



Staff Report to the Zoning Administrator

Application Number: **06-0263**

Applicant: Robert Grinager
Owner: Donald Myers
APN: 041-021-16

Agenda Date: October 20, 2006
Agenda Item #: **2**
Time: After 10:00 a.m.

Project Description: Proposal to recognize the construction of a gazebo attached to an existing significantly non-conforming residence. Requires a Residential Development Permit to conduct alterations to a significantly non-conforming structure.

Location: Property located on the southeast side of Bernal Street at the intersection with Valencia Street (at 406 and 408 Bernal Street).

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

Permits Required: Residential Development Permit

Staff Recommendation:

- Certification that the proposal is exempt from further Environmental Review under the California Environmental Quality Act.
- Approval of Application 06-0263, based on the attached findings and conditions

Exhibits

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

Parcel Information

Parcel Size:	About 27,000 square feet
Existing Land Use - Parcel:	Two unit dwelling group
Existing Land Use - Surrounding:	Offices, single and multi-family residential, open space
Project Access:	Bernal Street
Planning Area:	Aptos
Land Use Designation:	C-C and O-U (Community Commercial and Urban Open

**County of Santa Cruz Planning Department
701 Ocean Street, 4th Floor, Santa Cruz CA 95060**

Zone District: Space)
PA and PR (Professional and Administrative Office and
Parks and Recreation)
Coastal Zone: ☐ Inside ☒ Outside
Appealable to Calif. Coastal Comm. ☐ Yes ☒ No

Environmental Information

Geologic Hazards: Not mapped/no physical evidence on site
Soils: Elder Sandy Loam, Lompico-Felton Complex
Fire Hazard: Not a mapped constraint
Slopes: Flat (2% slopes) at project site, steeply sloped at rear to Valencia
Creek
Env. Sen. Habitat: No physical evidence at proposed construction site
Grading: No grading proposed
Tree Removal: No trees proposed to be removed
Scenic: Not a mapped resource
Drainage: Existing drainage adequate
Archeology: No physical evidence on site

Services Information

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

History

The existing duplex (dwelling group) was constructed in 1970 under a building permit issued in 1970 (number 17083), replacing one single-family dwelling. The construction of this duplex did not require a Development Permit at that time, but complied with the parcel's RM-1.5 zoning. A variance to reduce yard requirements was approved under permit 2035-V to construct a 9 unit dwelling group, which was never exercised.

Project Setting

The project site is located on the edge of the Aptos Village planning area, in a neighborhood of single-family dwellings, duplexes, and offices. The site, at about 27,000 square feet, is relatively flat bordering Bernal Street but is steeply sloped to the rear towards Valencia Creek.

Project Scope

In 2004, a gazebo was constructed within a deck area between two existing residences at 406 and 408 Bernal Street without the benefit of a building permit. As the gazebo is constructed to be

part of an existing covered walkway that extends from the carport/laundry room to the dwelling at 408 Bernal Street, it is considered to be “attached” per Section 13.10.700-A of the County Code, and requires a Residential Development Pennit to conduct alterations to a significantly non-conforming structure. The gazebo is not habitable, and will be shared by the inhabitants of both dwellings.

Zoning & General Plan Consistency

The property is zoned PA (Professional Administrative Office) with the rear portion of the site towards Valencia Creek zoned PR (Parks and Recreation). The zoning corresponds to the General Plan Land Use Designations of C-C (Community Commercial) and O-U (Urban Open Space). However, according to the Aptos Village Plan (adopted in April 1979), the site is designated for “Residential-two family attached units.” This designation in the Aptos Village and Planning Department interpretation contend that residential uses are principal permitted uses for PA zoned parcels in this portion of Aptos Village, which adopt RM-3 use and site standards. Therefore, the proposed residential accessory structure is a permitted use in the zone district.

The gazebo itself complies with the RM-3 zone district setbacks from both Bernal Street and the right-of-way accessing 8069,8071, and 8073 Valencia Street. Due to the size of the lot, Lot coverage and floor area ratio will remain below the maximums for the RM-3 zone district. The existing unit at 408 Bernal Street is a significantly non-conforming structure as it encroaches

Non-conforming dwelling group

The dwelling group is a non-conforming use as the structures were constructed prior to the adoption of standards for residential dwelling groups. Per Section 13.10.261 of the County Code (Residential Non-conforming uses), a non-conforming dwelling group may continue to exist as long as one unit is determined to be the conforming unit, at the choice of the property owner (in this case 408 Bernal Street, per the previously recorded Statement of Acknowledgement). The gazebo is a non-habitable accessory structure that is attached to 408 Bernal Street via a continuous roofline for a covered walkway running from the carport. The gazebo does not constitute a physical expansion or intensification of the non-conforming unit (406 Bernal Street), as it does not share a common wall or interior access with this unit.

Significantly non-conforming structure

The structure for 408 Bernal Street is significantly non-conforming to site standards as it encroaches into a 15 foot wide right-of-way serving three separate dwellings to the north of the project site, and other portions lie within 5 feet of the edge of this right-of-way. Recognition of the construction of the attached gazebo will comply with County Code Section 13.10.265(j) as the significantly non-conforming portion of the structure will not be altered, and the retention of the existing non-conforming portion will not be detrimental to the health, safety, or welfare of persons residing in the vicinity.

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 **06-0263**, 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

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Significantly Non-Conforming Structure Findings

1. That the existing structure and the conditions under which it would be operated and maintained is not detrimental to the health, safety, or welfare of persons residing or working in the vicinity or the general public. or be materially injurious to properties or improvements in the vicinity.

This finding can be made, in that the portion of 408 Bernal Street that encroaches into the private right-of-way or is within 5 feet of the private right-of-way will not obscure visibility of vehicles or pedestrians using the right-of-way, nor will it block access to light, air and open space. The 15 foot wide right of way at the location of the significantly non-conforming structure is essentially a driveway serving one single-family dwelling at 8073 Valencia Street, and is not heavily traveled. Furthermore, since most of paving is located on the adjacent parcels to the north, about 10 feet of vegetation exists between the encroaching portion of the structure and the pavement as traveled.

2. That the retention of the existing structure will not impede the achievement of the goals and objectives of the County General Plan, or of any Specific Plan which has been adopted for the area.

This finding can be made, in that the retention of the existing structure will comply with the County General Plan (including Policy 8.4.2, retaining existing housing) and the Aptos Village Plan. The existing significantly non-conforming dwelling will not be detrimental to the health, safety, or welfare of the surrounding neighborhood as the right of way is a driveway serving one house at this location (with low traffic volumes), and the distance between the structure and the paved road is at least 10 feet, allowing adequate visibility for vehicles and pedestrians. The structure complies with the Aptos Village plan, which calls for residential uses at this location, and specifically calls out the "Bernal Street Duplex" as an example of preferred architectural style in the neighborhood.

3. That the retention of the existing structure will compliment and harmonize with the existing and proposed land uses in the vicinity and will be compatible with the physical design aspects of the neighborhood.

This finding can be made, in that the retention of the existing significantly non-conforming structure will complement the existing pattern of development in the neighborhood, where a number of non-conforming structures currently exist (though not significantly non-conforming).

4. That the proposed project will not increase the nonconforming dimensions of the structure unless a Variance Approval is obtained.

This finding can be made, in that no changes are proposed for the significantly non-conforming portions of the structure.

Development Permit Findings

1. That the proposed location of the project and the conditions under which it would be operated or maintained will not be detrimental to the health, safety, or welfare of persons residing or working in the neighborhood or the general public, and will not result in inefficient or wasteful use of energy, and will not be materially injurious to properties or improvements in the vicinity.

This finding can be made, in that the gazebo will be required to obtain a building permit, and will be checked for compliance with the uniform building code for structural stability. As the gazebo will be in an interior courtyard bounded by two dwelling units and a carport, it will not result in any additional impacts (visual or otherwise) on the surrounding neighborhood.

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 gazebo complies with all applicable RM-3 setbacks and site standards, and with the residential uses outlined for the area in the Aptos Village plan, as the gazebo is a non-habitable accessory structure subordinate to the primary residential use on site.

The gazebo complies with Section 13.10.261 of the County Code (Residential Non-Conforming uses), as it does not constitute a physical expansion or intensification of the non-conforming unit (406 Bernal Street) as it is non habitable structure that *is* accessory to the conforming residential unit on site (408 Bernal Street), and does not share a common wall or interior access with the non-conforming unit (406 Bernal Street).

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 gazebo is accessory to the residential use on site, which is consistent with the use and density requirements specified for the zone district in this portion of Aptos Viilage.

The gazebo will not adversely impact the light, solar opportunities, air, and/or open space available to other structures or properties, and meets all current site and development standards for the zone district as specified in Policy 8.1.3 (Residential Site and Development Standards Ordinance).

The gazebo will not be improperly proportioned to the parcel size or the character of the neighborhood as specified in General Plan Policy 8.6.I (Maintaining a Relationship Between Structure and Parcel **Sizes**), as the floor area ratio and lot coverage for the site will be consistent with residentially zoned parcels of a similar size.

The gazebo complies with the Aptos Village Plan, in that it is residential in character and is located in a portion of Aptos Village designated for residences, and the gazebo is accessory to

this use.

4. That the proposed use will not overload utilities and will not generate more than the acceptable level of traffic on the streets in the vicinity.

This finding can be made, in that the gazebo is non habitable and will not generate additional traffic.

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 gazebo is constructed of wood and will be finished to match the existing structures on site (condition of approval II.B.1). As the gazebo is located in the center of an existing cluster of structures, it will harmonize with the existing structures when viewed from neighboring properties or Bernal Street.

Conditions of Approval

Exhibit A: Project plans, three sheets. drawn by Robert Grinager, dated June 19, 2006.

- I. This permit authorizes the construction of a gazebo on site with an existing significantly non-conforming structure and non-conforming dwelling group. 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.
 - C. Obtain an Encroachment Pennit from the Department of Public Works for all off-site work performed in the County road right-of-way.
- 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. Identify finish and color of exterior materials and roof covering for Planning Department approval. These colors and materials shall match those of the existing residences. Any color boards must be in 8.5" x 11" format.
 2. Details showing compliance with fire department requirements, including all requirements of the Urban Wildland Intermix Code, if applicable.
 3. Clearly identify or note on the plans that no work is proposed for the non-conforming unit 1406 Bernal Street) or to the portion of 408 Bernal Street within the street-side yard setback.
 - 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 Zone 6 drainage fees to the County Department of Public Works, Drainage. Drainage fees will be assessed on the net increase in impervious area.
 - E. Meet all requirements and pay any applicable plan check fee of the Aptos/La Selva Fire Protection District.
 - F. Submit a written statement signed by an authorized representative of the school district in which the project is located confirming payment in full of all applicable developer fees and other requirements lawfully imposed by the school district.
 - G. Complete and record a Declaration of Acknowledgment of a Significantly Non-Conforming Structure. **You may not alter the wording of this declaration.** Follow the instructions to record and return the form to the Planning Department.
- III. All construction shall be performed according to the approved plans for the Building Pennit. 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.
- IV. Operational Conditions
- A. Future alterations to either dwelling units will require the property owner to decide which unit is the conforming unit and which unit is the non-conforming unit in terms of use. Alterations, additions, and maintenance of the non-conforming unit shall be subject to County Code Section 13.10.261 of the County Code (Residential Non-conforming Uses).
 - B. In the event that future County inspections of the subject property disclose noncompliance with any Conditions of this approval or any violation of the County Code, the owner shall pay to the County the full cost of such County inspections, including any follow-up inspections and/or necessary enforcement actions, up to and including permit revocation.
- V. As a condition of this development approval, the holder of this development approval ("Development Approval Holder"), is required to defend, indemnify, and hold harmless the COUNTY, its officers, employees, and agents, from and against any claim (including attorneys' fees), against the COUNTY. it officers, employees, and agents to attack, set aside, void, or annul this development approval of the COUNTY or any subsequent amendment of this development approval which is requested by the Development Approval Holder.

- A. COUNTY shall promptly notify the Development Approval Holder of any claim, action, or proceeding against which the COUNTY seeks to be defended, indemnified, or held harmless. COUNTY shall cooperate fully in such defense. If COUNTY fails to notify the Development Approval 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.

Please note: **This** permit expires 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

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: 06-0263
Assessor Parcel Number: 041-021-16
Project Location: 406 Bernal St.

Project Description: Construct gazebo on property with two existing residences

Person or Agency Proposing Project: Robert Grinager

Contact Phone Number: (831) 662-2200

- 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(e): Minor addition to an existing structure

F. Reasons why the project is exempt:

Construction of a non-habitable accessory structure (gazebo) on site with two existing dwelling units

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

David Keyon, Project Planner

Date: _____

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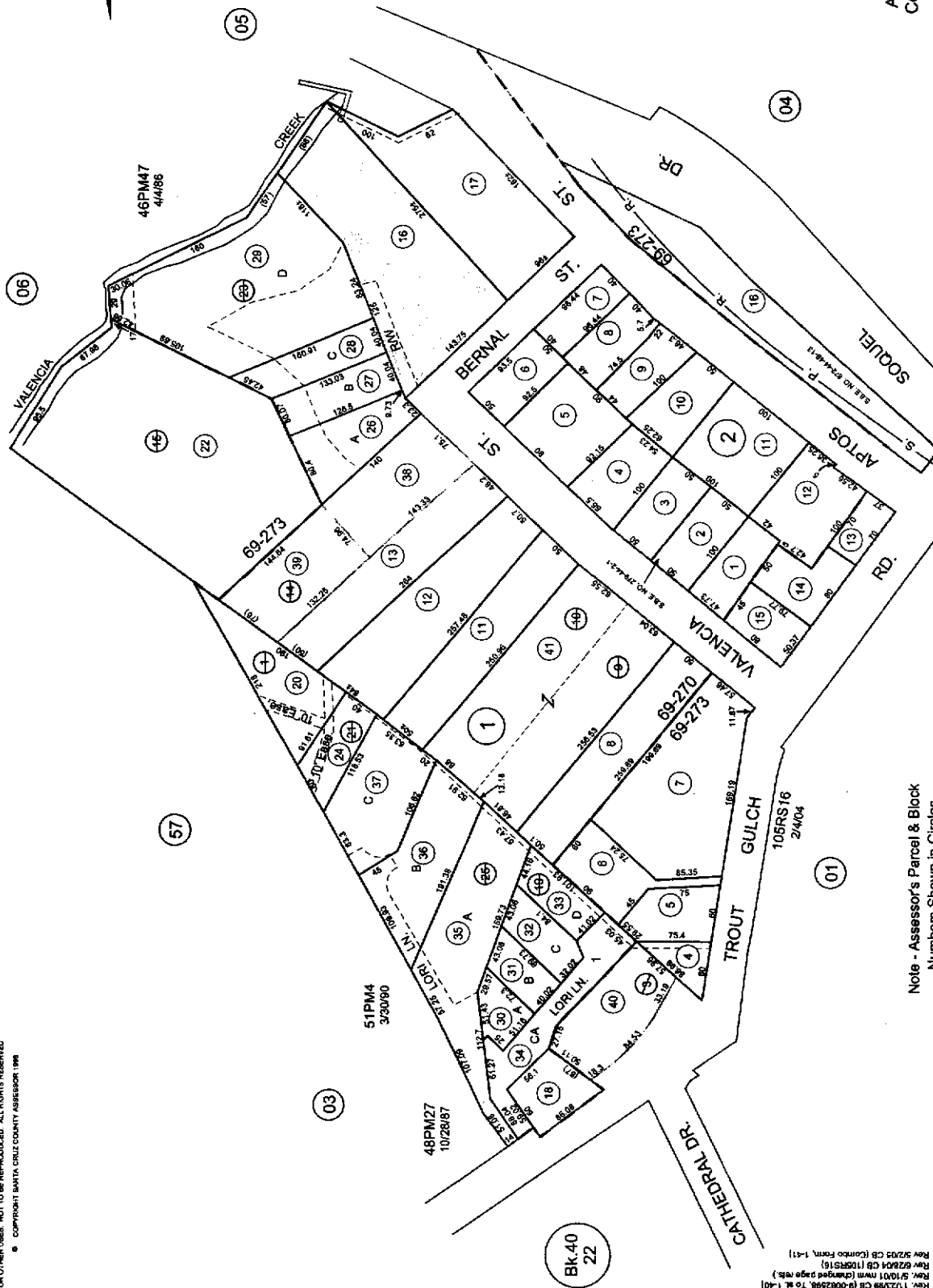
POR. APTOS RANCHO

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

Tax Area Code
69-270 69-273

41-02

1" = 100'



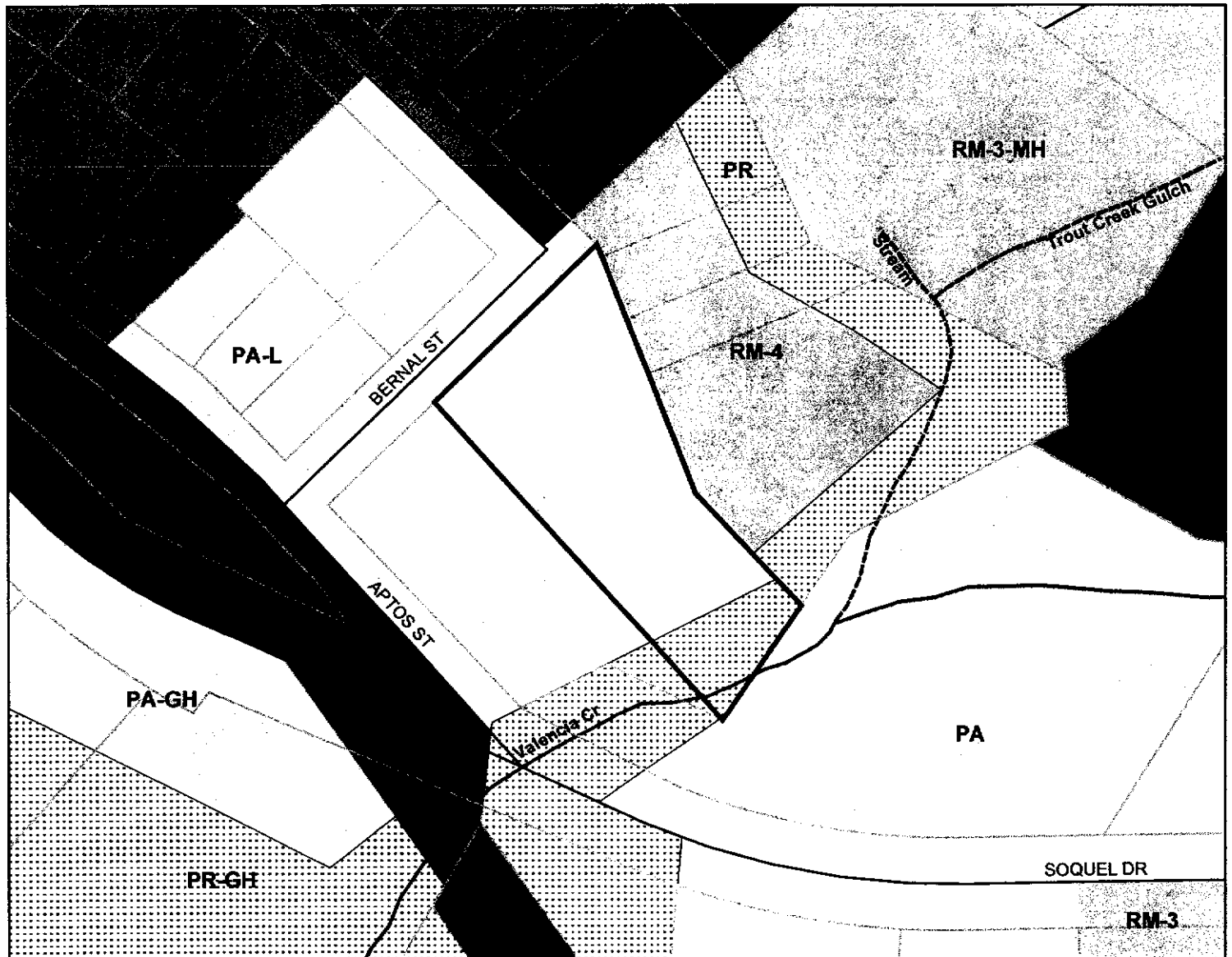
Assessor's Map No. 41-02
County of Santa Cruz, Calif.
Dec. 1998

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

Electronically Redrawn 12/1/98 by
Rev. 3/16/88 CB (Add R/W Lot L.N.)
Rev. 5/24/88 CB (Tax Consideration)
Rev. 1/22/89 CB (Revised page refs.)
Rev. 5/10/91 mmm (changed page refs.)
Rev. 6/28/04 CB (100RS16)
Rev. 5/2/05 CB (Combo Form 1-41)

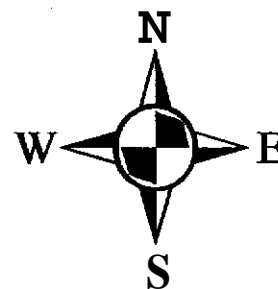


Zoning Map



Legend

- APN 041-021-16
- Assessors Parcels
- Streets
- INTERMITTENT STREAM
- PERENNIAL STREAM
- COMMERCIAL-PROF OFFICE (PA)
- RESIDENTIAL-MULTIFAMILY (RM)
- COMMERCIAL-NEIGHBORHOOD (C-1)
- PUBLIC FACILITY (PF)
- PARK (PR)



Map Created by
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May 2006

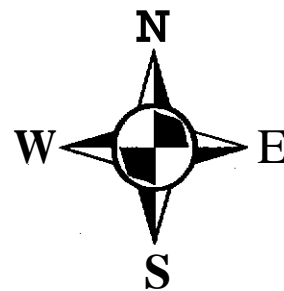


General Plan Designation Map



Legend

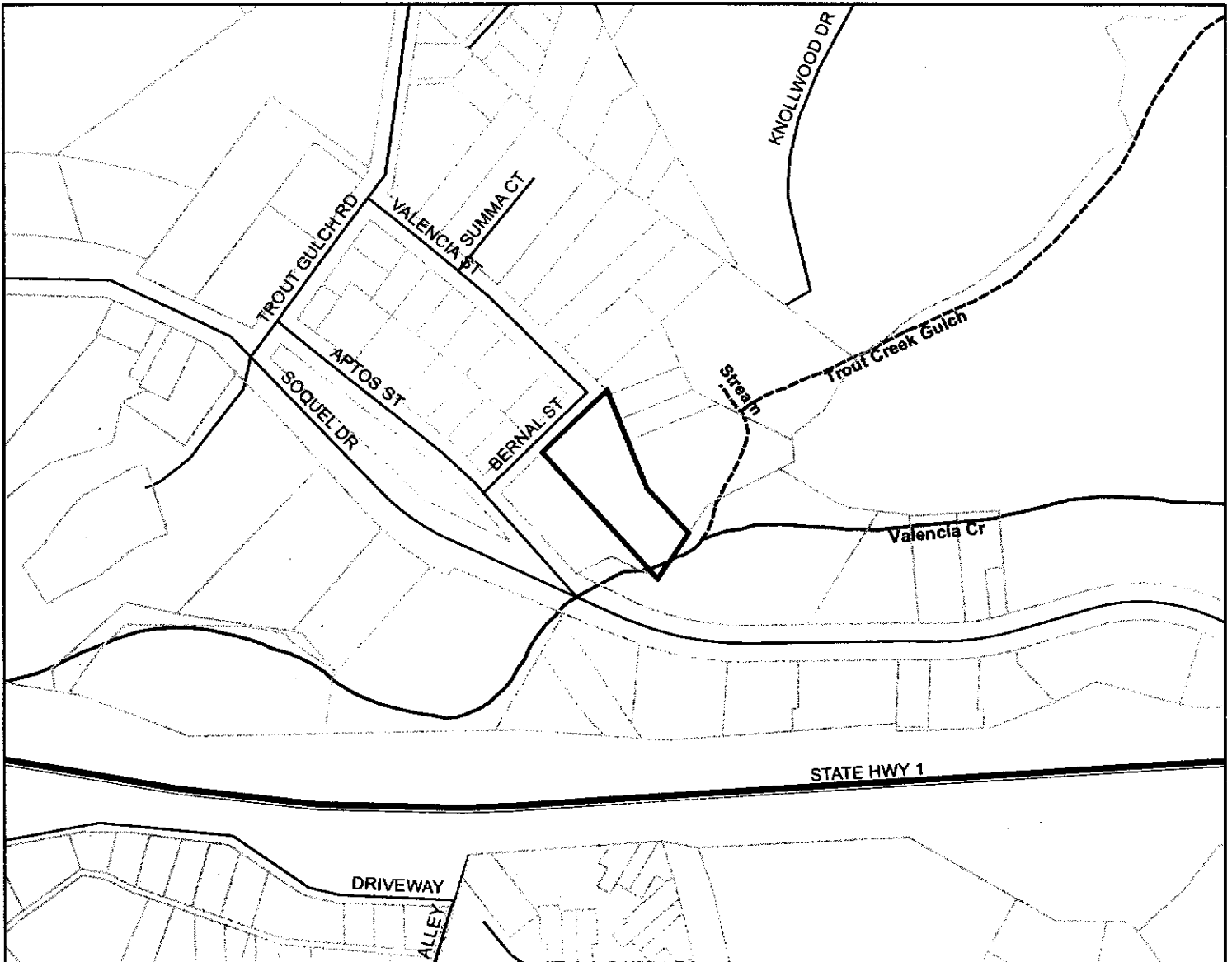
- APN 041-021-16
- Assessors Parcels
- INTERMITTENT STREAM
- PERENNIAL STREAM
- Commercial-Community(C-C)
- Residential- Urban Medium Density (R-UM)
- Urban Open Space (O-U)
- Commercial-Office(C-O)
- Public Facilities(P)
- Residential- Urban High Density (R-UH)









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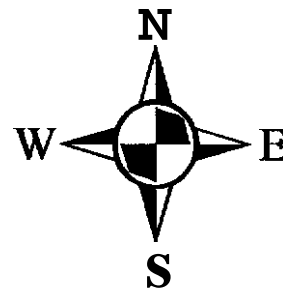


Location Map



Legend

-  APN 041-021-16
-  Assessors Parcels
-  Streets
-  State Highways
-  INTERMITTENT STREAM
-  PERENNIAL STREAM



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