

**MEMORANDUM**

Date: April 14, 2009

To: Glenda Hill, Zoning Administrator

From: Porcila Perez, Development Review Planning Staff

Re: Renotice of Application 08-0367 to include the rear panels and gates

Agenda Date: May 1, 2009

Agenda Item: 3

Time: After 10:00 a.m.

On March 20, 2009 a public hearing was held for Application 08-0367, which was continued from a public hearing on March 6, 2009 per the Zoning Administrator's request for additional information. The applicant is requesting an Amendment to Coastal Development Permits 88-0599 and 93-0258 to allow the construction of six- foot electric gates and fence.

The additional analysis requested by the Zoning Administrator included: additional diagrams showing the required parking spaces with the alternative gate and fence design, and photos of a larger car parked in space #2. The applicant provided staff with additional diagrams that included gates and panels at the rear of the structure, which were not noticed for a Coastal Permit. The Zoning Administrator remanded the proposal to staff for further analysis and to renote the proposal to include the fence along the rear property line and the gate at the base of the stairs.

The applicant seeks to prevent the public from cutting through the carport to access the pedestrian easement or vandalizing the property, this can be achieved by placing panels at the rear of the structure with a gate to access the 37 foot pedestrian easement and placing a gate at the base of the stairs, while still maintaining the function of an open carport.

As previously stated, Variance 88-0599 was granted to reduce the required 20-foot setback between the right of way (Beach Drive) and the entrance of a carport without gates. Enclosing the carport with gates causes the spaces to function more as a garage. Variances to reduce the 20-foot setback to the face of a garage have been approved in locations where there is sufficient area outside of the traveled roadway or right of way for a car to pull off the road. However, this is not the case in this situation, where the right of way abuts the property line and the only area available for a waiting car that is not used as the traveled road is an approximately 3-4 foot sidewalk that is used by pedestrians. In addition, the gates do not meet Department of Public Works, Road Engineering criteria which requires a setback between the right of way and face of garage.

The home is not a primary residence and is occupied only intermittently, the applicant has provided two alternatives to the original proposal, in both of which will enclose the carport only when the home is no being used. This reduces the number of times a car will stop in the road and block traffic to a very small number. Either alternative is superior to the original proposal. Alternative 1 proposes to enclose space #1 to provide an enclosed area for security when the home is not occupied while Alternative 2 proposes to enclose space #2. Based on the information submitted, if the Zoning Administrator chooses to approve the enclosure of the parking area, staff

would support Alternative 1 and no enclosure on parking space #2. By maintaining space #2 open, alternative #1 provides an area outside of the road for a car to pull off, while still providing a secured parking space off street. Parking space #1 is more difficult to maneuver into and therefore is better suited as the enclosed parking area.

#### **RECOMMENDATION:**

Based on the Coastal Development Permit findings, Residential Development Permit findings and revised Residential Development Permit Findings (Exhibit 2B), staff recommends:

**APPROVAL** of Application 08-0367 to construct a fence and gate at the rear property line, a gate at the base of the stairs, removable panel at space #1 and the portion that rectifies the code violation, and

**DENIAL** of Application 08-0367 to construct fence, panel or gate at the entrance to the carport for space #2.

#### **Exhibits:**

- 2A. Revised Project Plans and Letter, dated March 10, 2009
- 2B. Revised Findings
- 2C. Conditions of Approval
- 2D. Categorical Exemption (CEQA determination)
- 2E. Staff Report dated March 6 and March 20, 2009
- 2F. Copy of stolen vehicle report, dated 3/19/09
- 2G. Letter from Dennis J. Kehoe, dated 4/17/09

[REDACTED]

Powers Land Planning, Inc.

TRANSMITTAL

[REDACTED]

DATE: April 10, 2009

SUBJECT: Nelson

APPLICATION NO.: 08-0367 PERMIT NO.: \_\_\_\_\_

ASSESSOR'S PARCEL NUMBER: 043-072-01

ATTENTION TO: Porcila Wilson

FROM: Ron Powers *R*

DESCRIPTION OF MATERIAL ATTACHED:

- Two Alternatives for gates/panels

SPECIAL INSTRUCTIONS:

Hi Porcila,

Attached are 2 alternatives for the gates and panels for you and Glenda to consider.  
Alternate 1 proposes to enclose space #1 for security when the house is not occupied and  
Alternate 2 proposes to enclose space #2 for security when the house is not occupied.

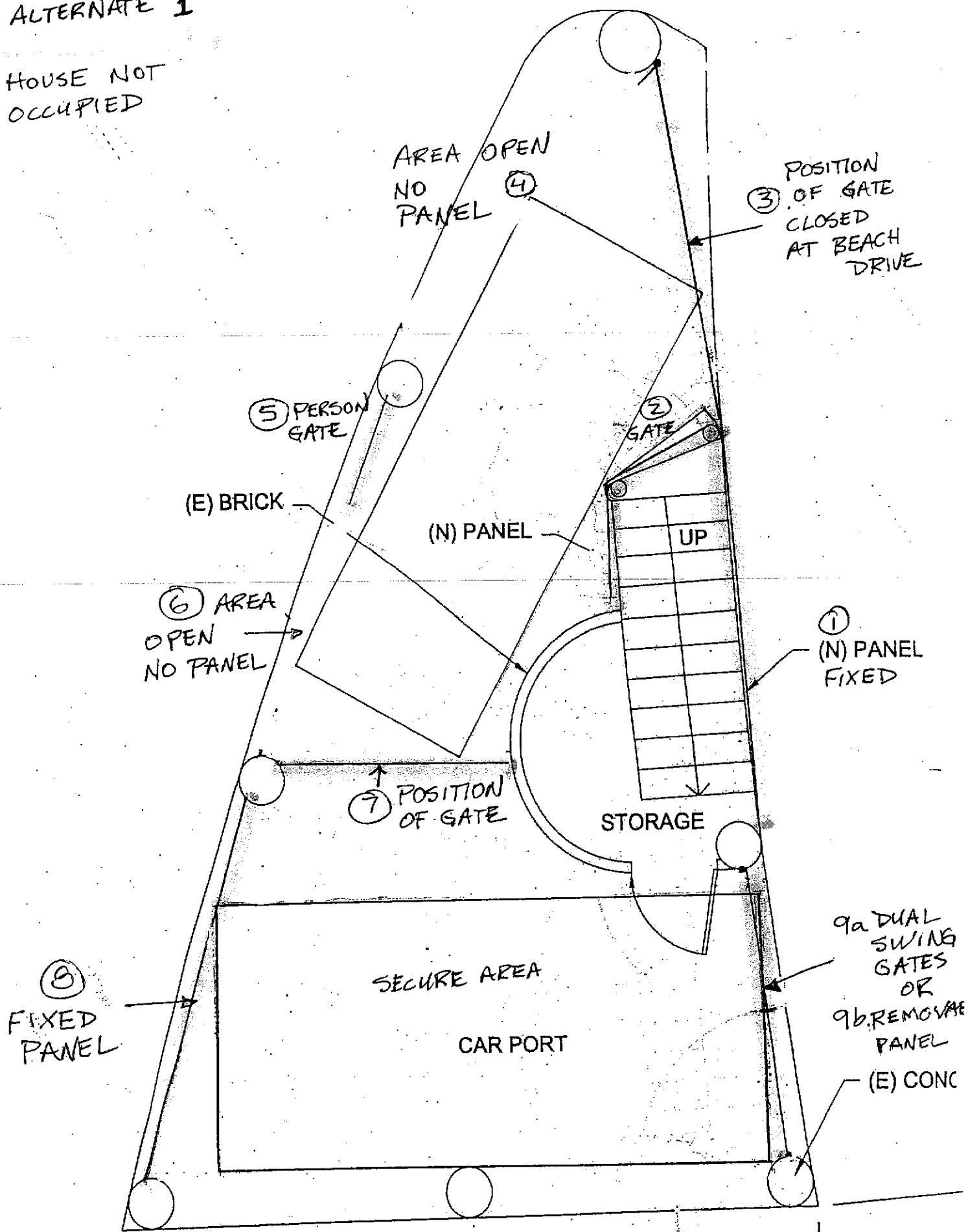
Obviously, we are hoping to be able to allow one or the other area to be secured along the  
Beach Drive side.

1607 Ocean Street, Suite 8  
Santa Cruz, CA 95060

Phone: 831-426-1663  
Fax: 831-426-1679  
Email: [ron@powersplanning.com](mailto:ron@powersplanning.com)

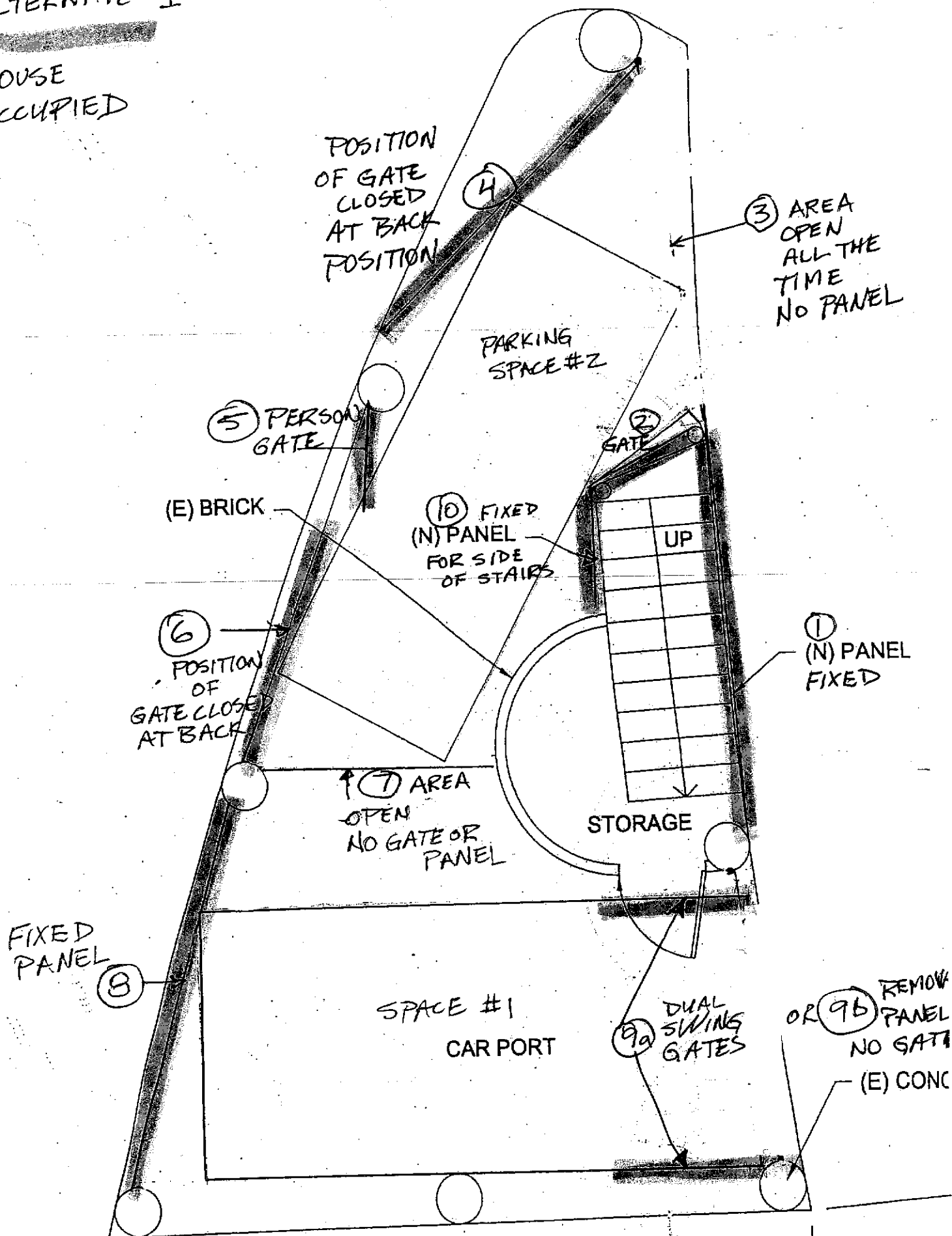
# ALTERNATE 1

HOUSE NOT  
OCCUPIED



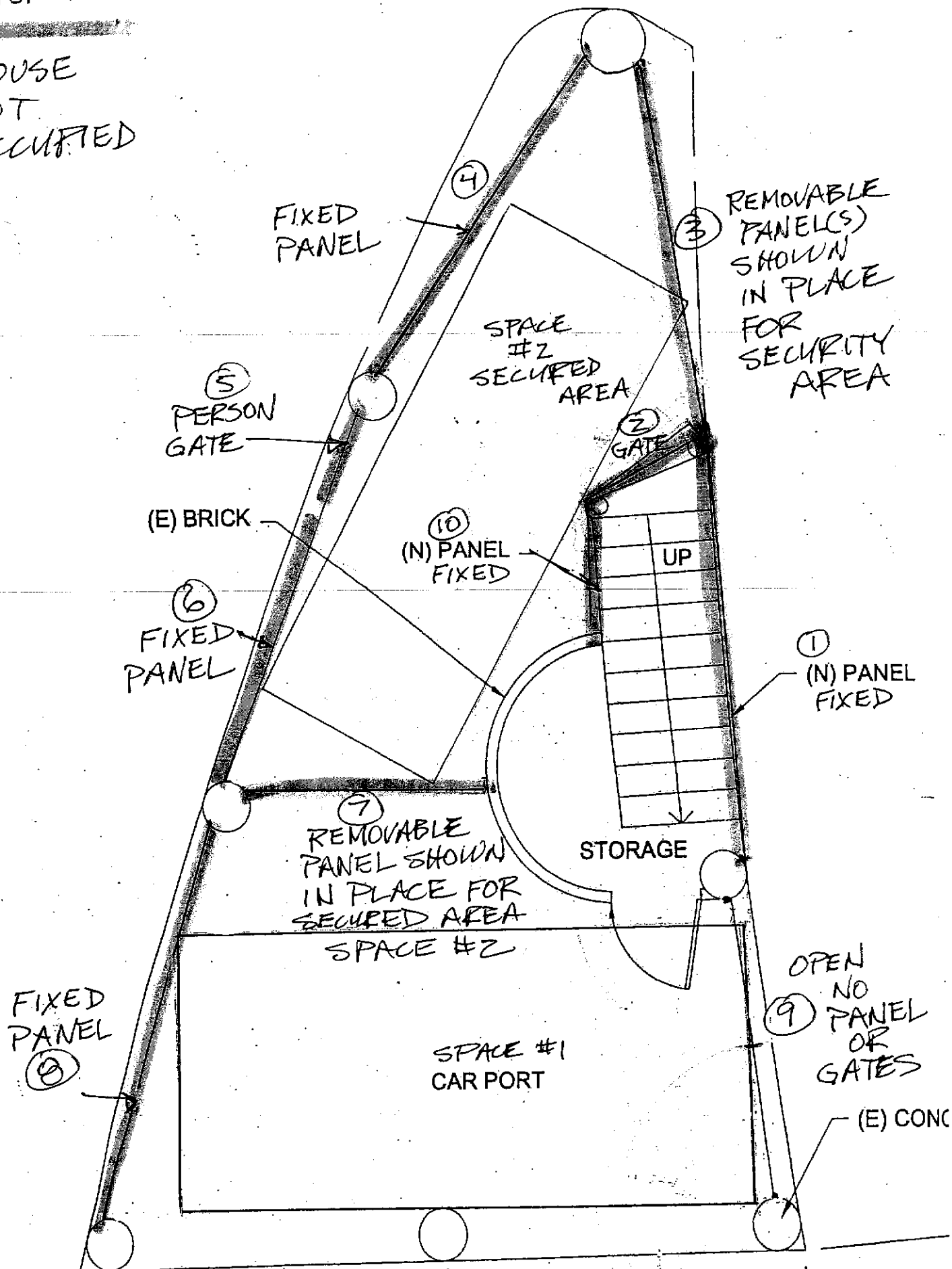
# ALTERNATE 1

HOUSE  
OCCUPIED



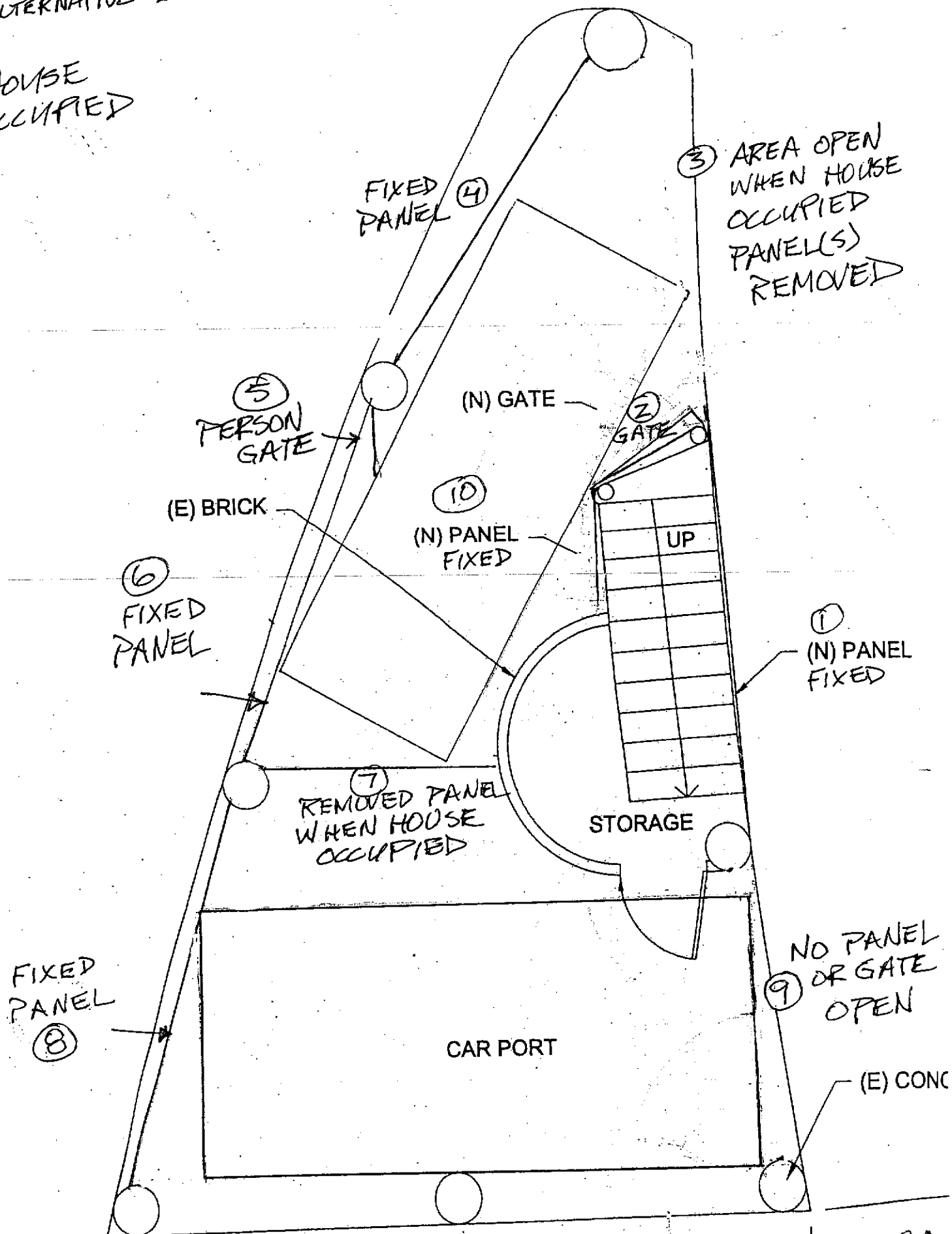
ALTERNATE 2

HOUSE  
NOT  
OCCUPIED



ALTERNATIVE 2

HOUSE  
OCCUPIED



## Revised 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 RM 2.5 (Multi-Family Residential-2,500 square foot minimum), a designation which allows residential uses. The proposed fence at the rear of the property, the removable panel on space #1, and gate at the base of the stairs are a principal permitted use within the zone district, consistent with the site's (R-UH) Urban High 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 such as public access, utility, or open space easements or development restriction in that no such easements or restrictions are known to encumber the project site. The proposed panels, gate and fence will be located entirely on the subject property and will not encroach onto the 37-foot pedestrian easement located adjacent to the rear of the property. In addition, access to the beach is located approximately 75 feet northwest up the street at Rio Del Mar State Beach.

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 is consistent with the surrounding neighborhood in terms of style, as fences in the area are of similar design. The development site is located on a prominent beach however, panels are proposed to be black iron gates of open design, which have been found to be consistent with Chapter 13.20 design criteria by the Urban Designer. A condition of approval has been included that the gates shall be maintained of an open design and color with any changes to be approved by the Urban Designer.

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 even though the project site is located between the shoreline and the first public road, the fence will not interfere with public access to the beach, ocean, or any nearby body of water because access is available approximately 75 feet northwest up the street at Rio Del Mar State Beach. 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.

Application #: 08-0367

APN: 043-072-01

Owner: Barbara Nelson

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 where other fences are composed of an open metal design. Additionally, fences and gates are allowed uses in the RM 2.5 (Residential-2,500 square foot minimum) zone district of the area, as well as the General Plan and Local Coastal Program land use designation. Developed parcels in the area contain single family dwellings with metal fences and gates which are of an open design and made of metal.

## Revised Residential 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 six foot high fence along the rear of the property and panel on space #1 will not interfere with sight distance for vehicles to turn on to and off of Beach Drive in a safe manner, in that the design of the fence meets County design criteria related to street intersection sight distance. The removable panel to be placed on space #1 will only be in place when the home is occupied and by maintaining space #2 open, it provides an area for a car to pull off the road.

The location of the fence along the rear property line, panel on space #1 and the gate at the base of the stairs on the property and the design does not contain any corners or pockets that would conceal persons with criminal intent as it is of an open design and a condition of approval has been included that it be maintained open in design.

The design of the fence will not utilize an excessive quantity of materials or energy in its construction or maintenance, in that the fence is a relatively insignificant structure that is accessory to the residential use allowed on the property.

The design and location of the fence, panel and gate will not adversely impact the available light or the movement of air to properties or improvements in the vicinity, in that the fence shall not exceed the six-foot height limit that would be allowed without a discretionary approval or a building permit. Furthermore, the fence is of open metal design that will be constructed to breakaway in compliance with Federal Emergency Management Agency requirements.

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 proposed fence along the rear property line, removable panel on space #1 and the gate at the base of the stairs and the conditions under which it would be operated or maintained will be consistent with the purpose of the RM 2.5 (Residential Multi-Family, 2,500 square foot minimum) zone district in that the primary use of the property will be residential, and a fence is a normal ancillary use in the zone district. Specific regulations for fencing and walls are contained in section 13.10.525. This proposal complies with the requirements and intents of that section, in that:

- The fence along the rear property line, removable panel on space #1 and the gate at the base of the stairs will be situated on the property in a manner that allows adequate sight distance for vehicles traveling along the roadway as well

as entering and exiting the property, in that the fence is set back from the traveled roadway and the applicant has designed the fence to meet County design criteria related to street intersection sight distance. The panel on space #1 is removable and does not exacerbate the sight distance condition that currently exists. In addition, the property will maintain space #2 as open on Beach Drive to provide an area for a car to pull off the road.

- The fence, panel and gate are made of an open design. In addition the fence will be set back from the street and allow adequate light and air to pass through to the street area and is made of an open design.
- The location of the fence and gate on the property and the open design of the fence and gate does not contain any corners or pockets that would conceal persons with criminal intent.

3. That the proposed use is consistent with all elements of the County General Plan and with any specific plan which has been adopted for the area.

This finding can be made, in that the proposed fence along the rear property line and gate at the base of the stairs is set back from the road and allows adequate sight distance consistent with road standards specified in the General Plan. The project is located in the R-UH (Urban High Residential) land use designation. The removable panel on space #1 will not exacerbate sight distance as this is already constrained by the existing building and stairway.

A specific plan has not been adopted for this portion of the County.

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

This finding can be made, in that the proposed fence at the rear of the property, removable panel on space #1 and gate at the base of the stairs will not generate any additional traffic on the streets in the vicinity, in that any associated electrical lights or gate motors do not create a significant draw on electrical utilities. Furthermore, the location of the fence at the rear of the property and removable panel on space #1 will not generate additional traffic, as space #2 within the carport will remain open on Beach Drive for cars to pull off the road.

5. That the proposed project will complement and harmonize with the existing and proposed land uses in the vicinity and will be compatible with the physical design aspects, land use intensities, and dwelling unit densities of the neighborhood.

This finding can be made, in that the proposed fence and gate will be compatible with the visual character of the neighborhood due to its height, design, and location. The proposed black color and open design are typically used on fences that are found along Beach Drive. The proposed fence at the rear of the property does not alter or increase the density or intensity of residential use within the surrounding neighborhood.

## Conditions of Approval

Exhibit 2A: Alternative 1 and 2, prepared by Powers Land Planning.

- I. This permit authorizes the construction of a six-foot fence and gate along the rear property line and a gate at the base of the stairs, and the removal of railing on the rooftop and ladder up to the rooftop. This approval does not confer legal status on any existing structure(s) or existing use(s) on the subject property that are not specifically authorized by this permit. Prior to exercising any rights granted by this permit including, without limitation, any construction or site disturbance, the applicant/owner shall:
  - A. Sign, date, and return to the Planning Department one copy of the approval to indicate acceptance and agreement with the conditions thereof.
  - B. Obtain a Building Permit from the Santa Cruz County Building Official, if necessary.
    1. Any outstanding balance due to the Planning Department must be paid prior to making a Building Permit application. Applications for Building Permits will not be accepted or processed while there is an outstanding balance due.
  - C. Obtain an Encroachment Permit 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. One elevation shall indicate materials and colors as they were approved by this Discretionary Application. If specific materials and colors have not been approved with this Discretionary Application, in addition to showing the materials and colors on the elevation, the applicant shall supply a color and material board in 8 1/2" x 11" format for Planning Department review and approval of the Urban Designer.

2. Revise plans to show a removable panel on space #1 and remove the panel on space #2.
  3. Details showing compliance with fire department requirements.
- C. Meet all requirements and pay any applicable plan check fee of the Aptos/La Selva Beach Fire Protection District.
- 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. Pursuant to Sections 16.40.040 and 16.42.100 of the County Code, if at any time during site preparation, excavation, or other ground disturbance associated with this development, any artifact or other evidence of an historic archaeological resource or a Native American cultural site is discovered, the responsible persons shall immediately cease and desist from all further site excavation and notify the Sheriff-Coroner if the discovery contains human remains, or the Planning Director if the discovery contains no human remains. The procedures established in Sections 16.40.040 and 16.42.100, shall be observed.
- IV. Operational Conditions
- A. In the event that future County inspections of the subject property disclose noncompliance with any Conditions of this approval or any violation of the County Code, the owner shall pay to the County the full cost of such County inspections, including any follow-up inspections and/or necessary enforcement actions, up to and including permit revocation.
  - B. All gates and panels installed below the base flood elevation shall be of breakaway construction as detailed in section 16.10.070(h).5.(vi) to allow for coastal flooding and prevent the accumulation of debris under or adjacent to the structure.
  - C. No encroachment is permitted onto the 37 foot pedestrian easement.
  - D. The fence and gate shall maintain an open design. The Urban Designer shall approve any changes to color and materials.
- V. As a condition of this development approval, the holder of this development approval ("Development Approval Holder"), is required to defend, indemnify, and hold harmless the COUNTY, its officers, employees, and agents, from and against any claim (including attorneys' fees), against the COUNTY, its officers, employees, and agents to attack, set

aside, void, or annul this development approval of the COUNTY or any subsequent amendment of this development approval which is requested by the Development Approval Holder.

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

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

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

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

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

Application #: 08-0367  
APN: 043-072-01  
Owner: Barbara Nelson

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

\_\_\_\_\_  
Glenda Hill  
Deputy Zoning Administrator

\_\_\_\_\_  
Porcila Perez Wilson  
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: 08-0367

Assessor Parcel Number: 043-072-01

Project Location: 202 Beach Drive Aptos

**Project Description:** Proposal to enclose the front and back of the carport with a combination of 6 foot tall, fixed and portable panels/gates, to place a gate at the base of the stairway and remove unpermitted railing on top of the roof.

**Person or Agency Proposing Project:** Barbara Nelson C/O Powers Land Planning

**Contact Phone Number:** 831-426-1663

- 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 3- New construction or conversion of small structure (Section 15303)

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

Accessory structures such as garages and carports.

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

\_\_\_\_\_  
Porcila Perez Wilson, Project Planner

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

**STAFF REPORT  
EXHIBIT 2E  
ZONING ADMINISTRATOR HEARING  
DATED MARCH 3 AND MARCH 20, 2009**

**MEMORANDUM**

Date: March 13, 2009  
To: Glenda Hill, Zoning Administrator  
From: Porcila Perez, Development Review Planning Staff  
Re: Additional information requested for Application 08-0367

Agenda Date: May 1, 2009  
Agenda Item #: 3  
Time: After 10:00 a.m.

On March 6, 2009 a public hearing was held for Application 08-0367, which is a request for an Amendment to Coastal Development Permits 88-0599 and 93-0258 to allow the construction of six-foot electric gates and fence. The Zoning Administrator remanded the proposal to staff for further analysis.

The additional analysis requested by the Zoning Administrator included: additional diagrams showing the required parking spaces with the alternative gate and fence design, and photos of a larger car parked in space #2.

Based on the submitted information, the diagrams show a substandard parking space #2 which does not coincide with the 8 ½' by 18' parking space (County Code 13.10.554) that was approved on Exhibit A of Permit 88-0599. It appears that modifications to the stairs and storage space do not allow for the required 8 ½' width of a parking space. The photos show that the larger car, in this case the El Camino, does fit in the allotted parking space. However, the gate at the entrance cannot be closed and therefore without the fence at the rear the public could continue to trespass.

Variance 88-0599 was granted to reduce the required 20-foot setback between the right of way (Beach Drive) and the entrance of a carport without gates. Enclosing the carport with gates causes the spaces to function more as a garage, which will reduce visibility for the cars pulling out despite the open fence and gate design. Variances to reduce the 20-foot setback to the face of a garage have been approved in locations where there is sufficient area outside of the traveled roadway or right of way for a car to pull off the road. However, this is not the case in this situation, where the right of way abuts the property line and the only area available for a waiting car that is not used as the traveled road is an approximately 3-4 foot sidewalk that is used by pedestrians. In addition, the gates do not meet Department of Public Works, Road Engineering criteria which requires a setback between the right of way and face of garage.

In conclusion, as shown in the revised diagrams, the proposed gates at both entrances will not close once the cars enter the carport area. Therefore, if the applicant seeks to prevent the public from cutting through the carport to access the pedestrian easement or vandalizing the property, this can be achieved by placing panels at the rear of the structure with a gate and placing a gate at the base of the stairs, while still maintaining the function of an open carport.

**RECOMMENDATION:**


Based on the revised Residential Development Permit Findings (Exhibit 1B), staff recommends Denial of Application 08-0367 for the portion that includes the gates and fence at the entrance to the carport, and Approval of Application 08-0367 for the portion that rectifies the code violation.

**Exhibits:**

- 1A. Revised Project Plans and Letter, dated March 10, 2009
- 1B. Revised Residential Development Permit Findings
- 1C. Staff Report

  
Powers Land Planning, Inc.

Land Use and  
Development Consulting

  
March 10, 2009

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

RE: 202 Beach Drive, APN: 043-072-01

Dear Porcila:

Attached are 2 diagrams along with photographs that represent the proposed operation of the gates and panels and illustrate parking space #2.

The key aspect of these panels and gates is for security at this vacation house. The prominence of this house makes it a target for vandalism and theft, so we believe that this proposal will be a good solution. One plan illustrates how the gates and panels function when the house is occupied (orange). The other plan illustrates the gates and panel locations in the secure position when the house is not occupied (blue).

Regarding the parking space information that Glenda Hill inquired about at the Zoning Administrator meeting, we believe that space number 2 was approved as a substandard space with the 1988 Coastal Permit. It does not meet the minimum width of 7.5 feet for a compact space and never did; given the 6.5 foot width between the exterior support piers on the ocean side of the house and the stairway support piers. The proposed gates and panels will not reduce the functionality of parking space #2.

The three attached photographs illustrate that space #2 can function with a long vehicle, such as the El Camino (17 foot length). The vehicle is just less than 6 feet wide and can maneuver into and out of space #2 with or without the gates and panels. (For comparison, a Volkswagen Beetle is 5.5 feet wide by 14 feet long.) This practical demonstration shows that even with the proposed security gate closed (typically used when the house is NOT occupied), that there is still sufficient room to allow the vehicle to be 100% parked on the property. With the security gate in the position at the perimeter

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County Planning Department  
Perez  
APN: 043-072-01/08-0367  
3/10/09  
Page 2 of 2

of the house (as would be the situation when the house is occupied), the parking space is much deeper than the required 18-foot standard space requirement.

The orange diagram illustrates the intent is to have the Beach Drive gate to space #2 continuously open when the house is occupied. This eliminates the need to open and close the gate when the house is being used. When the house is unoccupied, the gate serves a similar function as shutters serve when houses are closed for a season. This operation eliminates the need to close the gate behind the vehicle and keeps the carport operating as it currently functions.

We hope that this information adequately responds to the Planning Department questions. If there is any part that is unclear or that you believe may offer a better solution, please let us know so as soon as possible so that we may have an opportunity to prepare any modifications before the next Zoning Administrator meeting.

Thank you for your review.

Sincerely,



Ron Powers, AICP

Attachments: Site Plan diagrams and photographs

c: Barbara Nelson and Jim Bradshaw

1/4" = 1'-0"

WHEN HOUSE  
IS OCCUPIED

GATE REMAINS  
OPEN WHILE  
HOUSE IS  
OCCUPIED

PERSON GATE  
USED WHEN  
ALL OCEANSIDE  
PANELS IN PLACE  
(E) BRICK

(N) GATE  
SPACE  
#2

STAIR GATE  
IN OPEN  
POSITION

SECURITY  
GATE

(N) PANEL

UP

(N) PANEL

STORAGE

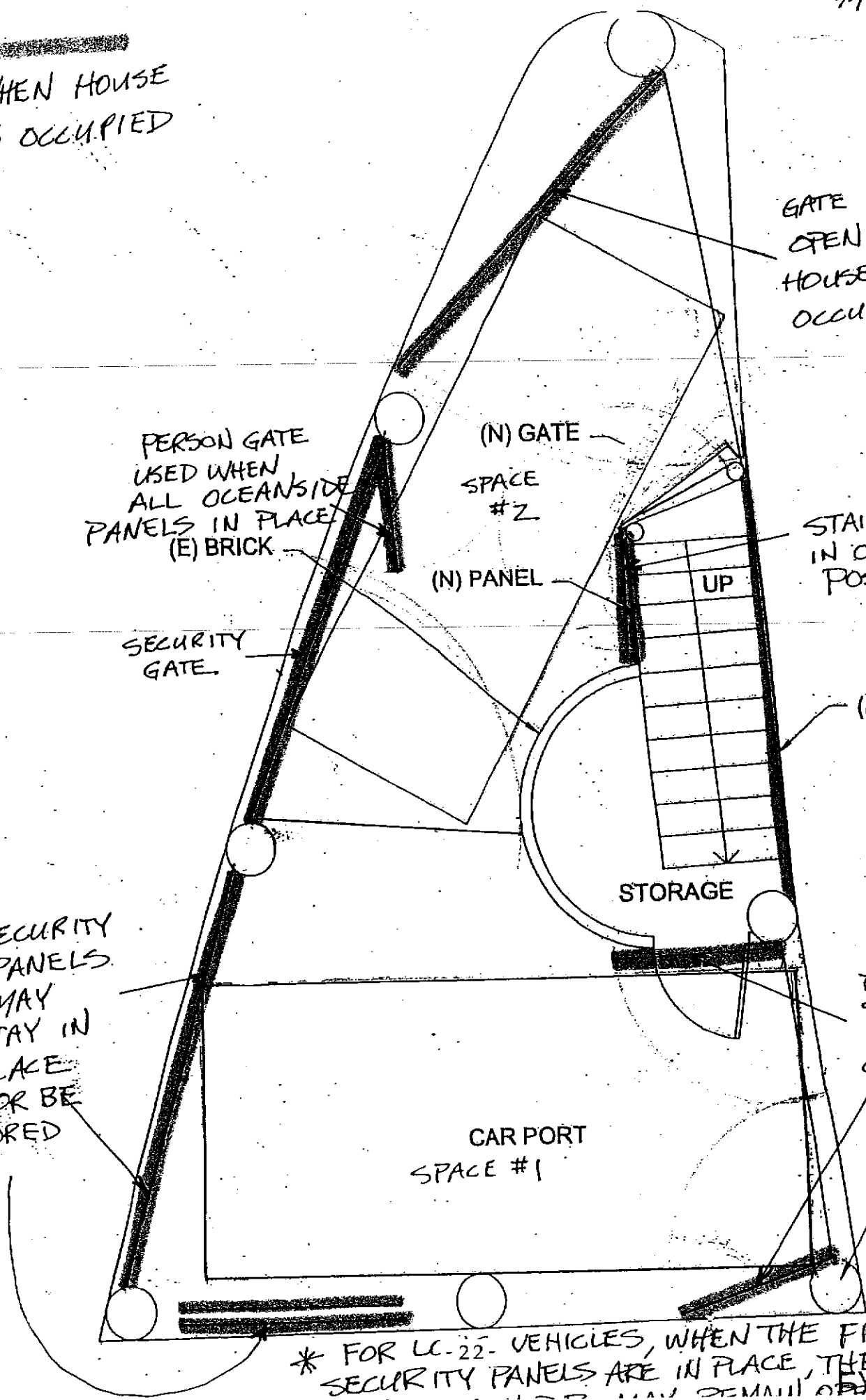
SECURITY  
PANELS  
MAY  
STAY IN  
PLACE  
OR BE  
STORED

CAR PORT  
SPACE #1

DUAL  
SWING  
GATES  
OPEN \*

(E) CONI

\* FOR LC-22 VEHICLES, WHEN THE FRONT  
SECURITY PANELS ARE IN PLACE, THE GATES  
MAY REMAIN OPEN EXHIBIT 1 A



1/4" = 1'-0"

CLOSED  
WHEN PROPERTY  
IS NOT IN USE

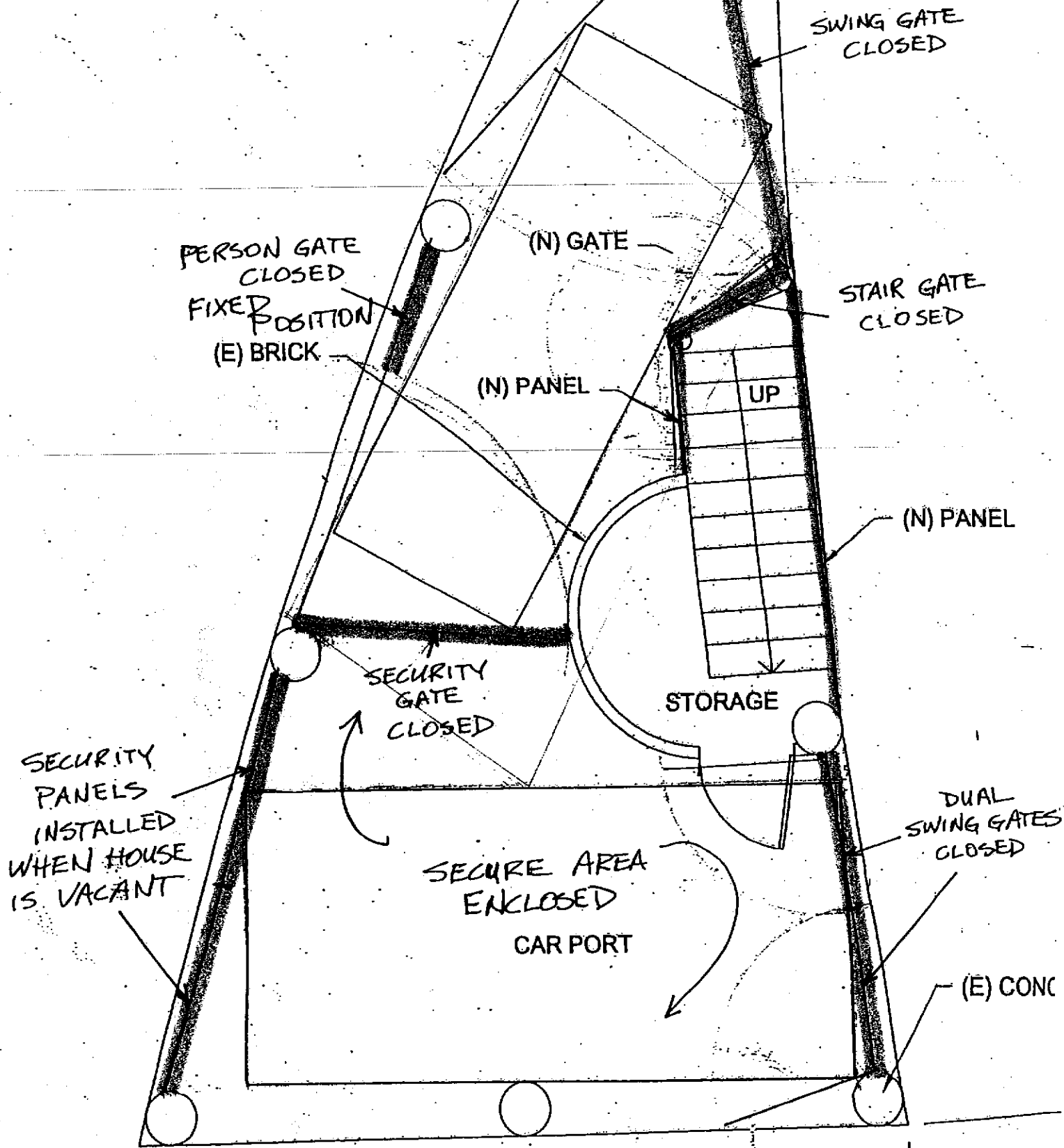
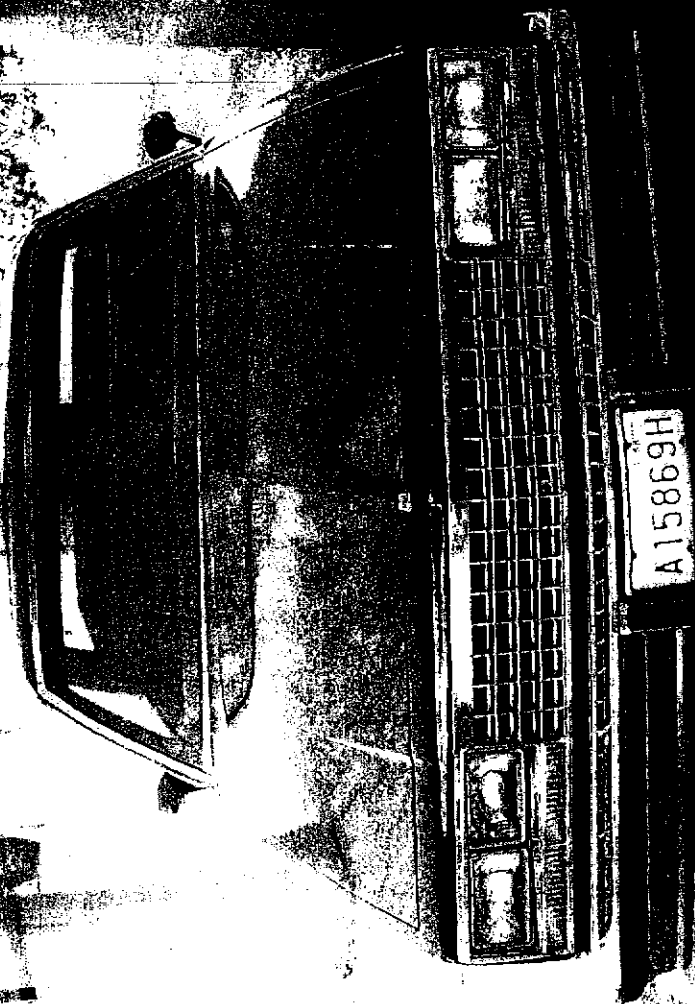


PHOTO #1

SECURITY GATE  
WHEN HOUSE  
IS SECURED



SHOWS SECURITY GATE IN CLOSED POSITION.  
... VEHICLE TO BE 100% ON PARCEL

PHOTO #2

SECURITY  
GATE  
WHEN HOUSE  
UNOCCUPIED



- 25 -

SHOWS SECURITY GATE FIXED AT HOUSE PERIMETER WHEN  
AIRRAILS VEHICLE TO PULL FORWARD

A

PHOTO #3



PINTO FIX  
GATE POSITION  
ON-PROPERTY

TO REMAIN  
WHEN  
HOUSE IS  
DAMAGED

SHOWS CAR 17' LENGTH STILL IS 100% ON  
PROPERTY, AT THE 11' POINT NE VEHICLE CLOSED

## Revised Residential Development Permit Findings

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

*This finding cannot be made, in that the location of the six foot high fence and gates along Beach Drive will not allow adequate room for vehicles to turn on to and off of Beach Drive in a safe manner. The subject parcel abuts the Beach Drive right of way, which at this location is the narrowest, at 31 feet wide, and serves as the entrance to the remainder of the properties on Beach Drive. In addition the steep coastal bluff abuts Beach Drive right of way immediately to the north and therefore, there is no room for cars to pull off on that side.*

The subject parcel was constructed to 100 percent lot coverage with an open first floor carport. The fences enclose the carport create an inadequate space for a car to pull into while waiting for gates to open. The car will block any traffic on Beach Drive and pedestrians on the sidewalk.

The parcel is shallow and allows sufficient room for two parking spaces, however the proposed gates will not close once a car is parked.

2. That the proposed location of the project and the conditions under which it would be operated or maintained will be consistent with all pertinent County ordinances and the purpose of the zone district in which the site is located.

*This finding cannot be made, in that the location of the proposed fence and the conditions under which it would be operated or maintained will be not be consistent with County ordinances and zone district regulations that require a 20-foot setback to the entrance of the carport. Coastal Permit and Variance 88-0599 allowed a reduction to the entrance of the carport to zero feet, as it would be unobstructed open area. The gates will enclose the open carport; variance findings could not be made for the enclosure. Variance findings have been made for a reduction to the 20-foot setback to the garage entrance in areas where there is room outside of the traveled roadway or right of way for a car to pull off for gates to open and close. The subject property abuts the Beach Drive right of way and the only area outside of the traveled roadway is the 3-4 foot wide sidewalk used by pedestrians. Therefore, there is insufficient area for a reduction to the 20-foot setback to the garage entrance and similar findings could not be made.*

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 cannot be made, in that the proposed fence location may disrupt traffic on Beach Drive as there is insufficient area for a car entering or exiting the property to pull off the road while the gates are opened or closed. In addition, the Department of Public Works Road Engineering Design criteria does not allow for gates closer than 18 feet from the edge of pavement as stopping in front of the gate will stop traffic along Beach Drive and block pedestrian access along the sidewalk.*

**Application 08-0367 Staff Report**  
**Zoning Administrator Meeting Continued from 3/06/09**  
**Exhibit 1C**

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## Staff Report to the Zoning Administrator

Application Number: 08-0367

**Applicant:** Barbara Nelson C/O Powers Land Planning      **Agenda Date:** March 7, 2009

**Owner:** Barbara Nelson

**Agenda Item #:** 2

**APN:** 043-072-01

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

**Project Description:** Proposal to construct two six foot tall electric gates and fence at the entrance of an existing carport and remove an unpermitted railing on top of roof.

**Location:** Property located approximately 125 feet east of the corner of Beach Drive and Rio Del mar Blvd., at 202 Beach Drive, Aptos.

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

**Permits Required:** Amendment to Coastal Development Permit and Variance 88-0599 and a Residential Development Permit to allow a fence and gate to exceed 3 feet in the front yard at the entrance to an existing carport, which has a zero foot front yard setback.

**Technical Reviews:** None

### Staff Recommendation:

- Certification that the proposal is exempt from further Environmental Review under the California Environmental Quality Act.
- APPROVAL of the portion of Application Number 08-0367 that describes the removal of the unauthorized railing on the roof level, based on the attached findings and conditions.
- DENIAL of the portion of Application Number 08-0367, that describes construction of two six foot gates and a fence, based on the attached findings and conditions.

### Exhibits

- |   |   |
|---|---|
| A. Project plans                              | H. Printout, Discretionary application comments, dated 02/05/09       |
| B. Findings                                   | I. Letter from Aptos/La Selva Fire Protection District, dated 8/21/08 |
| C. Conditions                                 | J. Project plans, dated June 2008                                     |
| D. Categorical Exemption (CEQA determination) | K. Comments & Correspondence  |
| E. Assessor's parcel map                      |   |
| F. Zoning & General Plan map                  |   |
| G. Location map                               |   |

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

### Parcel Information

Parcel Size: 653 square feet  
Existing Land Use - Parcel: Residential  
Existing Land Use - Surrounding: Residential  
Project Access: Beach Drive  
Planning Area: Aptos  
Land Use Designation: R-UH (Urban High Density Residential)  
Zone District: RM-2.5 (Multi-Family Residential -2,500 square foot minimum)  
Coastal Zone: ☒ Inside ☐ Outside  
Appealable to Calif. Coastal Comm. ☒ Yes ☐ No

### Environmental Information

Geologic Hazards: Coastal High Hazard - flood zone, slope instability across Beach Drive  
Soils: Purisima Formation (soil map index 109), Elkhorn-Pfeiffer complex (soil map index 136)  
Fire Hazard: Not a mapped constraint  
Slopes: Essentially flat  
Env. Sen. Habitat: Not mapped/no physical evidence on site  
Grading: No grading proposed  
Tree Removal: No trees proposed to be removed  
Scenic: Located adjacent to Rio Del Mar State Beach  
Drainage: Existing drainage adequate  
Archeology: Not mapped/no physical evidence on site

### Services Information

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

### Project Setting

The property is located on the beach side of Beach Drive, adjacent to the Rio Del Mar Esplanade in an area known as "the islands". This is the first property in a line of two and three story homes, most of which predate zoning and building permit requirements. Most homes are built to the property lines and are considered significantly non-conforming due to the proximity to Beach Drive right of way. A 37-foot pedestrian public right of way is located adjacent to the property in

the rear of the parcel. The subject parcel abuts the Beach Drive right of way, which at this location is the narrowest, at 31 feet wide, and serves as the entrance to the remainder of the properties on Beach Drive.

The property is subject to coastal wave run up (V-zone) and was constructed to comply with Federal Emergency Management Agency (FEMA) requirements by having an open, non-habitable first floor. The area and subject property is also subject to potential slope instability from the steeply sloped coastal bluff located across the street on the north side of Beach Drive.

### **Parcel History**

The existing three story residence was constructed with Permit 88-0599 for a Coastal Development Permit and Variances to reduce the required 20 foot front yard setback to the entrance of the carport to zero; reduce the required 15-foot front setback to the walls of the house to zero; reduce the required 15-foot front setback to the walls of the house to zero; reduce the required 15-foot rear yard to zero; reduce the required 7-foot side yard to zero; increase the maximum 0 foot north and south side yard wall heights to about 25 feet; increase the maximum allowed lot coverage to about 100%; and increase the maximum allowed building envelope.

In 1993 the applicant sought to recognize the addition of an air conditioning/heating unit on the roof and to revise condition of approval I.F. for Permit 88-0599, which required that an enclosed area off the deck which was proposed to be a solarium not exceed 70 square feet, so that it would not be an adequate size for a bedroom. The home was approved as a one bedroom as there is insufficient area to provide the required three parking spaces for a two bedroom home per County Code 13.10.552. The applicant requested an Amendment under Permit 93-0258 to delete the 70 square foot limitation to allow a two bedroom home and to recognize the air conditioning/heating unit on the roof. The third parking space was to be provided within the 37' pedestrian walkway. The request for a two bedroom and a third off-site parking space was denied because the parking ordinance does have provisions for residential uses to provide required parking spaces off-site, and the establishment of a parking space within a dedicated public walkway would conflict with use of the area by the public. The air conditioning/heating unit on the roof was approved with the equipment to be painted to match the tile on the top of the roof to mitigate for visual impact to the neighbors. Subsequently, building permit 91561 was issued for the single family dwelling and finalized on July 30, 1993.

In January 2008, a complaint was filed and follow up by code compliance staff verified that an unauthorized third story roof top deck was constructed, which included railing, a hot tub and ladder from the second story deck for access.

On August 7, 2008 the County of Santa Cruz accepted an application to construct two six foot tall electric gates and fence at the entrance of an existing carport and to rectify the code compliance issues by removing the railing at the top of the roof and the hot tub.

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

The subject property is a 653 square foot lot, located in the RM-2.5 (Multi-Family Residential - 2,500 square foot minimum) zone district, a designation that allows residential uses and is

consistent with the site's (R-UH) Urban High Density Residential General Plan designation.

The applicant is seeking to install two six-foot iron gates and fence at the front of the carport to stop the public from cutting through the open lower floor of the building to access the beach. County Code 13.10.323 requires a 20-foot minimum front yard setback to the entrance of a carport or garage. In 1988, the subject property was granted a variance to allow an open carport that has no setback from the front property line or from Beach Drive. The currently proposed fence effectively encloses the carport. An enclosed structure on the property line is not in conformance with the Zoning Ordinance.

The second element of the proposal, to remove the railing on the roof in order to rectify a code violation, is in conformance with the Zoning Ordinance.

#### Local Coastal Program Consistency

The proposed six foot fence and gates are not in conformance with the County's certified Local Coastal Program. General Plan Policy/LCP 7.7.26 allows property owners to erect barriers to discourage public encroachment upon private property while ensuring that beach access is protected. However, the gates and fence proposed at the front of the property create a hazard to the public using the 37 foot pedestrian easement located at the rear of the property in that the gates cannot close without a vehicle driving onto the easement. In addition, the need to drive onto the 37 foot pedestrian easement to properly use the gates is in conflict with General Plan Policy/LCP 7.7c and 7.7.10, which requires that beach and pedestrian access be maintained and protected.

The second element of the proposal, to remove the railing on the roof in order to rectify a code violation, is in conformance with the Local Coastal Plan.

#### **Analysis**

The proposed gates enclose the carport, which was approved as an open structure under Coastal Development Permit and Variance 88-0599 and a third parking space on the pedestrian easement was subsequently denied under Amendment 93-0258. The carport abuts the Beach Drive right of way, which creates two difficulties. Firstly, a car waiting for the gates to open in order to enter the property would block traffic on Beach Drive, as there is no space on the road for a car to pull off the road to open and close the gates or for cars to pass. County of Santa Cruz Department of Public Works roads engineering staff have commented that the gates are not in compliance with County Design Criteria which require an 18 foot setback between gates and the edge of pavement. The setback is necessary to avoid traffic conflicts and interference with pedestrians on the sidewalk.

Secondly, the location of the fence on the property and the design of the fence do not allow sufficient room for the gates to be closed when the cars enter the carport area. The parcel is 22 feet deep at it's maximum. This length, combined with a parking space requirement of 18 feet per County Code 13.10.525, does not allow for a properly functioning gate. In order for the gates to be closed a car must drive onto the 37' pedestrian easement at the rear. This creates a hazard to the general public and neighbors whom might be using the pedestrian walkway to access the beach. A request for a third parking space, which similarly involved a car encroaching onto the

easement, was denied in 1993.

The applicant seeks to erect the gates to discourage the general public from cutting through the open carport area to access the beach. Staff believes that erecting a stationary fence at the rear of the carport that is compliant with FEMA regulations is an effective alternative that would serve the owner's purpose and would not result in blocking traffic on Beach Drive or encroachment onto the pedestrian easement.

The applicant seeks to resolve code compliance issues that are related to the third story roof that has been converted to a deck with railing, which contains a hot tub and is accessed by a ladder. If the Zoning Administrator denies the proposed six foot gate and fence, staff recommends that the Zoning Administrator remand the code violation back to Code Compliance staff.

### Conclusion

As proposed and conditioned, the project is not 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 the portion of Application Number 08-0367 that describes the removal of the unauthorized railing on the roof level, based on the attached findings and conditions.
- **DENIAL** of the portion of Application Number 08-0367, that describes construction of two six foot gates and a fence, 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: Porcila Perez  
Santa Cruz County Planning Department  
701 Ocean Street, 4th Floor  
Santa Cruz CA 95060  
Phone Number: (831) 454-5321  
E-mail: [pln110@co.santa-cruz.ca.us](mailto:pln110@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 LCP designation.

This finding can be made, in that the property is zoned RM-2.5 (Multi family residential), a designation which allows residential uses. The proposed gates, fence, and removal of existing railing are principal permitted uses within the zone district, consistent with the site's R-UH (Residential- Urban High) 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 cannot be made for the gates and fence in that the gates will create a conflict with the pedestrian easement that is located at the rear of the property adjacent to the beach. This is due to the inadequate space under the house for a car to pull in while gates are open, without the car driving onto the public easement. A parking space is defined by County Code 13.10.554(a)1 as 8.5 feet by 18 feet long. The property is approximately 22 feet long in the area where the car will park, and the gate is approximately 9 feet long. Therefore, in order for the gates to close after a car enters the carport, the car will need to drive onto the pedestrian easement at the rear, which creates a hazard to the general public and neighbors.

The finding can be made to remove the railing on the roof level, which will not conflict with any easements or restrictions.

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 for the removal of the railing, which brings the structure into conformance with County Codes.

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 cannot be made, in that the project site is located between the shoreline and the first public road and is not in conformance with General Plan and Local Coastal Program policies regarding public access as follows:

The gates do not conform to General Plan Policy/LCP 7.7.26, which allows property owners to

erect barriers to discourage public encroachment upon private property while ensuring that beach access is protected. The gates and fence proposed at the front of the property create a hazard to the public using the 37 foot pedestrian easement located at the rear of the property in that the gates cannot close without a vehicle driving onto the easement. In addition, the need to drive onto the 37 foot pedestrian easement to properly use the gates is in conflict with General Plan Policy/LCP 7.7c and 7.7.10, which require that beach and pedestrian access be maintained and protected.

The gates are not in conformance with Chapter 3 of the Coastal Act section 30212(b)3, which allows for improvements to any structure which do not block or impede public access, in that a vehicle must encroach onto the 37 foot pedestrian easement in order to use the gates. Driving onto the easement may block public access and create a hazard. Further, Beach Drive is at it's narrowest at this location. A car stopped in the road waiting for gates to open will block traffic on this coastal road which gets significant traffic during spring and summer beach season.

The finding can be made to remove the railing on the roof level, which conforms to the GP/LCP and has no negative impact on public access, recreation, or service to visitors.

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

~~This finding cannot be made, in that the proposed gates will not be in conformance with General Plan Policy/LCP 7.7.26 allows property owners to erect barriers to discourage public encroachment upon private property while ensuring that beach access is protected. The gates and fence proposed at the front of the property create a hazard to the public using the 37 foot pedestrian easement located at the rear of the property in that the gates cannot close without a vehicle driving onto the easement. In addition, the need to drive onto the 37 foot pedestrian easement to properly use the gates is in conflict with General Plan Policy/LCP 7.7c and 7.7.10, which requires that beach and pedestrian access be maintained and protected.~~

The finding can be made to remove the railing on the roof level, which is in conformity with all provisions of the LCP.

### Variance Findings

2. That the granting of the 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 cannot be made, in that enclosing the carport on the front abutting Beach Drive will create a hazard to the public. The fences enclose the carport creating two conditions: 1) inadequate space for a car to pull into while waiting for gates to open. The car will block any traffic on Beach Drive and pedestrians on the sidewalk and 2) once the car pulls in, the car will intrude onto the pedestrian easement waiting for the gates to close. The location of the fence and the design of the fence does not allow sufficient room for the gates to be closed when the cars enter the carport. The parcel is 22 feet deep at it's maximum and the gates are approximately 9 feet long; this does not leave room for an 18 foot long parking space beyond the

gate (County Code 13.10.525). In addition, in order for the gates to be closed, a car would need to drive onto the 37' pedestrian easement at the rear to allow sufficient room for the gates to close. This creates a hazard to the general public and neighbors whom might be using the pedestrian walkway to access the beach.

### **Residential Development Permit Findings**

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

This finding cannot be made, in that the location of the six foot high fence and gates along Beach Drive will not allow adequate room for vehicles to turn on to and off of Beach Drive in a safe manner. The subject parcel abuts the Beach Drive right of way, which at this location is the narrowest, at 31 feet wide, and serves as the entrance to the remainder of the properties on Beach Drive. In addition the steep coastal bluff abuts Beach Drive right of way immediately to the north and therefore, there is no room for cars to pull off on that side.

The subject parcel was constructed to 100 percent lot coverage with an open first floor carport. The fences enclose the carport creating two conditions: 1) inadequate space for a car to pull into while waiting for gates to open. The car will block any traffic on Beach Drive and pedestrians on the sidewalk and 2) once the car pulls in, the car will intrude onto the pedestrian easement waiting for the gates to close. The location of the fence and the design of the fence does not allow sufficient room for the gates to be closed when the cars enter the carport. The parcel is 22 feet deep at it's maximum and the gates are approximately 9 feet long; this does not leave room for an 18 foot long parking space beyond the gate (County Code 13.10.525). In addition, in order for the gates to be closed, a car would need to drive onto the 37' pedestrian easement at the rear to allow sufficient room for the gates to close. This creates a hazard to the general public and neighbors whom might be using the pedestrian walkway to access the beach.

2. That the proposed location of the project and the conditions under which it would be operated or maintained will be consistent with all pertinent County ordinances and the purpose of the zone district in which the site is located.

This finding cannot be made, in that the location of the proposed fence and the conditions under which it would be operated or maintained will be not be consistent with County ordinances and zone district regulations that require a 20-foot setback to the entrance of the carport. Coastal Permit and Variance 88-0599 allowed a reduction to the entrance of the carport to zero feet, as it would be unobstructed open area. The gates will enclose the open carport; variance findings can not be made for the enclosure. Specific regulations for fencing and walls are contained in section 13.10.525. This proposal does not comply with the requirements and intents of that section, in that:

- The fence will be situated on the property in a manner that it does not allow adequate sight distance for vehicles traveling along the roadway as well as entering and exiting the property, in that the fence is not set back from the traveled roadway. Beach Drive traveled roadway is located immediately adjacent to the sidewalk that abuts the subject property, therefore, there is no area for a car to stop and open or close the gates.
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 cannot be made, in that the proposed gates will not be in conformance with General Plan Policy/LCP 7.7.26 allows property owners to erect barriers to discourage public encroachment upon private property while ensuring that beach access is protected. The gates and fence proposed at the front of the property create a hazard to the public using the 37 foot pedestrian easement located at the rear of the property in that the gates cannot close without a vehicle driving onto the easement. In addition, the need to drive onto the 37 foot pedestrian easement to properly use the gates is in conflict with General Plan Policy/LCP 7.7c and 7.7.10, which requires that beach and pedestrian access be maintained and protected.~~

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 cannot be made, in that the proposed fence location may disrupt traffic on Beach Drive as there is insufficient area for a car entering or exiting the property to pull off the road while the gates are opened or closed. In addition, the Department of Public Works Road Engineering Design criteria does not allow for gates closer than 18 feet from the edge of pavement. This is because stopping in front of the gate will stop traffic along Beach Drive and block pedestrian access along the sidewalk.~~

Application #: 08-0367  
APN: 043-072-01  
Owner: Barbara Nelson

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

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

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

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Don Bussey  
Deputy Zoning Administrator

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Porcila Perez  
Project Planner

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

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# 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: 08-0367

Assessor Parcel Number: 043-072-01

Project Location: 202 Beach Drive

**Project Description:** Proposal to construct a six foot fence and two six foot electric gates within the required front yard setback

**Person or Agency Proposing Project:** Barbara Nelson C/O Powers Land Planning

**Contact Phone Number:** (831) 426-1663

- 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: Projects which are disapproved (Section 15270)

E. x Categorical Exemption

Section 15301, Existing facilities

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

The proposal is to remove railing and to construct gates and fencing at an existing single family dwelling.

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

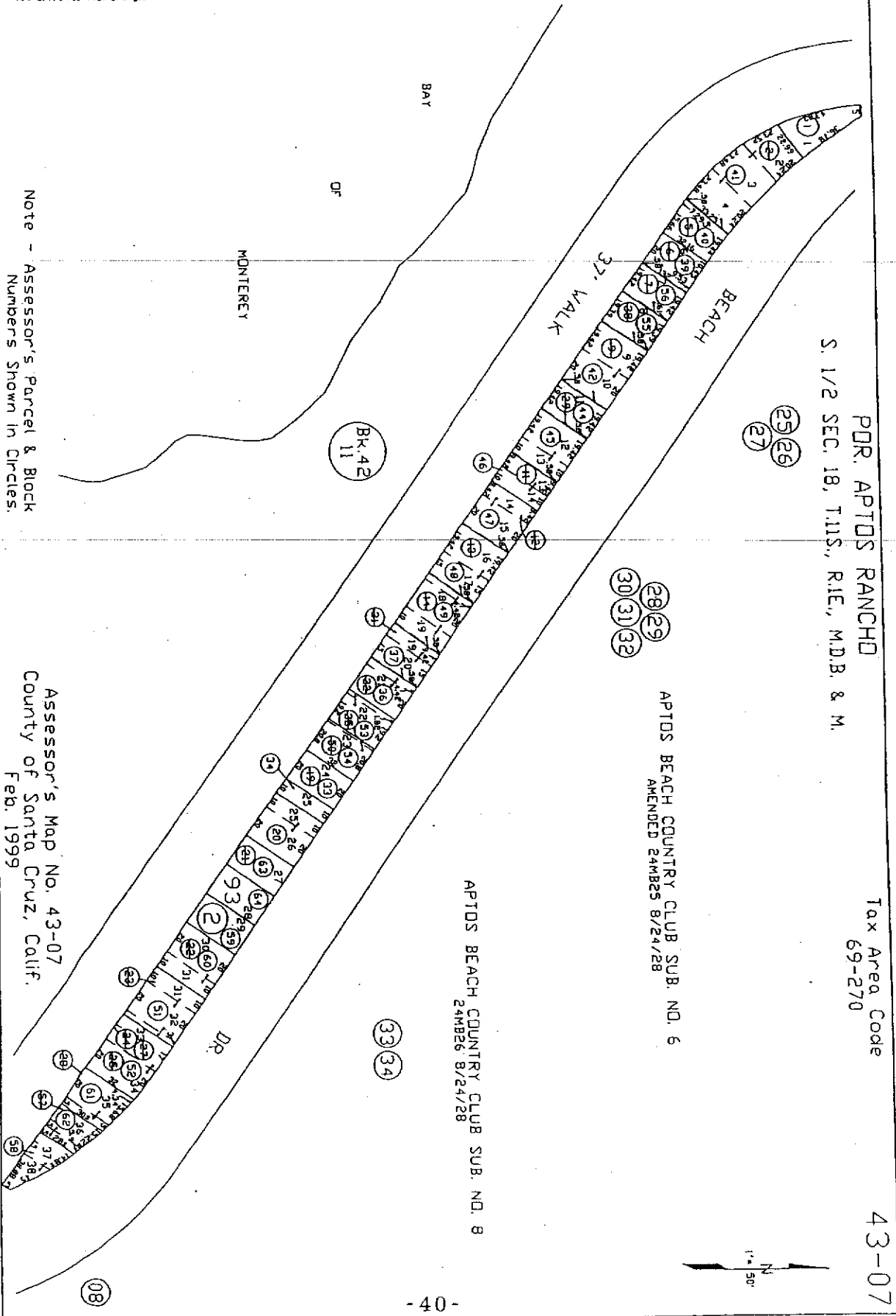
\_\_\_\_\_  
Porcila Perez, Project Planner

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

Electronically Redrawn 2/5/99 re:  
 Rev. 3/2/98 (B title Consolidation)  
 Rev. 3/25/98 (M nwn changed page refs)  
 Rev. 1/4/98 nwn title)  
 Rev. 2/16/98 nwn (changed title number)  
 Rev. 2/19/98 DB (corr. Tax code line 43-270)  
 Rev. 6/7/94 CB title change)

# 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

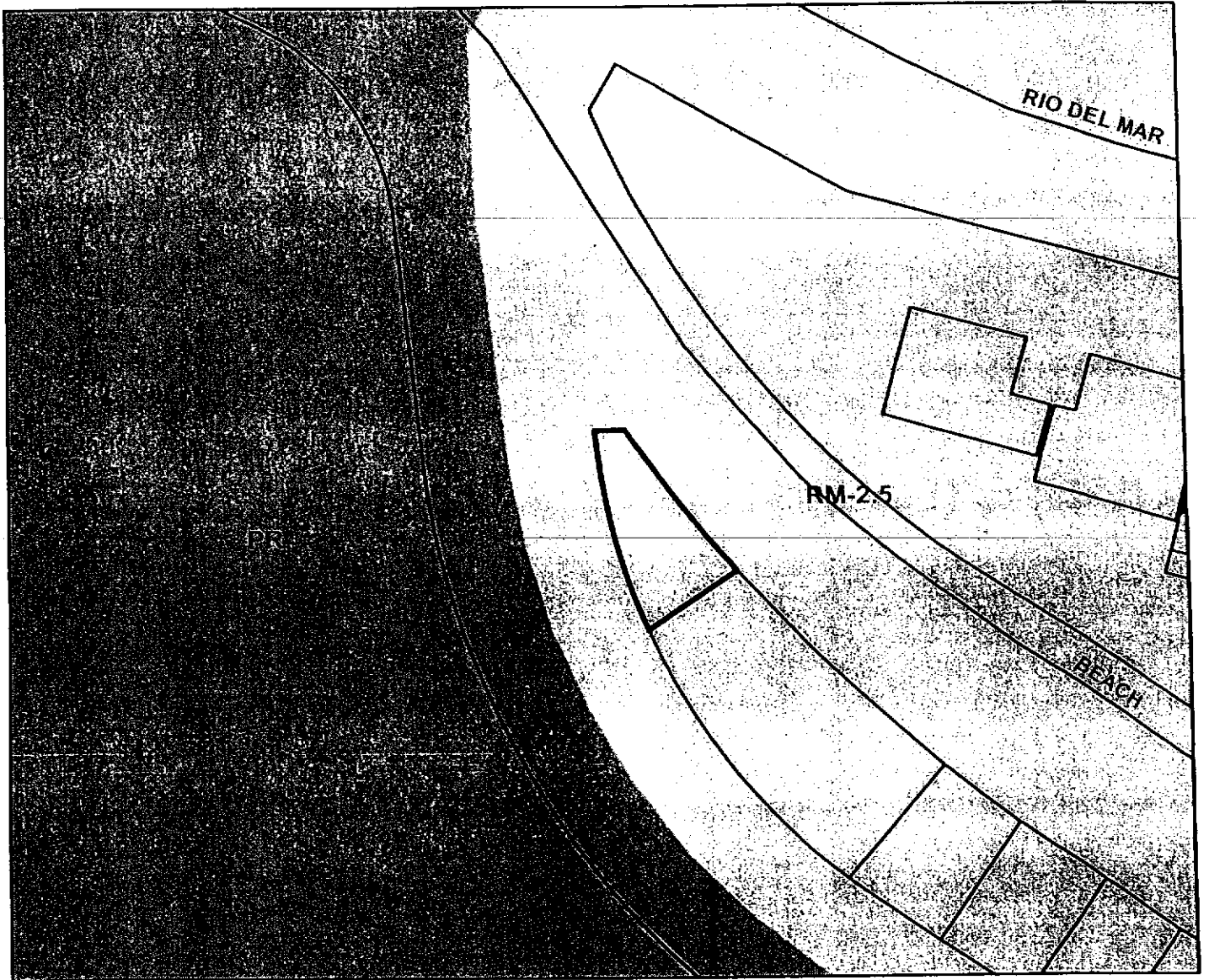


Note - Assessor's Parcel & Block Numbers Shown in Circles.


Assessor's Map No. 43-07  
 County of Santa Cruz, Calif.  
 Feb. 1999





# Zoning Map



## LEGEND

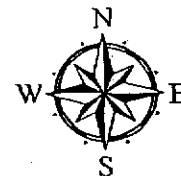
 APN: 043-072-01

 Assessors Parcels

 Streets

RESIDENTIAL-MULTI FAMILY

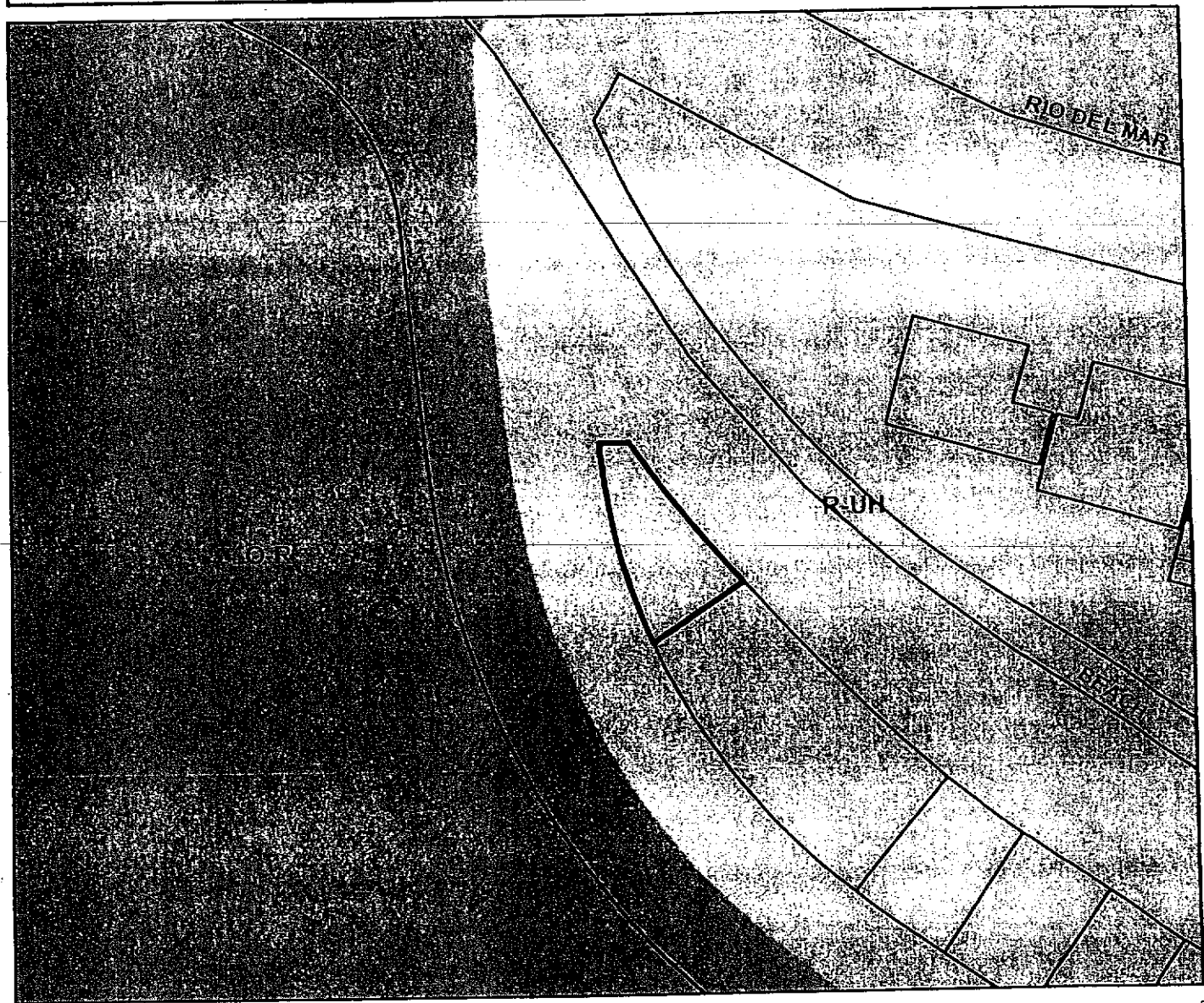
 PARK



Map Created by  
County of Santa Cruz  
Planning Department  
February 2009



# General Plan Designation Map



## LEGEND



APN: 043-072-01



Assessors Parcels

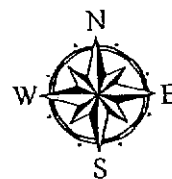


Streets

Residential - Urban High Density



Parks and Recreation







Map Created by  
County of Santa Cruz  
Planning Department  
February 2009

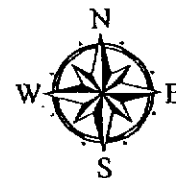


# Location Map



## LEGEND

-  APN: 043-072-01
-  Assessors Parcels
-  Streets
-  County Boundary



Map Created by  
County of Santa Cruz  
Planning Department  
February 2009

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

Project Planner: Maria Perez  
Application No.: 08-0367  
APN: 043-072-01

Date: February 24, 2009 print date  
Time: 11:27:14  
Page: 1

Environmental Planning Completeness Comments

===== REVIEW ON AUGUST 29, 2008 BY ANTONELLA GENTILE =====  
No completeness comments.

Environmental Planning Miscellaneous Comments

===== REVIEW ON AUGUST 29, 2008 BY ANTONELLA GENTILE =====  
Condition of approval: All gates and panels installed below the base flood elevation shall be of breakaway construction as detailed in section 16.10.070(h).5.(vi) to allow for coastal flooding and prevent the accumulation of debris under or adjacent to the structure. ===== UPDATED ON DECEMBER 22, 2008 BY ANTONELLA GENTILE =====  
Engineering calculations will be reviewed during the building application process.

Code Compliance Completeness Comments

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

Approved application 08-0367, which address the code violations. Property owner is also required to pay any code cost associated with the notice of violation. (LM)

===== REVIEW ON AUGUST 29, 2008 BY LAURA MADRIGAL =====  
NO COMMENT

Code Compliance Miscellaneous Comments

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

===== REVIEW ON AUGUST 29, 2008 BY LAURA MADRIGAL =====  
NO COMMENT

Dpw Road Engineering Completeness Comments

===== REVIEW ON AUGUST 28, 2008 BY ANWARBEG MIRZA =====  
1. The gate is not allowed as shown as vehicles stopping in front of the gate shall block traffic on Beach Dr. A minimum of 18 feet from the edge of pavement along the Beach Dr to the face of gate is required. Show details as necessary.

Dpw Road Engineering Miscellaneous Comments

===== REVIEW ON AUGUST 28, 2008 BY ANWARBEG MIRZA =====  
NO COMMENT

Aptos-La Selva Beach Fire Prot Dist Completeness C

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

===== REVIEW ON AUGUST 26, 2008 BY ERIN K STOW =====  
DEPARTMENT NAME: Aptos/La Selva Fire Dept.  
All Fire Department building requirements and fees will be addressed in the Building

Discretionary Comments - Continued

Project Planner: Maria Perez  
Application No.: 08-0367  
APN: 043-072-01

Date: February 24, 2009  
Time: 11:27:14  
Page: 2

Permit phase.

Plan check is based upon plans submitted to this office. Any changes or alterations shall be re-submitted for review prior to construction.

Aptos-La Selva Beach Fire Prot Dist Miscellaneous

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

===== REVIEW ON AUGUST 26, 2008 BY ERIN K STOW =====  
NO COMMENT



## Aptos/La Selva Fire Protection District

6934 Soquel Drive • Aptos, CA 95003

Phone # 831-685-6690 • Fax # 831-685-6699

August 21, 2008

Planning Department  
County of Santa Cruz  
Attention: Maria Porcila Perez  
701 Ocean Street  
Santa Cruz, CA 95060

Subject: APN: 043-072-01 / Appl #08-0367  
202 Beach Drive

Dear Ms. Perez:

Aptos/La Selva Fire Department has reviewed the plans for the above cited project and has no objections as presented.

A plan review fee of \$50.00 is due and payable to the Aptos/La Selva Fire Department **PRIOR TO APPROVAL** of building application. Reminder: the enclosed Permit/Service Fees form must be submitted to the Aptos/La Selva Fire Department at time of payment.

- Any other requirements will be addressed in the Building Permit phase.
- Plan check is based upon plans submitted to this office. Any changes or alterations shall be re-submitted for review prior to construction.

In order to obtain building application approval, recommend you have the DESIGNER add appropriate NOTES and DETAILS showing the following information on the plans that are submitted for BUILDING PERMIT.

- **ELECTRONIC CONTROL:** Security Gates equipped with electronic control devices shall have an approved fire department override key switch installed. **PROVIDE** a "Knox" Key Switch. Authorization forms for ordering the Knox Key Switch can be obtained directly at the Fire Department at 6934 Soquel Drive in Aptos.
- **FAIL SAFE OPERATION PROVISION:** All electronically controlled security gates shall be provided with manual override to allow operation of the gate during power outage.
- **GENERAL REQUIREMENTS:**

1. Access gates shall be a minimum ~~46~~ 2 feet wider than the required access road width. When open, gates shall not obstruct any portion of the required access roadway or driveway width

2. Gates shall be adequately supported to prevent dragging.
  3. Gates shall be operable by one person.
  4. Gates may swing in either direction and shall be open a full 90 degrees. Sliding gates shall slide parallel to the security fence.
- 
5. All gates shall remain in the open position when not attended or locked, or when electronic fire department key switches has activated.
  6. Overhead gate structures shall have a minimum of 15 feet vertical clearance.

Sincerely,



---

Jim Dias, Fire Marshal  
Fire Prevention Division  
Aptos/La Selva Fire Protection District

Cc: Barbara Nelson  
202 Beach Drive  
Aptos, CA 95003

Cc: Powers Land Planning  
1607 Ocean Street Suite 8  
Santa Cruz, CA 95060



# Aptos/La Selva Fire Protection District

6934 Soquel Drive • Aptos, CA 95003  
Phone # 831-685-6690 • Fax # 831-685-6699

## DISCRETIONARY APPLICATION FEE

### PLAN REVIEW:

DATE: 8/21/2008 APN: 043-072-01 APPL: 08-0367

PROJECT ADDRESS: 202 Beach Drive Aptos, CA 95003

PROJECT NAME: Nelson Electric Gate

SFD [ ☒ ] SFR [ ☐ ] MFD [ ☐ ] COR [ ☐ ] COM [ ☐ ]

OWNER: Barbara Nelson TELEPHONE: \_\_\_\_\_

OWNER

ADDRESS: 202 Beach Drive

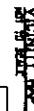
SPRINKLERED: Yes [ ☒ ] No [ ☐ ]

RATE: \$50 X 1 HOURS = FEE: \$50.00

TOTAL DUE: \$50.00

\_\_\_\_\_  
Fire Dept. Use Only

DATE PAID: \_\_\_\_\_ INITIALS: \_\_\_\_\_



1014A LOT CONFERENCE ROOM

[illegible]

1. TOTAL AMOUNT OF PROPOSED FINE: \$20,100.
2. DUTIES COME ABOUT TO GO INTO (a) SHIPWRECK SQUAD
- GUARDS STAFFED AS PERMITTED WITH ROADS

1. ADP #107281  
2. EDWARDS BULL  
OCCUPANCY CLASSIFICATION - A-1  
TYPE V-41 NON-SPRINKLERED.

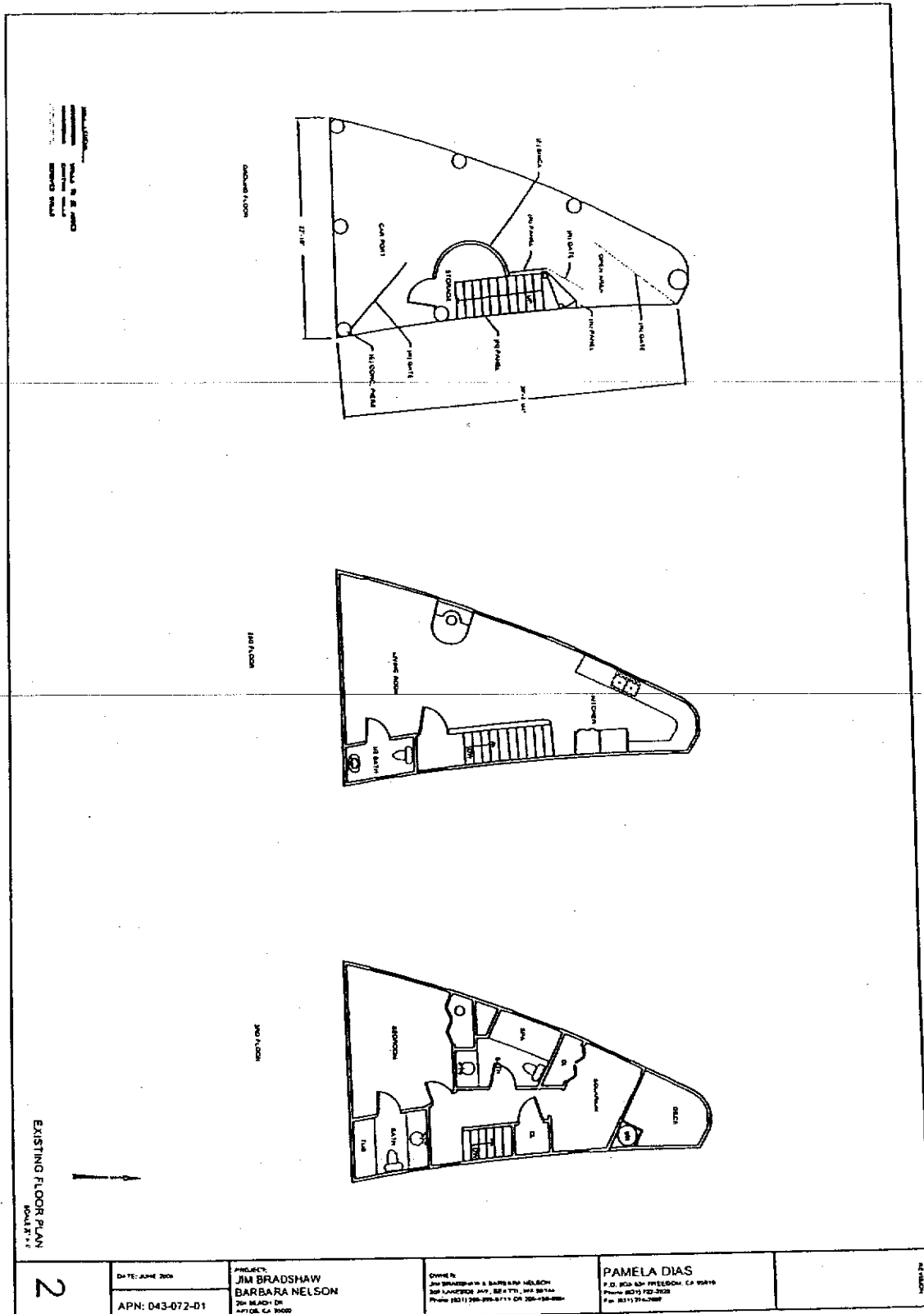
**PROJECT DESCRIPTION**  
There is no change to the box print.

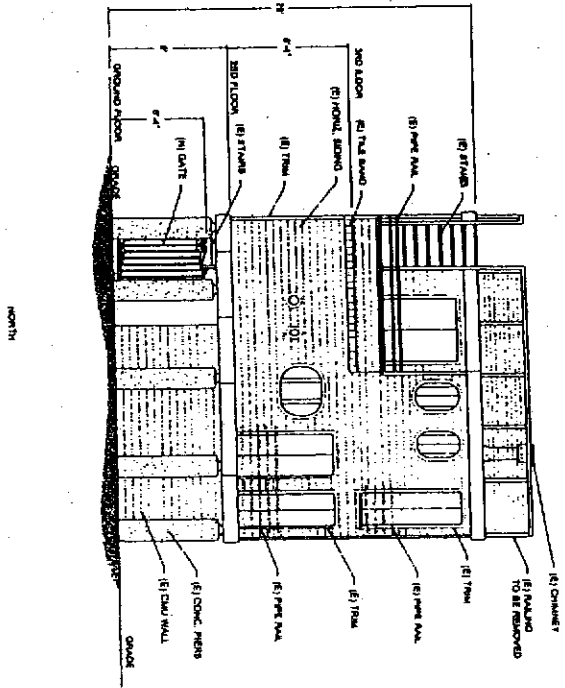
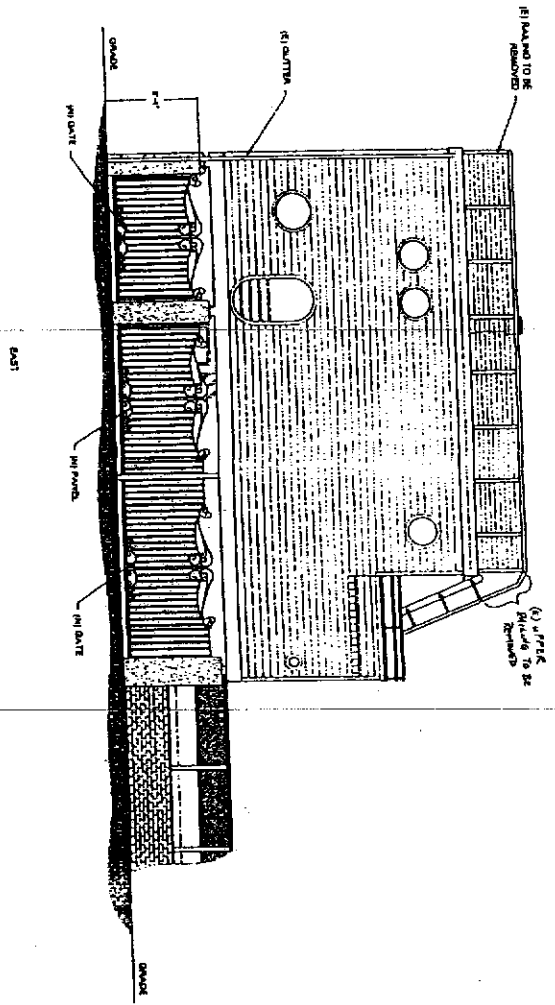
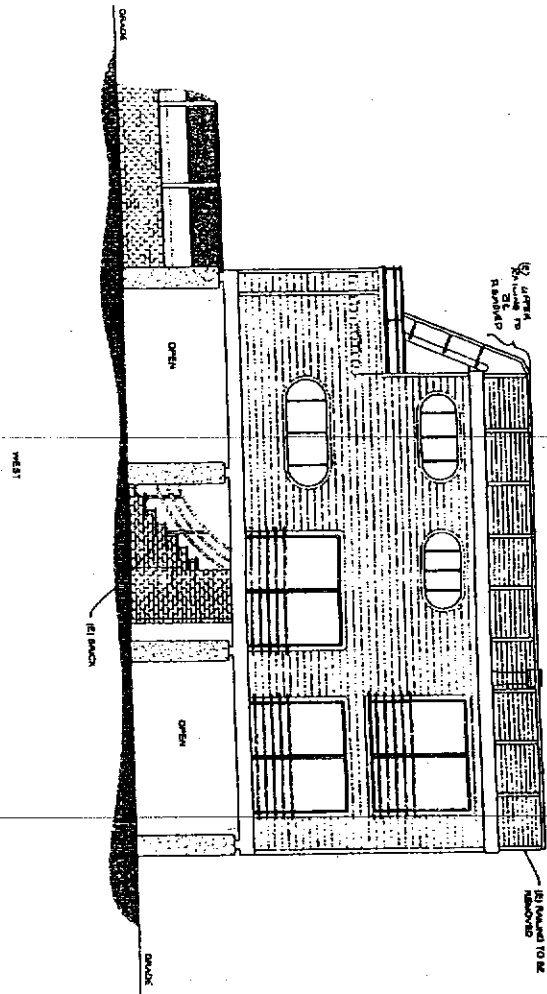
1. THE REMOVAL OF HOT TUB & RAILING AT ROOF.  
2. TO INSTALL GATES AND PANELS

NOTE:  
PROJECT SHALL COMPLY WITH THE 2007 CALIFORNIA  
BUILDING, PLUMBING, ELECTRICAL, FIRE, AND  
ENERGY CODES.



**SITE PLAN**  
SCALE 1" = 10'





ELEVATION PLAN  
SCALE 1/4" = 1'

3

DATE: JUNE 2008

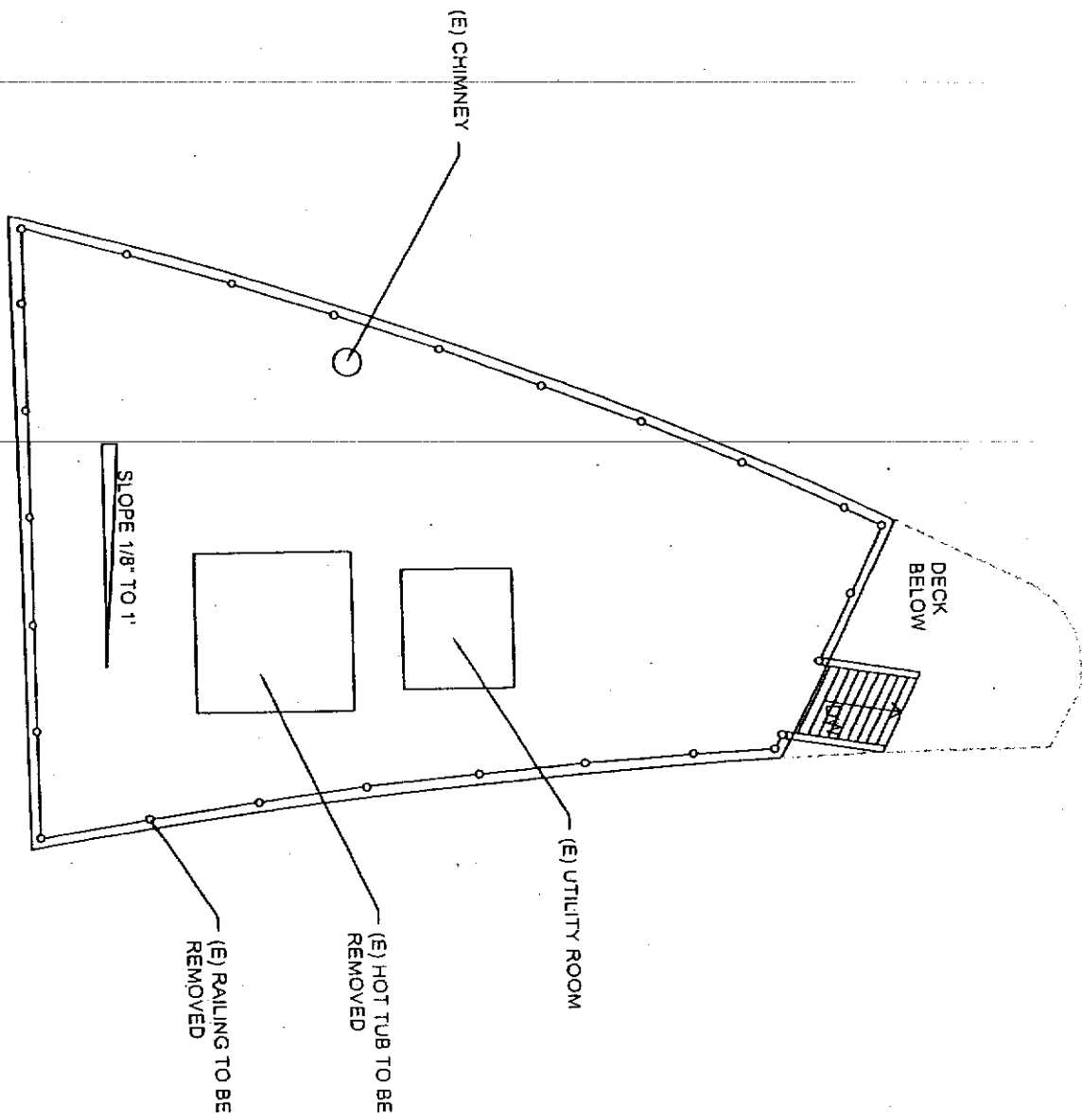
APN: 043-072-01

PROJECT:  
JIM BRADSHAW  
BARBARA NELSON  
204 BEACH DR  
APRIL, CA 95003

OWNER:  
JIM BRADSHAW & BARBARA NELSON  
302 LAKE SIDE AVE, SEATTLE, WA 98144  
Phone (206) 206-895-5711 OR 206-438-0884

PAMELA DIAS  
P.O. BOX 801 FREEDOM, CA 95018  
Phone (916) 722-3525  
Fax (916) 274-2857

REVISION



**Maria Perez**

---

**From:** jpdpg@comcast.net  
**Sent:** Wednesday, March 04, 2009 7:25 PM  
**To:** Maria Perez  
**Subject:** 08-0367 (\*\*) 202 Beach Dr.

Dear Ms Maria Perez,

This is to urge you to decline the proposed construction of gates and fence cutting off access from 202 Beach Dr. to the rear of the homes along the "inland" on Beach Dr. Our family has used this pathway for many, many years with babies in strollers, toddlers on tricycles, elders with canes, walkers and wheelchairs. This is a much safer, wider and easier route than the very small and tight sidewalk on Beach Dr. itself. Beach Dr. suffers gridlock during the summer and holiday time and if an emergency arises and rear access is necessary this could be a real danger.

Part of the charm of staying at the beach is strolling along the walkway to the little market, deli and restaurant with our family in a safe and neighborly way. To cut off this enjoyable element and possibly expose residents to dangers, to please one homeowner, disregarding the rest of us, does not seem reasonable or just. I was always under the impression that this is public right of way.

Respectfully,

The Dwyer Family  
214 Beach Dr.

**Maria Perez**

---

**From:** Brynne Wilson [bwilson@plagemanlund.com]  
**Sent:** Monday, February 23, 2009 2:58 PM  
**To:** Maria Perez  
**Subject:** Notice of Public Hearing 202 Beach Drive

To Whom It May Concern:

I received a Notice of Public Hearing regarding 202 Beach Drive, Aptos. I am writing to request more details about the proposal, specifically a staff report and prior permit.

---

Should you have any further questions or concerns, please contact me.

Sincerely,

Brynne Wilson for William H. Plageman

Plageman, Lund & Cannon LLP  
510-899-6100

**VEHICLE REPORT**  
CHP 400 (REV. 11-06) (CPI) 062

NOTE: CHP 180'S FURNISHED TO ALL PEACE OFFICERS BY THE CALIFORNIA HIGHWAY PATROL

REPORTING DEPARTMENT <b>FIP SANTA CRUZ</b>		LOCATION CODE <b>9770</b>	DATE / TIME OF REPORT <b>3-19-09 / 1810</b>	NOTICE OF STORED VEHICLE DELIVERED PERSONALLY <input checked="" type="checkbox"/>	FILE NO. <b>S 061-770-09</b>
LOCATION TOWED / STOLEN FROM <b>202 BEACH DR</b>		ODOMETER READING <b>2500</b>	VIN CLEAR IN SVS? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	DATE / TIME DISPATCH / NOTIFIED <b>3-19-09 /</b>	LOG NO.
YEAR <b>79</b>	MAKE <b>VW</b>	MODEL <b>BEATLE</b>	BODY TYPE <b>01</b>	COLOR <b>RED / TAN</b>	LICENSE NO. <b>5DS YSL</b>
VEHICLE IDENTIFICATION NO. <b>1592001929</b>			ENGINE NO.	VALUATION BY <input type="checkbox"/> OFFICER <input checked="" type="checkbox"/> OWNER	STATE <b>WA</b>
REGISTERED OWNER <b>BARBARA NELSON</b>			LEGAL OWNER <input checked="" type="checkbox"/> SAME AS R/O		

**302 LAKESTIDE AVE SO #302**  
**SEATTLE WA 98114**

☐ STORED ☐ IMPOUNDED ☐ RELEASED ☐ RECOVERED - VEHICLE / COMPONENT

TOWING / STORAGE CONCERN (NAME, ADDRESS, PHONE) STORAGE AUTHORITY / REASON

TOWED TO / STORED AT AIRBAG? ☐ YES ☐ NO DRIVEABLE? ☐ YES ☐ NO VIN SWITCHED? ☐ YES ☐ NO

CONDITION	YES	NO	ITEMS	YES	NO	ITEMS	YES	NO	ITEMS	YES	NO	ITEMS	YES	NO	CONDITION
WRECKED			FRONT			REGISTERED			REAR			FRONT			FRONT
BURNED HULK (P&H) (C) VC			REAR			EX-GENERATOR			VESSEL AS LOAD			REAR			REAR
VANDALIZED			RADIO			BATTERY			FIREARMS			LEFT REAR			LEFT REAR
ENG. / TRANS. STRIP			TARE DECK			DIFFERENTIAL			OTHER			RIGHT REAR			RIGHT REAR
MISC. PARTS STRIP			STAKE			TRANSMISSION						LEAF			LEAF
BODY METAL STRIP			OTHER RIGOR			AUTOMATIC						HUBS			HUBS

RELEASE VEHICLE TO ☐ R/O OR AGENT ☐ AGENCY HOLD ☒ 22550 A.V.C. DATE / TIME

NAME OF PERSON / AGENCY AUTHORIZING RELEASE ID NO DATE

SIGNATURE OF PERSON AUTHORIZING RELEASE SIGNATURE OF PERSON TAKING POSSESSION

☒ STOLEN VEHICLE / COMPONENT ☐ EMBEZZLED VEHICLE ☐ PLATE(S) REPORT

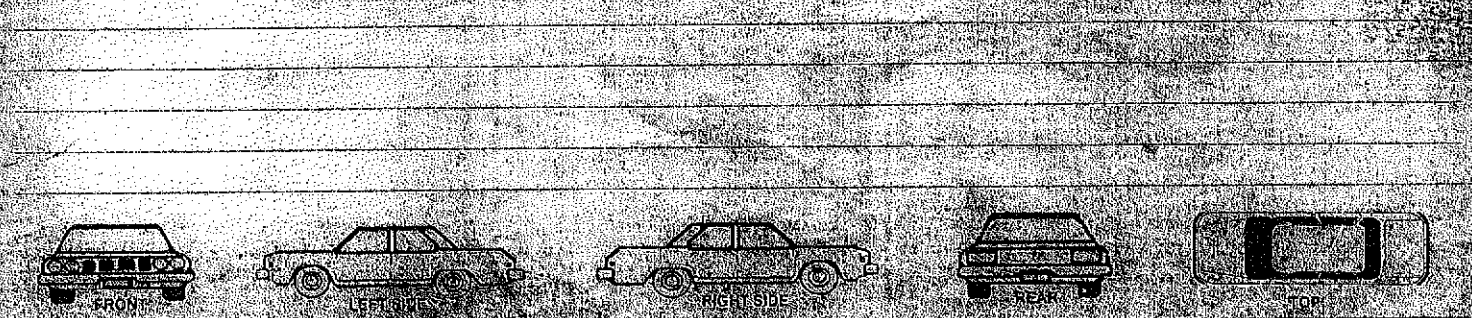
DATE / TIME OF OCCURRENCE **3-15-09 10400** DATE / TIME REPORTED **3-17-09 / 1815** NAME OF REPORTING PARTY **JAMES BRONDAW** DRIVER LICENSE NO. / STATE **BRON 999-571**

LAST DRIVER OF VEHICLE **JAMES BRONDAW** DATE / TIME **3-14-09 / 1300** ADDRESS OF R/O **202 BEACH DR** TELEPHONE OF R/O

I HEREBY DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT THE FOREGOING IS TRUE AND CORRECT

REMARKS (JUST PROPERTY - TOOLS - VEHICLE DAMAGE - ARRESTS)

DRIVER'S NAME **JAMES BRONDAW** ARRESTED SECTION ☐ YES ☐ NO REPORTED BY **JAMES C. BRONDAW** CARGO / TIME ☐ YES ☐ NO VALUES ☒ BILL FOR READING ATTACHED



SIGNATURE OF OFFICER TAKING REPORT **MAK** SUPERVISOR **MAK** REQUIRED COPIES SENT TO REGISTERED AND LEGAL OWNERS PER 2852 VOT ☐ YES ☐ NO DATE NOTIFIED

EXHIBIT 2F

Law Offices of  
**DENNIS J. KEHOE**  
Law Corporation

311 Bonita Drive  
Aptos, California 95003  
PHONE: (831) 662-8444 FAX : (831) 662-0227 EMAIL: kehoelaw@hotmail.com

April 17, 2009

**(Hand-Delivered and Transmitted by U.S. Mail)**

SANTA CRUZ PLANNING DEPARTMENT  
ATTENTION: ZONING ADMINISTRATOR, GLENDA HILL  
701 Ocean Street, 4<sup>th</sup> Floor  
Santa Cruz, CA 95060

**Re: 202 Beach Drive, Aptos, CA; APN 043-072-01, including Application  
No. 08-0367 and all amendments thereto; ZA hearing May 1, 2009**

Dear Ms. Hill:

I understand that the initial public hearing was scheduled March 7, 2009, which was continued to March 20, 2009, and, in turn, continued to May 1, 2009. The undersigned represents Mr. and Mrs. Gregory Basso, who own property in the area and regularly occupy one of the homes on "Beach Drive Island." Additionally, William Plageman and his family, owners of 216 Beach Drive (APN 43-072-44), and the Dwyer Family, owners of 214 Beach Drive, have similar objections to those following.

**1. BACKGROUND FACTS.**

**A. Subdivision Map:**

The subdivision map entitled "Subdivision No. 8 Aptos Beach Country Club Properties" was recorded in the Santa Cruz County Recorder's Office on August 24, 1928. That subdivision map specifically states, among other items, "That land delineated and designated hereon as Beach Drive, Beach Trail, Shore Trail and **37' Walk** is intended and is hereby offered for dedication as streets and highways for **public use.**" (Emphasis added) Under the Subdivision Map law, all recorded offers of dedication are irrevocable and can be abandoned only after a formal Abandonment Proceedings. HC §§8300-8362; Government Code §7050 No such Abandonment Proceedings have been held by the

SANTA CRUZ PLANNING DEPARTMENT  
ATTENTION: ZONING ADMINISTRATOR, GLENDA HILL  
Re: 202 Beach Drive, Aptos, CA; APN 043-072-01, including Application No. 08-0367  
and all amendments thereto  
Page 1 of 7 Pages

Board of Supervisors concerning the 37' Walk.

In the meantime, the Beach Drive dedication and the Walk dedication have been used over a number of years by the public as well as by my clients and Plagemans, Dwyers, and other owners and occupants of the Beach Drive Island area. Consequently, these dedications have been accepted and are public property which must be honored and protected by the County. Enclosed are the pertinent portions of the recorded Subdivision Map. (Ex. A) The Planning staff has confirmed that **"a 37-foot pedestrian right-of-way is located adjacent to the property (Nelson) in the rear of the parcel. The subject parcel abuts the Beach Drive right-of-way which, at this location is the narrowest, at 31-feet wide and serves as the entrance to the remainder properties on Beach Drive."** (Staff report, 3-07-09, pgs. 2-3, App. No. 08-0367) Additionally, the Zoning Map, attached as Ex.F to that same staff report, has the schematic outline of this 37' public access pedestrian Walk.

## **2. County Permit.**

**A.** The applicant's parcel size is 653 square feet. The minimum zoning requirements in the applicable zone for a buildable parcel is 2,500 square feet. Nevertheless, the County did grant Permit No. 88-0599 reducing setback and lot size requirements and required, among other items, "an **open**, non-habitable first floor" as a condition for granting that discretionary permit. (Emphasis added)(Staff Report, 3/7/09, pg.2) Moreover, the property is subject to Coastal Wave runoff. (Staff Report, pg.3) (See also Ex.B, photo #7, attached)

The current Application No. 08-0367 requests an amendment to the Coastal Development Permit to allow a fence and gate in the front yard adjacent to the Beach Drive right-of-way. The March 7, 2009, staff report points out that such a discretionary permit cannot be issued because there, otherwise, would be a violation of the General Plan and the LCP. Safety requirements further prohibit the granting of such discretionary permit.

**B.** The applicant has recently amended the application to also request a discretionary permit to erect self-described "barriers" along the beach side property line of this 653 square foot parcel. The discretionary permit requests for gates along Beach Drive and panels (barriers along the oceanside boundary) is scheduled for May 1, 2009. Both of those discretionary requests must be denied by the Zoning Administrator. Please refer to the below comments and the condition in County Permit No. 88-0499 requiring "an **open** non-habitable first floor." The applicant is a recent buyer (**2007**) of the subject parcel. Nevertheless, since Permit No. 88-0599 requires and "open" area and runs with the land, the applicant's current requests are 10 years too late.

SANTA CRUZ PLANNING DEPARTMENT  
ATTENTION: ZONING ADMINISTRATOR, GLENDA HILL  
Re: 202 Beach Drive, Aptos, CA; APN 043-072-01, including Application No. 08-0367  
and all amendments thereto  
Page 2 of 7 Pages

**3. The Requests For Gates And/Or To Erect A Beach Side Barrier (Panels) Must Be Denied.**

The request to erect such barriers (gates/panels) cannot legally be granted for a number of reasons including applicable law. Initially, as pointed out above, Permit No. 88-0599 requiring that the area in question remain "open" is final and binds the lands, the owner, and the County.

Second, the applicant is the successor-in-interest to the former owners of the subject property. Either the applicant or the former owners erected a wall across the dedicated 37' pedestrian walk blocking pedestrian access as well as visual access to and from Beach Drive and the Esplanade. (The present status of this wall is unclear. Were the necessary discretionary permits obtained? If not, the required findings here cannot be made.) As a result, the public has been using the open area over the subject 653 square foot parcel for pedestrian access onto and from Beach Drive. Such public pedestrian utilization has been occurring openly, notoriously, and consistently over the years ever since the construction of the wall blockage to the pedestrian walkway. Additionally, numerous private owners have acquired prescriptive property rights for access as well over this open area. Thus, there has been a dedication and acceptance of the public pedestrian access way over the open area on the subject parcel. Gion v. City of Santa Cruz (1976) 2 Cal.3d 29. Moreover, the applicant stands in the shoes of the prior owners of the subject parcel and, therefore, is also responsible for the wall blockage, as well subject to this dedicated and accepted public Walk.

Third, should the County permit a blockage of, among other items, the private access rights across this subject "open" area to and from the Walk and onto the Beach Drive sidewalk, this will constitute a violation of the federal Civil Rights Act for which the County will incur substantial liability. 42 USC §§1983 et seq.

Fourth, the LCP requires the preservation of public access ways such as this pedestrian walkway. Enclosed are eight (8) color copied photographs. (Ex. B) Photo #1 depicts a concrete pier on ground level supporting a portion of the upper story living area. It also depicts the portion of the 37' walkway as it converges with Beach Drive right-of-way. (See also photo # 2) The gray fence and false door block public access to and from the pedestrian walk onto Beach Drive resulting in the public using the open area across the subject parcel onto Beach Drive. Photo #8 depicts the subject open area. In speaking with staff, Ms. Perez, on March 26, 2009, there was an indication that the wall and door depicted on Photo #1 is on County property. If so, the County or Nelson, as condition of the permit, must remove the wall including the false door so as to allow continued public pedestrian access to and from the pedestrian walk onto Beach Drive. Otherwise, the County must deny this application and its amendment.

SANTA CRUZ PLANNING DEPARTMENT  
ATTENTION: ZONING ADMINISTRATOR, GLENDA HILL  
Re: 202 Beach Drive, Aptos, CA; APN 043-072-01, including Application No. 08-0367  
and all amendments thereto  
Page 3 of 7 Pages

If granted so as to prevent pedestrian access over this "open" area, numerous laws will be violated by both the County of Santa Cruz and Nelson including, but not limited to the LCP, the California Coastal Act, and established case and statutory law including, but not limited to, the federal Civil Right Act, 42 U.S.C. §§1983 et seq.

Fifth, the photos nos. 1 through 6 clearly depict that the applicant-owner of the subject (653 square foot) parcel, is utilizing the public 37' pedestrian walkway as her own private yard. Additionally, placing barriers (panels ) on the beach side property line will complete this attempt to exclude the public from the pedestrian walkway. For example, Photo #1 depicts, among other items, landscaping, a gazebo, potted plants, a wall, a false door, a background gray and white high fence, and landscaping. It also depicts one of the concrete piers supporting the upper floor living area which, supposedly, is on the property line of the applicant's property. Photo #2 depicts, essentially, the same items but at closer range. Photo #3 depicts applicant's car, garbage can, potted plant, and foliage within the pedestrian walkway as well as substantial impact on the private owners' access, health, and safety. Photo #4 depicts more landscaping, a garden hose, and a "moveable" porch used in conjunction with the upper living area of the applicant, all within the public 37' pedestrian walkway. Photo #5, depicts a close up of the door in front of the wall and some outdoor metal chairs. Photo #6, depicts the north side of the same wall depicted in Photo #5 as well as some potted trees growing on the pedestrian walkway.

The applicant cannot apply and the County cannot grant any discretionary permits with such obvious, unabated zoning , planning, and legal violations. Otherwise, the applicant as well as the County is subject to legal liability including damages and injunctive relief.

Sixth, staff indicates that "the area and subject property is also subject to potential slope instability from the steeply sloped coastal bluff located across the street on the north side of Beach Drive." (Staff Report, 3/7/09, pg. 3) Staff further indicates that

"The property is located on the beach side of Beach Drive adjacent to the Rio Del Mar Esplanade in an area known as the 'islands.' This is the first property in a line of two and three story homes, most of which pre-date zoning and building requirements." (Staff Report, 3/7/09, pg.2)

Due to potential fire hazards, safety concerns, and slope instability, this 37' public pedestrian walkway must remain open for access and for safety reasons. For people with disabilities or due to infirmity or age, this flat pedestrian walkway to Beach Drive and the Esplanade must remain open and be available for emergency purposes including public emergency ingress and egress for fire, medical, and safety purposes. Otherwise, there would be a violation of the laws, a number of safety regulations in the California Code of

SANTA CRUZ PLANNING DEPARTMENT  
ATTENTION: ZONING ADMINISTRATOR, GLENDA HILL  
Re: 202 Beach Drive, Aptos, CA; APN 043-072-01, including Application No. 08-0367  
and all amendments thereto  
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Regulations, and local agency safety ordinances as well as Permit No. 88-0599 requiring "an open, non-habitable first floor."

Furthermore, the public pedestrian walkway must remain open and available over the "open non-habitable" area for ingress and egress to Beach Drive due to, among other items, weather and storm conditions. For example, enclosed is photo #7 depicting on one occasion the ocean side of the pedestrian walkway. Additionally, slope instability of the steep slope north of the subject property and the ocean south of the subject property create a public need for ingress and egress to higher ground.

~~Should planning staff and/or the applicant wish to discuss this matter prior to the hearing, both myself and my clients will be available to do so.~~

Please contact me if you have any questions concerning the above.

Very truly yours,  
**DENNIS J KEHOE**  
DENNIS J. KEHOE

DJK:jlc  
Enclosures

c: Mr. and Mrs. Gregory Basso  
William Plageman  
The Dwyer Family  
Charlene Attack, Esq., (Hand-Delivered)  
County Planning Department, Attn: Porcila Perez,  
County Planner, (Hand-Delivered)  
Ron Powers (Hand-Delivered)

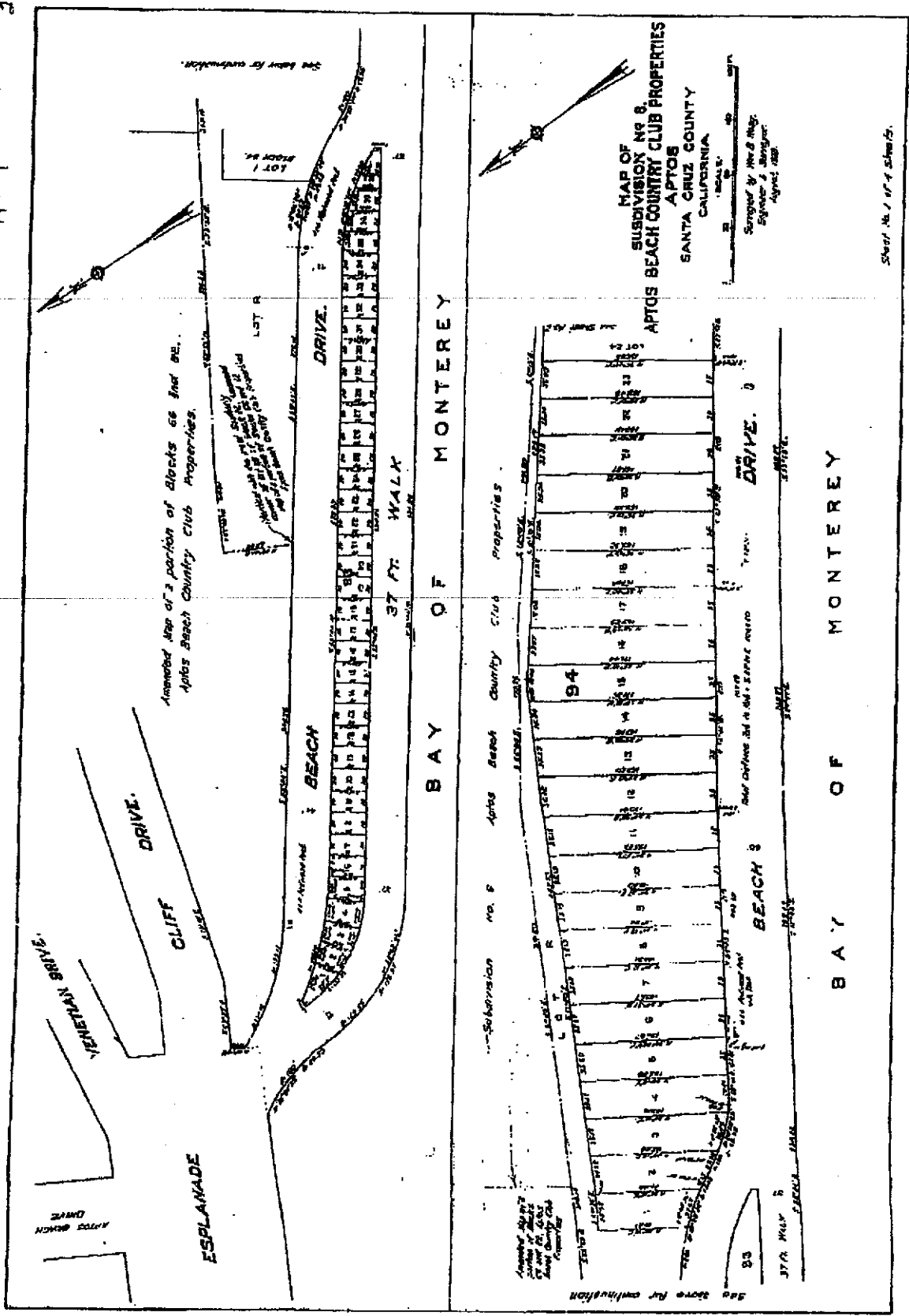
SANTA CRUZ PLANNING DEPARTMENT  
ATTENTION: ZONING ADMINISTRATOR, GLENDA HILL  
Re: 202 Beach Drive, Aptos, CA; APN 043-072-01, including Application No. 08-0367  
and all amendments thereto  
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**EXHIBIT A (Map)**

SANTA CRUZ PLANNING DEPARTMENT  
ATTENTION: ZONING ADMINISTRATOR, GLENDA HILL  
Re: 202 Beach Drive, Aptos, CA; APN 043-072-01, including Application No. 08-0367  
and all amendments thereto  
Page 6 of 7 Pages



Copy - Registered on file



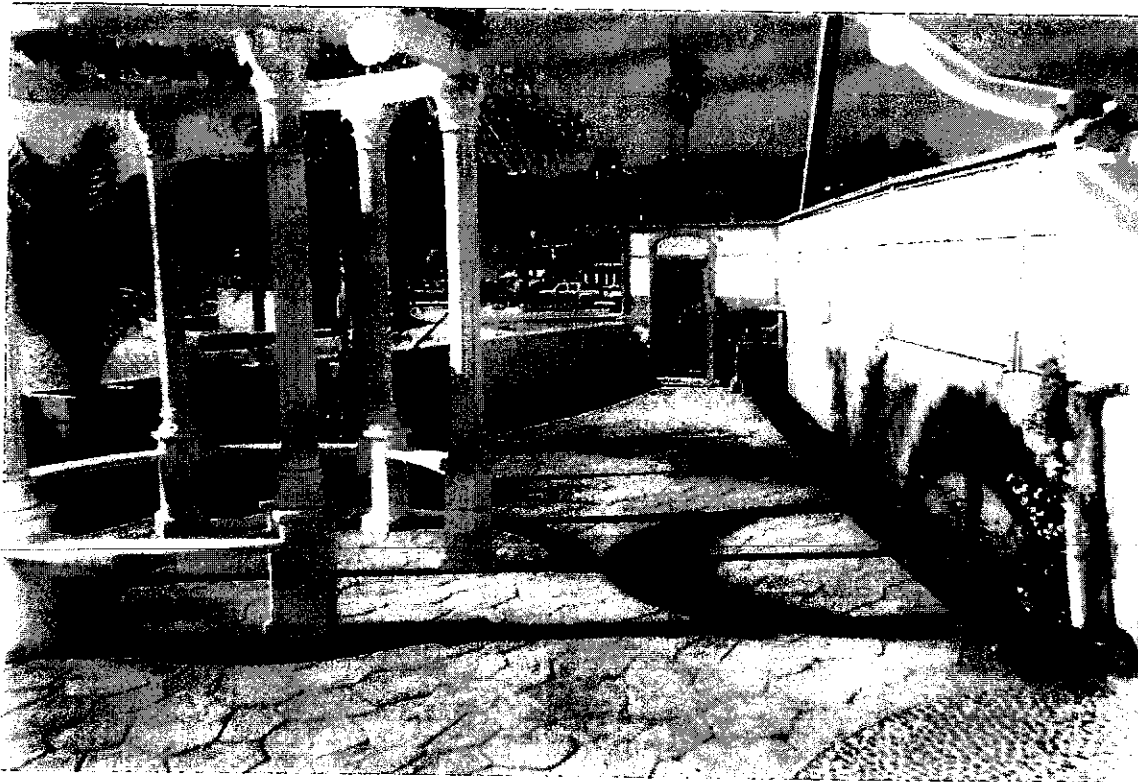
Description: Santa Cruz, CA Record Map 24.26 Page: 1 of 4  
Order: 03-25-2009 10-43-39 AM Comment:

EXHIBIT A-63-2009 2 of 2

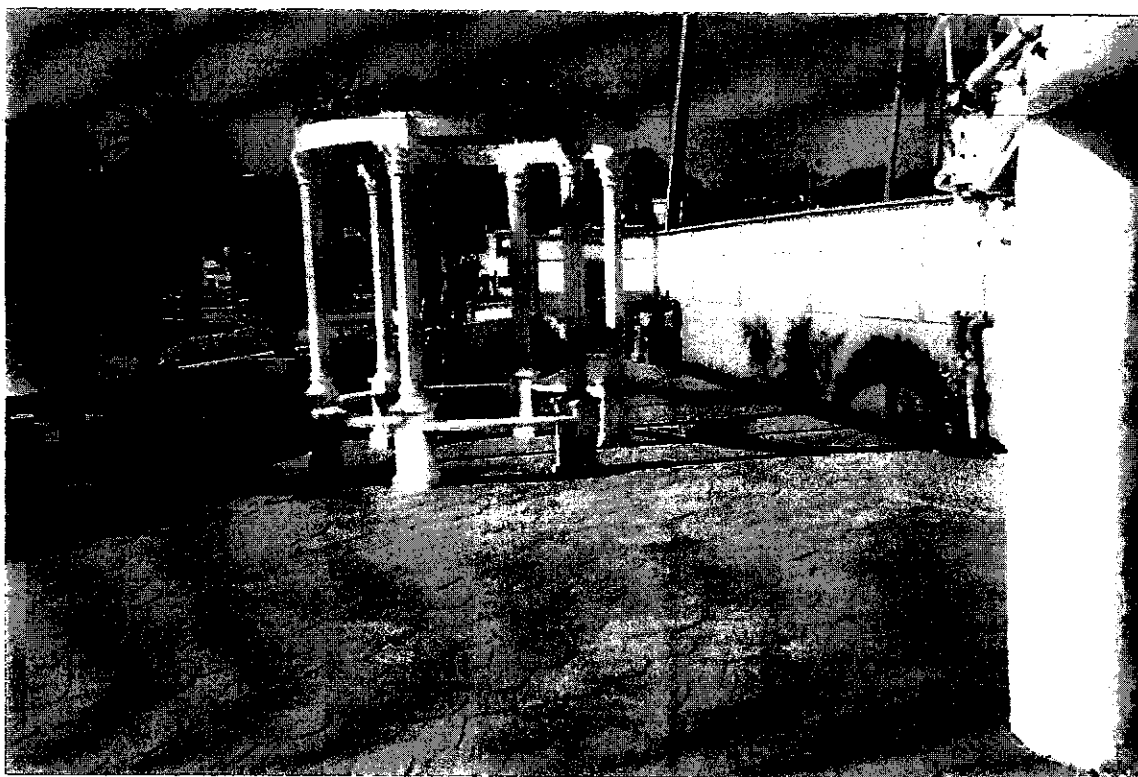
EXHIBIT 2G

**EXHIBIT B, (Photos)**

SANTA CRUZ PLANNING DEPARTMENT  
ATTENTION: ZONING ADMINISTRATOR, GLENDA HILL  
Re: 202 Beach Drive, Aptos, CA; APN 043-072-01, including Application No. 08-0367  
and all amendments thereto  
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#2  
→



#1  
→

#4 →





↓

↑ #

#6



#7 →



#8 →



"Open" AREA

**Application 08-0367 Staff Report**  
**Zoning Administrator Meeting Continued from 3/06/09**  
**Exhibit 1C**

---

---



## Staff Report to the Zoning Administrator

Application Number: **08-0367**

**Applicant:** Barbara Nelson C/O Powers Land Planning      **Agenda Date:** March 7, 2009

**Owner:** Barbara Nelson  
**APN:** 043-072-01

**Agenda Item #:** 2  
**Time:** After 10:00 a.m.

**Project Description:** Proposal to construct two six foot tall electric gates and fence at the entrance of an existing carport and remove an unpermitted railing on top of roof.

**Location:** Property located approximately 125 feet east of the corner of Beach Drive and Rio Del mar Blvd., at 202 Beach Drive, Aptos.

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

**Permits Required:** Amendment to Coastal Development Permit and Variance 88-0599 and a Residential Development Permit to allow a fence and gate to exceed 3 feet in the front yard at the entrance to an existing carport, which has a zero foot front yard setback.

**Technical Reviews:** None

### Staff Recommendation:

- Certification that the proposal is exempt from further Environmental Review under the California Environmental Quality Act.
- APPROVAL of the portion of Application Number 08-0367 that describes the removal of the unauthorized railing on the roof level, based on the attached findings and conditions.
- DENIAL of the portion of Application Number 08-0367, that describes construction of two six foot gates and a fence, based on the attached findings and conditions.

### Exhibits

- |   |   |
|---|---|
| A. Project plans                              | H. Printout, Discretionary application comments, dated 02/05/09       |
| B. Findings                                   | I. Letter from Aptos/La Selva Fire Protection District, dated 8/21/08 |
| C. Conditions                                 | J. Project plans, dated June 2008                                     |
| D. Categorical Exemption (CEQA determination) | K. Comments & Correspondence  |
| E. Assessor's parcel map                      |   |
| F. Zoning & General Plan map                  |   |
| G. Location map                               |   |

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

### Parcel Information

Parcel Size: 653 square feet  
Existing Land Use - Parcel: Residential  
Existing Land Use - Surrounding: Residential  
Project Access: Beach Drive  
Planning Area: Aptos  
Land Use Designation: R-UH (Urban High Density Residential)  
Zone District: RM-2.5 (Multi-Family Residential -2,500 square foot minimum)  
Coastal Zone: ☒ Inside ☐ Outside  
Appealable to Calif. Coastal Comm. ☒ Yes ☐ No

### Environmental Information

Geologic Hazards: Coastal High Hazard - flood zone, slope instability across Beach Drive  
Soils: Purisima Formation (soil map index 109), Elkhorn-Pfeiffer complex (soil map index 136)  
Fire Hazard: Not a mapped constraint  
Slopes: Essentially flat  
Env. Sen. Habitat: Not mapped/no physical evidence on site  
Grading: No grading proposed  
Tree Removal: No trees proposed to be removed  
Scenic: Located adjacent to Rio Del Mar State Beach  
Drainage: Existing drainage adequate  
Archeology: Not mapped/no physical evidence on site

### Services Information

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

### Project Setting

The property is located on the beach side of Beach Drive, adjacent to the Rio Del Mar Esplanade in an area known as "the islands". This is the first property in a line of two and three story homes, most of which predate zoning and building permit requirements. Most homes are built to the property lines and are considered significantly non-conforming due to the proximity to Beach Drive right of way. A 37-foot pedestrian  $1\frac{7}{2}$  right of way is located adjacent to the property in

the rear of the parcel. The subject parcel abuts the Beach Drive right of way, which at this location is the narrowest, at 31 feet wide, and serves as the entrance to the remainder of the properties on Beach Drive.

The property is subject to coastal wave run up (V-zone) and was constructed to comply with Federal Emergency Management Agency (FEMA) requirements by having an open, non-habitable first floor. The area and subject property is also subject to potential slope instability from the steeply sloped coastal bluff located across the street on the north side of Beach Drive.

### **Parcel History**

The existing three story residence was constructed with Permit 88-0599 for a Coastal Development Permit and Variances to reduce the required 20 foot front yard setback to the entrance of the carport to zero; reduce the required 15-foot front setback to the walls of the house to zero; reduce the required 15-foot front setback to the walls of the house to zero; reduce the required 15-foot rear yard to zero; reduce the required 7-foot side yard to zero; increase the maximum 0 foot north and south side yard wall heights to about 25 feet; increase the maximum allowed lot coverage to about 100%; and increase the maximum allowed building envelope.

In 1993 the applicant sought to recognize the addition of an air conditioning/heating unit on the roof and to revise condition of approval I.F. for Permit 88-0599, which required that an enclosed area off the deck which was proposed to be a solarium not exceed 70 square feet, so that it would not be an adequate size for a bedroom. The home was approved as a one bedroom as there is insufficient area to provide the required three parking spaces for a two bedroom home per County Code 13.10.552. The applicant requested an Amendment under Permit 93-0258 to delete the 70 square foot limitation to allow a two bedroom home and to recognize the air conditioning/heating unit on the roof. The third parking space was to be provided within the 37' pedestrian walkway. The request for a two bedroom and a third off-site parking space was denied because the parking ordinance does have provisions for residential uses to provide required parking spaces off-site, and the establishment of a parking space within a dedicated public walkway would conflict with use of the area by the public. The air conditioning/heating unit on the roof was approved with the equipment to be painted to match the tile on the top of the roof to mitigate for visual impact to the neighbors. Subsequently, building permit 91561 was issued for the single family dwelling and finalized on July 30, 1993.

In January 2008, a complaint was filed and follow up by code compliance staff verified that an unauthorized third story roof top deck was constructed, which included railing, a hot tub and ladder from the second story deck for access.

On August 7, 2008 the County of Santa Cruz accepted an application to construct two six foot tall electric gates and fence at the entrance of an existing carport and to rectify the code compliance issues by removing the railing at the top of the roof and the hot tub.

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

The subject property is a 653 square foot lot, located in the RM-2.5 (Multi-Family Residential - 2,500 square foot minimum) zone district, a designation that allows residential uses and is

consistent with the site's (R-UH) Urban High Density Residential General Plan designation.

The applicant is seeking to install two six-foot iron gates and fence at the front of the carport to stop the public from cutting through the open lower floor of the building to access the beach. County Code 13.10.323 requires a 20-foot minimum front yard setback to the entrance of a carport or garage. In 1988, the subject property was granted a variance to allow an open carport that has no setback from the front property line or from Beach Drive. The currently proposed fence effectively encloses the carport. An enclosed structure on the property line is not in conformance with the Zoning Ordinance.

The second element of the proposal, to remove the railing on the roof in order to rectify a code violation, is in conformance with the Zoning Ordinance.

#### Local Coastal Program Consistency

The proposed six foot fence and gates are not in conformance with the County's certified Local Coastal Program. General Plan Policy/LCP 7.7.26 allows property owners to erect barriers to discourage public encroachment upon private property while ensuring that beach access is protected. However, the gates and fence proposed at the front of the property create a hazard to the public using the 37 foot pedestrian easement located at the rear of the property in that the gates cannot close without a vehicle driving onto the easement. In addition, the need to drive onto the 37 foot pedestrian easement to properly use the gates is in conflict with General Plan Policy/LCP 7.7c and 7.7.10, which requires that beach and pedestrian access be maintained and protected.

The second element of the proposal, to remove the railing on the roof in order to rectify a code violation, is in conformance with the Local Coastal Plan.

#### Analysis

The proposed gates enclose the carport, which was approved as an open structure under Coastal Development Permit and Variance 88-0599 and a third parking space on the pedestrian easement was subsequently denied under Amendment 93-0258. The carport abuts the Beach Drive right of way, which creates two difficulties. Firstly, a car waiting for the gates to open in order to enter the property would block traffic on Beach Drive, as there is no space on the road for a car to pull off the road to open and close the gates or for cars to pass. County of Santa Cruz Department of Public Works roads engineering staff have commented that the gates are not in compliance with County Design Criteria which require an 18 foot setback between gates and the edge of pavement. The setback is necessary to avoid traffic conflicts and interference with pedestrians on the sidewalk.

Secondly, the location of the fence on the property and the design of the fence do not allow sufficient room for the gates to be closed when the cars enter the carport area. The parcel is 22 feet deep at it's maximum. This length, combined with a parking space requirement of 18 feet per County Code 13.10.525, does not allow for a properly functioning gate. In order for the gates to be closed a car must drive onto the 37' pedestrian easement at the rear. This creates a hazard to the general public and neighbors whom might be using the pedestrian walkway to access the beach. A request for a third parking space, which similarly involved a car encroaching onto the

easement, was denied in 1993.

The applicant seeks to erect the gates to discourage the general public from cutting through the open carport area to access the beach. Staff believes that erecting a stationary fence at the rear of the carport that is compliant with FEMA regulations is an effective alternative that would serve the owner's purpose and would not result in blocking traffic on Beach Drive or encroachment onto the pedestrian easement.

The applicant seeks to resolve code compliance issues that are related to the third story roof that has been converted to a deck with railing, which contains a hot tub and is accessed by a ladder. If the Zoning Administrator denies the proposed six foot gate and fence, staff recommends that the Zoning Administrator remand the code violation back to Code Compliance staff.

### **Conclusion**

As proposed and conditioned, the project is not 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 the portion of Application Number 08-0367 that describes the removal of the unauthorized railing on the roof level, based on the attached findings and conditions.
- **DENIAL** of the portion of Application Number 08-0367, that describes construction of two six foot gates and a fence, 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: Porcila Perez  
Santa Cruz County Planning Department  
701 Ocean Street, 4th Floor  
Santa Cruz CA 95060  
Phone Number: (831) 454-5321  
E-mail: [pln110@co.santa-cruz.ca.us](mailto:pln110@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 LCP designation.

This finding can be made, in that the property is zoned RM-2.5 (Multi family residential), a designation which allows residential uses. The proposed gates, fence, and removal of existing railing are principal permitted uses within the zone district, consistent with the site's R-UH (Residential- Urban High) 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 cannot be made for the gates and fence in that the gates will create a conflict with the pedestrian easement that is located at the rear of the property adjacent to the beach. This is due to the inadequate space under the house for a car to pull in while gates are open, without the car driving onto the public easement. A parking space is defined by County Code 13.10.554(a)1 as 8.5 feet by 18 feet long. The property is approximately 22 feet long in the area where the car will park, and the gate is approximately 9 feet long. Therefore, in order for the gates to close after a car enters the carport, the car will need to drive onto the pedestrian easement at the rear, which creates a hazard to the general public and neighbors.

The finding can be made to remove the railing on the roof level, which will not conflict with any easements of restrictions.

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 for the removal of the railing, which brings the structure into conformance with County Codes.

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 cannot be made, in that the project site is located between the shoreline and the first public road and is not in conformance with General Plan and Local Coastal Program policies regarding public access as follows:

The gates do not conform to General Plan Policy/LCP 7.7.26, which allows property owners to

erect barriers to discourage public encroachment upon private property while ensuring that beach access is protected. The gates and fence proposed at the front of the property create a hazard to the public using the 37 foot pedestrian easement located at the rear of the property in that the gates cannot close without a vehicle driving onto the easement. In addition, the need to drive onto the 37 foot pedestrian easement to properly use the gates is in conflict with General Plan Policy/LCP 7.7c and 7.7.10, which require that beach and pedestrian access be maintained and protected.

The gates are not in conformance with Chapter 3 of the Coastal Act section 30212(b)3, which allows for improvements to any structure which do not block or impede public access, in that a vehicle must encroach onto the 37 foot pedestrian easement in order to use the gates. Driving onto the easement may block public access and create a hazard. Further, Beach Drive is at it's narrowest at this location. A car stopped in the road waiting for gates to open will block traffic on this coastal road which gets significant traffic during spring and summer beach season.

The finding can be made to remove the railing on the roof level, which conforms to the GP/LCP and has no negative impact on public access, recreation, or service to visitors.

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

~~This finding cannot be made, in that the proposed gates will not be in conformance with General Plan Policy/LCP 7.7.26 allows property owners to erect barriers to discourage public encroachment upon private property while ensuring that beach access is protected. The gates and fence proposed at the front of the property create a hazard to the public using the 37 foot pedestrian easement located at the rear of the property in that the gates cannot close without a vehicle driving onto the easement. In addition, the need to drive onto the 37 foot pedestrian easement to properly use the gates is in conflict with General Plan Policy/LCP 7.7c and 7.7.10, which requires that beach and pedestrian access be maintained and protected.~~

The finding can be made to remove the railing on the roof level, which is in conformity with all provisions of the LCP.

### Variance Findings

2. That the granting of the 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 cannot be made, in that enclosing the carport on the front abutting Beach Drive will create a hazard to the public. The fences enclose the carport creating two conditions: 1) inadequate space for a car to pull into while waiting for gates to open. The car will block any traffic on Beach Drive and pedestrians on the sidewalk and 2) once the car pulls in, the car will intrude onto the pedestrian easement waiting for the gates to close. The location of the fence and the design of the fence does not allow sufficient room for the gates to be closed when the cars enter the carport. The parcel is 22 feet deep at it's maximum and the gates are approximately 9 feet long; this does not leave room for an 18 foot long parking space beyond the

gate (County Code 13.10.525). In addition, in order for the gates to be closed, a car would need to drive onto the 37' pedestrian easement at the rear to allow sufficient room for the gates to close. This creates a hazard to the general public and neighbors whom might be using the pedestrian walkway to access the beach.

### Residential Development Permit Findings

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

This finding cannot be made, in that the location of the six foot high fence and gates along Beach Drive will not allow adequate room for vehicles to turn on to and off of Beach Drive in a safe manner. The subject parcel abuts the Beach Drive right of way, which at this location is the narrowest, at 31 feet wide, and serves as the entrance to the remainder of the properties on Beach Drive. In addition the steep coastal bluff abuts Beach Drive right of way immediately to the north and therefore, there is no room for cars to pull off on that side.

The subject parcel was constructed to 100 percent lot coverage with an open first floor carport. The fences enclose the carport creating two conditions: 1) inadequate space for a car to pull into while waiting for gates to open. The car will block any traffic on Beach Drive and pedestrians on the sidewalk and 2) once the car pulls in, the car will intrude onto the pedestrian easement waiting for the gates to close. The location of the fence and the design of the fence does not allow sufficient room for the gates to be closed when the cars enter the carport. The parcel is 22 feet deep at it's maximum and the gates are approximately 9 feet long; this does not leave room for an 18 foot long parking space beyond the gate (County Code 13.10.525). In addition, in order for the gates to be closed, a car would need to drive onto the 37' pedestrian easement at the rear to allow sufficient room for the gates to close. This creates a hazard to the general public and neighbors whom might be using the pedestrian walkway to access the beach.

2. That the proposed location of the project and the conditions under which it would be operated or maintained will be consistent with all pertinent County ordinances and the purpose of the zone district in which the site is located.

This finding cannot be made, in that the location of the proposed fence and the conditions under which it would be operated or maintained will be not be consistent with County ordinances and zone district regulations that require a 20-foot setback to the entrance of the carport. Coastal Permit and Variance 88-0599 allowed a reduction to the entrance of the carport to zero feet, as it would be unobstructed open area. The gates will enclose the open carport; variance findings can not be made for the enclosure. Specific regulations for fencing and walls are contained in section 13.10.525. This proposal does not comply with the requirements and intents of that section, in that:

- The fence will be situated on the property in a manner that it does not allow adequate sight distance for vehicles traveling along the roadway as well as entering and exiting the property, in that the fence is not set back from the traveled roadway. Beach Drive traveled roadway is located immediately adjacent to the sidewalk that abuts the subject property, therefore, there is no area for a car to stop and open or close the gates.

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 cannot be made, in that the proposed gates will not be in conformance with General Plan Policy/LCP 7.7.26 allows property owners to erect barriers to discourage public encroachment upon private property while ensuring that beach access is protected. The gates and fence proposed at the front of the property create a hazard to the public using the 37 foot pedestrian easement located at the rear of the property in that the gates cannot close without a vehicle driving onto the easement. In addition, the need to drive onto the 37 foot pedestrian easement to properly use the gates is in conflict with General Plan Policy/LCP 7.7c and 7.7.10, which requires that beach and pedestrian access be maintained and protected.

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 cannot be made, in that the proposed fence location may disrupt traffic on Beach Drive as there is insufficient area for a car entering or exiting the property to pull off the road while the gates are opened or closed. In addition, the Department of Public Works Road Engineering Design criteria does not allow for gates closer than 18 feet from the edge of pavement. This is because stopping in front of the gate will stop traffic along Beach Drive and block pedestrian access along the sidewalk.

Application #: 08-0367  
APN: 043-072-01  
Owner: Barbara Nelson

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

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

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

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

\_\_\_\_\_  
Porcila Perez  
Project Planner

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

# 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: 08-0367

Assessor Parcel Number: 043-072-01

Project Location: 202 Beach Drive

**Project Description:** Proposal to construct a six foot fence and two six foot electric gates within the required front yard setback

**Person or Agency Proposing Project:** Barbara Nelson C/O Powers Land Planning

**Contact Phone Number:** (831) 426-1663

- 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: Projects which are disapproved (Section 15270)

E. x Categorical Exemption

Section 15301, Existing facilities

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

The proposal is to remove railing and to construct gates and fencing at an existing single family dwelling.

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

\_\_\_\_\_  
Porcila Perez, Project Planner

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

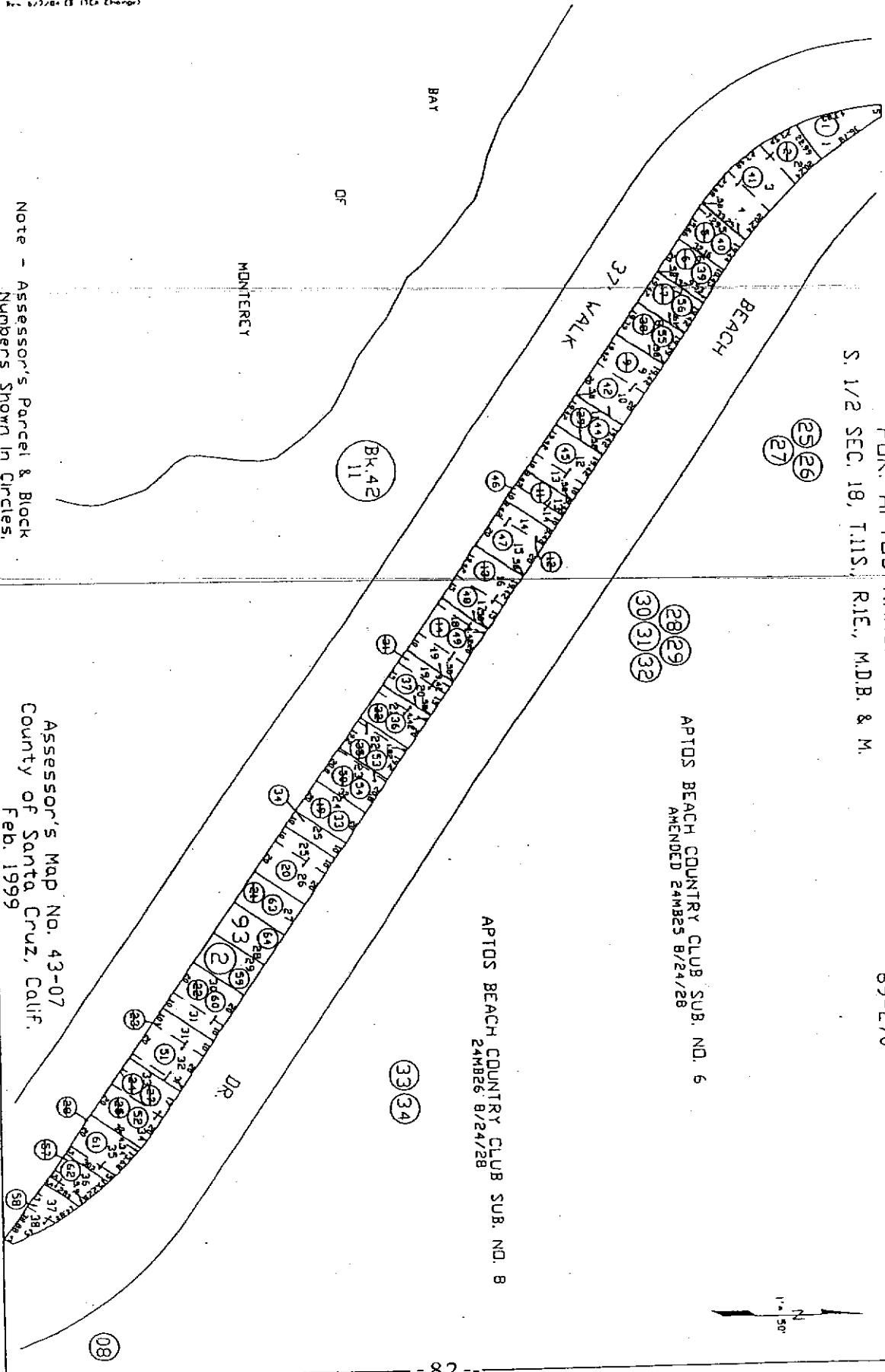
# FOR TAX PURPOSES ONLY

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Electronic Remission 2/5/99 re  
Rev. 5/24/99 E.I. 11a (Consolidation)  
Rev. 5/25/98 min. (changed page refs.)  
Rev. 1/4/97 min. (11a)  
Rev. 2/14/96 min. (changed blk. numbers)  
Rev. 2/19/93 DB (code, Tax code line 69-270)  
Rev. 6/7/90 E.I. 11a (change)

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

Assessor's Map No. 43-07  
County of Santa Cruz, Calif.  
Feb. 1999



S. 1/2 SEC. 18, T.11S.  
R.1E., M.D.B. & M.

POR. APTOS RANCHO

Tax Area Code  
69-270

43-07

APTOS BEACH COUNTRY CLUB SUB. NO. 8  
24MB26 8/24/28

APTOS BEACH COUNTRY CLUB SUB. NO. 6  
24MB25 8/24/28

Bk. 42  
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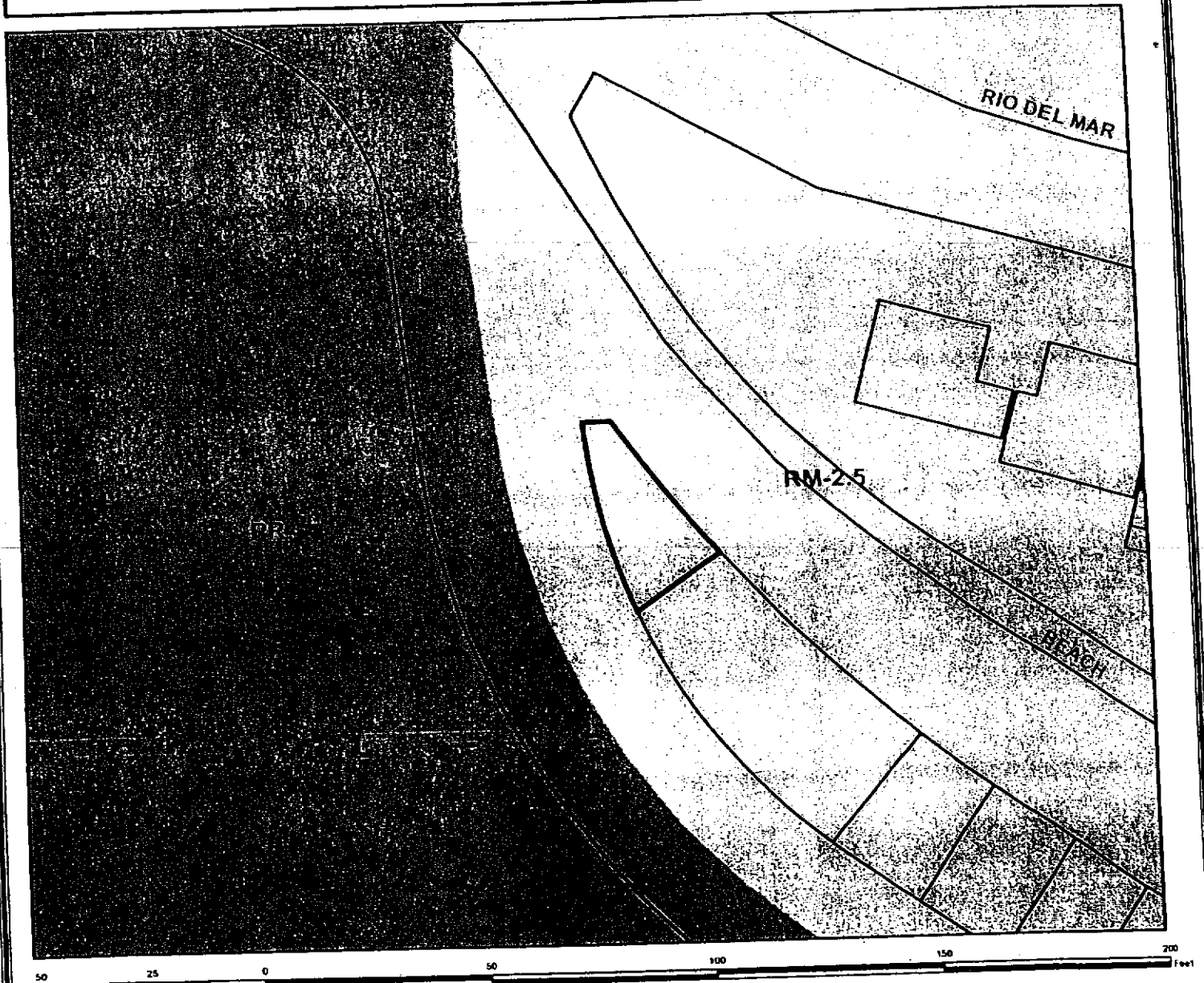
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82





# Zoning Map



## LEGEND

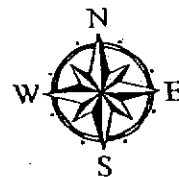
 APN: 043-072-01

 Assessors Parcels

 Streets

RESIDENTIAL-MULTI FAMILY

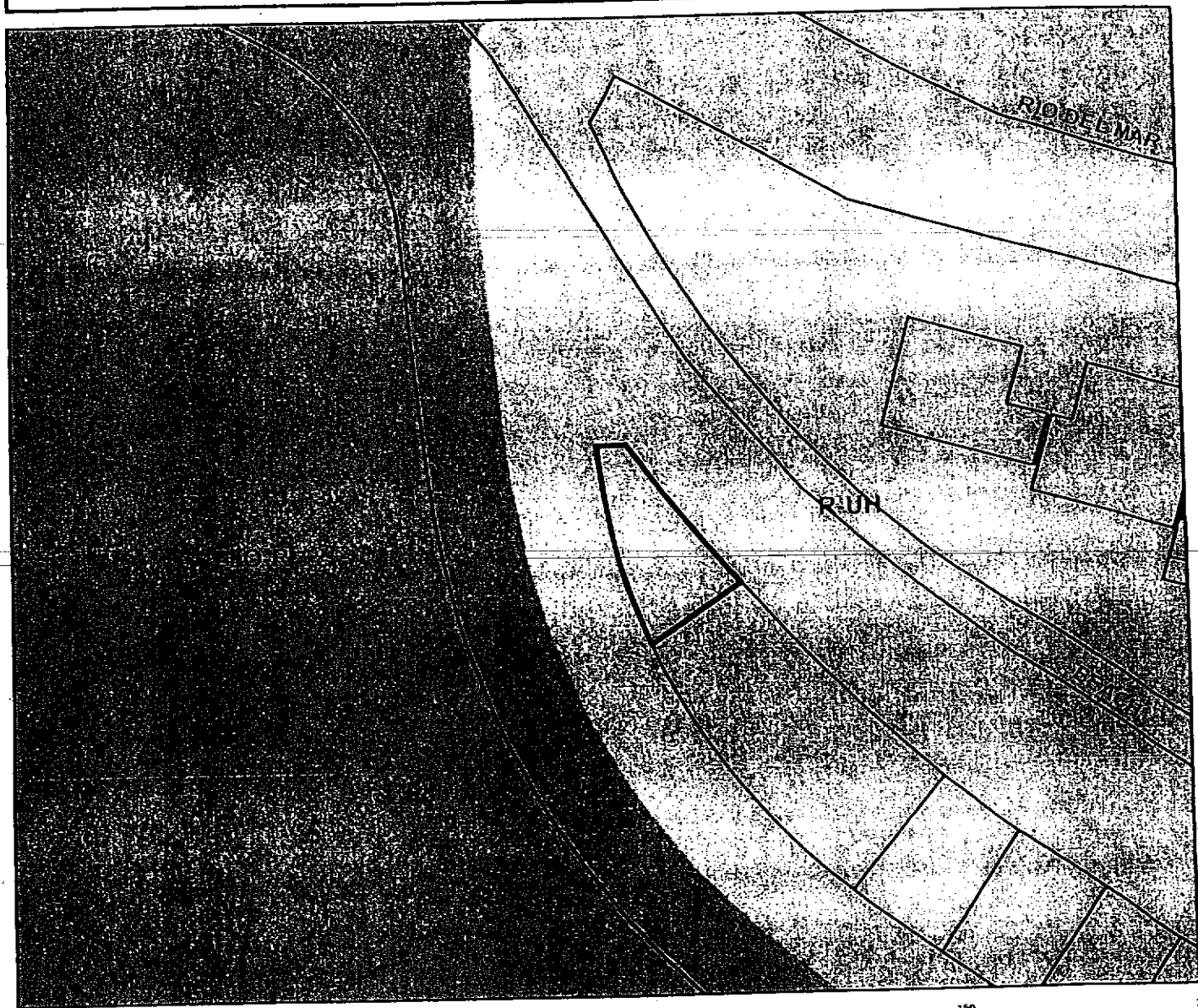
 PARK



Map Created by  
County of Santa Cruz  
Planning Department  
February 2009



# General Plan Designation Map



## LEGEND



APN: 043-072-01



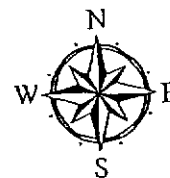
Assessors Parcels

Streets

Residential - Urban High Density



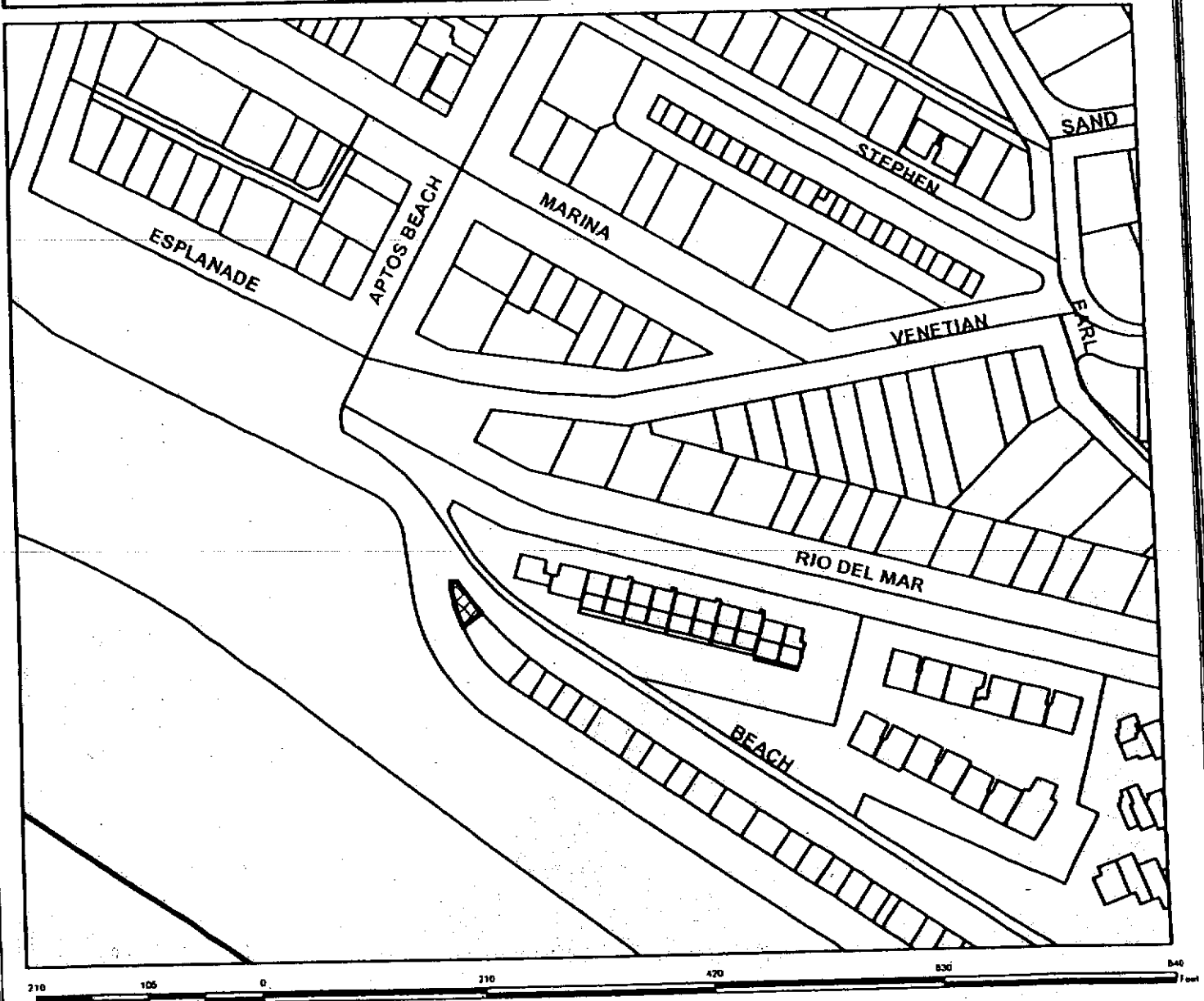
Parks and Recreation







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County of Santa Cruz  
Planning Department  
February 2009

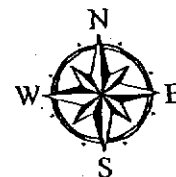


# Location Map



## LEGEND

-  APN: 043-072-01
-  Assessors Parcels
-  Streets
-  County Boundary



Map Created by  
County of Santa Cruz  
Planning Department  
February 2009

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

Project Planner: Maria Perez  
Application No.: 08-0367  
APN: 043-072-01

Date: February 24, 2009 print date  
Time: 11:27:14  
Page: 1

Environmental Planning Completeness Comments

===== REVIEW ON AUGUST 29, 2008 BY ANTONELLA GENTILE =====  
No completeness comments.

Environmental Planning Miscellaneous Comments

===== REVIEW ON AUGUST 29, 2008 BY ANTONELLA GENTILE =====  
Condition of approval: All gates and panels installed below the base flood elevation shall be of breakaway construction as detailed in section 16.10.070(h).5.(vi) to allow for coastal flooding and prevent the accumulation of debris under or adjacent to the structure. ===== UPDATED ON DECEMBER 22, 2008 BY ANTONELLA GENTILE =====  
Engineering calculations will be reviewed during the building application process.

Code Compliance Completeness Comments

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

Approved application 08-0367, which address the code violations. Property owner is also required to pay any code cost associated with the notice of violation. (LM)

===== REVIEW ON AUGUST 29, 2008 BY LAURA MADRIGAL =====  
NO COMMENT

Code Compliance Miscellaneous Comments

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

===== REVIEW ON AUGUST 29, 2008 BY LAURA MADRIGAL =====  
NO COMMENT

Dpw Road Engineering Completeness Comments

===== REVIEW ON AUGUST 28, 2008 BY ANWARBEG MIRZA =====  
1. The gate is not allowed as shown as vehicles stopping in front of the gate shall block traffic on Beach Dr. A minimum of 18 feet from the edge of pavement along the Beach Dr to the face of gate is required. Show details as necessary.

Dpw Road Engineering Miscellaneous Comments

===== REVIEW ON AUGUST 28, 2008 BY ANWARBEG MIRZA =====  
NO COMMENT

Aptos-La Selva Beach Fire Prot Dist Completeness C

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

===== REVIEW ON AUGUST 26, 2008 BY ERIN K STOW =====  
DEPARTMENT NAME: Aptos/La Selva Fire Dept.  
All Fire Department building requirements and fees will be addressed in the Building

Discretionary Comments - Continued

Project Planner: Maria Perez  
Application No.: 08-0367  
APN: 043-072-01

Date: February 24, 2009  
Time: 11:27:14  
Page: 2

Permit phase.

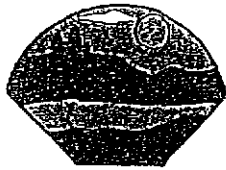
Plan check is based upon plans submitted to this office. Any changes or alterations shall be re-submitted for review prior to construction.

Aptos-La Selva Beach Fire Prot Dist Miscellaneous

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

===== REVIEW ON AUGUST 26, 2008 BY ERIN K STOW =====

NO COMMENT



## Aptos/La Selva Fire Protection District

6934 Soquel Drive • Aptos, CA 95003  
Phone # 831-685-6690 • Fax # 831-685-6699

---

August 21, 2008

Planning Department  
County of Santa Cruz  
Attention: Maria Porcila Perez  
701 Ocean Street  
Santa Cruz, CA 95060

Subject: APN: 043-072-01 / Appl #08-0367  
202 Beach Drive

Dear Ms. Perez:

Aptos/La Selva Fire Department has reviewed the plans for the above cited project and has no objections as presented.

A plan review fee of \$50.00 is due and payable to the Aptos/La Selva Fire Department **PRIOR TO APPROVAL** of building application. Reminder: the enclosed Permit/Service Fees form must be submitted to the Aptos/La Selva Fire Department at time of payment.

- Any other requirements will be addressed in the Building Permit phase.
- Plan check is based upon plans submitted to this office. Any changes or alterations shall be re-submitted for review prior to construction.

---

In order to obtain building application approval, recommend you have the DESIGNER add appropriate NOTES and DETAILS showing the following information on the plans that are submitted for BUILDING PERMIT.

- **ELECTRONIC CONTROL:** Security Gates equipped with electronic control devices shall have an approved fire department override key switch installed. PROVIDE a "Knox" Key Switch. Authorization forms for ordering the Knox Key Switch can be obtained directly at the Fire Department at 6934 Soquel Drive in Aptos.
- **FAIL SAFE OPERATION PROVISION:** All electronically controlled security gates shall be provided with manual override to allow operation of the gate during power outage.
- **GENERAL REQUIREMENTS:**
  1. Access gates shall be a minimum of 2 feet wider than the required access road width. When open, gates shall not obstruct any portion of the required access roadway or driveway width.

2. Gates shall be adequately supported to prevent dragging.
3. Gates shall be operable by one person.
4. Gates may swing in either direction and shall be open a full 90 degrees. Sliding gates shall slide parallel to the security fence.
5. All gates shall remain in the open position when not attended or locked, or when electronic fire department key switches has activated.
6. Overhead gate structures shall have a minimum of 15 feet vertical clearance.

Sincerely,



Jim Dias, Fire Marshal  
Fire Prevention Division  
Aptos/La Selva Fire Protection District

Cc: Barbara Nelson  
202 Beach Drive  
Aptos, CA 95003

Cc: Powers Land Planning  
1607 Ocean Street Suite 8  
Santa Cruz, CA 95060



# Aptos/La Selva Fire Protection District

6934 Soquel Drive • Aptos, CA 95003

Phone # 831-685-6690 • Fax # 831-685-6699

## DISCRETIONARY APPLICATION FEE

### PLAN REVIEW:

DATE: 8/21/2008 APN: 043-072-01 APPL: 08-0367

PROJECT ADDRESS: 202 Beach Drive Aptos, CA 95003

PROJECT NAME: Nelson Electric Gate

SFD [ ☒ ] SFR [ ☐ ] MFD [ ☐ ] COR [ ☐ ] COM [ ☐ ]

OWNER: Barbara Nelson TELEPHONE: \_\_\_\_\_

OWNER

ADDRESS: 202 Beach Drive

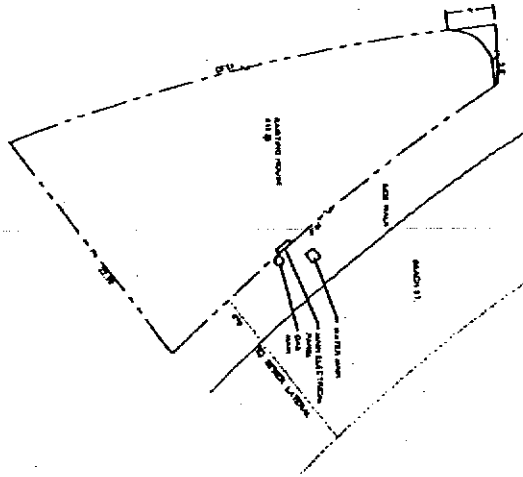
SPRINKLERED: Yes [ ☒ ] No [ ☐ ]

RATE: \$50 X 1 HOURS = FEE: \$50.00

TOTAL DUE: \$50.00

Fire Dept. Use Only

DATE PAID: \_\_\_\_\_ INITIALS: \_\_\_\_\_



VICINITY MAP

**SHEET SCHEDULE**

- 1 SITE PLAN
- 2 BUILDING FLOOR PLAN
- 3 EAST & WEST NORTH ELEVATION
- 4 ELEVATION NOTES

**NOTE:**

PROJECT SHALL COMPLY WITH THE 2001 CALIFORNIA BUILDING, PLUMBING, ELECTRICAL, FIRE AND ENERGY CODES.

DATE	BY	REVISION
04/01/08	JD	1.00
04/01/08	JD	1.01
04/01/08	JD	1.02
04/01/08	JD	1.03
04/01/08	JD	1.04
04/01/08	JD	1.05
04/01/08	JD	1.06
04/01/08	JD	1.07
04/01/08	JD	1.08
04/01/08	JD	1.09
04/01/08	JD	1.10
04/01/08	JD	1.11
04/01/08	JD	1.12
04/01/08	JD	1.13
04/01/08	JD	1.14
04/01/08	JD	1.15
04/01/08	JD	1.16
04/01/08	JD	1.17
04/01/08	JD	1.18
04/01/08	JD	1.19
04/01/08	JD	1.20

**NOTE:**

1. ALL WORK SHALL BE DONE IN ACCORDANCE WITH THE 2001 CALIFORNIA BUILDING, PLUMBING, ELECTRICAL, FIRE AND ENERGY CODES.

**GRADING/PAVING NOTES:**

- 1. 10% SLOPE TO NEAREST STREET OR DRAINAGE DITCH.
- 2. 10% SLOPE TO NEAREST STREET OR DRAINAGE DITCH.
- 3. 10% SLOPE TO NEAREST STREET OR DRAINAGE DITCH.
- 4. 10% SLOPE TO NEAREST STREET OR DRAINAGE DITCH.
- 5. 10% SLOPE TO NEAREST STREET OR DRAINAGE DITCH.
- 6. 10% SLOPE TO NEAREST STREET OR DRAINAGE DITCH.
- 7. 10% SLOPE TO NEAREST STREET OR DRAINAGE DITCH.
- 8. 10% SLOPE TO NEAREST STREET OR DRAINAGE DITCH.
- 9. 10% SLOPE TO NEAREST STREET OR DRAINAGE DITCH.
- 10. 10% SLOPE TO NEAREST STREET OR DRAINAGE DITCH.
- 11. 10% SLOPE TO NEAREST STREET OR DRAINAGE DITCH.
- 12. 10% SLOPE TO NEAREST STREET OR DRAINAGE DITCH.
- 13. 10% SLOPE TO NEAREST STREET OR DRAINAGE DITCH.
- 14. 10% SLOPE TO NEAREST STREET OR DRAINAGE DITCH.
- 15. 10% SLOPE TO NEAREST STREET OR DRAINAGE DITCH.
- 16. 10% SLOPE TO NEAREST STREET OR DRAINAGE DITCH.
- 17. 10% SLOPE TO NEAREST STREET OR DRAINAGE DITCH.
- 18. 10% SLOPE TO NEAREST STREET OR DRAINAGE DITCH.
- 19. 10% SLOPE TO NEAREST STREET OR DRAINAGE DITCH.
- 20. 10% SLOPE TO NEAREST STREET OR DRAINAGE DITCH.

**PARCEL ATTRIBUTES**

- 1. ACREAGE: 0.10
- 2. ZONING: LAR-1
- 3. OCCUPANCY: RESIDENTIAL
- 4. TYPE: SINGLE-FAMILY

**PROJECT DESCRIPTION**

- 1. THE REMOVAL OF HOT TUB & BATHING IN ROOM.
- 2. TO INSTALL GATES AND PANELS.

SITE PLAN  
SCALE: 1" = 10'

1

DATE: APRIL 2008

APN: 043-072-01

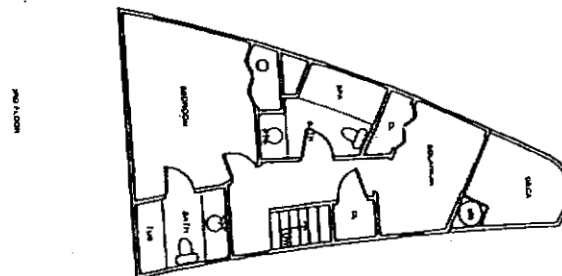
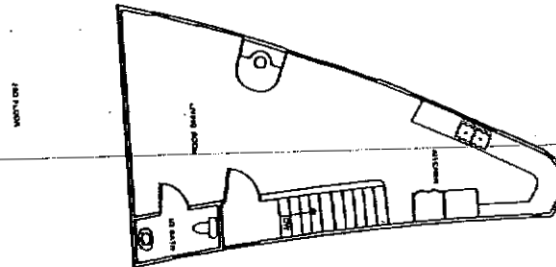
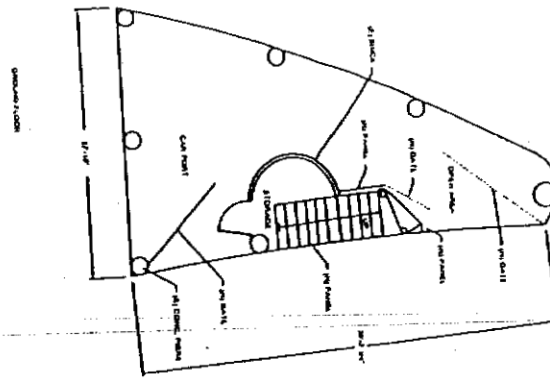
PROJECT:  
JIM BRADSHAW  
BARBARA NELSON  
204 BEACH DR  
APTOS, CA 95003

OWNER:  
JIM BRADSHAW & BARBARA NELSON  
300 LAKE SIDE AVE. SEATTLE, WA 98144  
Phone (206) 725-0000-2711 OR 206-688-0004

PAMELA DIAS  
P.O. BOX 834 FREEDOM, CA 95019  
Phone (951) 732-2625  
Fax (951) 374-2697

Exhibit

PROJECT: JIM BRADSHAW & BARBARA NELSON  
 DATE: JUNE 2000  
 APN: 043-072-01



EXISTING FLOOR PLAN

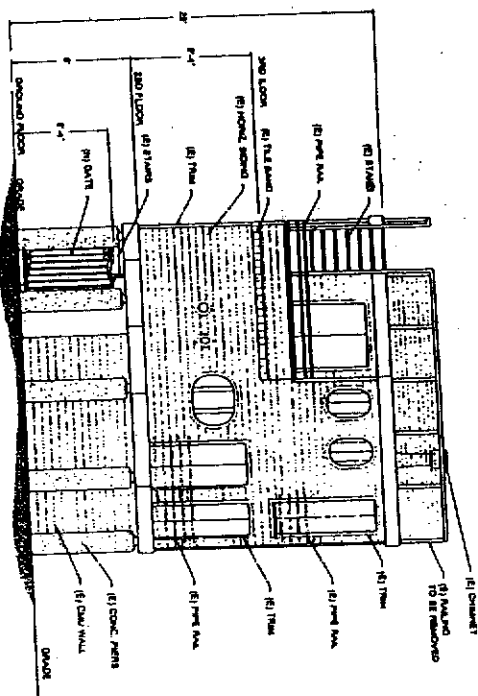
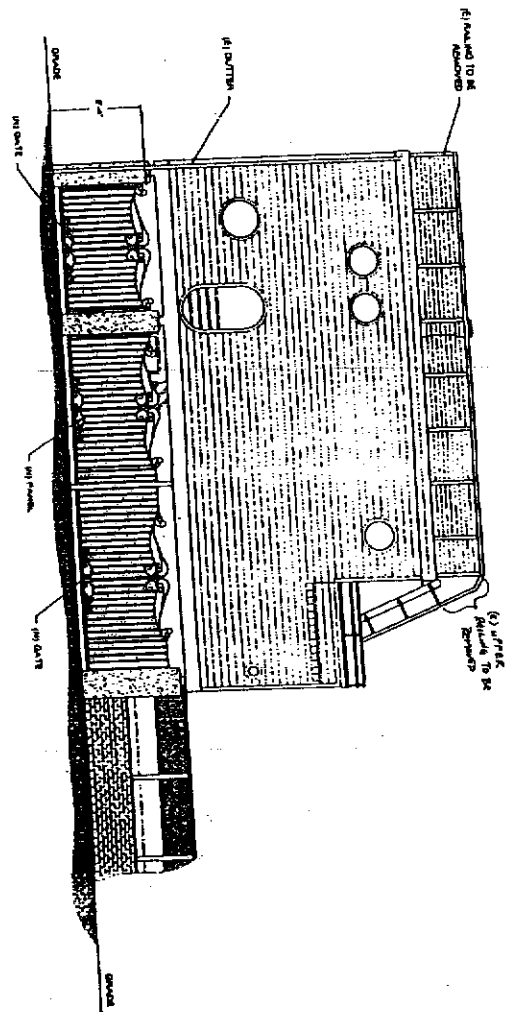
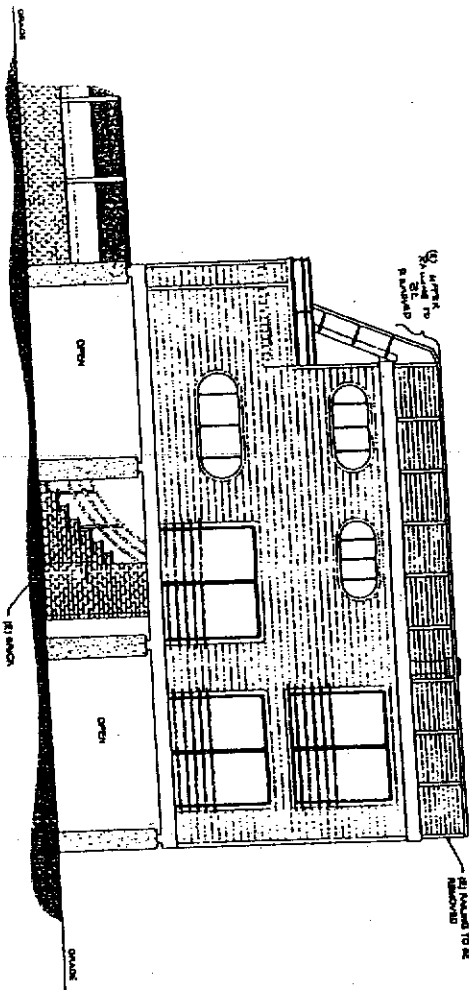
2

DATE: JUNE 2000  
 APN: 043-072-01

PROJECT:  
 JIM BRADSHAW  
 BARBARA NELSON  
 300 BLANCH ST  
 AMSTER, CA 94508

OWNER:  
 JIM BRADSHAW & BARBARA NELSON  
 300 BLANCH ST, 3RD FLOOR  
 AMSTER, CA 94508  
 Phone (925) 266-0411 FAX (925) 266-0412

PAMELA DIAS  
 P.E. AND ENR. PROFESSIONAL  
 Phone (925) 272-2028  
 Fax (925) 272-2028



REAR ELEVATION  
SCALE 1/4" = 1'-0"

3

DATE: JUNE 2009

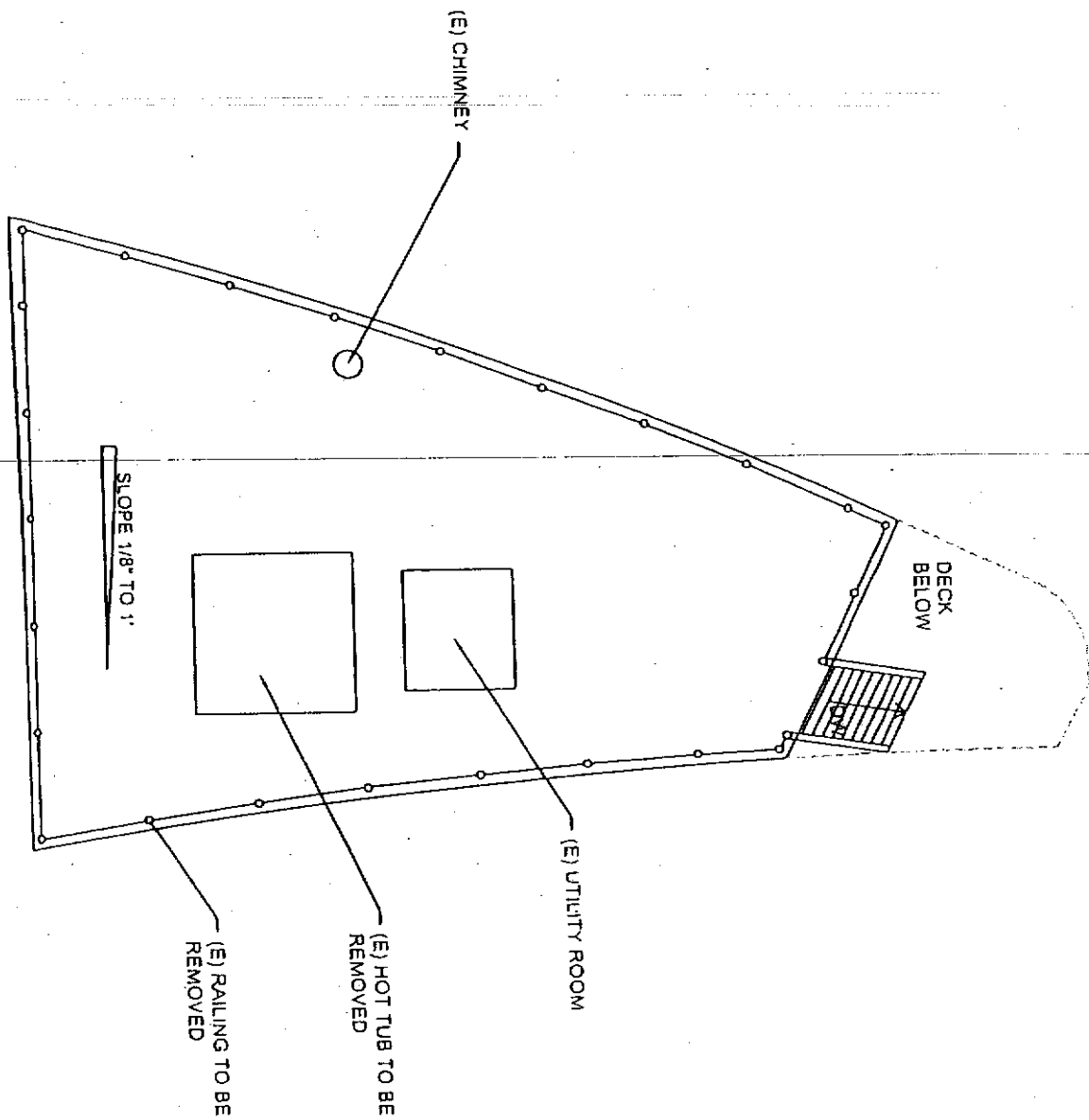
APN: 043-072-01

PROJECT:  
JIM BRADSHAW  
BARBARA NELSON  
308 BEACH DR  
APTOS, CA 95008

OWNER:  
JIM BRADSHAW & BARBARA NELSON  
308 LAKE SIDE AVE. SEATTLE, WA 98144  
Phone: (206) 266-8888-8711 OR 206-466-8888

PAMELA DIAS

P.O. BOX 954 FREEDOM, CA 95018  
Phone: (916) 722-7929  
Fax: (916) 274-2687



Maria Perez

---

From: jpdpg@comcast.net  
Sent: Wednesday, March 04, 2009 7:25 PM  
To: Maria Perez  
Subject: 08-0367 (\*\*) 202 Beach Dr.

Dear Ms Maria Perez,

This is to urge you to decline the proposed construction of gates and fence cutting off access from 202 Beach Dr. to the rear of the homes along the "inland" on Beach Dr. Our family has used this pathway for many, many years with babies in strollers, toddlers on tricycles, elders with canes, walkers and wheelchairs. This is a much safer, wider and easier route than the very small and tight sidewalk on Beach Dr. itself. Beach Dr. suffers gridlock during the summer and holiday time and if an emergency arises and rear access is necessary this could be a real danger.

Part of the charm of staying at the beach is strolling along the walkway to the little market, deli and restaurant with our family in a safe and neighborly way. To cut off this enjoyable element and possibly expose residents to dangers, to please one homeowner, disregarding the rest of us, does not seem reasonable or just. I was always under the impression that this is public right of way.

Respectfully,

The Dwyer Family  
214 Beach Dr.

**Maria Perez**

---

**From:** Brynne Wilson [bwilson@plagemanlund.com]  
**Sent:** Monday, February 23, 2009 2:58 PM  
**To:** Maria Perez  
**Subject:** Notice of Public Hearing 202 Beach Drive

To Whom It May Concern:

I received a Notice of Public Hearing regarding 202 Beach Drive, Aptos. I am writing to request more details about the proposal, specifically a staff report and prior permit.

Should you have any further questions or concerns, please contact me.

Sincerely,

Brynne Wilson for William H. Plageman

Plageman, Lund & Cannon LLP  
510-899-6100

---



VEHICLE REPORT  
OFFICIALS OF THE CALIFORNIA HIGHWAY PATROL

NOTE: CHD 1601 IS FURNISHED TO ALL PEACE OFFICERS BY THE CALIFORNIA HIGHWAY PATROL

REPORTING DEPARTMENT: CHP SANTA CRUZ LOCATION CODE: 9720 DATE/TIME OF REPORT: 3-19-09 11:50 NOTICE OF STORED VEHICLE DELIVERED PERSONALLY: ☒ FILE NO.: 5061-770-09

LOCATION TOWED / STOLEN FROM: 202 SPACU DR ODOMETER READING: 2500 VIN CLEAR IN SVS?: ☒ YES ☐ NO DATE/TIME DISPATCH NOTIFIED: 3-19-09 1 LOG NO.: 8

YEAR: 79 MAKE: VW MODEL: BEETLE BODY TYPE: 01 COLOR: DRD / TAN LICENSE NO.: 5D5Y56 ONE MONTH / YEAR: STWO 02/10 STATE: WA

VEHICLE IDENTIFICATION NO.: 1S92001929 ENGINE NO.: 135K VALUATION BY: ☒ OFFICER ☐ OWNER

REGISTERED OWNER: BARBARA NELSON SAME AS RIO: ☒ LEGAL OWNER: BARBARA NELSON

302 LAKESTAR AVE SO #302

SEATTLE WA 98144

☐ STORED ☐ IMPOUNDED ☐ RELEASED ☐ RECOVERED - VEHICLE COMPONENT

TOWING / STORAGE CONCERN (NAME ADDRESS PHONE):

TOWED TO / STORED AT: CHP SANTA CRUZ DRIVEABLE?: ☒ YES ☐ NO VIN SWITCHED?: ☐ YES ☒ NO

CONDITION	YES	NO	YES	NO	YES	NO	YES	NO	YES	NO	YES	NO	YES	NO	YES	NO	YES	NO
WRECKED																		
BURNED/HOT/SMOKING																		
VANDALIZED																		
ENGINE/TRANS. STRIPPED																		
MISC. PARTS STRIPPED																		
BODY METAL STRIPPED																		
REAR END STRIPPED																		

RELEASE VEHICLE TO: CHP SANTA CRUZ NAME OF PERSON / AGENCY AUTHORIZING RELEASE: CHP SANTA CRUZ DATE: 3-19-09

SIGNATURE OF PERSON AUTHORIZING RELEASE: [Signature]

☒ STORED VEHICLE ☐ RELEASED VEHICLE

DATE/TIME OF DELIVERY: 3-19-09 10:40 NAME OF DELIVERER: JAMES [Signature] LICENSE NO. / STATE: 5D5Y56 / WA

LAST DRIVER OF VEHICLE: JAMES [Signature] DATE/TIME OF DELIVERY: 3-19-09 10:40 NAME OF DELIVERER: JAMES [Signature] LICENSE NO. / STATE: 5D5Y56 / WA

I HEREBY CERTIFY UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

DELIVERER'S NAME: JAMES [Signature] DATE/TIME OF DELIVERY: 3-19-09 10:40

VEHICLE TYPE: BEETLE TRUCK VAN OTHER

REQUIREMENTS SENT TO REGISTERS: ☐ YES ☒ NO



Law Offices of  
**DENNIS J. KEHOE**  
Law Corporation

311 Bonita Drive  
Aptos, California 95003  
PHONE: (831) 662-8444 FAX : (831) 662-0227 EMAIL: kehoelaw@hotmail.com

April 17, 2009

**(Hand-Delivered and Transmitted by U.S. Mail)**

SANTA CRUZ PLANNING DEPARTMENT  
ATTENTION: ZONING ADMINISTRATOR, GLENDA HILL  
701 Ocean Street, 4<sup>th</sup> Floor  
Santa Cruz, CA 95060

**Re: 202 Beach Drive, Aptos, CA; APN 043-072-01, including Application  
No. 08-0367 and all amendments thereto; ZA hearing May 1, 2009**

Dear Ms. Hill:

I understand that the initial public hearing was scheduled March 7, 2009, which was continued to March 20, 2009, and, in turn, continued to May 1, 2009. The undersigned represents Mr. and Mrs. Gregory Basso, who own property in the area and regularly occupy one of the homes on "Beach Drive Island." Additionally, William Plageman and his family, owners of 216 Beach Drive (APN 43-072-44), and the Dwyer Family, owners of 214 Beach Drive, have similar objections to those following.

**1. BACKGROUND FACTS.**

**A. Subdivision Map:**

The subdivision map entitled "Subdivision No. 8 Aptos Beach Country Club Properties" was recorded in the Santa Cruz County Recorder's Office on August 24, 1928. That subdivision map specifically states, among other items, "That land delineated and designated hereon as Beach Drive, Beach Trail, Shore Trail and **37' Walk** is intended and is hereby offered for dedication as streets and highways for **public use.**" (Emphasis added) Under the Subdivision Map law, all recorded offers of dedication are irrevocable and can be abandoned only after a formal Abandonment Proceedings. HC §§8300-8362; Government Code §7050 No such Abandonment Proceedings have been held by the

SANTA CRUZ PLANNING DEPARTMENT  
ATTENTION: ZONING ADMINISTRATOR, GLENDA HILL  
Re: 202 Beach Drive, Aptos, CA; APN 043-072-01, including Application No. 08-0367  
and all amendments thereto  
Page 1 of 7 Pages



Board of Supervisors concerning the 37' Walk.

In the meantime, the Beach Drive dedication and the Walk dedication have been used over a number of years by the public as well as by my clients and Plagemans, Dwyers, and other owners and occupants of the Beach Drive Island area. Consequently, these dedications have been accepted and are public property which must be honored and protected by the County. Enclosed are the pertinent portions of the recorded Subdivision Map. (Ex. A) The Planning staff has confirmed that **"a 37-foot pedestrian right-of-way is located adjacent to the property (Nelson) in the rear of the parcel. The subject parcel abuts the Beach Drive right-of-way which, at this location is the narrowest, at 31-feet wide and serves as the entrance to the remainder properties on Beach Drive."** (Staff report, 3-07-09, pgs. 2-3, App. No. 08-0367) Additionally, the Zoning Map, attached as Ex. F to that same staff report, has the schematic outline of this 37' public access pedestrian Walk.

## 2. County Permit.

A. The applicant's parcel size is 653 square feet. The minimum zoning requirements in the applicable zone for a buildable parcel is 2,500 square feet. Nevertheless, the County did grant Permit No. 88-0599 reducing setback and lot size requirements and required, among other items, "an open, non-habitable first floor" as a condition for granting that discretionary permit. (Emphasis added) (Staff Report, 3/7/09, pg.2) Moreover, the property is subject to Coastal Wave runoff. (Staff Report, pg.3) (See also Ex. B, photo #7, attached)

The current Application No. 08-0367 requests an amendment to the Coastal Development Permit to allow a fence and gate in the front yard adjacent to the Beach Drive right-of-way. The March 7, 2009, staff report points out that such a discretionary permit cannot be issued because there, otherwise, would be a violation of the General Plan and the LCP. Safety requirements further prohibit the granting of such discretionary permit.

B. The applicant has recently amended the application to also request a discretionary permit to erect self-described "barriers" along the beach side property line of this 653 square foot parcel. The discretionary permit requests for gates along Beach Drive and panels (barriers along the oceanside boundary) is scheduled for May 1, 2009. Both of those discretionary requests must be denied by the Zoning Administrator. Please refer to the below comments and the condition in County Permit No. 88-0499 requiring "an open non-habitable first floor." The applicant is a recent buyer (2007) of the subject parcel. Nevertheless, since Permit No. 88-0599 requires and "open" area and runs with the land, the applicant's current requests are 10 years too late.

SANTA CRUZ PLANNING DEPARTMENT  
ATTENTION: ZONING ADMINISTRATOR, GLENDA HILL  
Re: 202 Beach Drive, Aptos, CA; APN 043-072-01, including Application No. 08-0367  
and all amendments thereto  
Page 2 of 7 Pages



**3. The Requests For Gates And/Or To Erect A Beach Side Barrier (Panels) Must Be Denied.**

The request to erect such barriers (gates/panels) cannot legally be granted for a number of reasons including applicable law. Initially, as pointed out above, Permit No. 88-0599 requiring that the area in question remain "open" is final and binds the lands, the owner, and the County.

Second, the applicant is the successor-in-interest to the former owners of the subject property. Either the applicant or the former owners erected a wall across the dedicated 37' pedestrian walk blocking pedestrian access as well as visual access to and from Beach Drive and the Esplanade. (The present status of this wall is unclear. Were the necessary discretionary permits obtained? If not, the required findings here cannot be made.) As a result, the public has been using the open area over the subject 653 square foot parcel for pedestrian access onto and from Beach Drive. Such public pedestrian utilization has been occurring openly, notoriously, and consistently over the years ever since the construction of the wall blockage to the pedestrian walkway. Additionally, numerous private owners have acquired prescriptive property rights for access as well over this open area. Thus, there has been a dedication and acceptance of the public pedestrian access way over the open area on the subject parcel. Gion v. City of Santa Cruz (1976) 2 Cal.3d 29. Moreover, the applicant stands in the shoes of the prior owners of the subject parcel and, therefore, is also responsible for the wall blockage, as well subject to this dedicated and accepted public Walk.

Third, should the County permit a blockage of, among other items, the private access rights across this subject "open" area to and from the Walk and onto the Beach Drive sidewalk, this will constitute a violation of the federal Civil Rights Act for which the County will incur substantial liability. 42 USC §§1983 et seq.

Fourth, the LCP requires the preservation of public access ways such as this pedestrian walkway. Enclosed are eight (8) color copied photographs. (Ex. B) Photo #1 depicts a concrete pier on ground level supporting a portion of the upper story living area. It also depicts the portion of the 37' walkway as it converges with Beach Drive right-of-way. (See also photo # 2) The gray fence and false door block public access to and from the pedestrian walk onto Beach Drive resulting in the public using the open area across the subject parcel onto Beach Drive. Photo #8 depicts the subject open area. In speaking with staff, Ms. Perez, on March 26, 2009, there was an indication that the wall and door depicted on Photo #1 is on County property. If so, the County or Nelson, as condition of the permit, must remove the wall including the false door so as to allow continued public pedestrian access to and from the pedestrian walk onto Beach Drive. Otherwise, the County must deny this application and its amendment.

SANTA CRUZ PLANNING DEPARTMENT  
ATTENTION: ZONING ADMINISTRATOR, GLENDA HILL  
Re: 202 Beach Drive, Aptos, CA; APN 043-072-01, including Application No. 08-0367  
and all amendments thereto  
Page 3 of 7 Pages



If granted so as to prevent pedestrian access over this "open" area, numerous laws will be violated by both the County of Santa Cruz and Nelson including, but not limited to the LCP, the California Coastal Act, and established case and statutory law including, but not limited to, the federal Civil Right Act, 42 U.S.C. §§1983 et seq.

Fifth, the photos nos. 1 through 6 clearly depict that the applicant-owner of the subject (653 square foot) parcel, is utilizing the public 37' pedestrian walkway as her own private yard. Additionally, placing barriers (panels) on the beach side property line will complete this attempt to exclude the public from the pedestrian walkway. For example, Photo #1 depicts, among other items, landscaping, a gazebo, potted plants, a wall, a false door, a background gray and white high fence, and landscaping. It also depicts one of the concrete piers supporting the upper floor living area which, supposedly, is on the property line of the applicant's property. Photo #2 depicts, essentially, the same items but at closer range. Photo #3 depicts applicant's car, garbage can, potted plant, and foliage within the pedestrian walkway as well as substantial impact on the private owners' access, health, and safety. Photo #4 depicts more landscaping, a garden hose, and a "moveable" porch used in conjunction with the upper living area of the applicant, all within the public 37' pedestrian walkway. Photo #5, depicts a close up of the door in front of the wall and some outdoor metal chairs. Photo #6, depicts the north side of the same wall depicted in Photo #5 as well as some potted trees growing on the pedestrian walkway.

The applicant cannot apply and the County cannot grant any discretionary permits with such obvious, unabated zoning, planning, and legal violations. Otherwise, the applicant as well as the County is subject to legal liability including damages and injunctive relief.

Sixth, staff indicates that "the area and subject property is also subject to potential slope instability from the steeply sloped coastal bluff located across the street on the north side of Beach Drive." (Staff Report, 3/7/09, pg. 3) Staff further indicates that

"The property is located on the beach side of Beach Drive adjacent to the Rio Del Mar Esplanade in an area known as the 'islands.' This is the first property in a line of two and three story homes, most of which pre-date zoning and building requirements." (Staff Report, 3/7/09, pg.2)

Due to potential fire hazards, safety concerns, and slope instability, this 37' public pedestrian walkway must remain open for access and for safety reasons. For people with disabilities or due to infirmity or age, this flat pedestrian walkway to Beach Drive and the Esplanade must remain open and be available for emergency purposes including public emergency ingress and egress for fire, medical, and safety purposes. Otherwise, there would be a violation of the laws, a number of safety regulations in the California Code of

SANTA CRUZ PLANNING DEPARTMENT  
ATTENTION: ZONING ADMINISTRATOR, GLENDA HILL  
Re: 202 Beach Drive, Aptos, CA; APN 043-072-01, including Application No. 08-0367  
and all amendments thereto  
Page 4 of 7 Pages



Regulations, and local agency safety ordinances as well as Permit No. 88-0599 requiring "an open, non-habitable first floor."

Furthermore, the public pedestrian walkway must remain open and available over the "open non-habitable" area for ingress and egress to Beach Drive due to, among other items, weather and storm conditions. For example, enclosed is photo #7 depicting on one occasion the ocean side of the pedestrian walkway. Additionally, slope instability of the steep slope north of the subject property and the ocean south of the subject property create a public need for ingress and egress to higher ground.

Should planning staff and/or the applicant wish to discuss this matter prior to the hearing, both myself and my clients will be available to do so.

Please contact me if you have any questions concerning the above.

Very truly yours,  
**DENNIS J KEHOE**  
DENNIS J. KEHOE

DJK:jlc

Enclosures

c: Mr. and Mrs. Gregory Basso  
William Plageman  
The Dwyer Family  
Charlene Attack, Esq., (Hand-Delivered)  
County Planning Department, Attn: Porcila Perez,  
County Planner, (Hand-Delivered)  
Ron Powers (Hand-Delivered)

SANTA CRUZ PLANNING DEPARTMENT  
ATTENTION: ZONING ADMINISTRATOR, GLENDA HILL  
Re: 202 Beach Drive, Aptos, CA; APN 043-072-01, including Application No. 08-0367  
and all amendments thereto  
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**EXHIBIT A (Map)**

SANTA CRUZ PLANNING DEPARTMENT  
ATTENTION: ZONING ADMINISTRATOR, GLENDA HILL  
Re: 202 Beach Drive, Aptos, CA; APN 043-072-01, including Application No. 08-0367  
and all amendments thereto  
Page 6 of 7 Pages



MAP OF  
SUBDIVISION NO 8.  
APTOS BEACH COUNTRY CLUB PROPERTIES  
APTOS  
SANTA CRUZ COUNTY  
CALIFORNIA

SCALE  
Surveyed by W.B. Hoag,  
Engineer & Surveyor  
August, 1928

THIS MAP WAS BY THESE PRESENTS

APPROVED AND CONFIRMED BY THE BOARD OF SUPERVISORS OF THE COUNTY OF SANTA CRUZ, CALIFORNIA, IN A RESOLUTION PASSED AT A REGULAR MEETING OF SAID BOARD, HELD AT THE COURT HOUSE, SANTA CRUZ, CALIFORNIA, ON THE 10TH DAY OF AUGUST, 1928, WHEREIN SAID BOARD, BY A MAJORITY VOTE, HAS ORDERED THAT SAID MAP BE RECORDED IN THE OFFICE OF THE COUNTY CLERK, AND THAT THE CLERK OF SAID COUNTY DO SO.

W.B. Hoag  
Surveyor

I hereby certify that this map was prepared by me or under my direct supervision and that I am a duly licensed Surveyor in the State of California.

I hereby certify that a Board has been filed, approved by me in an amount filed by the Board of Supervisors and by the Board of Supervisors in the Office of the County Clerk of Santa Cruz and confirmed for the payment of the fees which are at the time of filing this map, a map of the land shown by this map as being part thereof, and that the map is correct.

W.B. Hoag  
County Clerk of the County of Santa Cruz and Confirmed Clerk of the Board of Supervisors of said County

This map was made by me from my own survey of the ground

W.B. Hoag  
Civil Engineer

APPROVED AND CONFIRMED BY THE BOARD OF SUPERVISORS OF THE COUNTY OF SANTA CRUZ, CALIFORNIA, IN A RESOLUTION PASSED AT A REGULAR MEETING OF SAID BOARD, HELD AT THE COURT HOUSE, SANTA CRUZ, CALIFORNIA, ON THE 10TH DAY OF AUGUST, 1928, WHEREIN SAID BOARD, BY A MAJORITY VOTE, HAS ORDERED THAT SAID MAP BE RECORDED IN THE OFFICE OF THE COUNTY CLERK, AND THAT THE CLERK OF SAID COUNTY DO SO.

W.B. Hoag  
Surveyor

The Board of Supervisors of the County of Santa Cruz, California, has ordered that this map be recorded in the Office of the County Clerk, and that the Clerk of said County do so.

W.B. Hoag  
County Clerk of the County of Santa Cruz and Confirmed Clerk of the Board of Supervisors of said County

STATE OF CALIFORNIA  
County of Santa Cruz  
I, the undersigned, being a duly qualified Surveyor in the State of California, do hereby certify that the foregoing map was prepared by me or under my direct supervision and that I am a duly licensed Surveyor in the State of California.

W.B. Hoag  
County Clerk of the County of Santa Cruz and Confirmed Clerk of the Board of Supervisors of said County

W.B. Hoag  
Surveyor

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W.B. Hoag  
Surveyor

APPROVED AND CONFIRMED BY THE BOARD OF SUPERVISORS OF THE COUNTY OF SANTA CRUZ, CALIFORNIA, IN A RESOLUTION PASSED AT A REGULAR MEETING OF SAID BOARD, HELD AT THE COURT HOUSE, SANTA CRUZ, CALIFORNIA, ON THE 10TH DAY OF AUGUST, 1928, WHEREIN SAID BOARD, BY A MAJORITY VOTE, HAS ORDERED THAT SAID MAP BE RECORDED IN THE OFFICE OF THE COUNTY CLERK, AND THAT THE CLERK OF SAID COUNTY DO SO.

W.B. Hoag  
Surveyor

FILED  
August 24, 1928  
W.B. Hoag  
County Clerk of the County of Santa Cruz and Confirmed Clerk of the Board of Supervisors of said County

Copy is kept on file

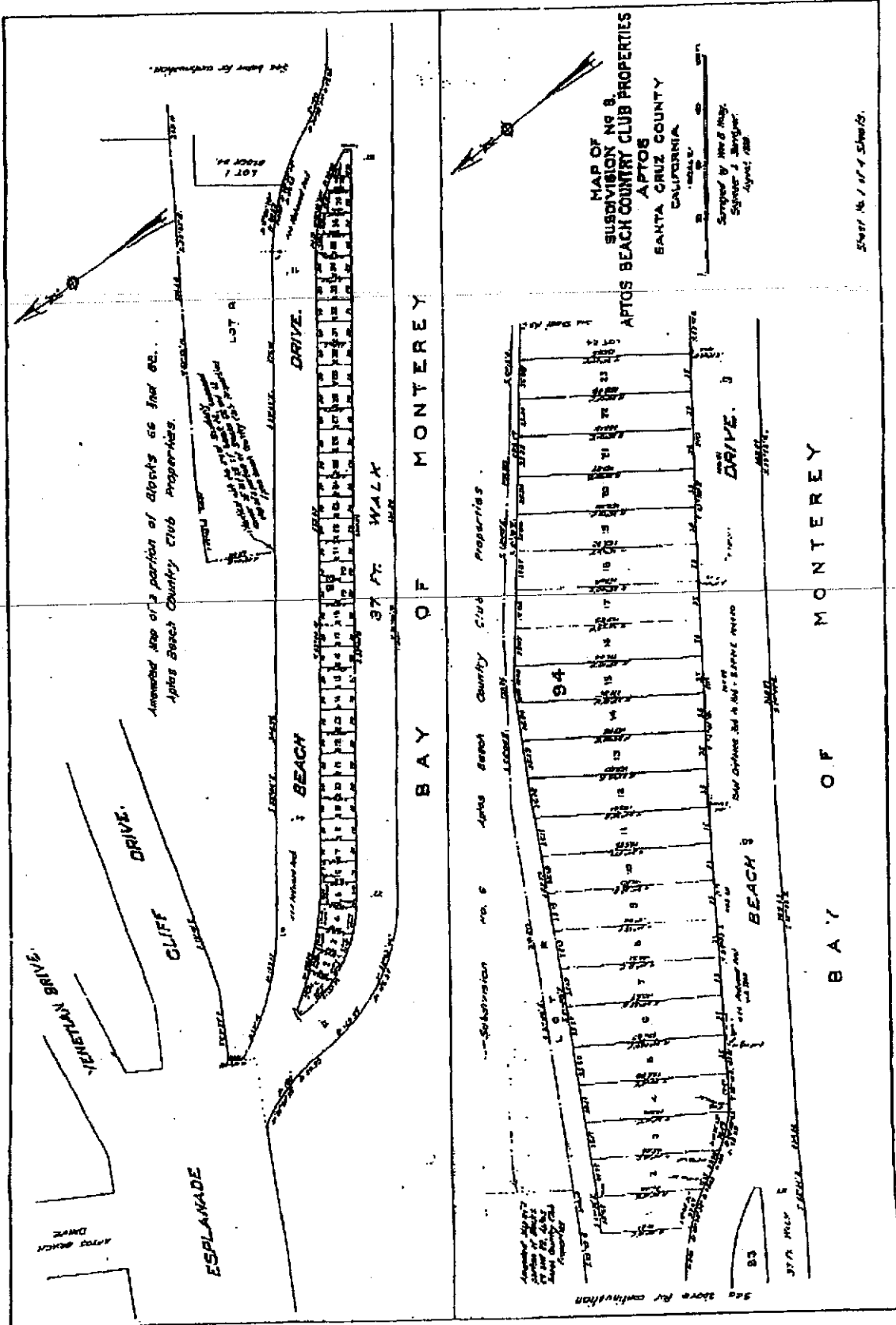
26

EXHIBIT A - 112 - 1 of 2

EXHIBIT 2



Copy - Original on file



Description: Santa Cruz, CA Record Map 24-26 Page: 1 of 4  
 Order: 03-25-2009 10-43-39 AM Comment:

EXHIBIT 1 Page 2 of 2

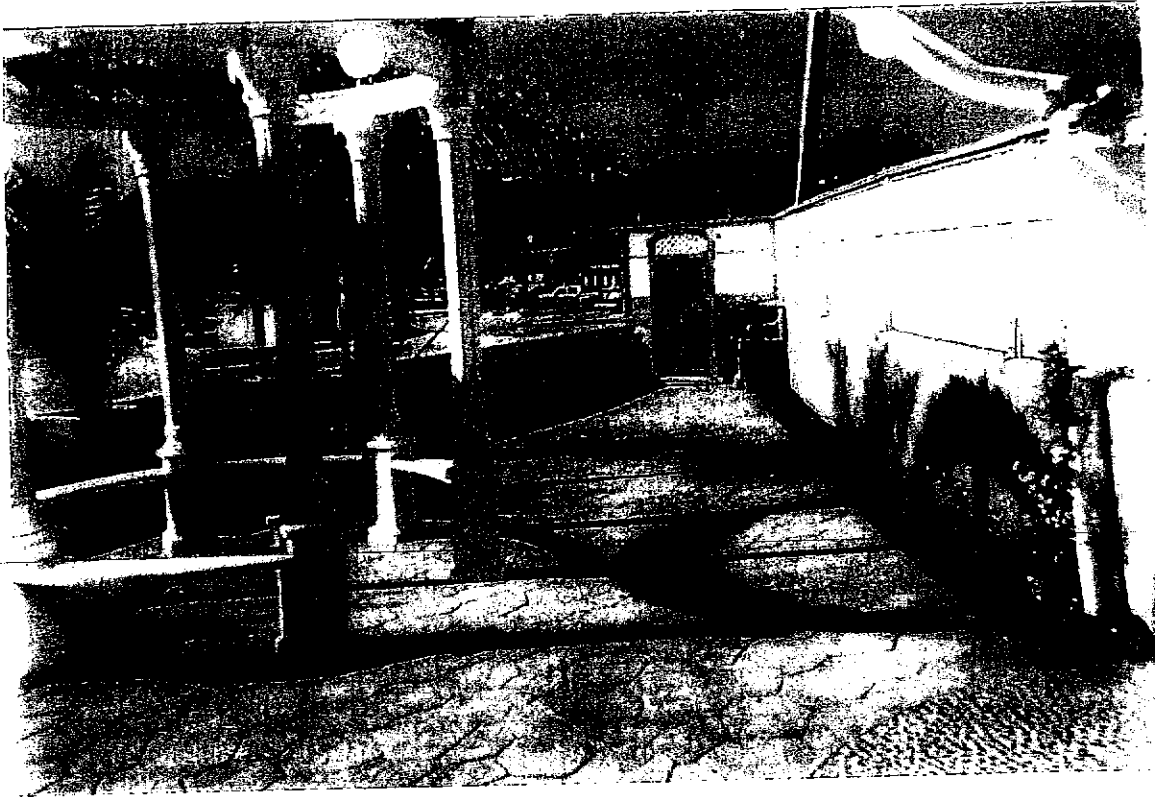
EXHIBIT 26



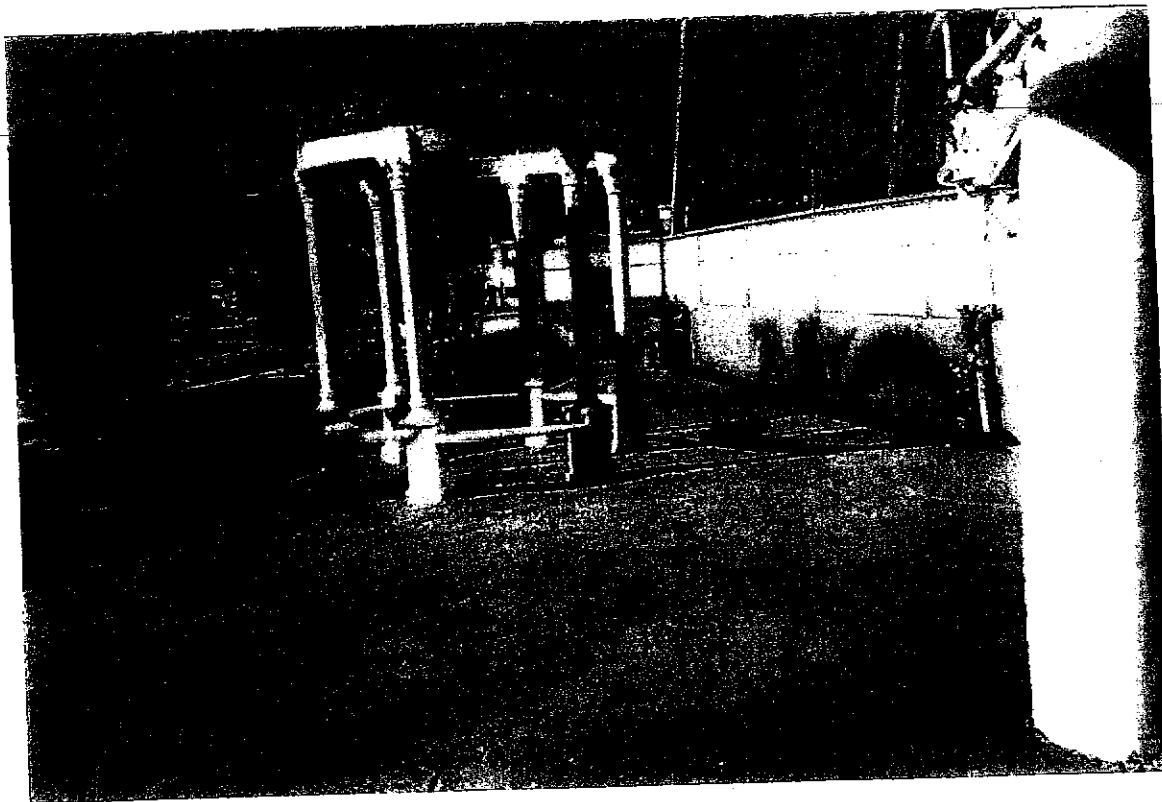
**EXHIBIT B, (Photos)**

SANTA CRUZ PLANNING DEPARTMENT  
ATTENTION: ZONING ADMINISTRATOR, GLENDA HILL  
Re: 202 Beach Drive, Aptos, CA; APN 043-072-01, including Application No. 08-0367  
and all amendments thereto  
Page 7 of 7 Pages





#2



#1



#4 →











#7 →





#8 →

"Open" Area