



Staff Report to the Planning Commission

Application Number: **131323**

Applicant: George Peixoto
Owner: Richard Peixoto
APN: 051-741-05

Agenda Date: March 26, 2014
Agenda Item #: 7
Time: After 9:00 a.m.

Project Description: Proposal to recognize 9,000 cubic yards of fill.

Location: Property located on the east side of Lakeview Road, (160 Lakeview Road), about 2000 feet south from College Road in Watsonville.

Supervisory District: 4th District (District Supervisor: Greg Caput)

Permits Required: Preliminary Grading Approval
Technical Reviews: None

Staff Recommendation:

- Denial of Application 131323, based on the attached findings.

Exhibits

- | | |
|------------------|---------------------------------------|
| A. Project Plans | C. Location, Zoning and General Plan, |
| B. Findings | Floodplain Maps |

Parcel Information

Parcel Size:	6.64 acres
Existing Land Use - Parcel:	Veggie Farm / Residence (pre-unauthorized grading) Residence / Equipment storage yard (post-unauthorized grading)
Existing Land Use - Surrounding:	Agriculture
Project Access:	Lakeview Road
Planning Area:	South County
Land Use Designation:	AG (Agricultural); Type 1A Agricultural Land
Zone District:	CA (Commercial Agriculture)
Coastal Zone:	<input type="checkbox"/> Inside <input checked="" type="checkbox"/> Outside
Appealable to Calif. Coastal Comm.	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

Environmental Information

Geologic Hazards:	Flood Zone AO
Soils:	Very High Liquefaction
Fire Hazard:	Not a mapped constraint
Slopes:	N/A
Env. Sen. Habitat:	Not mapped/no physical evidence on site
Grading:	9,000 cubic yards of asphalt grindings (already done)
Tree Removal:	No trees proposed to be removed
Scenic:	Not a mapped resource
Drainage:	Possible change in drainage patterns
Archeology:	Not mapped/no physical evidence on site

Services Information

Urban/Rural Services Line:	<input type="checkbox"/> Inside	<input checked="" type="checkbox"/> Outside
Water Supply:	Onsite	
Sewage Disposal:	Septic	
Fire District:	PVFPD	
Drainage District:	Zone 7	

History

On June 29, 2012, the subject property owner was issued a Notice of Violation (NOV) for placing fill (asphalt grindings) onsite without a permit, in violation of the County Grading ordinance.

After the initial posting of the Notice of Violation for grading, staff researched the property and determined that the property is located within a FEMA designated 100-year flood zone. County Code allows the placement of up to 50 cubic yards within a flood zone, if it is the minimum amount necessary, and if it can be demonstrated that the fill will not have cumulative adverse impacts. Since the volume placed was approximately 9,000 cubic yards, the property owner's representatives were repeatedly informed that we would not be able to recommend approval of placement of the asphalt grindings on the parcel.

The property owner's representatives have indicated that the asphalt grindings were placed over the site in order to store farm equipment to support agriculture operations on other parcels. The property owner's representatives were also told that land zoned as Commercial Agriculture (CA) and designated as a Type 1A Agricultural Resource ("prime farmland") is regulated by ordinances and policies which are intended to protect the long term agricultural viability of the prime soils and that, while the construction of an agricultural support facility on a portion of the property would likely meet the requirements, development of the entire parcel in a way that does not preserve the soil type, would not comply.

Project Setting

The property is located on Lakeview Road in Watsonville, about a half mile north of Riverside Road (Highway 129). The property is located in an agricultural area and is surrounded on all

sides by Commercial Agriculture zoned properties.

Grading and Geologic Hazards Ordinance Conflicts

This application is to recognize the placement of 9,000 cubic yards of fill. However, the subject property is located within a FEMA Designated AO zone, which is an area subject to inundation by 1-percent-annual-chance (100 year flood) shallow flooding where average depths are 1–3 feet. The County Grading ordinance (Chapter 16.20.080(C)(5) states:

“An application for a grading approval to place fill within a 100-year floodplain shall be denied, unless the fill is the minimum amount necessary, **not to exceed 50 cubic yards**, and it can be demonstrated through environmental review that the fill will not cause significant cumulative impacts.” (emphasis added)

Additionally, Chapter 16.10.070(F)(7) of the Flood regulations in the Geologic Hazards ordinance states:

“Allow the placement of fill within the 100-year floodplain in the minimum amount necessary, **not to exceed 50 cubic yards**. Fill shall only be allowed if it can be demonstrated that the fill will not have cumulative adverse impacts.” (emphasis added)

Since the Grading and Geologic Hazards ordinance only allow a maximum of 50 cubic yards of fill, the fill in the amount of 9,000 cubic yards cannot be approved.

Zoning & General Plan Conflicts

The property is zoned as Commercial Agriculture (CA) and designated as Type 1A Viable Agricultural Land in the County General Plan. Type 1A land meets the US Department of Agriculture Natural Resources Conservation Service and the California Department of Food and Agriculture criteria for “prime” and “unique” farmland and has been determined to be best suited to the commercial production of food, fiber, and ornamental crops and livestock.

Further, the parcel is designated as Prime Farmland on the California Department of Conservation’s Santa Cruz County Important Farmland Map in that the land was found to have the best combination of physical and chemical features that are able to sustain long term agricultural production.

Objective 5.13 of the County General Plan indicates that the conversion of commercial agricultural land to non-agricultural uses shall be prevented and that policy conflicts shall be resolved in favor of preserving and promoting agriculture on designated commercial agricultural lands.

Moreover, Objective 5.13.8 requires agricultural support facilities, where permitted on agricultural lands, to be located either off or, when not feasible, on the perimeter of good agricultural soils.

This is further supported by one of the stated purposes of the Agricultural Land Preservation and Protection ordinance (Section 16.50.010) to ensure maximum protection of commercially viable

agricultural land. Likewise, Section 13.10.311(A) states that one of the purposes of the CA Commercial Agriculture Zone District is to preserve the commercial agricultural lands within Santa Cruz County “which are a limited and irreplaceable natural resource.”

Finally, General Plan Policy 6.4.9 states “allow the placement of fill within the 100-year floodplain in the minimum amount necessary, not to exceed 50 cubic yards.”

Therefore, the fill placed on the site is in conflict with the General Plan and County Zoning ordinances as well.

Floodplain Mapping Discussion

As discussed above, this property is located within a FEMA designated floodplain.

The applicant has argued that this property was not in a FEMA floodplain before the May 12, 2012 effective date of the FEMA Flood Insurance Rate Map (FIRM). They have further argued that since the fill was placed before the May 12, 2012 effective date, the 50 cubic yard maximum fill amount allowed in the floodplain should not apply.

The Effective Date of the FIRM is primarily used for making adjustments to flood insurance premiums. The date does not dictate when the local jurisdiction is required to start using the maps for regulation of local flood ordinances. Rather, the Code of Federal Regulations (44 CFR 60.3(b)(4)) requires that communities “obtain, review and reasonably utilize any base flood elevation and floodway data available from a Federal, State or other source...”

The preliminary Flood Insurance Study (FIS), FIRMs and base flood elevations were provided to the County of Santa Cruz by FEMA on November 23, 2010. FEMA later issued a Letter of Final Determination (LFD) to the County on November 16, 2011, which stated that the proposed changes were final. According to a FEMA document titled “Use of Flood Insurance Data as Available Data,” data from a draft or preliminary Flood Insurance Study (FIS) constitute available data under Subparagraph 60.3(b)(4).

Therefore, if the property owner had actually applied for a permit as far back as November 23, 2010 (the date the preliminary map changes were issued to the County), the Planning Department would have been required to regulate County flood regulations to the proposed map changes. The unpermitted fill material was placed on the parcel in 2012.

Placement of fill by the property owner without a permit prior to the May 12, 2012 effective date of the FIRM does not “grandfather” or in any way absolve the property owner from the County’s flood regulations. Applications are reviewed for current requirements using the best available data at the time applications are submitted.

California Environmental Quality Act (CEQA)

Per Statutory Exemption 15270, CEQA does not apply to projects which a public agency rejects or disapproves.

Conclusion

As proposed, the project is inconsistent with the Grading ordinance, the Agricultural Land Preservation and Protection ordinance, the Zoning ordinance, the Flood regulations of the Geologic Hazards ordinance and General Plan policies. Please see Exhibit "B" ("Findings") for a listing of findings and evidence related to the above discussion.

The County of Santa Cruz is required by FEMA to enforce our floodplain regulations in order for County residents to be able to purchase flood insurance through the National Flood Insurance Program (NFIP). If we do not enforce these regulations, the County is at risk of being removed from the National Flood Insurance Program.

Staff Recommendation

- **DENIAL** of Application Number **131323**, based on the attached findings;

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.sccoplanning.com

Report Prepared By:



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Exhibit A

Project Plans



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(831) 724-5300 PHONE (831) 724-5509 FAX jeff@roperengineering.com



**SITE IMPROVEMENTS FOR
LAKEVIEW ORGANICS**
160 LAKEVIEW ROAD, WATSONVILLE APN 051-741-05

AS-BUILT GRADING PLAN

SCALE: AS NOTED
DESIGNED BY: JR
DRAWN BY: JR
DATE: SEPT. 19, 2012
REVISED: MAY 7, 2013
JOB NO: 11046
SHEET

C1

OF 2 SHEETS

REVISIONS	
NO.	DATE DESCRIPTION
1	8-27-12 GRADING, EARTHWORK, SUBMITTAL
2	8-27-12 REV. TO 1-12-12 SUBMITTAL



AS-BUILT GRADING PLAN

SCALE: 1"=30'
0 15 30 FEET

- LEGEND**
- EXISTING CONTOUR N.E. 2000
 - 15' EXISTING CONTOUR SEPT. 2012
 - 15' EXISTING GRADE SEPT. 2012
 - PLANLINE
 - PROPERTY LINE
 - EXISTING
 - EXISTING POLE
 - EXIST. UTILITY POLE
 - EXIST. POLE

BENCHMARK

CITY OF WATSONVILLE BENCH MARK N-125 AT THE
EAST END OF LAKEVIEW ROAD, WATSONVILLE, CA
ELEVATION = 42.00 AND 1989 DATUM

ESTIMATED EARTHWORK

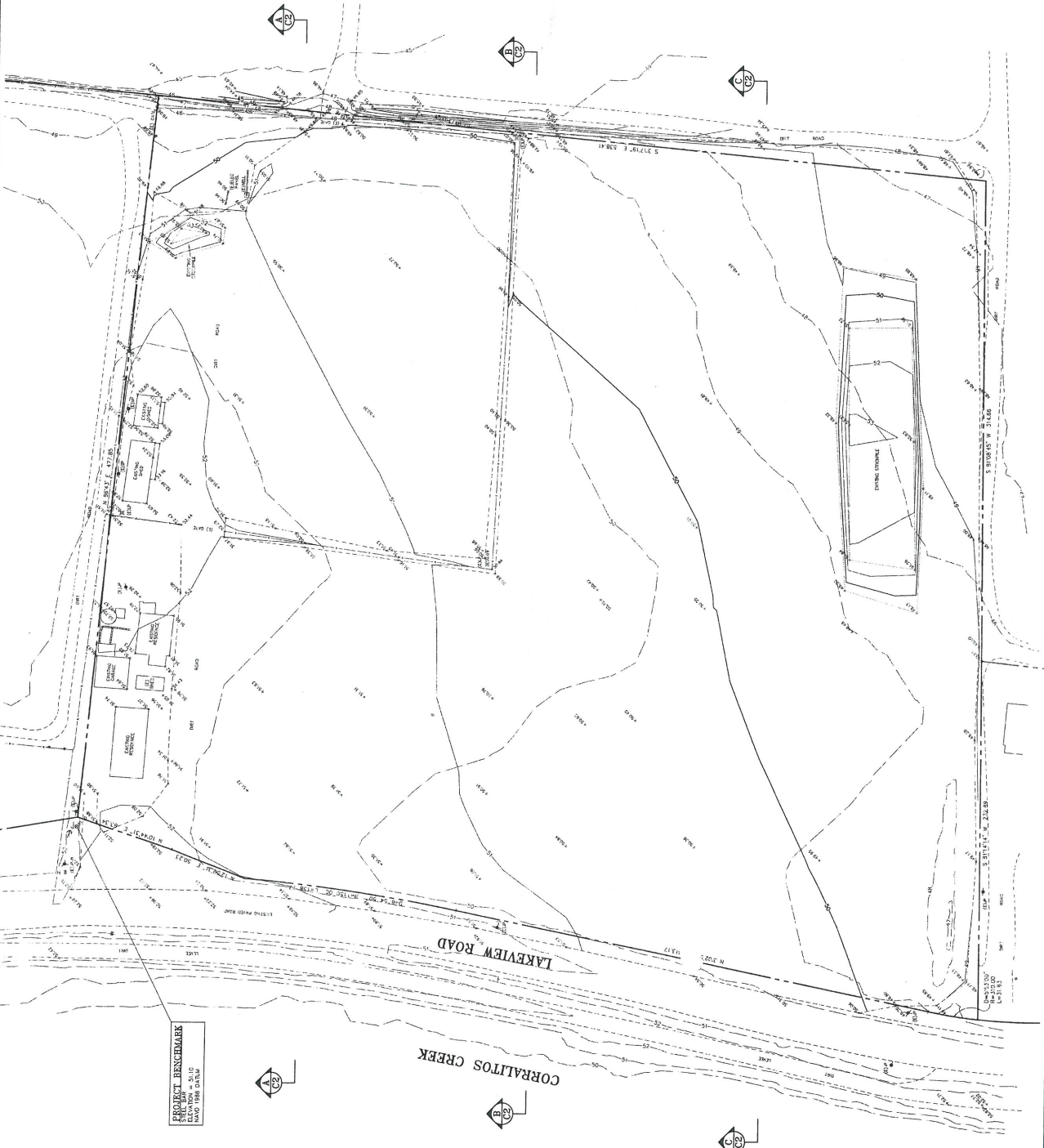
8000 ± CUBIC YARDS RAP FILL (RECYCLED ASPHALT PAVEMENT)

SCOPE OF WORK

PREPARE GRADING PLAN FOR FILL PLACED IN 2012.
RECYCLED ASPHALT PAVEMENT (RAP) FILL TO BE PLACED AT THE
AVERAGE DEPTH OF FILL IS 10 INCHES.

FEMA FLOOD INFORMATION

THE FLOOD INFORMATION IS BASED ON THE FEMA FLOOD MAPS
DATED 1-16-12. THE FLOOD INFORMATION IS BASED ON THE
FEMA FLOOD MAPS DATED 1-16-12.



PROJECT BENCHMARK
ELEVATION = 21.10
N-125 AT THE
EAST END OF LAKEVIEW ROAD

C2

2 SHEETS

SHEET

JOB NO. 11046

REVISION

DATE

SEPT. 19, 2012

BY

AS NOTED

SCALE

SECTIONS

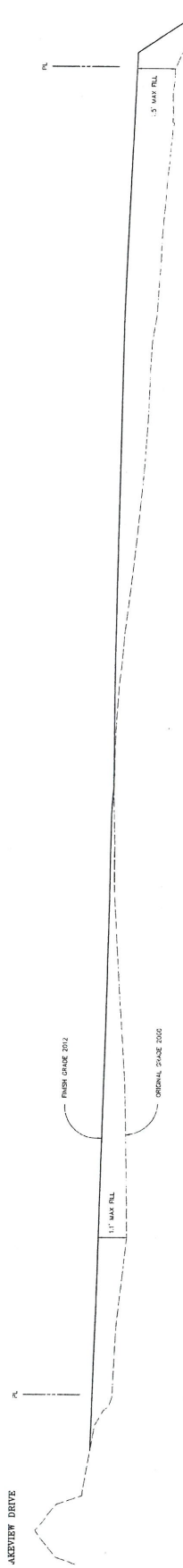
SITE IMPROVEMENTS FOR
LAKEVIEW ORGANICS
160 LAKEVIEW ROAD, WATSONVILLE, CA 95076
APN 051-741-05



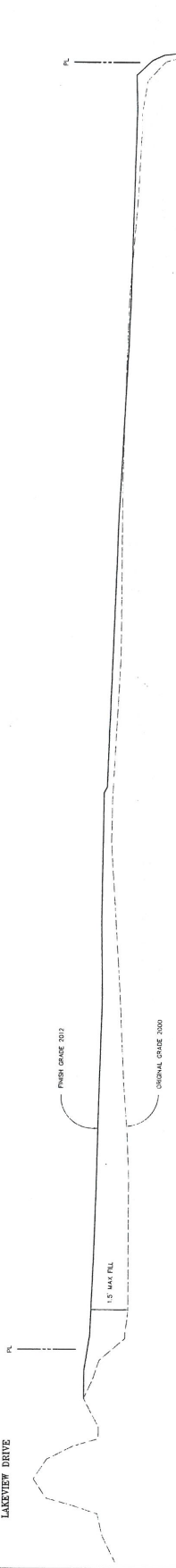
ROPER ENGINEERING & LAND SURVEYING
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jeff@roperengineering.com



SECTION C
SCALE: 1"=20' HORIZ
1"=2' VERT



SECTION B
SCALE: 1"=20' HORIZ
1"=2' VERT



SECTION A
SCALE: 1"=20' HORIZ
1"=2' VERT

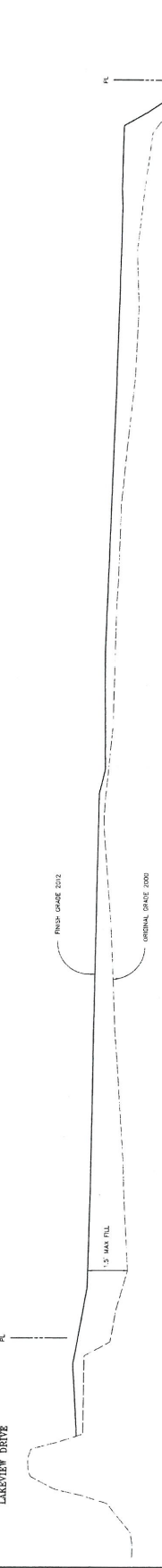


Exhibit B

Findings

Grading Permit Findings

Section 16.20.080 (C) of the County Code states the following:

- (1) An application for a grading, dredging or diking approval shall be denied if the Planning Director or Planning Commission makes any of the following findings:
 - (i) That the design of the proposed site is not consistent with the applicable general and specific plans adopted pursuant to Chapters 13.01 and 13.03 of the Santa Cruz County Code.
 - (ii) That the proposed grading plan for the development contemplated does not comply with the requirements of the Santa Cruz County Code.
 - (iii) If the project is for the creation of a building site, that adequate sewage facilities and water supplies cannot be provided.
 - (iv) If the project as proposed will cause excessive and unnecessary disturbance of the site particularly as defined in Section 16.10.050.
- (2) An application for a grading approval shall be denied if the work proposed would be hazardous by reason of flood, geological hazard, or unstable soils; be liable to endanger other properties or result in the deposition of debris on any public way, property, or drainage course; or otherwise create a hazard.
- (3) An application for a grading approval which would create unavoidable adverse environmental impact shall be denied.
- (4) An application for grading in a riparian corridor shall be denied if it is not in conformance with other chapters of the County Code which regulate development activity in riparian corridors.
- (5) An application for a grading approval to place fill within a 100-year floodplain shall be denied, unless the fill is the minimum amount necessary, not to exceed 50 cubic yards, and it can be demonstrated through environmental review that the fill will not cause significant cumulative impacts.

Staff recommends Denial of the application per the following findings for denial:

16.20.080(C)(1)(i): The design of the proposed site is not consistent with the applicable general and specific plans adopted pursuant to Chapters 13.01 and 13.03 of the Santa Cruz County Code.

Per the discussion in the staff report, the amount of fill exceeds 50 cubic yards and is not consistent with the General Plan policy 6.4.9. Additionally, the placement of 9,000 cubic yards of asphalt grindings over 6.6 acres of prime Type 1A agricultural soils is in conflict with General Plan policies 5.13 and 5.13.8, which call for protection of agricultural soils.

16.20.080(C)(1)(ii): The proposed grading plan for the development contemplated does not comply with the requirements of the Santa Cruz County Code.

Per the discussion in the staff report, the amount of fill exceeds 50 cubic yards and is not allowed per Section 16.10.070(F)(7) of the Geologic Hazards ordinance and Section 16.20.080(C)(5) of the Grading ordinance.

Additionally, placement of 9,000 cubic yards of asphalt grindings over the entire site is in conflict with Section 16.50.010 of the Agricultural Land Preservation and Protection ordinance, which calls for the maximum protection of commercially viable agricultural lands. Similarly, the placement of the material is in conflict with one of the purposes of Section 13.10.311(A) of the Zoning ordinance, which is to preserve agricultural lands which are a limited and irreplaceable natural resource.

16.10.050(C)(1)(iv): The project as proposed will cause excessive and unnecessary disturbance of the site particularly as defined in Section 16.10.050.

Section 16.10.050 of the Geologic Hazards ordinance requires projects to be constructed in areas of geologic hazards (such as flooding) in accordance with other provisions of the Geologic Hazards ordinance. Section 16.10.070(F)(7) allows a maximum of 50 cubic yards of fill. Placement of 9,000 cubic yards of fill within the floodplain is both excessive and unnecessary, especially when considering there is potential for diversion of floodwaters to negatively affect adjacent properties and a County maintained road.

16.20.080(C)(2): An application for a grading approval shall be denied if the work proposed would be hazardous by reason of flood, geological hazard, or unstable soils; be liable to endanger other properties or result in the deposition of debris on any public way, property, or drainage course; or otherwise create a hazard.

The property is located within a 100-year floodplain and County ordinances only allow up to 50 cubic yards of fill to be placed in the floodplain. The property owner placed 180 times that amount. The maximum amount of 50 cubic yards is also only allowed if it can also be shown that there are no cumulative adverse impacts. It is unlikely that 9,000 cubic yards of fill placed with the floodplain will not have cumulative adverse impacts such as diversion of flood waters onto adjacent properties and roads, or diversion of floodwaters which may affect a structure.

16.20.080(C)(3): An application for a grading approval which would create an unavoidable adverse environmental impact shall be denied.

There is a possibility that the placement of the 9,000 cubic yards of asphalt grindings on the parcel could have an adverse environmental impacts, however additional analysis through Environmental Review would have to be performed.

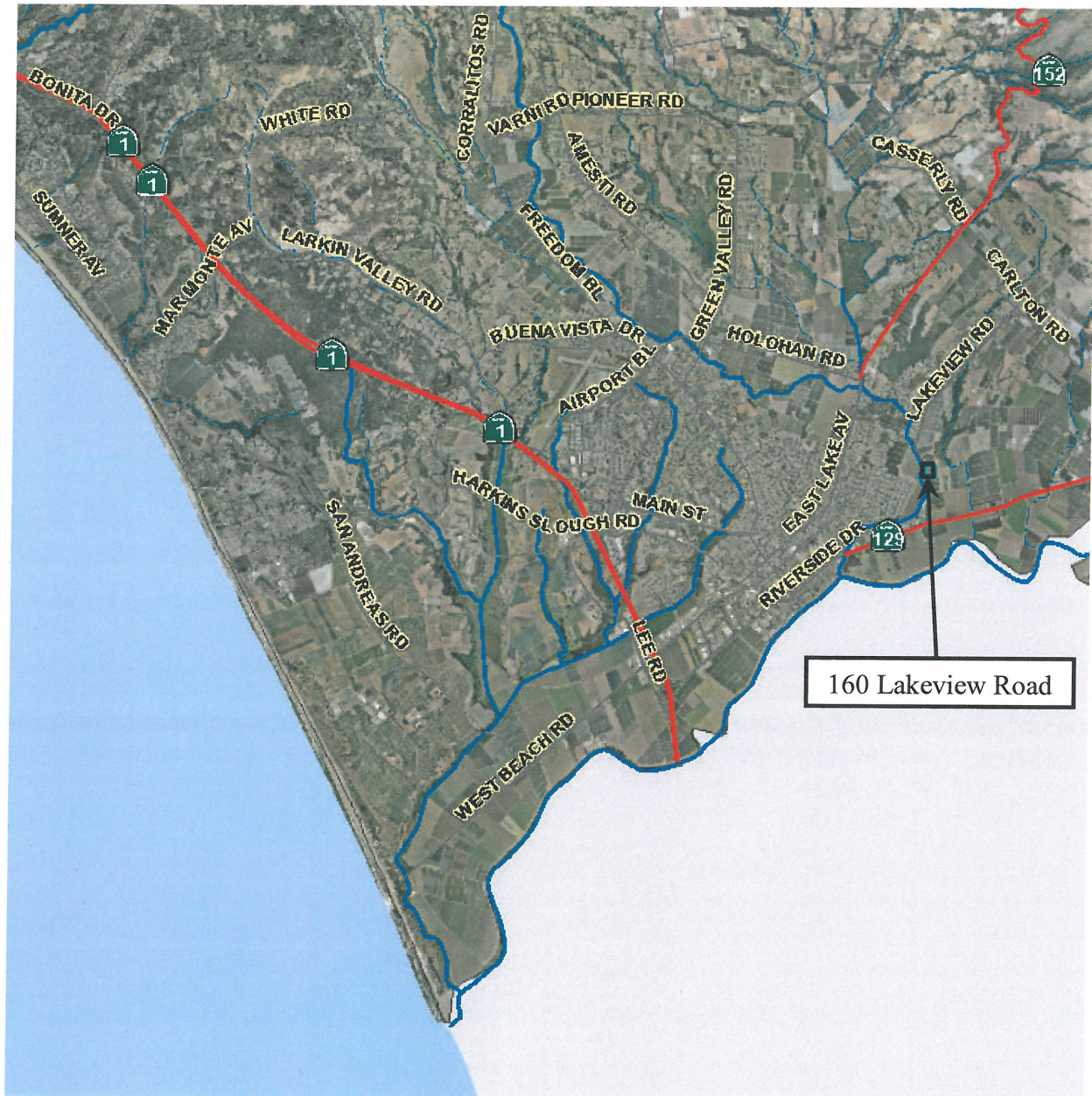
16.20.080(C)(5): An application for a grading approval to place fill within a 100-year floodplain shall be denied, unless the fill is the minimum amount necessary, not to exceed 50 cubic yards, and it can be demonstrated through environmental review that the fill will not cause significant cumulative impacts.

The property owner placed 9,000 cubic yards of fill on the site, which is well in excess of the 50 cubic yard maximum.

Exhibit C

Location, Site, Zoning, General Plan, Agricultural Soils, and Floodplain Maps

Location Map



Site Map



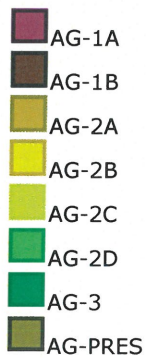
Zoning Map



General Plan Map



Agricultural Soils



Floodplain Map



Note: Shaded light blue areas designate the 100-year floodplain

DATE: _____

FROM: Kent Edler

RE: Application # 131323

Return all original documents to the planner, unless checked \Rightarrow ☐ Use original documents for distribution

- Completed by: _____
(support staff) (date)