future signage;

G. Require that the ~~studies~~ and reports should specifically **ADDRESS SOILS AND EROSION HAZARDS TO KINGSBURY DRIVE both near and long term**; and require applicants to monitor **any** related conditions; **and** to make and pay for any improvements on parcels 12 and 48, **particularly** the eastern 1/2, that will protect or prevent any current or future **threats to the stability of Kingsbury Drive arising from conditions** on parcels 12 or 48 including the installation of comprehensive drainage, erosion **and** landscaping measures;

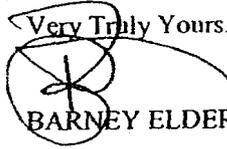
H. Impose further conditions as necessary and appropriate to implement each and every **LCP** policy and Code requirement listed in Attachments 7 and 8;

I. Require **CC&Rs** to be recorded against parcels 11, 12, and 48 requiring the actions listed above; and

J. To the extent that the foregoing actions and conditions are frustrated by applicants, to **DENY** the application; **AND** follow up **to** take further action under the County Code **to** require compliance **to** address the issues raised in this letter including recording appropriate notices of violation against these parcels.

**The Planning Department should** also note that on **January 23, 2007**, the Board ~~of Supervisors~~ will consider the issue of the adequacy of General Plan policies related **to** development **in areas subject to** geologic hazards and the protection of public health **and** safety for such ~~developments~~. **This may be an opportunity consider other issues that may affect this application and consideration should be given to continuing any hearing on this application until after the Board of Supervisors acts on this matter if the continuance can be done without losing jurisdiction to deny this application or impose additional conditions for issuance of any permit.**

**Thank** you for consideration of the information in this letter and attachments; and your anticipated action to address the issues raised in this letter.

Very Truly Yours,  
  
BARNEY ELDERS

BE:sh

*cc:* Chili Pepper, LLC  
California Coastal Commission, Attn Daniel Carl, Coastal Planner (California State Coastal Commission, Central Coast District Office, 725 Front Street, Suite 300, Santa Cruz, CA 95060)  
Supervisor Ellen Pine, 701 Ocean Street, Room 500 Santa Cruz, CA 95060  
Kingsbury Drive neighbors



APN: 043-081-11  
Code Enforcement Investigation  
Contact Date: 03/14/89

Date: 11/14/06  
Time: 14:08:59  
Code 280

01/30/91 The Status Code was C1.  
OWNER WAS ASKED TO CALL PUPBLIC WORKS.

06/15/92 The Status Code was I6.

Telephone call received from complaintant on 6/15/92. The primary concern is 8' ht. fence, illegal dwelling unit.

12/22/92 The Status Code was C7  
FOLLOW UP CODE CHANGED, THE OLD CODE WAS (I1). FOLLOW UP DATE CHANGED.  
THE OLD DATE WAS (920629). RESOLUTION DATE CHANGED. THE OLD DATE WAS ( )  
) . STATUS CODE CHANGED, THE OLD CODE WAS (I6).

12/22/92 The Status Code was C7.  
On 12/22/92. a site visit was completed by Code Officer, Ruth Owen. At that time.. it was verified the fence" height on the deck has been reduced to 5' 9". This case. therefore, is resolved.

04/19/99 The Status Code was Resolved. Added by MIB  
FOLLOWUP CODE CHANGED. OLD=(I2). FOLLOWUP DATE CHANGED.  
OLD=(19921222). AR HIVE DATE CHANGED, OLD=( ).

12/17/99 The Status Code was Resolved. Added by EMW  
ARCHIVE DATE CHANGED. OLD=(19990419).

### ATTACHMENT 3 (Parcel 11)

-----  
06/16/92 The Status Code was 16.  
FOLLOW UP CODE CHANGED. THE OLD CODE WAS ( ). FOLLOW UP DATE CHANGED,  
THE OLD DATE WAS ( ). STATUS CODE CHANGED. THE OLD CODE WAS (C1).  
-----

06/29/92 The Status Code was I2.  
FOLLOW UP CODE CHANGED. THE OLD CODE WAS (I1). FOLLOW UP DATE CHANGED.  
THE OLD DATE WAS (920629). STATUS CODE CHANGED. THE OLD CODE WAS (I6).  
-----

06/29/92 The Status Code was I2.  
On 6/29/92 a site visit was completed at the subject property. A  
privacy wall has been constructed on both sides of an existing second  
story deck. The 8' ht. wall has blocked an ocean view at the neighbor's  
property. The deck/wall range from approximately two - four feet from  
the property line.

At the time of the site visit Mr. and Mrs. Andre said that they have a  
legal non-conforming duplex on the property. They showed me the Asses-  
sors' records which notes two kitchens. A previous investigation notes  
two non-conforming kitchens in a single family dwelling. To date, the  
appraiser is assessing the property for SFD use. To check further with  
the Assessor records.

-----  
06/29/92 The Status Code was I2.  
On 6/29/92 a search of information determined that the sideyard setback  
is 5' and 8'. Therefore, the 8' wall is within the sideyard setback.  
-----

07/09/92 The Status Code was 12.  
FOLLOW UP CODE CHANGED. THE OLD CODE WAS (F6). FOLLOW UP DATE CHANGED,  
THE OLD DATE WAS (920630).  
-----

07/09/92 The Status Code was I2.  
On 7/21/92 a second inspection will be completed to determine the side-  
yard setback and coastal bluff setback.  
-----

08/11/92 The Status Code was 12.  
FOLLOW UP DATE CHANGED, THE OLD DATE WAS (920721).  
-----

08/11/92 The Status Code was I2.  
Ruth Owen telephoned Mr. Andre on 8/11/92. He had requested a change of  
appointment in writing. However, he is refusing to make an appointment  
time. I explained to him that I will issue a Notice of Building Viola-  
tion because the walls on the deck are over 6' in height and a building  
permit is required.  
-----

09/01/92 The Status Code was I2.  
-----

### ATTACHMENT 3 (Parcel 11)

FOLLOW UP DATE CHANGED. THE OLD DATE WAS (920820).

-----  
09/01/92 The Status Code was 12.  
FOLLOW UP DATE CHANGED. THE OLD DATE WAS (920930).

-----  
09/01/92 The Status Code was 12.  
notice of intent sent 9/1/92

-----  
10/01/92 The Status Code was 12.  
On 10/1/92, a telephone call was made to the subject residence. Ruth Owen explained to Mrs. Andre that this is the date that a site inspection is to be completed to determine if the building violation of a 6' wall was constructed without a building permit. If so, the violation will be recorded. She requested that I discuss this with her husband. He has received a copy of 12.10.125 (a) and wants to review it with his son, who is a lawyer.

I explained that a second complaint has been received in this office for conversion of a SFD to a duplex. I related that a previous property Owner has declared the Use of the property is a single family dwelling and that there was an alcove used as a wash area but not a second kitchen and separate rental. I explained that I will write a letter to Mr. Andre to respond to his letters. Also, that I will put a date and time on the letter to inspect the second dwelling unit. If a denial of inspection is made, a search warrant will be obtained.

-----  
10/01/92 The Status Code was 12.  
A telephone call was received from Mr. Andre. He said he plans to apply for a zoning variance and building permit in the near future to rectify the construction of wall violation. He is disputing the issue of the separate unit because he says the assessor records show two kitchens.

-----  
10/08/92 The Status Code was 17.  
STATUS CODE CHANGED. THE OLD CODE WAS (12).

-----  
10/08/92 The Status Code was 17.  
New informational letter sent to owner telling about violations and how to resolve them and asking for assessor's records.

-----  
11/03/92 The Status Code was 17.  
FOLLOW UP DATE CHANGED. THE OLD DATE WAS (921001)

-----  
11/03/92 The Status Code was 17.

### ATTACHMENT 3 (Parcel II)

11/03/92 The Status Code was I7.  
Staff consultation with Mr. and Mrs. Andre as well as their land consultant, Francis Padilla, was held with Dave Laughlin and Ruth Owen on 11/3/92. A review of 84-1342 CZ#2, BP BP 85625 and 91084 was completed. BP 91084 was issued to remodel one kitchen. The building plans state that one kitchen is to be removed. However, it was not removed at the time the building permit was finalized. Therefore, per Dave Laughlin, second kitchen to remain. But, a Declaration of Restriction is to be signed and recorded for single family dwelling use. Mr. and Mrs. Andre set up an appointment on December 1, 1992 for staff to verify there is no physical barrier to separate a second unit from the main dwelling.

At the same time, a verification will be completed that the partition on the deck will be reduced to 5' 9" height.

11/03/92 The Status Code was 17.  
FOLLOW UP CODE CHANGED, THE OLD CODE WAS (I1). FOLLOW UP DATE CHANGED, THE OLD DATE WAS (921201). RESOLUTION DATE CHANGED, THE OLD DATE WAS ( ). STATUS CODE CHANGED. THE OLD CODE WAS (I7).

12/09/92 The Status Code was I7.

Letter sent to owner telling about decisions made in meeting and need compliance by 12/22/92.

12/09/92 The Status Code was 17.  
FOLLOW UP DATE CHANGED, THE OLD DATE WAS (921201).

12/22/92 The Status Code was I7.  
FOLLOW UP CODE CHANGED. THE OLD CODE WAS (I4). FOLLOW UP DATE CHANGED. THE OLD DATE WAS (921222).

02/02/93 The Status Code was Issued Red Tag.  
FOLLOW UP CODE CHANGED. THE OLD CODE WAS (Staff Checked Compliance). FOLLOW UP D

On 12/22/92, Code Compliance Officer, Ruth Owen verified that there is an interior door access one portion of the house to another. Also, on December 30, 1992 the owner recorded a declaration of restriction to maintain the structure as a single family dwelling. Therefore, this zoning violation is resolved.

03/11/93 The Status Code was Resolved.

04/19/99 The Status Code was Resolved. Added by MIB  
FOLLOWUP CODE CHANGED, OLD=(I4). FOLLOWUP DATE CHANGED. OLD=(19930202). AR HIVE DATE CHANGED, OLD=( ).

### ATTACHMENT 3 (Parcel II)

Code Enforcement Comments - Continued  
APN: 043-081-11                      Contact Date: 05/28/92

Page: 4  
Code: B22

12/17/99 The Status Code was Resolved. Added by EMW  
ARCHIVE DATE CHANGED. OLD=( 19990419).

-----  
12/17/99 The Status Code was Resolved. Added by EMW  
NOTED ON ALLEGED VIOLATION/INVESTIGATIONS SCREEN: 1st contact letter  
sent to owner 6/16/92.

**ATTACHMENT 3 (Parcel 11)**

APN: 043-081-11      COUNTY OF SANTA CRUZ      Date: 11/34/06  
Code Enforcement Investigation      Comments      Time: 14:09:00  
Contact Date: 10/26/92      Code: 270

-----  
12/22/92 The Status Code was C7  
FOLLOW UP CODE CHANGED, THE OLD CODE WAS ( ). FOLLOW UP DATE CHANGED.  
THE OLD DATE WAS ( ). RESOLUTION DATE CHANGED, THE OLD DATE WAS ( ).  
STATUS CODE CHANGED, THE OLD CODE WAS (C1).  
-----

12/22/92 The Status Code was C7.  
A site visit was completed on 12/22/92. At that time, it was determined  
that the fence height has been reduced to 5' 9" on the deck. A photo  
was taken of the door to interior of other side of house. The detached  
garage is not used for living quarters. Mr. Andre said that he will  
record the declaraton of restriction for single family dwelling use  
after the holidays.

-----  
04/19/99 The Status Code was Resolved. Added by MIB  
FOLLOWUP CODE CHANGED. OLD=(I2). FOLLOWUP DATE CHANGED,  
OLD=(19921222). AR HIVE DATE CHANGED. OLD=( ).  
-----

12/17/99 The Status Code was Resolved. Added by EMW  
ARCHIVE DATE CHANGED. OLD=(19990419).

### ATTACHMENT 3 (Parcel 11)

-----  
02/02/93 The Status Code was Conducted Site Inspection.  
Letter received on 1/19/93 regarding four signs at the subject  
property.

The property is located in a scenic corridor.

Driveby 1/28/93 verified signs become illuminated when a vehicle passes  
by the property.

Per Dave Laughlin, this case is a priority C.

-----  
02/09/93 The Status Code was Conducted Site Inspection.  
FOLLOW UP DATE CHANGED, THE OLD DATE WAS (930202).

-----  
02/09/93 The Status Code was Conducted Site Inspection.  
Prof message sent to Marie Costa on 2/8/93. The message requested an  
opinion as to whether these posted notices which are not advertising a  
business should be enforced by County Code. Also, that this case will  
be handled as a priority "C" per Dave Laughlin.

-----  
03/19/93 The Status Code was Conducted Site Inspection.

Letter sent to owner with copy of recorded declaration of restriction  
as well as copies of the computer printouts about status of  
complaint..ma

-----  
08/18/98 BILLING HOURS .2 FOR Complaint Investigation. Added by RWN

approved appl'n 29034-M for "underground electric" w/hold to verify  
signs are < 12 sq in

-----  
09/16/98 The Status Code was Resolved. Added by RWN  
FOLLOWUP CODE CHANGED, THE OLD CODE WAS (15). FOLLOWUP DATE CHANGED,  
THE OLD DATE WAS (930208). RESOLUTION DATE CHANGED, THE OLD DATE WAS ( )  
. STATUS CODE CHANGED. THE OLD CODE WAS (Conducted Site Inspection).

-----  
09/24/98 BILLING HOURS .75 FOR On-Site Inspection. Added by RWN

bldg insp FL verified signs have been removed. Owner says he "took them  
down last year"..RESOLVED

-----  
04/19/99 The Status Code was Resolved. Added by MIB  
ARCHIVE DATE CHANGED. OLD=( ).

-----  
12/17/99 The Status Code was Resolved. Added by EMW  
ARCHIVE DATE CHANGED, OLD=(19990419).

**ATTACHMENT 3 (Parcel 11)**



ASSESSOR INFORMATION for APN 043-081-11

---

Parcel Status: A=Active  
Parcel Notebook?: YES  
Situs Address: KINGSBURY DR 310 APTOS  
Assessee Name: ANDRE RICHARD 3 TRUSTEE ETAL  
Mailing Street: 310 KINGSBURY DR  
City/State/Zip: APTOS CA 95003

---

PARCEL ETALS

---

Name	Vesting Code	% of INTEREST
ANDRE RICHARD J TRUSTEE ETAL	TR	
ANDRE RAMONA E TRUSTEE ETAL	TR	
ANDRE RICHARD J & RAMONA E BENEFICIARIES		

---

I. ALLS INVESTIGATION INFORMATION

---

Contact Date: 09/13/88 Redtag?: NO  
Investigation Code: Z20 ADD DWELLING UNIT W/OUT PERMIT  
Status: Resolved  
Last Action: C7 Resolved  
Follow-Up Code:  
Follow-Up Date:  
Resolved Date: 09/14/88 Permit No. :  
Archived Date: Priority: A  
Alleged Violation: PEOPLE LIVING IN GARAGE.  
History Available?: YES

---

Contact Date: 03/14/89 Redtag?: NO  
Investigation Code: 280 FENCE HEIGHT/LOCATION VIOLATN  
Status: Resolved  
Last Action: C7 Resolved  
Follow-up Code:  
Follow-Up Date:  
Resolved Date: 12/22/92 Permit No. :  
Archived Date: Priority: C  
Alleged Violation: 3.5 FOOT FENCE BUILT AT THE EDGE OF PAVEMENT IN  
RIGHT-OF-WAY.  
History Available?: YES

---

Contact Date: 05/28/92 Redtag?: NO  
Investigation Code: B22 DUPLEX CONVERSION W/OUT PERMIT  
Status: Resolved  
Last Action: C7 Resolved  
Follow-Up Code:  
Follow-Up Date:  
Resolved Date: 02/02/93 Permit No. :  
Archived Date: Priority: A  
Alleged Violation: GARAGE CONVERTED TO HABITABLE AREA AND CONVERTED  
SFD TO A DUPLEX A FEW YEARS AGO. NOW CONSTRUCTING  
AN 8' HIGH FENCE ON REAR DECK FOR REAR TENANT.  
History Available?: YES

**ATTACHMENT 3 (Parcel 11)**

-----  
Contact Date: 10/26/92 Redtag?: NO  
Investigation Code: Z70 SITE DEVELOP STANDARDS VIOLATN  
Status: Resolved  
Last Action: C7 Resolved  
Follow-Up Code:  
Follow-Up Date:  
Resolved Date: 12/22/92 Permit No. :  
Archived Date: Priority: B  
Alleged Violation: SIGNS IN VIOLATION OF 13.10.580, POSTED IN  
RESIDENTIAL DISTRICT.  
History Available?: YES  
-----  
Contact Date: 01/19/93 Redtag?: NO  
Investigation Code: Z90 OTHER ZONING VIOLATION  
Status: Resolved  
Last Action: C7 Resolved  
Follow-Up Code:  
Follow-Up Date:  
Resolved Date: 09/16/98 Permit No. :  
Archived Date: Priority: C  
Alleged Violation: FOUR SIGNS THAT HAVE BEEN INSTALLED ON OCEAN SIDE  
OF KINSBURY DRIVE (R.I.P. NO TRESPASSING. DANGER  
TOXIC, AND A 10' HIGH CROSS ERECTED).  
History Available?: YES  
-----  
Contact Date: 08/09/99 Redtag?: NO  
Investigation Code: E40 SIGN TREE REMOVAL W/OUT PERMIT  
Status: Resolved  
Last Action: C4 Complaint Not Valid  
Follow-Up Code:  
Follow-Up Date:  
Resolved Date: 01/12/00 Permit No. :  
Archived Date: Priority: B  
Alleged Violation: CUT DOWN THREE EUCALYPTUS TREES.  
History Available?: YES  
-----

3 ETALS  
6 INVESTIGATIONS

**ATTACHMENT 3 (Parcel 11)**







10/04/99 31 VL1 VOID WARNING LETTER MAR INSPECTIONS  
VOID WARNING LETTER SENT

10/18/99 21 FINAL PROJECT COMPLETE AND CLEAR FDL INSPECTIONS

----- Permit Description -----  
Remove overhead wiring and install underground wiring for an existing SFD.

DISCRETIONARY APPLICATION SNAPSHOT

-----  
Application No.: 06-0037 Appf. Date: 02/01/06 Review Level: 5  
Project Planner: RANDALL ADAMS Proj. Status: IN PROCESS  
Applicant Name: KIM TSCHANTZ - CYPRESS ENVIRONMENTAL  
Special Program: None App1. to Rectify a Violation?: N  
NEW Residential Units: NEW Commercial Square Footage:  
----- Project Description -----

Proposal to repair an existing retaining wall on a coastal bluff.  
Requires a Coastal Development Permit, and Geologic and Geotechnical Report Reviews. Property located on the South side of Kingsbury Drive at about 200 feet West of the intersection with Florence Drive (adjacent to 310 Kingsbury Drive).

DISCRETIONARY APPLICATION SNAPSHOT

-----  
Application No.: 06-0535 App1. Date: 09/21/06 Review Level: 5  
Project Planner: JOSEPH HANNA Proj. Status: APPROVED  
Applicant Name: KIM TSCHANTZ  
Special Program: None App1. to Rectify a Violation?: N  
NEW Residential Units: NEW Commercial Square Footage:  
----- Project Description -----

Proposal to repair an existing retaining wall on a coastal bluff.  
Requires an Emergency Coastal Development Permit (see Coastal Development Permit 06 -0037). Property located on the south side of Kingsbury Drive at about 200 feet West of the intersection with Florence Avenue (adjacent to 310 Kingsbury drive).  
Emergency Permit issued 10/2/06.

- 6 BUILDING APPLICATIONS
- 6 BUILDING PERMITS
- 2 DISCRETIONARY APPLICATIONS

**ATTACHMENT 3 (Parcel 11)**

**I ■. PARCEL PROFILE, CHARACTERISTICS, TRANSFERS AND SPLIT/COMBOS**

**PARCEL PROFILE INFORMATION**

EMIS est: -----Sq Footage -----Acreage  
 9,888.1 .227  
 Assessor:  
 Assessor Land Use Code: 020 SINGLE RESIDENCE  
 Layer Description..... Attribute..... Description.....  
 05 N83 PLANNING ZONES R-1-6 SINGLE-FAMILY RESIDENTIAL - 6,000 SQU  
 06 N83 PLANNING AREAS AT APTOS  
 07 N83 URBAN SERVICES L USL WITHIN USL  
 09 N83 SUPERVISORIAL DI SUPER-2 Ellen Pirie Second District  
 14 N83 COASTAL ZONE CZ WITHIN COASTAL ZONE  
 19 N83 G P BASE LAYER R-UL URBAN LOW RESIDENTIAL

**PARCEL CHARACTERISTICS**

Structure Data  
 Main Building. .SqFt: 2,007 No. Units.....: 1 Pool. ....: NO  
 Year Built (est). . . .: 1941 Heat.....: CENTRAL Spa.. ....: NO  
 Total Room Count.. . .: 7 Concrete.SqFt: 168 Decks. ....SqFt: 829  
 No. Bedrooms.....: 3 Garage...SqFt: 540 No. Fireplaces: 2  
 No. Bathrooms (F/H)..: 3 / 0 Carport. .SqFt: Roof.. ....: WOOD  
 Misc Other Buildings: YES  
 Land Data  
 Water.....: PUBLIC Sanitation.. .: PUBLIC

**PARCEL TRANSFERS**

Vol .-Page/ Serial No.	Rec.Date	Index Sell Price	No. Par.	D/TP	PCOR	F.V/ Vest.	Reap.Code/ % Interest
5263-034	05/18/93		003	01	PCOR	N/A	NO
	ANDRE R J & RAMONA E HW JT					JT	
5251-552	04/30/93		003	01		N/A	NO
	ANDRE R 3 & RAMONA E TRUSTEES					TR	
5093-289	08/24/92		003	01		N/A	NO
	ANDRE RICHARD J & RAMONA E H/W CP					CP	
5093-285	08/24/92		003	01		N/A	NO
	ANDRE RICHARD J & RAMONA E HW JT					JT	
4226-116	09/24/87	375,000	003	01	N	N/A	YES-COMPLETED
	SUMMIT BANK						
4172-939	06/09/87		003	09	N	N/A	YES-COMPLETED
	MATHEWS MAX S/W						
3633-220	09/30/83	285,000	003	01		NO	YES-COMPLETED
	LEONARD KATHLEEN GRACE						
3621-460	09/07/83		002	06		N/A	NO
	LEONARD LETITIA E						
3013-172	01/22/79		000			N/A	N/A

**SPLIT/COMBO INFORMATION**

Investigations.....

**ATTACHMENT 3 (Parcel 11)**

Parcel	Action	Other APN	Date	for Other APN?
04308111	NO HISTORY			NO
006 EMIS LAYERS		009 TRANSFERS		001 SPLIT/COMBO

**ATTACHMENT 3 (Parcel 11)**

ASSESSOR INFORMATION for APN 043-081-12

---

---

Parcel Status: A=Active  
Parcel Notebook?: NO  
Situs Address: No Situs Address  
Assessee Name: ANDRE RICHARD J TRUSTEE ETAL  
Mailing Street: 310 KINGSBURY DR  
City/State/Zip: APTOS CA 95003

---

---

PARCEL ETALS

Name	Vesting Code	% of INTEREST
ANDRE RICHARD J TRUSTEE ETAL	TR	
ANDRE RAMONA E TRUSTEE ETAL	TR	
ANDRE RICHARD J & RAMONA E BENEFICIARIES		

---

---

I. ALUS INVESTIGATION INFORMATION

---

---

NO INVESTIGATION RECORDS FOUND

---

---

3 ETALS  
INVESTIGATIONS

**ATTACHMENT 4 (Parcel 12)**



Applicant Name: KIM TSCHANTZ

Special Program: None

App1. to Rectify a Violation?: N

NEW Residential Units:

NEW Commercial Square Footage:

----- Project Description -----  
Proposal to repair an existing retaining wall on a coastal bluff.  
Requires an Emergency Coastal Development Permit (see Coastal  
Development Permit 06 -0037). Property located on the south side  
of Kingsbury Drive at about 200 feet West of the intersection  
with Florence Avenue (adjacent to 310 Kingsbury drive).  
Emergency Permit issued 10/2/06.

---

---

- 1 BUILDING APPLICATIONS
- 1 BUILDING PERMITS
- 2 DISCRETIONARY APPLICATIONS

**ATTACHMENT 4 (Parcel 12)**

**PARCEL PROFILE, CHARACTERISTICS, TRANSFERS AND SPLIT/COMBOS**

PARCEL PROFILE INFORMATION

EMIS est:      Sq Footage      Acreage  
                          10,149.5                           .233

Assessor:  
 Assessor Land Use Code: 010 LOT/RESIDENTIAL ZONE

Layer Description	Attribute	Description
05 N83 PLANNING ZONES	PR	PARKS, RECREATION AND OPEN SPACE DIST
06 N83 PLANNING AREAS	AT	APTOS
07 N83 URBAN SERVICES L	USL	WITHIN USL
09 N83 SUPERVISORIAL DI	SUPER-2	Ellen Pirie                           Second District
14 N83 COASTAL ZONE	CZ	WITHIN COASTAL ZONE
19 N83 G P BASE LAYER	0-U	URBAN OPEN SPACE

PARCEL CHARACTERISTICS

Structure Data		
Main Building.. .SqFt:	No. Units....:	Pool.. ..:
Year Built (est). ....: 0000	Heat.....:	Spa.....:
Total Room Count. ....:	Concrete. SqFt:	Decks.. ...SqFt:
No. Bedrooms.....:	Garage.. .SqFt:	No. Fireplaces: 0
No. Bathrooms (F/H).. : 0 / 0	Carport. .SqFt:	Roof.. ..:
Misc Other Buildings:		
Land Data		
Water.....:	Sanitation.. .:	

PARCEL TRANSFERS

Vol.-Page/ Serial No.	Rec.Date	Index Sell Price	NO. Par.	D/TP	PCOR	F.V/ Vest.	Reap.Code/ % Interest
5263-034	05/18/93		003	01	PCOR	N/A	NO
	ANDRE R J & RAMONA E HW	JT				JT	
5251-552	04/30/93		003	01		N/A	NO
	ANDRE R J & RAMONA E TRUSTEES					TR	
5093-289	08/24/92		003	01		N/A	NO
	ANDRE RICHARD J & RAMONA E HW	CP				CP	
5093-285	08/24/92		003	01		N/A	NO
	ANDRE RICHARD J & RAMONA E HW	JT				JT	
4226-116	09/24/87	375,000	003	01	N	N/A	YES-COMPLETED
	SUMMIT BANK						
4172-939	06/09/87		003	09	N	N/A	YES-COMPLETED
	MATHEWS MAX S/W						
3633-220	09/30/83	285,000	003	01		NO	YES-COMPLETED
	LEONARD KATHLEEN GRACE						
3459-463	07/02/82		001			N/A	NO
3459-462	07/02/82		001			N/A	YES-COMPLETED
	LEONARD LETITIA E ETAL						
3013-172	01/22/79		003			N/A	N/A

SPLIT/COMBO INFORMATION

**ATTACHMENT 4 (Parcel 12)**

Parcel	Action	Other APN	Date	Investigations for Other APN?
04308112	NO HISTORY			NO
006 EMIS LAYERS		010 TRANSFERS		001 SPLIT/COMBO

**ATTACHMENT 4 (Parcel 12)**



**ATTACHMENT 5 (view 15 feet above street level)**



**ATTACHMENT 6 (view public gets)**

## COASTAL ACT (LOCAL COASTAL PLAN/GENERAL PLAN) REQUIREMENTS

The numbers under the headings, herein, are **to** parts of the Santa Cruz County General Plan and certified Local Coastal Plan and the numbers refer to the General Plan element (2-LAND USE; 5-CONSERVATION AND OPEN SPACE; 6-PUBLIC SAFETY AND NOISE; 7-PARKS AND RECREATION, AND PUBLIC FACILITIES; with the numbers after the decimal point referring to specific policies

### (entire section) \*VIEW PROTECTION/LANDSCAPING

#### \*5.10.2 (LCP) Development Within Visual Resource Areas

\*Recognize that visual resources of Santa Cruz County possess diverse characteristics and that the resources worthy of protection may include, but are not limited to, ocean views...Require projects to be evaluated against the context of their unique environment and regulate...design to protect these resources consistent with the objectives and policies of this section.

#### \*5.10.3 (LCP) Protection of Public Vistas:

\*Protect significant public vistas **as** described in policy 5.10.2 from all publicly used roads and vista points by minimizing disruption of landform and aesthetic character caused by grading operations, timber harvests, utility wires and poles, signs, inappropriate landscaping and structure design. Provide necessary landscaping to screen development which is unavoidably sited within these vistas. (See policy 5.10.11.)

#### \*5.10.6 (LCP) Preserving Ocean Vistas

\*Where public ocean vistas exist, require that these vistas be retained to the maximum extent possible as a condition of approval for any new development.

#### \*5.10.9 (LCP) Restoration of Scenic **Areas**

"Require on-site restoration of visually blighted conditions as a mitigating condition of permit approval for new development. The type and amount of restoration shall be commensurate with the size of the project for which the permit is issued. Provide technical assistance for restoration of blighted areas.

#### \*5.10.12 (LCP) Development Visible from Urban Scenic Roads

\*In the viewsheds of urban **scenic** roads, require new discretionary development to improve the visual quality through siting, architectural design, landscaping and appropriate signage. (See policies 5.10.18, 5.10.19 **and** 5.10.20.)

#### \*5.10.13 (LCP) Landscaping Requirements

\*All grading and land disturbance projects visible from scenic roads **shall** conform to the following visual mitigation conditions:

- (a) Blend contours of the finished surface with the adjacent natural terrain and landscape to achieve a smooth transition and natural appearance; and
- (b) Incorporate only characteristic or indigenous plant species appropriate for the area.

#### \*5.10.18 (LCP) Signs Visible from Scenic Roads

\*Actively discourage the placement of signs which **will** be visible from scenic roads; where allowed, require strict compliance with **the** County Sign ordinance to minimize disruption of **the** natural scenic qualities of the viewshed. Give priority to sign abatement programs for scenic roads.

#### \*PARKS AND RECREATION, AND PUBLIC FACILITIES Objective 7.7c:

\*(LCP) To maintain or provide access, INCLUDING **VISUAL ACCESS**, to every beach ....

\*7.7.1 (LCP) Coastal Vistas

**"Encourage pedestrian enjoyment of ocean areas and beaches by the development of vista points** and overlooks with benches and railings, and facilities for pedestrian access to the beaches, subject to policy 7.6.2.

**\*INVASIVE, NON-NATIVE PLANTS**

\*5.1.14 (LCP) Removal of Invasive Plant Species

\***Encourage the removal of invasive species** and their replacement with characteristic native plants, except where such invasive species provide significant habitat value and where removal of such species would severely degrade the existing habitat. In such cases, develop long-term plans for gradual conversion to native species providing equal or better habitat values.

\*5.1.11 (LCP) Wildlife Resources Beyond Sensitive Habitats

\*For areas which may not meet the definition of sensitive habitat contained in policy 5.1.2, yet contain valuable wildlife resources (such as migration corridors or exceptional species diversity), protect these wildlife habitat values and species using the techniques outlined in policies 5.13 and 5.1.7 [LCP; includes " (e) Limit removal of native vegetation to the minimum amount necessary for structures, landscaping, driveways, septic systems and gardens; **(f) Prohibit landscaping with invasive or exotic species** and encourage the use of characteristic native species] and use other mitigation measures identified through the environmental review process.

\*6.3.7 Reuse of Topsoil and Native Vegetation Upon Grading Completion

\*Require topsoil to be stockpiled and reapplied upon completion of grading to promote regrowth of vegetation; **native vegetation should be used in replanting disturbed areas to enhance long-term stability.**

**\*WATER QUALITY**

\*5.4.14 (LCP) Water Pollution from Urban Runoff

\*Review proposed development projects for their potential to contribute to water pollution via increased storm water runoff. **Utilize erosion control measures**, on-site. detention and other appropriate storm water best management practices to **reduce pollution from urban runoff.**

\*6.3.8 (LOP) On-Site Sediment Containment

\*Require containment of all sediment on **the** site during construction and require drainage improvements for the completed development that will provide **runoff** control, including onsite retention or detention where downstream drainage facilities have limited capacity. Runoff control systems or Best Management Practices shall be adequate to prevent **any** significant increase in site **runoff** over pre-existing volumes and velocities and to maximize on-site collection of non-point source pollutants.

**\*PART 6.3 PROGRAMS**

\*b. **Enforce the comprehensive Erosion Control ordinance requiring control of existing erosion problems as well as the installation of erosion, sediment, and runoff control measures in new developments.**

**"PROTECTION OF URBAN OPEN SPACE**

\*5.11.1 (LCP) Designation of Urban Open Space Lands (O-U)

\*Designate Urban Open Space (O-U) areas [including]

(a) Coastal bluffs and beaches

**i** \*5.113 (LCP) Development Within Urban Open Space Areas

\***Consider development within areas identified as Urban Open Space only when consistent with all applicable resource protection and hazard mitigation policies**, and only in the following circumstances....**(b) For**...activities when the use is consistent with the maintenance of the area as open space, such as recreational use, **habitat restoration**, or **flood or drainage control** facilities.

**i** \*5.11.4 (LCP) Mitigating Development Impacts

"Require full mitigation of ALL **POTENTIAL** adverse impacts associated with developments located in Urban Open Space areas.

"SOILS

\*6.2.1 (LCP) Geologic Hazards Assessments for Development On and Near Slopes

\*Require a geologic hazards assessment of all development, including grading permits, that is potentially affected by slope instability...

\*6.2.2 (LCP) Engineering Geology Report

\*Require an engineering geology report by a certified engineering geologist and/or a soils engineering report when the hazards assessment identifies potentially unsafe geologic conditions in an area of proposed development.

\*6.2.3 (LCP) Conditions for Development and Grading Permits

\*Condition development and grading permits based on the recommendations of the Hazard assessment and other technical reports.

\*6.2.6 (LCP) Location of Structures and Drainage Considerations in Unstable Areas

Require location and/or clustering of structures away from potentially unstable slopes whenever a feasible building site exists away from the unstable areas. **Require drainage plans that direct runoff and drainage away from unstable slopes.**

\*6.2.9 (LCP) Recordation of Geologic Hazards

\*...Require property OWNERS and public agencies to control landslide conditions which **THREATEN structures or ROADS.**

\*6.2.10 (LCP) Site Development to Minimize Hazards

"Require all developments to be sited and designed to **AVOID or minimize hazards** as determined by the geologic hazards assessment or geologic and engineering investigations.

\*6.2.11 (LCP) Geologic Hazards Assessment in Coastal Hazard Areas

\*Require a geologic hazards assessment or full geologic report for all development activities within coastal hazard areas, including all development activity **within 100-feet of a coastal bluff** Other technical reports may be required if significant potential hazards are identified by the hazards assessment.

\*6.2.12 (LCP) Setbacks from Coastal Bluffs

\***All development activities**, including those which are cantilevered, and non habitable structures for which a building permit is required, shall **be set back a minimum of 25 feet from the top edge of the bluff.** A setback greater than 25 feet may be required based on conditions on and adjoining the site. The setback shall be sufficient to provide a stable building site over the 100-year lifetime of the structure, as determined through geologic and/or soil engineering reports. The determination of the **minimum** 100 year setback shall be based on the existing site conditions and shall not take into consideration the effect of **any** proposed shoreline or coastal bluff protection measures.

\*6.2.14 (LCP) Additions to Existing Structures

"Additions, including second story and cantilevered additions, shall comply with the setback requirements of 6.2.12.

\*6.2.15 (LCP) New Development on Existing Lots of Record

\*Allow development activities in areas subject to storm wave inundation or beach or bluff erosion on existing lots of record, within existing developed neighborhoods, under the following circumstances:  
**(a)** A technical report (including a geologic hazards assessment, engineering geology report and/or soil engineering report) demonstrates that the potential hazard can be mitigated over the 100-year lifetime of the structure. Mitigations can include, but are not limited to, building setbacks, elevation of the structure, and foundation design; .

**(b)** Mitigation of the potential hazard is not dependent on shoreline or coastal bluff protection structures, except on lots where both adjacent parcels are already similarly protected; and

**(c)** The owner records a Declaration of Geologic Hazards on the property deed that describes the potential hazard and the level of geologic and/or geotechnical investigation conducted.

\*6.2.19 (LCP) Drainage and Landscape Plans

\*Require drainage and landscape plans recognizing potential hazards on and **off** site **to** be approved by the **County** Geologist prior to the approval **of** development in the coastal hazard areas. Require that approved drainage and landscape development not contribute to **offsite** impacts and that the defined **storm** drain system or Best Management Practices be utilized where feasible. The applicant shall be responsible for the costs of repairing and/or restoring any off-site impacts.

\*6.2.20 (LCP) Reconstruction of Damaged Structures on Coastal Bluffs

\*...When structures located on or at the top of a coastal bluff are damaged as a result of coastal hazards, including slope instability **and** seismically; induced landslides, and where the loss is greater than 50 percent of the value, permit reconstruction if all applicable regulations can be met, including minimum setbacks. If the minimum setback cannot be met, allow only in-kind reconstruction, **AND ONLY IF THE HAZARD CAN BE MITIGATED TO PROVIDE STABILITY OVER A 100 YEAR PERIOD.**

\*6.3.2 (LCP) Grading Projects to Address Mitigation Measures

\*Deny **any** grading project where a potential danger to soil or water resources has been identified and adequate mitigation measures cannot -be undertaken.

\*6.3.3 (LCP) Abatement of Grading and Drainage Problems

\*Require, **as a** condition of development approval, abatement of any grading or drainage condition on the property which gives rise to existing or potential erosion problems.

\*6.3.4 (LCP) Erosion Control Plan Approval Required for Development

\*Require approval of an erosion control plan for all development, **as** specified in **the** Erosion Control ordinance. Vegetation removal shall be minimized and limited to that amount indicated on the approved development plans, but shall be consistent with fire safety requirements.

\*PARKS, RECREATION & OPEN SPACE

**i** \*7.1.3 (LCP) Parks, Recreation and Open Space Uses

\*Allow low intensity **uses** which are compatible with the **SCENIC VALUES** and natural setting of the county for open space lands which are not developable; and allow **commercial** recreation, County, State and Federal parks, preserves, and biotic research stations, local parks and passive open space uses for park lands which are developable.

**i** \*7.7.4 (LCP) Maintaining Recreation Oriented Uses

**\*Protect the coastal blufftop areas** and beaches **from intrusion** by nonrecreational structures and **incompatible** uses to the extent legally possible without impairing the constitutional rights of the property owner, subject to policy 7.6.2.

## COUNTY CODE REQUIREMENTS

### \*GENERAL PLAN CONSISTENCY REQUIRED

#### \* 13.01.130 General Plan consistency.

(a) Land Use Regulation. All land use regulations including building, zoning, subdivision and environmental protection regulations shall be consistent with the adopted General Plan. No discretionary land use project, public or private, shall be approved by the County unless it is found to be consistent with the adopted General Plan.

### \*LANDSCAPING/INVASIVE & NON-NATIVE PLANTS

#### \* 13.20.130 Design criteria for coastal zone developments.

##### (a) General

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

(b) Entire Coastal Zone. The following Design Criteria shall apply to projects sited anywhere in the coastal zone:

4. Landscaping. When a landscaping plan is required, new or replacement vegetation shall be compatible with surrounding vegetation and shall be suitable to the climate, soil, and ecological characteristics of the area. The County's adopted Landscape Criteria shall be used as a guide.

(d) Beach Viewsheds. The following Design Criteria shall apply to all projects located on blufftops and visible from beaches.

1. Blufftop Development. 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. In urban areas of the viewshed, site development shall conform to (c) 2 and 3 above.

**[(c) 2. ...Screening and landscaping suitable to the site shall be used to soften the visual impact of development in the viewshed.]**

### \*VIEWS

#### \* 13.20.130 Design criteria for coastal zone developments.

##### (a) General

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

**(a)(3)(iii)** The project will be consistent with the Visual Resource Policies of the General Plan and Local Coastal Program Land Use Plan. (Ord. 4346, 12/13/94)

(b) Entire Coastal Zone. The following Design Criteria shall apply to projects sited anywhere in the coastal zone:

1. Visual Compatibility. All new development shall be sited, designed **AND LANDSCAPED TO BE VISUALLY COMPATIBLE** and integrated with the character of surrounding neighborhoods or areas.

### \*SOILS

#### \* 16.10.050 Requirements for geologic assessment.

\*(a) All development is required to comply with the provisions of **this** Chapter....

(b) Hazard Assessment Required ...**as** specified in subsections (c) (d) **and** (e)...**a** full geologic report will be prepared according to the County Guidelines for Engineering Geologic **Reports**....A geologic hazards assessment shall also be required for development located in other areas of geologic hazard

(c) Geologic Report Required. A full geologic report shall be required ....

2. Whenever a significant potential hazard **is** identified by a geologic hazards assessment....

(e) Additional **Report** Requirements. Additional information (including but not limited to full geologic, subsurface geologic, hydrologic, geotechnical or other engineering investigations and reports) shall be required when a hazard or foundation constraint requiring further investigation **is** identified.

\*16.10.070 Permit conditions.

\*The recommendations of the....full geologic report ...shall be included as permit conditions....In addition, the requirements described below for specific geologic hazards shall become standard conditions for development

(e) Slope Stability.

1. Location: **All** development activities shall be located away from potentially unstable areas....

3. Drainage: Drainage plans designed to direct runoff away from unstable areas (as identified from the geologic hazards assessment or other technical report) shall be required.

6. Notice of Hazards: The developer and/or subdivider of a parcel or parcels in an area of geologic hazards shall be required to record a Declaration of Geologic Hazards with the County Recorder. The Declaration shall include a description of the hazards on the parcel, and the level of geologic and/or geotechnical investigation conducted.

7. Other Conditions: OTHER PERMIT CONDITIONS INCLUDING BUT NOT LIMITED TO PROJECT REDESIGN, building site elimination and the development of building and septic system envelopes, building setbacks and foundation and drainage requirements shall be required as deemed necessary by the Planning Director....

(h) Coastal Bluffs and Beaches:

1. Criteria in Areas Subject to Coastal Bluff Erosion: Projects in areas subject to coastal bluff erosion shall meet the following criteria:

(i) for all development...demonstration of the stability of the site, in its current, pre-development application condition, for a minimum of 100 years as determined by either a geologic hazards assessment or a full geologic report.

(ii) for all development...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.

(iii) the determination of the minimum setback shall be based on the existing site conditions and shall not take into consideration the effect of any proposed protection measures, such as shoreline protection structures, retaining walls, or deep piers....

(vi) The developer and/or the subdivider of a parcel or parcels in an area subject to geologic hazards shall be required, as a Condition of development approval and building permit approval, to record a Declaration of Geologic Hazards with the County Recorder. The Declaration shall include a description of the hazards on the parcel and the level of geologic and/or geotechnical investigation conducted.

(vii) approval of drainage and landscape plans for the site by the County Geologist....

(ix) All other required local, state and federal permits shall be obtained.

\* 16.22.060 Erosion control plan.

\*(a) Prior to issuance of a building permit, development permit or land division, an erosion control plan indicating proposed methods for the control of runoff, erosion, and sediment movement shall be submitted and approved. Erosion control plans may also be required by the Planning Director for other types of applications where erosion can reasonably be expected to occur....Erosion control plans shall include, as a minimum, the measures required under Sections 16.22.070, 16.22.080, 16.22.090, and 16.22.100 of this chapter. [*16.22.070 Runoff control: Runoff from activities subject to a building permit, parcel approval or development permit shall be properly controlled to prevent erosion. The following measures shall be used for runoff control, and shall be adequate to control runoff from a ten-year storm....(&) ALL RUNOFF should be detained or dispersed OVER NONERODIBLE VEGETATED SURFACES;....(c) Any concentrated runoff which cannot be effectively dispersed without causing erosion, shall be carried in nonerodible channels or conduits to the nearest drainage course; (d) Runoff from disturbed areas shall be detained or filtered...to prevent the escape of sediment from the disturbed area; (e) No earth or organic material shall be deposited or placed where it may be directly carried into a...body of standing water. \*16.22.100 Overall responsibility: It shall be the responsibility of the owner and the permittee to ensure that erosion does not occur from any activity during OR AFTER project construction.*]Additional measures or

modification of proposed measures may be required by the Planning Director prior to project approval. **No** grading or clearing may take place on the site prior **to** approval of an erosion control plan for that activity. Final certification of project completion may be delayed pending proper installation of measures identified in the approved erosion control plan.

(b)....The plans shall include the following information in writing and/or diagrams: 1. ...location of the proposed site. 2. Property lines and contours...details of terrain ..AREA drainage...proposed drainage channels...runoff control measures. 3. Measures for runoff control and erosion control to be constructed with, or **as** a part of, the proposed work. All measures required under this chapter shall be shown. Function of erosion control measures shall be consistent with the provisions of this chapter;....**5.** Revegetation proposal for **all surfaces** exposed or expected to be exposed during development activities ....

(d) For major development proposals, the erosion control plans shall be prepared by a registered professional authorized **to** do such work under state law. For these major projects, detailed plans of all surface and subsurface drainage devices, runoff calculations, and other calculations demonstrating adequacy of drainage structures shall be included.

ROGERS E. JOHNSON & ASSOCIATES  
CONSULTING ENGINEERING GEOLOGISTS

1729 SEABRIGHT AVENUE  
SANTA CRUZ, CA 95062

(408) 425-1288

14 January 1936

Richard and  
Ramona Andre  
310 Kingsbury Dr  
Aptos, CA 95003

APN:43-081-11, 12  
+ 43-082-48

Mr. John Jackson  
P.O. Box: 1  
Boulder Creek, CA 95006

Ph: (831)688-5928  
Cell:(831-818-5685  
e: randre@cruzio.com

Subject: Geologic Site Visit, 310 Kingsbury Drive, Rio Del Mar

Dear Mr. Jackson;

This letter report presents the results of our geologic site visit to 310 Kingsbury Drive, in Rio Del Mar, CA. The purpose of the site visit was to examine slope stability and drainage problems at the property, and to assess the degree of geologic hazard. In addition to the site visit, our staff geologists examined vertical aerial photos and oblique (low angle) aerial photos of the site, reviewed existing geologic reports on the area, and prepared this report.

Site Description

The subject property is located atop coastal bluffs overlooking the Pacific Ocean, on the Ocean side of Kingsbury Drive in Rio Del Mar, CA. There is a house on the property, surrounded by a lawn, garden plantings and a recently constructed wooden deck. The upper portion of the property slopes gently toward the west, which causes most rainfall which falls on the property to drain towards the sea cliff behind the house. The cliffs behind the house are high (> 80 feet), and are extremely steep (100%-125%). There are signs of recent shallow landsliding on the cliff face. A 3 to 6 foot high retaining wall supports a portion of the cliff directly behind the house. There are several existing houses

directly below the property near the base of the **sea** cliff.

#### Site Geology

The coastal bluffs of the Rio Del Mar area consist of the fine-to-medium grained sand of the Aromas Formation, overlain by up to 65 feet of the sand, silt, and gravel of the Marine Terrace Deposits (Dupre, 1975). These materials are poorly consolidated and are vulnerable to erosion from rainfall and subsequent runoff. Numerous landslides occurred along these cliffs during the great storm of 3-5 January 1982, causing damage to properties at both the top and bottom of the cliffs. These landslides typically occurred on extremely steep (> 100%) slopes that were covered with a soil mantle and shallow rooted plants such as ice plant.

#### GEOLOGIC HAZARDS

Geologic hazards on the **subject** property will be discussed in two parts; 1) drainage and erosion control, and 3) slope stability. This division is for discussion only, because drainage and erosion control measures can strongly affect the stability of slopes.

#### Drainage and Erosion Control

Controlling runoff from rainfall is extremely important on hillside homesites. This is especially true on the subject property, where runoff erosion can accelerate cliff retreat. There are some existing drainage control measures on the property ( i.e. concrete-lined drains, plastic hose) which have probably

helped lessen erosion. However, these drainage measures have not been maintained, and this limits their effectiveness. It is very important to clean and repair drainage systems at the beginning of each rainy season. A list of advice for the maintenance of hillside homesites is attached to this report.

In addition to the existing drainage control measures, full roof gutters should be added to the house, and the collected runoff should be led over the edge of the cliff in flexible plastic hose and carried to the base of the cliff. The outlets of all hoses carrying water to the base of the cliff should be carefully located, and should be provided with velocity dissipaters to prevent erosion at the base of the cliff.

During rainstorms, up to 2 feet of ponding water occurs at the western end of the basement area of the house, near the furnace and hot water heater. A small cut and a small concrete pad for the furnace have formed a low point with an impermeable surface in this area. The ponding water emerges from the soil just upslope of this area. During our site visit, the ground was still wet in this area, although no rain had fallen in 9 days.

The ponding in this area is probably due to infiltration of water upslope of the house, followed by lateral migration of water to beneath the house and return flow to the surface at the excavation for the furnace and water heater. The ponding could be reduced by cutting down upslope infiltration of water or by installing subdrains in the basement area. There appears to be an existing drain in the concrete foundation wall near where the

ponding is occurring. This drain is clogged, and should be cleared and connected to the concrete-lined ditch beneath the wooden deck. To reduce upslope infiltration, water should not be allowed to form temporary ponds on the property following rainstorms. Site inspection during a rainstorm showed that these temporary ponds currently form in the 2-3 inch deep channels which surround the lawns on the property. These channels could be graded and provided with an outlet to drain them thoroughly. Other low points which permit ponding should be identified during wet periods and regraded or filled.

#### Slope Stability

As mentioned, the cliffs on the subject property show signs of recent shallow landsliding. Aerial photos show several bare, near vertical sections of cliff which are probably actively eroding landslide scars. This landsliding appears most severe directly below the wooden retaining wall which supports the clifftop behind the house. Inspection showed that the head of this landslide scar is within approximately 20 feet of undermining the southern end of the retaining wall. Furthermore, erosion has exposed the concrete supports for the wall at the base of the northern end and threatens to undermine it completely. This is a serious condition, requiring immediate attention. Although loss of the wall would not immediately threaten the house, it might provoke landsliding which could threaten houses, property or human life below.

A small-scale recent soil slip has disrupted Jute netting on the clifftop near the northwestern boundary of the property. This

slide is not serious, but should **be** repaired immediately **before** erosion enlarges the landslide scar.

The property owner should be aware that Santa Cruz County is a seismically active area, and that seismic shaking during earthquakes can decrease the stability **of slopes**. A study by Keefer (1984) concluded that shallow landslides on steep **slopes** (such as the subject property) are often **generated by** the short-duration, high-frequency shaking characteristic of **smaller** earthquakes. **Deep** seated, larger landslides are **more** likely to be generated by stronger and probably longer duration shaking. In the **event** of a major earthquake ( $M > 7$ ) on a nearby fault, some **seismically induced** landsliding may occur along the sea cliffs below Kingsbury Drive. Unfortunately, **there is** little that can be done to mitigate **this** hazard.

#### RECOMENDATIONS

- 1) Install roof gutters around the house and channel all water collected to the **base of** the sea cliff. Do not allow water to fall from the roof onto the soil.
- 2) Regrade **or** fill areas **of** the yard and garden where ponding occurs during wet weather.
- 3) Thoroughly clean the existing drain (hole in concrete stemwall) in the basement furnace/ water heater area. This drain should **be** upgraded by fitting it with a screen to prevent clogging and connecting it to a drainage hose or to the concrete ditch beneath the wooden deck. **If** access to the **outlet of** this drain is not possible due to the wooden deck, the existing system of on-demand pumping **should be** connected to a well maintained drainage channel.
- 4) All drainage control measures should be thoroughly cleaned, and repaired where needed. **Hoses** and lined ditches should be kept clear **of** sediment and debris. Maintenance **of** the drainage system should be considered an important part **of** regular groundskeeping tasks.

- 5) A soils engineer should be consulted to suggest engineered repairs or improvements to the existing wooden retaining wall.

#### **INVESTIGATION LIMITATIONS**

The conclusions and recommendations noted in this report are based on presently accepted geologic practices and standards. They do not imply that the site is free from geologic hazards, or that the site will not possibly be subjected to ground failure, ground warping, or seismic shaking so intense that structures will be severely damaged. The report does suggest that compliance with the recommendations will reduce potential geologic hazards. This warranty is in lieu of any other warranties, either expressed or implied.

Please call our office if you have any questions regarding this report. Thank you for your patronage.

Joseph Hayes  
Project Geologist

Rogers E. Johnson  
C.E.G. #1016

#### **REFERENCES**

- Aerial Photos, 1:12000, Flown 10-5-76, Photos #120-125, University of California Map Library.
- Dupre, W. R., 1975, Map Showing Geology and Liquefaction Potential of Quaternary Deposits in Santa Cruz County, California. USGS Miscellaneous Field Studies Map MF-648, 1:62,500 scale.
- Keefer, D. K., 1984, Landslides Caused by Earthquakes, Geologic Society of America Bulletin, v. 95, p. 406-421.



# 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

March 1, 2006

Richard Andre, trustee etal.  
310 Kingsbury Drive  
Aptos, Ca 95003

Subject: **Incomplete Application - Additional Information Required**  
Application #: **06-0037**; Assessor's Parcel #: 043-081-12 & 48  
Owner: **Richard Andre, trustee etal.**

Dear Richard Andre, trustee etal.:

This letter is to inform you of the status of your application. On 2/1/06, the above referenced application was submitted for a Coastal Development Permit with the Santa Cruz County Planning Department. The initial phase in the processing of your application is an evaluation of whether enough information has been submitted to continue processing the application (the "completeness" determination). This is done by reviewing the submitted materials, other existing files and records, gathering input from other agencies, conducting a site visit and carrying out a preliminary review to determine if there is enough information to evaluate whether or not the proposal complies with current codes and policies.

These preliminary steps have been completed and it has been determined that additional information and/or material is necessary. At this stage, your application is considered **incomplete**. For your proposal to proceed, the following items should be submitted:

1. Please submit **4** complete sets of revised plans with the following additional information:
  - a. Please provide a site plan which clearly indicates the location of all improvements, including the proposed retaining walls and the proposed revegetation below. All parcels which will be affected must be clearly indicated on the project plans. APN 043-081-11 must be included in this application, as all improvements are accessory to the primary dwelling located on 043-081-11.
  - b. Please note that it is not necessary to enlarge the 8.5" x 11" documents prepared by the project engineer. Please attach the documents in the original size, or (if necessary) these items can be photocopied onto a larger sheet.
  - c. Please provide the revisions requested by the reviewing agencies listed below.
2. Please provide owner-agent forms (or other letters of authorization) for all parcels

involved in the proposed retaining wall repair and revegetation. Currently, it appears as though this application involves APNs **043-081-11, 12, 48** (Andre), **043-082-08** (Lomanaco) -09 (Chen) -10 (Mannina). If owner-agent forms (or other letters of authorization) can not be obtained from these property owners then the improvements will be limited to parcels in your ownership (APNs **043-081-11, 12, 48**).

3. Geologic and Geotechnical Report Reviews are required for this application. Please submit **3** copies of the required reports and pay the required review fees. Reports that are submitted without the accompanying review fees will be **returned**. This application will remain incomplete until these technical reviews have been completed.
4. Please review the attached Discretionary Application Comments from all agencies. Comments listed under the heading "Completeness Comments" for each agency must be addressed and resolved prior to your application being considered complete and able to move forward with review. Questions related **to** these comments can be addressed to each separate agency.
  - Environmental Planning (Andrea Koch – **454-3164**): Geologic and Geotechnical Report Reviews are required for this application. Please submit **3** copies of the required reports and pay the required review fees. Reports that are submitted without the accompanying review fees will be returned. This application will remain incomplete until these technical reviews have been completed.
  - Urban Designer (Larry Kasparowitz – **454-2676**): No further information is necessary to satisfy the requirements of this reviewing agency at this stage in the review process.

You must submit the required materials to the Planning Department at one time. Revisions to plans must be included in complete, updated sets of plans. All plan sets must be folded into an **- 8.5" x 11"** format. You have until **5/1/06**, to submit the all of the information required in this letter. Pursuant to Section **18.10.430** of the Santa Cruz County Code, failure to submit the required information may lead to abandonment of your application **and** forfeiture of fees.

Alternatively, you may withdraw the application and any unused fees will be refunded to you. If you wish to withdraw the application, please notify me in writing.

You have the right **to** appeal this determination that the application is incomplete pursuant to Section **18.10.320** of the County Code and Section **65943** of the Government Code. To appeal, submit the required fee for administrative appeals and a letter addressed to the Planning Director stating the determination appealed from, and the reasons you feel the determination is unjustified or inappropriate. The appeal letter and fee must be received by the Planning Department no later than **5:00 p.m., 3/14/06**.

#### Additional Issues

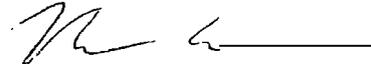
In addition to evaluating the completeness of your application, the initial review has identified other issues which will affect the processing of your project. Although it is not necessary for you **to** address these items for your application to be declared complete, they will need to be dealt

with in later stages of your application process. **At** this point, they are included solely to make you aware of them.

- A. Owner-agent forms (or ~~other~~ letters of authorization) are required for all parcels involved in the proposed retaining wall repair and revegetation. Currently, it appears as though this application involves APNs **043-081-11, 12, 48** (Andre), **043-082-08** (Lomanaco) -09 (Chen) -10 (Mannina). If owner-agent forms (or other letters of authorization) can not be obtained from these property owners then the improvements will be limited to parcels in your ownership (**APNs043-081-11, 12, 48**).
- B. Please note that all parcels under your ownership (APNs 043-081-11, 12, 48) will be required to be combined as a result of this application.
- C. Please review the attached Discretionary Application Comments from all agencies. Comments listed under the heading "Miscellaneous Comments" for each agency shall either be addressed **as** Conditions of Approval for this permit, if approved, or will be required prior to approval of any Building or Grading Permit(s) for this project. Questions related to these comments can be addressed to each separate agency.

Should you have further questions concerning this application, please contact me at:  
**(831) 454-3218**, or e-mail: [randall.adams@co.santa-cruz.ca.us](mailto:randall.adams@co.santa-cruz.ca.us)

Sincerely,



Randall Adams  
Project Planner  
Development Review

**ROGERS E. JOHNSON & ASSOCIATES**  
CONSULTING ENGINEERING GEOLOGISTS  
41 Hangar Way, Suite B  
Watsonville, California 95076-2458  
e-mail: [reja@bigfoot.com](mailto:reja@bigfoot.com)  
Ofc (831) 728-7200 • Fax (831) 728-7218

September 19, 2006

Job No. C06036-57

Richard and Ramona Andre  
310 Kingsbury Drive  
Aptos, California 95003

Subject: Review of Plans  
Proposed Renovation of Segment of Existing Blufftop Retaining Structure  
APNs 43-081-11, 12 and 43-082-48  
*App # 06-0037*

Dear Mr. and Mrs. André:

As requested by Joe Hanna, County Geologist with the Santa Cruz County Planning Department, we are providing the following comments regarding the proposed renovation of the blufftop retaining wall. We have reviewed the plans for the proposed renovation, prepared by Iland Engineers, dated 19 September 2006. We also reviewed the cross section of the bluff on and below your property, prepared by Haro, Kasunich and Associates, the project geotechnical engineers. The cross section depicts a representative view of geologic condition along a relevant segment of the coastal bluff.

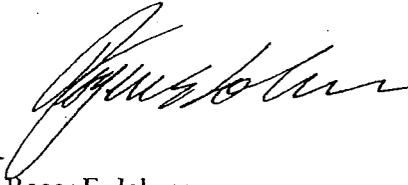
The proposed renovation of a 33 foot long segment of bluff top retaining wall will improve the stability of this segment of the bluff top. The subject retaining wall will help retain the upper section of the bluff but it will not prevent future bluff failures at the site. The wall is designed to protect the upper 10 feet or so of the approximately 90 foot **high** bluff. The upper 30 feet of the bluff is severely over steepened and will continue to fail until it reaches its natural angle of repose. We estimate the bluff top will ultimately recede an additional 20 to 30 feet before the bluff stabilizes at its natural angle of repose.

The frequency and magnitude of future failures depends chiefly on the vagaries of weather and the timing and severity of future earthquakes.

Please contact us if you have any questions regarding this letter.

Sincerely,

**ROGERS E. JOHNSON AND ASSOCIATES, INC.**



Roger E. Johnson  
C.E.G. No.1016



Copies: Addressee (2)  
Haro, Kasunich and Associates; **Attn:** John Kasunich (1)  
Cypress Environmental (1)  
Hland Engineers; **Attn:** Jeff Martin (1)

REJ/rej/adg

Rogers E. Johnson & Associates

Project No. SC7272  
15 May 2006  
Revised 25 May 2006

*Application # 06-0037  
ADN: 043-81-12*

MR. DICK ANDRE  
310 Kingsbury Drive  
Aptos, California 95003

Subject: Geotechnical Recommendations For Repair  
of Existing Tieback Retaining Wall

Reference: Andre Property  
310 Kingsbury Drive  
Santa Cruz County, California

Dear Mr. Andre:

At your request, we have met at the subject property with Iland Engineers and with Dave Kendall, project contractor. The purpose of our meeting was to assess the blufftop edge and to focus on the deteriorated tiedback retaining wall. The tiedback retaining wall has performed for over twenty five years and *is* in need of repair. The repair will include replacing wood lagging where the wood lagging has rotted, replacing a whaler beam that attaches to existing tiedback anchors that has rusted and re-supporting the **upcoast** corner of the vertical wall. The retaining wall will be further assessed during construction when Dave Kendall has removed the whaler beam and exposed the structural members. This inspection may require additional repair work, which will be determined during field inspection by our firm or Iland Engineers.

Based on our long term history with the reference property, discussions with the project engineer and contractor, we extend the following recommendations:

1. Con Hart redwood lagging should be used to replace rotten boards. Tiedback anchors should extend a minimum of 15 feet into the slope. Tiedback capacities generated by the partially cemented silty sands **will** be a minimum of 20 kips at a depth of 15 feet or pounds per square bonding of 1,200 psf.
2. Surface water above the wall is being controlled by gutters collected into small area storm drains, then carried downslope in closed plastic pipe. This drainage system should be inspected and repaired where necessary.

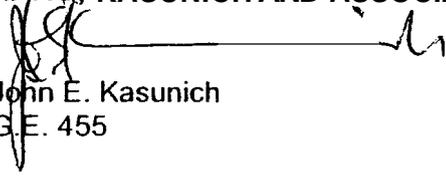
Mr. Dick Andre  
Project No. SC7272  
310 Kingsbury Drive  
15 May 2006  
Revised 25 May 2006  
Page 2

3. The neighbors which own much of the slope below the referenced property should re-establish a rigorous ground cover this Spring/Summer in preparation for next winter's rain season. We recommend that an erosion control matting in addition to seeding be appropriately stapled to the surface of the slope where it has become exposed this winter due to surficial erosion.

If you have any questions, please call our office.

Very truly yours,

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

  
John E. Kasunich  
G.E. 455

JEK/dk

Copies: 3 to Addressee  
1 to Dave Kendall, contractor  
1 to Don Ifland, S.E.

**ROGERS E. JOHNSON & ASSOCIATES**  
CONSULTING ENGINEERING GEOLOGISTS  
41 Hangar Way, Suite B  
Watsonville, California 95076-2458  
e-mail: [reja@bigfoot.com](mailto:reja@bigfoot.com)  
Ofc (831) 728-7200 • Fax (831) 728-7218

January 11, 2007

Job No. C06036-57

*App. # 06-0037*

Richard and Ramona Andre  
310 Kingsbury Drive  
Aptos, California 95003

Subject: Inspection of Completed Renovation  
of Segment of Existing Blufftop Retaining Structure  
APNs 43-081-11, 12 and 43-082-48

Dear Mr. and Mrs. Andre:

As required by Joe Hanna, County Geologist with the Santa Cruz County Planning Department, we have inspected the completed subject retaining structure. The structure was constructed per the design specifications, prepared by Ifland Engineers, dated 19 September 2006.

The completed renovation of a 33 foot long segment of bluff top retaining wall will improve the stability of this segment of the bluff top. The subject retaining wall will help retain the upper section of the bluff but it will not prevent future deep seated bluff failures at the site. The wall is designed to protect the upper 10 feet or so of the approximately 90 foot high bluff. The upper 30 feet of the bluff is severely over steepened and will continue to fail until it reaches its natural angle of repose. We estimate the bluff top will ultimately recede an additional 20 to 30 feet before the bluff stabilizes at its natural angle of repose.

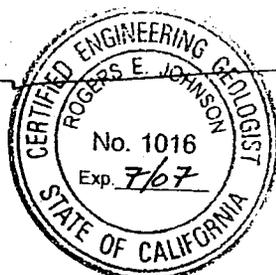
The frequency and magnitude of future failures depends chiefly on the vagaries of weather and the timing and severity of future earthquakes.

Please contact us if **you** have **any** questions regarding this letter.

Sincerely,

**ROGERS E. JOHNSON AND ASSOCIATES, INC.**

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



Copies: Addressee (2)  
Haro, Kasunich and Associates; Attn: John Kasunich (1)  
Cypress Environmental (1)  
Ifland Engineers; Attn: Jeff Martin (1)

REJ/rej/adg

73

EXHIBIT 6

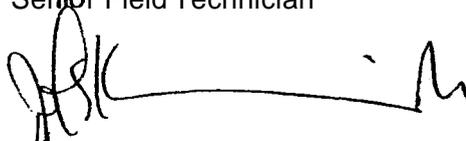
Mr. Dick Andre  
Project No. SC7272  
310 Kingsbury Drive  
5 January 2007  
Page 2

If you have any questions, please call **our** office.

Very truly yours,

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

John "JC" Cornett  
Senior Field Technician



John E. Kasunich  
Tel. 455

JC/sq

Copies: 2 to Addressee  
2 to Kim Tshantz  
1 to Jeff Martin, Ifland Engineers  
1 to Dave Kendall. Contractor

72

EXHIBIT G



App. # 06-0037

January 17, 2007

Mr. Dick Andre  
310 Kingsbury Dr  
Aptos, CA 95003

**RE: Retaining wall repair at above address**

Dear Mr. Andre:

On August 28<sup>th</sup>, 2006 I visited the above listed address for the purpose of observing a failing retaining wall (original design by others) on the face of the bluff near your home. We prepared plans, dated 9-19-06 for repair and replacement of timber lagging and walers, with the addition of grouted tie-backs, to extend the life of the existing wall.

Our plans allowed for the walers to be placed at the lowest accessible elevation that did not require excavation of the bluff face, in order to preserve as much vegetation and support for the existing piers as possible. From conversations with the contractors, I understand that all of the walers were placed at the higher elevation (top of pier) as to do otherwise would have required excavation of stable material from around the piers.

I also understand that, with my consent, in place of select structural redwood walers (which were not available) the contractor substituted recycled redwood water tank lumber. The contractor indicated that this was the highest quality redwood available and that you objected to the use of pressure treated Douglas fir. I further understand that he treated the redwood lagging and walers with an environmentally friendly preservative to maximize its useful life.

Based on these reports and conversations with the geotechnical engineers who observed the tie-back installation, I conclude that the repairs were carried out in general accordance with the plans prepared by our office. Please be aware that the intention of these plans was only to extend the useful life of the existing wall. The repair program was not intended to improve upon the original design or increase the stability of the bluff face beyond the original design. Ifland Engineers has been notified by Rogers Johnson & Associates that the natural angle of repose of the bluff occurs at a depth below the existing (and repaired) improvements and that future failure of the entire structure may occur.

Sincerely,

IFLAND ENGINEERS, INC.

Jeffrey L. Martin, RCE #68028  
JM



1100 Water Street, Suite 2 • Santa Cruz, CA 95062 • Tel (831) 426-5313 • Fax (831) 4261763 • www.iflandengineers.com

EXHIBIT C

74

LAW OFFICES OF

**HARRETT W. MANNINA, JR. ATTORNEY**

SUITE 110 EMPIRE BUILDING • 510 N. FIRST STREET • SAN JOSE, CALIFORNIA 95112 • TELEPHONE (408) 294-5061 • FACSIMILE (408) 294-5069

HARRETT W. MANNINA, SR.  
(1920-2002)

April 13, 2006

Richard and Ramona Andre  
310 Kingsbury Drive  
Aptos, CA 95003

Re: Revegetation/Erosion Control Plan

Dear Mr. and Mrs. Andre:

Pursuant to your letter of March 21, 2006, which I responded to in writing with my letter of March 29, 2006, which by the way you have found it unnecessary to respond to, I have spoken with Mr. Adams concerning the County of Santa Cruz Planning Department's owner-agent approval form.

It is my understanding that the form is not necessary and all you need is some type of writing from adjacent land owners stating that they do not disapprove of your proposed plan. In this respect I do not disapprove of your proposed erosion plan, however, it simply appears to be a band aid to your property without seriously addressing the dangers and possible catastrophic losses your eroding bluff poses to downhill properties.

Again I do not object to your proposed plan and I am assuming you may use this letter to meet the requirements stated by Mr. Adams. However, in reviewing my file I came across an October 18, 2000, letter that was prepared by Haro, Kasunich and Associates, Inc., and mailed to Dick and Ramona Andre at 310 Kingsbury Drive, Aptos, CA 95003. I enclose for your reference a copy of said letter. My question to you is why have you not yet commenced and completed the recommendations that were made by your Consulting Geotechnical & Coastal Engineers over five years ago. I have not observed a single one of these recommendations being implemented.

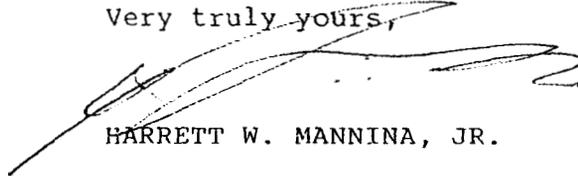
Please note that Mr. Xasunich also indicated "it would be beneficial for property owners at the top of the bluff and below the bluff to work together." I have spoken with John Serra and Bud Lomonaco and we are of the consensus that a meeting of all concerned would be appropriate and beneficial in addressing this ongoing problem.

Richard and Ramona Andre  
Page Two  
April 13, 2006

Although I have not spoken with Mr. Chen, a downhill property owner, I am assuming that he might want to be involved.

I look forward to hearing from you at your very earliest opportunity and it is quite evident that time is of the essence.

Very truly yours,

A handwritten signature in black ink, appearing to read "Harrett W. Mannina, Jr.", written over a dotted line. The signature is fluid and somewhat stylized, with a long horizontal stroke at the end.

HARRETT W. MANNINA, JR.

HWM:jc  
Encs.  
cc: Barbara L. Mannina



---

## Staff Report to the Zoning Administrator

Application Number: **06-0037**

---

**Applicant:** Kim Tschantz

**Agenda Date:** 2/2/07

**Owner:** Richard Andre trustee, etal.

**Agenda Item #:** 4

**APN:** 043-081-11 & 12; 043-082-09 & 48

**Time:** After 10:00 a.m

**Project Description:** Proposal to repair an existing retaining wall on a coastal bluff

**Location:** Property located on the south side of Kingsbury Drive at about 200 feet West of the intersection with Florence Drive (310 Kingsbury Drive).

**Supervisorial District:** 2nd District (District Supervisor: Ellen Pine)

**Permits Required:** Coastal Development Permit, Geologic Report Review, Geotechnical Report Review

### Staff Recommendation :

- Certification that the proposal is exempt from further Environmental Review under the California Environmental Quality Act.
- Approval of Application 06-0037, based on the attached findings and conditions.

### Exhibits

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

### Parcel information

Parcel Size:	27,744 square feet (APNs 043-081-11, 12 & 043-082-48)
Existing Land Use - Parcel:	Single family dwelling and associated improvements
Existing Land Use - Surrounding:	Single family residential neighborhood, coastal bluff
Project Access:	Kingsbury Drive
Planning Area:	Aptos
Land Use Designation:	R-UL (Urban Low Density Residential) 0 - U (Urban Open Space)
Zone District:	R- 1-6 (Single family residential - 6,000 square feet minimum)

---

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

PR (Parks, Recreation, and Open Space)  
Coastal Zone:   X   Inside   —   Outside  
Appealable to Calif. Coastal Comm.   X   Yes   —   No

### Environmental Information

Geologic Hazards: Coastal Bluff - Geologic report reviewed and accepted  
Soils: Soils report reviewed and accepted  
Fire Hazard: Not a mapped constraint  
Slopes: 15%-50%+  
Env. Sen. Habitat: Not mapped/no physical evidence on site  
Grading: Construction of replacement wall only  
Tree Removal: No trees proposed to be removed  
Scenic: Scenic beach viewshed  
Drainage: N/A  
Archeology: Not mapped/no physical evidence on site

### Services Information

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

### History

Emergency Coastal Development Permit 06-0535 was issued on **10/2/06** to authorize a repair of the existing retaining wall due to structural failure. Building Permit application 60609M was made for the emergency repair and was issued (BP **145400**) on 10/11/06 to allow construction. This application (**06-0037**) is for a regular Coastal Development Permit to authorize the emergency repair.

### Project Setting

The subject property (310 Kingsbury Drive) is located within a single family residential neighborhood on the south side of Kingsbury Drive in the Rio Del Mar Area of Aptos. A coastal bluff is located at the rear of the property (which is comprised of three separate parcels in common ownership). The property is developed with a single family residence and a detached garage. An existing retaining wall is located at the top of the coastal bluff to provide slope protection. The existing retaining wall is showing signs of failure and is currently being repaired (under Building Permit **145400**). An additional residential property (319 Beach Drive - under separate ownership) is included to allow for the installation of erosion control on the slope below the subject property.

## **Zoning & General Plan Consistency**

The subject property is approximately 27,744 square feet (in the separate parcels) located in the R-1-6 (Single family residential - 6,000 square feet minimum) zone district, a designation which allows residential uses. The portion of the project site in which the proposed retaining wall will be constructed, within the PR (Parks, Recreation, and Open Space) zone district, in order to preserve the coastal bluff as open space. The proposed retaining wall repair is accessory to the principal permitted residential use within the zone district and the project is consistent with the site's (R-UL) Urban Low Density Residential and (O-U) Urban Open Space General Plan designations. In order to ensure that the subject property is maintained for use as one residential property, staff recommends combination of the three parcels into one property.

## **Coastal Bluff**

The project site is bordered to the south by a coastal bluff. The existing retaining wall below the residence and yard is in danger of failing due to erosion and soil movement. A repair to the retaining wall has been proposed which will provide increased protection for the existing residence and properties below. This wall has been designed by a licensed civil engineer to the specifications of the project geologist and geotechnical engineer. The geologic and geotechnical reports have been reviewed and accepted by the County Geologist.

## **Local Coastal Program Consistency**

The proposed retaining wall is in conformance with the County's certified Local Coastal Program, in that the structure is sited and designed to be visually compatible with the character of the surrounding neighborhood. Many other bluff top parcels in the area utilize retaining walls to reduce the potential for erosion and slope failure. The subject property is not located between the shoreline and the first public road, with public beach access at Seacliff State Beach, Rio Del Mar Drive, and Beach Drive. The project site is not identified as a priority acquisition site in the County's Local Coastal Program. Consequently, the proposed project will not interfere with public access to the beach, ocean, or other nearby body of water.

## **Scenic Resources & Design Review**

The subject property is located within the scenic beach viewshed. Views from the public beach are protected and development along coastal bluffs should be designed to reduce visual impacts to the public beaches below. The proposed retaining wall repair complies with the requirements of the County Design Review Ordinance, in that the appearance of the existing retaining wall will not be significantly modified will not result in a visual impact on surrounding land uses and the scenic beach viewshed.

Neighbors of the proposed project have submitted a letter (Exhibit G) which describes a number of concerns, mostly related to the visual impact of the existing development on private views from residences across Kingsbury Drive, improvements installed on the existing residence, and signage placed along the frontage of Kingsbury Drive. In response to these concerns, Kingsbury Drive is not listed as a mapped scenic roadway in the County General Plan and views from private residences are not protected by the County Code or General Plan. However, the issues

raised by the neighbors do have some bearing on the use of the existing property. Vegetation has been allowed to grow in excess of three feet in height along the roadway, which is not consistent with County Code for roadside-vegetation and hedges. Staff recommends that the vegetation be maintained at no higher than 3 feet from the elevation of the Kingsbury Road within the 20 foot front yard setback along the entire frontage of the subject property. Additionally, all structural modifications to the existing residence performed without benefit of the required permits (Including the construction of roof top Improvements and lighting) must be removed from the existing residential structures. Signage installed along the roadside shall be limited to that allowed by County Code for signs within the R-1-6 zone district.

### **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 **06-0037**, 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: Randall Adams  
Santa Cruz County Planning Department  
701 Ocean Street, 4th Floor  
Santa Cruz CA 95060  
Phone Number: (831) 454-3218  
E-mail: [randall.adams@co.santa-cruz.ca.us](mailto:randall.adams@co.santa-cruz.ca.us)

## Coastal Development Permit Findings

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

This finding can be made, in that the property is zoned R-1-6 (Single family residential - 6,000 square feet minimum) and PR (Parks, Recreation, and Open Space), designations which allow residential uses. The proposed retaining wall repair is a principal permitted use within the zone districts, consistent with the site's (R-UL) Urban Low Density Residential and (O-U) Urban Open Space General Plan designations.

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 appearance of the existing retaining wall will be not be significantly modified will not result in a visual impact on surrounding land uses and the scenic beach viewshed.

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

This finding can be made, in that the project site is not located between the shoreline and the first public road, with public beach access at Seacliff State Beach, Rio Del Mar Drive, and Beach Drive. Consequently, the retaining wall repair 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. Additionally, residential uses are allowed uses in the R-1-6 (Single family residential - 6,000 square feet minimum) and PR (Parks, Recreation, and Open Space) zone districts, as well as the General Plan and Local Coastal Program land use designation.

## 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. Construction will comply with prevailing building technology, the Uniform Building Code, and the County Building ordinance to insure the optimum in safety and the conservation of energy and resources. The proposed retaining wall repair will not deprive adjacent properties or the neighborhood of light, air, or open space, in that the project will consist of a repair of an existing retaining wall at the rear of the-subject property.

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 retaining wall repair will be consistent with all pertinent County ordinances and the purpose of the R-1-6 (Single family residential - 6,000 square feet minimum) and PR (Parks, Recreation, and Open Space) zone district in that the primary use of the property will be one single family dwelling

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 existing 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 retaining wall will not adversely impact scenic resources as specified in General Plan Policy 5.10.7 (Open Beaches and Blufftops), in that the proposed retaining wall will be adequately screened by vegetation to reduce the visual impact of the proposed development on the scenic beach viewshed.

The vegetation on the subject property will be maintained at no higher than 3 feet in height, as measured from the level of Kingsbury Drive, in order to comply with the requirements of County Code section 13.10.525 et. seq.

The signage located along the frontage of Kingsbury Dnve will be removed in order to comply with County Code section 13 10.580 et seq

Lighting will be shielded and directed downward onto the subject property to prevent fugitive light from adversely impacting scenic resources.

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 a retaining wall is not a use that generates traffic and no increase in utilities consumption is anticipated.

- 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 appearance of the existing retaining wall will be not be significantly modified will not result in a visual impact on surrounding land uses and the scenic beach viewshed.

## Conditions of Approval

Exhibit **A**: Project plans, prepared by Ifland Engineers, 2 sheets, dated 9/19/06. Erosion control plans, prepared by John R. David, 1 sheet, dated 7/30/06.

- I. This permit authorizes the construction of a retaining wall repair, and the installation of associated erosion control vegetation, as shown on the approved Exhibit "**A**" for 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. Record an affidavit to Retain Property as One Parcel, which combines APNs 043-081-11, 043-081-12 & 043-082-48 into one parcel.
  - C. Provide evidence of legal construction or remove all structural alterations and rooftop floodlights that were installed on the existing structures.
  - D. Obtain a Building Permit from the Santa Cruz County Building Official.
  - E. Obtain a Grading Permit from the Santa Cruz County Building Official.
- II. Prior to issuance of a Building Permit the applicant/owner shall:
  - A. Submit proof that these conditions have been recorded in the official records of the County of Santa Cruz (Office of the County Recorder).
  - B. 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. Grading, drainage, and erosion control plans prepared by a licensed civil engineer, which meet the requirements of the project geologist and geotechnical engineer
    2. Landscape plans that identify the plant materials used to provide erosion control on the coastal bluff.
      - a. Notes which clearly indicate that vegetation will be maintained to not exceed 3 feet in height, as measured from the elevation of

Kingsbury Drive, within the required 20 foot front yard setback or within the Kingsbury Drive right of way.

3. Details showing compliance with fire department requirements, including all requirements of the Urban Wildland Intermix Code, if applicable.
  - C. 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.
  - D. Meet all requirements of and pay applicable fees to the County Department of Public Works, Drainage.
  - 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 plan review letter prepared and stamped by a licensed geologist.
  - G. Submit 3 copies of a plan review letter prepared and stamped by a licensed geotechnical engineer.
- 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 vegetation within the required 20 foot front yard setback along the property frontage or within the Kingsbury Drive right of way must be removed, or trimmed to remain 3 feet (or less) in height, within these areas.
  - C. All signs must be removed from the Kingsbury Drive right of way and the subject property, other than what is specifically allowed in County Code section 13.10.580 et. seq.
  - D. If evidence of legal construction has not been provided, all structural alterations and rooftop floodlights installed on the existing structures must be removed.
  - E. All decks must be under 30 inches in height within the required geologic setback (25 feet or 100 year stability, whichever is the greater distance).
  - F. No structures (other than deck hand rails) over 30 inches in height are allowed within the required geologic setback (25 feet or 100 year stability, whichever is the greater distance)

- G. No decks or other structures are allowed to cantilever beyond the top of the coastal bluff.
- H. All decks must be adequately drained away from the coastal bluff, or the runoff from beneath the decking must be adequately captured into the existing drain which outlets to the base of the slope, to avoid erosion caused by water draining across the bluff face. If these standards can not be met, a patio (or other form of landscape improvements which are acceptable to the County geologist) may be installed instead.
- I. **All** inspections required by the building permit shall be completed to the satisfaction of the County Building Official.
- J. The project must comply with all recommendations of the approved geologic and geotechnical reports and update letters.
- K. 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. No vegetation in excess of 3 feet in height is allowed within the required 20 foot front yard setback or within the Kingsbury Drive **right** of way. Vegetation must be maintained to remain 3 feet (or less) in height within these areas.
- B. No signage is allowed within the Kingsbury Drive right of way. No signage is allowed on the subject property within public view, other than what is specifically allowed in County Code section 13.10.580 et. seq.
- C. **All** lighting the subject property must be shielded and directed downward onto the subject property. Lights which are not shielded or that are directed to illuminate areas outside of the subject property are not allowed.
- D. All decks must be under 30 inches in height within the required geologic setback (25 feet or 100 year stability, whichever is the greater distance).
- E. No structures (other than deck hand rails) over 30 inches in height are allowed within the required geologic setback (25 feet or 100 year stability, whichever is the greater distance).
- F. No decks or other structures are allowed to cantilever beyond the top of the

coastal bluff.

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

---

Minor variations to this permit which do not affect the overall concept or density may be approved by the Planning Director at the request of the applicant or staff in accordance with Chapter 18 10 of the County Code

Application #: 06-0037  
APN: 043-081-11 & 12; 043-082-09 & 48  
Owner: Richard Andre trustee, etal.

**Please note: This permit expires two years from the effective date on the expiration date listed below unless you obtain the required permits and commence construction.**

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

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

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

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

\_\_\_\_\_  
Randall Adams  
Project Planner

---

Appeals Any property owner, or other person aggrieved or any other person whose interests are adversely affected by any act or determination of the Zoning Administrator, may appeal the act or determination to the Planning Commission in accordance with chapter 18 10 of the Santa Cruz County Code

# CALIFORNIA ENVIRONMENTAL QUALITY ACT

## NOTICE OF EXEMPTION

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

Application Number. 06-0037

Assessor Parcel Number. 043-081-11 & 12,043-082-09 & 48

Project Location 310 Kingsbury Dnve

**Project Description: Proposal to repair and existing retaining wall on a coastal bluff.**

**Person or Agency Proposing Project: Kim Tschantz**

**Contact Phone Number: (831) 688-5928**

- 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.   X   **Categorical Exemption**

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

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

Proposal to construct a retaining wall repair to protect an existing structure

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

\_\_\_\_\_  
Randall Adams, Project Planner

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

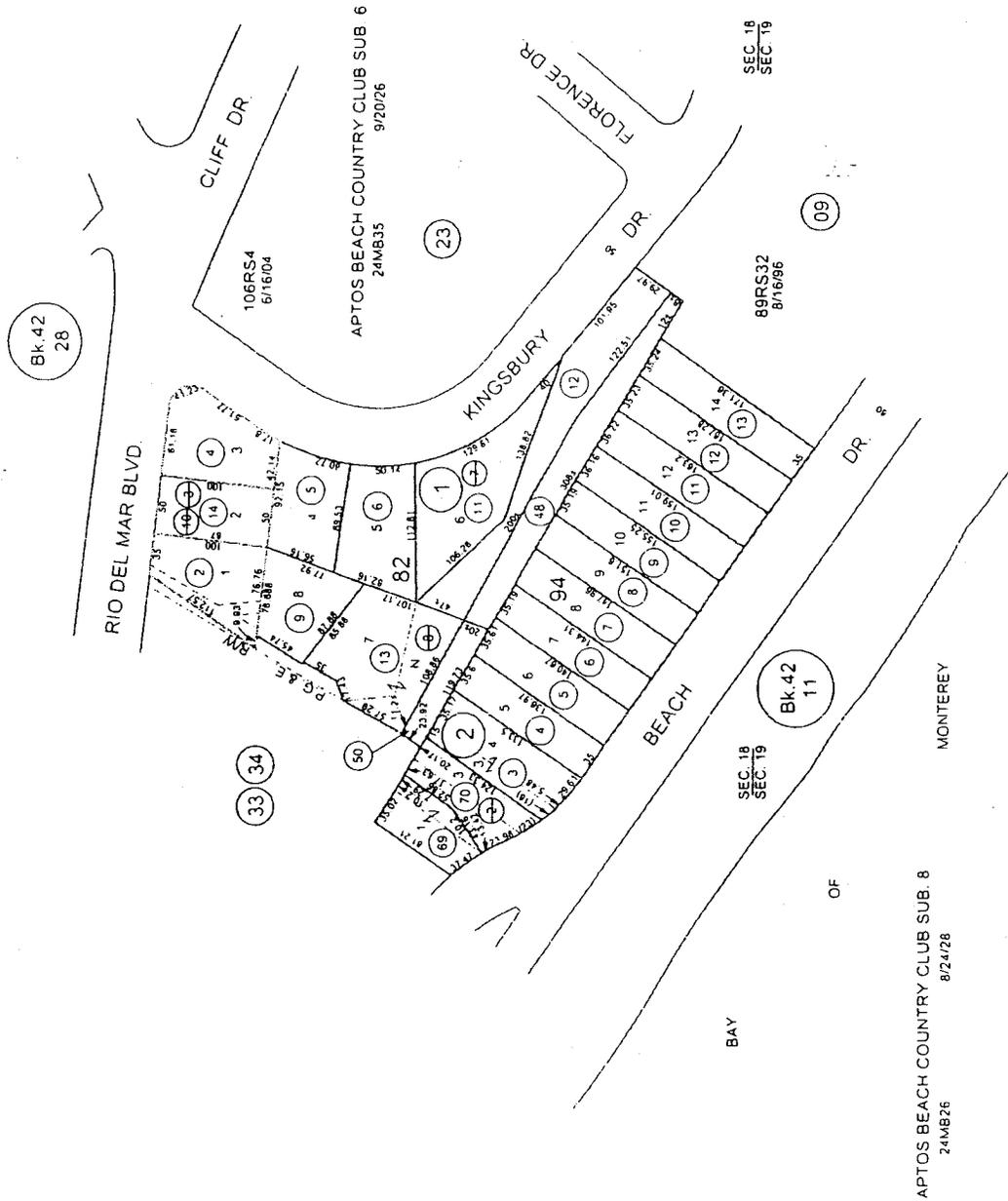
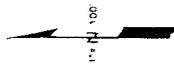
**FOR TAX PURPOSES ONLY**

THE ASSESSOR MAKES NO GUARANTEE AS TO MAP ACCURACY NOR ASSUMES ANY LIABILITY FOR OTHER USES. NOT TO BE REPRODUCED. ALL RIGHTS RESERVED.  
 © COPYRIGHT SANTA CRUZ COUNTY ASSESSOR 1999

**POR. APTOS RANCHO**  
 S.E. 1/4 SEC. 18, & N.E. 1/4  
 T. 11S., R. 1E., M.D.B. & M

Tax Area Code  
 69-273

43



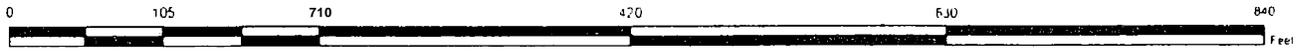
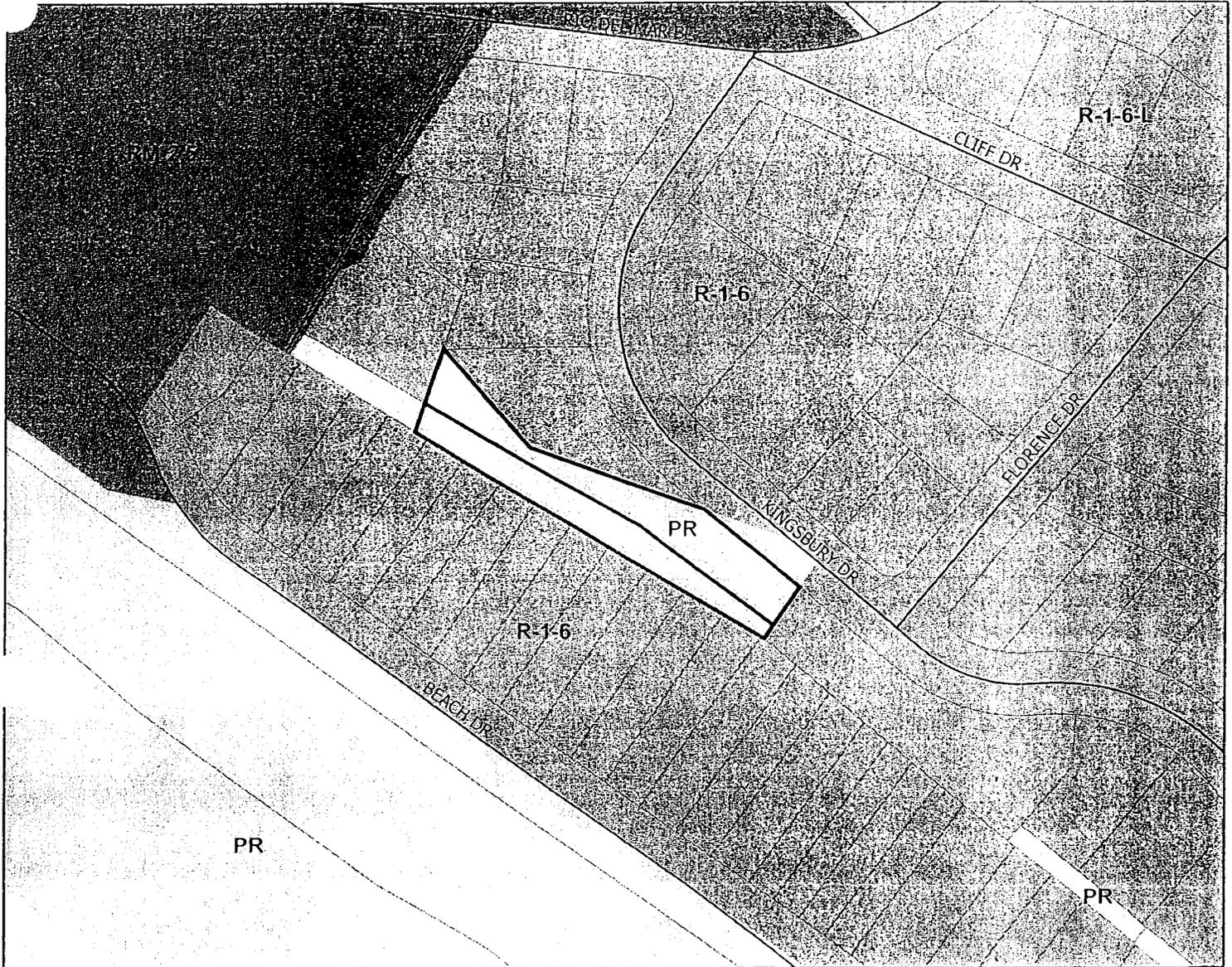
Note - Assessor's Parcel & Block Numbers Shown in Circles.

Assessor's Map No. 43-08  
 County of Santa Cruz, Calif  
 February, 1999

Electronic Redrawn 2/5/99  
 Rev 5/25/01 mm (changed page 15)  
 Rev 6/29/04 CB (106RS4)  
 RA - 3/15/05 OD (com 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100)

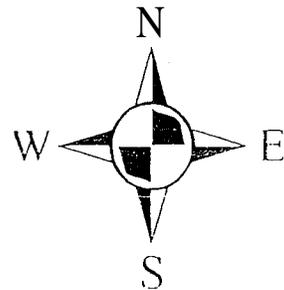


# Zoning Map



## Legend

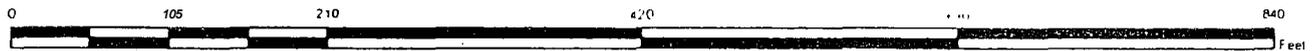
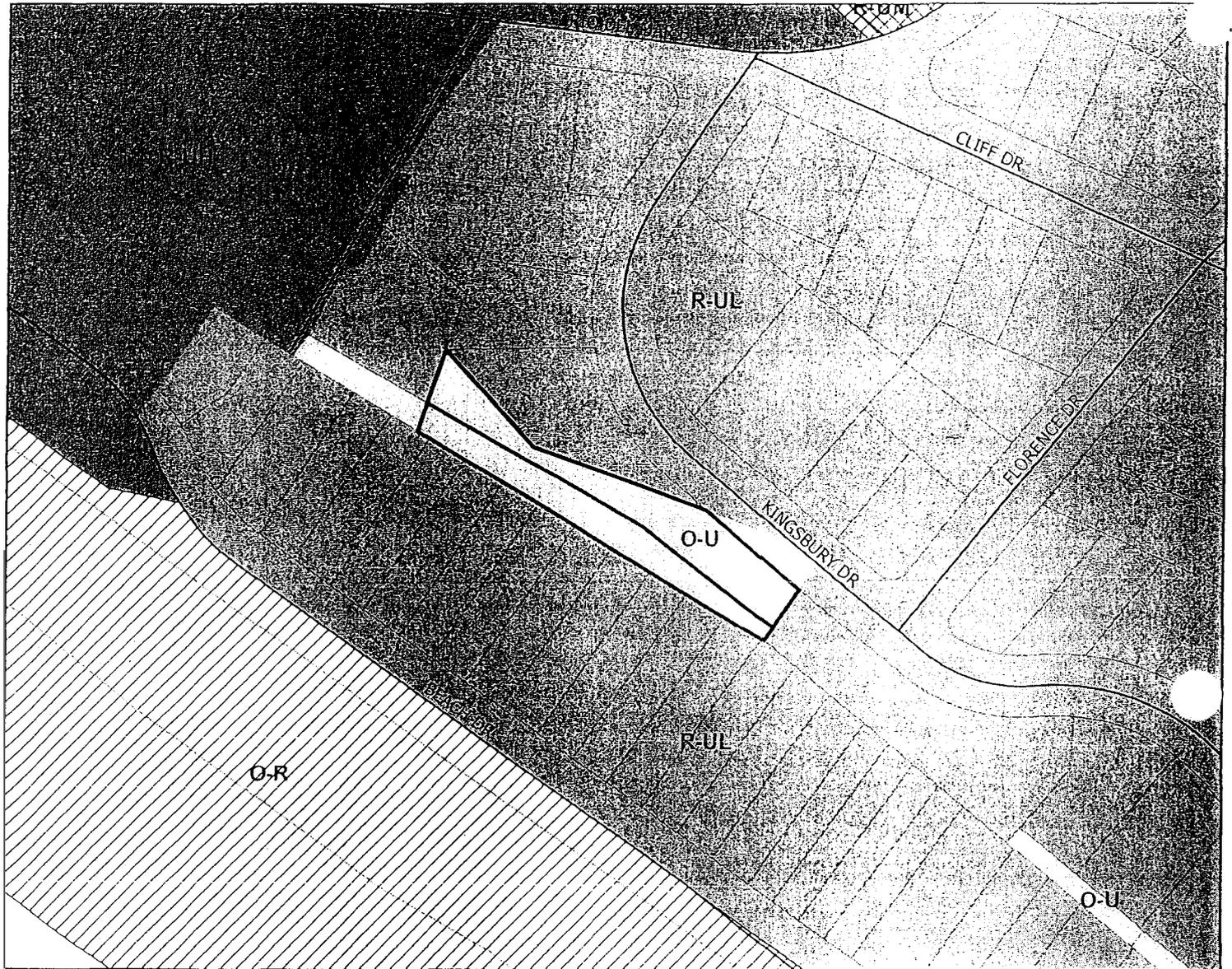
-  Project Parcels
-  Streets
-  Assessors Parcels
-  PARK (PR)
-  RESIDENTIAL-SINGLE FAMILY (R-1)
-  RESIDENTIAL-MULTI FAMILY (RM)



Map Created by  
 County of Santa Cruz  
 Planning Department  
 February 2006

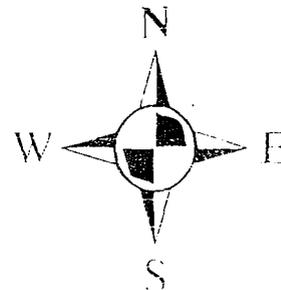


# General Plan Designation Map



## Legend

-  Project Parcels
-  Streets
-  Assessors Parcels
-  Urban Open Space (O-U)
-  Residential - Urban Low Density (R-UL)
-  Residential - Urban High Density (R-UH)
-  Parks and Recreation (O-R)
-  Residential - Urban Medium Density (R-UM)



Map Created by  
 County of Santa Cruz  
 Planning Department  
 February 2006

**EXHIBIT F**

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

Project Planner: Randa11 Adams  
Application No.: 06-0037  
043-081-11

Date December 29, 2006  
Time 14 11 44  
Page 1

Environmental Planning Completeness Comments

===== REVIEW ON FEBRUARY 10, 2006 BY ANDREA M KOCH =====

1) Completeness comments pending completion of the Geologic Hazards Assessment, which is currently in process. ===== UPDATED ON FEBRUARY 16, 2006 BY ANDREA M KOCH =====

2) Environmental Planning staff determined that application for a Geologic Hazards Assessment (GHA) is not necessary. The main purpose of a GHA is to determine whether or not an application requires submittal of a full geology report. In this case, staff determined from a simple review of the project plans that a full engineering geology report and a geotechnical (soils) report will be required with this application due to potential slope stability issues on the coastal bluff.

Please submit an engineering geology report prepared by a registered geologist experienced in engineering geology. The purpose of the engineering geology report is to address any existing geologic hazards and to provide recommendations for necessary mitigations.

Please also submit a geotechnical (soils) report prepared by a registered civil engineer experienced in soil engineering. The purpose of the soils report is to provide project design solutions to hazards identified in the engineering geology report.

A list of engineering geologists and geotechnical engineers that often prepare reports for the County is available upon request. Please also note that some firms can prepare both types of reports and combine them into one report.

3) The fee for Environmental Planning staff to perform a combined review of an engineering geology report and a geotechnical (soils) report is \$1732. You will be credited toward this fee the amount already paid for the GHA (\$1047).

This means that you will only be charged \$685 for a combined review of the engineering geology and geotechnical reports. ===== UPDATED ON FEBRUARY 16, 2006 BY ANDREA M KOCH =====

4) Additional completeness comments may follow after staff review of the engineering geology and geotechnical reports. ===== UFCATED ON FEBRUARY 16, 2006 BY ANDREA M KOCH =====  
===== UPDATED ON JULY 25, 2006 BY ANDREA M KOCH =====

1) A full engineering geology and geotechnical report is still required. Please submit any reports you have.

2) Please pay fees for review of the reports. You will be credited for the amount you paid for the GHA. (See previous comments.)

3) Additional comments may follow review of the engineering geology and geotechnical reports.

*Exhibit G*

Discretionary Comments - Continued

Project Planner: Randall Adams  
Application No.: 06-0037  
APN: 043-081-11

Date December 29, 2006  
Time 14 11 44  
Page 2

---

4) Please remove proposed plantings (on the Erosion Control Plan) from the properties of neighbors who do not want to participate. To plant on neighbors properties, you must submit an owner-agent form from the involved neighbors

(Ideally, the neighbors would agree to revegetate the area downslope of the retaining wall for the protection of their properties. However, they cannot be forced to do so at this point.) ===== UPDATED ON AUGUST 4, 2006 BY JOSEPH L HANNA  
=====

A Copy of an unsigned engineering geology report, and various portions of geotechnical engineering and other engineering work submitted. The geotechnical report makes general recommendation for a project larger than the current proposal. These studies do *not* directly apply to the current project. Please comply with the previous comments. ===== UPDATED ON DECEMBER 29, 2006 BY ANDREA M KOCH =====

Joe Hanna accepted the engineering geology and soils reports on 10/02/06

**Environmental Planning Miscellaneous Comments**

===== REVIEW ON FEBRUARY 10, 2006 BY ANDREA M KOCH =====  
===== UPDATED ON FEBRUARY 16, 2006 BY ANDREA M KOCH =====

1) After the engineering geology and geotechnical reports have been reviewed and accepted by Environmental Planning, and after the final plans have been prepared, please submit plan review letters from both the engineering geologist and the geotechnical engineer ~~stating~~ that the final plans are in conformance with the recommendations in the respective reports

2) More comments may follow after staff review of the engineering geology and geotechnical reports.



# 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

### Project Comment Sheet

Date: February 3, 2006

- Accessibility
- Code Compliance
- Environmental Planung    Andrea Koch
- Fire District
- Housing
- Long Range Planning
- Project Review
- Urban Designer    Lawrence Kasparowitz
- Planning Director
- Maps – Level 5    Elizabeth Hayward

- Dept. of Public Works
- Drainage District
- Driveway Encroachment
- Road Engineering / Transportation
- Sanitation
- Surveyor
- Environmental Health
- RDA
- Supervisor    Ellen Pirie
- Other

- Duplicate Files:**
- Geological Hazards    Jessica deGrassi

**To be Mailed:**

**From: Development Review Division**

Project Planner:    **Randall Adams**    Tel: 454-3218  
    **Email: pln515@co.santa-cruz.ca.us**  
 Subject APN:        **043-081-12**  
 Application Number: **06-0037**

**See Attached for Project Description**

The Attached Application for a Development Permit, Land Division Permit or General Plan Amendment has Been Received by the Planning Department

Please Submit Your Comments to the Project Planner Via the Discretionary Application Comments/Review Function in A.L.U.S.

Please Complete by: **February 23, 2006**

*no comments*

*[Signature]*

*2/15/06*

**Staff Report to Zoning Administrator**  
(With revisions from 2/2/07 Public Hearing)

**Application Number 06-0037**  
**Planning Commission Hearing**  
**5/23/07**

**Exhibit 1D**



---

## Staff Report to the Zoning Administrator

Application Number: **06-0037**

---

**Applicant:** Kim Tschantz

**Agenda Date:** 2/2/07

**Owner:** Richard Andre trustee, etal.

**Agenda Item #:** 4

**APN:** 043-081-11 & 12; 043-082-09 & 48

**Time:** After 10:00 a.m.

**Project Description:** Proposal to repair an existing retaining wall on a coastal bluff.

**Location:** Property located on the south side of Kingsbury Drive at about 200 feet West of the intersection with Florence Drive (310 Kingsbury Drive).

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

**Permits Required:** Coastal Development Permit, Geologic Report Review, Geotechnical Report Review

### Staff Recommendation:

- Certification that the proposal is exempt from further Environmental Review under the California Environmental Quality Act.
- Approval of Application 06-0037, based on the attached findings and conditions.

### Exhibits

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

### Parcel Information

Parcel Size:	27,744 square feet (APNs 043-081-11, 12 & 043-082-48)
Existing Land Use - Parcel:	Single family dwelling and associated improvements
Existing Land Use - Surrounding:	Single family residential neighborhood, coastal bluff
Project Access:	Kingsbury Drive
Planning Area:	Aptos
Land Use Designation:	R-UL (Urban Low Density Residential) 0-U (Urban Open Space)
Zone District:	R-1-6 (Single family residential - 6,000 square feet minimum)

---

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

PR (Parks, Recreation, and Open Space)  
Coastal Zone:  X  Inside      Outside  
Appealable to Calif. Coastal Comm.  X  Yes      No

### Environmental Information

Geologic Hazards: Coastal Bluff - Geologic report reviewed and accepted  
Soils: Soils report reviewed and accepted  
Fire Hazard: Not a mapped constraint  
Slopes: 15%-50%+  
Env. Sen. Habitat: Not mapped/no physical evidence on site  
Grading: Construction of replacement wall only  
Tree Removal: No trees proposed to be removed  
Scenic: Scenic beach viewshed  
Drainage: N/A  
Archeology: Not mapped/no physical evidence on site

### Services Information

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

### History

Emergency Coastal Development Permit 06-0535 was issued on 10/2/06 to authorize a repair of the existing retaining wall due to structural failure. Building Permit application 60609M was made for the emergency repair and was issued (BP 145400) on 10/11/06 to allow construction. This application (06-0037) is for a regular Coastal Development Permit to authorize the emergency repair.

### Project Setting

The subject property (310 Kingsbury Drive) is located within a single family residential neighborhood on the south side of Kingsbury Drive in the Rio Del Mar Area of Aptos. A coastal bluff is located at the rear of the property (which is comprised of three separate parcels in common ownership). The property is developed with a single family residence and a detached garage. **An** existing retaining wall is located at the top of the coastal bluff to provide slope protection. The existing retaining wall is showing signs of failure and is currently being repaired (under Building Permit 145400). **An** additional residential property (319 Beach Drive - under separate ownership) is included to allow for the installation of erosion control on the slope below the subject property.

## **Zoning & General Plan Consistency**

The subject property is approximately 27,744 square feet (in three separate parcels) located in the R-1-6 (Single family residential - 6,000 square feet minimum) zone district, a designation which allows residential uses. The portion of the project site in which the proposed retaining wall will be constructed, within the PR (Parks, Recreation, and Open Space) zone district, in order to preserve the coastal bluff as open space. The proposed retaining wall repair is accessory to the principal permitted residential use within the zone district and the project is consistent with the site's (R-UL) Urban Low Density Residential and (O-U) Urban Open Space General Plan designations. In order to ensure that the subject property is maintained for use as one residential property, staff recommends combination of the three parcels into one property.

## **Coastal Bluff**

The project site is bordered to the south by a coastal bluff. The existing retaining wall below the residence and yard is in danger of failing due to erosion and soil movement. A repair to the retaining wall has been proposed which will provide increased protection for the existing residence and properties below. This wall has been designed by a licensed civil engineer to the specifications of the project geologist and geotechnical engineer. The geologic and geotechnical reports have been reviewed and accepted by the County Geologist.

## **Local Coastal Program Consistency**

The proposed retaining wall is in conformance with the County's certified Local Coastal Program, in that the structure is sited and designed to be visually compatible with the character of the surrounding neighborhood. Many other bluff top parcels in the area utilize retaining walls to reduce the potential for erosion and slope failure. The subject property is **not** located between the shoreline and the first public road, with public beach access at Seacliff State Beach, Rio Del Mar Drive, and Beach Drive. The project site is not identified as a priority acquisition site in the County's Local Coastal Program. Consequently, the proposed project will not interfere with public access to the beach, ocean, or other nearby body of water.

## **Scenic Resources & Design Review**

The subject property is located within the scenic beach viewshed. Views from the public beach are protected and development along coastal bluffs should be designed to reduce visual impacts to the public beaches below. The proposed retaining wall repair complies with the requirements of the County Design Review Ordinance, in that the appearance of the existing retaining wall will be not be significantly modified will not result in a visual impact on surrounding land uses and the scenic beach viewshed.

Neighbors of the proposed project have submitted a letter (Exhibit G) which describes a number of concerns, mostly related to the visual impact of the existing development on private views from residences across Kingsbury Drive, improvements installed on the existing residence, and signage placed along the frontage of Kingsbury Drive. In response to these concerns, Kingsbury Drive is not listed as a mapped scenic roadway in the County General Plan and views from private residences are not protected by the County Code or General Plan. However, the issues

raised by the neighbors do have some bearing on the use of the existing property. Vegetation has been allowed to grow in excess of three feet in height along the roadway, which is not consistent with County Code for roadside vegetation and hedges. Staff recommends that the vegetation be maintained at no higher than 3 feet from the elevation of the Kingsbury Road within the 20 foot front yard setback along the entire frontage of the subject property. Additionally, all structural modifications to the existing residence performed without benefit of the required permits (including the construction of roof top improvements and lighting) must be removed from the existing residential structures. Signage installed along the roadside shall be limited to that allowed by County Code for signs within the R-1-6 zone district.

### **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**

- e Certification that the proposal is exempt from further Environmental Review under the California Environmental Quality Act.
- e **APPROVAL** of Application Number **06-0037**, 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: Randall Adams  
Santa Cruz County Planning Department  
701 Ocean Street, 4th Floor  
Santa Cruz CA 95060  
Phone Number: (831) 454-3218  
E-mail: [randall.adams@co.santa-cruz.ca.us](mailto:randall.adams@co.santa-cruz.ca.us)







## Coastal Development Permit Findings

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

This finding can be made, in that the property is zoned R-1-6 (Single family residential - 6,000 square feet minimum) and PR (Parks, Recreation, and Open Space), designations which allow residential uses. The proposed retaining wall repair is a principal permitted use within the zone districts, consistent with the site's (R-UL) Urban Low Density Residential and (O-U) Urban Open Space General Plan designations.

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 appearance of the existing retaining wall will be not be significantly modified will not result in a visual impact on surrounding land uses and the scenic beach viewshed.

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

This finding can be made, in that the project site is ~~not~~ located between the shoreline and the first public ~~through~~ road, ~~however with~~ public beach access *is available* at Seaciff State Beach, Rio Del ~~Mar~~ Drive, and Beach Drive. Consequently, the retaining wall repair 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. (*Amended at ZA 2/2/07*)

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. Additionally, residential uses are allowed uses in the R-1-6 (Single family residential - 6,000 square feet minimum) and PR (Parks, Recreation, and Open Space) zone districts, as well as the General Plan and Local Coastal Program land use designation.

## 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. Construction will comply with prevailing building technology, the Uniform Building Code, and the County Building ordinance to insure the optimum in safety and the conservation of energy and resources. The proposed retaining wall repair will not deprive adjacent properties or the neighborhood of light, air, or open space, in that the project will consist of a repair of an existing retaining wall at the rear of the subject property.

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 retaining wall repair will be consistent with all pertinent County ordinances and the purpose of the R-1-6 (Single family residential - 6,000 square feet minimum) and PR (Parks, Recreation, and Open Space) zone district in that the primary use of the property will be one single family dwelling.

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 existing 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 retaining wall will not adversely impact scenic resources as specified in General Plan Policy 5.10.7 (Open Beaches and Blufftops), in that the proposed retaining wall will be adequately screened by vegetation to reduce the visual impact of the proposed development on the scenic beach viewshed.

The vegetation on the subject property will be maintained at no higher than 3 feet in height, as measured from the level of Kingsbury Drive, in order to comply with the requirements of County Code section 13.10.525 et. seq.

The signage located along the frontage of Kingsbury Drive will be removed in order to comply with County Code section 13.10.580 et. seq.

Lighting will be shielded and directed downward onto the subject property to prevent fugitive light from adversely impacting scenic resources.

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 a retaining wall is not a use that generates traffic and no increase in utilities consumption is anticipated.

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 existing single family residential development is consistent with the land use intensity and density of the neighborhood. The three parcels which make up the subject property are required to be combined into one parcel.

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 appearance of the existing retaining wall will be not be significantly modified will not result in a visual impact on surrounding land uses and the scenic beach viewshed.

## Conditions of Approval

Exhibit A: Project plans, prepared by Ifland Engineers, 2 sheets, dated 9/19/06. Erosion control plans, prepared by John R. David, 1 sheet, dated 7/30/06.

- I. This permit authorizes the construction of a retaining wall repair, and the installation of associated erosion control vegetation, as shown on the approved Exhibit "A" for 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. Record an affidavit to Retain Property as One Parcel, which combines APNs 043-081-11, 043-081-12 & 043-082-48 into one parcel.
  - C. Provide evidence of legal construction or remove all structural alterations (*birdhouse structure on top of garage*) and ~~rooftop~~ floodlights that were installed on the existing structures. (*Amended at ZA 2/2/07*)
  - D. Obtain a Building Permit from the Santa Cruz County Building Official.
  - E. Obtain a Grading Permit from the Santa Cruz County Building Official.
- II. Prior to issuance of a Building Permit the applicant/owner shall:
  - A. Submit proof that these conditions have been recorded in the official records of the County of Santa Cruz (Office of the County Recorder).
  - B. 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. Grading, drainage, and erosion control plans prepared by a licensed civil engineer, which meet the requirements of the project geologist and geotechnical engineer.
    2. Any landscape *revegetation* plans ~~that~~ shall identify the plant materials used to provide erosion control on the coastal bluff *and shall be reviewed and approved by the project geotechnical engineer and the County geologist.* (*Amended at ZA 2/2/07*)

- a. ~~Notes which clearly indicate that vegetation will be maintained to not exceed 3 feet in height, as measured from the elevation of Kingsbury Drive, within the required 20 foot front yard setback or within the Kingsbury Drive right of way. (Deleted at ZA 2/2/07)~~
  - 3. Details showing compliance with fire department requirements, including all requirements of the Urban Wildland Intermix Code, if applicable.
  - 4. ***No fences greater than 3 feet in height are approved within the required front yard setback. (Added at ZA 2/2/07)***
  - C. 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.
  - D. Meet all requirements of and pay applicable fees to the County Department of Public Works, Drainage.
  - 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 plan review letter prepared and stamped by a licensed geologist.
  - G. Submit 3 copies of a plan review letter prepared and stamped by a licensed geotechnical engineer.
- 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 vegetation within the required 20 foot front yard setback along the property frontage or within the Kingsbury Drive right of way must be removed, or trimmed to remain 3 feet (or less) in height, within these areas. (Deleted at ZA 2/2/07)~~
  - C. All signs must be removed from the Kingsbury Drive right of way and the subject property, other than what is specifically allowed in County Code section 13.10.580 et. seq. ***Two signs, totaling 1 squarefoot in area combined, are allowed within the yard fronting on Kingsbury Drive. (Amended at ZA 2/2/07)***
  - D. If evidence of legal construction has not been provided, all structural alterations and rooftop floodlights installed on the existing structures must be removed.

- E. All decks must be under 30 inches in height within the required geologic setback (25 feet or 100 year stability, whichever is the greater distance).
- F. No structures (other than deck hand rails) over 30 inches in height are allowed within the required geologic setback (25 feet or 100 year stability, whichever is the greater distance)
- G. No decks or other structures are allowed to cantilever beyond the top of the coastal bluff.
- H. All decks must be adequately drained away from the coastal bluff, or the runoff from beneath the decking must be adequately captured into the existing drain which outlets to the base of the slope, to avoid erosion caused by water draining across the bluff face. If these standards can not be met, a patio (or other form of landscape improvements which are acceptable to the County geologist) may be installed instead.
- I. All inspections required by the building permit shall be completed to the satisfaction of the County Building Official.
- J. The project must comply with all recommendations of the approved geologic and geotechnical reports and update letters.
- K. 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. ~~No vegetation in excess of 3 feet in height is allowed within the required 20 foot front yard setback or within the Kingsbury Drive right of way. Vegetation must be maintained to remain 3 feet (or less) in height within these areas. (Deleted at ZA 2/2/07)~~
- B. No signage is allowed within the Kingsbury Drive right of way. No signage is allowed on the subject property within public view, other than what is specifically allowed in County Code section 13.10.580 et. seq.
- C. All lighting the subject property must be shielded and directed downward onto the subject property. Lights which are not shielded or that are directed to illuminate areas outside of the subject property are not allowed.

- D. All decks must be under **30** inches in height within the required geologic setback (25 feet or 100 year stability, whichever is the greater distance).
  - E. No structures (other than deck hand rails) over 30 inches in height are allowed within the required geologic setback (25 feet or 100 year stability, whichever is the greater distance).
  - F. No decks or other structures are allowed to cantilever beyond the top of the coastal bluff.
  - G. 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.
- 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.

Application #: 06-0037  
APN: 043-081-11 & 12; 043-082-09 & 48  
Owner: Richard Andre trustee, etal.

D. Successors Bound. "Development Approval Holder" shall include the applicant and the successor'(s) in interest, transferee(s), and assign(s) of the applicant.

---

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

**Please note: This permit expires ~~two years~~ 90 days from the effective date, on the expiration date listed below, unless you obtain the required permits, and commence construction, and obtain all required final inspections. (Amended at ZA 2/2/07)**

Approval Date: 2/2/07

Effective Date: 2/16/07

Expiration Date: 5/18/07

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

\_\_\_\_\_  
Randall Adams  
Project Planner

---

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

# CALIFORNIA ENVIRONMENTAL QUALITY ACT NOTICE OF EXEMPTION

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

Application Number: 06-0037

Assessor Parcel Number: 043-081-11 & 12; 043-082-09 & 48

Project Location: 310 Kingsbury Drive

**Project Description: Proposal to repair and existing retaining wall on a coastal bluff.**

**Person or Agency Proposing Project: Kim Tschantz**

**Contact Phone Number: (831) 688-5928**

- 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 1 - Existing Facilities (Section 15301)

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

Proposal to construct a retaining wall repair to protect an existing structure.

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

\_\_\_\_\_  
Randall Adams, Project Planner

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

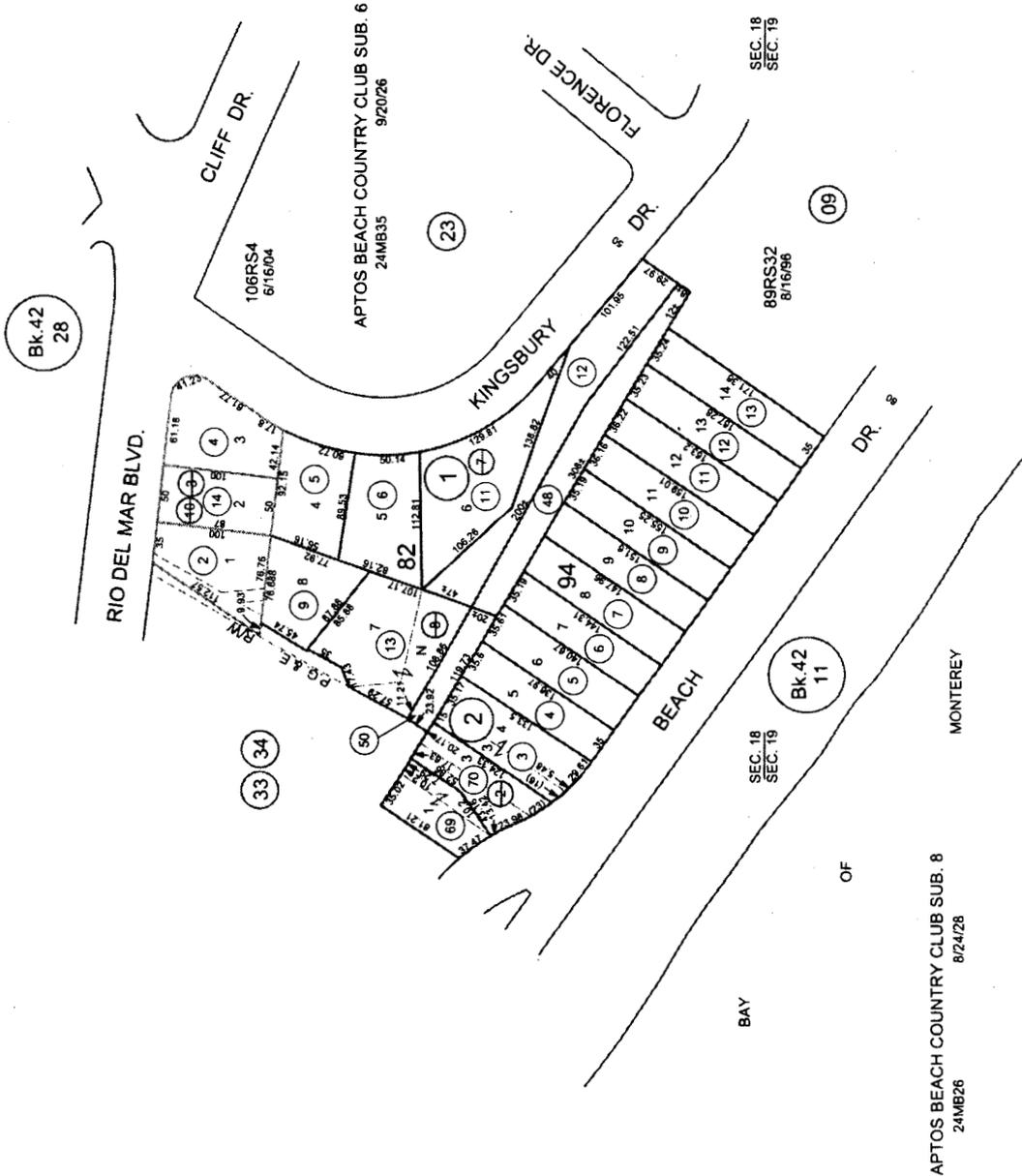
**FOR TAX PURPOSES ONLY**

THE ASSESSOR MAKES NO GUARANTEE AS TO MAP ACCURACY NOR ASSUMES ANY LIABILITY FOR ERRORS OR OMISSIONS. ALL RIGHTS RESERVED.  
© COPYRIGHT SANTA CRUZ COUNTY ASSESSOR 1999

**POR. APTOS RANCHO**  
S.E. 1/4 SEC. 18, & N.E. 1/4  
T. 11S., R. 1E., M.D.B. & M

Tax Area Code  
69-273

-08



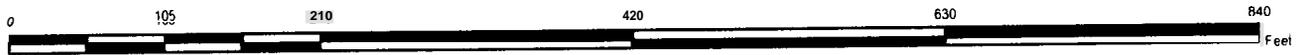
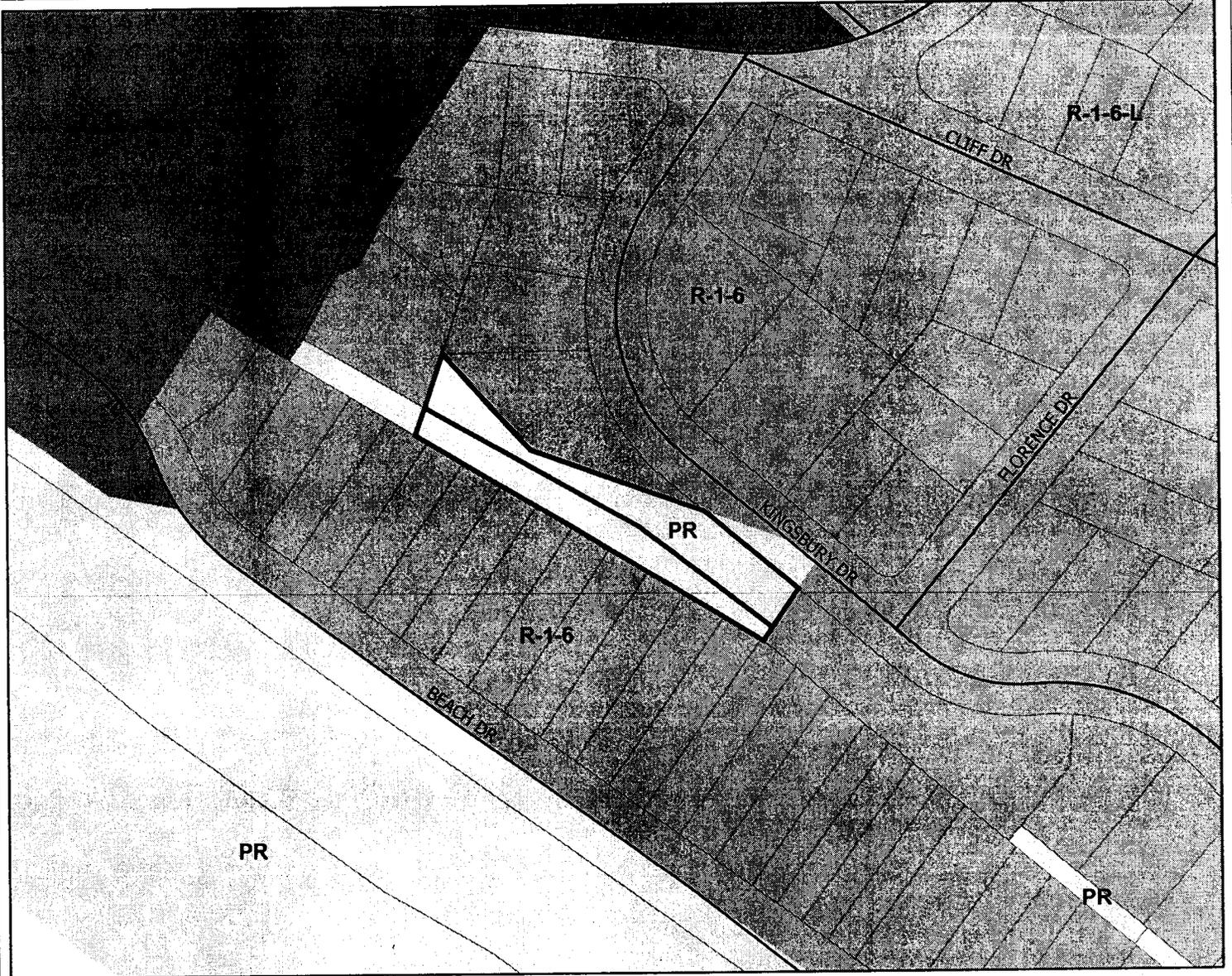
Note - Assessor's Parcel & Block  
Numbers Shown in Circles.

Assessor's Map No. 43-08  
County of Santa Cruz, Calif.  
February, 1999

Electronic Redrawn 2/5/99  
Rev. 5/25/0 (mm) (changed page refs.)  
Rev. 6/29/04 CB (106RS4)  
Rev. 3/15/05 DD (corr 1-2, 4 & 14 as per 106PM4)

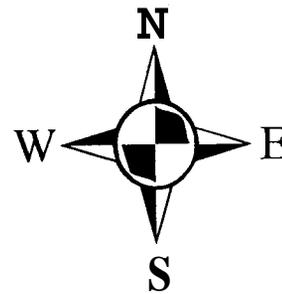


# Zoning Map



## Legend

-  Project Parcels
-  Streets
-  Assessors Parcels
-  PARK (PR)
-  RESIDENTIAL-SINGLE FAMILY (R-1)
-  RESIDENTIAL-MULTI FAMILY (RM)



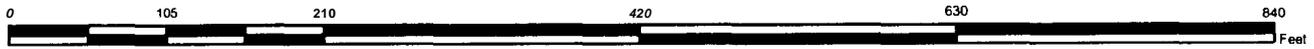
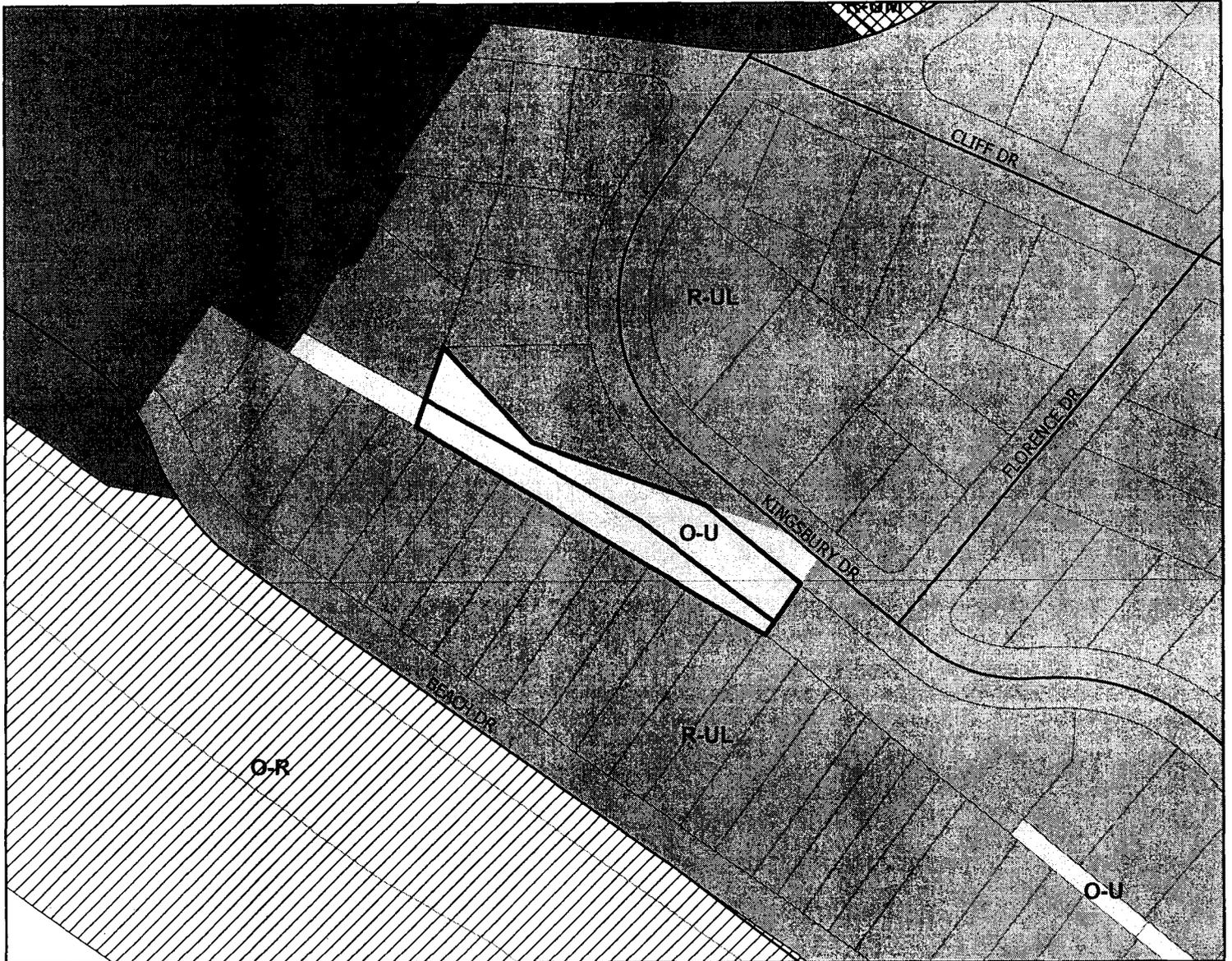
Map Created by  
County of Santa Cruz  
Planning Department

February 2006

**EXHIBIT** **F**

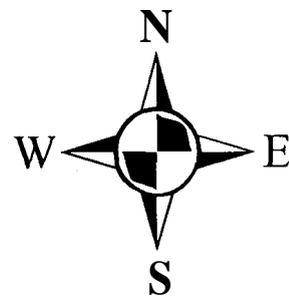


# General Plan Designation Map



## Legend

-  Project Parcels
-  Streets
-  Assessors Parcels
-  Urban Open Space (O-U)
-  Residential - Urban Low Density (R-UL)
-  Residential - Urban High Density (R-UH)
-  Parks and Recreation (O-R)
-  Residential - Urban Medium Density (R-UM)



Map Created by  
County of Santa Cruz  
Planning Department  
February 2006

**EXHIBIT F**

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

Project Planner: Randal1 Adams  
Application No. : 06-0037  
APN: 043-081-11

Date: December 29, 2006  
Time: 14:11:44  
Page: 1

---

Environmental Planning Completeness Comments

===== REVIEW ON FEBRUARY 10, 2006 BY ANDREA M KOCH =====

1) Completeness comments pending completion of the Geologic Hazards Assessment, which is currently in process. ===== UPDATED ON FEBRUARY 16, 2006 BY ANDREA M KOCH =====

2) Environmental Planning staff determined that application for a Geologic Hazards Assessment (GHA) is not necessary. The main purpose of a GHA is to determine whether or not an application requires submittal of a full geology report. In this case, staff determined from a simple review of the project plans that a full engineering geology report and a geotechnical (soils) report will be required with this application due to potential slope stability issues on the coastal bluff.

Please submit an engineering geology report prepared by a registered geologist experienced in engineering geology. The purpose of the engineering geology report is to address any existing geologic hazards and to provide recommendations for necessary mitigations.

Please also submit a geotechnical (soils) report prepared by a registered civil engineer experienced in soil engineering. The purpose of the soils report is to provide project design solutions to hazards identified in the engineering geology report.

A list of engineering geologists and geotechnical engineers that often prepare reports for the County is available upon request. Please also note that some firms can prepare both types of reports and combine them into one report.

3) The fee for Environmental Planning staff to perform a combined review of an engineering geology report and a geotechnical (soils) report is \$1732. You will be credited toward this fee the amount already paid for the GHA (\$1047).

This means that you will only be charged \$685 for a combined review of the engineering geology and geotechnical reports. ===== UPDATED ON FEBRUARY 16, 2006 BY ANDREA M KOCH =====

4) Additional completeness comments may follow after staff review of the engineering geology and geotechnical reports. ===== UPDATED ON FEBRUARY 16, 2006 BY ANDREA M KOCH =====

===== UPDATED ON JULY 25, 2006 BY ANDREA M KOCH =====

1) A full engineering geology and geotechnical report is still required. Please submit any reports you have.

2) Please pay fees for review of the reports. You will be credited for the amount you payed for the GHA. (See previous comments.)

3) Additional comments may follow review of the engineering geology and geotechnical reports.

Discretionary Comments - Continued

Project Planner: Randal Adams  
Application No. : 06-0037  
APN: 043-081-11

Date: December 29, 2006  
Time: 14:11:44  
Page: 2

---

4) Please remove proposed plantings (on the Erosion Control Plan) from the properties of neighbors who do not want to participate. To plant on neighbors' properties, you must submit an owner-agent form from the involved neighbors.

(Ideally, the neighbors would agree to revegetate the area downslope of the retaining wall for the protection of their properties. However, they cannot be forced to do so at this point.) ===== UPDATED ON AUGUST 4, 2006 BY JOSEPH L HANNA  
=====

A Copy of an unsigned engineering geology report, and various portions of geotechnical engineering and other engineering work submitted. The geotechnical report makes general recommendation for a project larger than the current proposal. These studies do not directly apply to the current project. Please comply with the previous comments. ===== UPDATED ON DECEMBER 29, 2006 BY ANDREA M KOCH =====

Joe Hanna accepted the engineering geology and soils reports on 10/02/06.

**Environmental Planning Miscellaneous Comments**

===== REVIEW ON FEBRUARY 10, 2006 BY ANDREA M KOCH =====  
===== UPDATED ON FEBRUARY 16, 2006 BY ANDREA M KOCH =====

1) After the engineering geology and geotechnical reports have been reviewed and accepted by Environmental Planning, and after the final plans have been prepared, please submit plan review letters from both the engineering geologist and the geotechnical engineer stating that the final plans are in conformance with the recommendations in the respective reports.

2) More comments may follow after staff review of the engineering geology and geotechnical reports.



# 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

### Project Comment Sheet

Date: February 3, 2006

- Accessibility
- Code Compliance
- Environmental Planning    Andrea Koch
- Fire District
- Housing
- Long Range Planning
- Project Review
- Urban Designer    Lawrence Kasparowitz
- Planning Director
- Maps – Level 5    Elizabeth Hayward

- Dept. of Public Works
- Drainage District
- Driveway Encroachment
- Road Engineering / Transportation
- Sanitation
- Surveyor
- Environmental Health
- RDA
- Supervisor    Ellen Pirie
- Other

<b>Duplicate Files:</b>	<b>To be Mailed:</b>
<input checked="" type="checkbox"/> Geological Hazards    Jessica deGrassi	

**From: Development Review Division**

Project Planner:    **Randall Adams    Tei: 454-3218**

**Email: [pln515@co.santa-cruz.ca.us](mailto:pln515@co.santa-cruz.ca.us)**

Subject APN:    **043-081-12**

Application Number: **06-0037**

**See Attached for Project Description**

The Attached Application for a Development Permit, Land Division Permit or General Plan Amendment has Been Received by the Planning Department.

Please Submit *Your* Comments to the Project Planner Via the Discretionary Application Comments/Review Function in A.L.U.S.

Please Complete by: **February 23, 2006**

*NO COMMENTS*  
*[Signature]*  
*2/5/06*

Project No. SC7272

6 December 2006

*App # 06-0037*

MR. DICK ANDRE  
310 Kingsbury Drive  
Aptos, California 95003

Subject: Tie Back Observations  
Bluff Top Retaining Wall Repair

Reference: Andre Property  
310 Kingsbury Drive  
Santa Cruz County, California

Dear Mr. Andre:

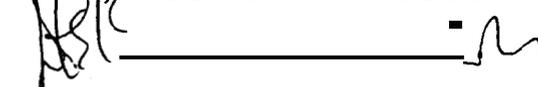
As requested, a representative from Haro, Kasunich and Associates visited the reference site between 15 November 2006 and 22 November 2006 to observe Retaining Wall Tieback repair earthwork. Our geotechnical recommendations for repair of the existing tieback retaining wall were presented in a letter dated 15 May 2006, revised 25 May 2006. The seven (7) tieback holes were a minimum of 4 inches in diameter by 19 feet deep. The tieback holes were embedded into firm native soils.

Based on our observations, the tieback holes for the existing retaining wall were constructed in general conformance with the project plans.

If you have any questions, please call our office.

Very truly yours,

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



John E. Kasunich  
F: 455  
G.T: 455

Senior Geotechnician

JC/sq

Copies: 2 to Addressee  
2 to Kim Tshantz  
1 to Jeff Martin, Ifland Engineers  
1 to Dave Kendall, Contractor

1 G

Project No. SC7272  
5 January 2007

*App. # 06-0037*

MR. DICK ANDRE  
310 Kingsbury Drive  
Aptos, California 95003

Subject: Final Inspection Letter  
Bluff Top Retaining Wall Repair

Reference: Andre Property  
310 Kingsbury Drive  
Santa Cruz County, California

Dear Mr. Andre:

As requested, we visited the referenced site in late December 2006 to observe the completed retaining wall repair work. Our geotechnical recommendations for repair of the existing tieback retaining wall were presented in a letter dated 15 May 2006, revised 25 May 2006. We observed tieback drilling operations from 15 November 2006 to 22 November 2006. The seven (7) tieback holes were inspected and positively reported in our letter dated 6 December 2006.

We returned to the site to observe the completed retaining wall repair work. The contractor placed seven (7) finger drain (weep drains) at the bottom of the retaining wall.

Backfilling behind the retaining wall included the use of filter fabric and clean beach sand. At the top of the backfill an 11 inch concrete v gutter was placed on finished grade matching the existing concrete v gutter to the north. This v gutter discharges into the existing storm drain system to the north. The retaining wall redwood lagging was coated with clear penetrating oil.

Based on our construction observations, and final inspection, the geotechnical aspects of the project were performed in general conformance with the recommendations presented in our geotechnical letter and the project plans.

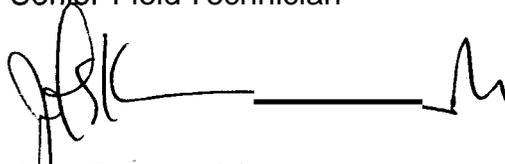
Mr. Dick Andre  
Project No. SC7272  
310 Kingsbury Drive  
5 January 2007  
Page 2

If you have any questions, please call our office.

Very truly yours,

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

John "JC" Cornett  
Senior Field Technician



John E. Kasunich  
G.E. 455

JC/sq

Copies: 2 to Addressee  
2 to Kim Tshantz  
1 to Jeff Martin, Ifland Engineers  
1 to Dave Kendall, Contractor

**ROGERS E. JOHNSON & ASSOCIATES**  
CONSULTING ENGINEERING GEOLOGISTS  
41 Hangar Way, Suite B  
Watsonville, California 95076-2458  
e-mail: reja@bigfoot.com  
Ofc (831) 728-7200 • Fax (831) 728-7218

January 11, 2007

Job No. C06036-57

*App. # 06-0037*

Richard and Ramona André  
310 Kingsbury Drive  
Aptos, California 95003

Subject: Inspection of Completed Renovation  
of Segment of Existing Blufftop Retaining Structure  
APNs 43-081-1 1, 12 and 43-082-48

Dear Mr. and Mrs. André:

As required by Joe Hanna, County Geologist with the **Santa Cruz** County Planning Department, we have inspected the completed subject retaining structure. The structure was constructed per the design specifications, prepared by Ifland Engineers, dated 19 September 2006.

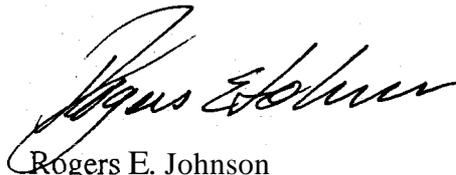
The completed renovation of a 33 foot long segment of bluff top retaining wall will improve the stability of this segment of the bluff top. The subject retaining wall will help retain the upper section of the bluff but it will not prevent future deep seated bluff failures at the site. The wall is designed to protect the upper 10 feet or so of the approximately 90 foot high bluff. The upper 30 feet of the bluff is severely over steepened and will continue to fail until it reaches its natural angle of repose. We estimate the bluff top will ultimately recede an additional 20 to 30 feet before the bluff stabilizes at its natural angle of repose.

The frequency and magnitude of future failures depends chiefly on the vagaries of weather and the timing and severity of future earthquakes.

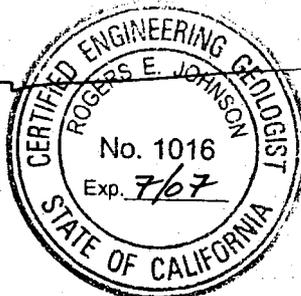
Please contact us if you have any questions regarding this letter.

Sincerely,

**ROGERS E. JOHNSON AND ASSOCIATES, INC.**



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



Copies: Addressee (2)  
Haro, Kasunich and Associates; Attn: John Kasunich (1)  
Cypress Environmental (1)  
Ifland Engineers; **Attn:** Jeff Martin (1)

REJ/rej/adg

EXHIBIT G



App. # 06-0037

January 17, 2007

Mr. Dick Andre  
310 Kingsbury Dr.  
Aptos, CA 95003

**RE: Retaining wall repair at above address**

Dear Mr. Andre:

On August 28<sup>th</sup>, 2006 I visited the above listed address for the purpose of observing a failing retaining wall (original design by others) on the face of the bluff near your home. We prepared plans, dated 9-19-06 for repair and replacement of timber lagging and whalers, with the addition of grouted tie-backs, to extend the life of the existing wall.

Our plans allowed for the whalers to be placed at the lowest accessible elevation that did not require excavation of the bluff face, in order to preserve as much vegetation and support for the existing piers as possible. From conversations with the contractors, I understand that all of the whalers were placed at the higher elevation (top of pier) as to do otherwise would have required excavation of stable material from around the piers.

I also understand that, with my consent, in place of select structural redwood whalers (which were not available) the contractor substituted recycled redwood water tank lumber. The contractor indicated that this was the highest quality redwood available and that you objected to the use of pressure treated Douglas fir. I further understand that he treated the redwood lagging and whalers with an environmentally friendly preservative to maximize its useful life.

Based on these reports and conversations with the geotechnical engineers who observed the tie-back installation, I conclude that the repairs were carried out in general accordance with the plans prepared by our office. Please be aware that the intention of these plans was only to extend the useful life of the existing wall. The repair program was not intended to improve upon the original design or increase the stability of the bluff face beyond the original design. Ifland Engineers has been notified by Rogers Johnson & Associates that the natural angle of repose of the bluff occurs at a depth below the existing (and repaired) improvements and that future failure of the entire structure may occur.

Sincerely,

IFLAND ENGINEERS, INC.



Jeffrey L. Martin, RCE #68028  
JM

1100 Water Street, Suite 2 • Santa Cruz, CA 95062 • Tel (831) 426-5313 • Fax (831) 426-1763 • www.iflandengineers.com

**12/15/06 Letter from Barney Elders**

**(Included as attachment to Exhibit 1D)**

**Application Number 06-0037  
Planning Commission Hearing  
5/23/07**

## **Additions to the Staff Report for the Planning Commission**

### **Item 9: 06-0037**

### **Additional Correspondence**

Richard and Ramona Andre  
310 Kingsbury Dr.  
Aptos, CA 95003

May 9, 2007

**Re: Coastal Development Permit No. 06-0037**

**To: Planning Commissioners**

**From: Richard and Ramona André, owners of 310 Kingsbury Dr., Aptos**

Please support the zoning administrator's approval of the permit, with no additional conditions, for repair of our bluff retaining wall. The wall serves the purpose of negating the effects of natural erosion of the bluff above Beach Drive.

We have worked diligently with the county for a stressful and exhausting two years and were finally forced by frustration with the unnecessarily confusing maze of a process to hire a consultant to obtain an emergency permit and the permit now in question.

Keep your focus on the wall! Do not be misled by any irrelevant complaints, especially the neighbor's lawyer's appeal. This appeal is only the latest in a series of attempts by this neighbor to control our property. We try to work with neighbors, including this one. Six years ago, we cooperated with this neighbor when she complained that our ivy was causing her allergy problems. After that, she said nothing about allergies but harassed us about view repeatedly, partly by letters from her previous attorney.

Last fall across from this neighbor and in her viewscape, a native oak tree (vandalized previously five years ago but amazingly regrew) and two old long-established escallonas were surreptitiously cut down completely and left there. These plants had been an attractive asset and added bluff stability to our property but affected her view. We are sad and angry about the loss. Our response to the tree cutting was to install signs and security, following law enforcement recommendations. It is obvious that her purpose for this appeal is to increase the value of her property by clear cutting our landscape across from her for what she perceives as a better view, which is already panoramic. It is all about money, not about the merits of the wall.

We have met all conditions of the permit. The wall repair has been completed, and the county has finalized the emergency permit. We now deserve the coastal zone permit. The zoning administrator required us to remove a structure supporting security lights and a surveillance camera, remove reward signs, reduce the number and size of "No Trespassing" signs (leaving no security for our 320-foot long property from further acts of vandalism by this neighbor and others), and lower a fence,. We certainly don't agree with the conditions but have nevertheless complied with them.

We cut the old fence down the required few inches to the 3-feet permitted and it now looks ugly. It was built by an artist connected to the history of this property and designed in the 1940's before all these codes existed.

We are not attending the Planning Commission hearing. We believe the appeal has no basis, is irrelevant, and is not a topic that should take the time and attention of the Planning Commission. We also want you to know we are angry about the county process that allows this lawyer's behavior. This commission should not be used as a court with us on trial and having our character and integrity attacked falsely.

Besides, this neighbor's current lawyer has written to threaten us with "legal action," seeking to intimidate us into clear cutting our property in the area of her viewshed.

The wall repair has been completed--more than 100 feet from the vegetated area across from the neighbor's property. What has the appeal to do with the wall?

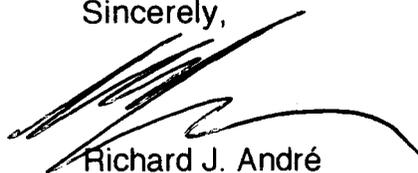
Nothing.

This section of bluff has remained stable, and we will not endanger its stability by doing anything with the vegetation (what little is left).

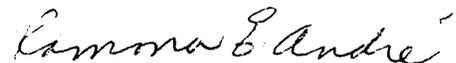
Getting a permit for a wall repair should not be an excuse for attacking us. This whole situation has affected our health and finances. We originally moved here for health reasons and don't need this stress.

Again, this neighbor's view is not your problem. We have met all conditions and will not make any more changes. We have confidence that you will approve our wall permit because it is the right thing to do. Please focus on the wall permit and approve it.

Sincerely,



Richard J. André



Ramona E. André

# **Additions to the Staff Report for the Planning Commission**

## **Item 9: 06-0037**

### **Late Correspondence**

**BARNEY ELDERS, ATTORNEY AT LAW**

**SBN 49399**

555 SOQUEL AVENUE, STE 240  
SANTA CRUZ, CALIFORNIA 95062  
PO BOX 8544, SANTA CRUZ, CA 95061-8544  
TEL (831) 459-8857 FAX (831) 425-1968  
EMAIL: [elders@,cruzio.com](mailto:elders@,cruzio.com)

originals received by Planning Department 5-11-07

May 11, 2007

Lani Freeman, Planning Commission Coordinator  
County of Santa Cruz  
Planning Department and Planning Commission  
701 Ocean Street  
Santa Cruz, CA 95060  
Phone: (831)454-3132  
Fax: (831)454-2131  
Email: Lani Freeman <PLN412@co.santa-cruz.ca.us>

re: re: 5-23-07 Planning Commission Hearing Agenda Item No. 9  
re Application No. 06-0037, 310 Kingsbury Drive & 319 Beach Drive Aptos  
APN 043-081-15 (previously 043-081-11 & 12; and 043-082-48); 043-082-09

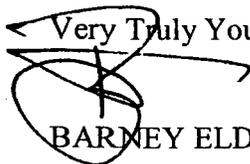
Dear Ms. Freeman:

Enclosed for inclusion in the 5-23-07 Planning Commission agenda packet for the above referenced matter and as per your instructions, please find 1 each of the following:

1. Report of James McKenna Certified Professional in Erosion and Sediment Control
2. Letter dated May 11, 2007 containing SUPPLEMENTAL MEMO....
3. Presentation entitled PLANNING COMMISSION HEARING 5-23-07 consisting of pages 1 to 70

Thank you for your assistance and cooperation in this matter.

Very Truly Yours,

  
BARNEY ELDERS

BE:sh

**Erosion Control Report  
Portion of Andre Property  
APN 043-081-15 (previously 043-081-11 & 12 & 043-082-48)  
310 Kingsbury Drive  
Aptos, CA**

May 11, 2007

prepared by

James McKenna  
Certified Professional Erosion and  
Sediment Control Specialist #532  
California Contractors License #663438  
2760 Valencia Road  
Aptos, CA 95003

at the request of  
Lesa Stock, Chili Pepper LLC and Kingsbury Neighbors

## Scope Of This Report

The following report is a review of my observations taken of portions of the Andre property (310 Kingsbury Drive, Aptos) between the period of February and May 2007. All of these observations were made on adjacent properties or on public streets either above or below the subject property as I did not have the authority to enter the property. It is also a summary of my opinions based on the observed conditions, and of selected maps, written reports and the conversations spoken at public hearings, including a review of the Planning Department file and conversations with Planner Randall Adams and County Geologist Joe Hanna. I have worked on erosion control projects in this area previously and am generally familiar with the soils, vegetation, geologic conditions, and conditions affecting erosion and soil stability in the area of this project. Although the entire property was considered during the formulation of my opinions, the focus of my observations and discussion is on a portion of the Andre's property approximately 100 feet long, parallel to Kingsbury drive by 40 feet wide, as measured from Kingsbury drive to the beach bluff, across from the Chili Pepper LLC/Lesa Stock property at 317 Kingsbury Drive.

## Site Conditions Observed

At the portion of the Andre's property as viewed from Kingsbury Drive looking south westerly across from 317 Kingsbury Drive, I observed in the first 20 feet distant from the road on a sloping plateau over-looking the bluff, masses of Algerian ivy (*Hedera canariensis*) occupying approximately 60 percent of the surface area. The Algerian ivy ranges from 4 to 6 feet in height, and upright woody stems of 2 to 4 inches in diameter are visible with leaf coverage mainly on the outer perimeter of the plant canopy.

Behind the masses of Algerian ivy, at the top edge of the bluff and beyond, on the face of the steep failing scarp of the bluff are approximately 10 to 15 trunks of what I believe are Green Wattle Acacia (*Acacia decurrens*). (There are 943 species of Acacia). The trees are 10 to 12 feet tall with trunks 4 to 6 inches in diameter, which account for approximately 10 to 20 percent of the surface area of the sloping plateau.

The balance of the vegetation on the plateau is of weedy introduced annual grasses, approximately 10 to 20 percent.

The general appearance of the specific area in question can be described as unmaintained and overgrown as there is no evidence of any weeding, vegetation management, or access for monitoring and the area is blocked off to entry by a 3 foot tall fence.

## Discussion of Observations

There does not appear to be any regard for the selection of plant materials or

any treatments that would be appropriate for protecting the bluff and the scarp below from accelerated erosion. A discussion of concerns are as follows:

1. As per various geologic engineering reports by Rogers Johnson Associates and Haro Kasunich and Associates, the entire property is subject to severe soil rilling and erosion. There have been measurable changes in soil loss and these reports have continually recommended treatments to improve retaining walls, drainage away from the slope face, vegetation establishment and ongoing monitoring of the site. I can conclude from these reports that similar soil loss events and the need for monitoring and treatment is also a concern in the area in question. Pruning ("trimming") the Algerian Ivy and Acacia to 3 feet or less would enable access to the area across from 317 Kingsbury to assess, monitor, and improve erosion control problems.

2. Drainage away from the slope face in this area has been neglected, as under the mounding Algerian ivy is the opportunity for collection and ponding of surface water. As viewed from below, there is evidence of soil rilling from above which is caused by concentrated runoff flowing over the erodible surface of the bluff face.

3. The configuration of the Algerian ivy plants in an unpruned condition does not encourage the more desirable lower, but more vigorous horizontal growth of the plant that would be achieved by pruning to 3 feet or less. Typically, Algerian ivy is trained as a ground cover 12 to 24 inches high. In this lower pruned ("trimmed") configuration, there is greater leaf area covering the soil surface, as sunlight is permitted into the leaf canopy permitting greater leaf growth, and thus protecting the soil surface from splash erosion. The more horizontal configuration encourages more rooting of the above ground lateral branches at each leaf node, thus resulting in more frequent rooting as measured radially from the initial planted stem. Careful pruning of the Algerian Ivy to 3 feet or less, as would be done by any skillful landscape contractor, would thus result in better erosion control.

4. The presence of the Acacia trees on the edge and face of the bluff is of concern. Acacia are known as a vigorous and weak wooded tree as the angle of attachment of the lateral limbs to the main trunk is quite vertical compared to other stronger wooded species. This vertical angle does not require much force (usually caused by the weight of the limb when under wind stress) to shear the limb off. Also as the Acacia matures on steep and shallow soils, there is the danger of the entire tree rotating outwards away from the slope and could pull out the entire root mass, thus exposing a concave scarp on the bluff face. For this reason, the Acacia on this site should be monitored and corrective pruning needs should be regularly undertaken to lessen the likelihood of soil pull-out. Pruning the Acacia to 3 feet or less would not cause erosion control problems; and would actually enhance erosion control. I do not see any evidence of preventative

pruning of the Acacias on the subject area.

5. The selection of the two dominant species (*Acacia* and *Hedera*) for this critical slope does not correspond with what are considered in the erosion control and natural re-source management fields of study as "Best Management Practices". Both of these species are non-native invasive plants which have a long history of displacing desirable native plants and wildlife. In many California coastal communities, these plants have been specifically targeted for eradication, either by regulatory ordinances, or as a condition of granting a development permit to a landowner. In my own experience of establishing erosion control vegetation on steep coastal bluffs in Santa Cruz County, the development permit required native species collected from an approved seed source on an adjacent bluff. Controlling the ivy will also diminish its potential competition with the Kikuyu grass selected in this case as an erosion control planting.

The concern by County Geologist that pruning of the plant material on the plateau area in question would cause "root shrinkage" which could cause or increase the probability of erosion on the bluff is contrary to my education and experience. The term "root shrinkage" in botanic literature is a phenomena of root diameter changing in size as the soil moisture tension changes due to the presence or absence of natural rainfall or irrigation. It occurs in plants as an adaptive mechanism to ration the root uptake of water should soil tensions increase during periods of drought. This would not be caused by pruning of the above ground portions of the plant. Careful pruning of the Algerian Ivy and Acacia at this site to 3 feet or less would not cause erosion control problems or result in excess water entering the soil by capillary action.

### Conclusions

If careful corrective pruning on the upper plateau is performed so that the vegetation is kept at three feet or less, I see no cause for the increase of erosion on the bluff. More likely, the erosion protection will be enhanced due to better monitoring and corrective drainage treatment implementation, greater horizontal spreading of ivy, and reducing the occurrence of root pull-out from falling trees.

The permit condition originally recommended by Staff (as modified by the wording in brackets) below

No vegetation in excess of 3 feet in height is [SHALL BE] allowed within the required 20 foot front yard setback or within the Kingsbury Drive right of way [BY THE OWNER OF APN 043-81-15]. Vegetation must [SHALL] be maintained [BY THE OWNER] to remain 3 feet (or less) in height within these areas .

is appropriate in this case; will not cause erosion problems in my opinion; and if done as recommended will likely improve erosion control.

The Algerian Ivy in the area between the road and bluff top should be trimmed and maintained to 2-3 feet (or less) for the reasons stated in this report.

The Acacia in the area between the road and bluff top should be trimmed and maintained to 2-3 feet for the reasons stated in this report.

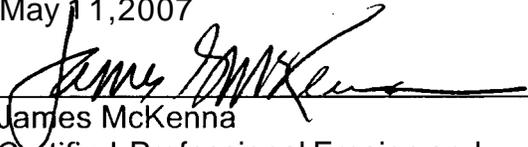
The Acacia on the bluff face should be closely inspected and treated as conditions require.

Once the ivy and Acacias are trimmed, the site should be evaluated for ponding, run off, drainage, and re-vegetation potential.

Furthermore, I recommend that a more comprehensive erosion control treatment be investigated and implemented for that site that would provide an even greater protection than just pruning alone of the existing plantings of Acacia and *Hedera*. *It is my opinion* that to "do nothing is the best possible treatment" to the site is contrary to the practice and art of the erosion control industry and not in keeping with other regulatory requirements that Santa Cruz County has previously enforced on similar beach bluff properties. The current Erosion Control Plan for this property should be expanded to adopt the recommendations in this report.

Thank you for the opportunity of commenting on this case.

May 11, 2007

  
James McKenna  
Certified Professional Erosion and  
Sediment Control Specialist #532  
California Contractors License #663438  
2760 Valencia Road  
Aptos, CA 95003

Educational and Professional Experience Highlights of James McKenna

Bachelor of Science, Department of Environmental Horticulture, University of California at Davis, June 1974. Graduated with Honors

Agriculture Single Subject and Agriculture Specialist Teaching Credentials, University of California at Davis, June 1978

Santa Cruz County Office of Education, Regional Occupational Programs Instructor, Forestry and Natural Resources Management, Landscape Horticulture 1978 to 1988.

Owner, James McKenna Landscapes, a design construction and consulting company specializing in erosion control, revegetation, water management, concrete and stone work.

President, Board of Directors, Resource Conservation District of Santa Cruz County, 1992 to present. The District provides education, technical assistance and cost sharing to landowners for implementing conservation measures on their property.

California Landscape Contractors Association, member, 1999 to present  
International Erosion Control Association, member 1999 to present.

Certified Professional Erosion and Sediment Control Specialist #532, an international certification program with over 3000 registrants, eligibility determined by testing, experience, and professional sponsorship.

**BARNEY ELDERS, ATTORNEY AT LAW**

SBN 49399

PO BOX 8544, SANTA CRUZ, CA 95061-8544

TEL (831) 459-8857 FAX (831) 425-1968

EMAIL: [elders@cruzio.com](mailto:elders@cruzio.com)

May 11,2007

Planning Commission, County of Santa Cruz  
c/ Lani Freeman, Planning Commission Coordinator  
701 Ocean Street, Rm., 4<sup>th</sup> Floor  
Santa Cruz, CA 95060

re: 5-23-07 Planning Commission Hearing Agenda Item No. 9  
re Application No. 06-0037, 310 Kingsbury Drive & 319 Beach Drive Aptos  
APN 043-081-15 (previously 043-081-11 & 12; and 043-082-48); 043-082-09

Ladies and Gentlemen:

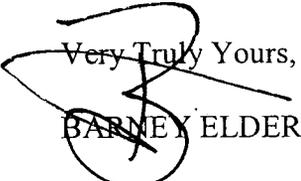
Attached please find the following:

- 1) Materials from erosion control expert James McKenna CPESC detailing why **trimming** the overgrown vegetation on the lot at 310 Kingsbury Drive **will improve**, and not aggravate, **erosion control**; and
- 2) a print out of a Powerpoint presentation concerning the issues in this matter;

both of which we ask be submitted to the Planning Commission, along with this letter containing supplemental information, with the agenda packet and for purposes of the 5-23-07 hearing.

Thank you.

Very Truly Yours,

  
BARNEY ELDERS

~ ~ ~

**SUPPLEMENTAL MEMO ADDRESSING ISSUES THAT HAVE BEEN RAISED  
SINCE THE FILING OF THE NOTICE OF APPEAL**

TO: Planning Commission, County of Santa Cruz  
RE: Hearing 5-23-07; Application No. 06-0037, 310 Kingsbury Drive & 319 Beach Drive Aptos  
FR: Appellants Lesa Stock, Chili Pepper LLC, Kingsbury Neighbors, Barney Elders  
DATE: May 11,2007

Ladies and Gentlemen: The following memo supplements the Notice of Appeal filed in this matter and is incorporated therein by reference. Thank you.

1.0 INTRODUCTION: Since the filing of the Notice of Appeal in this matter, several issues have been raised in contacts with Staff which appellants would like to address as follows:

## 2.0 THE WORK ON THE RETAINING WALL IN THIS MATTER HAS BEEN COMPLETED: WHY IS A COASTAL DEVELOPMENT PERMIT REQUIRED?

### 2.1 REQUIRED BY LAW

2.1.1 COUNTY CODE 13.20.170(a) provides: "It shall be unlawful for any person to undertake any development...in the Coastal Zone unless (1) a Development Permit has been obtained and is in effect....(b) It shall be unlawful for any person to exercise any Development Permit which authorizes development within the Coastal Zone without complying with all of the conditions of such permit"

2.1.1.1 "Development" means...the placement of any solid material or structure; and any "reconstruction" of a structure (GP/LCP Glossary)

2.1.1.2 "Structure" (and therefore "development") includes "ANY retaining wall" (GP/LCP Glossary)

2.2 WHEN AN EMERGENCY PERMIT IS OBTAINED, AS IN THIS CASE, IT IS CONDITIONED ON THE APPLICANT OBTAINING A REGULAR PERMIT: See COUNTY CODE 13.20.090: "Emergency Coastal Zone Permits: the emergency approval shall conform to the objectives of this chapter; shall expire 60 days after issuance; and the application shall be accompanied by an application for a regular permit"

2.3 A PORTION OF THE WORK REMAINS TO BE DONE: this includes the implementation of the erosion control plan, the re-vegetation plan and related landscaping, and the drainage improvements; ALONG WITH any work required by conditions the Planning Commission requires

3.0 THE "NEXUS" ISSUE: It has been suggested that the three conditions originally recommended by Planning Staff (1. that the overgrown vegetation on the property be trimmed to 3 feet or less within the Kingsbury right of way and 20 foot front yard setback; 2. that a birdhouse, surveillance camera, and floodlights on the garage be conditionally removed; and 3. that certain signs posted in the Kingsbury right of way be removed) do not have a "nexus" to the retaining wall work

3.1 What does "nexus" mean? "Nexus" refers to the requirement (in cases involving "exactions" which are dedications of land, the assessment of special fees, or a requirement for off-site improvements) that the nature and extent of permit conditions should have a relationship to the nature and extent of the project. The idea is based on certain state and federal case law that requires exactions (dedications of land and development fees) to be reasonably related to a project. A comment has been made that there is no "nexus" between the three permit conditions originally proposed by Staff and the project.

3.2 This position represents a departure from what was conceded at the Zoning Administrator hearing. At that hearing all parties were in agreement with the 3 conditions with some suggestions regarding wording, BEFORE the conditions were unilaterally changed by staff. Planner Randall Adams must have thought the three conditions had a "nexus" because he recommended them in the first place

3.3 There is some confusion about WHEN a "nexus" is required. THE "NEXUS" REQUIREMENT DOES NOT APPLY when all that is being required in a condition is that an applicant comply with existing applicable law. "Law" includes the General Plan, Local Coastal Plan, County Code, building regulations, or nuisance law (so called "legislative" requirements). **THE GOVERNMENT CAN ALWAYS CONDITION A PERMIT ON THE PROPERTY BEING IN COMPLIANCE WITH THE LAW.** (Home Builders Assn v City of Napa, 90 CA4th 188, Lucas v. South Carolina Coastal Council, 505 U.S. 1003, Ehrlich v City of Culver City, 12 Cal4th 854). **THIS IS A COMMONSENSE**

RULE: IT WOULD BE RIDICULOUS TO SAY THAT GOVERNMENT MUST ISSUE A PERMIT WHILE THE APPLICANT IS IN VIOLATION OF THE LAW REGARDING THE SUBJECT PROPERTY.

3.3.1 Another way of saying this is that there is ALWAYS a "nexus" to a condition that requires compliance with the law

3.3.1 Compliance with the law is commonly required as a "boilerplate" condition in every permit

3.4 THE COUNTY CLEARLY HAS THE LEGAL AUTHORITY TO REQUIRE CONDITIONS TO PERMITS

3.4.1 COUNTY CODE 18.10.240(a): The approving body may grant, or recommend the granting of, permits or approvals upon such terms and conditions as the approving body deems necessary to ensure the adequate implementation of the project in compliance with all County policies and ordinances.

3.4.2 COUNTY CODE 18.10.360: The approving party may grant permits or approvals upon such terms and conditions as the approving body deems necessary to ensure the adequate implementation of the project in compliance with all County policies and ordinances

3.5 ONE TYPE OF LEGAL COMPLIANCE THAT CAN BE REQUIRED IN A PERMIT CONDITION WITHOUT RAISING THE ISSUE OF "NEXUS" IS "CONSISTENCY" WITH VARIOUS PROVISIONS OF LAW

3.5.1 GENERAL PLAN AND LOCAL COASTAL PLAN CONSISTENCY IS REQUIRED FOR PERMITS, see Jones Co. v City of San Diego, 157 CA3d 745; AS WELL AS COMPLIANCE WITH THE CODE

3.5.1.1 COUNTY CODE 18.10.010, 18.10.111: Santa Cruz County uses an "integrated" system for development and related permit review and issuance; development and use of land is authorized by one or more of the following types of permits: (1) building permit (authorizing construction activities); (2) development permit (authorizing land use and development pursuant to all applicable County Ordinances); (3) Parcel Approval

3.5.1.2 COUNTY CODE 18.10.111(c): ALL PERMITS AND APPROVALS ...MUST BE IN CONFORMANCE WITH THE COUNTY GENERAL PLAN AND MUST ALSO BE CONSISTENT WITH ALL OTHER COUNTY ORDINANCES AND REGULATIONS

3.5.1.3 COUNTY CODE 13.01.130: discretionary land use permit shall be approved unless it is consistent with the General Plan (see also COUNTY CODE 18.10.140 All permits and approvals to be consistent with the General Plan)

3.5.1.4 COUNTY CODE 18.10.160: All permits and approvals issued for projects in the Coastal Zone to be in compliance Chapter 13.20 (Coastal Zone Regulations); (see also COUNTY CODE 13.20.130(a)2. finding required that a Coastal Development Permit is "consistent with the visual resource policies of the general plan and the LCP")

3.5.1.5 COUNTY CODE 12.01.070(b) requires that projects be consistent with the General Plan, Local Coastal Plan, and applicable County Codes

3.5.1.6 COUNTY CODE 18.10.360, 18.10.230: Finding required for development permits that the proposed use is consistent with all elements of the County General Plan; and consistent with other specific ordinances

3.5.2 ALL BUILDING CODE VIOLATIONS MUST BE CORRECTED BEFORE A BUILDING PERMIT CAN BE ISSUED: COUNTY CODE 12.01.070(c) requires all building code violations be corrected in order to get a building permit: **There is always a nexus when a property owner is made to correct a code violation**

3.5.3 BUILDING PERMITS MUST BE CONSISTENT WITH THE GENERAL PLAN AND LCP: COUNTY CODE 18.10.140

3.5.4 BUILDING PERMITS MUST BE CONSISTENT WITH COASTAL ZONE REGULATIONS, COUNTY CODE 18.10.160

3.5.5 PROPERTY FOR WHICH A PERMIT IS OBTAINED MUST BE IN CONFORMITY WITH NUISANCE LAW: **There is always a nexus when correction of a nuisance is the purpose of a condition**

3.5.5.1 COUNTY CODE 16.50.025 "Nuisance" is "anything which is injurious to health, or is indecent or offensive to the senses, or an obstruction to the use of property, so as to interfere with the comfortable enjoyment of life or property....",

3.5.5.2 COUNTY CODE 1.14.010: Any nuisance can be abated

3.5.5.3 COUNTY CODE 1.12.050A: **Any condition** caused or permitted to exist **in violation of any of the provisions of the County Code shall be a public nuisance and may be abated** as such by the county in accordance with this code and state law

3.5.5.4 COUNTY CODE 19.01.030: **Any violation of land use regulations may be abated as a public nuisance**

\*3.5.5.5 COUNTY CODE 13.10.279: **Building code and land use violations are a public nuisance:** any structure set up, erected or maintained and any use of land maintained contrary to any planning or zoning regulation is a public nuisance

3.5.5.6 OTHER NUISANCES: violations of the Fire Code (12.16.030), nonconforming signs (13.10.585), nuisance trees (13.11.075), nuisance species trees (13.20.130)

3.5.6 EVERY DEVELOPMENT ALSO REQUIRES AN EROSION CONTROL PLAN THAT ADDRESSES EROSION CONTROL ISSUES AT THE SITE

3.5.6.1 AN EROSION CONTROL PLAN IS REQUIRED FOR DEVELOPMENT PERMITS AND CAN (AND IN THIS CASE DOES) INCLUDE RE-VEGETATION AND LANDSCAPING: County Code 16.22.060

3.5.7 THERE IS ALMOST ALWAYS A NEXUS WHEN PROTECTION OF HEALTH, SAFETY, OR PUBLIC WELFARE IS PURPOSE OF CONDITION. COURTS GRANT GREAT DISCRETION TO LOCAL GOVERNMENT FOR THESE PURPOSES.

3.5.8 CASE LAW SHOWS THAT THE "NEXUS" REQUIREMENT ONLY APPLIES TO "ADJUDICATORY" "EXACTIONS" (WHICH ARE TYPICALLY DEDICATIONS OF LAND, PAYMENT OF SPECIAL FEES, OR OFF SITE IMPROVEMENTS)

3.5.9 SO THE "NEXUS" REQUIREMENT DOES NOT APPLY IN THIS CASE. EVEN IF THE "NEXUS" REQUIREMENT DID APPLY IN THIS CASE, THERE WOULD BE A SUFFICIENT RELATIONSHIP BETWEEN THE PROJECT AND THE THREE CONDITIONS

3.5.9.1 THE GENERAL RULE WHEN "NEXUS" APPLIES IS :If A Permit Can Be Denied It Can Also Be Conditioned"

3.5.9.2 THE CURRENT APPLICATION COULD BE DENIED ON A NUMBER OF GROUNDS

3.5.9.2.1 This permit can and should be denied due to lack of compliance with setback requirements. The Andre property violates the County setback ordinance as the garage actually encroaches into the public right of way; and the house is not set back 20 feet as required for an R-1-6 district, County Code 13.10.130, 13.10.700-Y (Yard), 13.10.277 (in PR districts which applies to this property the minimum setback is 30 feet, Co Code 13.10.353)

3.5.9.2.2 This permit can and should be denied because ANDRE HAS ALREADY VIOLATED A PERMIT CONDITION BY REFUSING TO ALLOW THE CONTRACTOR TO USE PRESSURE TREATED WOOD in the retaining wall as required by the approved plans (see letter dated January 17,2007 from Ifland Engineers) which means, given the termites in Santa Cruz County and other environmental effects, that the retaining wall will have a very short useful life span

3.5.9.2.3 Andre obtained a permit in 1985 (5-10-85 permit No. 84-1342-CZ) that included a number of conditions that have apparently not been satisfied. If the following conditions of the 1985 permit have not been satisfied this would justify denying the current application.

3.5.9.2.3.1 combine lots 43-081-11 and 43-081-12; findings note "to meet setback requirements, lots 43-081-11 & 12 will be combined"; not done until **2007**

3.5.9.2.3.2 record a geologic hazards declaration form; not done

3.5.9.2.3.3 submit an engineered drainage plan for review and approval"; this affects the entire property ...was it done?

3.5.9.2.3.4 record a declaration of restrictions for a single-family dwelling"; **not done**

3.5.9.2.3.5 install drainage improvements as required by Environmental Planning"; **this affects the entire property ...was it done?**

3.5.9.2.3.6 meet all conditions of Aptos Fire Department"; **this affects the entire property ...was it done?**

3.5.9.3 THE "NEXUS" IN THIS CASE IS PROVIDED BY THE FACT THAT AN EROSION CONTROL PLAN IS REQUIRED THAT AFFECTS THE ENTIRE PROPERTY REGARDING THE SAME TYPE OF PROBLEM THAT IS ADDRESSED BY THE RETAINING WALL. IN THIS REGARD, **THE PROJECT DESCRIPTION OF A "REPAIR OF AN EXISTING RETAINING WALL" IS MISLEADING.** The project under this permit is **actually an "erosion control project"** that **affects every part of the Andre property** because it includes **not only retaining wall renovation, but also re-vegetation, landscaping, and drainage control.** Every part of the Andre property is subject to runoff, ponding and slides. The retaining wall work is more extensive than a "repair" and would not fit the definition of "repair" in the Uniform Building Code. Andre's geotechnical engineer called it a "renovation". The extent of work makes it a "reconstruction". In a letter dated 8-30-06 ***Randall Adams stated that erosion control and landscaping is a condition of the permit.*** In a letter dated March 1, 2006 ***Randall Adams described the project as including "revegetation".*** **An erosion control plan is a required by the County Code** for this project. **An** erosion control plan **can be as comprehensive as necessary** to deal with the property subject to the permit: the County has the right to expand the scope of an erosion control plan (General Plan 6.3.4, County Code 16.22.060), including by requiring further mitigations such as additional retaining walls, drainage measures, and erosion control landscaping. Trimming the overgrown vegetation is a logical extension of the erosion control plan. Trimming the overgrown vegetation will actually improve erosion control. **THE SCOPE OF THE EROSION CONTROL PLAN IS A FACTOR IN DETERMINING THE CONDITIONS TO APPLY ...ALL OF WHICH ARE AUTHORIZED BY LAW.**

3.5.9.3.1 The report by Andre's geotechnical engineer Rogers Johnson makes it clear that the entire 300 feet of bluff owned by Andre is subject to erosion and slides, mostly caused by water run off and ponding water. The erosion and slides threaten homes on Beach Drive and because the bluff has the potential to recede 30 feet absent adequate prevention the erosion also threatens Kingsbury Drive. **THE SCOPE OF THE EROSION CONTROL PROBLEM DEFINES THE SCOPE OF THE EROSION CONTROL PLAN WHICH, IN TURN, IS A FACTOR IN DETERMINING THE CONDITIONS TO APPLY.**

3.5.9.4 Because the permit includes re-vegetation and landscaping (planting of erosion control kikuyu) therefore landscaping standards in the code apply.

3.5.9.5 The final permit conditions ordered at the Zoning Administrator hearing, other than the 3 conditions at issue in this appeal, affect the entire property and areas and subjects not directly pertaining to the retaining wall as follows and therefore presumably satisfy any "nexus" requirement. If the following conditions can be imposed certainly a "trimming" condition can be imposed for the vegetation:

- 3.5.9.5.1 Grading, drainage, and erosion control plans prepared by a licensed civil engineer, which meet the requirements of the project geologist and geotechnical engineer.
- 3.5.9.5.2 Details showing compliance with fire department requirements, including all requirements of the Urban Wildland Intermix Code, if applicable.
- 3.5.9.5.3 No fences greater than 3 feet in height are approved within the required front yard setback. (Added at ZA 2/2/07)
- 3.5.9.5.4 All decks must be adequately drained away from the coastal bluff, or the runoff from beneath the decking must be adequately captured into the existing drain which outlets to the base of the slope, to avoid erosion caused by water draining across the bluff face. If these standards can not be met, a patio (or other form of landscape improvements which are acceptable to the County geologist) may be installed instead.
- 3.5.9.5.5 The project must comply with all recommendations of the approved geologic and geotechnical reports and update letters.
- 3.5.8.9.6 **All** decks must be under 30 inches in height within the required geologic setback (25 feet or 100 year stability, whichever is the greater distance).
- 3.5.8.9.7 No structures (other than deck hand rails) over 30 inches in height are allowed within the required geologic setback (25 feet or 100 year stability, whichever is the greater distance).
- 3.5.8.9.8 No decks or other structures are allowed to cantilever beyond the top of the coastal bluff.

**3.6 BECAUSE THE 3 CONDITIONS ORIGINALLY PROPOSED BY PLANNING STAFF (trimming vegetation, removing the birdhouse/surveillance camera/floodlights, and removing the signs in the right of way) ALL MERELY REQUIRE COMPLIANCE WITH THE LAW, THE "NEXUS" REQUIREMENT DOES NOT APPLY; AND, AT THE SAME TIME, THE CONDITIONS ARE MANDATED BY LAW (references to GP/LCP are to the General Plan and Local Coastal Plan)**

**3.6.1 THE VEGETATION CONDITION IS REQUIRED BY LAW (No vegetation in excess of 3 feet in height is allowed within the required 20 foot front yard setback or within the Kingsbury Drive right of way. Vegetation must be maintained to remain 3 feet (or less) in height within these areas)**

**3.6.1.1 TRIMMING THE VEGETATION WILL NOT CAUSE PROBLEMS WITH EROSION AND WILL ACTUALLY IMPROVE EROSION CONTROL**

- 3.6.1.1.1 Trimming the vegetation as proposed by the "vegetation condition" in the original staff report would not cause "root shrinkage" or cause or increase the probability of erosion of the bluff.
- 3.6.1.1.2 Mr. Hanna is not qualified to testify regarding botany
- 3.6.1.1.3 Allowing the Algerian Ivy and Acacias to grow tall creates erosion control problems:
- 3.6.1.1.4 Trimming the vegetation as proposed by the "vegetation condition" will actually enhance soil stability and erosion control for the following reasons:
- 3.6.1.1.5 Trimming will promote root growth and horizontal branching and will therefore make the soil more stable
- 3.6.1.1.6 Trimming allows more sunlight and air to penetrate leading to more under canopy growth

3.6.1.1.7 Trimming will prevent "pull out" of soil when tall bushes like acacias grow too tall and fall over

3.6.1.1.8 The fact that the property owner has allowed the vegetation to become overgrown on the eastern part of his lot threatens "accelerated erosion" as defined by the Code

3.6.1.1.9 Trimming will make it easier to see the soil and topography under the vegetation on the bluff top to discover potential areas of water run off and ponding. Trimming will allow and encourage access to the site to inspect and monitor it for runoff and ponding which are the major causes of erosion; and will allow access to install erosion control. Andre's geotechnical engineer states in a letter that "other low points which permit ponding should be identified". There is no way the overgrown area could have been evaluated for runoff, ponding and slides without trimming.

3.6.1.1.10 Trimming will encourage growth of the vegetation planted pursuant to the erosion control plan

3.6.1.1.11 The "vegetation condition" that "*No vegetation in excess of 3 feet in height is allowed within the required 20foot front yard setback or within the Kingsbury Drive right of way. Vegetation must be maintained to remain 3feet (or less) in height within these areas.*" be made a condition of this Coastal Development permit.

3.6.1.1.12 The Algerian Ivy in the area between the road and bluff top should be trimmed and maintained to 2-3 ft to provide better erosion control;

3.6.1.1.13 The Acacia in the area between the road and bluff top should be trimmed and maintained to 2-3 ft to provide better erosion control;

3.6.1.1.14 The Acacia on the bluff face should be closely inspected and treated as conditions require; and

3.6.1.1.15 Once the ivy and Acacias are trimmed the site should be evaluated for ponding, run off, drainage, and re-vegetation potential.

3.6.1.1.16 The vegetation on either side of the overgrowth is trimmed to 3 feet or less without bad effect

3.6.1.1.17 Up to a couple years ago the overgrown area was also trimmed to 3 feet or less without bad effect. The only reason it is overgrown now is because of Richard Andre's spite campaign against Lesa Stock.

3.6.1.1.18 Even the County's "expert" on re-vegetation testified that altering the overgrown vegetation would be feasible

\*JOE HANNA TESTIMONY AT ZA HEARING

\*ZA: "OK. I'd just like to talk to the County Geologist real quick. So you can get outta here. If I understand correctly, Joe, the...your position is that it would be good to *retain* that vegetation ...and if they *do* want to do a re-veg or a landscape plan that it be *phased* and that you have some review ...and the geotechnical engineer...have some review of that plan?"

\*HANNA: "Correct. The idea of **just cutting down vegetation** on the top of a bluff **will** change the equilibrium of the site and **cause problems**. The hope would be that with **a phased landscape plan or a plan that would change over time that the result would be less of an impact** than an actual just coming and just trimming all the material down to 3 feet. The assumption would be that the new plan would...would select some of the species that are already there; retain those; eliminate some of the

others; and...and as a result substitute new vegetation in the place of those that are removed. And the combination that would result no change in the amount of ah...ah infiltration at top of the bluff and, also hope...hopefully not cause any additional problems."

\*ZA: OK. All right. Thank you. OK this is the public hearing..."

\*JOE HANNA PHONE CALL

He said he testified at the ZA hearing; that most of his experience with vegetation comes from "that experience" (testifying??) and "observation"; that he also talked to geologist and geotechnical engineers (the County's or Andres?); and [quoting verbatim] "the kind of vegetation there is actually, helpful...cutting it back down will actually reduce...will actually stress the roots...the root mass...of these bushes and will add to infiltration...there are some trees that are goin' to probably come out as a result of the natural landscaping plan ultimately but, ah, we just don't wanna uniformly cut it to a certain depth [??] it's just not...it's not wise to do that...THE ACACIAS MAYBE SHOULD GO...we may choose some other stuff to reduce its height and substitute some other things in there...its possible since there is sort of an adaptive landscaping that will probably be done over the next 60 days...that, ah, you know, and we should let them grow in there and let them get strong and then remove some of the others..."

### 3.6.1.2 THE **HEDGE ORDINANCE** REQUIRES THE VEGETATION TO BE TRIMMED

3.6.1.2.1 A HEDGE is ANY arrangement of PLANTS OR TREES obstructing the clear view, Co Code 13.10.700-H (Hedge)

3.6.1.2.2 No hedge shall exceed three feet in height if located in a front yard or other yard abutting a street, Co Code 13.10.525

3.6.1.2.3 The Zoning Administrator opted to limit any fences in the front yard to 3 feet and there are many factors weighing against keeping the overgrown vegetation over 3 feet; there is no basis for discretion to allow the vegetation to remain over 3 feet high unless it is required for erosion control (which it is not)

3.6.1.3 THE COUNTY CODE REQUIRES "APPROPRIATE LANDSCAPING" WITHIN A FRONT YARD SETBACK: The required yard (setback) adjoining a street shall incorporate appropriate landscape and/or hardscape, Co Code 13.11.075

00

**3.6.1.4 THE OVERGROWN VEGETATION VIOLATES THE GENERAL PLAN LOCAL COASTAL PLAN: THE GENERAL PLAN (GP) AND LOCAL COASTAL PLAN (LCP) REQUIRES THE OVERGROWN VEGETATION TO BE TRIMMED TO PRESERVE PUBLIC VIEWS**

**3.6.1.4.1 VIEWS ARE NOT JUST PROTECTED FROM THE BEACH. VIEWS TO THE SEA ARE ALSO PROTECTED.**

3.6.1.4.1.1 P/LCP POLICY 5.10.3: **Protect significant public vistas** as described in policy 5.10.2 [includes ocean views] **FROM all publicly used roads...**by minimizing disruption of...aesthetic character **caused by...signs, [and] inappropriate landscaping ...**

3.6.1.4.1.2 COUNTY CODE 13.20.121/122: Grounds for appeal to the Coastal Commission include that the development will fail to protect public views **FROM any public road** or from a recreational area to and along the coast

3.6.1.4.1.3 GP/LCP PARKS AND RECREATION, AND PUBLIC FACILITIES Objective 7.7c provides "maintain or provide access, **INCLUDING VISUAL ACCESS, TO** every beach ...."

3.6.1.4.1.4 Public Resources Code 30251 provides that "development shall be sited and designed **to protect views TO** and along **the ocean** and scenic coastal areas"

**3.6.1.4.2 THIS PROJECT IS SUBJECT TO THE COASTAL ACT PROTECTIONS AFFORDED TO "SCENIC ROADS"**

3.6.1.4.2.1 The property involved in this application is classified as "scenic" (The application states "general plan constraints: scenic")

3.6.1.4.2.2 County Code 13.11.030 defines property located on a coastal bluff as a "sensitive site" and equates a "sensitive site" with property located adjacent to a scenic road or within the viewshed of a scenic road. Therefore, **property located on a coastal bluff is accorded the same environmental consideration as a scenic road** so LCP 5.10.12 and LCP 5.10.13 should apply to property located on coastal bluffs

3.6.1.4.2.3 GP/LCP 5.10.12: In the viewsheds of URBAN SCENIC ROADS, **require new discretionary development to IMPROVE the visual quality** through siting, **architectural design, landscaping** and appropriate **signage**. (See policies 5.10.18, 5.10.19 and 5.10.20.).

3.6.1.4.2.4 GP/LCP 5.10.13: **All grading and land disturbance projects visible from scenic roads shall conform to the following visual mitigation conditions:**

- (a) Blend contours of the finished surface with the adjacent natural terrain and landscape to achieve a smooth transition and natural appearance; and
- (b) **Incorporate only characteristic or indigenous plant species appropriate for the area.**

3.6.1.4.3 GP/LCP PROVISIONS & CODE PROVISIONS GOVERNING "**NEW DEVELOPMENT**" REQUIRE VIEWS TO BE PROTECTED

3.6.1.4.3.1 THE LAW PROTECTS VIEWS

3.6.1.4.3.1.1 GP/LCP 5.10.6: "Where public ocean vistas exist, require that these vistas be retained TO THE MAXIMUM EXTENT POSSIBLE as a condition of approval for ANY new development"

3.6.1.4.3.1.2 GP/LCP 5.10.9: REQUIRE ON-SITE RESTORATION OF VISUALLY BLIGHTED CONDITIONS as a mitigating condition of permit approval for new development.

3.6.1.4.3.1.3 COUNTY CODE 13.11.072: "new development **..shall be..landscaped** as to be visually compatible and integrated with the character of the surrounding area...physical barriers...between adjacent parcels with similar uses are discouraged...unless needed for screening....**development shall protect the public viewsbed**, where possible [and]...**should minimize the impact on private views from adjacent parcels...**"

3.6.1.4.3.1.4 COUNTY CODE 13.20.130(b)1. All **NEW DEVELOPMENT** shall be sited, designed, and landscaped to be visually compatible and integrated with the character of the surrounding neighborhoods  
(compare COUNTY CODE 18.10.230: finding required for development permits that the projects will complement and harmonize with the existing and proposed land uses in the vicinity)

3.6.1.4.3.2 **The Current Project Is "New Development"**

3.6.1.4.3.2.1 "**Development**" means the placement of any solid material or structure; and any "reconstruction" of a structure (GP/LCP Glossary)

3.6.1.4.3.2.2 "**Structure**" (and therefore "development") **includes "ANY retaining wall"** (GP/LCP Glossary)

3.6.1.4.3.2.3 "**Development Activity**" means both "

- (4) "an addition of any size to a structure that is located on a coastal bluff...that extends the structure in a seaward direction" (here it can be presumed that the work extended the retaining wall, from which the old wood was removed, by the use of new beams, anchors, bolts, and lagging; **see Haro Kasunich letter**)

- (12) Retaining walls that require a permit (GP/LCP Glossary)

3.6.1.4.3.2.4 "**New Development**" means

- o "development activity"

- o EXCEPT FOR reconstruction...alteration or improvement of any structure that which is not in excess of fifty percent of the existing structure's fair market value"

- o *note that "repair" is NOT included in the exception*

3.6.1.4.3.2.5 FACTUALLY, even if the retaining wall was an "improvement" the cost was still in excess of 50% of the retaining wall's "fair market value"

- The retaining wall is 25 years old (see **15 May 2006 Haro Kasunich letter**)
- And has been failing since at least 1986 (see **Rogers Johnson letter**)
- Therefore its "fair market value" in 2006 could not be more than \$0
- In this case the PERMITS ALONE cost over \$10,000
- WHAT ABOUT THE REST?

*Devlopmt Permit	\$6714.45
fees:	\$ 632.65
*Building Permit	\$1423.28
fees:	\$2257.94

(note: County uses a figure of \$12.97/sf for retaining walls; this project was estimated at 144sf which is a total of \$1 755.36 using County sf figures that are much below the cost of this complex "repair" or what was actually charged)

*Rogers Johnson	\$ _____
*Haro Kasunich	\$ _____
*Ifland Engineers	\$ _____
*Prime Landscaping	\$ _____
John David (erosion control plan)	
*Dave Kendall contractor	\$ _____
*TOTAL	\$ .--

**3.6.1.4.3.2.5 THE PLANNING COMMISSION SHOULD REQUIRE THE PROPERTY OWNER TO FURNISH FURTHER INFORMATION ABOUT THE COST OF THE PROJECT TO HELP MAKE A DETERMINATION ABOUT WHETHER THE PROJECT INVOLVES "NEW DEVELOPMENT"**

**3.6.1.4.4 OTHER GP/LCP & CODE PROVISIONS PROTECT THE PUBLIC'S RIGHT TO VIEWS**

3.6.1.4.4.1 LCP 5.10.2 A project must be DESIGNED to protect public views..."design" is a very broad term

3.6.1.4.4.2 LCP 5.10.3 requires significant public vistas FROM ALL PUBLICLY USED ROADS to be protected from signs and INAPPROPRIATE LANDSCAPING

3.6.1.4.4.3 GP/LCP 7.7.1 requires that the County "**Encourage pedestrian enjoyment of ocean areas and beaches by the development of vista points** and overlooks with benches and railings, and facilities for pedestrian access to the beaches, subject to policy 7.6.2" which could easily be done in the 20 feet of un-used public right of way, except for the overgrown vegetation

3.6.1.4.4.4 LCP 7.1.3 requires preservation of scenic values in PARK zoned property: see also PARKS AND RECREATION, AND PUBLIC FACILITIES Objective 7.7c: "**maintain or provide access, INCLUDING VISUAL ACCESS, to every beach ....**"; also GP/LCP 7.1.3 "**Allow low intensity uses which are compatible with the SCENIC VALUES** and natural setting of the county **for open space lands which are not developable**"

3.6.1.4.4.5 LCP 5.11.4 requires full MITIGATION of all POTENTIAL ADVERSE IMPACTS in URBAN OPEN SPACE areas: "Require full mitigation of ALL POTENTIAL adverse impacts associated with developments located in Urban Open Space areas"

3.6.1.4.4.6 GP/LCP 7.7.4: "**Protect the coastal blufftop areas and beaches from intrusion by nonrecreational structures and incompatible uses**"

3.6.1.4.4.7 COUNTY CODE 13.20.130(b)4: Coastal Development Permit requires finding that new or replacement vegetation is compatible with the surrounding vegetation and to the climate, soil, and ecological characteristics of the area

3.6.1.4.4.8 COUNTY CODE 13.20.130(d) 1: Coastal Development Permit requires finding that Blufftop Development, in urban areas of the viewshed, conforms to 13.20.130(c)(2) "Screening and landscaping suitable to the site shall be used to soften the visual impact of development in the viewshed"

3.6.1.4.5 BECAUSE LANDSCAPING IS PART OF THIS PROJECT THE PLANNING COMMISSION SHOULD REQUIRE A LANDSCAPE MAINTENANCE AGREEMENT: COUNTY CODE Section 13.11.030 provides: "The **Planning Commission** or Zoning Administrator **shall, as a condition of approval of any landscaping OR LANDSCAPED AREA, require the execution of a landscape maintenance agreement and bond....**"

3.6.1.4.6 THE OVERGROWTH THREATENS POTENTIAL "ACCELERATED EROSION": Andre has intentionally let the Algerian Ivy and Acacia on his property grow un-maintained to block Lesa Stock's views and to serve as a barrier to prevent people from entering the property. As a result the Algerian Ivy has become tall and rangy, causing it to stop spreading horizontally, making it less compact, and reducing its tendency to re-root. Also as it grows taller, the area

under the top of the ivy thins out so there is less cover to intercept rain and less sunlight and air penetrates to the ground reducing under canopy-vegetation and exposing the soil more and leading to accelerated erosion. The Acacia poses an additional accelerated erosion threat which is that as it gets taller it is more prone to fall over and have the root ball tear out large pieces of dirt leading to exposed soil and erosion. This is a special problem along the edge of the bluff where a falling Acacia can take out a piece of the bluff leading to catastrophic erosion. County Code 16.22.040 provides that "NO PERSON SHALL CAUSE OR ALLOW THE CONTINUED EXISTENCE OF A CONDITION ON ANY SITE that is causing or is likely to cause accelerated erosion as determined by the Planning Director. SUCH A CONDITION SHALL BE CONTROLLED AND/OR PREVENTED BY THE RESPONSIBLE PERSON AND THE PROPERTY OWNER by using appropriate measures."

#### 3.6.1.4.7 THE OVERGROWTH IS A **NUISANCE** AND IS SUBJECT TO **ABATEMENT**

3.6.1.4.7.1 ALGERIAN IVY & ACACIA *ARE* INVASIVE NON-NATIVE **WEEDS**. Acacia (either baileyana, melanoxlyn, or longiflora) and Algerian Ivy (Hedera cananensis)....are on most non-native invasive plant lists that are known for displacing the desirable native plants

3.6.1.4.7.2 Weeds (including on private property) may be declared a public nuisance and may be abated...., Health & Safety Code 14876, 14880

- Property on which there is an accumulation of **weeds**, vegetation, **rodent harborages**, combustible materials or similar materials or conditions constitute fire, health or safety hazards are considered "substandard" and may be abated, Health and Safety Code 17920.3

- COUNTY CODE 13.11.075 Landscaping: (b)(1)(i) **Invasive species such as acacia...should be eliminated** if already present ....Required **landscaping shall be kept free from weeds...The use of...native plants is encouraged....**" Note that the current erosion control plan by John David/Prime Landscaping already includes the removal of invasive species.

- COUNTY CODE 16.50.025 defines "**Pest**" is to include "**weeds**" to the extent that it is detrimental to the "environment of the County"; **pests can be abated**

3.6.1.4.7.3 COUNTY CODE 13.11.075: **Trees that are a nuisance** and trees which threaten adjacent development may be removed, see also COUNTY CODE 13.20.130: **In the Coastal Zone nuisance species trees may be removed**

3.6.1.4.7.4 REMOVAL OF NON-NATIVE AND INVASIVE SPECIES AND RE-VEGETATION WITH NATIVES IS REQUIRED BY THE GENERAL PLAN

- o GP/LCP 5.1.14 **Encourage the removal of invasive species**
- o GP/LCP 5.1.11 **Prohibit landscaping with invasive or exotic species**
- o GP 6.3.7 **native vegetation should be used in replanting disturbed areas to enhance long-term stability**
- o GP/LCP 5.1.13 Allow development in Urban Open Space only when consistent with resource protection including **habitat restoration (e.g. native, non-invasive plants)**

3.6.1.4.7.5 ANDRE HAS BEEN DUMPING CUT BRUSH ON TOP OF THE OVERGROWTH CREATING A **FIRE HAZARD**

- o COUNTY CODE 12.16.030: **Any violation of the Fire Code** is a public nuisance,
- o THE ALGERIAN IVY AND ACACIA *ARE* A FIRE HAZARD BY REASON OF THE MASS OF VEGETATION

3.6.1.4.7.6 THE ALGERIAN IVY IS A HABITAT FOR RATS THAT *ARE* SPREADING IN THE NEIGHBORHOOD. Algerian ivy attracts rats and is actually REQUIRED by some counties to be eradicated as a condition of any permit.

3.6.1.4.7.7 THE ALGERIAN IVY IS ALLERGENIC. Ms. Stock has complained that she is allergic to Algerian Ivy

3.6.1.4.7.8 THE OVERGROWTH BLOCKS A PUBLIC RIGHT OF WAY

3.6.1.4.8 THE RETAINING WALL HAS AN IMPACT ON VIEWS FROM THE BEACH; THEREFORE PERMIT CONDITIONS CAN ADDRESS VIEWS AND THE VEGETATION CONDITION (TO IMPROVE PUBLIC VIEWS) IS ROUGHLY PROPORTIONAL TO THE VISUAL IMPACT OF THE WALL

3.6.1.4.9 OTHER BURDENS IMPOSED BY THE RETAINING WALL *ARE* WATER DIVERSION TO OTHER PARTS OF THE BLUFF; REDIRECTION OF THE LOADS ON THE BLUFF; AND FACILITATING THE CONTINUATION OF A STRUCTURE ON THE BLUFF WHICH IMPACTS SOIL STABILITY, RUNOFF, AND EROSION ON THE REST OF THE PROPERTY WHICH MAY BE ADDRESSED BY CONDITIONS. A 5-1-95 letter from Andre's geotechnical engineer states: "development...can exacerbate an already unstable slope by CONCENTRATING RUNOFF..."

### **3.6.2 A CONDITION THAT THE BIRDHOUSE, SURVEILLANCE CAMERA & FLOODLIGHTS TO BE REMOVED IS REQUIRED BY THE LAW**

3.6.2.1 The birdhouse housing the surveillance camera was built without permits (the electrical permit that was obtained is not sufficient as no building permit exemption applies), County Code 13.10.279: **Building code violations are a public nuisance.**

3.6.2.2 The birdhouse housing the surveillance camera violates the setback ordinance, County Code 13.10.279: **Land use violations are a public nuisance**

3.6.2.3 **Violations of the County Code, including building code and land use regulations, are also a "nuisance" and may be abated** (County Code 1.12.050A, 13.10.279, 19.01.030)

3.6.2.4 The birdhouse housing the surveillance camera is **on a tall pole and is clearly visible, and interferes with, public views from the beach** and violates the LCP and Coastal Act (Planner Adams said at the Zoning Administrator hearing that the birdhouse, camera, and lights are in a scenic area that can be viewed from below so would have to be evaluated from that point of view)

3.6.2.5 **Surveillance of adjacent homes and of public rights of way is offensive** and creates a psychological obstruction to the use of public property and is a nuisance; **conditions that are offensive or obstructive are a "nuisance"** under California and County law (Civil Code 3479, County Code 16.50.025) **and may be abated** by the government

3.6.2.6 The floodlights produce a glaring light that is a hazard to motorists at night time

3.6.2.7 The floodlights are unnecessary because they illuminate a part of Andre's property that is a vacant lot

3.6.2.8 The Zoning Administrator ordered the birdhouse, surveillance camera and floodlights removed at the Zoning Administrator hearing and this is not reflected in the written conditions. At the Zoning Administrator hearing the following exchange occurred:

\*ZA: so do you want the birdhouse structure removed? is that what you're...

\*ADAMS: or considered under another, you know, if they wanted to; you know, we had no plans submitted for the birdhouse; its an alteration to a structure that's visible from down below and this was a coastal development application

\*ADAMS: I would suggest there are also better ways to camouflage a camera that don't need to be that structural

\*ZA: so you're recommending that they delete the birdhouse structure

\*ADAMS: remove it, correct....

[further dialogue]

\*ADAMS: ...both of those can just be added in to say 'remove birdhouse structure from attached garage'

\*ZA: ok

### **3.6. A CONDITION THAT NO SIGNS BE POSTED ON THE PROPERTY IS REQUIRED BY THE LAW**

3.6.3.1 COUNTY CODE 13.10.580: No signs of any kind are permitted in the R-1 districts

3.6.3.2 COUNTY CODE 13.10.585: **Nonconforming signs** are a public nuisance and may be abated

3.6.3.3 THE SIGNS ALSO IMPAIR PUBLIC VIEWS AND *ARE* PROHIBITED IN ACCORD WITH THE PROVISIONS LISTED FOR PROTECTION OF VIEWS FROM THE OVERGROWTH: County Code 13.11.030 defines property located on a coastal bluff as a "sensitive site" and equates a "sensitive site" with property located adjacent to a scenic road or within the viewshed of a scenic road. Therefore, **property located on a coastal bluff is accorded the same environmental consideration as a scenic road** so GP/LCP 5.10.18 applies which provides "**Actively discourage the placement of signs which will be visible from scenic roads**"

3.7 WHERE "NEXUS" *IS* A REQUIREMENT FOR A PERMIT CONDITION, THE "RELATIONSHIP" AND "PROPORTIONALITY" OF THE CONDITION CAN BE JUDGED BY CUMULATIVE (i.e. future) IMPACTS AS WELL AS CURRENT IMPACTS, Associated Homebuilders Inc. v City of Walnut Creek, 4 C3d 633 (here, for instance, the progressive erosion of the bluff and the need for successive measures to address it; including eventual undermining of Kingsbury Drive)

3.8 THERE IS NO ISSUE OF A "NEXUS" FOR THE FIRST 20 FEET OF THE OVERGROWN VEGETATION BECAUSE THE COUNTY OWNS THE FIRST 20 FEET FRONTING ON KINGSBURY DRIVE.

# PLANNING COMMISSION HEARING 5-23-07

Agenda Item #9

- CONCERNING THE APPLICATION OF RICHARD WINDRIS (OWNER)  
FOR A COASTAL DEVELOPMENT PERMIT
- FOR "REPAIR" OF A BLUFFSIDE RETAINING WALL  
IN NO DEL MAR (310 KINGSBURY DRIVE)
  - ALSO INVOLVING
  - GEOLOGICAL & GEOTECHNICAL REPORTS
  - EROSION CONTROL PLAN
  - RE VEGETATION
  - LANDSCAPING  
&
  - DRAINAGE IMPROVEMENTS
- APPLICATION NO 06-0037

\*This Case Is About Whether 3 Conditions Originally Recommended By Staff and Then Either Withdrawn or Changed By Staff At or After The Zoning Administrator Hearing Should Be Added Back To Coastal Development Permit No. 06-0037 In Their Original Form

o ~~More~~ Specifically...

● **#1**: Whether A Condition That Vegetation Within The Public Kingsbury Drive Right Of Way And Owner-Richard Andre's Front Setback (That Andre Has Let Become Overgrown) Be Required To Be Trimmed & Maintained to No More Than 3 Feet SHOULD BE INCLUDED IN THE PERMIT

- \*This Condition Was Originally Proposed By County Planner Randall Adams In His Staff Report And Was Then Withdrawn The Day of The Zoning Administrator Hearing on 2-2-07
- \*Lesa Stock & Neighbors Have Appealed To Ask that The Trimming Condition Be Restored

- Sub Issues Are:
- Whether This Condition (also referred to as the "vegetation condition") Is Legal &
- Whether Trimming Would Cause Erosion Problems

o **#2** Whether A Condition Requiring **REMOVAL** Of A Surveillance Camera, Housing, and Floodlights should be included in the permit...At the Zoning Administrator Hearing These Items Were Ordered **REMOVED** From Andre's Property... But The Condition Was Later Changed To Only Require That Evidence of Legal Construction Be Furnished...

and

- **#3** Whether A Condition Required By the County Sign Ordinance (**NO** signs in an R-1 District) Should Be Restored or Whether The Condition Should Be Included *With Exceptions* To Allow No Trespassing Signs As Long As The Signs Are In The Andres' Setback (As Opposed to In The public Right of Way)

## SETTING

1. LESA STOCK, AND RICHARD ANDRE ARE NEIGHBORS
2. THEY LIVE ACROSS THE STREET FROM EACH OTHER ON KINGSBURY DRIVE
3. MR. ANDRE, IN A HOUSE ON A LONG NARROW LOT PERCHED ON A 90 FOOT COASTSIDE BLUFF (310 KINGSBURY)-outlined with a green line on Slide 8
4. AND LESA STOCK ACROSS THE STREET FROM THE ANDRE PROPERTY (317 KINGSBURY) (ACTUALLY MR. ANDRE'S HOME IS DOWN THE BLOCK A LITTLE BIT FROM LESA STOCK'S HOME)
5. THE PART OF ANDRE'S PROPERTY ACROSS FROM LESA STOCK IS VACANT AND UNBUILDABLE DUE TO ITS LOCATION NEAR THE CLIFF
6. SOME OTHER FEATURES OF THE PROPERTIES ARE SHOWN IN THE FOLLOWING SLIDES-the first 4 are aerial shots (showing the Andre property in yellow/Stock in orange on first photo...then 3 closer views...and finally SLIDE 8 marked up with the following features)

- \*Lesa Stock's home (owned by her one-person LLC Chili Pepper LLC) on one side of the street (marked "Stock")
- \*the Andre house and garage to the left (or west) and offset from Lesa Stock's house Kingsbury Drive in between (shaded ORANGE)
- \*you can see that Kingsbury Drive is really much wider than the paved portion (the edge of the right of way extends about 20 feet toward the Andre property...see the red dotted line...for the right of way boundary)
- \*you can see the edge of the cliff (red line)
- \*you can see the retaining wall (black line)
- \*you can see the Andres' manicured front yard (green)
- \*you can see where the Andres have let the weeds grow tall on the other part of their property in FRONT of Lesa Stock's home (yellow)
- \*you can see another lot involved in this permit where erosion control re-vegetation and landscaping has been required (lot 9 on Beach Drive)
- \*you can see 2 other lots originally included in the re-vegetation and landscaping part of this project (lots 8 and 10)
- \*and you can see where the Andres have been doing some work ( limited clipping in the overgrown area without improvement of the view blockage; drainage work along the cliff edge)



S.C. CO. DPW PHOTO 2003  
PARCELS LINES ARE ONLY APPROXIMATE

100' 200' 300' 400' 500'

1 inch = 100 feet

W

1 inc









Landscaping done since Feb 2, 2007

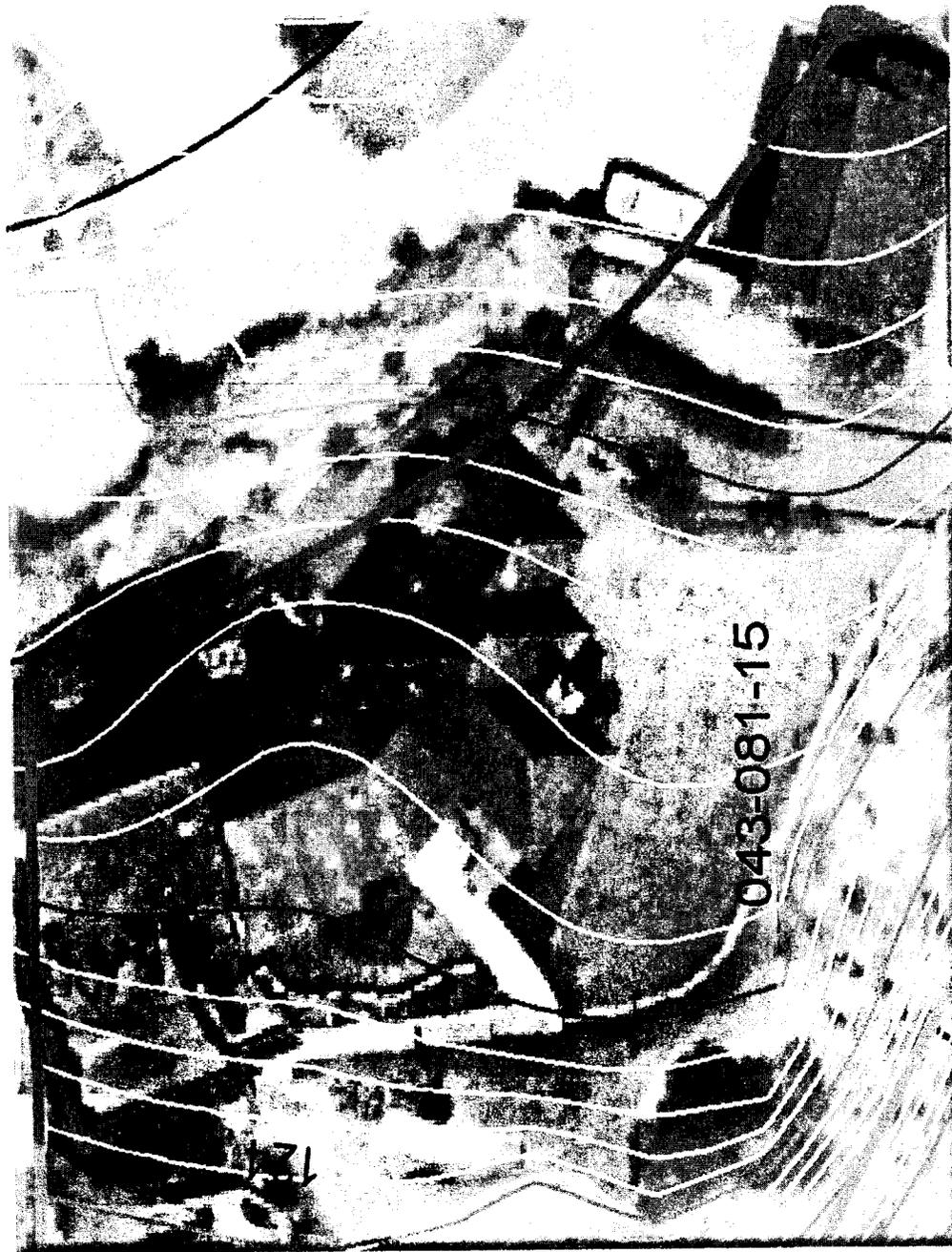
Stock

Kinberry Dr

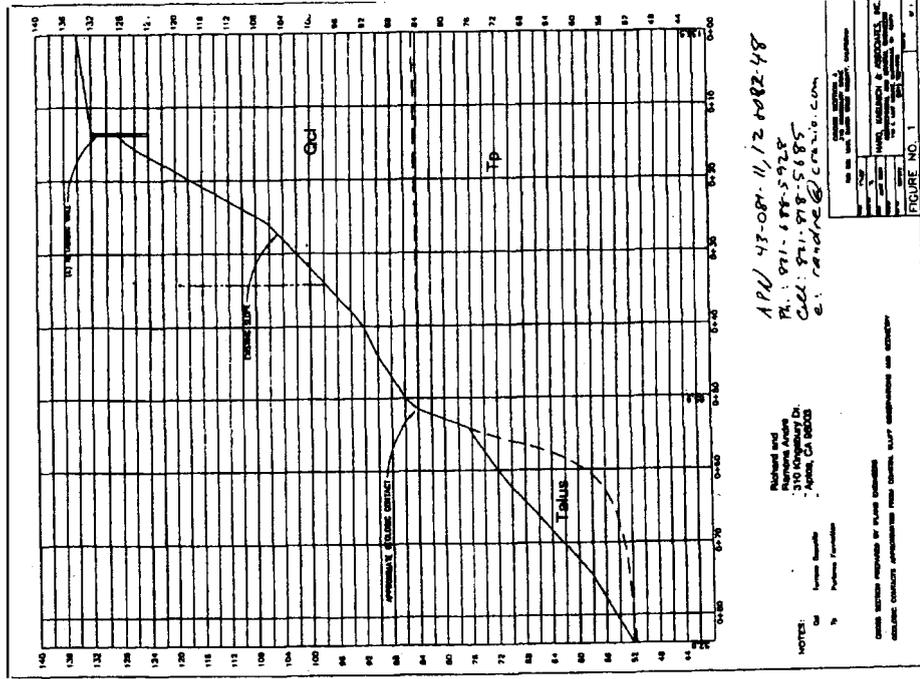
Erosion control landscaping required  
In erosion control plan but  
owners declined



AS CAN BE SEEN FROM THIS CLOSE UP AERIAL PHOTO, THE GROUNDS OF THE ANDRE RESIDENCE, RIGHT UP TO THE CLIFF EDGE, ARE MANICURED IN LAWN AND SMALL BUSHES, MOST UNDER 1 FOOT



# DIAGRAM OF SLOPE & RETAINING WALL



ATTACHMENT 2

3

\*UP TO A COUPLE YEARS AGO, THE PART OF MR. ANDRE'S PROPERTY ACROSS FROM LESA STOCK'S HOUSE WAS MAINTAINED AND THE VEGETATION WAS CUT LOW TO THE GROUND

\*...JUST LIKE THE LOT SHOWN BELOW WHICH IS NEXT TO PONDSE'S PROPERTY IMMEDIATELY TO THE "EAST" (TOWARD MONTEREY)

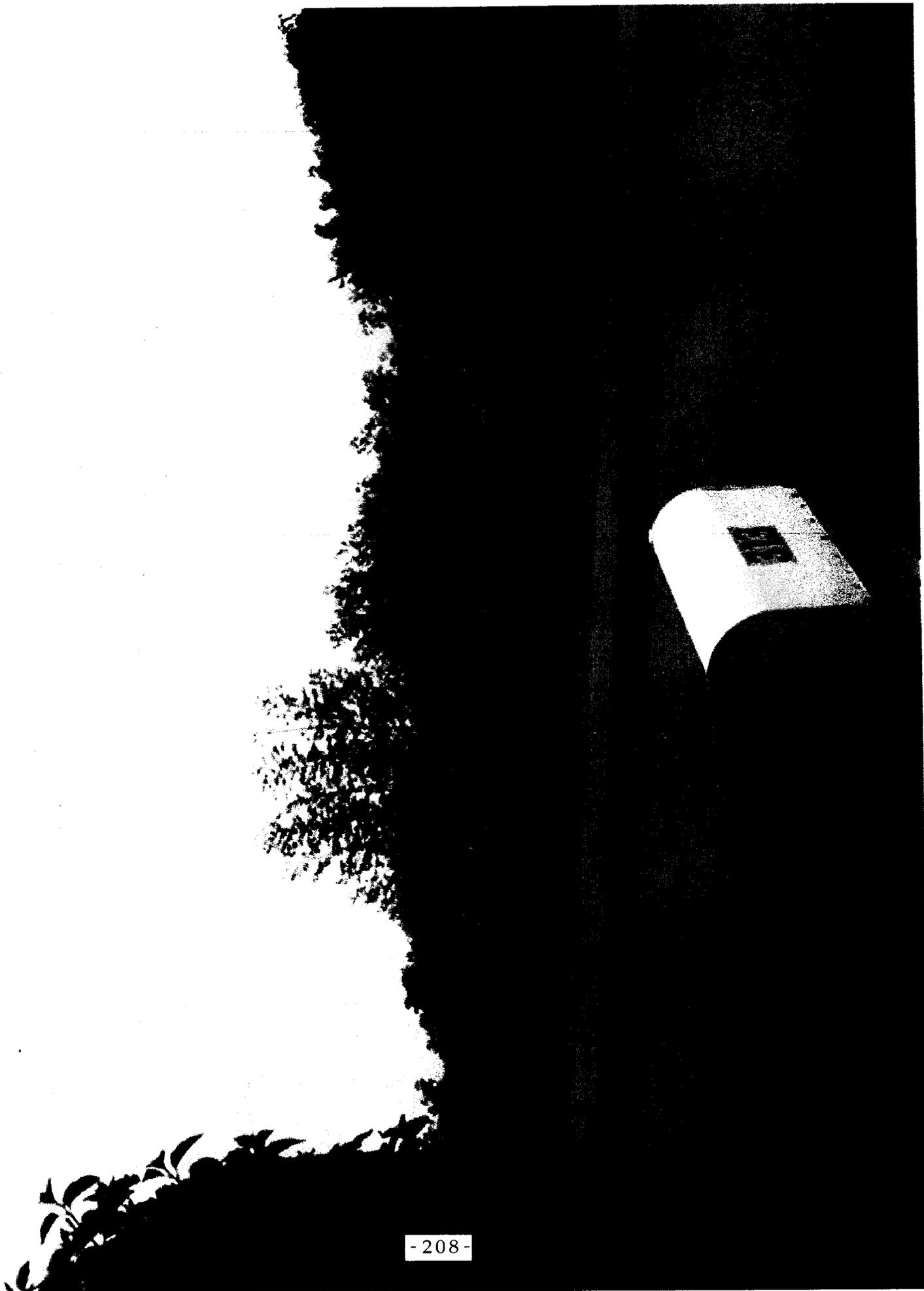


\*BUT WITHIN THE LAST COUPLE YEARS RICHARD ANDRE BECAME UPSET WITH LESSE STOCK

\*IN RETALIATION FOR SOME STILL UNKNOWN REASON, MR. ANDRE BEGAN WAR WITH HIS NEIGHBOR...

\*FIRST, MR. ANDRE ALLOWED THE VEGETATION GROW FROM LESSE STOCKS HOUSE TO GROW WILD, GRADUALLY CHOKING OFF VIEWS OF THE OCEAN FROM HER HOUSE





**NOTE HOW ANDRE'S WEEDS ARE HIGH RIGHT ACROSS THE FRONT OF  
LESA STOCK'S HOUSE BUT NOT ON EITHER SIDE  
(photos are from 2d story deck...weeds block all views at street level)**

**ON THE SIDE TOWARD THE ANDRES**



**ON THE OTHER SIDE**



BUT ALL ALONG THE FRONT OF LESSON STOCKS PROPER THE ANDRES' VEGETATION  
BLOCKS ALL VIEWS TO THE OCEAN  
UNFORTUNATELY THE OVERGROWN VEGETATION ALSO BLOCKS THE VIEWS OF  
THE PUBLIC INCLUDING MANY WALKERS, JOGGERS, DRIVERS AND NEIGHBORS WHO  
ALSO USED TO ENJOY THE MAGNIFICENT OCEAN VISTAS NOW BLOCKED BY WEEDS



BUT MR. ANDRE DID NOT STOP AT MERELY BLOCKING LESA STOCK'S OCEAN VIEW AND THE VISTAS ENJOYED BY THE PUBLIC, BUT BEGAN USING THE SITE AS A RUBBISH DUMP AND ALLOWING RAT INFESTATIONS

THE ANDRES STARTED DUMPING CUT BRUSH ON THE OVERGROWN LOT, CREATING A FIRE HAZARD



# SOON RATS WERE ATTRACTED TO THE ALGERIAN IVY ON THE SITE AND STARTED TO MULTIPLY AND INFEST THE NEIGHBORHOOD

The County of Santa Clara - Vector Control District (DIV) - Mozilla Firefox

File Edit View History Bookmarks Tools Help

http://www.sccgov.org Google

The County ...

YOU ARE HERE > Vector Control District (DIV) > What's Bothering You? > Rodents



**Rodents**

**Vector Programs Rodents**

Roof rats, norway rats, mice and other rodents constitute an ongoing problem to residents in Santa Clara County. Rodents, especially roof rats are common co-inhabitants in our homes, regardless of socio-economic boundaries. What attracts them? Unmanaged vegetation near buildings, particularly Algerian ivy, fruit

**QUICKLINKS**

- > Directions to Our New Office
- > Mosquito & Vector Control Association of CA
- > SCC Hazardous Materials Compliance Division

**HIGHLIGHTS**

- > Mosquito Fogging Schedule ...more

Print this article | Email this article

Find: algerian

Done

Start | Inbox for eld... | The County... | Microsoft Word

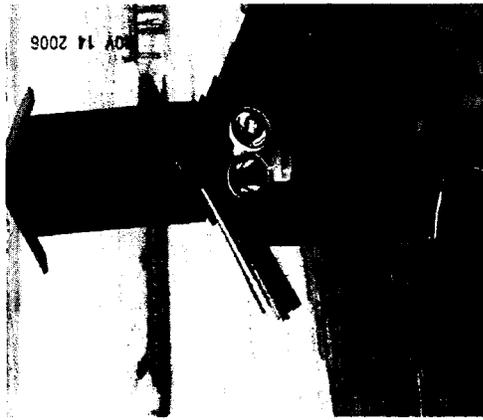
Next Previous Highlight all Match case

Norton 5:56 PM

**AND, AS THE IVY GREW, LESA STOCK  
BECAME SERIOUSLY ALLERGIC TO THE  
INCREASING ALGERIAN IVY BLOOMS**



THEN MR. WINDRE OUT A SURVEILLANCE CAMERA ON HIS ROOF POINTED TOWARD LESA STOCK'S HOUSE THAT RECORDS 24 HOURS A DAY TO A VIDEO MONITOR...WE HAVE PHOTOS SHOWING THAT THE CAMERA LENS WAS POINTED RIGHT AT HER HOUSE...IT RECORDS HER PRIVATE LIFE AND HER COMINGS AND GOINGS



- \*THE HOUSING FOR THE SURVEILLANCE CAMERA, DISGUISED TO LOOK LIKE A BIRDHOUSE, HAS MOTION-ACTIVATED LIGHTS ON IT THAT ILLUMINATE LESA STOCK'S HOUSE AND KINGSBURY DRIVE AT NIGHT
- \*UNFORTUNATELY THE CAMERA ALSO RECORDS THE ACTIVITIES OTHER NEIGHBORS AND MEMBERS OF THE PUBLIC ON THAT PART OF KINGSBURY SO PEOPLE CAN'T EVEN TAKE A WALK WITHOUT BEING MONITORED AND RECORDED

IF ACTIVATED BY THE MOTION SENSORS,  
THE FLOODLIGHTS ATTACHED TO THE SURVEILLANCE CAMERA  
CAN FLASH ON AT NIGHT,  
ILLUMINATING NEIGHBORING PROPERTIES  
&  
CREATING A HAZARD FOR DRIVERS USING KINGSBURY DRIVE



(ILLUSTRATION)

**THE BIRDHOUSE HOUSING IS PROMINENTLY  
VISABLE FROM THE BEACH**

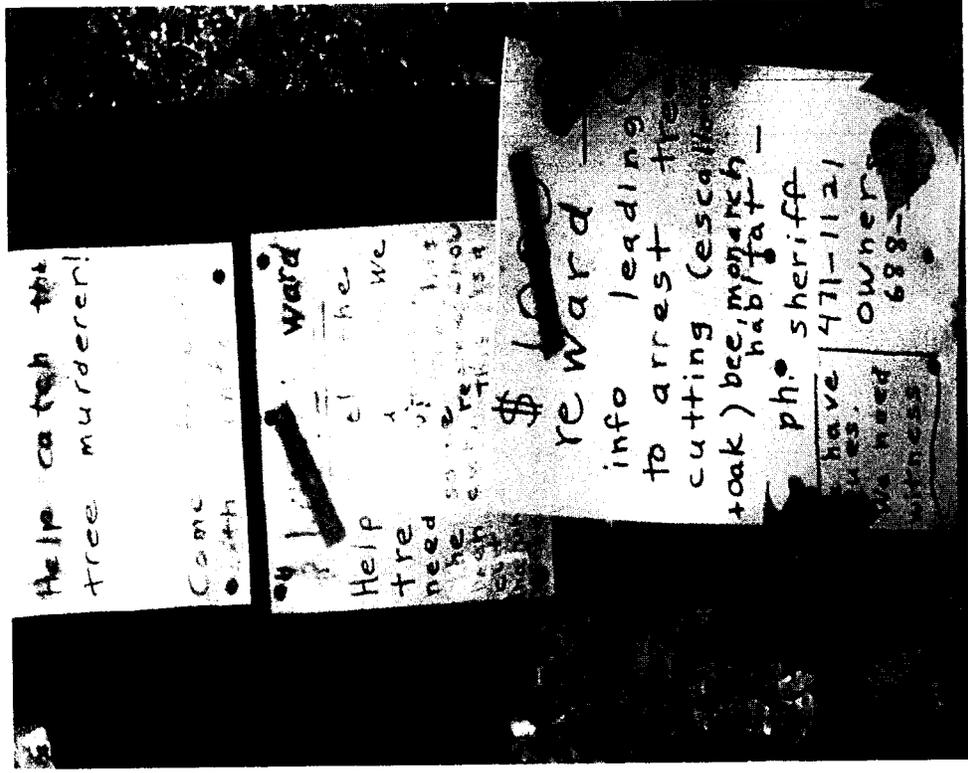


SHE HAS CONFRONTED HIM ON SEVERAL OCCASIONS

**\*SHE IS AFRAID OF HIM BECAUSE RICHARD ANDRE ONCE  
CHALLENGED ANOTHER NEIGHBOR TO A FIST FIGHT**

**\*MR. ANDRE THEN POSTED CRUDE HANDMADE SIGNS ACROSS FROM LESA STOCK'S HOME WITH ACCUSATIONS ABOUT "TREE MURDERERS"**

**\*UNFORTUNATELY, THESE SIGNS CREATED AN EYESORE FOR THE PUBLIC AS WELL**



**LESA STOCK BEGGED THE ANDRES TO STOP THEIR HARASSMENT AND THEY FLATLY REFUSED**

**\*SO WHEN THE ANDRES PUT OFF FIXING THEIR RETAINING WALL AS LONG AS THEY COULD AND FINALLY APPLIED TO THE COUNTY TO RECONSTRUCT IT, LESA STOCK DECIDED TO TAKE THESE PROBLEMS THAT WERE AFFECTING HER AND THE PUBLIC IN GENERAL TO THE COUNTY**

**\*LESA STOCK SENT A LETTER DATED DECEMBER 15, 2006 TO PLANNER RANDALL ADAMS TO ADVISE HIM OF THE PROBLEMS**

December 15, 2006.

....I would like to express my concerns about the permit application in this matter; and urge that the application be denied or expanded to address all issues raised in this letter (which affect both the public interest and nearby landowners). A summary of requested County actions appears starting at the bottom of page 12.

This permit involves the alteration of 33 feet of a retaining wall along apx. 308 feet of coastal bluff owned by applicants. While the 33 feet of retaining wall involved in the application is to be reinforced, inadequate attention has been paid in the application process to other slide-prone parts of the applicant's property and to other matters of public interest required by the General Plan, LCP, County Code, and CEQA. The issues can be summarized as follows:

Although an erosion control plan has been required in the area of the 33 foot retaining wall requiring a drainage plan, erosion control and landscaping plan, hazards along the other parts of the bluff top have not been addressed and may even be increased by the diversion of water and reinforcement of the 33 foot area: the erosion control plan should be expanded; 2) In particular, nothing has been done to even investigate the eastern 1/2 of parcels 12 and 48 which also likely pose erosion and slide hazards and which would threaten Kingsbury Drive as well as properties on Beach Drive below, primarily because those parts of parcels 12 and 48 have been allowed by applicants to become overgrown with invasive, non-native plants, preventing evaluation of the site: the vegetation in this area needs to be cut, the soils issues investigated, and conditions imposed to address soils issues, including replanting that area with erosion-control ground cover; and addressing other General Plan/LCP/Code issues such as landscaping and public views; .....

County of Santa Cruz Planning Department  
 Prescreen for Building Permit  
 (to be completed by Planning staff)

Prescreen Date: 9/21/06 Route to: Randall Adams Reviewed by: *[Signature]*  
 043-081-11/2-043-082-04.48  
 APNs: ~~043-081-11/2-043-082-04.48~~ Applicant/Owner: ~~[Name]~~ Agross Kim Tschu

Project Description (clearly specify number of bedrooms for zoning purposes and extent of proposed grading):  
*Consistent retaining wall / masonry wall*

*Coach. Dev. & Coasx*  
*Emergency*  
*06-0305*  
*Submitted for per. file.*

Zoning: OK to submit to Building Counter?

Yes  No  
 If No, list reasons:  
*The wall exceeds 9' 11"*  
*it is subject subject*

Building Review: OK to submit?

Yes  No  
 If No, list reasons:

Discretionary Permits: Did this project receive a discretionary permit approval?  Yes  No

If Yes, Permit # \_\_\_\_\_ Attach 4 copies of the discretionary permit.

Project Planner's name: \_\_\_\_\_



**EMERGENCY  
COASTAL PERMIT**

OF 0535

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

Telephone: (408) 454-2260  
Fax: (408) 454-2131

Owner's Name Richard Andre  
Applicant's Name Karen Schwartz  
Address Adjacent to 310 Kingsbury Drive, Apt 22  
Assessor's Parcel Number 043-061-003-012  
(B3) 668-3728  
Telephone Number 043-061-003-012-118

Location of Emergency Work Repair to retaining walls on the Coastal bluff adjacent to 310 Kingsbury Drive  
Emergency Caused By Improper failure of retaining wall on Coastal bluff

Emergency Status Verified By Joe Hanna, County Geologist  
1st, 2nd, 3rd, 4th, 5th, 6th, 7th, 8th, 9th, 10th, 11th, 12th, 13th, 14th, 15th, 16th, 17th, 18th, 19th, 20th, 21st, 22nd, 23rd, 24th, 25th, 26th, 27th, 28th, 29th, 30th, 31st, 32nd, 33rd, 34th, 35th, 36th, 37th, 38th, 39th, 40th, 41st, 42nd, 43rd, 44th, 45th, 46th, 47th, 48th, 49th, 50th, 51st, 52nd, 53rd, 54th, 55th, 56th, 57th, 58th, 59th, 60th, 61st, 62nd, 63rd, 64th, 65th, 66th, 67th, 68th, 69th, 70th, 71st, 72nd, 73rd, 74th, 75th, 76th, 77th, 78th, 79th, 80th, 81st, 82nd, 83rd, 84th, 85th, 86th, 87th, 88th, 89th, 90th, 91st, 92nd, 93rd, 94th, 95th, 96th, 97th, 98th, 99th, 100th

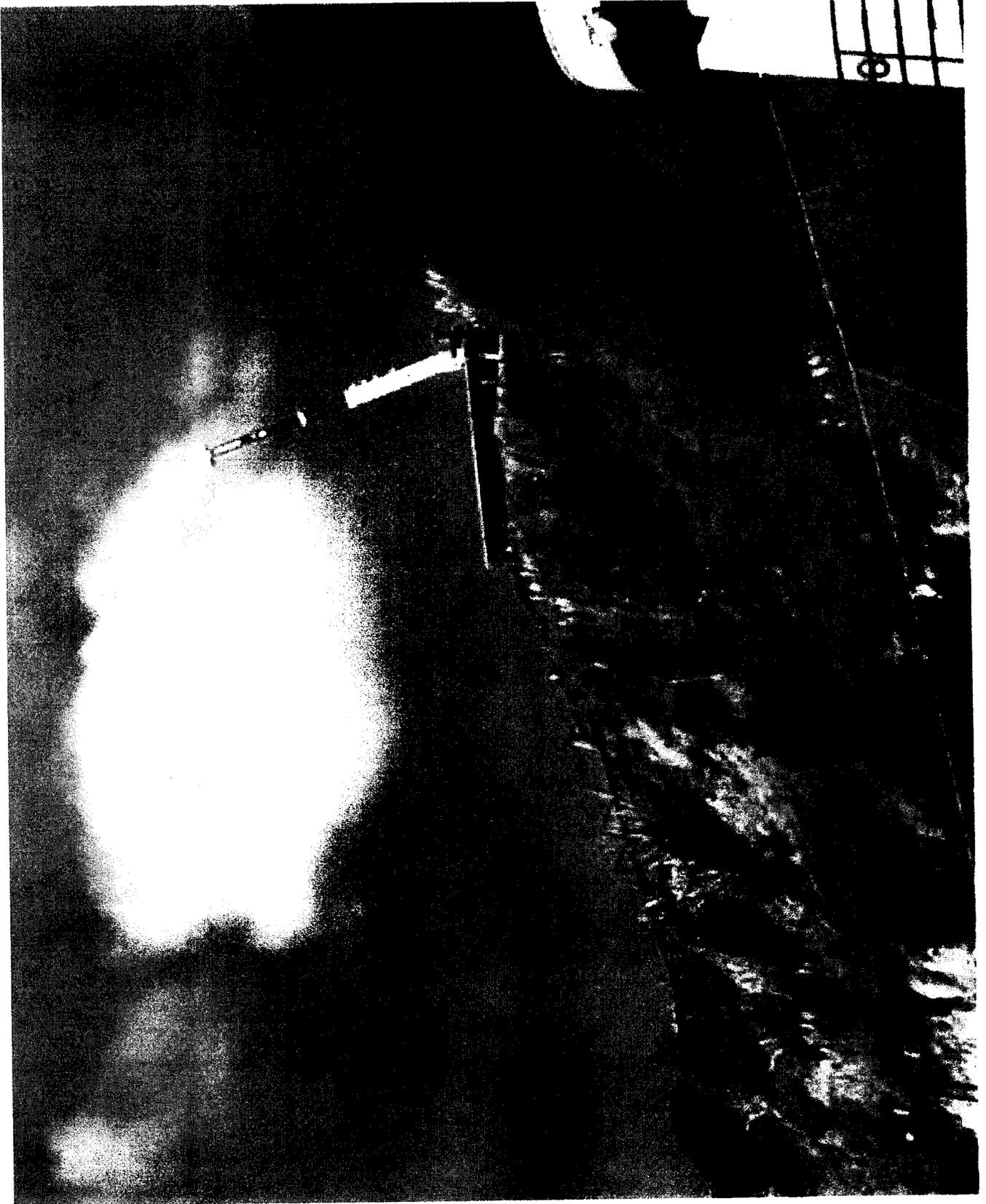
Work Authorized Work on retaining walls on Coastal bluff adjacent to 310 Kingsbury Drive  
for 90 days

IN ACCORDANCE WITH SECTION 13.20.090 OF THE COUNTY CODE: AN EMERGENCY COASTAL ZONE PERMIT MAY BE ISSUED FOR PROJECTS UNDER TAKEN TO PREVENT LOSS OF OR DAMAGE TO LIFE, HEALTH OR PROPERTY; OR TO RESTORE, REPAIR OR MAINTAIN PUBLIC WORKS, UTILITIES, AND SERVICES DURING AND IMMEDIATELY FOLLOWING A NATURAL DISASTER OR SERIOUS ACCIDENT. THE PLANNING DIRECTOR MAY REQUEST, AT THE APPLICANT'S EXPENSE, VERIFICATION BY A QUALIFIED PROFESSIONAL OF THE NATURE OF AND SOLUTIONS TO, THE EMERGENCY SITUATION.

**CONDITIONS OF ISSUANCE:**

- 1 Only the work specifically described above is authorized. Any additional work requires separate authorization. If the scope of work authorized by this permit is exceeded, a notice of violation resulting in civil penalties may be issued.
- 2 At the time of issuance of this permit, the applicant shall submit a completed application, including the appropriate fees, for a regular permit. Within 90 days of this permit issuance, all required technical reports and project plans must be submitted unless the Planning Director grants a time extension. Failure to submit the required information will void this permit.
- 3 The work authorized by this permit must begin within 15 days of issuance and the permit will be voided.
- 4 This permit shall expire 60 days after issuance.
- 5 Other Conditions: Work on retaining walls on Coastal bluff adjacent to 310 Kingsbury Drive must be completed within 90 days of permit issuance. All work must be completed by 10/15/05. All work must be completed by 10/15/05. All work must be completed by 10/15/05.





**\*IN THE PROCESS OF PREPARING THE STAFF REPORT ON THE ANDRES' APPLICATION, COUNTY PLANNER RANDALL ADAMS CAME UP WITH A VERY WISE PLAN TO RESOLVE ALL THESE PROBLEMS**

**\*HE SUGGESTED THREE CONDITIONS BE ATTACHED TO THE PERMIT**  
**1. THAT THE OVERGROWN VEGETATION BE TRIMMED TO 3 FEET OR LESS WITHIN THE KINGSBURY DRIVE PUBLIC RIGHT OF WAY AND WITHIN THE ANDRES' 20 FOOT FRONT YARD SETBACK (THE "vegetation condition")**

VEGETATION CONDITION.doc  
c:\...lgl-stock\conditions\vegetation condition.doc



Staff Report to the Zoning Administrator Application Number: 06-037

Applicant: Kim Tschantz  
Owner: Richard Andre trustee, et al.  
APN: 043-081-1 & 12; 043-082-09 & 48  
Agenda Date: 2/2/07  
Agenda Item # 4  
Time: After 10:00 a.m.

Staff Recommendation: Approval of Application 06-037, based on the attached findings and conditions

Emergency Coastal Development Permit 06-0535 was issued on 10/2/06 to authorize a repair of the existing retaining wall due to structural failure. Building Permit application 0609M was made for the emergency repair of the retaining wall. The permit was issued on 10/2/06. The permit requires that the vegetation be maintained at no higher than 3 feet from the elevation of the Kingsbury Road within the 20 foot front yard setback along the entire frontage of the subject property. Additionally, all structural modifications to the existing residence performed without benefit of the required permits (including the construction of roof top improvements and lighting) must be removed from the existing residential structures. Signage installed along the roadside shall be limited to that allowed by County Code for signs within the R-1-6 zone district.

Report Prepared By: Randall Adams

\*pg 10: [Operational Conditions] A. No vegetation in excess of 3 feet in height is allowed within the required 20 foot front yard setback or within the Kingsbury Drive right of way. Vegetation must be maintained to remain 3 feet (or less) in height within these areas .

**MR. ADAMS ALSO PROPOSED  
THAT...**

**2. THE SURVEILLANCE CAMERA,  
HOUSING, AND FLOODLIGHTS BE  
REMOVED**

*and*

**3. THAT THE SIGNS BE TAKEN  
DOWN**

**\*ON THE DAY OF THE ZONING ADMINISTRATOR HEARING ALL PARTIES, INCLUDING THE ANDRES, WERE RESIGNED TO ACCEPT RANDALL ADAMS' CONDITIONS EVEN THOUGH THERE WERE SOME SUGGESTIONS FOR SLIGHT MODIFICATIONS OF WORDING**

**CYPRESS ENVIRONMENTAL AND LAND USE PLANNING**

**P.O. BOX 1844**

**APTOS CALIFORNIA**

(831) 685-1006 [kimt@cypressenv.com](mailto:kimt@cypressenv.com)

February 1, 2007

Jon Bussey, Zoning Administrator  
Randall Adams, Planner  
County of Santa Cruz Planning Department  
701 Ocean Street, 4<sup>th</sup> floor  
Santa Cruz, CA 95060

**SUBJECT: Application 06-0037 (Richard and Ramona Andre)**

Dear Msrs. Bussey and Adams,

The Andrés and myself agree with the recommendation in the Zoning Administrator staff report to approve the Coastal Zone Permit for the subject property. ~~The staff report also recommends that the applicant provide a site plan showing the proposed location of the permit.~~

**Condition III.B**

The current language of the condition prohibits any vegetation higher than 3 feet, including isolated stands of trees or shrubs. This is more restrictive than specified in County Code Section 13.10.525. We believe the condition should be revised as stated below.

*Environmental Planning and Analysis, Land Use Consulting and Permitting*

Any hedge within the 20 foot front yard setback shall be limited to a maximum height of 3 feet consistent with County Code Section 13.10.525.

**BUT AS THE ZONING ADMINISTRATOR HEARING STARTED, RANDALL ADAMS INEXPLICABLY WITHDREW THE "vegetation condition" AND LATER CHANGED THE OTHER TWO CONDITIONS TO ALLOW THE SURVEILLANCE CAMERA TO REMAIN AND SIGNS TO BE POSTED ON THE PROPERTY**

\*AT THE ZONING ADMINISTRATOR HEARING THE ZONING ADMINISTRATOR, DON BUSSEY, CALLED THE COUNTY GEOLOGIST, JOE HANNA, AS A WITNESS TO TESTIFY AGAINST TRIMMING THE VEGETATION

\*JOE HANNA SAID TRIMMING WOULD 'CAUSE PROBLEMS' ...HE DID NOT ELABORATE

LATER WE FOUND OUT FROM RANDALL ADAMS THAT THE "PROBLEM" JOE HANNA WAS TALKING ABOUT WAS "ROOT SHRINKAGE"

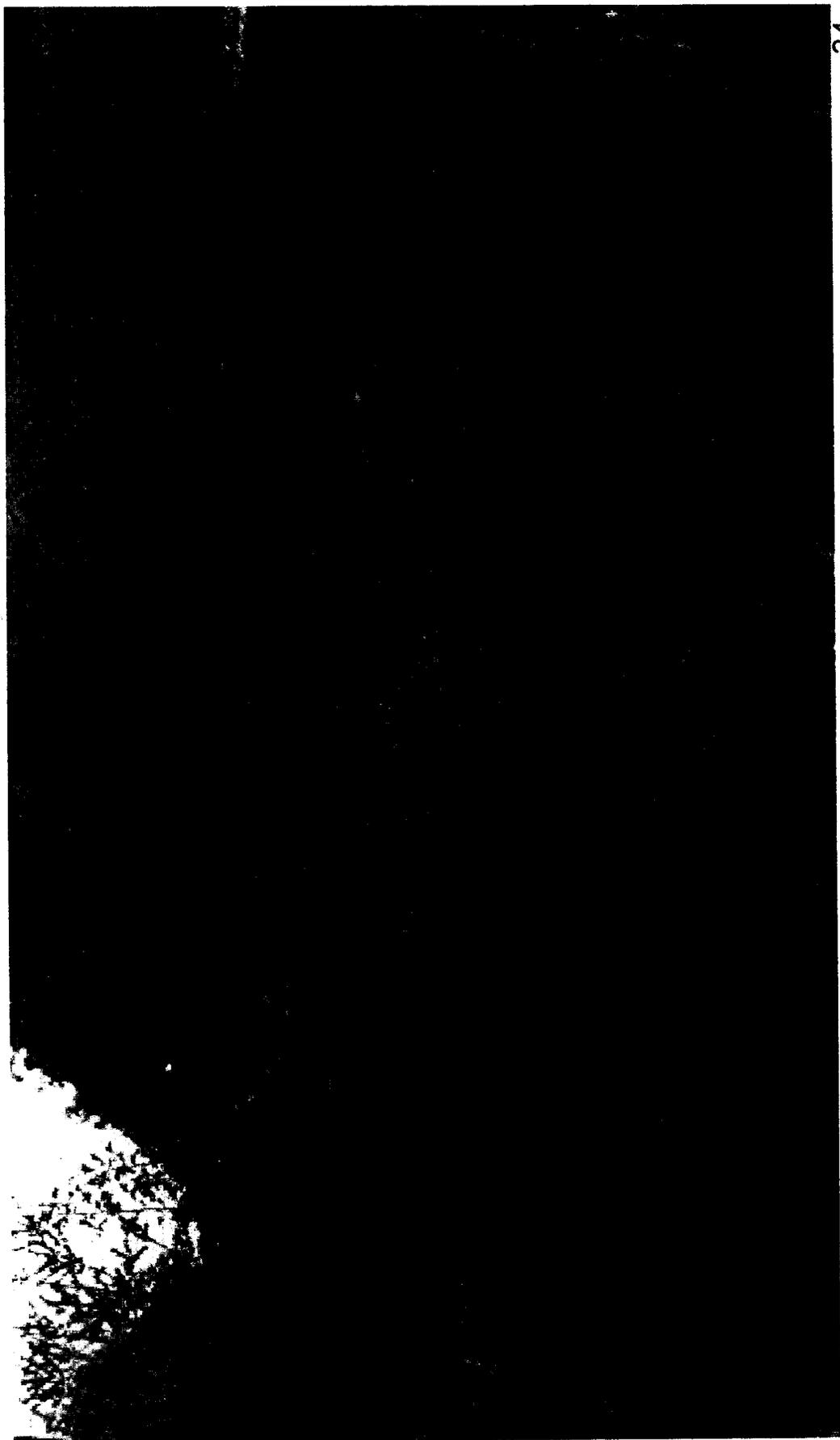
"ROOT SHRINKAGE" IS A THEORY THAT TRIMMING CAUSES ROOT DEATH LEAVING DEAD ROOTS IN THE SOIL THAT ACT AS CAPILLARIES TO DRAW WATER INTO THE SOIL THUS POTENTIALLY INCREASING EROSION

\*BUT, AS IT TURNS OUT, THERE IS NOT MUCH SCIENTIFIC SUPPORT FOR THE GEOLOGIST'S OBSERVATIONS THAT TRIMMING TO 3 FEET MIGHT PROMOTE EROSION

IN FACT, ACCORDING TO JAMES MCKENNA, AN EROSION CONTROL SPECIALIST WHO WILL A SUBMIT REPORT AND WILL BE PRESENT TO TESTIFY IN THIS CASE, TRIMMING WOULD POTENTIALLY IMPROVE EROSION CONTROL

\*IN FACT, THE AREAS TO EITHER SIDE OF THE OVERGROWTH (THE ANDRE'S' FRONT YARD AND THE NEXT LOT TOWARD MONTEREY) ARE TRIMMED EVEN LOWER

\*AND THE OVERGROWN AREA USED TO BE TRIMMED LOW IN A PARK-LIKE CONDITION (EVEN WITH A PARK BENCH!) BEFORE MR. ANDRE STARTED HIS WAR AGAINST LESA STOCK AND THE PUBLIC



**\*FOLLOWING THE ZONING ADMINISTRATOR HEARING AND TO THIS DAY...**

**\*DUE TO THE REMOVAL OF THE "vegetation condition" AT THE ZONING ADMINISTRATOR HEARING & THE WATERING DOWN OF THE CONDITION REQUIRING REMOVAL OF THE SURVEILLANCE CAMERA AND FLOODLIGHTS**

**\*THE OVERGROWTH CONTINUES TO BLOCK PUBLIC VIEWS**

**\*THE SURVEILLANCE CAMERA CONTINUES TO INVADE THE PRIVACY OF LESA STOCK AND THE PUBLIC INCLUDING HER NEIGHBORS...**

**\*THE FLOODLIGHTS STILL SHINE ON MEMBERS OF THE PUBHIO USING KINGSBURY DRIVE**

**\*THE RATS ARE STILL INFESTING THE OVERGROWTH.**

**\*AND MR. ANDRE CONTINUES TO PILE OUT BRUSH ON THE OVERGROWTH...**

**.. ONLY THE HANDMADE SIGNS HAVE BEEN REMOVED..**

and even the some signs still remain in violation of the County sign ordinance...  
13.10.580: *"No signs or outdoor advertising structure or display of any kind shall be permitted  
in the R-1 ... Districts ....*



\*AFTER THE ZONING ADMINISTRATOR HEARING RANDALL ADAMS TOLD BARNEY ELDERS THAT HE WAS ORDERED BY SUPERIORS IN THE PLANNING DEPARTMENT TO WITHDRAW THE "vegetation condition"

\*HE SAID THE CASE HAD BECOME TOO "HIGH PROFILE"

\*IT WAS NEVER CLEAR HOW THE REMOVAL OF THE SURVEILLANCE CAMERA AND FLOODLIGHTS DECIDED AT THE ZONING ADMINISTRATOR HEARING (see following testimony) ENDED UP MODIFIED IN THE FINAL CONDITIONS WITHOUT ANYONE HAVING A CHANCE TO COMMENT ON THAT BELATED CHANGE

\*ZP: so do you want the birdhouse structure removed or what you're.

\*ADAMS: or considered under another, you know, if they wanted to; you know, we had no plans submitted for the birdhouse; its an alteration to a structure that's visible from down below and this was a coastal development application

\*ADAMS: I would suggest there are also better ways to camouflage a camera that don't need to be that structural

\*ZP: so you're recommending that they delete the birdhouse structure

\*ADAMS: remove it, correct...  
[further dialogue]

\*ADAMS: ...both of those can just be added in to say 'remove birdhouse structure from attached garage'

\*ZA: ok

**\*BEFORE FILING THE APPEAL WITH THE PHOENIX  
COMMISSION LESA STOCK TRIED TO NEGOTIATE WITH THE  
BONDHOLDERS WHO IGNORES REFUSAL TO DISCUSS THE  
MATTER**

**\*SO WE ARE ASKING THE COMMISSION TO RESTORE  
THE CONDITIONS ORIGINALLY PROPOSED BY  
RANDALL ADAMS IN AN ENFORCEABLE MANNER**

**\*THIS IS OUR ONLY RECOURSE TO FIX THIS SIMPLE MATTER**

**\*THE OVERGROWN VEGETATION VIOLATES MANY PROVISIONS  
OF COUNTY LAW**

**\*THE OVERGROWN VEGETATION VIOLATES THE COUNTY  
HEDGE ORDINANCE WHICH SAYS...No hedge shall exceed three  
feet in height if located in a front yard or other yard abutting a  
street, Co Code 13.10 525**

**\*\*AND THE OVERGROWTH ALSO VIOLATES MANY PROVISIONS OF THE  
GENERAL PLAN AND LOCAL COASTAL PLAN**

**THE OVERGROWTH VIOLATES THE PUBLIC'S RIGHTS TO ENJOY SCENIC OCEAN  
VISTAS**

**\*THERE SEEMS TO BE A MISUNDERSTANDING THAT OUR LOCAL COASTAL PLAN  
ONLY PROTECTS VIEWS FROM THE BEACH, SHOREWARD...BUT NOT VIEWS  
TOWARD THE OCEAN. NOT ONLY DOES THIS MAKE NO SENSE...BUT THE ARE A  
NUMBER OF LAWS THAT SAY OTHERWISE**

**\*LOCAL COASTAL PLAN 5.10.3: Requires "significant public vistas", including ocean  
views FROM all publicly used roads, to be protected from inappropriate landscaping**

**\*COUNTY CODE 13.20.121/122 provides that a ground for appeal to the Coastal  
Commission is that "public views FROM any public road" are not protected**

**\*This property is zoned "park": LOCAL COASTAL PLAN Objective 7.7c concerning "  
park zoning requires that access, INCLUDING VISUAL ACCESS, TO every beach ...."  
be maintained or provided**

**\*And the Coastal Act itself provides that development shall be sited and designed to  
protect views TO and along the ocean and scenic coastal areas", Public Resources  
Code 30251**

## THE "NEW DEVELOPMENT" PROVISIONS IN THE LOCAL ORDINANCE DON REQUIRE PUBLIC OPEN VIEWS TO BE PROTECTED

- \*this project is considered "new development" as defined in the General Plan...repairs of retaining walls that require permits almost ALWAYS qualify as "new development" ...the only exception is for "improvements" (NOT "repairs") that cost less than 50% of the existing structure's "fair market value"
  - \*here we have a 25 year old retaining wall that has been in failing condition since 1986...the market value has to be \$0
  - \*but the Planning Department has not required the owner to document the cost of this project or document the market value of the retaining wall...
  - \*THE PLANNING COMMISSION should REQUIRE THE ANDRES TO DOCUMENT THE COST OF THEIR PROJECT for the record so a proper application of the "new development" provisions of the Local Coastal Plan and Code can be applied
  - \*here, permits and fees were over \$10,000 NOT COUNTING the currently unknown charges by Rogers Johnson engineers, Haro Kasunich engineers, Island Engineers, Prime Landscaping, and Dave Kendall contractor (is the figure 145400 on the following page a cost figure?)
- ❖ ❖ ❖
- \*BECAUSE the retaining wall work in this project is 'new development' the owner must trim the vegetation to 3 feet to
  - "retain ocean vistas TO THE MAXIMUM EXTENT POSSIBLE" (LCP 5.10.6)
  - restore VISUALLY BLIGHTED CONDITIONS (LCP 5.10 )
  - landscape to PROTECT PUBLIC VIEWS (Co Code 13.11 072)
  - and design the project to be VISUALLY COMPATIBLE WITH THE SURROUNDING NEIGHBORHOOD (Co Code 13.11.072)...like the manicured landscaping on either side of the overgrowth!

J. KASUNICH AND ASSOCIATES, INC.

CONSULTING GEOTECHNICAL & COASTAL ENGINEERS

APN:43-081-11, 12  
+ 43-082-48

Project No. SC7272  
18 October 2000

DICK AND RAMONA ANDRE  
310 Kingsbury Drive  
Aptos, California 95003

Ph: (831)688-5928  
Cell:(831-818-5685  
e: randre@cruzio.com

your property occurs throughout the Beach Drive coastal bluff area. Dave Kendall contractors have worked on your property in the past to control surface and subsurface drainage and have constructed a tiedback cantilevered retaining wall designed by Ifland Engineers 15 (±) years ago at the top edge of the bluff.

**ROGERS E. JOHNSON & ASSOCIATES**  
CONSULTING ENGINEERING GEOLOGISTS

1729 SEABRIGHT AVENUE  
SANTA CRUZ, CA 95062

APN:43-081-11, 12  
+ 43-082-48

(408) 425-1288

14 January 1986

Ramona Andre  
310 Kingsbury Dr  
Aptos, CA 95003

Ph: (831)688-5928  
Cell:(831-818-5685  
e: randre@cruzio.com

Mr. John Jackson  
P.O. Box 1  
Boulder Creek, CA 95006

Subject: Geologic Site Visit, 310 Kingsbury Drive, Rio Del Mar

Site Description

The subject property is located atop coastal bluffs overlooking the Pacific Ocean, on the ocean side of Kingsbury Drive in Rio Del Mar, CA. There is a house on the property, surrounded by a lawn, garden plantings and a recently constructed wooden deck.

A 3 to 6 foot high retaining wall supports a portion of the cliff directly behind the house. There are several existing houses

Site Geology

The coastal bluffs of the Rio Del Mar area consist of the fine-to-medium grained sand of the Aromas Formation, overlain by up to 65 feet of the sand, silt, and gravel of the Marine Terrace Deposits (Dupre, 1975). These materials are poorly consolidated

Drainage and Erosion Control

Controlling runoff from rainfall is extremely important on  
During rainstorms, up to 2 feet of ponding water occurs at the  
western end of the basement area of the house, near the furnace  
deck. To reduce upslope infiltration, water should not be allowed  
to form temporary ponds on the property following rainstorms.

Slope Stability

As mentioned, the cliffs on the subject property show signs of  
recent shallow landsliding. Aerial photos show several bare, near  
vertical sections of cliff which are probably actively eroding  
landslide scars. This landsliding appears most severe directly  
below the wooden retaining wall which supports the cliff top  
southern end of the retaining wall. Furthermore, erosion has  
exposed the concrete supports for the wall at the base of the  
northern end and threatens to undermine it completely. This is a  
serious condition, requiring immediate attention. Although loss  
of the wall would not immediately threaten the house, it might  
provoke landsliding which could threaten houses, property or  
human life below.

APN:43-081-11, 12  
+ 43-082-48

**ROGERS E. JOHNSON & ASSOCIATES**

CONSULTING ENGINEERING GEOLOGISTS

1729 SEABRIGHT AVENUE, SUITE D  
SANTA CRUZ, CA 95062

BUS. (408) 425-1288  
FAX. (408) 425-6539

18 May 1995

Ph: (831)688-5928  
Cell:(831-818-5685  
e: randre@cruzio.com

Richard and Ramona André  
310 Kingsbury Boulevard  
Aptos, California 95003

C95 023-70

Re: Preliminary geologic assessment of site drainage and bluff stability at 310 Kingsbury Boulevard

DEAR R. ANDRÉ:

At your request, we have made a preliminary evaluation of drainage conditions as they affect the stability of the bluff in the vicinity of the subject property.

If done properly, drainage controls can significantly reduce the hazard of soil slips/debris flows which could impact the residences at the base of the bluff on Beach Drive. Two general methods for mitigating the landsliding problem are to 1) reduce the amount of water infiltrating into the ground on the terrace adjacent to the top of the bluff, and 2) not allow runoff to issue onto the face of the bluff.

On the bluff, the less stable the bluff becomes. So, for instance, if the pipe is removed and water is allowed to take its natural course, it will primarily infiltrate into the ground and perhaps surface on the face of the bluff; obviously this is a situation that should be avoided.

Prior to development of the Kingsbury Boulevard/Beach Drive area, rainfall infiltrated into the terrace above the bluff and some of this infiltrated water resurfaced on the face of the bluff. Development, of course, can exacerbate an already unstable slope by concentrating runoff and super saturating a specific area. Conversely, if water can be entrained in conduits and carried away

that the relative If adequate drainage facilities are installed and maintained, the relative stability of a given segment of bluff can be improved over natural conditions.

LAW OFFICES OF

**HARRETT W. MANNINA, JR.** ATTORNEY

SUITE 110 EMPIRE BUILDING • 510 N. FIRST STREET • SAN JOSE, CALIFORNIA 95112 • TELEPHONE (408) 294-5061 • FACSIMILE (408) 294-5069

HARRETT W. MANNINA, SR.  
(1928-2002)

April 13, 2006

Richard and Ramona Andre  
310 Kingsbury Drive  
Aptos, CA 95003

Re: Reevaluation/Erosion Control plan

Dear Mr and Mrs Andre:

Pursuant to your letter of March 21, 2006, which I responded to in writing with my letter of March 29, 2006, which by the way you have found it unnecessary to respond to, I have spoken with Mr. Adams concerning the County of Santa Cruz Planning Department's owner-agent approval form.

It is my understanding that the form is not necessary and all you need is some type of writing from adjacent land owners stating that they do not disapprove of your proposed plan. In this respect I do not disapprove of your proposed erosion plan, however, it simply appears to be a band aid to your property without seriously addressing the dangers and possible catastrophic losses your eroding bluff poses to downhill properties.

Again I do not object to your proposed plan and I am assuming you may use this letter to meet the requirements stated by Mr. Adams. However, in reviewing my file I came across an October 18, 2000, letter that was prepared by Haro, Kasunich and Associates, Inc., and mailed to Dick and Ramona Andre at 310 Kingsbury Drive, Aptos, CA 95003. I enclose for your reference a copy of said letter. My question to you is why have you not yet commenced and completed the recommendations that were made by your Consulting Geotechnical & Coastal Engineers over five years ago. I have not observed a single one of these recommendations being implemented.

Please note that Mr. Kasunich also indicated "it would be beneficial for property owners at the top of the bluff and below the bluff to work together." I have spoken with John Serra and Bud Lomonaco and we are of the consensus that a meeting of all concerned would be appropriate and beneficial in addressing this ongoing problem.

PLANNING DEPARTMENT

GOVERNMENTAL CENTER



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

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

**DEVELOPMENT PERMIT APPLICATION**

APPLICATION NO.: **06-0037**

PHONE: (831) 454-2130  
PRINT DATE: 08/30/2006  
APPLICATION DATE: 02/01/2006

PARCEL NO. SITUS ADDRESS  
043-081-11 310 KINGSBURY DR APTOS 95003  
043-081-12 NOT AVAILABLE  
043-082-09 319 BEACH DR APTOS 95003  
043-082-48 NOT AVAILABLE

**PROJECT DESCRIPTION:**

Proposal to repair an existing retaining wall on a coastal bluff. Requires a Coastal Development Permit, and Geologic and Geotechnical Report Reviews. Property located on the South side of Kingsbury Drive at about 200 feet west of the intersection with Florence Drive (adjacent to 310 Kingsbury Drive).

**DIRECTIONS TO PROPERTY:**

TAKE HIGHWAY 1 SOUTH TO RIO DEL MAR BLVD. GO RIGHT. AT MARTIN DR TURN LEFT TO FLORENCE DR AND TURN RIGHT. GO TO END AND TURN RIGHT ON KINGSBURY DR. PROPERTY IS ON THE LEFT ADJACENT TO 310 KINGSBURY DRIVE.

**OWNER:** ANDRE RICHARD J TRUSTEE ETAL

310 KINGSBURY DR PTOS CA 95003

SEND HEARING NOTICE AND STAFF REPORT TO ONE

**APPLICANT:** KIM TSCHANTZ - CYPRESS ENVIRONMENTAL

PO BOX 1844 APTOS CA 95001

BUS. PHONE: (831)688-5928

SEND HEARING NOTICE AND STAFF REPORT TO APLICANT

**APPLICATION FEES: RECEIPT A0094301**

COB NOE ADMINISTRATIVE FEE 25.00  
COASTAL ZONE PERMIT - REGULAR 5000.00 #14352  
EROSION - OTHER REVIEW 489.00  
MAINT. GENERAL PLAN 14.67  
UPDATE GENERAL PLAN 9.78  
APPLICATION INTAKE B 161.00  
ENVIRONMENTAL EXEMPTION 134.00  
ENVIRONMENTAL EXEMPTION -134.00  
RECORDS MANAGEMENT FEE 15.00  
URBAN DES REV PROJ SUBJ TO CODE SEC 1311 1000.00 #14352  
\*\*\* TOTAL \*\*\* 6714.45

**APPLICATION FEES: RECEIPT: A0094477**

GEOLOGICAL - HAZARDS ASSESSMENT - MINOR 1047.00  
MAINT. GENERAL PLAN 31.41  
UPDATE GENERAL PLAN 20.94  
\*\*\* TOTAL \*\*\* 1099.35

ORIGINAL - OFFICE



PLANNING DEPARTMENT

GOVERNMENTAL CENTER

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

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

**BUILDING PERMIT APPLICATION**

APPLICATION NO : **60909EF**

PARCEL NO. 043-081-12 SITES ADDRESS NO SITES

PROJECT TYPE: RES  
PROJECT DESCRIPTION:

RPR: Repair an existing wood retaining wall on site with an existing SFD.  
See 06-0037 & 06-0535.

PRINT DATE: 10/11/2006  
APPLICATION DATE: 03/21/2006

PHONE: (831) 454-2260 BETWEEN 1 & 2  
FORM OF PLANS: BLUEPRINTS

*Type - RPR*

APPLICANT:	IFLAND ENGINEERS, INC	SANTA CRUZ	CA	95062	BUS: (831) 426-5313
DESIGNER/ARCHITECT:	1100 WATER ST. STE #2	SANTA CRUZ	CA	95062	BUS: (831) 426-5313
ENGINEER:	IFLAND ENGINEERS, INC	SANTA CRUZ	CA	95062	BUS: (831) 426-5313
OWNER:	1100 WATER ST. STE #2	SANTA CRUZ	CA	95062	BUS: (831) 426-5313
CONTACT:	JEFFERY LONN MARTIN, C.E.	SANTA CRUZ	CA	95062	BUS: (831) 426-5313
	ANDRE RICHARD J. TRUSTEE ETAL	SANTA CRUZ	CA	95062	BUS: (831) 426-5313
	310 KINGSBURY DR APTOS CA	SANTA CRUZ	CA	95003	BUS: (831) 426-5313
	IFLAND ENGINEERS, INC	SANTA CRUZ	CA	95062	BUS: (831) 426-5313
	1100 WATER ST. STE #2	SANTA CRUZ	CA	95062	BUS: (831) 426-5313

NO. OF PERMITS TO BE ISSUED: 1  
PERMIT WILL BE ISSUED TO: OWNER/BUILDER  
MEASURE J ALLOCATION REQUIRED: NO

ESTIMATED TIME FOR FIRST REVIEW: 6 WEEKS

ROUTING: BUILDING PLAN CHECK  
CONSOLIDATION  
ENVIRONMENTAL PLANNING  
ZONING REVIEW  
PRIORITY: Y

APPLICATION FEES: RECEIPT: 00100063 DATE PAID: 09/21/2006

BUILDING PERMIT PROCESSING	385.00
BUILDING PLAN CHECK	132.50
ENV RES-ADD/DETACH STRUCT URBAN	366.00
MAINT. GENERAL PLAN	40.67
UPDATE GENERAL PLAN	27.11
ZONING PLAN CHECK - MINOR	472.00
*** TOTAL ***	1423.28

I HAVE READ THIS FORM AND VERIFY THAT THE INFORMATION IS CORRECT

SIGNATURE OF APPLICANT:

*BP / 145400*  
MICHAEL CLAY, PLANNING DEPARTMENT

*10/11/06*

**❖THE LOW ALSO REQUIRES THIS PART OF KINGSBURY DRIVE TO BE TREATED AS A SCENIC ROAD**

The property involved in this application is classified as "scenic" (The application states "general plan constraints: scenic")

\*COUNTY CODE 13.11.030 defines property located on a coastal bluff as a "sensitive site" and equates a "sensitive site" with property located adjacent to a scenic road or within the viewshed of a scenic road.

Therefore, property located on a coastal bluff is accorded the same environmental consideration as a designated scenic road

\*AND therefore Local Coastal Plan policies 5.10.12 applies to property located on coastal bluffs

\*LOCAL COASTAL PLAN 5.10.12 requires discretionary development to improve visual quality through landscaping and appropriate signage.

**\*BUT THE "NEW DEVELOPMENT" & "SCENIC ROAD" PROVISIONS ARE NOT THE ONLY LAWS THAT PROTECT PUBLIC VIEWS IN THIS CASE...THERE ARE MANY MORE...**

**\*Local Coastal Plan 5.10.2 requires projects to be "designed" (a very broad term, especially in view of the fact that re-vegetation and landscaping elements are already a part of this project) to PROTECT PUBLIC VIEWS**

**\*Local Coastal Plan 5.10.3 requires significant public vistas FROM ALL PUBLICLY USED ROADS to be protected from signs and INAPPROPRIATE LANDSCAPING**

**\*Local Coastal Plan 7.7.1 requires that the County "Encourage pedestrian enjoyment of ocean areas and beaches by the development of vista points and overlooks with benches and railings" ....which could easily be done here in the 20 feet of un-used PUBLIC right of way, if it wasn't for the overgrown vegetation**

**\*Local Coastal Plan 7.1.3 requires the preservation of scenic values and a related provision (Objective 7.7c) requires that access "INCLUDING VISUAL ACCESS" be maintained or provided TO every beach ...."**

**\*Local Coastal Plan 5.11.4 requires full MITIGATION of all POTENTIAL ADVERSE IMPACTS in URBAN OPEN SPACE areas**

**\*Local Coastal Plan 7.7.4 requires protection of "the coastal blufftop areas and beaches from intrusion by nonrecreational structures and incompatible uses"**

**\*There are MANY MORE applicable protections for PUBLIC views in the General Plan, Local Coastal Plan, and County Code that require that the vegetation that has been intentionally allowed to grow tall FOR THE PURPOSE OF BLOCKING VIEWS to be trimmed and maintained...see the letter dated May 7, 2007 with the SUPPLEMENTAL MEMO submitted with this presentation, starting on page 7, paragraph 3.6 for a full explanation of the many protections that protect public views of the coast**

\*IN ADDITION TO THE LAWS THAT DIRECTLY PROTECT VIEWS, THERE ARE OTHER LEGAL PROVISIONS THAT SUPPORT ADDING A PERMIT CONDITION TO TRIM AND MAINTAIN THE OVERGROWN VEGETATION TO 3 FEET OR LESS IN THIS CASE

\*CHIEF AMONG THESE OTHER REASONS IS THE FACT THAT THE ALGERIAN IVY AND ACACIAS THAT ARE ON THE OVERGROWN SITE ARE A PUBLIC NUISANCE

BOTH PLANTS ARE NON-NATIVE AND INVASIVE (see the next page)

• RICHARD ANDRE CONTINUES TO THROW CUT BRUSH ON THE SITE CREATING A FIRE HAZARD...IF THERE WAS EVER A FIRE ON THIS LOT IT WOULD THREATEN HOMES AND WOULD DE-NUDE THE BLUFF LIKELY LEADING TO CATASTROPHIC LANDSLIDES IN THE WINTER

THE ALGERIAN IVY IS A PRIME HABITAT FOR RATS THAT HAVE MULTIPLIED SINCE THE LOT BECAME OVERGROWN ARE NOW INFESTING THE NEIGHBORHOOD...

• UNFORTUNATELY FOR THE PUBLIC, THE RATS DON'T KNOW THE DIFFERENCE BETWEEN LESA STOCK'S HOME AND THE REST OF THE NEIGHBORHOOD SO THEY ARE EVERYBODY'S PROBLEM

• THE OVERGROWTH IS BLOCKING A PUBLIC RIGHT OF WAY...THAT IS, THE FIRST 20 FEET, SEAWARD, FROM THE PAVED PART OF KINGSBURY DRIVE

• AND SINCE THE ALGERIAN IVY HAS BECOME OVERGROWN, LESA STOCK HAS BECOME SERIOUSLY ALLERGIC TO IT

\*A SITUATION CAUSING A PUBLIC NUISANCE CAN, AND MUST, BE ELIMINATED BY THE PERMIT CONDITIONS PROPOSED IN THIS CASE



# Friends of Five Creeks

## Who are the Friends of Five Creeks?

Friends of Five Creeks is a group of volunteers who seek to protect and restore the watersheds and aquatic and riparian habitat of the creeks of North Berkeley, Albany, Kensington, and southern El Cerrito and Richmond. We are a grassroots, all-volunteer organization (bylaws) affiliated with the non-profit Urban Creeks Council of California.

The "five creeks" in our name are Codornices, Village, Martin, Middle (Blackberry), and Cerrito Creeks and their tributaries.



Tiny Pacific chorus frogs like this

- HOME
- Donate
- Join
- Calendar of Events
- Updates
- Projects
- Creek Monitoring

## Invasive Plants Along East Bay Creeks

Some non-native plants take over large areas, crowd out the variety of plants that would otherwise flourish, and provide poor habitat for native insects, birds, or other life. The result is a monotonous impoverished ecosystem. By replacing these invaders with suitable native plants, you can create a low-maintenance, erosion-resistant landscape friendly to wildlife. Try to eliminate these plants before they become established. Prevent erosion if you clear a large stand along creeks.

**ALGERIAN** and **ENGLISH IVY** (*Hedera*). These woody evergreen vines have leathery, dark-green, three-pointed leaves. Algerian ivy, with pinkish stems and less distinct leaf points, is more invasive than English. These ivies are handsome and tough, but they shade out everything else, climb and kill trees, and provide useful habitat only to rats. Wearing gloves (some people are allergic), pull ivy up roots and all -- dense cover can be rolled up like a rug. Don't let it root again. On trees, cut woody stems growing up trees and pull off a few feet, so the ivy above will die.

**\*WHAT THIS ALL ADDS UP TO IS...**

**\*THERE CAN BE NO DOUBT THAT THERE IS LEGAL JUSTIFICATION FOR REQUIRING THE OVERGROWN VEGETATION ON THE ANDRE PROPERTY TO BE TRIMMED TO PRESERVE VIEWS AND ELIMINATE HEALTH AND SAFETY PROBLEMS**

**\*BUT THE COUNTY SAYS NO MATTER HOW GOOD AN IDEA THE TRIMMING MIGHT BE, TRIMMING WILL CAUSE ROOT SHRINKAGE LEADING TO SATURATION OF THE SOIL AND RESULTING IN EROSION**

**\*IT HAS BEEN SUGGESTED BY JOE HANNA THAT A BETTER APPROACH WOULD BE VOLUNTARY RE-VEGETATION OVER TIME**

**\*LISA STOCK HAS TRIED TO NEGOTIATE SUCH A RE-VEGETATION SOLUTION WITH THE ANDRES AND THEY WILL NOT EVEN TALK ABOUT IT**

**\*THE PLANNING DEPARTMENT STAFF, INSTEAD OF TRYING TO COMPROMISE THIS APPEAL, HAS SAID "ADDRESS YOUR CONCERNS TO THE PLANNING COMMISSION"**

**\*THE ANDRES HAVE A HISTORY OF BAD RELATIONS WITH THEIR NEIGHBORS, BUILDING CODE VIOLATIONS, & DELAYS IN FIXING EROSION PROBLEMS ON THEIR PROPERTY...SO THERE IS NO BASIS FOR ASSUMING VOLUNTARY COMPLIANCE OR COOPERATION ON THEIR PART**

**\*SO PERMIT CONDITIONS ARE THE ONLY RECOURSE AND THE LEAST THE COUNTY SHOULD DO TO TRY TO PROTECT PUBLIC RIGHTS AND ENFORCE THE LAW**

**\*SO THE PLANNING COMMISSION CAN ATTACH A "VEGETATION" CONDITION TO THE COASTAL DEVELOPMENT PERMIT THAT...**

No vegetation in excess of 3 feet in height is [SHALL BE] allowed within the required 20 foot front yard setback or within the Kingsbury Drive right of way [BY THE OWNER OF APN 043-81-15]. Vegetation must [SHALL] be maintained [BY THE OWNER] to remain 3 feet (or less) in height within these areas .

**...AS RECOMMENDED ORIGINALLY BY RANDALL ADAMS (with some slight formatting changes)**

**\*WITHOUT HAVING TO WORRY THAT THE TRIMMING WILL CAUSE EROSION**

**\*JOE HANNA, THE COUNTY GEOLOGIST, INITIALLY RAISED THE CONCERN ABOUT EROSION FROM THE TRIMMING**

**\*TO ADDRESS HIS CONCERNS LESA STOCK HAS HIRED JIM MCKENNA ANALYZE THIS CASE. JIM IS AN EXPERT, WHO IS AN EXPERTED LANDSCAPE**

**CONTRACTOR AND EROSION EXPERT, WHO IS A Certified Professional In Erosion And Sediment Control AND HAS A BACKGROUND OF WORKING ON BLUFFTOP PROPERTIES. HE HAS SUBMITTED A WRITTEN OPINION THAT CONFIRMS THE POINTS ON THE NEXT PAGE...**

\*Trimming the vegetation as proposed by the "vegetation condition" in the original staff report would not cause "root shrinkage" or cause or increase the probability of erosion of the bluff.

\*Allowing the Algerian Ivy and Acacias to grow tall creates erosion control problems:

\*Trimming the vegetation as proposed by the "vegetation condition" will actually enhance soil stability and erosion control for the following reasons:

\*Trimming will promote root growth and horizontal branching and will therefore make the soil more stable

\*Trimming allows more sunlight and air to penetrate leading to more under canopy growth

\*Trimming will prevent "pull out" of soil when tall bushes like acacias grow too tall and fall over

\*Trimming will make it easier to see the soil and topography under the vegetation on the bluff top to discover potential areas of water run off and ponding. Trimming will allow and encourage access to the site to inspect and monitor it for runoff and ponding which are the major causes of erosion; and will allow access to install erosion control. Andre's geotechnical engineer states in a letter that "other low points which permit ponding should be identified". There is no way the overgrown area could have been evaluated for runoff, ponding and slides without trimming. (see Andre's engineers comments on the next page)

Trimming will encourage growth of the vegetation plants prone to the erosion control plan

\*The "vegetation condition" that "No vegetation in excess of 3 feet in height is [SHALL BE] allowed within the required 20 foot front yard setback or within the Kingsbury Drive right of way [BY THE OWNER OF APN 043-81-15]. Vegetation must [SHALL] be maintained [BY THE OWNER] to remain 1 foot (or less) in height within these areas" be made a condition of this Coastal Development permit.

\*The Algerian Ivy in the area between the road and bluff top should be trimmed and maintained to 2-3 ft to provide better erosion control;

\*The Acacia in the area between the road and bluff top should be trimmed and maintained to 2-3 ft to provide better erosion control;

The Acacia on the bluff face should be inspected and treated as conditions require; and

\*Once the ivy and Acacias are trimmed the site should be evaluated for ponding, run off, drainage, and re-vegetation potential.

**ROGERS E. JOHNSON & ASSOCIATES**

CONSULTING ENGINEERING GEOLOGISTS

1729 SEABRIGHT AVENUE, SUITE D  
SANTA CRUZ, CA 95062

BUS. (408) 425-1288  
FAX. (408) 425-6539

18 May 1995

Ph: (831)688-5928  
Cell:(831-818-5685  
e: randre@cruzio.com

APN:43-081-11,12  
+ 43-082-48

Richard and Ramona André  
310 Kingsbury Boulevard  
Aptos, California 95003

<95023-70

Re: Preliminary geologic assessment of site pertaining to bluff stability at 310 Kingsbury Boulevard

Dear Mr and Mrs André:

At your request, we have made a preliminary evaluation of drainage conditions as they affect the stability of the bluff in the vicinity of the subject property.

The previous owner, Ms. Max Matthews. In our 1986 report we recommended reworking areas where water was ponding and installation of roof gutters. Other drainage improvements that would convey, via closed pipe all collected runoff to the base of the bluff. We made these recommendations to help alleviate the potential for shallow slope failures on the face of the bluff.

If done properly, drainage controls can significantly reduce the hazard of soil slips/debris flows which could impact the residences at the base of the bluff on Beach Drive. Two general methods for mitigating the landsliding problem are to 1) reduce the amount of water infiltrating into the ground on the terrace adjacent to the top of the bluff, and 2) not allow runoff to issue onto the face of the bluff.

◆IN ADDITION TO MR. MCKENNA'S OPINION, IT CAN BE SEEN FROM OBSERVATION OF THE PROPERTY AND BY IMPLICATION FROM MR. MCKENNA'S OPINION THAT TRIMMING WILL NOT CAUSE EROSION...

\*The fact that the property owner has allowed the vegetation to become overgrown on the eastern part of his lot threatens "accelerated erosion" as defined by the Code

\*The vegetation on either side of the overgrowth is trimmed to 3 feet or less without bad effect

\*Up to a couple years ago the overgrown area was also trimmed to 3 feet or less without bad effect. The only reason it is overgrown now is because of Richard Andre's spite campaign against Lesa Stock.

\*EVEN THE COUNTY'S "EXPERT" ON RES VEGETATION TESTIFIED THAT ALTHOUGH THE OVERGROWN VEGETATION WOULD BE FEASIBLE

**HERE ARE THE CONDITIONS WE ARE ASKING BE ATTACHED TO THIS PERMIT** (Please See The Last 2 Pages For A Detailed History Of Conditions Requested, Conditions Attached, Conditions Changed Etc.)

- 1. No vegetation in excess of 3 feet in height is [SHALL BE] allowed within the required 20 foot front yard setback or within the Kingsbury Drive right of way [BY THE OWNER OF APN 043-81-15]. Vegetation must [SHALL] be maintained [BY THE OWNER] to remain 3 feet (or less) in height within these areas .**
  - 2. Birdhouse, pole, surveillance camera, floodlights, and related improvements on roof of garage shall be removed forthwith and no similar structures shall be erected on the property at any time. This condition does not prevent owners from installing security motion sensor lights on the front of their house or garage if such lights are installed by permit and in compliance with all applicable law; and are shielded to prevent illumination of Kingsbury Drive and any other properties.**
  - 3. All signs must be removed from the Kingsbury Drive right of way and the subject property, other than what is specifically allowed in County Code section 13.10.580 et. seq.**
- Q. These conditions shall be implemented by the owner forthwith.**

\*THERE HAS BEEN SOME SUBMISSION IN THIS CASE HOW THE  
CONDITIONS SUBMITTED BY RANDOLPH PERDAMS CANNOT BE  
LEGALLY APPLIED IN THIS CASE

\*THE ARGUMENT IS THAT THE 3 CONDITIONS DO NOT HAVE A  
"NEXUS" TO THE PROJECT

\*THE "NEXUS" IDEA IS THAT THE CONDITIONS DO NOT RELATE  
TO THE REPAIR OF THE RETAINING WALL

\*THE RESPONSE TO THIS IS TWOFOHD (see next pages)

## FIRST

THE PROJECT, BOTH AS APPROVED AND IN TERMS OF CUMULATIVE IMPACTS, IS MUCH BROADER THAN JUST A SIMPLE RETAINING WALL REPAIR...THE PROJECT AFFECTS THE ENTIRE PROPERTY AND HAS MANY ASPECTS TO IT

### A BROAD SCOPE OF WORK JUSTIFIES A BROAD SCOPE OF CONDITIONS

- THE RETAINING WALL WORK INVOLVED PRACTICALLY REBUILDING THE WALL, NOT JUST "REPAIRING" IT
- THEN THE PROJECT HAS MORPHED INTO A VERY BROAD UNDERTAKING INVOLVING EROSION CONTROL, RE-VEGETATION, LANDSCAPING, AND DRAINAGE CONTROL AFFECTING A MAJORITY OF THE PROPERTY
- ALSO RECENTLY MET WITH PREVIOUS THREE LOTS INTO ONE THE OVERGROWN VEGETATION IS AN INTEGRAL PART OF THE LOT WHERE THE RETAINING WALL IS LOCATED

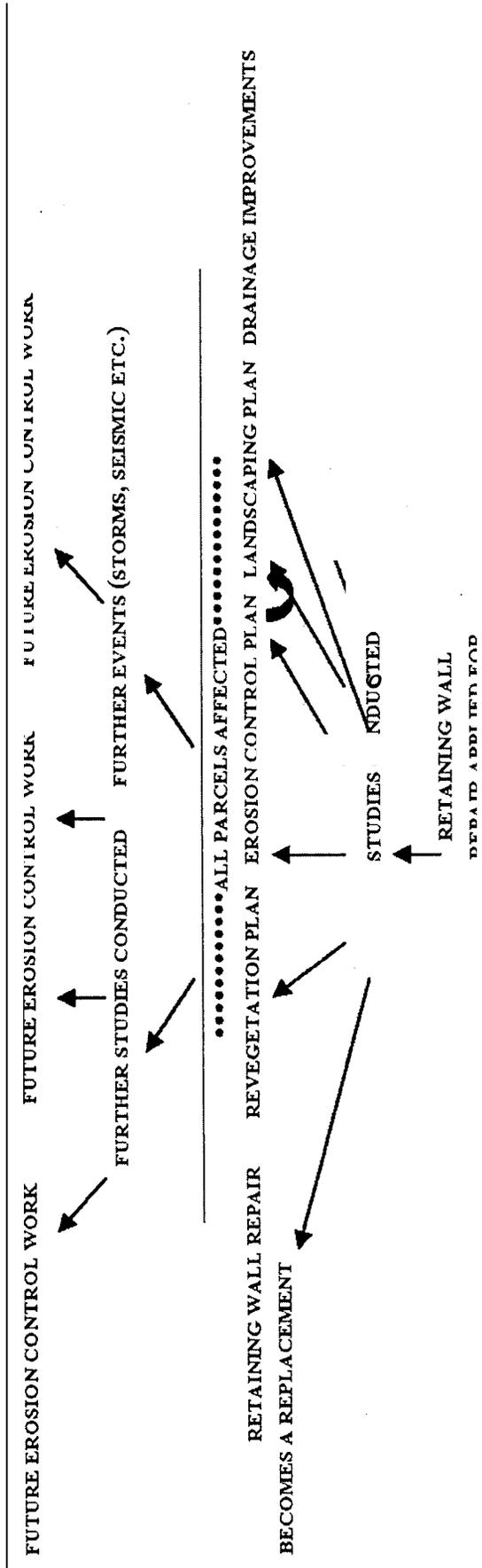
\* ALSO JOE HANNA HAS ACTUALLY SUGGESTED LANDSCAPING WORK IN THE OVERGROWN AREA AS PART OF THE MANAGEMENT OF THIS PROPERTY

\* AND RECENTLY MR. ANDRE HAS ACTUALLY BEEN DOING SOME TRIMMING OF THE OVERGROWN VEGETATION AREA PRESUMABLY IN ACCORD WITH JOE HANNA WHO IS MONITORING THIS PROPERTY, EVEN THOUGH THE TRIMMING HAS BEEN LIMITED

\* AND UNDER THE VEGETATION THERE MAY BE PONDING OR RUNOFF PROBLEMS (THE MAJOR CAUSE OF EROSION AND LANDSLIDES) THAT CAN ONLY BE DISCOVERED AND INCORPORATED INTO THE EROSION CONTROL PLAN IF THE OVERGROWTH IS TRIMMED

\* SO THERE IS CLEARLY A "NEXUS" OR CONNECTION BETWEEN THE PROJECT AND THE OVERGROWN VEGETATION

# HOW THE ANDRES' "PROJECT" EXPANDED



## **SECOND, AND MOST IMPORTANTLY...**

**THE REQUIREMENT OF A "NEXUS" DOES NOT PREVENT CONDITIONS BEING APPLIED THAT MERELY REQUIRE COMPLIANCE WITH THE LAW, INCLUDING STATE LAW, COUNTY CODE, NUISANCE ABATEMENT, THE GENERAL PLAN OR THE LOCAL COASTAL PLAN**

**\*THE CASE LAW REQUIRING A PERMIT CONDITION TO HAVE A "NEXUS" DOES NOT APPLY TO COMPLIANCE WITH THE LAW**

**\*THIS IS PRETTY COMMONSENSE...WHY WOULD THE GOVERNMENT HAVE TO HAVE A "NEXUS" OR REASON FOR REQUIRING COMPLIANCE WITH THE LAW AS A PERMIT CONDITION OR OTHERWISE?**

**\*AND THE COUNTY CODE PROVIDES THAT ANY PROJECT, INCLUDING A COASTAL DEVELOPMENT PERMIT, MUST COMPLY WITH COUNTY CODE, GENERAL PLAN, AND LOCAL COASTAL PLAN**

**\*A PERMIT CONDITION REQUIRING COMPLIANCE WITH THE COUNTY CODE, GENERAL PLAN, AND LOCAL COASTAL PLAN ALWAYS HAS A "NEXUS"**

**\*AND THE LAW GIVES GREAT DEFERENCE TO LOCAL GOVERNMENT TO DO IMPOSE ANY CONDITIONS TO PROTECT HEALTH, SAFETY OR THE PUBLIC WELFARE**

**\*PLEASE SEE THE LETTER DATED MAY 7, 2007 WITH THE "SUPPLEMENTAL MEMO" STARTING AT PAGE 2 FOR A DETAILED DISCUSSION OF THE "NEXUS" ISSUE**

**\*IN FACT, THE COUNTY WOULD BE WISE AND WITHIN ITS RIGHTS TO GO MUCH FURTHER THAN THE 3 CONDITIONS THAT HAVE BEEN DISCUSSED SO FAR...AND**

- **REQUIRE EXTENSIVE EROSION STUDIES AND CONTROLS**
- **ADDITION THE ENTIRE LENGTH OF RICHARD ANDRE'S PROPERTY**
- **TO PROTECT LIFE AND PROPERTY**
- **FROM SPILLS ONTO BEACH DRIVE AND**

◦ **AND FROM THE UNDERMINING OF KINGSBURY DRIVE (see the December 15, 2006 letter submitted to the Zoning Administrator; and the Notice of Appeal in this proceeding for further information)**

**\*BUT THE PLANNING DEPARTMENT SEEMS TO THINK THAT DEFERRING THESE PROBLEMS IS THE BEST CHOICE**

**\*LESA STOCK SIMPLY DOES NOT HAVE THE RESOURCES TO FIGHT THIS KIND OF PUBLIC INTEREST BATTLE TO REQUIRE THE COUNTY TO PROTECT BEACH DRIVE HOMES AND KINGSBURY DRIVE IF THE COUNTY WILL NOT TAKE THE INITIATIVE**

**\*BUT THIS IS THE PERFECT OPPORTUNITY FOR THE COUNTY TO START AN AGGRESSIVE PROGRAM OF PUBLIC PROTECTION**

COUNTY OF SANTA CRUZ  
PLANNING DEPARTMENT

ONING ADMINISTRATOR MEETING  
STAFF REPORT/INITIAL STUDY

Date: 5/10/85  
Time: After 10:00 a.m  
Agenda Item: 4  
Staff Planner: Chuck Schweiker

APPLICANT: MAX MATTHEWS BY ELAINE JACKSON  
OWNER: Same  
Application No: 84-134Z-CZ

APN: 43-081-11,12,48

Supervisory District: Second  
Section: T S, R  
Location: Southwest side of Kingsbury Drive, approximately 200 feet south of Rio di  
Mar Boulevard. Aptos Area

EXISTING SITE CONDITIONS

Parcel Size: Approximately 9300 square feet  
Land Use: Single family dwelling  
Vegetation: Landscape  
Slope: 0-15% all 16-30% 31-50% 51% \_\_\_\_\_ acres/sq ft  
Nearby Watercourse: Monterey Bay  
Distance To: 200 feet  
Agri. Class/Type: NA  
Rock/Soil Type: NA

ENVIRONMENTAL CONCERNS

Within USL: Yes  
Road Access: No  
Groundwater Supply: No  
Water Resource  
Protection: No  
Timber and Mineral: No  
Wildlife: NO  
Fire Hazard: No  
Archaeology: No  
Erosion: High potential  
Landslide: High potential  
Liquefaction: High potential  
Seismic: No  
Floodplain: No  
Riparian Corridor: No  
Solar Access: No  
Solar Orientation: No

SERVICES

Fire Protection: Antec Fire District  
New roads

ROGERS E. JOHNSON & ASSOCIATES  
CONSULTING ENGINEERING GEOLOGISTS  
41 Hangar Way, Suite B  
Watsonville, California 95076-2458  
e-mail: [reje@bigfoot.com](mailto:reje@bigfoot.com)  
Ofc (831) 728-7200 • Fax (831) 728-7218

September 19, 2006

Job No. C06036-57

Richard and Ramona André  
310 Kingsbury Drive  
Aptos, California 95003

Subject: Review of Plans  
Proposed Renovation of Segment of Existing Blufftop Retaining Structure  
APNs 43-081-11, 12 and 43-082-48  
*APP. # 06-0037*

Dear Mr and Mrs. André:

As requested by Joe Hanna, County Geologist with the Santa Cruz County Planning Department we are providing the following comments regarding the proposed renovation of the blufftop retaining wall. We have reviewed the plans for the proposed renovation, prepared by Inland Engineers, dated 19 September 2006. We also reviewed the cross section of the bluff on and below your property, prepared by Haro, Kasunich and Associates, the project geotechnical engineers. The cross section depicts a representative view of geologic condition along a relevant segment of the coastal bluff.

The proposed renovation of a 33 foot long segment of bluff top retaining wall will improve the stability of this segment of the bluff top. The subject retaining wall will help retain the upper section of the bluff but it will not prevent future bluff failures at the site. The wall is designed to protect the upper 10 feet or so of the approximately 90 foot high bluff. The upper 30 feet of the bluff is severely over steepened and will continue to fail until it reaches its natural angle of repose. We estimate the bluff top will ultimately recede an additional 20 to 30 feet before the bluff stabilizes at its natural angle of repose.

**\*FOR TODAY, AS WE HAVE DEMONSTRATED, AT LEAST EACH OF THE 3 CONDITIONS PROPOSED BY RANDALL ADAMS MUST BE INCLUDED AS PART OF APPROVAL OF THIS COASTAL DEVELOPMENT PERMIT**

**\*THESE 3 PERMIT CONDITIONS CAN BE INCLUDED; THEY SHOULD BE INCLUDED; AND THEY MUST BE INCLUDED AS THE LAW REQUIRES**

THE COUNTY AND EVERYONE WHOSE LIFE  
IS INVOLVED IN THE SOLUTIONS OF THE  
PROBLEMS OF THE COUNTY AND THE PUBLICS TO  
SOLVE THE KINDS OF PROBLEMS PRESENTED IN THIS CASE  
DEVELOP HIS COASTAL PROPERTY?

THE COUNTY AND EVERYONE WHOSE LIFE  
IS INVOLVED IN THE SOLUTIONS OF THE  
PROBLEMS OF THE COUNTY AND THE PUBLICS TO  
SOLVE THE KINDS OF PROBLEMS PRESENTED IN THIS CASE  
DEVELOP HIS COASTAL PROPERTY?

LES A STOCK WILL THANK YOU FOR DOING SO



AND THE PUBLIC WILL THANK YOU TOO

**NOTES ON LANGUAGE USED FOR CONDITIONS**

**\*VEGETATION CONDITION**

**\*As Proposed In Original Staff Report:**

\*pg 10: [Operational Conditions] A. No vegetation in excess of 3 feet in height is allowed within the required 20 foot front yard setback or within the Kingsbury Drive right of way. Vegetation must be maintained to remain 3 feet (or less) in height within these areas .

**\*As Proposed At Zoning Administrator Hearing: NONE**

**\*As Set Forth In Final Written Conditions: NONE**

**\*As Suggested In The Notice Of Appeal:**

Owners of APNs 043-081-11, 043-081-12, and 043-082-48 as such parcels may exist or may be combined shall design and implement an adaptive landscaping plan that shall result, within a reasonable time not exceeding one (1) year, in all vegetation within the required 20 foot front yard setback of said parcels and within the Kingsbury Drive right of way to be no more than 3 feet in height (subject to the right of the County to also control the vegetation within the Kingsbury Drive right of way in this manner at its option and to control the vegetation within setback at owners cost should owners fail to comply with this condition). Once the adaptive landscape plan is so implemented all vegetation shall be maintained by said owners within the required 20 foot front yard setback of said parcels and within the Kingsbury Drive right of way to remain 3 feet (or less) in height within these areas. Such adaptive landscape plan shall be reviewed and approved by the project geotechnical engineer and the County geologist prior to and during implementation.

**\*Acceptable Version:**

No vegetation in excess of 3 feet in height is [SHALL BE] allowed within the required 20 foot front yard setback or within the Kingsbury Drive right of way [BY THE OWNER OF APN 043-81-15]. Vegetation must [SHALL] be maintained [BY THE OWNER] to remain 3 feet (or less) in height within these areas .

**\*BIRDHOUSE, SURVEILLANCE CAMERA & FLOODLIGHTS CONDITION**

**\*As Proposed In Original Staff Report:**

D. If evidence of legal construction has not been provided, all structural alterations and rooftop floodlights installed on the existing structures must be removed.  
C. All lighting the subject property must be shielded and directed downward onto the subject property. Lights which are not shielded or that are directed to illuminate areas outside of the subject property are not allowed.

**\*As Proposed At Zoning Administrator hearing: REMOVE**

**\*As Set Forth In Final Written Conditions:**

C. Provide evidence of legal construction or remove all structural alterations and rooftop birdhouse structure on top of garage) and rooftop floodlights that were installed on the existing structures. (Amended at ZA 2/2/07)  
C. All lighting the subject property must be shielded and directed downward onto the subject property. Lights which are not shielded or that are directed to illuminate areas outside of the subject property are not allowed.

**\*Questions?**

**\*what is "evidence of legal construction"**

**\*legal WHEN BUILT?**

**\*does not address issue of coastal views at all**

**\*does not address issue of surveillance camera and privacy rights at all...a camera that surveys all lawful public activity and intrudes into private homes is a NUISANCE and violates County Code**

**\*As Suggested In The Notice Of Appeal:**

**"Birdhouse, pole, surveillance camera, floodlights, and related**

**improvements on roof of garage shall be removed forthwith and no similar structures shall be erected on the property at any time. This condition does not prevent owners from installing security motion sensor lights on the front of their house or garage if such lights are installed by permit and in compliance with all applicable law; and are shielded to prevent illumination of Kingsbury Drive and any other properties"**

**\*SIGNS CONDITION**

**\*As Proposed In Original Staff Report:**

**All signs must be removed from the Kingsbury Drive right of way and the Subject property, other than what is specifically allowed in County Code section 13.10.580 et. seq.**

**\*As Proposed At Zoning Administrator Hearing:  
Ordered as per final written conditions**

**\*As Set Forth In Final Written Conditions:**

**All signs must be removed from the Kingsbury Drive right of way and the subject property, other than what is specifically allowed in County Code section 13.10.580 et. seq. Two signs, totaling 1 square foot in area combined, are allowed within the yard fronting on Kingsbury Drive. (Amended at ZA 2/2/07)**

**\*As Suggested In The Notice Of Appeal:**

**THE COUNTY SIGN ORDINANCE DOES NOT ALLOW THE SIGNS INCLUDED IN THE FINAL WRITTEN CONDITIONS (13.10.580 provides: "No signs or outdoor advertising structure or display of any kind shall be permitted in the R-1, RB, RR, RA, RM, A, AP, or CA Districts except the following:**

- (a) One non-illuminated sign or nameplate not larger than one square foot in area pertaining to a home occupation. [home business]**
- (b) One non-illuminated sign not larger than six square feet in area pertaining to the sale, lease, rental, or display of a structure or land.**
- (c) One identification sign, not directly illuminated, not larger than twelve (12) square feet in area, located on the site of a discretionary use and included in the Development Permit for said use.**
- (d) One or two non-illuminated signs, single or double-faced, with a total area not larger than fifty (50) square feet, pertaining to the sale of subdivision lots and included in the permit for said subdivision"**

**So the condition as originally proposed by Randall Adams "All signs must be removed from the Kingsbury Drive right of way and the subject property, other than what is specifically allowed in County Code section 13.10.580 et. seq." is proper and should be applied as intended by County Code.**