



Staff Report to the Zoning Administrator

Application Number: **04-0489**

Applicant: Richard Emigh
Owner: James and Linda Theiring
APN: 038-231-06

Agenda Date: June 24, 2005
Agenda Item #: 4
Time: After 10:00 a.m.

Project Description: Proposal to recognize the construction of a 5' tall retaining wall with 6' high redwood fence on top within the front and side yard setbacks and to recognize repairs to a non-conforming garage. Requires a Residential Development Permit for a fence greater than 6' in height within the Front and Side Yard setbacks, a Variance to allow repairs in excess of 50% to a non-conforming garage, and a Coastal Development Permit.

Location: Project located on New Brighton Road about 1/3 mile south of the intersection of New Brighton Rd. and Mc Gregor Dr. (100 New Brighton Rd.).

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

Permits Required: Variance, Residential Development Permit, and a Coastal Development Permit

Staff Recommendation:

- Approval of Application 04-0489, based on the attached findings and conditions.
- Certification that the proposal is exempt from further Environmental Review under the California Environmental Quality Act.

Exhibits

- | | | | |
|----|--|----|--|
| A. | Project plans | E. | Assessor's parcel map |
| B. | Findings | F. | Zoning map |
| C. | Conditions | G. | Letter from State Parks. 5/4/05 |
| D. | Categorical Exemption (CEQA determination) | | |

Parcel Information

Parcel Size: 9,365 square feet (EMIS Estimate)
Existing Land Use - Parcel: Single-family residential
Existing Land Use - Surrounding: New Brighton State Beach to the north and west,

Project Access: residential to south and east.
New Brighton Road
Planning Area: Aptos
Land Use Designation: R-UL (Urban Low Residential)
Zone District: R-1-8 (Single-family residential, 8,000 square feet minimum)
Coastal Zone: ☒ Inside ☐ Outside
Appealable to Calif. Coastal Comm. ☒ Yes ☐ No

Environmental Information

Geologic Hazards: Not mapped/no physical evidence on site, adjacent to coastal bluff
Soils: Watsonville Loam (Soils Index No. 177)
Fire Hazard: Not a mapped constraint
Slopes: Site is relatively flat (2-5% slopes)
Env. ~~Sen.~~ Habitat: Potential Monarch Butterfly habitat in Eucalyptus grove NW of site
Grading: No grading proposed
Tree Removal: No trees proposed to be removed
scenic: Within a mapped scenic area
Drainage: Existing drainage adequate
Traffic: No increase in traffic
Roads: Existing roads adequate
Parks: Existing park facilities adequate
Archeology: Not mapped/no physical evidence on site

Services Information

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

Background

The existing single-family dwelling was constructed under a building permit issued in 1957 (permit 1895). In 1963, an addition consisting of a bedroom and bathroom was constructed with the benefit of a building permit (permit 8532). No additional permits have been granted on the property subsequent to these approvals.

Project scope

The property owner seeks to obtain a Variance, Coastal Development, and Residential Development Permit to recognize the re-construction of a retaining wall, redwood fence, and repairs to a non-conforming garage to rectify a Code Compliance investigation. To avoid encroachment onto State Park land to the north and west of the subject property, a six foot high

wood fence will be relocated to the property line, where it will sit on top of a retaining wall. Due to the location of the fence on top of the retaining wall, the total height of the fence when measured will exceed six feet in height and therefore requires a Residential Development Permit.

Repairs and reconstruction to the non-conforming portion of the garage require a Variance as the alterations to walls exceed 50% of the non-conforming portion of the structure. Finally, a Coastal Development Permit is required as the project site is located within a mapped scenic area due to its proximity to the beach and the adjacent State Park.

Project Setting and Existing Conditions

The subject property is bounded by the New Brighton State Beach campground to the west and north, a small group of single-family residences to the east, and a coastal bluff to the south. Access to the site is maintained through the campground. The area surrounding the site is forested with Eucalyptus groves, which help shield the site from the view of nearby campsites. Some of the surrounding Eucalyptus groves contain potential Monarch Butterfly habitat, which will not be affected by development on the project site.

The single-family dwelling and attached garage is non-conforming with regards to the front yard, side yard, and rear yard setbacks due to changes in zoning regulations since construction in 1957 and 1963. During construction, the site was graded to be about five feet below the State Park land on the north side of the property, requiring construction of a retaining wall along the northern (front) property line and partially along the western (side) property line. Though the fence and retaining wall do not encroach onto State Parks property above ground, footings and the subdrain system do encroach onto State Parks property about 10 ½ inches below grade. A letter from Victor Roth in State Parks states that State Parks has no objections to these minor encroachments (Exhibit G).

Zoning & General Plan Consistency

The property site is zoned R-1-8 (Single-family residential, 8,000 square feet minimum lot size) and maintains a General Plan/Local Coastal Program Land Use Designation of R-UL (Urban Low Residential).

Fence regulations

Section **13.10.525** of the County Code regulates fences and retaining walls. Fences in excess of six feet in height require a Level 5 Residential Development Permit, which the proposal requires as the six foot high wood fence sits on top of a five foot tall retaining wall as it has been relocated off of State Park land. The retaining wall sits on the interior side of the property, so the fence when viewed from outside the property will retain the appearance of a six foot high redwood fence common to the residences in the surrounding neighborhood. The fence and retaining wall will not interfere with visibility of vehicles and pedestrians as the driveway accessing the northeast corner of the site is only used for access to the subject parcel

Non-conforming structure regulations

A portion of the existing three-car garage exists within the front yard setback, along which various repairs have been conducted due to termite damage. As these repairs exceed 50% of the

linear length of the non-conforming portion of the structure, a Variance is required (Section 13.10.265(e)(3) of the County Code). Variance findings *can* be made, due to the configuration of the existing dwelling and the configuration of the right-of-way, and the lack of public impacts due to the location of the garage. The repairs will not increase the non-conforming dimensions of the garage.

Local Coastal Program Consistency

The proposed fence and garage is in conformance with the County's certified Local Coastal Program, in that the structures are compatible with the coastal surroundings as the garage is low-slung to minimize visibility and the fence is of a wood finish appropriate for the forested setting of the campground and neighborhood. Though the total height of the fence and retaining wall will be about nine feet, only a six foot high fence will be visible to the public as the face of the retaining wall will be directed toward the subject property, and will therefore be compatible with the neighborhood in which other six foot high fences exist. Neither the garage or fence will be visible from the beach or the ocean.

The project site is not encumbered by public access easements, **as** existing access exists from the New Brighton Beach campground adjacent to the project site. The site is not identified as a priority acquisition site in the County's Local Coastal Program.

The replacement fence and garage repairs comply with the provisions of Section 13.20.130 of the County Code (Coastal Zone Design Criteria) as the fence will be compatible with the surrounding coastal setting as it will be no more than six feet in height when viewed from outside the property and will be constructed of wood to complement the forest setting. Due to a drop in grade at the project site, the garage and associated repairs will not be visible from the surrounding campground. As both the fence and garage are pre-existing, the alterations will not result in a change from present conditions, with the exception that the fence will not be located on the subject property rather than State Park land.

Conclusion

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

Staff Recommendation

- APPROVAL of Application Number **04-0489**, based on the attached findings and conditions.
- Certification that the proposal is exempt from further Environmental Review under the California Environmental Quality Act.

Supplementary reports and information referred to in this report are on file and available for Viewing at the Santa Cruz County Planning Department, and are hereby made a part of

the administrative record for the proposed project.

The County Code and General Plan, as well as hearing agendas and additional information are available online at: www.co.santa-cruz.ca.us

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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-1-8 (Single-family residential, 8,000 square feet minimum), a designation which allows residential uses. The proposed fence and garage is a principal permitted use within the zone district, consistent with the site's (R-UL) Urban Low Residential General Plan designation.

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

This finding can be made, in that the proposal does not conflict with any existing easement or development restriction such as public access, utility, or open space easements in that no such easements or restrictions are known to encumber the project site.

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

This finding can be made, in that the fence and repaired garage will be compatible with the neighborhood as the alterations will not result in a significant change from the existing conditions. No new site disturbance is proposed, as the retaining wall will be replaced in-kind at its existing location.

4. That the project conforms with the public access, recreation, and visitor-sewing 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 adequate public access is already available from the New Brighton State Beach campground to the west of the project site. The project will remove all encroachments (with the exception of drainage improvements and below-grade footings for the fence) onto State Park land.

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

This finding can be made, in that the fence and garage will not block public access and will be compatible with the neighborhood in terms of design and layout. Neither structure will be visible from the beach, and the visual impact on the users of the New Brighton Beach campground will be minimal due to existing vegetation surrounding the site.

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 location of the fence will allow adequate visibility of vehicles and pedestrians as the property is located at the end of the right-of-way, and the garage is located on a portion of the site that will not reduce access to light and air for neighboring properties as the property adjacent to the garage is undeveloped State Park land. No additional energy will be used.

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 location of the fence/retaining wall and the non-conforming garage will be consistent with the intent and purpose of the site standards for the R-1-8 zone district and other applicable County ordinances as the project will not degrade visibility of vehicles and pedestrians when exiting the site, access to light and air for structures on adjacent properties will be maintained, and the project will be visually compatible with development in the vicinity. The right-of-way for New Brighton Road ends at the northeast corner of the property, becoming the driveway to the subject property. As all traffic along the portion of the right-of-way closest to the project site is to or from the site itself, visibility will not be an issue. Furthermore, access to light and air will be maintained as the State Park land adjacent to the fence and garage is not developed and is not likely to be developed in the future, and the site is about five feet below the grade of the adjacent property, reducing the perceived height of the non-conforming garage. Finally, the proposed fence will replace an existing fence and will maintain the appearance of a six foot high fence when viewed from outside the property, similar to existing fences in the vicinity.

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 both the fence and garage are ancillary to the primary residential use on site, and are therefore consistent with the intent and purpose of the site's R-UL (Urban Low Residential) General Plan/Local Coastal Program land use designation.

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 neither the fence nor repaired garage will result in increased

utility usage, and not additional traffic will be generated as no new bedrooms will be added.

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 fence/retaining wall will appear to be a six foot high wood fence from outside the property, in a neighborhood where other six foot high fences exist due to privacy concerns. Furthermore, the non-conforming garage will be about five feet below the grade of the adjacent property, minimizing its visual impact from surrounding properties. The land use intensity and dwelling unit density of the site will remain the same.

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 project does not require Design Review under Chapter 13.11 as the project is not resulting in additional square footage.

Variance Findings

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

This finding can be made, in that special circumstances exist on site in terms of the location of existing approved structures on site (approved with building permits in 1957 and 1963), which limit the location of any garage or storage structure on site, and the unusual location of the right-of-way, from which a front yard setback has been established along a portion of the property that is effectively a side yard. The location of the driveway and location of the existing dwelling make the present location of the three-car garage the most appropriate location for a garage on site, which despite the location in the front yard setback is actually the least visually obtrusive location on site due to grade differentiation and the location of the road. Furthermore, the right-of-way only abuts the property at the northwest corner, so the required 20 foot front yard setback along the northern property line abuts State Park land rather than a right-of-way and traveled roadway, functioning more as a side yard than a front yard.

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

This finding can be made, in that the granting of a variance to allow the reconstruction of a garage within the front yard setbacks will maintain the intent and objectives of the zoning ordinance. Due to a decrease in grade of five feet from the adjacent State Park land and the lack of structures or campsites immediately adjacent to the project site (the nearest campsite is about 140 feet away on the other side of a Eucalyptus grove), the garage does not affect access to light and air for neighboring properties, the primary intent of setback regulations. Furthermore, the garage will not be readily visible from State Park lands due to the six foot high wood fence, grade differentiation, and the presence of Eucalyptus trees surrounding the site.

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

This finding can be made, as the granting of the variance to the front yard setback is consistent with variances granted on similar single-family residential zoned lots with existing structures and unusual right-of-way configurations. Variances have been granted in situations where the location of existing (approved) structures limits construction of a garage to a location within the front yard setback, so the granting of the requested variance will not constitute the granting of a special privilege.

Conditions of Approval

Exhibit A: Project plans, five sheets, sheets 1-4 drawn by Clarke Shultes and dated 7/20/04, sheet 5 drawn by Bowman and Williams and dated 1/13/05.

- I. This permit authorizes the re-construction of a wood fence and retaining wall of up to 9 feet in total height along the northern and western property line, recognizes a fence up to six feet in height along the eastern property line, and recognizes repairs to an existing non-conforming garage. Prior to exercising any rights granted by this permit including, without limitation, any construction or site disturbance, the applicant/owner shall:
 - A. Sign, date, and return to the Planning Department one copy of the approval to indicate acceptance and agreement with the conditions thereof.
 - B. Obtain a Building Permit from the Santa Cruz County Building Official.
- 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. The final plans shall include the following additional information:
 1. Details showing compliance with fire department requirements.
 - C. Meet all requirements and pay any applicable plan check fee of the Central Fire Protection District.
 - D. Pay any outstanding Code Compliance investigation fees.
- III. All construction shall be performed according to the approved plans for the Building Permit. Prior to final building inspection, the applicant/owner must meet the following conditions:
 - A. All site improvements shown on the final approved Building Permit plans shall be installed.
 - B. All inspections required by the building permit shall be completed to the satisfaction of the County Building Official.
 - C. The protective construction fencing that exists on the adjacent parcel must be kept in place for the duration of this project and no future encroachments into the eucalyptus grove are permitted.

IV. Operational Conditions

- A. In the event that future County inspections of the subject property disclose noncompliance with any Conditions of this approval or any violation of the County Code, the owner shall pay to the County the full cost of such County inspections, including any follow-up inspections and/or necessary enforcement actions, up to and including permit revocation.

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 from the effective date unless you obtain the required permits and commence construction.

Approval Date: _____

Effective Date: _____

Expiration Date: _____

Don Bussey
Deputy Zoning Administrator

David Keyon
Project Planner

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

CALIFORNIA ENVIRONMENTAL QUALITY ACT

NOTICE OF EXEMPTION

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

Application Number: 04-0489

Assessor Parcel Number: 038-231-06

Project Location: 100New Brighton Road

Project Description: Recognize the construction of a fence within the front yard and remodeling of a non-conforming garage

Person or Agency Proposing Project: Richard Emigh

Contact Phone Number: (831) 479-1452

- 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: 15301: Existing Facilities

F. Reasons why the project is exempt:

Repairs and alterations to existing improvements

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

David Keyon, Project Planner

Date: _____

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SOQUEL RANCHO

PDR. SECS. 11, 12, 13 & 14, T.11S., R.1W., M.D.B. & M.

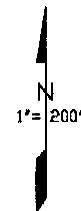
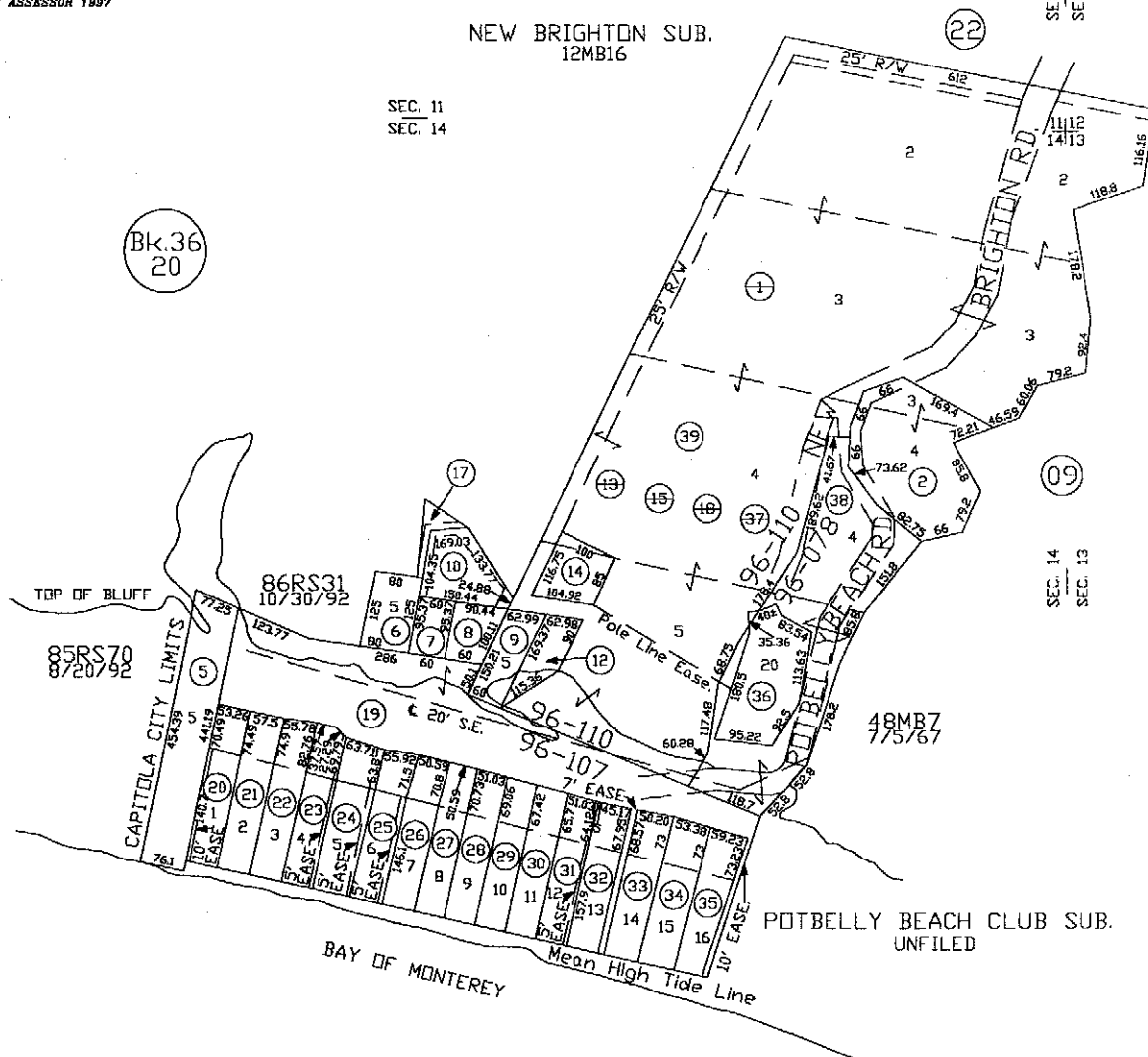
Tax Area Code
96-078 96-107
96-110

38-23

NEW BRIGHTON SUB.
12MB16

SEC. 11
SEC. 14

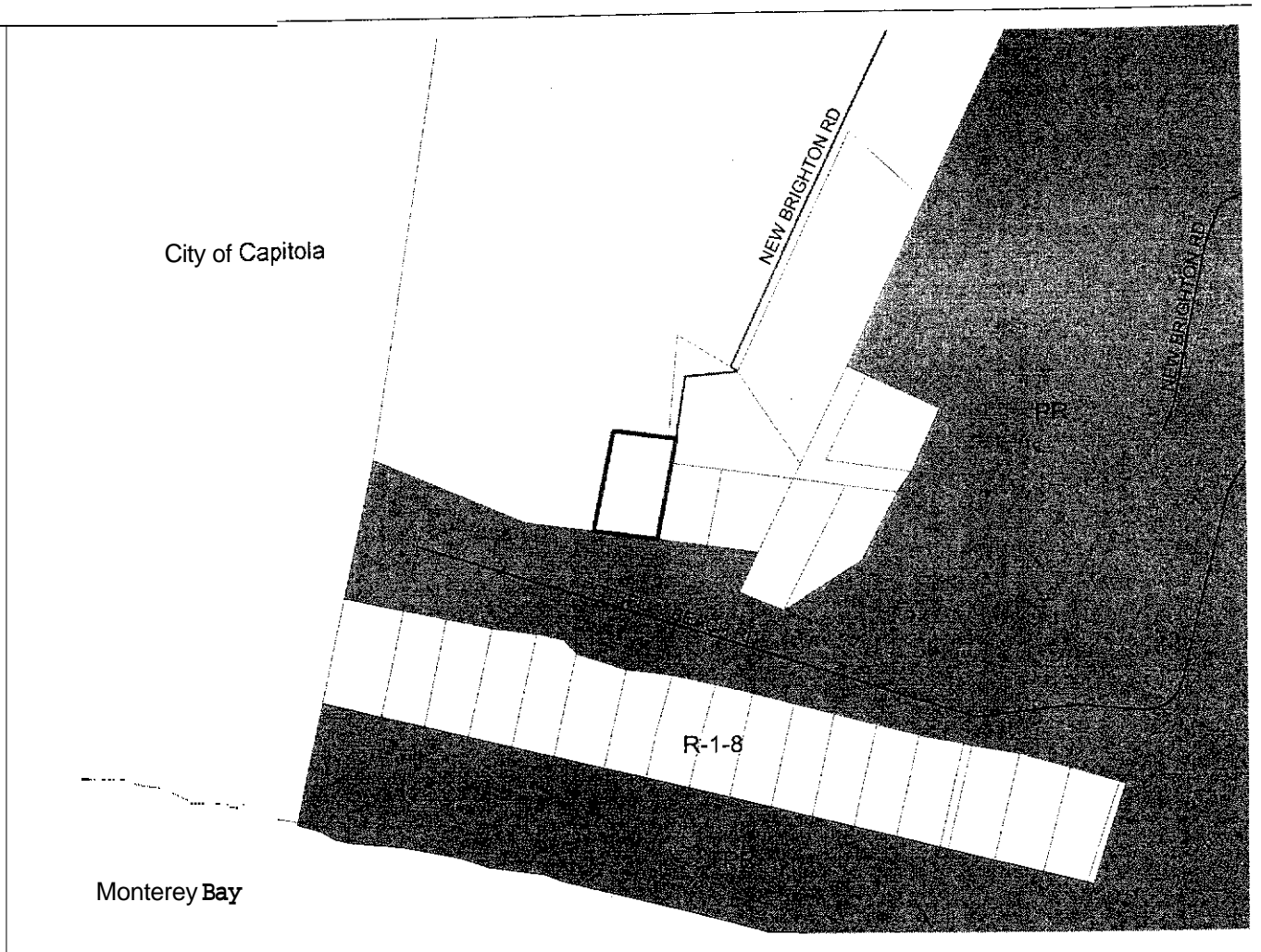
SEC. 12
SEC. 13



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

Assessor's Map No. 38-23
County of Santa Cruz, Cali
Nov., 1997

Zoning Map



500 0 500 Feet

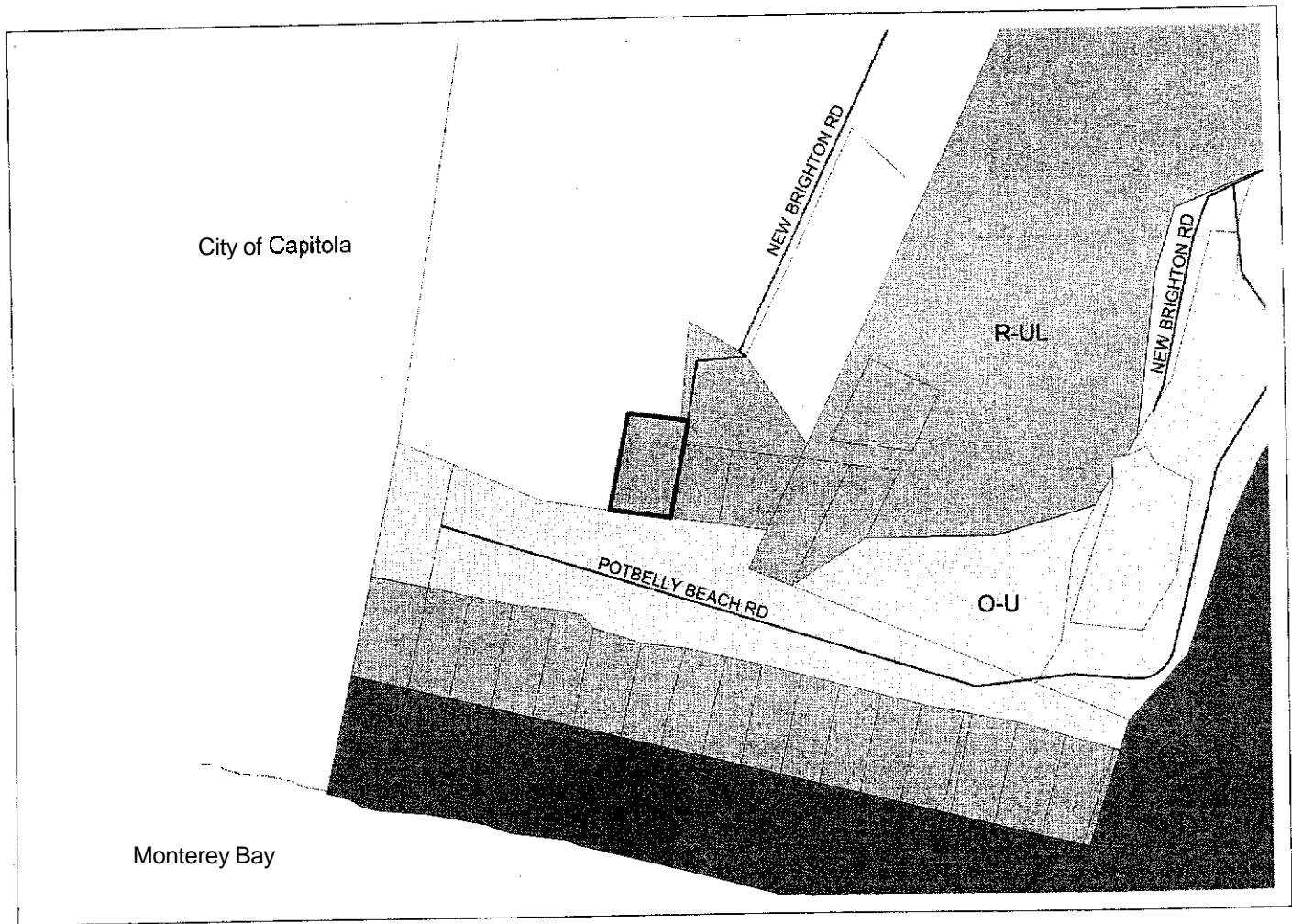
Legend

	APN 038-231-06
	Parcel boundaries
	Streets
	R-1-8
	PR









Map created by Santa Cruz County
Planning Department:
October 2004

General Plan Map



500 0 500 Feet

Legend

-  APN 038-231-06
-  Parcel boundaries
-  Streets
-  Parks and Recreation
-  Residential - Urban Low Density
-  Urban Open Space



Map created by Santa Cruz County
Planning Department:
October 2004



DEPARTMENT OF PARKS AND RECREATION

Ruth Coleman, Director

Santa Cruz District
303 Big Trees Park Rd.
Felton, CA 95018
(831) 335-6318 Fax (831) 335-6394

May 4, 2005

Santa Cruz County Planning Department
701 Ocean Street
Fourth Floor
Santa Cruz CA. 95060

RE: County Application #04-489; APN 038-231-06
James and Linda Thering

The purpose of this letter is to confirm that representatives of California State Parks, Santa Cruz District, have met with Mr. James Thering and his representative on several occasions regarding proposed fence development located adjacent to New Brighton State Beach.

The District has reviewed revised project plans dated 1/12/05 and is pleased to confirm that an earlier planned driveway encroachment on to state park lands has been eliminated. Plans for the proposed fence and its supporting structure have also been reviewed. The District does not have any objection to the fence structure as built and proposed gate modifications. District staff has also reviewed the proposed drainage plan associated with the fence structure and has no objections.

Should you have any questions, please call me at 831) 335-6385.

Sincerely,

Victor S. Roth
Staff Park and Recreation Specialist

cc: James and Linda Thering
100 New Brighton Rd.
Aptos, CA 95003