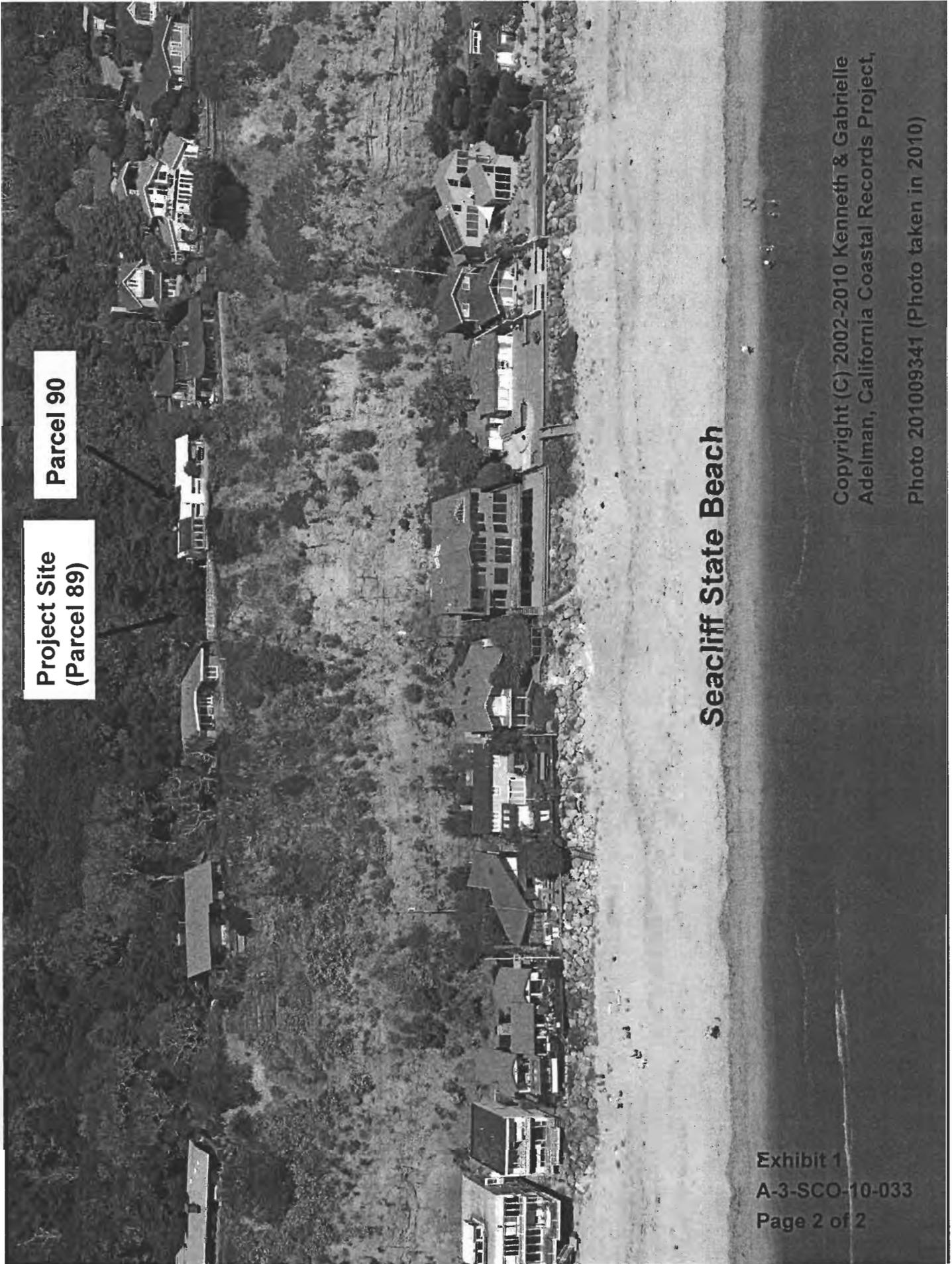


County of Santa Cruz

Sheet 2 of 3

CCC Exhibit 1
(page 1 **of** 2 **pages)**



**Project Site
(Parcel 89)**

Parcel 90

Seacliff State Beach

Copyright (C) 2002-2010 Kenneth & Gabrielle
Adelman, California Coastal Records Project,

Photo 201009341 (Photo taken in 2010)

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060-4508
VOICE (831) 427-4883 FAX (831) 427-4877



APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

Please Review Attached Appeal Information Sheet Prior To Completing This Form.

SECTION I. Appellant(s)

Name: Patrick Murphy

Mailing Address: 735 Oakhill Road

City: Aptos

Zip Code: CA

Phone: 95003

SECTION II. Decision Being Appealed

1. Name of local/port government:

County of Santa Cruz

2. Brief description of development being appealed:

Approval of three story home which County asserts is only two stories on a substandard lot the County illegally recognized through an Unconditional Certificate of Compliance without a Coastal Development Permit.

3. Development's location (street address, assessor's parcel no., cross street, etc.):

Oakhill Road, APN 038-151-89 (No situs)

4. Description of decision being appealed (check one.):

- Approval; no special conditions
Approval with special conditions:
Denial

RECEIVED

JUN 29 2010

CALIFORNIA COASTAL COMMISSION CENTRAL COAST AREA

Note: For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

TO BE COMPLETED BY COMMISSION:
APPEAL NO: A-3-SC0-10-033
DATE FILED: July 6, 2010
DISTRICT: Central Coast

CCC Exhibit 2 (page 1 of 6 pages)

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 2)

5. Decision being appealed was made by (check one):

- Planning Director/Zoning Administrator
- City Council/Board of Supervisors
- Planning Commission
- Other

6. Date of local government's decision: June 15, 2010

7. Local government's file number (if any): Development Permit 09-0139

SECTION III. Identification of Other Interested Persons

Give the names and addresses of the following parties. (Use additional paper as necessary.)

a. Name and mailing address of permit applicant:

Robert Goldspink on behalf of Brian Arthur
8042-C Soquel Dr
Aptos, CA 95003

b. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

(1) Brian Arthur
382 Belle Monti Ave
Aptos, CA 95003

(2) Katharine P. Minott
745 Oakhill Rd
Aptos, CA 95003

(3) Josephine F. Little
753 Oakhill Rd
Aptos, CA 95003

(4) Frank A. Minuti, Jr. CPA
Berger/Lewis Accountancy Corp.
740 Front St. Suite 365
Santa Cruz, CA 95060

(5) Marile Robinson and Amy Love
749 Oakhill Road
Aptos, CA 95003

(6) William P. Parkin (representing Appellant Patrick Murphy)
Wittwer & Parkin, LLP
147 S. River Street, Suite 221
Santa Cruz, CA 95060

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 3)

SECTION IV. Reasons Supporting This Appeal

PLEASE NOTE:

- Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section.
- State briefly **your reasons for this appeal**. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)
- This need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

The Appeal is being made for two reasons:

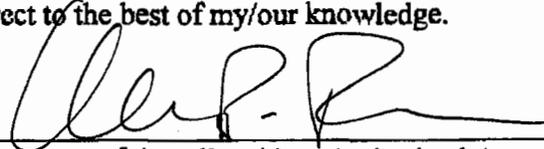
1) The lot in question is not a legal lot for purposes of the Coastal Act. It was recognized through an unconditional Certificate of Compliance, which is really conditional in nature. The County should not have recognized the lot in the first place. In fact it was denied by the County initially, until approved on appeal by a County planner, because the lot was combined with other lots to form a developable lot. The preexisting home on the original lot was built across the property boundary of the newly created parcel along with a driveway, carport and deck. The previous owners also asked that the lots be combined for tax purposes. Under the County Code (Section 14.01.110(a)), the lots were combined and the act of redividing them requires a Coastal Development Permit. Moreover, the County, while claiming they were not conditions, did indeed condition the Certificates of Compliance on removal of the structures on the now "vacant" parcel or through a lot line adjustment. The owner applied for a Coastal Development Permit for demolition and the Coastal Staff indicated in its file upon receipt of notice of the Coastal Development Permit that demolition "appears to be being done to facilitate development on adjacent lot, but that's not clear." "In any case, it is either a separate legal lot or it isn't, and that is a separate question from this project is (sic) additional development is subsequently approved." However, the pre-existing house still crosses the property boundary of the newly created lot and is significantly nonconforming. The County required the property owner to record a Notice of Adjacent Significantly Nonconforming Structure authorizing the encroachment of "A portion of the western wall of the single-family dwelling on the adjacent parcel ... about 3 inches over the eastern property line". Moreover, the eaves of the preexisting house encroach two feet over the property line in a 65-year easement agreement recorded in April 2005 for maintenance of the encroachment. Interestingly, the staff report to the Zoning Administrator for the new home states that the existing home is actually four feet over the property line. At minimum, the new lot requires a Coastal Development Permit and the encroachments have to be resolved to meet the conditions of the Certificate of Compliance. The Appellants can and will provide a complete history and evidence of the illegal lot division.

2) The County approved what is essentially a three story home in an area that is limited to two stories under the LCP. The Board of Supervisors determined based on a 3-2 vote that the home is not three stories. This decision sets a dangerous precedent. The County has essentially found that if a home is built on a slope, additional stories are permitted. The County's interpretation is highlighted by the diagram in the Staff Report to the Board of Supervisors attached hereto as Exhibit A. The County asserts that stories can be stepped up a slope in consecutive order so that at each level another first story is designated. Thus, there can be two separate "first" stories, and two separate second stories as indicated in the County's diagram. The approved home is really three stories.

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 4)

SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.



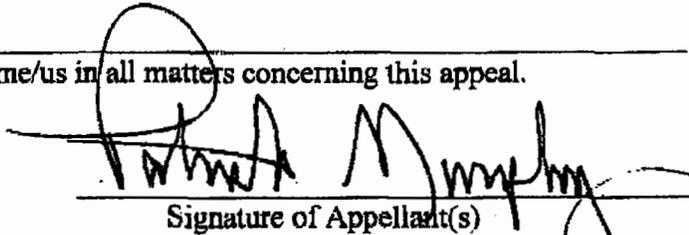
Signature of Appellant(s) or Authorized Agent

Date: June 29, 2010

Note: If signed by agent, appellant(s) must also sign below.

Section VI. Agent Authorization

I/We hereby authorize William P. Parkin
to act as my/our representative and to bind me/us in all matters concerning this appeal.



Signature of Appellant(s)

Date: June 29, 2010

“For planning and zoning purposes, that portion of a building included between the upper surface of any floor and the lower surface of the floor or ceiling above. An attic, basement, mezzanine, or under floor does not count as a story.”

Additionally, Section 16.22.050(a) of the Erosion Control Ordinance states:

“Structures on slopes that would normally require major grading shall utilize pole, step, or other foundations that do not require major grading.”

Major grading is defined as any amount of grading more than 100 cubic yards (16.22.030).

Historically, the practice of the Planning Department has been to interpret these two Code Sections as allowing a design such as that shown in Figure 1. This design employs either the use of piers or a stepped conventional foundation, and requires minimal excavation into the hillside.

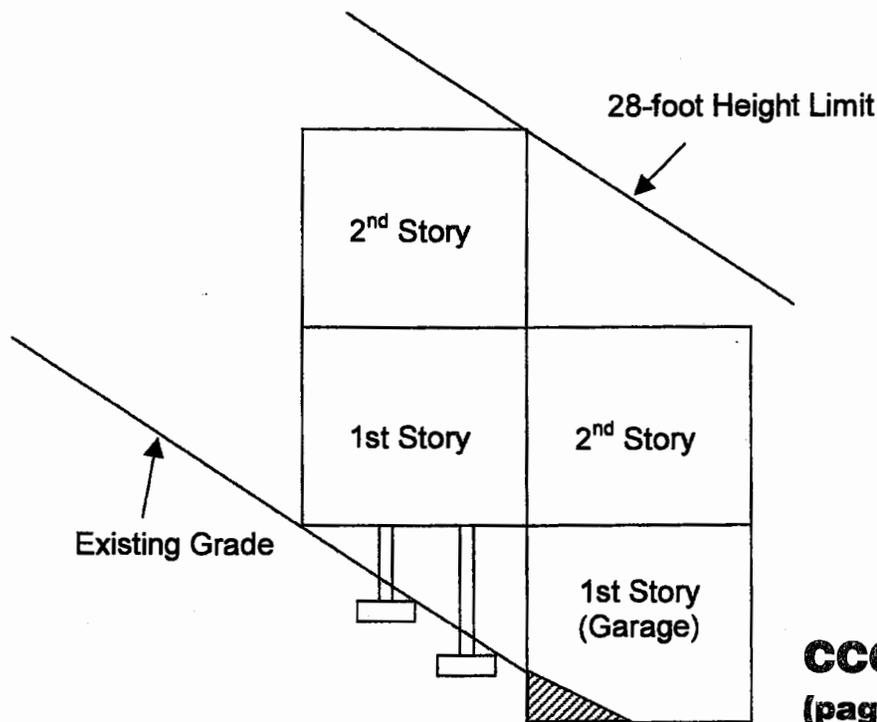


Figure 1

Here you can see that stepping the structure up the slope follows the contour of the hillside, minimizes the amount of required grading (the dashed area), and preserves the 28-foot height limit. FAR, lot coverage and setback requirements act to control the overall size and location of a structure(s) on a parcel.

EXHIBIT A **62**

Oct 5, 2010

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OCT 06 2010

California Coastal Commission
725 Front Street, Suite 300
Santa Cruz, CA 95060-4508

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

RE: Appeal No. A-3-SCO-10-033

Dear Commissioners,

I am the owner of the Oakhill Rd. building project being appealed, and am asking that the commission find "no substantial issues" with the project's conformance with the LCP.

1. On June 10, 2003, the County issued an Unconditional Certificate of Compliance recognizing the legal status of two lots that had been created in 1929. The neighbors, Patrick and Laura Murphy, did not contest the certificate of compliance until April 14, 2009, six years after it was issued and two years after I (Brian Arthur) purchased one of the parcels. The other parcel was sold in 2005. The statute of limitations for an appeal was 60 days.
2. The project has been subject to detailed scrutiny by County Planning staff and the appellants' attorney. The proposed house is a two-story structure in full compliance with all County Zoning regulations, and the subject lot has a home on each side with electricity, sewer, water, and natural gas readily available.
3. Since the first legal action took place, I have survived three hearings with strong opposition from the appellants and their attorney. These hearings were 1. Zoning Administrator's hearing January 15, 2010, 2. Appeal to Planning Commission on March 24, 2010, and 3. Appeal to Board of Supervisors on June 15, 2010. Mr. Murphy tried to buy the lot from the previous owner before I purchased it, and again from me after I purchased it for a very low price. I feel all these lawsuits and appeals are a form of harassment and I have had considerable emotional distress and expense due to his unfounded actions.

Thank you for your consideration,



Brian Arthur
382 Belle Monti Ave.
Aptos, CA 95003

CCC Exhibit 3A
(page 1 of 22 pages)

ROBERT J GOLDSPINK ARCHITECT

October 4th 2010
Coastal Commission
725 Front Street
Santa Cruz CA 95060

Arthur Residence
Oakhill Road Aptos
APN 038-151-89 No Situs Appln # 09-0139
Commission Appeal No. A-3-SCO-10-033

Dear Commissioners,

I refer to the Coastal Commission's letter to Kathy Previsich, Santa Cruz County Planning Director, dated 7.7.10 and now submit the following information for your review.

The design drawings approved by the County were subjected to thorough review by Planning staff and found to be in full conformance with all applicable zoning regulations. Specifically, the project complies with all requirements of County Code 13.20.10 et seq. The application withstood careful review by the Zoning Administrator when he approved the Coastal Development Permit application and subsequent appeals to the Planning Commission and Board of Supervisors

In the absence of any valid reasons why the project should not proceed, the Murphy's and their attorney embarked on a campaign to deliberately misinterpret County Codes and misrepresent the facts. For example, Mr. Parkin, the Murphy's attorney, would have us believe the County does not know how to assess what a story is when examining compliance with the maximum two-storey limit. He would also like us believe the maximum building height is measured perpendicular to the grade, not vertically per Code, an unintended, more lenient interpretation!

Paragraph (c) of County Code 13.20.122 'Coastal Commission appeals' includes the following:

"Grounds of appeal for any coastal project approved under these regulations in the area identified in Section

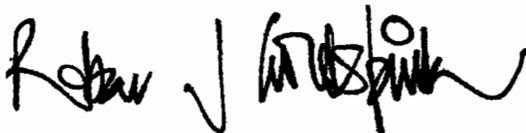
13.20.122(a) shall be limited to the following:

1. The development will fail to provide adequate physical access or public or private commercial use or interferes with such uses.
2. The development will fail to protect views from any public road or from any recreational area to and along the coast
3. The development will not be compatible with the established physical scale of the area
4. The development may significantly alter natural land forms
5. The development will not comply with the shoreline erosion and geologic setback requirements."

The appeal fails to meet any of the above grounds and I urge you to determine that the appeal is without merit, reject this appeal application or find there are no substantial issues.

Please call if you have any questions.

Sincerely,



Robert J Goldspink

email cc Brian Arthur

8042c Soquel Drive Aptos CA 95003 tel [831] 688 8950 fax [831] 688 4402
RobertGoldspink@aol.com

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April 29, 2011

Ms. Susan Craig,
California Coastal Commission
725 Front St. Suite 300
Santa Cruz, CA 95050-4508

APR 29 2011

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

Dear Ms. Craig,

Re; A-3-SCO-10-033

I want to thank you sincerely for taking the time to meet with me and my architect, Mr. Goldspink. This letter is a follow-up of our meeting the other day. As you may be aware, Mr. Goldspink is very knowledgeable and has worked in Santa Cruz County for many years. Under the scrutiny of the appellant's attorney, my architect [as did the County of Santa Cruz Planning Dept.] double and triple checked every item in my building plans during the permit process to make certain we complied with all ordinances and regulations.

It is important to note that there are many homes designed just like mine that have been previously approved in the coastal zone by the Coastal Commission; several pictures are included in my previous package under "Exhibit G". The coastal commission determined correctly that these homes, like mine, are two-story.

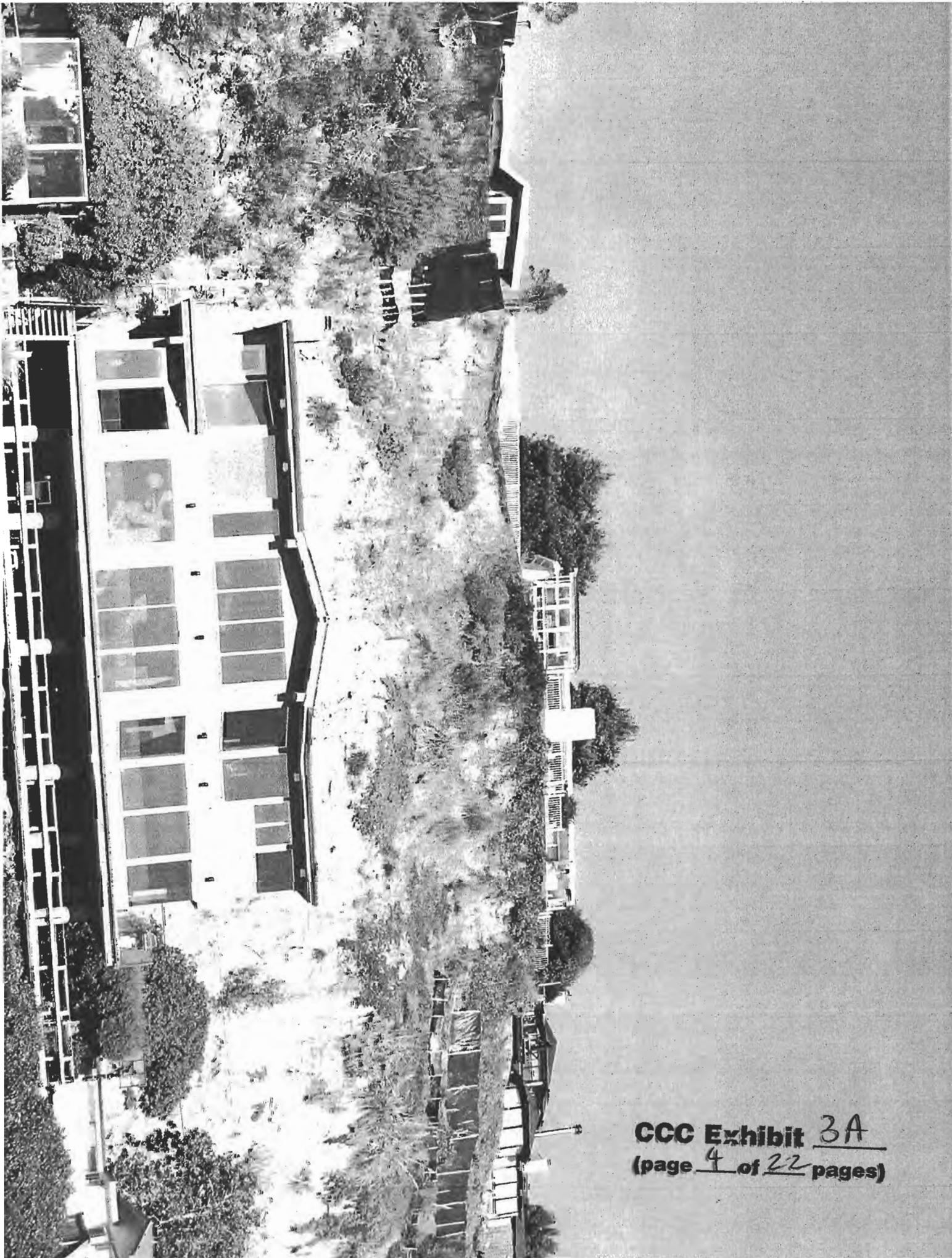
Based upon the information I received, it is apparent the appellant is bringing into my case other Certificates of Compliance approved by the county that he challenges. These have not had a judicial determination as to the legality of the lot, including the determination of whether the unit is a "development". Because these differ from my situation, where full and fair opportunity to present all issues was allowed and a judicial determination made upon all the evidence and law, they are not relevant and should not be allowed in my case. For example, Mr. Parkin argues the development issue in his letter, however my 2003 Certificate of Compliance has already been determined not to be a "development" per the Honorable Timothy R. Volkmann of the Superior Court of California, County of Santa Cruz.

If the point of these hearings and trials are harassment, then Mr. Murphy is doing a very good job. As stated before, Mr. Murphy's attorney has argued against my building project at five (5) separate hearing (including the planning commission and Board of Supervisors) and a trial in the Superior court of California mentioned above. He appears to have a vendetta against my project or me.

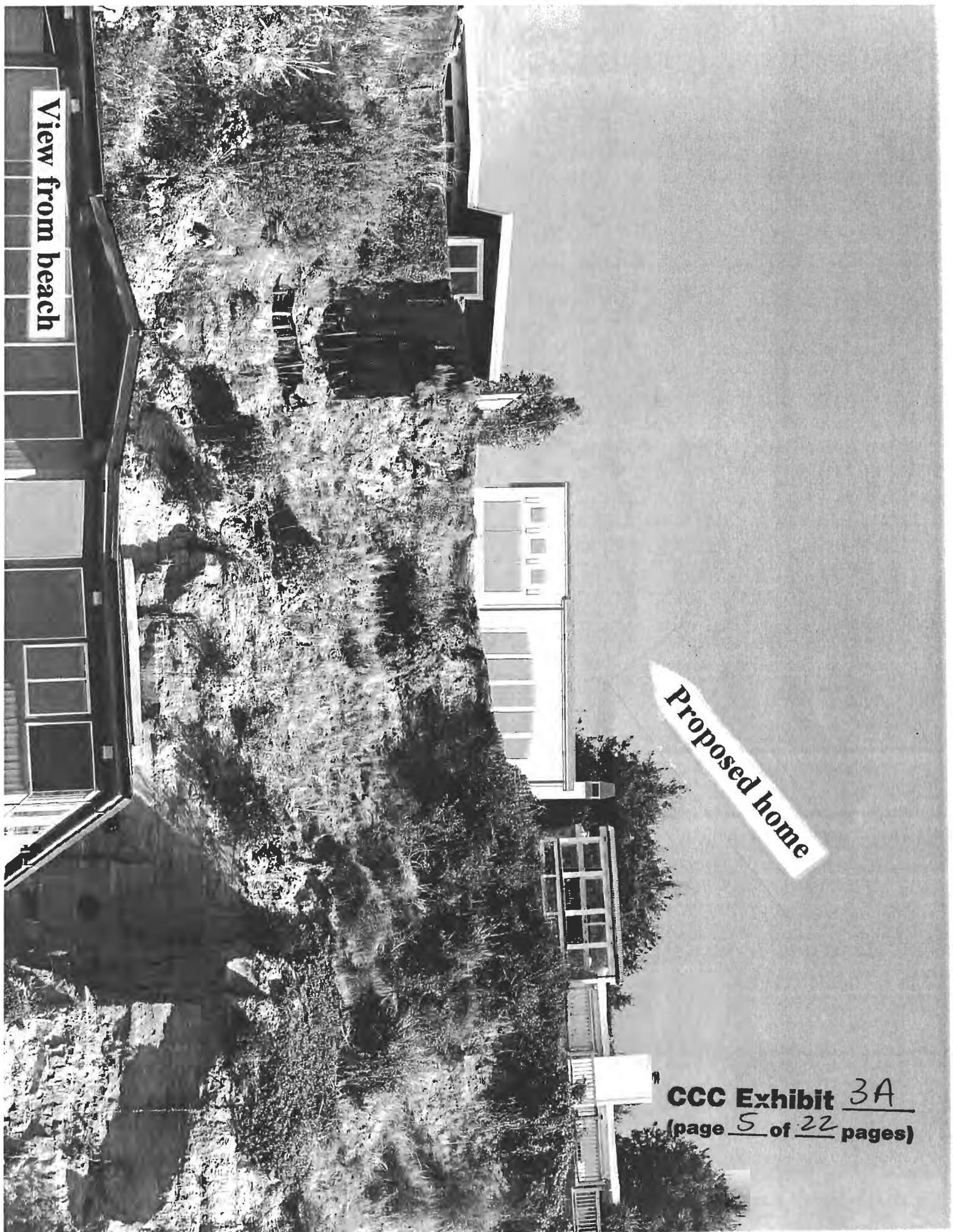


Brian Arthur
382 Belle Monti Ave.
Aptos, Ca 95003

CCC Exhibit 3A
(page 3 **of** 22 **pages)**



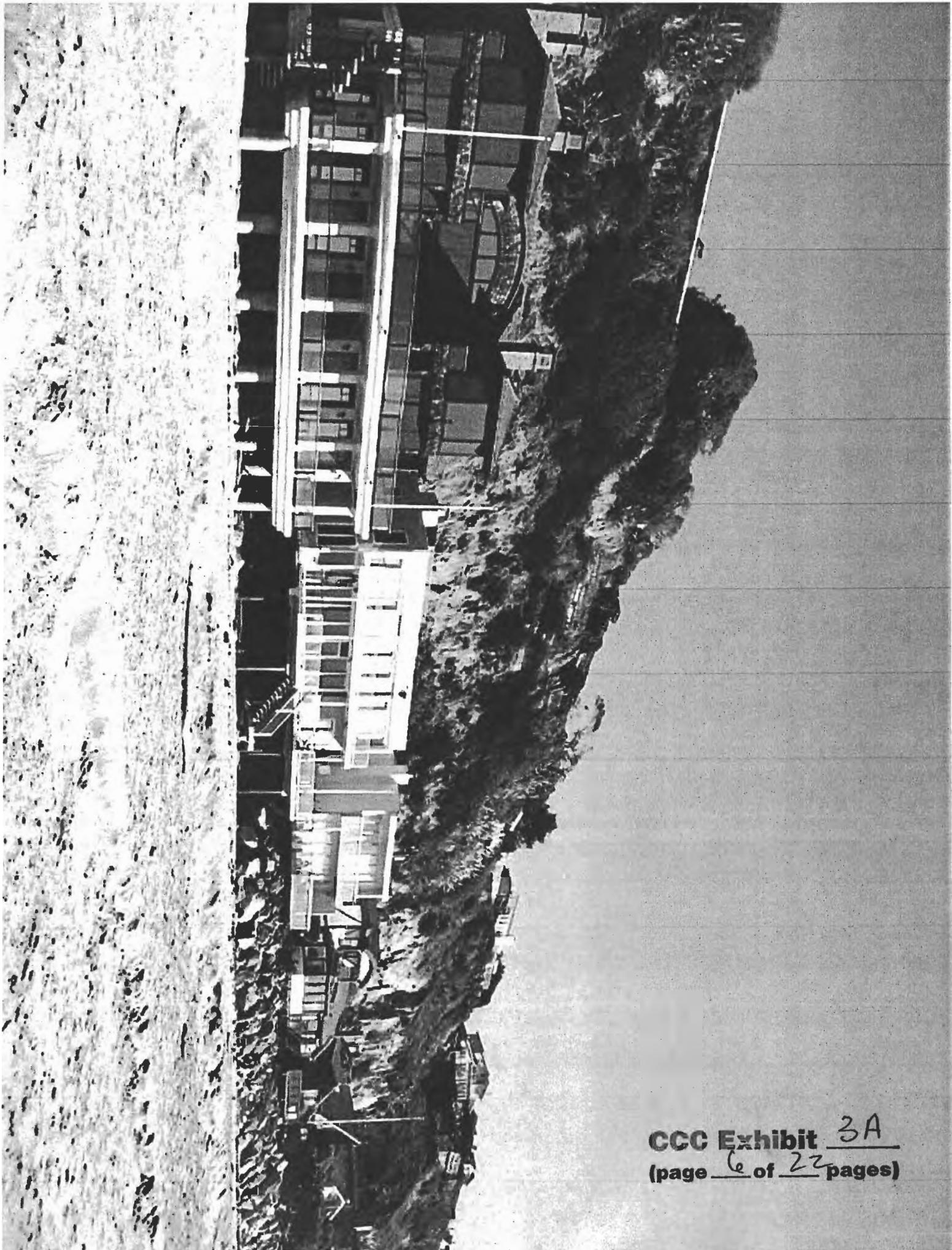
CCC Exhibit 3A
(page 4 of 22 pages)



View from beach

Proposed home

CCC Exhibit 3A
(page 5 of 22 pages)



CCC Exhibit 3A
(page 6 of 22 pages)

A-3-SCO-10-033

RECEIVED

MAR 04 2011

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

CCC Exhibit 3A
(page 7 of 22 pages)

March 3, 2011

California Coastal Commission
725 Front St., Suite 300
Santa Cruz, CA 95060-4508

Dear Commissioners,

My name is Brian Arthur. I live in Aptos, CA, Santa Cruz County. I am a retired pharmacist and recently purchased an ocean view lot in Aptos where I am planning to build my dream home. It is important to note that this property does not have ocean or beach frontage. There exists a seawall, a row of houses and a street between the ocean and my lot (Please see Exhibit A). On January 15, 2010 (Exhibit B), the county zoning administrator approved my building plans and a building permit was just a couple of months away.

In total, Mr. Murphy, an adjacent property owner, has argued against my building project at five (5) separate hearings (including the planning commission and Board of Supervisors).

Now he has filed an appeal with the California Coastal Commission. He has expressed two very weak reasons supporting his appeal. He claims (1) that my lot is not legal, and (2) that my plans are for a 3-story house instead of a 2-story which is the maximum allowed by the County of Santa Cruz.

1. Legality

- a. On top of all these appeals, Mr. Murphy had filed a lawsuit against the County of Santa Cruz, me, and the previous owner as to the legality of the subject parcel. The court found there was no merit to the lawsuit challenging the legality of the lot. A copy of the judge's decision is included in your documents as Exhibit C.
- b. The California Subdivision Map Act states that the legality of a parcel is the responsibility of the cities or counties; not the state.

2. Number of stories

- a. The Coastal Commission has been provided with the local code sections and a sketch clarifying the codes as outlined by the County of Santa Cruz Planning Department (Exhibit D). On sloping ground, the County encourages a home owner to step a house up the slope keeping each part of the house not more than two stories high and not more than 28ft high. This often results in a lower level single story garage in front of a two-story house. I have included a sketch depicting my house plans with and without a garage (Exhibit E).
- b. Exhibit F is the house next door—notice similarities with my proposed home—a 2-story home with the garage in front at a lower level.
- c. At the local appeal by Mr. Murphy to the Board of Supervisors, Ellen Pirie, the supervisor for the Aptos district, stated that she had lived in a similarly designed house and that there are many just like it in the county, and immediately voted in favor of my project. Exhibit G shows several newer

homes of similar design to mine with the garage at a lower position in the front. All of these have been approved within the Coastal Zone jurisdiction.

There are no substantial issues regarding the building of my home to warrant a hearing by this Commission. I have met every requirement made of me by any agency and have established that I have a legal lot. In fact, as can be seen from the Zoning map [Exhibit H] many of the homes that actually sit on the bluff overlooking the ocean are located on lots very similar in size and dimension to my lot.

Mr. Murphy knows this, but has repeatedly attempted to use the governmental agencies for his personal economic advantage. Long ago, Mr. Murphy revealed his intent to purchase my lot at half of what I have put into it. He and his attorney have made statements before various agencies that are untrue: mis-statements of requirements and of accepted methodology, simply to confuse the panels in which we have appeared. I can only imagine that the purpose is to drag this out until I give up on my investment and my dreams and cave in to sell my lot cheaply to Mr. Murphy.



Brian Arthur
382 Belle Monti Ave.
Aptos, CA 95003

ASSESSOR PARCEL LINES
ARE ONLY APPROXIMATE
SCCO DPW PHOTO 2007

A-3-SCO-10-033

EXHIBIT A



1 inch = 68 feet

CCC Exhibit 3A
(page 10 of 22 pages)



COUNTY OF SANTA CRUZ
Planning Department

COASTAL DEVELOPMENT AND RESIDENTIAL
DEVELOPMENT PERMIT

Owner: BRIAN ARTHUR
Address: 382 BELLE MONTI AVENUE
APTOS, CA 95003

Permit Number: 09-0139
Parcel Number(s): 038-151-89

PROJECT DESCRIPTION AND LOCATION

Permit to construct an approximately 2,544 square foot, two-story single family dwelling with an elevator, three foot six inch high retaining wall within the required 20 foot front yard setback and to grade approximately 160 cubic yards. Requires a Coastal Development Permit, a Residential Development Permit for a wall exceeding the 3 foot height limit within the required 20 foot front yard setback, Design Review and Preliminary Grading approval. Property located on the south side of Oak Hill Road (between 735 and 749 Oak Hill Road) approximately 380 feet west of Seacliff Drive.

SUBJECT TO ATTACHED CONDITIONS

Approval Date: 1/15/2010
Exp. Date (if not exercised): see conditions
Denial Date: _____

Effective Date: 2/1/2010
Coastal Appeal Exp. Date: Call Coastal Com
Denial Date: _____

This project requires a Coastal Zone Permit, the approval of which is appealable to the California Coastal Commission. (Grounds for appeal are listed in the County Code Section 13.20.110.) The appeal must be filed with the Coastal Commission within 10 business days of receipt by the Coastal Commission of notice of local action. Approval or denial of the Coastal Zone Permit is appealable. The appeal must be filed within 14 calendar days of action by the decision body.

This permit cannot be exercised until after the Coastal Commission appeal period. That appeal period ends on the above indicated date. Permittee is to contact Coastal staff at the end of the above appeal period prior to commencing any work.

A Building Permit must be obtained (if required) and construction must be initiated prior to the expiration date in order to exercise this permit. **THIS PERMIT IS NOT A BUILDING PERMIT.**

By signing this permit below, the owner agrees to accept the terms and conditions of this permit and to accept responsibility for payment of the County's costs for inspections and all other actions related to noncompliance with the permit conditions. This permit shall be null and void in the absence of the owner's signature below.

Signature of Owner/Agent
Kevin Babtsch
Staff Planner

Date
1/15/10
Date

Distribution: Applicant, File, Clerical, Coastal Commission

CCC Exhibit 3A
(page 11 of 22 pages)

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COPY

FILED

JAN 05 2011

ALEX SALVO, CLERK
BY [Signature]
DEPUTY, SANTA CRUZ COUNTY

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CRUZ

PATRICK MURPHY and LAURA MURPHY,

Plaintiffs,

vs.

COUNTY OF SANTA CRUZ,
Real Parties In Interest BRIAN ARTHUR
and TOM OSWALT,

Defendants.

NO.CV 163497

DECISION ON PETITION FOR
WRIT OF MANDATE

PATRICK MURPHY and LAURA MURPHY,

Petitioners,

vs.

COUNTY OF SANTA CRUZ,
Real Parties In Interest BRIAN ARTHUR
and TOM OAWALT,

Respondents.

This case came on regularly for an evidentiary hearing on December 17, 2010,
in Department 4, the Honorable Timothy R. Volkmann presiding. Petitioners were

1 present and were represented by William Parkin and Bradley Bening. Respondent
2 was represented by Jason Heath and Christopher R. Cheleden. Real Parties in
3 Interest Brian Arthur and Tom Oswalt attended and were represented by Edward
4 Newman.
5

6 The Court has reviewed and considered all the evidence, as well as the
7 applicable law, and hereby rules as follows:

8 Petitioners seek prospective relief pursuant to the Coastal Act. Specifically, they
9 seek to compel the Respondent to consult with the Coastal Commission per 14 CCR
10 13569 and seek to compel the Respondent to require a Coastal Development Permit
11 for the lot recognized by the 2003 Certificate of Compliance. They contend that the
12 Certificate was conditional, in nature, and is thereby subject to the provisions of the
13 Coastal Act.
14

15 Respondent and Real Parties in Interest assert that this Petition is barred by
16 the Statute of Limitations per Government Code 66499.37 and the Doctrine of
17 Laches. If the ninety day time period per Government Code 66499.37 does not
18 apply, the Respondent and Real Parties in Interest contend that the Limitations
19 periods described in California Code of Civil Procedure Sections 338 and/or 343
20 should apply to bar this action.
21
22

23 Despite contending in their Opening Trial Brief that the Certificate of
24 Compliance was illegally issued (page 27), the Petitioners confirmed, at trial, that
25 they were not seeking to undo the Certificate but, rather, asserted that the 2003
26 Certificate was a "development" per the Coastal Act. As a result, the Court will
27 initially focus its Decision upon the Statute of Limitations defense. The Court finds
28 that this Petition is barred by the time frame described in Government Code

CCC Exhibit 3A
(page 13 **of** 22 **pages)**

1 66499.37. Glenda Hill is considered an "advisory agency" pursuant to Government
2 Code 66415. The evidence that she possessed the authority to make a decision on
3 the administrative appeal concerning the lot in question , in addition to her authority
4 to investigate and report on the propriety of issuing certificates of compliance for the
5 subject lots confirm this finding. Even if one would find, for the sake of argument,
6 that Ms. Hill was not an "advisory agency" for the purposes of Government Code
7 66415 and would equate her authority to that of the Planning Director in the People
8 ex. rel. Brown v. Tehama County Board of Supervisors (149 Cal. App. 4th 422)
9 (2007), this action would be barred by the three year statute outlined in California
10 Code of Civil Procedure 338. Taking it one step further, even if one could argue the
11 CCP 338 is inapplicable, the more global four year limitations period pursuant to
12 California Code of Civil Procedure 343 would bar this action. No case law authority
13 was provided to allow a challenge six years, post-determination. No explanation was
14 offered as to why the Petitioners delayed in their due diligence requirement when it
15 was clear to them, in 2005, that two lots were present and being sold, separately.
16 The Petition is time barred based upon a failure to comply any of the Statutes of
17 Limitation outlined above.

18 For the benefit of all parties, the Court will continue with its evaluation of
19 additional issues presented either in the pretrial pleadings, or within the trial evidence
20 and argument. The Petitioners contend that the County of Santa Cruz should consult
21 with the Coastal Commission. This assertion is founded upon 14 CCR 13569. The
22 County contends there is no such requirement as there is no "development." The
23 question presented is: Does the division and transfer of this property constitute a
24 development? Public Resources code 30106 defines a development. Focusing on
25 the evidence in this matter, does Ms. Hill's decision that the parcels had not been
26 recombined constitute a "development" requiring a Coastal Development Permit and
27 triggering the procedure provided within 14 CCR 13569? The Court finds it does
28 not. Ms. Hill's decision that the 1959 lot split remained valid did not change the

CCC Exhibit 3A
(page 14 of 20 pages)

1 density, or intensity of the use of this land. Real Party in Interest Brian Arthur's
2 request for a building permit does, but he is in the process of obtaining a coastal
3 permit for that. As the Certificate of Compliance was unconditional (Ms. Hill's
4 decision merely recognized the 1959 lot split and served as a rejection that the lots
5 had been subsequently recombined), The Court finds neither those decisions by
6 Glenda Hill, nor the issuance of the Certificate of Compliance constituted a
7 development within the meaning of the Coastal Act.

8 There was reference to a Due Process argument within the Petitioners'
9 Opening Trial Brief. Petitioners argued lack of notice and a lack of an opportunity to
10 be heard. The Court read a portion of the opinion in *Horn v. County of Ventura* (24
11 Cal. 3rd 605) (1979) into the record. Horn found that only substantial or significant
12 deprivations of property can trigger constitutional notice and hearing requirements.
13 (Id. at page 615). The Court finds that the allowance of two lots does not
14 substantially affect the use of the Petitioners' property. No evidence was provided as
15 to any particular adverse impact. There was no evidence of a substantial increase in
16 traffic or air pollution. No evidence was provided as to any constriction in access to
17 the Petitioners' property. As a result, the Due Process argument is not persuasive.

18 The Court does not find that the owners of the developed parcel, Love and
19 Robinson are indispensable parties as the Petitioners claim that they are not seeking
20 to recombine the parcels.

21 In conclusion, the Court finds that this Petition is barred per the Statutes of
22 Limitation. Even if one considered the Petition as timely filed, the Court finds that the
23 2003 Certificate of Compliance is not a "development" per the Coastal Act. Thus, the
24 County of Santa Cruz had no duty to consult with the Coastal Commission. As the
25 acknowledgement of the 1959 lot split did not substantially deprive the Petitioners of
26 their property rights, their due process position is not persuasive. It should also be
27 noted that the Real Party In Interest Brian Arthur is proceeding with the attempts to
28

1 obtain a Coastal Development Permit and the Petitioners acknowledge that they
2 have been providing their input concerning those efforts.

3 The Petition for Writ of Mandate is denied. This decision is submitted pursuant
4 to California Rule of Court 3.1590.

5 SO ORDERED.

6

7

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DATED:

1/5/2011

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TIMOTHY R. VOLKMANN
Judge of the Superior Court

Board of Supervisors Hearing
June 15, 2010
Page No. 3

“For planning and zoning purposes, that portion of a building included between the upper surface of any floor and the lower surface of the floor or ceiling above. An attic, basement, mezzanine, or under floor does not count as a story.”

Additionally, Section 16.22.050(a) of the Erosion Control Ordinance states:

“Structures on slopes that would normally require major grading shall utilize pole, step, or other foundations that do not require major grading.”

Major grading is defined as any amount of grading more than 100 cubic yards (16.22.030).

Historically, the practice of the Planning Department has been to interpret these two Code Sections as allowing a design such as that shown in Figure 1. This design employs either the use of piers or a stepped conventional foundation, and requires minimal excavation into the hillside.

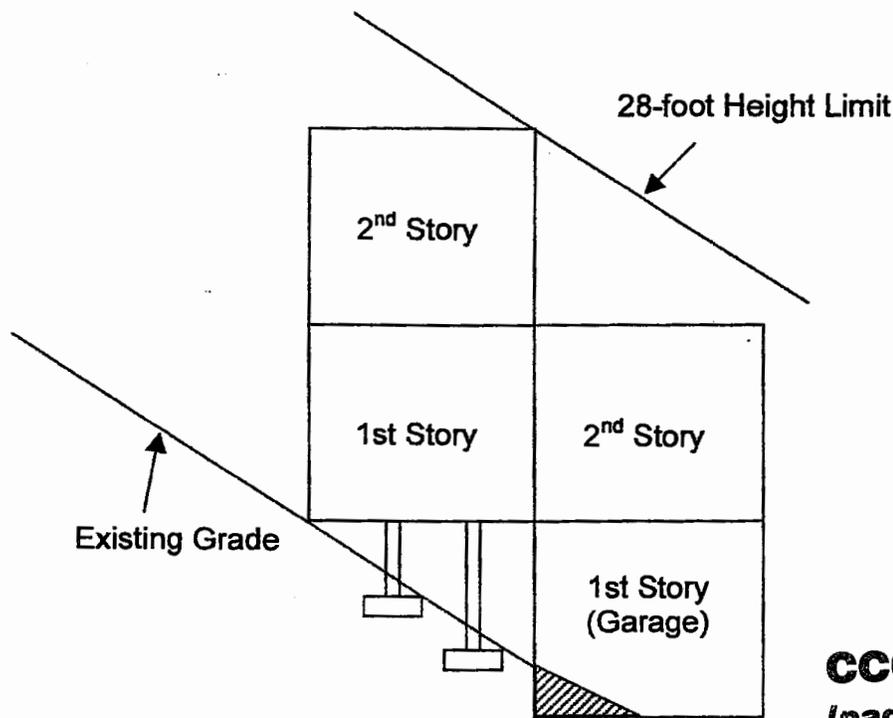
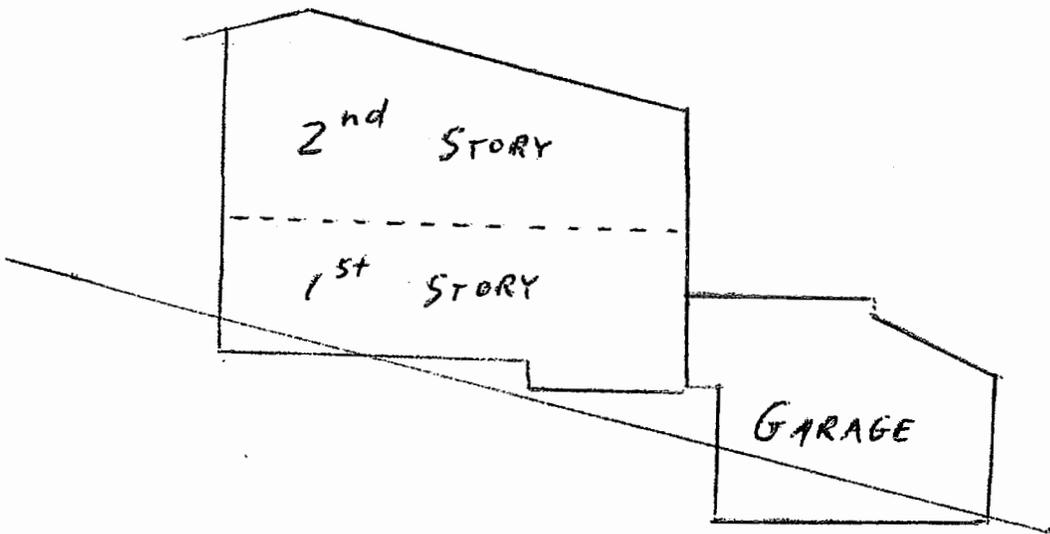
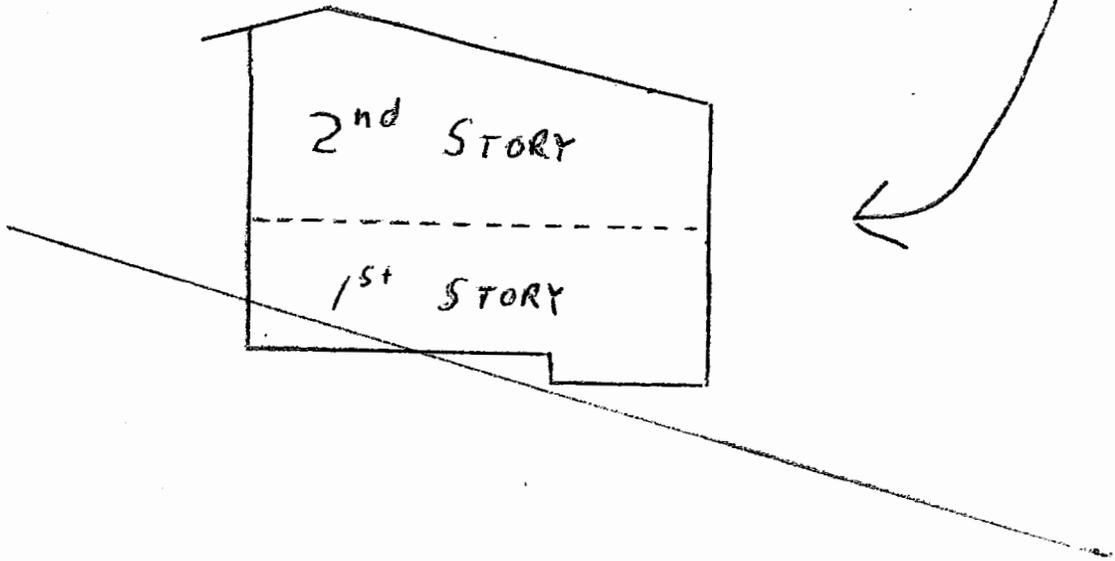


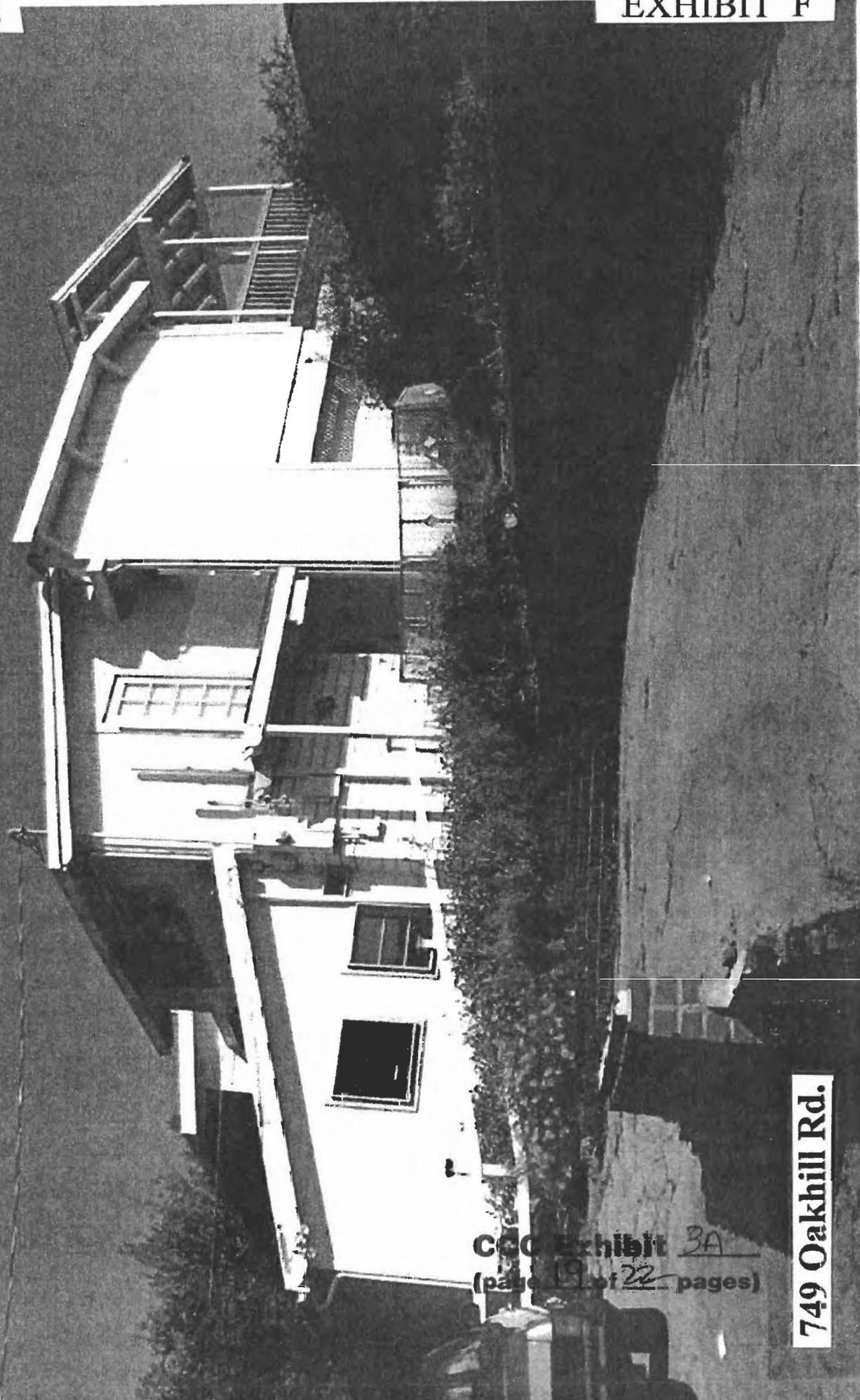
Figure 1

Here you can see that stepping the structure up the slope follows the contour of the hillside, minimizes the amount of required grading (the dashed area), and preserves the 28-height limit. FAR, lot coverage and setback requirements act to control the overall size and location of a structure(s) on a parcel.

CCC Exhibit 3A
(page 17 of 22 pages)

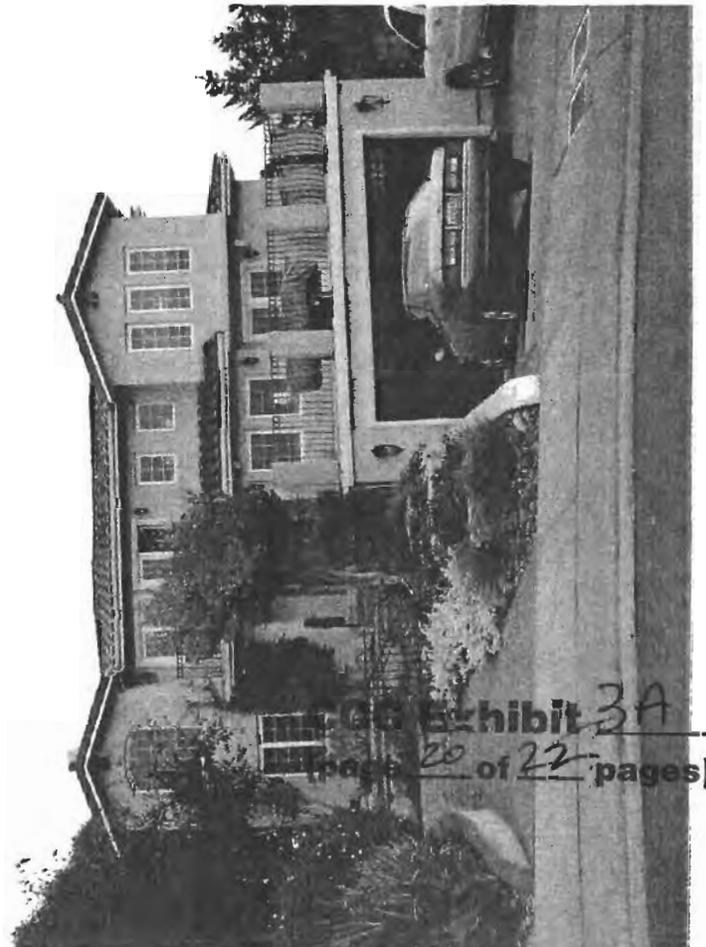
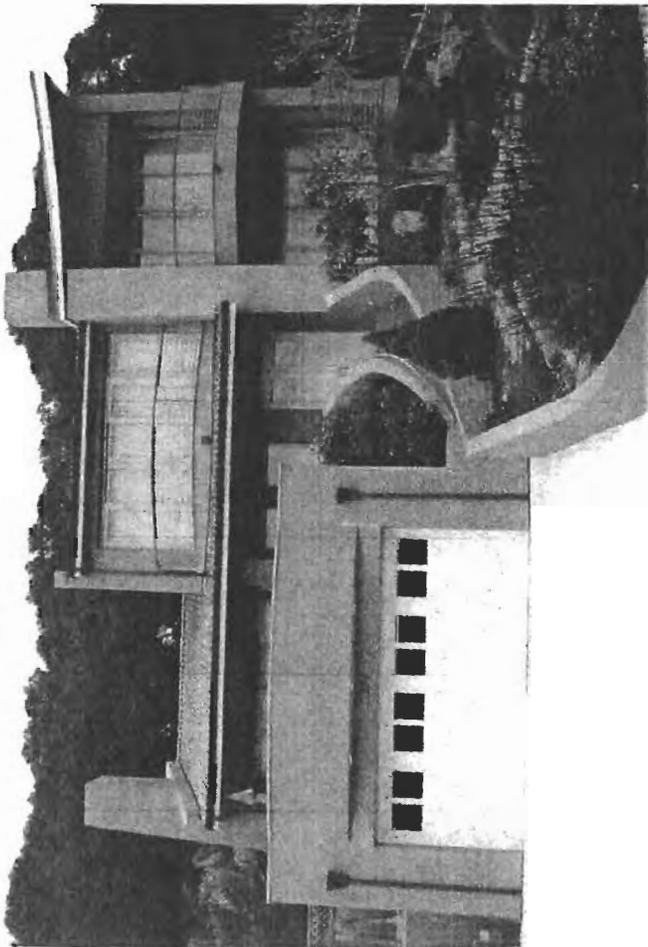
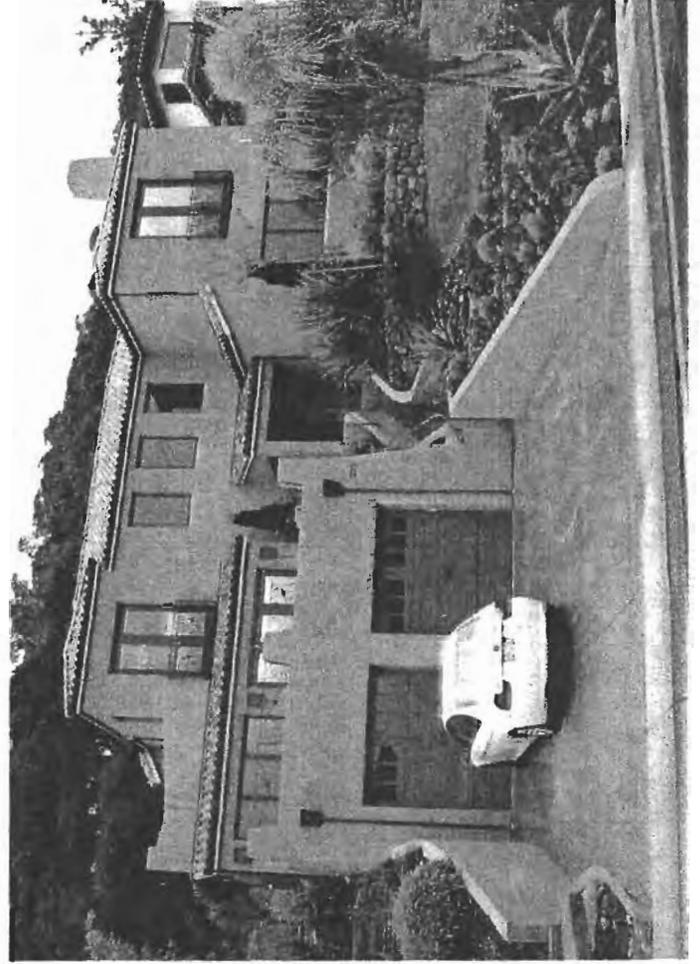
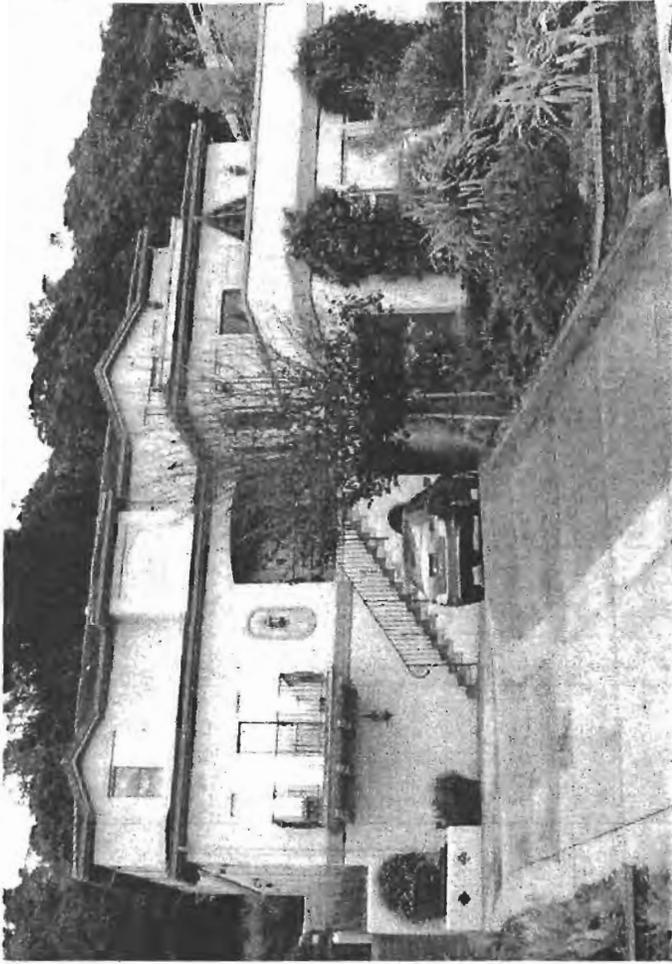
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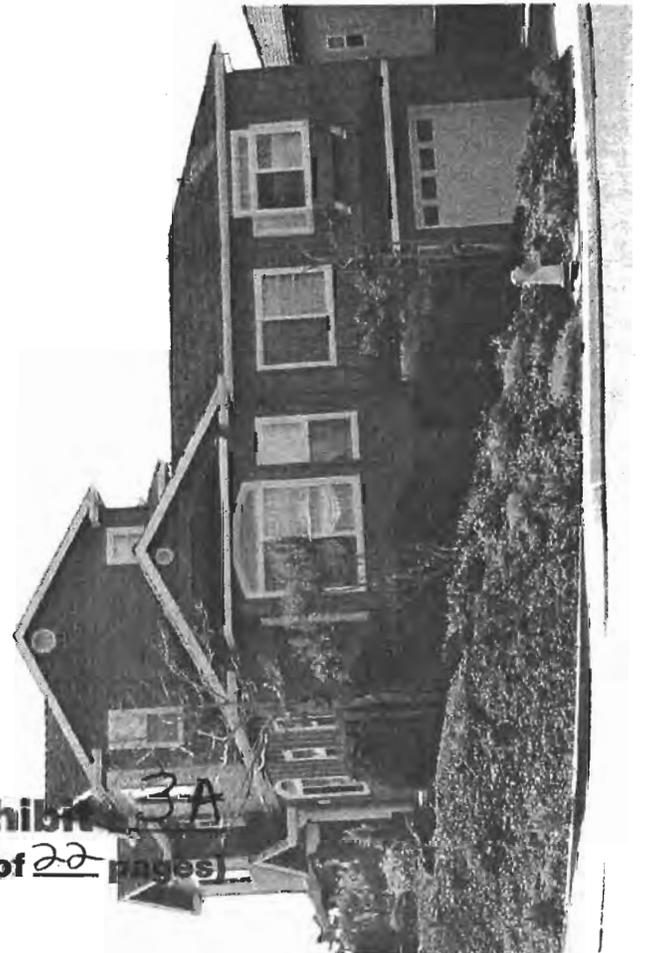
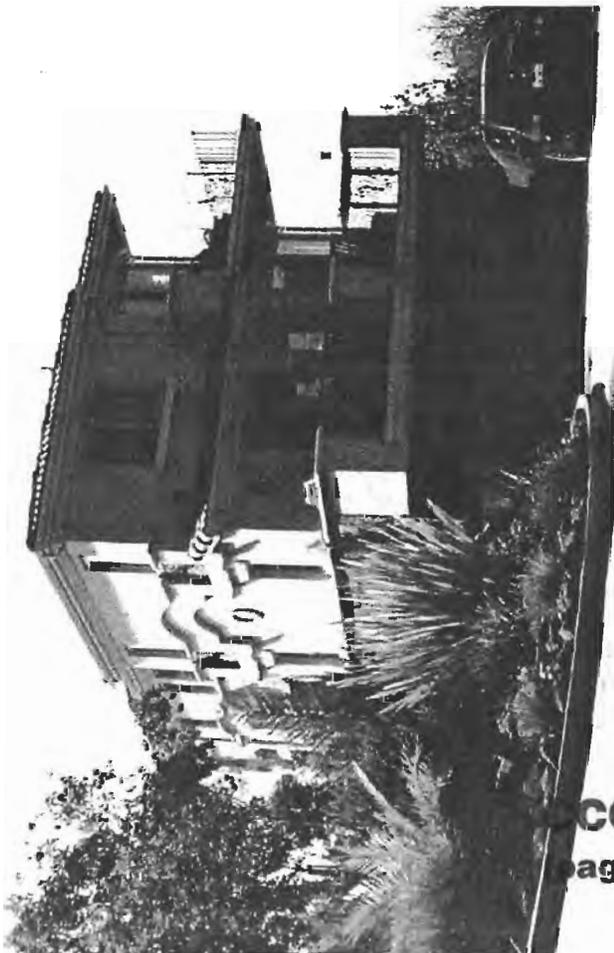




CCO Exhibit 3A
(page 19 of 22 pages)

749 Oakhill Rd.

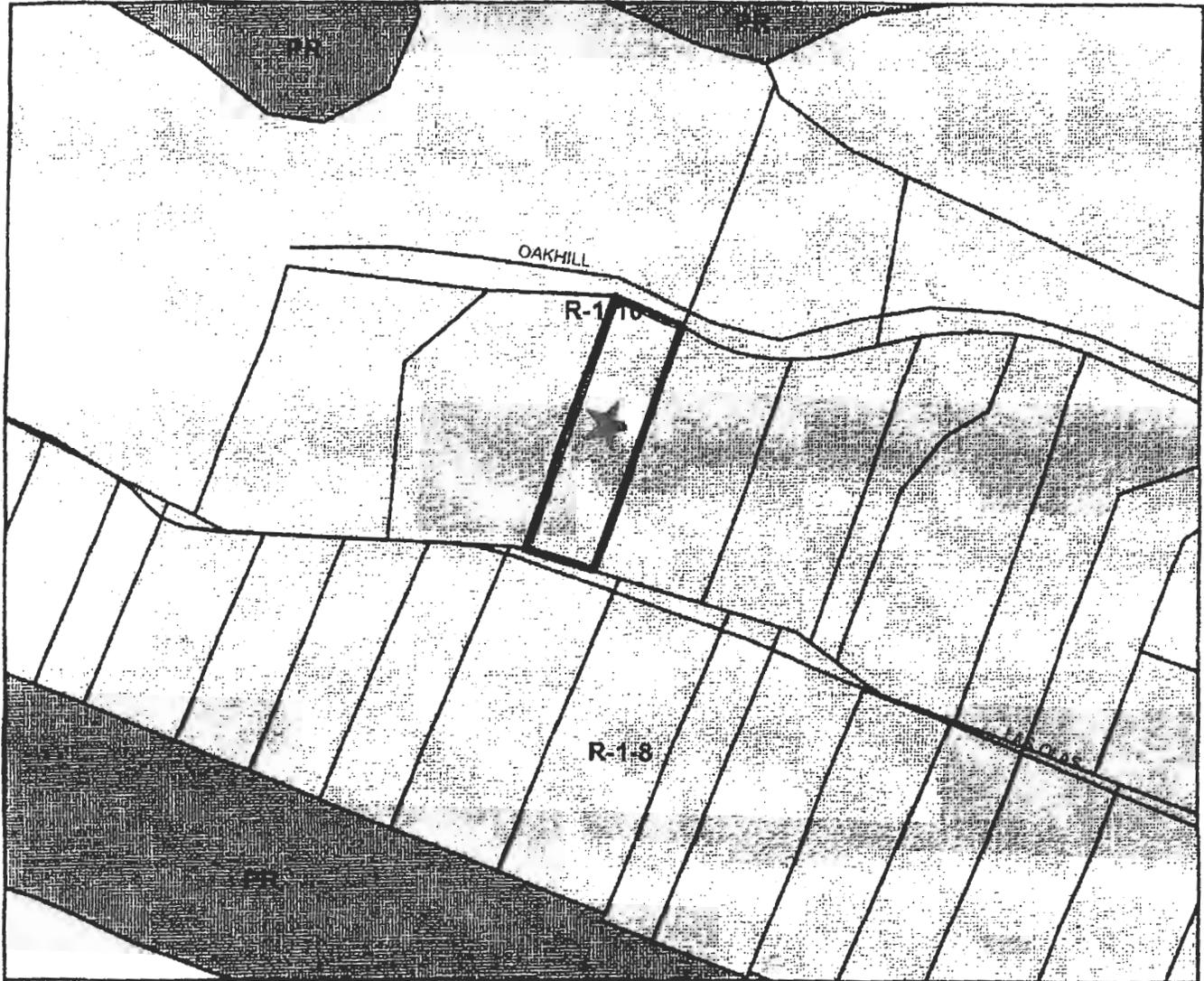




CC Exhibit 3A
 page 21 of 22 pages



Zoning Map



LEGEND

-  APN: 038-151-89
-  Assessors Parcels
-  Streets
-  County Boundary
-  RESIDENTIAL-SINGLE FAMILY
-  PARK



CCC Exhibit 3A
 County of Santa Cruz
 (page 22 of 22 pages)
 December 2008

page 22 of 22

TO: California Coastal Commission, Central Coast District
FROM: Wittwer & Parkin LLP *WJP*
DATE: November 12, 2010
SUBJECT: County of Santa Cruz Combination Ordinance

Summary

It has recently come to our attention that the County of Santa Cruz (County) has represented to the California Coastal Commission (Commission) staff that the County has “determined” that the Combination Ordinance, County Code Section 14.01.110, does not apply retroactively, and therefore, does not apply to combine lots where structures spanning two lots were build prior to adoption of the Combination Ordinance. We do not believe that the plain language of the statute supports this “determination,” nor do we believe that this “determination” provides a proper legal basis for the County to refuse to enforce this provision of the Combination Ordinance. (Cal. Const. Art. III, § 3.5). Accordingly, we would respectfully request that the Commission carefully consider what impact, if any, that the County’s “determination” has on the question of retroactivity of the Combination Ordinance.

RECEIVED

NOV 12 2010

The County’s Combination Ordinance

The relevant provision of the Combination Ordinance states:

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

14.01.110 Combination of parcels by action of owner.

(a) Contiguous parcels or units thereof under common ownership shall be deemed combined by the actions of the owner under any of the following circumstances:

5. Parcel on which a dwelling or commercial structure or portion thereof *has* been built across the common boundary line of such lots or parcels except when the encroachment was of such a minor and inadvertent nature that it could be eliminated through a boundary adjustment. Such parcels remain combined even if the structure is removed.

By its plain terms, a combination by the action of the owner “shall be deemed combined” any time a dwelling or commercial structure “has been built” across the common boundary line. (County Code §14.01.110). The operative verbs “combined” and “has” are specifically and purposefully used in the past-tense to indicate something that has already happened by prior action of the owner. Indeed, each of the other four circumstances in which combination shall occur likewise involve past conduct of the owner.¹ Thus it is very clear that the Board of Supervisors intended this provision to apply retroactively, and that there no basis whatsoever for the County’s purported “determination.”

¹ It should also be noted that state law likewise recognizes that prior actions of an owner can operate to “consolidate” two separate parcels (e.g. by written statement in grant deed). Civ. Code 1093. (“This section does not constitute a change in, but is declaratory of, existing law.”)

CCC Exhibit 3B
(page 1 **of** 18 **pages)**

The County's "determination" is not a proper basis for its failure to enforce the combination ordinance under Cal. Const. Article III, §3.5.

We understand that the legal underpinning of the County's "determination" is that retroactive application would potentially constitute a "taking" of private property without just compensation. However, an agency "determination" is not a proper legal basis for the it to refuse to enforce the law. (Cal. Const. Art. III, § 3.5 "An administrative agency, including an administrative agency created by the Constitution or an initiative statute, has no power: (a) To declare a statute unenforceable, or refuse to enforce a statute, on the basis of it being unconstitutional unless an appellate court has made a determination that such statute is unconstitutional.") Moreover, it is actually quite common for new laws to affect past behavior, regardless of fault. For example, present owners of property contaminated by prior owners or others must clean them up whether they were involved with the contamination or not.

Lastly, California Courts have recognized that explicit legislative intent is necessary to preempt local subdivision ordinances. *Griffin Dev. Co. v. City of Oxnard* (1985) 39 Cal.3d 256; see, also, Curtin & Merritt, Cal. Subdivision Map Act and the Development Process (Cont.Ed.Bar 2d ed. 2009 Update, §§ 1.10; 1.11, pp. 11-13). Here there is no specific legislative intent to preempt actions by the owner, which state law recognizes; e.g. by past written statement in a grant. (Civ. Code 1093; see FN1).

Conclusion

As the Commission is well aware, parcel legalization poses a significant issue as to impacts on Coastal resources in the Coastal Zone.² Indeed, virtually every coastal resource identified in the Coastal Act can be, and often is, negatively impacted by development of "parcels" which lack legal status. Accordingly, we respectfully request that the Commission not consider the County "determination" as either valid or binding on this question and reserve comment and judgment until this issue has been fully analyzed.

² See, California Coastal Commission adopted Staff Report for Application No. 4-07-040 April 2009 Agenda (Specter):

Furthermore, there are an undetermined number of "parcels" that purportedly have been divided off of larger lots but without the required permits that have not yet been discovered by the Commission. Although it is not possible to predict how many such illegal "parcels" exist, the Commission has found many cases where the review of a development proposal in the Santa Monica Mountains reveals evidence that the property was not created legally.

The future development of the existing undeveloped parcels in conjunction with any increased density will result in tremendous increases in demands on road capacity, sewage and other services, recreational facilities, beaches, and associated impacts to water quality, geologic stability and hazards, rural community character, and contribution to fire hazards...

Jonathan Wittwer
William P. Parkin
Ryan D. Moroney

WITTWER & PARKIN, LLP

147 SOUTH RIVER STREET, SUITE 221
SANTA CRUZ, CALIFORNIA 95060
TELEPHONE: (831) 429-4066
FACSIMILE: (831) 429-4067
E-MAIL: office@wittwerparkin.com

OF COUNSEL
Gary A. Patton

April 6, 2010

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APR 08 2011

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

Via Hand Delivery

Susan Craig, Coastal Planner
California Coastal Commission
725 Front Street, Suite 300
Santa Cruz, California 95060

**RE: Appeal of County Board of Supervisor's Decision on June 15, 2010
Development Permit Application 09-0139
APN 038-151-89
Owner: Brian Arthur
Appellant: Patrick Murphy**

Dear Ms. Craig:

This office represents Patrick Murphy in his appeal to the Commission of the County's approval of the above referenced Project. As you know, the appeal presents two independent reasons why the proposed Project raises a substantial issue. This letter is intended to address the first basis -- that the land division and the creation of the parcel in question in 2003 constitutes "development" under the Coastal Act requiring a Coastal Development Permit (CDP). Accordingly, the parcel is not legal and, thus the proposed house cannot be approved until a CDP is obtained for the lot by the landowner.

The County's "pattern and practice" of avoiding Coastal Commission review of land divisions

As part of our research into this matter, this office reviewed all of the County approvals for Certificates of Compliance (COC) within the Coastal Zone from 2000 through 2010. A summary of our findings is provided herewith in table format with reference to relevant documents from the County's discretionary planning files, including the staff report for the approved COCs.

Notably, of the fifty-five (55) COC approvals, fifty (50) appear to present potential issues with respect to Coastal Act compliance. The issues raised include: 1) failure to independently assess whether parcel legalization constitutes "development" for the purposes of the Coastal Act; 2) failure to properly apply the County Combination Ordinance; and 3) failure to properly apply

**CCC Exhibit 3B
(page 3 of 18 pages)**

California Appellate Court precedent¹ when determining that pre-1929 parcel maps created a legal parcel. However, because all were processed as unconditional COCs, Coastal Commission (and public) oversight was circumvented in each instance.² That is because the County reviews and approves unconditional COCs at processing “level III”, which is done entirely administratively, with no notice to the public and no final local action notice to the Commission, even when such lot legality determinations are made within the Coastal Zone. See, County Code Sections 14.01.114; 18.10.112.

Based on the evidence presented in the accompanying table, the County appear to have a pattern and practice of permitting circumvention of the Coastal Commission (and public) review of lot legality determinations in the Coastal Zone in this way. We believe this practice to be unlawful and improper, and request that the Commission take jurisdiction of this appeal, and thereby establish a precedent so that this practice is corrected. Indeed, this appeal presents a rare opportunity in which an aggrieved neighbor has been willing to dispute the County’s illegal process and compel compliance with the requirements of the Coastal Act.

A CDP was required for the 2003 land division at issue in this appeal

Additionally, we would also like to take this opportunity to briefly summarize the three reasons why a CDP is required for the 2003 division of land purporting to create the parcel upon the proposed house is to be built:

¹ See, i.e. *Abernathy Valley, Inc. v. County of Solano* (2009) 173 Cal.App.4th 42, *Witt Home Ranch, Inc. v. County of Sonoma* (2008) 165 Cal.App.4th 543; and *Gardner v. County of Sonoma* (2003) 29 Cal.4th 990.

² The purpose of the County COC Approvals - 2000-2010 table is not intended to call into question all of these prior approvals, but rather to demonstrate to the Commission one of the substantial issues raised in this appeal; to wit the circumvention of Coastal Commission (and the public’s) oversight on land divisions in the Coastal Zone. The County’s actions with respect to these myriad of COC approvals is a serious problem with the County’s administration of its Local Coastal Program and the landowners are permitted to avoid Commission and public oversight through the issuance of unconditional COCs. It is our contention that this practice must stop, and that a strong message must be sent to the County that its practice of allowing landowners to avoid the requirements for a CDP will not be tolerated.

1. **The parcel was combined with APN 038-151-85 by operation of law when the prior owner (who owned both parcels at the time) built a dwelling over the common boundary line in 1981. County Code Section 14.01.110(a)(5). Notably, the original house still encroaches over the common boundary line.**

County Code § 14.01.110(a) sets forth circumstances under which two parcels are combined by operation of law by the action of the owner; these include, *inter alia*:

2. Parcels which have been combined into one assessor's parcel number by the Assessor upon the request of the owner; ...

5. Parcel on which a dwelling or commercial structure or portion thereof has been built across the common boundary line of such lots or parcels except when the encroachment was of such a minor and inadvertent nature that it could be eliminated through a boundary adjustment. Such parcels remain combined even if the structure is removed.

As explained in legal briefs previously provided to staff, the Property at issue was combined by operation of law in 1981 when the prior owner applied for a building permit representing the property as one large lot and built over the supposed property line. (Parkin Decl., Exhibits E, G, H, K, and L, p.2.)³ Thus, at the time of the 2001 Application for COCs by landowner, the Property did not consist of two pre-existing legally created parcels. It is axiomatic that a parcel cannot have a portion of a house built across a property boundary. The whole point of dividing land into parcels, or lots, is to establish separate buildable units. The County's combination ordinance recognizes this fundamental principal.

Moreover, the existing house still crosses the property line even though some improvements have been demolished. It is a planning nightmare to allow landowners to claim individual parcels for lots with boundaries that cut through a portion of a house. Such a result could ultimately wreak havoc on future approvals for construction and remodeling, and, and no doubt creates problems for later owners. The County should not be permitted to allow houses to be built across property boundaries.

³ For convenience, the attached exhibits retain their original designation referenced in the Trial Brief previously provided to staff and staff counsel.

- (2) **Assuming, for the sake of argument that building over the common boundary did not combine the parcels, the parcels were combined by operation of law when the prior owner requested and obtained a single Assessor's Parcel Number in 1988. County Code Section 14.01.110(a)(2).**

Even if, for the sake of argument, the prior owner's actions in 1981 did not result in combination, the owner's at the time later requested that the parcels be combined for tax purposes in 1988 independently resulted in combination of the parcels per the County's ordinance. (Parkin Decl., Exhibit G, H). A parcel is considered combined if the property owner requests combination of Assessor Parcels. County Code § 14.01.110(a)(2).

- (3) **The administrative record clearly reflects that the COC was *conditioned* on the several actions being taken: including the demolition of existing encroachments and the recordation of an Acknowledgment of Adjacent Significant Nonconforming Structure.**

The COC purporting to legalize the parcel at issue here was conditional because the County required demolition of encroachments and the recordation of a Notice and Acknowledgment of Nonconforming Structure. In issuing the COCs, the County required the demolition of portions of the existing home and/or lot boundary adjustment for the separate vacant parcel. (Parkin Decl., Exhibit C, p. 2). The prior owner clearly understood the COC to be conditional and he proceeded to remove the encroachment by demolishing the deck and elevator shaft. However, the prior owner was not able to fully correct the encroachment because the house still encroaches onto the created vacant lot. Thus, the County also conditioned the COC on the recordation of an Acknowledgment of Adjacent Significant Nonconforming Structure. (Parkin Decl., Exhibit M).

Under the Coastal Act, the County's issuance of the COC's in 2003 constituted "development" requiring a CDP. Whether the County calls the COC conditional or unconditional does not change the fact that it was truly conditional. The Coastal Commission has jurisdiction over whether a CDP is required and whether the COC was really a Conditional COC. The County's position in granting the appeal of the original denial of the COC was that the encroachment was "of such a minor and inadvertent nature that it could be eliminated through a boundary adjustment" pursuant to County Code Section 14.01.110, subd. (a)(5). However, there was nothing "minor AND inadvertent" about the encroachment and to this day the encroachment has still not been resolved. The encroachment was intentional with an elevator, deck, carport and previously a bedroom. The previous owners applied for building permits knowing full well what they were doing and later requested combination of the parcels for tax purposes. (Parkin Decl., CC and E.) Clearly, a CDP is required to once again create two

Susan Craig
Appeal of County Application 09-0139 (Arthur); APN 038-151-89
Page 5

new parcels.

Thank you for your consideration.

Very truly yours,
WITWER & PARKIN, LLP.



William P. Parkin

Attachments: Relevant Exhibits from Parkin Declaration in Support of Trial Brief
County COC Approval Table 2000-2010 (2 volumes)

CCC Exhibit 3B
(page 7 **of** 18 **pages)**

**BOSSO, WILLIAMS, SACHS,
ATAK & GALLAGHER**

AND

PETER L. SANFORD

AN ASSOCIATION OF PROFESSIONAL CORPORATIONS

MAILING ADDRESS P.O. Box 1822

LOCATION 133 MISSION STREET, SUITE 280

SANTA CRUZ, CA 95061-1822

TELEPHONE (831) 426-8484

FACSIMILE (831) 423-2839

PETER L. SANFORD, APC *

SAN JOSE OFFICE:

333 W. SANTA CLARA ST. #612

SAN JOSE, CA 95113

TEL: (408) 285-8700

FAX: (408) 285-8403

PLEASE REPLY TO SANTA CRUZ

* CERTIFIED SPECIALIST IN TAXATION
LAW, THE STATE BAR OF CALIFORNIA,
BOARD OF LEGAL SPECIALIZATION

ROBERT E. BOSSO
LLOYD R. WILLIAMS
PHILIP M. SACHS
CHARLENE B. ATAK
JOHN M. GALLAGHER
PETER L. SANFORD
CATHERINE A. PHILPOVITCH
PASCHA R. STEVENS
MICHELLE E. ANDERSON
EDWARD L. CHUN
SUZANNE P. YOST

May 18, 2001

VIA HAND-DELIVERY

Don Bussey, Project Manager
County of Santa Cruz Planning Dept.
701 Ocean St., 4th Floor
Santa Cruz, CA 95060

**Re: Application No. 01-0068 for Unconditional COCs
APN 38-151-85
Property Owners: Tom and Emily Oswalt**

Dear Don:

In response to your letter to Suzanne Yost of our office dated February 15, 2001, enclosed are:

1) A letter from the County Assessor indicating that the Assessor's office does not have a written request from the property owner requesting that the parcels be combined to a single number;

2) A map prepared by Robert L. DeWitt & Associates, showing all of the existing improvements on the property;

3) A record of survey map prepared by Robert L. DeWitt & Associates;

4) An assessor's parcel map that shows the property in question;

5) A complete set of the Assessor's records. Please refer to the letter referenced in item (1), above, for the explanation from the Assessor.

6) The slope work was never performed. The previous owner applied for the permit, and never did the work. When the Oswalts acquired the property, they had some landscaping

CCC Exhibit 3B
(page 8 of 18 pages)

Don Bussey, Project Manager
May 18, 2001
Page 2

work done to stabilize the slope. Additionally, the Oswalts diverted the drains from the property so that they no longer empty out over the slope.

You will see from the map prepared by DeWitt's office that a small portion of the house, and the elevator (which is actually outside of the house) and deck, encroach over the property line. The encroachment has existed since long before the County's parcel combination ordinance was enacted. The area covered by the encroachment used to have a bedroom, and it used to encroach much more than it does today. The Oswalts are willing to agree to remove the elevator and deck should they ever elect to sell one of the parcels separate from the other parcel.

Very truly yours,



Catherine A. Philipovitch

Enc.

CCC Exhibit 3B
(page 9 of 18 pages)

Recording requested by:

COUNTY OF SANTA CRUZ

When recorded, return to:

Planning Department
Attn: David Keyon
County of Santa Cruz
701 Ocean Street
Santa Cruz, CA 95060



2005-0019528

Recorded	REC FEE	13.00
Official Records	CC CONF	1.00
County Of	CC CONF	1.00
SANTA CRUZ		
GARY E. HAZELTON		
Recorder		
CAROL D. SUTHERLAND		
Assistant	DLA	
09:53AM 24-Mar-2005	Page 1 of 3	

Conditions of Approval

Development Permit No. 04-0531

Property Owner: Tom and Emily Oswalt

Assessor's Parcel No.: 038-151-89, 038-151-90

Exhibit A: Project plans, one sheet, drawn by Tracy Johnson, dated 9/27/04.

- I. This permit authorizes the demolition of an elevator shaft and decking attached to a single-family residence, and the required modifications to the western wall. 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 Demolition Permit from the Santa Cruz County Building Official.
 - C. Obtain a Building Permit from the Santa Cruz County Building Official.

- II. Prior to issuance of a Demolition/Building Permit the applicant/owner shall:
 - A. Submit proof that these conditions have been recorded in the official records of the County of Santa Cruz (Office of the County Recorder).
 - B. Submit Final Architectural Plans for review and approval by the Planning Department. The final plans shall be in substantial compliance with the plans marked Exhibit "A" on file with the Planning Department. The final plans shall include the following additional information:
 - 1. Identify finish of exterior materials and colors of the modified wall for Planning Department approval. Any color boards must be in 8.5" x 11" format. Colors and materials must match the existing dwelling.
 - C. Sign and record a Declaration of Acknowledgement of a Significantly Non-Conforming Structure for APN 038-151-90 and a Declaration of Acknowledgment of an Adjacent Significantly Non-Conforming Structure for APN 038-151-89. Submit proof of recordation to the Planning Department.

III. All construction shall be performed according to the approved plans for the Building

CCC Exhibit 3B
(page 10 of 18 pages)

By signing below, the owner agrees to accept the terms and conditions of approval of Application 04-0531 and to accept responsibility for payment of the County's cost for inspections and all other action related to noncompliance with the permit condition. The approval of Application 04-0531 is null and void in the absence of the owner's signature below.

Executed on 3-22-05
(date)

Property Owner(s) signatures:

(Signature) Emily Oswalt (Print Name) EMILY OSWALT
(Signature) Tom Oswalt (Print Name) TOM OSWALT
(Signature) _____ (Print Name) _____

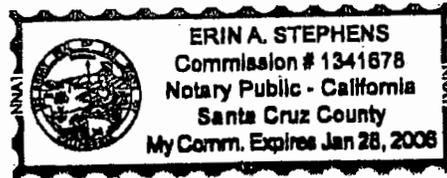
**ALL SIGNATURES ARE TO BE ACKNOWLEDGED BEFORE A NOTARY PUBLIC.
IF A CORPORATION, THE CORPORATE FORM OF ACKNOWLEDGMENT
SHALL BE ATTACHED.**

STATE OF CALIFORNIA, COUNTY OF SANTA CRUZ} ss

On March 23, 2005 before me Erin A. Stephens, personally appeared Emily Oswalt and Tom Oswalt personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal

Signature Erin A. Stephens
(Signature of Notary Public)



This form must be reviewed and approved by a County Planning Department staff person after notarization and prior to recordation.

Dated: 3/24/05

COUNTY OF SANTA CRUZ

By: Cheri Suarez
Planning Department Staff

CCC Exhibit 3B
(page 21 **of** 18 **pages)**

Return recorded form to:

Planning Department
County of Santa Cruz

Attention: David Keyon
Application #: 04-0531



2005-0019529

Recorded	REC FEE	10.00
Official Records	CC CONF	1.00
County Of	CC CONF	1.00
SANTA CRUZ		
GARY E. HAZELTON		
Recorder		
CAROL D. SUTHERLAND		
Assistant	DLA	
09:53AM 24-Mar-2005	Page 1 of 2	

Acknowledgement of Adjacent Significantly Nonconforming Structure

This acknowledgement, made in Santa Cruz county, State of California, by Tom and Emily Oswalt owner(s) of real property described in Exhibit "A" (attached property description), known as Assessor's Parcel Number 038-151-89, hereby declares that all of the property described below shall be held, sold, and conveyed subject to the following acknowledgements and consent, which are given for the purpose of the adjacent property commonly referred to as 749 Oak Hill Road (Assessor's Parcel Number 038-151-90) (hereinafter referred to as "ADJACENT PROPERTY") meeting the requirements of the Santa Cruz County Code. Such acknowledgements and consent shall run with the title to the Exhibit "A" property and be binding on all parties having any right, title or interest in the property or any part thereof, their heirs, successors, and assignees and shall apply to each owner thereof.

Article I

OWNER acknowledges that the ADJACENT PROPERTY contains a(n) Single Family Dwelling which is not in compliance with the following current County building and/or development regulations:

Code Section: 13.10.265(k)2
 Current Requirement: Minimum 10 foot side yard setback
 As Approved: A portion of the western wall of the single-family dwelling on the adjacent parcel encroaches about 3 inches over the eastern property line

Article II

OWNER HEREBY CONSENTS TO THE REDUCED STANDARD FOR THE ADJACENT STRUCTURE DESCRIBED IN ARTICLE I AND HEREBY WAIVES THE RIGHT TO RESCIND THIS ACKNOWLEDGEMENT WITHOUT COUNTY APPROVAL. SUCH CONSENT AND WAIVER ARE MADE FREELY AND VOLUNTARILY AND NOT UNDER DURESS FROM THE OWNERS OF THE ADJACENT PROPERTY.

Article III

OWNER acknowledges that upon receiving final building permit inspection approval for construction described in Article I, said structure is a legal non-conforming structure and is subject to the provisions of County Code Section 13.10.265, pertaining to nonconforming structures. This section of the Code includes limitations on structural improvements or reconstruction of a nonconforming structure.

ALL SIGNATURES ARE TO BE ACKNOWLEDGED BEFORE A NOTARY PUBLIC. IF A CORPORATION, THE CORPORATE FORM OF ACKNOWLEDGMENT SHALL BE ATTACHED.

CCC Exhibit 3B
(page 12 **of** 18 **pages)** Page 1

Executed on 3-20 05, 2005.

Owner: Emily Oswalt
Owner: Tom Oswalt
Owner: _____

**ALL SIGNATURES ARE TO BE ACKNOWLEDGED BEFORE A NOTARY PUBLIC.
IF A CORPORATION, THE CORPORATE FORM OF ACKNOWLEDGMENT SHALL
BE ATTACHED.**

STATE OF CALIFORNIA COUNTY OF Santa Cruz

On March 23, 2005 before me Erin A Stephens personally appeared Tom Oswalt and Emily Oswalt personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature Erin A Stephens
(Notary Public in and for said County and State)

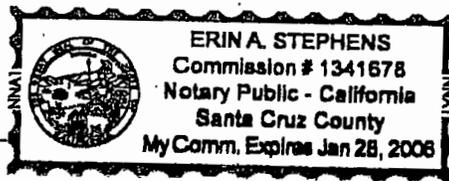


EXHIBIT "A"

All the real property situated in the County of Santa Cruz, State of California, conveyed from Tom and Emily Oswalt, to Tom and Emily Oswalt, by deed recorded in 2003-0058477, Santa Cruz County Official Records Office on 6/17/2003. Assessor's Parcel Number: 038-151-89, located in the County of Santa Cruz, State of California commonly known as: 749 Oak Hill Road.

This form must be reviewed and approved by a County Planning Department staff person after notarization and prior to recordation.

Dated: 3/24/05

COUNTY OF SANTA CRUZ

By: Cheri Swacca
Planning Department Staff

CCC Exhibit 3B
(page 13 **of** 18 **pages)**

Return recorded form to:

Planning Department
County of Santa Cruz

Attention: David Keyon
Application #: 04-0531



2005-0019530

Recorded	REC FEE	10.00
Official Records	CC CONF	1.00
County Of	CC CONF	1.00
SANTA CRUZ		
GARY E. HAZELTON		
Recorder		
CAROL D. SUTHERLAND		
Assistant	DLA	

09:53AM 24-Mar-2005 | Page 1 of 2

Acknowledgement of Significantly Nonconforming Structure to County Regulations

This acknowledgement, made in Santa Cruz county, State of California, by Tom and Emily Oswalt owner(s) of real property described in Exhibit "A" (attached property description), known as Assessor's Parcel Number 038-151-90, hereby declares that all of the property described below shall be held, sold, and conveyed subject to the following restrictions and conditions, which are for the purpose of meeting the requirements of the Santa Cruz County Code, and which shall run with the title to the property and be binding on all parties having any right, title or interest in the property or any part thereof, their heirs, successors, and assignees and shall apply to each owner thereof.

Article I

OWNER acknowledges that the existing Single Family Dwelling is not in compliance with the following current County building and/or development regulations:

- Code Section: 13.10.265(k)2
- Current Requirement: Minimum 10 foot side yard setback
- As Approved: A portion of the western wall of the existing single-family dwelling encroaches about 3 inches over western property line

Article II

OWNER acknowledges that upon receiving final building permit inspection approval for construction described in Article I, said structure is a legal non-conforming structure and is subject to the provisions of County Code Section 13.10.265, pertaining to nonconforming structures. This section of the Code includes limitations on structural improvements or reconstruction of a nonconforming structure.

ALL SIGNATURES ARE TO BE ACKNOWLEDGED BEFORE A NOTARY PUBLIC. IF A CORPORATION, THE CORPORATE FORM OF ACKNOWLEDGMENT SHALL BE ATTACHED.

CCC Exhibit 3B
(page 14 **of** 18 **pages)**

Executed on 3-20-05, 20__.

Owner: Tom Oswald
Owner: Emily Oswald
Owner: _____

ALL SIGNATURES ARE TO BE ACKNOWLEDGED BEFORE A NOTARY PUBLIC. IF A CORPORATION, THE CORPORATE FORM OF ACKNOWLEDGMENT SHALL BE ATTACHED.

STATE OF CALIFORNIA COUNTY OF Santa Cruz

On March 23, 2005 before me Erin A. Stephens personally appeared Tom Oswald and Emily Oswald personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature Erin A. Stephens
(Notary Public in and for said County and State)

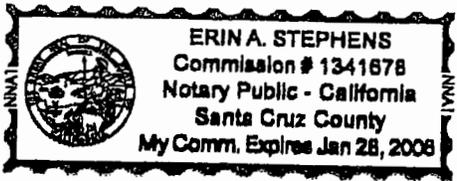


EXHIBIT "A"

All the real property situated in the County of Santa Cruz, State of California, conveyed from Tom and Emily Oswald, to Tom and Emily Oswald, by deed recorded in 2003-0058477, Santa Cruz County Official Records Office on 6/17/2003. Assessor's Parcel Number: 038-151-90, located in the County of Santa Cruz, State of California commonly known as: 749 Oak Hill Road.

This form must be reviewed and approved by a County Planning Department staff person after notarization and prior to recordation.

Dated: 3/24/05

COUNTY OF SANTA CRUZ
By: Cheri Sicares
Planning Department Staff

CCC Exhibit 38
(page 15 of 18 pages)

BUILDING PERMIT APPLICATION
County of Santa Cruz

1898
APPLIC. NO.

UP insp. card - per
3/23/81 for use 11/94

71147-216
DO NOT PASS
DO NOT
REFILE
Return to Linda
in Records Room

38-151-05, 23 749 Oakhill Road
Assessor's Parcel No. Job Location

Sherwood + Kathy Grover
Owner(s) Telephone 608-2045

749 Oakhill Road
Mailing Address City Aptos Zip 95060

Same
Designer, Engineer or Architect City Lic. No.

Same
Contractors (List subcontractors on reverse) Telephone

Mailing Address City Lic. No.

CONTACT PERSON: Jim Debid
112 Pine Place #4
S.C. 95060

LIST OTHER PERMITS:

PROJECT DESCRIPTION: to construct an elevator shaft addition to existing SFD

ARCHIVE BOX #317147-216
DO NOT PASS ..DO NOT REFILE
RETURN TO THE RECORDS
ROOM WHEN FINISHED!!!!!!

181-01-181
RD 10-1-81

6-22-81
DATE

67984
PERMIT NO.

Peter Fry
ISSUED BY

CCC Exhibit
(page 16 of 18 pages)

BUILDING PERMIT

No. 67984

Date 6-22-81	Assessor's Parcel No. 38-15-5,23	Job Location 749 Oakhill Rd.	Aptos
Owner Grover	Address Job	City	Telephone 688-2545
Applicant Jim DuGuik	Address 112 Pine Pl. #4	City SC	Telephone 427-1331
Contractor Owner- Builder	Address	City	Lic. No.
Architect/Engineer	Address	City	Lic. No.

LICENSED CONTRACTORS DECLARATION

I hereby affirm that I am licensed under provisions of Chap. 9 (commencing with Sec. 7000) of Div. 3 of the Bus. and Prof. Code, and my license is in full force.

Lic. No. _____ Lic. Class _____

Contractor _____ Date _____

OWNER-BUILDER DECLARATION

I hereby affirm that I am exempt from the Contractor's License Law for the following reasons:

362 I, as owner of the property, or my employees with wages as their sole compensation, will do the work, and the structure is not intended or offered for sale (Sec. 7044, Bus. and Prof. Code: The Contractor's License Law does not apply to an owner of property who builds or improves thereon, and who does such work himself or through his employees, provided that such improvements are not intended or offered for sale. If, however, the building or improvement is sold within one year of completion, the owner-builder will have the burden of proving that he did not build or improve for the purpose of sale.)

I, as owner of the property, am exclusively contracting with licensed contractors to construct the project (Sec. 7044 Bus. & Prof. Code: The Contractor's License Law does not apply to an owner of property who builds or improves thereon, and who contracts for such projects with a contractor(s) license pursuant to the Contractor's Law).

I am exempt under Sec. _____, Bus & Prof. Code for this reason: _____

X Owner Jim DuGuik Date 6-22-81

WORKER'S COMPENSATION DECLARATION

I hereby affirm that I have a certificate of consent to self-insure, or a certificate of Worker's Compensation Insurance, or a certified copy thereof (Sec. 3800, Lab. Code).

Policy No. _____ Company _____

_____ certified copy is hereby furnished

_____ certified copy is filed with Santa Cruz County Bldg. Dept.

X Applicant Jim DuGuik Date 6-22-81

CERTIFICATION OF EXEMPTION FROM WORKER'S COMPENSATION INSURANCE

I certify that in the performance of the work for which this permit is issued, I shall not employ any person in any manner so as to become subject to the Worker's Compensation Laws of California.

X Owner Jim DuGuik Date 6-22-81

NOTICE TO OWNER: If, after making this Certificate of Exemption, you should become subject to the Worker's Compensation provisions of the Labor Code, you must forthwith comply with such provisions of this permit shall be deemed revoked.

CONSTRUCTION LENDING AGENCY

I hereby affirm that there is a construction lending agency for the performance of the work for which this permit is issued (Sec. 3097, Civ. Code).

Lender's Name _____ Lender's Address _____

CCC Exhibit 3B
(page 17 of 18 pages)

I certify that I have read this application and state that the above information is correct. I agree to comply with all county ordinances and state laws relating to building construction, and hereby authorize representatives of the county to enter upon the above mentioned property for inspection purposes.

X Owner/Agent Jim DuGuik Date 6-22-81
Bldg. 43

CENTRAL COAST
REGIONAL COASTAL ZONE CONSERVATION COMMISSION

701 OCEAN STREET, ROOM 310
SANTA CRUZ, CALIFORNIA 95060
PHONE: (408) 426-7390



NO PERMIT REQUIRED

June 17, 1981

Sherwood and Kathy Grover
749 Oakhill Road
Aptos, California 95003

Re: 749 Oakhill Road, Aptos, CA APN 38-151-05, 23

Regarding your proposal or project, no permit is required from this commission because:

- Location not within the Coastal Zone as described on Commission maps.
- No permit is required for the requested repairs or improvements to an existing single family residence. Addition of interior elevator to enclosed deck.
- Located within a "local option" permit zone (city or county grants coastal development permits).
- Located within an area excluded from the coastal permit requirement (Exclusion No. _____, Type _____).
- Proposal is not considered a "development" under Section 30106 of the Coastal Act of 1976.
- Other.

Very truly yours,

EDWARD Y. BROWN
Executive Director

Cecilia Mitchell
Stenographer

CCC Exhibit 3B
(page 18 of 18 pages)

RECEIVED

JUL 15 2010

753 Oakhill Road
Aptos, CA 95003
July 15, 2010

Dan Carl, District Manager
California Coastal Commission
Central Coast District Office
725 Front Street, Suite 300
Santa Cruz, CA 95060
FAX (831) 427-4877

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

RE: Commission Appeal No. A-3-SCO-10-033

I am writing in response to your Notification of Appeal dated July 7, 2010, to correct and amplify the records which you already have. I am enclosing a list of residents, a map of Oakhill Road and the one-page advertisement for the property in question in this appeal.

The correction to the record: Mr. Goldspink, the project architect, said that there were roughly a dozen or more houses on Oakhill Road. In actuality there are seven on the cliff side, and one on the north side. Of these seven houses, three are clustered at the entrance to Oakhill Road; at number 749 the hill dips sharply and the remaining lots are larger. Mrs. Hanchett (#755) owns all of the north side property excepting the property at #751, which is also at the entrance to the road. (see map)

The following residents have written letters and spoken against the proposed structure in at least one, and many at several of the earlier hearings on this matter:

- #743 Katharine Minott
- #749 Amy Love/ Marilee Robinson
- #735 William Parkin (attny for) Laura & Pat Murphy
- #753 Josephine Little (Mrs. Henry Bailey Little)
- #755 Jim Wilder (attny for) Gwynn Hanchett

On the attached map you will see the property held by the above-named individuals. As you can see, they represent all who live anywhere near the plot in question. As you likely know, the plot was carved out of the property at #749 Oakhill Road, without notification to any of the neighbors.

I am also enclosing the flyer that depicts the property at issue, which is now for sale. The flyer represents sweeping beach views, which would only be visible from the house if it were excessively tall.

Please let me know if I can answer further questions. Thank you for your attention in this matter.

Sincerely,

JF Little
Josephine Little

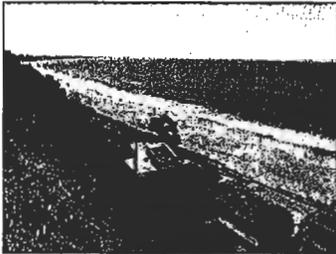
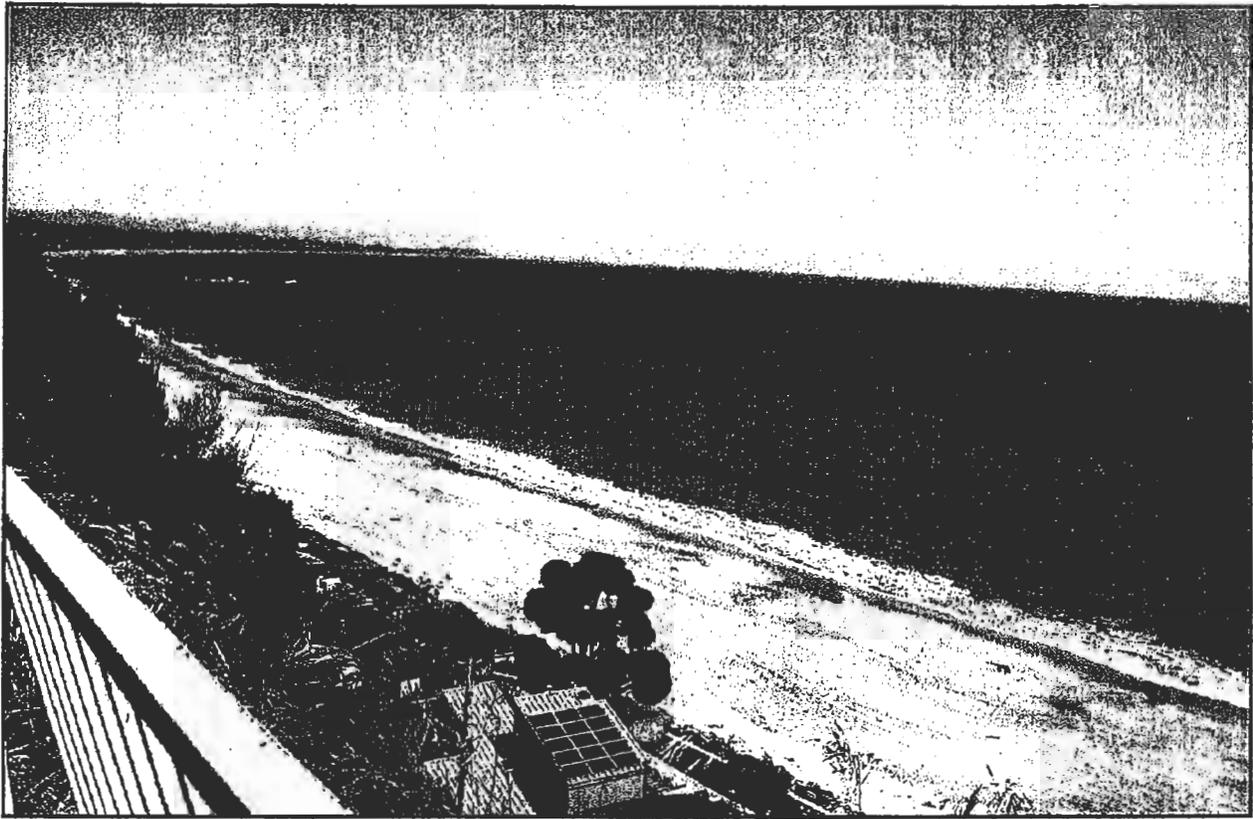
CCC Exhibit 3C
(page 1 of 3 pages)

re Appeal # A-3-500.10.
033



property whose owners
oppose development of this property

0 Oakhill Road, Seacliff



Breathtaking Bluff Front lot in prime Seacliff location. Includes approved plans for beautiful 2322 square foot Ocean Front Custom Home set back approximately 36 feet and features panoramic views of surf and sand from Capitola to Monterey from all main living areas plus the large, usable ocean front yard. Serene, private road location surrounded by majestic Oaks and the ocean waters as far as the eye can see.

Exhibit 3C
 (page 3 of 3 pages)

Offered at \$895,000



Your Luxury Home & Ocean Front Specialist!

Kelley Trousdale
 831-566-7070 Direct
 831-688-1933 x203 Office
 Email kt@c21lad.com

Century 21 Lad
 9047 Soquel Drive
 Aptos, CA 95003
 DRE# 01113597

Visit www.SantaCruzEstates.com For Additional Information



Applicable LCP Policies and Standards - Protection of Visual Resources

LUP Objective 5.10.a (Protection of Visual Resources). To identify, protect, and restore the aesthetic values of visual resources.

LUP Objective 5.10.b (New Development in Visual Resource Areas). To ensure that new development is appropriately designed and constructed to have minimal to no adverse impact upon identified visual resources.

LUP Policy 5.10.2 (Development Within Visual Resource Areas). Recognize that visual resources of Santa Cruz County possess diverse characteristics.... Require projects to be evaluated against the context of their unique environment and regulate structure height, setbacks and design to protect these resources consistent with the objectives and policies of this section. ...

LUP Policy 5.10.3 (Protection of Public Vistas). Protect significant public vistas...from all publicly used roads and vistas points by minimizing disruption of landform and aesthetic character caused by grading operations, ... inappropriate landscaping and structure design.

LUP Policy 5.10.6 (Preserving Ocean Vistas). Where public ocean vistas exist, require that these vistas be retained to the maximum extent possible as a condition of approval for any new development.

LUP Policy 5.10.7 (Open Beaches and Blufftops). Prohibit the placement of new permanent structures which would be visible from a public beach, except where allowed on existing parcels of record, or for shoreline protection and for public beach access. Use the following criteria for allowed structures: (a) Allow infill structures (typically residences on existing lots of record) where compatible with the pattern of existing development. (b) Require shoreline protection and access structures to use natural materials and finishes to blend with the character of the area and integrate with the landform.

LUP Policy 5.10.12 (Development Visible from Urban Scenic Roads). In the viewsheds of urban scenic roads, require new discretionary development to improve the visual quality through siting, architectural design, landscaping, and appropriate signage.

IP Section 13.10.323(b)...

R-1-10 to R-1-15.9

(10,000 to <16,000 sq. ft.)... Maximum Number of Stories: 2

Maximum Height (feet): 28

IP section 13.10.700-S - Definitions

Story. For planning and zoning purposes, that portion of a building included between the upper surface of any floor and the lower surface of the floor or ceiling above. An attic, basement, mezzanine, or under floor does not count as a story.

Story, First. The lowest story in a building which qualifies as a story, as defined herein, except that a floor level in a building having only one floor level shall be classified as a first story, provided such floor level is not more than 4 feet below grade, as defined herein, for more than 50 percent of the total perimeter, or not more than 8 feet below grade, as defined herein, at any point.

Santa Cruz County Ordinance 14.01.109 - Certificate of Compliance (not LCP)

14.01.109. Any person who owns real property, or is buying such land under a contract of sale may request the County to determine by application for Parcel Legality Status Determination whether the real property in question complies with the provisions of the Subdivision Map Act and County Ordinances enacted pursuant thereto.

(a) A parcel qualifies for an Unconditional Certificated of Compliance if:

1. The real property in question complies with the provisions of the Subdivision Map Act and County Ordinances enacted pursuant thereto as follows:

(i) The subject property was conveyed by a separate document as a separate parcel on or before January 21, 1972. (Written evidence shall be required to support this finding. Evidence may be in the form of a contract of sale, grant deed, or deed of trust which was recorded on or before January 21, 1972, or other evidence such as copies of receipts for installment payments, etc., or similar written documentation which establishes a bonafide conveyance on or before January 21, 1972); and

(ii) The parcel in question complied with the provisions of the Subdivision Map Act as the time of its creation; and

(iii) At the time the contract, deed, or other document creating the subject parcel was signed, the subject parcel complied with the applicable County ordinances then in effect, including (without limitation) the parcel size required by the then applicable zone district; and

(iv) The parcel in question has not been combined by the owner, and is not subject to merger; or

2. The parcel in question has been "approved for development" pursuant to Government Code Section 66499.34:

(i) By issuance of a permit or grant of approval for development of the parcel in question; or

(ii) By improvements that have been completed prior to the time a permit or grant of approval for development was required by the County Ordinances in effect at the time of the improvement; or

(iii) By improvements that have been completed in reliance upon a permit or grant of approval for development; or

3. The parcel in question is conclusively presumed to be lawfully created, pursuant to Government Code Section 66412.6, under the following circumstances.

(i) A parcel created by a minor land division shall be conclusively presumed to be lawfully created if:

A. Fewer than five parcels were created at the time of creation of the parcel in question; and

B. The parcel was created on or before January 21, 1972.

(ii) A parcel owned by a subsequent bona fide purchaser shall be conclusively presumed to be lawfully created if:

A. The parcel was created on or before January 21, 1972; and

B. The parcel was acquired by a subsequent purchaser for valuable consideration and without actual or constructive knowledge of a violation of the Subdivision Map Act or County Ordinance enacted pursuant thereto; and

C. At the time of its creation, the parcel complied with the Subdivision Map Act and County Ordinances enacted pursuant thereto. If the parcel owned by the subsequent bona fide purchaser did not comply with the Subdivision Map Act and County Ordinances enacted pursuant thereto at the time of its creation, then a Conditional (rather than an Unconditional) Certificated of Compliance shall be issued pursuant to Section 14.01.109(b).

(iii) For purposes of Subsection 14.01.109(a)3, a parcel shall be deemed created on or before January 21, 1972, if prior thereto the parcel was conveyed by a deed, deed of trust, or bona fide contract of sale (and in the case of a division creating five or more parcels was in compliance with County ordinances in effect at the time, including minimum parcel size). A parcel shall not be deemed created if it was:

A. Solely the result of a right-of-way dividing parcels; or

B. Shown solely on a record of survey, unless the parcel was shown on a record of survey map filed between January 1, 1937, and January 1, 1955, on the basis of a tentative subdivision map for five or more lots which was approved by the County Board of Supervisors; or

C. Shown solely on an unrecorded subdivision map or an unrecorded parcel map; or

D. As to divisions creating five or more parcels, the parcel did not meet the minimum parcel size of the zoning applicable to the property at the time such parcels were originally created; or

E. The parcel was described as a "parcel" on one deed and the owner is unable to present documentation showing that the parcel was previously separately conveyed by a separate deed on or before January 21, 1972; or

F. The parcel was created under circumstances which demonstrate an intent to circumvent the Subdivision Map Act or County Ordinances adopted pursuant thereto.

(b) If the County determines that the parcel in question does not comply with the provisions of the Subdivision Map Act or County Ordinances enacted pursuant thereto, and does not otherwise

qualify for an Unconditional Certificate of Compliance, it shall issue a Conditional Certificate of Compliance, as follows:

1. If applicant is the current owner of record and was the owner of record at the time of the initial violation, the County shall issue and record a Conditional Certificate of Compliance imposing such conditions as would be applicable to a current division of the property.

2. If applicant was not the owner at the time of the initial violation, the County shall issue and record a Conditional Certificate of Compliance imposing such conditions as would have been applicable to the division of the property at the time applicant acquired his or her interest therein.

(c) The effect of the Certificate of Compliance is as follows:

1. An Unconditional Certificate of Compliance operates as a final determination that the parcel in question is a legal parcel for the purposes of sale, lease or financing. Such Certificate does not entitle the parcel owner to a building permit or grant of development approval absent compliance with other requirements for such building permit or development approval.

2. A Conditional Certificate of Compliance serves as notice to the applicant or subsequent grantee, transferee, or assignee that fulfillment and implementation of the conditions given shall be required prior to the parcel in question being deemed a legal parcel for the purposed of sale, lease, or financing. For that reason, conditions relating to violation, combination or merger shall be included. Compliance with such conditions does not entitle the parcel owner to a building permit or grant of development approval absent compliance with other requirements for such building permit or development approval.

(d) A designated remainder parcel, as defined by this chapter, may subsequently be sold without any further requirement of the filing of a parcel map or final map, however, prior to the sale, lease or financing of said remainder parcel, a conditional certificate of compliance shall be obtained.

Santa Cruz County Ordinance 14.01.110 - Combination of Parcels by Action of Owner (not LCP)

(a) Contiguous parcels or units thereof under common ownership shall be deemed combined by the actions of the owner under any of the following circumstances:

1. Parcels which have been included in an owner's affidavit combining the parcels and recorded in the Office of the County Recorder; or

2. Parcels which have been combined into one assessor's parcel number by the Assessor upon the request of the owner; unless:

(a) the owner demonstrates to the satisfaction of the Planning Director that no significant financial, land use or planning benefit resulted from the combination into one assessor's parcel; and

(b) any financial benefit resulting from the combination into one assessor's parcel was found by the Planning Director not to be significant, and the owner pays all assessment district, county service area, or other similar charges or fees which would have been due and payable on the subject parcel had it not been combined into one assessor's parcel.

3. Parcels which have been required to be combined as a condition of approval of a minor land division, subdivision, lot line adjustment, or other discretionary approval, and such approval has been accepted or implemented by the owner; or

4. Parcels or portions thereof which have been conveyed as one parcel by metes and bounds describing the perimeter of such contiguous parcels or portions thereof, or by description of two or more lots in a block as one parcel where:

(i) The metes and bounds description varies from an existing boundary line of one or more of the parcel conveyed; or

(ii) There is an express written statement of the grantor which demonstrates the grantor's intent to combine the parcels (including, without limitation, by describing an entire subdivided block of lots or specified lots thereof as one parcel).

5. Parcel on which a dwelling or commercial structure or portion thereof has been built across the common boundary line of such lots or parcels except when the encroachment was of such a minor and inadvertent nature that it could be eliminated through a boundary adjustment. Such parcels remain combined even if the structure is removed.

(b) Lots or parcels which have been combined by actions of the owner as provided in this Section shall thereafter be subject to all of the provisions of this Chapter.

Santa Cruz County Ordinance 14.01.111 – Merger (not LCP)

Two or more contiguous parcels or units of land held by the same owner shall be subject to merger if any one of the contiguous parcels or units held by the same owner does not conform to standards for minimum parcel size under the Santa Cruz County Zoning Ordinance applicable to the parcels or units of land, and if all of the following requirements are satisfied. For purposes of determining whether contiguous parcels are held by the same owner, ownership shall be determined as of the date that a Notice of Intention to Determine Status is recorded.

(a) At least one of the affected parcels is undeveloped by any structure for which a building permit was issued or for which a building permit was not required at the time of construction or is developed only with an accessory structure or accessory structures, or is developed with a single structure, other than an accessory structure, that is also partially sited on a contiguous parcel or unit.

(b) One or more of the following conditions exist with respect to the parcel to be merged:

- 1. It comprises less than 5,000 square feet in area at the time of determination of merger;*
- 2. It was not created in compliance with applicable laws and ordinances in effect at the time of its creation; or*
- 3. It does not meet current standards for sewage disposal or domestic water supply, and it is determined by the Director of Environmental Health that such parcel or unit will not be able to meet the minimum criteria for sewage disposal or water supply in the reasonably foreseeable future; or*
- 4. It has been determined by the Planning Director from a geologic investigation or other geologic report to have slope stability or other geologic hazards which cannot be mitigated to an acceptable degree for development; or*
- 5. It has been determined by the Planning Director to have no legal access which is adequate for vehicular and safety equipment access and maneuverability; or*
- 6. It has been determined by the Planning Director to be incapable of being developed because of conflicts with applicable General Plan provisions, other than minimum lot size or density standards.*

(c) The requirements of subsection (b) above need not be satisfied, and the parcels in question shall be merged, if the other requirements of this Section are satisfied and if one of the following conditions exists:

- 1. On or before July 1, 1981, one or more of the contiguous parcels or units of land is enforceably restricted open space land pursuant to a contract, agreement, scenic restriction, or open-space easement, as defined and set forth in Section 421 of the Revenue and Taxation Code.*
- 2. On July 1, 1981, one or more of the contiguous parcels or units of land is timberland as defined in subdivision (f) of Section 51104 of the Government Code, or is land devoted to an agricultural use as defined in subdivision (b) of Section 51201 of the Government Code.*

3. *On July 1, 1981, one or more of the contiguous parcels or units of land are located within 2,000 feet of the site on which an existing commercial mineral resource extraction use is being made, whether or not the extraction is being made pursuant to a use permit issued by a local agency.*

4. *On July 1, 1981, one or more of the contiguous parcels or units of land are located within 2,000 feet of a future commercial mineral extraction site as shown on a plan for which a use permit or other permit authorizing commercial mineral resource extraction has been issued by a local agency.*

5. *Within the Coastal Zone, as defined in Section 30103 of the Public Resources Code, one or more of the contiguous parcels or units of land have been identified or designated as being of insufficient size to support residential development and where the identification or designation has either (1) been included in the Land Use Plan portion of a Local Coastal Program prepared and adopted pursuant to the California Coastal Act of 1976 (Division 20 of the Public Resources Code), or (2) prior to the adoption of a Land Use Plan, been made by formal action of the California Coastal Commission pursuant to the provisions of the California Coastal Act of 1976 in a coastal development permit decision or in an approved Land Use Plan work program or an approved issue identification on which the preparation of a Land Use Plan pursuant to the provisions of the California Coastal Act is based.*

6. *For purposes of subparagraphs 3 and 4 of this subsection, "mineral resource extraction" means gas, oil, hydrocarbon, gravel or sand extraction, geothermal wells, or other similar commercial mining activity.*

(d) Procedure to Determine Merger Status of Parcels.

1. *Notice of Intention to Determine Merger Status. Whenever a designee of Planning Director believes that real property is subject to merger pursuant to the provisions of this section, the designee of the Planning Director shall cause to be mailed by certified mail (return receipt requested) to the then current record owner of the property a Notice of Intention to Determine Merger Status notifying the owner that the affected parcels can be merged pursuant to standards set forth in this section and advising the owner of the opportunity to request a hearing on the determination of status and to present evidence at the hearing that the property does not meet the criteria for merger. The designee of the Planning Director shall cause the Notice of Intention to Determine Merger Status to be filed for record with the County Recorder on the date that the notice is mailed to the property owner.*

2. *Hearing to Determine Merger Status of Parcels. At any time within 30 days after recording of the Notice of Intention to Determine Merger Status, the owner of the affected property may file with the County Planning Department a request for a hearing on determination of merger status. Upon receiving a request for hearing on determination of merger status, the Director shall set a hearing not more than 60 days of the receipt of the property owner's request and advise the property owner by certified mail of the time, date, and place of the hearing. The hearing may be postponed or continued with the mutual consent of the Director and the property owner. At the conclusion of the hearing, the Director shall make a determination whether the affected parcels are to be merged or are not to be merged and shall so notify the owner of the determination. Any determination of merger shall be recorded within 30 days after conclusion of the hearing.*

3. Determination of Status Without a Hearing. If within the 30 day period provided, the owner does not file request for a hearing in accordance with subsection (d)2 above, the Director may, at any time thereafter, make a determination that the affected parcels are to be merged or are not to be merged. Any determination of merger shall be recorded by the Director no later than 90 days following the mailing of the Notice of Intention to Determine Status.

4. Release of Notice of Intention to Determine Merger Status. If in accordance with subsections (d)2 or (d)3 above, the Director determines that the subject property shall not be merged, the Planning Director shall cause to be recorded a Release of the Notice on Intention Status, and shall mail a clearance letter to the then current owner of the property.

FILED

JUN - 2 2010

ALEX CALVO, CLERK
BY DEBORAH ROJAS
DEPUTY, SANTA CRUZ COUNTY

1 DANA McRAE, State Bar No. 142331
2 County Counsel, County of Santa Cruz
3 CHRISTOPHER R. CHELEDEN, State Bar No. 181185
4 Assistant County Counsel
5 701 Ocean Street, Room 505
6 Santa Cruz, California 95060-4068
7 Telephone: (831) 454-2040
8 Fax: (831) 454-2115

9 **Attorneys for Respondent/Defendant County of Santa Cruz**

10 SUPERIOR COURT OF CALIFORNIA

11 COUNTY OF SANTA CRUZ

12 PATRICK MURPHY AND LAURA MURPHY, 13 Petitioners and Plaintiffs, 14 v. 15 COUNTY OF SANTA CRUZ AND 16 DOES 1 through 15, inclusive, 17 Respondents and Defendants.	Case No. CV 163497 COUNTY OF SANTA CRUZ'S TRIAL BRIEF IN OPPOSITION TO FIRST AMENDED PETITION FOR WRIT OF MANDAMUS AND COMPLAINT Date: July 9, 2010 Time: 9:00 a.m. The Honorable Timothy R. Volkmann
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18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Page(s)

TABLE OF AUTHORITIES iii-v

INTRODUCTION 1

STATEMENT OF FACTS 2

 A. The County Grants Application No. 01-0068 in 2003 For Two
 Unconditional Certificates of Compliance 3

 1. Oswalt Applies for Unconditional Certificate of Compliance 3

 2. On Appeal, County Grants Two Unconditional Certificates Of
 Compliance 5

 B. Unconditional Certificates of Compliance Recorded on June 17, 2003 6

 C. Demolition of Elevator Shaft and Deck Required Coastal Development
 Permit Issued in 2005 7

 D. Brian Arthur Purchases Oswalt Parcel in 2007 8

 E. Brian Arthur Applies to Construct Single Family Home and Approval is
 Pending at the Board of Supervisors 8

 F. Petitioners Seek Coastal Commission Consultation in 2009 9

LEGAL ARGUMENT 10

 A. Petitioners' Claims are Time-Barred 10

 B. No Coastal Act Violations Are Present Here 13

 1. Issuance of a Coastal Development Permit Was Not Required
 in 2003 14

 2. The County Was Not Required to Consult with the Coastal
 Commission in 2009 19

 C. The County Has Not Violated Petitioners' Due Process Rights 23

CONCLUSION 27

TABLE OF AUTHORITIES

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CASES

Page (s)

Anthony v. Snyder (2004)
116 Cal.App.4th 643..... 12

Burke v. California Coastal Com. (2008)
168 Cal.App.4th 1098..... 15

California Coastal Com. v. Quanta Investment Corp. (1980)
113 Cal.App.3d 579..... 14

Cohan v. City of Thousand Oaks (1994)
30 Cal.App.4th 547..... 25

Findleton v. El Dorado County (1993)
12 Cal.App.4th 709..... 10, 12

Fishback v. County of Ventura (2005)
133 Cal.App.4th 896..... 10, 12

Friends of Riverside's Hills v. City of Riverside (2008)
168 Cal.App.4th 743..... 12

Gardner v. County of Sonoma
(2003) 29 Cal.4th 990..... 4, 11, 25

Hensler v. City of Glendale (1994)
8 Cal.4th. 1 11

Holt v. County of Monterey (1982)
128 Cal.App.3d 797..... 13

Horn v. County of Ventura (1979)
24 Cal.3d 605..... 24, 25, 26

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF AUTHORITIES-Continued

<u>CASES</u>	<u>Page (s)</u>
<i>Hunt v. County of Shasta</i> (1990) 225 Cal.App.3rd 432	12
<i>Kirk v. County of San Luis Obispo</i> (1984) 156 Cal.App.3d 453.....	13
<i>Knox v. Davis</i> (9 th Cir. 2001) 260 F.3d 1009.....	23
<i>La Fe, Inc. v. County of Los Angeles</i> (1999) 73 Cal.App.4 th 231	15, 17
<i>Lakeview Meadows Ranch v. County of Santa Clara</i> (1994) 27 Cal.App.4th 593	10
<i>Ojavan Investors v. Cal. Coastal Comm'n</i> (1997) 54 Cal.App.4th 373.....	17
<i>Scott v. City of Indian Wells</i> (1972) 6 Cal.3d 541	25
<i>South Central Coast Regional Commission v. Pratt Construction, Inc.</i> (1982) 128 Cal.App.3d 830.....	16
<i>Stell v. Jay Hales Development Co.</i> (1992) 11 Cal.App.4th 1214.....	12
<i>Travis v. County of Santa Cruz</i> (2004) 33 Cal.4th 757	11
<i>Witt Home Ranch, Inc. v. County of Sonoma</i> (2008) 165 Cal.App.4 th 543.....	25

1 TABLE OF AUTHORITIES-Continued

2
3 STATUTES

Page (s)

4 Government Code

5 Section 65009(a)(1) 11
6 Section 66410 14
7 Section 66412.6 4
8 Section 66412.6(a)..... 10
9 Section 66418 25
10 Section 66419 25
11 Section 66451.3 25
12 Section 66474(b) 25
13 Section 66474(e)..... 25
14 Section 66474(f) 25
15 Section 66499.35 10, 13, 25, 26
16 Section 66499.35(a)..... 3, 10
17 Section 66499.35(b) 3, 11
18 Section 66499.35(f)(1) 11
19 Section 66499.35(f)(1)(E) 25
20 Section 66499.37 11

21 Code of Civil Procedure

22 Section 335.1 23

23 Public Resources Code

24 Section 30106 14, 17, 20
25 Section 30600(a)..... 14
26 Section 30603 20
27 Section 30610(e) 20, 21
28 Section 30802 1, 8, 13

29 OTHER AUTHORITIES

30 California Code of Regulations, Title 14

31 Section 13240 20
32 Section 13568 20
33 Section 13569 9, 19, 20, 21, 23
34 Section 13569(b) 21

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF AUTHORITIES-Continued

OTHER AUTHORITIES

Page (s)

Santa Cruz County Code	
Section 13.20.040	14
Section 13.20.050	14
Section 13.20.070	21
Section 14.01.109(a)(1)(i)	4
Section 14.01.109(a)(1)(iv)	4
Section 14.10.110(a).....	4
Section 14.10.110(a)(2)	6
Section 14.10.110(a)(5)	6
United States Code 42	
Section 1983	23

1
2
3
4
5
6
7
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INTRODUCTION

Petitioners challenge a 2003 County of Santa Cruz (the "County") decision to issue an "unconditional certificate of compliance" to recognize a legal parcel created by a conveyance that occurred in 1952.¹ Petitioners own a second home next door to the subject parcel and would like to see it remain undeveloped. Petitioners argue that the County incorrectly interpreted its own ordinance in 2003 and should have found that the lot created in 1952 had been combined with a neighboring parcel. While Petitioners belatedly disagree with the County's 2003 decision, the applicable Subdivision Map Act statute of limitation is 90 days; therefore, the Petition is time-barred. Furthermore, as argued by real parties in interest in more detail, common-law principles of laches dictate the same result. This court should deny the Petition on this basis alone and does not need to reach Petitioners' other issues.

Petitioners essentially argue that the Court should ignore the application of the statute of limitation or laches because: (1) the County declined Petitioners' 2009 request to consult with the California Coastal Commission ("Coastal Commission") regarding the 2003 issuance of the unconditional certificate of compliance; (2) the County should have required a Coastal Development Permit ("CDP") in 2003² and (3) the County violated Petitioners' procedural due process rights because the County failed to provide "notice" to Petitioners of the 2003 decision and to consult with the Coastal Commission in 2009.

Petitioners' Coastal-related and due process claims should be rejected. Issuance of an unconditional certificate of compliance (which merely recognizes pre-existing legal parcels) does not constitute "development" as defined by the Coastal Act; therefore, no CDP was required, particularly where the lot was originally created in 1952 long before

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¹ Petitioners' lengthy introduction raises numerous irrelevant and inapplicable legal issues and unnecessarily complicates this case. For example, the Petitioners' Opening Brief ("Opening Brief" or "OB") mentions zoning changes and cites several cases involving the California Environmental Quality Act ("CEQA") (OB: 3:19-21-4:1-11) and variances (OB: 4:12-25-5:1-3) even though this case involves neither zoning changes, CEQA nor granting of a variance. Similarly, the OB refers to "antiquated" or "archaic" subdivision maps even though such maps are not at issue here. (OB:1:26)

² This cause of action is similarly time-barred under the Coastal Act's 60 day statute of limitation. (Public Resources Code § 30802).

1 enactment of the Coastal Act. Because the consultation process only occurs when
2 "development" is proposed, the County had no obligation in 2009 to consult with the
3 Coastal Commission.³ California law does not require that Petitioners receive notice
4 relating to the County's issuance of unconditional certificates of compliance, so no due
5 process concerns are implicated.⁴ Further, whatever due process claim that Petitioners
6 might have had based upon lack of notice in 2003 is time-barred.

7 Brian Arthur, the "innocent purchaser" real party in interest in this case who
8 purchased the property in 2007 for hundreds of thousands of dollars (and the County) are
9 entitled to rely on the 2003 issuance of the certificate of compliance. A contrary result
10 would potentially call into question (and potentially open to court review) thousands of
11 unconditional certificates of compliance issued throughout the entire length of the Coastal
12 Zone since 1976, the effective date of the Coastal Act. The law does not support such a
13 potentially far-reaching and destructive result.

14 For all of the foregoing reasons, the County respectfully requests that the Petition be
15 denied in its entirety.

16 STATEMENT OF FACTS

17 Petitioners' "Statement of Facts" opens with a lengthy (OB: 5-10) discussion of
18 Petitioners' view of the relevant law applicable to this case. The County will respond to the
19 legal issues raised by Petitioners in its Legal Argument section below. The County
20 supplements and clarifies Petitioners' Statement of Facts as follows.

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24 ³ The County also notes that Petitioners notified the Coastal Commission staff of Petitioners' request for consultation
and, to the County's knowledge, the Coastal Commission has chosen not to respond.

25 ⁴ As noted in the OB, Petitioners have received notice of the pending application to construct a 2544-square-foot house
26 on the disputed parcel and are fully exercising their legal rights regarding this application including filing litigation in
27 Superior Court (*Murphy v. County of Santa Cruz*, Santa Cruz Superior Court Case No. CV 166672) and pursuing their
28 administrative remedies including exhausting all County appeals and retaining the option to pursue a future appeal to the
California Coastal Commission if the County approves the home Project. Petitioners have raised the same issues in the
administrative proceedings that they have here.

1 **A. The County Grants Application No. 01-0068 in 2003 For Two**
2 **Unconditional Certificates of Compliance**

3 Petitioners state at OB 10:8-9 that the relevant facts start in 2003 with the "creation of
4 a lot" administratively by a County staff person.⁵ Notwithstanding the inaccuracy of this
5 statement, the relevant chronology started substantially before 2003.

6 **1. Oswalt Applies for Unconditional Certificate of Compliance**

7 On or about June 17, 1999, real party-in-interest Tom F. Oswalt ("Oswalt") acquired
8 the property referenced as APN 038-151-85. (A true and correct copy of the Grant Deed for
9 this conveyance is attached hereto as County's Trial Exhibit "A") The legal parcel at issue in
10 the application (and this case) (the "Oswalt Parcel") is a portion of APN 038-151-85 and was
11 created on July 7, 1952, by deed dated June 23, 1952, recorded on July 7, 1952, in Book 874-
12 Page 36 of the Official Records of Santa Cruz County. (A true and correct copy of this
13 Summary and Grant Deed is attached hereto as County's Trial Exhibit "B")

14 As indicated by Petitioners, on or about February 5, 2001, Oswalt applied to the
15 County for an unconditional certificate of compliance⁶ to recognize as a legal separate lot a
16 portion of APN 038-151-85 conveyed in 1952. (Petitioners' Trial Exhibit "D" at p.1) The
17 project description stated that it was an application for a proposal to establish the legality of a
18 parcel located on the south side of Oak Hill Road, about 300 feet west from Seacliff Drive.
19 (*Id.*)

20 On July 3, 2001, Planning Department staff member Don Bussey prepared a staff
21 report regarding Application No 01-0068. (Petitioners' Trial Exhibit "G") In that staff
22 report, Mr. Bussey concluded that the Oswalt Parcel (a portion of APN 38-151-85) was
23 legally created by separate deed transfer and that the parcel in question did comply with the

24
25 ⁵ Similar to the Introduction, the "Statement of Facts" discusses numerous irrelevant issues not present here including approval of
parcel and tract maps (OB:5:7-12) and "antiquated parcel maps" (OB:5:13-19).

26 ⁶ The certificate of compliance process allows a land owner to apply for a certificate from the local agency and requires that the
27 agency determine whether the parcel is in compliance with the Map Act and the ordinances that the agency enacted pursuant to the
28 Act. (Government Code § 66499.35(a)). If a parcel is determined to be in compliance, the local agency must issue an unconditional
"certificate of compliance," which is recorded. If the parcel does not comply, the agency must issue a "conditional certificate of
compliance." (Government Code § 66499.35(b)).

1 provisions of the Subdivision Map Act and the applicable County ordinances then in effect.⁷
2 (*Id.* at p. 2). Petitioners try to obscure but do not dispute that: the Oswalt Parcel was legally
3 created by conveyance in 1952 and not by a County staff person in 2003.⁸ The County's
4 action in 2003 merely recognized a parcel that had legally existed for over 50 years.

5 Once the County determines whether or not a legal parcel exists, County Code §
6 14.01.109 (a)(1)(iv) requires the County to determine if such a parcel has been combined
7 with other surrounding parcels by express action of the owner. (Petitioners' First Request
8 for Judicial Notice Exhibit "A" at p. 2) On June 12, 2001, Cathy Graves, Principal Planner,
9 agreed with the staff's recommendation and concluded that the applicants' request for
10 recognition of two legal parcels could not be approved because the Oswalt Parcel had been
11 combined by action of the owner. (Petitioners' Trial Exhibit "G" at p. 3) Graves reviewed
12 the building permit history and determined that an improvement built over the common
13 boundary line in 1981 consisting of an elevator shaft and deck combined with a 1988 request
14 of the property owner to the County Assessor to receive one property tax bill required that
15 the two parcels created by conveyance in 1952 be determined to be combined by action of
16 the owner pursuant to County Code § 14.01.110(a) (the "Combination Ordinance"). (*Id.* at
17 4.)

18 On June 26, 2001, Oswalt's legal representative appealed Graves' administrative
19 determination regarding the combination of the parcels. (A true and correct copy of
20 Oswalt's appeal letter is attached hereto as County's Trial Exhibit "C") Oswalt's appeal
21 letter raised numerous arguments as to why Graves' determination should be reversed,

22
23 ⁷ County Code § 14.01.109(a)(1)(i) requires the County to issue an unconditional certificate of compliance if, among
24 other requirements, the subject property was conveyed by a separate document as a separate parcel on or before January
25 21, 1972. (Petitioners' First Request for Judicial Notice Exhibit "A"; see also Government Code § 66412.6 [creating
26 conclusive presumption of parcel legality for parcels created prior to March 4, 1972]).

27 ⁸ Again, Petitioners make reference to "antiquated subdivision maps" and reference the *Gardner v. County of Sonoma*
28 (2003) 29 Cal.4th 990, 1005 decision discussing such maps even though such maps are not at issue in this case. *Gardner*
involved whether 12 parcels depicted in a subdivision map prepared and filed by a landowner in 1865 when there was no
state regulations of subdivisions, should be recognized as legal parcels. Such recognition raises different concerns than
the facts here where a parcel was created by conveyance in 1952 and subsequently conveyed. The Subdivision Map Act
contains an express conclusive presumption of parcel legality for such parcels. (*See* Footnote 7, *supra*)

1 including: (1) that the relevant encroachment that Graves relied on to find combination of the
2 parcels predated enactment of the County's Combination Ordinance and that such Ordinance
3 could not be applied retroactively; (2) that the owners' request to receive one property tax
4 bill did not combine the parcels⁹; and (3) that the County's Combination Ordinance was
5 preempted by the State Subdivision Map Act. (*Id.*) The Planning Director designated
6 Principal Planner Glenda Hill to act on the appeal.¹⁰ On July 3, 2001 Project Manager Don
7 Bussey prepared a staff report recommending Hill rule against the appeal and deem the lots
8 combined. (Petitioners' Trial Exhibit "H")

9 **2. On Appeal, County Grants Two Unconditional Certificates Of**
10 **Compliance**

11 On August 27, 2002, Principal Planner Glenda Hill issued her decision. (*See*
12 "Determination on Appeal of Unconditional Certificate of Compliance Application No. 01-
13 0068, APN No. 38-151-85" ("The Hill Appeal Letter") (Petitioners' Trial Exhibit "C")). The
14 Hill Appeal Letter granted the appeal and directed that two unconditional certificates of
15 compliance be prepared and recorded for the Oswalt Parcel and the adjacent parcel to
16 recognize two parcels. She based her decision on several determinations:

17 "1. The building permit showing the parcel(s) as one parcel and allowing the
18 encroachment was approved in 1981. The Planning Department should have required
19 the combination of parcels at that time; however, I find no evidence of the
20 requirement;

21 "2. The alleged combination noted in the Assessor's records occurred on a
22 Saturday. While County staff do work weekends occasionally, the notation was
23 irregular;

23 ⁹ When asked in deposition regarding the relationship between the Assessor's Office and its combination procedure and the Planning
24 Department's determination as to whether parcels are combined, former County Assessor Robert Petersen responded that the action of
25 the Assessor is separate from those downstream effects that might happen in the Planning Department. (Petitioners' Trial Exhibit "N"
26 p. 18) As far as the Assessor is concerned, it is irrelevant. If there is a combination request, the Assessor will combine. (*Id.*) In a
follow-up question, when asked if the business that the Assessor does in combining lots for assessment purposes has anything to do
with the business that the Planning Department does in determining whether or not lots are combined, Assessor Petersen indicated that
it does not. (*Id.*)

27 ¹⁰ Petitioners take issue with Ms. Hill ruling on the appeal even though they do not dispute that the Planning Director has the authority
28 to delegate these types of decisions to Ms. Hill. Furthermore, Petitioners mischaracterize the decision at issue as "dividing property"
even though it involved a parcel legality determination for lots which had existed since 1952.

1 3. No written record of the combination request is on file with the Assessor.
2 While the owners may have, indeed, requested the combination, the existing proof of
3 this action is not compelling;

4 4. Even if the owners did request the combination of the parcels, County Code
5 section 14.01.110(a)(2) states that the parcels shall not be deemed combined if "the
6 owner demonstrates to the satisfaction of the Planning Director that no significant
7 financial, land use or planning benefit resulted from the combination into one
8 assessor's parcel." My research found no financial, land use or planning benefit
9 would have been derived by combining the parcels in 1988, in that no planning or
10 building applications were submitted at that time nor were there property transfers;

11 5. Even though there is an existing encroachment of the property line, I have
12 determined that it is "of such a minor and inadvertent nature that it could be
13 eliminated through a boundary adjustment." (Section 14.01.110(a)(5))."

14 Finally, Ms. Hill concluded that she did have a concern about the existing encroachment of
15 an elevator shaft and deck. (*Id.*) She indicated to the property owner's attorney that it was
16 her understanding that the property owners were willing to voluntarily correct the
17 encroachment through demolition or a lot line adjustment, and she indicated that she agreed
18 that one of these solutions was necessary.¹¹ (*Id.*)

19 **B. Unconditional Certificates of Compliance Recorded on June 17, 2003**

20 On June 9, 2003, prior to recordation of the Certificates of Compliance, Glenda Hill
21 drafted a Memorandum to Don Bussey clarifying the wording of two sentences in the Hill
22 Appeal Letter indicating that the word "necessary" should not be construed as a condition of
23 the granting of the Appeal as the County was issuing unconditional certificates of
24 compliance. (Petitioners' Trial Exhibit "J") Ms. Hill suggested that the prior language in the
25 Hill Appeal Letter was her opinion and suggestion and not a condition of approval. (*Id.*)
26 Ms. Hill directed Mr. Bussey to record two unconditional certificates of compliance for APN
27 38-151-85, including the Oswalt Parcel, as approved under Permit 01-0068. (*Id.*)
28

¹¹ On January 13, 2003, the applicants' attorney wrote a letter to the County concluding that the County's issuance of the unconditional certificates of compliance were not subject to the condition that the applicants remove all encroachments over the common property line or obtain a lot line adjustment to allow the encroachment plus a five-foot setback. (A true and correct copy of the January 13, 2003 Letter is attached hereto as County Trial Exhibit "D").

1 On or about June 17, 2003, the County recorded two unconditional certificates of
2 compliance for the Oswalt parcel and the adjacent parcel comprising APN 38-151-85 and
3 indicating that the County had determined that such real property was determined to be two
4 legal parcels. (Petitioners' Trial Exhibit "B") The Unconditional Certificates of Compliance
5 contain the following standard language:

6 "FURTHERMORE, THIS CERTIFICATION OF COMPLIANCE SHALL
7 NOT CONSTITUTE A DETERMINATION THAT SAID PARCEL IS
8 BUILDABLE OR IS ENTITLED TO A BUILDING PERMIT OR OTHER
9 DEVELOPMENT APPROVAL WITHOUT COMPLIANCE WITH THE
10 PROVISIONS OF ALL OTHER SANTA CRUZ COUNTY ORDINANCES
11 AND REGULATIONS.

12 THIS CERTIFICATE OF PARCEL COMPLIANCE RELATES ONLY TO
13 ISSUES OF COMPLIANCE OR NON-COMPLIANCE WITH THE
14 SUBDIVISION MAP ACT AND LOCAL ORDINANCES ENACTED
15 PURSUANT THERETO. THE PARCEL DESCRIBED HEREIN MAY BE
16 SOLD, LEASED OR FINANCED WITHOUT FURTHER COMPLIANCE
17 WITH THE SUBDIVISION MAP ACT OR ANY LOCAL ORDINANCE
18 ENACTED PURSUANT THERETO. DEVELOPMENT OF THIS PARCEL
19 MAY REQUIRE ISSUANCE OF A PERMIT OR PERMITS, OR OTHER
20 GRANT OR GRANTS OF APPROVAL."

21 The issued unconditional certificates of compliance issued and related documents contain no
22 conditions of approval.

23 **C. Demolition of Elevator Shaft and Deck Required Coastal Development
24 Permit Issued in 2005**

25 As indicated by Petitioners, in 2005, Oswalt applied for and obtained County permits
26 to "demolish the deck and elevator shaft." (OB:14:21-23). What is conspicuously absent
27 from Petitioners' recitation of the facts is that Oswalt was required to obtain a coastal
28 development permit ("CDP"), also known as a coastal zone approval, to authorize such
work. (A true and correct copy of the Staff Report and recorded Conditions of Approval for
CDP 04-0531 is attached hereto as County's Trial Exhibit "E.") Nowhere in this Staff
Report or the conditions of approval does it indicate that the application was somehow a
condition of approval of the 2003 issuance of the certificates of compliance. The issuance of

1 CDP 04-0531 was discretionary in nature meaning that public notice and hearing was
2 required. On or about March 4, 2005, the Santa Cruz County Zoning Administrator held a
3 noticed public hearing on the application. Neither the Petitioners nor anyone else spoke in
4 opposition to the CDP application, nor exercised their appeal rights relating to issuance of
5 the CDP, including filing an appeal to the California Coastal Commission. (A true and
6 correct transcript of the March 4, 2005, Zoning Administrator Hearing is attached hereto as
7 County's Trial Exhibit "F.") The Coastal Commission was provided a final local action
8 notice ("FLAN") for CDP 04-0531 and chose not to take jurisdiction. Significantly, the
9 Coastal Commission recognized on November 4, 2004, that the CDP "appears to be being
10 done to facilitate development on adjacent lot, but that's not clear." (Petitioners' Trial
11 Exhibit "BB" at p. 1). In other words, the Coastal Commission was aware of and could have
12 chosen to investigate the parcel legality issue as early as November 4, 2004, and chose not
13 to. The 60-day Coastal Act statute of limitations period at Public Resources Code § 30802 in
14 which to challenge issuance of CDP 04-0531 has longed since passed and as Petitioners
15 failed to exhaust their administrative remedies, their arguments at OB 15:4-15 should be
16 disregarded.

17 **D. Brian Arthur Purchases Oswalt Parcel in 2007**

18 Arthur purchased the Oswalt Parcel from Oswalt for hundreds of thousands of dollars
19 on or about May 15, 2007. (A copy of the Grant Deed is attached as Petitioners' Trial
20 Exhibit "S"). Arthur relied upon the issuance of the certificates of compliance four years
21 earlier and was an innocent purchaser.

22 **E. Brian Arthur Applies to Construct Single Family Home and Approval is**
23 **Pending at the Board of Supervisors**

24 Since September 17, 2007, Arthur has been seeking the County's approval of the
25 necessary permits, including a CDP, to construct an approximately 2,500-square-foot house
26 on the Oswalt Parcel. On March 24, 2010, the County's Planning Commission approved the
27 home project, and Petitioners have appealed the approval to the Board of Supervisors. As of
28 this writing, the appeal is pending before the Board with a hearing date in June 2010. If the

1 Board of Supervisors upholds the Planning Commission's approval, the Petitioners may
2 exercise an appeal to the California Coastal Commission. Petitioners have raised the parcel
3 legality issue in the on-going administrative proceedings, as they have here, so the Coastal
4 Commission may have an opportunity to consider the parcel legality issues in the future, in
5 the event of an appeal.

6 **F. Petitioners Seek Coastal Commission Consultation in 2009**

7 On March 10, 2009, Petitioners' counsel wrote a letter to Tom Burns, former County
8 Planning Director alleging that the Oswalt Parcel had not achieved legal status despite the
9 fact that the County had issued an "Unconditional Certificate of Compliance" for the parcel
10 in 2003. (Petitioners' Trial Exhibit "V"). In that letter, counsel requested that the County
11 consult with the Coastal Commission pursuant to Title 14 of the California Code of
12 Regulations, § 13569. The letter indicates that it was also sent to the Coastal Commission
13 staff.

14 On March 17, 2009, Mr. Burns responded to counsel's letter indicating that the
15 recording of the unconditional certificate of compliance took place for each lot six years
16 earlier. (Petitioners' Trial Exhibit "W"). In addition, Mr. Burns concluded that based on
17 prior executive directors' determinations, the County had been advised by Coastal
18 Commission staff that issuance of an unconditional certificate of compliance was not
19 "development" under the Coastal Act. (Petitioners' Trial Exhibit "W"). Because it is not
20 development under the Coastal Act, no FLAN is required. (*Id.*) The County concurred with
21 the Coastal Commission's prior understanding of the law.¹² (*Id.*)

22 On April 13, 2009, counsel for petitioners responded to Mr. Burns' March 17, 2009,
23 letter disagreeing with the conclusions in Mr. Burns' letter and copying the California
24 Coastal Commission staff. (Petitioners' Trial Exhibit "X")

25
26 ¹² In an email dated September 30, 2008, to Petitioners' counsel, Dan Carl of the Santa Cruz Office Coastal Commission
27 staff concluded that "From our end, it is our general position that unconditional certificates of compliance for which it is
28 clear that an unconditional (as opposed to a conditional) COC is appropriate based on the evidence are not development
requiring a coastal permit." (A true and correct copy of the E-Mail is attached hereto as County's Trial Exhibit "G.")

1 LEGAL ARGUMENT

2 A. Petitioners' Claims are Time-Barred

3 A certificate of compliance is a recordable document by which a local agency
4 evaluates the legality of an existing parcel pursuant to the Subdivision Map Act.
5 (Government Code § 66499.35). The process is initiated by application of the property
6 owner or a requesting local agency to determine whether a particular parcel complies with
7 the Subdivision Map Act and applicable local ordinances. (Government Code §
8 66499.35(a)). California courts have recognized two primary paths for creation of a parcel
9 that may be recognized as legal by a certificate of compliance: (1) creation by conveyance
10 and (2) creation by antiquated subdivision map. Only creation by conveyance is at issue in
11 this case.

12 Creation by conveyance occurs where a parcel is divided from its surrounding land
13 and placed into separate ownership by deed or government patent. (*Lakeview Meadows*
14 *Ranch v. County of Santa Clara* (1994) 27 Cal.App.4th 593, 598). The Map Act generally
15 permitted the creation of up to four parcels by deed or patent until 1972. (*Fishback v.*
16 *County of Ventura* (2005) 133 Cal.App.4th 896, 902 footnote 3). After 1972, a map was
17 required to create all new parcels. Thus, parcels created by deed or patent before that date
18 and not subsequently extinguished, are generally entitled to recognition through a certificate
19 of compliance. (Government Code § 66412.6(a)). Here, it is undisputed that the Oswalt
20 Parcel was created by conveyance in 1952, long before the Coastal Act's effective date.

21 If, after reviewing the history of the property, the agency determines that the parcel
22 complies with the Map Act and local ordinance, it is legally obligated to record an
23 unconditional certificate of compliance. (Government Code § 66499.35(a)). Issuance of an
24 unconditional certificate is ministerial in nature, does not involve the exercise of discretion,
25 and is not subject to the Permit Streamlining Act. (*Findleton v. Board of Supervisors* (1993)
26 12 Cal.App.4th 709, 713). If the local agency determines that the parcel does not comply
27 with the Subdivision Map Act or local ordinances, the local agency must issue what is
28 known as a certificate with conditions otherwise known as a "conditional certificate of

1 compliance.” (Government Code § 66499.35(b)). Here, notwithstanding Petitioners’
2 unsupported, belated assertions to the contrary, it is undisputed that the County recorded
3 “unconditional” certificates of compliance in 2003. (See Petitioners’ Trial Exhibit
4 “B”[indicating that the County imposed no conditions on issuance of the certificates of
5 compliance]).

6 On recordation of an unconditional certificate of compliance, the parcel may be sold,
7 leased or financed without further processing under the Map Act. (Government Code §
8 66499.35(f)(1)) A certificate of compliance allows a parcel to be sold, leased, or financed
9 without compliance with current general plan standards; without the assurance of
10 infrastructure; without dedication or fees; and without mitigation of environmental or
11 community impacts. (*Gardner v. County of Sonoma* (2003) 29 Cal.4th 990, 1005). Thus, the
12 issuance of an unconditional certificate of compliance has significant implications for
13 property owners. Here, in reliance on issuance of the unconditional certificate of compliance
14 in 2003 Brian Arthur purchased the subject lot in 2007 for hundreds of thousands of dollars

15 In recognition of the need for certainty for innocent purchasers like Real Party in
16 Interest Arthur, the statute of limitations for land use challenges is generally very short. The
17 legislative purpose of the short statute of limitations is to give governmental land use
18 decisions certainty, permit them to take effect quickly, and give property owners the
19 necessary confidence to proceed with approved projects. (*Travis v. County of Santa Cruz*
20 (2004) 33 Cal.4th 757, 765). The Legislature has deemed the short periods "essential" in
21 dealing with the housing crisis in California. (Government Code section 65009(a)(1))

22 The statute of limitations applicable to a particular land use decision depends on the
23 nature of the cause of action, i.e., the gravamen of the cause of action. (*Hensler v. City of*
24 *Glendale* (1994) 8 Cal.4th. 1, 22). For example, if a challenge concerns or relates to a
25 subdivision, courts have applied the 90-day statute of limitations in Government Code
26 section 66499.37, "no matter what the form of the action." *Hensler, supra*, 8 Cal.4th at

1 26-27 (emphasis added).¹³ Here, the gravamen of the Petition is that the County erred in
2 applying its own subdivision ordinance in 2003 by failing to find: (1) that the lots had been
3 combined by operation of law; and (2) that the certificate that was issued was conditional
4 and not unconditional.¹⁴ Here, Petitioners are seeking judicial review of a County decision
5 applying the Combination Ordinance that occurred in 2003 that had nothing whatsoever to do
6 with the Coastal Act. Petitioners' claims are time-barred and the court is not required to
7 reach the Coastal Act and due process issues.

8 California law has specifically held that the 90-day statute of limitations applies to
9 certificate of compliance decisions. (*Stell v. Jay Hales Development Co.* (1992) 11
10 Cal.App.4th 1214, 1228) (overruled on unrelated grounds)). In the *Stell* case, neighbors
11 challenged the on-going construction of a two story house. The city had issued a certificate
12 of compliance that was recorded on June 14, 1989 and the court ruled that the applicable
13 statute of limitation ran on September 12, 1989, making the neighbors' legal action time-
14 barred. (*Id.* at 1229) The court in the *Stell* case explained:

15 "The Legislature in enacting a comprehensive scheme to regulate the creation and
16 control of subdivisions and other divisions of land, past and present, and in an obvious
17 effort to provide a fair and equitable scheme to settle the validity of divisions of land
18 occurring in decades past under earlier provisions of law, also provided a means
19 whereby land owners could request that a local government make a determination

20 ¹³ Section 66499.37 applies by its terms to any action involving a controversy over or arising out of the Map Act.
21 (*Hensler, supra*, 8 Cal.4th at 23). Any action to attack, review, set aside, void, or annul a local agency's decision
22 regarding a subdivision or any proceeding, act, or determination taken or made before such a decision generally must be
23 filed and served within 90 days of the decision. Thereafter all persons are barred from any action or proceeding or any
24 defense of invalidity or unreasonableness of the decision or of the proceedings, acts, or determinations. (Government
25 Code § 66499.37; *Friends of Riverside's Hills v. City of Riverside* (2008) 168 Cal.App.4th 743, 751 [since CEQA claim
26 concerns City's approval of subdivision, filing and service requirements of Government Code section 66499.37 apply in
27 addition to CEQA requirements]; *Anthony v. Snyder* (2004) 116 Cal.App.4th 643, 656 [a breach of contract claim that
28 concerns acts by city council subject to challenge under the Subdivision Map Act subject to the statute of limitations of
Government Code § 66499.37].

25 ¹⁴ OB:24-27 consists of Petitioners' belated disagreement with how the Hill Appeal Letter applied the relevant facts to
26 find that the subject parcels were not combined. The OB references the County's failure to correctly review an
27 application because the County is bound by the terms of its subdivision ordinance. (OB:18:8-21). Even assuming
28 arguendo that the statute of limitation does not apply, under the applicable "substantial evidence" standard of review, the
County's 2003 decision should be upheld. (*Fishback, supra*, 133 Cal.App.4th at 901-902). Furthermore, as stated by
Petitioners, a writ will not lie to control discretion conferred upon a public agency or officer. (*Findleton, supra*, 12
Cal.App.4th at 713-714.).

1 about the validity of any prior division of land. That means is presently embodied in
2 Government Code section 66499.35. . . . The Subdivision Map Act provides criminal
3 sanctions against illegal subdividers and allows local governments control over such
4 situations.

4 In *Hunt v. County of Shasta* (1990) 225 Cal.App.3rd 432, 446, the Court held that the
5 county's failure to issue a requested certificate of compliance violated its statutory duty and
6 constituted a de facto denial, and triggered commencement of the 90-day limitations period
7 of the Subdivision Map Act from the county's failure to act. (*See also Kirk v. County of San*
8 *Luis Obispo* (1984) 156 Cal.App.3d 453 [action to compel issuance of certificate of
9 compliance with Subdivision Map Act filed one year after the County denial was time-barred
10 based upon the Map Act's statute of limitation]. Here, Petitioners seek judicial review of
11 County subdivision decisions in 2003 and such review is time-barred. As stated by the
12 California Supreme Court, a plaintiff may not avoid the applicable statute of limitation by
13 claiming that the permit or condition is "void" and thus subject to challenge at any time.
14 (*Travis, supra*, 33 Calrth at 768). This is in effect what Petitioners attempt to do here.
15 Furthermore, the County also joins in the argument of real parties in interest that this action
16 is time-barred based upon the common-law doctrine of laches.¹⁵

17 **B. No Coastal Act Violations Are Present Here**

18 Although the County asserts that based upon the applicable statute of limitations, the
19 court is not required to reach Petitioners' Coastal Act issues,¹⁶ a review of these claims
20 indicate that they are meritless.

21
22
23
24 ¹⁵ A third-party challenge to a subdivision approval may be barred by laches even though the action is filed within the statutory
25 period. Laches may arise as a defense to a third-party challenge to a subdivision approval if (1) the subdivider spent large sums of
26 money in good faith reliance on the approval, (2) the challenger delayed for an unjustified period before filing the challenge, and (3)
the delay injured the developer. (*See Holt v. County of Monterey* (1982) 128 Cal.App.3d 797, 801-802). All of these elements are
present here.

27 ¹⁶ The applicable statute of limitations for actions challenging the County's decisions under the Coastal Act is 60 days. (Public
28 Resources Code § 30802). A challenge to the County's non-"decision" in 2003 to not require a coastal development permit in
connection with the unconditional certificates of compliance is time-barred.

1 **1. Issuance of a Coastal Development Permit Was Not Required in 2003**¹⁷

2 Public Resources Code § 30600(a) (of the Coastal Act) provides in pertinent part: “. . .
3 . . . any person . . . wishing to perform or undertake any development in the coastal zone, ...
4 shall obtain a coastal development permit” from either the Coastal Commission or the local
5 government. Thus, the Coastal Commission or local government can only require a permit
6 for activities in the coastal zone that constitute a “development.” (§ 30600, subd. (a)).¹⁸ The
7 Coastal Act's “cardinal requirement” is the requirement that anyone seeking to undertake a
8 development within the coastal zone must first obtain a coastal development permit.
9 (*California Coastal Com. v. Quanta Investment Corp.* (1980) 113 Cal.App.3d 579, 587-588).

10 Public Resources Code § 30106 provides in pertinent part:

11 “Development” means, on land, in or under water, the placement or erection of any
12 solid material or structure; . . . ; grading, removing, dredging, mining, or extraction of
13 any materials; change in the density or intensity of use of land, including, but not
14 limited to, subdivision pursuant to the Subdivision Map Act (commencing with
15 Section 66410 of the Government Code), and any other division of land, including lot
16 splits, construction, reconstruction, demolition, or alteration of the size of any
17 structure, As used in this section, “structure” includes, but is not limited to, any
18 building, road, pipe, flume, conduit, siphon, aqueduct, telephone line, and electrical
19 power transmission and distribution line.”¹⁹

20 Thus, the scope of the Commission's and the County's jurisdiction to require a coastal
21 development permit turns on the proper interpretation of “development” as defined in the
22 Coastal Act. As a threshold matter, the Oswalt Parcel was created in 1952, 20 years prior to
23 the effective date of the Coastal Act. An unconditional certificate of compliance, which
24 merely recognizes an existing lot, does not constitute a “change in the density or intensity of

24 ¹⁷ The Santa Cruz County Local Coastal Program (“LCP”) refers to a CDP as a “Coastal Zone Approval.” For
25 consistency with Petitioners’ OB and ease of reference, the County will refer to a CDP here rather than a Coastal Zone
26 Approval.

26 ¹⁸ County Code § 13.20.050 contains essentially the same requirement to obtain a coastal zone approval to undertake any
27 development, subject to certain exclusions discussed below.

28 ¹⁹ Santa Cruz County Code § 13.20.040 adopts the same definition of “development.”

1 use of land” and therefore does not constitute development requiring a coastal development
2 permit.

3 Whether an agency has acted in excess of its jurisdiction is a question of law reviewed
4 de novo on appeal. (*Burke v. California Coastal Com.* (2008) 168 Cal.App.4th 1098, 1106).
5 While courts do not defer to an agency's determination when deciding if the action lies
6 within the agency's statutorily delegated authority, the agency's interpretation of its
7 governing statute is entitled to “great weight.” (*La Fe, Inc. v. County of Los Angeles* (1999)
8 73 Cal.App.4th 231, 240). Here, the County has historically taken the position that
9 unconditional certificates of compliance do not constitute development and therefore, no
10 CDP is required. (Petitioners' Trial Exhibit "W"). As previously noted, the County's
11 position is consistent with prior Coastal Commission determinations²⁰ (*Id.*) The County and
12 the CCC's interpretation is entitled to deference.

13 Petitioners' Opening Brief does not dispute the fundamental legal conclusion that the
14 issuance of an unconditional certificate of compliance is not development and no CDP is
15 required. Instead, Petitioners request that this court issue a writ stating that: (1) the
16 unconditional certificates issued in 2003 were actually “conditional” (OB:12:1-10) and (2)
17 the County should have deemed the parcels combined by operation of law in 2003. (OB 24-
18 27). As indicated above, such determinations have nothing to do with the Coastal Act and
19 instead solely involves the County's interpretation of its local subdivision regulations. A
20 contrary result would mean that courts could potentially review certificates of compliance
21 decisions in the Coastal Zone statewide since enactment of the Coastal Act in 1975. This
22 could create clouds on title for thousands of properties in coastal California. The applicable
23 statute of limitations exists to avoid such a result.

24 For several pages (OB 11-14 and OB 24-27), Petitioners' Statement of Facts and
25 Legal Argument speculate on the wisdom of Hill's appeal determination (made 7 years ago)

26 _____
27 ²⁰ See Footnote 12, *supra*.

1 and whether the Certificates of Compliance were “in the nature of conditional” or
2 unconditional. Petitioners attempt to reargue the facts in front of Ms. Hill and make
3 unsupported statements like: “this statement is simply untrue” and it is “axiomatic that
4 significant improvements had to be removed,” and “the combination was approved as a
5 matter of law.” Petitioners’ Legal Argument relies on earlier self-serving statements
6 contained in the “Statement of Facts” and cite no relevant legal authority. As indicated
7 above, even if Petitioners’ claims were not time-barred, a writ does not lie to compel the
8 exercise of discretion. Substantial evidence supports the County’s issuance of the
9 unconditional certificate of compliance on appeal by the Hill Appeal Letter. (See Statement
10 of Facts, *supra*.) This Court should ignore Petitioners’ self-serving statements to the
11 contrary. Furthermore, the recorded certificates of compliance at issue in this case contain
12 no conditions whatsoever, notwithstanding Petitioners’ claims to the contrary. The
13 certificates of compliance are unconditional.

14 Petitioners wrongly cite *South Central Coast Regional Commission v. Pratt*
15 *Construction, Inc.* (1982) 128 Cal.App.3d 830, 844 for the proposition that the Coastal Act
16 must prevail in the case of a conflict between the Coastal Act and the Subdivision Map Act.
17 The issue in the *South Central Coast* case was “at what point in the subdivision process does
18 a subdivider acquire a vested right to complete his subdivision without a permit from the
19 Commission.” *South Central Coastal Regional Commission* involved a tentative subdivision
20 map that was approved 4 years prior to enactment of the Coastal Act. The court applied a
21 vested rights analysis and held that because the developer had not obtained approval of a
22 final map, including completing necessary improvements, the subdivider had not obtained
23 vested rights and a coastal permit was required. (*Id.* at 845).

24 Here, no conflict exists between the Subdivision Map Act and the Coastal Act
25 because no CDP was legally required in 2003. In order to proceed to “development” of the
26 Oswalt Parcel, i.e. build a home, Arthur is required to obtain a coastal development permit
27 for construction of the house and is currently attempting to obtain such a permit.
28

1 Petitioners' citation to *Ojavan Investors v. Cal. Coastal Comm'n* (1997) 54
2 Cal.App.4th 373, 388 is similarly not on-point. In *Ojavan Investors*, as a condition of
3 approval of coastal development permits, the Coastal Commission required by recorded deed
4 restrictions that 72 lots be combined into two lots and prohibited further division. Later
5 investors/successors in interest ignored the recorded restrictions, purchased 54 lots, and sold
6 19 lots to third parties. (*Id.* at 379-380). The court in *Ojavan* upheld the Coastal
7 Commission's declaration of restrictions, found the investors in violation of the Coastal Act,
8 but did not find a conflict between the Subdivision Map Act and the Coastal Act. (*Id.* at 388)

9 Unlike the parcels in *Ojavan* the Oswalt Parcel obtained an unconditional certificate
10 of compliance to confirm the legality of the subject parcel. Petitioners cite *Ojavan* for the
11 proposition that "when parcels have been combined, separating them subsequently triggers
12 Coastal review since that constitutes "development" pursuant to Public Resources Code §
13 30106." The *Ojavan* court was referring to the investors' illegal purchase and sale of
14 individual lots resulting in the splitting of the previously recombined lots, in violation of the
15 declarations of restriction required by the Coastal Commission. This is in no way similar or
16 applicable to the facts here where Arthur's successor in interest obtained an unconditional
17 certificate of compliance from the County confirming the legality of the Oswalt Parcel and
18 specifically finding that they had not been combined.²¹ Similarly, Petitioners citation to *La*
19 *Fe, Inc. v. County of Los Angeles* (1999) 73 Cal.App.4th 231, 242 is also not applicable here
20 because it involved approval of a lot line adjustment which created new parcels which had
21 never existed prior to approval of the lot line adjustment.

22 Petitioners claim that the Coastal Commission has faced this question "numerous
23 times;" however, the only support for this claim is a single administrative decision referred to
24
25
26

27 ²¹ Petitioners' reference to an ambiguous statement in a real estate disclosure statement that the County had nothing to do
28 with does not affect the legal status of the lots or the validity of the certificate of compliance for the Oswalt Parcel.

1 as "Spector."²² Similar to the discussion of the *Ojavan* case, Petitioners do not disclose that
2 the lots at issue in the Spector matter were granted unconditional certificates of compliance
3 as a result of criminal fraud by a County of Los Angeles planning department employee.
4 (Petitioners' Trial Exhibit B, Staff Report at p. 16 ["Los Angeles County staff has stated that
5 the four C of C's issued in 1997 (CC Nos. 95-0378, 95-0379, 95-0380 and 95-0381) for the
6 property making up the parent parcel were issued in error and were investigated as part of a
7 fraud inquiry involving a County employee"]). A 2005 press release issued by the Los
8 Angeles County District Attorney indicated that the planning department employee was
9 ultimately sentenced to four years in State prison and that the planning department employee
10 had issued hundreds of fraudulent certificates of compliance. (A true and correct copy of the
11 Press Release is attached hereto as County's Trial Exhibit "H"). The OB's citation to the
12 central reason for the CCC's denial in the Spector proceeding (OB:9:8-15) does not disclose
13 that the CCC was concerned about the untold hundreds of **illegal** parcels that "purportedly
14 have been divided off of larger lots but without the required permits that have not yet been
15 discovered by the Commission." In contrast with Spector, the Oswalt Parcel lawfully
16 obtained the required unconditional certificate of compliance, and is not illegal.

17 Furthermore in Spector, the lots were unlawfully created by conveyance as separate
18 parcels in 1997, decades after the 1972 Map Act deadline for grandfathering parcels
19 conveyed by deed relevant to the Oswalt Parcel here. In the Spector proceeding the CCC
20 refused to grant an after-the-fact CDP for illegal land conveyances that occurred in 1997.
21 Finally, Petitioners do not disclose that the County of Los Angeles ultimately rescinded the
22 certificates of compliance fraudulently issued in Spector and issued conditional certificates
23 of compliance. The County here has not rescinded the certificate of compliance issued for
24 the Oswalt Parcel. Even if the Court could consider the Spector proceeding as legal

25

26 ²² Of course, the Coastal Commission's Spector decision is not binding precedent on this court. Furthermore, the Coastal
27 Commission makes decisions for a variety of reasons that are not the same as the role of this Court based upon
28 separation of powers principles.

28

1 precedent, it has nothing to do with the facts here.

2 **2. County Was Not Required to Consult with the Coastal Commission**
3 **in 2009**

4 Perhaps recognizing their statute of limitations problems, Petitioners assert a cause of
5 action against the County for violation of Section 13569 of the Coastal Commission's
6 administrative regulations. Legal research did not reveal a single published appellate case
7 interpreting Section 13569.

8 14 C.C.R. § 13569 provides:

9 "Determination of Applicable Notice and Hearing Procedures.

10 **The determination of whether a development is categorically excluded, non-**
11 **appealable or appealable** for purposes of notice, hearing and appeals procedures
12 shall be made by the local government at the time the application for development
13 within the coastal zone is submitted. This determination shall be made with reference
14 to the certified Local Coastal Program, including any maps, categorical exclusions,
15 land use designations and zoning ordinances which are adopted as part of the Local
16 Coastal Program. Where an applicant, interested person, or a local government has a
question as to **the appropriate designation for the development**, the following
procedures shall **establish whether a development is categorically excluded, non-**
appealable or appealable:

17 (a) The local government shall make its determination as to **what type of**
18 **development is being proposed (i.e. categorically excluded, appealable, non-**
19 **appealable)** and shall inform the applicant of the notice and hearing requirements for
20 that particular development. The local determination may be made by any designated
local government employee(s) or any local body as provided in local government
procedures.

21 (b) If the determination of the local government is challenged by the applicant or an
22 interested person, or if the local government wishes to have a Commission
23 determination as to the appropriate designation, the local government shall notify the
24 Commission by telephone of the dispute/question and shall request an Executive
Director's opinion;

25 (c) The executive director shall, within two (2) working days of the local government
26 request (or upon completion of a site inspection where such inspection is warranted),
27 transmit his or her determination as to whether the **development is categorically**
excluded, non-appealable or appealable;

1 (d) Where, after the executive director's investigation, the executive director's
2 determination is not in accordance with the local government determination, the
3 Commission shall hold a hearing for purposes of determining the appropriate
4 designation for the area. The Commission shall schedule the hearing on the
5 determination for the next Commission meeting (in the appropriate geographic region
6 of the state) following the local government request. (emphasis added)."

6 At a threshold level, Petitioners ignore the limited applicability of the § 13569 process.

7 Without citation to authority, Petitioners state that the § 13569 process applies to:

8 "determine the appropriate status of a development proposal," (OB: 21:8-10) "provide an
9 administrative process for a project-level dispute resolution" (OB:21:10-11) and determine
10 "what constitutes development under the Coastal Act." (OB:21:21-23). However, that is not
11 what the regulation states.

12 The determination under 14 CCR § 13569 is limited to whether the development
13 proposed by an application is "categorically excluded, non-appealable or appealable" under
14 the Coastal Act and the local LCP. These are terms of art under the Coastal Act. Public
15 Resources Code section 30603 specifies which coastal permits are non-appealable to the
16 Coastal Commission, and 14 CCR § 13568 prescribes the notice to be given for non-
17 appealable developments. Public Resources Code section 30610(e) sets forth a procedure to
18 agencies to seek approval of certain categories of development or any category of
19 development within certain areas to be categorically excluded from Coastal Act permit
20 requirements. 14 CCR § 13240 *et seq* set forth the procedure for the Coastal Commission to
21 approve categorical exclusions proposed by a local government in its LCP. Categorical
22 exclusions refer to actions that are "development" within the meaning of the Coastal Act but
23 which are excluded from Coastal Act permit requirements by the local LCP approved by the
24 Coastal Commission.

25 At most, there is a difference of opinion here between the Petitioners and the former
26 County Planning Director as to the proper interpretation of the definition of "development"
27 in Section 30106. The County has no mandatory duty to accept the Petitioner's
28 interpretation.

1 First, the regulation only applies to "what type of development is being proposed (i.e.,
2 excludable, appealable, non-appealable.)" As stated above, issuance of unconditional
3 certificates of compliance do not constitute development, so the regulation is not implicated.
4 Second, the regulation only applies to the determination of whether or not development is
5 "categorically excluded, non-appealable or appealable." None of these determinations are at
6 issue here. Petitioners mistakenly equate whether a project is "excluded" with whether or
7 not it constitutes "development." An exclusion determination involves whether something
8 that inarguably falls within the definition of development is nevertheless excluded from the
9 requirement to obtain a coastal development permit. (See Public Resources Code § 30610(e)
10 [authorizes the Coastal Commission to adopt exclusions for activities that otherwise
11 constitute development under the Coastal Act]; and County Code § 13.20.070 [County Code
12 listing of exclusions that would otherwise constitute development approved by the Coastal
13 Commission]). An exclusion determination is not at issue here. Similarly, the determination
14 of whether a project is appealable or not appealable to the Coastal Commission has not been
15 raised by Petitioners and is also not at issue here. As a matter of law, section 13569 is not
16 applicable to the facts here.

17 Even assuming arguendo that section 13569 could apply, the Court should deny the
18 Petition on this issue. First, Petitioners argue that the County should consult with the Coastal
19 Commission in 2009 regarding a decision that occurred in 2003. Imposing such a
20 requirement would not be consistent with the applicable statute of limitation in this case.

21 Furthermore, Petitioners copied their request for consultation to Coastal Commission
22 staff so the Coastal Commission staff was fully aware of Petitioners' request for
23 consultation. Effectively, this accomplished the same thing as the County's obligation under
24 section 13569 generally and 13569(b) specifically, which is to "notify the Commission by
25 telephone of the dispute/question and request an Executive Director's opinion."

26 Here, the Coastal Commission chose to do nothing (perhaps because they continued
27 to agree with the County's and the Commission's prior determinations that unconditional
28

1 certificates of compliance do not constitute development). This non-action in 2009 occurred
2 in the context of the Coastal Commission being aware of the lot legality issue since at least
3 November 2004 in connection with the CDP for removal of the deck and elevator shaft.
4 Since 2004, the Coastal Commission has exercised its discretion by not acting in this matter.
5 Petitioners are pursuing their administrative remedies on this issue with regard to the
6 pending CDP application for the house, and the Coastal Commission may be asked to
7 consider lot legality as part of the Petitioners' likely appeal if the County approves the CDP
8 for the house.

9 Finally, Petitioners discuss the 2001 Schoenfield administrative decision in front of
10 the Coastal Commission ("*Schoenfield*").²³ (OB:22-23) Once more, Petitioners do not
11 disclose the significant difference between *Schoenfield* and the facts here.

12 In *Schoenfield*, in 2000 the property owner applied to the County of San Luis Obispo
13 for two unconditional certificates of compliance. Ultimately, the San Luis Obispo County
14 Board of Supervisors granted the request for two unconditional certificates of compliance on
15 April 10, 2001. An appeal to the Coastal Commission was made by a neighbor on April 30,
16 2001. The Coastal Commission staff report indicates that a prior certificate of compliance
17 for one parcel had been issued in 1976 that had merged the parcels illegally created in 1949.
18 The Coastal Commission took the position that the certificates were conditional because the
19 parcels were created illegally. The neighbor asked for an Executive Director's consultation
20 and the County refused. In response, the CCC Executive Director determined that the
21 resolution process was applicable and that the County had issued two conditional certificates
22 of compliance. As noted by the CCC staff report, conditional certificates do constitute
23 development under the Coastal Act because they create new parcels rather than merely
24 recognizing existing parcels. On May 7, 2002, one year after the County's action approving
25 the unconditional certificates of compliance, the Commission denied the CDP application for
26

27
28 ²³ Again, this decision has no value as legal precedent and the Coastal Commission does not sit in the same position as
this court when reviewing these matters and when providing appropriate remedies.

1 what it deemed as conditional certificates of compliance.

2 Petitioners themselves recognize the key difference between *Schoenfield* and this
3 case. Petitioners acknowledge that even though San Luis Obispo County did not forward a
4 FLAN, and refused to forward the 13569 consultation request to the Commission, “the
5 [Coastal Commission] Executive Director nevertheless intervened and determined that the
6 County had effectively issued two *conditional* certificates of compliance that required a
7 CDP.” (OB:23:20-24). Here, the Coastal Commission has been aware of the parcel legality
8 issue since at least November, 2004, as well as been aware of the request for consultation in
9 2009 and, to the County’s knowledge has chosen not to get involved. Perhaps this is because
10 the instant case does not raise the same substantive concerns present in the *Schoenfield* case.
11 More likely, the Coastal Commission recognizes that here, unlike in *Schoenfield*, seven years
12 has elapsed since issuance of the certificates of compliance, the property has been sold to an
13 innocent purchaser for hundreds of thousands of dollars, and the applicable statute of
14 limitations has run. Because the Petitioners have chosen not to name the Coastal
15 Commission as a necessary and indispensable party in this action, the parties can only infer
16 from the Coastal Commission’s silence that its position in this case is not the same as its
17 actions in *Schoenfield* one decade ago.

18 **C. The County Has Not Violated Petitioners’ Due Process Rights**

19 Petitioners allege that their due process rights have been violated: (1) because they
20 failed to receive notice and a hearing in 2003; and (2) because the County declined their
21 request for consultation in 2009. These claims do not withstand close scrutiny.

22 The claims relating to 2003 are time barred. The statute of limitations for federal civil
23 rights claims under 42 U.S.C. 1983 (including procedural due process claims) is governed by
24 the forum state’s statute for personal injury actions. (*Knox v. Davis*, (9th Cir. 2001) 260 F.3d
25 1009, 1012). In California, the relevant statute of limitations is two years. (Code of Civil
26 Procedure § 335.1)

27 The due process clause of the California Constitution has been interpreted to require
28

1 reasonable notice and an opportunity to be heard before governmental deprivation of a
2 significant property interest. There is no precise definition of what qualifies as a "significant
3 property interest." Petitioners rely on *Horn v. County of Ventura* (1979) 24 Cal.3d 605, 612
4 as the basis for their due process claim and for the appropriate Constitutional standard of
5 review. However, Petitioner's due process claims fail to meet the *Horn* standards and should
6 be rejected. In *Horn*, an adjacent landowner alleged that a subdivision map approval
7 creating four new lots would hinder access to his lot creating substantial traffic and parking
8 congestion. (24 Cal.3d at 611). The Supreme Court held that land use decisions which
9 "substantially affect" the property rights of owners of adjacent parcels may constitute
10 "deprivations" of property within the context of procedural due process. (*Id.* at 615) The
11 Supreme Court found that *Horn* had stated a claim that the subdivision plan would
12 substantially interfere with his use of the only access from his parcel to the public streets,
13 and would increase both traffic congestion and air pollution. (*Id.*) From a pleading
14 standpoint, the Court held that the plaintiff had adequately described a deprivation
15 sufficiently substantial to overcome the defendant's demurrer. (*Id.*). The court did not hold
16 that the plaintiff had actually established such a property interest.

17 Here, Petitioners have not alleged, much less proven, any substantial impact to their
18 property interest as a result of the County's recognition of a lot that was created in 1952
19 through issuance of an unconditional certificate of compliance. Their only unsupported
20 statement is that due process is required "given the gravity of the County's decisions on them
21 (i.e. creation of a substandard, illegal parcel)." (OB: 29:27-28) In addition to the parcel not
22 being illegal or substandard, this is not a sufficient property interest. As a matter of law, this
23 Court should hold that Petitioners' ill-defined interests fail the standards set forth in *Horn*
24 and are insufficient. This disposes of both of Petitioners' due process arguments. To the
25 extent Petitioners have a procedural due-process protected property interest with regard to
26 the development of the neighboring parcel, as noted above, they are fully participating in the
27 CDP approval process for the house, including exhausting all appeals and filing additional
28

1 litigation challenging such approvals. This is all the due process that is required.

2 Unlike *Horn* which involved approval of a subdivision map, issuance of unconditional
3 certificates of compliance do not require that neighboring property owners be required to be
4 provided with notice and an opportunity to be heard because it is a ministerial act.²⁴ The
5 California Supreme Court in *Gardner, supra*, 29 Cal.4th 990, 1005 specifically distinguished
6 *Horn* and stated as follows:

7
8 “That is, when substandard parcels, such as those at issue here, are validated by
9 certificates of compliance, they “may be sold, leased, or financed without further
10 compliance with the Subdivision Map Act or any local ordinance enacted pursuant
11 thereto.” (§ 66499.35, subd. (f)(1)(E).) Thus, if we were to adopt plaintiffs' position
12 and hold that local agencies must issue a certificate of compliance for any parcel
13 depicted on an accurate, antiquated subdivision map, we would, in effect, be
14 permitting the sale, lease, and financing of parcels: (1) without regard to regulations
15 that would otherwise require consistency with applicable general and specific plans
16 (§§ 66474, subd. (b), 66418, 66419) and require consideration of potential
17 environmental and public health consequences (§ 66474, subs.(e), (f)); (2) without
18 consideration of dedications and impact mitigation fees that would otherwise be
19 authorized by the Act; and (3) **without affording notice and an opportunity to be
20 heard to interested persons and landowners likely to suffer a substantial or
21 significant deprivation of their property rights** (§ 66451.3; *Horn v. County of
22 Ventura* (1979) 24 Cal.3d 605, 616)[emphasis added].

18 Thus, the Supreme Court recognized that the granting of unconditional certificates of
19 compliance, unlike the due process afforded a subdivision map, does not require notice and
20 due process to interested persons and landowners.

21 The discussion in *Gardner* is consistent with *Witt Home Ranch, Inc. v. County of*
22 *Sonoma* (2008) 165 Cal.App.4th 543 in which the court upheld a county board of
23 supervisors' denial of a certificate of compliance against due process and other challenges.

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25
26 ²⁴ The other two cases cited by Petitioners are not applicable to the facts here. *Cohan v. City of Thousand Oaks* (1994)
27 30 Cal.App.4th 547, 558 involved approval of a subdivision map and the procedural due process rights of
28 landowners/applicants and did not discuss the due process rights of neighboring property owners. Similarly, *Scott v. City
of Indian Wells* (1972) 6 Cal.3d 541 involved approval of a conditional use permit and the city's refusal to provide notice
to neighboring property owners, that was otherwise legally required, because they lived in an adjacent city. Both of
these cases involved discretionary approval of new development as opposed to recognition of pre-existing legal parcels.

1 The Court held as follows:

2
3 “Issuance of a certificate of compliance under section 66499.35, subdivision (a) is a
4 ministerial act, requiring the responsible local agency to determine whether a valid
5 final or parcel map has been recorded or, if not, what must be done to complete the
6 process. Unlike, for example, the actual approval of a subdivision map, consideration
7 of an application for a certificate of compliance does not require “the exercise of
8 judgment, and the careful balancing of conflicting interests” (*Horn v. County of
Ventura* (1979) 24 Cal.3d 605, 615); rather, issuance of certificates of compliance
normally involves “merely appl[ying] the law to the facts ... us[ing] no special
discretion or judgment in reaching a decision. . . .”

9 Therefore, the *Witt Home Ranch* court rejected the landowners’ procedural due process
10 claims.

11 Petitioners’ OB cites numerous provisions of state law and County Code that require a
12 public hearing on a variety of applications, including subdivisions, Coastal Zone Approvals
13 or CDPs, and conditional certificates of compliance. (OB:28:2-28.) As stated above, none
14 of these types of applications are at issue here. The County approved an unconditional
15 certificate of compliance for the Oswalt Parcel which is subject to Processing Level III
16 in the County Code which does not require notice and public hearing pursuant to County
17 Code Section 14.010.114.²⁵ (Petitioners’ Request for Judicial Notice Exhibit “C”).

18 Petitioners’ claims relating to procedural due process and the Coastal Act’s
19 consultation process should be rejected for all of the reasons stated in this section in addition
20 to the reasons stated above in that the consultation process does not legally apply to the facts
21 present here.

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28 ²⁵ Nothing in Government Code section 66499.35, the certificate of compliance statutory scheme requires that notice and public hearing be provided for issuance of unconditional certificates of compliance.

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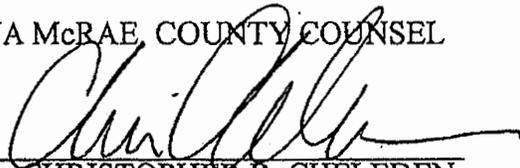
CONCLUSION:

For all of the reasons stated herein, the County respectfully requests that the Petition be denied in its entirety and that Petitioners take nothing.

Dated: June 2, 2010

DANA McRAE, COUNTY COUNSEL

By:



CHRISTOPHER R. CHELEDEN
Assistant County Counsel
Attorney for Respondent

1 **PROOF OF SERVICE**

2 I, the undersigned, state that I am a citizen of the United States and employed in the County
3 of Santa Cruz, State of California. I am over the age of 18 years and not a party to the within action.
4 My business address is 701 Ocean Street, Room 505, Santa Cruz, California 95060. On the date set
5 out below, I served a true copy of the following on the person(s)/entity(ies) listed below:

6 **COUNTY OF SANTA CRUZ'S TRIAL BRIEF IN OPPOSITION TO FIRST**
7 **AMENDED PETITION FOR WRIT OF MANDAMUS AND COMPLAINT**

8 by **service by mail** by placing said copy enclosed in a sealed envelope and placing the envelope
9 for collection and mailing on the date and at the place shown below following our ordinary business
10 practices. I am readily familiar with this business's practice for collecting and processing
11 correspondence for mailing. On the same day that correspondence is placed for collection and
12 mailing, it is deposited in the ordinary course of business with the United States Postal Service with
13 postage fully prepaid.

14 by **express or overnight mail** by arranging for pick-up by an employee of an express/overnight
15 mail company on:

16 by **facsimile service** at the number listed below and have confirmation that it was received by:

17 **WILLIAM PARKIN, ESQ.**
18 **WITTWER & PARKIN LLP**
19 **147 SOUTH RIVER STREET, SUITE 221**
20 **SANTA CRUZ, CA 95060**
21 **(Attorney for Patrick Murphy and Laura Murphy)**

22 **BRADLEY BENING, ESQ.**
23 **Willoughby, Stuart & Bening Inc.**
24 **50 West San Fernando, Suite 400**
25 **San Jose, CA 95113**
26 **(Attorney for Patrick Murphy and Laura Murphy)**

27 **EDWARD NEWMAN, ESQ.**
28 **NEWMAN & MARCUS, A LAW CORPORATION**
331 Capitola Avenue, Suite K
Capitola, CA 95010
(Attorney for Brian Arthur and Thomas F. Oswalt)

I declare under penalty of perjury that the foregoing is true and correct. Executed
June 2, 2010, at Santa Cruz, California.



MARIA G. VARGAS

CCC Exhibit 5
(page 34 of 34 pages)

JUDGMENT

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Based on the Court's order of this date denying the petition for writ of mandate the Court hereby ENTERS FINAL JUDGMENT in favor of defendants and respondents COUNTY OF SANTA CRUZ and respondents and real parties in interest BRIAN ARTHUR and TOM OSWALT and against plaintiffs and petitioners PATRICK MURPHY and LAURA MURPHY. Defendants and respondents COUNTY OF SANTA CRUZ and respondents and real parties in interest BRIAN ARTHUR and TOM OSWALT are the prevailing parties in this action and may recover their costs of suit, as permitted by law, from Plaintiffs and petitioners pursuant to the timely filing of a memorandums of costs, and the court's ruling on any timely motion(s) to strike or tax costs that may subsequently be filed in opposition by any Petitioners.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

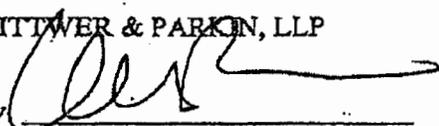
That judgment be entered in favor of Respondents and Real Parties in Interest and against Petitioners on the Petition as a whole, and each cause of action therein, and that Petitioners take nothing by way of the Petition.

Dated: FEB 01 2011

TIMOTHY R. VOLKMANN
Hon. Timothy Volkmann
Judge of the Superior Court

ORDER AND JUDGMENT APPROVED AS TO FORM:

Dated: 1/31/11

WITTWER & PARKIN, LLP
By: 
WILLIAM PARKIN
Attorneys for Petitioner

Dated: _____

NEWMAN & MARCUS
By: _____
EDWARD NEWMAN
Attorneys for Petitioner

JUDGMENT

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IT IS HEREBY ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:
That judgment be entered in favor of Respondents and Real Parties in Interest and against Petitioners on the Petition as a whole, and each cause of action therein, and that Petitioners take nothing by way of the Petition.

Dated: _____

Hon. Timothy Volkmann
Judge of the Superior Court

ORDER AND JUDGMENT APPROVED AS TO FORM:

Dated: _____

WITTWER & PARKIN, LLP

By: _____
WILLIAM PARKIN
Attorneys for Petitioner.

Dated: 1-31-11

NEWMAN & MARCUS

By: _____
EDWARD NEWMAN
Attorneys for Petitioner

FILED

JAN 05 2011

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BY
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SUPERIOR COURT OF CALIFORNIA

COUNTY OF SANTA CRUZ

PATRICK MURPHY and LAURA MURPHY,

Plaintiffs,

NO. CV 163497

DECISION ON PETITION FOR WRIT OF MANDATE

vs.

COUNTY OF SANTA CRUZ,
Real Parties In Interest BRIAN ARTHUR
and TOM OSWALT,

Defendants.

PATRICK MURPHY and LAURA MURPHY,

Petitioners,

vs.

COUNTY OF SANTA CRUZ,
Real Parties In Interest BRIAN ARTHUR
and TOM OAWALT,

Respondents.

This case came on regularly for an evidentiary hearing on December 17, 2010, in Department 4, the Honorable Timothy R. Volkmann presiding. Petitioners were

1 present and were represented by William Parkin and Bradley Bening. Respondent
2 was represented by Jason Heath and Christopher R. Cheleden. Real Parties In
3 Interest Brian Arthur and Tom Oswalt attended and were represented by Edward
4 Newman.

5
6 The Court has reviewed and considered all the evidence, as well as the
7 applicable law, and hereby rules as follows:

8 Petitioners seek prospective relief pursuant to the Coastal Act. Specifically, they
9 seek to compel the Respondent to consult with the Coastal Commission per 14 CCR
10 13569 and seek to compel the Respondent to require a Coastal Development Permit
11 for the lot recognized by the 2003 Certificate of Compliance. They contend that the
12 Certificate was conditional, in nature, and is thereby subject to the provisions of the
13 Coastal Act.
14

15 Respondent and Real Parties In Interest assert that this Petition is barred by
16 the Statute of Limitations per Government Code 66499.37 and the Doctrine of
17 Laches. If the ninety day time period per Government Code 66499.37 does not
18 apply, the Respondent and Real Parties in Interest contend that the Limitations
19 periods described in California Code of Civil Procedure Sections 338 and/or 343
20 should apply to bar this action.
21

22
23 Despite contending in their Opening Trial Brief that the Certificate of
24 Compliance was illegally issued (page 27), the Petitioners confirmed, at trial, that
25 they were not seeking to undo the Certificate but, rather, asserted that the 2003
26 Certificate was a "development" per the Coastal Act. As a result, the Court will
27 initially focus its Decision upon the Statute of Limitations defense. The Court finds
28 that this Petition is barred by the time frame described in Government Code

1 66499.37. Glenda Hill is considered an "advisory agency" pursuant to Government
2 Code 66415. The evidence that she possessed the authority to make a decision on
3 the administrative appeal concerning the lot in question , in addition to her authority
4 to investigate and report on the propriety of issuing certificates of compliance for the
5 subject lots confirm this finding. Even if one would find, for the sake of argument,
6 that Ms. Hill was not an "advisory agency" for the purposes of Government Code
7 66415 and would equate her authority to that of the Planning Director in the People
8 ex. rel. Brown v. Tehama County Board of Supervisors (149 Cal. App. 4th 422)
9 (2007), this action would be barred by the three year statute outlined in California
10 Code of Civil Procedure 338. Taking it one step further, even if one could argue the
11 CCP 338 is inapplicable, the more global four year limitations period pursuant to
12 California Code of Civil Procedure 343 would bar this action. No case law authority
13 was provided to allow a challenge six years, post-determination. No explanation was
14 offered as to why the Petitioners delayed in their due diligence requirement when it
15 was clear to them, in 2005, that two lots were present and being sold, separately.
16 The Petition is time barred based upon a failure to comply any of the Statutes of
17 Limitation outlined above.

18 For the benefit of all parties, the Court will continue with its evaluation of
19 additional issues presented either in the pretrial pleadings, or within the trial evidence
20 and argument. The Petitioners contend that the County of Santa Cruz should consult
21 with the Coastal Commission. This assertion is founded upon 14 CCR 13569. The
22 County contends there is no such requirement as there is no "development." The
23 question presented is: Does the division and transfer of this property constitute a
24 development? Public Resources code 30106 defines a development. Focusing on
25 the evidence in this matter, does Ms. Hill's decision that the parcels had not been
26 recombined constitute a "development" requiring a Coastal Development Permit and
27 triggering the procedure provided within 14 CCR 13569? The Court finds it does
28 not. Ms. Hill's decision that the 1959 lot split remained valid did not change the

CCC Exhibit 6
(page 6 of 8 pages)

X
1 density, or intensity of the use of this land. Real Party in Interest Brian Arthur's
2 request for a building permit does, but he is in the process of obtaining a coastal
3 permit for that. As the Certificate of Compliance was unconditional (Ms. Hill's
4 decision merely recognized the 1959 lot split and served as a rejection that the lots
5 had been subsequently recombined), The Court finds neither those decisions by
6 Glenda Hill, nor the issuance of the Certificate of Compliance constituted a
7 development within the meaning of the Coastal Act.

8 There was reference to a Due Process argument within the Petitioners'
9 Opening Trial Brief. Petitioners argued lack of notice and a lack of an opportunity to
10 be heard. The Court read a portion of the opinion in Horn v. County of Ventura (24
11 Cal. 3rd 605) (1979) into the record. Horn found that only substantial or significant
12 deprivations of property can trigger constitutional notice and hearing requirements.
13 (Id. at page 615). The Court finds that the allowance of two lots does not
14 substantially affect the use of the Petitioners' property. No evidence was provided as
15 to any particular adverse impact. There was no evidence of a substantial increase in
16 traffic or air pollution. No evidence was provided as to any constriction in access to
17 the Petitioners' property. As a result, the Due Process argument is not persuasive.

18 The Court does not find that the owners of the developed parcel, Love and
19 Robinson are indispensable parties as the Petitioners claim that they are not seeking
20 to recombine the parcels.

21 In conclusion, the Court finds that this Petition is barred per the Statutes of
22 Limitation. Even if one considered the Petition as timely filed, the Court finds that the
23 2003 Certificate of Compliance is not a "development" per the Coastal Act. Thus, the
24 County of Santa Cruz had no duty to consult with the Coastal Commission. As the
25 acknowledgement of the 1959 lot split did not substantially deprive the Petitioners of
26 their property rights, their due process position is not persuasive. It should also be
27 noted that the Real Party In Interest Brian Arthur is proceeding with the attempts to
28

1 obtain a Coastal Development Permit and the Petitioners acknowledge that they
2 have been providing their input concerning those efforts.

3 The Petition for Writ of Mandate is denied. This decision is submitted pursuant
4 to California Rule of Court 3.1590.

5 SO ORDERED.

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8 DATED: 1/5/2011

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TIMOTHY R. VOLKMANN
Judge of the Superior Court

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