NOTICE OF FINAL LOCAL ACTION ON COASTAL PERMIT

County of Santa Cruz

FINAL LOCAL ACTION NOTICE

REFERENCE # 3-SCO-10-121

APPEAL PERIOD 6/22-7/6/2010

RECEIVED

JUN 21 2010

CALIFORNIA COASTAL COMMISSION CENTRAL COAST AREA

Date of Notice: 06/15/10

Notice Sent to (via certified mail):
California Coastal Commission
Central Coast Area Office
725 Front Street, Ste. 300
Santa Cruz, CA 95060

Please note the following **Final Santa Cruz County Action** on a coastal permit, coastal permit amendment or coastal permit extension application (all local appeals have been exhausted for this matter):

Project Information

Application No.: 09-0139
Project Applicant: Brian Arthur
Applicant's Rep: Robert Goldspink
Project Location: South side of Oakhill Road (between 735 and 749 Oakhill Road) and approximately 380 feet west of the intersection with Seacliff Drive.

Project Description: Proposal 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 and a Residential Development Permit for a wall exceeding the 3 foot height limit within the required 20 foot front yard setback

Final Action Information

Final Local Action: Approved with Conditions

Final Action Body:
- __ Zoning Administrator
- __ Planning Commission
- X Board of Supervisors

Required Materials Supporting the Final Action	Enclosed	Previously sent (date)
Staff Report	X	
Adopted Findings	X	
Adopted Conditions	X	
Site Plans	X	
Elevations	X	

Additional Materials Supporting the Final Action	Enclosed	Previously sent (date)
CEQA Document	X	
Geotechnical Reports (excerpt)	X	
Biotic Reports		
Other:		
Other:		

Coastal Commission Appeal Information

This Final Action is appealable to the California Coastal Commission. The Coastal Commission's 10-working day appeal period begins the first working day after the Coastal Commission receives adequate notice of this Final Action. The Final Action is not effective until after the Coastal Commission's appeal period has expired and no appeal has been filed. Any such appeal must be made directly to the California Coastal Commission Central Coast Area Office in Santa Cruz; there is no fee for such an appeal. Should you have any questions regarding the Coastal Commission appeal period or process, please contact the Central Coast Area Office at the address listed above, or by phone at (831) 427-4863.

Copies of this notice have also been sent via first-class mail to:
- Applicant
- Interested parties who requested mailing of notice

CCC Exhibit 7
(page 1 of 455 pages)

COUNTY OF SANTA CRUZ

PLANNING DEPARTMENT
701 OCEAN STREET, 4TH FLOOR, SANTA CRUZ, CA 95060
(831) 454-2580 FAX: (831) 454-2131 TDD: (831) 454-2123
KATHY MOLLOY PREVISICH, PLANNING DIRECTOR

June 1, 2010

AGENDA DATE: June 15, 2010

Board of Supervisors
County of Santa Cruz
701 Ocean Street
Santa Cruz, CA 95060

Subject: Public Hearing to Consider Appeal of Planning Commission Approval of Coastal Development Application 09-0139
APN: 038 – 151 - 89

Members of the Board:

On May 18, 2010 your Board considered Application 09-0139, a proposal to construct a 2,510 square foot, two-story single-family dwelling and attached garage, located on the coastal bluff side of Oakhill Road (APN: 038-151-89). Your Board voted to accept jurisdiction and hear the appeal of the Planning Commission approval of Application 09-0139, pursuant to the procedures set forth in County Code Section 18.10.340.

BACKGROUND

This item was originally heard and approved on January 15, 2010 by the Zoning Administrator. The law firm of Wittwer & Parkin, on behalf of neighbors Laura and Patrick Murphy, appealed this decision on January 28, 2010.

The appeal was heard by the Planning Commission on March 25, 2010. The Planning Commission heard testimony both in favor of and in opposition to the project. After the public hearing closed, there was a discussion among the Commissioners, primarily focusing on the issues of the compatibility of the proposed design with the surrounding neighborhood, the method for determining height and stories, and the definition of a basement. The Planning Commission approved the application. The Planning Commission motion also included two revised conditions to require detailed plans of landscaping at the bluff and to require an engineered drainage plan. A copy of the Revised Conditions of Approval is included as Attachment 1B.

On April 2, 2010 an appeal of the Planning Commission approval was filed by Wittwer & Parkin , and on May 18, 2010 your Board voted to take jurisdiction and hear the appeal (5/18/10 packet on file with the Clerk of the Board).

APPEAL ISSUES

The appellant has presented four issues that constitute the basis of the appeal. The issues are 1) conformance with zoning standards for height and story limitation, 2) site safety with respect to the coastal bluff, 3) the issuance of a CEQA Exemption, and 4) parcel legality. During the May 18, 2010 Jurisdictional Hearing, Supervisor Pirie indicated that of the four issues presented by the appellant, her concern was limited to the proposed number of stories. Other members of the Board shared this concern. However, this public hearing is considered a "de novo" hearing. Earlier staff reports attached to this letter provide analysis of the project; this additional letter will focus on the number of "stories" and neighborhood compatibility. The other appeal issues were covered in the prior staff reports and staff is prepared to address them as well. A more detailed analysis of the policies regarding stories follows.

Applicant Revisions to the Proposed Project Submitted After May 18 Board Meeting

A portion of the appellant's assertion that the proposed dwelling exceeds the two-story limit is based on the inclusion of a basement in the design. In order to simplify the discussion and eliminate confusion about how the County Code defines a basement, the applicant has elected to remove the basement entirely from the proposal (Attachment 1A). Additionally, the deck chair storage area has been deleted above the garage. This revision resolves the appellant's argument regarding both the County Code definition of a basement and the County Policy Interpretation regarding the treatment of exterior basement walls.

The revised plans more clearly demonstrate that the proposed house will be a two-story dwelling in conformance with Chapter 13.10.323 of the County Code. The revision also presents a more uniform street presence from Oakhill, enhancing the compatibility of the design with surrounding properties.

The revised plans also clarify the proposed height of the dwelling, further demonstrating that the structure will conform to the 28-foot height limit.

Stories – Policy and Practice

Until 1992, the County Zoning Ordinance did not restrict the number of allowed stories, nor did it include a definition of a story. Instead, the County Code relied on the height limit, as well as property line setbacks, lot coverage, and floor area ratio, to ensure that a proposed structure would not negatively affect surrounding properties and maintain compatibitility. Ordinance No. 4159, which included the current language pertaining to stories, was adopted as an urgency measure in preparation for the General Plan Update in 1994. The General Plan Update included Policy 8.6.3, which limited residential structures to two stories in urban areas.

The definition of story (Section 13.10.700-S) states:

> "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.

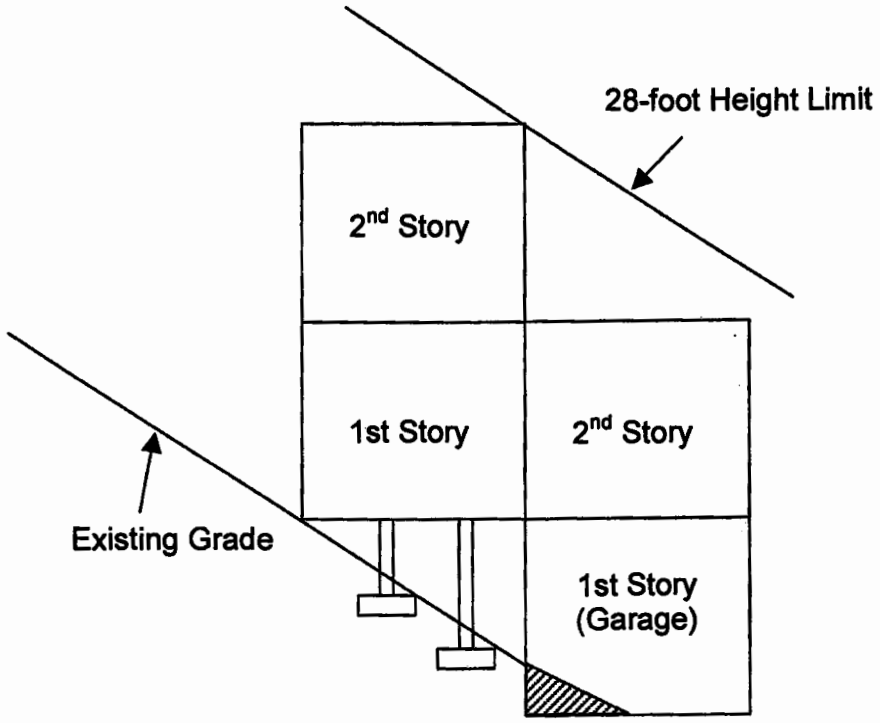

Figure 1

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.

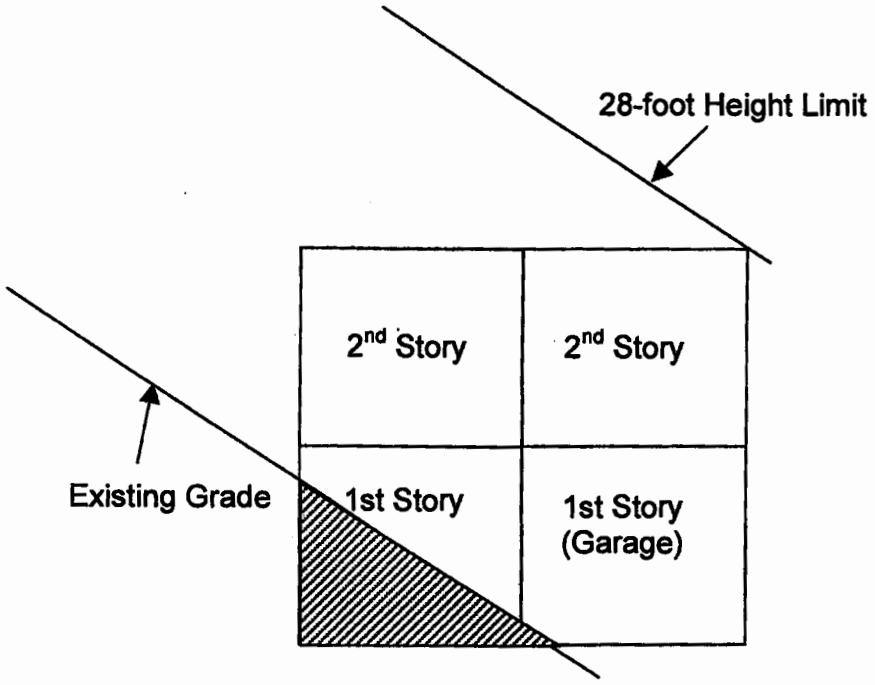

Figure 2

In Figure 2, the stepped foundation has been eliminated and substantial excavation is required to bring the rear portion of the dwelling down to the same elevation as the front.

The above figures illustrate how allowing a structure to step back along a hillside minimizes the amount of grading, reducing the potential for erosion as well as the degree of overall site disturbance. In areas of sensitive habitat, such as the salamander protection zone or riparian corridor areas, for example, it is particularly desirable to allow construction to step up or down a steep hillside rather than relying on construction design that creates a more significant degree of site disturbance.

Continuing the existing practice of allowing such stepped construction also provides more options for lots characterized by steep slopes that drop away from the roadway. In these instances designs that provide for a structure to step down a slope eliminate the need for large, enclosed understories or piers that would otherwise extend to the base of the slope. The current policy has been developed as a tool that can provide design options, which may be environmentally and visually superior in the context of our County's more physically constrained sites.

The project before your Board is based on a stepped configuration such as that shown in Figure 1. As previously stated, this approach has been used all over the County for

several decades. Disallowing this approach would represent a significant departure from Planning Department practices employed for many years and would substantially increase in the amount of grading in many instances.

The appellant asserts that the practice of allowing structures to step up hillsides would result in buildings of excessive mass and height. Staff disagrees. Lot coverage, FAR, and setbacks to property lines all serve to limit the mass and bulk of structures. No amount of "stepping" could be used to avoid these additional site standards, which limit the size and location of a proposed structure on a parcel.

Remaining Appeal Issues

In addition to the issues relating to conformance with site standards, the appellants take issue with the safety of the site. As reviewed at the May 18 Board meeting, the proposal has been reviewed by the County Geologist, project Geologist and project Geotechnical Engineer, each of whom have testified that the coastal bluff setback is appropriate, the small amount of earthwork beneficial and that the proposed dwelling will be free from Geologic Hazards. Homes on neighboring properties are located substantially closer to the bluff.

Because the project, as submitted to the County, has been designed to be free from Geologic Hazards, CEQA statutes provide an Exemption from further environmental review. While the appellants believe that additional environmental review is required and that an Initial Study is appropriate, the consulting geologist, geotechnical engineer and County Geologist have stated that there is no expectation that the project will negatively impact the coastal bluff or that recession of the bluff will impact the house. Therefore, the CEQA Exemption is warranted.

Finally, the appellants assert that the subject parcel is not a legal lot of record and therefore no development approval should be granted. The 2003 Planning Department issuance of an Unconditional Certificate of Compliance conferred legality upon the parcel. Therefore, staff believes that this issue was settled at that time.

NEIGHBORHOOD COMPATIBILITY

Though not explicitly called out as a basis of the appeal, some of the concern regarding this proposal is about whether or not the design of the proposed dwelling is appropriate in the context of the Oakhill neighborhood. The County Urban Designer evaluated the proposal with respect to Neighborhood Compatibility and found that it was consistent with all County Design Guidelines.

The appellants assert that the subject lot is substandard and that the proposed dwelling is of an inappropriate scale given the small lot. While the net developable area of the subject lot is significantly smaller than the minimum lot size for the zoning district, the proposal does not rely on any variances to the required site standards. Further, based

on County Assessor's data, the proposal fits within the range of existing structures located along the bluff side of Oakhill Road as shown in the table below. Please note that the table includes data available for those comparable lots whose acreage is exclusively located along the bluff. The property at the end of the road, at 755 Oakhill, contains land on both sides of the street, including large areas of riparian corridor, and therefore it has not been included in the table as a comparable property.

Address	Map Key*	Net Site Area (estimated)	Habitable Structures (estimated)	Garages	Deck	Total Habitable, Garage and Deck Areas
749	D	6,882 sq ft	1,575	266	210	2,051
SUBJECT LOT	**C**	**5,100 sq ft**	**2322**	**222**	**360**	**2,904**
743	F	5,317 sq ft	2277	210	712	3,199
735	B	8,960 sq ft	1730	540	966	3,236
753	A	10,060 sq ft	1885	250	1,126	3,261
739 Seacliff	H	11,504	2,124	1,893	280	4,297
741	G	10,335 sq ft	3,246	434	1,006+	4,686
745	E	9,060 sq ft	4,430	328	551	5,309

Source: County Assessor's Records, Building Permit Records and GIS Mapping Tool
*See attached Assessor's Parcel Map

While many of the bluff top parcels along Oakhill are substantially larger than the subject site, the majority of the lots are similarly substandard with respect to the R-1-10 10,000 square foot minimum net site area. Additionally, the property located at 743 Oakhill is comparable ~~in~~ terms of net site area as well as dwelling size. It is also important to note that nearly all of the existing homes along Oakhill are developed with substantially greater deck area than the proposed dwelling. Deck area has been included in the above table because, while decks are not characterized by bulk and mass, they do constitute living space. The increased bluff setback required for the subject property means the loss of comparable deck area. Therefore outdoor activities enjoyed by many surrounding properties, would be largely confined to the indoor space of the proposed dwelling.

As well as being fairly comparable to surrounding properties with respect to overall living area, the proposed structure, particularly as shown in the revised plans, is

compatible to surrounding properties from a design standpoint as well. Nearby dwellings present a similar presence from the street with respect to bulk and mass. For example the two adjacent dwellings are each located approximately 7-9 feet above the elevation of the roadway. From the road, therefore, the visual impact of the two adjacent houses is quite similar to that of the proposed dwelling given the 18-20% slope between the roadway and the front (north) elevation of the structures. There are no single-family dwellings across the street from the subject property, so there is no vantage point from which a neighboring dwelling would be able to view the entire structure "head-on."

The massing presented by the subject dwelling is comparable to that of surrounding dwellings in terms of the building height. The articulation at the street front and the location of the proposed garage and parking area are also consistent with surrounding designs. The proposed dwelling utilizes muted earth tones and stucco materials, consistent with the three other houses on the block, which have stucco exteriors. Finally, the proposed dwelling will be partially screened from the street view by an existing 48-inch redwood tree located at the front of the property.

Considering these factors, staff has determined that the proposed project is compatible with the neighborhood. The project revisions offered by the applicant provide additional assurance that the proposed dwelling will be compatible with existing homes in the neighborhood by removing the storage area and re-positioning window locations on the street-facing elevation. These revisions help to reduce the possibility that the dwelling will appear to have three stories.

CONCLUSION

The property owner has complied with the direction provided by all County reviewing agencies and previous decision makers and proposes to construct a relatively modest house on a challenging site. The single-family dwelling is designed to be compatible with the neighborhood, while providing a significantly larger bluff setback than surrounding properties. The proposal provides some benefit to the adjacent properties and the properties located below on Las Olas Drive, by re-directing the drainage on the site away from the bluff face.

The proposed project has been designed to conform to all applicable site standards, including FAR, lot coverage, setbacks, height, and the two-story limit. The project also complies with coastal protection regulations and policies.

It is therefore RECOMMENDED that your Board take the following actions:

1. Certify that the proposal is exempt from further Environmental Review under the California Environmental Quality Act.

2. Deny the Appeal of the Planning Commission Approval

3. Approve Application 09-0139, with the removal of the basement and deck as shown on Attachment 1A, based on the attached findings and conditions.

Sincerely,

Kathy M Previsich

Kathy M. Previsich
Planning Director

RECOMMENDED:

SUSAN A. MAURIELLO
County Administrative Officer

Attachments:

1A Revised Project Plans
2B Findings and Conditions
3C. Corrected Agenda Package and Correspondence presented to the Board of Supervisors at the hearing of May 18, 2010 (on file with the Clerk).

KP:PXL:RBG\G:\Board Letters\Pending

FOR TAX PURPOSES ONLY

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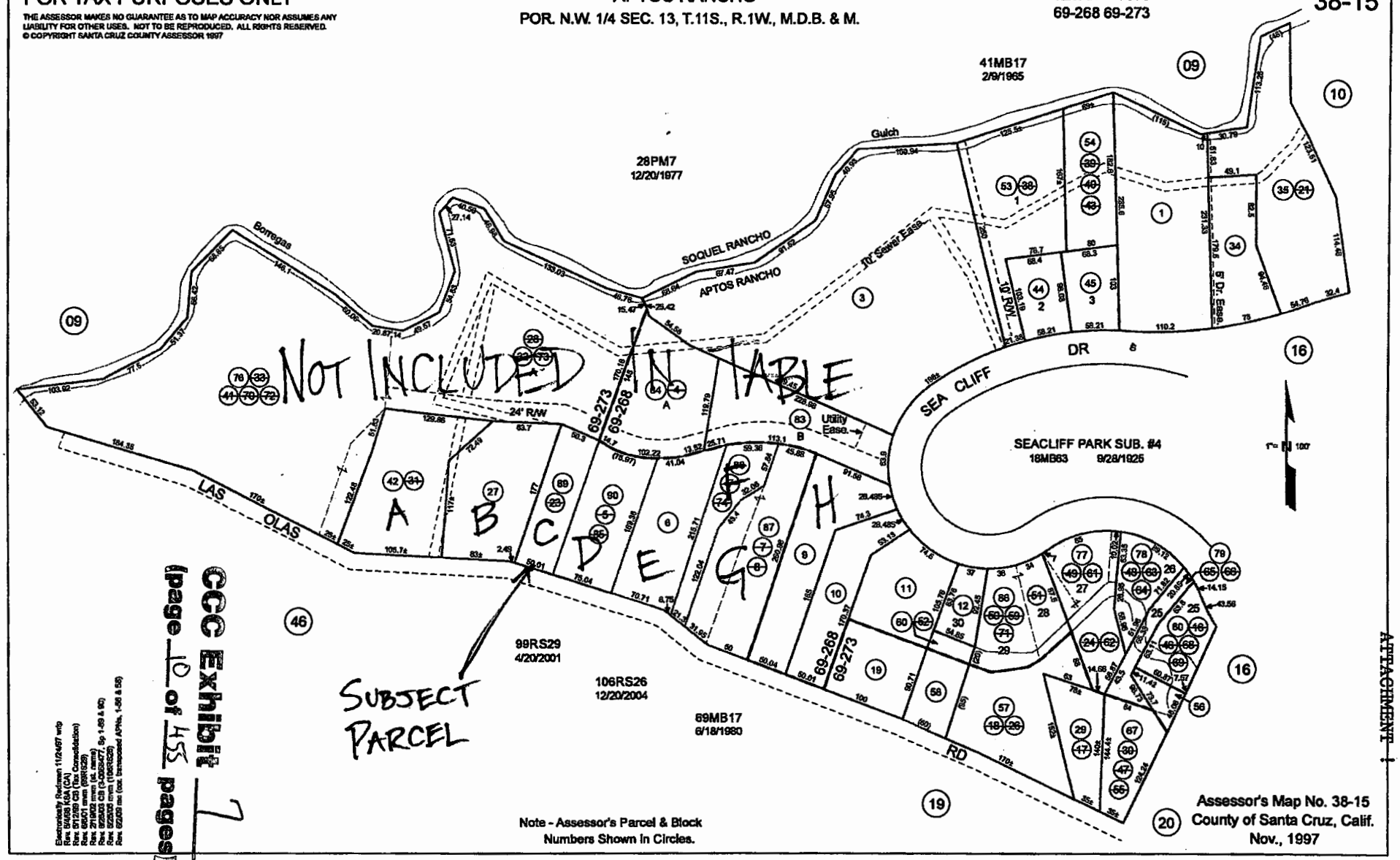
APTOS RANCHO

POR. N.W. 1/4 SEC. 13, T.11S., R.1W., M.D.B. & M.

Tax Area Code
69-268 69-273

38-15



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

Assessor's Map No. 38-15
County of Santa Cruz, Calif.
Nov., 1997

Electronically Redrawn 11/24/97 wrp
Rev. 04/08/94 (CA)
Rev. 5/12/89 CB (Tax Consolidation)
Rev. 6/5/01 mwm (99RS29)
Rev. 2/19/02 mwm (at. mwm)
Rev. 9/23/03 CB (3-09/04/77, Sp 1-89 & 90)
Rev. 9/23/03 mwm (106RS26)
Rev. 02/09 rac (loc. transposed APNs, 1-56 & 55)

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ATTACHMENT 1

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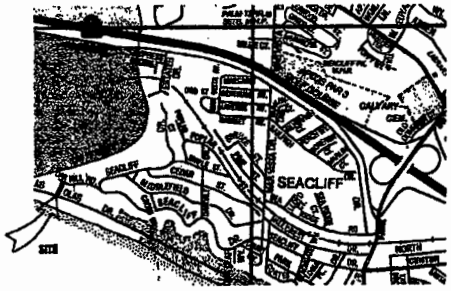
ATTACHMENT 1A

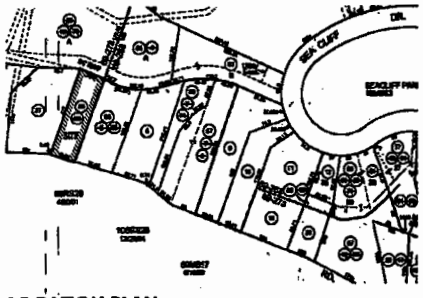
Revised Project Plans

Application Number 09-0139
Board of Supervisors Hearing
06/15/10



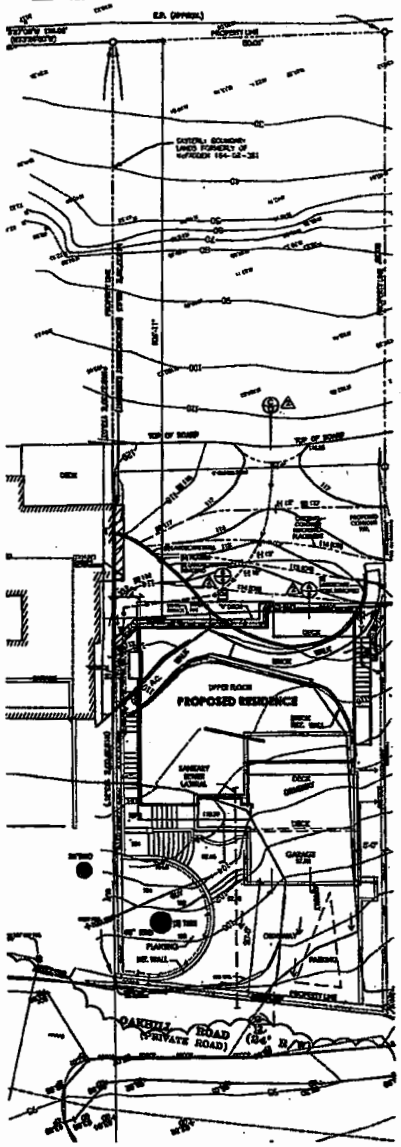
VICINITY MAP

NTS



LOCATION PLAN

NTS



SITE PLAN

1" =10'-0" (SEE ALSO DWG 6)

REVISIONS

△ 9-18-09 Building footprint reduced, floor areas reduced

Project Data

PROJECT NAME	Arthur Residence
PROJECT ADDRESS	Oakhill Road (No Sites) Aptos CA 95003
OWNER	Brian Arthur 352 Belle Mont Avenue Aptos CA 95003 tel (831) 688-0380
APN	038 181 09
ZONING	R-1-40
CONSTRUCTION	Type VB
MUNICIPALITY	County of Santa Cruz
PROJECT DESCRIPTION	Constant two-story 3-bedroom, 3½-bathroom, single family dwelling with an attached two-car garage
△ AREA COMPUTATIONS	Site Area 2,100 sf
	Proposed Upper Floor habitable floor area 1,146.0
	Proposed Lower Floor habitable floor area 1,173.0
	Proposed total habitable floor area 2,323.0
	Proposed Garage and Mechanical floor area 223.3 [after 220 sf credit]
	Proposed total floor area 2,544.34 sf
	See also Gross Building Area calculation sheets
UTILITIES	Soquel Creek Water District Santa Cruz County Sanitation District

Consultants

GEOTECHNICAL ENGINEER	Hare, Kaneshiro & Associates 115 East Lake Avenue Watsonville CA 95076 Mike Hart Parks	tel (831) 722-4175 fax 722-3308
GEOLOGIST	Rogers Johnson & Associates 41 Hangar Way, Suite B Watsonville CA 95076	tel (831) 728-2800 fax 728-2818
CIVIL ENGINEER	Mike Van Hoe 104 Forest Avenue Santa Cruz Ca 95062	tel (831) 429-8364 fax 429-8872
SURVEYOR	Robert Dewitt, Civil Engineer 1807 Ocean Street Santa Cruz CA 95060	tel (831) 426-1217 fax 426-8224
ARCHITECT	Robert Flint Tree Dam 6763 Soquel Drive Soquel CA 95073	tel (831) 462-8233 fax 462-8236

Drawing List

1 SITE PLAN & PROJECT DATA
2 UPPER & LOWER FLOOR PLANS
3 GARAGE FLOOR PLAN
4 ELEVATIONS North & East
5 ELEVATIONS South & West
6 SECTIONS A & B
7 ROOF PLAN
8 GRADING & DRAINAGE
9 EROSION CONTROL DETAILS & LANDSCAPE PLAN
10 OFFSITE DRAINAGE
11 CIVIL SECTIONS & DETAILS
12 SITE SECTION C
13 FLOOR AREAS-INFORMEABLE AREAS
1' TOPOGRAPHIC SITE MAP

ARTHUR RESIDENCE

Brian Arthur
Oak Hill Road
Aptos, CA 95003 No Sites

APN 038-181-09
ROBERT J. GOLDSPINK ARCHITECT
C 13,796

3043 Soquel Drive Aptos CA 95003
tel: (831) 688-0380 fax: (831) 688-0483
Robert@ahlaptos.net

Date: 09-20-09

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Site Plan and Project Data

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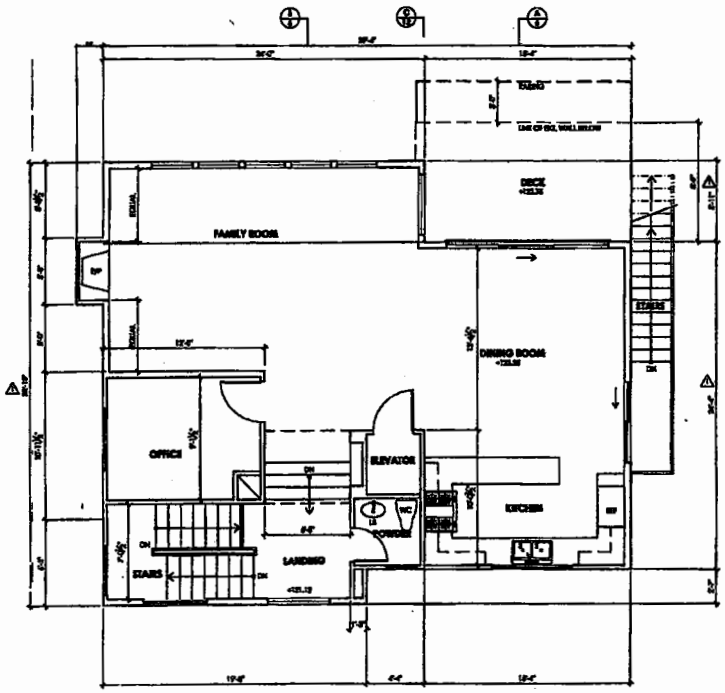
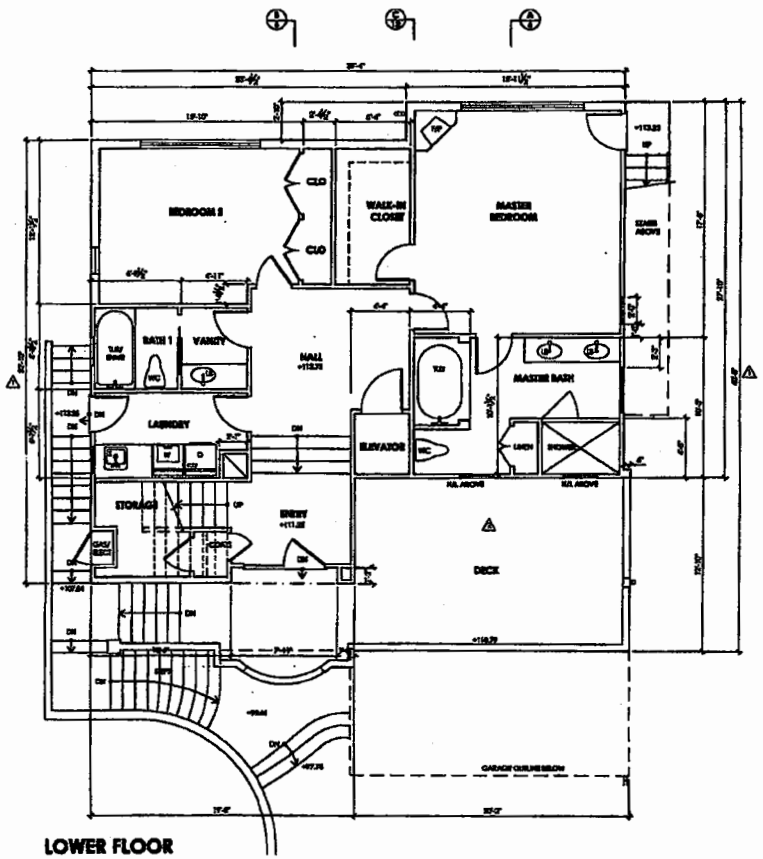


UPPER FLOOR
1/4" = 1'-0" typical



LOWER FLOOR

REVISIONS
9-10-09 Floor areas reduced
8-19-10 Storage removed

ARTHUR RESIDENCE

Brian Arthur
Oak Hill Road
Aptos, CA 95003 No Sites

APN 038-151-89
ROBERT J. GOLDSPINK ARCHITECT
C 12,796

[illegible] Aptos CA 95003
tel: (831) 688-8550 fax: (831) 688-4461
[illegible]

date: 02-19-09

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Upper and Lower Floor Plans

0442

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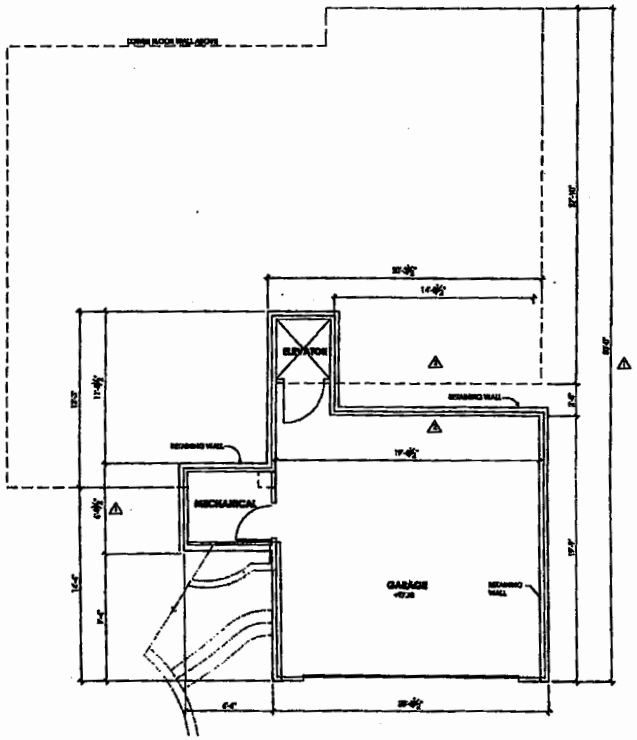
REVISIONS
△ 9-18-09 Basement plan amended
△ 6-19-10 Basement removed



△ GARAGE FLOOR PLAN
1/4" = 1'-0"

ARTHUR RESIDENCE

Brian Arthur
Oak Hill Road
Aptos, CA 95003 No Sites

APN 058-153-09
ROBERT J. GOLDSPINK ARCHITECT
C 12,796

3

Garage Floor Plan

0443

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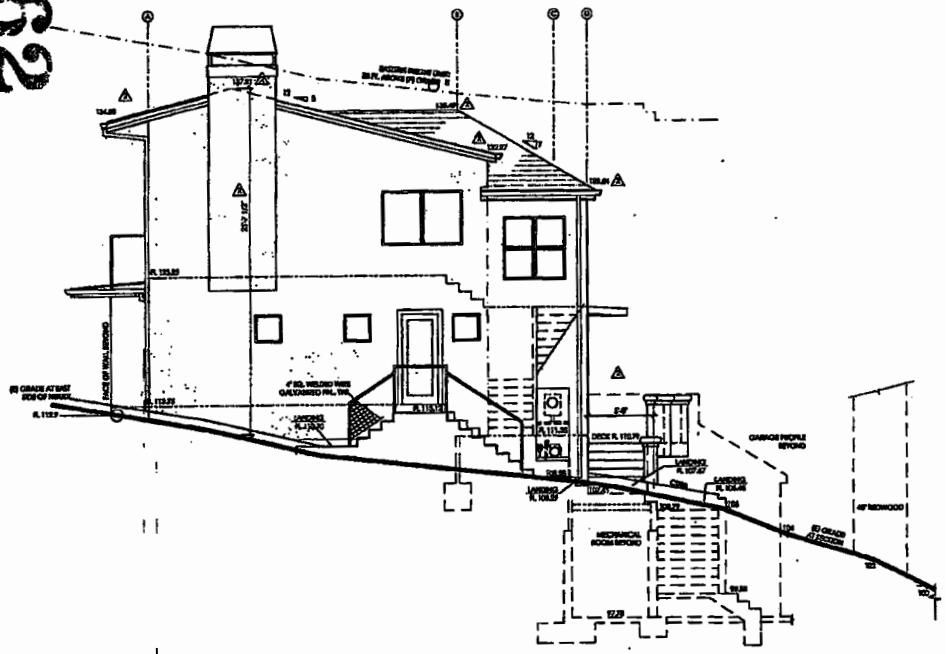
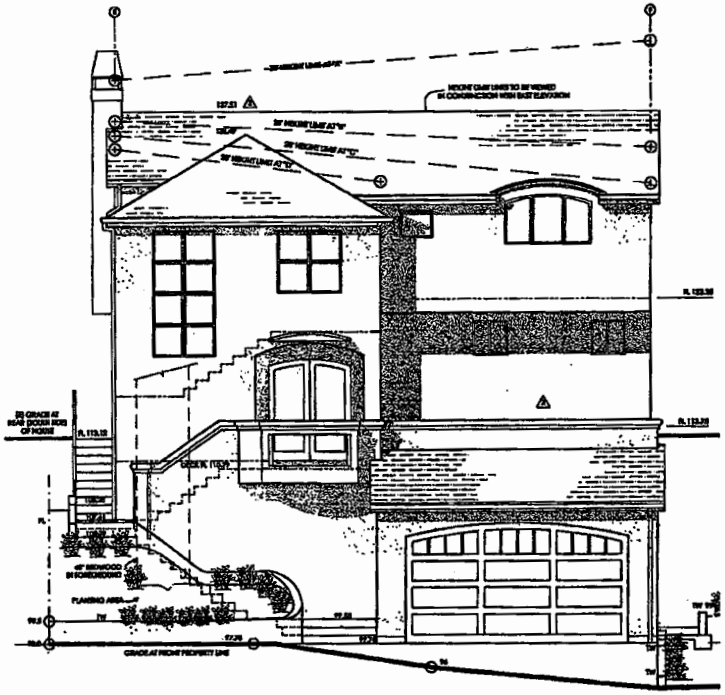


EAST ELEVATION
1/4" = 1'-0" typical



NORTH ELEVATION

REVISIONS
9-18-09 Elevations revised to suit reduced floor areas
9-19-10 Roof lowered 4", covered storage removed

Exterior Materials & Colors Schedule

Roof	Elk composition roofing, color: Antique Slate
Walls, generally	Elastomeric acrylic stucco top coat, Dryvit color to match Kelly Moore 'Keystone' #128
Garage & Stop walls	Elastomeric acrylic stucco top coat, Dryvit color to match Kelly Moore 'Wood Moor' #157 with header/sections from end of house
Exterior Doors & Windows	White
Gutters & Downspouts	Copper
Porch Canopy	Stainless steel frame with frosted glass canopy
Porches, Bottles & Seats	Painted wood, color: white
West Stair Balustrade	Powder-coated, galvanized wire mesh with tube posts and handrail, color: white
South Deck Balustrade	Powder-coated tube posts and handrail, color: white, with glass panels
Steps & Landings	Colored, rock-salt concrete, color: Davis 'Slate Green'
Driveway	Colored, stamped concrete, color: Davis 'Slate Green'

ARTHUR RESIDENCE

Brian Arthur
Oak Hill Road
Aptos, CA 95003 No Sites

APN 032-251-09
ROBERT J. GOLDSPINK ARCHITECT
C 13,796

[illegible] Aptos CA [illegible]
tel: (831) [illegible] fax: (831) [illegible]
[illegible]

Date: [illegible]

4

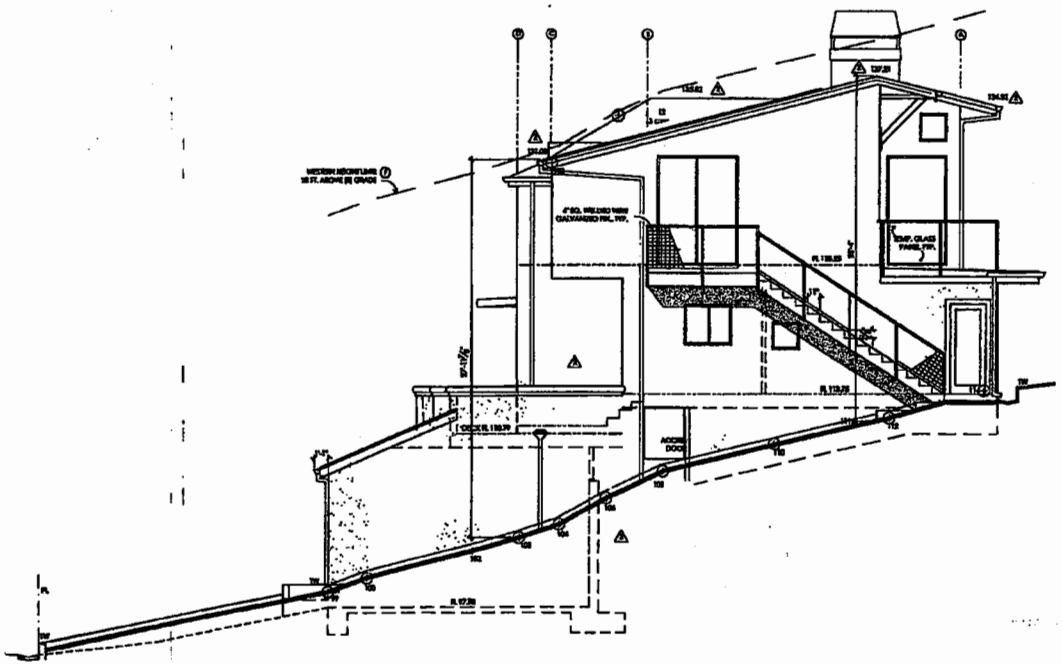
Elevations-North & East

CCC Exhibit 7
(page 15 of 455 pages)

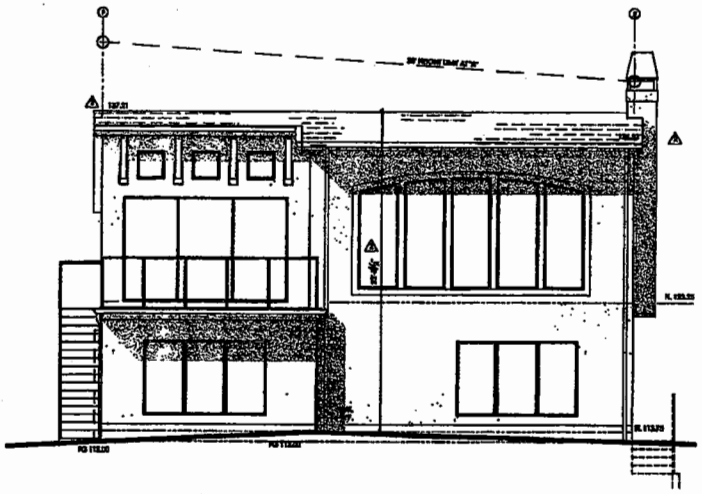
0444

C:\ACAD\PROJECTS\GOLDSPINK\Arthur\ARTHUR.MAY [illegible] Aug. 9/21/2010 8:22:43 AM, Adobe PDF

REVISIONS
9-18-09 Elevations revised to suit reduced floor areas
6-19-10 Roof lowered 4"



1/4"=1'-0"
WEST ELEVATION



SOUTH ELEVATION
1/4"=1'-0"

ARTHUR RESIDENCE

Brian Arthur
Oak Hill Road
Aptos, CA 95003 No Situs

APN 038-151-39
ROBERT J. GOLDSPINK ARCHITECT
C 13,796

[illegible] Aptos CA 95003
tel: (831) 688-[illegible] fax: (831) 688-[illegible]
[illegible]

date: 09-10-09

5
Elevations-South and West

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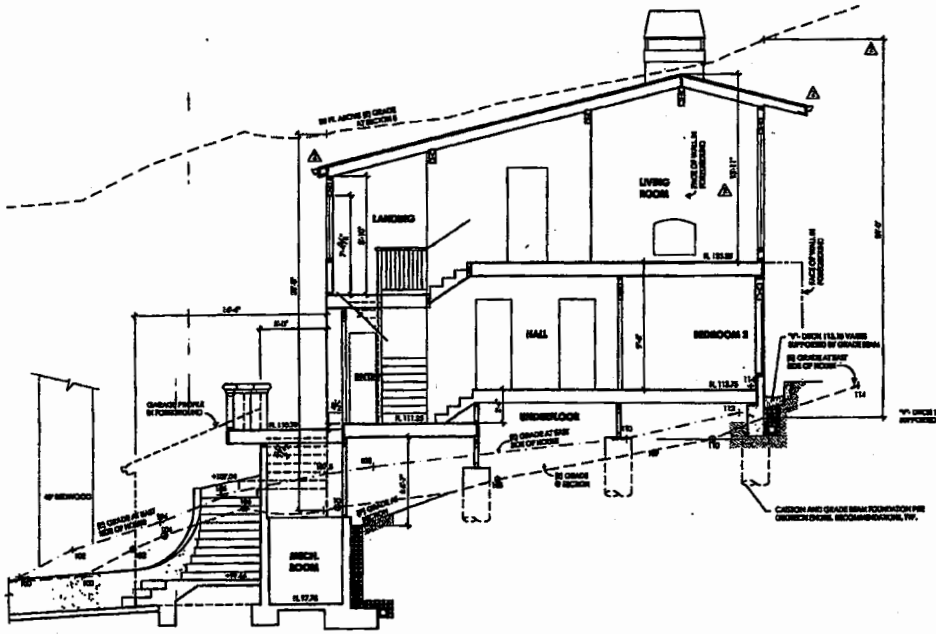
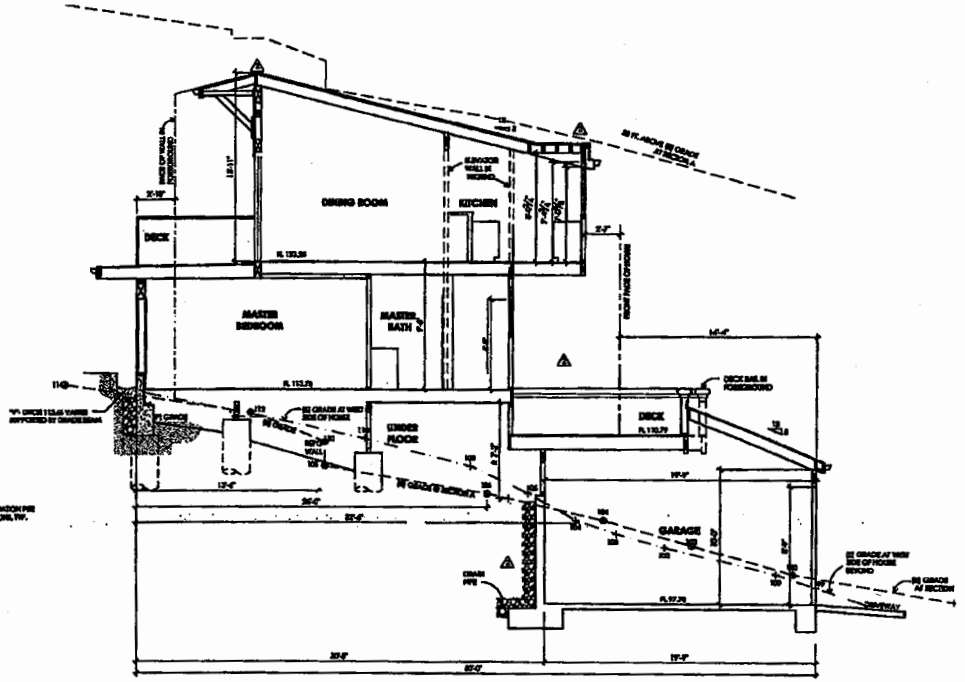
0445

REVISIONS
1 9-18-89 Sections revised to suit reduced floor areas
2 6-19-90 Roof lowered 4". Max bldg height line added. Basement and Covered storage deleted.



SECTION B (through entry)
SCALE: 1/4" = 1'-0"



SECTION A (through garage)
SCALE: 1/4" = 1'-0"

ARTHUR RESIDENCE

Brian Arthur
Oak Hill Road
Aptos, CA 95003 No Sites

APN 052-152-05
ROBERT J. GOLDSPINK ARCHITECT
C 12,796

0043 Soquel Drive Aptos CA 95003
tel: (832) 688-0000 fax: (832) 688-4483
[illegible]

Date: 03-20-89

6

Sections A and B

0446

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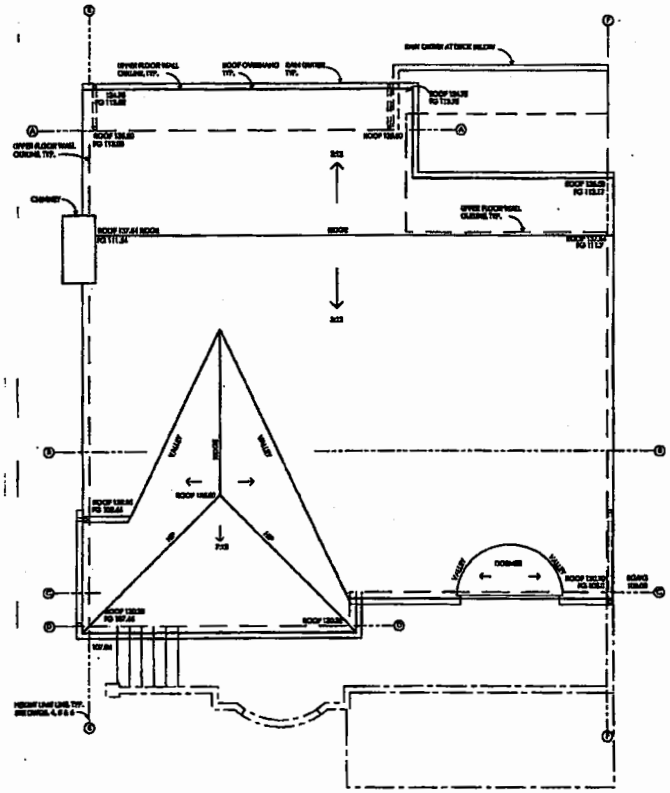
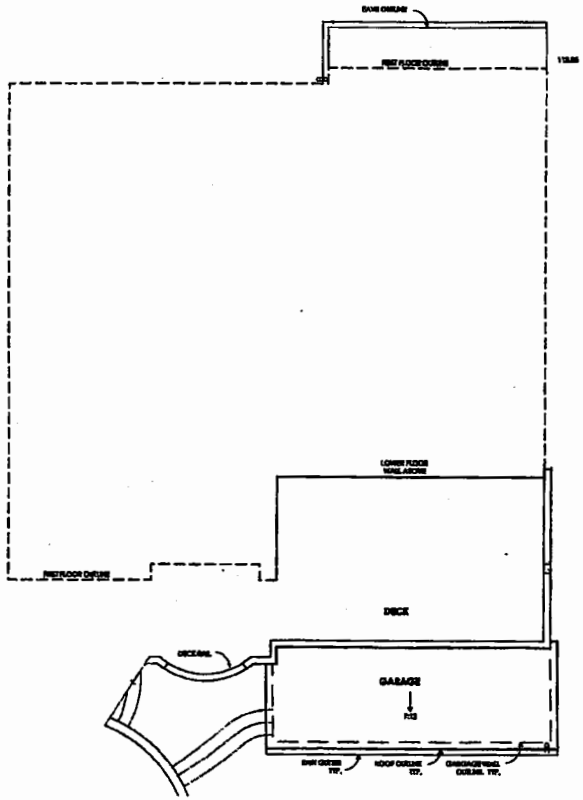


UPPER ROOF PLAN

Roof Plan Notes



LOWER ROOF PLAN at garage & deck

1/4" =1'-0" Typ.

ARTHUR RESIDENCE

Brian Arthur
Oak Hill Road
Agoura, CA 93003 No Show

APN 050-131-03
ROBERT J. GOLDSPINK ARCHITECT
C 13,796

Roof Plan

7

0447

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Engineering Volumes Calculations

Geologic Setback Area: Section A-A'	
0	0.0
Geologic Setback Area: Section B-B'	
0	0.0
Under New Residence, Perimeter	
+3.0(70'+0.5*80)/27	1.5
Total Fill	1.5
CUT	
Geologic Setback Area: South of Section A-A'	
+0.5*11*15+11/27	3.8
Geologic Setback Area: Section A-A' TO B-B'	
+0.5*(15.4)+(8.45)*8/27	6.0
Geologic Setback Area: North of Section B-B'	
+11.2*(8.45)/27	7.1
[redacted] at Garage, Mech Equipment Driveway	
(0.5*0.2*20*20+0.5*2.0*20+0.5*7*7+0.5*2.5)/27	139.1
Under New Residence & Mech Room	
Total Cut	156.0
Total Grading Quantities	[illegible]

Notes

No site disturbance shall occur during winter months: October 15 through April 15

Site generally slopes from top of bluff Northward towards Oakhill Road. See topographic survey by Robert Dewitt & Associates, dated

Excavation proposed for new residence. Minor grading proposed between house and bluff to achieve positive drainage away from bluff. Grading proposed for entry steps and driveway between house and street. Erosion control silt barrier shall be installed around limit of disturbance at exposed area during construction.

All site conditions are existing, unless noted otherwise; see topographic survey

[1] Existing landscape retaining wall to remain
[2] Existing landscape retaining wall removed
[3] Existing walkway removed
[4] Existing fence
[5] New concrete walkway and steps
[6] New concrete landscape wall and steps
[7] 'V' profile concrete drainage ditch at grade sloping to street, typ. Refer also to detail 1/11.
[8] Catch basin with sediment trap discharges into drainage ditch
[9] Rainwater leader discharges into drainage ditch, typ. Refer also to detail 2/11.
[10] Foundation drain daylights at drainage ditch, typ.
[11] 'V' profile concrete drainage ditch at grade, typical. See Sections A, B and C for profile at South wall of house
[12] New landscape retaining wall
[13] Existing grade around Redwood tree to be undisturbed, except for new steps and retaining wall. Utility trenches in this area to be dug by hand
[14] Grading between bluff top and house shall be minimum required to achieve positive drainage away from bluff top within. Grading within 10 ft of bluff top to be carried out by hand
[15] The project Civil Engineer, Mike Van Horn, Inc., shall be contacted subsequent to grading excavations and prior to placement of concrete for 'V' profile ditches, installation of swale liners, and installation of catch basins (CB) so that he can observe the site to confirm adequate drainage configurations at the site
[16] Coir log roll, see details, Drawing 9
[17] Semi-pervious paving: Interlocking paving on compacted sand calculated at 50% permeability
[18] Colored Concrete paving
[19] See Drawing 13 for Impervious Area Calculations

Drainage Note:

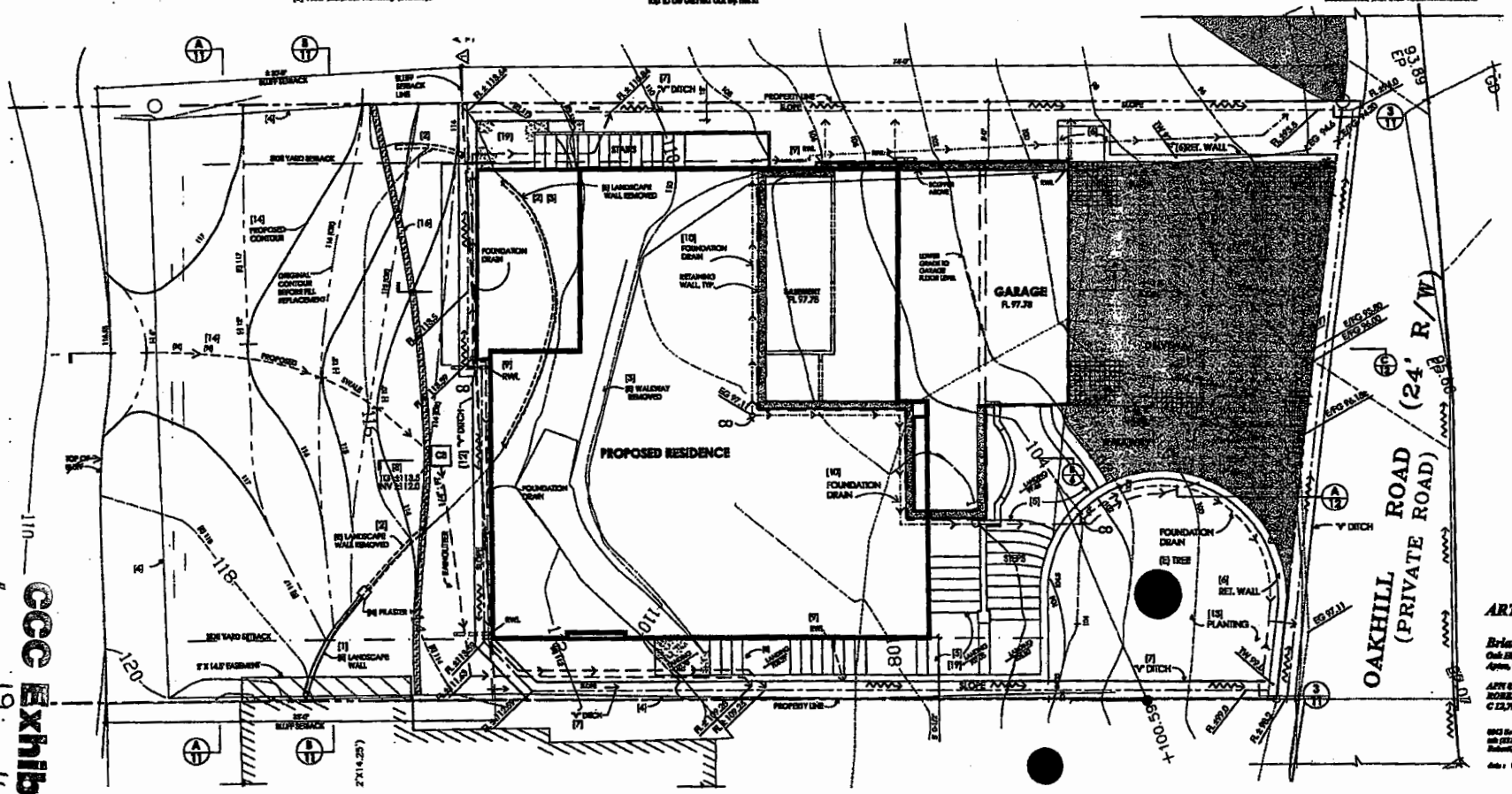
Rainwater surface runoff from adjacent parcels, to the East and West, surface drain 'directly' to Oakhill Road, as indicated with arrows shown on the plan(s). No changes to these existing drainage patterns will occur as a result of this proposed development.

Landscape Note

Existing Redwood tree to remain. New planting shall be drought tolerant. See Landscape Plan

Geotechnical Report

All new construction shall comply with the recommendations set out in Hers, Kenwith & Associates' Geotechnical Investigation report, dated 11-17-2005, one copy included with the application documents.
Hers, Kenwith & Associates shall inspect and approve grading and caisson drilling, and issue letter confirming construction has been completed in accordance with their recommendations



GRADING & DRAINAGE
1/4" = 1'-0"

ARTHUR RESIDENCE

Brian Arthur
Oak Hill Road
Aptos, CA 95003 No Elev

APN 038-131-09
ROBERT J. GOLDSPINK ARCHITECT
C 12,798

8

Grading & Drainage

0448

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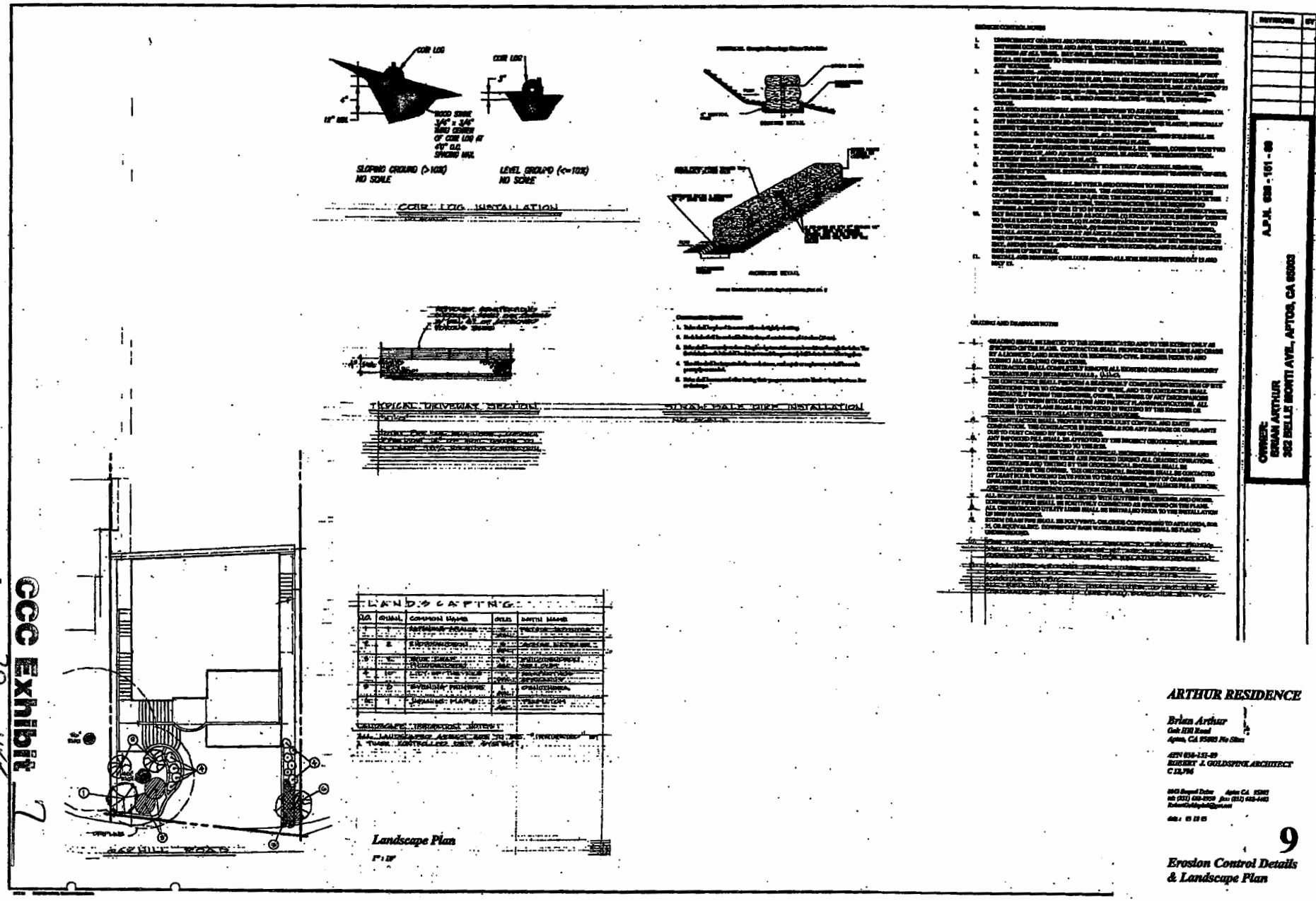

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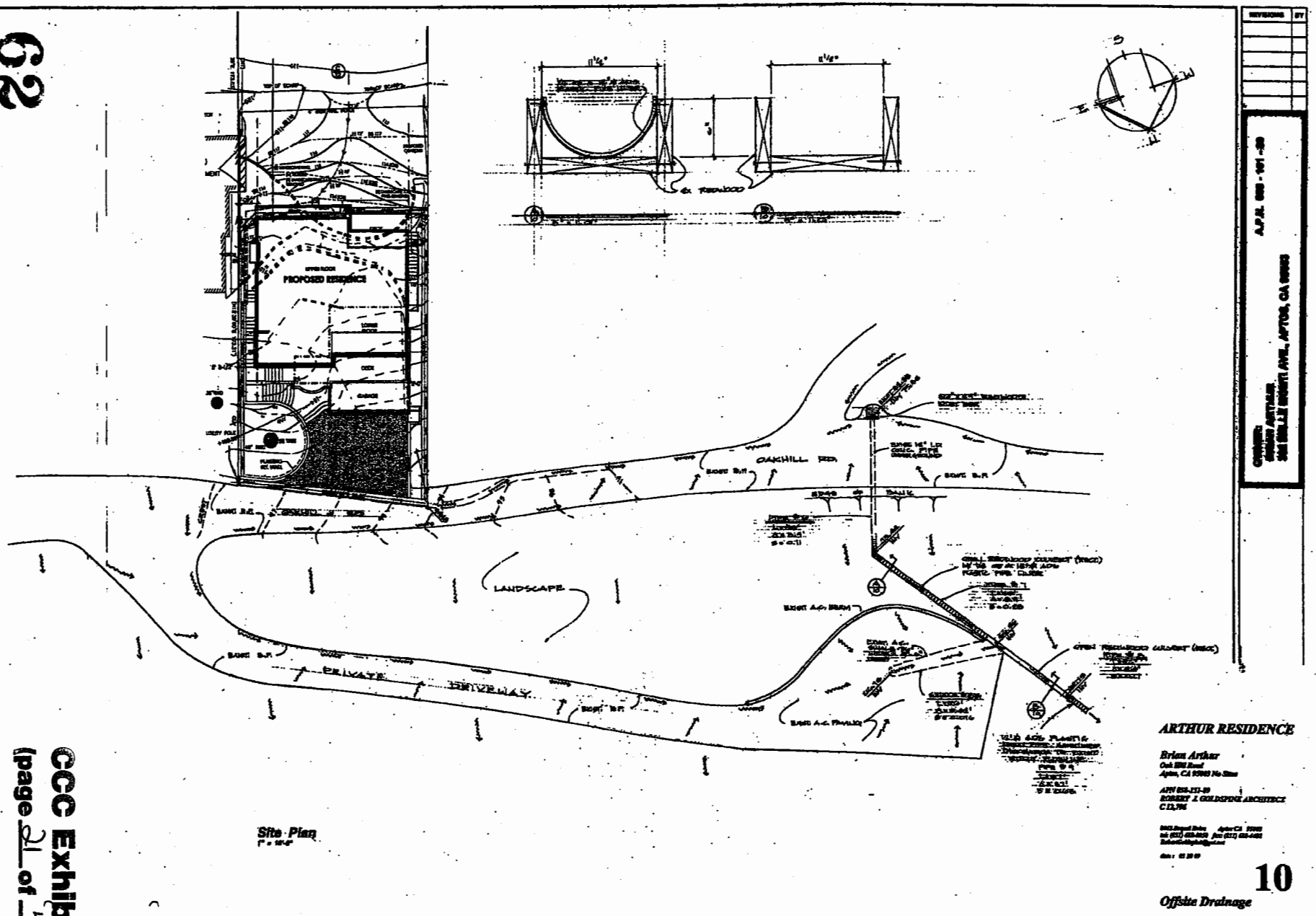
0449



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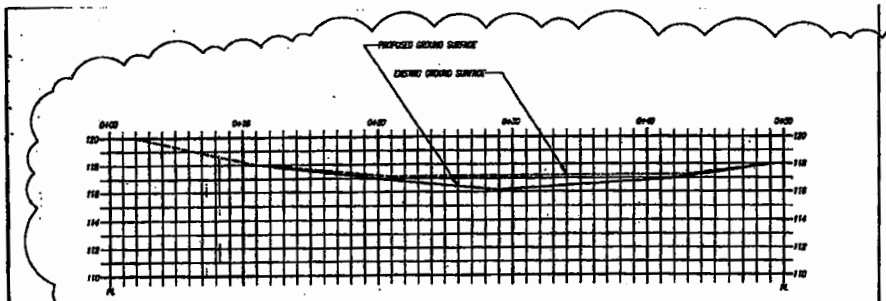
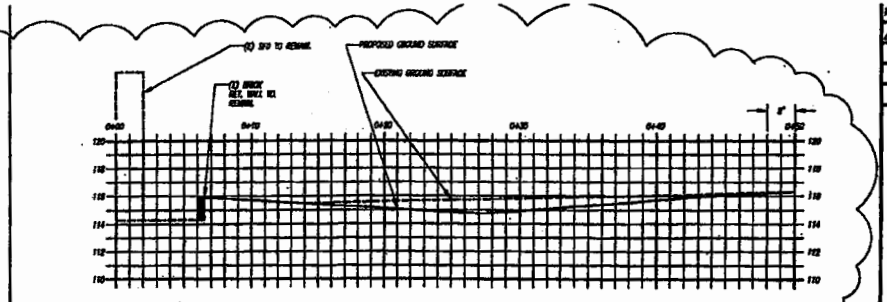
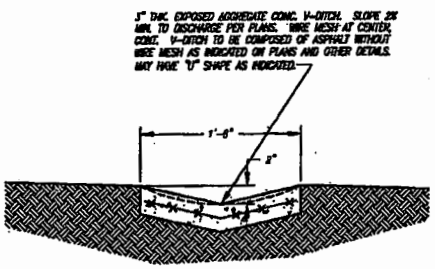
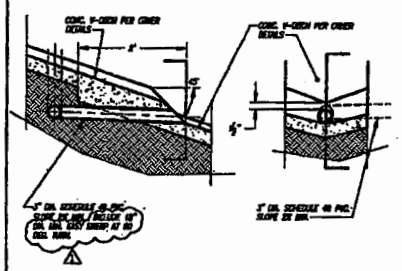
(page 21 of 455 pages)



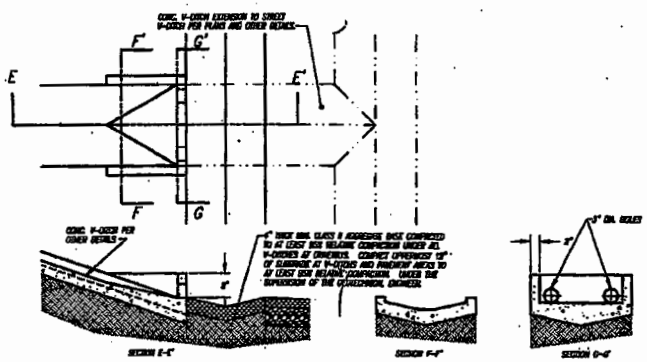




7/11 V-Ditch
Scale: 2" = 1'-0"



9/11 Drain Pipes to V-Ditch
Scale: 1" = 1'-0"



3/11 V-Ditch Headwall Dissipater
Scale: 1" = 1'-0"

REVISION	DRAWN
12/23/09	MVH

"Mod 12-23-09"

MIKE VAN HORN, INC., RCE 35615
REGISTERED CIVIL ENGINEER
101 FOREST AVE., SANTA CRUZ, CA.
TEL. (831) 459-9544 | FAX (831) 459-9623

DISCLAIMER

SECTIONS & DETAILS

FOR: MR. BRIAN ARTHUR
PROJECT: NEW SINGLE FAMILY DWELLING
OAK HILL ROAD, APTOS, CALIFORNIA
APN 038-151-09

DATE: 14 MARCH 2008
SCALE: SEE DWG.
DRAWN: MVH
FILE NO. 2383
SHEET 11
CIV SHEET 9

CCC Exhibit 7
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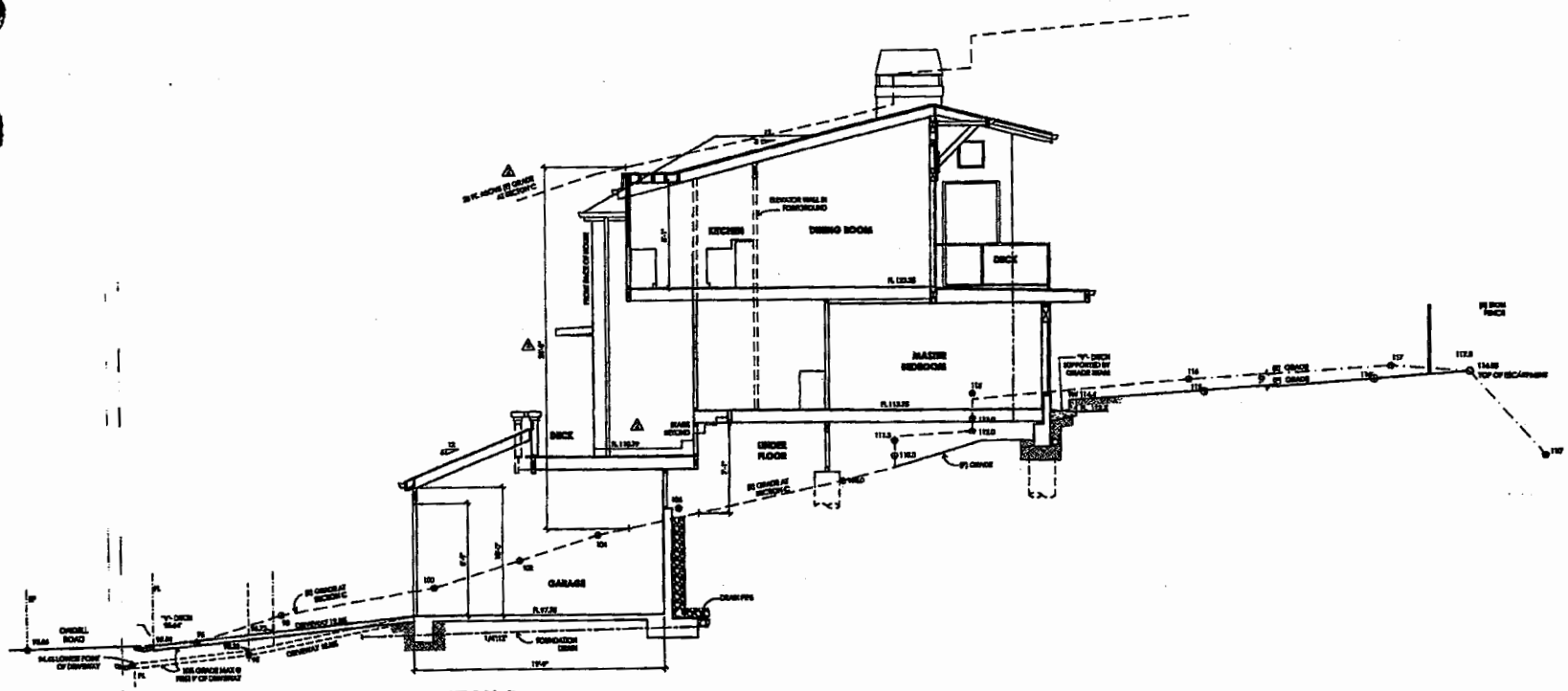
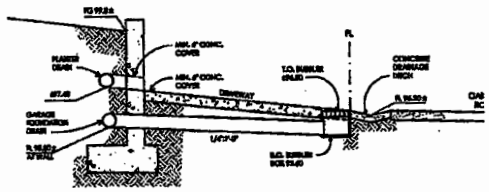
0451

REVISIONS

1. 9-18-89 Building section amended to suit reduced floor areas (no change to exterior grades)
2. 5-19-98 Roof lowered 4". Max bldg height line added. Covered storage removed.



SECTION C
SCALE: 1/4" = 1'-0"



DETAIL A
SCALE: 1/2" = 1'-0"

ARTHUR RESIDENCE

Brian Arthur
Oak Hill Road
Aptos, CA 95003 No Sites

APN 038-151-89
ROBERT J. GOLDSPINK ARCHITECT
C 12,796

[illegible]

Date: [illegible]

12

Site Section C

0452

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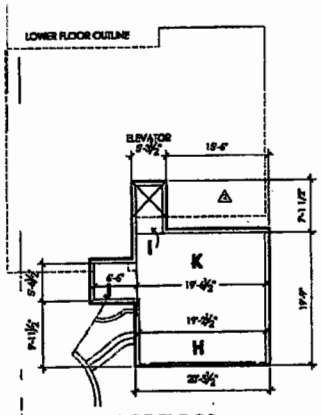
REVISIONS

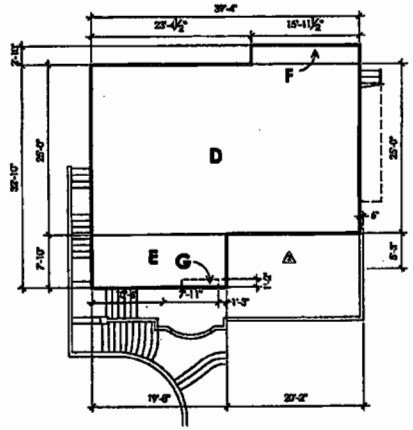
△1 9-16-09 Floor areas & lot coverage calculations amended to suit reduced floor areas

△2 6-19-10 Basement and chair storage omitted. Area calculations amended

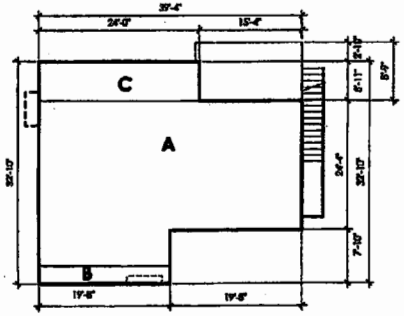


GARAGE FLOOR

1/8" = 1'-0" typical



LOWER FLOOR



UPPER FLOOR

△ ***Floor Area Calculations***

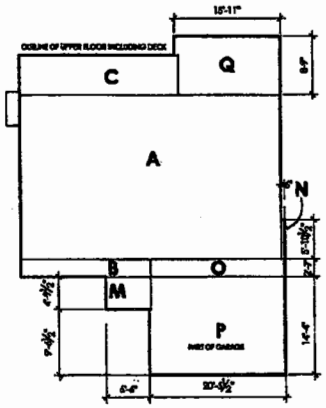
Upper Floor					
	A	39.33	x 24.33	=	956.9 sf
	B	19.66	x 2.58	=	50.7
	C	24.00	x 5.92	=	142.0
		Total habitable			1,149.6 sf
Lower Floor					
	C	39.33	x 20.00	=	953.3 sf
	E	19.66	x 7.83	=	153.9
	F	19.66	x 2.33	=	45.8
less	G	7.92	x 1.17	=	- 9.3 sf
		Total habitable			1,173.6 sf
Garage & Mechanical					
	H	5.66	x 19.31	=	191.33 sf
	I	7.25	x 4.00	=	29.00
	J	2.54	x 6.83	=	34.01
	K	19.84	x 9.79	=	194.20
		Subtotal			447.54 sf
		Less garage credit			- 225.00 sf
		Total floor area			222.54 sf
△	Total Floor Area				2,544.34 sf

△ ***Building Lot Coverage Calculations***

A	39.33	x 124.33	=	956.9
B	19.66	x 2.58	=	50.7
C	24.00	x 5.92	=	142.0
E	5.00	x 6.83	=	32.5
G	1.67	x 32.17	=	53.8
D	32.83	x 14.33	=	470.5
C	15.34	x 8.79	=	134.8
Total				1,871.4 sf

△ ***Impermeable & Semi-Permeable Areas***

SITE AREA		5,100 sf
PAVED AREAS		
	Driveway within 20ft front yard setback	443 sf
	Driveway outside 20ft front yard setback	20 sf
	Walkway from street, front steps and landings	313 sf
	Landings and steps at East side of house	53 sf
	Landings and steps at West side of house	127 sf
	Total	955 sf
IMPERMEABLE AREA		
	Landings, steps and walkways above	432 sf
	Building footprint	1,634 sf
	Total	2,129 sf
SEMI-PERMEABLE AREA		
	Driveway	453 sf



LOT COVERAGE DIAGRAM

ARTHUR RESIDENCE

Brian Arthur
Oak Hill Road
Aptos, CA 95003 No Situs

APN 028-231-09
ROBERT J. GOLDSPECK ARCHITECT
C 12,794

8042 Soquel Drive Aptos CA 95003
tel: (831) 685-9550 fax: (831) 685-4453
Robert@robertjgoldspeck.com

Date: 10-20-09

13

Floor Areas
Impermeable Areas

CCC Exhibit 7
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0453

ATTACHMENT 1B

Findings and Conditions

Application Number 09-0139
Board of Supervisors Hearing
06/15/10

Application #: 09-0139
APN: 038-151-89
Owner: Brian Arthur

Coastal Development Permit Findings

1. That the project is a use allowed in one of the basic zone districts, other than the Special Use (SU) district, listed in section 13.10.170(d) as consistent with the General Plan and Local Coastal Program LUP designation.

This finding can be made, in that the property is zoned R-1-10 (Single family residential - 10,000 square feet minimum), a designation which allows residential uses. The proposed new single-family dwelling is a principal permitted use within the zone district, consistent with the site's (R-UL) Urban Low Density Residential General Plan designation.

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

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

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

This finding can be made, in that the development is consistent with the surrounding neighborhood in terms of architectural style; the site is surrounded by lots developed to an urban density; the colors are similar to that of the vegetated coastal bluff below and are thus complementary to the site. The new dwelling will incorporate a cross gable design with the front gable hipped and the second story stepped back from the street so as to avoid a monolithic and imposing appearance. Additionally, two complementary but different exterior paint colors will be used at the street side in order to provide differentiation in the use of a stucco exterior. The street view is further mitigated by the presence of a 48-inch redwood tree and planting area at the eastern side of the lot.

Varied roof planes, deck and fenestration provide visual interest at the street front, while the window design and tube and glass railing at the beach-facing south elevation are generally consistent with surrounding designs along the bluff. The portion of the dwelling that is visible from the beach is consistent in shape and height with the silhouettes of the houses on either side. Additionally, the proposed color blends in well with the color and appearance of the bluff below. The overall effect is en entirely compatible presentation from both the Oakhill street front and from the beach below. The glazing for the windows facing the beach and Las Olas Drive are conditioned to be of non-reflective material only to further prevent any visual impact to the viewshed.

4. That the project conforms with the public access, recreation, and visitor-serving policies, standards and maps of the General Plan and Local Coastal Program land use plan, specifically Chapter 2: figure 2.5 and Chapter 7, and, as to any development between and nearest public road and the sea or the shoreline of any body of water located within the coastal zone, such development is in conformity with the public access and public recreation policies of Chapter 3 of the Coastal Act commencing with section 30200.

This finding can be made, in that while the project site is located between the shoreline and the first public road, there is no available beach access from the subject parcel. Consequently, the new single-family dwelling will not interfere with public access to the beach, ocean, or any nearby body of water. Further, the project site is not identified as a priority acquisition site in the County Local Coastal Program.

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

This finding can be made, in that the structure is sited and designed to be visually compatible, in scale with, and integrated with the character of the surrounding neighborhood. The proposed two-story dwelling is consistent with the size and design of the adjacent dwellings as well as the dwellings located along Las Olas Drive at the base of the coastal bluff. Additionally, residential uses are allowed uses in the R-1-10 (Single family residential - 10,000 square feet minimum) zone district of the area, as well as the General Plan and Local Coastal Program land use designation. Developed parcels in the area contain single-family dwellings of primarily two-story construction. Size and architectural styles vary widely in the area, and the design submitted is not inconsistent with the existing range, utilizing a blend of traditional elements such as hipped, cross gabled roof design, eave overhangs and arched window elements.

The south-facing elevation presents a modest façade, which is in scale with the adjacent dwellings and incorporates vertical elements and balanced fenestration to further soften the apparent bulk and mass of the structure from the beach and from Las Olas Drive. The proposed color scheme complements and blends in with the natural hues of the vegetated coastal bluff below so that the overall appearance will harmonize with the existing structures in the vicinity and will not represent a negative impact to the view from the beach.

Application #: 09-0139
APN: 038-151-89
Owner: Brian Arthur

Residential Development Permit Findings

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

This finding can be made, in that the project is located in an area designated for residential uses. Though the structure is located approximately 33 feet from the coastal bluff, the dwelling will not encroach into the 100-year geologic setback line established by the engineering geologist for the project. All recommendations made by the engineering geologist and geotechnical engineer (Exhibits H, I) have been incorporated into the required conditions of approval of this permit.

Proposed drainage improvements will ensure that all drainage be directed away from the bluff face, potentially lengthening the life and preserving the stability of the bluff in order to protect the health, safety and welfare of the residents of the subject dwelling and surrounding properties. No structures are proposed to be built within the required 100-year bluff setback and the minimal amount of grading done to improve the drainage will be done by hand. Per the recommendations made by the project geotechnical engineer, the house will be constructed on a pier and grade beam foundation. Construction will comply with prevailing building technology, the California Building Code, and the County Building ordinance to insure the optimum in safety and the conservation of energy and resources. The proposed single-family dwelling will not deprive adjacent properties or the neighborhood of light, air, or open space, in that the structure will conform to all required site standards for the zone district.

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

This finding can be made, in that the proposed location of the new single-family dwelling and the conditions under which it would be operated or maintained will be consistent with all pertinent County ordinances and the purpose of the R-1-10 (Single family residential - 10,000 square feet minimum) zone district in that the primary use of the property will be one new single-family dwelling that meets all current site standards for the zone district.

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

This finding can be made, in that the proposed residential use is consistent with the use and density requirements specified for the Urban Low Density Residential (R-UL) land use designation in the County General Plan.

The proposed new single-family dwelling will not adversely impact the light, solar opportunities, air, and/or open space available to other structures or properties, and meets all current site and development standards for the zone district as specified in Policy 8.1.3 (Residential Site and Development Standards Ordinance), in that the new single-family dwelling will not adversely shade adjacent properties, and will meet current setbacks for the zone district that ensure access to light, air, and open space in the neighborhood.

The project consists of infill development, which is compatible with the surrounding structures in terms of height, mass and bulk and design and therefore complies with General Plan Policy 5.10.7 (Visual Resources- Open Beaches and Blufftops). The proposed dwelling will be painted a sage green, which blends in with the vegetation located on the bluff below. The ocean-facing windows shall be restricted to the use of non-reflective glazing material further reducing the visual impact of the new house.

The proposed new single-family dwelling will not be improperly proportioned to the parcel size or the character of the neighborhood as specified in General Plan Policy 8.6.1 (Maintaining a Relationship Between Structure and Parcel Sizes), in that the proposed new single-family dwelling will comply with the site standards for the R-1-10 zone district (including setbacks, lot coverage, floor area ratio, height, and number of stories) and will result in a structure consistent with a design that could be approved on any similarly sized lot in the vicinity.

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

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

This finding can be made, in that the proposed new single-family dwelling is to be constructed on an existing undeveloped lot. The expected level of traffic generated by the proposed project is anticipated to be only 1 peak trip per day, such an increase will not adversely impact existing roads and intersections in the surrounding area.

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

This finding can be made, in that the proposed structure is located in a mixed neighborhood containing a variety of architectural styles, and the proposed new single-family dwelling is consistent with the land use intensity and density of the neighborhood. Surrounding dwellings are characterized predominately by two-story structures of similar bulk and mass.

6. The proposed development project is consistent with the Design Standards and Guidelines (sections 13.11.070 through 13.11.076), and any other applicable requirements of this chapter.

This finding can be made, in that the proposed new single-family dwelling will be of an appropriate scale and type of design that will enhance the aesthetic qualities of the surrounding properties and will not reduce or visually impact available open space in the surrounding area. The new dwelling incorporates several design features such as hipped, cross-gabled roof design, articulation at the street front and fenestration that provides visual interest. The proposal has been reviewed and approved by the County Urban Designer.

Conditions of Approval

Exhibit A: 12 Sheets, prepared by Robert Goldspink Architect, dated 3-10-09, (Sheets 1-7, 12 & 13 revised 9-18-09), Sheet 11 revised 3-25-09, Topographic Map prepared by Robert L. DeWitt, dated 8-27-07.

I. This permit authorizes the construction of a new 2,544 square foot single-family dwelling, with 450 square foot attached garage and 3'-6" tall retaining wall within the front yard setback. This approval does not confer legal status on any existing structure(s) or existing use(s) on the subject property that are not specifically authorized by this permit. Prior to exercising any rights granted by this permit including, without limitation, any construction or site disturbance, the applicant/owner shall:

A. Sign, date, and return to the Planning Department one copy of the approval to indicate acceptance and agreement with the conditions thereof.

B. Obtain a Building Permit from the Santa Cruz County Building Official.

1. Any outstanding balance due to the Planning Department must be paid prior to making a Building Permit application. Applications for Building Permits will not be accepted or processed while there is an outstanding balance due.

C. Obtain a Grading Permit from the Santa Cruz County Building Official.

D. Submit proof that these conditions have been recorded in the official records of the County of Santa Cruz (Office of the County Recorder) within 30 days from the effective date of this permit.

II. Prior to issuance of a Building Permit the applicant/owner shall:

A. Submit final architectural plans for review and approval by the Planning Department. The final plans shall be in substantial compliance with the plans marked Exhibit "A" on file with the Planning Department. Any changes from the approved Exhibit "A" for this development permit on the plans submitted for the Building Permit must be clearly called out and labeled by standard architectural methods to indicate such changes. Any changes that are not properly called out and labeled will not be authorized by any Building Permit that is issued for the proposed development. The final plans shall include the following additional information:

1. One elevation shall indicate materials and colors as depicted on the "Exterior Materials and Colors" sheet submitted by the project architect (dated April 6, 2009). If there is a significant conflict between the color shown on the sheet and the written description on the sheet, the color sample provided shall be considered the approved colors.

a. The north-facing exterior shall incorporate two complementary, but distinct colors to differentiate the first and second stories.

2. Non-reflective glazing material shall be used for all windows that are visible from the beach.

3. Grading, drainage, and erosion control plans that include the following information:

   a. All grading performed within the 100-year geologic setback shall be done by hand.

   b. A maximum excavation at the crest of the slope at the blufftop must not exceed 6 inches.

   c. Grading plans shall include all grading volumes and calculations, a destination for off-hauled material, existing and proposed contours and top-of-wall/bottom-of-wall elevations for all retaining walls.

4. No deck, patios, spas, or other surfaced areas or structures shall be allowed within the 100-year geologic setback.

5. No portion of the structure may encroach into the 100-year geologic setback, with the exception of eaves and gutters, which may encroach 3 feet into the setback. Any such encroaching eaves must be sloped and may not be used as an extension of a deck or other living space.

6. The building plans must include a roof plan and a surveyed contour map of the ground surface, superimposed and extended to allow height measurement of all features. Spot elevations shall be provided at points on the structure that have the greatest difference between ground surface and the highest portion of the structure above. This requirement is in addition to the standard requirement of detailed elevations and cross-sections and the topography of the project site which clearly depict the total height of the proposed structure. Maximum height is 28 feet.

7. Details showing compliance with fire department requirements.

8. *Submit a landscape plan showing the planting of drought-resistant landscaping. Landscaping plan shall be submitted to County Geologist for review and approval. (Added by the Planning Commission on March 24, 2010).*

9. *Submit an Engineered Drainage Plan showing all existing and proposed drainage improvements. Drainage Plan to be reviewed and approved by the Department of Public Works, Stormwater Section. (Added by the Planning Commission on March 24, 2010).*

B. Submit four copies of the approved Discretionary Permit with the Conditions of Approval attached. The Conditions of Approval shall be recorded prior to submittal, if applicable.

C. Meet all requirements of and pay Zone 6 drainage fees to the County Department of Public Works, Stormwater Management. Drainage fees will be assessed on the net increase in impervious area.

D. Meet all requirements of and pay fees to the County Department of Public Works, Sanitation Section.

E. Meet all requirements and pay any applicable plan check fee of the Aptos/La Selva Fire Protection District.

F. Submit 3 copies of a soils report prepared and stamped by a licensed Geotechnical Engineer.

G. Submit 3 copies of the Engineering Geology Report prepared and stamped by a licensed Engineering Geologist.

H. Submit a Tree Protection and Tree Preservation plan that incorporates all recommendations made by the project arborist in her letter of November 8, 2007 (Exhibit L).

I. Submit a plan review letter from a certified arborist, which states that the final building and grading plans conform to the recommendations made in the assessment prepared for the site. Construction must adhere to the following mitigation measures.

J. Submit plan review letters from the project engineering geologist and geotechnical engineer stating that the final grading, drainage and erosion control plans are in conformance with the recommendations made in the approved technical reports prepared for the project.

K. Pay the current fees for Parks and Child Care mitigation for 3 bedroom(s). Currently, these fees are, respectively, $1,000 and $109 per bedroom.

L. Pay the current fees for Roadside and Transportation improvements for *one dwelling unit*. Currently, these fees are, respectively, $2,740 and $2,740 per unit. *(Revised by the Zoning Administrator on 1/15/10).*

M. Provide required off-street parking for 3 cars. Parking spaces must be 8.5 feet wide by 18 feet long and must be located entirely outside vehicular rights-of way. Parking must be clearly designated on the plot plan.

N. Submit a written statement signed by an authorized representative of the school district in which the project is located confirming payment in full of all applicable developer fees and other requirements lawfully imposed by the school district.

O. Complete and record a Declaration of Restriction to maintain a non-habitable basement. **You may not alter the wording of this declaration.** Follow the instructions to record and return the form to the Planning Department.

P. Complete and record a Declaration of Geologic Hazard. **You may not alter the wording of this declaration.** Follow the instructions to record and return the form to the Planning Department.

III. All construction shall be performed according to the approved plans for the Building Permit. Prior to final building inspection, the applicant/owner must meet the following conditions:

A. All site improvements shown on the final approved Building Permit plans shall be installed.

B. All inspections required by the building permit shall be completed to the satisfaction of the County Building Official.

C. The project must comply with all recommendations of the approved soils reports.

D. Pursuant to Sections 16.40.040 and 16.42.100 of the County Code, if at any time during site preparation, excavation, or other ground disturbance associated with this development, any artifact or other evidence of an historic archaeological resource or a Native American cultural site is discovered, the responsible persons shall immediately cease and desist from all further site excavation and notify the Sheriff-Coroner if the discovery contains human remains, or the Planning Director if the discovery contains no human remains. The procedures established in Sections 16.40.040 and 16.42.100, shall be observed.

IV. Operational Conditions

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

B. Parking during construction shall not obstruct traffic along Oakhill Road. The road shall be kept free of dirt and debris during construction. (Revised by Zoning Administrator on 1/15/10)

C. *Limit all construction to the time between 8:00 am and 6:00 pm weekdays, excluding holidays. Hours may be revised or extended if needed to complete grading in advance of adverse weather conditions. Notice must be provided to neighbors prior to any change in construction hours (Revised by Zoning Administrator on 1/15/10).*

V. As a condition of this development approval, the holder of this development approval ("Development Approval Holder"), is required to defend, indemnify, and hold harmless the COUNTY, its officers, employees, and agents, from and against any claim (including attorneys' fees), against the COUNTY, it officers, employees, and agents to attack, set aside, void, or annul this development approval of the COUNTY or any subsequent amendment of this development approval which is requested by the Development Approval Holder.

A. COUNTY shall promptly notify the Development Approval Holder of any claim, action, or proceeding against which the COUNTY seeks to be defended, indemnified, or held harmless. COUNTY shall cooperate fully in such defense. If COUNTY fails to notify the Development Approval Holder within sixty (60) days of any such claim, action, or proceeding, or fails to cooperate fully in the defense thereof, the Development Approval Holder shall not thereafter be responsible to defend, indemnify, or hold harmless the COUNTY if such failure to notify or cooperate was significantly prejudicial to the Development Approval Holder.

B. Nothing contained herein shall prohibit the COUNTY from participating in the defense of any claim, action, or proceeding if both of the following occur:

1. COUNTY bears its own attorney's fees and costs; and

2. COUNTY defends the action in good faith.

C. Settlement. The Development Approval Holder shall not be required to pay or perform any settlement unless such Development Approval Holder has approved the settlement. When representing the County, the Development Approval Holder shall not enter into any stipulation or settlement modifying or affecting the interpretation or validity of any of the terms or conditions of the development approval without the prior written consent of the County.

D. Successors Bound. "Development Approval Holder" shall include the applicant and the successor'(s) in interest, transferee(s), and assign(s) of the applicant.

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

Approval Date: _____

Effective Date: _____

Expiration Date: _____

Paia Levine Principal Planner	Robin Bolster-Grant Project Planner

---

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

ATTACHMENT 1C

Corrected Agenda Package Presented to the Board of Supervisors (on file with the Clerk)

Application Number 09-0139
Board of Supervisors Hearing
06/15/10

ATTACHMENT 1C

RECEIVED
JUN 21 2010
CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

Corrected Agenda Package Presented to the Board of Supervisors

(At 5/18/10 Public Hearing)

Application Number 09-0139
Board of Supervisors Hearing
06/15/10

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ATTACHMENT 1C

Corrected Agenda Package Presented to board of Supervisors
5/18/10 Hearing

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COUNTY OF SANTA CRUZ

PLANNING DEPARTMENT

701 OCEAN STREET - 4TH FLOOR, SANTA CRUZ, CA 95060
(831) 454-2580 FAX: (831) 454-2131 TDD: (831) 454-2123

KATHLEEN MOLLOY PREVISICH, PLANNING DIRECTOR

May 4, 2010

AGENDA DATE: May 18, 2010

Board of Supervisors
County of Santa Cruz
701 Ocean Street
Santa Cruz, CA 95060

APPEAL OF PLANNING COMMISSION APPROVAL OF APPLICATION 09-0139

Members of the Board:

On January 15, 2010, the Zoning Administrator approved Coastal Development Permit 09-0139 to construct a two-story, 2,544 square foot single-family dwelling on a vacant lot overlooking Las Olas Drive. The approval was appealed to the Planning Commission and on March 24, 2010, the Commission upheld the approval and denied the appeal. On April 2, 2010, the law firm of Wittwer & Parkin, LLP appealed the Planning Commission approval to your Board on behalf of a neighbor (Letter of Appeal, Attachment 1). Pursuant to County Code 18.10.340, your Board must determine whether to accept jurisdiction of this appeal.

BACKGROUND

The subject property is a vacant parcel, approximately 8,280 square feet in gross site area and 5,100 square feet in net site area after the deduction of the coastal bluff, located on the bluff side of Oakhill Drive. On September 17, 2007, two years before the current application was submitted, the property owner applied for Coastal Development Permit 07-0548 to construct a single-family dwelling. The proposal included substantial grading within the 100-year geologic bluff setback. The 2007 application was denied by the Zoning Administrator due to the extent and location of the proposed grading.

Following a substantial re-design of the project, the current application was submitted on April 16, 2009. The proposal eliminated the grading within the bluff setback, with the exception of 16 cubic yards of earthwork that will re-direct runoff away from the face of the bluff. The revised project was approved by the Zoning Administrator on January 15, 2010. On January 28, 2010, an appeal of the Zoning Administrator's approval was filed by on behalf of the adjacent neighbor. The appeal was based on four issues: – that the subject parcel is a substandard illegally created lot, that the proposed dwelling exceeds County site standards for height and story limit, that the hazards posed by the coastal bluff were not adequately analyzed, and that the project should not have been certified as exempt from further environmental review under CEQA.

The appeal was heard by the Planning Commission and on March 24, 2010 the Zoning Administrator's approval was upheld and the appeal denied. (The Planning Commission

minutes are provided in Attachment 2 and the Planning Department letter to the Planning Commission in Attachment 4)

The Clerk of the Board received the appeal of the Planning Commission decision on April 2, 2010 (Attachment 1).

PROJECT DESCRIPTION

The property owner seeks to construct a 2-story single-family dwelling of 2,544 square feet with an elevator, three foot six inch retaining wall within the front setback, and to grade about 160 cubic yards, including 16 cubic yards of excavation within the 100-year coastal bluff setback. The project is located on the south side of Oakhill Drive, within the Aptos Planning Area.

The earthwork proposed within the geologic setback is designed to provide positive drainage away from the coastal bluff and is therefore not defined as grading according to Chapter 16.10 (Geologic Hazards Ordinance) of the County Code and does not require a Geologic Exception per Section 16.10.100.

FINDINGS FOR TAKING JURISDICTION

County Code Section 18.10.340(c) establishes the findings that must be made in order for your Board to take jurisdiction of an appeal from the Planning Commission. The specific findings for the Board to take jurisdiction are limited to the following:

1. There was an error or abuse of discretion on the part of the Planning Commission, Zoning Administrator, or other officer;

2. There was a lack of a fair and impartial hearing;

3. The decision appealed from is not supported by the facts presented and considered at the time the decision appealed from was made;

4. There is significant new evidence relevant to the decision which could not have been presented at the time the decision appealed from was made; or

5. There is either error, abuse of discretion, or some other factor which renders the act done or determination made unjustified or inappropriate to the extent that a further hearing before the Board is necessary.

If the Board finds that one or more of these findings apply, the Board may either grant a review limited to the record of the entire proceedings held before the Commission, zoning Administrator, or other officer, or in the alternate, may elect to conduct the proceedings as if no other hearing had been held and re-hear the matter de novo.

In appropriate circumstances, without taking jurisdiction for further review, the Board may, by a majority vote, refer the matter back to the Planning Commission for reconsideration of new evidence or other considerations.

BASIS OF THE APPEAL AND STAFF RESPONSE

The appellants, in their letter of April 2, 2010 (Attachment 1), assert that the Planning Commission committed "numerous errors" in denying the Appellants' appeal and approving Application 09-0139 and that these render the Planning Commission's determination to approve the project unjustified and inappropriate. The letter presents essentially the same four issues first raised during the Zoning Administrator's Hearing and subsequently raised in their appeal to the Planning Commission. The issues are analyzed separately below:

The Project Violates the County's Standards for Height and Number of Stories

The appellant maintains that the proposed dwelling exceeds the 28-foot height limit, however ample evidence has been presented to support the fact that all elements of the house meet the 28-foot height limit. During the Planning Commission Hearing explanations were presented by both the staff planner and project architect, detailing the challenging topography of the site and explaining how the height of the building is less than or equal to 28 feet above grade at all points. The architect stated that an unusually large number of cross-sections through the building were taken in order to establish the 28-foot level across the front of the dwelling. There was also an extensive discussion of how building height is measured.

Similarly, evidence was presented at two public hearings to demonstrate that the proposed dwelling meets the Zoning Ordinance definition of a two-story house. The appellant contends that the storage and elevator lobby rooms do not meet the definition of a basement and that the project sets a "dangerous precedent" in allowing a house to be "stepped up" a slope to avoid stacking three levels on top of one another. As discussed during the Planning Commission hearing, the practice of stepping a house up steep slopes has extensive precedent in Santa Cruz County and has long been viewed as environmentally superior to the extensive grading that would otherwise be required in order to construct a similarly sized house on a slope. As long as no more than two levels of a dwelling are stacked directly on top of one another, the dwelling has historically been determined to be conforming to the two-story limit. This is in accordance with County Code Section 13.10.700-S ("S" definitions). It was also pointed out that the front elevation presented in the project plans does not represent the view from the roadway, which is located 8-10 feet below the elevation of the first floor of the house and that the angle created by this perspective mitigates the apparent bulk and mass of the stepped back components.

It is important to reiterate a point raised before the Planning Commissioners, which is that the elevator lobby/storage room, to which the appellants object, does not add to the mass or bulk of the visible structure in that the room is entirely subterranean.

The Planning Commission posed numerous questions about the County Code definition of a basement and a lengthy discussion ensued concerning the rationale for including the elevator/storage room in that definition. The definition is as follows:

> Basement. For planning and zoning purposes, a basement is the space below the bottom of the floor framing (joists or girders that directly support the floor sheathing) and the basement floor.
>
> To qualify as a basement more than 50% of the basement exterior perimeter wall area must be below grade and no more than 20% of the perimeter exterior wall may exceed 5 feet - 6 inches above the exterior grade;
>
> If any part of a basement is 7 feet 6 inches or higher, then all areas greater than 5 feet 0 inches in height shall count as area for F.A.R. calculations;
>
> *Basements are not considered as a story.* (italics added)

The elevator lobby/storage room does conform to this definition and is therefore not counted as a story. Nothing in the definition precludes defining two separate rooms, located at the same elevation, as "basement" and "non-basement." Finally, while the appellants assert that the elevator/storage room cannot be defined as a basement because it lacks the requisite number of exterior walls, there is no requirement in the County Code that a basement have four exterior walls, and on sloping sites such as this, a basement may only have three exterior walls.

The Recommended Geologic Setback to the Coastal Bluff is Inadequate

The appellant takes issue with the 100-year bluff setback of 33 feet, which was recommended by the project geologist, Rick Parks, and reviewed and approved by the County Geologist. A geologist hired by the appellant (Hydro-Geo) prepared a letter (Exhibit 1C of Attachment 4) stating the opinion that the setback should be at least 40 feet. Both the project geologist and County Geologist have reviewed the letter prepared by Hydro-Geo and find that the alternate setback is not substantiated by the evidence found on site. The appellant's geologist did not perform any trenching or other site-specific investigation, relying instead on aerial photography and historical geologic reports. Many of the statements contained in the letter presented by Hydro-Geo do not apply to the current project at all. For instance, the letter references a pin pile wall that has never been a part of any proposal for the subject site.

The project geologist, who has 21 years of experience working in Santa Cruz County, presented information to the Planning Commission that refuted the assertions made by the appellant's geologic consultant. The project geologist further explained that the proposed earthwork within the geologic setback will improve the site drainage and will not allow surface water to destabilize the bluff. The appellant includes erroneous information about the site soils, stating that the surface layers are less pervious and shouldn't be removed. In fact, as the project geologist stated during the Planning Commission hearing and as shown in boring logs for the site and presented to the Commissioners, the top 4 ½ feet of soil at the site is characterized by material of low permeability. Mr. Parks also answered questions concerning the appellant's allegation that the site is particularly susceptible to hazards due to earthquake. The project geologist was working in Santa Cruz at the time of the 1989 Loma Prieta earthquake and stated that the recommended 33-foot bluff setback for the subject property was based, in part, on the observations made along the bluff in 19[illegible] distance accounts for expected periodic failures at the bluff face.

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The project geotechnical engineer Mike Van horn, who has 20 years of experience in the county, made a separate presentation to the Planning commission. Mr. Van Horn discussed

the proposed grading and drainage on the site, verifying that the small amount of earthwork proposed within the geologic setback will improve the drainage at the site rather than present any potential hazard.

The CEQA Exemption Was Not Warranted

The appellant asserts that the project should not have been granted a Class 3 Categorical Exemption from CEQA because the project may impact an environmental resource of hazardous concern, namely the coastal bluff located to the south of the proposed development. This argument is based on the proximity of the proposed dwelling to the coastal bluff and, the appellants assert, is supported by the county requirement that a Declaration of Geologic Hazard be recorded on the property.

With respect to the subject parcel, the applicant has provided all required technical reports and the development conforms to all recommendations made by the project geologist and geotechnical engineer regarding safe setbacks, proper design of drainage systems and building and foundation design. The reports have been reviewed and approved by the County Geologist and Senior Civil Engineer and discussed thoroughly during the March Planning Commission hearing. There is not a reasonable possibility that the proposed single-family dwelling, as submitted and conditioned, will have a significant effect on the geologic hazard that exists on the parcel. Therefore, the project is eligible for a Class 3 Exemption from further environmental review under CEQA.

The purpose of requiring a Declaration of Geologic Hazard is to assure that potential buyers of property located in areas of special flood hazard, landslide or other geologic hazard are made aware that the *property* has limitations associated with those hazard areas. A Declaration of Geologic Hazard does not state or imply that a specific building site will be impacted, or that the construction of the building will change the type or degree of hazard or risk.

Development that adheres to the provisions of the Geologic Hazards Ordinance, including the required submittal and review of technical reports, conformance with building setbacks, elevation and/or floodproofing and other measures, minimizes potential impacts from natural physical hazards. While portions of the parcel, therefore, may be subject to hazards, development that conforms to Chapter 16.10 is not expected to impact or be impacted by such hazards.

The Subject Property is Not a Legal, Buildable Lot

The parcel received an Unconditional Certificate of Compliance on June 10, 2003. The approval of the Certificate was not challenged during the appeal period, and the legality of the subject lot has not been revisited as a part of the current development application. It should be noted that on April 14, 2009, the appellant filed a lawsuit challenging the legality of the Unconditional Certificate of Compliance. The lawsuit has not yet been resolved, and this issue was not addressed during the Planning Commission hearing.

Conclusion

Staff believes that the Planning Commission's findings for approval are supported by the facts presented and considered at the public hearing, and that no documentation has been presented that indicates error, abuse of discretion or some other factor that renders the decision of the Planning Commission unjustified, or inappropriate to the extent that further review would be warranted. The Planning Commission heard nearly two hours of questions and answers, with testimony presented by project proponents, technical consultants, and those opposed to the project.

The evidence before the Commission included the staff report with supporting documents (Attachment 3). The technical information indicates support for the proposed design by the County Geologist, project geologist and project geotechnical engineer. The hearing was impartial and no new evidence has come to light since the Planning Commission took its action.

In addition, the Planning Commissioners conducted a through review and staff sees no benefit in remanding the matter back to the Commission for further consideration.

There are several options available to your Board with respect to the appeal now before you. Your Board may make one or more of the five required findings, take jurisdiction for further review, and direct that a noticed public hearing be scheduled with 30 days; or decline to take jurisdiction and allow the Planning Commission's approval to stand; or remand the matter back to the Planning Commission for further consideration with specific direction.

Given the lack of circumstances that would trigger the taking of jurisdiction as given in 18.10.340, it is RECOMMENDED that your Board decline to take jurisdiction of this matter.

Sincerely,

Kathy M Previsich

Kathy M. Previsich
Planning Director

RECOMMENDED:

SUSAN A. MAURIELLO
County Administrative Officer

Attachments:

1. Letter of appeal to the Board of Supervisors, dated April 2, 2010.
2. Planning Commission Minutes from the March 24, 2010 hearing.
3. Revised Conditions of Approval, per Planning Commission hearing March 24, 2010
4. Letter to the Planning Commission hearing, dated February 12, 2010 (on file with Clerk)
5. Location Map
6. Project Plans

KMP:PL:RBG\G:\Board Letters\Pending\

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ATTACHMENT 1

Jonathan Wittwer
William P. Parkin
Ryan D. Moroney

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OF COUNSEL
Gary A. Patton

April 2, 2010

HAND DELIVERED

Board of Supervisors
County of Santa Cruz
701 Ocean Street, 5th Floor
Santa Cruz, CA 95060

Re: Appeal of Planning Commission Split (3-2) Decision on March 24, 2010
Development Permit Application 09-0139
APN: 038-151-89
Owner: Brian Arthur

Dear Board of Supervisors:

This letter serves as a formal appeal, by Patrick and Laura Murphy, of the above-referenced Planning Commission decision, to the County of Santa Cruz Board of Supervisors.

This office represents the Murphy's with respect to the above referenced Planning Commission's 3-2 decision on appeal of Application 09-0139. Our clients oppose the Project on four grounds. *First*, the proposed residence exceeds the County's standards for height and number of stories. *Second*, due to geotechnical hazards identified by experts and the subject property's long history of landslides, a greater setback from the bluff is necessary. *Third*, these hazardous conditions and other unusual circumstances associated with the subject property/project require environmental review under the California Environmental Quality Act (CEQA–Public Resources Code § 21000, *et seq.*) And *fourth*, without the required Coastal Development Permit (CDP), the subject property is not a legal, buildable lot. We further believe that the application should be denied based, *inter alia*, on the rationale provided in the Staff Report for the prior project proposal (07-0548), attached hereto as Exhibit A and hereby incorporated by reference. Finally, we note that all of the permits requested are ***discretionary***, and there is no automatic "right" to the grant of the permits sought. We therefore strongly urge the Board to grant this appeal and to DENY Application 09-0139.

APR 2 PM 2 [illegible]

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County Code Section 18.10.340 sets for the grounds for the Board of Supervisors to take jurisdiction of appeals; including: "that there was an error or abuse of discretion on the part of the Commission, Zoning Administrator, or other officer..." or "some other factor which renders the act done or determination made unjustified or inappropriate to the extent that a further hearing before the Board is necessary." As set forth in more detail below, the Planning Commission committed numerous errors in denying the Appellants appeal and granting Application 09-0139. Additionally, Appellants believe there are other factors at issue in this case which render the approval of said application unjustified and inappropriate. Appellants therefore respectfully request that the Board to take jurisdiction of this appeal.

The Project violates the County's standards for Height and Number of Stories

The Project is limited to 28 feet per the County Code. The Staff Report to the Zoning Administrator acknowledges this height limitation. However, a dormer in the front of the house slightly exceeds this height limitation. The Staff stated to the Planning Commission that the height will be verified in the field when it is being built. However, at that time, it is usually too late to stop the construction of the home. Thus, the home's height should be verified in this process, not after the fact. Indeed, it was clear from the Planning Commission proceedings that no one is exactly certain that the building will be under 28 feet in height.

More importantly, the Project violates the zoning standards for the number of stories permitted. The Zoning Administrator stated that while the house will indeed look like it is three stories, it is not because the back end of the garage has an elevator lobby and storage area that is ***interiorly*** partitioned off from the rest of the first story garage. Thus, Staff's position is that this back portion of the garage does not count as a story. This analysis ignores a plain reading of the County Code, and also sets a terrible precedent.

(1) The rear portion of the garage does not meet the Code definition of a "basement"

Under County Code § 17.10.700S, a "First Story" is "[t]he lowest story in a building which qualifies as a story... ." In this case, the lowest story here is the garage, and it is admitted that it counts as a story. However, the Applicant and Staff have asserted that the rear portion of the garage (over which two additional stories are build) is somehow not part of the first story because it is a "basement." This conclusion directly conflicts with the County Code definition of "basement" which states that "[t]o qualify as a basement more than 50% of the basement ***exterior perimeter wall*** area must be below grade and no more than 20% of the perimeter exterior wall

may exceed 5 feet - 6 inches above the exterior grade." In this case, it is undisputed that the garage floor exterior perimeter wall is not more than 50% below grade - in fact nearly all of it is above grade.

The Applicant's and Staff's argument is based on the fact that the plans call for an ***interior*** partition of the garage, so that the front portion of the first story can be considered the garage and the back portion of the story (of which is 50% apparently is below grade) can be considered the basement. Under this rationale, Staff therefore need only count the perimeter of this rear ***interior*** partition in order to determine what percentage is sub-grade. However, the code clearly requires that the calculation be based on the ***exterior perimeter walls***. The interior partition is thus totally irrelevant to the basement calculation under a plain reading of the Code.

At the Planning Commission meeting, Staff maintained that the basement in the Applicant's plans met the code requirements based on a recent Staff "policy interpretation" of July 2009 of the Code's "basement" definition. This internal policy determination, which was never approved by the Board, allows the perimeter calculation to be based on a measurement of "interior" walls. This policy interpretation is contrary to the zoning ordinance approved by the Board of Supervisors. (This policy interpretation is provided for the Board's convenience as Exhibit B attached hereto.) **An "exterior perimeter wall" cannot be reasonably interpreted to include an "interior wall".** Indeed, Staff's strained reading of the Code not only conflicts with its plain meaning, but also its intent.[1]

(2) The Applicant's own plans identify the garage as a separate story

If the garage is the "first story" under the code definition (i.e. "the lowest story in a building that qualifies as a story"), then what else could the next story possibly be considered but the second story? Indeed, the second story's baseline elevation is higher than the garage's ceiling. Even the Applicant's plans identify three stories: an "upper floor", "lower floor" and "garage floor plan". *See* Staff Report Exhibit 1D pp. 2-3 (attached hereto as Exhibit C For your convenience). Moreover, the Staff presentation to the Planning Commission shows three stories with two of them being labeled "First Story." (*See*, Exhibit D attached hereto for your convenience). It is axiomatic that a home cannot have two "First" stories. Moreover, the third story is actually cantilevered over the garage, which is admitted to be a story. To say that the home is not a three story home when the third story is actually cantilevered out over the first story labeled a garage is incomprehensible.

[1] As previously mentioned, even the Zoning Administrator admitted at the hearing that the house will *look* like a three-story house.

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(3) Staff's "policy interpretation" sets a dangerous precedent by allowing an Applicant to exceed the 2-story height limit by "stepping" up a steep slope

The Board should be wary of the dangerous precedent Staff's analysis and conclusions would set for future projects. Indeed, under the rationale used by Staff, an applicant could basically "step" up a steep slope with story after story (with small basements between each). In other words, instead of stopping at three stories as this Applicant has, a future applicant might use this "policy interpretation" to argue for four or even five stories if the slope permitted.

At the Planning Commission hearing, Staff and the applicant both asserted that this "policy interpretation" was "smart planning" because it avoided the need to grade into a slope. While superficially appealing, this argument ignores the fact that nothing prevents an applicant from stepping up a slope as long as the home does not exceed two stories. Essentially, Staff's argument gives special treatment to landowners with sloping lots and allows them to build three story homes, something other landowners are not entitled to do.

In sum, the proposed Project should not be approved because it is in fact three stories, and out of character with the surrounding neighborhood.

<u>The Project requires a greater set-back from the bluff due to substantial geological hazards and the threat to neighboring properties</u>

It is obvious that any building and development on this parcel must be closely conditioned to ensure the public health, safety, and welfare. The physical stability of the site and adjacent properties should be of paramount concern, particularly since geologic failures on the property could have such adverse impacts on other properties nearby.

The County Geologic Hazard ordinance requires a coastal bluff setback which the County determines will provide a stable site for 100 years. In this case, it has been determined by the Applicant's expert that the setback requirement is a minimum of 33 feet. However, our geotechnical consultant has indicated that the 100 year set back should be at least 40 feet or more given site specific evidence. *See*, Exhibit E, *Preliminary Geologic Assessment*, prepared by Hydro-Geo Consultants, Inc, attached hereto and incorporated by reference. This evidence was submitted to the Zoning Administrator and the Planning Commission.

In any case, the County Code does not allow grading within the coastal bluff setback,

unless an exception is granted and there can be no legitimate reason for any grant of exception in this case.[2] According to the Staff Report, the Applicant proposes to perform grading in the 100 year setback, but then concludes that no exception is needed because it is minor leveling that will be done by hand. While the grading has been reduced since the proposal that was before the Zoning Administrator on January 16, 2009, the proposed contouring within the bluff setback is still problematic and consists of more than minor leveling since it will be up to a foot deep throughout the setback area. Even if the proposed grading was excepted, **the proposed grading and drainage "improvements" (i.e. grading) may allow surface water to seep more rapidly into the soil and contribute to the destabilization of the bluff by removing less pervious surface soils.** *See*, Exhibit E. Moreover, the fact remains that a residential structure can be built on the property without the need for any grading. All water currently flows towards the street from the bluff's edge because the current grade of the property is away from the bluff's edge. Thus, there is no reason to allow the Applicant to perform <u>any</u> grading, even of a minor nature, within the 100 year setback.

Moreover, the Project site is also highly prone to earthquake hazards. The Loma Prieta Earthquake triggered significant landslides along the entire face of the bluff along Seacliff State Beach and Las Olas Drive with head scarps 20 to 30 feet high and tension cracks that cut through several building foundations at the top of the cliff. *See*, Exhibit E. *See, also*, Exhibit F, *California Geology April Edition*,[3] including Photos 4 and 6. And, pictures taken on or around December 21, 2009, below the proposed home and attached hereto as Exhibit G, show failure at the toe of the bluff at Las Olas Drive. Also, attached as Exhibit H is a photo of the home next door to the proposed home (i.e., the home that crosses the property boundary and is part of the property from which the project site was split) sitting precariously close to the bluff's edge. Any compromise of the bluff from the proposed home will only exacerbate the current condition of the area.

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[2] It should be noted that while our geotechnical consultant recommended some mitigation measures, such as a "pin pile" retaining structure, to prevent bluff failure, we believe many of these mitigations may be illegal under the County Code. The Geotechnical consultant is not a planner or lawyer. However, the opinion is being provided as further evidence that building a residence on this site is hazardous. Moreover, the opinion reiterated that an exception to the geologic setback should not be granted.

[3] *Coastal Landslides caused by the October 17, 1989 Earthquake*, Plant & Griggs, April 1990 California Geology, Department of Earth Sciences UCSC.

Due to the County identified geological hazards associated with the property, the Project is not exempt from Environmental Review under CEQA

The Staff Report asserts that the proposed Project is exempt from environmental review based on CEQA's Class 3 Categorical Exemption for small construction or development projects pursuant to CEQA Guidelines § 15303. However, Class 3 Categorical Exemptions are qualified by the requirement that the project location be considered when determining whether this exemption applies, particularly where the project may impact an environmental resource of ***hazardous*** concern. CEQA Guidelines § 15300.2(a).[4] *See, also, Salmon Protection & Watershed Network v. County of Marin* (2004) 125 Cal. App. 4th 1098. In considering whether the Class 3 Exemption applies, the Board should keep in mind that CEQA Guidelines § 15003(f) provides that "**CEQA was intended to be interpreted in such a manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language.**" *See, also, Friends of Mammoth v. Board of Supervisors* (1972) 8 Cal. 3d 247.

The County Code contains an entire section, § 16.10, regulating development within geological ***hazard*** areas, including on coastal bluffs.[5] In fact, Section 16.10.070(h) imposes specific restrictions on development on coastal bluffs, including the requirement that the developer record a Declaration of Geological Hazards with the County Recorder. Likewise, the County General Plan and LCP contains an entire subsection setting forth policies and programs to deal with the hazards of development on Coastal Bluffs. *See*, County General Plan sections 6.2.10 - 6.2.21.

Here, in accordance with County Code requirements for coastal bluffs, the County has required the recordation of a Declaration Regarding the Issuance of a Development Permit in an Area Subject to Geological Hazards as a condition of issuing a development permit for the subject parcel. See, Exhibit I. **The County requirement that a declaration of geological hazards be recorded confirms that that the proposed project does not qualify for the**

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[4] (a) Location. Classes 3, 4, 5, 6, and 11 are qualified by consideration of where the project is to be located--a project that is ordinarily insignificant in its impact on the environment may in a particularly sensitive environment be significant. Therefore, these classes are considered to apply in all instances, except where the project may impact on an environmental resource of hazardous or critical concern where designated, precisely mapped, and officially adopted pursuant to law by federal, state, or local agencies.

[5] A coastal bluff is defined as: "A bank or cliff along the coast subject to coastal erosion processes. Coastal bluff refers to the top edge, face, and base of the subject bluff." County Code § 16.10.040(j) (underline added).

claimed exemption due to potential impacts of hazardous concern.[6] In this instance, allowing development at this site will have the affect of attracting people to this location and exposing them to the hazard.[7]

Likewise, a categorical exemption may not be used where there is a "reasonable possibility" that the proposed activity will have a significant effect on the environment based on unusual circumstances, such as those that exist here. CEQA Guidelines § 15300.2(c).[8] The Applicant's expert contends that a 33- foot setback is sufficient whereas our expert maintains a 40-foot set-back is required. The Appellants contend that environmental review is necessary because of the disputed geologic issues present.

In sum, the particularly sensitive location of the proposed Project in a geologic hazard zone, **as identified by the County**, requires that it be subject to environmental review under CEQA. Additionally, the unique circumstances presented by these geotechnical and other issues, likewise excepts the Project from a Class 3 Categorical Exemption. We have presented evidence that the geologic setback was not properly determined and that there are hazards associated with building a structure on this site. Under these circumstances, CEQA mandates that governmental agencies and the public generally be made aware of the environmental impact of a proposed project. Seem CEQA Guideline §15003(c); *No Oil, Inc. v. City of Los Angeles* (1974) 13 C. 3d 68.

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[6] As one of the Planning Commissioners pointed out, it is difficult to reconcile the fact that the County on the one hand has required a declaration of geological ***hazard*** be recorded, while on the other hand has relied on an CEQA exemption which can not apply to projects that may have an impact on an environmental resource of ***hazardous*** or critical concern where designated, precisely mapped, and officially adopted pursuant to law by federal, state, or local agencies.

[7] *See*, CEQA Guideline 15226.2 "The EIR shall also analyze any significant environmental effects the project might cause by bringing development and people into the area affected. **For example, an EIR on a subdivision astride an active fault line should identify as a significant effect the seismic hazard to future occupants of the subdivision. The subdivision would have the effect of attracting people to the location and exposing them to the hazards found there."**

[8] (c) Significant Effect. A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.

The subject property is not a legal, buildable lot because no CDP was obtained as required by State law and the County Code

The "history" section of the Staff Report before the Zoning Administrator indicated that Assessor's Parcel 038-151-89 was recognized by the County of Santa Cruz as a separate parcel in 2003 through the granting of a Certificate of Compliance (COC). However, that COC was granted unlawfully, without public notice or hearing, without a Coastal Development Permit (CDP), and without consulting the Coastal Commission. And, despite the County's description of the Certificate of Compliance as being "Unconditional," it was in fact a "Conditional" Certificate of Compliance.[9] Therefore, the Project cannot be approved or proceed without a CDP authorizing legalization of the subject property as a separate legal parcel for planning and land use purposes.

Thank you for your consideration.

Very truly yours,
WITTWER & PARKIN, LLP

William P. Parkin

Encl.

[9] Whether the subject COC was conditional or unconditional is one of the matters at issue in the current lawsuit *Murphy v. County et al.* (Santa Cruz Superior Court Case No. CV163497). A copy of the First Amended Petition and Complaint is attached hereto as Exhibit J. In that lawsuit, the Murphy's contend, *inter alia*, that ***the subject parcel requires a CDP authorizing the legality of the parcel, and no such CDP has been applied for or obtained.*** Thus, without the required CDP, the subject parcel is neither legal nor buildable. The Murphy's lawsuit also contends that the County's Planning Director improperly declined their request to consult with the Coastal Commission's Executive Director on that issue under California Code of Regulations Section 13569. Once such a request is made, Section 13569 requires the Planning Director to consult with the Executive Director – ***the Planning Director had no discretion to decline the request.*** While we would agree that these issues are properly before the judiciary, we would also submit that these are important underlying facts in the history of this and prior development applications for this parcel, and thus something the Board should be aware of when ultimately making its decision.

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cc: Robin Bolster-Grant, Project Planner (via E-mail w/o attachments)
Chris Cheleden, Esq., Assistant County Counsel (via E-mail w/o attachments)
Ed Newman, Esq., Attorney for Applicants (via E-mail w/o attachments)
Dan Carl, District Manager, Coastal Commission (via Hand Delivery w/o attachments)
Client

Staff Report to the Zoning Administrator

Application Number: 07-0548

Applicant: Tracy Johnson
Owner: Brian Arthur
APN: 038-151-89

Agenda Date: January 16, 2009
Agenda Item #: 7.
Time: After 10:00 a.m.

Project Description: Proposal to construct a 3,083 square foot two-story single family dwelling with an elevator, a four-foot retaining wall within the front yard setback, grade approximately 168 cubic yards, and approximately an additional 43 cubic yards within the 100-year geologic setback.

Location: Property located on the south side of Oak Hill Road (between 735 and 749 Oak Hill Road), approximately 380 feet west of the intersection with Seacliff Drive.

Supervisoral District: Second District (District Supervisor: Ellen Pirie)

Permits Required: Coastal Development Permit, Residential Development Permit for a retaining wall exceeding three (3) feet within the required front yard setback, Preliminary Grading Approval and an Exception to Chapter 16.10, the Geologic Hazard Ordinance.
Technical Reviews: Geologic and Geotechnical Reports

Staff Recommendation:

- Certification that the proposal is exempt from further Environmental Review under the California Environmental Quality Act.
- DENIAL of Application 07-0548, based on the attached findings.

Exhibits

A. Project plans
B. Findings
C. Conditions
D. Categorical Exemption (CEQA determination)
E. Assessor's parcel map
F. Zoning & General Plan map
G. Location Map
H. Printout, Discretionary application comments, dated 11/25/08
I. Urban Designer comments, dated September 10, 2008
J. Geotechnical Engineering Report review letter, dated 12/20/05
K. Excerpts of Conclusions and Recommendations from Geologic Investigation prepared by Rogers E. Johnson & Associates, dated 10/24/2005 (report on file)
L. Excerpts of Discussion, Conclusions and Recommendation from Geotechnical Investigation prepared

CCC Exhibit 7
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EXHIBIT A

by Haro, Kasunich & Associates, Inc., dated 11/2005 (report on file).

M. Letter of Request for an Exception by Rogers E. Johnson and Associates, dated 10/20/08

N. Project Geotechnical Engineer letter of recommendation for approval of exception to County Code Sections 16.10.070(h)1(ii) and 16.10.040(s), dated 10/22/08

O. Memo from County Geologist, dated 11/27/08

P. Evaluation of brick retaining wall letter, Mike Van Horn, dated 8/22/08

Q. Comments & Correspondence

Parcel Information

Parcel Size:	8,276 square feet
Existing Land Use - Parcel:	Vacant
Existing Land Use - Surrounding:	Single
Project Access:	Oak Hill Road
Planning Area:	Aptos
Land Use Designation:	R-UL (Urban Low Density Residential)
Zone District:	R-1-10 (Single family residential - 10,000 square feet per unit)
Coastal Zone:	x Inside __ Outside
Appealable to Calif. Coastal Comm.	x Yes __ No

Environmental Information

Geologic Hazards:	Coastal bluff, instability has been identified in the technical reports
Soils:	Soil 179 (Watsonville Loam)
Fire Hazard:	Not a mapped constraint
Slopes:	Coastal Bluff, over 70% slope at rear of property
Env. Sen. Habitat:	Not mapped/no physical evidence on site
Grading:	211 cubic yards
Tree Removal:	No trees proposed to be removed
Scenic:	Mapped resource
Drainage:	Proposed drainage adequate
Archeology:	Not mapped/no physical evidence on site

Services Information

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

History

The subject parcel (formerly APN 038-151-85) was determined to be a legal parcel and granted an Unconditional Certificate of Compliance under Permit 01-0068 on June 10, 2003. In March 2005, Coastal Development Permit 04-0531 permitted the demolition of an existing deck and elevator shaft attached to a single family dwelling on the adjacent parcel that encroached onto the subject parcel, a portion of this dwelling still encroaches. Building permit #140419 for the

demolition work was finaled on May 5, 2005.

Geologic and Geotechnical reports were reviewed and accepted by the County Geologist in December 2005 which established a coastal bluff setback and building envelope for a single family dwelling. On January 14, 2008 building permit #148760 was finaled, which allowed the demolition of an existing carport that had collapsed, as part of this permit no grading or removal of existing retaining walls was allowed.

The County Planning Department accepted an application for a Coastal Development Permit, Residential Development Permit for a retaining wall exceeding three (3) feet within the required front yard setback, Preliminary Grading Approval and an Exception to Chapter 16.10 Geologic Hazard Ordinance on September 17, 2007.

Project Setting

The property is located at the top of a coastal bluff on the south side of Oak Hill Road (between 735 and 749 Oak Hill Road), approximately 380 feet west of the intersection with Seacliff Drive. The south end of the parcel is the coastal bluff, immediately above Las Olas Drive. The coastal bluff is a slope in excess of 70 % grade. Three retaining walls of approximately four feet in height are located on the subject property, one of which goes under the neighboring structure at the point where the structure encroaches on the subject parcel. A letter from the structural engineer clarified that the retaining wall is not attached to the neighboring structure (Exhibit P). A 48" redwood tree is located within the northeastern most point of the property and will be retained. A line of mostly two story homes exist on either side of the vacant parcel along Oak Hill Road and a line of two story homes exists below the bluff across Las Olas Drive.

Zoning Consistency

The subject property is a 8,786 square foot lot, located in the R-1-10 (Single family residential - 10,000 square feet per unit) zone district, a designation which allows residential uses. The proposed Single Family Dwelling is a principal permitted use within the zone district.

	R-1-10 Standards	Proposed Residence
Front yard setback	20 feet	20 feet
Rear yard setback	15 feet	100+/ **
Side yard setback	5 feet and 5 feet*	5 feet and 5 feet
Building Height	28 feet	28 feet
Number of Stories	2	2
Lot Coverage	30%	22%
Floor Area Ratio	50 %	48%
Parking	3 bedrooms-3 spaces	3 spaces-two covered, one in driveway

* County Code 13.10.323 site standards allows for 5 and 5 foot side yard setbacks when the parcel width is less than 60 feet.

** 100-year geologic setback line is approximately 33. feet from the top of slope as established by Geologic and Geotechnical reports.

The proposed Single Family Dwelling is two stories, which are stepped up the slope from Oak Hill Road. The proposed garage qualifies as a story (County Code 13.10.700-S), as it does not meet the definition of a basement (County Code 13.10.700-B). A deck area was originally proposed in between the garage and the top floor, that would have qualified it as a three story home. A three-story home is not allowed within the urban services line without a variance, for which findings could not be made. The applicant revised the plans to include a sloping roof area in the portion between the top floor and the bottom floor.

Local Coastal Program Consistency

Land Use Designation

The General Plan/Local Coastal Program Land Use Designation of the parcel is R-UL (Urban Low Density Residential), implemented by the R-1-10 (10,000 square foot minimum-single family residence) zone district. The proposed single-family dwelling complies with the purposes of this Land Use Designation, as the primary use of the site will be residential.

Exception to Geologic Hazard Ordinance Required

The proposed single family dwelling is located at the top of a coastal bluff. Geologic and Geotechnical reports established a 100- year geologic setback line 33 feet landward of the edge of the bluff and set the building envelope as required by General Plan/LCP 6.2.12. The original geologic and geotechnical reports demonstrate that the building envelope would provide a stable site for 100-year lifetime (County Code 6.2.12). However, the project also includes grading within the 33 foot setback. The grading has not been fully evaluated and it may have adverse impacts on the stability of the coastal bluff (Exhibit O). Further, grading is not allowed within the setback from the coastal bluff and an exception to the Geologic Hazard Ordinance 16.10, would be required for the grading to be approved.

As part of the proposal, the applicant is seeking an exception (Exhibits M & N) to the Geologic Hazard Ordinance 16.10.070 Permit conditions (h) to allow grading within the 25-foot and 100 year setbacks to remove approximately 43 cubic yards of material. In order to grant an exception (County Code 16.10.100) each of four findings must be made. For supplemental information to the following discussion, see memo from County Geologist, Joe Hanna (Exhibit N).

The first finding requires that a hardship, as defined in Section 16.10.040(2j) exists. The definition of hardship is as follows:

Hardship. For the purposes of administering Section 16.10.100, means the exceptional hardship that would result from failure to grant the requested Exception. The specific hardship must be exceptional, unusual, and peculiar to the property involved. Economic or financial hardship alone is not exceptional. Inconvenience, aesthetic considerations, personal preferences, or the disapproval of neighbors also cannot qualify as exceptional hardship, as these problems can be resolved through means other than granting an Exception, even if those alternative means are more expensive, require a property owner to build elsewhere, or put the parcel to a different use than originally intended or proposed.

This finding cannot be made, in that the applicant does not demonstrate that a hardship as

defined in Section 16.10.040 (2j) will exist if the exception is not granted. Grading 3 to 5 feet of the bluff is not necessary to develop the parcel as the conclusions of the applicant's consulting geologist report indicate (Exhibit K, Rogers E. Johnson & Associates, 10/24/2005). Furthermore, coastal bluff retreat issues are common to hundreds of homes along the Santa Cruz coast and are not exceptional, unusual, and peculiar to this property.

The second finding is that the project is necessary to mitigate a threat to public health, safety, or welfare. The excavation of a few feet of the crest of the bluff will have little positive impact on the amount or rate of coastal bluff retreat and in fact may have unforeseen adverse affects on the stability of the bluff. An effective alternate solution would be to construct a retaining system with the capacity to stabilize the entire slope. The grading approach is therefore not necessary to mitigate the threat to public health and safety.

The third finding states that the request is for the smallest amount of variance from the provisions of this Chapter as possible. This finding cannot be made in that the applicant's consultants have not analyzed alternatives to their proposal. Most of the benefits of the grading can be accomplished with on site control drainage without the excavation within the 25 foot setback. In addition, if there is mitigation required beyond drainage control, a retaining wall is an option. Both drainage control and a retaining wall can be accomplished without an exception to Chapter 16.10.

The fourth and final finding states that adequate measures will be taken to ensure consistency with the purposes of this Chapter and the County General Plan. This finding cannot be made, in that the grading on the bluff is inconsistent with Section 6.2.11 and 6.2.12 of the General Plan, which specifies the setback from coastal bluffs and the requirement for full geologic investigation. It is also inconsistent with Section 8.6.6 and 5.10.3 of the General Plan, in that the grading will alter the bluff and increase the visibility of the home from the beach below.

In conclusion, the County Geologist states that excavating into the bluff as proposed will not substantially mitigate coastal bluff retreat and if fact may have an adverse effect. Secondly, alternative methods to control drainage have not been assessed. If mitigation of a geologic hazard is the goal then the applicant should consider options that do not require an exception to the code, such as a bluff top retaining wall. Retaining walls at the top of the bluff have a proven ability to control the retreat of the bluffs, such as the wall recently installed on the neighboring property at 745 Oak Hill.

Design Review

The proposal is located within the Coastal Zone and therefore must comply with County Code 13.20 and 13.11 design review standards. The Urban Designer evaluated the proposed single family dwelling and found that it does not comply with the requirements of the County Design Review Ordinance (Exhibit I). The home is not visually compatible with the existing character of the neighborhood in that the majority of the surrounding development is made of horizontal or vertical wood exteriors. This proposal uses primarily stucco with stone used at the lower area of the front facade. The large rounded window at the rear facade is out of character with the overall design of the residence, and it adds to the lack of compatibility with the neighboring residences as seen from the beach. In addition, the combination of the roof forms result in a structure that

does no have a unified scheme. There are large areas of the front facade that have no fenestration.

The proposal is also required to minimize site disturbance and retain the natural state of the bluff as required per County Code 13.20.130. The applicant is seeking an exception to the geologic ordinance to grade within the geologic setback, and therefore will not be maintaining the natural state of the bluff or minimizing grading. The proposed grading also increases the visual impact of the new development from the beach below, which is not consistent with General Plan/Local Coastal Policies 8.6.5 or 8.6.6, which require that development maintain a relationship with the natural environment and be low-profile, and that natural landforms such as bluffs be protected.

Residential Development Permit

The proposal also includes a retaining wall that will exceed the three-foot maximum within the required front yard setback and requires a Residential Development Permit. The proposed retaining wall will not affect sight distance for exiting the property, Oak Hill is a narrow paved road that serves three properties beyond this parcel.

The four foot retaining wall will be made of concrete that will be conditioned to be left unfinished and unpainted, or be stained/painted a muted natural earth tone. Retaining walls are often found in residential neighborhoods throughout Santa Cruz County and therefore it will not be out of character. The design of the retaining wall will not utilize an excessive quantity of materials or energy in its construction or maintenance, in that the retaining wall is a relatively insignificant structure that is accessory to the residential use allowed by R-1-10 (Single family residential - 10,000 square feet per unit) zone district on the property.

The design and location of the retaining wall will not adversely impact the available light or the movement of air to properties or improvements in the vicinity, in that the retaining wall shall not exceed the six foot height limit that would be allowed in other locations (not abutting a right-of-way) without a discretionary approval or a building permit. The location of the retaining wall on the property and the design does not contain any corners or pockets that would conceal persons with criminal intent.

Conclusion

As proposed, the project is not consistent with all applicable codes and policies of the Zoning Ordinance and General Plan/LCP with the exception of the Residential Development Permit for the four foot retaining wall within the front yard setback. Please see Exhibit "B" ("Findings") for a complete listing of findings and evidence related to the above discussion.

Staff Recommendation

- Certification that the proposal is exempt from further Environmental Review under the California Environmental Quality Act.

- DENIAL of Application Number **07-0548**, based on the attached findings.

Supplementary reports and information referred to in this report are on file and available for viewing at the Santa Cruz County Planning Department, and are hereby made a part of the administrative record for the proposed project.

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

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Coastal Development Permit Findings

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

This finding cannot be made, in that the development is not consistent with the design criteria. Regarding the design of the structure, General Plan policy 8.4.1 requires that new infill development on vacant land be consistent with the existing residential character of the neighborhood. The proposed materials, stucco and stone, do not meet criteria for neighborhood compatibility in that they are not consistent with the wood siding found in the majority of neighboring homes. Regarding site design, the proposal is not minimizing grading in accordance with General Plan policy/LCP 6.3.9, and will alter the coastal bluff, which is a natural landform that should be retained in it's natural state in accordance with General Plan policies/LCP 8.6.5 and 8.6.6.

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

This finding cannot be made in that General Plan policy/LCP 6.2.10 requires all development to be sited and designed to avoid or minimize hazards. The proposed grading, which is "development" according to County Code 16.10.040(m), does not mitigate the hazard to the downslope neighbors on Las Olas Drive. The excavation of a few feet of the crest of the bluff will have little positive impact on the amount or rate of coastal bluff retreat, and in fact may have unforeseen adverse affects on the stability of the bluff. Mitigation of the hazard can be accomplished through alternate methods, such as a bluff top retaining wall, which would not require an exception to the Geologic Hazard Ordinance 16.10.

General Plan policy/LCP 6.2.11 requires a full geologic report for all development activities within coastal hazard areas, including within a 100-feet of a coastal bluff. This finding cannot be made in that the original geologic report did not include a full assessment of the proposed grading within 100 feet of the coastal bluff and the potential impacts on the surrounding parcels, including those downslope on Las Olas Drive.

General Plan policy/LCP 6.2.12 requires that all development activities occur a minimum of 25 feet from the top of edge of the bluff. This finding cannot be made in that the proposed grading is within the 33 foot bluff top setback. Grading on a coastal bluff is considered development per definitions of "development" (County Code 16.10.040(s)10) and "coastal hazard area" (County Code 16.10.040(m)).

General Plan policy/LCP 8.6.6 requires that ridgetops and natural prominent landforms such as cliffs, bluffs, dunes, rock outcroppings be protected from development. The finding cannot be made in that the grading will alter the coastal bluff, which is a natural landform that should be retained in it's natural state. While a hazard has been identified by the project geologist, there are alternative methods of mitigating the hazard that do not require an exception to the geologic hazard ordinance and which may not require alteration of the natural landform. In addition, a building envelope was established by the Geologic and Geotechnical Investigations that is set back 33 feet from the edge of the coastal bluff to provide 100-year lifetime and does not require

any grading within the geologic setback.

General Plan policy/LCP 5.10.3 requires minimizing disruption of landforms by grading or inappropriate landscaping, and requires that structures be designed to protect public vistas. This finding cannot be made in that, the grading will alter the natural state of the bluff which helps screen the proposed structure from the public state beach below. The grading will exacerbate the visual impact of the proposed structure.

Development Permit Findings

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

This finding cannot be made, in that the project is located at the top of a coastal bluff and the applicant proposes to grade within the geologic setback. The project Engineering Geologist states that the bluff will fail, however, the grading of the bluff will not mitigate for the hazard.

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

This finding cannot be made, in that the proposed location of the Single Family Dwelling and the conditions under which it would be operated or maintained will not be consistent with all pertinent County ordinances, specifically Chapter 16.10.070(h), 13.20 and 13.11. The applicant seeks to grade within the geologic setback and specific findings for the activity cannot be made (Exhibit O). The grading will increase the visual impact of the proposed development, and is also inconsistent with General Plan policies/LCP 8.6.5 and 8.6.6. The design of the structure is not compatible with the neighborhood, see Finding #5.

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

This finding cannot be made, in that the proposed structure is not in conformance with Coastal Design Review Standards as outlined in Chapter 13.20 and 13.11. The home is not visually compatible with the existing character of the neighborhood in that the majority of the surrounding development is made of horizontal or vertical wood exteriors. This proposal uses primarily stucco with stone used at the lower area of the front facade. The large rounded window at the rear facade is out of character with the overall design of the residence, and it adds to the lack of compatibility with the neighboring residences as seen from the beach. In addition, the combination of the roof forms result in a structure that does no have a unified scheme. There are large areas of the front facade that have no fenestration.

Application #: 07-0548
APN: 038-151-89
Owner: Brian Arthur

6. The proposed development project is consistent with the Design Standards and Guidelines (sections 13.11.070 through 13.11.076), and any other applicable requirements of this chapter.

This finding cannot be made, in that the proposed structure is not in conformance with Coastal Design Review Standards as outlined in Chapter 13.11.073. The design is not compatible with the existing character of the neighborhood in that the majority of the surrounding development is made of horizontal or vertical wood exteriors. The subject property is proposing stucco and stone exterior. In addition, the combination of the roof forms result in a structure that does no have a unified scheme. There are large areas of the front facade that have no fenestration. The large rounded window at the rear facade is out of character with the overall design of the residence. The window adds to the lack of compatibility with the neighboring residences as seen from the beach.

Geologic Hazard Exception Findings

1. A hardship, as defined in Section 16.10.040(2j) exists.

This finding cannot be made, in that the applicant does not demonstrate that a hardship will exist as defined in Section 16.10.040 (2j) if the exception is not granted. Grading 3 to 5 feet of the bluff is not necessary to develop the parcel (Rogers E. Johnson & Associates, 10/25/05). Futhermore, coastal retreat isssues are common to hundreds of homes along the Santa Cruz Coast and are not exceptional, unusual, and peculiar to this property.

2. The project is necessary to mitigate a threat to public health, safety, or welfare.

The excavation of a few feet of the crest of the bluff will have little positive impact on the amount or rate of coastal bluff retreat, and may have unforeseen adverse affects on the stability of the bluff. A true solution would be to construct a retaining system with the capacity to stabilize the entire slope. Various options that provide stability and which do not require an exception to Chapter 16.10 are available.

Finding 2 cannot be made, in that the proposed grading within the 25 foot and 100 year setbacks does not mitigate for the threat to public health and safety as it is not clear that the grading will significantly reduce the rate of coastal bluff retreat. Furthermore, the grading work may have unforeseen negative affects on the stability of the bluff.

3. The request is for the smallest amount of variance from the provisions of this Chapter as possible.

This finding cannot be made in that the applicant's consultants have not analyzed alternatives to their proposal. Most of the benefits of the grading can be accomplished with on site control drainage without the excavation within the 25 foot setback, and alternatively must evaluate if a

Application #: 07-0548
APN: 038-151-89
Owner: Brian Arthur

bluff wall is the only alternative to control the geologic hazard.

4. Adequate measures will be taken to ensure consistency with the purposes of this Chapter and the County General Plan.

This finding cannot be made, in that the grading on the bluff is inconsistent with Section 6.2.12 of the General Plan and is inconsistent with Section 5.10.3 of the General Plan in that it will remove a part of the slope that would screen the home and reduce the visual impact of a home public beach below.

Approval Date: _____

Effective Date: _____

Expiration Date: _____

Don Bussey Deputy Zoning Administrator	Maria Perez Project Planner

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

ATTACHMENT 1

CALIFORNIA ENVIRONMENTAL QUALITY ACT
NOTICE OF EXEMPTION

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

Application Number: 07-0548
Assessor Parcel Number: 038-151-89
Project Location: No Situs

Project Description: Proposal to construct a single family dwelling

Person or Agency Proposing Project: Tracy Johnson

Contact Phone Number: 831-722-5462

A. _____ The proposed activity is not a project under CEQA Guidelines Section 15378.
B. _____ The proposed activity is not subject to CEQA as specified under CEQA Guidelines Section 15060 (c).
C. _____ **Ministerial Project** involving only the use of fixed standards or objective measurements without personal judgment.
D. __x__ **Statutory Exemption** other than a Ministerial Project (CEQA Guidelines Section 15260 to 15285).

Specify type: 15270 Projects which are disapproved

E. ____ **Categorical Exemption**

Specify type:

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

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

_____ Date:_____
Maria Perez, Project Planner

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EXHIBIT D

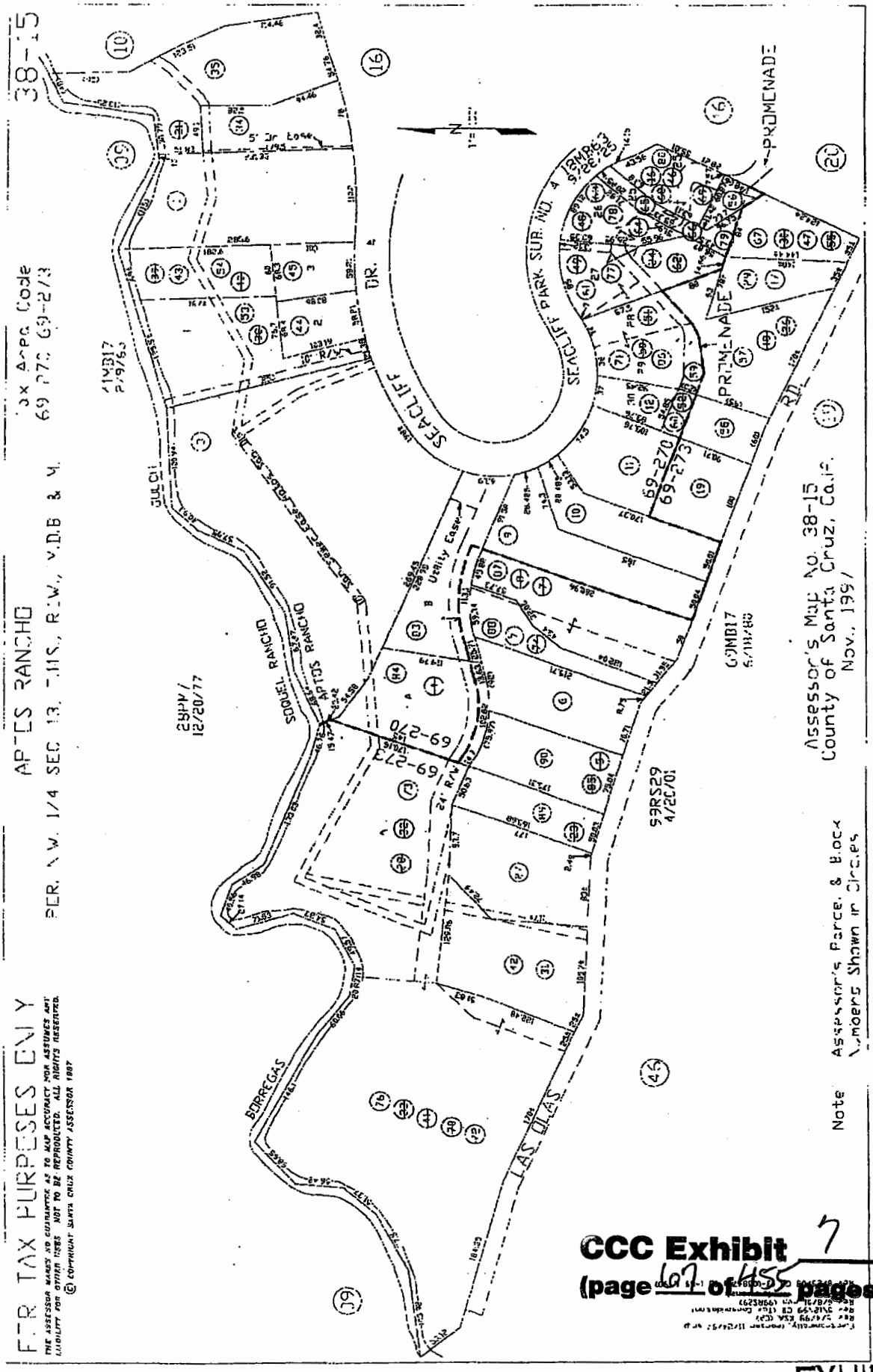

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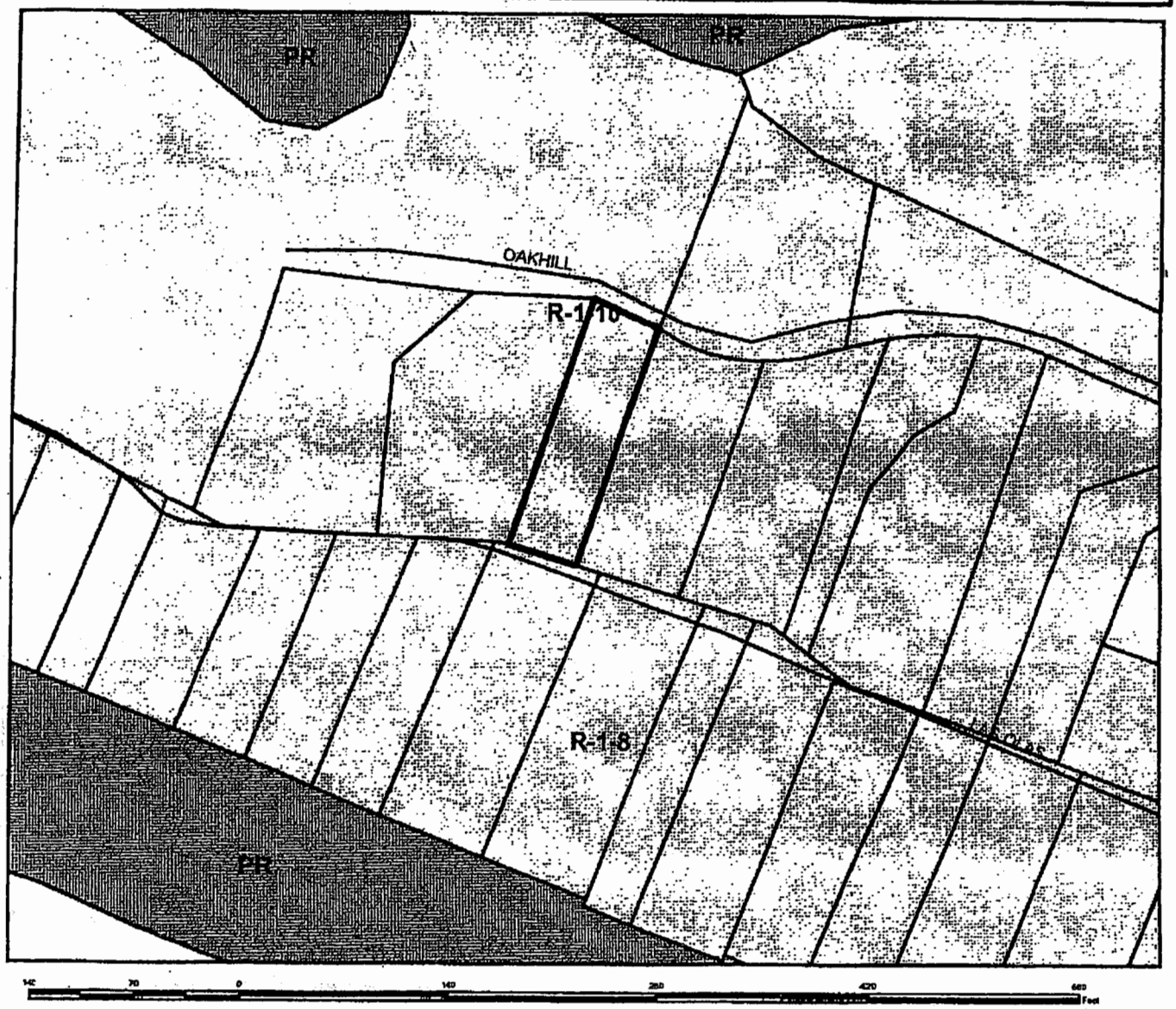
EXHIBIT E

Zoning Map



LEGEND

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

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Map Created by
County of Santa Cruz
Planning Department
December 2008

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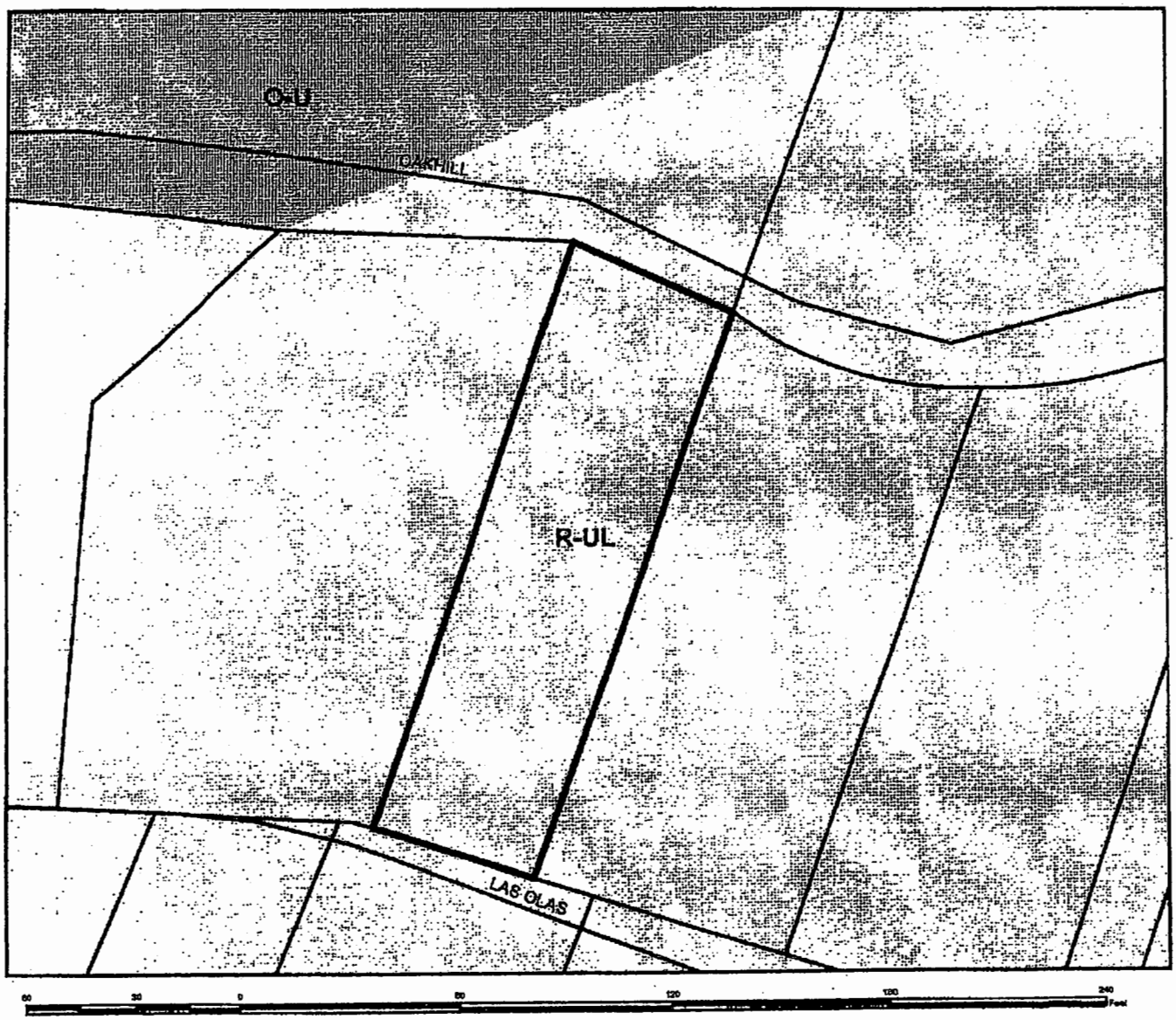
(page 68 **of** 455 **pages)**

EXHIBIT F.4

General Plan Designation Map



LEGEND

- APN: 038-151-89
- Assessors Parcels
- Streets
- Residential - Urban Low Density
- Urban Open Space

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Map Created by
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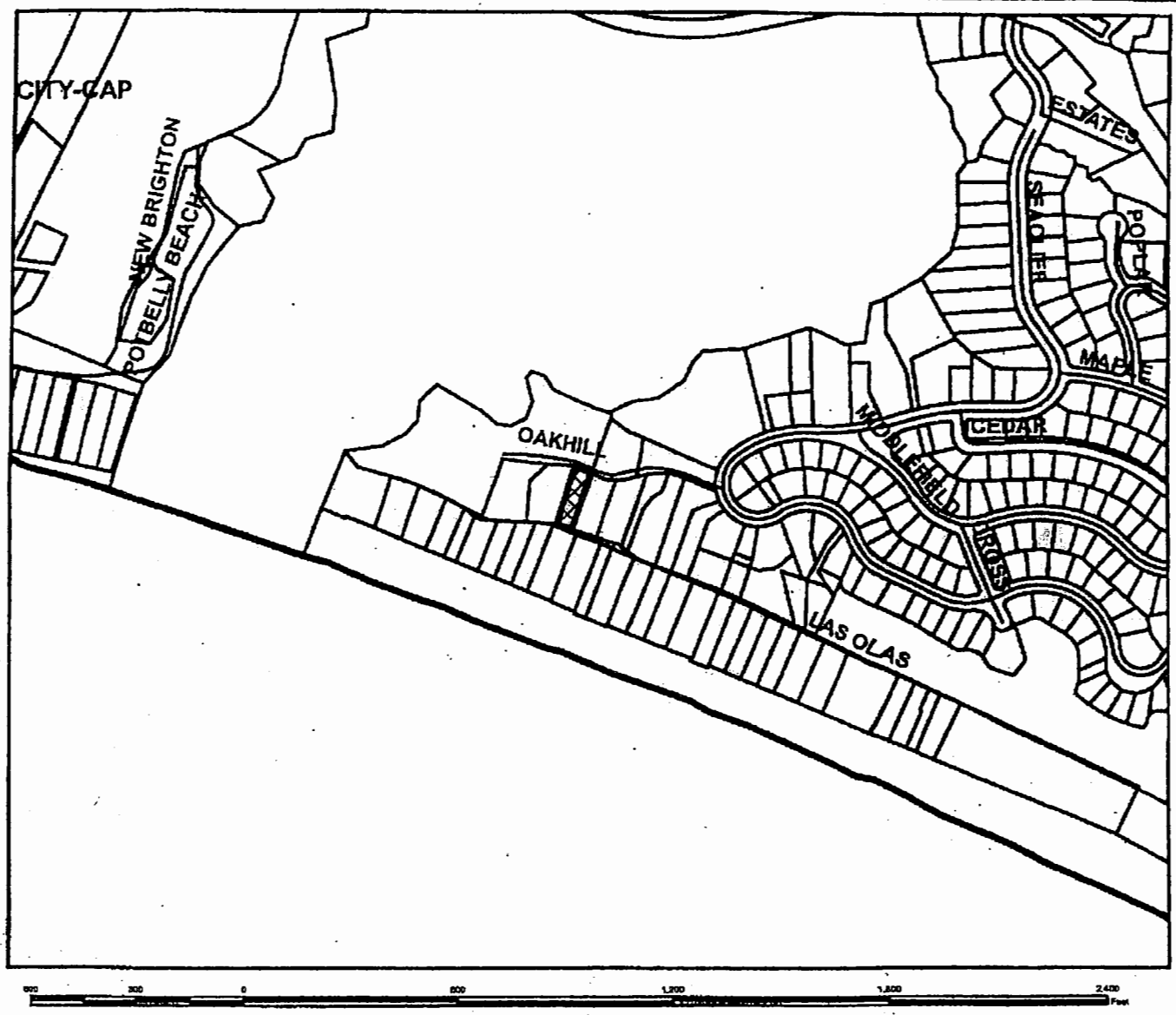
EXHIBIT F

Location Map



LEGEND

- APN: 038-151-89
- Assessors Parcels
- Streets
- CAPITOLA
- County Boundary

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Map Created by
County of Santa Cruz
Planning Department
December 2008

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EXHIBIT G

ATTACHMENT 1

Project Planner: Maria Perez
Application No.: 07-0548
APN: 038-151-89

Date: November 25, 2008
Time: 10:06:00
Page: 1

Environmental Planning Completeness Comments

======== REVIEW ON OCTOBER 5, 2007 BY CAROLYN I BANTI ========
1. Prior to the discretionary application being deemed complete, plan review letters from the geotechnical engineer and engineering geologist shall be submitted to Environmental Planning. The authors of the reports shall writ the letters; the letters shall refer to the final set of reviewed plans by drawing and revision dates and shall state that the project plans conform to the reports' recommendations.

2. The proposed project includes grading within the 100-year setback for the structure. Grading is defined as development in Section 16.10.040(s) and must be set back beyond the 100-year lifetime setback per 16.10.070(ii). Please revise the project plan and scope as necessary.

3. Please include top-of-wall and bottom-of-wall elevations for all retaining walls. These elevations should be shown on the grading plans at the beginning, end, and transition points for the walls. ======== UPDATED ON OCTOBER 15, 2007 BY ANTONELLA GENTILE ========
4. Submit a letter from a certified arborist that evaluates the health of the 48 inch redwood tree and makes recommendations for its protection during construction. The letter should also address any potential effect that the proposed garden walls may have on the tree. ======== UPDATED ON JUNE 16, 2008 BY CAROLYN I BANTI ========

--- Completeness Comments --- Soils and Grading ---

Correspondence dated December 6, 2008 from the County to the applicant requested additional information regarding the removal of the existing retaining wall that may extend beneath the adjacent structure to the east. The revisions remove only a portion of the wall, and propose grading adjacent to the wall. Please submit a letter from a civil engineer that addresses:(a) whether the wall extends under the adjacent structure; if so, submit a foundation study for the adjacent residence that clearly states the extent of structural improvements necessitated by the proposed demolition and grading work (b) if the wall does not extend under the adjacent residence, the letter must confirm this and provide a statement that the alterations to the wall and adjacent grade do not threaten the structural integrity of the wall. ======== UPDATED ON JUNE 19, 2008 BY ANTONELLA GENTILE ========
A plan review letter is required from the arborist prior to this application being deemed complete. The letter must reference the site plan and grading plan by final revision date and state that preservation of the tree is feasible and that the plans conform to the recommendations given in the arborist's report.

Environmental Planning Miscellaneous Comments

======== REVIEW ON OCTOBER 5, 2007 BY CAROLYN I BANTI ========
The following are Compliance Comments in regards to soils and grading issues:

1. All grading must be set back 2' from property lines per code section 16.20.160 (Table C). Please revise plans accordingly.

The following are Misc. Comments/Conditions of Approval in regards to soils and grading issues:

1. Prior to building permit issuance, the applicant shall submit an agreement between the property owner and the road association or other legal entity authorizing the proposed improvements associated with the widening of Oakhill Road.

2. Please include a construction detail of the proposed curbwall on the plans submitted with the building permit application. Note that the wall footings must be deep enough to maintain a distance of 5' between the face of the wall footing and the adjacent slope face per code section 16.20.160.

3. Building permit plans shall note the destination of off-hauled material. Please note that this material may only be delivered to County approved locations.
======== UPDATED ON OCTOBER 15, 2007 BY ANTONELLA GENTILE ========
Although this parcel is mapped as Riparian Woodland, upon site visit no riparian resources were found.Please refund the Riparian Presite fee.

Please note that Significant trees on this parcel remain protected by the Significant Tree Ordinance. ======== UPDATED ON JUNE 16, 2008 BY CAROLYN I BANTI ========

--- Compliance Comments --- Soils and Grading ---

First review comments noted the apparent conflict between the proposed grading within the 100 year geologic setback and our Geologic Hazards Ordinance which prohibits such activity. In response, the applicant has provided plan review letters from the project geotechnical engineer and engineering geologist. The additional technical information has been reviewed, and findings cannot be made for an exception to the provisions of Chapter 16.10 as oulined in County Code Section 16.10.100. Please revise plans to remove the proposed grading within the geologic setback. See correspondence dated December 6, 2007 for additional details regarding allowable activities within this setback. ======== UPDATED ON JUNE 19, 2008 BY ANTONELLA GENTILE ========
Conditions regarding the redwood tree:

1. Arborist's recommendations shall be clearly stated on the plans.

2. Plans shall include contact information for the project arborist.

3. Submit 2 copies of the arborist's report with the building permit application.

4. A new plan review letter will be required from the project arborist once the building plans have been approved by all agencies. Wall foundations, as well as grading, shall be reviewed.

5. A pre-construction meeting shall be held onsite with the applicant, grading contractor, Environmental Planning staff, soils engineer, and arborist. Procedures, the staging area, tree protection measures and haul routes shall be discussed.

6. The arborist shall verify in writing that tree protection measures have been in-

stalled per the report's recommendations prior to permit final.

Dpw Drainage Completeness Comments

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

======== REVIEW ON OCTOBER 5, 2007 BY TRAVIS RIEBER ========
1. Does this site currently receive runoff from adjacent/upslope property? (Specifically from the existing home along the east side of the property) If so, how will the project continue to accept this runoff without causing adverse impacts to the proposed structure or adjacent/downstream neighbors?

2. Please describe the offsite drainage path to a safe point of release. Include details such as specific drainage features, their condition and their capacity. Analysis should be performed by a licensed civil engineer.

3. Collecting runoff from impervious surfaces and directing it to the street is generally inconsistent with county efforts to hold runoff to pre-development rates.

Note: - Projects are required to maintain predevelopment runoff rates where feasible. Mitigating measures should be used on-site to limit increases in post-development runoff leaving the site. Best Management Practices should be employed within the development to meet this goal as much as possible. Such measures include pervious or semi-pervious pavements, runoff surface spreading, discharging roof and driveway runoff into landscaping, etc.

4. How will surface and subsurface runoff intercepted by the proposed retaining walls be controlled and directed to a safe point of release without causing adverse impacts to the proposed structure or adjacent/downstream neighbors. Please provide a cross section construction detail of the proposed retaining walls.

5. Does Oakhill Road currently have a roadside curb? If not, please clarify the need for changing the existing conditions.

Please call the Dept. of Public Works, Storm Water Management Section, from 8:00 am to 12:00 noon if you have questions. ======== UPDATED ON JUNE 3, 2008 BY TRAVIS RIEBER ========
1. More details are needed for the existing culvert. Provide a schematic showing the configuration of the culvert. What is the condition of the inlet and outlet? Is the outlet on private property? Demonstrate how overflow from a 25-year storm event will be conveyed to a reasonable safe point of release.

2. Please revise the tributary drainage area map to clearly show all areas draining toward the existing culvert. Add notes to the map to help clarify how the limits were defined. Show on the map the location of the inlet and outlet of the existing culvert.

3. Provide calculations demonstrating that the proposed roadside drainage swale has adequate capacity to convey a 25-year storm event to a reasonable safe point of release. ======== UPDATED ON SEPTEMBER 9, 2008 BY TRAVIS RIEBER ========
Previous miscellaneous comments have not been addressed completely.

1. More details are needed for the existing culvert. Provide a schematic showing the configuration of the culvert. What is the condition of the inlet and outlet? Is the outlet on private property? Demonstrate how overflow from a 25-year storm event will be conveyed to a reasonable safe point of release. Demonstrate that the overflow from a 25-year storm event will not cause adverse impacts to adjacent or downstream properties.

2. Please revise the tributary drainage area map to clearly show all areas draining toward the existing culvert. Add notes to the map to help clarify how the limits were defined. Show on the map the location of the inlet and outlet of the existing culvert.

3. Submit revised calculations based on the revised tributary drainage area map and the actual dimensions and configuration of the existing culvert from the site visit on 08 August 2008.

4. Provide calculations demonstrating that the proposed roadside drainage swale has adequate capacity to convey a 25-year storm event to a reasonable safe point of release.

5. Please deposit $550.00 to public works to supplement the previously deposited amount to establish an at cost review account.

Note: All re-submittals shall be made through the Planning Department. Materials left with Public Works may be returned by mail, with resulting delays. ======== UPDATED ON OCTOBER 28, 2008 BY TRAVIS RIEBER ========
The drainage calculations dated 10/2/2008, sheet 8a dated 9/29/2008 and sheet 8 dated 3/17/2008 have been received and are approved for the discretionary application stage. See miscellaneous comments for issues to be addressed at the building application stage.

Dpw Drainage Miscellaneous Comments

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

======== REVIEW ON OCTOBER 5, 2007 BY TRAVIS RIEBER ========
1. Are the existing impervious areas on the site permitted? Please provide proof such as assessors records, old building permits, photos or aerial photos.

2. For fee calculations please provide tabulation of existing impervious areas and new impervious areas resulting from the proposed project.

Note: A drainage fee will be assessed on the net increase in impervious area.
======== UPDATED ON JUNE 3, 2008 BY TRAVIS RIEBER ========
For fee calculations please provide tabulation of existing impervious areas and new impervious areas resulting from the proposed project. Make clear on the plans by shading or hatching the limits of both the existing and new impervious areas. To receive credit for the existing impervious surfaces please provide documentation such as assessor-s records, survey records, aerial photos or other official records that will help establish and determine the dates they were built. ======== UPDATED ON SEPTEMBER 9, 2008 BY TRAVIS RIEBER ========

========= UPDATED ON OCTOBER 28, 2008 BY TRAVIS RIEBER =========
See previous miscellaneous comments.

Dpw Driveway/Encroachment Completeness Comments

========= REVIEW ON OCTOBER 29, 2007 BY DEBBIE F LOCATELLI =========
No Comment, project adjacent to a non-County maintained road.

Dpw Driveway/Encroachment Miscellaneous Comments

========= REVIEW ON OCTOBER 29, 2007 BY DEBBIE F LOCATELLI =========
No comment.

Dpw Road Engineering Completeness Comments

========= REVIEW ON OCTOBER 2, 2007 BY ANWARBEG MIRZA =========
NO COMMENT

Dpw Road Engineering Miscellaneous Comments

========= REVIEW ON OCTOBER 2, 2007 BY ANWARBEG MIRZA =========
Please see miscellaneous comments for issues to be addressed prior to building permit issuance.

1. In order to evaluate access to the single-family dwelling, show how property obtains access road to the county road system and provide details of intersection of the Oak hill Rd. to County Road in plan view.

2. The driveway/access must meet County of Santa Cruz standards in the Design Criteria. Please refer the correct figure and show in plan view.

Dpw Sanitation Completeness Comments

========= REVIEW ON OCTOBER 4, 2007 BY CARMEN M LOCATELLI =========
Sewer service is currently available.

Dpw Sanitation Miscellaneous Comments

========= REVIEW ON OCTOBER 4, 2007 BY CARMEN M LOCATELLI =========
Proposed location of on-site sewer lateral(s), clean-out(s), and connection(s) to existing public sewer must be shown on the plot plan of the building permit application
Show all existing and proposed plumbing fixtures on floor plans of building application.

Aptos-La Selva Beach Fire Prot Dist Completeness C

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

======== REVIEW ON OCTOBER 9, 2007 BY ERIN K STOW ========
DEPARTMENT NAME:Aptos/La Selva Fire Dept. APPROVED

Aptos-La Selva Beach Fire Prot Dist Miscellaneous

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

======== REVIEW ON OCTOBER 9, 2007 BY ERIN K STOW ========
NO COMMENT

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EXHIBIT H

ATTACHMENT 1

COUNTY OF SANTA CRUZ | Planning Department

INTEROFFICE MEMO

APPLICATION NO: 07-0548 (third routing)

Date: September 10, 2008

To: Porcila Perez, Project Planner

From: Larry Kasparowitz, Urban Designer

Re: Review of new residence at Oak Hill Road, Aptos

Completeness Comments

- ***The roof height exhibit must be signed by and licensed Architect, Civil Engineer, or Surveyor.***

Design Review Authority

13.20.130 The Coastal Zone Design Criteria are applicable to any development requiring a Coastal Zone Approval.

Design Review Standards

13.20.130 Design criteria for coastal zone developments

Evaluation Criteria	Meets criteria in code (✔)	Does not meet criteria (✔)	Urban Designer's Evaluation
Visual Compatibility			
All new development shall be sited, designed and landscaped to be visually compatible and integrated with the character of surrounding neighborhoods or areas		✔	*The majority of the surrounding houses are wood – either horizontal or vertical.*
Minimum Site Disturbance			
Grading, earth moving, and removal of major vegetation shall be minimized.		✔	
Developers shall be encouraged to maintain all mature trees over 6 inches in diameter except where circumstances require their removal, such as obstruction of the building site, dead or diseased trees, or nuisance species.	✔		
Special landscape features (rock outcroppings, prominent natural landforms, tree groupings) shall be retained.		✔	*The bluff should remain in it's natural state.*

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(page 22 of 455 pages)

EXHIBIT 1

Ridgeline Development			
Structures located near ridges shall be sited and designed not to project above the ridgeline or tree canopy at the ridgeline			N/A
Land divisions which would create parcels whose only building site would be exposed on a ridgetop shall not be permitted			N/A
Landscaping			
New or replacement vegetation shall be compatible with surrounding vegetation and shall be suitable to the climate, soil, and ecological characteristics of the area			N/A

Rural Scenic Resources			
Location of development			
Development shall be located, if possible, on parts of the site not visible or least visible from the public view.			N/A
Development shall not block views of the shoreline from scenic road turnouts, rest stops or vista points			N/A
Site Planning			
Development shall be sited and designed to fit the physical setting carefully so that its presence is subordinate to the natural character of the site, maintaining the natural features (streams, major drainage, mature trees, dominant vegetative communities)			N/A
Screening and landscaping suitable to the site shall be used to soften the visual impact of development in the viewshed			N/A
Building design			
Structures shall be designed to fit the topography of the site with minimal cutting, grading, or filling for construction			N/A
Pitched, rather than flat roofs, which are surfaced with non-reflective materials except for solar energy devices shall be encouraged			N/A
Natural materials and colors which blend with the vegetative cover of the site shall be used, or if the structure is located in an existing cluster of buildings, colors and materials shall repeat or harmonize with those in the cluster			N/A
Large agricultural structures			

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(page 78 of 455 pages)

The visual impact of large agricultural structures shall be minimized by locating the structure within or near an existing group of buildings			N/A
The visual impact of large agricultural structures shall be minimized by using materials and colors which blend with the building cluster or the natural vegetative cover of the site (except for greenhouses).			N/A
The visual impact of large agricultural structures shall be minimized by using landscaping to screen or soften the appearance of the structure			N/A
Restoration			
Feasible elimination or mitigation of unsightly, visually disruptive or degrading elements such as junk heaps, unnatural obstructions, grading scars, or structures incompatible with the area shall be included in site development			N/A
The requirement for restoration of visually blighted areas shall be in scale with the size of the proposed project			N/A
Signs			
Materials, scale, location and orientation of signs shall harmonize with surrounding elements			N/A
Directly lighted, brightly colored, rotating, reflective, blinking, flashing or moving signs are prohibited			N/A
Illumination of signs shall be permitted only for state and county directional and informational signs, except in designated commercial and visitor serving zone districts			N/A
In the Highway 1 viewshed, except within the Davenport commercial area, only CALTRANS standard signs and public parks, or parking lot identification signs, shall be permitted to be visible from the highway. These signs shall be of natural unobtrusive materials and colors			N/A

Beach Viewsheds			
Blufftop development and landscaping (e.g., decks, patios, structures, trees, shrubs, etc.) in rural areas shall be set back from the bluff edge a sufficient distance to be out of sight from the shoreline, or if infeasible, not visually intrusive			N/A
No new permanent structures on open beaches shall be allowed, except			N/A

where permitted pursuant to Chapter 16.10 (Geologic Hazards) or Chapter 16.20 (Grading Regulations)			
The design of permitted structures shall minimize visual intrusion, and shall incorporate materials and finishes which harmonize with the character of the area. Natural materials are preferred			N/A

Design Review Authority

13.11.040 Projects requiring design review.

(a) Single home construction, and associated additions involving 500 square feet or more, within coastal special communities and sensitive sites as defined in this Chapter.

13.11.030 Definitions

(u) 'Sensitive Site" shall mean any property located adjacent to a scenic road or within the viewshed of a scenic road as recognized in the General Plan; or ***located on a coastal bluff***, or on a ridgeline.

Design Review Standards

13.11.072 Site design.

Evaluation Criteria	Meets criteria in code (✔)	Does not meet criteria (✔)	Urban Designer's Evaluation
Compatible Site Design			
Location and type of access to the site	✔		
Building siting in terms of its location and orientation	✔		
Building bulk, massing and scale		✔	***The applicant should draw the outline of the neighboring structures to scale on the front elevation.***
Parking location and layout	✔		
Relationship to natural site features and environmental influences	✔		
Landscaping	✔		
Streetscape relationship			N/
Street design and transit facilities			N/
Relationship to existing structures	✔		
Natural Site Amenities and Features			
Relate to surrounding topography	✔		
Retention of natural amenities	✔		
Siting and orientation which takes advantage of natural amenities	✔		

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Ridgeline protection			N/A
Views			
Protection of public viewshed	✔		
Minimize impact on private views	✔		
Safe and Functional Circulation			
Accessible to the disabled, pedestrians, bicycles and vehicles			N/A
Solar Design and Access			
Reasonable protection for adjacent properties	✔		
Reasonable protection for currently occupied buildings using a solar energy system	✔		
Noise			
Reasonable protection for adjacent properties	✔		

13.11.073 Building design.

Evaluation Criteria	Meets criteria in code (✔)	Does not meet criteria (✔)	Urban Designer's Evaluation
Compatible Building Design			
Massing of building form		✔	
Building silhouette		✔	
Spacing between buildings			N/A
Street face setbacks	✔		
Character of architecture		✔	
Building scale	✔		
Proportion and composition of projections and recesses, doors and windows, and other features		✔	
Location and treatment of entryways	✔		
Finish material, texture and color	✔		
Scale			
Scale is addressed on appropriate levels	✔		
Design elements create a sense of human scale and pedestrian interest	✔		
Building Articulation			
Variation in wall plane, roof line, detailing, materials and siting	✔		
Solar Design			
Building design provides solar access that is reasonably protected for adjacent properties	✔		

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EXHIBIT 1

Building walls and major window areas are oriented for passive solar and natural lighting	✔		

Urban Designers Comments

- *The combination of roof forms adds to the appearance of bulk. The designer should seek to simplify the roof forms.*
- *The garage must be determined to see if it meets the test of a basement or there may possibly be a third story.*
- *Before the hearing, story poles should be provided.*
- *Glazing shall not be tinted or have films. Low-E clear glazing shall be used to reduce reflectance.*

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Project No. SC8970
17 November 2005

DISCUSSIONS, CONCLUSIONS AND RECOMMENDATIONS

Based on the results of our investigation, the proposed project appears compatible with the site, provided the following recommendations are incorporated into the design and construction of the proposed project.

One of the primary purposes of our investigation was to work with the project engineering geologists, Rogers Johnson & Associates, to estimate the configuration of the coastal blufftop in 100 years in order to determine a blufftop setback line allowing for a project building envelope design life of at least 100 years.

The slope stability model used to determine the blufftop setback included 20 feet of recession of the blufftoe/bluff face preceding a design seismic failure of the blufftop. We have included a copy of the Geologic Map dated 5 October 2005 with this report showing the "100 Year Geologic Setback Line" and the "Geologically Stable Building Envelope". The delineated building envelope is about 32 feet landward of the existing blufftop.

The referenced parcel is one of about sixteen bluff parcels including Seacliff Beach State Park, which are situated above Las Olas Drive. Historically, bluff face failures or rockfall events have impacted the blufftoe and the adjacent Las Olas Drive. Rockfall

mitigation recommendations for the referenced parcel are beyond the scope of this report. We recommend future owners of the parcel consult with a geotechnical engineer or engineering geologist experienced in rockrfall mitigation regarding such measures.

The proposed residence may be founded upon a drilled pier and grade beam foundation system.

The following recommendations should be used as guidelines for preparing project plans and specifications:

Site Grading

1. The geotechnical engineer should be notified at least four (4) working days prior to any site clearing or grading so that the work in the field can be coordinated with the grading contractor, and arrangements for testing and observation can be made. The recommendations of this report are based on the assumption that the geotechnical engineer will perform the required testing and observation during grading and construction. It is the owner's responsibility to make the necessary arrangements for these required services.

2. Where referenced in this report, Percent Relative Compaction and Optimum Moisture Content shall be based on ASTM Test Designation D1557 current.

3. Areas to be graded should be cleared of all obstructions including loose fill, building foundations, trees not designated to remain, or other unsuitable material. Existing depressions or voids created during site clearing should be backfilled with engineered fill.

4. Cleared areas should then be stripped of organic-laden topsoil. Stripping depth should be from 2 to 4 inches. Actual depth of stripping should be determined in the field by the geotechnical engineer. Strippings should be wasted off-site or stockpiled for use in landscaped areas if desired.

5. Areas to receive engineered fill should be scarified to a depth of 6 inches, moisture conditioned, and compacted to at least 90 percent relative compaction. Portions of the site may need to be moisture conditioned to achieve suitable moisture content for compaction. These areas may then be brought to design grade with engineered fill.

6. Engineered fill should be placed in thin lifts not exceeding 8 inches in loose thickness, moisture conditioned, and compacted to at least 90 percent relative

compaction. The upper 12 inches of pavement and slab subgrades should be compacted to at least 95 percent relative compaction. The aggregate base below pavements should likewise be compacted to at least 95 percent relative compaction.

7. If grading is performed during or shortly after the rainy season, the grading contractor may encounter compaction difficulty, such as pumping or bringing free water to the surface, in the upper surface clayey and silty sands. If compaction cannot be achieved after adjusting the soil moisture content, it may be necessary to over-excavate the subgrade soil and replace it with angular crushed rock to stabilize the subgrade. We estimate that the depth of over-excavation would be approximately 24 inches under these adverse conditions.

8. Fills should be keyed and benched into firm soil in areas where existing slope gradients exceed 6:1 (horizontal to vertical). Subdrains will be required in areas where keyways or benches expose potential seepage zones.

9. The on-site soils generally appear suitable for use as engineered fill. Materials used for engineered fill should be free of organic material, and contain no rocks or clods greater than 6 inches in diameter, with no more than 15 percent larger than 4 inches.

10. We estimate shrinkage factors of about 15 percent for the on-site materials when used in engineered fills.

11. All permanent cut and fill slopes should be inclined no steeper than 2:1 (horizontal to vertical).

12. Following grading, all exposed slopes should be planted as soon as possible with erosion-resistant vegetation.

13. After the earthwork operations have been completed and the geotechnical engineer has finished his observation of the work, no further earthwork operations shall be performed except with the approval of and under the observation of the geotechnical engineer.

Foundations

14, The proposed residence may be supported on a drilled pier and grade beam foundation system. The foundation perimeter should be setback from the blufftop in conformance with the building envelope delineated on the project Geologic Map, Figure 2 in the Appendix of this report.

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Drilled Piers

15. We recommend a drilled pier and grade beam foundation to support the proposed residence.

16. Drilled piers should be at least 18 inches in diameter and be embedded at least 10 feet below existing grades.

17. Piers constructed in accordance with the above may be designed for an allowable end bearing of 4 ksf.

18. For passive lateral resistance, an equivalent fluid pressure of 250 psf may be assumed to act against two pier diameters. The upper 3 feet of soil should be neglected when computing passive resistance.

19. Prior to placing concrete, all foundation excavations should be thoroughly cleaned. The foundation excavations must be observed by the geotechnical engineer or his representative prior to placing concrete.

Retaining Walls and Lateral Pressures

20. Retaining walls should be designed to resist lateral earth pressures, a seismic surcharge and any additional surcharge loads. Walls up to 12 feet high should be

designed to resist an active equivalent fluid pressure of 35 pcf for level backfills, and 50 pcf for sloping backfills inclined up to 2:1 (horizontal to vertical). Restrained walls should be designed to resist uniformly applied wall pressure of 23H psf per linear foot of wall for level backfills. A seismic surcharge within the retaining wall active pressure zone of 18H psf per linear foot of wall should also be used. The seismic surcharge should be applied at 0.6H above the base of the active zone.

21. The above lateral pressures assume that the walls are fully drained to prevent hydrostatic pressure behind the walls. Drainage materials behind the wall should consist of Class 1, Type A permeable material (Caltrans Specification 68-1.025) or an approved equivalent. The drainage material should be at least 12 inches thick. The drains should extend from the base of the walls to within 12 inches of the top of the backfill. A perforated pipe should be placed (holes down) about 4 inches above the bottom of the wall and be tied to a suitable drain outlet. Wall backdrains should be plugged at the surface with clayey material to prevent infiltration of surface runoff into the backdrains.

Slabs-on-Grade

22. We recommend that proposed slabs-on-grade be supported on at least 12 inches of non-expansive engineered fill compacted to at least 95 percent relative compaction. Prior to construction of the slab, the subgrade surface should be proof-

rolled to provide a smooth, firm, uniform surface for slab support. The project design professionals should determine the appropriate slab reinforcing and thickness, in accordance with the anticipated use and loading of the slab. However, we recommend that consideration be given to a minimum slab thickness of 5 inches and steel reinforcement necessary to address temperature and shrinkage considerations. At is recommended that rebar in lieu of wire mesh be used for slab reinforcement. The steel reinforcement should be held firmly in the vertical center of the slab during placement and finishing of the concrete with pre-cast concrete dobies.

23. In areas where floor wetness would be undesirable, a blanket of at least inches of free-draining gravel should be placed beneath the floor slab to act as a capillary break. Capillary break material should be free-draining, clean, angular gravel such as ¾-inch drainrock. The gravel should be washed to remove fines and dust prior to placement on the slab subgrade. The vapor retarder should be a high quality membrane at least 10 mil thick and puncture resistant. An acceptable product for use as a vapor retarder is the Stego Wrap 10-mil Class A vapor retarder system manufactured by Stego Industries, LLC. Provided the Stego Wrap system is installed per manufacturers recommendations, the concrete may be poured directly upon the Stego Wrap Vapor Retarder. The primary considerations for installing the vapor retarder are: taping all seams; sealing all penetrations such as pipe, ducting, wire, etc; and repairing all punctures.

24. It should be clearly understood slabs are not waterproof, nor are they vapor-proof. The aforementioned moisture retardant system will help to minimize water and water vapor transmission through the slab; however moisture sensitive floor coverings require additional protective measures. Floor coverings must be installed according to the manufacturer's specifications, including appropriate waterproofing applications and/or any recommended slab and/or subgrade preparation. Consideration should also be given to recommending a topical waterproofing application over the slab.

25. Exterior concrete slabs-on-grade should be founded on firm, well-compacted ground. Reinforcing should be provided in accordance with the anticipated use and loading of the slab. The reinforcement should not be tied to the building foundations. These exterior slabs can be expected to suffer some cracking and movement. However, thickened exterior edges, a well-prepared subgrade including premoistening prior to pouring concrete, adequately spaced expansion joints, and good workmanship should minimize cracking and movement.

Flexible Pavements

26. Asphaltic concrete, aggregate base and subbase, and preparation of the subgrade should conform to and be placed in accordance with the Caltrans Standard Specifications, latest edition, except that the test method for compaction should be determined by ASTM D1557-Current.

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17 November 2005

27. To have the selected sections perform to their greatest efficiency, it is important that the following items be considered:

A. Moisture condition the subgrade and compact to a minimum relative compaction of at least 95 percent, at about 2 percent over optimum moisture content.

B. Provide sufficient gradient to prevent ponding of water.

C. Use only quality materials of the type and thickness (minimum) specified. Base rock should meet Caltrans Standard Specifications for Class II Aggregate Base, and be angular in shape.

D. Compact the base rock to a relative dry density of 95 percent.

E. Place the asphaltic concrete during periods of fair weather when the free air temperature is within prescribed limits per Caltrans specifications.

F. Provide a routine maintenance program.

Site Drainage

28. Thorough control of runoff is essential to the performance of the project.

29. Runoff must not be allowed to sheet flow over graded slopes. Berms or lined V-ditches should be constructed at the top of slopes to divert water toward suitable collection facilities.

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30. Permanent subdrains may be required adjacent to pavements or building foundations where groundwater levels are near the surface. The location and depth of these drains will need to be determined in the field by the geotechnical engineer.

31. Surface drainage should include provisions for positive gradients so that surface runoff is not permitted to pond adjacent to foundations and pavements. Surface drainage should be directed away from the building foundations.

32. Full roof gutters should be placed around all eaves. Discharge from the roof gutters should be conveyed away from the downspouts by closed conduit to either: an approved energy dissipater; on site detention; or street drainage as determined by the project civil engineer.

33. The migration of water or spread of extensive root systems below foundations, slabs, or pavements may cause undesirable differential movements and subsequent damage to these structures. Landscaping should be planned accordingly.

Plan Review, Construction Observation, and Testing

34. Our firm should be provided the opportunity for a general review of the final project plans prior to construction so that our geotechnical recommendations may be properly interpreted and implemented. If our firm is not accorded the opportunity of

making the recommended review, we can assume no responsibility for misinterpretation of our recommendations. We recommend that our office review the project plans prior to submittal to public agencies, to expedite project review. The recommendations presented in this report require our review of final plans and specifications prior to construction and upon our observation and, where necessary, testing of the earthwork and foundation excavations. Observation of grading and foundation excavations allows anticipated soil conditions to be correlated to those actually encountered in the field during construction.

ATTACHMENT 1

ROGERS E. JOHNSON & ASSOCIATES
CONSULTING ENGINEERING GEOLOGISTS
41 Hangar Way, Suite B
Watsonville, California 95076-2458
e-mail: rogersjohnson@sbcglobal.net
Ofc (831) 728-7200 • Fax (831) 728-7218

20 October 2008

Brian Arthur
382 Belle Monte Avenue
Aptos, California 95003

Job No. C07027-56

Subject: Request for Exception
Oak Hill Road, Aptos, California
Santa Cruz County APN 038-151-89
Application # 07-0548

Dear Mr. Arthur:

As described in our geologic investigation for the subject site (Johnson, 2005), the property is situated atop a very steep, 100 foot high coastal bluff overlooking Las Olas Drive, Monterey Bay and a row of beachfront houses. The "100 year geologic setback line" designated by our firm lies 33 feet landward of the top of the bluff and our geologically suitable building envelope begins landward of the geologic setback line. This creates a zone between the top of the bluff and the building envelope in which the bluff is expected to fail during the economic lifetime of the development. Within this zone is an existing iron rail fence, brick retaining wall and loose surface soil. The eventual failure of the bluff creates a geologic hazard to persons, structures and property at its base and can impede the right-of-way on Las Olas Drive. Structures such as the brick wall and iron fence and loose soil within this zone increase the hazard.

The Santa Cruz County Planning Department (2007) cited "Issues of Consistency with County Regulations and Policies" with the development plans for this project with respect to site grading; specifically, grading within the "100 year setback" (County Code section 16.10.070(h)(1)(ii) and development within the "100 year setback" (County Code section 16.10.040(s). The purpose of this letter is to request an exception, as outlined in Section 16.10.100 of the Santa Cruz County Code which, if granted, will allow for the proposed mitigations within the 100 year geologic setback zone to be performed.

The construction plans (Tracy Robert Johnson, 2008) for the proposed residence include removing the existing fence and a portion of the brick retaining wall and regrading the surface soils within the 100 year setback zone. This will help improve site drainage and improve the stability of the bluff. These proposed actions will help mitigate the geologic hazard at the base of the bluff.

Bluff failure is already a significant geologic hazard in this area, particularly at the base of the bluff. The surface soil on the blufftop at the subject site is extensively burrowed, creating a conduit for rainwater or runoff to infiltrate the underlying loose, unconsolidated earth materials, which in turn decreases the stability of the bluff. As shown on the plans, creating an impermeable

barrier on the ground surface within the 100 year setback zone will significantly reduce infiltration and eliminate burrowing.

Removal of the fence, wall and surface soil will also reduce the hazard at the base of the bluff by lessening the driving force (mass) that contributes to blufftop failures.

Left unmitigated, the iron fence, brick wall and loose soil existing at the blufftop within the 100 year setback zone will ultimately fail, which poses a hazard to persons, structures and property at the base of the bluff. In our opinion, the hazards posed by the iron fence, brick wall and loose soil can be easily mitigated by their careful removal.

Please call if you have questions.

Sincerely,

ROGERS E. JOHNSON AND ASSOCIATES

Gregory Easton
Project Geologist
C.E.G. No. 2502

PROFESSIONAL GEOLOGIST
GREGORY EASTON
No. 2502
CERTIFIED ENGINEERING GEOLOGIST
STATE OF CALIFORNIA

Rogers E. Johnson
Principal Geologist
C.E.G. No. 1016

CERTIFIED ENGINEERING GEOLOGIST
ROGERS E. JOHNSON
No. 1016
Exp. 7/09
STATE OF CALIFORNIA

GFE/REJ/gfe

References:

Rogers E. Johnson and Associates, 2005, Geologic Investigation, Oswalt Property, Oak Hill Road, Aptos, California, Santa Cruz County APN 038-151-89, 24 October, 2005, unpublished consultants report, Job No. C05041-56.

Santa Cruz County Planning Department, 2007, Incomplete Application - Additional Information Required, Application #: 07-0548; Assessor's Parcel #: 038-151-89, Owner: Brian Arthur, 15 October 2007, 4p.

Tracy Robert Johnson, 2008, Grading Plan (sheet 6), Erosion Control and Stormwater Management Plan (sheet 8), and Sections & Details (sheet 11) for Brian Arthur, 17 March 2008, Job No. 0704RN, 11 Sheets.

Copies:

Addressee (1)
Tracy Johnson (4)
Haro, Kasunich and Associates, Inc., Attn: Rick Parks (1)

ATTACHMENT 1

COUNTY OF SANTA CRUZ

PLANNING DEPARTMENT
701 OCEAN STREET, 4TH FLOOR, SANTA CRUZ, CA 95060
(831) 454-2580 FAX: (831) 454-2131 TDD: (831) 454-2123
TOM BURNS, PLANNING DIRECTOR

December 20, 2005

Emily and Tom Oswalt, Trustees
P.O. Box 310
Aptos, CA 95001

Subject: Review of **Engineering Geology Report**, by Rogers E. Johnson dated October 24, 2005, Project # C05041-56 and **Geotechnical Engineering** Report by Haro, Kasunich and Assoicates, Inc. Dated November 2005, Project #: SC8970
APN 038-151-89, Application #: 05-0753

Dear Emily and Tom Oswalt,

The purpose of this letter is to inform you that the Planning Department has accepted the subject reports and the following items shall be required:

1. All construction shall comply with the recommendations of the reports.

2. Final plans shall reference the reports and include a statement that the project shall conform to the reports' recommendations.

3. Before building permit issuance a *plan review letters* shall be submitted to Environmental Planning. The authors of the reports shall write the *plan review letters*. These letters shall state that the project plans conform to the reports' recommendations.

4. The Engineering Geologist must identify the location of the Coastal Bluff on their geologic map, and a copy of that map must be submitted with any future permit application. All further submittal to the County must include a site plan that has a representation of the site relief, the geologic acceptable development envelope, and the Coastal Bluff. A civil engineer must prepare this site plan and any grading plans.

5. The attached declaration of geologic hazards must be recorded before the issuance of the building permit issuance.

After building permit issuance the soils engineer *must remain involved with the project* during construction. Please review the *Notice to Permits Holders* (attached). In addition, the engineering geologist will need to approve in writing the location of the buildings footings and provide a

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final letter at the end of the project that indicates that all of the work complies with the recommendations to the report.

Our acceptance of the reports is limited to its technical content. Other project issues such as zoning, fire safety, septic or sewer approval, etc. may require resolution by other agencies.

Please call the undersigned at (831) 454-3175, or e-mail joe.hanna@co.santa-cruz.ca.us if we can be of any further assistance.

Sincerely,

Joseph L. Hanna, CEG 1313
County Geologist

Cc: Robert Loveland, Environmental Planning
Haro, Kasunich and Assoicates, Inc, attention Rick Parks PE
Rogers E. Johnson and Associates

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coefficient (k) of 0.54. This is based on a predicted PGA of 0.64g (mean plus one standard deviation), a total bluff height of 99 feet and an estimated slide height of 37 feet, occurring within the marine terrace deposits and Aromas Sand.

Current Santa Cruz County standards require that the pseudostatic slope stability analysis show the site stable beyond a 1.2 factor of safety. Given this standard, a minimum seismic coefficient (k) of 0.15 should be used as suggested within Special Publication 117 (California Division of Mines and Geology, 1997).

Aseismic Slope Stability

The sea cliff is also subject to slope failure under aseismic conditions. Not all of the materials that are loosened by earthquakes fail as landslides; some remains on the bluff. This "earthquake weakening" together with weathering of the bluff can produce loose debris on the slope. Subsequent storms can mobilize this loose debris. Although generally smaller than seismically generated failures, storm generated landslides are an order of magnitude more common (a ten year cycle versus a hundred year cycle).

Our review of time sequential aerial photographs revealed numerous failures of the subject coastal bluff. Subsequent to construction of the seawall, these failures were primarily the result of over saturation of loose debris mantling the slope. Individual failures tended to be localized either within the upper bluff composed of the marine terrace deposits and the Aromas Sand or within the lower bluff composed of the Purisima Formation sandstone. A significant portion of the failures were relatively large, covering the entire width of the property.

During a site visit on August 10, 2005, we observed a relatively large, aseismic, joint controlled, block failure of the bluff at the subject property. The failure was restricted to the upper approximately 30 feet of the Purisima Formation sandstone and incorporated approximately 150 cubic yards of material. It spanned about a 30 foot width of bluff-face and was up to a maximum of 6 feet thick (measured perpendicular to the bluff-face).

CONCLUSIONS and RECOMMENDATIONS

1. The coastal bluff at the subject property is protected from surf erosion and as a consequence the rate of retreat of the toe of the bluff is very slow. However, the top of the bluff at the subject property will continue to retreat until the alluvial deposits reach their natural angle of repose, forming a stable slope. The ultimate configuration of the bluff top in 100 years is difficult to predict with accuracy. However, given our observations of the materials that underlie the bluff at the subject property we can establish a reasonable estimate. The Purisima Formation sandstone forming the base of the bluff may continue to fail in joint bounded blocks. Therefore we have estimated an additional 20 feet of additional block failure (measured perpendicular to the bluff-face, see Plate 2). The upper bluff deposits, which include the Aromas Sand and marine terrace deposits, will continue

to erode and fail until the angle of their slope is about 33 degrees (1.5:1 slope gradient). The projection of the 1.5:1 slope to the terrace surface from the contact in the cliff face of the upper bluff deposits with the underlying Purisima Formation sandstone defines the 100 year bluff top. This estimate assumes no significant shifts in climactic conditions causing an increased rate of erosion. All future construction on the bluff top should be located behind this 100 year geologic setback line (Plate 1).

2. The site is located in an area of high seismic activity and will be subject to strong seismic shaking in the future. Modified Mercalli Intensities of up to VIII are possible. The controlling seismogenic source for the subject property is the San Andreas fault, 12 kilometers to the northeast. The design earthquake on this fault should be M_w 7.9. Expected duration of strong shaking for this event is about 31 seconds. Deterministic analysis for the site yields a mean peak ground acceleration plus one dispersion of 0.64g.

3. If the project geotechnical engineer performs pseudostatic slope stability analysis of the coastal bluff backing the subject residence, they should utilize our geologic cross sections. Current practice suggests that a site-specific seismic coefficient (k) be used in the analysis when considering a factor of safety of greater than 1.0. Ashford and Sitar (2002) recommend a method for calculating a site-specific pseudostatic seismic coefficient (k) specifically for a coastal bluff top setting. Following their guidelines yields a coefficient (k) of 0.54. Current Santa Cruz County standards require that the pseudostatic slope stability analysis show the site stable beyond a 1.2 factor of safety. Given this standard, a minimum seismic coefficient (k) of 0.15 should be used as suggested within Special Publication 117 (California Division of Mines and Geology, 1997).

4. Drainage from improved surfaces, such as walkways, patios, roofs and driveways, at the top of the bluff should be collected in impermeable gutters or pipes and either carried to the base of the bluff via closed conduit or discharged into an established storm drain system <u>that does not issue onto the bluff</u>. At no time should any concentrated discharge be allowed to spill directly onto the ground adjacent to the existing residence. Any drain water on paved areas should not be allowed to flow toward the residence or toward the bluff top. The control of runoff is essential for control of erosion and prevention of ponding.

5. We request the privilege of reviewing all geotechnical engineering, civil engineering, drainage, and architectural reports and plans pertaining to the proposed development.

INVESTIGATION LIMITATIONS

1. The conclusions and recommendations contained herein are based on probability and in no way imply that the proposed development will not possibly be subjected to ground failure, seismic shaking or landsliding of such a magnitude that it overwhelms the site.

Project No. SC9551
22 October 2008

MR. BRIAN ARTHUR
382 Belle Monti Avenue
Aptos, California 95003

Subject: Geotechnical Recommendation for Approval of Exception to County Code Sections 16.10.070(h)(1)(ii) and 16.10.040(s)

Reference: Blufftop Grading Within a Geologic Hazards Setback Area Adjacent to Proposed Arthur Residence Building Envelope
APN 038-151-89
Oak Hill Road
Santa Cruz County, California

Dear Mr. Arthur:

A new residence is proposed to be constructed at the referenced coastal blufftop parcel adjacent Oak Hill Road in Santa Cruz County, California. Our Geotechnical Investigation for the proposed project is dated 25 November 2005. An engineering geology report for the project was prepared Rogers E. Johnson & Associates. The engineering geology report delineates a 100 year erosion setback line for the project site blufftop building envelope. The new residence must be placed landward of the 100 year erosion setback line.

A Grading Plan was developed for the proposed residence by the project civil engineer, Mr. Mike Van Horn, CE. The Grading Plan and Cross Section show the blufftop at the center of the parcel being cut down from about elevation 117 to elevation 114 feet. The blufftop will be cut to drain toward the center of the parcel with a shallow swale conveying the collected blufftop runoff landward. The 2005 Geologic and Geotechnical Investigations prepared for the development of the referenced parcel noted the bluff face will destabilize over time due to natural processes whether or not the new residence is constructed. Las Olas Drive is situated immediately adjacent the toe of the bluff with a beachfront residential development at the seaward perimeter of Las Olas Drive. Las Olas Drive has been historically impacted with landslide debris from the oversteepened bluff.

Our letter titled Geotechnical Review of Grading, Erosion Control, and Storm Water Management Plan with Supplemental Geotechnical Analyses, dated 30 April 2008 outlines our engineering opinion that removal of the top 3 feet of the blufftop will reduce the volume of soil that has the potential to impact Las Olas

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Drive below as well as provide a positive increase to the slope stability of the bluff face by reducing the driving forces within the potential blufftop failure wedge

It is our understanding current Santa Cruz County regulations do not allow grading or development within a geologic hazards setback area. Pursuant to Santa Cruz County Code Chapter 16.10.100, we recommend an exception be granted to County Code Sections 16.10.070(h)(1)(ii) and 16.10.040(s) in order to allow the cutting of the blufftop in order to reduce the existing threat to public safety.

If you have any questions regarding this letter, please call our office.

Sincerely,

HARO, KASUNICH AND ASSOCIATES, INC.

Rick L. Parks
GE 2603

REGISTERED PROFESSIONAL ENGINEER
RICK L. PARKS
No. 2603
Exp. 31 Dec 08
GEOTECHNICAL
STATE OF CALIFORNIA

RLP/dk

Copies: 1 to Addressee
1 to Roger E. Johnson & Associates
Attention: Greg Easton, C.E.G.
3 to Tracy Robert Johnson – Residential Design and Planning
Attention: Tracy Johnson

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ATTACHMENT 1

COUNTY OF SANTA CRUZ | Planning Department

MEMORANDUM

Date: November 27, 2008

To: Porcila Perez, Development Review Planner

From: Joe Hanna, County Geologist CEG 1313

Re: Proposed Exception to the Geologic Hazards Code
APN 038-151-89, Application Number 07-0548

Rogers E. Johnson and Associates In their letter dated October 20, 2008 and Haro, Kasunich, and Associates in their letter dated October 22, 2008 state that the eventual failure of the bluff creates a geologic hazard to persons, structures and property below the proposed Arthur Home on Oak Hill Road. To resolve this hazard, the letters recommend an exception to the Geologic Hazards Code Section *16.10.070 Permit conditions (h)* to allow grading within the 25-foot and 100 year setbacks to remove 3 to 5 feet of the permeable soils that contribute potential infiltration of surface water. All of this work is shown on a plan prepared by the project Civil Engineer Mike Van Horn.

Previously, Rogers E. Johnson and Associates stated in their report dated October 24, 2005 that a home could be built on the property if the home was setback approximately 33 feet from the crest of the bluff. The report identified the vertical rock bluff face and rock slope stability as the control factor in bluff retreat. County staff accepted this report and its conclusions, and subsequent project approvals have been based upon this report.

I agree with the addendum reports in their conclusions that coastal bluff retreat poses a potential hazard to the occupants of the homes at the base of the slope as well as any vehicles or pedestrians that are on Las Olas Drive. Improving surface drainage may increase the length of time before the next bluff top failure occurs by decreasing pore pressure along the various fractures. I disagree that this minor excavation resolves the hazard, and the current information has not demonstrated that removing this material will significantly reduce the geological hazard. In fact a majority of the benefit of the proposed work is related to the drainage control and can be accomplished without the exception and related grading of the soils zone at the top of the bluff. My reasons for these conclusions are:

i. The effect on stability of the removal of the relatively small amount of weight contributed by the soil on the crest of the slope is unclear. Depending upon the orientation of fractures within this rock, removal of weight from the crest of the slope may decrease resisting forces with a resulting decrease in slope stability after removal. A detailed kinematic analysis and related stability analysis would be necessary to assure that removals form crest would not adversely affect slope stability.

ii. Clearly, the engineering geologist has indicated that adverse water conditions contribute to block slope failure. In as far as the site contributes to adverse water conditions, an effective drainage system can be installed on the existing ground surface with minimal excavation without the need for the exception.

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iii. The iron fence, and brick wall can be removed with little additional grading.

iv. There are proven methods to control bluff retreat that do not require an exception to the Code. An example of one of these methods is the retaining wall with reinforced caisson or pier foundations completed on the Minott property at 745 Oak Hill Road (see Rogers E. Johnson September 17, 2007.)

Exception:

An exception to the geologic hazards Code is needed to allow the grading into the 25 foot setback per Section ***16.10.070 Permit conditions (h) Coastal Beaches and Bluffs*** *which states in ii,*

"for all development, including that which is cantilevered, and for non-habitable structures, a minimum setback shall be established at least 25 feet from the top edge of the coastal bluff, or alternatively, the distance necessary to provide a stable building site over a 100-year lifetime of the structure, whichever is greater."

To make an exception to section 16.10.070 (h) ii findings are required under section 16.10.100 (c) of the Geologic Hazards Codes. The difficulties in making these findings are as follows:

Required Finding 1. - that hardship, as defined in Section 16.10.040(2j), exists

This finding cannot be made, in that applicant does not demonstrate that a hardship will exist as defined in Section 16.10.040 (2j) if the exception is not granted. Grading 3 to 5 feet of the bluff is not necessary to develop the parcel as the conclusions of the Rogers E. Johnson 10/25/2005 report demonstrates. Furthermore, coastal bluff retreat issue are common to hundreds of homes along the Santa Cruz Coast and are not exceptional, unusual, and peculiar to this property.

Required Finding 2. - the project is necessary to mitigate a threat to public health, safety, or welfare

The excavation of a few feet of the crest of the bluff will have little impact on the amount or rate of coastal bluff retreat, and may have unforeseen adverse affects on the stability of the bluff. A true solution would be to construct a retaining system with the capacity to stabilize the entire slope.

Finding 2 cannot be made, in that the proposed grading within the 25 foot and 100 year setbacks does not mitigate for the threat to public health and safety as it is not clear that the grading will significantly reduce the rate of coastal bluff retreat. Furthermore, the grading work may have unforeseen affects on the stability of the bluff.

Required Finding 3. - the request is for the smallest amount of variance from the provisions of this Chapter as possible

This finding cannot be made, in that the applicant's consultants have not analyzed alternatives to their proposal. Most of the benefits of the grading can be accomplished with on site control drainage without the excavation within the 25 setback, and alternatively must evaluate if a bluff wall is the only alternative to control the geologic hazard.

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Required Finding 4. - adequate measures will be taken to ensure consistency with the purposes of this chapter and this Chapter and the County General Plan. (Ord. 3340, 11/23/82; 3598, 11/6/84; 4518-C, 3/8/99)

This finding cannot be made, in that the grading on the bluff is inconsistent with Section 6.2.12 of the General Plan and is inconsistent Section 5.10.3 of the General Plan in that it will modify a public vista with an adverse change in the aesthetic character of the community.

Conclusions:

The following conclusion can be made concerning the current proposed additional grading:

1. Alternative methods of controlling drainage must be assessed. I believe that a drainage system set at grade with similar fabric as proposed by the Van Horn's grading plan would control drainage at least as well as the current proposal.

2. I cannot see how Finding 1 can be made for this project because a clear hardship, as defined in Section 16.10.040(2j), does not exist with regards to the applicant and the project.

3. Excavating a few feet into the bluff as proposed by the Consultants will not substantially mitigate coastal bluff retreat. Without a clear mitigation making Finding 2 is infeasible, as the Finding requires mitigation of the hazard. Similarly, Finding 3 is complicated as the condition assumes that the least amount of variance required to Code to accomplish the mitigation of a geologic hazard. If mitigation of a geologic hazard is the goal then the applicant should consider options that do not require an exception to the Code such as bluff top walls. These walls have a proven ability to control the retreat of bluff.

4. The consultants must also consider the design of the project in relationship to the adjacent properties and interplay bluff retreat on each parcel will have with the others.

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ATTACHMENT 1

MIKE VAN HORN, INC.

Registered Civil and Geotechnical Engineer
101 Forest Avenue, Santa Cruz, CA 95062-2622

soilsurgeon@cruzio.com
cell (831) 234-5966

Tel. (831) 429-9364
Fax (831) 429-9822

File Number: 12073

22 August 2008

Mr. Brian Arthur
382 Belle Monti Avenue
Aptos, CA 95003

Subject: Proposed Single Family Dwelling Development, APN 038-151-89
Oakhill Road
Santa Cruz County, California

Evaluation of Brick Retaining Wall

Dear Mr. Arthur:

As requested by Mr. Tracy Johnson on your behalf, I have visited the subject site, observed the condition of the existing brick retaining wall, and I have observed the under floor area of the residence east/adjacent to the brick retaining wall. I am providing herein my conclusions regarding the stability of the brick retaining wall with respect to its proposed alterations to the affected site features.

It is my understanding the existing brick retaining wall, located within the geologic setback within the subject site, is planned to be reduced in length such that only the east most approximately nine to ten feet of the retaining wall is to remain following completion of the proposed improvements. The proposed plans also call for the reduction of the height of the backfill for a significant portion of the remaining brick wall.

I visited the subject site today, 22 August 2008. I observed the existing conditions of the brick retaining wall. The east most nine feet of the retaining wall is in relatively good condition and is slightly curved in plan view. The retaining wall does not extend under the residence to the east of the wall.

Additionally, at the home owner's permission, I observed the under floor area of the residence to the east of the wall and observed the foundation of this residence extends down to the base elevation of the brick retaining wall so that the residence's foundation does not depend upon the presence of the brick retaining wall for structural support of any kind.

Based on the above conditions and assumptions, I conclude the proposed alterations to the brick retaining wall and adjacent grade do not threaten the structural integrity of the wall.

CCC Exhibit 7
(page 106 of 455 pages)

EXHIBIT

This concludes this letter. If you have any questions, please contact this office.

Sincerely Yours,

Mr. Mike Van Horn, CE 35615, GE 2047 (expires 9/30/09)

COPIES: 1 to Addressee
3 to Tracy Johnson, Residential Design
1 to File

SANTA CRUZ COUNTY PLANNING DEPARTMENT POLICY/ORDINANCE INTERPRETATION

Interpretation No.: BASEMENT-03 (Basement definition - perimeter exterior wall)
Effective Date: July 27, 2009
Revised: none

Question

How are the "basement exterior perimeter wall area" and the "perimeter exterior wall" as referred to in the definition of basement (13.10.700-B) calculated, for the purpose of determining if a portion of a structure qualifies as a basement for planning and zoning purposes?

Applicable Ordinance Section(s)
13.10.700-B
13.10.700-G

INTERPRETATION:

In order for a portion of a structure to qualify as a basement for planning and zoning purposes, the basement definition in Section 13.10.700-B requires in part that "more than 50% of the basement exterior perimeter wall area must be below grade and no more than 20% of the perimeter exterior wall may exceed 5 feet – 6 inches above the exterior grade." In the definition, the phrases "basement exterior perimeter wall" and "perimeter exterior wall" both refer to the perimeter walls of the basement, regardless of whether the perimeter basement walls are exterior walls of the structure as a whole. A basement wall located entirely underground, or abutting another portion of the structure such as an under floor, is still considered a perimeter wall of the basement. In figure A below, walls a, b, c, and d represent the basement perimeter walls.

Therefore, to qualify as a basement, more than 50% of the perimeter wall area of the basement must be below grade and no more than 20% of the perimeter wall area of the basement may exceed 5 feet 6 inches above the exterior grade, regardless of the relationship of the basement perimeter walls to the exterior walls of the structure as a whole. (Note: Garages with interior access that are on the same level as the basement will be considered as part of the basement. Garages without interior access to a portion of the structure will be considered as separate accessory structures, consistent with the definition of garage in Section 13.10.700-G.)

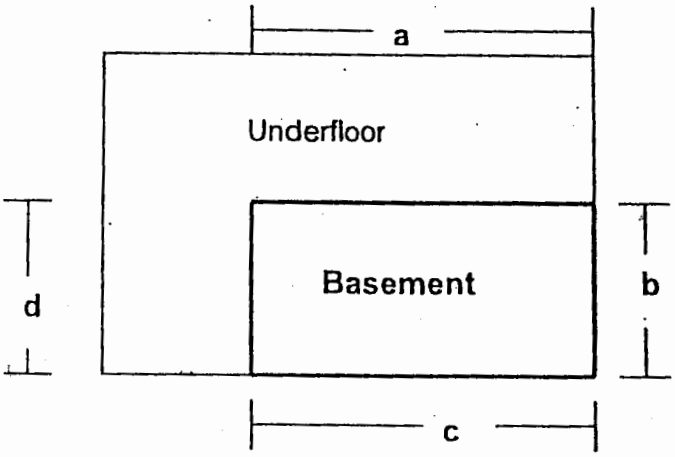
As is consistent with the procedure for measuring structure height outlined in policy interpretation HT-01 (Building Height), when a perimeter basement wall is not located at the exterior of the structure, the height of that basement wall will be measured from the original (natural) grade, as it exists at the outside of the basement perimeter wall. When a perimeter basement wall is located at the exterior of the structure, the height of that basement wall will be measured from the finished grade or natural grade, whichever is lower, as it exists at the outside of the basement wall (see Figure B: Section View).

The location of the exterior grade at the outside of the basement perimeter walls should be included in submitted plans. To determine the location of the exterior grade for perimeter basement walls that abut another portion of the structure instead of facing directly outside, an elevation and/or sectional view may be required.

Figure A: Basement Perimeter Walls

ATTACHMENT 1

Perimeter basement walls =
a+b+c+d



2 Basement Tests

To qualify as a basement:

1) More than 50% of the perimeter wall area of the basement (walls a+b+c+d) must be below the exterior grade;

and

2) No more than 20% of the perimeter wall area of the basement (walls a+b+c+d) can exceed 5'6" above the exterior grade.

Reason:

The intention of the basement definition is to ensure that the basement be located primarily underground. A basement that does not meet this requirement is considered a story or an underfloor instead of a basement.

In order for the basement to be located primarily underground, it is necessary for the perimeter walls of the basement to meet the criteria contained in the definition, regardless of whether the perimeter basement walls are located at the structure exterior. The word perimeter refers to the entire perimeter of the basement, including portions of the perimeter that face directly outside and portions of the perimeter that face another portion of the subterranean area. This requirement flows logically from the definition, which reads in part, "To qualify as a basement more than 50% of the basement exterior perimeter wall area must be below grade and no more than 20% of the perimeter exterior wall may exceed 5 feet– 6 inches above the exterior grade" (underlining added). Since the entire sentence refers to the basement, the reference to the "perimeter exterior wall" refers to the perimeter walls of the basement, and not to some other portion of the structure.

Tom Burns, Planning Director

7/22/09
Date

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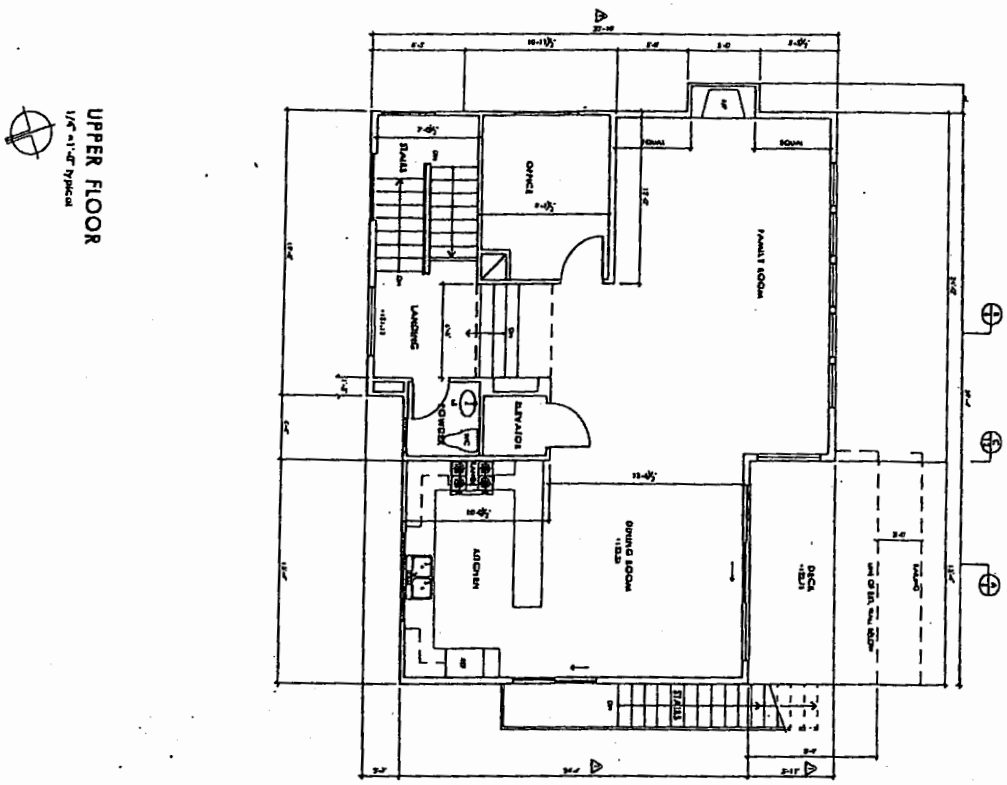
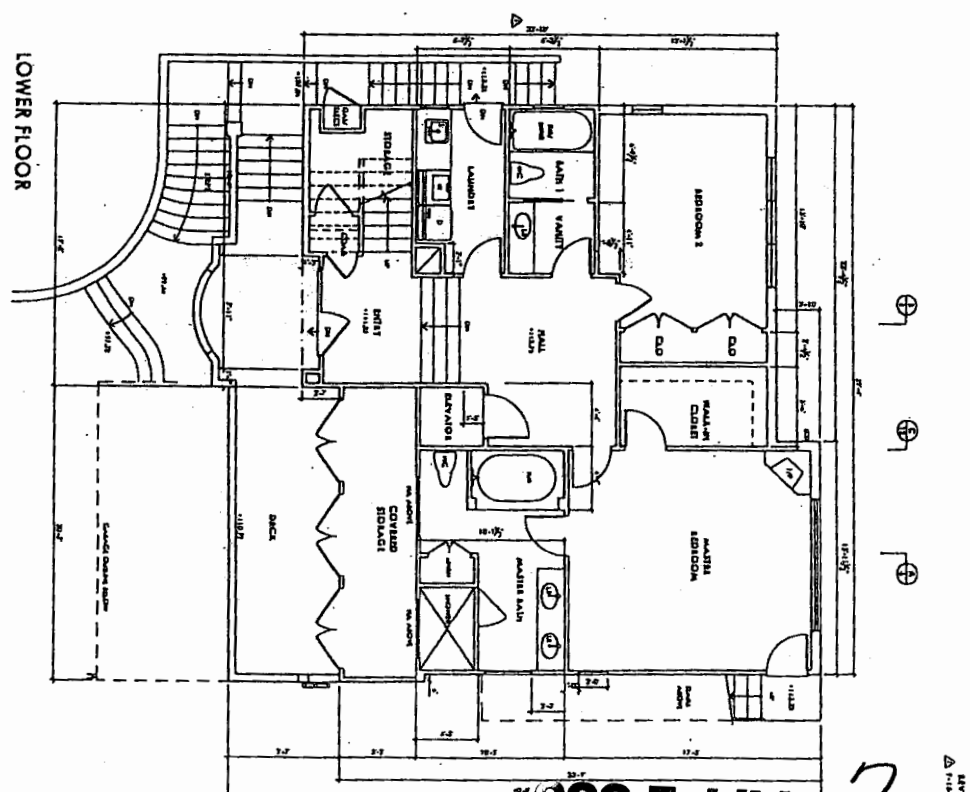
(page 109 of 455 pages)
15-10-700-B

ATTACHMENT 1





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ARTHUR RESIDENCE

Brian Arthur

ROBERT J. COLUSPINA ARCHITECT

Upper and Lower Floor Plans

2

EXHIBIT C

EXHIBIT 10

ATTACHMENT 1

REVISIONS
△ 9-18-09 Basement reduced

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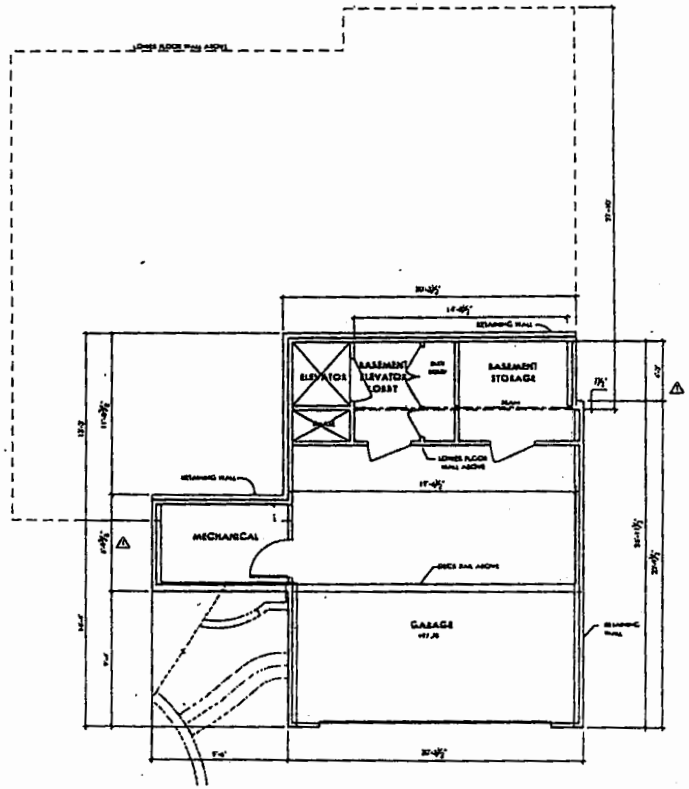
EXHIBIT 1



△ GARAGE FLOOR PLAN
1/4" = 1'-0"

ARTHUR RESIDENCE

Brian Arthur
Utah Hill Road
Aptos, CA 95003 No Sites

APN 026-131-07
ROBERT J. GOLDSTEVE ARCHITECT
C 12,796

3

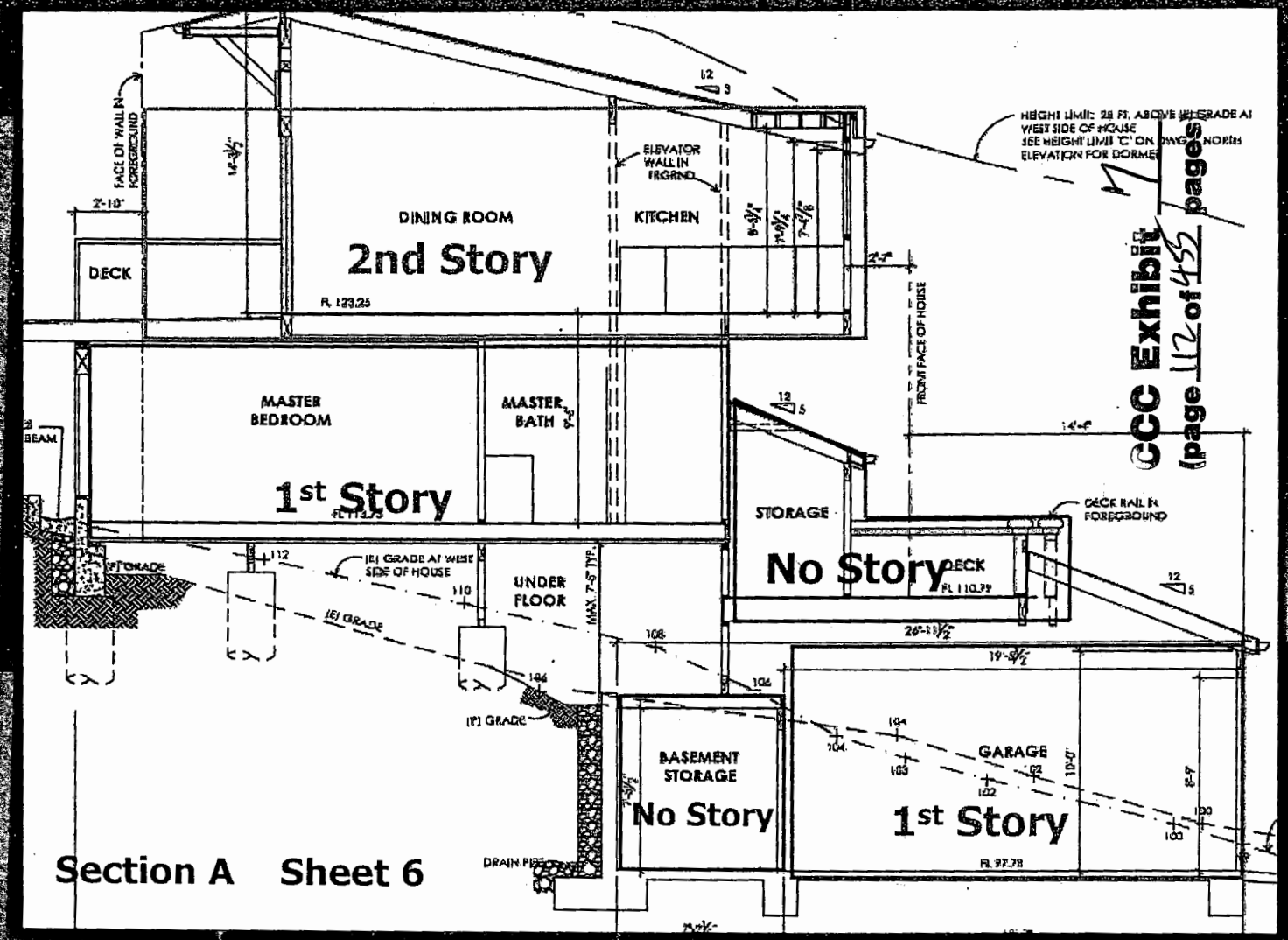
Garage Floor Plan

-74-3-

ATTACHMENT 1

EXHIBIT D

Number of Stories



CCC Exhibit (page 112 of 455 pages)

Application 09-0139 Santa Cruz County Planning Department Project Planner – Robin Bolster-Grant

HYDRO-GEO CONSULTANTS, INC.
P.O. Box 4353, Mountain View, CA 94040-4353
(650) 428-0588 • FAX (650) 428-0589

January 11, 2010
Project 10667-A

Wittwer & Parkin, LLP
147 South River Street, Suite 221
Santa Cruz, California 95060
Attention: Mr. William Parkin

Subject: Preliminary Geologic Assessment
Proposed Single-Family Parcel
Oak Hill Road (APN 38-151-89)
Aptos, Santa Cruz Co., California

Dear Bill,
At your request we visited the subject property on January 8, 2010, studied stereo-paired and oblique aerial photographs, and reviewed the available geologic data listed in the references at the end of this letter report.

BACKGROUND INFORMATION

The subject property is an undeveloped, rectangular shaped, 0.2 acre lot that is approximately 50 feet wide and 170 feet long. It is a substandard size lot for this area. The western portion of this parcel consists of a 100 foot bluff with a very steep slope of approximately 60 degrees that overlooks Las Olas Road and Seacliff State Beach in Santa Cruz County, California. The upper surface of the captioned property slopes to the east, toward Borregas Creek that flows along Oak Hill Road, approximately 250 feet from the site.

The bluff at this property has eroded several feet further eastward than the adjacent parcels to the north and south have; there also appears to be less vegetation on the face of the bluff below this lot suggesting active slope instability.

Pampas grass indicative of high groundwater conditions is present on the face of the slope on the northside of the captioned parcel

Highly fractured Purisima Sandstone that dips 2 to 3 degrees to the southeast (Hickey, 1968) is exposed in the lower portion of this buff. The most pronounced set of joints in this sandstone typically dip seaward in this area (Griggs and Plant, 1998). A marine terrace deposit, approximately 35 feet thick, composed of relatively loose sand and gravel overlies the sandstone. These terrace sediments, which have an angle of repose of 33 degrees (Rogers E. Johnson, 2007), are over-steepened to an unstable position, near vertical slope with a Factor of Safety of less than 1 (Haro, Kasunich and Associates, 2007). This slope is subject to continuous slumping and landsliding. Haro, Kasunich and Associates (2007) recommended that a "pin pile" retaining structure tied together with a grade-beam, consisting of drilled, 24-inch diameter reinforced concrete piers on 5 foot centers, extending at least 5 feet into the Purisima Sandstone, should be installed along the top of this slope to help mitigate the unstable slope condition.

Santa Cruz County (County Code Sections 16.10.070(h)(1)(ii) & 16.1004(s)) requires that a grading and building setback be maintained within the estimated "100 year erosion setback". Rogers E. Johnson & Associates (2008) estimated the 100 year setback to be 33 feet from the top of the bluff at this site. The setback from the top edge of the bluff under the Uniform Building Code (2007) is determined by a 45 degree upward projection from the toe of the bluff which, in this case, may be greater than 33 feet.

Rogers E. Johnson (2008) has requested that an "exception" from the 100 year setback grading requirement be issued by the County to a allow for the removal of up to 3 feet of surface material and the old brick retaining wall in order to improve surface drainage and reduce some of the overburden weight (driving force) on this unstable slope.

The Loma Prieta Earthquake of October 17, 1989 (Magnitude 6.9) triggered significant landslides along the entire face of the bluff along Seacliff State Beach with head scarps 20 to 30 feet high and tension cracks that cut through several building foundations at the top of the cliff (Manson, et al, 1992). The old brick retaining wall at the western end

of the paved driveway on this site, located approximately 40 feet from the top of the bluff, is cracked and has moved approximately 1 inch. This may have occurred during the 1989 earthquake.

FINDINGS

Based on the above information, it is our opinion that the potential "100 year grading" and building setback is greater that the recommended 33 feet and should be at least 40 feet or more as suggested by the crack in the on-site brick retaining wall and a 45 degree upward projection from the base of the bluff.

We do not agree that an "exception" should be made from this setback for site grading. In our opinion, there is a greater potential to destabilize the bluff from the vibrations and weight of the grading equipment than the slight advantage that may be gained by removing some weight from the top of the bluff with heavy equipment.

We also question the feasibility of diverting and "improving" the drainage by grading at the captioned site. Boring logs in this area (Haro, Kasunich and Associates, 2997) indicate that the surface soil is more clayey and less pervious that the underlying material. Consequently, if the clayey surface material at this site is removed, it may allow surface water to seep more rapidly into the soil and contribute to the destabilization of the bluff.

Surface water diverted to a sump or French drain around the proposed residence could also more rapidly infiltrate into the soil and saturate the surrounding terrace sediments. High water conditions in the adjacent Borregas Creek may also contribute to high groundwater levels at this site. These conditions could reduce the stability of the bluff face by seepage and erosion along the contact between the highly fractured underlying sandstone that is unstable and slopes toward the beach and the generally loose terrace sediments.

We believe that the recommendations of Haro, Kasunich and Associates (2007) to install a "pin pile" retaining structure along the face of the bluff would provide a good solution for mitigating the unstable slope condition in the upper portion of the bluff at this site. An engineered retaining wall would also be needed to support the unstable Purisima Sandstone along Las Olas Road, and to provide safer conditions for the houses below this site.

CLOSURE

We trust that this information will be of assistance. If you have any questions please do hesitate to call our office

Very truly yours,
HYDRO-GEO CONSULTANTS, INC.

John T. O'Rourke

Engineering Geologist 419
Hydrogeologist 395

JO'R:jod
e-mailed:

CCC Exhibit 7
(page 116 of 455 pages)

REFERENCES

Blake, T.F., Hollingsworth, R.A., and Stewart, J.P., 2002, Recommended Procedures for Implementation of the DMG Special Publication 117 Guidelines for Analyzing and Mitigating Landslide Hazards in California: Southern California Earthquake Center.

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Brabb, E.E. (Compiler), 1989, Geologic Map of Santa Cruz County, California: U.S. Geological Survey, Miscellaneous Investigations Series Map I-1905.

Griggs, G.B. and Plant, N., 1998. Coastal-Bluff Failures in Northern Monterey Bay Induced by the Earthquake (pp. C33 – C50); in The Loma Prieta, California Earthquake of October 17, 1989 – Landslides: U.S. Geological Survey, Professional Paper 1551-C.

Haro, Kasunich and Associates, 2007, Geotechnical Investigation for 745 Oak Hill Road, APN 038-151-06, Santa Cruz County, California:

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Manson, M.W., Keefer, D.K., and McKittrick, M.A., 1992, Landslides and Other Geologic Features in the Santa Cruz Mountains, California, Resulting From the Loma Prieta Earthquake of October 17, 1989: California Division of Mines and Geology, Open-File Report 91-05.

Parrish, J.G., 2008, Guidelines for Evaluating and Mitigating Seismic Hazards in California: California Geological Survey, Special Publication 117.

Rogers E. Johnson & Associates, 2007, Geologic Evaluation of Coastal Bluff Property, 745 Oak Hill Road, Aptos, California, Santa Cruz County, APN 033-151-06: unpublished report (Job No. C07006-56).

Rogers E. Johnson & Associates, 2008, Request for Exception, Oak Hill Road, Aptos, California, Santa Cruz County, APN 038-151-89, Application #07-0548: unpublished letter report (Job No. C07027-56).

WAC, 6-16-89, Stereo-paired Aerial Photographs (black & white), Flight WAC 89CA, Photographs 36-124 and 36-125, scale: 1" = ~ 2,640.

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ATTACHMENT 1

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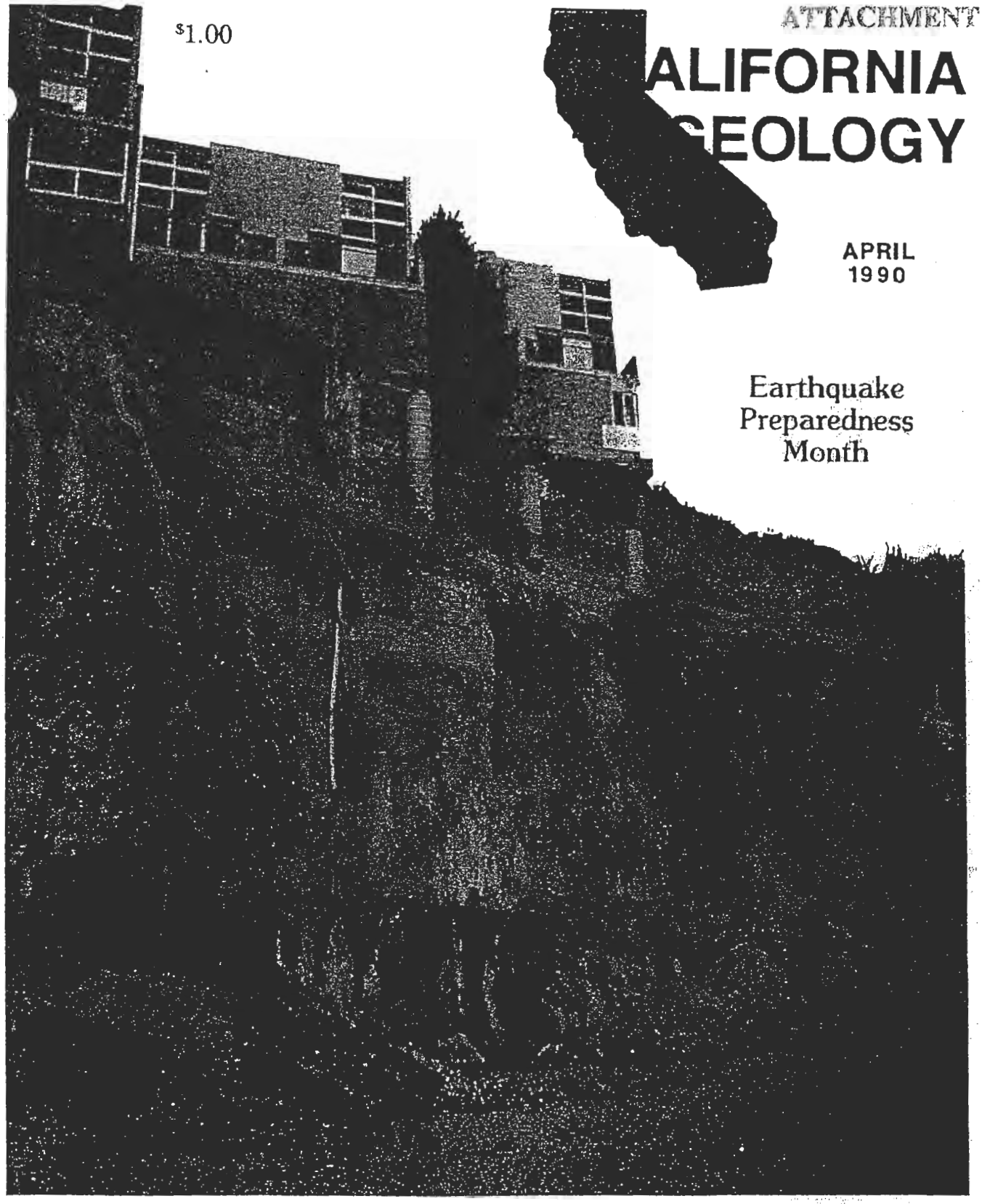
CALIFORNIA GEOLOGY

APRIL 1990



Earthquake Preparedness Month

GEORGE DEUKMEJIAN, Governor
STATE OF CALIFORNIA

GORDON K. VAN VLECK, Secretary
THE RESOURCES AGENCY

RANDALL M. WARD, Director
DEPARTMENT OF CONSERVATION

CALIFORNIA DEPARTMENT OF CONSERVATION

Division of Mines and Geology

Understanding California's Geology

Our Resources – Our Hazards

CCC Exhibit 7
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EXHIBIT F

ATTACHMENT 1

Coastal Landslides Caused By The October 17, 1989 Earthquake

Santa Cruz County, California

By

NATHANIEL PLANT and GARY B. GRIGGS
Department of Earth Sciences
University of California, Santa Cruz

INTRODUCTION

The October 17, 1989 earthquake (magnitude 7.1) ruptured a 24-mile (40 km) long segment of the San Andreas fault zone in the Santa Cruz Mountains, about 54 miles (90 km) south of San Francisco (Figure 1). The hypocenter was at a depth of 11.5 miles (18 km), and peak recorded horizontal ground accelerations varied from 0.64 gravity (g) in Corralitos, 0.54 g in Capitola, and 0.47 g in Santa Cruz (Shakal and others, 1989). This was the largest earthquake in California since the 7.7 magnitude event on the White Wolf fault near Bakersfield in 1952, and the largest event on the San Andreas fault since the 1906 earthquake (McNally and others, 1989). The earthquake caused damage and local emergencies in Alameda, Contra Costa, Marin, Monterey, San Benito, San Francisco, San Mateo, Santa Clara, Santa Cruz, and Solano counties. At least $6 billion in damage resulted from the earthquake; 62 people died and 3,757 were injured (Plafker and Galloway, 1989).

Extensive ground fracturing and cracking in the Santa Cruz Mountains resulted from a combination of the severe shaking and the reactivation of a number of very large "ancient" landslide masses. Liquefaction led to subsidence and formation of sand volcanoes (also called sand boils) along the San Lorenzo, Salinas, and Pajaro rivers as well as in the Moss Landing area. Widespread failure of the sea cliffs also took place between San Francisco and Monterey.

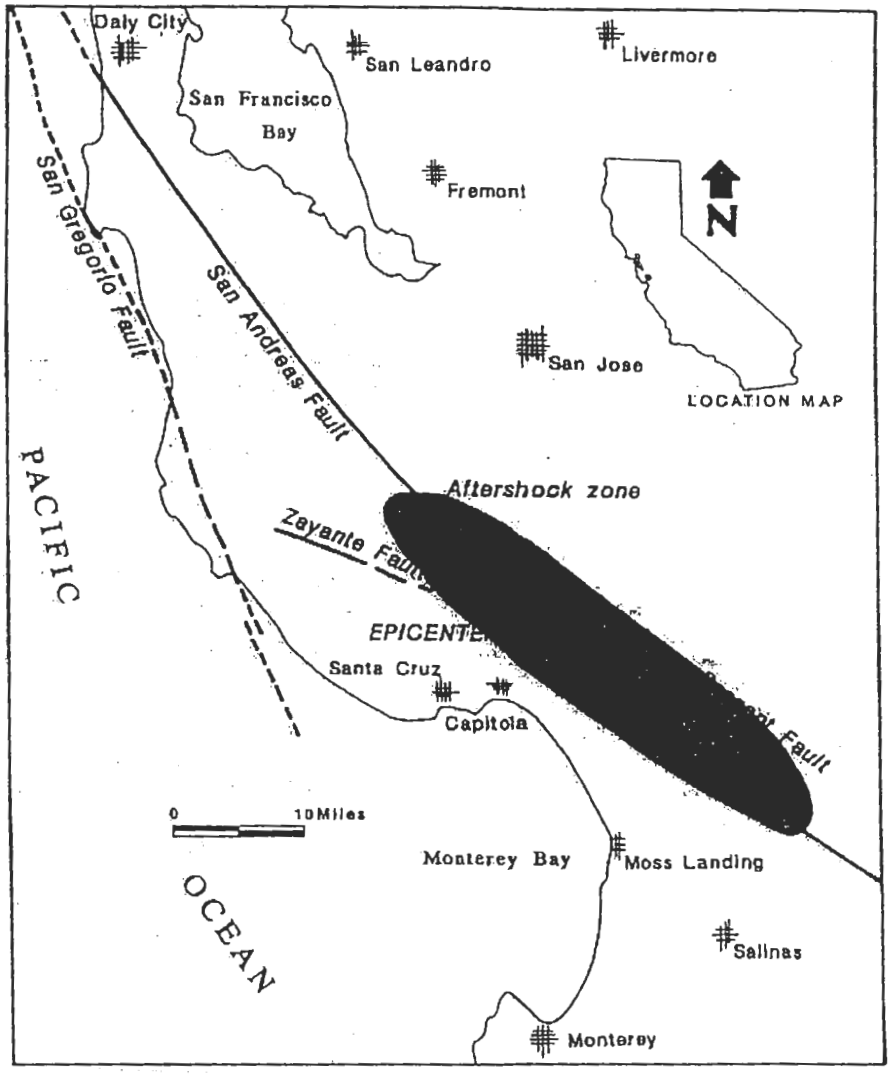

Figure 1. San Francisco Bay area, showing the epicenter of the October 17, 1989 Loma Prieta earthquake in the Santa Cruz Mountains, aftershock zone, main trace of the San Andreas fault, and other nearby faults.

HISTORY OF SEA CLIFF EROSION

Landsliding in marine terrace terrain has been recognized as a geologic hazard along much of the California coastline (Cleveland, 1975). The steep, often unvegetated sea cliffs bordering northern Monterey Bay clearly reflect the effects of active erosional processes. Erosion rates here, due to both marine and nonmarine processes, vary from several inches to several feet per year and are controlled primarily by lithology, structure, stratigraphy, and exposure to wave energy (Griggs and Johnson, 1979; Griggs and Savoy, 1985). These processes include both hydraulic impact and scour from winter storms, as well as mass movements associated with intense rainfall, and, less frequently, mass movements associated with earthquakes. Although construction

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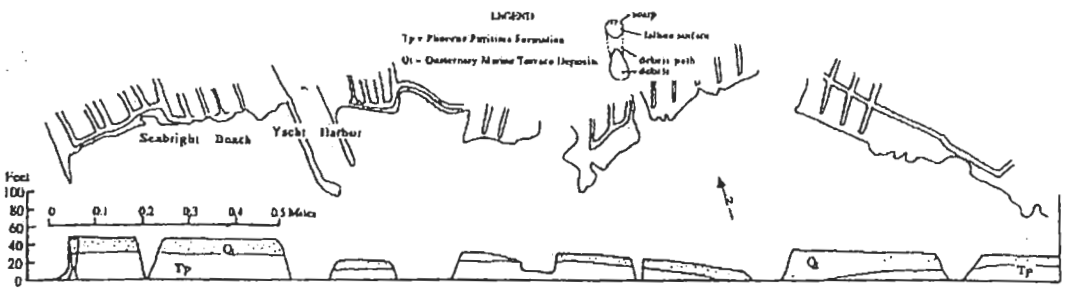
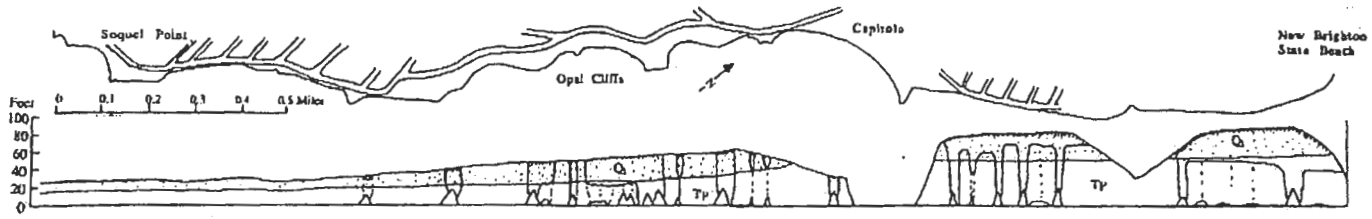


Figure 2. Plan view and longitudinal section showing the location and dimensions of sea cliff failures as well as the geology between Seabright Beach and New Brighton State Beach.



of coastal protection structures has slowed erosion of the coastline by marine processes in some areas, mass failure continues to take place along both protected and unprotected bluffs. Thus, scientists, planners, and developers find that recent events continue to push the limits of coastal erosion landward.

Hydraulic impact and scour are responsible for erosion at the base of the sea cliffs wherever coastal protection structures or wide protective beaches are absent. Typically, the cliffs are undercut over time with subsequent failure of the overlying material. As this material falls into the surf zone, it is broken down by continued wave action and carried away (Griggs and Johnson, 1979).

Sea cliffs over-steepened by wave induced erosion at their base are also susceptible to mass failure during heavy rainfall as a result of elevated groundwater conditions. Such failures are common in bedrock along joints* or other weak planes, and within the overlying, less consolidated marine terrace deposits, alluvium, or soils. Sea cliffs protected from marine erosional processes commonly develop a talus slope at their base whereas the upper portions remain steep. Heavy rainfall may induce failure in both the talus slopes and along the exposed upper portion of the cliff. For example, intense rainstorms in January 1982 caused widespread failure along the cliffs of northern Monterey Bay between New Brighton State Beach and Rio Del Mar. These storms endangered cliff top structures and damaged or destroyed beach houses (Griggs, 1982).

*See Glossary, p. 83

Large earthquakes, such as the October 17, 1989 event, are also capable of producing sea cliff failure. For example, in the October 8, 1865 (approximate 6.5 magnitude) Santa Cruz Mountains earthquake, the *Santa Cruz Sentinel* (1865) reported that overhanging cliffs fell into graded roads, "below Soquel the high cliffs crumbled into the sea," and "a continuous cloud of dust rose along the cliffs between Castro's Landing (now called Rio Del Mar) and Santa Cruz." During the great 1906, 8.3 magnitude earthquake "much earth fell from bluffs near the town" (Capitola) (Lawson, 1908). It is apparent that large earthquakes can cause instantaneous cliff retreat and also weaken sea cliffs through seismic shaking, forming cracks and fissures, thereby increasing the susceptibility of the cliffs to subsequent failure.

EFFECTS OF THE OCTOBER 17, 1989 EARTHQUAKE ON COASTAL BLUFFS

Three key strong-motion stations operated by the Division of Mines and Geology provided the first quantitative records for an earthquake which affected coastal bluffs (Shakal and others, 1989). Prior to October 1989, engineering geologists who studied coastal bluff stability were limited to descriptive interpretations of strong motion in the near-field, or had to extrapolate instrumental data tens of miles from an epicenter to the cliff site. By fortuitous circumstances, the epicenter, the coastal cliffs, and the strong motion instruments were all close to each other for the Loma Prieta earthquake. This provides a new and unique data set which will be helpful for quantitative analysis of coastal bluffs elsewhere.

These new strong-motion data for coastal Santa Cruz County are summarized on Table 1. It is significant for coastal bluff stability that *vertical* ground motion of about 0.40g to 0.60g occurred along the coastline in the near-field. It is inferred that *horizontal* ground motion was on the order of 0.47g to 0.64g for near-field coastal cliffs. The intensity of shaking was VIII on the Modified Mercalli scale. The duration of strong motion which affected cliff stability was on the order of 10 to 15 seconds.

On November 1, 1989, a team of geologists videotaped and photographed the coastline between Bolinas and Monterey, California from an airplane and noted many landslide scars, particularly between Capitola and Moss Landing (Figure 1). The videotape facilitated subsequent mapping of individual slides onto a topographic base map (1 inch = 100 feet).

TABLE 1. NEAR-FIELD STRONG MOTION
Loma Prieta Earthquake of October 17, 1989

Location of Station	Epicentral Distance	Acceleration	
Corralitos SMIP	4.4 mi	90°	0.50g
		Up	0.47g
		360°	0.64g
Capitola SMIP	5.6 mi	90°	0.47g
		Up	0.60g
		360°	0.54g
Santa Cruz SMIP	9.9 mi	90°	0.44g
		Up	0.40g
		360°	0.47g

Data from Shakal and others, (1989).

More detailed ground observations compared lithologies, structural and stratigraphic weaknesses, and potential for additional failure (such as bluff top cracks landward of the failure area). A review of historic aerial stereo photographs and related literature, used to compare the October 17, 1989 event to both prior historic earthquakes and recent large storms, indicated that these observations typify the effects of large earthquakes on sea cliffs and that these effects are comparable to those resulting from heavy rainfall.

Coastal bluff failures resulting from the October 17, 1989 earthquake occurred between San Francisco and Monterey in a variety of lithologies and slope conditions. In northern Monterey Bay, between Seabright Beach to the north and Sunset State Beach to the south, there are excellent examples of the lithologic and morphologic control over earthquake-induced sea cliff failure. Three main differences in lithology along the coastline of northern Monterey Bay result in three distinct types of earthquake induced failures.

Photo 1. Joint controlled wedge failure in the Pliocene Purisima Formation. Marine erosion processes undercut these cliffs, which failed along intersecting joint planes.

Between Seabright Beach and New Brighton State Beach (Figure 2), sea cliffs are cut into a marine terrace that is up to 75 feet (25 m) high. This terrace consists of an uplifted wave-cut bedrock platform that is overlain by several feet of terrace deposits (Figure 3). The wave cut platform is in a thickly bedded to massive siltstone with prominent shell lags* (Pliocene Purisima Formation). Even though the Purisima Formation is well indurated, it is extensively jointed and susceptible to wedge failure along joint surfaces (Photo 1). The unconsolidated terrace deposits typically consist of marine cobbles overlain by shallow marine to eolian sands, and a fluvial conglomerate that is capped by a thin soil horizon. The nearly vertical sea cliffs in this area are actively eroding where they are not protected by revetments, seawalls, or a wide sandy beach. In general, where unprotected, the coarse-grained and well-jointed Purisima Formation erodes at a relatively rapid rate (about 12 to 24 inches per year; 30-60 cm/yr) (Griggs and Johnson, 1979).

*See Glossary, p. 83.

Seismic shaking initiated numerous rock falls and block falls along this section of coast. Undercut and weakened bedrock and fractured promontories collapsed along with bluff top terrace deposits. Failure along joint surfaces allowed large blocks to separate from more intact rock. The size of these failures was dependent on joint spacing and orientation, cliff height, and toe* support. High cliffs with widely spaced, sub-vertical joints and inadequate toe support sustained the largest instantaneous and incipient failures in weakened or undercut sedimentary rock. Toe support in the form of a shore platform, revetment, seawall, or wide beach generally inhibited failure. Although the density of failures diminished away from the epicentral region, several large slides and rockfalls occurred as far north as Daly City (Photo 2).

Damage to private property and public structures was minimal along the cliffs of this area with the exception of the cliffs immediately east of Capitola. In this area bedrock and terrace deposits toppled to the beach below and extensive bluff top fracturing also occurred. This caused further damage to walls and foundations of an apartment complex (already overhanging the sea cliff, Photo 3) and additional failure to an abandoned cliff top public road in the Capitola area.

From New Brighton State Beach to Aptos Creek (Figure 4), an interbedded, pebbly, cross-bedded, moderately indurated, and weakly jointed sandstone member replaces the jointed siltstone member in the Purisima Formation and underlies 90-114-foot (30-38 m) high cliffs. Terrace deposits, consisting of poorly consolidated sands and interbedded pebbles, poorly sorted fluvial conglomerate, and a thin soil horizon, are about 15 feet (5 m)

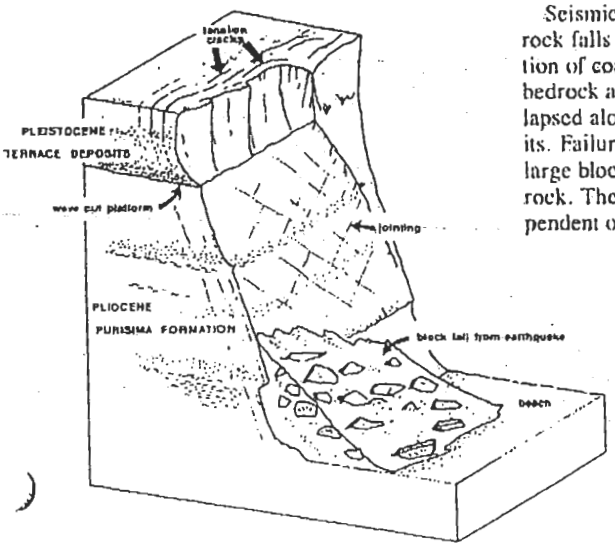


Figure 3. Block diagram showing sea cliff structure and typical failure style in sea cliffs underlain by well-jointed Pliocene Purisima Formation siltstone. Note the tension cracks in the Pleistocene terrace deposits and undercut sea cliff.

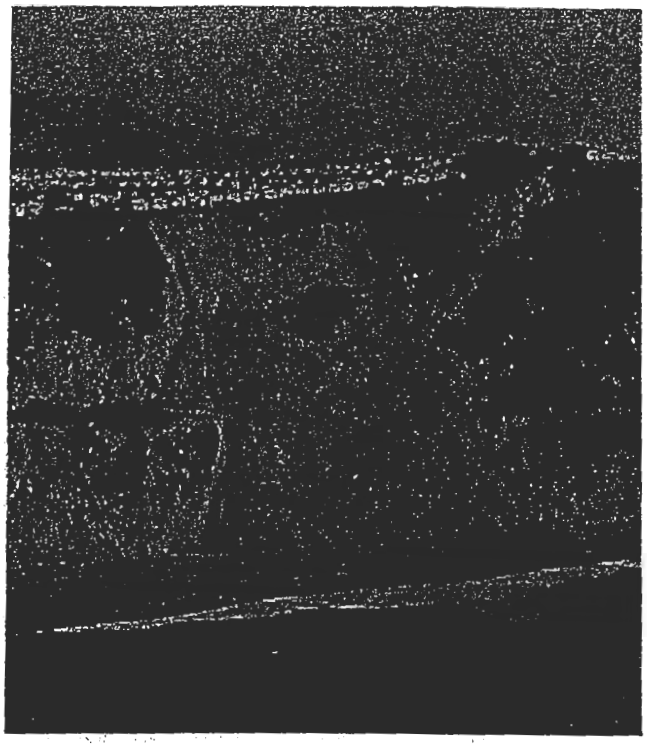


Photo 2. Large coastal landslide near Daly City. Note the proximity of cliff top houses to the head scarp.

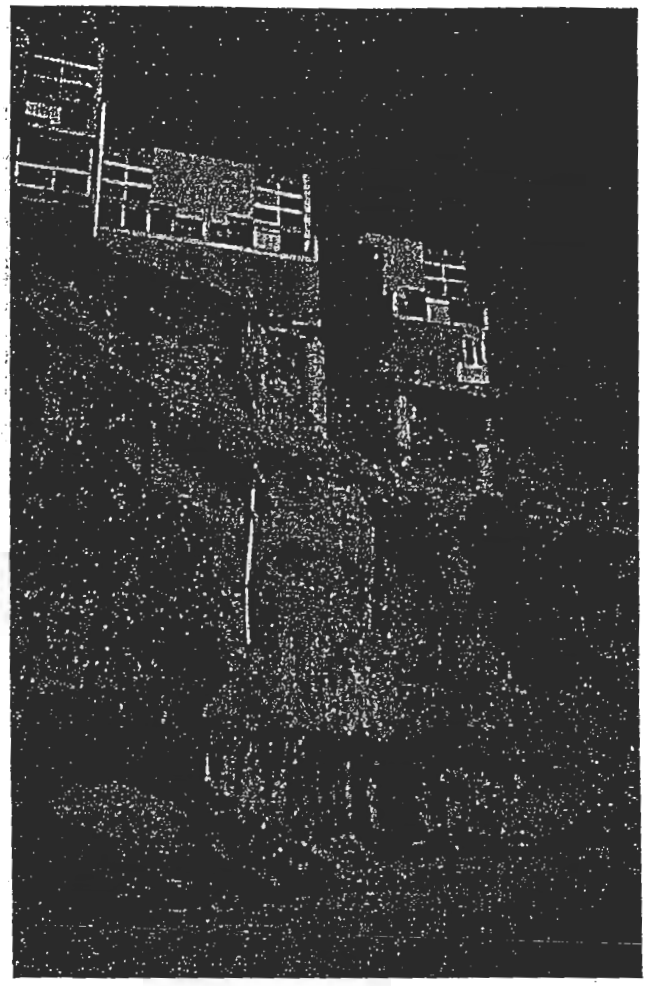


Photo 3. Bluffs east of Capitola. Collapse of terrace deposits and underlying, extensively jointed siltstone further undermined the previously exposed foundation of this apartment building.

thick and thin to the east. Seawalls and revetments, which protect the beach front development, isolate the base of the cliff from marine erosion; the upper portions of the cliffs continue to fail periodically.

Seismic shaking initiated two types of failure here. Translation* (uniform movement) along a joint or weathering surface produced many large slides up to 180 feet wide (60 m wide) that originated in the upper 36 feet (12 m) of the sea cliff (Photo 4). The scarps of these slides tend to cut vertically through the Quaternary terrace deposits and then flatten as they approach the Purisima Formation (Figure 5). Deep tension cracks cut through the terrace deposits (Photo 5) and soils 3-18 feet (1-6 m) landward of many of the scarps; depth of cracks tends to increase with the size of the scarp (Figure 6). Some intact blocks and much loose soil cascaded down the face of the cliff, forming 60 foot (20 m) high coalescing talus cones that partially buried some automobiles and blocked access to homes (Photo 6).

*See Glossary, p. 83

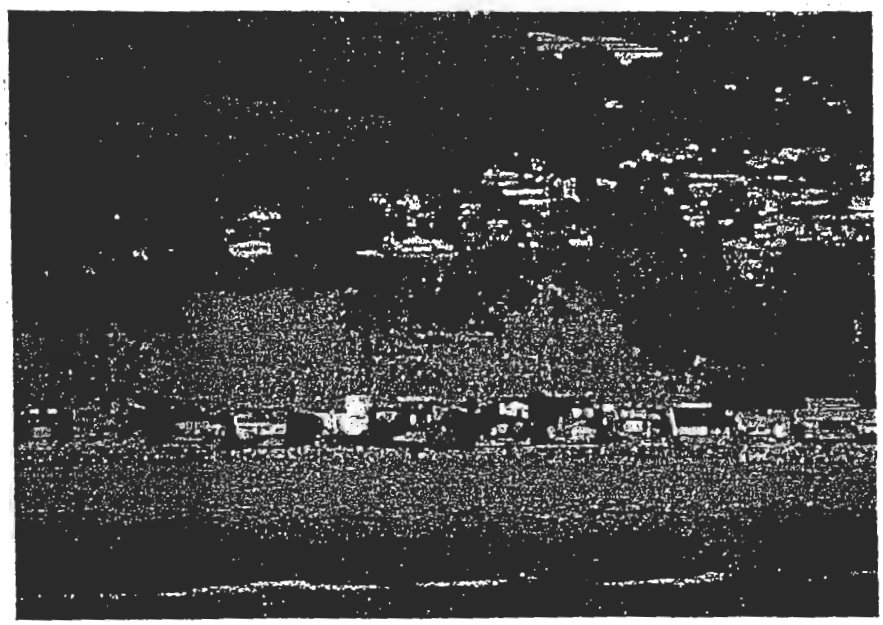


Photo 4. Extensive sea cliff failure above Los Olas Drive. Failure occurred in the upper 36 feet (12 m) of the cliff and loose material cascaded down the steep slope. Note the many houses both above and below the landslide that are jeopardized by slope failure.

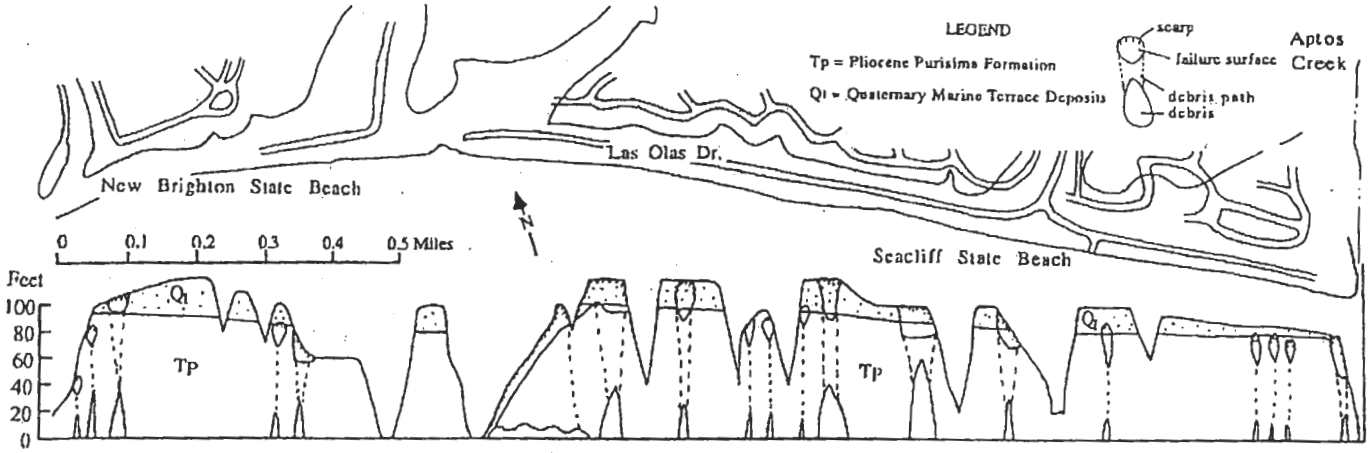


Figure 4. Plan view and longitudinal section showing the location and dimensions of sea cliff failures as well as the geology between New Brighton State Beach and Aptos Creek. A sandstone member replaces the siltstone member of the Pliocene Purisima Formation (Tp) in this area.

In the lower 30 feet (10 m) of the cliff, the sandstone was undercut by fracturing along intersecting conjugate joint sets. Blocks 3 feet (1 m) thick and several feet high broke up easily and formed small talus cones. Though fractured and partially detached from the cliff, many blocks did not fall and remain as unstable areas.

Between Aptos Creek and Rio del Mar, semi-consolidated eolian and fluvial sands of the Pleistocene Aromas Formation form 75-120 foot (25-40 m) high, steep cliffs (Figure 7). The upper 6-15 feet (2-5 m) are more cohesive than the underlying partly consolidated and weakly cemented sands. Sea walls and revetments that protect the back-beach development also protect the cliff toe from wave induced erosion. However, the bluffs continue to fail periodically, as they did in the 100-year storm in January 1982 that caused considerable property damage (Photo 7). The loose surficial sand liquified and flowed downslope over a weathered, less permeable surface and into homes at the base of the sea cliff (Griggs, 1982).

Photo 5. Deep tension crack in terrace deposits. These cracks often cut through house foundations and indicate the potential extent of future failure.

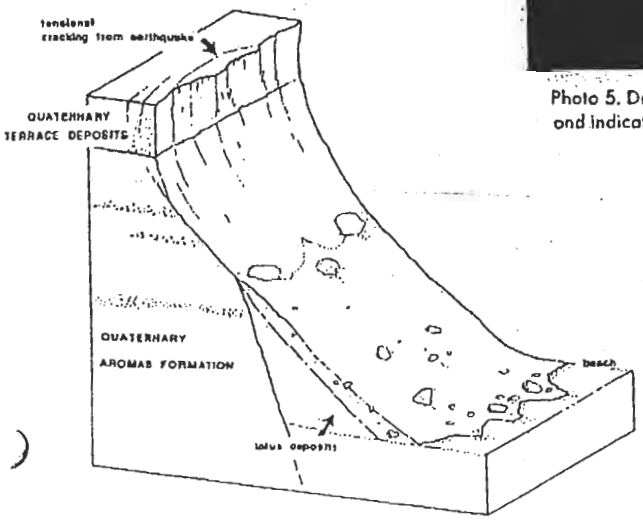
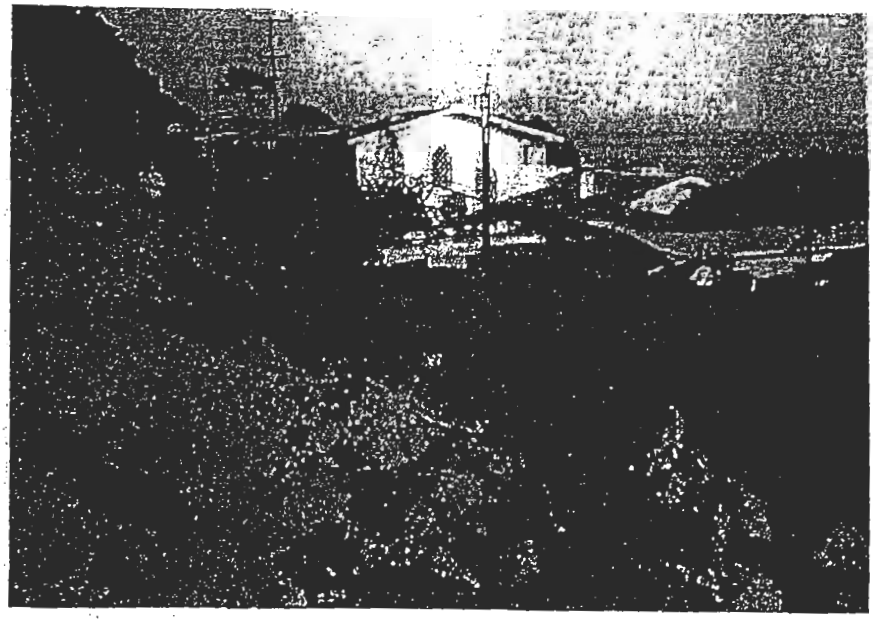


Figure 5. Block diagram showing structure and typical failure style in sea cliffs underlain by sandstone member of the Pliocene Purisima Formation. Note that the failure occurred in the upper portion of the cliff and material cascaded down the steep slope.

Three types of earthquake-induced failures prevailed along this stretch of coast. The first type was a shallow dry sand flow less than 3 feet (1 m) deep, 15-30 feet (5-10 m) wide, and 30-60 feet (10-20 m) long, which originated well below the bluff top (Figure 8, Photo 8). A vertical scarp cut through a thin, cohesive soil layer to a failure surface that paralleled the bluff face. Loose sand or small blocks of more cohesive material, often held together by roots, slid along this surface and then ramped over the less steep talus deposits at the base of the slope.

Photo 6. View facing east along Los Olos Drive. Material from a failure in the upper part of the bluff cascaded down the slope and blocked the road. Note the telephone pole broken by the landslide.



The second type of earthquake failure, larger translational slides, several feet deep and up to 90 feet wide, occurred in the upper 30-45 feet (10-15 m) of the cliff face where near-vertical cliff tops existed before the earthquake. These failures were similar to the failures in the sandstone member of the Purisima Formation (Figure 5). A 3-9 foot (1-3 m) vertical scarp cut through the more cohesive soils that were undercut by downslope failure of underlying, less cohesive soils. Large intact blocks, 3-6 feet (1-2 m) thick, and loose sand from the upper portion of the cliff cascaded down the slope and tension cracks up to 30 feet (10 m) formed landward of the scarps.

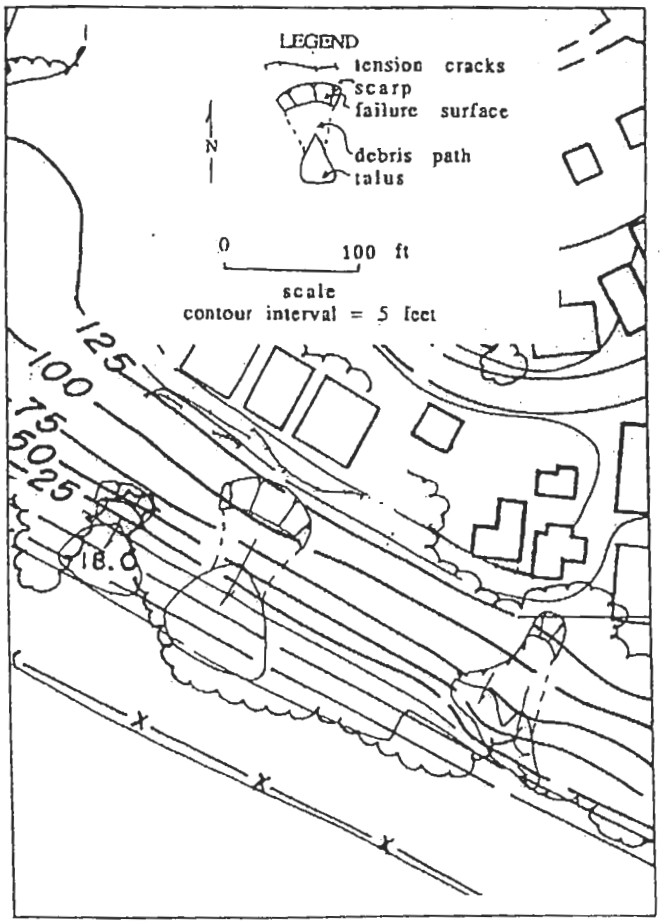


Figure 6. Details of sea cliff failures and tension cracks. Note the prevalence of tension cracks near the large failure.

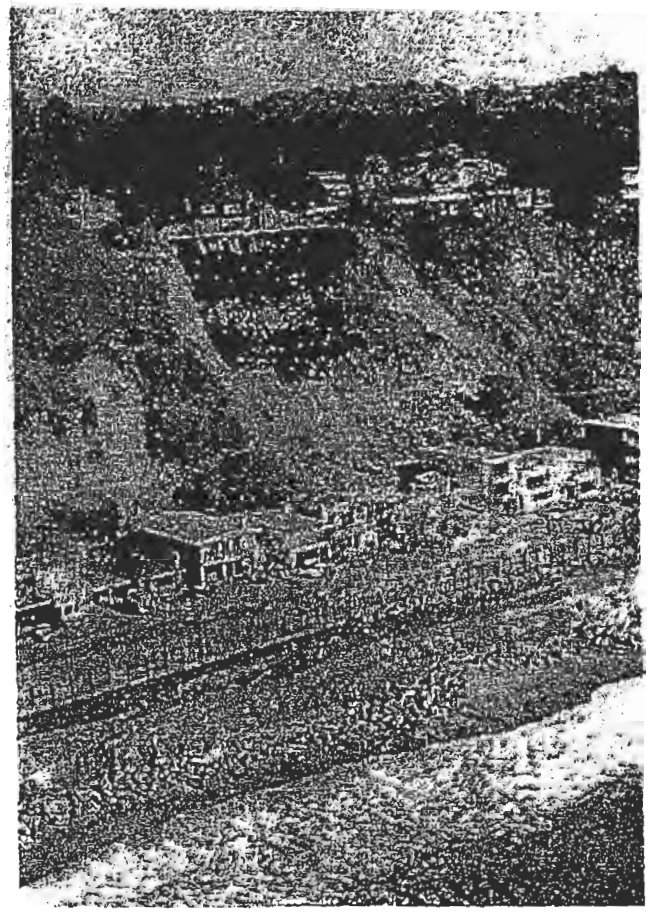


Photo 7. Slope failure in 1982 that destroyed a house on Beach Drive. This type of sea cliff failure is very similar to that caused by the October 17, 1989 earthquake.

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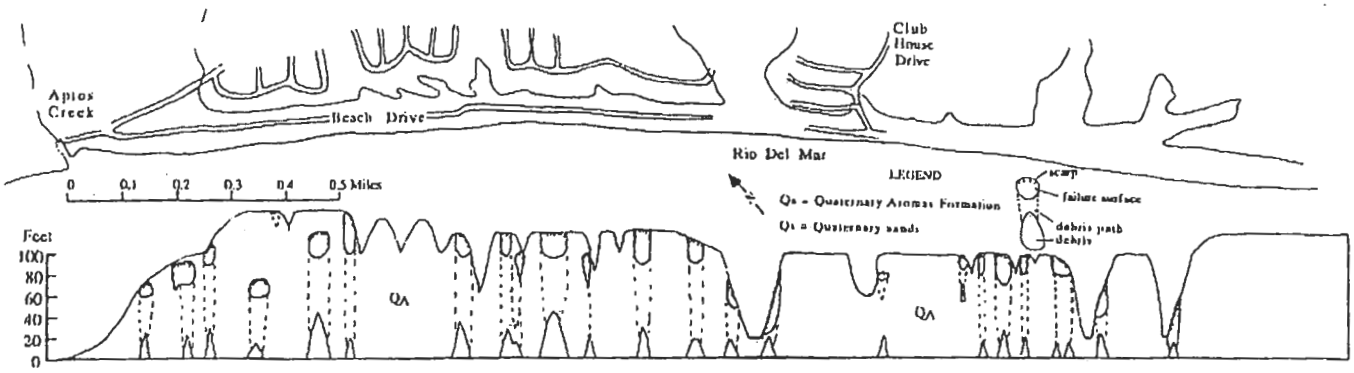

Figure 7. Plan view and longitudinal section showing the location and dimensions of sea cliff failures and the geology between Aptos Creek and Rio Del Mar.

The third type of earthquake failure is a translational slide. South of Manressa State Beach (Figure 9), sands composing the cliffs are less consolidated and the cliffs are therefore less stable. This stretch of cliffs is fronted by a wide protective beach. During the earthquake, a very large translational slide, 300 feet (100 m) wide and 6-9 feet (2-3 m) deep, undermined 15-30 feet (5-10 m) of the cliff top above the Place de Mer development (Figure 8, Photo 8). Large intact blocks toppled from the upper 15 feet (5 m) of slope while intact patches of soil, held together by roots, and loose sand slid down the slope to a roadway. One house and its retaining wall system were undercut by the slope collapse in this area; the house had to be demolished.

Further to the south, the coastal bluffs in the Sunset State Beach area (Figure 9) consist of weakly consolidated Pleistocene dunes (Wisconsin age; Dupré, 1975) which have been stabilized by vegetation. Homes have been built on the eroding edge of this ancient dune complex. Slope failure in this area occurred when shallow slabs up to 3 feet thick were detached and translated short distances downslope (Photo 9). This form of bluff retreat has threatened several homes and at least one will be relocated.

[1] See Glossary, p. 83

Photo 8. Very large dry sand flow above Place de Mer development. Houses at the top and base of this failure were at risk.

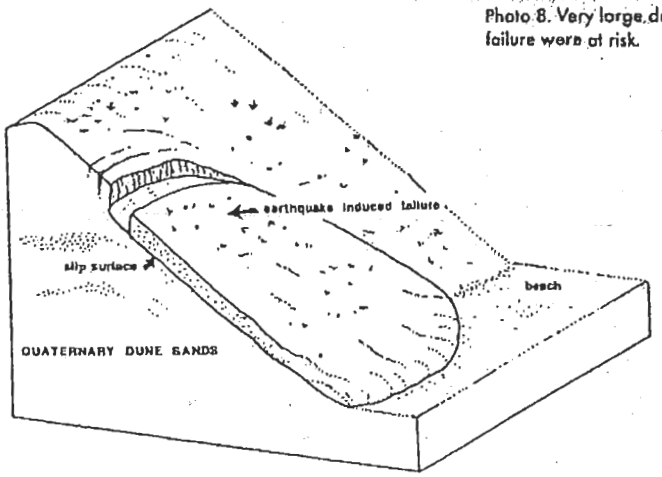

Figure 8. Block diagram of dry sand flow in weakly consolidated dunes. Note the tension cracks in the cohesive surface layer.

The lithology of the sea cliff materials controlled the mode of failure at most locations. Promontories, headlands, and narrow peninsulas or ridges along the coast were consistently the sites of the most extensive failure (Photo 10). On a larger scale, scientists also noted this effect in the Santa Cruz Mountains, as a result of this earthquake (Plafker and Galloway, 1989), and in other areas where large earthquakes have occurred in the past (Harp and others, 1981). In these non-coastal areas, the ground surface topography caused reflection of seismic

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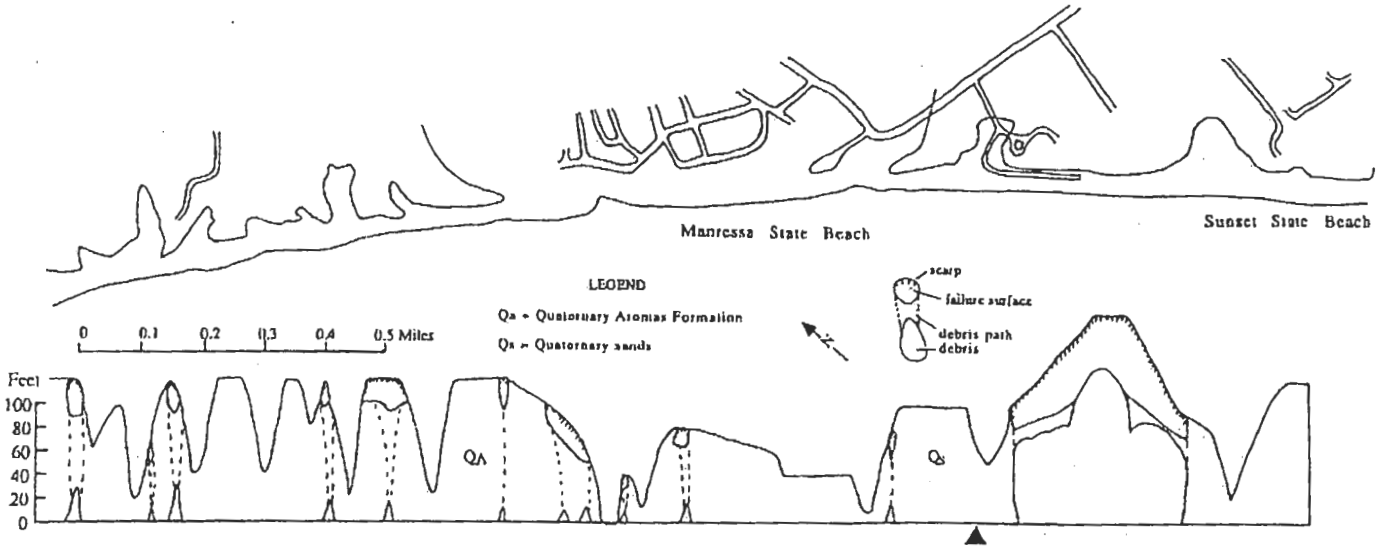

Figure 9. Plan view and longitudinal section showing the location and dimensions of sea cliff failures and geology between Rio Del Mar and Sunset State Beach.

waves; constructive interference* then amplified the incoming seismic energy, increased the dynamic stresses, and caused rock or soil failure. However, the size of the ground surface structure that can reflect incoming seismic waves must be on the same order as the seismic wavelength (Harp and others, 1981). Thus, variations of the topography with dimensions of tens of miles will interact with long seismic waves. On the other hand, sea cliffs which are tens of feet high will not respond to long wavelengths. Therefore, the repeated failure along the coastal promontories and narrow ridges is probably due to the lack of lateral support during the intense shaking rather than to topographic amplification.

IMPACT ON FUTURE LAND USE DECISIONS

Seismically induced coastal bluff failure was common up to 47 miles (75 km) from the epicenter of the 7.1 magnitude October 17 earthquake. The cliff failure in developed areas of the coast posed risks to structures on the bluff top as well as the private and public structures on the beach below. One death occurred on a beach north of Santa Cruz when a section of weak bedrock in a cliff collapsed onto a sunbather.

The two geologic hazards consistently identified at coastal sites in consulting reports are seismically induced slope failure and slope failure induced by excess water. Soil properties and slope configuration are commonly used in site-specific slope stability analysis. Study of historical stereo aerial photographs can indicate where and when slope failure has taken place in the past and aid in relating these failures to either seismic or rainfall events.

For example, the aerial photographs of the northern Monterey Bay coastline extend back to 1928 and show the changes over a period of 60 years. These photographs clearly show periodic shallow failure or sloughing of the bluffs and widespread bluff failures that occur after heavy precipitation. Most often, the failures are initiated in the bluff top terrace deposits and may extend all the way to the base of the bluff. Where the thickness of the failed material is great enough, the steep slopes produce flows that damage and destroy the homes below. The incidents of bluff failure of this type are relatively common, occurring every 10-15 years on the average.

If large scale, deep-seated bluff failure occurred during the 1906 earthquake, or in the two magnitude 6.0 events that occurred on the offshore San Gregorio fault in 1926, it might be expected that some evidence would be present in the 1928 aerial photographs. The photos, however,

Photo 9. Large dry sand flows above Sunset State Beach. One of the bluff top houses will be moved farther back from the edge of the cliff.

*See Glossary, p. 83

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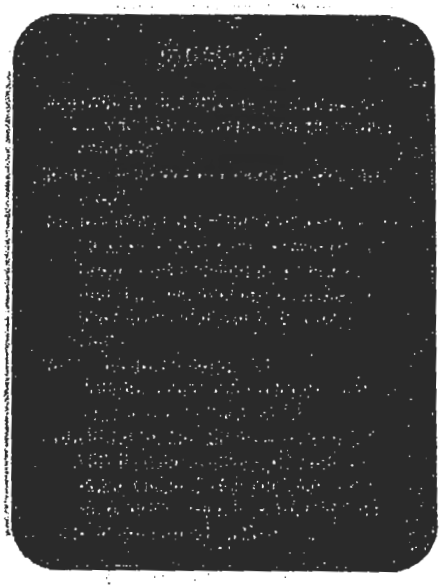


Photo 10. Extensive slope failure and cracking on a narrow ridge. This house will be torn down and the slope will be graded to a safer angle. Houses below this failure were evacuated.

show a bluff configuration without evidence of any major or deep seated failure. There are extensive areas along the upper bluffs in the Rio Del Mar area that appear devoid of vegetation in the 1928 photos, suggesting recent failure. In general, the aerial photo record indicates that the type of coastal bluff failure expected in this area during a major earthquake is similar to that expected during intense rainfall events, namely shallow surficial failures, up to several feet thick at most. The October 17, 1989 earthquake provided an opportunity to check these interpretations and hazard assessments.

The areas where the extensive damage occurred during the October 1989 earthquake, and where homes received the most damage, were those that failed most frequently during past episodes of intense rainfall as shown in aerial photographs. Along northern Monterey Bay, the areas of most frequent failure are the steep bluffs cut into the Pliocene Purisima Formation from the Las Olas Drive/Seacliff State Beach area to Aptos Creek, and the bluffs composed of the weakly consolidated Pleistocene Aromas Formation, which extend from Aptos Creek down coast to La Selva Beach.

The top, slope, and base of coastal bluffs are potentially endangered by earthquake-induced slope failure, necessitating costly mitigation measures. At the top of bluffs, several structures were immediately damaged when cliff failure undermined the foundations (Photo 3). In nearly all cases of failure, tension cracks up to 30 feet (10 m) formed behind the head of scarps, and in some cases cut through house foundations (Photos 5 and 10). Cracking and slope failure were so extensive at three bluff top sites that the homes had to be demolished. Two of these homes were built on very narrow peninsulas (Photo 10); the third was at the crest of a very high, steep, narrow section of bluff top (Photo 8). These bluff top cracks probably represent incipient slides that may fail under winter conditions of increased pore pressure. The depth and width of such cracks can be used as a reasonable indicator of potential bluff top failure during seismic shaking.

Most of the sea cliffs included in this study were too steep to support slope construction, and the hazard of building on such locations is verified by observations. In several locations, mid-slope sites received debris from upslope failures (Photo 8).

Hazards to houses at beach level resulted from failure of the cliffs behind them. Such failures led to the damage and evacuation of a number of houses in the Las Olas Drive and Beach Drive areas. The houses built closest to the base of the bluffs were most susceptible to this type of damage.

Mitigation and risk reduction measures began within one week of the earthquake and included fencing off dangerous sites, cutting back overhangs, and removing trees from the top and slope of the sea cliff. At sites where bluff top houses had to be demolished due to the threat they posed to houses at beach level, extensive grading was required to remove and stabilize the cracked bluff top areas.

CONCLUSIONS

The October 17, 1989 earthquake provided an opportunity to observe the effects of a large earthquake on slope stability. Sea cliff failures along the extensively developed northern Monterey Bay coastline demonstrated both the hazard induced by earthquakes and the general instability of coastal bluffs. Failures produced by the recent earthquake occurred in bluffs that were actively eroding (Photo 3) and in bluffs that were protected from marine erosion (Photo 4). Furthermore, narrow ridges or promontories were observed to be most likely to sustain severe damage (Photo 10). Although the earthquake caused massive instantaneous failure, residual, weakened bedrock and soils may experience increased erosion and failure rates as the typical cycle of winter storms batters the coastline. Current and future development proposals along the coast should consider the evidence and experience gained from this earthquake to evaluate both building constraints and the feasibility of hazard mitigation measures.

ATTACHMENT I

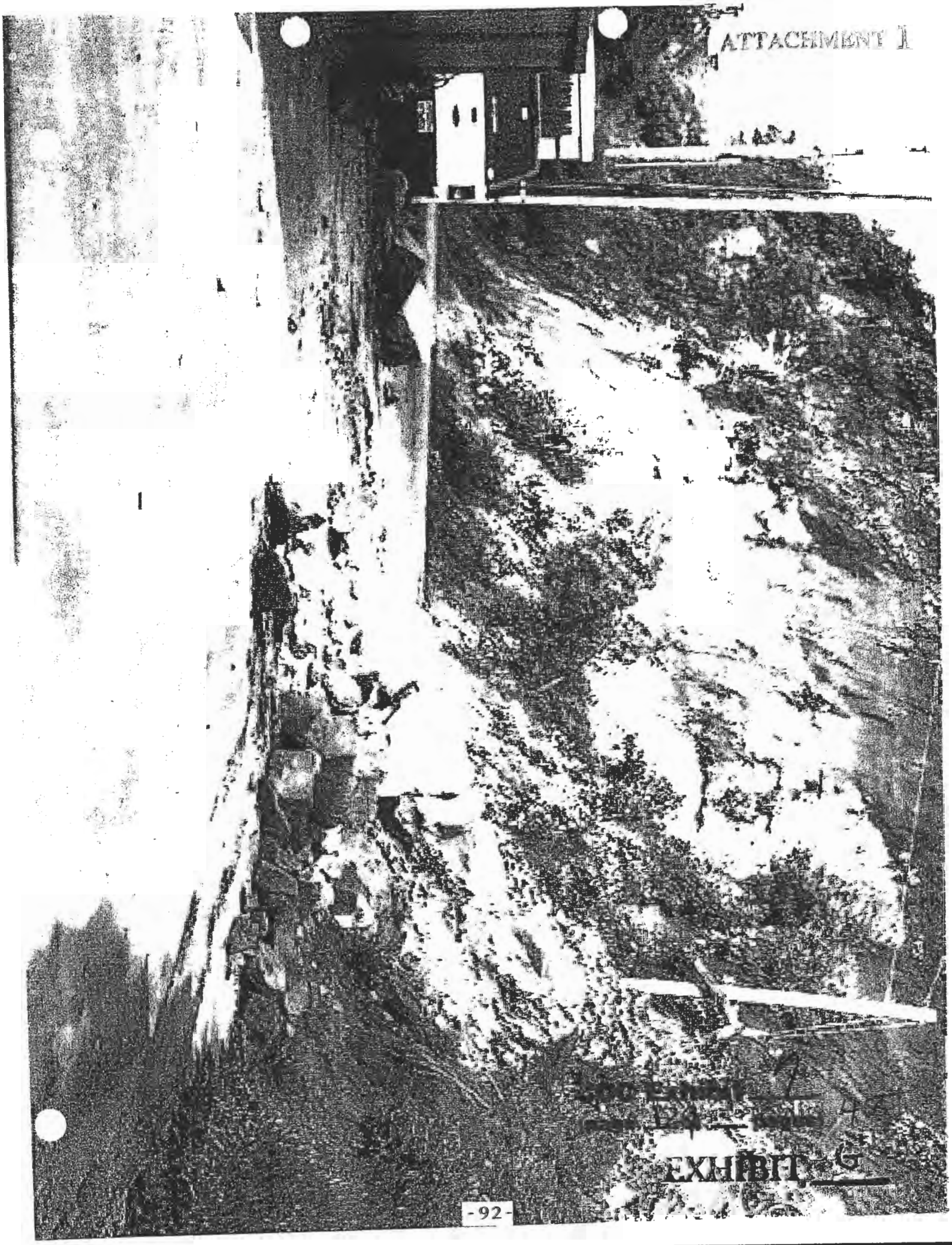
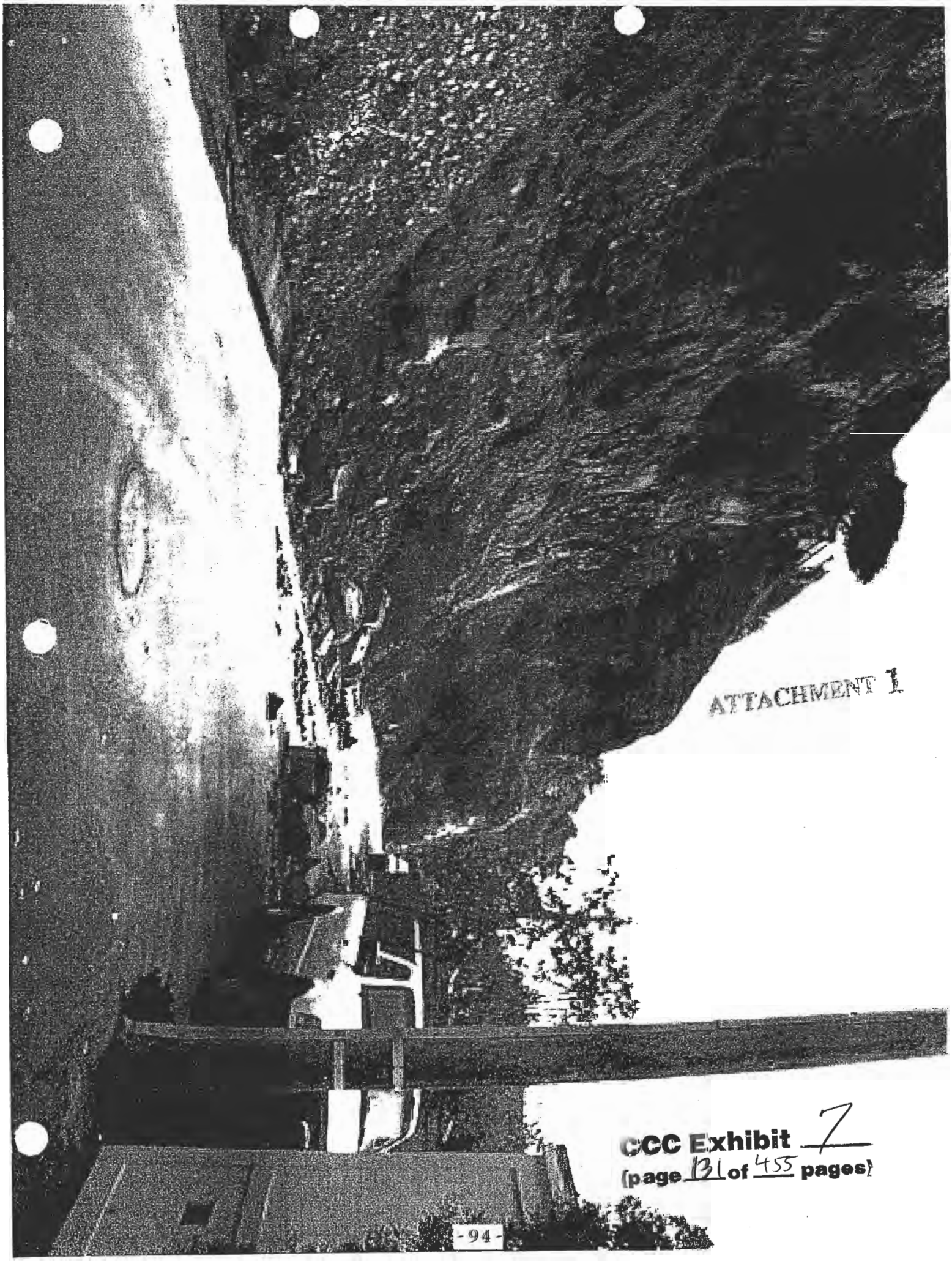


EXHIBIT G

ATTACHMENT 1



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ATTACHMENT

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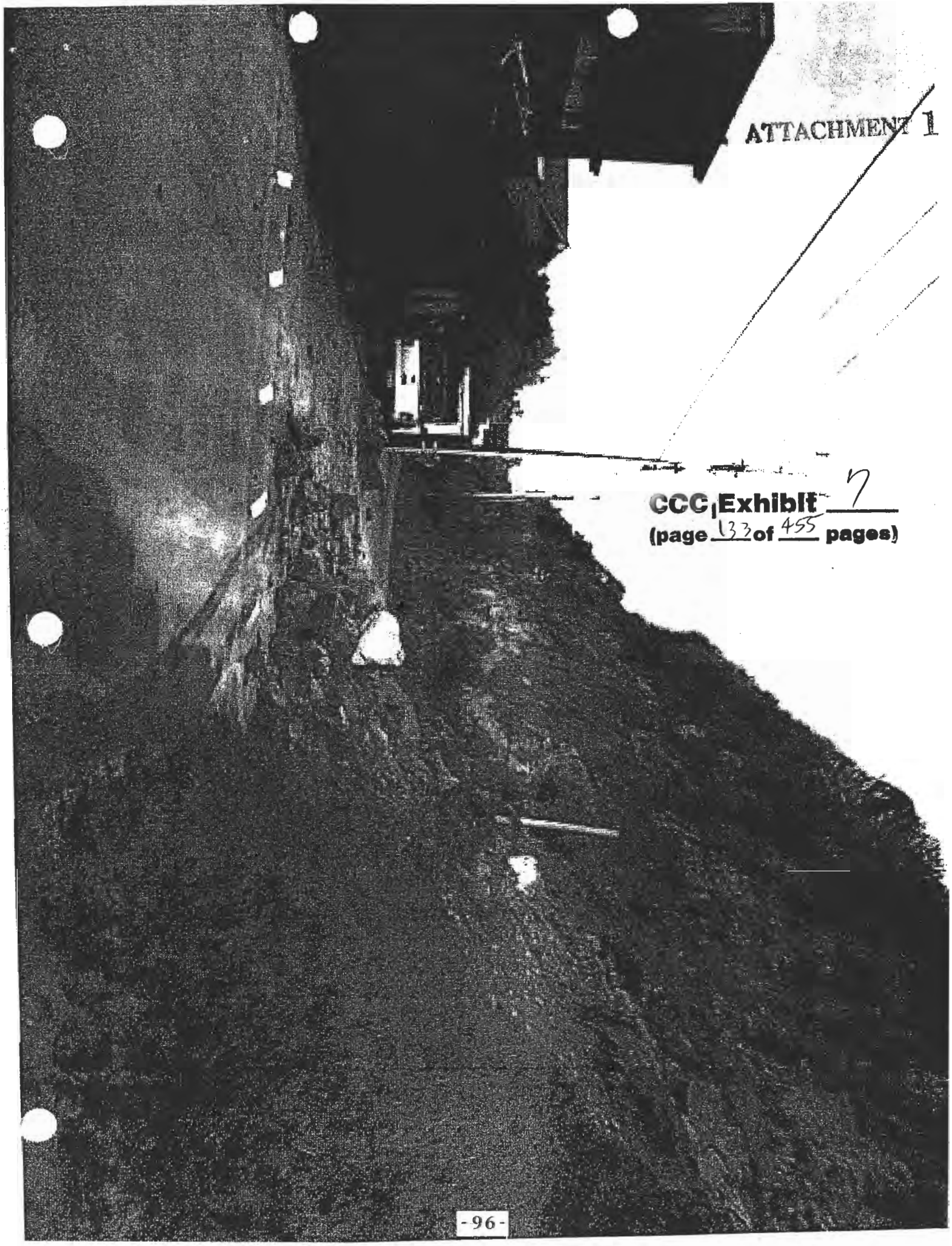

ATTACHMENT 1

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TTACHMENT 1

CCC Exhibit 1
(page 124 of 455 pages)

IBIT H

RECORDED AT THE REQUEST OF:
COUNTY OF SANTA CRUZ

WHEN RECORDED MAIL TO:
SANTA CRUZ COUNTY PLANNING
701 OCEAN ST.
SANTA CRUZ, CA 95060

ATTACHMENT 1

2006-0003315

Recorded
Official Records
County of
Santa Cruz
GARY E. HAZELTON
Recorder

011:38AM 18-Jan-2006

REC FEE 16.00
CC CONFORMED COP 1.00

JRS
Page 1 of 4

(Space above this line for Recorder's use only)

DECLARATION REGARDING THE ISSUANCE OF A DEVELOPMENT PERMIT IN AN AREA SUBJECT TO GEOLOGIC HAZARDS

(Document Title)

THIS PAGE ADDED TO PROVIDE ADEQUATE SPACE FOR RECORDING INFORMATION (Cal. Gov. Code §27361.6)

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(page 135 of 455 pages)

REC 33 (1-93)

EXHIBIT I

RECORDED AT REQUEST OF:
County of Santa Cruz

WHEN RECORDED MAIL TO:

Santa Cruz County Planning
701 Ocean St.
Santa Cruz, CA 95060

(Space above this line for Recorder's use only)

Note to County Recorder:
Please return to the staff geologist in the Planning Department when completed.

DECLARATION REGARDING THE ISSUANCE OF A DEVELOPMENT PERMIT IN AN AREA SUBJECT TO GEOLOGIC HAZARDS

The undersigned ~~Tom~~ Emily Oswalt (names of property owners) (does) (do) hereby certify to be the owner(s) of the real property located in the County of Santa Cruz, State of California, commonly known as Oakwood Rd Aptos (street address); legally described in that certain deed recorded in ~~Book~~ # 2003-0058477 on ~~Page~~ _____ of the official records of the Santa Cruz County Recorder on June 17 2003 (deed recordation date); Assessor's Parcel Number: 038-151-89.

And, acknowledge that records and reports, filed with the Santa Cruz County Planning Department, indicates that the above described property is located within an area that is subject to geologic hazards, to wit:

> The home is located on a Coastal Bluff, and the engineering geologist Rogers E. Johnson has designated a development envelope. All structures must be located within this envelope, and all development must be contained within the envelope. The development envelope maybe modified with approval by the project engineering geologist and the County Geologist.

And, having full understanding of said hazards, (I) (We) elect to pursue development activities in an area subject to geologic hazards and do hereby agree to release the County from any liability and consequences arising from the issuance of the development permit.

This declaration shall run with the land and shall be binding upon the undersigned, any future owners, encumbrancers, their successors, heirs, or assignees. This document should be

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NOTICE TO PERMIT HOLDERS WHEN A SOILS REPORT HAS BEEN PREPARED, REVIEWED AND ACCEPTED FOR THE PROJECT

After issuance of the building permit, the County requires your soils engineer to be involved during construction. Several letters or reports are required to be submitted to the County at various times during construction. They are as follows:

1. **When a project has engineered fills and / or grading,** a letter from your soils engineer must be submitted to the Environmental Planning section of the Planning Department prior to foundations being excavated. This letter must state that the grading has been completed in conformance with the recommendations of the soils report. Compaction reports or a summary thereof must be submitted.

2. **Prior to placing concrete for foundations,** a letter from the soils engineer must be submitted to the building inspector and to Environmental Planning stating that the soils engineer has observed the foundation excavation and that it meets the recommendations of the soils report.

3. **At the completion of construction,** a *final letter* from your soils engineer is required to be submitted to Environmental Planning that summarizes the observations and the tests the soils engineer has made during construction. The final letter must also state the following: "Based upon our observations and tests, the project has been completed in conformance with our geotechnical recommendations."

   If the *final soils letter* identifies any items of work remaining to be completed or that any portions of the project were not observed by the soils engineer, you will be required to complete the remaining items of work and may be required to perform destructive testing in order for your permit to obtain a final inspection.

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disclosed to the forgoing individuals. This declaration may not be altered or removed from the records of the County Recorder without the prior consent of the Planning Director of the County of Santa Cruz.

OWNER: Emily Oswalt
Signature

OWNER: tom Oswalt
Signature

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

State of California
County of Santa Cruz
Subscribed and Sworn to before me
this 17th day of January, 2006,
by Tom & Emily Oswalt.

Fred Yee
Notary Public

FRED YEE
Commission # 1595176
Notary Public - California
Santa Cruz County
My Comm. Expires Jul 18, 2009

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ATTACHMENT 1

William P. Parkin, State Bar No. 139718
Jonathan Wittwer, State Bar No. 058665
Gary Patton, State Bar No. 048998
Ryan D. Moroney, State Bar No. 218920
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147 South River Street, Suite 221
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office@wittwerparkin.com

Attorneys for Petitioners and Plaintiffs
PATRICK AND LAURA MURPHY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA CRUZ

PATRICK MURPHY, and LAURA MURPHY,	Case No. CV 163497
Petitioners and Plaintiffs,	
v.	**FIRST AMENDED PETITION FOR WRIT OF MANDAMUS AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF, DAMAGES AND ATTORNEYS FEES**
COUNTY OF SANTA CRUZ, and DOES 1 THROUGH 15,	
Respondents and Defendants,	
BRIAN ARTHUR, TOM F. OSWALT, as trustee for the Oswalt Trust, and DOES 15 THROUGH 30,	Date: January 14, 2010 Time: 8:29 a.m. Dept.: 4
Real Parties in Interest and Defendants.	Honorable Timothy R. Volkmann

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EXHIBIT J

1. On June 10, 2003, the County of Santa Cruz (hereinafter "County" or "Respondents") improperly issued two Unconditional Certificates of Compliance recognizing two separate and distinct parcels ("Subject Parcels"), when only one legal parcel exists, concerning real property on a coastal bluff above Seacliff Beach located at 749 Oakhill Road (Assessor's Parcel Number 038-151-85) (hereinafter the "Property") in unincorporated Santa Cruz County. The Unconditional Certificates of Compliance were administratively approved without public notice or hearing even though improvements for the pre-existing home on the Property crosses the boundary line between the two parcels which were issued to Unconditional Certificates of Compliance on the Property. The County now recognizes a portion of the subject Property as a legally distinct parcel (with a new Assessor's Parcel Number being assigned–038-151-89) and thus the County allowed the illegal creation of two separate parcels.

2. Said Certificates of Compliance were issued contrary to both state law and the County's own regulations. Because the Subject Parcels were not actually legally created, the County has improperly allowed the subdivision of property without a Minor Land Division Approval and a required Coastal Development Permit (appealable to and otherwise subject to the jurisdiction of the California Coastal Commission). By the procedure employed by the County, the Applicant avoided the scrutiny of the County Planning Commission and Coastal Commission and thwarted the Petitioners' and Plaintiffs' administrative appellate and due process rights. Such actions also violated the County's Local Coastal Program. The failure of the County to follow the law is a failure to proceed in a manner required by law, and thus is an abuse of discretion.

3. By this Petition and Complaint, Petitioners and Plaintiffs allege that the purported parcels are not two separate, legal parcels, and ask the Court to mandate the Respondent County of Santa Cruz to take all necessary and appropriate actions to ensure that said Property is not recognized by or treated by the County as being comprised of separate legal parcels. Petitioners

and Plaintiffs further request declaratory relief that the purported parcels were not created in compliance with applicable state and local law, and thus are not separate, legal parcels and that the County be enjoined from treating them as such until and unless such division complies with the California Coastal Act, the Local Coastal Program, the Subdivision Map Act, and County regulations.

I

PARTIES

4. Petitioners hereby incorporate by reference paragraphs 1 through 3 as if fully set forth herein.

5. Petitioners and Plaintiffs Patrick and Laura Murphy ("Petitioners") own real property in Santa Cruz County on Oakhill Road in the Seacliff area, adjacent to the Property.

6. Respondent and Defendant County of Santa Cruz is a political subdivision of the State of California with general jurisdiction over the division and use of land located within the unincorporated areas of Santa Cruz County, California. Notwithstanding its general jurisdiction over the division and use of land within Santa Cruz County, the County is subject at all times to applicable provisions of State law, which includes, specifically, the California Coastal Act (Public Resources Code Section 30000 *et seq.*). Pursuant to the California Coastal Act, the County has a State-approved Local Coastal Program which requires issuance of a Coastal Development Permit by the County prior to any division of land. The California Coastal Commission has appellate jurisdiction in the Coastal Zone where this parcel is located. Further, the County must follow the mandatory requirements of its own applicable regulations as it exercises its jurisdiction over the division and use of land within its jurisdictional boundaries.

7. The true names and capacities, whether individual, corporate or otherwise, of Does 1 through 15, are unknown to Petitioners who therefore sue said Respondents by such fictitious

names and will seek leave to amend this First Amended Petition for Writ of Mandamus and Complaint for Declaratory and Injunctive Relief, Damages and Attorneys Fees (hereinafter "First Amended Petition and Complaint") when their identities have been ascertained.

8. Petitioners are informed and believe that at all times herein alleged, Respondents and each of them were the agents and employees of each of the remaining Respondents and while doing the things herein alleged, were acting within the course and scope of such agency and employment.

9. Real Party in Interest Brian Arthur ("Arthur") is the owner of Assessor's Parcel Number (APN) 038-151-89, which he claims to be a separate, legal parcel, and which he seeks to develop with a new single-family dwelling.

10. Real Party in Interest Tracy Johnson is an applicant for a proposed single-family dwelling on APN 038-151-89.

11. Real Party In Interest Tom F. Oswalt, as trustee of the Oswalt Trust, (Oswalt) is a previous owner of the Property, and he applied for and received the subject Unconditional Certificates of Compliance for the Property. However, Oswalt provided seller financing for the purchase of APN 038-151-89 by Arthur and still holds a Deed of Trust on APN 038-151-89.

12. Real Party in Interest Ron Powers was the applicant for the subject Unconditional Certificates of Compliance.

13. The true names and capacities, whether individual, corporate or otherwise, of Does 15 through 30, are unknown to Petitioners who therefore sues said Real Parties by such fictitious names and will seek leave to amend this Petition and Complaint when they have been ascertained.

14. Petitioners are informed and believe that at all times herein alleged, the remaining Real Parties in Interest and each of them is the agent and employee of each of the remaining Real Parties and while doing the things herein alleged, were acting within the course and scope of

such agency and employment.

II

STANDING

15. Petitioners hereby incorporate by reference paragraphs 1 through 14 herein as if fully set forth herein.

16. Petitioners are owners of real property on Oak Hill Road and located adjacent to the Property. Petitioners are adjacent landowners and taxpayers in the County of Santa Cruz. Issuance of the subject Unconditional Certificates of Compliance adversely affects the interests of Petitioners. Petitioners are adversely affected by the County's noncompliance with its regulations, including the County Subdivision Ordinance, the Local Coastal Program ("LCP") and the County's noncompliance with the State Subdivision Map Act and the State Coastal Act. The subject Unconditional Certificates of Compliance adversely affect development on a coastal bluff and the environmental integrity of the County of Santa Cruz.

17. Jurisdiction of this court is invoked pursuant to California Code of Civil Procedure Sections 1085 and 1060, Public Resources Code Sections 30803 and 30804, the Constitution of the State of California, and other applicable law.

III

GENERAL ALLEGATIONS

18. Petitioners hereby incorporate by reference paragraphs 1 through 17 herein as if fully set forth herein.

///

Application for Certificates of Compliance

19. On February 5, 2001, Application No. 01-0068 was filed by Oswalt, Trustees, then the owner of the Property. The application sought Unconditional Certificates of Compliance to establish a separate legal parcel on the Property. The Development Permit Application is attached to this Petition and Complaint as **Exhibit A**. The Application shows on its face, and it is true in fact, that the Property is located within the California Coastal Zone, as established by the California Coastal Act.

20. Unconditional Certificates of Compliance are issued to recognize parcels that were legally created under the Subdivision Map Act at a prior date. Thus, in seeking such recognition of such parcels, the landowner avoids the need to apply for a division of the land under the Subdivision Map Act (and the County Subdivision Ordinance) or the California Coastal Act (and the County LCP).

21. On June 12, 2001, after having reviewed extensive materials related to the Application, <u>and without any public notice or hearing</u>, but acting on an administrative basis only, Santa Cruz County Principal Planner Cathy Graves determined that "Assessor's Parcel Number 038-151-85 does not constitute two separate legal parcels and does not warrant the recording of either an Unconditional or Conditional Certificates of Compliance." The materials considered by the County include documents showing, among other things, that existing improvements were built across the boundary line which Oswalt sought to establish by his application for the subject Unconditional Certificates of Compliance. Indeed, the owners of the Property were only assessed property taxes by the County Assessor as one parcel, the owners represented in previous applications to the County that the Property only consisted of one parcel, and the home, driveway, decking, carport and elevator constructed on the Property straddle or straddled the boundary line in which Oswalt sought to establish, and said development exists or existed on both properties. For these reasons, under State law and the County's regulations, the Property

was found to consist of one legal parcel. Nothing has occurred to support a different conclusion.

22. The determination denying the issuance of the Unconditional Certificates of Compliance was accepted by Santa Cruz County's Project Manager, Don Bussey, also on an administrative basis, and without a public notice or a hearing. A copy of the County determination was provided to legal counsel of Oswalt, and a copy of that determination letter is attached to this Petition and Complaint as **Exhibit B**. The County's determination letter advised Oswalt of their ability to appeal the decision to the Santa Cruz County Planning Director.

23. On June 26, 2001, acting through their attorney, Oswalt appealed the denial of Application No. 01-0068. A copy of the appeal letter is attached to this Petition and Complaint as **Exhibit C**.

24. In a letter dated July 3, 2001, Don Bussey, Project Manager, recommended denial of the appeal and "upholding the Zoning Administrators decision that: 1. Assessor's Parcel Numbers 038-151-85 constitutes only [one] legal parcel for land use and planning purposes." A copy of this letter recommending denial of the appeal is attached to this Petition and Complaint as **Exhibit D**.

25. On August 27, 2002, more than one year later, and again on an administrative basis, <u>without a public notice or hearing</u>, Glenda Hill, Santa Cruz County Principal Planner for Development Review, issued a letter to Oswalt's counsel stating that her letter "serves as a decision on the administrative appeal..." This letter granted the appeal, though it noted "a concern about the existing encroachment. You have indicated that the property owners are willing to correct the encroachment either through demolition or a lot line adjustment. I agree that one of these solutions is necessary." The letter from Principal Planner Glenda Hill also indicated that she would "direct Don Bussey, the staff planner, to prepare and record the unconditional certificates of compliance." A copy of this decision letter, granting the appeal, and indicating that Unconditional Certificates of Compliance would be issued, is attached to this

Petition and Complaint as **Exhibit E**.

26. On June 9, 2003, almost an additional year later, in a memorandum from Glenda Hill to Don Bussey, Ms. Hill stated that "this memo is to clarify the wording of two sentences in the Appeal Determination letter for 01-0068, dated August 27, 2002, to wit: "You have indicated that the property owners are willing to correct the encroachment either through demolition or a lot line adjustment. I agree that one of the solutions is necessary. The word 'necessary' should not be construed as a condition of the appeal determination, as this is an Unconditional Certificate of Compliance. It is, rather, my opinion and suggestion." The memo further directed Mr. Bussey to "record the Unconditional Certificates of Compliance for APN 38-151-85, as approved under Permit No. 01-0068." This memorandum was issued on an administrative basis, without any public notice or public hearing, and is attached to this Petition and Complaint as **Exhibit F**.

27. Based on the directive contained in the June 9, 2003 memo, and as indicated earlier, the two Unconditional Certificates of Compliance were issued for the Property on the very next day, June 10, 2003. Copies of these Unconditional Certificates of Compliance are attached to this Petition and Complaint as **Exhibits G** and **H**.

28. By issuing these Certificates of Compliance, the County has taken the position that the Property the County currently identifies as APN 038-151-89 is a separate, legal parcel, and that the property so identified is no longer to be considered a portion of APN 038-151-85. The County administratively issued, without public notice or hearing or an opportunity to object, the subject Unconditional Certificates of Compliance in order to avoid the need to comply with the Subdivision Map Act or the Coastal Act and their respective County counterparts as alleged above. This process utilized by the County also meant that the California Coastal Commission did not receive notice of purported land division as it would have had the County instead held public hearings and approved a Coastal Development Permit. The Coastal Commission is

required to receive notice of all "Final Local Action" on Coastal Development Permits. Because the County administratively issued purported Unconditional Certificates of Compliance it illegally purported to divide land and create separate parcels so as to thwart and infringe on the public's rights to notice and an opportunity to be heard regarding such illegal land divisions.

29. This Petition and Complaint challenges the assertion that the Property contains two separate, legal parcels and that the real property identified as APN 038-151-89 is a separate, legal parcel, on the basis that the County could not legally issue and record the two Unconditional Certificates of Compliance without first complying with mandatory provisions of state and local law. Moreover, the County conditioned the approval. Thus, despite the County's arguments to the contrary, it actually issued *Conditional* Certificates of Compliance. While such Conditional Certificates were still illegal, their issuance also triggers the need for a Coastal Development Permit. By law, such Conditional Certificates require Coastal Development Permits.

Recent application to construct single-family dwelling on illegal parcels

30. On September 17, 2007, by Application No. 07-0548, Arthur and Johnson submitted a Development Permit Application to the County to construct an approximately 3,042 square foot, two-story single family dwelling on APN 038-151-89.

31. The County accepted and processed Application No. 07-0548. Petitioners and others appeared and opposed the application.

32. At the noticed Zoning Administrator public hearing held on January 16, 2009, at which Petitioner appeared and noted that the newly created parcel needs a Coastal Development Permit before the development proceeds, Mr. Don Bussey, acting as the County Zoning Administrator, discussed the development problems with APN 038-151-89, noting the fact that there is still an encroachment on the legally invalid parcel from the adjoining property, of which

the purported parcel now identified as APN 038-151-89 was formerly a portion, and highlighting the significant geological issues involved. During said public hearing, Mr. Bussey stated that he had recommended against the creation of what the County is now identifying as APN 038-151-89.

33. Mr. Bussey's statement at the January 16, 2009 hearing caused Petitioners to learn of the subject Unconditional Certificates of Compliance for the first time, and to investigate County's processing of the Unconditional Certificates of Compliance Application that led to its recognition as a separate legal parcel, including the earlier administrative non-noticed and non-public proceedings that resulted in the County's decision to issue the two Unconditional Certificates of Compliance for the Property, and which was for purported parcel that the County now identifies as Assessor's Parcels Numbers 038-151-89. Petitioners discovered that these Unconditional Certificates of Compliance had not, in fact, ever been legally effective in creating new, separate, legal parcels because the County did not comply with mandatory provisions of the County LCP and the State Coastal Act. At a minimum, because no LCP was issued, no separate legal parcel was ever actually created as to APN 038-151-89.

34. Ultimately, Application No. 07-0548 was denied on January 16, 2009, "without prejudice," and Petitioners are informed and believe, and on that basis allege, that future applications will be made to develop the property now identified as APN 038-151-89 as if it were a lawfully created separate, legal parcel from APN 038-151-85, which it is not.

35. Petitioners promptly informed the County of the County's error in issuing and recording the two Unconditional Certificates of Compliance by a letter dated March 10, 2009, a copy of which is attached to this Petition and Complaint as **Exhibit I**, and specifically requested the County to "notify the current property owner that the creation of Assessor's Parcel 038-151-89 requires a CDP [Coastal Development Permit]; or, in the alternative, that you inform the Executive Director of the Coastal Commission by telephone of this dispute/question and request

an Executive Director's opinion, as required by the Coastal Act." Instead, by letter dated March 17, 2009, the County has wrongly asserted that "the issuance of a Certificate of Compliance does not constitute 'development' for the purposes of the California Coastal Act." A copy of said letter is attached hereto as **Exhibit J**. Petitioners' response to the County's letter is attached hereto as **Exhibit K**.

36. The County has and continues to fail to take either of the actions requested by Petitioners and Plaintiffs in their letter of March 10, 2009, and Petitioners and Plaintiffs have no plain, speedy or effective remedy except by this action seeking an order of this Court.

IV

[FIRST CAUSE OF ACTION]

Enforcement Against Violation of Santa Cruz County Code, Local Coastal Program and California Coastal Act [PRC § 30804]

37. Petitioners hereby incorporate by reference paragraphs 1 through 36 herein as if fully set forth herein.

38. Although the County issued and recorded the subject Unconditional Certificates of Compliance on June 10, 2003 which purport to recognize and establish the real property identified as APNs 038-151-85 and 038-151-89 as separate, legal parcels, the County's action was legally ineffective to achieve this result, because the County failed to follow mandatory provisions of both local and state law in connection with its issuance of the subject Unconditional Certificates of Compliance.

39. The Property did not consist of two separate, legal parcels at the time the Certificates of Compliance were issued. Unconditional Certificates of Compliance can only be issued for

parcels that are indeed pre-existing legally created parcels. In this case, the Property did not consist of two pre-existing legally created parcels.

40. Santa Cruz County Code Section 13.20.050 (a part of the County LCP) provides that any person wishing to undertake any "development," as that term is defined in Santa Cruz County Code Section 13.20.040, must first obtain a Coastal Zone Approval. "Development" as defined in County Code Section 13.20.040 includes any "change in the density or intensity of use of land, including but not limited to subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits," with some exceptions that do not apply to the property at issue here.

41. Furthermore, the Coastal Act requires a Coastal Development Permit for all divisions of land (with one exception not relevant here). Public Resources Code §§30106; 30600. It further authorizes any person to maintain an action to enforce the duties imposed upon any local government by the act. Public Resources Code §30804. Moreover, assuming, *arguendo*, that a Certificate of Compliance could be issued, the subject certificates were "conditional" certificates of compliance requiring a Coastal Development Permit.

42. In this case, no Coastal Development Permit (or Coastal Zone Approval) was ever applied for or issued in connection with the issuance and recording of the two Unconditional Certificates of Compliance issued by the County on June 10, 2003, and they thus have no legal effect whatsoever in establishing the Property as having two lawfully created separate, legal parcels for land use and planning purposes.

43. By treating the Property as two separate, legal parcels without the requisite Coastal Development Permit, the County has and continues to abuse its discretion, and has and continues to fail to proceed in the manner required by law by violating the requirements of the County LCP and the California Coastal Act. Petitioners therefore seek a writ of mandamus directing the County to take all necessary and appropriate actions to ensure that APN 038-151-89

is not recognized by or treated by the County as being a lawfully created separate legal parcels prior to the issuance of a Coastal Development Permit. Petitioners seek to compel the County to comply with the County's own regulations and duties imposed upon the County by the Coastal Act and require Real Parties in Interest to apply for and obtain a Coastal Development Permit prior to further development of APN 038-151-89 as a lawfully created separate legal parcel and prior to accepting any future development application.

44. By failing to require Real Party in Interest to obtain a Coastal Development Permit prior to its issuance of the Certificates of Compliance, the County abused its discretion and failed to proceed in the manner required by law. A peremptory writ of mandate is necessary in this instance to avoid irreparable harm through recognition and treatment of the Property as having two separate legal parcels.

V

SECOND CAUSE OF ACTION

Declaratory Relief

45. Plaintiffs hereby incorporate by reference paragraphs 1 through 44 herein as if fully set forth herein.

46. An actual controversy has arisen between the Petitioners, Respondents, and Real Parties in Interest concerning their respective rights and duties in that the Petitioners contend that the Property does not contain two separate, legal parcels and that APN 038-151-89 is not a lawfully created separate legal parcel. The California Coastal Act authorizes any person to seek declaratory relief to prevent violations of the Act. Public Resources Code §30803.

47. Petitioners further contend that the purported parcels were not created and that the County's recognition of the Property as containing two separate legal parcels and recognition of

APN 038-151-89 as a lawfully created separate legal parcel, without the required governmental review and approval is unlawful. A Coastal Development Permit is required before the subject Unconditional Certificates of Compliance can have legal force and effect.

48. Petitioners therefore seek a judicial declaration that the Property does not contain two separate, legal parcels and that APN 038-151-89 is not a lawfully created separate legal parcel.

VI

THIRD CAUSE OF ACTION

Failure to Perform a Mandatory Duty

49. Plaintiffs hereby incorporate by reference paragraphs 1 through 48 herein as if fully set forth herein.

50. By letter dated March 10, 2009, the Petitioners requested that the County consult with the Coastal Commission's Executive Director concerning the County's unlawful treatment of the Property. Title 14 of the California Code of Regulations §13569 governs and states that

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

These state regulations are mandatory, not discretionary. Yet, the County refused to consult the Coastal Commission as requested. Thus, the County has failed to perform a mandatory duty and a writ of mandate should issue compelling the County to consult with the Coastal Commission concerning this matter.

VII

FOURTH CAUSE OF ACTION

Equitable Relief/injunction

51. Plaintiffs hereby incorporate by reference paragraphs 1 through 50 herein as if fully set forth herein.

52. The California Coastal Act authorizes any person to seek equitable relief to restrain violations of the Act. Public Resources Code §30803.

53. The County's past and present actions in treating the Property as constituting two separate, legal parcels and in recognizing APN 038-151-89 as a lawfully created separate legal parcel without a valid Coastal Development Permit constitutes a violation of the Coastal Act.

54. Plaintiffs possesses no speedy, adequate remedy at law, in that recognition of APN 038-151-89 as a separate legal parcel or development of the Property will permanently and forever harm, injure, degrade and impact the environmental values of the coastal bluff and surrounding areas in violation of the Coastal Act and the County's Local Coastal Program. Real Parties in Interest Arthur and Tracy Johnson threaten to proceed with development on the recognized parcel without a Coastal Development Permit for creation of said parcel. Further, Plaintiffs, as adjacent landowners, persons interested in protecting coastal and environmental resources, and taxpayers of the County of Santa Cruz, will suffer irreparable and permanent injuries if the County's treatment of the Property as a separate, legal parcel is not enjoined.

55. A stay and/or restraining order and preliminary and permanent injunction should issue restraining the County from continued recognition of the Property as two separate, legal parcels and/or the recognition if APN 038-151-89 as a lawfully created, separate legal parcel for land-use and planning purposes.

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ATTACHMENT 1

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VIII

FIFTH CAUSE OF ACTION

Violation of Due Process of Law

56. Petitioners hereby incorporate by reference paragraphs 1 through 55 herein as if fully set forth herein.

57. The Federal and State constitutional principle of due process requires that landowners and other affected parties be provided adequate notice and opportunity to be heard prior to any governmental action that may affect significant property rights. These principles are codified in Government Code §§ 65090 and 65091 and County Code Chapter 18.10.

58. Furthermore, because the County's approval in this case constitutes a quasi-adjudicatory acts, those persons affected by such land use decisions are constitutionally entitled to notice and an opportunity to be heard prior to issuance of the subject Certificates of Compliance. *Horn v. County of Ventura*, (1979) 24 Cal. 3d 605, 612.

59. In addition, the County's issuance of the Certificates of Compliance at issue in this case required a Coastal Development Permit (CDP) and any issuance of a CDP requires a notice and hearing pursuant to the Coastal Act and the County LCP.

60. In this case, the public and adjacent property owners were not provided with any notice or a public hearing on the County's review, approval and/or issuance of the subject Certificates of Compliance. This lack of notice and hearing constitutes a violation of the Federal and State constitutional requirements of due process, as well as State and County law. The public, and particularly the adjacent property owners, were legally entitled to an opportunity to review and comment on such actions affecting their property rights.

IX

ATTORNEYS FEES

61. Petitioners hereby incorporate by reference paragraphs 1 through 61 herein as if fully set forth herein.

62. Petitioners are entitled to reasonable attorneys fees pursuant to the Federal and State Constitutional rights of equal protection and due process of law, including, but not limited 42 U.S.C. 1988.

63. In pursuing this action, Petitioners will confer a substantial benefit on the People of the State of California and therefore are entitled to recover from Respondents and Real Parties reasonable attorneys' fees and costs pursuant to Section 1021.5 of the Code of Civil Procedure, and other provisions of law.

64. In pursuing this action, Petitioners will enforce a duty imposed on the County by the California Coastal Act and restrain a continuing violation of the California Coastal Act. If successful, Petitioners request to recover from Respondents reasonable attorneys' fees pursuant to Public Resources Code §30824, and other provisions of law.

WHEREFORE, Petitioners pray for judgment as follows:

1. For a Peremptory Writ of Mandate directing the County to take all necessary and appropriate actions to ensure that the Property (consisting of APNs 038-151-85 and 038-151-89) is not recognized or treated by the County as being comprised of separate legal parcels or as a lawfully created, separate legal parcel for land-use and planning purposes;

2. For declaratory relief that the Property (consisting of APNs 038-151-85 and 038-

151-89) is not comprised of separate legal parcels and/or is not a lawfully created, separate legal parcel for land-use and planning purposes;

3. For a Peremptory Writ of Mandate ordering the County to consult with the Coastal Commission's Executive Director on this issues raised by this action pursuant to 14 CCR 13569(b);

4. For an order staying and enjoining Respondents from engaging in any activity which treats or otherwise recognizes the Property as having two separate parcels and from recognizing APN 038-151-89 as a lawfully created separate parcel for purposes of parcel legality and/or future applications for a single-family dwelling thereon;

5. For reasonable attorneys' fees under 42 U.S.C. 1988, California Code of Civil Procedure Section 1021.5, Public Resources Code Section 30824, and any other applicable provisions of law;

6. For damages according to proof;

7. For costs of suit; and,

8. For such other and further relief as the Court deems proper.

Respectfully submitted,
WITTWER & PARKIN, LLP

Dated: December 21, 2009

By: William P. Parkin
Attorneys for Petitioners and Plaintiffs
PATRICK AND LAURA MURPHY

ATTACHMENT 1

VERIFICATION

I, WILLIAM P. PARKIN, say:

I am Attorney of Record for PATRICK and LAURA MURPHY, parties to this action.

I have read the First Amended Petition for a Writ of Mandamus and Complaint for Declaratory and Injunctive Relief and know the contents thereof. I am informed and believe that the matters therein are true and on that ground allege that the matters stated therein are true. This verification was not signed by a party to this action because Patrick and Laura Murphy are absent from the county where I have my office at the time this Petition for Writ of Mandamus was drafted and ready for filing. This verification was executed on December 22, 2009, at Santa Cruz, California.

William P. Parkin

CCC Exhibit 7
(page 152 of 455 pages)

ATTACHMENT 2

Planning Commission Minutes

Proceedings of the Santa Cruz County
Planning Commission

Volume 2010, Number 3

March 24, 2010

Location: Board of Supervisors, County Government Center,
701 Ocean Street, Room 525, Santa Cruz, CA 95060

Action Summary Minutes

Voting Key

Commissioners: Kennedy, Aramburu, Chair Dann, Gonzalez, and Vice Chair Shepherd
Alternate Commissioners: Perlin, Holbert, Danna, and Britton

Commissioners present were Kennedy, Aramburu, Chair Dann, Gonzalez, and Britton.

Consent Items

6. **Approval of minutes**
To approve the minutes of the February 24, 2010 Planning Commission meeting as submitted by the Planning Department.

Approved minutes. Commissioner Gonzalez made the motion and Commissioner Kennedy seconded. Voice vote carried 3-0-2, with ayes from Kennedy, Dann, and Gonzales. Commissioners Aramburu and Britton abstained.

Scheduled Items

7. **09-0139(**)** **No Situs, Aptos** **APN: 038-151-89**
Appeal of the Zoning Administrator's approval of a proposal 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 Oakhill Road (between 735 and 749 Oak Hill Road) approximately 380 feet west of Seacliff Drive.
Owner: Brian Arthur
Applicant: Robert Goldspink
Supervisorial District: 2
Project Planner: Robin Bolster-Grant, 454-5357
Email: pln111@co.santa-cruz.ca.us

CCC Exhibit 7
(page 158 of 455 pages)

ATTACHMENT 2

Approved staff recommendation with additional conditions of approval regarding a landscape plan, which uses drought tolerant plants, to be approved by the County Geologist prior to a building perm being issued and a drainage plan that details the handling and management of off site drainage to be submitted with the building permit application. Commissioner Aramburu made the motion and Commissioner Kennedy seconded. Roll Call vote carried 3-2, with ayes from Kennedy, Aramburu, and Dann. Commissioners Gonzalez and Britton voted no.

8. 09-0035(**) 1175 7th Avenue, Santa Cruz APN: 026-211-19

Proposal to construct a 9-unit townhouse subdivision. Requires approval of a Tentative Map, Residential Development Permit, Coastal Development Permit, a Roadside/Roadway Exception, Design Review, Soils Report Review, Archaeological Site Review, and Preliminary Grading Approval. Property located on the west side of 7th Avenue at Volz Lane.
Owner/Applicant: Chris Bixler
Supervisorial District: 3
Project Planner: Robin Bolster-Grant, 454-5357
Email: pln111@co.santa-cruz.ca.us

Approved staff recommendation with an additional condition of approval to (1) include a modification suggested by the applicant to move Buildings A, B, and C 1 ft to the north to change all but 2 of the compact parking spaces to standard spaces, and (2) include a requirement in the Homeowners Association CC&Rs that garages be used for vehicle parking and not just for storage. Commissioner Kennedy made the motion and Commissioner Gonzalez seconded. Roll call vote carried 5-0 with ayes from Kennedy, Aramburu, Dann, Gonzalez, and Britton.

CCC Exhibit 7
(page 159 of 455 pages)

Conditions of Approval

Exhibit A: 12 Sheets, prepared by Robert Goldspink Architect, dated 3-10-09, (Sheets 1-7, 12 & 13 revised 9-18-09), Sheet 11 revised 3-25-09, Topographic Map prepared by Robert L. DeWitt, dated 8-27-07.

I. This permit authorizes the construction of a new 2,544 square foot single-family dwelling, with 450 square foot attached garage and 3'-6" tall retaining wall within the front yard setback. This approval does not confer legal status on any existing structure(s) or existing use(s) on the subject property that are not specifically authorized by this permit. Prior to exercising any rights granted by this permit including, without limitation, any construction or site disturbance, the applicant/owner shall:

A. Sign, date, and return to the Planning Department one copy of the approval to indicate acceptance and agreement with the conditions thereof.

B. Obtain a Building Permit from the Santa Cruz County Building Official.

1. Any outstanding balance due to the Planning Department must be paid prior to making a Building Permit application. Applications for Building Permits will not be accepted or processed while there is an outstanding balance due.

C. Obtain a Grading Permit from the Santa Cruz County Building Official.

D. Submit proof that these conditions have been recorded in the official records of the County of Santa Cruz (Office of the County Recorder) within 30 days from the effective date of this permit.

II. Prior to issuance of a Building Permit the applicant/owner shall:

A. Submit final architectural plans for review and approval by the Planning Department. The final plans shall be in substantial compliance with the plans marked Exhibit "A" on file with the Planning Department. Any changes from the approved Exhibit "A" for this development permit on the plans submitted for the Building Permit must be clearly called out and labeled by standard architectural methods to indicate such changes. Any changes that are not properly called out and labeled will not be authorized by any Building Permit that is issued for the proposed development. The final plans shall include the following additional information:

1. One elevation shall indicate materials and colors as depicted on the "Exterior Materials and Colors" sheet submitted by the project architect (dated April 6, 2009). If there is a significant conflict between the color shown on the sheet and the written description on the sheet, the color sample provided shall be considered the approved colors.

a. The north-facing exterior shall incorporate two complementary, but distinct colors to differentiate the first and second stories.

2. Non-reflective glazing material shall be used for all windows that are visible from the beach.

3. Grading, drainage, and erosion control plans that include the following information:

   a. All grading performed within the 100-year geologic setback shall be done by hand.

   b. A maximum excavation at the crest of the slope at the blufftop must not exceed 6 inches.

   c. Grading plans shall include all grading volumes and calculations, a destination for off-hauled material, existing and proposed contours and top-of-wall/bottom-of-wall elevations for all retaining walls.

4. No deck, patios, spas, or other surfaced areas or structures shall be allowed within the 100-year geologic setback.

5. No portion of the structure may encroach into the 100-year geologic setback, with the exception of eaves and gutters, which may encroach 3 feet into the setback. Any such encroaching eaves must be sloped and may not be used as an extension of a deck or other living space.

6. The building plans must include a roof plan and a surveyed contour map of the ground surface, superimposed and extended to allow height measurement of all features. Spot elevations shall be provided at points on the structure that have the greatest difference between ground surface and the highest portion of the structure above. This requirement is in addition to the standard requirement of detailed elevations and cross-sections and the topography of the project site which clearly depict the total height of the proposed structure. Maximum height is 28 feet.

7. Details showing compliance with fire department requirements.

8. *Submit a landscape plan showing the planting of drought-resistant landscaping. Landscaping plan shall be submitted to County Geologist for review and approval. (Added by the Planning Commission on March 24, 2010).*

9. *Submit an Engineered Drainage Plan showing all existing and proposed drainage improvements. Drainage Plan to be reviewed and approved by the Department of Public Works, Stormwater Section. (Added by the Planning Commission on March 24, 2010).*

B. Submit four copies of the approved Discretionary Permit with the Conditions of Approval attached. The Conditions of Approval shall be recorded prior to submittal, if applicable.

C. Meet all requirements of and pay Zone 6 drainage fees to the County Department of Public Works, Stormwater Management. Drainage fees will be assessed on the net increase in impervious area.

D. Meet all requirements of and pay fees to the County Department of Public Works, Sanitation Section.

E. Meet all requirements and pay any applicable plan check fee of the Aptos/La Selva Fire Protection District.

F. Submit 3 copies of a soils report prepared and stamped by a licensed Geotechnical Engineer.

G. Submit 3 copies of the Engineering Geology Report prepared and stamped by a licensed Engineering Geologist.

H. Submit a Tree Protection and Tree Preservation plan that incorporates all recommendations made by the project arborist in her letter of November 8, 2007 (Exhibit L).

I. Submit a plan review letter from a certified arborist, which states that the final building and grading plans conform to the recommendations made in the assessment prepared for the site. Construction must adhere to the following mitigation measures.

J. Submit plan review letters from the project engineering geologist and geotechnical engineer stating that the final grading, drainage and erosion control plans are in conformance with the recommendations made in the approved technical reports prepared for the project.

K. Pay the current fees for Parks and Child Care mitigation for 3 bedroom(s). Currently, these fees are, respectively, $1,000 and $109 per bedroom.

L. Pay the current fees for Roadside and Transportation improvements for *one dwelling unit*. Currently, these fees are, respectively, $2,740 and $2,740 per unit. *(Revised by the Zoning Administrator on 1/15/10).*

M. Provide required off-street parking for 3 cars. Parking spaces must be 8.5 feet wide by 18 feet long and must be located entirely outside vehicular rights-of way. Parking must be clearly designated on the plot plan.

N. Submit a written statement signed by an authorized representative of the school district in which the project is located confirming payment in full of all applicable developer fees and other requirements lawfully imposed by the school district.

O. Complete and record a Declaration of Restriction to maintain a non-habitable basement. **You may not alter the wording of this declaration**. Follow the instructions to record and return the form to the Planning Department.

P. Complete and record a Declaration of Geologic Hazard. **You may not alter the wording of this declaration**. Follow the instructions to record and return the form to the Planning Department.

III. All construction shall be performed according to the approved plans for the Building Permit. Prior to final building inspection, the applicant/owner must meet the following conditions:

A. All site improvements shown on the final approved Building Permit plans shall be installed.

B. All inspections required by the building permit shall be completed to the satisfaction of the County Building Official.

C. The project must comply with all recommendations of the approved soils reports.

D. Pursuant to Sections 16.40.040 and 16.42.100 of the County Code, if at any time during site preparation, excavation, or other ground disturbance associated with this development, any artifact or other evidence of an historic archaeological resource or a Native American cultural site is discovered, the responsible persons shall immediately cease and desist from all further site excavation and notify the Sheriff-Coroner if the discovery contains human remains, or the Planning Director if the discovery contains no human remains. The procedures established in Sections 16.40.040 and 16.42.100, shall be observed.

IV. Operational Conditions

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

B. Parking during construction shall not obstruct traffic along Oakhill Road. The road shall be kept free of dirt and debris during construction. (Revised by Zoning Administrator on 1/15/10)

C. *Limit all construction to the time between 8:00 am and 6:00 pm weekdays, excluding holidays. Hours may be revised or extended if needed to complete grading in advance of adverse weather conditions. Notice must be provided to neighbors prior to any change in construction hours (Revised by Zoning Administrator on 1/15/10).*

V. As a condition of this development approval, the holder of this development approval ("Development Approval Holder"), is required to defend, indemnify, and hold harmless the COUNTY, its officers, employees, and agents, from and against any claim (including attorneys' fees), against the COUNTY, it officers, employees, and agents to attack, set aside, void, or annul this development approval of the COUNTY or any subsequent amendment of this development approval which is requested by the Development Approval Holder.

A. COUNTY shall promptly notify the Development Approval Holder of any claim, action, or proceeding against which the COUNTY seeks to be defended, indemnified, or held harmless. COUNTY shall cooperate fully in such defense. If COUNTY fails to notify the Development Approval Holder within sixty (60) days of any such claim, action, or proceeding, or fails to cooperate fully in the defense thereof, the Development Approval Holder shall not thereafter be responsible to defend, indemnify, or hold harmless the COUNTY if such failure to notify or cooperate was significantly prejudicial to the Development Approval Holder.

B. Nothing contained herein shall prohibit the COUNTY from participating in the defense of any claim, action, or proceeding if both of the following occur:

1. COUNTY bears its own attorney's fees and costs; and

2. COUNTY defends the action in good faith.

C. Settlement. The Development Approval Holder shall not be required to pay or perform any settlement unless such Development Approval Holder has approved the settlement. When representing the County, the Development Approval Holder shall not enter into any stipulation or settlement modifying or affecting the interpretation or validity of any of the terms or conditions of the development approval without the prior written consent of the County.

D. Successors Bound. "Development Approval Holder" shall include the applicant and the successor'(s) in interest, transferee(s), and assign(s) of the applicant.

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

Approval Date: _____

Effective Date: _____

Expiration Date: _____

Paia Levine Principal Planner	Robin Bolster-Grant Project Planner

---

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

ATTACHMENT 4

COUNTY OF SANTA CRUZ

PLANNING DEPARTMENT

701 OCEAN STREET - 4TH FLOOR, SANTA CRUZ, CA 95060
(831) 454-2580 FAX: (831) 454-2131 TDD: (831) 454-2123

TOM BURNS, PLANNING DIRECTOR

February 12, 2010

Agenda Date: March 24, 2010
Item #: 7
Time: After 9 AM
APN: 038-151-89
Application: 09-0139

Planning Commission
County of Santa Cruz
701 Ocean Street
Santa Cruz, CA 95060

Subject: A public hearing to consider an appeal of the Zoning Administrator's decision to approve application 09-0139; a proposal to construct an approximately 2,544 square foot, two story single family dwelling with an elevator, three foot six inch high retaining wall and to grade approximately 160 cubic yards.

Members of the Commission:

BACKGROUND

Application 09-0139, a request to construct a new dwelling adjacent to a coastal bluff, was originally heard by the Zoning Administrator on January 15, 2010. Based on the staff findings and conditions of approval, the proposal was approved by the Zoning Administrator on that date (Exhibit B to Attachment 1). An appeal was filed on January 28, 2010 by Wittwer & Parkin, LLP on behalf of Patrick and Laura Murphy, (hereafter "appellants") owners of the parcel adjacent and to the west of the proposed development (Attachment 1). After consideration of the applicant's appeal, staff recommends that your Commission uphold the Zoning Administrator's approval of Application 09-0139.

The subject property is a vacant parcel, located at the top of a coastal bluff and is approximately 8,276 square feet in gross site area. The subject parcel was granted an Unconditional Certificate of Compliance under Permit #01-0068 on June 10, 2003. In March of 2005 a Coastal Development Permit was issued to allow the demolition of an existing deck and elevator shaft located on the adjacent property to the east, which had been built over the shared property line.

On September 17, 2007, the current property owner applied for a Coastal Development Permit for the construction of a single-family dwelling. The proposal included substantial grading within the required 100-year geologic setback in order to create a flatter yard area and to enhance ocean views. That application was denied by the Zoning Administrator, without prejudice, due to the proposed grading within the geologic setback. Following a re-design of the proposed dwelling, the current application was submitted on April 16, 2009.

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PROJECT DESCRIPTION

The applicant seeks to construct an approximately 2,544 square foot, two-story, single-family dwelling with an elevator, three foot six inch retaining wall within the front setback, and to grade about 160 cubic yards, 16 cubic yards of which will occur within the coastal bluff setback. The project is located within the Aptos Planning Area.

The proposal includes earthwork within the geologic setback for the purposes of providing positive drainage away from the coastal bluff. Additionally, design changes to the dwelling itself have improved the compatibility of the proposed house with the surrounding neighborhood and beach below.

ANALYSIS AND DISCUSSION OF APPEAL ISSUES

The grounds of this appeal, as described in the letter of appeal dated January 28, 2010 (Exhibit 1A) are that the application "proposes development on a substandard, illegal parcel." The appellant additionally asserts that proposal violates County standards for height and number of stories, results in potential instability of the slope and that the project requires additional review under the California Environmental Quality Act (CEQA).

Parcel Legality

The appellant asserts that the 2003 Unconditional Certificate of Compliance was granted unlawfully and that the subject application cannot be approved without a Coastal Development Permit for the legality determination. It is the position of staff that the issuance of the Unconditional Certificate in 2003, to which no appeal was filed, and subsequent issuance of a Coastal Development Permit in 2005 have effectively settled the issue of parcel legality. Therefore the legality of the subject lot was not revisited as a part of the current development application. It is worth noting, however, that the issuance of an Unconditional Certificate of Compliance does not constitute "development" as defined in Section 13.20.040 of the County Code and therefore does not require a Coastal Development approval per Section 13.20.050 of the County Code.

It should also be noted that on April 14, 2009, the appellant file a lawsuit challenging the legality of the Unconditional Certificate of Compliance that was issued in 2003.

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Site Standards for Height and Number of Stories

The appellants assert that the project violates the 28-foot height limit for residential structures and exceeds the two-story limitation for residential structures located within the Urban Services Line.

As discussed during the Zoning Administrator Hearing on January 15, 2010, the structure complies with the 28-foot height requirement as shown in the northern elevation on Plan Sheet 4 (Exhibit 1.D, . Further, a condition of approval requires a roof plan, including spot elevations, at the time of building application submittal. The elevations must demonstrate that the new structure conforms to the height limit prior to the issuance of a building permit. Staff has checked the dormer that the appellant asserts is overheight and does not agree with the assertion.

With respect to the number of stories, the County Code states that basements, attics and underfloor areas are not considered stories. The appellants contend that the County Code does not permit the separation of the garage from the basement, which consists of the elevator, storage, and lobby, because the two areas are located at the same level. Section 13.10.700-B of the County Code defines a basement as "the space below the bottom of the floor framing (joists or girders that directly support the floor sheathing) and the basement floor." Further the definition states that more than 50% of the basement exterior perimeter wall area must be below grade and no more than 20% of the perimeter exterior wall may exceed 5 feet – 6 inches above the exterior grade.

There is nothing in the basement definition that precludes two areas located at the same level from being defined differently, based on the extent to which the areas are located below exterior grade. In the case of the subject proposal, the portion of the bottom level labeled "garage" does not meet the criteria to be labeled a "basement," while the areas to the rear (south) at the same level, labeled "elevator", "basement elevator lobby," and "basement storage" are entirely sub-grade and do qualify as a basement. Further, these areas are separated from the garage by a partition and are characterized by uses that are different from that of the garage. Therefore the rear portion of the bottom level is not considered a story, for planning purposes, and the house meets the definition of a two-story house. The Zoning Administrator concurred with this interpretation of the ordinance.

Finally, given that the proposed dwelling conforms to the 28-foot height limit, neither the view from the Oakhill Drive nor from the beach, would be impacted by the determination regarding the basement definition.

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Geologic Hazard/Stability Concerns

The appellant states that the proposed project threatens the integrity of the coastal bluff and neighboring parcels, asserting that the 33-foot bluff setback recommended by the project geologic is not adequate. The appeal letter references an unsigned geologic assessment of the subject site, which was performed by the appellant's geologist on January 8, 2010. The appellant's geologist states that the 100-year setback "may be greater than 33 feet…" and disputes the issuance of an "exception" to the required setback for purposes of site grading.

The geologic report prepared for the site by Rogers Johnson (project geologist) has been reviewed and approved by the County Geologist. The review and approval of the 33-foot setback by two registered geologists provides an adequate degree of assurance that the proposed single-family dwelling will not be subject to geologic hazards and is in compliance with the County Geologic Hazards Ordinance (Chapter 16.10).

Section 16.10.070(h)2(i) of the County Code exempts earthwork within the geologic setback that consists of "minor leveling, of the scale typically accomplished by hand, necessary to create beneficial drainage patterns…that does not excavate into the face or base of the bluff" from the provisions of the Geologic Hazards Ordinance concerning Coastal Bluffs. The amount of earthwork proposed within the setback is therefore exempt and does *not* require the issuance of an exception to any provision of the ordinance. The proposed work within the setback is a benefit to the site and to surrounding properties in that it addresses ongoing drainage problems and will

contribute to the stability of the coastal bluff by directing all surface runoff away from the bluff and toward the street.

Finally, the appellant asserts that the project site is prone to earthquake hazards, which will be exacerbated by the construction of the proposed single-family dwelling. Nothing in the geologic and geotechnical reports prepared for the site substantiates the claim that the proposed dwelling increases any earthquake-related risk to the site or surrounding properties.

Environmental Review under CEQA

The appellant asserts that the Zoning Administrator's decision to certify the CEQA Class 3 Categorical Exemption was made in error. As stated in the CEQA Guidelines, the Class 3 Exemption applies to small construction or development projects *except where the project may impact on an environmental resource of hazardous or critical concern* (Exhibit 1F).

While the parcel contains areas defined as coastal bluff, the proposed development is located within the area determined to be stable over the 100-year lifetime of the structure and, as conditioned, is not expected to impact the bluff. Further, the drainage improvements that are a part of the proposed development will have a positive effect on the stability of the bluff, rather than a negative impact.

SUMMARY

The issues raised by the appellant are the same as those presented to the Zoning Administrator prior to the January 15, 2010 hearing and they focus on legality of the parcel, the incompatibility with the zoning ordinance (regarding standards for height and number of stories), geologic hazards and the basis for granting the Categorical CEQA Exemption.

These issues were fully explored in the staff report, in the technical documents that support the application, and during the Zoning Administrator public hearing. The result was a decision by the Zoning Administrator that the project is in compliance with the Zoning Ordinance and other County Codes and that the CEQA exemption was appropriate.

RECOMMENDATION

The proposed project is consistent with County General Plan policies and ordinances, and staff recommends that the Planning Commission take the following action:

- Uphold the Zoning Administrator's certifications of the CEQA Exemption and approval of Application 09-0139.
- Deny the appellant's appeal.

Sincerely,

Robin Bolster-Grant
Project Planner
Development Review

Reviewed By: _____
Paia Levine
Principal Planner
Development Review

Exhibits:

1A.	Appeal letter by Wittwer & Parkin, LLP, dated January 28, 2010.
1B.	Staff report to the Zoning Administrator, originally heard on 8/21/09.
1C.	Letter from Hydro-Geo Consultants, Inc., dated January 11, 2010
1D.	Project Plans
1E.	Correspondence
1F.	CEQA Guidelines, Section 15
1G	Letter from Joe Hanna, County Geologist, dated March 2, 2010

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(page 170 of 455 pages)

Jonathan Wittwer
William P. Parkin
Ryan D. Moroney

WITTWER & PARKIN, LLP
147 SOUTH RIVER STREET, SUITE 221
SANTA CRUZ, CALIFORNIA 95060
TELEPHONE: (831) 429-4055
FACSIMILE: (831) 429-4057
E-MAIL: office@wittwerparkin.com

OF COUNSEL
Gary A. Patton

January 28, 2010

HAND DELIVERED

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

Re: Appeal of Zoning Administrator Decision on January 15, 2010
Development Permit Application 09-0139
APN 038-151-89
Owner: Brian Arthur

Dear Members of the Planning Commission:

This letter as a formal appeal, by Patrick and Laura Murphy, to the Planning Commission of the above-referenced Zoning Administrator decision. We have provided a check in the amount of $1515.00 to cover the appeal fee.

This office represents the Murphy's with respect to the above referenced Zoning Administrator's decision. Our clients oppose the Project because it proposes development on a substandard, illegal parcel. The Project also violates the County standards for height and number of stories. In addition, the Project will result in potential instability of the slope thereby endangering adjacent homes, including the Murphy's home. Finally, given the geological hazards posed by the Project's location and the unusual circumstances associated with the subject parcel, environmental review is required under the California Environmental Quality Act ("CEQA" Public Resources Code § 21000 *et seq.*)

The Project Proposes Development on a Substandard, Illegal Parcel

The "history" provided in the Staff Report to the Zoning Administrator indicates that Assessor's Parcel 038-151-89 was only recognized by the County of Santa Cruz as a separate parcel in 2003 through the granting of a Certificate of Compliance. However, that Certificate of Compliance was granted unlawfully, without a Coastal Development Permit (CDP), and without consulting the Coastal Commission. And, despite the County's description of the Certificate of Compliance as being "Unconditional," it was truly a "Conditional" Certificate of Compliance.

(Conditional Certificates of Compliance, even if lawfully issued, still require a Coastal Development Permit.) Demolition of structures and improvements were required, and the County required the recordation of Acknowledgments of Nonconforming structures on the illegal "lot" that is the subject of this application and the adjacent lot from which it was split. The County also required the recordation of Grant of Easement and Easement Agreement for the encroachment. The Staff Report even states that there is already a four foot encroachment on this parcel from preexisting construction on an adjacent property. In fact, the granting of that Certificate of Compliance is the subject of a current lawsuit by our clients against the County and the project applicant. Without a CDP for the "parcel," the Project cannot be approved or proceed.

The Project Violates the County's Standards for Height and Number of Stories

The Project is limited to 28 feet per the County Code. The Staff Report to the Zoning Administrator acknowledges this height limitation. However, a dormer in the front of the house slightly exceeds this height limitation. However, more importantly, the Project violates the zoning standards for the number of stories permitted.

The Zoning Administrator stated that while the house will indeed look like it is three stories, it is not. This was based on the argument that the garage, which admittedly counts as a story, is not directly below the other two floors of the house. In other words, because the house is set on the back end of the garage, the garage is story, but is not considered a story below the other two. This analysis ignores the actual plans and the reading of the County Code.

The back end of the garage has an elevator lobby and storage area partitioned off from the rest of the garage. The other two stories are directly above the elevator lobby and storage area. While the garage is admittedly a story, Staff and the Zoning Administrator considered this back portion of the garage that is partitioned off from the rest of the garage to be a "basement." Thus, it was argued that this portion does not count as a story. This argument, however, creates a means for applicants to thwart the prohibition against three story homes.

Under County Code § 17.10.700S, a "First Story" is "The lowest story in a building which qualifies as a story... ." The lowest story here is the garage, and it is admitted that it counts as a story. The garage is not a separate detached structure, but part of the structure. Moreover, the Project was analyzed incorrectly. There is no authority in the County Code to allow the applicant to partition the garage from the elevator lobby and storage area associated therewith by constructing an interior wall, and then call the back part of the story a basement

while the front portion containing the garage is considered a story. County Code § 17.10.700B states that "[t]o qualify as a basement more than 50% of the basement exterior perimeter wall area must be below grade and no more than 20% of the perimeter exterior wall may exceed 5 feet - 6 inches above the exterior grade." The calculation must be based on the perimeter wall of the structure. In calculating the perimeter of the entire structure as envisioned in the County Code, the rear area of the structure could not be counted as a basement because the perimeter of the entire story would exceed the thresholds set forth under the County Code. Moreover, the garage height exceeds 7 feet, 6 inches. Thus, the first story could not be counted as a basement. Even under the Zoning Administrator's logic, the second and third stories are above the first story. Moreover, the Floor Area Ratio must be recalculated.

For these reasons, the appeal should be granted because the home approved is three stories and out of character with the other homes adjacent to the Project.

The Proposed Project Threatens the Integrity of the Coastal Bluff and Neighboring Parcels

Assuming for the sake of argument that this is a separate parcel with appropriate CDP approval, it is obvious that any building and development on this parcel must be closely conditioned to ensure the public health, safety, and welfare. The physical stability of the site and adjacent properties is of paramount concern, particularly since geologic failures on the property could have such adverse impacts on other properties nearby.

The County Code contains an entire section, § 16.10, regulating development within geological ***hazard*** areas, including on coastal bluffs.[1] In fact, Section 16.10.070(h) imposes specific restrictions on development on coastal bluffs, including the requirement that the developer record a Declaration of Geological Hazards with the County Recorder. Likewise, the County General Plan and LCP contains an entire subsection setting forth policies and programs to deal with the hazards of development on Coastal Bluffs. *See*, County General Plan sections 6.2.10 - 6.2.21.

The County Geologic Hazard ordinance requires a coastal bluff setback which the County determines will provide a stable site for 100 years. In this case, it has been determined that the

[1] A coastal bluff is defined as: "A bank or cliff along the coast subject to coastal erosion processes. Coastal bluff refers to the top edge, face, and base of the subject bluff." County Code § 16.10.040(j) (underline added).

setback requirement is a minimum of 33 feet. Our geotechnical consultant has indicated that the 100 year set back should be at least 40 feet or more given site specific evidence. This evidence was submitted to the Zoning Administrator. In any case, the County Code does not allow grading within the coastal bluff setback, unless an exception is granted and there can be no legitimate reason for any grant of exception in this case.[2]

According to the Staff Report, the Applicant proposes to perform grading in the 100 year setback, but then concludes that no exception is needed because it is minor leveling that will be done by hand. While the grading has been reduced since the proposal that was before the Zoning Administrator on January 16, 2009, the proposed contouring within the bluff setback is still problematic and consists of more than minor leveling since it will be up to a foot deep throughout the setback area. Even if the proposed grading was excepted, the proposed grading and drainage "improvements" may allow surface water to seep more rapidly into the soil and contribute to the destabilization of the bluff by removing less pervious surface soils. Moreover, the fact remains that a residential structure can be built on the property without the need for any grading. All water currently flows towards the street from the bluff's edge because the current grade of the property is away from the bluff's edge. Thus, there is no reason to allow the Applicant to perform <u>any</u> grading, even of a minor nature, within the 100 year setback.

Moreover, the Project site is also prone to earthquake hazards. The Loma Prieta Earthquake triggered significant landslides along the entire face of the bluff along Seacliff State Beach and Las Olas Drive with head scarps 20 to 30 feet high and tension cracks that cut through several building foundations at the top of the cliff. We submitted evidence to the Zoning Administrator to support these assertions. We also submitted pictures to the Zoning Administrator of recent failures at the toe of the bluff. Any compromise of the bluff from the proposed home will only exacerbate the current condition of the area.

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[2] It should be noted that while our geotechnical consultant recommended some mitigation measures, such as a "pin pile" retaining structure, to prevent bluff failure, we believe many of these mitigations may be illegal under the County Code. The Geotechnical consultant is not a planner or lawyer. However, the opinion is being provided as further evidence that building a residence on this site is hazardous. Moreover, the opinion reiterated that an exception to the geologic setback should not be granted.

The Proposed Project Requires Environmental Review under CEQA

The Staff Report asserts that the proposed Project is exempt from environmental review based on CEQA's Class 3 Categorical Exemption for small construction or development projects pursuant to CEQA Guidelines § 15303. However, Class 3 Categorical Exemptions are qualified by the requirement that the project location be considered when determining whether this exemption applies, particularly where the project may impact an environmental resource of ***hazardous*** concern. CEQA Guidelines § 15300.2(a).)[3] *See, also, Salmon Protection & Watershed Network v. County of Marin* (2004) 125 Cal. App. 4th 1098. Here, in accordance with County Code requirements for coastal bluffs, the County has required the recordation of a Declaration Regarding the Issuance of a Development Permit in an Area Subject to Geological Hazards as a condition of issuing a development permit for the subject parcel. See attached Declaration. That action by the County alone confirms that that that the proposed project does not qualify for the claimed Exemption due to potential impacts of hazardous concern. Likewise, a categorical exemption may not be used where there is a reasonable possibility that the proposed activity will have a significant effect on the environment based on ***unusual circumstances***, such as those that exist here. CEQA Guidelines § 15300.2(c).[4]

In sum, the particularly sensitive location of the proposed Project in a geologic hazard zone requires that it be subject to environmental review under CEQA. We have presented evidence that the geologic setback was not properly determined and that there are hazards associated with building a structure on this site. Additionally, the unique circumstances presented by these geotechnical and other issues, likewise excepts the Project from a Class 3 Categorical Exemption.

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[3] (a) Location. Classes 3, 4, 5, 6, and 11 are qualified by consideration of where the project is to be located--a project that is ordinarily insignificant in its impact on the environment may in a particularly sensitive environment be significant. Therefore, these classes are considered to apply in all instances, except where the project may impact on an environmental resource of hazardous or critical concern where designated, precisely mapped, and officially adopted pursuant to law by federal, state, or local agencies.

[4] (c) Significant Effect. A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.

Thank you for your consideration.

Very truly yours,
WITTWER & PARKIN, LLP

William P. Parkin

Encl.

cc: Robin Bolster-Grant, Project Planner (via E-mail)
Chris Cheleden, Esq., Assistant County Counsel (via E-mail)
Ed Newman, Esq. (via E-mail)

CCC Exhibit 7
(page 176 of 455 pages)

EXHIBIT 1A

Staff Report to the Zoning Administrator

Application Number: 09-0139

~~**Applicant:** Robert Goldspink~~
Owner: Brian Arthur
APN: 038-151-89

~~**Agenda Date:** January 15, 2010~~
Agenda Item #:
Time: After 10:00 a.m.

Project Description: Proposal to construct an approximately 2,544 square foot, two story single family dwelling including a 450 square foot attached garage, elevator, a three foot six inch high retaining wall within the required 20 foot front yard setback and approximately 160 cubic yards of grading.

Location: Project located on the south side of Oakhill Road approximately 380 feet west of the intersection with Seacliff Drive (between 735 and 749 Oakhill Road).

Supervisoral District: 2nd District (District Supervisor: Ellen Pirie)

Permits Required: Coastal Development Permit, Residential Development Permit
Technical Reviews: Preliminary Grading Approval, Design Review

CCC Exhibit 2
(page 177 of 455 pages)

Staff Recommendation:

- Certification that the proposal is exempt from further Environmental Review under the California Environmental Quality Act.
- Approval of Application 09-0139, based on the attached findings and conditions.

Exhibits

A. Project plans
B. Findings
C. Conditions
D. Categorical Exemption (CEQA determination)
E. Assessor's, Location, Zoning and General Plan Maps
F. Comments & Correspondence
G. Geotechnical Engineering Report review letter, dated 12/20/05
H. Excerpts of Conclusions and Recommendations from Geologic Investigation prepared by Rogers E. Johnson & Associates, dated 10/24/05 (report on file)
I. Excerpts of Discussion, Conclusion and Recommendation from Geotechnical Investigation prepared by Haro, Kasunich & Associates, Inc., dated 11/2005 (report on file)
J. Evaluation of Culvert Analysis and Brick Retaining Wall by Mike Van Horn, dated 8/15/08 and 8/22/08
K. Plan Review letters from Engineering Geologist and Geotechnical Engineer

L. Arborist Report by Nature First, dated 11/8/07

Parcel Information

Parcel Size:	5,100 square feet (net site area)
~~Existing Land Use - Parcel:~~	~~Vacant~~
Existing Land Use - Surrounding:	Single-Family Residential
Project Access:	Oakhill Drive
Planning Area:	Aptos
Land Use Designation:	R-UL (Urban Low Density Residential)
Zone District:	R-1-10 (Single family residential - 10,000 square feet minimum)
Coastal Zone:	X Inside __ Outside
Appealable to Calif. Coastal Comm.	X Yes __ No

Environmental Information

Geologic Hazards:	Coastal bluff instability – proposed development outside of 100-year setback
Soils:	Soil 179 (Watsonville Loam)
Fire Hazard:	Not a mapped constraint
Slopes:	> 70% slope associated with coastal bluff to the rear of the lot
Env. Sen. Habitat:	Not mapped/no physical evidence on site
Grading:	160 cubic yards
Tree Removal:	No trees proposed to be removed
Scenic:	Mapped Resource
Drainage:	Existing drainage adequate
Archeology:	Not mapped/no physical evidence on site

Services Information

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

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(page 178 of 455 pages)

History

The subject parcel was granted an Unconditional Certificate of Compliance under Permit #01-0068 on June 10, 2003. In March 2005, Coastal Development Permit 04-0531 was approved to allow the demolition of an existing deck and elevator shaft located on the adjacent property to the east, which had been constructed over the shared property line. According to surveyed plans, a portion of the adjacent dwelling continues to encroach approximately four feet onto the subject site.

On December 12, 2005, the County Geologist accepted Engineering Geology and Geotechnical Reports, which established the appropriate 100-year coastal bluff setback and building envelope for a single-family dwelling.

On September 17, 2007 the current property owner applied for a Coastal Development Permit, a Residential Development Permit, Preliminary Grading Approval and an Exception to the County Geologic Hazard Ordinance (#07-0548) to allow the construction of a new single-family home and to allow site grading to encroach into the 100-year geologic setback. Application 07-0548 was denied without prejudice by the Zoning Administrator on January 16, 2009 primarily due to the proposed grading encroachment. The design of the proposed dwelling was also determined to be incompatible with the homes in the neighborhood with respect to the roof forms, the selection of building materials and the overall architectural style.

Application 07-0548 was denied without prejudice. County Code Section 18.10.135 allows for immediate re-application and therefore the current application was made on April 16, 2009. The proposed design has been modified to conform to County policies and codes and the grading has been significantly reduced from what was previously proposed.

Project Setting

The property is located at the top of a coastal bluff on the south side of Oakhill Road. The bluff is located at the southern end of the parcel, immediately above Las Olas Drive. Three retaining walls of approximately four feet in height are located on the subject property, one of which goes under the neighboring structure to the east at the point at which the structure encroaches onto the subject lot. A letter submitted from a structural engineer under the previous application (#07-0548) verified that the retaining wall is not attached to the neighboring structure (Exhibit J). A 48" redwood tree on the property shall be retained. The surrounding neighborhood is developed with one and two-story single family dwellings, both along Oakhill Road and at the base of the bluff across Las Olas Drive.

Zoning & General Plan Consistency

The subject property is a parcel of approximately 8,276 square feet in gross site area and 5,100 square feet in net site area after the deduction of the coastal bluff. The site is located in the R-1-10 (Single family residential - 10,000 square feet minimum) zone district, a designation which allows residential uses. The proposed single-family dwelling is a principal permitted use within the zone district and the project is consistent with the site's (R-UL) Urban Low Density Residential General Plan designation.

	R-1-10 Site Standards	Proposed Residence
Front Yard Setback	20 feet	20 feet
Rear Yard Setback	15 feet	100 +/- **
Side Yard Setback	5 and 5 feet*	5 and 5 feet
Building Height	28 feet	28 feet
Number of Stories	2	2
Lot Coverage	40%***	33%
Floor Area Ratio	50%	49.8%
Parking	3 spaces	3 spaces (two covered; one tandem in driveway)

* County Code Section 13.10.323 allows for 5 and 5 foot side yard setbacks for parcels less than 60 feet wide.

** 100-year Geologic Setback established by approved Geologic and Geotechnical reports is located approximately 33 feet from the top of the break in slope

*** Per Ordinance 5042, effective 6/10/09, lot coverage increased from 30% to 40% in the Coastal Zone.

The proposed single-family dwelling is two stories with an attached garage. The house is stepped up the slope from Oakhill Road. The garage counts as a story (County Code 13.10.700-B) as it does not meet the definition of a basement. The elevator, elevator lobby and basement storage areas located on the garage level meet the definition of a basement area and do not qualify as a story. Additionally, the storage area located above the garage does not meet the definition of a story as it is not connected to the floor above. Therefore the proposed dwelling conforms to the two-story limit applied within the Urban Services Line.

Local Coastal Program Consistency

The proposed new single-family dwelling conforms to the County's certified Local Coastal Program, in that the structure is sited and designed to be visually compatible, in scale with, and integrated with the character of the surrounding neighborhood. Developed parcels in the area contain primarily two-story single-family dwellings. The architectural styles vary in the area. Exterior materials in the vicinity include the use of wood shingles, horizontal wood siding and stucco exteriors. Similarly, roof styles and fenestration vary throughout the neighborhood as well. The design submitted fits within the range of styles exhibited in the area, with uniform roof planes, a modest degree of articulation providing visual interest, and the use of colors and materials that soften the overall appearance of the new dwelling. The design proposed as a part of the original Coastal Development application (#07-0548) was found to be incompatible with the neighborhood due in part to the inclusion of a south-facing large round window, a lack of cohesive roof geometry and a lack of north-facing fenestration. The current design includes major revisions, which address the previous shortcomings and results in a compatible overall appearance. Specifically, the large window has been eliminated, a more interesting fenestration scheme has been incorporated along the north façade and the rooflines have been modified to reflect a more unified presentation. Another modification to the original design includes the use of different exterior colors for the first and second stories, which will differentiate and break up an the otherwise monolithic appearance of stucco.

The project site is not identified as a priority acquisition site in the County's Local Coastal Program. While the site is located between the shoreline and the first public road, there is no public access from Oakhill Drive. Therefore the proposed project will not interfere with public access to the beach, ocean, or other nearby body of water.

Coastal Bluff

The proposed single-family dwelling is located at the top of a coastal bluff. Geologic and geotechnical reports (Exhibits H, I) established a 100-year geologic setback line 33 feet landward of the edge of the bluff and set the building envelope as required by General Plan Policy 6.2.12. The technical reports demonstrate that the building envelope would provide a stable site for 100-year span. The current proposal includes approximately 16 cubic yards of grading within the 33-foot bluff setback. While grading is generally not allowed within the 100-year setback to the coastal bluff, Section 16.10.070(h)2(i) of the County Code defines grading as any earthwork "...other than minor leveling, of the scale typically accomplished by hand, necessary to create beneficial drainage patterns...that does not excavate into the face or base of the bluff." The proposed earthwork will facilitate the establishment of positive drainage away from the bluff and a condition of approval is included to require the grading within the 100-year setback to be performed by hand. Therefore an exemption to the Geologic Hazards Ordinance is not required.

Additionally, portions of the existing retaining wall and walkways will be removed. An evaluation of the impact of the removal of portions of the wall was performed by a civil engineer (Exhibit J), who concluded that the alterations to the brick retaining wall and small amount of earthwork do not threaten the structural integrity of the wall. The evaluation also found that the adjacent residence does not depend upon the presence of the brick retaining wall for any structural support; therefore removal of portions of the wall are not expected to have a negative impact on the adjacent residence.

No additional structures or hardscape are proposed for the bluff side of the dwelling. Drainage calculations have been provided to demonstrate that the post-development runoff rates do not exceed pre-development rates.

All work performed within the bluff setback will conform to the recommendations of the project geotechnical engineer and engineering geologist. The County Geologist has reviewed and approved the technical reports for this site (Exhibit H). Additionally, the plans have been reviewed and approved by the Drainage Section of the Department of Public Works.

Design Review

The proposed new single-family dwelling complies with the requirements of the County Design Review Ordinance, in that the proposed project will incorporate site and architectural design features as uniform roof forms and fenestration that complement the architectural styles of the surrounding homes. The north elevation presents a nicely articulated street presence, largely screened by the presence of a 48-inch redwood tree at the eastern portion of the lot. The cross gable design and gently arched windows and roof elements soften the overall appearance from the north, while the fenestration and tube and glass railing at the beach-facing south elevation are entirely consistent with surrounding designs along the bluff.

Scenic Resources

The proposed dwelling will be visible from the public beach and from Las Olas Drive to the south. General Plan Policy 5.10.7 allows the placement of new permanent structures on when the structures constitute infill on existing lots of record *where compatible with the pattern of existing development.* The proposed dwelling presents a façade to the beach that is of similar bulk and mass as the existing adjacent structures. The photo simulation depicts a southern elevation that is broken up by vertical elements and balanced fenestration. The proposed color scheme consists of muted earth tones and is similar to the color of the vegetated coastal bluff in the foreground. The color allows the structure to blend in with the natural environment to a large degree, particularly when compared to the relatively stark white color of the existing dwelling immediately to the east.
A condition of approval has been included which will require the glazing to be non-reflective. The overall impact of the proposed dwelling on the view from the beach will be less than significant based on the size, design and color of the structure.

Residential Development Permit

The proposal includes the construction of a retaining wall that will exceed the three-foot maximum height limit within the front yard setback and requires a Residential Development Permit. The proposed retaining wall is located uphill from the traveled roadway and will not affect sight distance for entering and exiting the property. There is no pedestrian area on this side of Oakhill with which the wall would interfere. The three foot, six inch retailing wall will be made of concrete and finished with stucco and painted to match the color of the house.

In conjunction with the proposal made under application # 07-0548, the project was reviewed by a certified arborist in order to assess possible impacts of the proposed retaining wall and other improvements to the 48-inch redwood tree on the property (Exhibit L). All tree protection measures recommended by the project arborist are included as required conditions of approval and include a pre-construction meeting with contractors and written verification by the arborist that all pre-construction measures have been implemented.

Conclusion

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

CCC Exhibit 7
(page 182 of 455 pages)

Staff Recommendation

- Certification that the proposal is exempt from further Environmental Review under the California Environmental Quality Act.

- APPROVAL of Application Number **09-0139**, based on the attached findings and conditions.

ATTACHMENT 4

Supplementary reports and information referred to in this report are on file and available for viewing at the Santa Cruz County Planning Department, and are hereby made a part of the administrative record for the proposed project.

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

Report Prepared By: Robin Bolster-Grant
Santa Cruz County Planning Department
701 Ocean Street, 4th Floor
Santa Cruz CA 95060
Phone Number: (831) 454-5357
E-mail: robin.bolster@co.santa-cruz.ca.us

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EXHIBIT 1D

ATTACHMENT 4

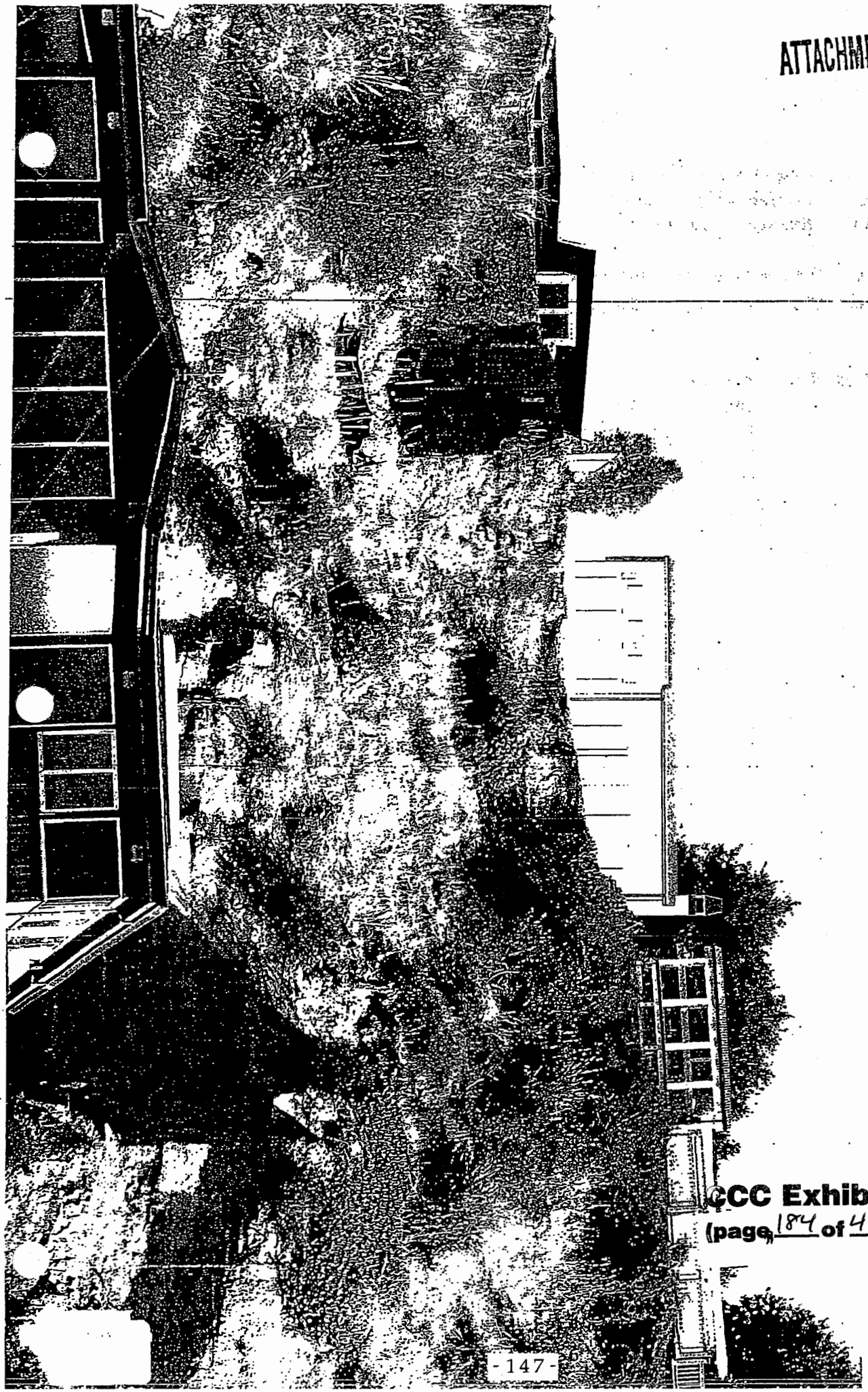

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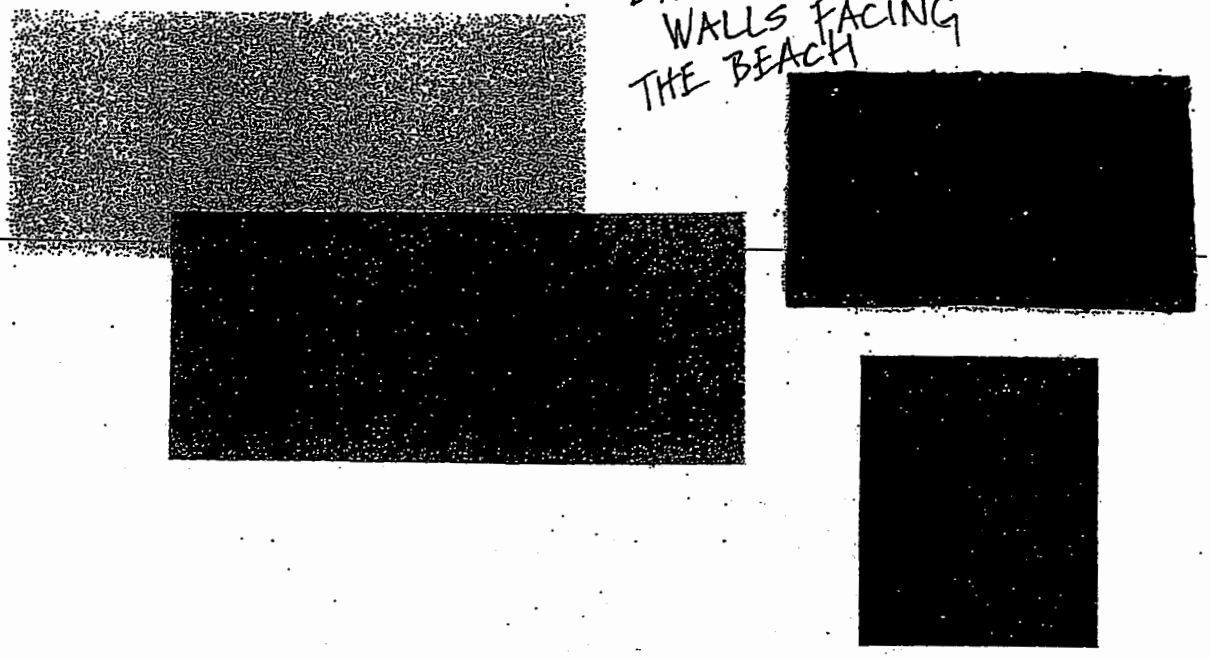
EXHIBIT 1R

ATTACHMENT 4

APPROVED COLOR FOR EXTERIOR WALLS FACING THE BEACH



GREEN SLATE
3 LBS 3685

A.	Roof	Elk composition roofing, color: Antique Slate
B.	Walls, generally	Elastomeric acrylic stucco top coat, Dryvit color to match Kelly Moore 'Keystone' #186
C.	Garage & Step walls	Elastomeric acrylic stucco top coat, Dryvit color to match Kelly Moore 'Wood Moss' #197 with heavier texture than rest of house
D.	Exterior Doors & Windows	White
E.	Gutters & Downspouts	Copper
F.	Porch Canopy	Stainless steel frame with frosted glass canopy
G.	Fascias, Soffits & Struts	Painted wood, color: white
H.	West Stair Balustrade	Powder-coated, galvanized wire mesh with tube posts and handrail, color: white
I.	South Deck Balustrade	Powder-coated tube posts and handrail, color: white, with glass panels
J.	Steps & Landings	Colored, rock-salt concrete, color: Davis 'Slate Green'
K.	Driveway	Colored, stamped concrete, color: Davis 'Slate Green'

Arthur Residence

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EXTERIOR MATERIALS AND COLORS

Robert J Goldspink Architect 8042 Soquel Drive Aptos CA 95003
tel [831] 688 8950 fax [831] 688 4402

April 6th 2009

EXHIBIT B

Application #: 09-0139
APN: 038-151-89
Owner: Brian Arthur

ATTACHMENT 4

Coastal Development Permit Findings

1. That the project is a use allowed in one of the basic zone districts, other than the Special Use (SU) district, listed in section 13.10.170(d) as consistent with the General Plan and Local Coastal Program LUP designation.

This finding can be made, in that the property is zoned R-1-10 (Single family residential - 10,000 square feet minimum), a designation which allows residential uses. The proposed new single-family dwelling is a principal permitted use within the zone district, consistent with the site's (R-UL) Urban Low Density Residential General Plan designation.

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

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

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

This finding can be made, in that the development is consistent with the surrounding neighborhood in terms of architectural style; the site is surrounded by lots developed to an urban density; the colors are similar to that of the vegetated coastal bluff below and are thus complementary to the site. The new dwelling will incorporate a cross gable design with the front gable hipped and the second story stepped back from the street so as to avoid a monolithic and imposing appearance. Additionally, two complementary but different exterior paint colors will be used at the street side in order to provide differentiation in the use of a stucco exterior. The street view is further mitigated by the presence of a 48-inch redwood tree and planting area at the eastern side of the lot.

Varied roof planes, deck and fenestration provide visual interest at the street front, while the window design and tube and glass railing at the beach-facing south elevation are generally consistent with surrounding designs along the bluff. The portion of the dwelling that is visible from the beach is consistent in shape and height with the silhouettes of the houses on either side. Additionally, the proposed color blends in well with the color and appearance of the bluff below. The overall effect is en entirely compatible presentation from both the Oakhill street front and from the beach below. The glazing for the windows facing the beach and Las Olas Drive are conditioned to be of non-reflective material only to further prevent any visual impact to the viewshed.

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EXHIBIT B

4. That the project conforms with the public access, recreation, and visitor-serving policies, standards and maps of the General Plan and Local Coastal Program land use plan, specifically Chapter 2: figure 2.5 and Chapter 7, and, as to any development between and nearest public road and the sea or the shoreline of any body of water located within the coastal zone, such development is in conformity with the public access and public recreation policies of Chapter 3 of the Coastal Act commencing with section 30200.

This finding can be made, in that while the project site is located between the shoreline and the first public road, there is no available beach access from the subject parcel. Consequently, the new single-family dwelling will not interfere with public access to the beach, ocean, or any nearby body of water. Further, the project site is not identified as a priority acquisition site in the County Local Coastal Program.

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

This finding can be made, in that the structure is sited and designed to be visually compatible, in scale with, and integrated with the character of the surrounding neighborhood. The proposed two-story dwelling is consistent with the size and design of the adjacent dwellings as well as the dwellings located along Las Olas Drive at the base of the coastal bluff. Additionally, residential uses are allowed uses in the R-1-10 (Single family residential - 10,000 square feet minimum) zone district of the area, as well as the General Plan and Local Coastal Program land use designation. Developed parcels in the area contain single-family dwellings of primarily two-story construction. Size and architectural styles vary widely in the area, and the design submitted is not inconsistent with the existing range, utilizing a blend of traditional elements such as hipped, cross gabled roof design, eave overhangs and arched window elements.

The south-facing elevation presents a modest façade, which is in scale with the adjacent dwellings and incorporates vertical elements and balanced fenestration to further soften the apparent bulk and mass of the structure from the beach and from Las Olas Drive. The proposed color scheme complements and blends in with the natural hues of the vegetated coastal bluff below so that the overall appearance will harmonize with the existing structures in the vicinity and will not represent a negative impact to the view from the beach.

Application #: 09-0139
APN: 038-151-89
Owner: Brian Arthur

Development Permit Findings

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

This finding can be made, in that the project is located in an area designated for residential uses. Though the structure is located approximately 33 feet from the coastal bluff, the dwelling will not encroach into the 100-year geologic setback line established by the engineering geologist for the project. All recommendations made by the engineering geologist and geotechnical engineer (Exhibits H, I) have been incorporated into the required conditions of approval of this permit.

Proposed drainage improvements will ensure that all drainage be directed away from the bluff face, potentially lengthening the life and preserving the stability of the bluff in order to protect the health, safety and welfare of the residents of the subject dwelling and surrounding properties. No structures are proposed to be built within the required 100-year bluff setback and the minimal amount of grading done to improve the drainage will be done by hand. Per the recommendations made by the project geotechnical engineer, the house will be constructed on a pier and grade beam foundation. Construction will comply with prevailing building technology, the California Building Code, and the County Building ordinance to insure the optimum in safety and the conservation of energy and resources. The proposed single-family dwelling will not deprive adjacent properties or the neighborhood of light, air, or open space, in that the structure will conform to all required site standards for the zone district.

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

This finding can be made, in that the proposed location of the new single-family dwelling and the conditions under which it would be operated or maintained will be consistent with all pertinent County ordinances and the purpose of the R-1-10 (Single family residential - 10,000 square feet minimum) zone district in that the primary use of the property will be one new single-family dwelling that meets all current site standards for the zone district.

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

This finding can be made, in that the proposed residential use is consistent with the use and density requirements specified for the Urban Low Density Residential (R-UL) land use designation in the County General Plan.

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EXHIBIT 1B

The proposed new single-family dwelling will not adversely impact the light, solar opportunities, air, and/or open space available to other structures or properties, and meets all current site and development standards for the zone district as specified in Policy 8.1.3 (Residential Site and Development Standards Ordinance), in that the new single-family dwelling will not adversely shade adjacent properties, and will meet current setbacks for the zone district that ensure access to light, air, and open space in the neighborhood.

The project consists of infill development, which is compatible with the surrounding structures in terms of height, mass and bulk and design and therefore complies with General Plan Policy 5.10.7 (Visual Resources- Open Beaches and Blufftops). The proposed dwelling will be painted a sage green, which blends in with the vegetation located on the bluff below. The ocean-facing windows shall be restricted to the use of non-reflective glazing material further reducing the visual impact of the new house.

The proposed new single-family dwelling will not be improperly proportioned to the parcel size or the character of the neighborhood as specified in General Plan Policy 8.6.1 (Maintaining a Relationship Between Structure and Parcel Sizes), in that the proposed new single-family dwelling will comply with the site standards for the R-1-10 zone district (including setbacks, lot coverage, floor area ratio, height, and number of stories) and will result in a structure consistent with a design that could be approved on any similarly sized lot in the vicinity.

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

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

This finding can be made, in that the proposed new single-family dwelling is to be constructed on an existing undeveloped lot. The expected level of traffic generated by the proposed project is anticipated to be only 1 peak trip per day, such an increase will not adversely impact existing roads and intersections in the surrounding area.

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

This finding can be made, in that the proposed structure is located in a mixed neighborhood containing a variety of architectural styles, and the proposed new single-family dwelling is consistent with the land use intensity and density of the neighborhood. Surrounding dwellings are characterized predominately by two-story structures of similar bulk and mass.

6. The proposed development project is consistent with the Design Standards and Guidelines (sections 13.11.070 through 13.11.076), and any other applicable requirements of this chapter.

This finding can be made, in that the proposed new single-family dwelling will be of an appropriate scale and type of design that will enhance the aesthetic qualities of the surrounding properties and will not reduce or visually impact available open space in the surrounding area. The new dwelling incorporates several design features such as hipped, cross-gabled roof design, articulation at the street front and fenestration that provides visual interest. The proposal has been reviewed and approved by the County Urban Designer.

ATTACHMENT 4

Conditions of Approval

Exhibit A: 12 Sheets, prepared by Robert Goldspink Architect, dated 3-10-09, (Sheets 1-7, 12 & 13 revised 9-18-09), Sheet 11 revised 3-25-09, Topographic Map prepared by Robert L. DeWitt, dated 8-27-07.

I. This permit authorizes the construction of a new 2,544 square foot single-family dwelling, with 450 square foot attached garage and 3'-6" tall retaining wall within the front yard setback. This approval does not confer legal status on any existing structure(s) or existing use(s) on the subject property that are not specifically authorized by this permit. Prior to exercising any rights granted by this permit including, without limitation, any construction or site disturbance, the applicant/owner shall:

A. Sign, date, and return to the Planning Department one copy of the approval to indicate acceptance and agreement with the conditions thereof.

B. Obtain a Building Permit from the Santa Cruz County Building Official.

1. Any outstanding balance due to the Planning Department must be paid prior to making a Building Permit application. Applications for Building Permits will not be accepted or processed while there is an outstanding balance due.

C. Obtain a Grading Permit from the Santa Cruz County Building Official.

D. Submit proof that these conditions have been recorded in the official records of the County of Santa Cruz (Office of the County Recorder) within 30 days from the effective date of this permit.

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(page 191 of 455 pages)

II. Prior to issuance of a Building Permit the applicant/owner shall:

A. Submit final architectural plans for review and approval by the Planning Department. The final plans shall be in substantial compliance with the plans marked Exhibit "A" on file with the Planning Department. Any changes from the approved Exhibit "A" for this development permit on the plans submitted for the Building Permit must be clearly called out and labeled by standard architectural methods to indicate such changes. Any changes that are not properly called out and labeled will not be authorized by any Building Permit that is issued for the proposed development. The final plans shall include the following additional information:

1. One elevation shall indicate materials and colors as depicted on the "Exterior Materials and Colors" sheet submitted by the project architect (dated April 6, 2009). If there is a significant conflict between the color shown on the sheet and the written description on the sheet, the color sample provided shall be considered the approved colors.

EXHIBIT 1B

a. The north-facing exterior shall incorporate two complementary, but distinct colors to differentiate the first and second stories.

2. Non-reflective glazing material shall be used for all windows that are visible from the beach.

3. Grading, drainage, and erosion control plans that include the following information:

   a. All grading performed within the 100-year geologic setback shall be done by hand.

   b. A maximum excavation at the crest of the slope at the blufftop must not exceed 6 inches.

   c. Grading plans shall include all grading volumes and calculations, a destination for off-hauled material, existing and proposed contours and top-of-wall/bottom-of-wall elevations for all retaining walls.

4. Submit a landscape plan showing the planting of drought-resistant landscaping

5. No deck, patios, spas, or other surfaced areas or structures shall be allowed within the 100-year geologic setback.

6. No portion of the structure may encroach into the 100-year geologic setback, with the exception of eaves and gutters, which may encroach 3 feet into the setback. Any such encroaching eaves must be sloped and may not be used as an extension of a deck or other living space.

7. The building plans must include a roof plan and a surveyed contour map of the ground surface, superimposed and extended to allow height measurement of all features. Spot elevations shall be provided at points on the structure that have the greatest difference between ground surface and the highest portion of the structure above. This requirement is in addition to the standard requirement of detailed elevations and cross-sections and the topography of the project site which clearly depict the total height of the proposed structure. Maximum height is 28 feet.

8. Details showing compliance with fire department requirements.

B. Submit four copies of the approved Discretionary Permit with the Conditions of Approval attached. The Conditions of Approval shall be recorded prior to submittal, if applicable.

C. Meet all requirements of and pay Zone 6 drainage fees to the County Department of Public Works, Stormwater Management. Drainage fees will be assessed on the net increase in impervious area.

D. Meet all requirements of and pay fees to the County Department of Public Works, Sanitation Section.

E. Meet all requirements and pay any applicable plan check fee of the Aptos/La Selva Fire Protection District.

F. Submit 3 copies of a soils report prepared and stamped by a licensed Geotechnical Engineer.

G. Submit 3 copies of the Engineering Geology Report prepared and stamped by a licensed Engineering Geologist.

H. Submit a Tree Protection and Tree Preservation plan that incorporates all recommendations made by the project arborist in her letter of November 8, 2007 (Exhibit L).

I. Submit a plan review letter from a certified arborist, which states that the final building and grading plans conform to the recommendations made in the assessment prepared for the site. Construction must adhere to the following mitigation measures.

J. Submit plan review letters from the project engineering geologist and geotechnical engineer stating that the final grading, drainage and erosion control plans are in conformance with the recommendations made in the approved technical reports prepared for the project.

K. Pay the current fees for Parks and Child Care mitigation for 3 bedroom(s). Currently, these fees are, respectively, $1,000 and $109 per bedroom.

L. Pay the current fees for Roadside and Transportation improvements for *one dwelling unit*. Currently, these fees are, respectively, $2,740 and $2,740 per unit. *(Revised by the Zoning Administrator on 1/15/10).*

M. Provide required off-street parking for 3 cars. Parking spaces must be 8.5 feet wide by 18 feet long and must be located entirely outside vehicular rights-of way. Parking must be clearly designated on the plot plan.

N. Submit a written statement signed by an authorized representative of the school district in which the project is located confirming payment in full of all applicable developer fees and other requirements lawfully imposed by the school district.

O. Complete and record a Declaration of Restriction to maintain a non-habitable basement. **You may not alter the wording of this declaration**. Follow the instructions to record and return the form to the Planning Department.

P. Complete and record a Declaration of Geologic Hazard. **You may not alter the wording of this declaration**. Follow the instructions to record and return the form to the Planning Department.

III. All construction shall be performed according to the approved plans for the Building Permit. Prior to final building inspection, the applicant/owner must meet the following conditions:

A. All site improvements shown on the final approved Building Permit plans shall be installed.

B. All inspections required by the building permit shall be completed to the satisfaction of the County Building Official.

C. The project must comply with all recommendations of the approved soils reports.

D. Pursuant to Sections 16.40.040 and 16.42.100 of the County Code, if at any time during site preparation, excavation, or other ground disturbance associated with this development, any artifact or other evidence of an historic archaeological resource or a Native American cultural site is discovered, the responsible persons shall immediately cease and desist from all further site excavation and notify the Sheriff-Coroner if the discovery contains human remains, or the Planning Director if the discovery contains no human remains. The procedures established in Sections 16.40.040 and 16.42.100, shall be observed.

IV. Operational Conditions

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

B. Parking during construction shall not obstruct traffic along Oakhill Road. The road shall be kept free of dirt and debris during construction.(Revised by Zoning Administrator on 1/15/10)

C. *Limit all construction to the time between 8:00 am and 6:00 pm weekdays, excluding holidays. Hours may be revised or extended if needed to complete grading in advance of adverse weather conditions. Notice must be provided to neighbors prior to any change in construction hours (Revised by Zoning Administrator on 1/15/10).*

ATTACHMENT 4

V. As a condition of this development approval, the holder of this development approval ("Development Approval Holder"), is required to defend, indemnify, and hold harmless the COUNTY, its officers, employees, and agents, from and against any claim (including attorneys' fees), against the COUNTY, it officers, employees, and agents to attack, set aside, void, or annul this development approval of the COUNTY or any subsequent amendment of this development approval which is requested by the Development Approval Holder.

A. COUNTY shall promptly notify the Development Approval Holder of any claim, action, or proceeding against which the COUNTY seeks to be defended, indemnified, or held harmless. COUNTY shall cooperate fully in such defense. If COUNTY fails to notify the Development Approval Holder within sixty (60) days of any such claim, action, or proceeding, or fails to cooperate fully in the defense thereof, the Development Approval Holder shall not thereafter be responsible to defend, indemnify, or hold harmless the COUNTY if such failure to notify or cooperate was significantly prejudicial to the Development Approval Holder.

B. Nothing contained herein shall prohibit the COUNTY from participating in the defense of any claim, action, or proceeding if both of the following occur:

1. COUNTY bears its own attorney's fees and costs; and

2. COUNTY defends the action in good faith.

C. Settlement. The Development Approval Holder shall not be required to pay or perform any settlement unless such Development Approval Holder has approved the settlement. When representing the County, the Development Approval Holder shall not enter into any stipulation or settlement modifying or affecting the interpretation or validity of any of the terms or conditions of the development approval without the prior written consent of the County.

D. Successors Bound. "Development Approval Holder" shall include the applicant and the successor'(s) in interest, transferee(s), and assign(s) of the applicant.

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

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

Application #: 09-0139
APN: 038-151-89
Owner: Brian Arthur

ATTACHMENT 4

Approval Date: January 15, 2010

Effective Date: January 29, 2010

Expiration Date: January 29, 2013

Don Bussey
Deputy Zoning Administrator

Robin Bolster-Grant
Project Planner

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

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EXHIBIT 1

ATTACHMENT 4

CALIFORNIA ENVIRONMENTAL QUALITY ACT
NOTICE OF EXEMPTION

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

Application Number: 09-0139
Assessor Parcel Number: 038-151-89
Project Location: No Situs

Project Description: Proposal to construct an approximately 2,322 square foot single-family dwelling with 450 square foot attached garage, elevator, and 3'-6" retaining wall located within the required 20-foot front yard setback.

Person or Agency Proposing Project: Robert Goldspink

Contact Phone Number: (831) 688-8950

A. _____ The proposed activity is not a project under CEQA Guidelines Section 15378.
B. _____ The proposed activity is not subject to CEQA as specified under CEQA Guidelines Section 15060 (c).
C. _____ **Ministerial Project** involving only the use of fixed standards or objective measurements without personal judgment.
D. _____ **Statutory Exemption** other than a Ministerial Project (CEQA Guidelines Section 15260 to 15285).

Specify type:

E. __X__ **Categorical Exemption**

Specify type: Class 3 - New Construction or Conversion of Small Structures (Section 15303)

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

Construction of a single-family dwelling in a residential zone.

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

_____ Date: 1/9/10
Robin Bolster-Grant, Project Planner

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EXHIBIT 1B

ATTACHMENT 4

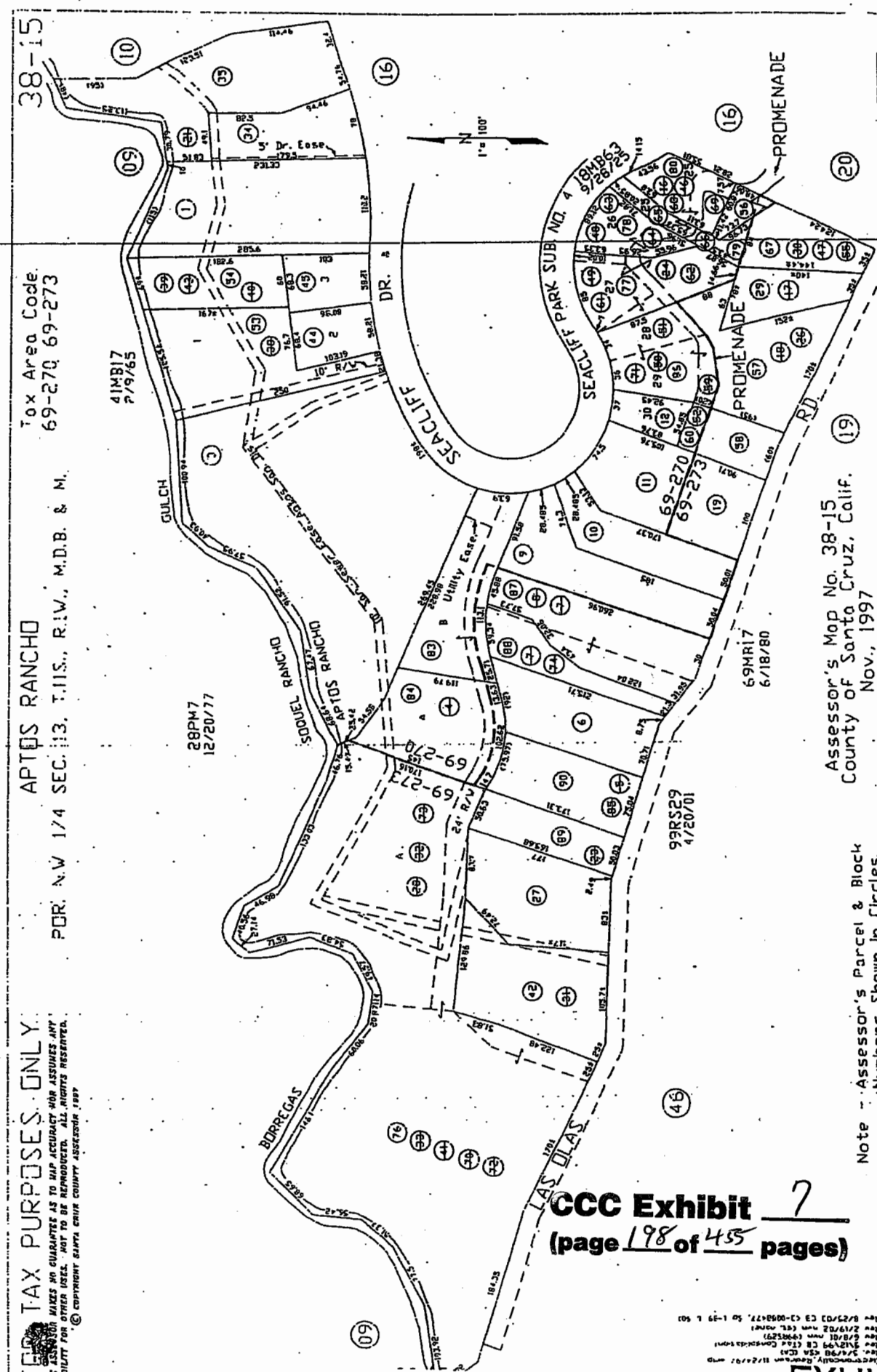

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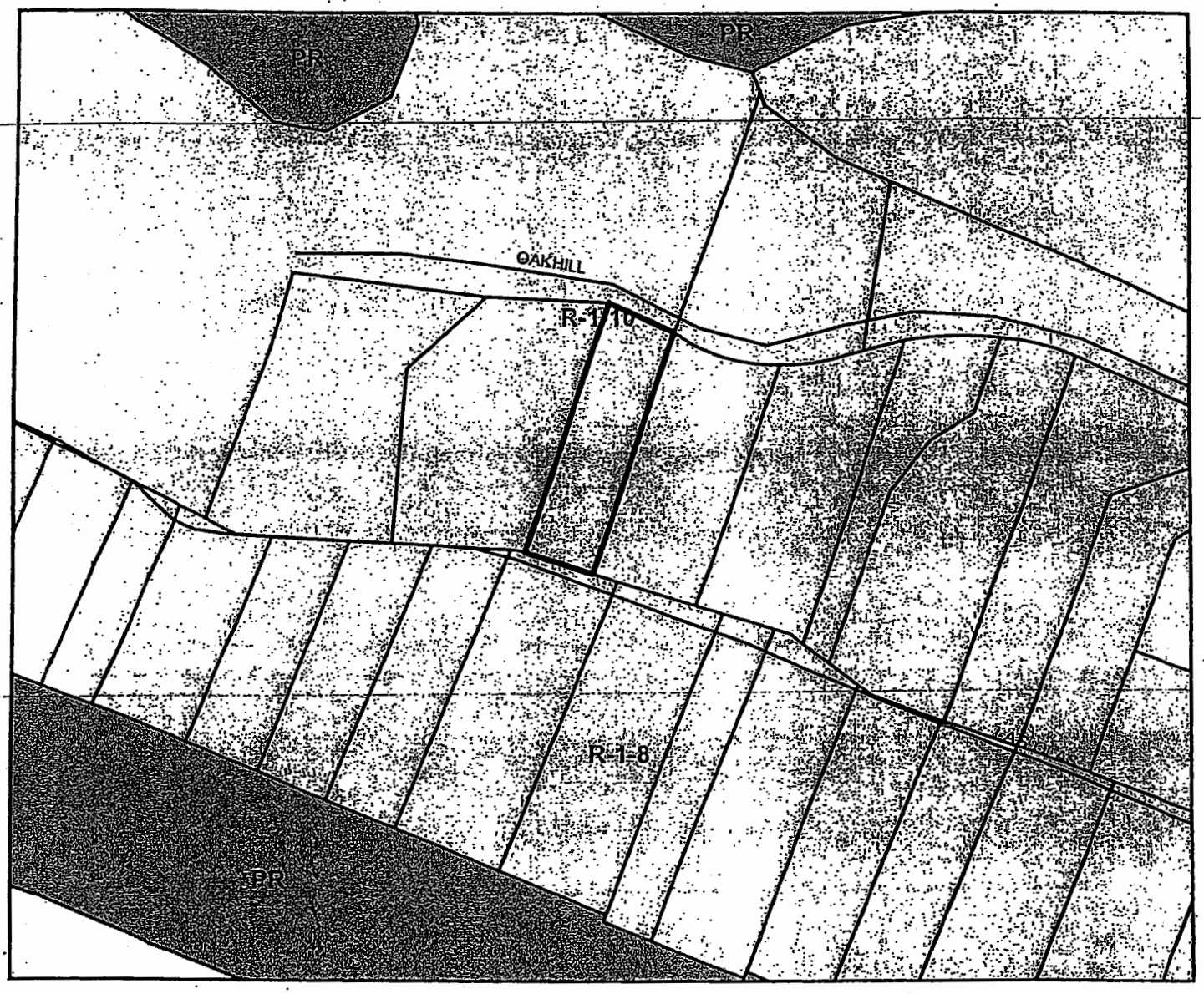
EXHIBIT 1

Zoning Map



LEGEND

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

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Map Created by
County of Santa Cruz
Planning Department
December 2008

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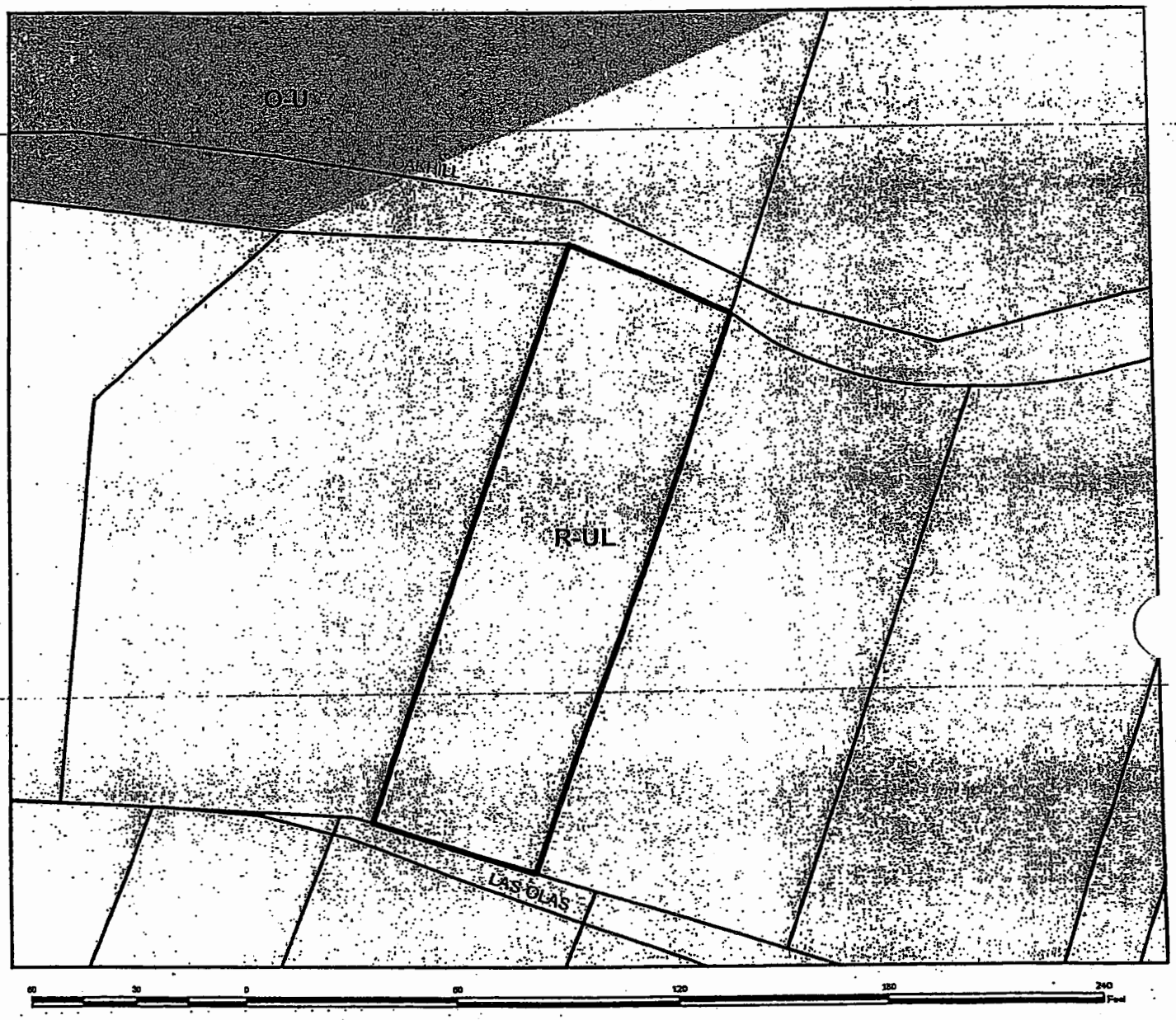
EXHIBIT 1B

ATTACHMENT 4

General Plan Designation Map



LEGEND

- APN: 038-151-89
- Assessors Parcels
- Streets
- Residential - Urban Low Density
- Urban Open Space

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Map Created by
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December 2008

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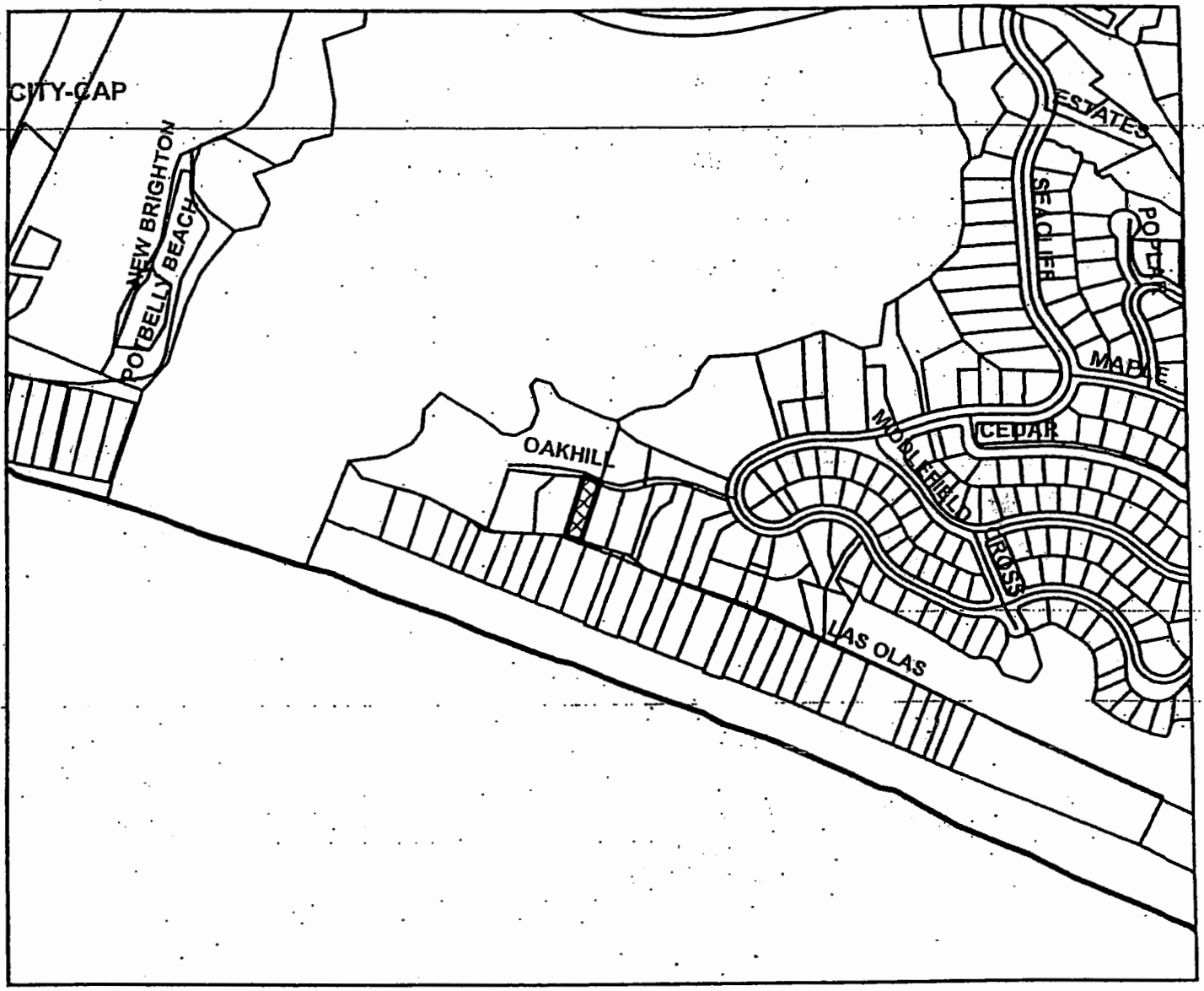
EXHIBIT 4

Location Map

ATTACHMENT 4



LEGEND

- APN: 038-151-89
- Assessors Parcels
- Streets
- CAPITOLA
- County Boundary

N W E S

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Planning Department
December 2008

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ATTACHMENT 4

Project Planner: Robin Bolster
Application No.: 09-0139
APN: 038-151-89

Date: December 24, 2009
Time: 11:12:23
Page: 1

Environmental Planning Completeness Comments

========= REVIEW ON JULY 20, 2009 BY ANTONELLA GENTILE =========
1. Please label the 100-year geologic setback on the site plan. ========= UPDATED ON ~~OCTOBER 22, 2009 BY ANTONELLA GENTILE~~ =========
Project complete per Environmental Planning.

Environmental Planning Miscellaneous Comments

========= REVIEW ON JULY 20, 2009 BY ANTONELLA GENTILE =========
Miscellaneous comments:

1. A minimum amount of grading will be allowed outside of the 100-year geologic envelope for the purpose of directing drainage toward the street rather than over the slope.

2. Although this site is mapped as Riparian Woodland, upon site visit no riparian resources were found.

3. Prior to approval of this application, submit a plan review letter from the project arborist that references the site plan and grading and drainage plan and states the the plans conform to the recommendations in the arborist's report dated 11/8/07 submitted with application 07-0548.

Conditions

Prior to building permit issuance:

1. Plans shall be prepared in conformance with the geology report prepared by Rogers E. Johnson dated October 24, 2005 and all updates, the geotechnical engineering report by Haro, Kasunich and Associates dated November 2005 and all updates and the arborist's report dated 11/8/07 by Nature First and all updates.

2. Plans shall include references to the geology report/updates, the geotechnical engineering report/updates, and the arborist's report/updates.

3. Apply for a grading permit at the time of building permit application submittal. Grading plans shall include all grading volumes and calculations, a destination for off-hauled material, existing and proposed contours, and top-of-wall and bottom-of-wall elevations for all retaining walls.

4. Provide an erosion control plan.

5. Provide updates and plan review letters from the geotechnical engineer, the geologist, and the project arborist.

6. Submit 2 copies of all technical reports for inclusion with the building permit plans.

Prior to permit final:

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EXHIBIT 1B

1. A pre-construction meeting shall be held onsite prior to the commencement of construction. Environmental Planning staff, the geotechnical engineer, the contractor, the applicant, and the arborist shall attend. Please note this on the building permit plans.

~~2. Final letters shall be required from the geologist, the geotechnical engineer,~~ the arborist, and the civil engineer or architect who prepares the grading plans.

3. A final grading, drainage, and erosion control inspection shall be conducted by Environmental Planning staff. ======== UPDATED ON OCTOBER 22, 2009 BY ANTONELLA GENTILE ========
A plan review letter is required from the arborist at this time to confirm that the recommendations from the arborist are reflected on the plans.

See above for conditions.

Dpw Drainage Completeness Comments

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

======== REVIEW ON JULY 14, 2009 BY TRAVIS RIEBER ========
1. Please submit the Civil Engineering Calculations, demonstrating the adequacy of the offsite drainage path, from discretionary application 07-0548 dated 10/2/08 for review.

2. What type of surfacing is being proposed for the driveway? The county would prefer the use of semi-impervious surfacing (paver blocks, base rock, gravel, pervious concrete) where feasible.

The applicant is encouraged to discuss the above comments with the reviewer to avoid unnecessary additional routings. A $210.00 additional review fee shall be applied to all re-submittals starting with the third routing.

Please call the Dept. of Public Works, Storm Water Management Section, from 8:00 am to 12:00 noon if you have questions. ======== UPDATED ON OCTOBER 21, 2009 BY TRAVIS RIEBER ========
The plans with revisions dated 9/18/2009, Civil Engineering Computations dated 10/2/2008 and Evaluation of Culvert Analysis dated 8/15/2008 have been received and are approved for the building application stage. Please see miscellaneous comments for issues to be addressed at the building application stage.

Dpw Drainage Miscellaneous Comments

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

======== REVIEW ON JULY 14, 2009 BY TRAVIS RIEBER ========
1. Please provide a cross section construction detail of the proposed drive surfacing.

2. For fee calculations please provide tabulation of new impervious and semi-impervious (gravel, base rock, paver blocks, pervious payment) areas resulting from the

proposed project. Make clear on the plans by shading or hatching the limits of both the existing and new impervious areas. To receive credit for the existing impervious surfaces to be removed please provide documentation such as assessor-s records, survey records, aerial photos or other official records that will help establish and determine the dates they were built.

Note: A drainage fee will be assessed on the net increase in impervious area. Reduced fees are assessed for semi-pervious surfacing (50%) to offset costs and encourage more extensive use of these materials.

3. A civil engineer has to inspect the drainage improvements on the parcel and provide public works with a letter confirming that the work was completed per the plans. The civil engineer-s letter shall be specific as to what got inspected whether invert elevations, pipe sizing, the size of the mitigation features and all the relevant design features. Notes of -general conformance to plans- are not sufficient. An as-built plan may be submitted in lieu of the letter. Upon approval of the project a hold will be placed on the permit to be released once a satisfactory letter is received. ========= UPDATED ON OCTOBER 21, 2009 BY TRAVIS RIEBER =========
See previous miscellaneous comments

Aptos-La Selva Beach Fire Prot Dist Completeness C

========= REVIEW ON JULY 9, 2009 BY ERIN K STOW =========
DEPARTMENT NAME:Aptos/La Selva Fire District APPROVED

Aptos-La Selva Beach Fire Prot Dist Miscellaneous

========= REVIEW ON JULY 9, 2009 BY ERIN K STOW =========
NO COMMENT

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EXHIBIT B

ATTACHMENT 4

COUNTY OF SANTA CRUZ

PLANNING DEPARTMENT
701 OCEAN STREET, 4TH FLOOR, SANTA CRUZ, CA 95060
(831) 454-2580 FAX: (831) 454-2131 TDD: (831) 454-2123
TOM BURNS, PLANNING DIRECTOR

December 20, 2005

Emily and Tom Oswalt, Trustees
P.O. Box 310
Aptos, CA 95001

Subject: Review of Engineering Geology Report, by Rogers E. Johnson dated October 24, 2005, Project # C05041-56 and Geotechnical Engineering Report by Haro, Kasunich and Assoicates, Inc. Dated November 2005, Project #: SC8970
APN 038-151-89, Application #: 05-0753

Dear Emily and Tom Oswalt,

The purpose of this letter is to inform you that the Planning Department has accepted the subject reports and the following items shall be required:

1. All construction shall comply with the recommendations of the reports.

2. Final plans shall reference the reports and include a statement that the project shall conform to the reports' recommendations.

3. Before building permit issuance a *plan review letters* shall be submitted to Environmental Planning. The authors of the reports shall write the *plan review letters*. These letters shall state that the project plans conform to the reports' recommendations.

4. The Engineering Geologist must identify the location of the Coastal Bluff on their geologic map, and a copy of that map must be submitted with any future permit application. All further submittal to the County must include a site plan that has a representation of the site relief, the geologic acceptable development envelope, and the Coastal Bluff. A civil engineer must prepare this site plan and any grading plans.

5. The attached declaration of geologic hazards must be recorded before the issuance of the building permit issuance.

After building permit issuance the soils engineer *must remain involved with the project* during construction. Please review the *Notice to Permits Holders* (attached). In addition, the engineering geologist will need to approve in writing the location of the buildings footings and provide a

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(over)

EXHIBIT B

final letter at the end of the project that indicates that all of the work complies with the recommendations to the report.

Our acceptance of the reports is limited to its technical content. Other project issues such as zoning, fire safety, septic or sewer approval, etc. may require resolution by other agencies.

Please call the undersigned at (831) 454-3175, or e-mail joe.hanna@co.santa-cruz.ca.us if we can be of any further assistance.

Sincerely,

Joseph L. Hanna, CEG 1313
County Geologist

Cc: Robert Loveland, Environmental Planning
Haro, Kasunich and Assoicates, Inc, attention Rick Parks PE
Rogers E. Johnson and Associates

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EXHIBIT 1B

coefficient (k) of 0.54. This is based on a predicted PGA of 0.64g (mean plus one standard deviation), a total bluff height of 99 feet and an estimated slide height of 37 feet, occurring within the marine terrace deposits and Aromas Sand.

Current Santa Cruz County standards require that the pseudostatic slope stability analysis show the site stable beyond a 1.2 factor of safety. Given this standard, a minimum seismic coefficient (k) of 0.15 should be used as suggested within Special Publication 117 (California Division of Mines and Geology, 1997).

Aseismic Slope Stability

The sea cliff is also subject to slope failure under aseismic conditions. Not all of the materials that are loosened by earthquakes fail as landslides; some remains on the bluff. This "earthquake weakening" together with weathering of the bluff can produce loose debris on the slope. Subsequent storms can mobilize this loose debris. Although generally smaller than seismically generated failures, storm generated landslides are an order of magnitude more common (a ten year cycle versus a hundred year cycle).

Our review of time sequential aerial photographs revealed numerous failures of the subject coastal bluff. Subsequent to construction of the seawall, these failures were primarily the result of over saturation of loose debris mantling the slope. Individual failures tended to be localized either within the upper bluff composed of the marine terrace deposits and the Aromas Sand or within the lower bluff composed of the Purisima Formation sandstone. A significant portion of the failures were relatively large, covering the entire width of the property.

During a site visit on August 10, 2005, we observed a relatively large, aseismic, joint controlled, block failure of the bluff at the subject property. The failure was restricted to the upper approximately 30 feet of the Purisima Formation sandstone and incorporated approximately 150 cubic yards of material. It spanned about a 30 foot width of bluff-face and was up to a maximum of 6 feet thick (measured perpendicular to the bluff-face).

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CONCLUSIONS and RECOMMENDATIONS

1. The coastal bluff at the subject property is protected from surf erosion and as a consequence the rate of retreat of the toe of the bluff is very slow. However, the top of the bluff at the subject property will continue to retreat until the alluvial deposits reach their natural angle of repose, forming a stable slope. The ultimate configuration of the bluff top in 100 years is difficult to predict with accuracy. However, given our observations of the materials that underlie the bluff at the subject property we can establish a reasonable estimate. The Purisima Formation sandstone forming the base of the bluff may continue to fail in joint bounded blocks. Therefore we have estimated an additional 20 feet of additional block failure (measured perpendicular to the bluff-face, see Plate 2). The upper bluff deposits, which include the Aromas Sand and marine terrace deposits, will continue

EXHIBIT 1E

to erode and fail until the angle of their slope is about 33 degrees (1.5:1 slope gradient). The projection of the 1.5:1 slope to the terrace surface from the contact in the cliff face of the upper bluff deposits with the underlying Purisima Formation sandstone defines the 100 year bluff top. This estimate assumes no significant shifts in climactic conditions causing an increased rate of erosion. All future construction on the bluff top should be located behind this 100 year geologic setback line (Plate 1).

2. The site is located in an area of high seismic activity and will be subject to strong seismic shaking in the future. Modified Mercalli Intensities of up to VIII are possible. The controlling seismogenic source for the subject property is the San Andreas fault, 12 kilometers to the northeast. The design earthquake on this fault should be M_w 7.9. Expected duration of strong shaking for this event is about 31 seconds. Deterministic analysis for the site yields a mean peak ground acceleration plus one dispersion of 0.64g.

3. If the project geotechnical engineer performs pseudostatic slope stability analysis of the coastal bluff backing the subject residence, they should utilize our geologic cross sections. Current practice suggests that a site-specific seismic coefficient (k) be used in the analysis when considering a factor of safety of greater than 1.0. Ashford and Sitar (2002) recommend a method for calculating a site-specific pseudostatic seismic coefficient (k) specifically for a coastal bluff top setting. Following their guidelines yields a coefficient (k) of 0.54. Current Santa Cruz County standards require that the pseudostatic slope stability analysis show the site stable beyond a 1.2 factor of safety. Given this standard, a minimum seismic coefficient (k) of 0.15 should be used as suggested within Special Publication 117 (California Division of Mines and Geology, 1997).

4. Drainage from improved surfaces, such as walkways, patios, roofs and driveways, at the top of the bluff should be collected in impermeable gutters or pipes and either carried to the base of the bluff via closed conduit or discharged into an established storm drain system that does not issue onto the bluff. At no time should any concentrated discharge be allowed to spill directly onto the ground adjacent to the existing residence. Any drain water on paved areas should not be allowed to flow toward the residence or toward the bluff top. The control of runoff is essential for control of erosion and prevention of ponding.

5. We request the privilege of reviewing all geotechnical engineering, civil engineering, drainage, and architectural reports and plans pertaining to the proposed development.

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INVESTIGATION LIMITATIONS

1. The conclusions and recommendations contained herein are based on probability and in no way imply that the proposed development will not possibly be subjected to ground failure, seismic shaking or landsliding of such a magnitude that it overwhelms the site.

EXHIBIT 1B

Project No. SC8970
17 November 2005

DISCUSSIONS, CONCLUSIONS AND RECOMMENDATIONS

Based on the results of our investigation, the proposed project appears compatible with the site, provided the following recommendations are incorporated into the design and construction of the proposed project.

One of the primary purposes of our investigation was to work with the project engineering geologists, Rogers Johnson & Associates, to estimate the configuration of the coastal blufftop in 100 years in order to determine a blufftop setback line allowing for a project building envelope design life of at least 100 years.

The slope stability model used to determine the blufftop setback included 20 feet of recession of the blufftoe/bluff face preceding a design seismic failure of the blufftop. We have included a copy of the Geologic Map dated 5 October 2005 with this report showing the "100 Year Geologic Setback Line" and the "Geologically Stable Building Envelope". The delineated building envelope is about 32 feet landward of the existing blufftop.

The referenced parcel is one of about sixteen bluff parcels including Seacliff Beach State Park, which are situated above Las Olas Drive. Historically, bluff face failures or rockfall events have impacted the blufftoe and the adjacent Las Olas Drive. Rockfall

mitigation recommendations for the referenced parcel are beyond the scope of this report. We recommend future owners of the parcel consult with a geotechnical engineer or engineering geologist experienced in rockfall mitigation regarding such measures.

The proposed residence may be founded upon a drilled pier and grade beam foundation system.

The following recommendations should be used as guidelines for preparing project plans and specifications:

Site Grading

1. The geotechnical engineer should be notified at least four (4) working days prior to any site clearing or grading so that the work in the field can be coordinated with the grading contractor, and arrangements for testing and observation can be made. The recommendations of this report are based on the assumption that the geotechnical engineer will perform the required testing and observation during grading and construction. It is the owner's responsibility to make the necessary arrangements for these required services.

2. Where referenced in this report, Percent Relative Compaction and Optimum Moisture Content shall be based on ASTM Test Designation D1557 current.

3. Areas to be graded should be cleared of all obstructions including loose fill, building foundations, trees not designated to remain, or other unsuitable material. Existing depressions or voids created during site clearing should be backfilled with engineered fill.

4. Cleared areas should then be stripped of organic-laden topsoil. Stripping depth should be from 2 to 4 inches. Actual depth of stripping should be determined in the field by the geotechnical engineer. Strippings should be wasted off-site or stockpiled for use in landscaped areas if desired.

5. Areas to receive engineered fill should be scarified to a depth of 6 inches, moisture conditioned, and compacted to at least 90 percent relative compaction. Portions of the site may need to be moisture conditioned to achieve suitable moisture content for compaction. These areas may then be brought to design grade with engineered fill.

6. Engineered fill should be placed in thin lifts not exceeding 8 inches in loose thickness, moisture conditioned, and compacted to at least 90 percent relative

compaction. The upper 12 inches of pavement and slab subgrades should be compacted to at least 95 percent relative compaction. The aggregate base below pavements should likewise be compacted to at least 95 percent relative compaction.

7. If grading is performed during or shortly after the rainy season, the grading contractor may encounter compaction difficulty, such as pumping or bringing free water to the surface, in the upper surface clayey and silty sands. If compaction cannot be achieved after adjusting the soil moisture content, it may be necessary to over-excavate the subgrade soil and replace it with angular crushed rock to stabilize the subgrade. We estimate that the depth of over-excavation would be approximately 24 inches under these adverse conditions.

8. Fills should be keyed and benched into firm soil in areas where existing slope gradients exceed 6:1 (horizontal to vertical). Subdrains will be required in areas where keyways or benches expose potential seepage zones.

9. The on-site soils generally appear suitable for use as engineered fill. Materials used for engineered fill should be free of organic material, and contain no rocks or clods greater than 6 inches in diameter, with no more than 15 percent larger than 4 inches.

10. We estimate shrinkage factors of about 15 percent for the on-site materials when used in engineered fills.

11. All permanent cut and fill slopes should be inclined no steeper than 2:1 (horizontal to vertical).

12. Following grading, all exposed slopes should be planted as soon as possible with erosion-resistant vegetation.

13. After the earthwork operations have been completed and the geotechnical engineer has finished his observation of the work, no further earthwork operations shall be performed except with the approval of and under the observation of the geotechnical engineer.

Foundations

14. The proposed residence may be supported on a drilled pier and grade beam foundation system. The foundation perimeter should be setback from the blufftop in conformance with the building envelope delineated on the project Geologic Map, Figure 2 in the Appendix of this report.

Drilled Piers

15. We recommend a drilled pier and grade beam foundation to support the proposed residence.

16. Drilled piers should be at least 18 inches in diameter and be embedded at least 10 feet below existing grades.

17. Piers constructed in accordance with the above may be designed for an allowable end bearing of 4 ksf.

18. For passive lateral resistance, an equivalent fluid pressure of 250 psf may be assumed to act against two pier diameters. The upper 3 feet of soil should be neglected when computing passive resistance.

19. Prior to placing concrete, all foundation excavations should be thoroughly cleaned. The foundation excavations must be observed by the geotechnical engineer or his representative prior to placing concrete.

Retaining Walls and Lateral Pressures

20. Retaining walls should be designed to resist lateral earth pressures, a seismic surcharge and any additional surcharge loads. Walls up to 12 feet high should be

EXHIBIT 1

designed to resist an active equivalent fluid pressure of 35 pcf for level backfills, and 50 pcf for sloping backfills inclined up to 2:1 (horizontal to vertical). Restrained walls should be designed to resist uniformly applied wall pressure of 23H psf per linear foot of wall for level backfills. A seismic surcharge within the retaining wall active pressure zone of 18H psf per linear foot of wall should also be used. The seismic surcharge should be applied at 0.6H above the base of the active zone.

21. The above lateral pressures assume that the walls are fully drained to prevent hydrostatic pressure behind the walls. Drainage materials behind the wall should consist of Class 1, Type A permeable material (Caltrans Specification 68-1.025) or an approved equivalent. The drainage material should be at least 12 inches thick. The drains should extend from the base of the walls to within 12 inches of the top of the backfill. A perforated pipe should be placed (holes down) about 4 inches above the bottom of the wall and be tied to a suitable drain outlet. Wall backdrains should be plugged at the surface with clayey material to prevent infiltration of surface runoff into the backdrains.

Slabs-on-Grade

22. We recommend that proposed slabs-on-grade be supported on at least 12 inches of non-expansive engineered fill compacted to at least 95 percent relative compaction. Prior to construction of the slab, the subgrade surface should be proof-

rolled to provide a smooth, firm, uniform surface for slab support. The project design professionals should determine the appropriate slab reinforcing and thickness, in accordance with the anticipated use and loading of the slab. However, we recommend that consideration be given to a minimum slab thickness of 5 inches and steel reinforcement necessary to address temperature and shrinkage considerations. At is recommended that rebar in lieu of wire mesh be used for slab reinforcement. The steel reinforcement should be held firmly in the vertical center of the slab during placement and finishing of the concrete with pre-cast concrete dobies.

23. In areas where floor wetness would be undesirable, a blanket of at least inches of free-draining gravel should be placed beneath the floor slab to act as a capillary break. Capillary break material should be free-draining, clean, angular gravel such as ¾-inch drainrock. The gravel should be washed to remove fines and dust prior to placement on the slab subgrade. The vapor retarder should be a high quality membrane at least 10 mil thick and puncture resistant. An acceptable product for use as a vapor retarder is the Stego Wrap 10-mil Class A vapor retarder system manufactured by Stego Industries, LLC. Provided the Stego Wrap system is installed per manufacturers recommendations, the concrete may be poured directly upon the Stego Wrap Vapor Retarder. The primary considerations for installing the vapor retarder are: taping all seams; sealing all penetrations such as pipe, ducting, wire, etc; and repairing all punctures.

24. It should be clearly understood slabs are not waterproof, nor are they vapor-proof. The aforementioned moisture retardant system will help to minimize water and water vapor transmission through the slab; however moisture sensitive floor coverings require additional protective measures. Floor coverings must be installed according to the manufacturer's specifications, including appropriate waterproofing applications and/or any recommended slab and/or subgrade preparation. Consideration should also be given to recommending a topical waterproofing application over the slab.

25. Exterior concrete slabs-on-grade should be founded on firm, well-compacted ground. Reinforcing should be provided in accordance with the anticipated use and loading of the slab. The reinforcement should not be tied to the building foundations. These exterior slabs can be expected to suffer some cracking and movement. However, thickened exterior edges, a well-prepared subgrade including premoistening prior to pouring concrete, adequately spaced expansion joints, and good workmanship should minimize cracking and movement.

Flexible Pavements

26. Asphaltic concrete, aggregate base and subbase, and preparation of the subgrade should conform to and be placed in accordance with the Caltrans Standard Specifications, latest edition, except that the test method for compaction should be determined by ASTM D1557-Current.

27. To have the selected sections perform to their greatest efficiency, it is important that the following items be considered:

A. Moisture condition the subgrade and compact to a minimum relative compaction of at least 95 percent, at about 2 percent over optimum moisture content.

B. Provide sufficient gradient to prevent ponding of water.

C. Use only quality materials of the type and thickness (minimum) specified. Base rock should meet Caltrans Standard Specifications for Class II Aggregate Base, and be angular in shape.

D. Compact the base rock to a relative dry density of 95 percent.

E. Place the asphaltic concrete during periods of fair weather when the free air temperature is within prescribed limits per Caltrans specifications.

F. Provide a routine maintenance program.

Site Drainage

28. Thorough control of runoff is essential to the performance of the project.

29. Runoff must not be allowed to sheet flow over graded slopes. Berms or lined V-ditches should be constructed at the top of slopes to divert water toward suitable collection facilities.

30. Permanent subdrains may be required adjacent to pavements or building foundations where groundwater levels are near the surface. The location and depth of these drains will need to be determined in the field by the geotechnical engineer.

31. Surface drainage should include provisions for positive gradients so that surface runoff is not permitted to pond adjacent to foundations and pavements. Surface drainage should be directed away from the building foundations.

32. Full roof gutters should be placed around all eaves. Discharge from the roof gutters should be conveyed away from the downspouts by closed conduit to either: an approved energy dissipater; on site detention; or street drainage as determined by the project civil engineer.

33. The migration of water or spread of extensive root systems below foundations, slabs, or pavements may cause undesirable differential movements and subsequent damage to these structures. Landscaping should be planned accordingly.

Plan Review, Construction Observation, and Testing

34. Our firm should be provided the opportunity for a general review of the final project plans prior to construction so that our geotechnical recommendations may be properly interpreted and implemented. If our firm is not accorded the opportunity of

making the recommended review, we can assume no responsibility for misinterpretation of our recommendations. We recommend that our office review the project plans prior to submittal to public agencies, to expedite project review. The recommendations presented in this report require our review of final plans and specifications prior to construction and upon our observation and, where necessary, testing of the earthwork and foundation excavations. Observation of grading and foundation excavations allows anticipated soil conditions to be correlated to those actually encountered in the field during construction.

ATTACHMENT 4

MIKE VAN HORN INC.

Registered Civil and Geotechnical Engineer
101 Forest Avenue, Santa Cruz, CA 95062-2622

soilsurgeon@cruzio.com
cell (831) 234-5966

Tel. (831) 429-9364
Fax (831) 429-9822

File Number: 12073

15 August 2008

Mr. Brian Arthur
382 Belle Monti Avenue
Aptos, CA 95003

Subject: Proposed Single Family Dwelling Development, APN 038-151-89
Oakhill Road
Santa Cruz County, California

Evaluation of Culvert Analysis

Dear Mr. Arthur:

As requested by Mr. Tracy Johnson on your behalf, I am providing a more detailed evaluation of the culvert drainage system presently assumed to receive surface runoff from your property and other properties within the tributary area of the culver receiving inlet.

A visit to the subject site was performed on 08 August 2008. The culvert drainage system was observed, documented, and photographed at that time. Refer to the attached photographs. The culvert drainage system consists of the following elements. Please note the following quantities are approximate due to restrictions in site access. The culvert runs from the inlet on the south side of Oakhill Road under Oakhill Road to the base of the north road bank. This portion of the culvert is an approximately 12-inch diameter CMP. The culvert then transitions into an approximately 16-inch diameter ADS flume with a semi-circular cross section supported by a redwood box. The culvert then transitions into an approximately 16-inch wide by six inch deep, rectangular, redwood flume. The redwood flume transitions into an approximately 18-inch CMP which runs down into the gully and into very heavy brush. The culvert appears to be in good condition and appears to be functioning adequately at this time with no indications of failure, leakage or other inadequate features.

Based on the above culvert dimensions, I conclude the assumptions provided in my previous drainage calculations[1] for the culvert are very conservative, are an adequate analysis, and indicate the culvert has sufficient capacity to accept the addition post-development runoff from the proposed project impermeable features.

[1] Mike Van Horn, Inc., Civil Engineering Computations, (Santa Cruz, CA, 4.28.08), File Number 12073, Application Number 07-0548.

CCC Exhibit 7
(page 22 of 455 pages) EXHIBIT 1B

Mike Van Horn, Inc.

File Number 12073 15 August 2008

This concludes this letter. If you have any questions, please contact this office.

Sincerely Yours,

REGISTERED PROFESSIONAL ENGINEER
MIKE VAN HORN
No. 35615
EXP. 9/30/09
8/15/09
Stamp Date
CIVIL
STATE OF CALIFORNIA

Mr. Mike Van Horn, CE 35615, GE 2047 (expires 9/30/09)

COPIES: 1 to Addressee
3 to Tracy Johnson, Residential Design
1 to File

CCC Exhibit 7
(page 222 **of** 455 **pages)**

EXHIBIT 1F

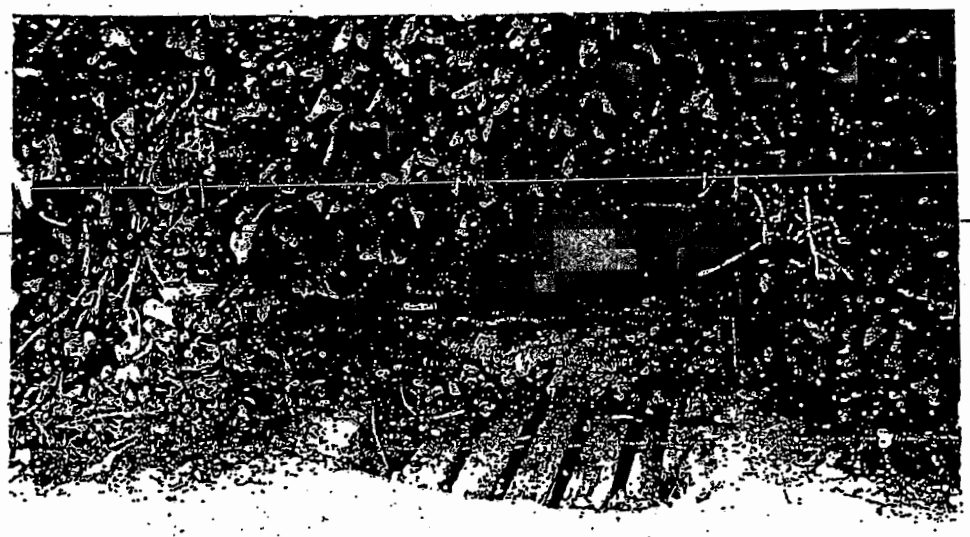

Figure 1 – Culvert Inlet: Redwood Box in Good Condition

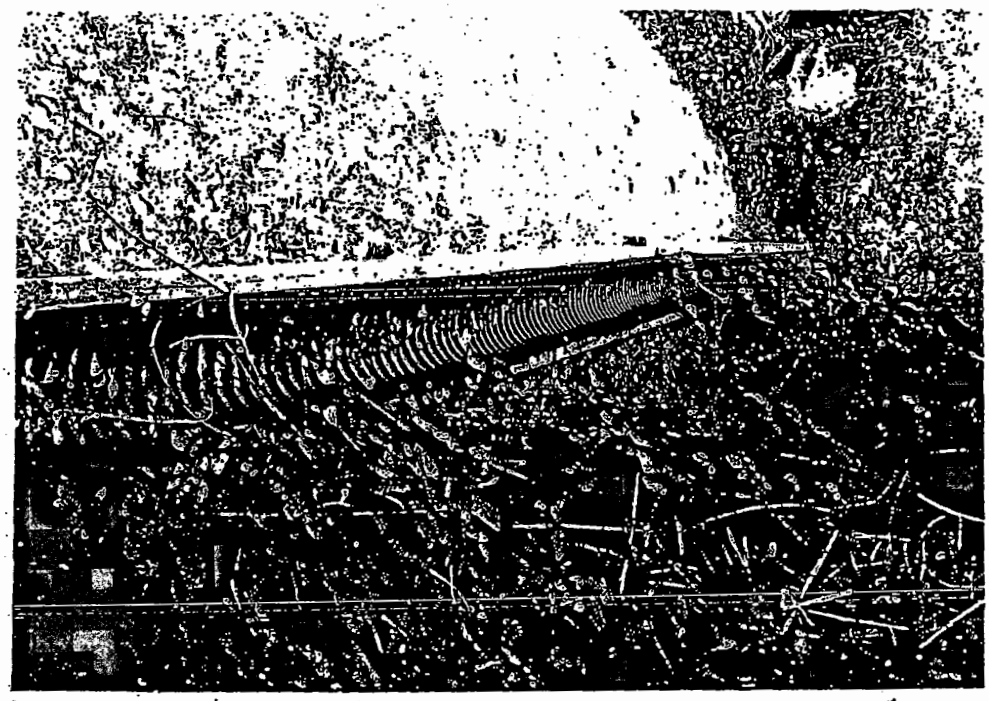

Figure 2 – Culvert at ADS in Redwood Box

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(page 223 of 455 pages)

EXHIBIT B

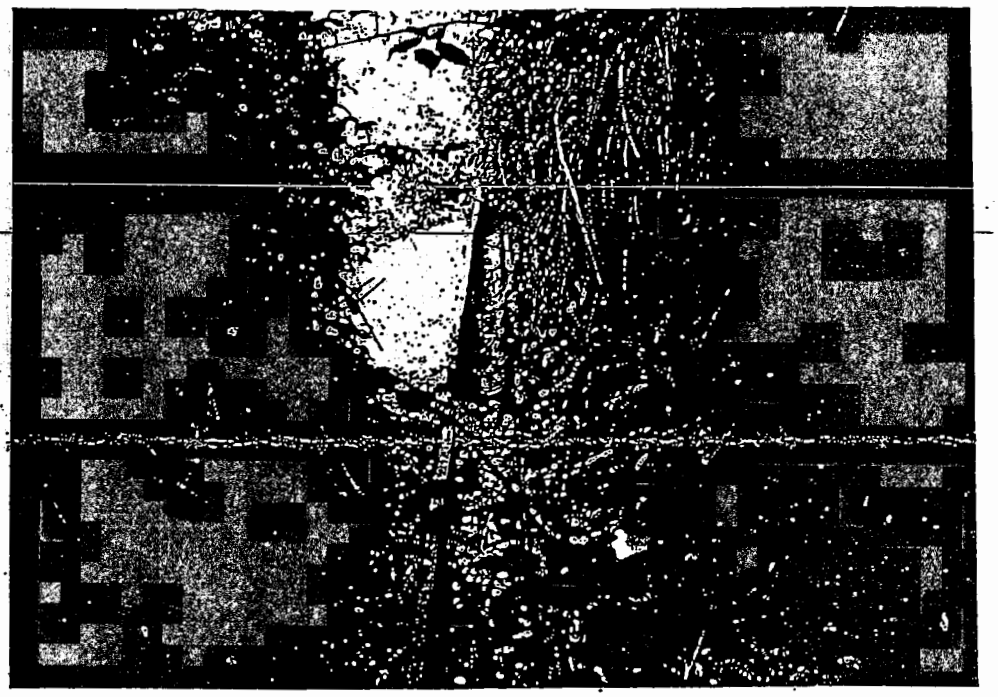

Figure 3 – Culvert ADS Transition to Redwood Flume Box

Figure 4 – Culvert Transition to Gully CMP

MIKE VAN HORN, INC.

Registered Civil and Geotechnical Engineer
101 Forest Avenue, Santa Cruz, CA 95062-2622

soilsurgeon@cruzio.com
cell (831) 234-5966

Tel. (831) 429-9364
Fax (831) 429-9822

File Number: 12073

22 August 2008

Mr. Brian Arthur
382 Belle Monti Avenue
Aptos, CA 95003

Subject: Proposed Single Family Dwelling Development, APN 038-151-89
Oakhill Road
Santa Cruz County, California

Evaluation of Brick Retaining Wall

Dear Mr. Arthur:

As requested by Mr. Tracy Johnson on your behalf, I have visited the subject site, observed the condition of the existing brick retaining wall, and I have observed the under floor area of the residence east/adjacent to the brick retaining wall. I am providing herein my conclusions regarding the stability of the brick retaining wall with respect to its proposed alterations to the affected site features.

It is my understanding the existing brick retaining wall, located within the geologic setback within the subject site, is planned to be reduced in length such that only the east most approximately nine to ten feet of the retaining wall is to remain following completion of the proposed improvements. The proposed plans also call for the reduction of the height of the backfill for a significant portion of the remaining brick wall.

I visited the subject site today, 22 August 2008. I observed the existing conditions of the brick retaining wall. The east most nine feet of the retaining wall is in relatively good condition and is slightly curved in plan view. The retaining wall does not extend under the residence to the east of the wall.

Additionally, at the home owner's permission, I observed the under floor area of the residence to the east of the wall and observed the foundation of this residence extends down to the base elevation of the brick retaining wall so that the residence's foundation does not depend upon the presence of the brick retaining wall for structural support of any kind.

Based on the above conditions and assumptions, I conclude the proposed alterations to the brick retaining wall and adjacent grade do not threaten the structural integrity of the wall.

Mike Van Horn, Inc.

File Number 12073

22 August 2008

This concludes this letter. If you have any questions, please contact this office.

Sincerely Yours,

REGISTERED PROFESSIONAL ENGINEER
MIKE VAN HORN
No. 2047
Exp. 9/30/09
8/25/08
Stamp Date
GEOTECHNICAL
STATE OF CALIFORNIA

Mr. Mike Van Horn, CE 35615, GE 2047 (expires 9/30/09)

COPIES: 1 to Addressee
3 to Tracy Johnson, Residential Design
1 to File

ATTACHMENT 4

ROGERS E. JOHNSON & ASSOCIATES
CONSULTING ENGINEERING GEOLOGISTS
41 Hangar Way, Suite B
Watsonville, California 95076-2458
e-mail: rogersjohnson@sbcglobal.net
Ofc (831) 728-7200 • Fax (831) 728-7218

30 April 2008
First Revision 2 May 2008
Second Revision 15 April 2009

Brian Arthur
382 Belle Monte Avenue
Aptos, California 95003

Job No. C07027-56

Subject: Geologic Plan Review of Proposed Single-Family Dwelling
Oak Hill Road, Aptos, California
Santa Cruz County APN 038-151-89

Dear Mr. Arthur:

We have reviewed the plan set for the above-referenced subject parcel. The plans, prepared by Robert Goldspink, the project architect were received by our office on 13 April 2009. The plans include a sheet by Mike Van Horn, the project civil engineer (sheet 11). We specifically reviewed sheets 6 (Sections A & B), 8 (Grading and Drainage), 10 (Offsite Drainage), 11 (Sections and Details) and 12 (Site Section C) for conformance with the recommendations in our Geologic Investigation (REJA, 2005).

The plans depict the proposed single-family dwelling, supported by piers, behind the 100-year geologic setback line depicted on Plate 1 of our report (REJA, 2005). Minor grading near the blufftop is proposed to achieve positive drainage toward Oak Hill Road. Drainage for the proposed development is controlled and directed towards Oak Hill Road, away from the bluff top.

The plans are geologically acceptable and in general conformance with our geologic report (REJA, 2005).

If you have any questions or comments, please contact us at your convenience.

CCC Exhibit 7
(page 227 of 455 pages)

Sincerely,

ROGERS E. JOHNSON AND ASSOCIATES

Gregory Easton
Project Geologist
C.E.G. No. 2502

PROFESSIONAL GEOLOGIST
GREGORY EASTON
No. 2502
CERTIFIED ENGINEERING GEOLOGIST
STATE OF CALIFORNIA

Rogers E. Johnson
Principal Geologist
C.E.G. No. 1016

CERTIFIED ENGINEERING GEOLOGIST
ROGERS E. JOHNSON
No. 1016
Exp. 7/09
STATE OF CALIFORNIA

EXHIBIT 1B

ATTACHMENT 4

Copies: Addressee (1)
Robert Goldspink (4)
Haro, Kasunich and Associates, Inc., Attn. Rick Parks (1)

References:

Robert J. Goldspink Architect, 2009, development plans for Arthur Residence, Oak Hill Road, Aptos, California, 12 sheets, dated 10 March 2009.

Mike Van Horn, 2008, Sections and Details, for Brian Arthur, New Single Family Dwelling, Oak Hill Road, Aptos, California, Sheet 11, dated 14 March 2008, revised 25 March 2009.

Rogers E. Johnson and Associates, 2005, Geologic Investigation, Oswalt Property, Oak Hill Road, Aptos, California, Santa Cruz County APN 038-151-89, prepared 24 October, 2005, unpublished consultants report, Job No. C05041-56.

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(page 228 of 455 pages)

EXHIBIT 11

HARO, KASUNICH AND ASSOCIATES, INC.

CONSULTING GEOTECHNICAL & COASTAL ENGINE

Project No. SC9551
16 April 2009

MR. BRIAN ARTHUR
382 Belle Monti Avenue
Aptos, California 95003

Subject: Geotechnical Review of Project Plans

Reference: Proposed Blufftop Residence
APN 038-151-89
Oak Hill Road
Santa Cruz County, California

Dear Mr. Arthur:

This letter outlines our review of the geotechnical aspects of the Architectural and Civil Engineering project plan sheets for the proposed blufftop residence at the referenced parcel.

Our Geotechnical Investigation for the proposed project is dated 25 November 2005.

The project plan sheets were prepared by Robert Goldspink Architect and Mike Van Horn, Inc (MVH). Specifically we reviewed the following plan sheets:

a. Sheet 1 – Site Plan dated 3/10/09;
b. Sheet 2 – Upper and Lower Floor Plans dated 3/10/09;
c. Sheet 3 – Garage Floor Plan dated 3/10/09;
d. Sheet 4 – Elevations North & East dated 3/10/09;
e. Sheet 5 – Elevations South & West dated 3/10/09;
f. Sheet 6 – Sections A & B dated 3/10/09 showing conceptual caisson and grade beam foundation system;
g. Sheet 7 – Roof Plan dated 3/10/09;
h. Sheet 8 – Grading & Drainage dated 3/10/09 showing proposed blufftop swale to convey runoff away from bluff face;
i. Sheet 9 – Erosion Control & Grading/Drainage Notes w/ Landscape Plan dated 3/10/09;
j. Sheet 10 – Offsite Drainage dated 3/10/09;
k. Sheet 11 – Sections & Details (MVH) revised 3/25/09;
l. Sheet 12 – Site Section C dated 3/10/09;
m. Sheet 13 – Floor Area Calculations dated 3/10/09 w/no geotechnica aspects; and
n. Sheet T – Partial Topographic Map dated 8/27/07 by Robert L. DeWitt & Associates.

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EXHIBIT 4

It is our opinion the geotechnical aspects of the aforementioned plan sheets were prepared in general conformance to our geotechnical recommendations.

We will work with the project architect and structural engineer during the design of the pier and grade beam system to support the proposed residence and associated retaining walls.

If you have any questions regarding this letter, please call our office.

Very truly yours,

HARO, KASUNICH AND ASSOCIATES, INC

Rick L. Parks
GE 2603

REGISTERED PROFESSIONAL ENGINEER
RICK L. PARKS
No. 2603
Exp. 31 Dec
GEOTECHNICAL
STATE OF CALIFORNIA

RLP/sq
Copies: 1 to Addressee
3 to Robert Goldspink Architect

CCC Exhibit 7
(page 230 of 455 pages)

EXHIBIT 1B

ATTACHMENT 4

NATURE FIRST

Professional Tree Care & Management, Inc.

November 8, 2007

Brian Arthur
382 Belle Monti Avenue
Aptos, CA 95003

Re: 735 Oak Hill, Aptos

Dear Brian,

Thank you for providing Nature First Professional Tree Care & Management with the opportunity to review your project. Following are our recommendations and prices:

Findings:

Species: *Sequoia sempervirens*
Common name: coast redwood
DBH (diameter breast height): 4.4 feet
Canopy spread: 50 feet

The redwood tree is located in the southeast corner of the property and there is a multi-leader or co-dominent top in the tree. A utility pole is located adjacent to the tree and P.G. & E has cleared the power lines creating an oddly-shaped canopy.

The property is sloped with an existing driveway and a demolished carport situated along the highest point of the property. The large redwood is surrounded by low growing vegetation. A brick retaining wall is located approximately 10-12 feet below the tree.

Intent:

The intent of the plan is to build a new home. The blueprint calls for a twenty-foot cut into the property from the street and installation of a driveway using pavers with sand and brick. A garden retaining wall is scheduled to be installed approximately five feet away from the highest side of the redwood tree and wrap half circle toward the street.
The wall is forming a garden planter to be installed at the main entrance.

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(page 231 of 455 pages)

NATURE FIRST TREE CARE, INC. CERTIFIED ARBORISTS
5736 Soquel Drive, Soquel, CA 95073 831 462-8233 Fax 831 462-8236
E-mail: naturefirst@sbcglobal.net Website: www.naturefirsttreecare.com CA Contractors Lic. #775940

EXHIBIT 11

Purpose:

The purpose of this report is to address the preservation and management of specified trees during construction. The following goals are intended to provide consistent care for the trees:

a. Insure and promote preservation of the existing tree canopy.
b. Provide standards of maintenance and care.
c. Establish criteria for determining when a tree is unsafe.
d. Provide standards for the replacement of trees that are scheduled for removal.
e. Increase the survivability of trees during and after construction by providing standards and best management practices.

Recommendations:

The excavation of the driveway is going to create a grade change. The health of the tree is not to be compromised. In addition, the installation of the footings for the garden wall will require trenching to a depth of twelve to fourteen inches. It appears that most of the digging will be performed at the drip line of the redwood tree and all trenching is to be done by hand. The roots of the tree are most likely growing beyond the drip line, but with proper tree protection and a preservation plan, the work can be executed. Deep root fertilization of the tree is required due to the impact of the grade change and construction. Recommend the redwood tree to be pruned upon completion and nitrified mulch applied over the root zone.

The following steps shall be incorporated in the Tree Protection and Preservation plan:

a. Verification of tree protection - the arborist shall verify in writing that all pre-construction conditions have been met.

b. A pre-construction meeting of the contractors is to be held on site to review procedures, tree protection measures and haul routes, and staging areas.

c. Strict adherence to the enclosed construction guidelines.

See attached conditions which are hereby made a part of this estimate and agreement. Full payment is due upon completion unless prior arrangement have been made.

CCC Exhibit 7
(page 232 of 455 pages)

EXHIBIT

ATTACHMENT 4

Please feel free to call the office if you have any questions. We look forward to serving you.

Sincerely,

Mimi Scoppettone

Mimi Scoppettone
Certified Arborist WE-1555A

CCC Exhibit 7
(page 233 of 455 pages)

EXHIBIT 1F

ATTACHMENT 4

Robin Bolster

From: foglady1@hotmail.com on behalf of Katharine Minott [kpminott@gmail.com]
Sent: Monday, January 11, 2010 10:35 AM
To: Robin Bolster
Cc: Ellen Pirie; kpminott@gmail.com
Subject: APN 038 151 89 on Oak Hill Drive, Aptos

Katharine P. Minott
745 Oak Hill Road • Aptos CA 95003

TO:

Project Planner: Robin Bolster-Grant
Email: pln111@co.santa-cruz.ca.us

REGARDING:

Application: 09-0139
Undersized lot between 735 and 749 OAK HILL RD., APTOS
APN(S): 038-151-89
Sup. Dist: 2

Property located on the south side of Oak Hill Road (between 735 and 749 Oak Hill Road) approximately 380 feet west of the intersection with Seacliff Drive.

January 11, 2010

Dear Robin,

As a bluff-top neighbor, living two doors east of the proposed project at 749 Oak Hill Road in Aptos, I have deep reservations about the project as Mr. Brian Arthur has presented it so far. There are serious legal issues, which require legal discussion and many remedies to "fix" the property site before a Coastal Development Permit could possibly be entertained.

1. The first point seems moot: this small lot and fabricated address (749) should never have been allowed to become a sub-divided lot for a livable structure. The small lot was meant to house an accessory garage or tool shed for the house to which it had belonged.

2. Allowing the sub-division to proceed rather than be automatically nullified immediately created the "main house" to be a non-conforming structure on the west side-yard setback. Thus, unnecessarily, creating a reverberating sequence of expensive bluff and home structure issues that have yet to be remedied by neighbors on the east side.

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(page 234 of 455 pages)

3. Additionally, the legality of the subdivision has not been verified.

4. Why is there an *Exception to Chapter 16.10* about Geologic Hazards? The proposed drainage plan for 749 Oak Hill is an example of a PATHETIC preventative and minimalist drainage plan. A much needed aggressive drainage infrastructure should be designed by an civil engineer working in conjunction with a geologic soils engineer to design a pump and drainage system to deflect ALL water away from the bluff and sides

EXHIBIT K

ATTACHMENT

yards belonging to 749 Oak Hill Rd.

When one bluff-top property liquefies and slides, the softening impact on the neighboring bluff land is impartial to property lines and adversely weakens the bluffs belonging to each one of us.

Please refer to photographs taken by next door neighbors, Ms. Love and Ms. Robinson which illustrate how steep the bluff decline is in front of the Hill lot and the enormous amount of mud/dirt that abruptly fell from his property below, onto Las Olas Drive only a few days ago.

This particular lot at 749 Oak Hill is historically notorious for its sharp and abrupt down slope and the large amount of rock and mudflow it disgorges during wet winters. The rock flows have not only caused damage to the homes below on Las Olas Dr, but the attendant fissures have loosened the upper bluff slope along Oak Hill Drive.

When the 749-lot lets loose its weight of wet sand and mudstone, it leaves not only its own occupant vulnerable to erosion, but all neighboring homes become equally fallible to extensive loss of bluff property.

The proposed drainage is not an adequate remedy. The minimal parameter trough described is an anemic and under-designed drainage solution for the proposed project.

A landscape plan designed and engineered by a licensed arborist and a landscape architect should be required to use drought tolerant native plants to restore the bluff and inhibit future mud-flow.

5. The narrowness of 749 Oak Hill Road in front of the project appears less wide than a fire-road and poses a possible health safety risk to permit access and turn-around space for emergency vehicles.

Additionally, the entire length of power, cable and other electrical lines from my 745 Oak Hill Road home through the Applicants property and to the north-west end of the road at the Hanchett house, should be moved to the opposite side of the street.

This will require an easement, but it is a far more prudent planning stipulation than the Applicant's unsafe and current method to justify the continuance of hanging all of his electrical and utility wires by cutting away a square-ish swath of redwood branches for the wires to loop through.

The various ATT, PGE and Comcast wires, other abandoned cable wires and the transformers are a mess and should all be cleaned up and, ideally, trenched underground.

The onus is on the Coastal Commission, the Planning Department and the ZA to determine:

1. The legality of the property's subdivision.
2. To ensure this vulnerable stretch of coastal bluff is re-engineered to inhibit runoff.

CCC Exhibit 7

EXHIBIT B

ATTACHMENT 4

3. To remedy the visual blight and hazards of the mish-mash of power lines in the tree branches.
4. The reality of emergency trucks being able to get into the site and to have the radius to extricate themselves.

It is my opinion the facts will not bear up under scrutiny and the Zoning Administrator will DENY the Applicant's proposal.

Best wishes,

Katharine P. Minott

Master of Urban and Regional Planning
San José State University

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(page 236 of 455 pages)

EXHIBIT 14

ATTACHMENT 4

WITTWER & PARKIN, LLP

Jonathan Wittwer
William P. Parkin
Ryan D. Mooney

147 SOUTH RIVER STREET, SUITE 221
SANTA CRUZ, CALIFORNIA 95060
TELEPHONE (831) 429-4055
FACSIMILE (831) 429-4067
E-MAIL office@wittwerparkin.com

OF COUNSEL
Gary A. Patton

January 14, 2010

HAND DELIVERED

Mr. Steven Guiney
Zoning Administrator
Santa Cruz County Planning Department
701 Ocean Street, 4th Floor
Santa Cruz, CA 95060

RE: Application 09-0139 – Set For Hearing on Friday, January 15, 2010
APN 038-151-89; Oak Hill Road

Dear Mr. Guiney:

This office represents Patrick and Laura Murphy with respect to the above referenced application which requests a Coastal Development Permit, a Residential Development Permit and a Preliminary Grading Approval (the "Project"). Our clients oppose the proposed Project because it proposes development on a substandard, illegal parcel. In addition, the Project will result in potential instability of the slope thereby endangering adjacent homes, including the Murphy's home. Finally, given the geological hazards posed by the Project's location and the unusual circumstances associated with the subject parcel, environmental review is required under the California Environmental Quality Act ("CEQA" Public Resources Code § 21000 *et seq.*).

All of the permits requested are "discretionary," and there is no automatic "right" to the grant of the permits sought. The staff report presented to you recommends approval of Application 09–139. We believe that the application should be denied based on the rationale provided in the staff report for the prior project proposal (07-0548), attached hereto as **Exhibit A** and hereby incorporated by reference, and for the reasons discussed herein. We strongly urge you to DENY Application 09-0139.

The Project Proposes Development on a Substandard, Illegal Parcel

The "history" provided in the staff report indicates Assessor's Parcel 038-151-85 was only recognized by the County of Santa Cruz as a separate parcel in 2003 through the granting of a Certificate of Compliance. However, that Certificate of Compliance was granted unlawfully,

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EXHIBIT 1R

and was granted without a Coastal Development Permit (CDP) and without consulting the Coastal Commission. And, despite the County's description of the Certificate of Compliance as being "Unconditional," it was truly a "Conditional" Certificate of Compliance. (Conditional Certificates of Compliance, even if lawfully issued, still require a Coastal Development Permit.) Demolition of structures and improvements were required, and the County required the recordation of Acknowledgments of Nonconforming structures on the illegal "lot" that is the subject of this application and the adjacent lot from which it was split. The Staff Report even states that there is already a four foot encroachment on this parcel from preexisting construction on an adjacent property. In fact, the granting of that Certificate of Compliance is the subject of a current lawsuit by our clients against the County and the project applicant. *See*, **Exhibit B**, *First Amended Petition and Complaint,* filed January 4, 2010, attached hereto and incorporated by reference. Without a CDP for the "parcel," the Project cannot be approved or proceed.

Assuming for the sake of argument that this is a separate parcel with appropriate CDP approval, it is obvious that any building and development on this parcel must be closely conditioned to ensure the public health, safety, and welfare. The physical stability of the site and adjacent properties is of paramount concern, particularly since geologic failures on the property could have such adverse impacts on other properties nearby.

The Proposed Project Threatens the Integrity of the Coastal Bluff and Neighboring Parcels

The County Code contains an entire section, § 16.10, regulating development within geological ***hazard*** areas, including on coastal bluffs.[1] In fact, Section 16.10.070(h) imposes specific restrictions on development on coastal bluffs, including the requirement that the developer record a Declaration of Geological Hazards with the County Recorder. Likewise, the County General Plan and LCP contains an entire subsection setting forth policies and programs to deal with the hazards of development on Coastal Bluffs. *See*, County General Plan sections 6.2.10 - 6.2.21.

The County Geologic Hazard ordinance requires a coastal bluff setback which the County determines will provide a stable site for 100 years. In this case, it has been determined that the setback requirement is a minimum of 33 feet. Our geotechnical consultant has indicated that the 100 year set back should be at least 40 feet or more given site specific evidence. *See*, **Exhibit C**,

[1] A coastal bluff is defined as: "A bank or cliff along the coast subject to coastal erosion processes. Coastal bluff refers to the top edge, face, and base of the subject bluff." County Code § 16.10.040(j) (underline added).

Preliminary Geologic Assessment, prepared by Hydro-Geo Consultants, Inc, attached hereto and incorporated by reference. In any case, the County Code does not allow grading within the coastal bluff setback, unless an exception is granted and there can be no legitimate reason for any grant of exception in this case.[2]

According to the Staff Report, the Applicant proposes to perform grading in the 100 year setback, but then concludes that no exception is needed because it is minor leveling that will be done by hand. While the grading has been reduced since the proposal that was before the Zoning Administrator on January 16, 2009, the proposed contouring within the bluff setback is still problematic and consists of more than minor leveling since it will be up to a foot deep throughout the setback area. Even if the proposed grading was excepted, the proposed grading and drainage "improvements" may allow surface water to seep more rapidly into the soil and contribute to the destabilization of the bluff by removing less pervious surface soils. *See*, **Exhibit C.** Moreover, the fact remains that a residential structure can be built on the property without the need for any grading. All water currently flows towards the street from the bluff's edge because the current grade of the property is away from the bluff's edge. Thus, there is no reason to allow the Applicant to perform <u>any</u> grading, even of a minor nature, within the 100 year setback.

Moreover, the Project site is also prone to earthquake hazards. The Loma Prieta Earthquake triggered significant landslides along the entire face of the bluff along Seacliff State Beach and Las Olas Drive with head scarps 20 to 30 feet high and tension cracks that cut through several building foundations at the top of the cliff. *See*, **Exhibit C.** *See, also*, **Exhibit D**, *California Geology April Edition*,[3] including Photos 4 and 6. And, pictures taken on or around December 21, 2009, below the proposed home and attached hereto as Exhibit E, show failure at the toe of the bluff at Las Olas Drive. Also, attached as Exhibit F is a photo of the home next door to the proposed home (i.e., the home that crosses the property boundary and is part of the property from which the project site was split) sitting precariously close to the bluff's edge. Any

[2] It should be noted that while the geotechnical consultant recommended some mitigation measures, such as a "pin pile" retaining structure, to prevent bluff failure, we believe many of these mitigations may be illegal under the County Code. The Geotechnical consultant is not a planner or lawyer. However, the opinion is being provided as further evidence that building a residence on this site is hazardous. Moreover, the opinion reiterated that an exception to the geologic setback should not be granted.

[3] *Coastal Landslides caused by the October 17, 1989 Earthquake*, Plant & Griggs, April 1990 California Geology, Department of Earth Sciences UCSC.

CCC Exhibit 7
(page 239 of 455 pages)

compromise of the bluff from the proposed home will only exacerbate the current condition of the area.

The Proposed Project Requires Environmental Review under CEQA

The Staff Report asserts that the proposed Project is exempt from environmental review based on CEQA's Class 3 Categorical Exemption for small construction or development projects pursuant to CEQA Guidelines § 15303. However, Class 3 Categorical Exemptions are qualified by the requirement that the project location be considered when determining whether this exemption applies, particularly where the project may impact an environmental resource of ***hazardous*** concern. CEQA Guidelines § 15300.2(a).)[4] *See, also, Salmon Protection & Watershed Network v. County of Marin* (2004) 125 Cal. App. 4th 1098. Likewise, a categorical exemption may not be used where there is a reasonable possibility that the proposed activity will have a significant effect on the environment based on ***unusual circumstances***, such as those that exist here. CEQA Guidelines § 15300.2(c)[5]

In sum, the particularly sensitive location of the proposed Project in a geologic hazard zone requires that it be subject to environmental review under CEQA. We have presented evidence that the geologic setback was not properly determined and that there are hazards associated with building a structure on this site. Additionally, the unique circumstances presented by these geotechnical and other issues, likewise excepts the Project from a Class 3 Categorical Exemption.

---

[4] (a) Location. Classes 3, 4, 5, 6, and 11 are qualified by consideration of where the project is to be located–a project that is ordinarily insignificant in its impact on the environment may in a particularly sensitive environment be significant. Therefore, these classes are considered to apply in all instances, except where the project may impact on an environmental resource of hazardous or critical concern where designated, precisely mapped, and officially adopted pursuant to law by federal, state, or local agencies.

[5] (c) Significant Effect. A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.

Conclusion - Application 09-139 Should be DENIED.

The proposals before the Zoning Administrator represent an attempt to build beyond the restraints of normal County regulations on what is already a "problem" property. The applicant requests an exception to the required coastal bluff setback exposes other persons and properties to potential peril. Accordingly, we urge denial of the application.

Thank you for your attention to our views in this matter.

Very truly yours,
WITTWER & PARKIN, LLP

William P. Parkin

cc: Don Bussey, County of Santa Cruz
Robin Bolster-Grant, Project Planner (via E-mail)
Chris Cheleden, Esq., Assistant County Counsel (via E-mail)
Ed Newman, Esq. (via E-mail)
Dan Carl, California Coastal Commission

Staff Report to the Zoning Administrator

Application Number: 07-0548

Applicant: Tracy Johnson
Owner: Brian Arthur
APN: 038-151-89

Agenda Date: January 16, 2008
Agenda Item #: 7.
Time: After 10:00 a.m.

Project Description: Proposal to construct a 3,083 square foot two-story single family dwelling with an elevator, a four-foot retaining wall within the front yard setback, grade approximately 168 cubic yards, and approximately an additional 43 cubic yards within the 100-year geologic setback.

Location: Property located on the south side of Oak Hill Road (between 735 and 749 Oak Hill Road), approximately 380 feet west of the intersection with Seacliff Drive.

Supervisoral District: Second District (District Supervisor: Ellen Pirie)

Permits Required: Coastal Development Permit, Residential Development Permit for a retaining wall exceeding three (3) feet within the required front yard setback, Preliminary Grading Approval and an Exception to Chapter 16.10, the Geologic Hazard Ordinance.
Technical Reviews: Geologic and Geotechnical Reports

Staff Recommendation:

- Certification that the proposal is exempt from further Environmental Review under the California Environmental Quality Act.
- DENIAL of Application 07-0548, based on the attached findings.

Exhibits

A. Project plans
B. Findings
C. Conditions
D. Categorical Exemption (CEQA determination)
E. Assessor's parcel map
F. Zoning & General Plan map
G. Location Map
H. Printout, Discretionary application comments, dated 11/25/08
I. Urban Designer comments, dated September 10, 2008
J. Geotechnical Engineering Report review letter, dated 12/20/05
K. Excerpts of Conclusions and Recommendations from Geologic Investigation prepared by Rogers E. Johnson & Associates, dated 10/24/2005 (report on file)
L. Excerpts of Discussion, Conclusions and Recommendation from Geotechnical Investigation prepared

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

EXHIBIT A

CCC Exhibit 7
(page 242 of 455 pages)

by Haro, Kasunich & Associates, Inc., dated 11/2005 (report on file).

M. Letter of Request for an Exception by Rogers E. Johnson and Associates, dated 10/20/08

N. Project Geotechnical Engineer letter of recommendation for approval of exception to County Code Sections 16.10.070(h)1(ii) and 16.10.040(s), dated 10/22/08

O. Memo from County Geologist, dated 11/27/08

P. Evaluation of brick retaining wall letter, Mike Van Horn, dated 8/22/08

Q. Comments & Correspondence

Parcel Information

Parcel Size:	8,276 square feet
Existing Land Use - Parcel:	Vacant
Existing Land Use - Surrounding:	Single
Project Access:	Oak Hill Road
Planning Area:	Aptos
Land Use Designation:	R-UL (Urban Low Density Residential)
Zone District:	R-1-10 (Single family residential - 10,000 square feet per unit)
Coastal Zone:	x Inside __ Outside
Appealable to Calif. Coastal Comm.	x Yes __ No

Environmental Information

Geologic Hazards:	Coastal bluff, instability has been identified in the technical reports
Soils:	Soil 179 (Watsonville Loam)
Fire Hazard:	Not a mapped constraint
Slopes:	Coastal Bluff, over 70% slope at rear of property.
Env. Sen. Habitat:	Not mapped/no physical evidence on site
Grading:	211 cubic yards
Tree Removal:	No trees proposed to be removed
Scenic:	Mapped resource
Drainage:	Proposed drainage adequate
Archeology:	Not mapped/no physical evidence on site

Services Information

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

History

The subject parcel (formerly APN 038-151-85) was determined to be a legal parcel and granted an Unconditional Certificate of Compliance under Permit 01-0068 on June 10, 2003. In March 2005, Coastal Development Permit 04-0531 permitted the demolition of an existing deck and elevator shaft attached to a single family dwelling on the adjacent parcel that encroached onto the subject parcel, a portion of this dwelling still encroaches. Building permit #140419 for the

demolition work was finaled on May 5, 2005.

Geologic and Geotechnical reports were reviewed and accepted by the County Geologist in December 2005 which established a coastal bluff setback and building envelope for a single family dwelling. On January 14, 2008 building permit #148760 was finaled, which allowed the demolition of an existing carport that had collapsed, as part of this permit no grading or removal of existing retaining walls was allowed.

The County Planning Department accepted an application for a Coastal Development Permit, Residential Development Permit for a retaining wall exceeding three (3) feet within the required front yard setback, Preliminary Grading Approval and an Exception to Chapter 16.10 Geologic Hazard Ordinance on September 17, 2007.

Project Setting

The property is located at the top of a coastal bluff on the south side of Oak Hill Road (between 735 and 749 Oak Hill Road), approximately 380 feet west of the intersection with Seacliff Drive. The south end of the parcel is the coastal bluff, immediately above Las Olas Drive. The coastal bluff is a slope in excess of 70 % grade. Three retaining walls of approximately four feet in height are located on the subject property, one of which goes under the neighboring structure at the point where the structure encroaches on the subject parcel. A letter from the structural engineer clarified that the retaining wall is not attached to the neighboring structure (Exhibit P). A 48" redwood tree is located within the northeastern most point of the property and will be retained. A line of mostly two story homes exist on either side of the vacant parcel along Oak Hill Road and a line of two story homes exists below the bluff across Las Olas Drive.

Zoning Consistency

The subject property is a 8,786 square foot lot, located in the R-1-10 (Single family residential - 10,000 square feet per unit) zone district, a designation which allows residential uses. The proposed Single Family Dwelling is a principal permitted use within the zone district.

	R-1-10 Standards	Proposed Residence
Front yard setback	20 feet	20 feet
Rear yard setback	15 feet	100+/ **
Side yard setback	5 feet and 5 feet*	5 feet and 5 feet
Building Height	28 feet	28 feet
Number of Stories	2	2
Lot Coverage	30%	22%
Floor Area Ratio	50 %	48%
Parking	3 bedrooms-3 spaces	3 spaces-two covered, one in driveway

* County Code 13.10.323 site standards allows for 5 and 5 foot side yard setbacks when the parcel width is less than 60 feet.

** 100-year geologic setback line is approximately 33. feet from the top of slope as established by Geologic and Geotechnical reports.

The proposed Single Family Dwelling is two stories, which are stepped up the slope from Oak Hill Road. The proposed garage qualifies as a story (County Code 13.10.700-S), as it does not meet the definition of a basement (County Code 13.10.700-B). A deck area was originally proposed in between the garage and the top floor, that would have qualified it as a three story home. A three-story home is not allowed within the urban services line without a variance, for which findings could not be made. The applicant revised the plans to include a sloping roof area in the portion between the top floor and the bottom floor.

Local Coastal Program Consistency

Land Use Designation

The General Plan/Local Coastal Program Land Use Designation of the parcel is R-UL (Urban Low Density Residential), implemented by the R-1-10 (10,000 square foot minimum-single family residence) zone district. The proposed single-family dwelling complies with the purposes of this Land Use Designation, as the primary use of the site will be residential.

Exception to Geologic Hazard Ordinance Required

The proposed single family dwelling is located at the top of a coastal bluff. Geologic and Geotechnical reports established a 100- year geologic setback line 33 feet landward of the edge of the bluff and set the building envelope as required by General Plan/LCP 6.2.12. The original geologic and geotechnical reports demonstrate that the building envelope would provide a stable site for 100-year lifetime (County Code 6.2.12). However, the project also includes grading within the 33 foot setback. The grading has not been fully evaluated and it may have adverse impacts on the stability of the coastal bluff (Exhibit O). Further, grading is not allowed within the setback from the coastal bluff and an exception to the Geologic Hazard Ordinance 16.10, would be required for the grading to be approved.

As part of the proposal, the applicant is seeking an exception (Exhibits M & N) to the Geologic Hazard Ordinance 16.10.070 Permit conditions (h) to allow grading within the 25-foot and 100 year setbacks to remove approximately 43 cubic yards of material. In order to grant an exception (County Code 16.10.100) each of four findings must be made. For supplemental information to the following discussion, see memo from County Geologist, Joe Hanna (Exhibit N).

The first finding requires that a hardship, as defined in Section 16.10.040(2j) exists. The definition of hardship is as follows:

Hardship. For the purposes of administering Section 16.10.100, means the exceptional hardship that would result from failure to grant the requested Exception. The specific hardship must be exceptional, unusual, and peculiar to the property involved. Economic or financial hardship alone is not exceptional. Inconvenience, aesthetic considerations, personal preferences, or the disapproval of neighbors also cannot qualify as exceptional hardship, as these problems can be resolved through means other than granting an Exception, even if those alternative means are more expensive, require a property owner to build elsewhere, or put the parcel to a different use than originally intended or proposed.

This finding cannot be made, in that the applicant does not demonstrate that a hardship as

defined in Section 16.10.040 (2j) will exist if the exception is not granted. Grading 3 to 5 feet of the bluff is not necessary to develop the parcel as the conclusions of the applicant's consulting geologist report indicate (Exhibit K, Rogers E. Johnson & Associates, 10/24/2005). Furthermore, coastal bluff retreat issues are common to hundreds of homes along the Santa Cruz coast and are not exceptional, unusual, and peculiar to this property.

The second finding is that the project is necessary to mitigate a threat to public health, safety, or welfare. The excavation of a few feet of the crest of the bluff will have little positive impact on the amount or rate of coastal bluff retreat and in fact may have unforeseen adverse affects on the stability of the bluff. An effective alternate solution would be to construct a retaining system with the capacity to stabilize the entire slope. The grading approach is therefore not necessary to mitigate the threat to public health and safety.

The third finding states that the request is for the smallest amount of variance from the provisions of this Chapter as possible. This finding cannot be made in that the applicant's consultants have not analyzed alternatives to their proposal. Most of the benefits of the grading can be accomplished with on site control drainage without the excavation within the 25 foot setback. In addition, if there is mitigation required beyond drainage control, a retaining wall is an option. Both drainage control and a retaining wall can be accomplished without an exception to Chapter 16.10.

The fourth and final finding states that adequate measures will be taken to ensure consistency with the purposes of this Chapter and the County General Plan. This finding cannot be made, in that the grading on the bluff is inconsistent with Section 6.2.11 and 6.2.12 of the General Plan, which specifies the setback from coastal bluffs and the requirement for full geologic investigation. It is also inconsistent with Section 8.6.6 and 5.10.3 of the General Plan, in that the grading will alter the bluff and increase the visibility of the home from the beach below.

In conclusion, the County Geologist states that excavating into the bluff as proposed will not substantially mitigate coastal bluff retreat and if fact may have an adverse effect. Secondly, alternative methods to control drainage have not been assessed. If mitigation of a geologic hazard is the goal then the applicant should consider options that do not require an exception to the code, such as a bluff top retaining wall. Retaining walls at the top of the bluff have a proven ability to control the retreat of the bluffs, such as the wall recently installed on the neighboring property at 745 Oak Hill.

Design Review

The proposal is located within the Coastal Zone and therefore must comply with County Code 13.20 and 13.11 design review standards. The Urban Designer evaluated the proposed single family dwelling and found that it does not comply with the requirements of the County Design Review Ordinance (Exhibit I). The home is not visually compatible with the existing character of the neighborhood in that the majority of the surrounding development is made of horizontal or vertical wood exteriors. This proposal uses primarily stucco with stone used at the lower area of the front facade. The large rounded window at the rear facade is out of character with the overall design of the residence, and it adds to the lack of compatibility with the neighboring residences as seen from the beach. In addition, the combination of the roof forms result in a structure that

does no have a unified scheme. There are large areas of the front facade that have no fenestration.

The proposal is also required to minimize site disturbance and retain the natural state of the bluff as required per County Code 13.20.130. The applicant is seeking an exception to the geologic ordinance to grade within the geologic setback, and therefore will not be maintaining the natural state of the bluff or minimizing grading. The proposed grading also increases the visual impact of the new development from the beach below, which is not consistent with General Plan/Local Coastal Policies 8.6.5 or 8.6.6, which require that development maintain a relationship with the natural environment and be low-profile, and that natural landforms such as bluffs be protected.

Residential Development Permit

The proposal also includes a retaining wall that will exceed the three-foot maximum within the required front yard setback and requires a Residential Development Permit. The proposed retaining wall will not affect sight distance for exiting the property, Oak Hill is a narrow paved road that serves three properties beyond this parcel.

The four foot retaining wall will be made of concrete that will be conditioned to be left unfinished and unpainted, or be stained/painted a muted natural earth tone. Retaining walls are often found in residential neighborhoods throughout Santa Cruz County and therefore it will not be out of character. The design of the retaining wall will not utilize an excessive quantity of materials or energy in its construction or maintenance, in that the retaining wall is a relatively insignificant structure that is accessory to the residential use allowed by R-1-10 (Single family residential - 10,000 square feet per unit) zone district on the property.

The design and location of the retaining wall will not adversely impact the available light or the movement of air to properties or improvements in the vicinity, in that the retaining wall shall not exceed the six foot height limit that would be allowed in other locations (not abutting a right-of-way) without a discretionary approval or a building permit. The location of the retaining wall on the property and the design does not contain any corners or pockets that would conceal persons with criminal intent.

Conclusion

As proposed, the project is not consistent with all applicable codes and policies of the Zoning Ordinance and General Plan/LCP with the exception of the Residential Development Permit for the four foot retaining wall within the front yard setback. Please see Exhibit "B" ("Findings") for a complete listing of findings and evidence related to the above discussion.

Staff Recommendation

- Certification that the proposal is exempt from further Environmental Review under the California Environmental Quality Act.
- DENIAL of Application Number 07-0548, based on the attached findings.

Application #: 07-0548
APN: 038-151-89
Owner: Brian Arthur

Supplementary reports and information referred to in this report are on file and available for viewing at the Santa Cruz County Planning Department, and are hereby made a part of the administrative record for the proposed project.

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

Report Prepared By: Maria Perez
Santa Cruz County Planning Department
701 Ocean Street, 4th Floor
Santa Cruz CA 95060
Phone Number: (831) 454-5321
E-mail: maria.perez@co.santa-cruz.ca.us

Coastal Development Permit Findings

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

This finding cannot be made, in that the development is not consistent with the design criteria. Regarding the design of the structure, General Plan policy 8.4.1 requires that new infill development on vacant land be consistent with the existing residential character of the neighborhood. The proposed materials, stucco and stone, do not meet criteria for neighborhood compatibility in that they are not consistent with the wood siding found in the majority of neighboring homes. Regarding site design, the proposal is not minimizing grading in accordance with General Plan policy/LCP 6.3.9, and will alter the coastal bluff, which is a natural landform that should be retained in it's natural state in accordance with General Plan policies/LCP 8.6.5 and 8.6.6.

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

This finding cannot be made in that General Plan policy/LCP 6.2.10 requires all development to be sited and designed to avoid or minimize hazards. The proposed grading, which is "development" according to County Code 16.10.040(m), does not mitigate the hazard to the downslope neighbors on Las Olas Drive. The excavation of a few feet of the crest of the bluff will have little positive impact on the amount or rate of coastal bluff retreat, and in fact may have unforeseen adverse affects on the stability of the bluff. Mitigation of the hazard can be accomplished through alternate methods, such as a bluff top retaining wall, which would not require an exception to the Geologic Hazard Ordinance 16.10.

General Plan policy/LCP 6.2.11 requires a full geologic report for all development activities within coastal hazard areas, including within a 100-feet of a coastal bluff. This finding cannot be made in that the original geologic report did not include a full assessment of the proposed grading within 100 feet of the coastal bluff and the potential impacts on the surrounding parcels, including those downslope on Las Olas Drive.

General Plan policy/LCP 6.2.12 requires that all development activities occur a minimum of 25 feet from the top of edge of the bluff. This finding cannot be made in that the proposed grading is within the 33 foot bluff top setback. Grading on a coastal bluff is considered development per definitions of "development" (County Code 16.10.040(s)10) and "coastal hazard area" (County Code 16.10.040(m)).

General Plan policy/LCP 8.6.6 requires that ridgetops and natural prominent landforms such as cliffs, bluffs, dunes, rock outcroppings be protected from development. The finding cannot be made in that the grading will alter the coastal bluff, which is a natural landform that should be retained in it's natural state. While a hazard has been identified by the project geologist, there are alternative methods of mitigating the hazard that do not require an exception to the geologic hazard ordinance and which may not require alteration of the natural landform. In addition, a building envelope was established by the Geologic and Geotechnical Investigations that is set back 33 feet from the edge of the coastal bluff to provide 100-year lifetime and does not require

EXHIBIT C

any grading within the geologic setback.

General Plan policy/LCP 5.10.3 requires minimizing disruption of landforms by grading or inappropriate landscaping, and requires that structures be designed to protect public vistas. This finding cannot be made in that, the grading will alter the natural state of the bluff which helps screen the proposed structure from the public state beach below. The grading will exacerbate the visual impact of the proposed structure.

Development Permit Findings

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

This finding cannot be made, in that the project is located at the top of a coastal bluff and the applicant proposes to grade within the geologic setback. The project Engineering Geologist states that the bluff will fail, however, the grading of the bluff will not mitigate for the hazard.

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

This finding cannot be made, in that the proposed location of the Single Family Dwelling and the conditions under which it would be operated or maintained will not be consistent with all pertinent County ordinances, specifically Chapter 16.10.070(h), 13.20 and 13.11. The applicant seeks to grade within the geologic setback and specific findings for the activity cannot be made (Exhibit O). The grading will increase the visual impact of the proposed development, and is also inconsistent with General Plan policies/LCP 8.6.5 and 8.6.6. The design of the structure is not compatible with the neighborhood, see Finding #5.

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

This finding cannot be made, in that the proposed structure is not in conformance with Coastal Design Review Standards as outlined in Chapter 13.20 and 13.11. The home is not visually compatible with the existing character of the neighborhood in that the majority of the surrounding development is made of horizontal or vertical wood exteriors. This proposal uses primarily stucco with stone used at the lower area of the front facade. The large rounded window at the rear facade is out of character with the overall design of the residence, and it adds to the lack of compatibility with the neighboring residences as seen from the beach. In addition, the combination of the roof forms result in a structure that does no have a unified scheme. There are large areas of the front facade that have no fenestration.

EXHIBIT C

6. The proposed development project is consistent with the Design Standards and Guidelines (sections 13.11.070 through 13.11.076), and any other applicable requirements of this chapter.

This finding cannot be made, in that the proposed structure is not in conformance with Coastal Design Review Standards as outlined in Chapter 13.11.073. The design is not compatible with the existing character of the neighborhood in that the majority of the surrounding development is made of horizontal or vertical wood exteriors. The subject property is proposing stucco and stone exterior. In addition, the combination of the roof forms result in a structure that does no have a unified scheme. There are large areas of the front facade that have no fenestration. The large rounded window at the rear facade is out of character with the overall design of the residence. The window adds to the lack of compatibility with the neighboring residences as seen from the beach.

Geologic Hazard Exception Findings

1. A hardship, as defined in Section 16.10.040(2j) exists.

This finding cannot be made, in that the applicant does not demonstrate that a hardship will exist as defined in Section 16.10.040 (2j) if the exception is not granted. Grading 3 to 5 feet of the bluff is not necessary to develop the parcel (Rogers E. Johnson & Associates, 10/25/05). Futhermore, coastal retreat isssues are common to hundreds of homes along the Santa Cruz Coast and are not exceptional, unusual, and peculiar to this property.

2. The project is necessary to mitigate a threat to public health, safety, or welfare.

The excavation of a few feet of the crest of the bluff will have little positive impact on the amount or rate of coastal bluff retreat, and may have unforeseen adverse affects on the stability of the bluff. A true solution would be to construct a retaining system with the capacity to stabilize the entire slope. Various options that provide stability and which do not require an exception to Chapter 16.10 are available.

Finding 2 cannot be made, in that the proposed grading within the 25 foot and 100 year setbacks does not mitigate for the threat to public health and safety as it is not clear that the grading will significantly reduce the rate of coastal bluff retreat. Furthermore, the grading work may have unforeseen negative affects on the stability of the bluff.

3. The request is for the smallest amount of variance from the provisions of this Chapter as possible.

This finding cannot be made in that the applicant's consultants have not analyzed alternatives to their proposal. Most of the benefits of the grading can be accomplished with on site control drainage without the excavation within the 25 foot setback, and alternatively must evaluate if a

EXHIBIT C

bluff wall is the only alternative to control the geologic hazard.

4. Adequate measures will be taken to ensure consistency with the purposes of this Chapter and the County General Plan.

This finding cannot be made, in that the grading on the bluff is inconsistent with Section 6.2.12 of the General Plan and is inconsistent with Section 5.10.3 of the General Plan in that it will remove a part of the slope that would screen the home and reduce the visual impact of a home public beach below.

Approval Date: _____

Effective Date: _____

Expiration Date: _____

Don Bussey Deputy Zoning Administrator	Maria Perez Project Planner

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

EXHIBIT C

ATTACHMENT 4

CALIFORNIA ENVIRONMENTAL QUALITY ACT
NOTICE OF EXEMPTION

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

Application Number: 07-0548
Assessor Parcel Number: 038-151-89
Project Location: No Situs

Project Description: Proposal to construct a single family dwelling

Person or Agency Proposing Project: Tracy Johnson

Contact Phone Number: 831-722-5462

A. _____ The proposed activity is not a project under CEQA Guidelines Section 15378.
B. _____ The proposed activity is not subject to CEQA as specified under CEQA Guidelines Section 15060 (c).
C. _____ **Ministerial Project** involving only the use of fixed standards or objective measurements without personal judgment.
D. __x__ **Statutory Exemption** other than a Ministerial Project (CEQA Guidelines Section 15260 to 15285).

Specify type: 15270 Projects which are disapproved

E. ____ **Categorical Exemption**

Specify type:

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

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

_____ Date:_____
Maria Perez, Project Planner

EXHIBIT D

CCC Exhibit 7
(page 253 of 455 pages)

EXHIBIT 11

ATTACHMENT 4

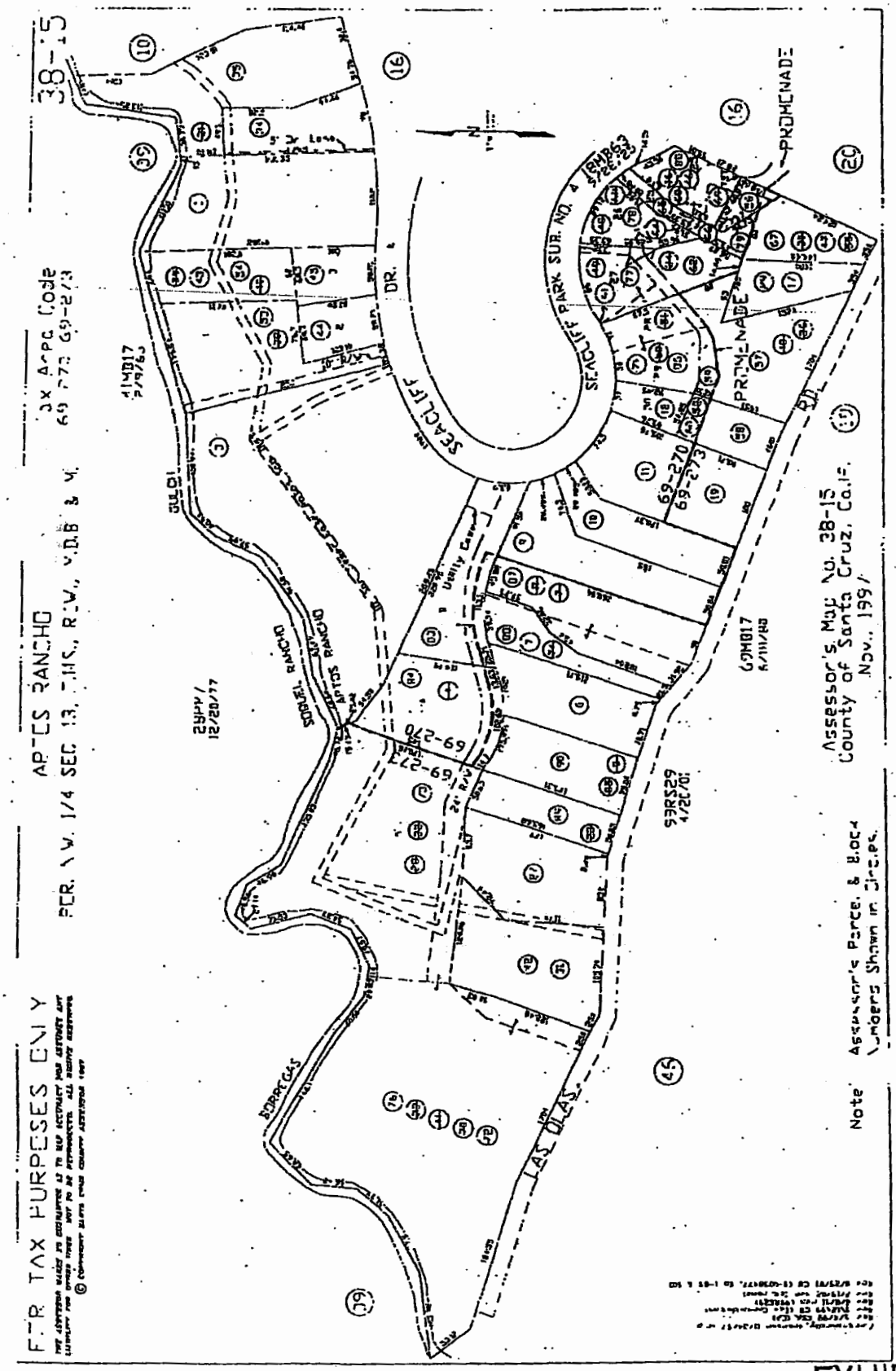

EXHIBIT E

CCC Exhibit 7
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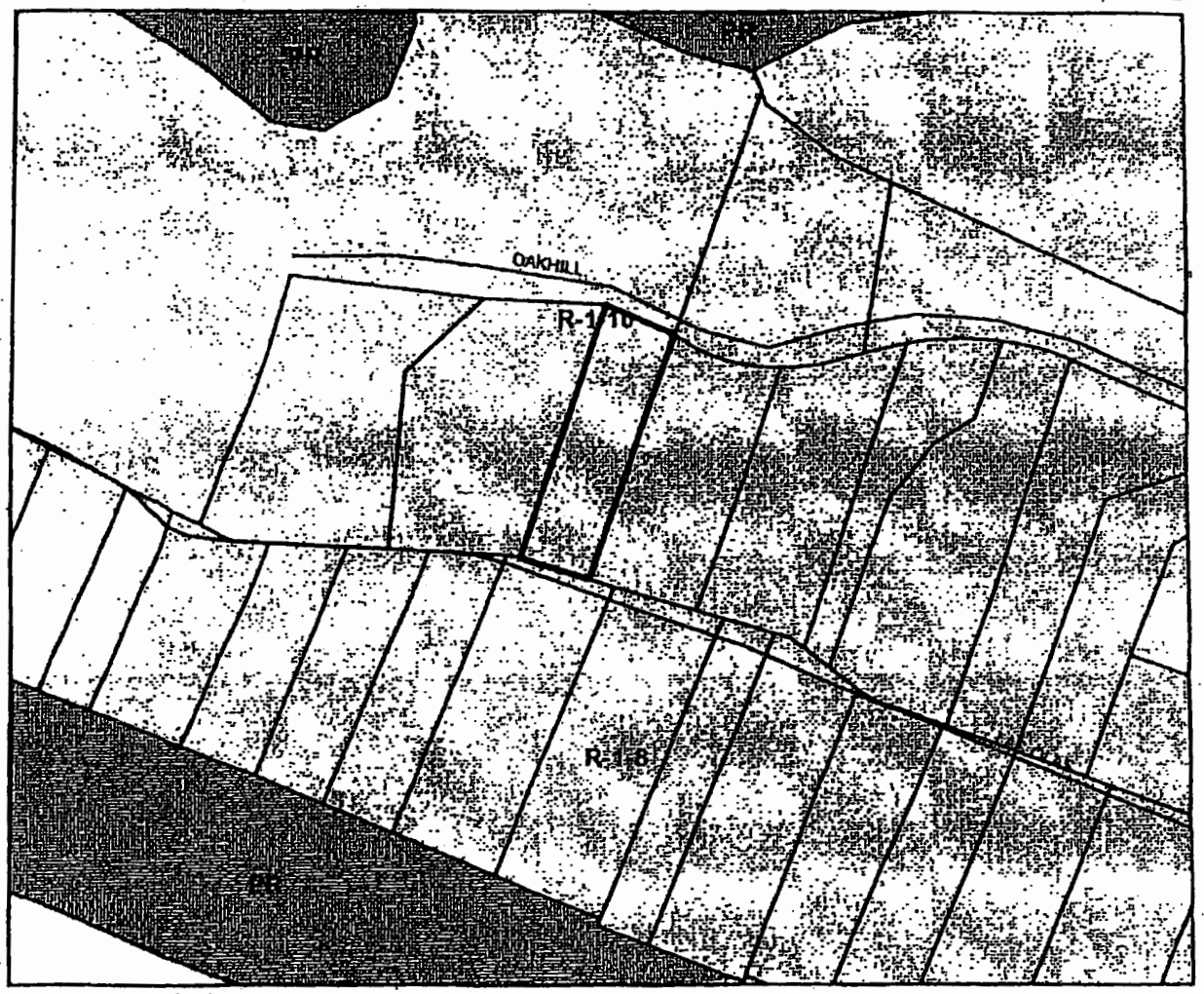
EXHIBIT 1B

Zoning Map



LEGEND

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

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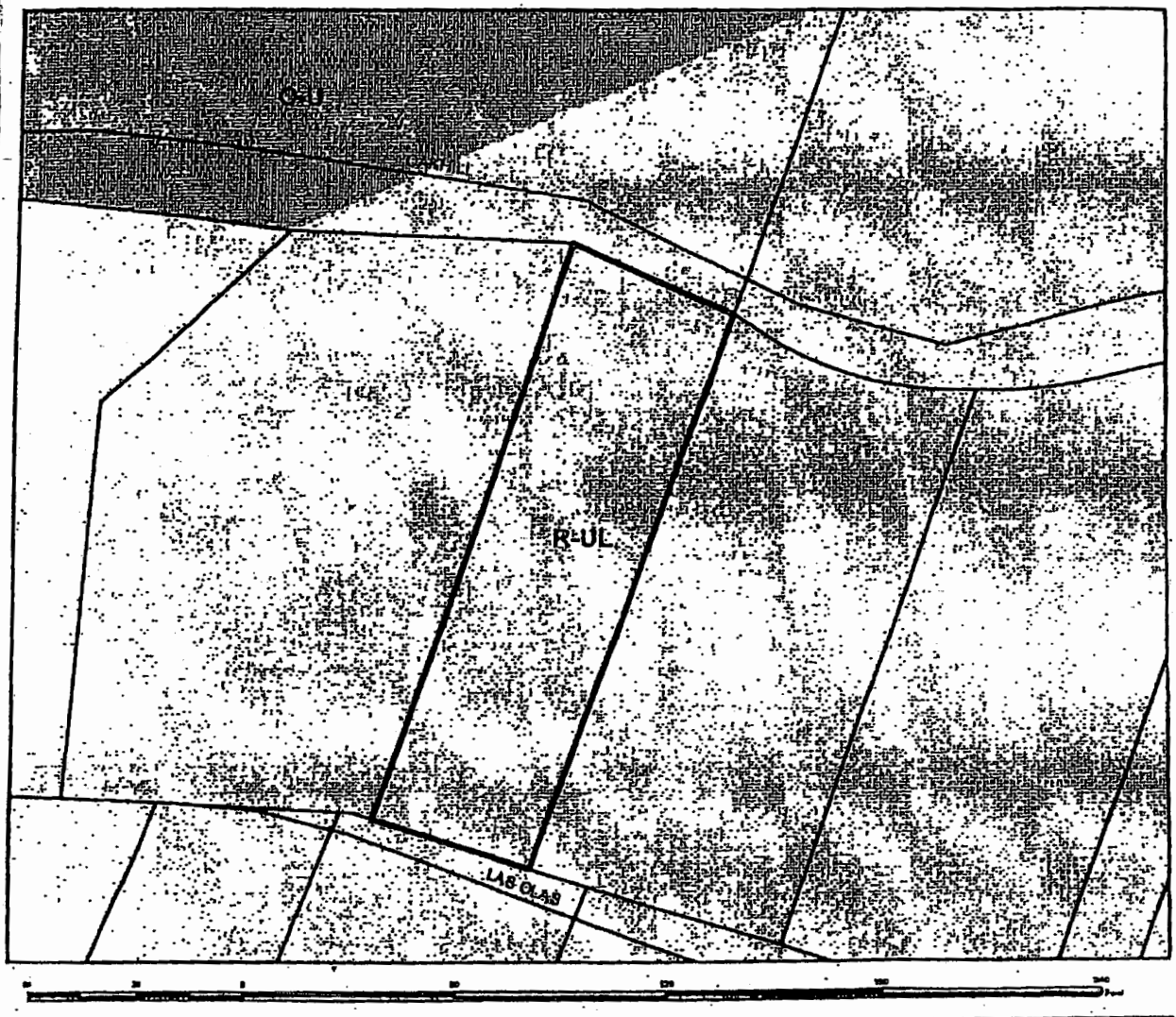
Map Created by
County of Santa Cruz
Planning Department
December 2008

EXHIBIT F.1

ATTACHMENT 4

General Plan Designation Map



LEGEND

- APN: 038-151-89
- Assessors Parcels
- Streets
- Residential - Urban Low Density
- Urban Open Space

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Map Created by
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Planning Department
December 2008

EXHIBIT F

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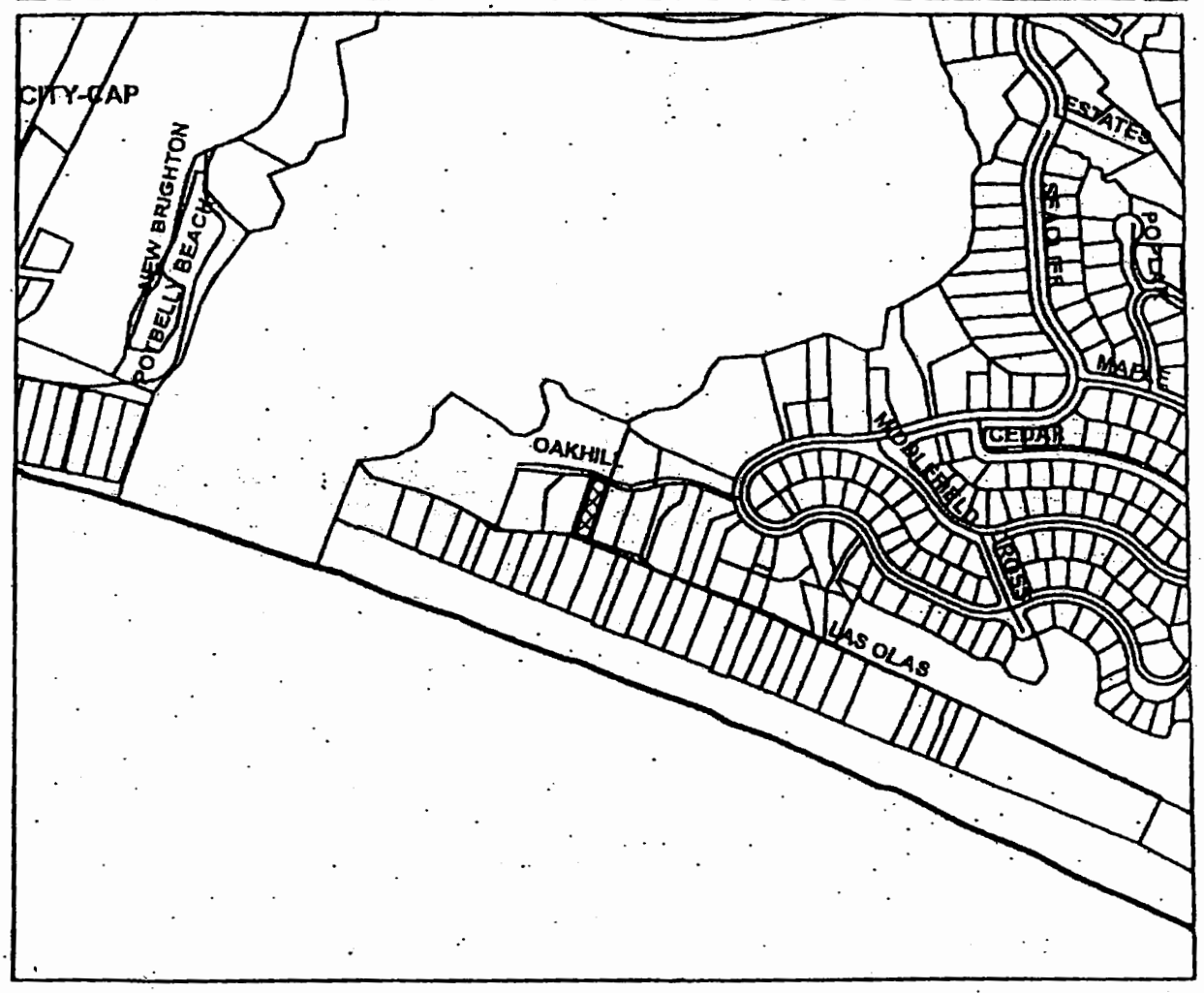
EXHIBIT 1B

Location Map



LEGEND

- APN: 038-151-89
- Assessors Parcels
- Streets
- CAPITOLA
- County Boundary

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Map Created by
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Planning Department
December 2008

EXHIBIT G

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(page 257 of 455 pages)

EXHIBIT 1B

COUNTY OF SANTA CRUZ
DISCRETIONARY APPLICATION COMMENTS

ATTACHMENT 4

Project Planner: Maria Perez
Application No.: 07-0548
APN: 038-151-89

Date: November 25, 2008
Time: 10:06:00
Page: 1

Environmental Planning Completeness Comments

========== REVIEW ON OCTOBER 5, 2007 BY CAROLYN I BANTI ==========
1. Prior to the discretionary application being deemed complete, plan review letters from the geotechnical engineer and engineering geologist shall be submitted to Environmental Planning. The authors of the reports shall writ the letters; the letters shall refer to the final set of reviewed plans by drawing and revision dates and shall state that the project plans conform to the reports' recommendations.

2. The proposed project includes grading within the 100-year setback for the structure. Grading is defined as development in Section 16.10.040(s) and must be set back beyond the 100-year lifetime setback per 16.10.070(ii). Please revise the project plan and scope as necessary.

3. Please include top-of-wall and bottom-of-wall elevations for all retaining walls. These elevations should be shown on the grading plans at the beginning, end, and transition points for the walls. ========== UPDATED ON OCTOBER 15, 2007 BY ANTONELLA GENTILE ==========
4. Submit a letter from a certified arborist that evaluates the health of the 48 inch redwood tree and makes recommendations for its protection during construction. The letter should also address any potential effect that the proposed garden walls may have on the tree. ========== UPDATED ON JUNE 16, 2008 BY CAROLYN I BANTI ==========

--- Completeness Comments --- Soils and Grading ---

Correspondence dated December 6, 2008 from the County to the applicant requested additional information regarding the removal of the existing retaining wall that may extend beneath the adjacent structure to the east. The revisions remove only a portion of the wall, and propose grading adjacent to the wall. Please submit a letter from a civil engineer that addresses:(a) whether the wall extends under the adjacent structure; if so, submit a foundation study for the adjacent residence that clearly states the extent of structural improvements necessitated by the proposed demolition and grading work (b) if the wall does not extend under the adjacent residence, the letter must confirm this and provide a statement that the alterations to the wall and adjacent grade do not threaten the structural integrity of the wall. ========== UPDATED ON JUNE 19, 2008 BY ANTONELLA GENTILE ==========
A plan review letter is required from the arborist prior to this application being deemed complete. The letter must reference the site plan and grading plan by final revision date and state that preservation of the tree is feasible and that the plans conform to the recommendations given in the arborist's report.

Environmental Planning Miscellaneous Comments

========== REVIEW ON OCTOBER 5, 2007 BY CAROLYN I BANTI ==========
The following are Compliance Comments in regards to soils and grading issues:

1. All grading must be set back 2' from property lines per code section 16.20.160 (Table C). Please revise plans accordingly.

CCC Exhibit 7
(page 258 **of** 455 **pages)** EXHIBIT H

EXHIBIT H

The following are Misc. Comments/Conditions of Approval in regards to soils and grading issues:

1. Prior to building permit issuance, the applicant shall submit an agreement between the property owner and the road association or other legal entity authorizing the proposed improvements associated with the widening of Oakhill Road.

2. Please include a construction detail of the proposed curbwall on the plans submitted with the building permit application. Note that the wall footings must be deep enough to maintain a distance of 5' between the face of the wall footing and the adjacent slope face per code section 16.20.160.

3. Building permit plans shall note the destination of off-hauled material. Please note that this material may only be delivered to County approved locations.
========== UPDATED ON OCTOBER 15, 2007 BY ANTONELLA GENTILE ==========
Although this parcel is mapped as Riparian Woodland, upon site visit no riparian resources were found. Please refund the Riparian Presite fee.

Please note that Significant trees on this parcel remain protected by the Significant Tree Ordinance. ========== UPDATED ON JUNE 16, 2008 BY CAROLYN I BANTI ==========

--- Compliance Comments --- Soils and Grading ---

First review comments noted the apparent conflict between the proposed grading within the 100 year geologic setback and our Geologic Hazards Ordinance which prohibits such activity. In response, the applicant has provided plan review letters from the project geotechnical engineer and engineering geologist. The additional technical information has been reviewed, and findings cannot be made for an exception to the provisions of Chapter 16.10 as oulined in County Code Section 16.10.100. Please revise plans to remove the proposed grading within the geologic setback. See correspondence dated December 6, 2007 for additional details regarding allowable activities within this setback. ========== UPDATED ON JUNE 19, 2008 BY ANTONELLA GENTILE ==========
Conditions regarding the redwood tree:

1. Arborist's recommendations shall be clearly stated on the plans.

2. Plans shall include contact information for the project arborist.

3. Submit 2 copies of the arborist's report with the building permit application.

4. A new plan review letter will be required from the project arborist once the building plans have been approved by all agencies. Wall foundations, as well as grading, shall be reviewed.

5. A pre-construction meeting shall be held onsite with the applicant, grading contractor, Environmental Planning staff, soils engineer, and arborist. Procedures, the staging area, tree protection measures and haul routes shall be discussed.

6. The arborist shall verify in writing that tree protection measures have been in-

stalled per the report's recommendations prior to permit final.

Dpw Drainage Completeness Comments

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

========== REVIEW ON OCTOBER 5, 2007 BY TRAVIS RIEBER ==========

1. Does this site currently receive runoff from adjacent/upslope property? (Specifically from the existing home along the east side of the property) If so, how will the project continue to accept this runoff without causing adverse impacts to the proposed structure or adjacent/downstream neighbors?

2. Please describe the offsite drainage path to a safe point of release. Include details such as specific drainage features, their condition and their capacity. Analysis should be performed by a licensed civil engineer.

3. Collecting runoff from impervious surfaces and directing it to the street is generally inconsistent with county efforts to hold runoff to pre-development rates.

Note: - Projects are required to maintain predevelopment runoff rates where feasible. Mitigating measures should be used on-site to limit increases in post-development runoff leaving the site. Best Management Practices should be employed within the development to meet this goal as much as possible. Such measures include pervious or semi-pervious pavements, runoff surface spreading, discharging roof and driveway runoff into landscaping, etc.

4. How will surface and subsurface runoff intercepted by the proposed retaining walls be controlled and directed to a safe point of release without causing adverse impacts to the proposed structure or adjacent/downstream neighbors: Please provide a cross section construction detail of the proposed retaining walls.

5. Does Oakhill Road currently have a roadside curb? If not, please clarify the need for changing the existing conditions.

Please call the Dept. of Public Works, Storm Water Management Section, from 8:00 am to 12:00 noon if you have questions. ========== UPDATED ON JUNE 3, 2008 BY TRAVIS RIEBER ==========

1. More details are needed for the existing culvert. Provide a schematic showing the configuration of the culvert. What is the condition of the inlet and outlet? Is the outlet on private property? Demonstrate how overflow from a 25-year storm event will be conveyed to a reasonable safe point of release.

2. Please revise the tributary drainage area map to clearly show all areas draining toward the existing culvert. Add notes to the map to help clarify how the limits were defined. Show on the map the location of the inlet and outlet of the existing culvert.

3. Provide calculations demonstrating that the proposed roadside drainage swale has adequate capacity to convey a 25-year storm event to a reasonable safe point of release. ========== UPDATED ON SEPTEMBER 9, 2008 BY TRAVIS RIEBER ==========
Previous miscellaneous comments have not been addressed completely.

EXHIBIT H

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EXHIBIT B

1. More details are needed for the existing culvert. Provide a schematic showing the configuration of the culvert. What is the condition of the inlet and outlet? Is the outlet on private property? Demonstrate how overflow from a 25-year storm event will be conveyed to a reasonable safe point of release. Demonstrate that the overflow from a 25-year storm event will not cause adverse impacts to adjacent or downstream properties.

2. Please revise the tributary drainage area map to clearly show all areas draining toward the existing culvert. Add notes to the map to help clarify how the limits were defined. Show on the map the location of the inlet and outlet of the existing culvert.

3. Submit revised calculations based on the revised tributary drainage area map and the actual dimensions and configuration of the existing culvert from the site visit on 08 August 2008.

4. Provide calculations demonstrating that the proposed roadside drainage swale has adequate capacity to convey a 25-year storm event to a reasonable safe point of release.

5. Please deposit $550.00 to public works to supplement the previously deposited amount to establish an at cost review account.

Note: All re-submittals shall be made through the Planning Department. Materials left with Public Works may be returned by mail, with resulting delays. ========== UPDATED ON OCTOBER 28, 2008 BY TRAVIS RIEBER ==========
The drainage calculations dated 10/2/2008, sheet 8a dated 9/29/2008 and sheet 8 dated 3/17/2008 have been received and are approved for the discretionary application stage. See miscellaneous comments for issues to be addressed at the building application stage.

Dpw Drainage Miscellaneous Comments

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

========== REVIEW ON OCTOBER 5, 2007 BY TRAVIS RIEBER ==========
1. Are the existing impervious areas on the site permitted? Please provide proof such as assessors records, old building permits, photos or aerial photos.

2. For fee calculations please provide tabulation of existing impervious areas and new impervious areas resulting from the proposed project.

Note: A drainage fee will be assessed on the net increase in impervious area.
========== UPDATED ON JUNE 3, 2008 BY TRAVIS RIEBER ==========
For fee calculations please provide tabulation of existing impervious areas and new impervious areas resulting from the proposed project. Make clear on the plans by shading or hatching the limits of both the existing and new impervious areas. To receive credit for the existing impervious surfaces please provide documentation such as assessor-s records, survey records, aerial photos or other official records that will help establish and determine the dates they were built. ========== UPDATED ON SEPTEMBER 9, 2008 BY TRAVIS RIEBER ==========

======= UPDATED ON OCTOBER 28, 2008 BY TRAVIS RIEBER =======
See previous miscellaneous comments.

Dpw Driveway/Encroachment Completeness Comments

======= REVIEW ON OCTOBER 29, 2007 BY DEBBIE F LOCATELLI =======
No Comment, project adjacent to a non-County maintained road.

Dpw Driveway/Encroachment Miscellaneous Comments

======= REVIEW ON OCTOBER 29, 2007 BY DEBBIE F LOCATELLI =======
No comment.

Dpw Road Engineering Completeness Comments

======= REVIEW ON OCTOBER 2, 2007 BY ANWARBEG MIRZA =======
NO COMMENT

Dpw Road Engineering Miscellaneous Comments

======= REVIEW ON OCTOBER 2, 2007 BY ANWARBEG MIRZA =======
Please see miscellaneous comments for issues to be addressed prior to building permit issuance.

1. In order to evaluate access to the single-family dwelling, show how property obtains access road to the county road system and provide details of intersection of the Oak hill Rd. to County Road in plan view.

2. The driveway/access must meet County of Santa Cruz standards in the Design Criteria. Please refer the correct figure and show in plan view.

Dpw Sanitation Completeness Comments

======= REVIEW ON OCTOBER 4, 2007 BY CARMEN M LOCATELLI =======
Sewer service is currently available.

Dpw Sanitation Miscellaneous Comments

======= REVIEW ON OCTOBER 4, 2007 BY CARMEN M LOCATELLI =======
Proposed location of on-site sewer lateral(s), clean-out(s), and connection(s) to existing public sewer must be shown on the plot plan of the building permit application
Show all existing and proposed plumbing fixtures on floor plans of building application.

Aptos-La Selva Beach Fire Prot Dist Completeness C

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

========== REVIEW ON OCTOBER 9, 2007 BY ERIN K STOW ==========
DEPARTMENT NAME:Aptos/La Selva Fire Dept. APPROVED

Aptos-La Selva Beach Fire Prot Dist Miscellaneous

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

========== REVIEW ON OCTOBER 9, 2007 BY ERIN K STOW ==========
NO COMMENT

EXHIBIT H

ATTACHMENT 4

COUNTY OF SANTA CRUZ | Planning Department

INTEROFFICE MEMO

APPLICATION NO: 07-0548 (third routing)

Date: September 10, 2008

To: Pordia Perez, Project Planner

From: Larry Kasparowitz, Urban Designer

Re: Review of new residence at Oak Hill Road, Aptos

Completeness Comments

- *The roof height exhibit must be signed by and licensed Architect, Civil Engineer, or Surveyor.*

Design Review Authority

13.20.130 The Coastal Zone Design Criteria are applicable to any development requiring a Coastal Zone Approval.

Design Review Standards

13.20.130 Design criteria for coastal zone developments

Evaluation Criteria	Meets criteria in code (✔)	Does not meet criteria (✔)	Urban Designer's Evaluation
Visual Compatibility			
All new development shall be sited, designed and landscaped to be visually compatible and integrated with the character of surrounding neighborhoods or areas		✔	*The majority of the surrounding houses are wood – either horizontal or vertical*
Minimum Site Disturbance			
Grading, earth moving, and removal of major vegetation shall be minimized.		✔	
Developers shall be encouraged to maintain all mature trees over 6 inches in diameter except where circumstances require their removal, such as obstruction of the building site, dead or diseased trees, or nuisance species.	✔		
Special landscape features (rock outcroppings, prominent natural landforms, tree groupings) shall be retained.		✔	*The bluff should remain in it's natural state.*

EXHIBIT 1

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EXHIBIT 1B

Ridgeline Development			
Structures located near ridges shall be sited and designed not to project above the ridgeline or tree canopy at the ridgeline			N/A
Land divisions which would create parcels whose only building site would be exposed on a ridgetop shall not be permitted			N/A
Landscaping			
New or replacement vegetation shall be compatible with surrounding vegetation and shall be suitable to the climate, soil, and ecological characteristics of the area			N/A

Rural Scenic Resources			
Location of development			
Development shall be located, if possible, on parts of the site not visible or least visible from the public view.			N/A
Development shall not block views of the shoreline from scenic road turnouts, rest stops or vista points			N/A
Site Planning			
Development shall be sited and designed to fit the physical setting carefully so that its presence is subordinate to the natural character of the site, maintaining the natural features (streams, major drainage, mature trees, dominant vegetative communities)			N/A
Screening and landscaping suitable to the site shall be used to soften the visual impact of development in the viewshed			N/A
Building design			
Structures shall be designed to fit the topography of the site with minimal cutting, grading, or filling for construction			N/A
Pitched, rather than flat roofs, which are surfaced with non-reflective materials except for solar energy devices shall be encouraged			N/A
Natural materials and colors which blend with the vegetative cover of the site shall be used, or if the structure is located in an existing cluster of buildings, colors and materials shall repeat or harmonize with those in the cluster			N/A
Large agricultural structures			

The visual impact of large agricultural structures shall be minimized by locating the structure within or near an existing group of buildings			N/A
The visual impact of large agricultural structures shall be minimized by using materials and colors which blend with the building cluster or the natural vegetative cover of the site (except for greenhouses)			N/A
The visual impact of large agricultural structures shall be minimized by using landscaping to screen or soften the appearance of the structure			N/A
Restoration			
Feasible elimination or mitigation of unsightly, visually disruptive or degrading elements such as junk heaps, unnatural obstructions, grading scars, or structures incompatible with the area shall be included in site development			N/A
The requirement for restoration of visually blighted areas shall be in scale with the size of the proposed project			N/A
Signs			
Materials, scale, location and orientation of signs shall harmonize with surrounding elements			N/A
Directly lighted, brightly colored, rotating, reflective, blinking, flashing or moving signs are prohibited			N/A
Illumination of signs shall be permitted only for state and county directional and informational signs, except in designated commercial and visitor serving zone districts			N/A
In the Highway 1 viewshed, except within the Davenport commercial area, only CALTRANS standard signs and public parks, or parking lot identification signs, shall be permitted to be visible from the highway. These signs shall be of natural unobtrusive materials and colors			N/A

Beach Viewsheds			
Blufftop development and landscaping (e.g., decks, patios, structures, trees, shrubs, etc.) in rural areas shall be set back from the bluff edge a sufficient distance to be out of sight from the shoreline, or if infeasible, not visually intrusive			N/A
No new permanent structures on open beaches shall be allowed, except			N/A

EXHIBIT 1.

where permitted pursuant to Chapter 16.10 (Geologic Hazards) or Chapter 16.20 (Grading Regulations)			
The design of permitted structures shall minimize visual intrusion, and shall incorporate materials and finishes which harmonize with the character of the area. Natural materials are preferred			N/A

Design Review Authority

13.11.040 Projects requiring design review.

(a) Single home construction, and associated additions involving 500 square feet or more, within coastal special communities and sensitive sites as defined in this Chapter.

13.11.030 Definitions

(u) "Sensitive Site" shall mean any property located adjacent to a scenic road or within the viewshed of a scenic road as recognized in the General Plan; or ***located on a coastal bluff***, or on a ridgeline.

Design Review Standards

13.11.072 Site design

Evaluation Criteria	Meets criteria in code (✔)	Does not meet criteria (✔)	Urban Designer's Evaluation
Compatible Site Design			
Location and type of access to the site	✔		
Building siting in terms of its location and orientation	✔		
Building bulk, massing and scale		✔	***The applicant should draw the outline of the neighboring structures to scale on the front elevation.***
Parking location and layout	✔		
Relationship to natural site features and environmental influences	✔		
Landscaping	✔		
Streetscape relationship			N/A
Street design and transit facilities			N/A
Relationship to existing structures	✔		
Natural Site Amenities and Features			
Relate to surrounding topography	✔		
Retention of natural amenities	✔		
Siting and orientation which takes advantage of natural amenities	✔		

Ridgeline protection			N/A
Views			
Protection of public viewshed	✔		
Minimize impact on private views	✔		
Safe and Functional Circulation			
Accessible to the disabled, pedestrians, bicycles and vehicles			N/A
Solar Design and Access			
Reasonable protection for adjacent properties	✔		
Reasonable protection for currently occupied buildings using a solar energy system	✔		
Noise			
Reasonable protection for adjacent properties	✔		

13.11.073 Building design.

Evaluation Criteria	Meets criteria in code (✔)	Does not meet criteria (✔)	Urban Designer's Evaluation
Compatible Building Design			
Massing of building form		✔	
Building silhouette		✔	
Spacing between buildings			N/A
Street face setbacks	✔		
Character of architecture		✔	
Building scale	✔		
Proportion and composition of projections and recesses, doors and windows, and other features		✔	
Location and treatment of entryways	✔		
Finish material, texture and color	✔		
Scale			
Scale is addressed on appropriate levels	✔		
Design elements create a sense of human scale and pedestrian interest	✔		
Building Articulation			
Variation in wall plane, roof line, detailing, materials and siting	✔		
Solar Design			
Building design provides solar access that is reasonably protected for adjacent properties	✔		

EXHIBIT 1

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EXHIBIT 1B

Building walls and major window areas are oriented for passive solar and natural lighting	✔		

Urban Designers Comments

- *The combination of roof forms adds to the appearance of bulk. The designer should seek to simplify the roof forms.*
- *The garage must be determined to see if it meets the test of a basement or there may possibly be a third story.*
- *Before the hearing, story poles should be provided.*
- *Glazing shall not be tinted or have films. Low-E clear glazing shall be used to reduce reflectance.*

Project No. SC8970
17 November 2005

DISCUSSIONS, CONCLUSIONS AND RECOMMENDATIONS

Based on the results of our investigation, the proposed project appears compatible with the site, provided the following recommendations are incorporated into the design and construction of the proposed project.

One of the primary purposes of our investigation was to work with the project engineering geologists, Rogers Johnson & Associates, to estimate the configuration of the coastal blufftop in 100 years in order to determine a blufftop setback line allowing for a project building envelope design life of at least 100 years.

The slope stability model used to determine the blufftop setback included 20 feet of recession of the blufftoe/bluff face preceding a design seismic failure of the blufftop. We have included a copy of the Geologic Map dated 5 October 2005 with this report showing the "100 Year Geologic Setback Line" and the "Geologically Stable Building Envelope". The delineated building envelope is about 32 feet landward of the existing blufftop.

The referenced parcel is one of about sixteen bluff parcels including Seacliff Beach State Park, which are situated above Las Olas Drive. Historically, bluff face failures or rockfall events have impacted the blufftoe and the adjacent Las Olas Drive. Rockfall

EXHIBIT L

mitigation recommendations for the referenced parcel are beyond the scope of this report. We recommend future owners of the parcel consult with a geotechnical engineer or engineering geologist experienced in rockfall mitigation regarding such measures.

The proposed residence may be founded upon a drilled pier and grade beam foundation system.

The following recommendations should be used as guidelines for preparing project plans and specifications:

Site Grading

1. The geotechnical engineer should be notified at least four (4) working days prior to any site clearing or grading so that the work in the field can be coordinated with the grading contractor, and arrangements for testing and observation can be made. The recommendations of this report are based on the assumption that the geotechnical engineer will perform the required testing and observation during grading and construction. It is the owner's responsibility to make the necessary arrangements for these required services.

2. Where referenced in this report, Percent Relative Compaction and Optimum Moisture Content shall be based on ASTM Test Designation D1557 current.

3. Areas to be graded should be cleared of all obstructions including loose fill, building foundations, trees not designated to remain, or other unsuitable material. Existing depressions or voids created during site clearing should be backfilled with engineered fill.

4. Cleared areas should then be stripped of organic-laden topsoil. Stripping depth should be from 2 to 4 inches. Actual depth of stripping should be determined in the field by the geotechnical engineer. Strippings should be wasted off-site or stockpiled for use in landscaped areas if desired.

5. Areas to receive engineered fill should be scarified to a depth of 6 inches, moisture conditioned, and compacted to at least 90 percent relative compaction. Portions of the site may need to be moisture conditioned to achieve suitable moisture content for compaction. These areas may then be brought to design grade with engineered fill.

6. Engineered fill should be placed in thin lifts not exceeding 8 inches in loose thickness, moisture conditioned, and compacted to at least 90 percent relative

compaction. The upper 12 inches of pavement and slab subgrades should be compacted to at least 95 percent relative compaction. The aggregate base below pavements should likewise be compacted to at least 95 percent relative compaction.

7. If grading is performed during or shortly after the rainy season, the grading contractor may encounter compaction difficulty, such as pumping or bringing free water to the surface, in the upper surface clayey and silty sands. If compaction cannot be achieved after adjusting the soil moisture content, it may be necessary to over-excavate the subgrade soil and replace it with angular crushed rock to stabilize the subgrade. We estimate that the depth of over-excavation would be approximately 24 inches under these adverse conditions.

8. Fills should be keyed and benched into firm soil in areas where existing slope gradients exceed 6:1 (horizontal to vertical). Subdrains will be required in areas where keyways or benches expose potential seepage zones.

9. The on-site soils generally appear suitable for use as engineered fill. Materials used for engineered fill should be free of organic material, and contain no rocks or clods greater than 6 inches in diameter, with no more than 15 percent larger than 4 inches.

10. We estimate shrinkage factors of about 15 percent for the on-site materials when used in engineered fills.

11. All permanent cut and fill slopes should be inclined no steeper than 2:1 (horizontal to vertical).

12. Following grading, all exposed slopes should be planted as soon as possible with erosion-resistant vegetation.

13. After the earthwork operations have been completed and the geotechnical engineer has finished his observation of the work, no further earthwork operations shall be performed except with the approval of and under the observation of the geotechnical engineer.

Foundations

14. The proposed residence may be supported on a drilled pier and grade beam foundation system. The foundation perimeter should be setback from the blufftop in conformance with the building envelope delineated on the project Geologic Map, Figure 2 in the Appendix of this report.

Drilled Piers

15. We recommend a drilled pier and grade beam foundation to support the proposed residence.

16. Drilled piers should be at least 18 inches in diameter and be embedded at least 10 feet below existing grades.

17. Piers constructed in accordance with the above may be designed for an allowable end bearing of 4 ksf.

18. For passive lateral resistance, an equivalent fluid pressure of 250 psf may be assumed to act against two pier diameters. The upper 3 feet of soil should be neglected when computing passive resistance.

19. Prior to placing concrete, all foundation excavations should be thoroughly cleaned. The foundation excavations must be observed by the geotechnical engineer or his representative prior to placing concrete.

Retaining Walls and Lateral Pressures

20. Retaining walls should be designed to resist lateral earth pressures, a seismic surcharge and any additional surcharge loads. Walls up to 12 feet high should be

designed to resist an active equivalent fluid pressure of 35 pcf for level backfills, and 50 pcf for sloping backfills inclined up to 2:1 (horizontal to vertical). Restrained walls should be designed to resist uniformly applied wall pressure of 23H psf per linear foot of wall for level backfills. A seismic surcharge within the retaining wall active pressure zone of 18H psf per linear foot of wall should also be used. The seismic surcharge should be applied at 0.6H above the base of the active zone.

21. The above lateral pressures assume that the walls are fully drained to prevent hydrostatic pressure behind the walls. Drainage materials behind the wall should consist of Class 1, Type A permeable material (Caltrans Specification 68-1.025) or an approved equivalent. The drainage material should be at least 12 inches thick. The drains should extend from the base of the walls to within 12 inches of the top of the backfill. A perforated pipe should be placed (holes down) about 4 inches above the bottom of the wall and be tied to a suitable drain outlet. Wall backdrains should be plugged at the surface with clayey material to prevent infiltration of surface runoff into the backdrains.

Slabs-on-Grade

22. We recommend that proposed slabs-on-grade be supported on at least 12 inches of non-expansive engineered fill compacted to at least 95 percent relative compaction. Prior to construction of the slab, the subgrade surface should be proof-

rolled to provide a smooth, firm, uniform surface for slab support. The project design professionals should determine the appropriate slab reinforcing and thickness, in accordance with the anticipated use and loading of the slab. However, we recommend that consideration be given to a minimum slab thickness of 5 inches and steel reinforcement necessary to address temperature and shrinkage considerations. At is recommended that rebar in lieu of wire mesh be used for slab reinforcement. The steel reinforcement should be held firmly in the vertical center of the slab during placement and finishing of the concrete with pre-cast concrete dobies.

23. In areas where floor wetness would be undesirable, a blanket of at least inches of free-draining gravel should be placed beneath the floor slab to act as a capillary break. Capillary break material should be free-draining, clean, angular gravel such as ¾-inch drainrock. The gravel should be washed to remove fines and dust prior to placement on the slab subgrade. The vapor retarder should be a high quality membrane at least 10 mil thick and puncture resistant. An acceptable product for use as a vapor retarder is the Stego Wrap 10-mil Class A vapor retarder system manufactured by Stego Industries, LLC. Provided the Stego Wrap system is installed per manufacturers recommendations, the concrete may be poured directly upon the Stego Wrap Vapor Retarder. The primary considerations for installing the vapor retarder are: taping all seams; sealing all penetrations such as pipe, ducting, wire, etc; and repairing all punctures.

24. It should be clearly understood slabs are not waterproof, nor are they vapor-proof. The aforementioned moisture retardant system will help to minimize water and water vapor transmission through the slab; however moisture sensitive floor coverings require additional protective measures. Floor coverings must be installed according to the manufacturer's specifications, including appropriate waterproofing applications and/or any recommended slab and/or subgrade preparation. Consideration should also be given to recommending a topical waterproofing application over the slab.

25. Exterior concrete slabs-on-grade should be founded on firm, well-compacted ground. Reinforcing should be provided in accordance with the anticipated use and loading of the slab. The reinforcement should not be tied to the building foundations. These exterior slabs can be expected to suffer some cracking and movement. However, thickened exterior edges, a well-prepared subgrade including premoistening prior to pouring concrete, adequately spaced expansion joints, and good workmanship should minimize cracking and movement.

Flexible Pavements

26. Asphaltic concrete, aggregate base and subbase, and preparation of the subgrade should conform to and be placed in accordance with the Caltrans Standard Specifications, latest edition, except that the test method for compaction should be determined by ASTM D1557-Current.

27. To have the selected sections perform to their greatest efficiency, it is important that the following items be considered:

A. Moisture condition the subgrade and compact to a minimum relative compaction of at least 95 percent, at about 2 percent over optimum moisture content.

B. Provide sufficient gradient to prevent ponding of water.

C. Use only quality materials of the type and thickness (minimum) specified. Base rock should meet Caltrans Standard Specifications for Class II Aggregate Base, and be angular in shape.

D. Compact the base rock to a relative dry density of 95 percent.

E. Place the asphaltic concrete during periods of fair weather when the free air temperature is within prescribed limits per Caltrans specifications.

F. Provide a routine maintenance program.

Site Drainage

28. Thorough control of runoff is essential to the performance of the project.

29. Runoff must not be allowed to sheet flow over graded slopes. Berms or lined V-ditches should be constructed at the top of slopes to divert water toward suitable collection facilities.

30. Permanent subdrains may be required adjacent to pavements or building foundations where groundwater levels are near the surface. The location and depth of these drains will need to be determined in the field by the geotechnical engineer.

31. Surface drainage should include provisions for positive gradients so that surface runoff is not permitted to pond adjacent to foundations and pavements. Surface drainage should be directed away from the building foundations.

32. Full roof gutters should be placed around all eaves. Discharge from the roof gutters should be conveyed away from the downspouts by closed conduit to either: an approved energy dissipater; on site detention; or street drainage as determined by the project civil engineer.

33. The migration of water or spread of extensive root systems below foundations, slabs, or pavements may cause undesirable differential movements and subsequent damage to these structures. Landscaping should be planned accordingly.

Plan Review, Construction Observation, and Testing

34. Our firm should be provided the opportunity for a general review of the final project plans prior to construction so that our geotechnical recommendations may be properly interpreted and implemented. If our firm is not accorded the opportunity of

making the recommended review, we can assume no responsibility for misinterpretation of our recommendations. We recommend that our office review the project plans prior to submittal to public agencies, to expedite project review. The recommendations presented in this report require our review of final plans and specifications prior to construction and upon our observation and, where necessary, testing of the earthwork and foundation excavations. Observation of grading and foundation excavations allows anticipated soil conditions to be correlated to those actually encountered in the field during construction.

ATTACHMENT 4

ROGERS E. JOHNSON & ASSOCIATES
CONSULTING ENGINEERING GEOLOGISTS
41 Hangar Way, Suite B
Watsonville, California 95076-2458
e-mail: rogerejohnson@sbcglobal.net
Ofc (831) 728-7200 • Fax (831) 728-7218

20 October 2008

Brian Arthur
382 Belle Monte Avenue
Aptos, California 95003

Job No. C07027-56

Subject: Request for Exception
Oak Hill Road, Aptos, California
Santa Cruz County APN 038-151-89
Application # 07-0548

Dear Mr. Arthur:

As described in our geologic investigation for the subject site (Johnson, 2005), the property is situated atop a very steep, 100 foot high coastal bluff overlooking Las Olas Drive, Monterey Bay and a row of beachfront houses. The "100 year geologic setback line" designated by our firm lies 33 feet landward of the top of the bluff and our geologically suitable building envelope begins landward of the geologic setback line. This creates a zone between the top of the bluff and the building envelope in which the bluff is expected to fail during the economic lifetime of the development. Within this zone is an existing iron rail fence, brick retaining wall and loose surface soil. The eventual failure of the bluff creates a geologic hazard to persons, structures and property at its base and can impede the right-of-way on Las Olas Drive. Structures such as the brick wall and iron fence and loose soil within this zone increase the hazard.

The Santa Cruz County Planning Department (2007) cited "Issues of Consistency with County Regulations and Policies" with the development plans for this project with respect to site grading; specifically, grading within the "100 year setback" (County Code section 16.10.070(h)(1)(ii) and development within the "100 year setback" (County Code section 16.10.040(s). The purpose of this letter is to request an exception, as outlined in Section 16.10.100 of the Santa Cruz County Code which, if granted, will allow for the proposed mitigations within the 100 year geologic setback zone to be performed.

The construction plans (Tracy Robert Johnson, 2008) for the proposed residence include removing the existing fence and a portion of the brick retaining wall and regrading the surface soils within the 100 year setback zone. This will help improve site drainage and improve the stability of the bluff. These proposed actions will help mitigate the geologic hazard at the base of the bluff.

Bluff failure is already a significant geologic hazard in this area, particularly at the base of the bluff. The surface soil on the blufftop at the subject site is extensively burrowed, creating a conduit for rainwater or runoff to infiltrate the underlying loose, unconsolidated earth materials, which in turn decreases the stability of the bluff. As shown on the plans, creating an impermeable

EXHIBIT B

EXHIBIT B

barrier on the ground surface within the 100 year setback zone will significantly reduce infiltration and eliminate burrowing.

Removal of the fence, wall and surface soil will also reduce the hazard at the base of the bluff by lessening the driving force (mass) that contributes to blufftop failures.

Left unmitigated, the iron fence, brick wall and loose soil existing at the blufftop within the 100 year setback zone will ultimately fail, which poses a hazard to persons, structures and property at the base of the bluff. In our opinion, the hazards posed by the iron fence, brick wall and loose soil can be easily mitigated by their careful removal.

Please call if you have questions.

Sincerely,

ROGERS E. JOHNSON AND ASSOCIATES

Gregory Easton
Project Geologist
C.E.G. No. 2502

PROFESSIONAL GEOLOGIST
GREGORY EASTON
No. 2502
CERTIFIED ENGINEERING GEOLOGIST
STATE OF CALIFORNIA

Rogers E. Johnson
Principal Geologist
C.E.G. No. 1016

CERTIFIED ENGINEERING GEOLOGIST
ROGERS E. JOHNSON
No. 1016
Exp. 7/09
STATE OF CALIFORNIA

GFE/REJ/gfe

References:

Rogers E. Johnson and Associates, 2005, Geologic Investigation, Oswalt Property, Oak Hill Road, Aptos, California, Santa Cruz County APN 038-151-89, 24 October, 2005, unpublished consultants report, Job No. C05041-56.

Santa Cruz County Planning Department, 2007, Incomplete Application - Additional Information Required, Application #: 07-0548; Assessor's Parcel #: 038-151-89, Owner: Brian Arthur, 15 October 2007, 4p.

Tracy Robert Johnson, 2008, Grading Plan (sheet 6), Erosion Control and Stormwater Management Plan (sheet 8), and Sections & Details (sheet 11) for Brian Arthur, 17 March 2008, Job No. 0704RN, 11 Sheets.

Copies:

Addressee (1)
Tracy Johnson (4)
Haro, Kasunich and Associates, Inc., Attn: Rick Parks (1)

ATTACHMENT 4

COUNTY OF SANTA CRUZ

PLANNING DEPARTMENT
701 OCEAN STREET, 4TH FLOOR, SANTA CRUZ, CA 95060
(831) 454-2580 FAX: (831) 454-2131 TDD: (831) 454-2123
TOM BURNS, PLANNING DIRECTOR

December 20, 2005

Emily and Tom Oswalt, Trustees
P.O. Box 310
Aptos, CA 95001

Subject: Review of Engineering Geology Report, by Rogers E. Johnson dated October 24, 2005, Project # C05041-56 and Geotechnical Engineering Report by Haro, Kasunich and Assoicates, Inc. Dated November 2005, Project #: SC8970
APN 038-151-89, Application #: 05-0753

Dear Emily and Tom Oswalt,

The purpose of this letter is to inform you that the Planning Department has accepted the subject reports and the following items shall be required:

1. All construction shall comply with the recommendations of the reports.

2. Final plans shall reference the reports and include a statement that the project shall conform to the reports' recommendations.

3. Before building permit issuance a *plan review letters* shall be submitted to Environmental Planning. The authors of the reports shall write the *plan review letters*. These letters shall state that the project plans conform to the reports' recommendations.

4. The Engineering Geologist must identify the location of the Coastal Bluff on their geologic map, and a copy of that map must be submitted with any future permit application. All further submittal to the County must include a site plan that has a representation of the site relief, the geologic acceptable development envelope, and the Coastal Bluff. A civil engineer must prepare this site plan and any grading plans.

5. The attached declaration of geologic hazards must be recorded before the issuance of the building permit issuance.

After building permit issuance the soils engineer *must remain involved with the project* during construction. Please review the *Notice to Permits Holders* (attached). In addition, the engineering geologist will need to approve in writing the location of the buildings footings and provide a

(over)

EXHIBIT J

CCC Exhibit 7
(page 284 of 455 pages)

final letter at the end of the project that indicates that all of the work complies with the recommendations to the report.

Our acceptance of the reports is limited to its technical content. Other project issues such as zoning, fire safety, septic or sewer approval, etc. may require resolution by other agencies.

Please call the undersigned at (831) 454-3175, or e-mail joe.hanna@co.santa-cruz.ca.us if we can be of any further assistance.

Sincerely,

Joseph L. Hanna, CEG 1313
County Geologist

Cc: Robert Loveland, Environmental Planning
Haro, Kasunich and Assoicates, Inc, attention Rick Parks PE
Rogers E. Johnson and Associates

coefficient (k) of 0.54. This is based on a predicted PGA of 0.64g (mean plus one standard deviation), a total bluff height of 99 feet and an estimated slide height of 37 feet, occurring within the marine terrace deposits and Aromas Sand.

Current Santa Cruz County standards require that the pseudostatic slope stability analysis show the site stable beyond a 1.2 factor of safety. Given this standard, a minimum seismic coefficient (k) of 0.15 should be used as suggested within Special Publication 117 (California Division of Mines and Geology, 1997).

Aseismic Slope Stability

The sea cliff is also subject to slope failure under aseismic conditions. Not all of the materials that are loosened by earthquakes fail as landslides; some remains on the bluff. This "earthquake weakening" together with weathering of the bluff can produce loose debris on the slope. Subsequent storms can mobilize this loose debris. Although generally smaller than seismically generated failures, storm generated landslides are an order of magnitude more common (a ten year cycle versus a hundred year cycle).

Our review of time sequential aerial photographs revealed numerous failures of the subject coastal bluff. Subsequent to construction of the seawall, these failures were primarily the result of over saturation of loose debris mantling the slope. Individual failures tended to be localized either within the upper bluff composed of the marine terrace deposits and the Aromas Sand or within the lower bluff composed of the Purisima Formation sandstone. A significant portion of the failures were relatively large, covering the entire width of the property.

During a site visit on August 10, 2005, we observed a relatively large, aseismic, joint controlled, block failure of the bluff at the subject property. The failure was restricted to the upper approximately 30 feet of the Purisima Formation sandstone and incorporated approximately 150 cubic yards of material. It spanned about a 30 foot width of bluff-face and was up to a maximum of 6 feet thick (measured perpendicular to the bluff-face).

CONCLUSIONS and RECOMMENDATIONS

1. The coastal bluff at the subject property is protected from surf erosion and as a consequence the rate of retreat of the toe of the bluff is very slow. However, the top of the bluff at the subject property will continue to retreat until the alluvial deposits reach their natural angle of repose, forming a stable slope. The ultimate configuration of the bluff top in 100 years is difficult to predict with accuracy. However, given our observations of the materials that underlie the bluff at the subject property we can establish a reasonable estimate. The Purisima Formation sandstone forming the base of the bluff may continue to fail in joint bounded blocks. Therefore we have estimated an additional 20 feet of additional block failure (measured perpendicular to the bluff-face, see Plate 2). The upper bluff deposits, which include the Aromas Sand and marine terrace deposits, will continue

to erode and fail until the angle of their slope is about 33 degrees (1.5:1 slope gradient). The projection of the 1.5:1 slope to the terrace surface from the contact in the cliff face of the upper bluff deposits with the underlying Purisima Formation sandstone defines the 100 year bluff top. This estimate assumes no significant shifts in climactic conditions causing an increased rate of erosion. All future construction on the bluff top should be located behind this 100 year geologic setback line (Plate 1).

2. The site is located in an area of high seismic activity and will be subject to strong seismic shaking in the future. Modified Mercalli Intensities of up to VIII are possible. The controlling seismogenic source for the subject property is the San Andreas fault, 12 kilometers to the northeast. The design earthquake on this fault should be M_w 7.9. Expected duration of strong shaking for this event is about 31 seconds. Deterministic analysis for the site yields a mean peak ground acceleration plus one dispersion of 0.64g.

3. If the project geotechnical engineer performs pseudostatic slope stability analysis of the coastal bluff backing the subject residence, they should utilize our geologic cross sections. Current practice suggests that a site-specific seismic coefficient (k) be used in the analysis when considering a factor of safety of greater than 1.0. Ashford and Sitar (2002) recommend a method for calculating a site-specific pseudostatic seismic coefficient (k) specifically for a coastal bluff top setting. Following their guidelines yields a coefficient (k) of 0.54. Current Santa Cruz County standards require that the pseudostatic slope stability analysis show the site stable beyond a 1.2 factor of safety. Given this standard, a minimum seismic coefficient (k) of 0.15 should be used as suggested within Special Publication 117 (California Division of Mines and Geology, 1997).

Cordon

4. Drainage from improved surfaces, such as walkways, patios, roofs and driveways, at the top of the bluff should be collected in impermeable gutters or pipes and either carried to the base of the bluff via closed conduit or discharged into an established storm drain system that does not issue onto the bluff. At no time should any concentrated discharge be allowed to spill directly onto the ground adjacent to the existing residence. Any drain water on paved areas should not be allowed to flow toward the residence or toward the bluff top. The control of runoff is essential for control of erosion and prevention of ponding.

5. We request the privilege of reviewing all geotechnical engineering, civil engineering, drainage, and architectural reports and plans pertaining to the proposed development.

INVESTIGATION LIMITATIONS

1. The conclusions and recommendations contained herein are based on probability and in no way imply that the proposed development will not possibly be subjected to ground failure, seismic shaking or landsliding of such a magnitude that it overwhelms the site.

ATTACHMENT 4

HARO, KASUNICH AND ASSOCIATES, INC.

CONSULTING GEOTECHNICAL & COASTAL ENGINEERS

Project No. SC9551
22 October 2008

MR. BRIAN ARTHUR
382 Belle Monti Avenue
Aptos, California 95003

Subject: Geotechnical Recommendation for Approval of Exception to County Code Sections 16.10.070(h)(1)(ii) and 16.10.040(s)

Reference: Blufftop Grading Within a Geologic Hazards Setback Area Adjacent to Proposed Arthur Residence Building Envelope
APN 038-151-89
Oak Hill Road
Santa Cruz County, California

Dear Mr. Arthur:

A new residence is proposed to be constructed at the referenced coastal blufftop parcel adjacent Oak Hill Road in Santa Cruz County, California. Our Geotechnical Investigation for the proposed project is dated 25 November 2005. An engineering geology report for the project was prepared Rogers E. Johnson & Associates. The engineering geology report delineates a 100 year erosion setback line for the project site blufftop building envelope. The new residence must be placed landward of the 100 year erosion setback line.

A Grading Plan was developed for the proposed residence by the project civil engineer, Mr. Mike Van Horn, CE. The Grading Plan and Cross Section show the blufftop at the center of the parcel being cut down from about elevation 117 to elevation 114 feet. The blufftop will be cut to drain toward the center of the parcel with a shallow swale conveying the collected blufftop runoff landward. The 2005 Geologic and Geotechnical Investigations prepared for the development of the referenced parcel noted the bluff face will destabilize over time due to natural processes whether or not the new residence is constructed. Las Olas Drive is situated immediately adjacent the toe of the bluff with a beachfront residential development at the seaward perimeter of Las Olas Drive. Las Olas Drive has been historically impacted with landslide debris from the oversteepened bluff.

Our letter titled Geotechnical Review of Grading, Erosion Control, and Storm Water Management Plan with Supplemental Geotechnical Analyses, dated 30 April 2008 outlines our engineering opinion that removal of the top 3 feet of the blufftop will reduce the volume of soil that has the potential to impact Las Olas

EXHIBIT N

116 EAST LAKE AVENUE • WATSONVILLE, CALIFORNIA 95076 • (831) 722-4175 • FAX (831) 722-3202

ATTACHMENT 4

Drive below as well as provide a positive increase to the slope stability of the bluff face by reducing the driving forces within the potential blufftop failure wedge

It is our understanding current Santa Cruz County regulations do not allow grading or development within a geologic hazards setback area. Pursuant to Santa Cruz County Code Chapter 16.10.100, we recommend an exception be granted to County Code Sections 16.10.070(h)(1)(ii) and 16.10.040(s) in order to allow the cutting of the blufftop in order to reduce the existing threat to public safety.

If you have any questions regarding this letter, please call our office.

Sincerely,

HARO, KASUNICH AND ASSOCIATES, INC.

REGISTERED PROFESSIONAL ENGINEER
RICK L. PARKS
No. 2603
Exp. 31 Dec 08
GEOTECHNICAL
STATE OF CALIFORNIA

Rick L. Parks
GE 2603

RLP/dk

Copies: 1 to Addressee
1 to Roger E. Johnson & Associates
Attention: Greg Easton, C.E.G.
3 to Tracy Robert Johnson – Residential Design and Planning
Attention: Tracy Johnson

EXHIBIT B

ATTACHMENT 4

COUNTY OF SANTA CRUZ | Planning Department

MEMORANDUM

Date: November 27, 2008

To: Porcila Perez, Development Review Planner

From: Joe Hanna, County Geologist CEG 1313

Re: Proposed Exception to the Geologic Hazards Code
APN 038-151-89, Application Number 07-0548

Rogers E. Johnson and Associates in their letter dated October 20, 2008 and Haro, Kasunich, and Associates in their letter dated October 22, 2008 state that the eventual failure of the bluff creates a geologic hazard to persons, structures and property below the proposed Arthur Home on Oak Hill Road. To resolve this hazard, the letters recommend an exception to the Geologic Hazards Code Section *16.10.070 Permit conditions (h)* to allow grading within the 25-foot and 100 year setbacks to remove 3 to 5 feet of the permeable soils that contribute potential infiltration of surface water. All of this work is shown on a plan prepared by the project Civil Engineer Mike Van Horn.

Previously, Rogers E. Johnson and Associates stated in their report dated October 24, 2005 that a home could be built on the property if the home was setback approximately 33 feet from the crest of the bluff. The report identified the vertical rock bluff face and rock slope stability as the control factor in bluff retreat. County staff accepted this report and its conclusions, and subsequent project approvals have been based upon this report.

I agree with the addendum reports in their conclusions that coastal bluff retreat poses a potential hazard to the occupants of the homes at the base of the slope as well as any vehicles or pedestrians that are on Las Olas Drive. Improving surface drainage may increase the length of time before the next bluff top failure occurs by decreasing pore pressure along the various fractures. I disagree that this minor excavation resolves the hazard, and the current information has not demonstrated that removing this material will significantly reduce the geological hazard. In fact a majority of the benefit of the proposed work is related to the drainage control and can be accomplished without the exception and related grading of the soils zone at the top of the bluff. My reasons for these conclusions are:

i. The effect on stability of the removal of the relatively small amount of weight contributed by the soil on the crest of the slope is unclear. Depending upon the orientation of fractures within this rock, removal of weight from the crest of the slope may decrease resisting forces with a resulting decrease in slope stability after removal. A detailed kinematic analysis and related stability analysis would be necessary to assure that removals form crest would not adversely affect slope stability.

ii. Clearly, the engineering geologist has indicated that adverse water conditions contribute to block slope failure. In as far as the site contributes to adverse water conditions, an effective drainage system can be installed on the existing ground surface with minimal excavation without the need for the exception.

EXHIBIT 0

iii. The iron fence, and brick wall can be removed with little additional grading.

iv. There are proven methods to control bluff retreat that do not require an exception to the Code. An example of one of these methods is the retaining wall with reinforced caisson or pier foundations completed on the Minott property at 745 Oak Hill Road (see Rogers E. Johnson September 17, 2007.)

Exception:

An exception to the geologic hazards Code is needed to allow the grading into the 25 foot setback per Section ***16.10.070 Permit conditions (h) Coastal Beaches and Bluffs*** *which states in ii,*

"for all development, including that which is cantilevered, and for non-habitable structures, a minimum setback shall be established at least 25 feet from the top edge of the coastal bluff, or alternatively, the distance necessary to provide a stable building site over a 100-year lifetime of the structure, whichever is greater."

To make an exception to section 16.10.070 (h) ii findings are required under section 16.10.100 (c) of the Geologic Hazards Codes. The difficulties in making these findings are as follows:

Required Finding 1. - that hardship, as defined in Section 16.10.040(2j), exists

This finding cannot be made, in that applicant does not demonstrate that a hardship will exist as defined in Section 16.10.040 (2j) if the exception is not granted. Grading 3 to 5 feet of the bluff is not necessary to develop the parcel as the conclusions of the Rogers E. Johnson 10/25/2005 report demonstrates. Furthermore, coastal bluff retreat issue are common to hundreds of homes along the Santa Cruz Coast and are not exceptional, unusual, and peculiar to this property.

Required Finding 2. - the project is necessary to mitigate a threat to public health, safety, or welfare

The excavation of a few feet of the crest of the bluff will have little impact on the amount or rate of coastal bluff retreat, and may have unforeseen adverse affects on the stability of the bluff. A true solution would be to construct a retaining system with the capacity to stabilize the entire slope.

Finding 2 cannot be made, in that the proposed grading within the 25 foot and 100 year setbacks does not mitigate for the threat to public health and safety as it is not clear that the grading will significantly reduce the rate of coastal bluff retreat. Furthermore, the grading work may have unforeseen affects on the stability of the bluff.

Required Finding 3. - the request is for the smallest amount of variance from the provisions of this Chapter as possible

This finding cannot be made, in that the applicant's consultants have not analyzed alternatives to their proposal. Most of the benefits of the grading can be accomplished with on site control drainage without the excavation within the 25 setback, and alternatively must evaluate if a bluff wall is the only alternative to control the geologic hazard.

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ATTACHMENT 4

Required Finding 4. - adequate measures will be taken to ensure consistency with the purposes of this chapter and this Chapter and the County General Plan. (Ord. 3340, 11/23/82; 3598, 11/6/84; 4518-C, 3/8/99)

This finding cannot be made, in that the grading on the bluff is inconsistent with Section 6.2.12 of the General Plan and is inconsistent Section 5.10.3 of the General Plan in that it will modify a public vista with an adverse change in the aesthetic character of the community.

Conclusions:

The following conclusion can be made concerning the current proposed additional grading:

1. Alternative methods of controlling drainage must be assessed. I believe that a drainage system set at grade with similar fabric as proposed by the Van Horn's grading plan would control drainage at least as well as the current proposal.

2. I cannot see how Finding 1 can be made for this project because a clear hardship, as defined in Section 16.10.040(2j), does not exist with regards to the applicant and the project.

3. Excavating a few feet into the bluff as proposed by the Consultants will not substantially mitigate coastal bluff retreat. Without a clear mitigation making Finding 2 is infeasible, as the Finding requires mitigation of the hazard. Similarly, Finding 3 is complicated as the condition assumes that the least amount of variance required to Code to accomplish the mitigation of a geologic hazard. If mitigation of a geologic hazard is the goal then the applicant should consider options that do not require an exception to the Code such as bluff top walls. These walls have a proven ability to control the retreat of bluff.

4. The consultants must also consider the design of the project in relationship to the adjacent properties and interplay bluff retreat on each parcel will have with the others.

EXHIBIT 1

Registered Civil and Geotechnical Engineer
101 Forest Avenue, Santa Cruz, CA 95062-2622
soilsurgeon@cruzio.com
cell (831) 234-5966
Tel. (831) 429-9364
Fax (831) 429-9822

File Number: 12073

22 August 2008

Mr. Brian Arthur
382 Belle Monti Avenue
Aptos, CA 95003

Subject: Proposed Single Family Dwelling Development, APN 038-151-89
Oakhill Road
Santa Cruz County, California

Evaluation of Brick Retaining Wall

Dear Mr. Arthur:

As requested by Mr. Tracy Johnson on your behalf, I have visited the subject site, observed the condition of the existing brick retaining wall, and I have observed the under floor area of the residence east/adjacent to the brick retaining wall. I am providing herein my conclusions regarding the stability of the brick retaining wall with respect to its proposed alterations to the affected site features.

It is my understanding the existing brick retaining wall, located within the geologic setback within the subject site, is planned to be reduced in length such that only the east most approximately nine to ten feet of the retaining wall is to remain following completion of the proposed improvements. The proposed plans also call for the reduction of the height of the backfill for a significant portion of the remaining brick wall.

I visited the subject site today, 22 August 2008. I observed the existing conditions of the brick retaining wall. The east most nine feet of the retaining wall is in relatively good condition and is slightly curved in plan view. The retaining wall does <u>not</u> extend under the residence to the east of the wall.

Additionally, at the home owner's permission, I observed the under floor area of the residence to the east of the wall and observed the foundation of this residence extends down to the base elevation of the brick retaining wall so that the residence's foundation does not depend upon the presence of the brick retaining wall for structural support of any kind.

Based on the above conditions and assumptions, I conclude the proposed alterations to the brick retaining wall and adjacent grade do not threaten the structural integrity of the wall.

EXHIBIT p

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EXHIBIT 1B

Mike Van Horn, Inc.

File Number 12073

22 August 2008

This concludes this letter. If you have any questions, please contact this office.

Sincerely Yours,

REGISTERED PROFESSIONAL ENGINEER
MIKE VAN HORN
No. 2047
Exp. 9/30/09
8/15/08
Stamp Date
GEOTECHNICAL
STATE OF CALIFORNIA

Mr. Mike Van Horn, CE 35615, GE 2047 (expires 9/30/09)

COPIES: 1 to Addressee
3 to Tracy Johnson, Residential Design
1 to File

CCC Exhibit 7
(page 294 of 455 pages)

ATTACHMENT 4

William P. Parkin, State Bar No. 139718
Jonathan Wittwer, State Bar No. 058665
Gary Patton, State Bar No. 048998
Ryan D. Moroney, State Bar No. 218920
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office@wittwerparkin.com

Attorneys for Petitioners and Plaintiffs
PATRICK AND LAURA MURPHY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA CRUZ

PATRICK MURPHY, and LAURA MURPHY, Petitioners and Plaintiffs, v. COUNTY OF SANTA CRUZ, and DOES 1 THROUGH 15, Respondents and Defendants, BRIAN ARTHUR, TOM F. OSWALT, as trustee for the Oswalt Trust, and DOES 15 THROUGH 30, Real Parties in Interest and Defendants.	Case No. CV 163497 **FIRST AMENDED PETITION FOR WRIT OF MANDAMUS AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF, DAMAGES AND ATTORNEYS FEES** Date: January 14, 2010 Time: 8:29 a.m. Dept.: 4 Honorable Timothy R. Volkmann

EXHIBIT B

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(page 295 of 455 pages)

1. On June 10, 2003, the County of Santa Cruz (hereinafter "County" or "Respondents") improperly issued two Unconditional Certificates of Compliance recognizing two separate and distinct parcels ("Subject Parcels"), when only one legal parcel exists, concerning real property on a coastal bluff above Seacliff Beach located at 749 Oakhill Road (Assessor's Parcel Number 038-151-85) (hereinafter the "Property") in unincorporated Santa Cruz County. The Unconditional Certificates of Compliance were administratively approved without public notice or hearing even though improvements for the pre-existing home on the Property crosses the boundary line between the two parcels which were issued to Unconditional Certificates of Compliance on the Property. The County now recognizes a portion of the subject Property as a legally distinct parcel (with a new Assessor's Parcel Number being assigned–038-151-89) and thus the County allowed the illegal creation of two separate parcels.

2. Said Certificates of Compliance were issued contrary to both state law and the County's own regulations. Because the Subject Parcels were not actually legally created, the County has improperly allowed the subdivision of property without a Minor Land Division Approval and a required Coastal Development Permit (appealable to and otherwise subject to the jurisdiction of the California Coastal Commission). By the procedure employed by the County, the Applicant avoided the scrutiny of the County Planning Commission and Coastal Commission and thwarted the Petitioners' and Plaintiffs' administrative appellate and due process rights. Such actions also violated the County's Local Coastal Program. The failure of the County to follow the law is a failure to proceed in a manner required by law, and thus is an abuse of discretion.

3. By this Petition and Complaint, Petitioners and Plaintiffs allege that the purported parcels are not two separate, legal parcels, and ask the Court to mandate the Respondent County of Santa Cruz to take all necessary and appropriate actions to ensure that said Property is not recognized by or treated by the County as being comprised of separate legal parcels. Petitioners

and Plaintiffs further request declaratory relief that the purported parcels were not created in compliance with applicable state and local law, and thus are not separate, legal parcels and that the County be enjoined from treating them as such until and unless such division complies with the California Coastal Act, the Local Coastal Program, the Subdivision Map Act, and County regulations.

I

PARTIES

4. Petitioners hereby incorporate by reference paragraphs 1 through 3 as if fully set forth herein.

5. Petitioners and Plaintiffs Patrick and Laura Murphy ("Petitioners") own real property in Santa Cruz County on Oakhill Road in the Seacliff area, adjacent to the Property.

6. Respondent and Defendant County of Santa Cruz is a political subdivision of the State of California with general jurisdiction over the division and use of land located within the unincorporated areas of Santa Cruz County, California. Notwithstanding its general jurisdiction over the division and use of land within Santa Cruz County, the County is subject at all times to applicable provisions of State law, which includes, specifically, the California Coastal Act (Public Resources Code Section 30000 *et seq.*). Pursuant to the California Coastal Act, the County has a State-approved Local Coastal Program which requires issuance of a Coastal Development Permit by the County prior to any division of land. The California Coastal Commission has appellate jurisdiction in the Coastal Zone where this parcel is located. Further, the County must follow the mandatory requirements of its own applicable regulations as it exercises its jurisdiction over the division and use of land within its jurisdictional boundaries.

7. The true names and capacities, whether individual, corporate or otherwise, of Does 1 through 15, are unknown to Petitioners who therefore sue said Respondents by such fictitious

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(page 297 of 455 pages)

EXHIBIT 9

names and will seek leave to amend this First Amended Petition for Writ of Mandamus and Complaint for Declaratory and Injunctive Relief, Damages and Attorneys Fees (hereinafter "First Amended Petition and Complaint") when their identities have been ascertained.

8. Petitioners are informed and believe that at all times herein alleged, Respondents and each of them were the agents and employees of each of the remaining Respondents and while doing the things herein alleged, were acting within the course and scope of such agency and employment.

9. Real Party in Interest Brian Arthur ("Arthur") is the owner of Assessor's Parcel Number (APN) 038-151-89, which he claims to be a separate, legal parcel, and which he seeks to develop with a new single-family dwelling.

10. Real Party in Interest Tracy Johnson is an applicant for a proposed single-family dwelling on APN 038-151-89.

11. Real Party In Interest Tom F. Oswalt, as trustee of the Oswalt Trust, (Oswalt) is a previous owner of the Property, and he applied for and received the subject Unconditional Certificates of Compliance for the Property. However, Oswalt provided seller financing for the purchase of APN 038-151-89 by Arthur and still holds a Deed of Trust on APN 038-151-89.

12. Real Party in Interest Ron Powers was the applicant for the subject Unconditional Certificates of Compliance.

13. The true names and capacities, whether individual, corporate or otherwise, of Does 15 through 30, are unknown to Petitioners who therefore sues said Real Parties by such fictitious names and will seek leave to amend this Petition and Complaint when they have been ascertained.

14. Petitioners are informed and believe that at all times herein alleged, the remaining Real Parties in Interest and each of them is the agent and employee of each of the remaining Real Parties and while doing the things herein alleged, were acting within the course and scope of

such agency and employment.

II

STANDING

15. Petitioners hereby incorporate by reference paragraphs 1 through 14 herein as if fully set forth herein.

16. Petitioners are owners of real property on Oak Hill Road and located adjacent to the Property. Petitioners are adjacent landowners and taxpayers in the County of Santa Cruz. Issuance of the subject Unconditional Certificates of Compliance adversely affects the interests of Petitioners. Petitioners are adversely affected by the County's noncompliance with its regulations, including the County Subdivision Ordinance, the Local Coastal Program ("LCP") and the County's noncompliance with the State Subdivision Map Act and the State Coastal Act. The subject Unconditional Certificates of Compliance adversely affect development on a coastal bluff and the environmental integrity of the County of Santa Cruz.

17. Jurisdiction of this court is invoked pursuant to California Code of Civil Procedure Sections 1085 and 1060, Public Resources Code Sections 30803 and 30804, the Constitution of the State of California, and other applicable law.

III

GENERAL ALLEGATIONS

18. Petitioners hereby incorporate by reference paragraphs 1 through 17 herein as if fully set forth herein.

///

Application for Certificates of Compliance

19. On February 5, 2001, Application No. 01-0068 was filed by Oswalt, Trustees, then the owner of the Property. The application sought Unconditional Certificates of Compliance to establish a separate legal parcel on the Property. The Development Permit Application is attached to this Petition and Complaint as **Exhibit A**. The Application shows on its face, and it is true in fact, that the Property is located within the California Coastal Zone, as established by the California Coastal Act.

20. Unconditional Certificates of Compliance are issued to recognize parcels that were legally created under the Subdivision Map Act at a prior date. Thus, in seeking such recognition of such parcels, the landowner avoids the need to apply for a division of the land under the Subdivision Map Act (and the County Subdivision Ordinance) or the California Coastal Act (and the County LCP).

21. On June 12, 2001, after having reviewed extensive materials related to the Application, and without any public notice or hearing, but acting on an administrative basis only, Santa Cruz County Principal Planner Cathy Graves determined that "Assessor's Parcel Number 038-151-85 does not constitute two separate legal parcels and does not warrant the recording of either an Unconditional or Conditional Certificates of Compliance." The materials considered by the County include documents showing, among other things, that existing improvements were built across the boundary line which Oswalt sought to establish by his application for the subject Unconditional Certificates of Compliance. Indeed, the owners of the Property were only assessed property taxes by the County Assessor as one parcel, the owners represented in previous applications to the County that the Property only consisted of one parcel, and the home, driveway, decking, carport and elevator constructed on the Property straddle or straddled the boundary line in which Oswalt sought to establish, and said development exists or existed on both properties. For these reasons, under State law and the County's regulations, the Property

was found to consist of one legal parcel. Nothing has occurred to support a different conclusion.

22. The determination denying the issuance of the Unconditional Certificates of Compliance was accepted by Santa Cruz County's Project Manager, Don Bussey, also on an administrative basis, and without a public notice or a hearing. A copy of the County determination was provided to legal counsel of Oswalt, and a copy of that determination letter is attached to this Petition and Complaint as **Exhibit B**. The County's determination letter advised Oswalt of their ability to appeal the decision to the Santa Cruz County Planning Director.

23. On June 26, 2001, acting through their attorney, Oswalt appealed the denial of Application No. 01-0068. A copy of the appeal letter is attached to this Petition and Complaint as **Exhibit C**.

24. In a letter dated July 3, 2001, Don Bussey, Project Manager, recommended denial of the appeal and "upholding the Zoning Administrators decision that: 1. Assessor's Parcel Numbers 038-151-85 constitutes only [one] legal parcel for land use and planning purposes." A copy of this letter recommending denial of the appeal is attached to this Petition and Complaint as **Exhibit D**.

25. On August 27, 2002, more than one year later, and again on an administrative basis, <u>without a public notice or hearing</u>, Glenda Hill, Santa Cruz County Principal Planner for Development Review, issued a letter to Oswalt's counsel stating that her letter "serves as a decision on the administrative appeal..." This letter granted the appeal, though it noted "a concern about the existing encroachment. You have indicated that the property owners are willing to correct the encroachment either through demolition or a lot line adjustment. I agree that one of these solutions is necessary." The letter from Principal Planner Glenda Hill also indicated that she would "direct Don Bussey, the staff planner, to prepare and record the unconditional certificates of compliance." A copy of this decision letter, granting the appeal, and indicating that Unconditional Certificates of Compliance would be issued, is attached to this

Petition and Complaint as **Exhibit E**.

26. On June 9, 2003, almost an additional year later, in a memorandum from Glenda Hill to Don Bussey, Ms. Hill stated that "this memo is to clarify the wording of two sentences in the Appeal Determination letter for 01-0068, dated August 27, 2002, to wit: "You have indicated that the property owners are willing to correct the encroachment either through demolition or a lot line adjustment. I agree that one of the solutions is necessary. The word 'necessary' should not be construed as a condition of the appeal determination, as this is an Unconditional Certificate of Compliance. It is, rather, my opinion and suggestion." The memo further directed Mr. Bussey to "record the Unconditional Certificates of Compliance for APN 38-151-85, as approved under Permit No. 01-0068." This memorandum was issued on an administrative basis, without any public notice or public hearing, and is attached to this Petition and Complaint as **Exhibit F**.

27. Based on the directive contained in the June 9, 2003 memo, and as indicated earlier, the two Unconditional Certificates of Compliance were issued for the Property on the very next day, June 10, 2003. Copies of these Unconditional Certificates of Compliance are attached to this Petition and Complaint as **Exhibits G and H**.

28. By issuing these Certificates of Compliance, the County has taken the position that the Property the County currently identifies as APN 038-151-89 is a separate, legal parcel, and that the property so identified is no longer to be considered a portion of APN 038-151-85. The County administratively issued, without public notice or hearing or an opportunity to object, the subject Unconditional Certificates of Compliance in order to avoid the need to comply with the Subdivision Map Act or the Coastal Act and their respective County counterparts as alleged above. This process utilized by the County also meant that the California Coastal Commission did not receive notice of purported land division as it would have had the County instead held public hearings and approved a Coastal Development Permit. The Coastal Commission is

required to receive notice of all "Final Local Action" on Coastal Development Permits. Because the County administratively issued purported Unconditional Certificates of Compliance it illegally purported to divide land and create separate parcels so as to thwart and infringe on the public's rights to notice and an opportunity to be heard regarding such illegal land divisions.

29. This Petition and Complaint challenges the assertion that the Property contains two separate, legal parcels and that the real property identified as APN 038-151-89 is a separate, legal parcel, on the basis that the County could not legally issue and record the two Unconditional Certificates of Compliance without first complying with mandatory provisions of state and local law. Moreover, the County conditioned the approval. Thus, despite the County's arguments to the contrary, it actually issued *Conditional* Certificates of Compliance. While such Conditional Certificates were still illegal, their issuance also triggers the need for a Coastal Development Permit. By law, such Conditional Certificates require Coastal Development Permits.

Recent application to construct single-family dwelling on illegal parcels

30. On September 17, 2007, by Application No. 07-0548, Arthur and Johnson submitted a Development Permit Application to the County to construct an approximately 3,042 square foot, two-story single family dwelling on APN 038-151-89.

31. The County accepted and processed Application No. 07-0548. Petitioners and others appeared and opposed the application.

32. At the noticed Zoning Administrator public hearing held on January 16, 2009, at which Petitioner appeared and noted that the newly created parcel needs a Coastal Development Permit before the development proceeds, Mr. Don Bussey, acting as the County Zoning Administrator, discussed the development problems with APN 038-151-89, noting the fact that there is still an encroachment on the legally invalid parcel from the adjoining property, of which

the purported parcel now identified as APN 038-151-89 was formerly a portion, and highlighting the significant geological issues involved. During said public hearing, Mr. Bussey stated that he had recommended against the creation of what the County is now identifying as APN 038-151-89.

33. Mr. Bussey's statement at the January 16, 2009 hearing caused Petitioners to learn of the subject Unconditional Certificates of Compliance for the first time, and to investigate County's processing of the Unconditional Certificates of Compliance Application that led to its recognition as a separate legal parcel, including the earlier administrative non-noticed and non-public proceedings that resulted in the County's decision to issue the two Unconditional Certificates of Compliance for the Property, and which was for purported parcel that the County now identifies as Assessor's Parcels Numbers 038-151-89. Petitioners discovered that these Unconditional Certificates of Compliance had not, in fact, ever been legally effective in creating new, separate, legal parcels because the County did not comply with mandatory provisions of the County LCP and the State Coastal Act. At a minimum, because no LCP was issued, no separate legal parcel was ever actually created as to APN 038-151-89.

34. Ultimately, Application No. 07-0548 was denied on January 16, 2009, "without prejudice," and Petitioners are informed and believe, and on that basis allege, that future applications will be made to develop the property now identified as APN 038-151-89 as if it were a lawfully created separate, legal parcel from APN 038-151-85, which it is not.

35. Petitioners promptly informed the County of the County's error in issuing and recording the two Unconditional Certificates of Compliance by a letter dated March 10, 2009, a copy of which is attached to this Petition and Complaint as **Exhibit I**, and specifically requested the County to "notify the current property owner that the creation of Assessor's Parcel 038-151-89 requires a CDP [Coastal Development Permit]; or, in the alternative, that you inform the Executive Director of the Coastal Commission by telephone of this dispute/question and request

an Executive Director's opinion, as required by the Coastal Act." Instead, by letter dated March 17, 2009, the County has wrongly asserted that "the issuance of a Certificate of Compliance does not constitute 'development' for the purposes of the California Coastal Act." A copy of said letter is attached hereto as **Exhibit J**. Petitioners' response to the County's letter is attached hereto as **Exhibit K**.

36. The County has and continues to fail to take either of the actions requested by Petitioners and Plaintiffs in their letter of March 10, 2009, and Petitioners and Plaintiffs have no plain, speedy or effective remedy except by this action seeking an order of this Court.

IV

[FIRST CAUSE OF ACTION]

Enforcement Against Violation of Santa Cruz County Code, Local Coastal Program and California Coastal Act [PRC § 30804]

37. Petitioners hereby incorporate by reference paragraphs 1 through 36 herein as if fully set forth herein.

38. Although the County issued and recorded the subject Unconditional Certificates of Compliance on June 10, 2003 which purport to recognize and establish the real property identified as APNs 038-151-85 and 038-151-89 as separate, legal parcels, the County's action was legally ineffective to achieve this result, because the County failed to follow mandatory provisions of both local and state law in connection with its issuance of the subject Unconditional Certificates of Compliance.

39. The Property did not consist of two separate, legal parcels at the time the Certificates of Compliance were issued. Unconditional Certificates of Compliance can only be issued for

parcels that are indeed pre-existing legally created parcels. In this case, the Property did not consist of two pre-existing legally created parcels.

40. Santa Cruz County Code Section 13.20.050 (a part of the County LCP) provides that any person wishing to undertake any "development," as that term is defined in Santa Cruz County Code Section 13.20.040, must first obtain a Coastal Zone Approval. "Development" as defined in County Code Section 13.20.040 includes any "change in the density or intensity of use of land, including but not limited to subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits," with some exceptions that do not apply to the property at issue here.

41. Furthermore, the Coastal Act requires a Coastal Development Permit for all divisions of land (with one exception not relevant here). Public Resources Code §§30106; 30600. It further authorizes any person to maintain an action to enforce the duties imposed upon any local government by the act. Public Resources Code §30804. Moreover, assuming, *arguendo*, that a Certificate of Compliance could be issued, the subject certificates were "conditional" certificates of compliance requiring a Coastal Development Permit.

42. In this case, no Coastal Development Permit (or Coastal Zone Approval) was ever applied for or issued in connection with the issuance and recording of the two Unconditional Certificates of Compliance issued by the County on June 10, 2003, and they thus have no legal effect whatsoever in establishing the Property as having two lawfully created separate, legal parcels for land use and planning purposes.

43. By treating the Property as two separate, legal parcels without the requisite Coastal Development Permit, the County has and continues to abuse its discretion, and has and continues to fail to proceed in the manner required by law by violating the requirements of the County LCP and the California Coastal Act. Petitioners therefore seek a writ of mandamus directing the County to take all necessary and appropriate actions to ensure that APN 038-151-89

is not recognized by or treated by the County as being a lawfully created separate legal parcels prior to the issuance of a Coastal Development Permit. Petitioners seek to compel the County to comply with the County's own regulations and duties imposed upon the County by the Coastal Act and require Real Parties in Interest to apply for and obtain a Coastal Development Permit prior to further development of APN 038-151-89 as a lawfully created separate legal parcel and prior to accepting any future development application.

44. By failing to require Real Party in Interest to obtain a Coastal Development Permit prior to its issuance of the Certificates of Compliance, the County abused its discretion and failed to proceed in the manner required by law. A peremptory writ of mandate is necessary in this instance to avoid irreparable harm through recognition and treatment of the Property as having two separate legal parcels.

V

SECOND CAUSE OF ACTION

Declaratory Relief

45. Plaintiffs hereby incorporate by reference paragraphs 1 through 44 herein as if fully set forth herein.

46. An actual controversy has arisen between the Petitioners, Respondents, and Real Parties in Interest concerning their respective rights and duties in that the Petitioners contend that the Property does not contain two separate, legal parcels and that APN 038-151-89 is not a lawfully created separate legal parcel. The California Coastal Act authorizes any person to seek declaratory relief to prevent violations of the Act. Public Resources Code §30803.

47. Petitioners further contend that the purported parcels were not created and that the County's recognition of the Property as containing two separate legal parcels and recognition of

APN 038-151-89 as a lawfully created separate legal parcel, without the required governmental review and approval is unlawful. A Coastal Development Permit is required before the subject Unconditional Certificates of Compliance can have legal force and effect.

48. Petitioners therefore seek a judicial declaration that the Property does not contain two separate, legal parcels and that APN 038-151-89 is not a lawfully created separate legal parcel.

VI

THIRD CAUSE OF ACTION

Failure to Perform a Mandatory Duty

49. Plaintiffs hereby incorporate by reference paragraphs 1 through 48 herein as if fully set forth herein.

50. By letter dated March 10, 2009, the Petitioners requested that the County consult with the Coastal Commission's Executive Director concerning the County's unlawful treatment of the Property. Title 14 of the California Code of Regulations §13569 governs and states that

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

These state regulations are mandatory, not discretionary. Yet, the County refused to consult the Coastal Commission as requested. Thus, the County has failed to perform a mandatory duty and a writ of mandate should issue compelling the County to consult with the Coastal Commission concerning this matter.

VII

FOURTH CAUSE OF ACTION

Equitable Relief/injunction

51. Plaintiffs hereby incorporate by reference paragraphs 1 through 50 herein as if fully set forth herein.

52. The California Coastal Act authorizes any person to seek equitable relief to restrain violations of the Act. Public Resources Code §30803.

53. The County's past and present actions in treating the Property as constituting two separate, legal parcels and in recognizing APN 038-151-89 as a lawfully created separate legal parcel without a valid Coastal Development Permit constitutes a violation of the Coastal Act.

54. Plaintiffs possesses no speedy, adequate remedy at law, in that recognition of APN 038-151-89 as a separate legal parcel or development of the Property will permanently and forever harm, injure, degrade and impact the environmental values of the coastal bluff and surrounding areas in violation of the Coastal Act and the County's Local Coastal Program. Real Parties in Interest Arthur and Tracy Johnson threaten to proceed with development on the recognized parcel without a Coastal Development Permit for creation of said parcel. Further, Plaintiffs, as adjacent landowners, persons interested in protecting coastal and environmental resources, and taxpayers of the County of Santa Cruz, will suffer irreparable and permanent injuries if the County's treatment of the Property as a separate, legal parcel is not enjoined.

55. A stay and/or restraining order and preliminary and permanent injunction should issue restraining the County from continued recognition of the Property as two separate, legal parcels and/or the recognition if APN 038-151-89 as a lawfully created, separate legal parcel for land-use and planning purposes.

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VIII

FIFTH CAUSE OF ACTION

Violation of Due Process of Law

56. Petitioners hereby incorporate by reference paragraphs 1 through 55 herein as if fully set forth herein.

57. The Federal and State constitutional principle of due process requires that landowners and other affected parties be provided adequate notice and opportunity to be heard prior to any governmental action that may affect significant property rights. These principles are codified in Government Code §§ 65090 and 65091 and County Code Chapter 18.10.

58. Furthermore, because the County's approval in this case constitutes a quasi-adjudicatory acts, those persons affected by such land use decisions are constitutionally entitled to notice and an opportunity to be heard prior to issuance of the subject Certificates of Compliance. *Horn v. County of Ventura*, (1979) 24 Cal. 3d 605, 612.

59. In addition, the County's issuance of the Certificates of Compliance at issue in this case required a Coastal Development Permit (CDP) and any issuance of a CDP requires a notice and hearing pursuant to the Coastal Act and the County LCP.

60. In this case, the public and adjacent property owners were not provided with any notice or a public hearing on the County's review, approval and/or issuance of the subject Certificates of Compliance. This lack of notice and hearing constitutes a violation of the Federal and State constitutional requirements of due process, as well as State and County law. The public, and particularly the adjacent property owners, were legally entitled to an opportunity to review and comment on such actions affecting their property rights.

IX

ATTORNEYS FEES

61. Petitioners hereby incorporate by reference paragraphs 1 through 61 herein as if fully set forth herein.

62. Petitioners are entitled to reasonable attorneys fees pursuant to the Federal and State Constitutional rights of equal protection and due process of law, including, but not limited 42 U.S.C. 1988.

63. In pursuing this action, Petitioners will confer a substantial benefit on the People of the State of California and therefore are entitled to recover from Respondents and Real Parties reasonable attorneys' fees and costs pursuant to Section 1021.5 of the Code of Civil Procedure, and other provisions of law.

64. In pursuing this action, Petitioners will enforce a duty imposed on the County by the California Coastal Act and restrain a continuing violation of the California Coastal Act. If successful, Petitioners request to recover from Respondents reasonable attorneys' fees pursuant to Public Resources Code §30824, and other provisions of law.

WHEREFORE, Petitioners pray for judgment as follows:

1. For a Peremptory Writ of Mandate directing the County to take all necessary and appropriate actions to ensure that the Property (consisting of APNs 038-151-85 and 038-151-89) is not recognized or treated by the County as being comprised of separate legal parcels or as a lawfully created, separate legal parcel for land-use and planning purposes;

2. For declaratory relief that the Property (consisting of APNs 038-151-85 and 038-

151-89) is not comprised of separate legal parcels and/or is not a lawfully created, separate legal parcel for land-use and planning purposes;

3. For a Peremptory Writ of Mandate ordering the County to consult with the Coastal Commission's Executive Director on this issues raised by this action pursuant to 14 CCR 13569(b);

4. For an order staying and enjoining Respondents from engaging in any activity which treats or otherwise recognizes the Property as having two separate parcels and from recognizing APN 038-151-89 as a lawfully created separate parcel for purposes of parcel legality and/or future applications for a single-family dwelling thereon;

5. For reasonable attorneys' fees under 42 U.S.C. 1988, California Code of Civil Procedure Section 1021.5, Public Resources Code Section 30824, and any other applicable provisions of law;

6. For damages according to proof;

7. For costs of suit; and,

8. For such other and further relief as the Court deems proper.

Respectfully submitted,
WITTWER & PARKIN, LLP

Dated: December 21, 2009

By: William P. Parkin
Attorneys for Petitioners and Plaintiffs
PATRICK AND LAURA MURPHY

ATTACHMENT 4

VERIFICATION

I, WILLIAM P. PARKIN, say:

I am Attorney of Record for PATRICK and LAURA MURPHY, parties to this action.

I have read the First Amended Petition for a Writ of Mandamus and Complaint for Declaratory and Injunctive Relief and know the contents thereof. I am informed and believe that the matters therein are true and on that ground allege that the matters stated therein are true. This verification was not signed by a party to this action because Patrick and Laura Murphy are absent from the county where I have my office at the time this Petition for Writ of Mandamus was drafted and ready for filing. This verification was executed on December 22, 2009, at Santa Cruz, California.

William P. Parkin

CCC Exhibit 7
(page 313 of 455 pages)

EXHIBIT B

ATTACHMENT 4

EXHIBIT A

CCC Exhibit 7
(page 314 of 455 pages)

EXHIBIT B

ATTACHMENT 4

PLANNING DEPARTMENT

GOVERNMENTAL CENTER

COUNTY OF SANTA CRUZ

701 OCEAN STREET SANTA CRUZ, CALIFORNIA 95060
FAX (831) 454-2131 TDD (831) 454-2123

DEVELOPMENT PERMIT APPLICATION

PHONE: (831) 454-2130
PRINT DATE: 06/26/2001
APPLICATION DATE: 02/05/2001

APPLICATION NO.: **01-0068**

PARCEL NO.	SITUS ADDRESS
038-151-85	749 OAKHILL RD APTOS 95003

PROJECT DESCRIPTION:
Proposal to establish the legality of a parcel. Requires an Unconditional Certificate of Compliance. Property located on the south side of Oak Hill Road, about 300 feet west from Seacliff Drive.

DIRECTIONS TO PROPERTY: SEACLIFF DRIVE SOUTH, RIGHT ON OAK HILL ROAD TO 749 OAK HILL ROAD.

OWNER: OSWALT EMILY & TOM F TRUSTEES 749 OAK HILL ROAD APTOS CA 95003
APPLICANT: BOSS, WILLIAMS, ATTN: SUZANNE YOST P.O. BOX 1822 SANTA CRUZ CA 95061
BUS. PHONE: (831)426-8484

APPLICATION FEES: RECEIPT: 00052722 DATE PAID: 02/05/2001

APPLICATION INTAKE B	89.00	
UNCOND CERT OF COMPL/PARCEL LEGL - ACP	1500.00	#13270
*** TOTAL ***	1589.00	***

APPLICATION FEES: RECEIPT: 00056113 DATE PAID: 06/26/2001

APPEAL ADMINISTRATIVE	195.00	#13270 programmer
APPEAL ADMINISTRATIVE	-195.00	#13270 will correct
FLAT FEE CONVERTED TO AT COST	195.00	#13270
*** TOTAL ***	195.00	***

PARCEL CHARACTERISTICS FOR:	03815185
ZONE DISTRICT(S):	SINGLE-FAMILY RESIDENTIAL - 10,000 SQUARE FOOT MINIMUM SITE AREA
GENERAL PLAN LAND USE DESIGNATION(S):	URBAN LOW RESIDENTIAL
PLANNING AREA:	APTOS
URBAN SERVICES LINE:	WITHIN USL
COASTAL ZONE:	WITHIN COASTAL ZONE
GENERAL PLAN RESOURCES & CONSTRAINTS:	RW
GENERAL PLAN RESOURCES & CONSTRAINTS:	SCENIC
ASSESSOR LAND USE CODE:	SINGLE RESIDENCE
DISTRICT SUPERVISOR:	Ellen Pirie
PARCEL SIZE:	20081.2 SQUARE FEET (EMIS ESTIMATE)

THIS PARCEL SIZE HAS BEEN CALCULATED BY EMIS, THE COUNTY'S GEOGRAPHIC INFORMATION SYSTEM, AND IS AN ESTIMATE ONLY. IF A MINIMUM PARCEL SIZE IS REQUIRED TO MEET COUNTY STANDARDS, YOU MAY NEED TO OBTAIN A SURVEY TO DEMONSTRATE THAT YOU HAVE SUFFICIENT LAND AREA.

ORIGINAL - OFFICE

CCC Exhibit 7
(page 315 of 455 pages)

ACTUAL CONDITIONS ON THIS PROPERTY MAY NOT COINCIDE WITH THE MAPPED RESOURCE/CONSTRAINT INFORMATION, WHICH IS SOMEWHAT GENERALIZED. THE APPLICATION OF SPECIFIC RESOURCE AND CONSTRAINT POLICIES IS DEPENDENT ON THE ACTUAL CONDITIONS ON THE PROPERTY AND IN THE AREA OF DEVELOPMENT.

The DECISION ON YOUR PROJECT WILL BE MADE BY THE PLANNING DIRECTOR.

THE UNDERSIGNED PROPERTY OWNER(S) HEREBY AUTHORIZES THE FILING OF THIS APPLICATION, AND AUTHORIZES ON-SITE REVIEW BY AUTHORIZED STAFF. I CERTIFY TO THE BEST OF MY ABILITY THAT THE ABOVE AND ATTACHED INFORMATION IS TRUE AND CORRECT, AND THAT I HAVE READ AND UNDERSTOOD THE ABOVE INFORMATION.

SIGNATURE OF PROPERTY OWNER/OWNER'S AGENT

X Becky Doyle for Bosso Williams et al

SIGNATURE OF PROPERTY OWNER/OWNER'S AGENT

APPLICATION TAKEN BY
CATHY H. GRAVES, PLANNING DEPARTMENT
SUBMITTED AT 701 OCEAN STREET

NOTICE TO DEVELOPMENT PERMIT APPLICANT:

You will be notified within five (5) working days of the name and phone number of your project planner.

If your project is found to be extraordinarily complex, reviews normally charged a fixed development permit or technical review fee may be charged on an actual cost basis. This determination may be made either at application acceptance or during application review. Authority for these charges is found in the Planning Department Fee Schedule.

Your application fees are not refundable, except as specified in the Planning Department Fee Schedule.

If you have begun an activity or work requiring county review or approval without first obtaining a permit, you will be charged fees equal to the cost of investigation and resolution of the violation. Authority for these charges is found in Chapter 1.12 of the Santa Cruz County Code.

You need to advise residents of property that Planning Department staff may be visiting the site. Site should be clearly marked/staked for staff inspection. Incomplete directions or marking will delay review of the project.

ORIGINAL - OFFICE

CCC Exhibit 7
(page 316 of 455 pages)

EXHIBIT 17

ATTACHMENT 4

EXHIBIT B

CCC Exhibit 7
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EXHIBIT 1B

ATTACHMENT 4

PLANNING DEPARTMENT

GOVERNMENTAL CENTER

COUNTY OF SANTA CRUZ

701 OCEAN STREET - SANTA CRUZ, CALIFORNIA 95060
FAX (831) 454-2131 TDD (831) 454-2123 PHONE (831) 454-2580

Ms. Susan Yost
P. O. Box 1822
Santa Cruz, CA
95061

June 12, 2001

SUBJECT: Application No. 01-0068
APN: 038-151-85
Lands of Oswalt

Proposal and Property Location

The proposal is a request to establish the legality of two parcels of about 8,825 +- gross square feet and about 12,900 +- gross square feet, each known as a portion of Assessor's Parcel Number 038-151-85. This requires a Lot legality Determination/ Certificate of Compliance.
The property is located at 749 Oak Hill Road, Aptos.

Analysis and Discussion

Assessor's Parcel Number 038-151-85 was evaluated as to whether the two parcels in question could be presumed to be lawfully created pursuant to Government Code Section 66412.6 and entitled to an Unconditional Certificate of Compliance pursuant to Government Code Section 66499.35 and Santa Cruz County Code Sections 14.01.109, 14.01.110 and 14.01.111.

The chain of title submitted by the applicant indicates that the Assessors' Parcel Number comprises three separate deed descriptions, with the two parcels in question described within separate deed instruments and have been described separately since at least 1938/ 1941.

Lot A	335 OR 61	May 12, 1938	Monterey Bay Finance Co. To Sherman
	407 OR 433	August 13, 1941	California Pacific Title Company to Grover
Lot B	874 OR 36	July 7, 1952	Mc Fadden to Grover

The property has an existing two story sfd constructed in 1938 (per Assessor's records). Several building permits were applied for over the years (From a review of the record, it appears that most of those permits voided for lack of inspections.). It is important to note that a building permit was applied for and issued for an addition in 1981 (see Building Application 1898; Building Permit Number 67984), with that application representing the property as one large lot (no lot line shown separating the parcels) and clearly indicating an improvement being built over the property line (not an inadvertent encroachment, rather a significant encroachment of the dwelling) of what was then noted as APN 038-151-05 and 038-151-23.

CCC Exhibit 7
(page 318 of 455 pages)

EXHIBIT 1B

According to the Residential Building Record of the Santa Cruz County assessor's office, in 1988, the owner (Grover) formally requested that the property receive only one tax bill. Based upon a conversation with Assessor's office staff, a written request from the owner would have been required at that time (per personal communication with Jessie Mudgett of the Assessor's Office staff on 5/29/01) for that office to combine the two APN's (038-151-05 and 038-151-23) into only one APN (038-151-85). The Assessors's Records also clearly note that "the two parcels had been valued as one site in the past".

County Code Section 14.01.109(a) states that a parcel qualifies for an Unconditional Certificate of Compliance if:

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

(1) The subject property was conveyed by a separate document as a separate parcel on or before January 20, 1972.

The separate deed instruments describing the 3 individual parcels were first recorded in 1938, 1941 and 1952 (335 OR 61 recorded May 12, 1938; 407 OR 433 recorded August 13, 1941; 874 OR 36 recorded July 7, 1952).

(2) The parcel in question complied with the provisions of the Subdivision Map Act at the time of its creation.

No evidence exists that indicates that the parcels in question did not comply with the provisions of the State Map Act at the time they were created.

(3) 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.

At the time of creation, the parcels did not conflict with any applicable ordinance (pre dated zoning).

(4) The parcel in question has not been combined by the owner, and is not subject to merger.

The improvement on the parcel 038-151-85 significantly encroaches over the proposed property line (the encroachment is over 10 feet) and the owner at that time (1981) had full knowledge of the encroachment. In addition, on September 10, 1988, the owner requested one tax number (see previous discussion). Because of the significant encroachment which cannot be resolved through a lot line adjustment, County Code Section 14.01.110 (a) 5, stipulates that these parcels be considered combined by action of owner (Note: A lot line adjustment and a Site Area Variance would be required to address the encroachment.). Further, the owner in 1988 would have had to submit a written request to the County Assessor to combine the two assessors parcel numbers into one such that only one tax bill is received (per Assessor's office staff). Given these facts, the parcel has been combined by action of the owner (see County Code Section 14.01.110 (a) 5 and 14.01.110 (a) 2).

CCC Exhibit 2
(page 319 of 455 pages)

EXHIBIT 1B

Summary Conclusion

Based upon the maps, deeds, evidence submitted and other parcel related files, the parcels do not meet the criteria contained within section 14.01.109 of the County Code and the applicable sections of the State Map Act to be considered as individual parcels.

Recommendation

Therefore, based upon a preponderance of evidence, the following determinations are recommended:

- Assessor's Parcel Number 038-151-05 and 23 were combined into one APN by action of the owner.
- Assessor's Parcel Number 038-151-85 does not constitute two separate legal parcels and does not warrant the recording of either an Unconditional or Conditional Certificates of Compliance.

ACCEPT STAFF RECOMMENDATION ✓

REVERSE STAFF RECOMMENDATION _____

Don Bussey
Don Bussey
Project Manager.

Cathy Graves
Cathy Graves
Principal Planner

Date: 6-12-01

EXHIBITS: 038-151-85

1. Chain of Title for ~~028-304-68 and 69~~ with associated maps
2. Copy of Assessors Maps
3. Copy of the Assessor's Residential Building Record
4. Copy of Building Application 1898 Cover Sheet and Plot Plan
5. Copy of various Building records and inspection cards.

APPEALS

In accordance with Section 18.10.300 et seq of the Santa Cruz County Code, the applicant may appeal an action or decision taken on a Level III project such as this one. Appeals of decisions of the Supervising Planner are made to the Planning Director. All appeals shall be made in writing and shall state the nature of the application, your interest in the matter, and the basis upon which the decision is considered to be in error. Appeals must be made no later than fourteen (14) calendar day following the date of action from which the appeal is being taken and must be accompanied by the appropriate appeal filing fee.

ATTACHMENT 4

EXHIBIT C

CCC Exhibit 7

(page 321 of 455 pages)

EXHIBIT 1B

LAW OFFICES OF
BOSSO, WILLIAMS, SACHS,
ATACK & GALLAGHER
AND
PETER L. SANFORD
AN ASSOCIATION OF PROFESSIONAL CORPORATIONS

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

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) 288-9700
FAX: (408) 288-9403
PLEASE REPLY TO SANTA CRUZ

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

ATTACHMENT 4

June 26, 2001

VIA HAND-DELIVERY

Alvin James, Planning Director
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 Mr. James:

This office represents Tom and Emily Oswalt, owners of APN 38-151-85. The Oswalts appeal the decision denying Application No. 01-0068 for unconditional certificates of compliance. Enclosed is a check in the amount of $195 made payable to the County of Santa Cruz, representing the appeal fee.

The bases of the appeal are as follows:

1. <u>The Combination Ordinance was Not Enacted until 1984 — After the Elevator was Installed</u>.

The County's Combination Ordinance, which provides that contiguous parcels under common ownership shall be deemed combined by action of the owner if certain criteria are met, was first enacted in 1984. A copy of Ordinance No. 3524, adopted on June 19, 1984, is attached hereto as Exhibit A for your reference. The elevator in question (which is located across the common boundary) was installed in 1981 — 3 years before the first parcel combination ordinance was enacted. It would be an unlawful deprivation of property rights for the County to apply the parcel combination ordinance retroactively to improvements that already existed as of the date of enactment of the combination ordinance. Additionally, it would amount to an *ex post facto* law, in violation of the United States Constitution.

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Therefore, the County cannot contend that the parcels have been combined on the basis of the construction of the elevator across the common property line in 1981.

In 1979, the County adopted a parcel merger ordinance. A copy of Ordinance 2672, adopted on May 8, 1979, is attached hereto as Exhibit B for your reference. The parcel merger ordinance provided that contiguous parcels under common ownership shall be merged where a dwelling or commercial structure or portion thereof has been built across the common boundary line, and which has thereafter been taxed as one building site. (Former County Code §13.08.102(b)(5) — Section 11 of Ordinance 2672). Thereafter, as part of Ordinance No. 3524, adopted in 1984, the County provided that "[a]ny parcels or units of land otherwise subject to the merger provisions of Section 14.01.102.2(a) for which a Notice of Merger had not been recorded on or before January 1, 1984, shall be deemed not to have merged if on January 1, 1984:

1. The parcel meets each of the following criteria:
   - (i) Comprises at least 5,000 square feet in area.
   - (ii) Was created in compliance with applicable laws and ordinances in effect at the time of its creation.
   - (iii) Meets current standards for sewage disposal and domestic water supply.
   - (iv) Has no slope stability or other geologic hazards which cannot be mitigated to an acceptable degree for development.
   - (v) Has legal access which is adequate for vehicular and safety equipment access and maneuverability.
   - (vi) The parcel would be consistent with the applicable General Plan and any applicable specific plan, other than minimum lot size or density standards.

"2. And, with respect to such parcel, none of the following conditions exist:

(i) On or before July 1, 1981, one or more of the contiguous parcels or units of land is enforceably restricted open-space . . .

(ii) On July 1, 1981, one or more of the contiguous parcels or units of land is timberland . . .

(iii) On July 1, 1981, one or more of the contiguous parcels or units of land is located within 2,000 feet of the site on which an existing commercial mineral resource extraction use is being made . . .;

(iv) On July 1, 1981, one or more of the contiguous parcels or units of land is located within 2,000 feet of a future commercial mineral extraction site . . .

(v) Within the coastal zone, . . ., one or more of the contiguous parcels or units of land has, prior to July 1, 1981, been identified or designated as being of insufficient size to support residential development . . .

The foregoing ordinance is consistent with the State Subdivision Map Act, which contains very similar provisions. (Gov. C. §66451.30).

In this case, if the parcels were "merged" under Ordinance No. 2672, they were "unmerged" by Ordinance No. 3524. It is undisputed that:

- No notice of merger was recorded prior to January 1, 1984.
- The parcels in question are each over 5,000 square feet.
- The parcels were created in compliance with all applicable laws and ordinances in effect at the time of their creation (which was prior to the enactment of Santa Cruz County zoning laws, and in full compliance with any subdivision laws).
- As of January 1, 1984, the parcels met the applicable standards for sewage disposal and domestic water supply.
- As of January 1, 1984, the parcels had no slope stability or other geologic hazards which could not be mitigated to an acceptable degree for development.
- As of January 1, 1984, the parcels had legal access which is adequate for vehicular and safety equipment access and maneuverability.
- As of January 1, 1984, the parcels would have been consistent with the applicable General Plan and any applicable specific plan, other than minimum lot size or density standards.
- The parcels were not restricted to open-space on or before July 1, 1981.
- The parcels were not timberland as of July 1, 1981.
- The parcels were not within 2,000 feet of an existing commercial mineral resource extraction site as of July 1, 1981.
- The parcels were not within 2,000 feet of a future commercial mineral extraction site as of July 1, 1981.
- The parcels were not identified as being of insufficient size to support residential development in any land use plan prior to July 1, 1981, or in any coastal development permit decision or approved land use plan work program, or approved issue identification.

Based on the foregoing, the parcels were "deemed not to have merged." The parcel combination ordinance enacted in 1984 (and any subsequent ordinance) cannot be applied retroactively to the subject parcels.

II. The Owner Did Not Combine the Parcels after 1984.

The Assessor's Records indicate that on September 10, 1988 the parcels were combined by owner. The County Assessor prepared a letter, which was attached to the supplemental submittal that we made on May 18, 2001, which explains: "Although the written parcel record noted that former parcels 05 and 23 were combined at the owners request in 1988, we have no written record of this request." (A copy of the Assessor's Letter is attached hereto as **Exhibit C** for your reference). Further discussions with the Assessor's Office confirms that the Assessor's Office would have required any such combination to be on a special form and payment of a fee would have also been required. No such form is included in the Assessor's file today. Additionally, the date on which the alleged combination by owner occurred (September 10, 1988) was a Saturday.

The parcel combination ordinance provides that parcels may be combined for subdivision purposes if they have been combined into one assessor's parcel number upon request of the owner unless: 1) 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 2) the Planning Director finds that any financial benefit resulting from the combination was not significant, and the owner pays all assessment district, county service area, and similar charges that would have applied had the parcels not been combined into one assessor's parcel. (County C. §14.01.110(a)(2)). In this case, the owner would have obtained absolutely no significant financial, land use or planning benefit from the combination into one assessor's parcel number. The owner was not seeking a permit at the time of the alleged combination. The reason for this requirement in the Code is to ensure that the owner does not inadvertently combine the parcels for subdivision purposes while intending to simply combine the parcels for purposes of receiving one tax bill. Since the parcels had previously been taxed as one building site, the owner would not have received any significant tax benefit as a result of the combination. The Assessor's Records show that the values for the two parcels were simply added together on the sheet with the new assessor's parcel number.

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The lack of a written record signed by the owner requesting a combination, coupled with the fact that the owner did not receive any significant financial, land use or planning benefit, undermines any contention that the parcels were combined by the owner.

III. In Any Event, the Parcel Combination Ordinance is Preempted by the State Subdivision Map Act.

The State Subdivision Map Act ("SMA") provides that "except as is otherwise provided for in [Article 1.5 of the SMA], two or more contiguous parcels or units of land which have been created under the provisions of this division, or any prior law regulating the division of land, or a local ordinance enacted pursuant thereto, or which were not subject to those provisions at the time of their creation, shall not be deemed merged by virtue of the fact that the contiguous parcels or units are held by the same owner, and no further proceeding under the provisions of this division or a local ordinance enacted pursuant thereto shall be required for the purpose of sale, lease, or financing of the contiguous parcels or units, or any of them." (Gov. C. §66451.10(a)). Article 1.5 of the SMA provides "the sole and exclusive authority for local agency initiated merger of contiguous parcels." (Gov. C. §66451.10(b)).

The SMA authorizes local agencies to adopt ordinances which provide for the merger of contiguous parcels under common ownership where certain requirements are satisfied (pertaining to the developability of the parcels). (Gov. C. §66451.11). The procedure that the local agency must follow to declare a merger is very specific. (See Gov. C. §66451.13 et seq.). If a local agency has not followed that procedure, it cannot require merger of contiguous parcels. (Gov. C. §§66451.11, 66451.13). In Morehart v. County of Santa Barbara (1994) 7 Cal. 4th 725, 758-759, the court held that the SMA's merger provisions impliedly preempt any local zoning ordinance's requirement that parcels not eligible for merger under Government Code Section 66451.11 be nonetheless merged as a condition to issuance of a development permit.

In this case, the County's parcel combination ordinance is impliedly preempted by the SMA's merger provisions because the County ordinance provides that parcels are deemed combined (*i.e.* the same as being deemed merged) if they are held under common ownership and the owner requests one tax bill. The only circumstances under which a local agency can provide that contiguous parcels under common ownership are "deemed combined" or

"subject to merger" are where the parcels meet the criteria set forth in Government Code section 66451.11.

Based on the foregoing, we respectfully submit that the applicants' appeal should be GRANTED, and the requested unconditional certificates of compliance should be ISSUED.

Very truly yours,

Catherine A. Philipovitch

Catherine A. Philipovitch

Enc.
cc: Tom and Emily Oswalt
Don Bussey
Skip Pearson

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EXHIBIT 1B

ORDINANCE NO. 3524

ATTACHMENT 4

ORDINANCE AMENDING THE SANTA CRUZ COUNTY CODE
RELATING TO THE COMBINATION AND MERGER OF PARCELS

The Board of Supervisors of the County of Santa Cruz do ordain as follows:

SECTION I

Section 13.10.510 of the Santa Cruz County Code is hereby amended by adding subsection (h) to read as follows:

(h) Pre-existing Parcels. The use of land permitted for the district in which the land is located shall be permitted on a building site of less area, width, depth, or frontage than that required by the regulations for such district if such land was a separate lot or parcel under separate ownership of record or was shown on a map of a recorded subdivision on the date said district regulation became applicable to said lot or parcel; provided that such land has not been combined or merged with a contiguous lot or parcel pursuant to the provisions of the Santa Cruz County Code now contained in Sections 14.01.102.1 through 14.01.102.4.

SECTION II

Section 13.10.530 of the Santa Cruz County Code is repealed.

SECTION III

Section 14.01.102 of the Santa Cruz County Code is hereby amended to read:

14.01.102 APPLICABILITY.

This chapter shall not apply to:

(a) Exemptions.

1. The financing or leasing of apartments, offices, stores, or similar space within apartment buildings, industrial buildings, commercial buildings, mobile home parks, trailer parks, or recreational vehicle parks;

2. Mineral, oil, gas, or agricultural leases;

3. Land dedicated for cemetery purposes under the Health and Safety Code of the State of California;

4. Financing or leasing of second dwelling units pursuant to the provisions of Section 13.10.681 of the Santa Cruz County Code. This chapter shall apply to the sale or transfer of such second dwelling units.

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(b) Status of Parcels Previously Created. Except as otherwise provided in Sections 14.01.102.1 through 14.01.102.4, two or more contiguous parcels or units of land which have been legally subdivided in any manner shall not merge by virtue of the fact that such contiguous parcels or units are held by the same owner, and no further proceedings under the provisions of the Subdivision Map Act or this chapter shall be required for the purpose of sale, lease, or financing of such contiguous parcels or units or any of the above.

SECTION IV

The Santa Cruz County Code is hereby amended by adding Section 14.01.102.1 to read:

14.01.102.1 COMBINATION OF PARCELS BY ACTIONS OF THE OWNER. Contiguous parcels or units under common ownership shall be deemed combined by the owner thereof under any of the following circumstances:

(a) Lots or parcels which have been included in an owner's affidavit combining the lots or parcels and recorded in the Office of the County Recorder;

(b) Lots or parcels which have been combined into one assessor's parcel number by the Assessor upon the request of the owner;

(c) Lots or parcels which have been required to be combined as a condition of approval of a minor land division, parcel redivision, boundary adjustment, or other discretionary approval, and such approval has been accepted by the owner;

(d) Lots or parcels or portions thereof which have been conveyed as one parcel by metes and bounds description describing the perimeter of such contiguous lots or parcels or portions thereof.

(e) Lots or parcels on which a dwelling or commercial structure or portion thereof has been built across the common boundary line of such lots of parcels except when the encroachment was of such a minor and inadvertent nature that it could be eliminated through a boundary adjustment.

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.

SECTION V

Section 14.01.102.2 of the Santa Cruz County Code is hereby amended to read:

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14.01.102.2 MERGER OF PARCELS PRIOR TO JULY 1, 1984.

(a) Criteria for Merger Prior to July 1, 1984. Except as hereinafter provided in subsection (b) below, contiguous parcels or units which met the following criteria for merger prior to July 1, 1984, shall be deemed to have merged:

1. Any contiguous lots in a pre-1937 substandard subdivision ("paper subdivision") as hereinafter defined, which are held by the same owner on or after April 15, 1977, shall be deemed merged if:

(i) At least one of such lots did not meet the then current minimum parcel size specified by the zoning applicable to the property; and

(ii) At least one of such lots was undeveloped.

2. A pre-1937 substandard subdivision ("paper subdivision") for purposes of this section, means a subdivision which has been determined by resolution of the Board of Supervisors to have all the following characteristics as of January 1, 1977:

(i) The subdivision was created by subdivision map recorded prior to August 27, 1937;

(ii) The subdivision is located outside of the urban service area as delinated on urban service area maps approved by the Board of Supervisors;

(iii) At least 50% of the lots in the subdivision do not meet the current minimum parcel size specified by the zoning applicable to the property;

(iv) At least 50% of the lots in the subdivision are not developed;

(v) At least 50% of the total length of the road rights-of-way in the subdivision are less than 40 feet in width;

(vi) The street system which serves the subdivision lot has not been improved (i.e., with asphalt, concrete, sealcoat or oil and screenings) or is not within the designated rights-of-way; and

(vii) Public utilities have not been developed to serve the entire subdivision.

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(b) Criteria for Non-merger. Any parcels or units of land otherwise subject to the merger provisions of Section 14.01.102.2(a) for which a Notice of Merger had not been recorded on or before January 1, 1984, shall be deemed not to have merged if on January 1, 1984:

1. The parcel meets each of the following criteria:

   (i) Comprises at least 5,000 square feet in area.

   (ii) Was created in compliance with applicable laws and ordinances in effect at the time of its creation.

   (iii) Meets current standards for sewage disposal and domestic water supply.

   (iv) Has no slope stability or other geologic hazards which cannot be mitigated to an acceptable degree for development.

   (v) Has legal access which is adequate for vehicular and safety equipment access and maneuverability.

   (vi) The parcel would be consistent with the applicable General Plan and any applicable specific plan, other than minimum lot size or density standards.

2. And, with respect to such parcel, none of the following conditions exist:

   (i) 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.

   (ii) On July 1, 1981, one or more of the contiguous parcels or units of land is timberland as defined in subdivision (f) of Section 51100, or is land devoted to an agricultural use as defined in subdivision (b) of Section 51201.

   (iii) On July 1, 1981, one or more of the contiguous parcels or units of land is 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 the local agency.

   (iv) On July 1, 1981, one or more of the contiguous parcels or units of land is 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 the local agency.

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(v) 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 has, prior to July 1, 1981, 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 pursuant to the provisions of the California Coastal Act is based.

For purposes of this section, "mineral resource extraction" means gas, oil, hydrocarbon, gravel, or sand extraction, geothermal wells, or other similar commercial mining activity.

(c) Notices of Merger. The Planning Director shall record a Notice of Merger for any parcels merged pursuant to the provisions of this section. At least 30 days prior to recording such a Notice of Merger, the Planning Director shall advise the owner of the affected parcels, in writing, of the intention to record the Notice and specify a time, date, and place at which the owner may present evidence to the Planning Director as to why such notice should not be recorded.

The Planning Director shall cause to be recorded on or before January 1, 1986, a Notice of Merger for any parcel merged pursuant to the provisions of this Section prior to January 1, 1984. After January 1, 1986, no parcel otherwise subject to the merger provisions of this section shall be considered merged unless such Notice of Merger is recorded.

(d) Application by Owner for Hearing on Determination of Status. If a Notice of Merger has not been recorded against affected parcels prior to January 1, 1984, the owner may file an application for a hearing on determination of status. Upon receipt of an application together with the application fee established by resolution, and such other information as the Director may deem necessary to determine the status of the parcels, the Director shall set a hearing and make a determination that the affected parcels have merged or, if meeting the criteria of subsection (b) above for non-merger, are deemed not to have merged. If the Director determines that the parcels meet the standards for non-merger, the Director shall issue to the owner and record with the County Recorder a notice of the status of the parcels which shall identify each parcel and declare that the parcels are unmerged pursuant to this section. If the Director determines that the parcels have merged and do not meet the criteria for non-merger specified in subsection (b) above, the Director shall issue to the owner and record with the County Recorder, a Notice of Merger.

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SECTION VI

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The Santa Cruz County Code is hereby amended by adding Section 14.01.102.3 to read:

14.01.102.3 MERGER OF PARCELS AFTER JULY 1, 1984. On or after July 1, 1984, 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:

(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) With respect to any affected parcel or unit, one or more of the following conditions exists:

(i) Comprises less than 5,000 square feet in area at the time of determination of merger and is located in a substandard subdivision fitting the criteria for a "paper subdivision" set forth in Section 14.01.102.2;

(ii) Was not created in compliance with applicable laws and ordinances in effect at the time of its creation;

(iii) Does not meet current standards for sewage disposal and 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 and water supply in the foreseeable future;

(iv) 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.

(v) It has been determined by the Planning Director to have no legal access which is adequate for vehicular and safety equipment access and maneuverability.

(vi) 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.

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EXHIBIT 1B

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.

(c) The requirements of subsection (b) above shall not apply if one of the following conditions exists:

(i) 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.

(ii) On July 1, 1981, one or more of the contiguous parcels or units of land is timberland as defined in subdivision (f) of Section 51100, or is land devoted to an agricultural use as defined in subsection (b) of Section 51201.

(iii) On July 1, 1981, one or more of the contiguous parcels or units of land is 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 the local agency.

(iv) On July 1, 1981, one or more of the contiguous parcels or units of land is 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 the local agency.

(v) 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 has been identified or designated as being of insufficient size to support residential development and where the identification or designation has either (i) 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 (ii) 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.

For purposes of paragraphs (iii) and (iv) of this subdivision, "mineral resource extraction" means gas, oil, hydrocarbon, gravel or sand extraction, geothermal wells, or other similar commercial mining activity.

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SECTION VII

The Santa Cruz County Code is hereby amended by adding Section 14.01.102.4 to read:

14.01.102.4 PROCEDURE TO DETERMINE STATUS OF PARCELS.

(a) Notice of Intention to Determine Status. Whenever the Director believes that real property is subject to merger pursuant to the provisions of Section 14.01.102.2 or Section 14.01.102.3, the Director shall cause to be mailed by certified mail to the then current record owner of the property a Notice of Intention to Determine Status notifying the owner that the affected parcels may be merged pursuant to standards set forth in Section 14.01.102.2 and Section 14.01.102.3 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 Director shall cause the Notice of Intention to Determine Status to be filed for record with the County Recorder on the date that the notice is mailed to the property owner.

(b) Hearing to Determine Status. Upon receiving a request for hearing on determination of status, the Director shall set a hearing within 30 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.

(c) Determination of Status Without a Hearing. If within the 30 day period provided, the owner does not file a request for a hearing in accordance with subsection (b) 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.

(d) Release of Notice of Intention to Determine Status. If in accordance with subsection (b) or (c) 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 of Intention to Determine Status, and shall mail a clearance letter to the then current owner of the property.

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SECTION VIII

This ordinance shall take effect 30 days after final passage.

PASSED AND ADOPTED this 19th day of June, 1984, by the Board of Supervisors of the County of Santa Cruz by the following vote:

AYES: SUPERVISORS Forbus, Patton, Moore, Cucchiara, Levy

NOES: SUPERVISORS None

ABSENT: SUPERVISORS None

Robley Levy
Chairman of the Board of Supervisors

ATTEST: Stephen M. Jung
Clerk of said Board

APPROVED AS TO FORM:
Dwight L. Herr
DWIGHT L. HERR
County Counsel

DISTRIBUTION: Planning
County Counsel

cf

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ATTACHMENT 4

ORDINANCE NO. 2672

AN ORDINANCE AMENDING SECTIONS 13.04.212 and 13.08.102 OF THE SANTA CRUZ COUNTY CODE

The Board of Supervisors of the County of Santa Cruz do ordain as follows:

SECTION I

Subsection (a) of Section 13.04.212 of the Santa Cruz County Code is hereby amended to read:

(a) A use of land permitted for the district in which the land is located shall be permitted on a building site of less area, width, depth, or frontage than that required by the regulations for such district if such land was a separate lot or parcel under separate ownership of record or was shown on a map of a recorded subdivision on the date said district regulations became applicable to said lot or parcel; provided, however, that the following contiguous lots and parcels shall not be exempt under this section from such current zoning regulations and shall be deemed to be merged for purposes of this Chapter:

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

2. Lots or parcels which have been combined into one Assessor's Parcel Number by the Assessor upon the request of the owner.

3. Lots or parcels which have been required to be combined as a condition of approval of a minor land division, partial redivision, boundary adjustment or other discretionary permit;

4. Lots or parcels or portions thereof which have been conveyed as one parcel by a metes and bounds description describing the perimeter of such contiguous lots or parcels or portions thereof, and which has thereafter been taxed as one building site;

5. Lots or parcels on which a dwelling or commercial structure or portion thereof has been built by the owner of such lots or parcels across the common boundary line of those lots or parcels, and which has thereafter been taxed as one building site;

6. Any contiguous lots or parcels created by a parcel map or subdivision map recorded on or after January 1, 1977, which are held by the same owner at any time after one year following the date that the parcel map or subdivision map was recorded shall be deemed merged if:

(i) At least one of such parcels or lots does not meet the current minimum parcel size specified by the zoning applicable to the property; and

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(ii) At least one of such parcels or lots is undeveloped.

7. Any contiguous lots in a pre-1937 substandard subdivision ("paper subdivision") which are held by the same owner on or after April 15, 1977, shall be deemed merged if:

(i) At least one of such lots does not meet the current minimum parcel size specified by the zoning applicable to the property; and

(ii) At least one of such lots is undeveloped.

8. A pre-1937 substandard subdivision ("paper subdivision") for purposes of this section means a subdivision which has been determined by Resolution of the Board of Supervisors to have all the following characteristics as of January 1, 1977.

(i) The subdivision was created by a Subdivision Map recorded prior to August 27, 1937;

(ii) The subdivision is located outside of the urban service area as delineated on urban service area maps approved by the Board of Supervisors;

(iii) At least 50% of the lots in the subdivision do not meet the current minimum parcel size specified by the zoning applicable to the property;

(iv) At least 50% of the lots in the subdivision are not developed;

(v) At least 50% of the total length of the road rights-of-way in the subdivision are less than 40 feet in width;

(vi) The street system to serve the subdivision lots has not been improved (i.e. with asphalt, concrete, seal coat, or oil and screenings) or is not within the designated rights-of-way; and

(vii) Public utilities have not been developed to serve the entire subdivision.

SECTION II

Subsection (b) of Section 13.08.102 of the Santa Cruz County Code is hereby amended to read:

(b) Notwithstanding the definition of "Subdivision" contained in this Chapter, two or more contiguous parcels or units of land which have been legally subdivided in any manner shall not merge by virtue of the fact that such contiguous parcels or units are held by the same owner, and no further proceedings under the provisions of the Subdivision Map Act or this Chapter shall be required for the purpose of sale, lease, or financing of such contiguous parcels or units or any of them; except that the following contiguous parcels or units shall be merged:

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

2. Lots or parcels which have been combined into one Assessor's Parcel Number by the Assessor upon the request of the owner;

3. Lots or parcels which have been required to be combined as a condition of approval of a minor land division, partial redivision, boundary adjustment or other discretionary permit;

4. Lots or parcels or portions thereof which have been conveyed as one parcel by a metes and bounds description describing the perimeter of such contiguous lots or parcels or portions thereof, and which has thereafter been taxed as one building site;

5. Lots or parcels on which a dwelling or commercial structure or portion thereof has been built across the common boundary line of such lots or parcels, and which has thereafter been taxed as one building site.

6. Any contiguous lots or parcels created by a parcel map or subdivision map recorded on or after January 1, 1977, which are held by the same owner at any time after one year following the date that the parcel map or subdivision map was recorded shall be deemed merged if:

(i) At least one of such parcels or lots does not meet the current minimum parcel size specified by the zoning applicable to the property; and

(ii) At least one of such parcels or lots is undeveloped.

7. Any contiguous lots in a pre-1937 substandard subdivision ("paper subdivision"), as determined by the Board of Supervisors pursuant to Section 13.04.212(a)(1) of the Santa Cruz County Code, which are held by the same owner on or after April 15, 1977, shall be deemed merged if:

(i) At least one of such lots does not meet the current minimum parcel size specified by the zoning applicable to the property; and

(ii) At least one of such lots is undeveloped.

SECTION III

This ordinance shall take effect 30 days after the date of adoption. The Board of Supervisors hereby declares that the amendments made by this ordinance are declaratory of existing law rather than a change in the law.

ATTACHMENT 4

PASSED AND ADOPTED this 8th day of May, 1979, by the following vote:

AYES: SUPERVISORS LIDDICOAT, LIBERTY, MATTHEWS, PATTON, FORBUS
NOES: SUPERVISORS NONE
ABSENT: SUPERVISORS NONE

D. DAN FORBUS, Chairman
Board of Supervisors

ATTEST:
Clerk of the Board

Approved as to form:

DWIGHT L. HERR
Chief Deputy County Counsel

DLH/lac

DISTRIBUTION:

Community Resources Agency
County Counsel
Assessor

EXHIBIT B

CCC Exhibit 7
(page 340 of 455 pages)

EXHIBIT 1

ATTACHMENT 4

COUNTY OF SANTA CRUZ

ROBERT C. PETERSEN, ASSESSOR
701 OCEAN STREET
SANTA CRUZ, CA 95060
(831) 454-2002 FAX: (831) 454-2495

March 14, 2001

Santa Cruz County Planning Department
701 Ocean St., 4th Floor
Santa Cruz, CA. 95060

RE: Application No. 01-0068
APN: 38-151-85
Lands of Oswalt

Attn: Don Bussey

Dear Don:

Cathy Philipovitch, attorney for Suzanne Yost, provided me your February 15, 2001 letter to Ms. Yost regarding this parcel.

In the letter you asked two questions pertinent to the Assessor's Office. The answer to both question 1 and 5 follows:

Although the written parcel record noted that former parcels 05 and 23 were combined at the owners request in 1988, we have no written record of this request.

Very truly yours,

ROBERT C. PETERSEN

ASSESSOR

EXCELLENCE INTEGRITY SERVICE

EXHIBIT C

CCC Exhibit 7
(page 341 of 455 pages)

ATTACHMENT 4

CCC Exhibit 7
(page 342 of 455 pages) EXHIBIT D

EXHIBIT 1B

ATTACHMENT 4

PLANNING DEPARTMENT

GOVERNMENTAL CENTER 701 OCEAN

COUNTY OF SANTA CRUZ

STREET - SANTA CRUZ, CALIFORNIA 95060
FAX (831) 454-2131 TDD (831) 454-2123 PHONE (831) 454-2580

Zoning Administrator
County of Santa Cruz

July 3, 2001

Subject: Level III Appeal of Application No. 01-0068
APN: 038-151-85
Lands of Oswalt

Proposal and Property Location

The applicant applied for a lot legality determination regarding the legality of 2 parcels known as portions of Assessor's Parcel Number 038-151-85. This required a lot legality determination / Certificate of Compliance. The matter before you is the appeal of the determination that the parcels in question do not constitute separate legal parcels for land use and planning purposes (Attachment 1).

The Property is located on the south side of Oak Hill Road (749 Oak Hill) about 300 feet west of Seacliff Drive, Seacliff.

Appeal Issues

Staff has separated the appeal letter into two sections. The following address issues raised within the letter of Appeal dated June 26, 2001 (Attachment 2).

A Combination by Action of Owner Ordinance was not in effect in 1981

The appellant states that the County's Combination Ordinance (County Code Section 14.01.102.1) "was first enacted in 1984", and therefore, this standard cannot be applied. In fact, the County Code contained wording regarding the combination or merging of property since 1978 with the adoption of Ordinance #2402 which amended section 13.04.212 (a Section of the Zoning Ordinance) of the County Code. That section was further amended in 1979 with the adoption of Ordinance #2672 which was the operational ordinance in effect on the day the building permit was applied for and when it was issued (Attachment 3). Specifically contained within that ordinance was the statement that parcels "*shall be deemed merged for the purposes of this Chapter:*" when

> "5. *Lots or parcels on which a dwelling or commercial structure or portion thereof has been built by the owner of such lots or parcels across the common boundary line of those lots or parcels, and which has thereafter been taxed as one building site;*"

From the record, it is clear that Mr. Grover (the owner of record in 1981) had full knowledge of the location of the lot lines. Further, Mr. Grover signed the "Owner Builder Verification" form which was attached to the building plans which clearly shows a significant encroachment over the lot line of over 9 feet (Attachment 4; also see survey map).

CCC Exhibit 7
(page 343 of 455 pages)

In summary, a version of the Combination by Action of Owner ordinance was in effect at the time the owner (Sherwood and Kathy Grover) applied for Building Permit #1898 in June of 1981.

The Owner did not combine the parcels after 1984

The appellant alleges that the owner did not combine the parcels after 1984. The Assessor's Office Residential Building Record for this site clearly notes "comb 38-151-05 & 23 by owner - 9-10-88" (Attachment 5). Further, Assessor's Staff have indicated that a written request would have been required from the owner prior to any combination and that they do not retain these written requests.

County Code Section 14.01.110 9 (a) 2 states that the parcels shall be considered combined when "*Parcels which have been combined into one assessor's parcel number by the Assessor upon the request of the owner...*". No evidence has been submitted by the applicant to address sections 14.01.110 (a) 2 (a) or (b).

Staff concluded based upon a preponderance of the evidence that the properties were combined into one tax number upon the request of the owner.

Analysis and Discussion

Assessor's Parcel Numbers 038-151-85 was evaluated as to whether portions of that parcel were presumed to be lawfully created pursuant to Government Code Section 66412.6 and entitled to a Certificate of Compliance pursuant to Government Code Section 66499.35 and Santa Cruz County Code Section 14.01.109 and 110.

The real property in question does not comply with the provisions of the Subdivision Map Act and County Ordinances enacted pursuant thereto for the issuance of an Unconditional Certificate of Compliance in that:

(1) The subject properties were conveyed by a separate document as a separate parcel on or before January 21, 1972; and

(2) The parcels in question did comply with the provisions of the Subdivision Map Act at the time of creation; and

(3) At the time the deed creating the subject parcels was signed, the subject parcel did comply with the applicable County ordinances then in effect, including (without limitation) the parcel size required by the then applicable zone district.

4) The parcel in question was combined by the owner, and is not subject to merger.

Based upon a preponderance of the evidence submitted, the parcels do not meet the criteria contained within section 14.01.109 of the County Code and the applicable sections of the State Map Act to be considered as individual parcels.

Therefore, Assessor's Parcel Number 038-151-85 constitutes only one legal parcel and does not warrant the recording of an Unconditional Certificate of Compliance.

Recommendation

Denial of the Appeal and upholding the Zoning Administrators decision that:

1. Assessor's Parcel Numbers 038-151-85 constitutes only legal parcel for land use and planning purposes.

Prepared By: Don Bussey
Don Bussey, Project Manager

Date: July 3, 2001

CCC Exhibit 7
(page 344 of 455 pages)

EXHIBIT 1

ATTACHMENT 4

Attachments

1. Staff Report and Action dated June 12, 2001
2. Letter of Appeal dated June 26, 2001
3. Excerpts from the 1981 Zoning Ordinance.
4. Building Permit Application #1898 and Building Permit #0058Q
5. Copy of a portion of the Residential Building Record for this Parcel Number 038-151-85
6. Chain of Title (on file with the Planning Department)
7. Survey Map of Property (on file with the Planning Department)
8. Assessor's Map
9. Copy of Application 98-0702

CCC Exhibit 7
(page 345 of 485 pages)

EXHIBIT 1B

ATTACHMENT 4

CCC Exhibit 7
(page 340 of 455 pages) EXHIBIT E

EXHIBIT 1D

ATTACHMENT 4

COUNTY OF SANTA CRUZ

INTER-OFFICE CORRESPONDENCE

DATE: June 9, 2003

TO: Don Bussey

FROM: Glenda Hill, AICP gh

SUBJECT: Clarification of Statement in Appeal Determination Letter
01-0068 APN 38-151-85

This memo is to clarify the wording of two sentences in the Appeal Determination letter for 01-0068, dated August 27, 2002, to wit:

> *You have indicated that the property owners are willing to correct the encroachment either through demolition or a lot line adjustment. I agree that one of the solutions is necessary.*

The word "necessary" should not be construed as a condition of the appeal determination, as this is an Unconditional Certificate of Compliance. It is, rather, my opinion and suggestion.

Please record the Unconditional Certificates of Compliance for APN 38-151-85, as approved under Permit No. 01-0068

1

CCC Exhibit 7
(page 349 of 455 pages)

ATTACHMENT 4

CCC Exhibit 7
(page 348 of 455 pages)

EXHIBIT E

EXHIBIT 11

ATTACHMENT 4

COUNTY OF SANTA CRUZ

PLANNING DEPARTMENT
701 OCEAN STREET, SUITE 310, SANTA CRUZ, CA 95060
(831) 454-2580 FAX: (831) 454-2131 TDD: (831) 454-2123
ALVIN JAMES, DIRECTOR

August 27, 2002

Catherine A. Philipovitch
Bosso, Williams, Sachs, Atack & Gallagher
and Peter L. Sanford
P.O. Box 1822
Santa Cruz, CA 95061-1822

SUBJECT: DETERMINATION ON APPEAL OF UNCONDITIONAL CERTIFICATE OF COMPLIANCE APPLICATION NO. 01-0068, APN 38-151-85

Dear Ms. Philipovitch:

This letter serves as the decision on the administrative appeal of the determination that the above property does not qualify for unconditional certificates of compliance due to combination of the parcels by action of the owners. The Planning Director, Alvin James, has authorized me to make the determination of the merits of the appeal.

The unconditional certificate of compliance was not approved administratively because it appeared that the alleged parcels had been combined by action of the owners. This conclusion was based on a notation on the Assessor's records for the parcel noting the date of combination and the plot plan of an issued building permit submitted by the owners showing the parcels as one lot with proposed improvements located over the shared property line.

The appeal letter you submitted stated the bases of the appeal to be that the combination ordinance was not enacted until after the encroaching improvement was installed, the owners did not combine the parcels, and that the County's Combination Ordinance is preempted by the State Subdivision Map Act.

After reviewing the application file, the letter of appeal, and consulting with County Counsel, I am granting your appeal and, thereby, directing that unconditional certificates of compliance be prepared and recorded to recognize two parcels. I am basing my decision on the following conclusions:

1. The building permit showing the parcel(s) as one parcel and allowing the encroachment was approved in 1981. The Planning Department should have required the combination of the parcels at that time; however, I found no evidence of the requirement;
2. The alleged combination noted in the Assessor's records occurred on a Saturday. While County staff do work weekends occasionally, the notation was irregular;

CCC Exhibit 7
(page 349 of 455 pages)

EXHIBIT 1E

3. No written record of the combination request is on file with the Assessor. While the owners may have, indeed, requested the combination, the existing proof of this action is not compelling;
4. Even if the owners did request the combination of the parcels, County Code Section 14.01.110(a)2 states that the parcels shall not be deemed combined if "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". My research found no financial, land use or planning benefit would have been derived by combining the parcels in 1988, in that no planning or building applications were submitted at that time nor were there property transfers;
5. Even though there is an existing encroachment over the property line, I have determined that it is "of such a minor and inadvertent nature that it could be eliminated through a boundary adjustment" (Section 14.01.110(a)5.)

I do have a concern about the existing encroachment. You have indicated that the property owners are willing to correct the encroachment either through demolition or a lot line adjustment. I agree that one of these solutions is necessary.

I will direct Don Bussey, the staff planner, to prepare and record the unconditional certificates of compliance. If you have any questions about my decision, please feel free to contact me at 454-3216.

Sincerely,

Glenda Hill

Glenda Hill, AICP
Principal Planner
Development Review

Cc: Tom and Emily Oswalt
01-0068 File

CCC Exhibit 7
(page 350 of 455 pages)

ATTACHMENT 4

CCC Exhibit 7
(page 351 of 455 pages) EXHIBIT G

EXHIBIT 1R

17-Jul 2003 2003-0058477

Has not been compared with original

SANTA CRUZ COUNTY RECORDER

WHEN RECORDED RETURN TO:
Santa Cruz County Planning Department
701 Ocean Street
Santa Cruz, CA 95060
Attn: Don Bussey
#01-0068
APN: 038-151-85 (a)

ATTACHMENT 4

UNCONDITIONAL CERTIFICATE OF COMPLIANCE

WHEREAS, Emily Oswalt and Tom F. Oswalt, as Trustees of the Oswalt Trust dated May 25, 1999 are the property owners or vendee of such owners of certain real property located in the County of Santa Cruz, State of California, known as a portion of Santa Cruz County Assessor's Parcel Number 038-151-85, and more particularly described in Exhibit "A" attached hereto and incorporated herein by reference; and

WHEREAS, pursuant to an application for Parcel Legality Status Determination, the County of Santa Cruz has determined that such real property is determined to be a legal parcel;

NOW, THEREFORE an Unconditional Certificate of Compliance is hereby issued for the above-described parcel.

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

THIS CERTIFICATE OF PARCEL COMPLIANCE RELATES ONLY TO ISSUES OF COMPLIANCE OR NONCOMPLIANCE WITH THE SUBDIVISION MAP ACT AND LOCAL ORDINANCES ENACTED PURSUANT THERETO. THE PARCEL DESCRIBED HEREIN MAY BE SOLD, LEASED OR FINANCED WITHOUT FURTHER COMPLIANCE WITH THE SUBDIVISION MAP ACT OR ANY LOCAL ORDINANCE ENACTED PURSUANT THERETO. DEVELOPMENT OF THE PARCEL MAY REQUIRE ISSUANCE OF A PERMIT OR PERMITS, OR OTHER GRANT OR GRANTS OF APPROVAL.

DATED 6/10/03
COUNTY OF SANTA CRUZ

By: Glenda Hill
Glenda Hill
PRINCIPAL PLANNER

STATE OF CALIFORNIA
COUNTY OF SANTA CRUZ

On 6/11/03 before me Bernice Romero, Notary Public, personally appeared Glenda Hill personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the person or the entity upon behalf of which the person acted executed the instrument.
Witness my hand and official seal
Signature Bernice Romero

BERNICE ROMERO
Commission # 1229825
Notary Public - California
Santa Cruz County
My Comm. Expires Aug 20, 2003

CCC Exhibit 7
(page 352 of 455 pages)

EXHIBIT A

ATTACHMENT 4

SITUATE IN THE COUNTY OF SANTA CRUZ, STATE OF CALIFORNIA AND DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE EASTERLY BOUNDARY LINE OF LANDS CONVEYED BY SANTA CRUZ LAND TITLE COMPANY TO C. E. MCFADDEN ET UX BY DEED RECORDED JANUARY 6, 1930 IN VOLUME 164, PAGE 281, OFFICIAL RECORDS OF SANTA CRUZ COUNTY, AT THE POINT OF INTERSECTION WITH THE SOUTHERLY LINE OF A 24.00 FOOT ROAD AS RESERVED IN DEED, SANTA CRUZ LAND TITLE COMPANY, GRANTOR TO MONTEREY BAY FINANCE CO., GRANTEE, DATED DECEMBER 31, 1929 AND RECORDED JANUARY 6, 1930 IN VOLUME 164, PAGE 279, OFFICIAL RECORDS OF SANTA CRUZ COUNTY; RUNNING THENCE SOUTH 18° 39' WEST 173.31 FEET TO THE SOUTHEASTERLY CORNER OF SAID LANDS OF MCFADDEN; THENCE EASTERLY ALONG THE NORTHERLY LINE OF BEACH LAND OF SANTA CRUZ LAND TITLE COMPANY, SOUTH 73° 24' EAST 50.03 FEET TO THE SOUTHWESTERLY CORNER OF LAND OF JACOB HARDER, JR. ET UX; THENCE NORTH 18° 39' EAST ALONG THE WESTERLY LINE OF SAID LAND OF HARDER 165.68 FEET TO THE SOUTHERLY LINE OF SAID 24.00 FOOT ROAD; THENCE WESTERLY ALONG SAID LAST MENTIONED LINE 50.63 FEET TO THE POINT OF BEGINNING.

BEGINNING AT THE SOUTHEASTERN CORNER OF LANDS CONVEYED BY MONTEREY BAY FINANCE CO., A CORPORATION, ET AL TO MARJORIE T. SHERMAN BY DEED DATED APRIL 6, 1938 AND RECORDED MAY 2, 1938 IN VOLUME 353, PAGE 61, OFFICIAL RECORDS OF SANTA CRUZ COUNTY; THENCE SOUTH 73° 24' EAST 25.015 FEET TO A STATION; THENCE NORTH 18° 39' EAST 167.00 FEET, MORE OR LESS, TO THE SOUTHERN BOUNDARY OF A 24.00 FOOT ROAD AS RESERVED IN THE DEED, SANTA CRUZ LAND TITLE COMPANY, GRANTOR TO MONTEREY BAY FINANCE CO., GRANTEE, DATED DECEMBER 31, 1929 AND RECORDED JANUARY 6, 1930 IN VOLUME 164, PAGE 279, OFFICIAL RECORDS OF SANTA CRUZ COUNTY; THENCE WESTERLY ALONG THE SOUTHERN LINE OF SAID ROAD 26.32 FEET, MORE OR LESS, TO THE NORTHEASTERN CORNER OF THE FIRST MENTIONED LANDS AS CONVEYED TO MARJORIE T. SHERMAN; THENCE ALONG THE EASTERN BOUNDARY OF LANDS OF SAID MARJORIE T. SHERMAN SOUTH 18° 39' WEST 165.68 FEET TO THE PLACE OF BEGINNING.

A portion of APN 038-151-85

CCC Exhibit 7
(page 357 of 455 pages)

ATTACHMENT 4

CCC Exhibit 7 EXHIBIT H
(page 354 of 455 pages)

EXHIBIT 1b

ATTACHMENT 4

17-Jur 06 2003-0058476

Has not been compared with original

SANTA CRUZ COUNTY RECORDER

WHEN RECORDED RETURN TO:
ta Cruz County Planning Department
701 Ocean Street
Santa Cruz, CA 95060
Attn: Don Bussey
#01-0068
APN: 038-151-85 (b)

UNCONDITIONAL CERTIFICATE OF COMPLIANCE

WHEREAS, Emily Oswalt and Tom F. Oswalt, as Trustees of the Oswalt Trust dated May 25, 1999 are the property owners or vendee of such owners of certain real property located in the County of Santa Cruz, State of California, known as a portion of Santa Cruz County Assessor's Parcel Number 038-151-85, and more particularly described in Exhibit "A" attached hereto and incorporated herein by reference; and

WHEREAS, pursuant to an application for Parcel Legality Status Determination, the County of Santa Cruz has determined that such real property is determined to be a legal parcel;

NOW, THEREFORE an Unconditional Certificate of Compliance is hereby issued for the above-described parcel.

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

THIS CERTIFICATE OF PARCEL COMPLIANCE RELATES ONLY TO ISSUES OF COMPLIANCE OR NONCOMPLIANCE WITH THE SUBDIVISION MAP ACT AND LOCAL ORDINANCES ENACTED URSUANT THERETO. THE PARCEL DESCRIBED HEREIN MAY BE SOLD, LEASED OR FINANCED WITHOUT FURTHER COMPLIANCE WITH THE SUBDIVISION MAP ACT OR ANY LOCAL ORDINANCE ENACTED PURSUANT THERETO. DEVELOPMENT OF THE PARCEL MAY REQUIRE ISSUANCE OF A PERMIT OR PERMITS, OR OTHER GRANT OR GRANTS OF APPROVAL.

DATED 6/10/03
COUNTY OF SANTA CRUZ

By: Glenda Hill
Glenda Hill
PRINCIPAL PLANNER

STATE OF CALIFORNIA
COUNTY OF SANTA CRUZ

On 6/11/03 before me Bernice Romero, Notary Public, personally appeared Glenda Hill personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the person or the entity upon behalf of which the person acted executed the instrument.
Witness my hand and official seal
Signature Bernice Romero

BERNICE ROMERO
Commission # 1229823
Notary Public - California
Santa Cruz County
My Comm. Expires Aug 20, 2003

CCC Exhibit 7
(page 355 of 455 pages)

ATTACHMENT 4

EXHIBIT A

SITUATE IN THE COUNTY OF SANTA CRUZ, STATE OF CALIFORNIA AND DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEASTERN CORNER OF LAND CONVEYED TO, C. E. MCFADDDEN ET UX BY DEED RECORDED IN VOLUME 164 AT PAGE 281, OFFICIAL RECORDS OF SANTA CRUZ COUNTY; THENCE FROM SAID POINT OF BEGINNING ALONG THE EASTERN BOUNDARY OF SAID LANDS NORTH 19° 39' EAST 173.31 FEET, MORE OR LESS, TO A 1/2" IRON PIPE ON THE SOUTHERN BOUNDARY OF A 24 FOOT RIGHT OF WAY AT THE NORTHWESTERN CORNER OF LAND CONVEYED TO SHERWOOD B. GROVER BY DEED RECORDED IN VOLUME 489 AT PAGE 377, OFFICIAL RECORDS OF SANTA CRUZ COUNTY; THENCE LEAVING SAID BOUNDARY NORTH 65° 07' WEST 50.3 FEET TO A 1-1/2" IRON PIPE; THENCE PARALLEL WITH THE EASTERN BOUNDARY OF SAID LAND OF MCFADDEN SOUTH 18° 39' WEST 177 FEET, MORE OR LESS, TO THE SOUTHERN BOUNDARY OF SAID LAND; THENCE ALONG THE SOUTHERN BOUNDARY OF SAID LANDS SOUTH 73° 24' EAST 50.01 FEET TO THE POINT OF BEGINNING.

A portion of APN 038-151-85

CCC Exhibit 7
(page 356 of 455 pages)

ATTACHMENT 4

CCC Exhibit 7 EXHIBIT I
(page 357 of 455 pages)

EXHIBIT

ATTACHMENT 4

Jonathan Wittwer
William P. Parkin
Jennifer M. Brager
Ryan D. Moroney

WITTWER & PARKIN, LLP
147 SOUTH RIVER STREET, SUITE 221
SANTA CRUZ, CALIFORNIA 95060
TELEPHONE (831) 429-4055
FACSIMILE (831) 429-4057
E-MAIL: office@wittwerparkin.com

OF COUNSEL
Gary A. Patton

March 10, 2009

HAND DELIVERED

Mr. Tom Burns, Planning Director
Santa Cruz County Planning Department
701 Ocean Street, Room 400
Santa Cruz, CA 95060

RE: Request for Proper Processing of Certificate of Compliance Under Coastal Act Unconditional Certificate of Compliance for APN 038-151-85, 89; 749 Oakhill

Dear Mr. Burns:

This office represents Patrick and Laura Murphy, property owners on Oak Hill Road in the Seacliff area. We recently wrote to the Zoning Administrator on behalf of the Murphys, urging denial of Application 07-0548. That application sought various approvals for a single-family home for Assessor's Parcel 038-151-89.

In 2003, the County administratively deemed Assessor's Parcel 038-151-89 to be a separate parcel from Assessor's Parcel 038-151-85. This was done through the issuance of an Unconditional Certificate of Compliance without any public notice or hearing.[1] During the Zoning Administrator hearing on Application 07-0548, which was held on January 16, 2009, there was some discussion about the legal status of Assessor's Parcel 038-151-89. We have now been able to fully investigate this matter, stimulated in part by a brief discussion of parcel legality that took place at the Zoning Administrator's hearing, and we have concluded that Assessor's Parcel 038-151-85 has not, in fact, achieved legal status despite the fact that the County has issued an Unconditional Certificate of Compliance for the parcel.

The Certificate of Compliance was issued even though there were/are physical encroachments of the house, driveway, deck, elevator and carport that are associated with and inextricably linked to APN 038-151-85. The two parcels were and are not separate legal parcels. It is also interesting to note that the County issued a demolition permit to allow improvements to be removed from the newly created parcel. These were significant improvements even though

[1] It should be noted that the 038-151-89 is a new Assessor's Parcel Number created after the County issued an Unconditional Certificate of Compliance.

CCC Exhibit 7
(page 358 of 455 pages)

EXHIBIT B

when issuing the Certificate of Compliance the Planning Department stated that the encroachments were of a "minor and inadvertent nature... ." This process has been highly suspect and was clearly intended to circumvent the vigorous requirements of the Coastal Act, public notice and hearing, and appellate rights to the Coastal Commission. It should be noted that for separate reasons, the Zoning Administrator did, in fact, deny Application 07-0548, as recommended by planning staff, and as we had requested. However, the legal status of the parcel will continue to be an issue because the applicant will likely resubmit plans for a home on the site.

Assessor's Parcel 038-151-89 is not a separate legal parcel because recognizing the parcel as a separate parcel would have required the issuance of a Coastal Development Permit (CDP), and then the filing with the Coastal Commission of a Final Local Action Notice (FLAN), enabling an appeal of County's action to the Coastal Commission. It should also be noted that the request for an Unconditional Certificate of Compliance was first denied by the Planning Department, but was reversed by an administrative appeal. The Coastal Commission staff should have been informed of the County's creation of this new lot. Moreover, an action is not final for purposes of the Coastal Act until a FLAN is filed, and the time for an appeal has run. Public Resources Code § 30603(d); 14 CCR § 13571. Issuance of a Certificate of Compliance is not, in and of itself, enough to establish the legality of the parcel for a piece of property within the Coastal Zone.

Because no CDP was ever processed, and because no FLAN ever filed with the Coastal Commission, the legality of Assessor's Parcel 038-151-89 has not been properly established. The purpose of this letter is to raise this issue with the County, and to request, on behalf of the Murphys, that the proposed Unconditional Certificate of Compliance be promptly and properly processed under the Coastal Act. The following are some of the reasons that support our conclusion that the 2003 Unconditional Certificate of Compliance failed to establish that Assessor's Parcel 038-151-89 is a separate, legal parcel.

1. The issuance of a Certificate of Compliance for Assessor's Parcel 038-151-89 qualifies as "development" under the definition of development contained in the Coastal Act (PRC § 30106), and there is no exclusion from the resulting requirement for a CDP. Specifically, "development" means any "change in the density or intensity of use of land, including, but not limited to, subdivision . . . , and any other division of land, including lot splits . . ." The County cannot circumvent this requirement for a CDP by issuing an Unconditional Certificate of Compliance. Otherwise, the County could thwart the requirements of the Coastal Act with impunity. This is particularly true where there is no public notice or hearing of the County's action creating the new parcel.

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(page 359 of 455 pages)

EXHIBIT 1

2. The Legislature's stated intent was to grant the Coastal Commission permit jurisdiction with respect to any changes in the density or intensity of use of land, including any division of land. Section 30106 by its terms recognizes that a subdivision of land or a lot split can result in changes in the density or intensity of use of property, and a Certificate of Compliance can, as here, have the same effect. *La Fe v. County of L.A.*, 73 Cal. App. 4th 231, 242 (Cal. Ct. App. 1999). That is because the Certificate of Compliance statute (Govt. C. § 66499.35) provides that on request of a property owner, a city or county must determine whether the property complies with the Subdivision Map Act or ordinances enacted pursuant to the act. If it does not comply, the city or county may record either a certificate of compliance or a conditional certificate of compliance. *Morehart v. County of Santa Barbara*, 7 Cal. 4th 725, 734 (Cal. 1994). Both the statute and the courts make clear that the facts must be liberally construed to support the Commission's jurisdiction (PRC § 30009; *California Coastal Com. v. Quanta Investment Corp.* 113 Cal. App. 3d at p. 609 (conversion of existing apartment units into a stock cooperative form of ownership was a "division of land" and hence "development").

3. Because the Unconditional Certificate of Compliance issued by the County in 2003 was a "development" approval, a CDP was necessary. Such a permit was never applied for or issued. Hence, the County has not properly processed the application for issuance of a Certificate of Compliance, the issuance of which requires a CDP and is appealable to the Coastal Commission. Because of this procedural failure, the parcel is not, currently, a separate legal parcel capable of development.

Since it is our conclusion that Assessor's Parcel 038-151-89 is not a separate, legal parcel from 038-151-85 capable of development, we request that the County promptly inform the property owner of that fact, and request that the owner apply for a CDP for the parcel. If the County disagrees with our analysis, as outlined in this letter, and believes that Assessor's Parcel 038-151-89 is a separate, legal parcel, then I hereby request you to notify the Coastal Commission by telephone of the dispute/question and request an Executive Director's opinion.

Title 14 of the California Code of Regulations § 13569 governs "Determination of Applicable Notice and Hearing Procedures" with respect to the California Coastal Act. That section provides as follows:

"The determination of whether a development is categorically excluded, non-appealable or appealable for purposes of notice, hearing and appeals procedures shall be made by the local government at the time the application for development within the coastal zone is submitted. This determination shall be made with reference to the certified Local Coastal

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Program, including any maps, categorical exclusions, land use designations and zoning ordinances which are adopted as part of the Local 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:

(a) The local government shall make its determination as to what type of development is being proposed (i.e. categorically excluded, appealable, non-appealable) and shall inform the applicant of the notice and hearing requirements for 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.

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

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

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

Again, this letter is our request, on behalf of the Murphys, that you promptly notify the current property owner that the creation of Assessor's Parcel 038-151-89 requires a CDP; or, in the alternative, that you inform the Executive Director of the Coastal Commission by telephone of this dispute/question and request an Executive Director's opinion, as required by the Coastal Act. I also respectfully request that you notify this office of your intent with regards to this issue. If I do not hear from you by close of business on Monday, March 16, 2009, as to whether you have informed or will inform the property owner that the parcel requires a CDP, or whether you have sought or will seek a determination of the Executive Director of the Coastal Commission, then I will assume you have no intention of doing so and will advise my clients accordingly.

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Thank you for your attention to this matter. If you have any questions, please feel free to contact me.

Very truly yours,
WITTWER & PARKIN, LLP

William P. Parkin

cc: Don Bussey, Zoning Administrator
Dan Carl, California Coastal Commission
Clients

ATTACHMENT 4

EXHIBIT J

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(page 363 of 455 pages)

EXHIBIT 1

ATTACHMENT 4

✓ JW __ BP __ JB ✓ RM ✓ G.P RECEIVED MAR 2 7 2009

COUNTY OF SANTA CRUZ

PLANNING DEPARTMENT

701 OCEAN STREET, SUITE 400, SANTA CRUZ, CA 95060
(831) 454-2580 FAX: (831) 454-2131 TDD: (831) 454-2123
TOM BURNS, DIRECTOR

Wittwer & Parkin LLP
147 South River Street
Suite 221
Santa Cruz, CA
95060

March 17, 2009

Subject: Situs: 749 Oakhill
APN: 038-151-89 and 90

Dear Mr. Parkin:

This letter is in response to you letter dated March 10, 2009 regarding the Unconditional Certificates of Compliance issued for these lots.

As you are aware, an application for a lot legality/ Certificate of Compliance to recognize both these properties was submitted to the County in 2001. Initially, it was determined that only one legal lot existed. However, on appeal it was determined that the owner had not combined the property into one lot by their actions and the encroachment was of such a minor and inadvertent nature that it could be eliminated through either demolition or a boundary adjustment. This action resulted in the recording of an Unconditional Certificate of Compliance for each lot in June 2003.

Your question as to whether a Coastal Development Permit is required for an Unconditional Certificate of Compliance has been raised in the past. We have requested an Executive Directors determination on this issue in the past and have been advised by the Coastal Commission that no Coastal Development Permit was required since the issuance of an Unconditional Certificate of Compliance has been determined by the State Coastal Commission to not be development under the Coastal Act. Because it is not development under the Coastal Act, no FLAN is required. The County concurs with this determination.

I believe this answers your inquiry. Should you have further questions, feel free to contact me.

Sincerely,

Tom Burns
Planning Director

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EXHIBIT B

ATTACHMENT 4

EXHIBIT K

CCC Exhibit 2
(page 365 of 455 pages)

EXHIBIT 1B

ATTACHMENT 4

WITTWER & PARKIN, LLP

147 SOUTH RIVER STREET, SUITE 221
SANTA CRUZ, CALIFORNIA 95060
TELEPHONE: (831) 429-4055
FACSIMILE: (831) 429-4057
E-MAIL: office@wittwerparkin.com

Jonathan Wittwer
William P. Parkin
Jennifer M. Bragar
Ryan D. Moroney

OF COUNSEL
Gary A. Patton

April 13, 2009

HAND DELIVERED

Mr. Tom Burns, Planning Director
Santa Cruz County Planning Department
701 Ocean Street, Room 400
Santa Cruz, CA 95060

RE: Request for Proper Processing of Certificate of Compliance Under Coastal Act Unconditional Certificate of Compliance for APN 038-151-85, 89; 749 Oakhill

Dear Mr. Burns:

Thank you for your letter of March 17, 2009 concerning the above referenced matter.

For clarification, we requested that you consult with the Executive Director of the Coastal Commission about the issuance of a specific Certificate of Compliance. Your response was that you have discussed Certificates of Compliance previously with the Commission and that in your view they agree with you that, in general, the issuance of an Unconditional Certificate of Compliance does not constitute development. Our inquiry was with respect to the specific facts of this case, not Certificates of Compliance in general. Please let me reemphasize our point. We do not believe that when a parcel located in the Coastal Zone has been recognized by the County, and that parcel was never a legal parcel to begin with, that the County's action of simply recognizing it is adequate to create a new parcel. Otherwise, the County could avoid the requirements of the Coastal Act. The law does not countenance such a result.

In any event, we requested that you consult with the Commission's Executive Director regarding the specific matter referenced above, and you declined to do so. However, it is our position that the way the regulation is structured, it is a mandatory duty on your part to actually consult the Executive Director. 14 CCR § 13569(b). I understand from your letter that our request for you to consult with the Executive Director has been denied. Therefore, we have no choice but to advise our clients to take legal action.

CCC Exhibit 7
(page 366 of 455 pages)

EXHIBIT 1B

If you have any questions, please feel free to contact me.

Very truly yours,
WITTWER & PARKIN, LLP

Jonathan Wittwer

Jonathan Wittwer

cc: Don Bussey, Zoning Administrator
Dan Carl, California Coastal Commission
Clients

County of Santa Cruz
Planning Department

ATTACHMENT 4
Planning Commission
Meeting Date: 3/24/10
Agenda Item: # 7
Time: After 9:00 a.m.

Additions to the Staff Report for the Planning Commission

Item 7: 09-0139

Late Correspondence

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EXHIBIT 1

ATTACHMENT 4

Josephine F. Little
753 Oakhill Road, Aptos, CA 95003

March 13, 2010

To: County of Santa Cruz Planning Commission
Robin Bolster-Grant, Project Planner

Re: Wednesday, March 24, 2010, Morning Agenda #7
Application: 09-0139(**); APN: 038-151-89

I am writing in opposition to the Zoning Administrator's approval of a proposal to construct a 2,544 square foot structure between 735 and 749 Oakhill Road, Aptos.

Background: I have been a permanent resident at 753 Oakhill Road for 32 years, in the house built by my late husband, H.B. Little, in 1965. Our house was the last one built from the ground up (rather than remodeled) on this street. We have known the owners of all the properties on Oakhill Road for many decades. The property in question at 749 Oakhill Road was owned by the Grover family. They never considered the property two lots. The house and garage were connected across what has become the lot line, and dividing the property into two has led to many problems for both parcels. Had I been given the opportunity, I would definitely have objected to the lot division.

Some of my specific objections to the matter before you follow:

Drainage: Following the damage from the earthquake in 1989, it was necessary for us to redesign the entire ocean side area of our property. At that time, with the guidance of erosion specialist John Kucinich, we installed an extensive and effective drainage system that has prevented further erosion. Not only did we make sure to carry the ocean side drainage away from the cliff, but we also made sure that the drainage was directed to the County drainage system on the road.

From what I am able to ascertain from Mr. Arthur's plans available to me, adequate drainage is not part of the plan, nor are provisions for carrying the water to the main drain once it reaches the road.

Erosion: Because we have resided at 753 Oakhill Road for half a century, we have seen the inevitable erosion of the cliff on which we live. In some places on adjacent property it has eroded as much as ten feet.

John David, of Prime Landscaping, maintains our portion of the cliff. He has on file photographs that show that a van-sized portion of the cliff at the address in question fell to the street below between October 14, 2009 and January 28, 2010. I think that an onsite inspection of the property would make it this clear. It is inconceivable to me that building a new 2,544 square foot residence on this fragile sandstone cliff wouldn't compromise the whole area, let alone the property at issue.

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EXHIBIT B

Staff Recommendations: It's my understanding that in a memo dated January 16, 2008, the staff recommended against granting a permit for this project on several grounds. It doesn't appear to me that the staff's recommendations were mitigated enough to be overturned by the Zoning Administrator at the last hearing. I don't see how the mere reduction of the soil removed in grading, or the siding on the house, would have a significant effect on the overall conclusion that a house of this size was prudent, safe or appropriate to this fragile cliff-side lot.

Notice: In addition, the Notice of Public Hearing for March 24 was titled "No Situs, Aptos". I find this notice deceptive, as all previous notices identified the property as a specific lot "between 735 and 749 Oakhill Road." Many could have overlooked this purported notice because they didn't think it referred to any property that concerned them.

I hope my concerns will be addressed at the meeting on March 24, which I plan to attend.

Sincerely,

Josephine F Little

Cc:
Ellen Pierie
City National Bank
Frank Minuti
Laura and Pat Murphy
William Parkin, Esq.
Gwynn Hanchett
Katharine Minott, Esq.
Amy Love and Marilee Robinson

ATTACHMENT 4

HYDRO-GEO CONSULTANTS, INC.
P.O. Box 4553, Mountain View, CA 94040-4553
(650) 428-0588 • FAX (650) 428-0589

January 11, 2010
Project 10667-A

Wittwer & Parkin, LLP
147 South River Street, Suite 221
Santa Cruz, California 95060
Attention: Mr. William Parkin

Subject: Preliminary Geologic Assessment
Proposed Single-Family Parcel
Oak Hill Road (APN 38-151-89)
Aptos, Santa Cruz Co., California

Dear Bill,
At your request we visited the subject property on January 8, 2010, studied stereo-paired and oblique aerial photographs, and reviewed the available geologic data listed in the references at the end of this letter report.

BACKGROUND INFORMATION

The subject property is an undeveloped, rectangular shaped, 0.2 acre lot that is approximately 50 feet wide and 170 feet long. It is a substandard size lot for this area. The western portion of this parcel consists of a 100 foot bluff with a very steep slope of approximately 60 degrees that overlooks Las Olas Road and Seacliff State Beach in Santa Cruz County, California. The upper surface of the captioned property slopes to the east, toward Borregas Creek that flows along Oak Hill Road, approximately 250 feet from the site.

The bluff at this property has eroded several feet further eastward than the adjacent parcels to the north and south have; there also appears to be less vegetation on the face of the bluff below this lot suggesting active slope instability.

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EXHIBIT C

EXHIBIT 1C

Pampas grass indicative of high groundwater conditions is present on the face of the slope on the northside of the captioned parcel

Highly fractured Purisima Sandstone that dips 2 to 3 degrees to the southeast (Hickey, 1968) is exposed in the lower portion of this buff. The most pronounced set of joints in this sandstone typically dip seaward in this area (Griggs and Plant, 1998). A marine terrace deposit, approximately 35 feet thick, composed of relatively loose sand and gravel overlies the sandstone. These terrace sediments, which have an angle of repose of 33 degrees (Rogers E. Johnson, 2007), are over-steepened to an unstable position, near vertical slope with a Factor of Safety of less than 1 (Haro, Kasunich and Associates, 2007). This slope is subject to continuous slumping and landsliding. Haro, Kasunich and Associates (2007) recommended that a "pin pile" retaining structure tied together with a grade-beam, consisting of drilled, 24-inch diameter reinforced concrete piers on 5 foot centers, extending at least 5 feet into the Purisima Sandstone, should be installed along the top of this slope to help mitigate the unstable slope condition.

Santa Cruz County (County Code Sections 16.10.070(h)(1)(ii) & 16.1004(s)) requires that a grading and building setback be maintained within the estimated "100 year erosion setback". Rogers E. Johnson & Associates (2008) estimated the 100 year setback to be 33 feet from the top of the bluff at this site. The setback from the top edge of the bluff under the Uniform Building Code (2007) is determined by a 45 degree upward projection from the toe of the bluff which, in this case, may be greater than 33 feet.

Rogers E. Johnson (2008) has requested that an "exception" from the 100 year setback grading requirement be issued by the County to a allow for the removal of up to 3 feet of surface material and the old brick retaining wall in order to improve surface drainage and reduce some of the overburden weight (driving force) on this unstable slope.

The Loma Prieta Earthquake of October 17, 1989 (Magnitude 6.9) triggered significant landslides along the entire face of the bluff along Seacliff State Beach with head scarps 20 to 30 feet high and tension cracks that cut through several building foundations at the top of the cliff (Manson, et al, 1992). The old brick retaining wall at the western end

of the paved driveway on this site, located approximately 40 feet from the top of the bluff, is cracked and has moved approximately 1 inch. This may have occurred during the 1989 earthquake.

FINDINGS

Based on the above information, it is our opinion that the potential "100 year grading" and building setback is greater that the recommended 33 feet and should be at least 40 feet or more as suggested by the crack in the on-site brick retaining wall and a 45 degree upward projection from the base of the bluff.

We do not agree that an "exception" should be made from this setback for site grading. In our opinion, there is a greater potential to destabilize the bluff from the vibrations and weight of the grading equipment than the slight advantage that may be gained by removing some weight from the top of the bluff with heavy equipment.

We also question the feasibility of diverting and "improving" the drainage by grading at the captioned site. Boring logs in this area (Haro, Kasunich and Associates, 2997) indicate that the surface soil is more clayey and less pervious that the underlying material. Consequently, if the clayey surface material at this site is removed, it may allow surface water to seep more rapidly into the soil and contribute to the destabilization of the bluff.

Surface water diverted to a sump or French drain around the proposed residence could also more rapidly infiltrate into the soil and saturate the surrounding terrace sediments. High water conditions in the adjacent Borregas Creek may also contribute to high groundwater levels at this site. These conditions could reduce the stability of the bluff face by seepage and erosion along the contact between the highly fractured underlying sandstone that is unstable and slopes toward the beach and the generally loose terrace sediments.

We believe that the recommendations of Haro, Kasunich and Associates (2007) to install a "pin pile" retaining structure along the face of the bluff would provide a good solution for mitigating the unstable slope condition in the upper portion of the bluff at this site. An engineered retaining wall would also be needed to support the unstable Purisima Sandstone along Las Olas Road, and to provide safer conditions for the houses below this site.

CLOSURE

We trust that this information will be of assistance. If you have any questions please do hesitate to call our office

Very truly yours,
HYDRO-GEO CONSULTANTS, INC.

Engineering Geologist 419
Hydrogeologist 395

JO'R:jod
e-mailed: wparkin@wittwerparkin.com

REFERENCES

Blake, T.F., Hollingsworth, R.A., and Stewart, J.P., 2002, Recommended Procedures for Implementation of the DMG Special Publication 117 Guidelines for Analyzing and Mitigating Landslide Hazards in California: Southern California Earthquake Center.

Bloyd, R.M., 1981, Approximate Ground-Water-Level Contours, April 1981 For the Soquel-Aptos Area, Santa Cruz County, California: U.S. Geological Survey, Open-File Report81-680.

Brabb, E.E. (Compiler), 1989, Geologic Map of Santa Cruz County, California: U.S. Geological Survey, Miscellaneous Investigations Series Map I-1905.

Griggs, G.B. and Plant, N., 1998. Coastal-Bluff Failures in Northern Monterey Bay Induced by the Earthquake (pp. C33 – C50); in The Loma Prieta, California Earthquake of October 17, 1989 – Landslides: U.S. Geological Survey, Professional Paper 1551-C.

Haro, Kasunich and Associates, 2007, Geotechnical Investigation for 745 Oak Hill Road, APN 038-151-06, Santa Cruz County, California:

Hickey, J.J, 1968, Hydrogeologic Study of the Soquel-Aptos Area, Santa Cruz County, California: U.S. Geological Survey, Water Resources Division, Open-File Report.

International Code Council, 2008, 2007 California Building Code, Title 24, Part 2, Volume 2 of 2.

Manson, M.W., Keefer, D.K., and McKittrick, M.A., 1992, Landslides and Other Geologic Features in the Santa Cruz Mountains, California, Resulting From the Loma Prieta Earthquake of October 17, 1989: California Division of Mines and Geology, Open-File Report 91-05.

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EXHIBIT C

Parrish, J.G., 2008, Guidelines for Evaluating and Mitigating Seismic Hazards in California: California Geological Survey, Special Publication 117.

Rogers E. Johnson & Associates, 2007, Geologic Evaluation of Coastal Bluff Property, 745 Oak Hill Road, Aptos, California, Santa Cruz County, APN 033-151-06: unpublished report (Job No. C07006-56).

Rogers E. Johnson & Associates, 2008, Request for Exception, Oak Hill Road, Aptos, California, Santa Cruz County, APN 038-151-89, Application #07-0548: unpublished letter report (Job No. C07027-56).

WAC, 6-16-89, Stereo-paired Aerial Photographs (black & white), Flight WAC 89CA, Photographs 36-124 and 36-125, scale: 1" = ~ 2,640.

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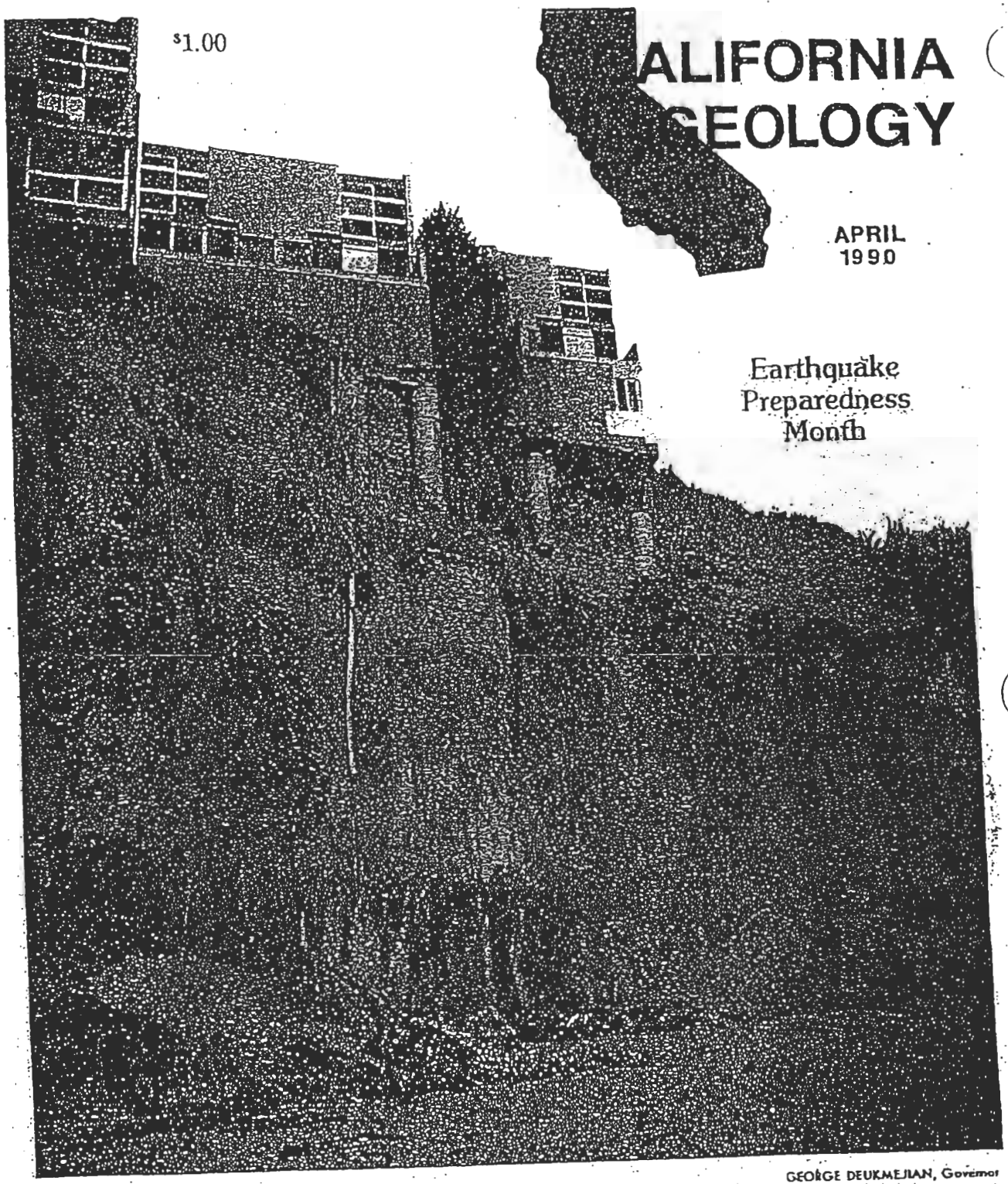
EXHIBIT C

ATTACHMENT 4

$1.00

CALIFORNIA GEOLOGY

APRIL 1990



Earthquake Preparedness Month

GEORGE DEUKMEJIAN, Governor
STATE OF CALIFORNIA

GORDON K. VAN VLECK, Secretary
THE RESOURCES AGENCY

RANDALL M. WARD, Director
DEPARTMENT OF CONSERVATION

CALIFORNIA DEPARTMENT OF CONSERVATION

Division of Mines and Geology

Understanding California's Geology

Our Resources – Our Hazards

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EXHIBIT

EXHIBIT 1C

ATTACHMENT 4

Coastal Landslides Caused By The October 17, 1989 Earthquake

Santa Cruz County, California

By

NATHANIEL PLANT and GARY B. GRIGGS
Department of Earth Sciences
University of California, Santa Cruz

INTRODUCTION

The October 17, 1989 earthquake (magnitude 7.1) ruptured a 24-mile (40 km) long segment of the San Andreas fault zone in the Santa Cruz Mountains, about 54 miles (90 km) south of San Francisco (Figure 1). The hypocenter was at a depth of 11.5 miles (18 km), and peak recorded horizontal ground accelerations varied from 0.64 gravity (g) in Corralitos, 0.54 g in Capitola, and 0.47 g in Santa Cruz (Shakal and others, 1989). This was the largest earthquake in California since the 7.7 magnitude event on the White Wolf fault near Bakersfield in 1952, and the largest event on the San Andreas fault since the 1906 earthquake (McNally and others, 1989). The earthquake caused damage and local emergencies in Alameda, Contra Costa, Marin, Monterey, San Benito, San Francisco, San Mateo, Santa Clara, Santa Cruz, and Solano counties. At least $6 billion in damage resulted from the earthquake; 62 people died and 3,757 were injured (Plafker and Galloway, 1989).

Extensive ground fracturing and cracking in the Santa Cruz Mountains resulted from a combination of the severe shaking and the reactivation of a number of very large "ancient" landslide masses. Liquefaction led to subsidence and formation of sand volcanoes (also called sand boils) along the San Lorenzo, Salinas, and Pajaro rivers as well as in the Moss Landing area. Widespread failure of the sea cliffs also took place between San Francisco and Monterey.

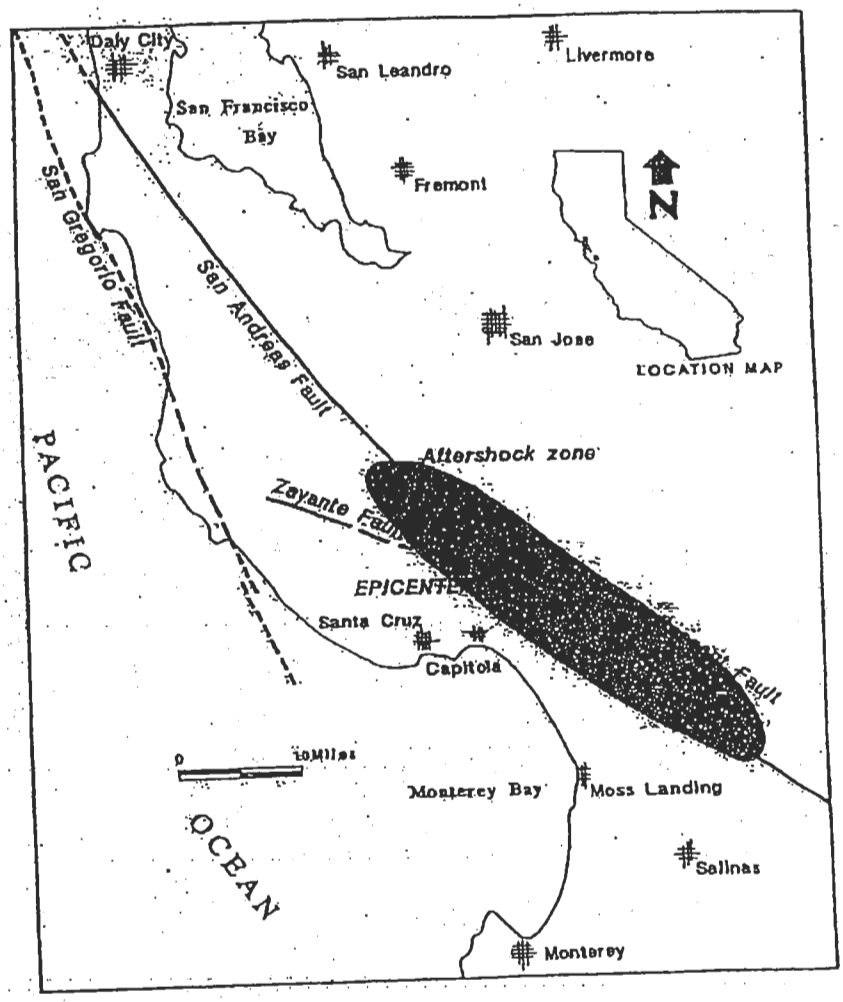

Figure 1. San Francisco Bay area, showing the epicenter of the October 17, 1989 Loma Prieta earthquake in the Santa Cruz Mountains, aftershock zone, main trace of the San Andreas fault, and other nearby faults.

HISTORY OF SEA CLIFF EROSION

Landsliding in marine terrace terrain has been recognized as a geologic hazard along much of the California coastline (Cleveland, 1975). The steep, often unvegetated sea cliffs bordering northern Monterey Bay clearly reflect the effects of active erosional processes. Erosion rates here, due to both marine and nonmarine processes, vary from several inches to several feet per year and are controlled primarily by lithology, structure, stratigraphy, and exposure to wave energy (Griggs and Johnson, 1979; Griggs and Savoy, 1985). These processes include both hydraulic impact and scour from winter storms, as well as mass movements associated with intense rainfall, and, less frequently, mass movements associated with earthquakes. Although construction

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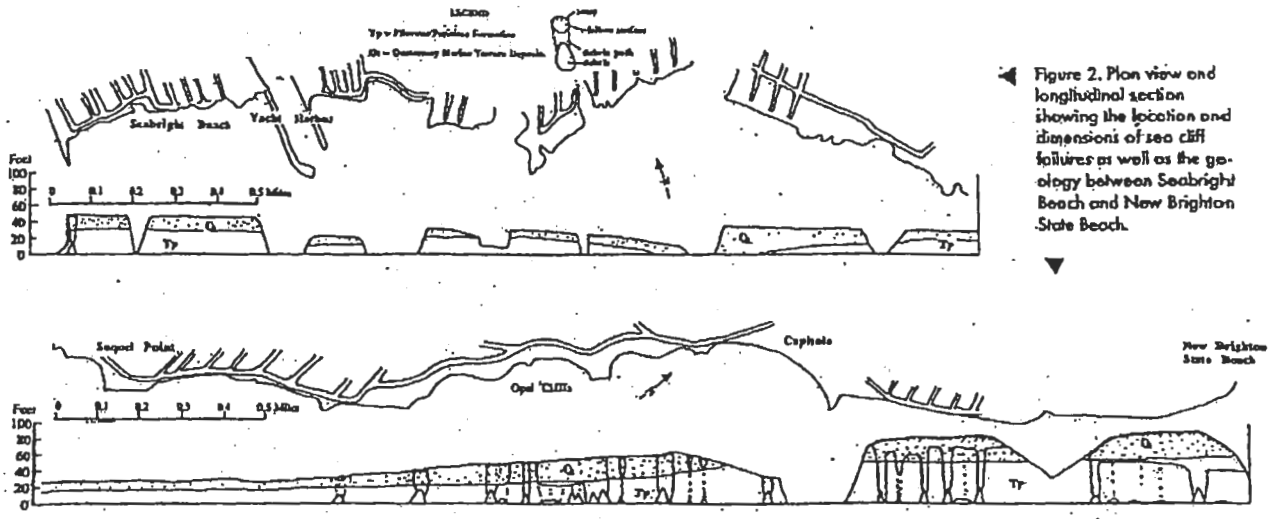

Figure 2. Plan view and longitudinal section showing the location and dimensions of sea cliff failures as well as the geology between Seabright Beach and New Brighton State Beach.

of coastal protection structures has slowed erosion of the coastline by marine processes in some areas, mass failure continues to take place along both protected and unprotected bluffs. Thus, scientists, planners, and developers find that recent events continue to push the limits of coastal erosion landward.

Hydraulic impact and scour are responsible for erosion at the base of the sea cliffs wherever coastal protection structures or wide protective beaches are absent. Typically, the cliffs are undercut over time with subsequent failure of the overlying material. As this material falls into the surf zone, it is broken down by continued wave action and carried away (Griggs and Johnson, 1979).

Sea cliffs over-steepened by wave induced erosion at their base are also susceptible to mass failure during heavy rainfall as a result of elevated groundwater conditions. Such failures are common in bedrock along joints* or other weak planes, and within the overlying, less consolidated marine terrace deposits, alluvium, or soils. Sea cliffs protected from marine erosional processes commonly develop a talus slope at their base whereas the upper portions remain steep. Heavy rainfall may induce failure in both the talus slopes and along the exposed upper portion of the cliff. For example, intense rainstorms in January 1982 caused widespread failure along the cliffs of northern Monterey Bay between New Brighton State Beach and Rio Del Mar. These storms endangered cliff top structures and damaged or destroyed beach houses (Griggs, 1982).

*See Glossary, p. 83

Large earthquakes, such as the October 17, 1989 event, are also capable of producing sea cliff failure. For example, in the October 8, 1865 (approximate 6.5 magnitude) Santa Cruz Mountains earthquake, the *Santa Cruz Sentinel* (1865) reported that overhanging cliffs fell into graded roads, "below Soquel the high cliffs crumbled into the sea," and "a continuous cloud of dust rose along the cliffs between Castro's Landing (now called Rio Del Mar) and Santa Cruz." During the great 1906, 8.3 magnitude earthquake "much earth fell from bluffs near the town" (Capitola) (Lawson, 1908). It is apparent that large earthquakes can cause instantaneous cliff retreat and also weaken sea cliffs through seismic shaking, forming cracks and fissures, thereby increasing the susceptibility of the cliffs to subsequent failure.

EFFECTS OF THE OCTOBER 17, 1989 EARTHQUAKE ON COASTAL BLUFFS

Three key strong-motion stations operated by the Division of Mines and Geology provided the first quantitative records for an earthquake which affected coastal bluffs (Shakal and others, 1989). Prior to October 1989, engineering geologists who studied coastal bluff stability were limited to descriptive interpretations of strong motion in the near-field, or had to extrapolate instrumental data tens of miles from an epicenter to the cliff site. By fortuitous circumstances, the epicenter, the coastal cliffs, and the strong motion instruments were all close to each other for the Loma Prieta earthquake. This provides a new and unique data set which will be helpful for quantitative analysis of coastal bluffs elsewhere.

These new strong-motion data for coastal Santa Cruz County are summarized on Table 1. It is significant for coastal bluff stability that *vertical* ground motion of about 0.40g to 0.60g occurred along the coastline in the near-field. It is inferred that *horizontal* ground motion was on the order of 0.47g to 0.64g for near-field coastal cliffs. The intensity of shaking was VIII on the Modified Mercalli scale. The duration of strong motion which affected cliff stability was on the order of 10 to 15 seconds.

On November 1, 1989, a team of geologists videotaped and photographed the coastline between Bolinas and Monterey, California from an airplane and noted many landslide scars, particularly between Capitola and Moss Landing (Figure 1). The videotape facilitated subsequent mapping of individual slides onto a topographic base map (1 inch = 100 feet).

TABLE 1. NEAR-FIELD STRONG MOTION
Loma Prieta Earthquake of October 17, 1989

Location of Station	Epicentral Distance	Acceleration	
Corralitos SMIP	4.4 mi	90°	0.50g
		Up	0.47g
		360°	0.64g
Capitola SMIP	5.6 mi	90°	0.47g
		Up	0.60g
		360°	0.54g
Santa Cruz SMIP	9.9 mi	90°	0.44g
		Up	0.40g
		360°	0.47g

Data from Shakal and others, (1989).

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EXHIBIT 10

More detailed ground observations compared lithologies, structural and stratigraphic weaknesses, and potential for additional failure (such as bluff top cracks landward of the failure area). A review of historic aerial stereo photographs and related literature, used to compare the October 17, 1989 event to both prior historic earthquakes and recent large storms, indicated that these observations typify the effects of large earthquakes on sea cliffs and that these effects are comparable to those resulting from heavy rainfall.

Coastal bluff failures resulting from the October 17, 1989 earthquake occurred between San Francisco and Monterey in a variety of lithologies and slope conditions. In northern Monterey Bay, between Seabright Beach to the north and Sunset State Beach to the south, there are excellent examples of the lithologic and morphologic control over earthquake-induced sea cliff failure. Three main differences in lithology along the coastline of northern Monterey Bay result in three distinct types of earthquake induced failures.

Photo 1. Joint controlled wedge failure in the Pliocene Purisima Formation. Marine erosion processes undercut these cliffs, which failed along intersecting joint planes.

Between Seabright Beach and New Brighton State Beach (Figure 2), sea cliffs are cut into a marine terrace that is up to 75 feet (25 m) high. This terrace consists of an uplifted wave-cut bedrock platform that is overlain by several feet of terrace deposits (Figure 3). The wave cut platform is in a thickly bedded to massive siltstone with prominent shell lags* (Pliocene Purisima Formation). Even though the Purisima Formation is well indurated, it is extensively jointed and susceptible to wedge failure along joint surfaces (Photo 1). The unconsolidated terrace deposits typically consist of marine cobbles overlain by shallow marine to eolian sands, and a fluvial conglomerate that is capped by a thin soil horizon. The nearly vertical sea cliffs in this area are actively eroding where they are not protected by revetments, seawalls, or a wide sandy beach. In general, where unprotected, the coarse-grained and well-jointed Purisima Formation erodes at a relatively rapid rate (about 12 to 24 inches per year; 30-60 cm/yr) (Griggs and Johnson, 1979).

*See Glossary, p. 83.

Seismic shaking initiated numerous rock falls and block falls along this section of coast. Undercut and weakened bedrock and fractured promontories collapsed along with bluff top terrace deposits. Failure along joint surfaces allowed large blocks to separate from more intact rock. The size of these failures was dependent on joint spacing and orientation, cliff height, and toe* support. High cliffs with widely spaced, sub-vertical joints and inadequate toe support sustained the largest instantaneous and incipient failures in weakened or undercut sedimentary rock. Toe support in the form of a shore platform, revetment, seawall, or wide beach generally inhibited failure. Although the density of failures diminished away from the epicentral region, several large slides and rockfalls occurred as far north as Daly City (Photo 2).

Damage to private property and public structures was minimal along the cliffs of this area with the exception of the cliffs immediately east of Capitola. In this area bedrock and terrace deposits toppled to the beach below and extensive bluff top fracturing also occurred. This caused further damage to walls and foundations of an apartment complex (already overhanging the sea cliff, Photo 3) and additional failure to an abandoned cliff top public road in the Capitola area.

From New Brighton State Beach to Aptos Creek (Figure 4), an interbedded, pebbly, cross-bedded, moderately indurated, and weakly jointed sandstone member replaces the jointed siltstone member in the Purisima Formation and underlies 90-114-foot (30-38 m) high cliffs. Terrace deposits, consisting of poorly consolidated sands and interbedded pebbles, poorly sorted fluvial conglomerate, and a thin soil horizon, are about 15 feet (5 m)

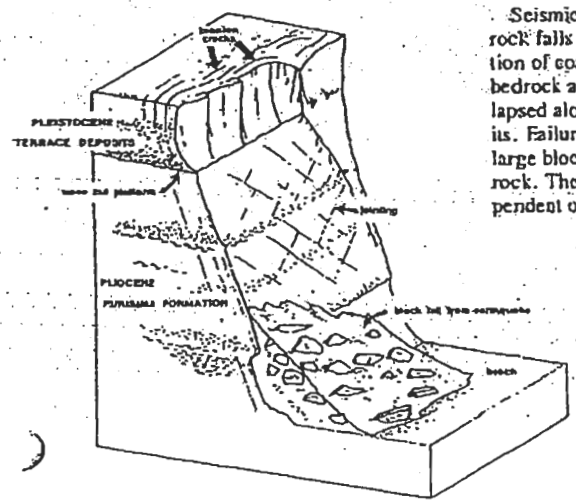

Figure 3. Block diagram showing sea cliff structure and typical failure style in sea cliffs underlain by well-jointed Pliocene Purisima Formation siltstone. Note the tension cracks in the Pleistocene terrace deposits and undercut sea cliff.

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EXHIBIT 1C

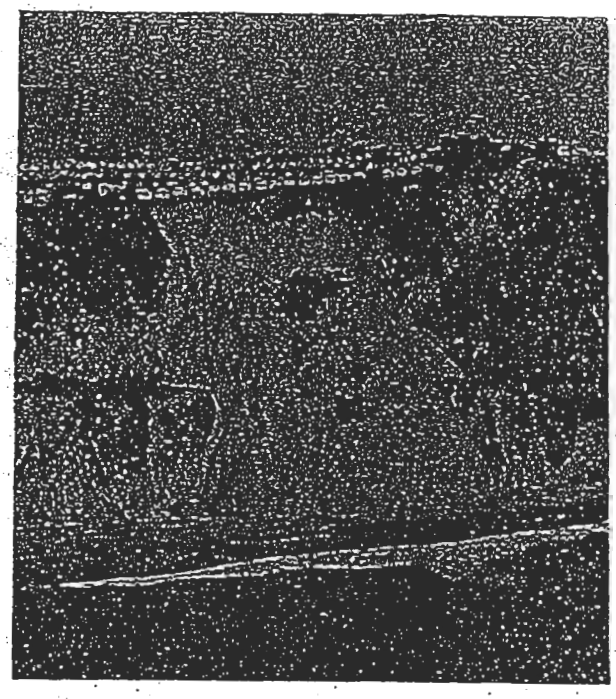


Photo 2. Large coastal landslide near Daly City. Note the proximity of cliff top houses to the head scarp.

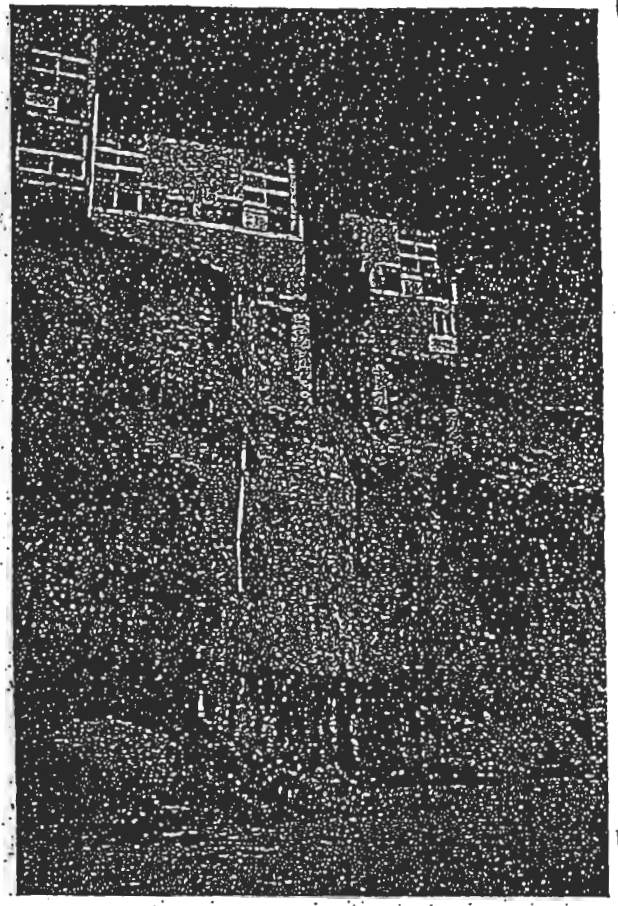


Photo 3. Bluffs east of Capitola. Collapse of terrace deposits and underlying extensively jointed siltstone further undermined the previously exposed foundation of this apartment building.

thick and thin to the east. Seawalls and revetments, which protect the beach front development, isolate the base of the cliff from marine erosion; the upper portions of the cliffs continue to fail periodically.

Seismic shaking initiated two types of failure here. Translation* (uniform movement) along a joint or weathering surface produced many large slides up to 180 feet wide (60 m wide) that originated in the upper 36 feet (12 m) of the sea cliff (Photo 4). The scarps of these slides tend to cut vertically through the Quaternary terrace deposits and then flatten as they approach the Purisima Formation (Figure 5). Deep tension cracks cut through the terrace deposits (Photo 5) and soils 3-18 feet (1-6 m) landward of many of the scarps; depth of cracks tends to increase with the size of the scarp (Figure 6). Some intact blocks and much loose soil cascaded down the face of the cliff, forming 60 foot (20 m) high coalescing talus cones that partially buried some automobiles and blocked access to homes (Photo 6).

*See Glossary, p. 83

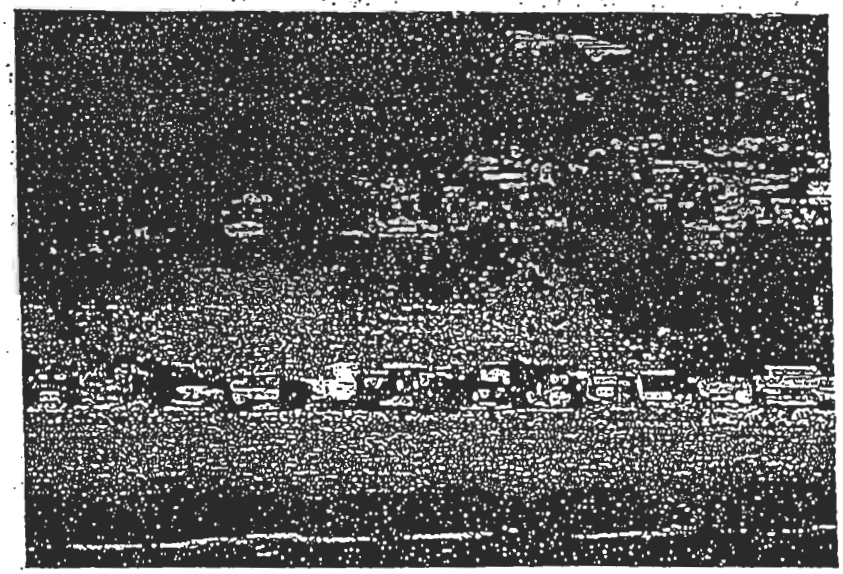


Photo 4. Extensive sea cliff failure above Los Olos Drive. Failure occurred in the upper 36 feet (12 m) of the cliff and loose material cascaded down the steep slope. Note the many houses both above and below the landslide that are jeopardized by slope failure.

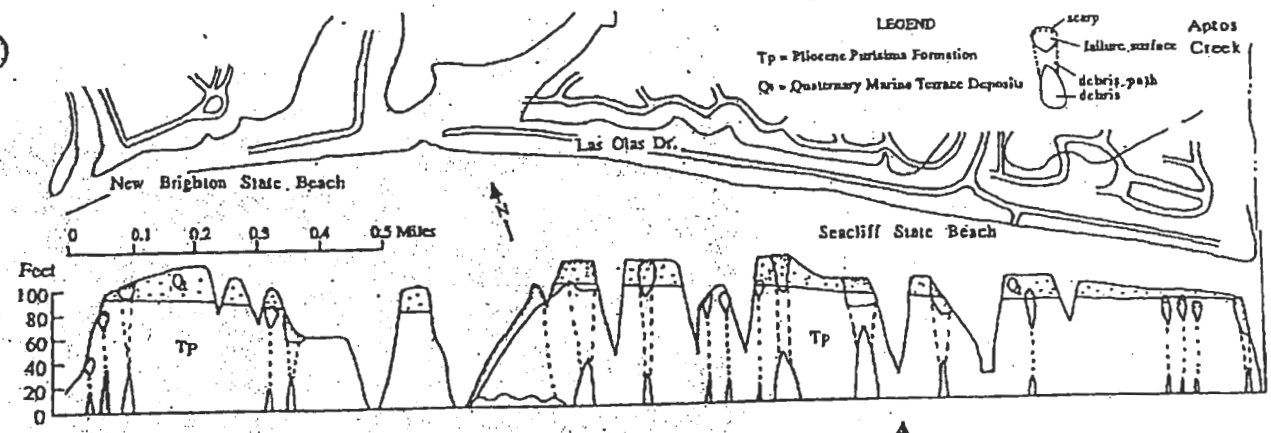


Figure 4. Plan view and longitudinal section showing the location and dimensions of sea cliff failures as well as the geology between New Brighton State Beach and Aptos Creek. A sandstone member replaces the siltstone member of the Pliocene Purisima Formation (Tp) in this area.

In the lower 30 feet (10 m) of the cliff, the sandstone was undercut by fracturing along intersecting conjugate joint sets. Blocks 3 feet (1 m) thick and several feet high broke up easily and formed small talus cones. Though fractured and partially detached from the cliff, many blocks did not fall and remain as unstable areas.

Between Aptos Creek and Rio del Mar, semi-consolidated eolian and fluvial sands of the Pleistocene Aromas Formation form 75-120 foot (25-40 m) high, steep cliffs (Figure 7). The upper 6-15 feet (2-5 m) are more cohesive than the underlying partly consolidated and weakly cemented sands. Sea walls and revetments that protect the back-beach development also protect the cliff toe from wave induced erosion. However, the bluffs continue to fail periodically, as they did in the 100-year storm in January 1982 that caused considerable property damage (Photo 7). The loose surficial sand liquified and flowed downslope over a weathered, less permeable surface and into homes at the base of the sea cliff (Griggs, 1982).

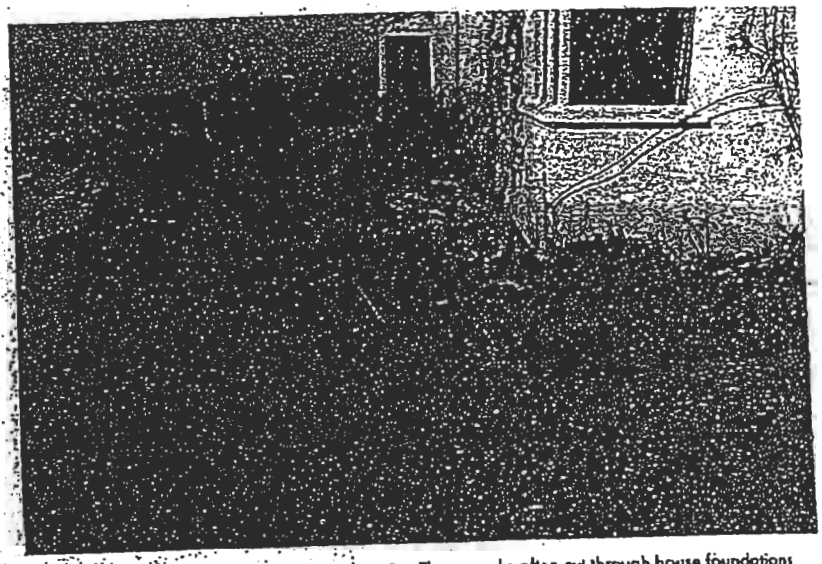


Photo 5. Deep tension crack in terrace deposits. These cracks often cut through house foundations and indicate the potential extent of future failure.

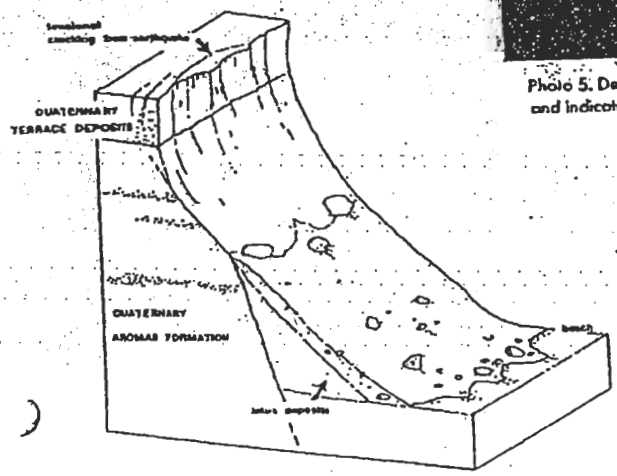
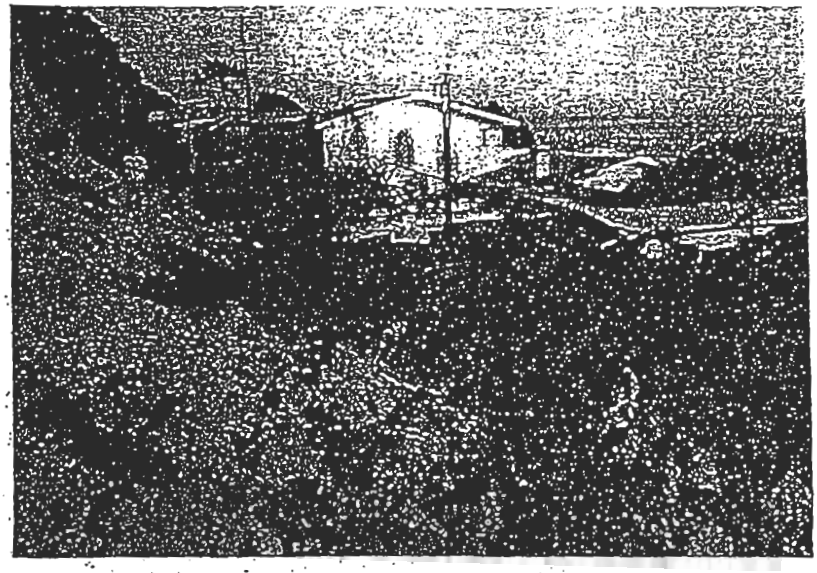


Figure 5. Block diagram showing structure and typical failure style in sea cliffs underlain by sandstone member of the Pliocene Purisima Formation. Note that the failure occurred in the upper portion of the cliff and material cascaded down the steep slope.

Three types of earthquake-induced failures prevailed along this stretch of coast. The first type was a shallow dry sand flow less than 3 feet (1 m) deep, 15-30 feet (5-10 m) wide, and 30-60 feet (10-20 m) long, which originated well below the bluff top (Figure 8, Photo 8). A vertical scarp cut through a thin, cohesive soil layer to a failure surface that paralleled the bluff face. Loose sand or small blocks of more cohesive material, often held together by roots, slid along this surface and then ramped over the less steep talus deposits at the base of the slope.

Photo 6. View facing east along Los Olos Drive. Material from a failure in the upper part of the bluff cascaded down the slope and blocked the road. Note the telephone pole broken by the landslide.



The second type of earthquake failure, larger translational slides, several feet deep and up to 90 feet wide, occurred in the upper 30-45 feet (10-15 m) of the cliff face where near-vertical cliff tops existed before the earthquake. These failures were similar to the failures in the sandstone member of the Purisima Formation (Figure 5). A 3-9 foot (1-3 m) vertical scarp cut through the more cohesive soils that were undercut by downslope failure of underlying, less cohesive soils. Large intact blocks, 3-6 feet (1-2 m) thick, and loose sand from the upper portion of the cliff cascaded down the slope and tension cracks up to 30 feet (10 m) formed landward of the scarps.

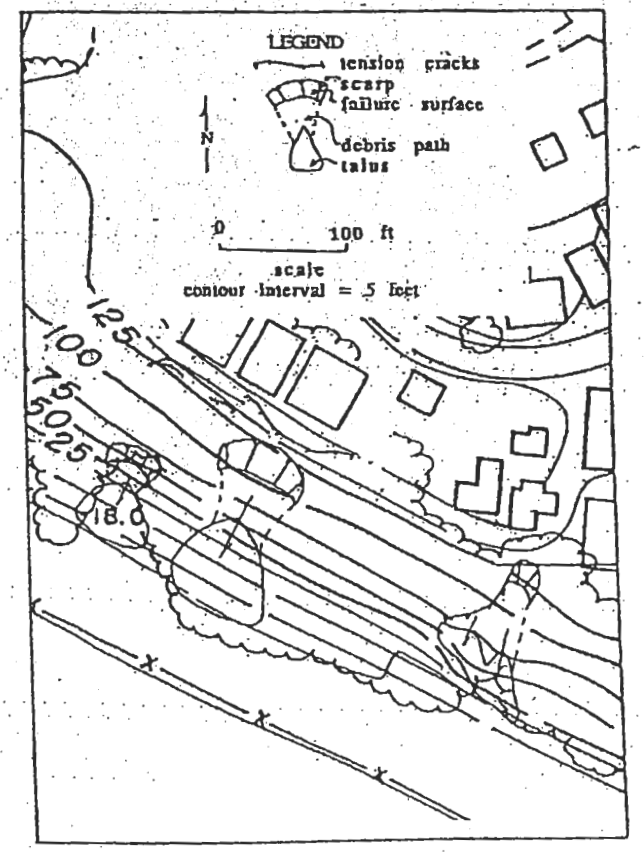


Figure 6. Details of sea cliff failures and tension cracks. Note the prevalence of tension cracks near the large failure.

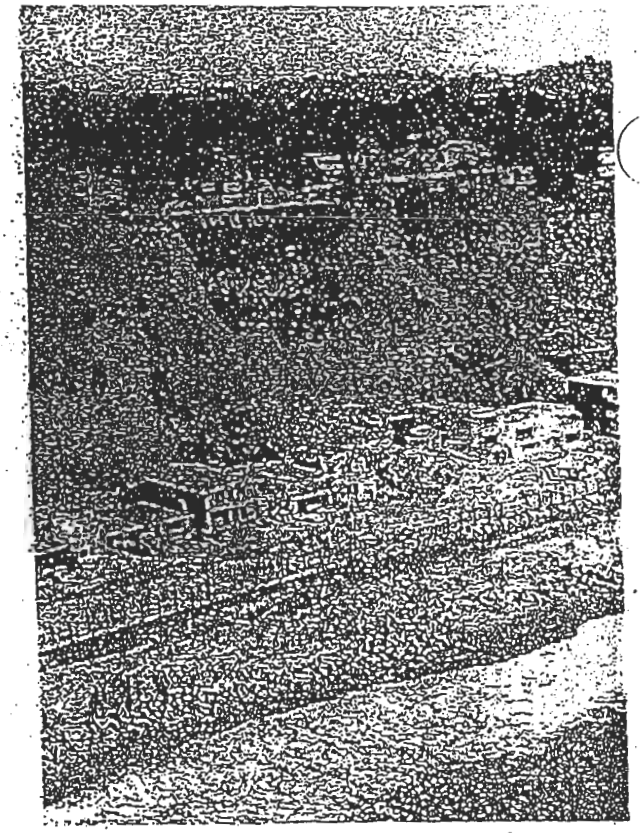


Photo 7. Slope failure in 1982 that destroyed a house on Beach Drive. This type of sea cliff failure is very similar to that caused by the October 17, 1989 earthquake.

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EXHIBIT 1C

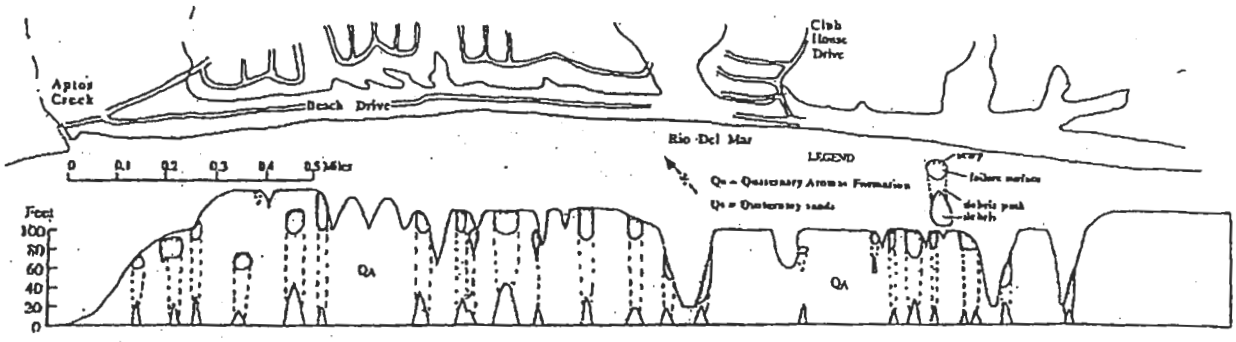

Figure 7. Plan view and longitudinal section showing the location and dimensions of sea cliff failures and the geology between Aptos Creek and Rio Del Mar.

The third type of earthquake failure is a translational slide. South of Manressa State Beach (Figure 9), sands composing the cliffs are less consolidated and the cliffs are therefore less stable. This stretch of cliffs is fronted by a wide protective beach. During the earthquake, a very large translational slide, 300 feet (100 m) wide and 6-9 feet (2-3 m) deep, undermined 15-30 feet (5-10 m) of the cliff top above the Place de Mer development (Figure 8, Photo 8). Large intact blocks toppled from the upper 15 feet (5 m) of slope while intact patches of soil, held together by roots, and loose sand slid down the slope to a roadway. One house and its retaining wall system were undercut by the slope collapse in this area; the house had to be demolished.

Further to the south, the coastal bluffs in the Sunset State Beach area (Figure 9) consist of weakly consolidated Pleistocene dunes (Wisconsin age; Dupré, 1975) which have been stabilized by vegetation. Homes have been built on the eroding edge of this ancient dune complex. Slope failure in this area occurred when shallow slabs up to 3 feet thick were detached and translated short distances downslope (Photo 9). This form of bluff retreat has threatened several homes and at least one will be relocated.

*See Glossary, p. 83

Photo 8. Very large dry sand flow above Place de Mer development. Houses at the top and base of this failure were at risk.

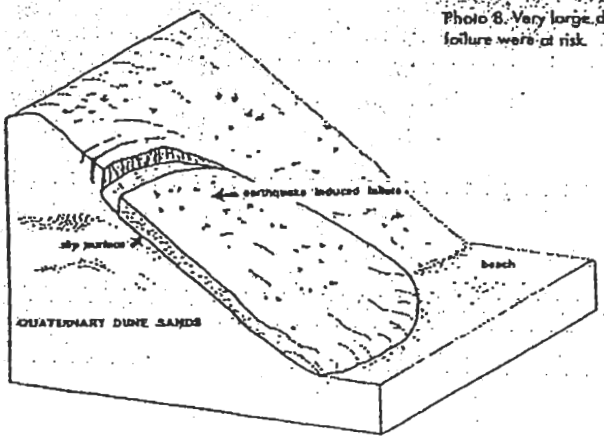

Figure 8. Block diagram of dry sand flow in weakly consolidated dunes. Note the tension cracks in the cohesive surface layer.

The lithology of the sea cliff materials controlled the mode of failure at most locations. Promontories, headlands, and narrow peninsulas or ridges along the coast were consistently the sites of the most extensive failure (Photo 10). On a larger scale, scientists also noted this effect in the Santa Cruz Mountains, as a result of this earthquake (Plafker and Galloway, 1989), and in other areas where large earthquakes have occurred in the past (Harp and others, 1981). In these non-coastal areas, the ground surface topography caused reflection of seismic

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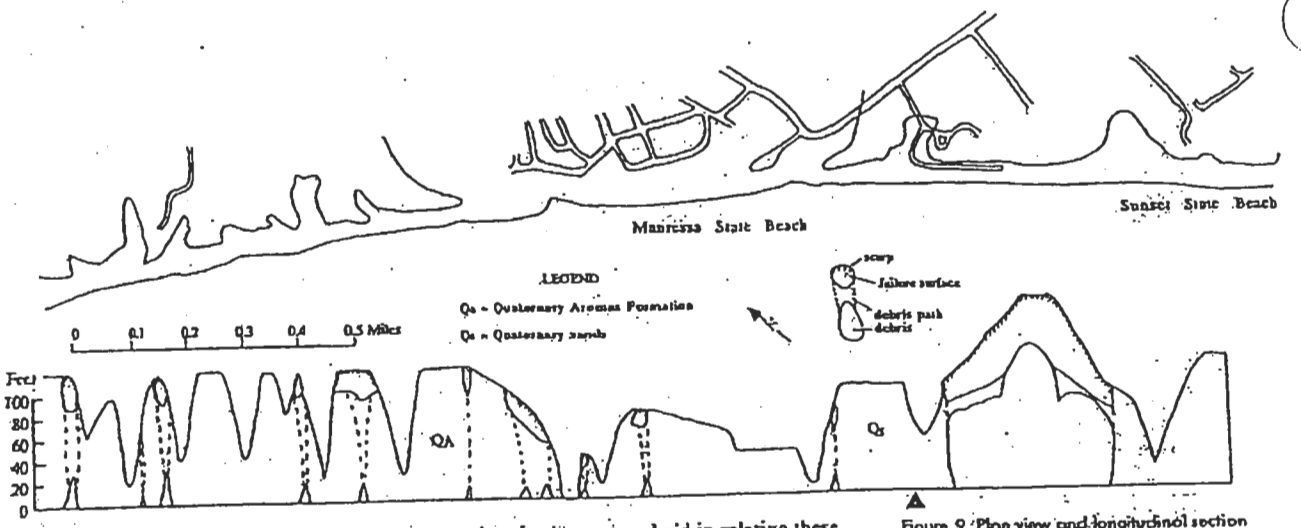

Figure 9. Plan view and longitudinal section showing the location and dimensions of sea cliff failures and geology between Rio Del Mar and Sunset State Beach.

waves; constructive interference* then amplified the incoming seismic energy, increased the dynamic stresses, and caused rock or soil failure. However, the size of the ground surface structure that can reflect incoming seismic waves must be on the same order as the seismic wavelength (Harp and others, 1981). Thus, variations of the topography with dimensions of tens of miles will interact with long seismic waves. On the other hand, sea cliffs which are tens of feet high will not respond to long wavelengths. Therefore, the repeated failure along the coastal promontories and narrow ridges is probably due to the lack of lateral support during the intense shaking rather than to topographic amplification.

IMPACT ON FUTURE LAND USE DECISIONS

Seismically induced coastal bluff failure was common up to 47 miles (75 km) from the epicenter of the 7.1 magnitude October 17 earthquake. The cliff failure in developed areas of the coast posed risks to structures on the bluff top as well as the private and public structures on the beach below. One death occurred on a beach north of Santa Cruz when a section of weak bedrock in a cliff collapsed onto a sunbather.

The two geologic hazards consistently identified at coastal sites in consulting reports are seismically induced slope failure and slope failure induced by excess water. Soil properties and slope configuration are commonly used in site-specific slope stability analysis. Study of historical stereo aerial photographs can indicate where and when slope failure has taken place in the past and aid in relating these failures to either seismic or rainfall events.

For example, the aerial photographs of the northern Monterey Bay coastline extend back to 1928 and show the changes over a period of 60 years. These photographs clearly show periodic shallow failure or sloughing of the bluffs and widespread bluff failures that occur after heavy precipitation. Most often, the failures are initiated in the bluff-top terrace deposits and may extend all the way to the base of the bluff. Where the thickness of the failed material is great enough, the steep slopes produce flows that damage and destroy the homes below. The incidents of bluff failure of this type are relatively common, occurring every 10-15 years on the average.

If large scale, deep-seated bluff failure occurred during the 1906 earthquake, or in the two magnitude 6.0 events that occurred on the offshore San Gregorio fault in 1926, it might be expected that some evidence would be present in the 1928 aerial photographs. The photos, however,

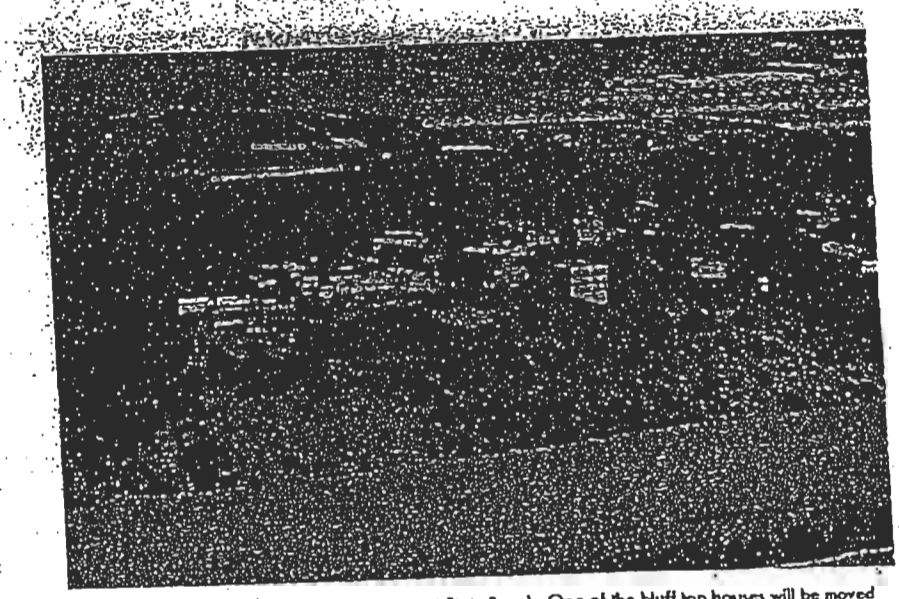

Photo 9. Large dry sand flows above Sunset State Beach. One of the bluff top houses will be moved farther back from the edge of the cliff.

*See Glossary, p. 33

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EXHIBIT 1C

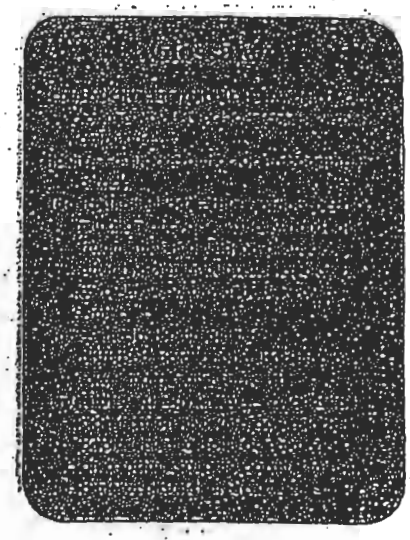

Photo 10. Extensive slope failure and cracking on a narrow ridge. This house will be torn down and the slope will be graded to a safer angle. Houses below this failure were evacuated.

show a bluff configuration without evidence of any major or deep seated failure. There are extensive areas along the upper bluffs in the Rio Del Mar area that appear devoid of vegetation in the 1928 photos, suggesting recent failure. In general, the aerial photo record indicates that the type of coastal bluff failure expected in this area during a major earthquake is similar to that expected during intense rainfall events, namely shallow surficial failures, up to several feet thick at most. The October 17, 1989 earthquake provided an opportunity to check these interpretations and hazard assessments.

The areas where the extensive damage occurred during the October 1989 earthquake, and where homes received the most damage, were those that failed most frequently during past episodes of intense rainfall as shown in aerial photographs. Along northern Monterey Bay, the areas of most frequent failure are the steep bluffs cut into the Pliocene Purisima Formation from the Las Olas Drive/Seacliff State Beach area to Aptos Creek, and the bluffs composed of the weakly consolidated Pleistocene Aromas Formation, which extend from Aptos Creek down coast to La Selva Beach.

The top, slope, and base of coastal bluffs are potentially endangered by earthquake-induced slope failure, necessitating costly mitigation measures. At the top of bluffs, several structures were immediately damaged when cliff failure undermined the foundations (Photo 3). In nearly all cases of failure, tension cracks up to 30 feet (10 m) formed behind the head of scarps, and in some cases cut through house foundations (Photos 5 and 10). Cracking and slope failure were so extensive at three bluff top sites that the homes had to be demolished. Two of these homes were built on very narrow peninsulas (Photo 10); the third was at the crest of a very high, steep, narrow section of bluff top (Photo 8). These bluff top cracks probably represent incipient slides that may fail under winter conditions of increased pore pressure. The depth and width of such cracks can be used as a reasonable indicator of potential bluff top failure during seismic shaking.

Most of the sea cliffs included in this study were too steep to support slope construction, and the hazard of building on such locations is verified by observations. In several locations, mid-slope sites received debris from upslope failures (Photo 8).

Hazards to houses at beach level resulted from failure of the cliffs behind them. Such failures led to the damage and evacuation of a number of houses in the Las Olas Drive and Beach Drive areas. The houses built closest to the base of the bluffs were most susceptible to this type of damage.

Mitigation and risk reduction measures began within one week of the earthquake and included fencing off dangerous sites, cutting back overhangs, and removing trees from the top and slope of the sea cliff. At sites where bluff top houses had to be demolished due to the threat they posed to houses at beach level, extensive grading was required to remove and stabilize the cracked bluff top areas.

CONCLUSIONS

The October 17, 1989 earthquake provided an opportunity to observe the effects of a large earthquake on slope stability. Sea cliff failures along the extensively developed northern Monterey Bay coastline demonstrated both the hazard induced by earthquakes and the general instability of coastal bluffs. Failures produced by the recent earthquake occurred in bluffs that were actively eroding (Photo 3) and in bluffs that were protected from marine erosion (Photo 4). Furthermore, narrow ridges or promontories were observed to be most likely to sustain severe damage (Photo 10). Although the earthquake caused massive instantaneous failure, residual, weakened bedrock and soils may experience increased erosion and failure rates as the typical cycle of winter storms batters the coastline. Current and future development proposals along the coast should consider the evidence and experience gained from this earthquake to evaluate both building constraints and the feasibility of hazard mitigation measures.

ATTACHMENT 4

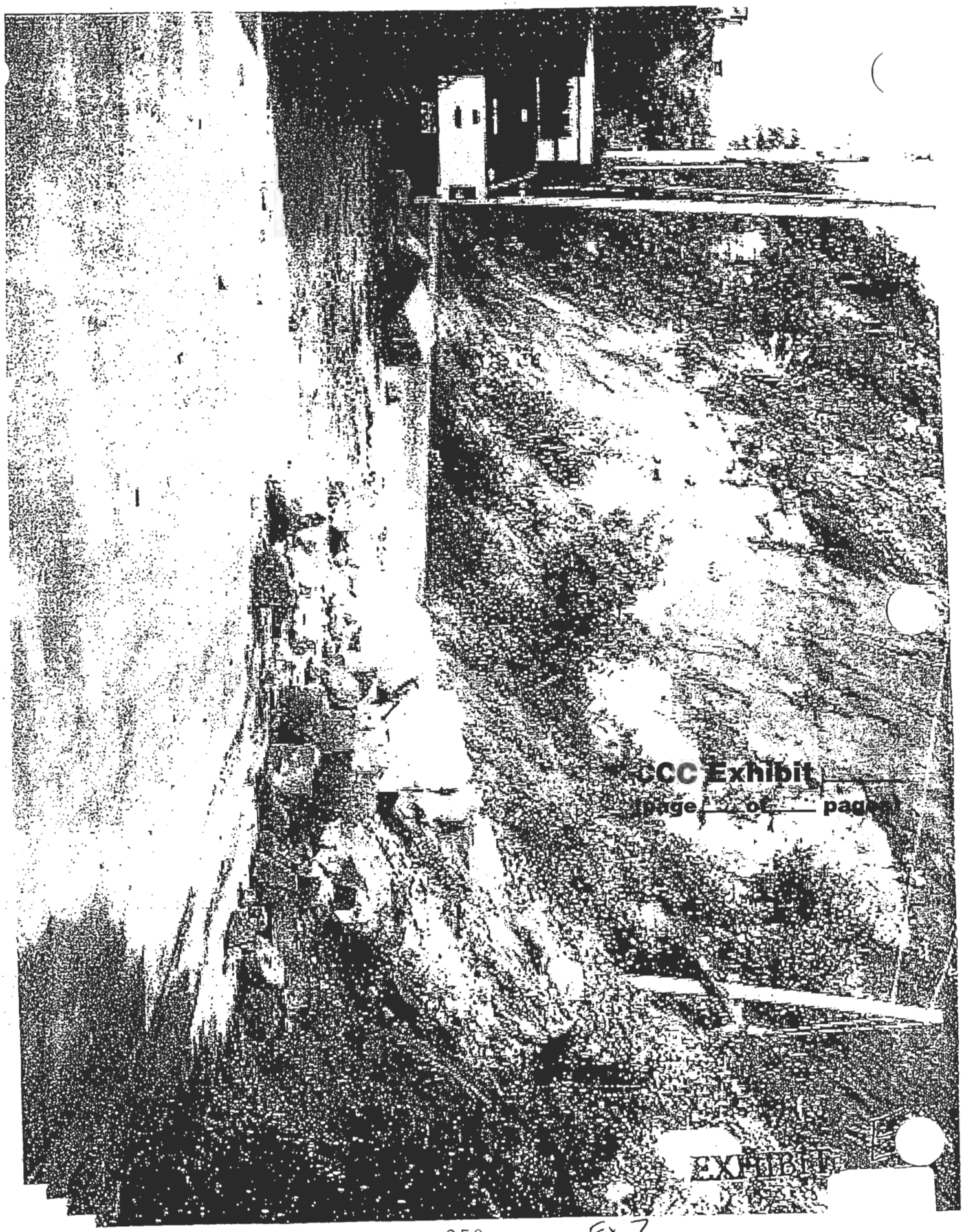

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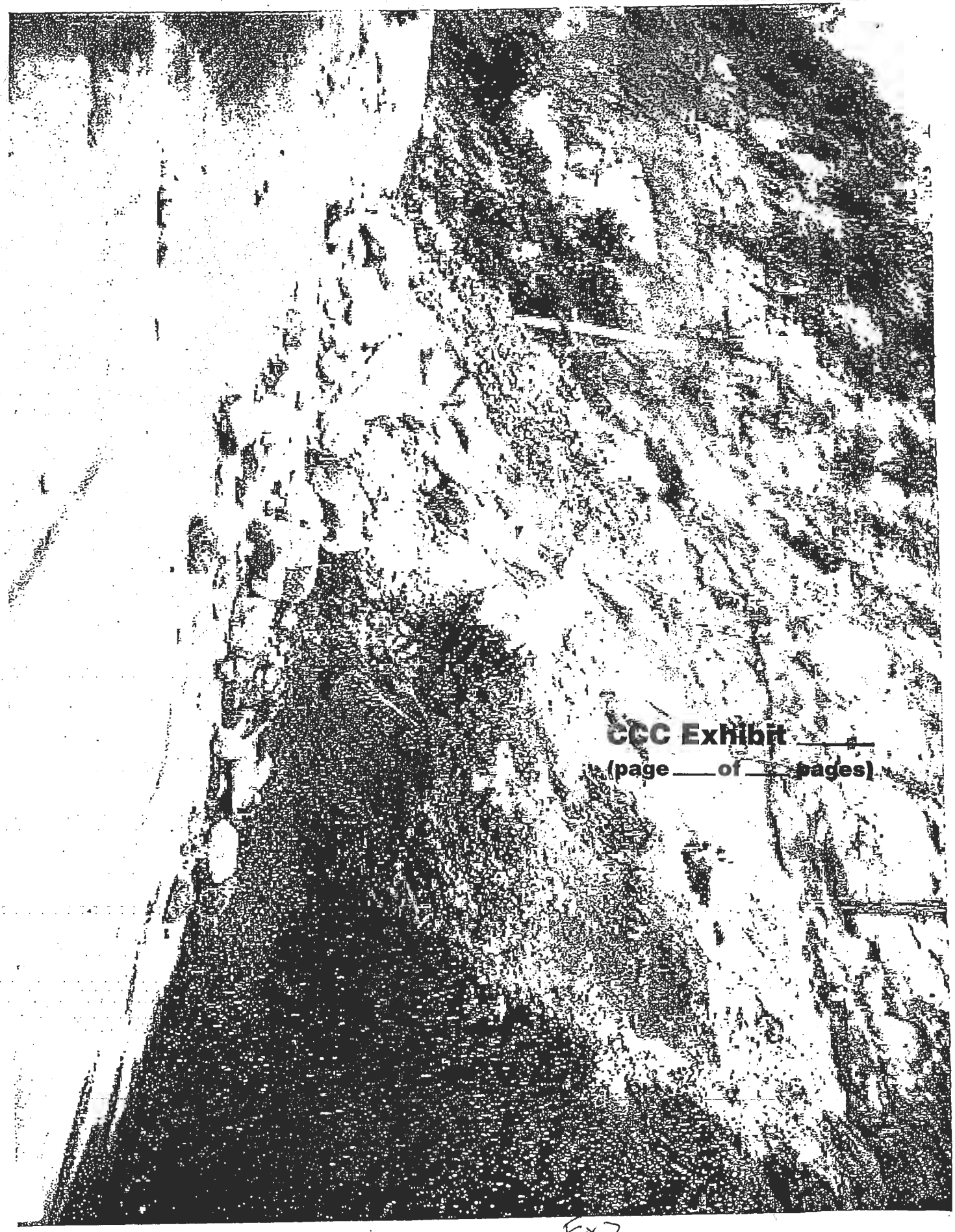
EXHIBIT C



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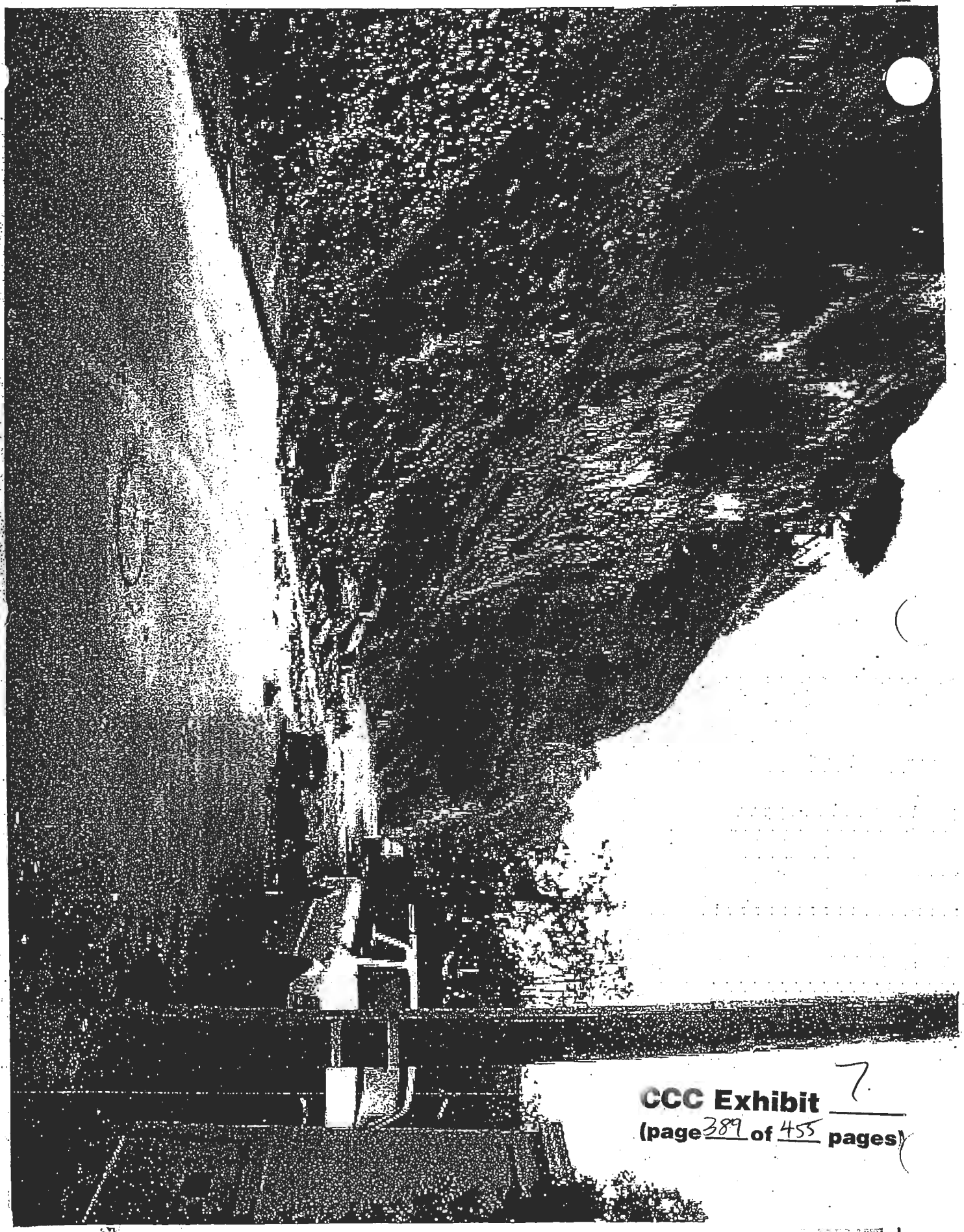

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EXHIBIT C

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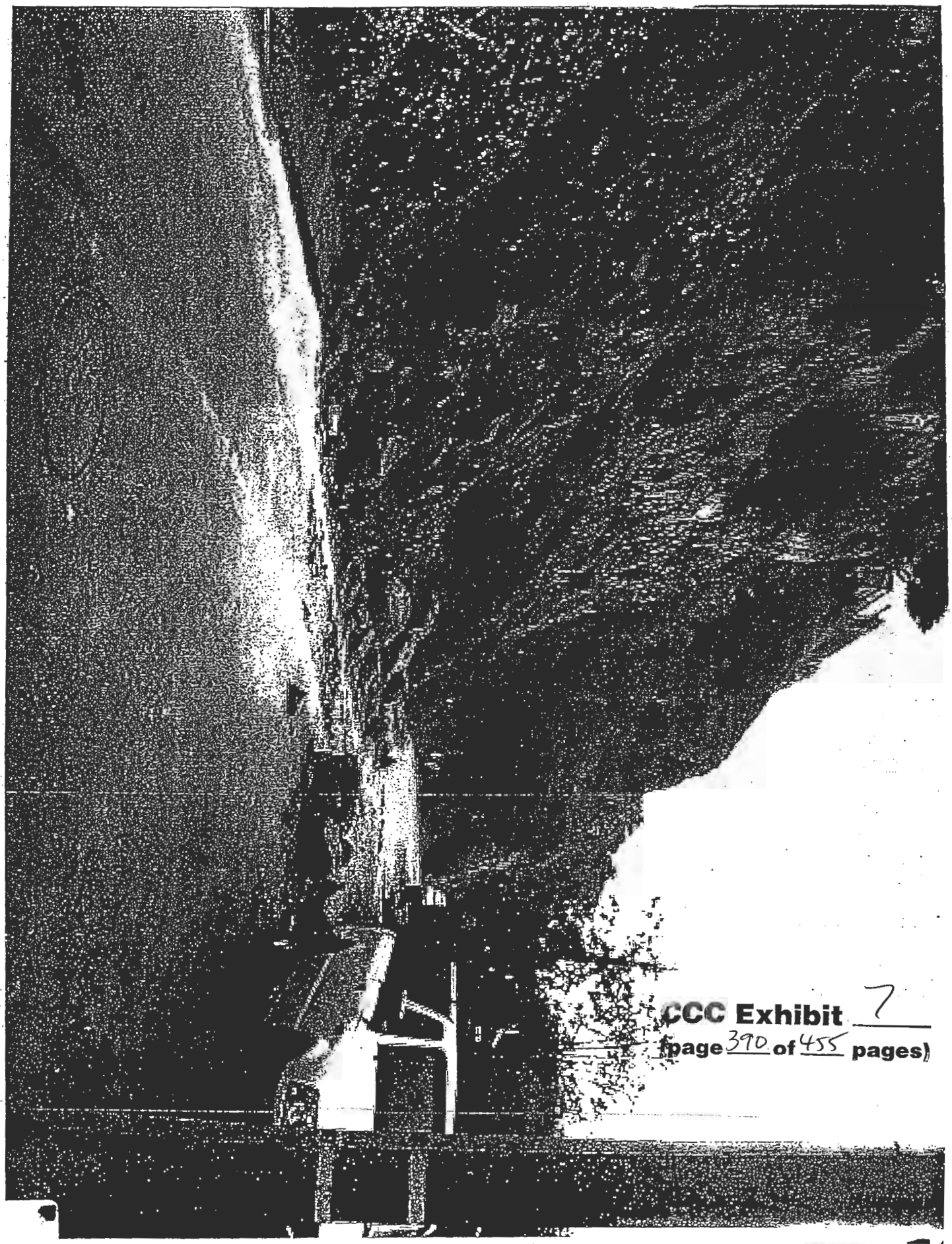

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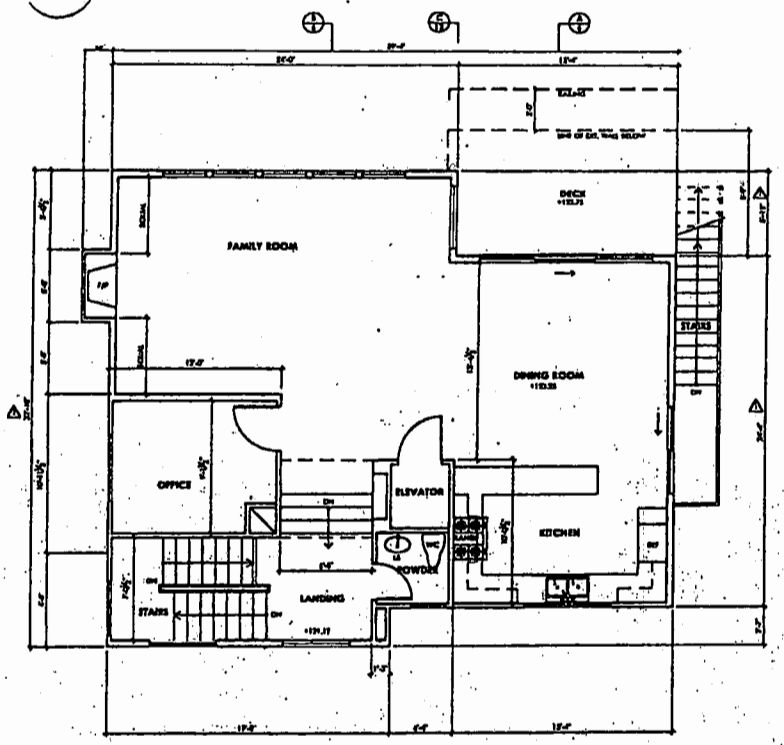
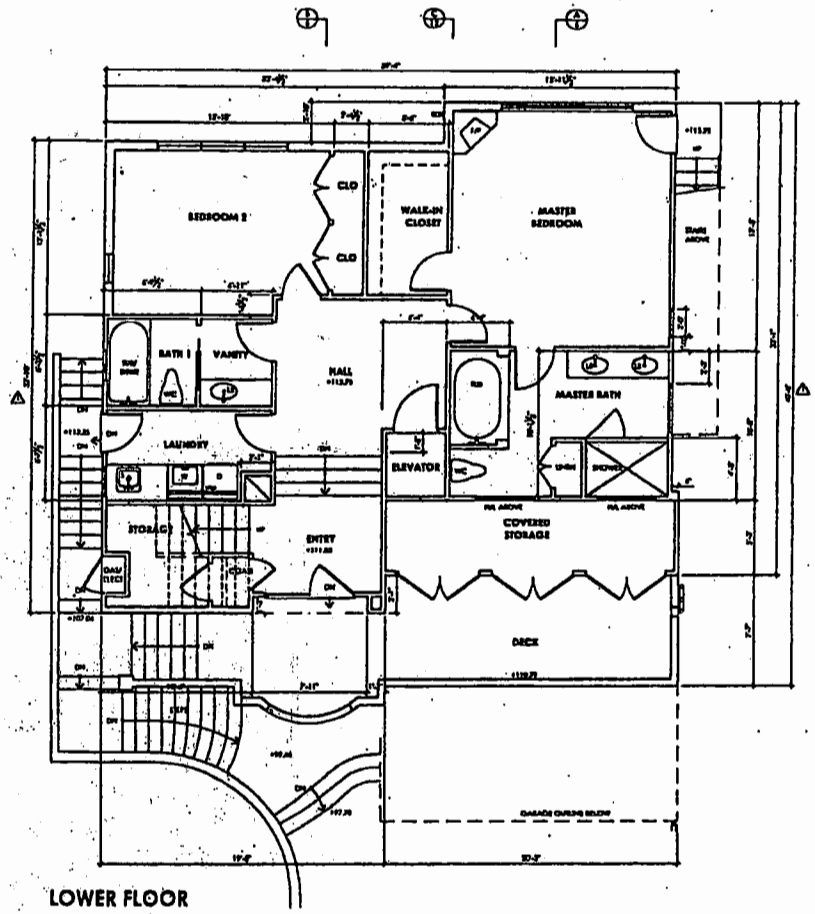
EXHIBIT 7



UPPER FLOOR
1/4" =1'-0" typical



LOWER FLOOR

ARTHUR RESIDENCE

Brian Arthur
Oak Hill Road
Aptos, CA 95003 No Sites

APN 638-191-89
ROBERT J. GOLDSPINK ARCHITECT
C 12,794

2

Upper and Lower Floor Plans

ATTACHMENT 4

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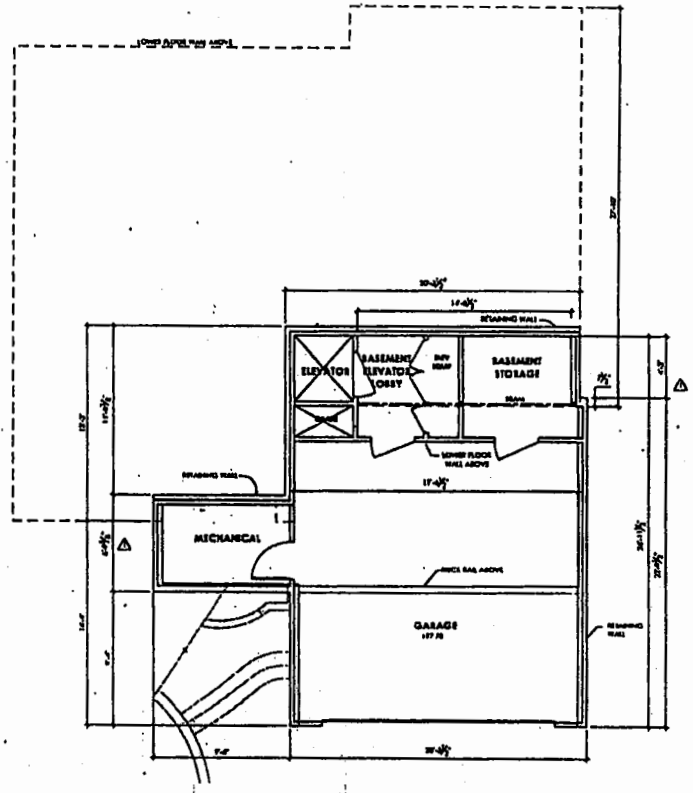
EXHIBIT D

REVISIONS
△ 9-18-09 Basement



△ GARAGE FLOOR PLAN
1/4" = 1'-0"

ARTHUR RESIDENCE

Brian Arthur
Oak Hill Road
Aptos, CA 95003 No Situs

APN 038-351-49
ROBERT J. GOLDSPINK ARCHITECT
C 33,796

3

Garage Floor Plan

ATTACHMENT 4

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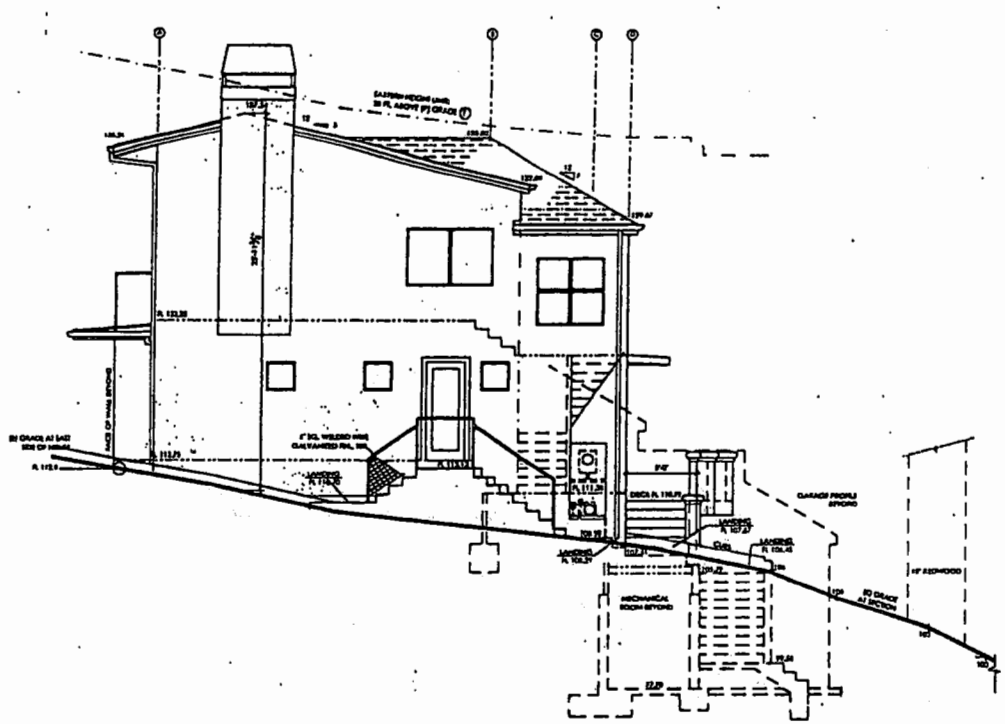
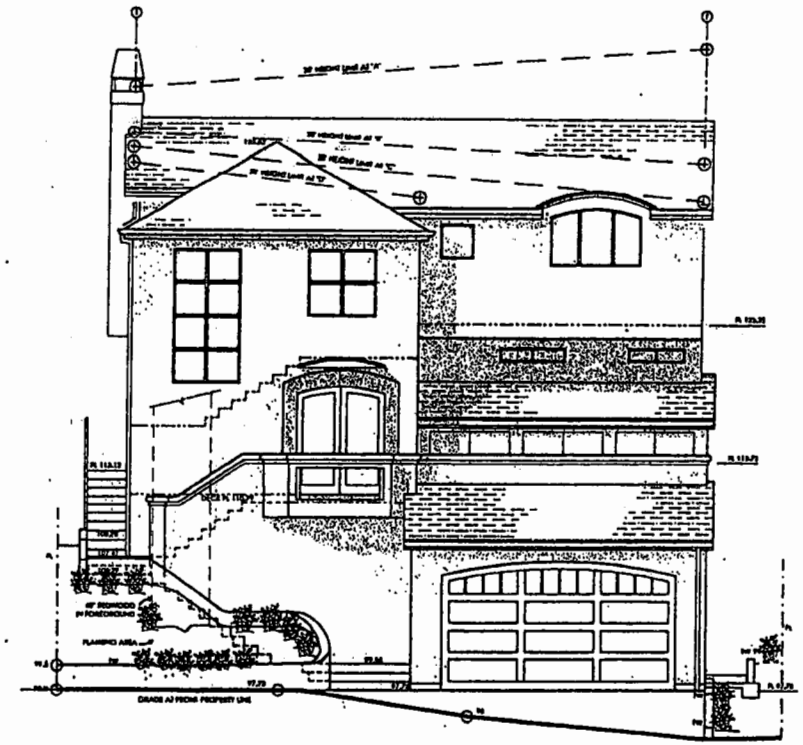
EXHIBIT D



EAST ELEVATION
1/4" =1'-0" typical



NORTH ELEVATION

Exterior Materials & Colors Schedule

Roof	Ex composition roofing, color, Antique Stone
Walls, generally	Elastomeric acrylic stucco top coat, Dryer color to match Kelly Moore Keystone® 6126
Garage & Stop walls	Elastomeric acrylic stucco top coat, Dryer color to match Kelly Moore Wood Moss® 6127 with heavier texture than rest of house
Exterior Doors & Windows	White
Gutters & Downspouts	Copper
Porch Canopy	Stainless steel frame with frosted glass canopy
Fascias, Soffits & Stress	Painted wood, color: white
Wood Stair Balustrade	Powder-coated, galvanized wire mesh with tube posts and handrail, color: white
South Deck Balustrade	Powder-coated tube posts and handrail, color: white, with glass panels
Steps & Landings	Colored, rock-hard concrete, color: Dark 'Green Green'
Driveway	Colored, stamped concrete, color: Dark 'Slate Green'

ARTHUR RESIDENCE

Brian Arthur
Oak Hill Road
Aptos, CA 95003 No Sizes

APN 038-251-09
ROBERT J. GOLDSPINE ARCHITECT
C 12,796

[illegible] Aptos CA 95003
[illegible]

Elevations-North

ATTACHMENT 4

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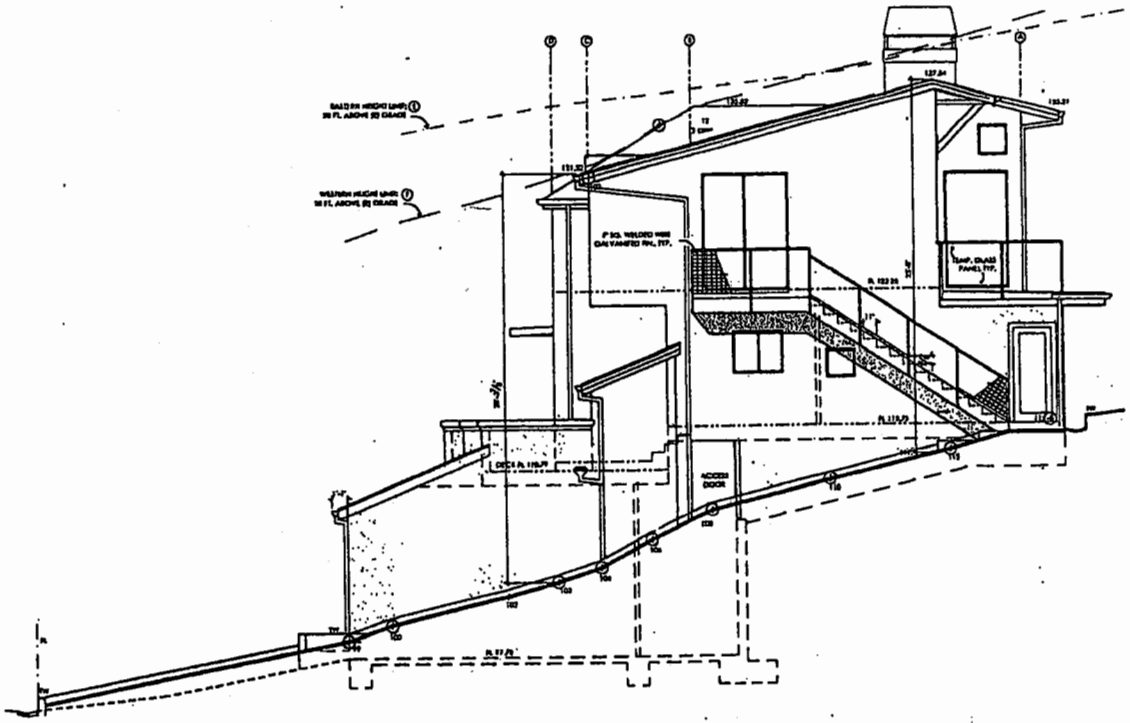
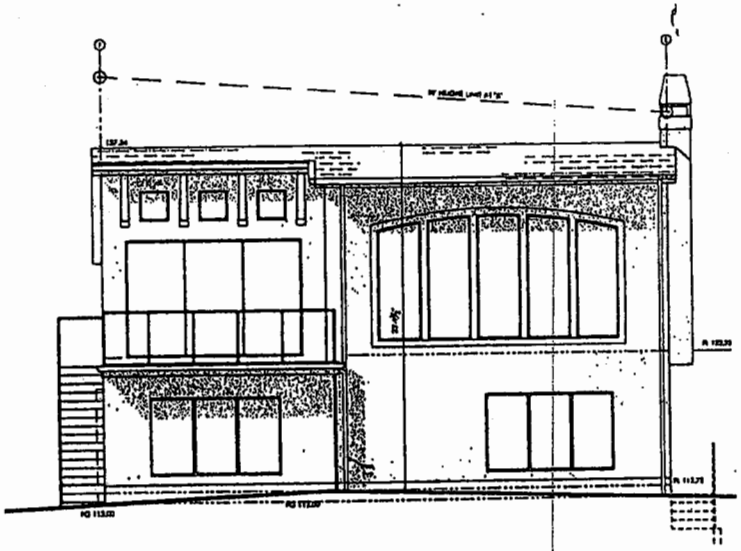
EXHIBIT D



1/4" =1'-0"
WEST ELEVATION



SOUTH ELEVATION
1/4" =1'-0"

ARTHUR RESIDENC

Brian Arthur
Oak Hill Road
Aptos, CA 95003 No Sims

APN 038-151-89
ROBERT J. GOLDSPINK ARCHITECT
C 12,756

9061 Soquel Drive Aptos CA 95003
tel: (831) 688-8120 fax: (831) 688-6402
RobertGoldspink@yet.net

date: 03-10-09

Elevations-South and West

ATTACHMENT 455

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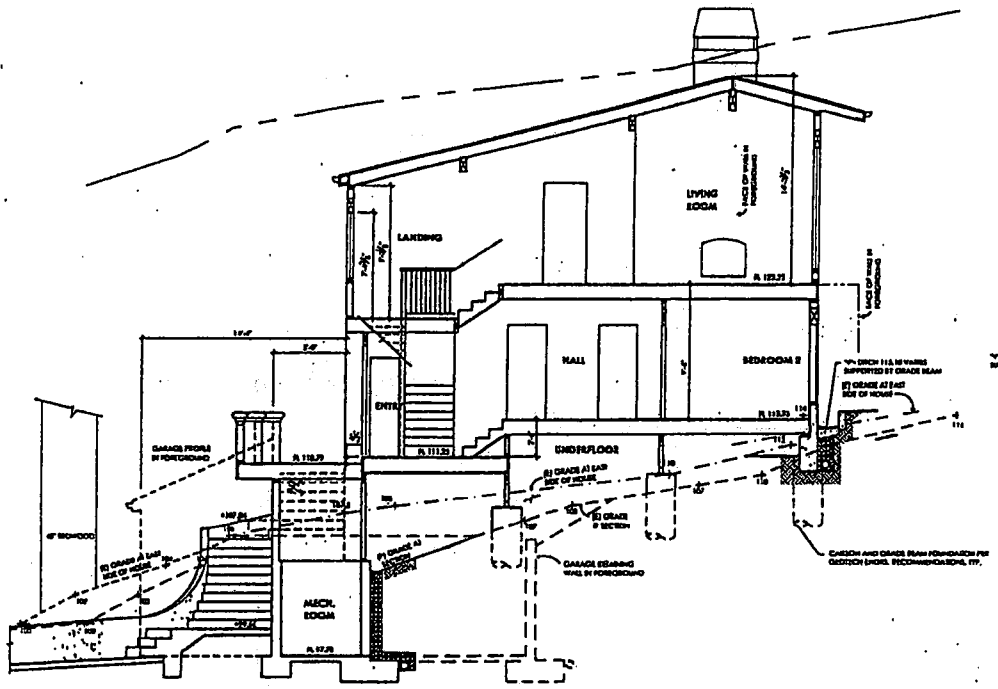
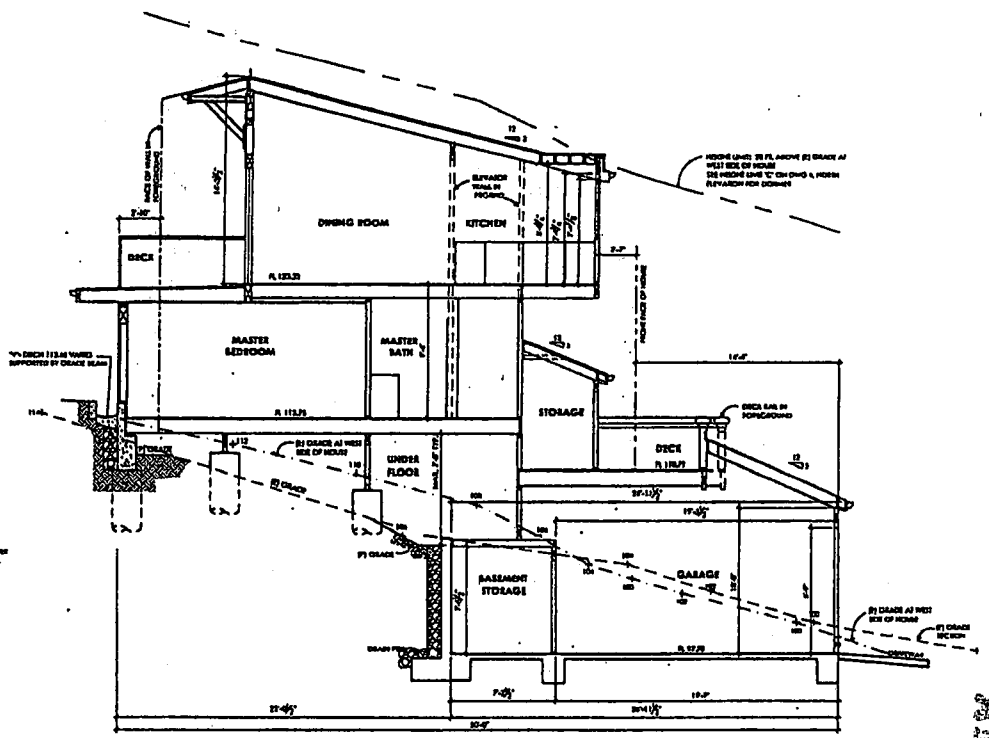
EXHIBIT D



SECTION B (through entry)
SCALE: 1/4" = 1'-0"



SECTION A (through garage)
SCALE: 1/4" = 1'-0"

REVISIONS
1-18-09 Sections revised to suit reduced floor areas

ATTACHMENT 4 6

ARTHUR RESIDENC

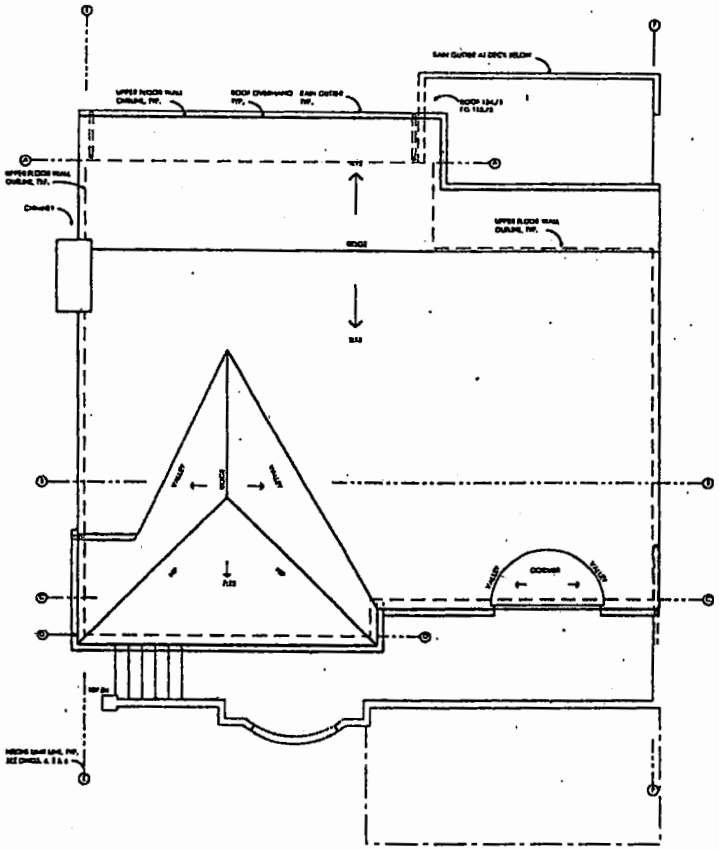
Brian Arthur
Oak Hill Road
Aptos, CA 95003 No Sino

APN 938-151-09
ROBERT J. GOLDSPINK ARCHITECT
C 22,796

Sections A and B

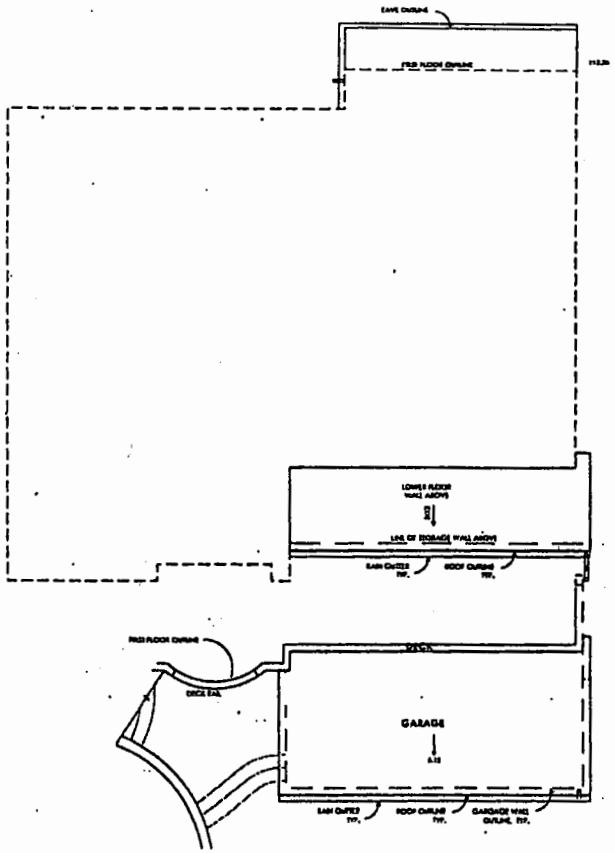
CCC Exhibit 7
(page 395 of 455 pages)

EXHIBIT D



UPPER ROOF PLAN

Roof Plan Notes



LOWER ROOF PLAN at garage & deck

1/4" =1'-0" Typ.

REVISIONS

ARTHUR RESIDENCE

Brian Arthur
Oak Hill Road
Aptos, CA 95003 No Sizes

APN 026-131-89
ROBERT J. GOLDSPINK ARCHITECT
C 12,796

Roof Plan

7

ATTACHMENT 4

CCC Exhibit 7
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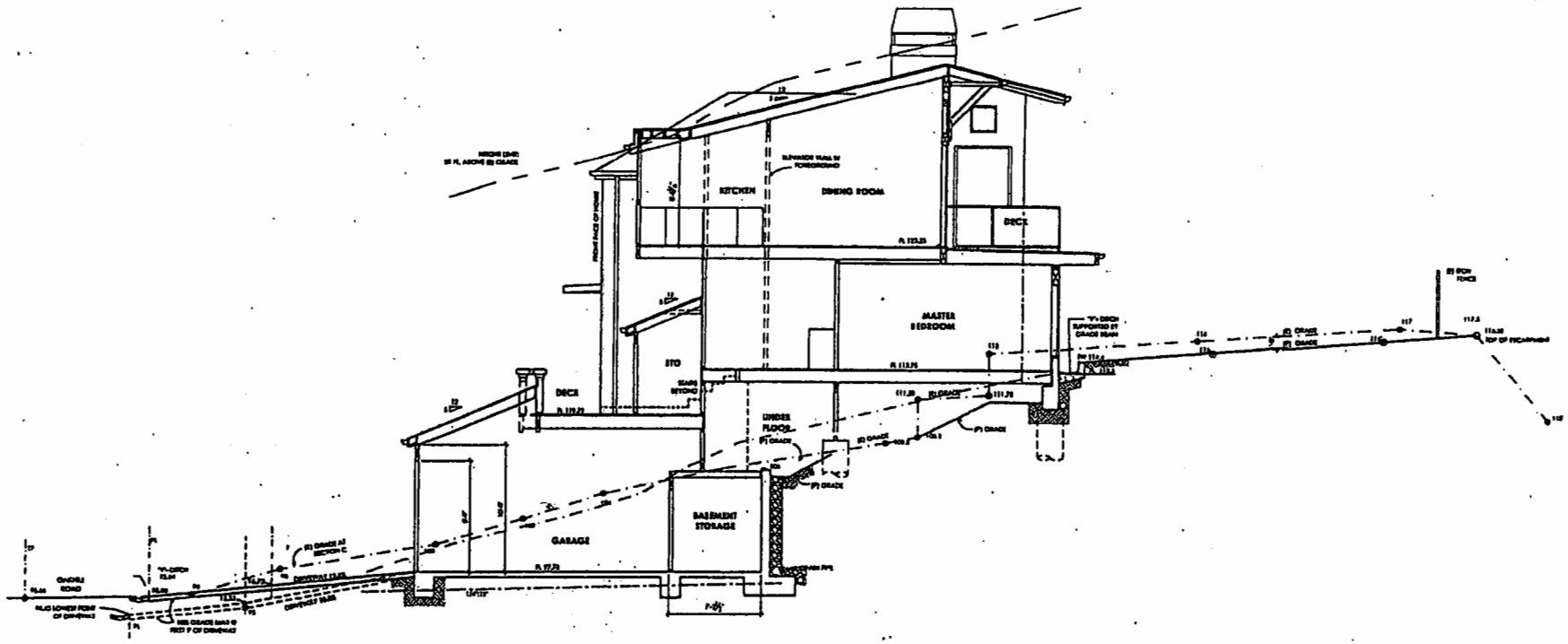
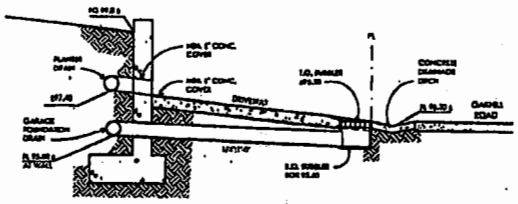
EXHIBIT D

REVISIONS
△ 1-18-09 Building section amended to suit reduced floor areas (no change to exterior grades)



SECTION C
SCALE: 1/4" = 1'-0"



DETAIL A
SCALE: 1/2" = 1'-0"

ARTHUR RESIDENCE

Brian Arthur
Oak Hill Road
Aptos, CA 95003 No Sims

APN 038-131-49
ROBERT J. GOLDSPINK ARCHITECT
C 12,796

12

Site Section C

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EXHIBIT 1D

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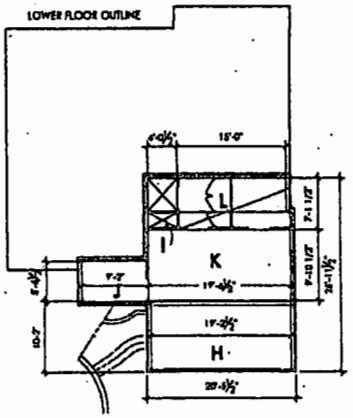
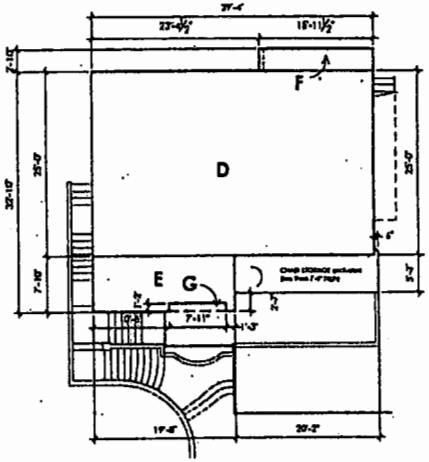
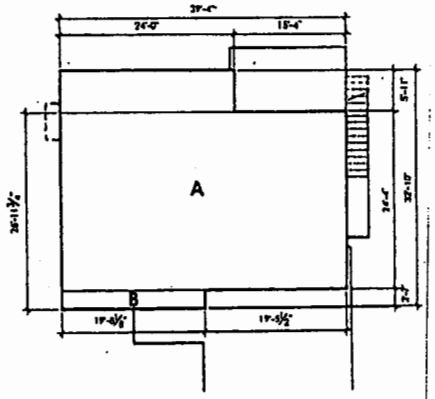


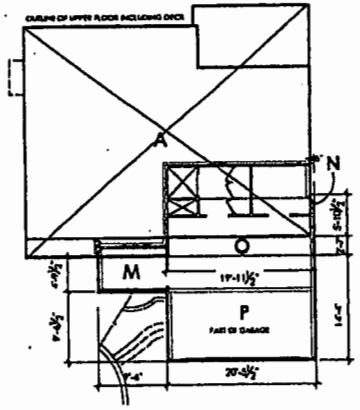
GARAGE FLOOR
1/8" = 1'-0" typical



LOWER FLOOR



UPPER FLOOR



LOT COVERGE DIAGRAM

Floor Area Calculations

Upper Floor						
	A	27.00	x	30.25	=	1,155.7 sf
	B	16.00	x	8.33	=	80.7
		Subtotal				1,840.4 sf
less	C	8.83	x	15.33	=	- 80.8
		Total Subtotal				1,145.8 sf
Lower Floor						
	D	30.33	x	25.00	=	553.2 sf
	E	19.00	x	7.83	=	553.2
	F	15.00	x	2.83	=	48.7
less	G	7.83	x	1.17	=	- 8.3 sf
		Total Subtotal				1,153.0 sf
Garage & Mechanical						
	H	10.10	x	10.21	=	103.2 sf
	I	8.1	x	4.00	=	8.4
	J	8.84	x	8.17	=	80.8
	K	19.84	x	8.97	=	342.7
		Subtotal				447.3 sf
		Less garage credit				- 223.0 sf
		Total floor area				223.3 sf
Basement	L	19.0	x	7.1	=	(134.9) sf basement area excluded
Total Floor Area						2,844.0 sf

Building Lot Coverage Calculations

Upper Floor						
Deck	C	8.83	x	15.33	=	48.8
Part of Garage	M	4.75	x	8.00	=	43.0
	N	2.67	x	0.50	=	2.0
	O	2.00	x	20.17	=	40.0
	P	20.48	x	14.33	=	293.7
		Total				346.4 sf
Total						1,834.0 sf

Impermeable & Semi-Permeable Areas

SITE AREA		5,100 sf	
PAVED AREAS			
	Driveway within 200 feet yard setback	443 sf	
	Driveway outside 200 feet yard setback	20 sf	
	Walkway front street, front steps and landings	212 sf	
	Landings and steps at East side of house	63 sf	
	Landings and steps at West side of house	27 sf	
	Total	665 sf	(13.1%)
IMPERMEABLE AREA			
	Landings, steps and walkways above	482 sf	
	Building footprint	1,634 sf	
	Total	2,120 sf	(41.7%)
SEMI-PERMEABLE AREA			
	Driveway	443 sf	(8.69%)

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EXHIBIT D

REVISION
5-15-09 F

8 sub reducing floor

ARTHUR RESIDENCE

Brian Arthur
Oak Hill Road
Aptos, CA 95003 No Sims

APN 938-151-89
ROBERT J. GOLDSPINK ARCHITECT
C 13,796

[illegible]

13

Floor Areas
Impermeable Areas

ATTACHMENT 4

ROBERT J GOLDSPINK ARCHITECT

ATTACHMENT 4

February 10th 2010

Robin Bolster-Grant, Planning Department
County of Santa Cruz
701 Ocean Street
Santa Cruz CA 95060

Arthur Residence
Oakhill Road Aptos
APN 038-151-89 No Situs Appln # 09-0139

Dear Robin,

Thank you for making a copy of the appeal submitted by Wittwer & Parkin, dated 1.28.10. I have reviewed the document and set out my responses, as follows:

1. Legal status of parcel

It is my understanding that the land is a legal building lot. The County approved an Unconditional Certificate of Compliance for this parcel on 6.10.03

2. Building height and number of stories

I believe Mr. Parkin has misread the architectural drawings. This is understandable as the relationship of the various parts of the roof to the ground plane is not simple. For this reason, we prepared roof height lines A through F to show how each part of the roof relates to the grade immediately below. Please refer to Drawings 4 through 7, dated 3.10.09 The basement storage and elevator area behind the Garage is completely below grade. It is separate from the Garage and meets all of the County requirements for a "basement"; I believe it has been correctly classified as a "basement". There are no provisions in the County Code to disallow a "basement" because it is adjacent an area that is not so classified.

3. Integrity of the bluff

Currently, there is an area at the center of the site that drains towards the bluff. The minor grading approved by the ZA enables us to reverse the direction of drainage and comply with County regulations, particularly 16.10.70.(h).2.(i), requiring storm water to be directed away from the bluff. The Code provides for minor grading of the area between the bluff top and the 100-year setback to achieve this positive drainage provided it is carried out by hand and is kept to a minimum.

The area to be graded is approx. 752 sf [approx. 45.6% of the setback area] and the graded volume is approx. 16 cy i.e. an average grade reduction of approx. 6". The maximum depth of grading will be 12", the minimum needed to achieve positive drainage away from the bluff top. As you can see, the grading is very modest and will not be "throughout the setback area" as alleged.

The 100-year bluff setback was established by Haro, Kasunich & Associates, geotechnical engineers, in collaboration with Rogers Johnson Associates, geologists. Both of these engineers have extensive experience of coastal bluff properties; their professional opinions are second to none.

4. CEQA

I believe County staff have correctly reviewed and processed the CEQA review and findings.

Sincerely,

Robert J Goldspink

cc Brian Arthur

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

CCC Exhibit 7
(page 399 of 455 pages)

EXHIBIT 1E

15300.2. Exceptions

(a) Location. Classes 3, 4, 5, 6, and 11 are qualified by consideration of where the project is to be located – a project that is ordinarily insignificant in its impact on the environment may in a particularly sensitive environment be significant. Therefore, these classes are considered to apply all instances, except where the project may impact on an environmental resource of hazardous or critical concern where designated, precisely mapped, and officially adopted pursuant to law by federal, state, or local agencies.

(b) Cumulative Impact. All exemptions for these classes are inapplicable when the cumulative impact of successive projects of the same type in the same place, over time is significant.

(c) Significant Effect. A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.

(d) Scenic Highways. A categorical exemption shall not be used for a project which may result in damage to scenic resources, including but not limited to, trees, historic buildings, rock outcroppings, or similar resources, within a highway officially designated as a state scenic highway. This does not apply to improvements which are required as mitigation by an adopted negative declaration or certified EIR.

(e) Hazardous Waste Sites. A categorical exemption shall not be used for a project located on a site which is included on any list compiled pursuant to Section 65962.5 of the Government Code.

(f) Historical Resources. A categorical exemption shall not be used for a project which may cause a substantial adverse change in the significance of a historical resource.

Note: Authority cited: Section 21083, Public Resources Code; References: Sections 21084 and 21084.1, Public Resources Code; *Wildlife Alive v. Chickering* (1977) 18 Cal.3d 190; *League for Protection of Oakland's Architectural and Historic Resources v. City of Oakland* (1997) 52 Cal.App.4th 896; *Citizens for Responsible Development in West Hollywood v. City of West Hollywood* (1995) 39 Cal.App.4th 925; *City of Pasadena v. State of California* (1993) 14 Cal.App.4th 810; *Association for the Protection etc. Values v. City of Ukiah* (1991) 2 Cal.App.4th 720; and *Baird v. County of Contra Costa* (1995) 32 Cal.App.4th 1464

Discussion: In *McQueen v. Mid-Peninsula Regional Open Space* (1988) 202 Cal. App. 3d 1136, the court reiterated that categorical exemptions are construed strictly, shall not be unreasonably expanded beyond their terms, and may not be used where there is substantial evidence that there are unusual circumstances (including future activities) resulting in (or which might reasonably result in) significant impacts which threaten the environment.

Public Resources Code Section 21084 provides several additional exceptions to the use of categorical exemptions. Pursuant to that statute, none of the following may qualify as a categorical exemption: (1) a project which may result in damage to scenic resources, including but not limited to, trees, historic buildings, rock outcroppings, or similar resources within a scenic highway (this does not apply to improvements which are required as mitigation for a project for which a negative declaration or EIR has previously been adopted or certified; (2) a project located on a site included on any list compiled pursuant to Government Code section 65962.5 (hazardous and toxic waste sites, etc.); and (3) a project which may cause a substantial adverse change in the significance of a historical resource.

15303. New Construction or Conversion of Small Structures

Class 3 consists of construction and location of limited numbers of new, small facilities or structures; installation of small new equipment and facilities in small structures; and the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure. The numbers of structures described in this section are the maximum allowable on any legal parcel. Examples of this exemption include, but are not limited to:

(a) One single-family residence, or a second dwelling unit in a residential zone. In urbanized areas, up to three single-family residences may be constructed or converted under this exemption.

(b) A duplex or similar multi-family residential structure, totaling no more than four dwelling units. In urbanized areas, this exemption applies to apartments, duplexes and similar structures designed for not more than six dwelling units.

(c) A store, motel, office, restaurant or similar structure not involving the use of significant amounts of hazardous substances, and not exceeding 2500 square feet in floor area. In urbanized areas, the exemption also applies to up to four such commercial buildings not exceeding 10,000 square feet in floor area on sites zoned for such use if not involving the use of significant amounts of hazardous substances where all necessary public services and facilities are available and the surrounding area is not environmentally sensitive.

(d) Water main, sewage, electrical, gas, and other utility extensions, including street improvements, of reasonable length to serve such construction.

(e) Accessory (appurtenant) structures including garages, carports, patios, swimming pools, and fences.

(f) An accessory steam sterilization unit for the treatment of medical waste at a facility occupied by a medical waste generator, provided that the unit is installed and operated in accordance with the Medical Waste Management Act (Section 117600, et seq., of the Health and Safety Code) and accepts no offsite waste.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21084 and 21084.2, Public Resources Code.

Discussion: This section describes the class of small projects involving new construction or conversion of existing small structures. The 1998 revisions to the section clarify the types of projects to which it applies. In order to simplify and standardize application of this section to commercial structures, the reference to ioccupant load of 30 persons or lessi contained in the prior guideline was replaced by a limit on square footage. Subsection (c) further limits the use of this exemption to those commercial projects which have available all necessary public services and facilities, and which are not located in an environmentally sensitive area.

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(page 401 of 455 pages)

EXHIBIT 1E

ATTACHMENT 4

COUNTY OF SANTA CRUZ | Planning Department

MEMORANDUM

Date: March 2, 2010

To: Robin Bolster-Grant

From: Joe Hanna

Re: Appeal of Zoning Administrators Decision Approving 09-0139

I have reviewed the unsigned Preliminary Geologic Assessment from Hydro-Geo Consultants dated January 11, 2010. The report is a assessment of the previous work by Engineering Geology Report, by Rogers E. Johnson dated October 24, 2005, Project # C05041-56 and Geotechnical Investigation report by Haro, Kasunich and Assoicates, Inc. dated November 2005, Project #: SC8970 for Application #: 05-0753. Hydro-Geo Consultants makes a series of assertions about the previous work. Their assessment is used as a basis for the appeal, and therefore I have reviewed the assessment along with the original reports to evaluate if the critic supports sustaining the appeal. As a side note, State Law requires that all of these reports be signed, and typically County staff would not consider an unsigned report. I have made an exception to our practice and have reviewed the report assuming that it represents the opinion of the engineering geologist. My conclusions are as follows:

1. Hydro-Geo states in the second paragraph of the third page states, *"it is our opinion that the potential "100 year grading" and building setback is greater tha(n) the recommended 33 feet and should be 40 feet or more as suggested by the crack in the on-site brick retaining wall and a 45 degree upward project form the base of the bluff."*

   The statement combines four issues: a ground crack, the grading, the calculated setback, and the Building Code setback. The issue of grading is answered in item 2. The answers to the other questions are presented in this section.

   Ground Cracking and setbacks: The recommended 33-foot setback was determined by conservative calculations of slope stability, and an adequate evaluation of the site geology. The Hydro-Geo letter report adds nothing to his evaluation. The retaining wall's cracking is likely unrelated to the slope stability. The wall is substandard and old, and there are many similar explanations for the cracking. I have observed no evidence of slope movements forty feet back from the bluff.

   California Building Code Requirements: The Hydro-Geo Report improperly applies the setback requirements of the 2007 California Building Code (hereafter CBC). The setbacks referred to in the CBC (Sections 1805.3 and 1805.3.2) pertain to the footing setbacks from slopes. Per Section 1895.3.2, the bottom of footings are to be located behind an imaginary 45 degree plane projected upward from the tope of the slope – the structure its self is not required to be setback from the plane.

   Nevertheless, based upon the cross-section shown on Plate 2 of the Engineering Geology Report, by Rogers E. Johnson and Associates dated October 24, 2005, projection of the 45 degree plane

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EXHIBIT

upward from the toe of the bluff to the ground surface behind the bluff defines setback that is only 26 feet from the bluff, and less restrictive than the Rogers E. Johnson and Associates setback of 33 feet. Furthermore, Sectin 1805.3.2 of the CBC allows for alterative setbacks based upon consideration of material, height of slope, slope gradient, load intensity and erosion characteristics of the slope material. These were considered in the project technical reports.

I am unclear how Hydro-Geo has applied the 2007 CBC setbacks since they have not provided any cross-sections or any additional information.

2. Hydro-Geo's states in the third paragraph of the third page, *" We do not agree that an "exception" should be made from the setback for site grading. In our opinion, there is a greater potential to destabilize the bluff from vibrations and weight of the grading equipment than the slight advantage that may be gained by removing some weight from the top of the bluff with heavy equipment."*

   No exception is needed. The exception request by the applicant was for another project that was denied. The only grading that will be allowed on the slope is the shaping of the slope by hand to remove fill and develop a beneficial drainage pattern. This grading is specifically exempted in Section 16.10.070 (h) Coastal Bluffs and Beaches 2. (1), and is necessary on Coastal Bluffs to prevent water from flowing over the bluff to reduce erosion. The small amount of grading now proposed will not removed the soils zone, will be completed by hand, and is necessary to redirect drainage away from the edge of the bluff. This type of minor regrading has been required on hundreds of projects with only beneficial impacts.

3. Hydro-Geo states in the third paragraph of the third page, *"Surface water diverted to a sump or French drain around the proposed residence could also more rapidly infiltrate into the soil and saturate the surrounding terrace sediments."*

   No water is being diverted to a sump or French drain. The site drainage will be captured on the ground surface, and controlled on this property with an engineered drainage system with no increase in the amount or intensity anywhere on the property. Subsurface drains will collect and control whatever subsurface drainage is present on the site.

4. Hydro-Geo states in the third paragraph of the fourth page *"High water conditions in the adjacent Borregas Creek may also contribute to high groundwater levels at this site."*

   No evidence is presented in the Hydro-Geo report that supports a conclusion that Borregas Creek will influence the stability of the Coastal Bluff. There is little evidence of seepage along the bluff that is of a pattern or magnitude that would indicate that Borregas Creek affects the ground water conditions at this site. Furthermore, none of the large number of engineering geology or geotechnical reports that have been prepared for development of the coast near this project have conclude or suggested that Borregas Creek has any influence on this bluff's stability.

5. Hydro-Geo states in the first paragraph of the fourth page *"We believe that the recommendations of Haro, Kasunich, and Associates to install a "pin pile" retaining structure along the face of the bluff would provide a good solution from mitigation the unstable slope condition in the upper portion of the bluff at the site."*

   Haro, Kasunich and Associates has not recommended a pin pile wall for this site. As indicated in the project consulting reports, the designated building envelope has been determine to compensate for

100 years of erosion and slope instability to avoid the necessity of constructing a pin pile wall. The 2007 report by Haro, Kasunich and Associates was prepared for a property at 745 Oak Hill Road where the home is located within a few feet of the coastal bluff, and bluff retreat correspondingly undermined the stability of the home's foundations necessitating the repair.

A 33' setback, as was designated for the project , avoids the need to the construction a wall. We still believe even with all of the new information from the Hydro-Geo report that there is no need to modify the project.

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(page 404 of 455 pages)

County of Santa Cruz
Planning Department

ATTACHMENT 4
Planning Commission
Meeting Date: 3/24/10
Agenda Item: # 7
Time: After 9:00 a.m.

Additions to the Staff Report for the Planning Commission

Item 7: 09-0139

Late Correspondence

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ATTACHMENT 4

Katharine P. Minott
745 Oak Hill Road • Aptos, California 95003
kpminott@gmail.com

County of Santa Cruz Planning Commission
Planning Department
701 Ocean Street, 4th Floor
Santa Cruz, California 95060

March 17, 2010

c/o Robin Bolster-Grant, Project Planner
(e-mail: pln111@co.santa-cruz.ca.us)

Re: Application 09-139 (APN 038-151-89/Oak Hill Road Aptos, CA.)
Meeting Date: March 24, 2010, Agenda Item 7 (Site in Supervisorial District 2)

Dear Planning Commissioners,

As a bluff-top neighbor, living two doors east of the proposed project on Oak Hill Road in Aptos, I have deep reservations about the Zoning Administrator's conditions of approval.

I join my Oak Hill Road and Las Olas Drive neighbors in asserting the lot's bluffside and streetside drainage have not been adequately designed. We are requesting the Planning Commission not approve any planning or building permits until acceptable drainage and bluff landscaping designs are submitted. The designs must make guarantees that no additional environmental impacts will occur along this vulnerable stretch of coastal bluff.

BLUFF DRAINAGE: There appear to be obvious conditions of approval missing. I cannot find any special requirements to correct the problematic lack of drainage and landscaping on the bluff.

This particular lot is historically notorious for the large amount of rock and mudflow bluff face sheds during wet winters. The rock flows have caused damage to the homes below on Las Olas Drive and weaken the integrity of the bluff properties on either side of the lot.

The proposed drainage is not an adequate remedy. The minimal parameter trough described in the application is an anemic and under-designed drainage solution. An aggressive drainage infrastructure plan should be designed to deflect ALL water away from the bluff and side-yards

In addition to a more comprehensive drainage plan, a landscape plan designed and engineered by a licensed arborist and a landscape architect should be required to use drought tolerant native plants to restore the bluff and inhibit future mudflow.

CCC Exhibit 7
(page 406 of 455 pages)

ATTACHMENT 4

Katharine P. Minott
745 Oak Hill Road • Aptos, California 95003
kpminott@gmail.com

STREETSIDE DRAINAGE: The Oak Hill Road neighbors would like to know where the storm water flow will go and how it will be slowed down. We are requesting that a complete set of engineering drawings be submitted to the Planning Commission that show the rate of drainage flow from the lot and onto Mrs. Hanchett's streetside property.

EMERGENCY VEHICLES: I am doubtful that the width of the new roadway and driveway entrance meet the 18-foot design standard set by the Fire Department. The narrowness of Oak Hill Road in front of the project appears less wide than a fire-road and poses a possible health safety risk to permit access and turn-around space for emergency vehicles.

I will reserve additional comments until after the Planning Commission and neighbors receive design solutions to these concerns.

Thank you for your consideration,

Katharine P. Minott

cc: Supervisor Ellen Pirie; Josephine F. Little; Amy Love and Marilee Robinson; Laura and Pat Murphy; Gwen Hanchett; William Parkin, Esq.

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(page 407 of 455 pages)

ATTACHMENT 4

WITTWER & PARKIN, LLP

147 SOUTH RIVER STREET, SUITE 221
SANTA CRUZ, CALIFORNIA 95060
TELEPHONE: (831) 429-4055
FACSIMILE: (831) 429-4057
E-MAIL: office@wittwerparkin.com

Jonathan Wittwer
William P. Parkin
Ryan D. Moroney

OF COUNSEL
Gary A. Patton

March 22, 2010

HAND DELIVERED

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

Re: Appeal of Zoning Administrator Decision on January 15, 2010
Development Permit Application 09-0139
APN 038-151-89
Owner: Brian Arthur

Dear Members of the Planning Commission:

This letter responds to the February 12, 2010 staff report for the above-referenced appeal. The Planning Commission should grant the appeal and deny the Application for four reasons. *First*, without the required Coastal Development Permit (CDP), the subject property is not a legal, buildable lot. *Second*, the proposed residence exceeds the County's standards for height and number of stories. *Third*, due to geotechnical hazards identified by experts and the subject property's long history of landslides, a greater setback from the bluff is necessary. And *fourth*, these hazardous conditions and other unusual circumstances associated with the subject property/project require environmental review under the California Environmental Quality Act (CEQA–Public Resources Code § 21000, *et seq.*)

The subject property is not a legal, buildable lot because no CDP was obtained as required by State law and the County Code

In 2003, the County administratively (*i.e. without public notice or hearing*) issued a Certificate of Compliance (COC) for the subject property carving out APN 038-151-089, from APN 038-151-85. The Staff report alleges that the COC was Unconditional. This assertion is flawed for at least two reasons:

(1) *The subject parcels were merged by the owner in 1988 and therefore did not meet the criteria for issuance of an Unconditional Certificate of Compliance.* This fact

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(page 408 of 455 pages)

is supported by the July 3, 2001 Zoning Administrator Report which concludes that "[b]ased on the preponderance of the evidence submitted, the parcels do not meet the criteria contained within Section 14.01.109 of the County Code and applicable sections of the State Map Act to be considered as individual parcels." *See,* Exhibit A.[1]

(2) *The County attached conditions to the COC, including requiring a correction of the encroachment of the elevator shaft and deck on the parent parcel through demolition or a lot line adjustment. See,* Exhibit B.[2] Thus, because the subject COC was Conditional, the Applicant is required to obtain a CDP for the parcel before the project can proceed.

The Staff Report cites the property owner's 2005 CDP as part of the basis for "settling the issue of parcel legality." However, by its own terms, that CDP was obtained simply "to demolish the deck and elevator shaft" – the very condition of the 2003 COC. The CDP for demolition did not legitimize the COC, or dispense with the requirement for a CDP for the COC. Further, the fact that the Property owner went through the effort and expense of obtaining a CDP to fulfill the condition only strengthens the Appellants' position that the subject COC was conditional.

In sum, the Project cannot be approved or proceed without a CDP authorizing legalization of the subject property as a separate legal parcel for planning and land use purposes.

The Project violates the County's standards for Height and Number of Stories because 50% of the first story's exterior perimeter is not below grade. Thus it does not qualify as a basement

The Staff Report indicates that staff checked the height and does not agree with Appellants' position. Appellants refer the Commission to their prior comments and maintain that

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[1] We note that on administrative (*i.e. without public notice or hearing*) appeal, the Principal Planner for Development Review granted to COCs.

[2] 8/27/02 letter from the Principal Planner for Development Review, to counsel for the property owner stating that "You have indicated that the property owners are willing to correct the encroachment either through demolition or a lot line adjustment. *I agree that one of these solutions is necessary.*"

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the dormer exceeds the County's height limitation.

The Staff Report also attempts to rebut the Appellants' argument that the proposed structure exceeds the County's two-story maximum for residential structures located within the Urban Service Line. Staff argues that "There is nothing in the basement definition that precludes two areas located at the same level from being defined differently..." Staff's conclusion is simply wrong. In fact, the Code expressly states that "[t]o qualify as a basement **more than 50% of the basement *exterior* perimeter wall area must be below grade** and no more than 20% of the perimeter exterior wall may exceed 5 feet - 6 inches above the exterior grade." County Code § 13.10.700B (emphasis added). An ***exterior perimeter*** by definition includes the four exterior walls, and thus includes the garage in this case, which is not below grade. In contrast to Staff's conclusions, the ***interior partition is completely irrelevant to this calculation***. Staff's strained reading of the code not only defies its plain meaning and intent,[3] but also basic common sense.

Further, if the garage is the "first story" under the code definition (i.e. "the lowest story in a building that qualifies as a story"), then what else could the next story possibly be considered but the second story. Indeed, the second story's baseline elevation is higher than the garage's ceiling. Even the Applicant's plans identify an "upper floor", "lower floor" and "garage floor plan". *See* Staff Report Exhibit 1D pp. 2-3.

Finally, this Planning Commission should be wary of the dangerous precedent Staff's analysis and conclusions would set for future projects. Indeed, under the rationale used by staff, an applicant could basically "step" up a steep slope with story after story (with small basements between each). In other words, instead of stopping at three stories as this Applicant has, a future applicant might use this clever manipulation of the Code to argue for four or even five stories if the slope permitted.

In sum, the proposed Project should not be approved because it is in fact three stories, and out of character with the surrounding neighborhood.

The Project requires a greater set-back from the bluff due to substantial geological hazards

The Appellants set forth extensive evidence of the geological hazards posed by the Project in our January 28, 2010 letter. We are providing additional recently discovered exchange

---

[3] Even the Zoning Administrator admitted at the hearing that the house will *look* like a three-story house.

of letters (including a Landslide Hazard assessment prepare by G.E. Webber Geologic Consultants) between the prior owner's attorneys and the attorney for the homeowners living downslope from the bluff. *See*, Exhibit C. We believe this provides further evidence of geologic hazards and further support for the argument that a greater setback from the bluff is required. Also attached please find a signed original of the geotechnical report prepared by the Appellants' expert. *See*, Exhibit D.

The Project requires Environmental Review under CEQA

The Staff Report asserts that the proposed development is located within an area determined to be stable over the 100-year lifetime of the structure and that that the Project "is not ***expected*** to impact the bluff." The Appellants contend that further environmental review is necessary because of the disputed geologic issues present. As we stated in our appeal letter, a categorical exemption may not be used where there is a reasonable possibility that the proposed activity will have a significant effect on the environment based on ***unusual circumstances***, such as those that exist here. CEQA Guidelines § 15300.2(c).

Thank you for your further consideration.

Very truly yours,
WITTWER & PARKIN, LLP

William P. Parkin

Encl.

cc: Robin Bolster-Grant, Project Planner (via E-mail)

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ATTACHMENT 4

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EXHIBIT A

ATTACHMENT 4

PLANNING DEPARTMENT

GOVERNMENTAL CENTER 701 OCEAN

COUNTY OF SANTA CRUZ

STREET - SANTA CRUZ, CALIFORNIA 95060
FAX (831) 454-2131 TDD (831) 454-2123 PHONE (831) 454-2580

Zoning Administrator
County of Santa Cruz

July 3, 2001

Subject: Level III Appeal of Application No. 01-0068
APN: 038-151-85
Lands of Oswalt

Proposal and Property Location

The applicant applied for a lot legality determination regarding the legality of 2 parcels known as portions of Assessor's Parcel Number 038-151-85. This required a lot legality determination / Certificate of Compliance. The matter before you is the appeal of the determination that the parcels in question do not constitute separate legal parcels for land use and planning purposes (Attachment 1).

e Property is located on the south side of Oak Hill Road (749 Oak Hill) about 300 feet west of Seacliff Drive, Seacliff.

Appeal Issues

Staff has separated the appeal letter into two sections. The following address issues raised within the letter of Appeal dated June 26, 2001 (Attachment 2).

A Combination by Action of Owner Ordinance was not in effect in 1981

The appellant states that the County's Combination Ordinance (County Code Section 14.01.102.1) "was first enacted in 1984", and therefore, this standard cannot be applied. In fact, the County Code contained wording regarding the combination or merging of property since 1978 with the adoption of Ordinance #2402 which amended section 13.04.212 (a Section of the Zoning Ordinance) of the County Code. That section was further amended in 1979 with the adoption of Ordinance #2672 which was the operational ordinance in effect on the day the building permit was applied for and when it was issued (Attachment 3). Specifically contained within that ordinance was the statement that parcels "*shall be deemed merged for the purposes of this Chapter:*" when

> "*5. Lots or parcels on which a dwelling or commercial structure or portion thereof has been built by the owner of such lots or parcels across the common boundary line of those lots or parcels, and which has thereafter been taxed as one building site;*"

From the record, it is clear that Mr. Grover (the owner of record in 1981) had full knowledge of the location of the lot lines. Further, Mr. Grover signed the "Owner Builder Verification" form which was attached to the building plans which clearly shows a significant encroachment over the lot line of over 9 feet (Attachment 4; also see survey map).

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In summary, a version of the Combination by Action of Owner ordinance was in effect at the time the owner (Sherwood and Kathy Grover) applied for Building Permit #1898 in June of 1981.

The Owner did not combine the parcels after 1984

The appellant alleges that the owner did not combine the parcels after 1984. The Assessor's Office Residential Building Record for this site clearly notes "comb 38-151-05 & 23 by owner - 9-10-88" (Attachment 5). Further, Assessor's Staff have indicated that a written request would have been required from the owner prior to any combination and that they do not retain these written requests.

County Code Section 14.01.110 9 (a) 2 states that the parcels shall be considered combined when *"Parcels which have been combined into one assessor's parcel number by the Assessor upon the request of the owner..."*. No evidence has been submitted by the applicant to address sections 14.01.110 (a) 2 (a) or (b).

Staff concluded based upon a preponderance of the evidence that the properties were combined into one tax number upon the request of the owner.

Analysis and Discussion

Assessor's Parcel Numbers 038-151-85 was evaluated as to whether portions of that parcel were presumed to be lawfully created pursuant to Government Code Section 66412.6 and entitled to a Certificate of Compliance pursuant to Government Code Section 66499.35 and Santa Cruz County Code Section 14.01.109 and 110.

The real property in question does not comply with the provisions of the Subdivision Map Act and County Ordinances enacted pursuant thereto for the issuance of an Unconditional Certificate of Compliance in that:

(1) The subject properties were conveyed by a separate document as a separate parcel on or before January 21, 1972; and

(2) The parcels in question did comply with the provisions of the Subdivision Map Act at the time of creation; and

(3) At the time the deed creating the subject parcels was signed, the subject parcel did comply with the applicable County ordinances then in effect, including (without limitation) the parcel size required by the then applicable zone district.

4) The parcel in question was combined by the owner, and is not subject to merger.

Based upon a preponderance of the evidence submitted, the parcels do not meet the criteria contained within section 14.01.109 of the County Code and the applicable sections of the State Map Act to be considered as individual parcels.

Therefore, Assessor's Parcel Number 038-151-85 constitutes only one legal parcel and does not warrant the recording of an Unconditional Certificate of Compliance.

Recommendation

Denial of the Appeal and upholding the Zoning Administrators decision that:

1. Assessor's Parcel Numbers 038-151-85 constitutes only legal parcel for land use and planning purposes.

Prepared By: Don Bussey
Don Bussey, Project Manager

Date: July 3, 2001

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Attachments

1. Staff Report and Action dated June 12, 2001
2. Letter of Appeal dated June 26, 2001
3. Excerpts from the 1981 Zoning Ordinance.
4. Building Permit Application #1898 and Building Permit #0058Q
5. Copy of a portion of the Residential Building Record for this Parcel Number 038-151-85
6. Chain of Title (on file with the Planning Department)
7. Survey Map of Property (on file with the Planning Department)
8. Assessor's Map
9. Copy of Application 98-0702

ATTACHMENT 4

COUNTY OF SANTA CRUZ

PLANNING DEPARTMENT
701 OCEAN STREET, SUITE 310, SANTA CRUZ, CA 95060
(831) 454-2580 FAX: (831) 454-2131 TDD: (831) 454-2123
ALVIN JAMES, DIRECTOR

August 27, 2002

Catherine A. Philipovitch
Bosso, Williams, Sachs, Atack & Gallagher
and Peter L. Sanford
P.O. Box 1822
Santa Cruz, CA 95061-1822

SUBJECT: DETERMINATION ON APPEAL OF UNCONDITIONAL CERTIFICATE OF COMPLIANCE APPLICATION NO. 01-0068, APN 38-151-85

Dear Ms. Philipovitch:

This letter serves as the decision on the administrative appeal of the determination that the above property does not qualify for unconditional certificates of compliance due to combination of the parcels by action of the owners. The Planning Director, Alvin James, has authorized me to make the determination of the merits of the appeal.

The unconditional certificate of compliance was not approved administratively because it appeared that the alleged parcels had been combined by action of the owners. This conclusion was based on a notation on the Assessor's records for the parcel noting the date of combination and the plot plan of an issued building permit submitted by the owners showing the parcels as one lot with proposed improvements located over the shared property line.

The appeal letter you submitted stated the bases of the appeal to be that the combination ordinance was not enacted until after the encroaching improvement was installed, the owners did not combine the parcels, and that the County's Combination Ordinance is preempted by the State Subdivision Map Act.

After reviewing the application file, the letter of appeal, and consulting with County Counsel, I am granting your appeal and, thereby, directing that unconditional certificates of compliance be prepared and recorded to recognize two parcels. I am basing my decision on the following conclusions:

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1. The building permit showing the parcel(s) as one parcel and allowing the encroachment was approved in 1981. The Planning Department should have required the combination of the parcels at that time; however, I found no evidence of the requirement;
2. The alleged combination noted in the Assessor's records occurred on a Saturday. While County staff do work weekends occasionally, the notation was irregular;

3. No written record of the combination request is on file with the Assessor. While the owners may have, indeed, requested the combination, the existing proof of this action is not compelling;
4. Even if the owners did request the combination of the parcels, County Code Section 14.01.110(a)2 states that the parcels shall not be deemed combined if "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". My research found no financial, land use or planning benefit would have been derived by combining the parcels in 1988, in that no planning or building applications were submitted at that time nor were there property transfers;
5. Even though there is an existing encroachment over the property line, I have determined that it is "of such a minor and inadvertent nature that it could be eliminated through a boundary adjustment" (Section 14.01.110(a)5.)

I do have a concern about the existing encroachment. You have indicated that the property owners are willing to correct the encroachment either through demolition or a lot line adjustment. I agree that one of these solutions is necessary.

I will direct Don Bussey, the staff planner, to prepare and record the unconditional certificates of compliance. If you have any questions about my decision, please feel free to contact me at 454-3216.

Sincerely,

Glenda Hill

Glenda Hill, AICP
Principal Planner
Development Review

Cc: Tom and Emily Oswalt
01-0068 File

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ATTACHMENT 4

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EXHIBIT C

ATTACHMENT 4

NEWMAN, MARCUS & CLARENBACH, LLP

HOWARD W. NEWMAN
HOWARD S. MARCUS (1941-1998)
SARA CLARENBACH

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TELEPHONE 476-6622
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E-MAIL sarac@nmclip.com

June 15, 2005

Tom and Emily Oswalt
231 Ventana Way
Aptos, CA 95003

Re: Your empty lot adjacent to 749 Oakhill Road
APN: 038-151-89

Our Clients: Mary and Mark Stevens
771 and 773 Las Olas Drive, Aptos

Dear Mr. and Mrs. Oswalt:

I am writing to let you know that this office represents Mary and Mark Stevens, who own real property located at 771 and 773 Las Olas Drive, Aptos, California, located directly below an empty lot which you own adjacent to 749 Oakhill Road, Aptos. Mr. and Mrs. Stevens have asked me to contact you in respect to sluffing or "mini slides" which have come down from your property on top of the bluff. The sluffing has occurred directly in front of the Stevens' two properties.

I have made a visual observation of your empty lot, and find that the flat area of the lot is covered by a lush growth of grass. It appears that that grass is watered quite a bit. I also observed netting towards the ocean side of the grass and at the top of the cliff, which is apparently designed to retain slipping soil. I also understand that that area of the cliff face has been watered, perhaps in an effort to encourage growth.

I have also observed large chunks of sandy soil, part of the cliff face, below that flat grassy area of your property, which appear to be poised to break off. If they do break off, obviously they will deposit a good bit of material in the direction of my clients' property.

As you may recall, I also represent the Sea Cliff Beach Association, of which the Stevens are members. In that regard, for the last several years I have sent an annual letter in early July to "upslope" property owners along W. Seacliff Drive and Oakhill Road. In that annual letter, I remind the upslope owners of their responsibilities and duties of care as to the downslope owners. I reiterate

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ATTACHMENT 4

here, on behalf of my individual clients, Mary and Mark Stevens, the importance of your fulfilling those duties of care. In short, an owner must avoid negligence which would give rise to damage to other parties, and must exercise reasonable care to prevent injury to others outside of his/her land. An upslope owner is liable for all hazardous conditions which he or she reasonably should know, concerning his/her property.

It is my understanding from discussions with consulting engineering geologist Gary Webber, that watering a "bench" at the top of a bluff, and watering the face of a bluff, can increase instability. This is to request that you conduct a site visit at your empty lot, and that you consult with an expert in the appropriate discipline, such as a consulting engineering geologist or a soils engineer, to obtain recommendations to prevent further landslides and slurring, and that you implement whatever recommendations are made.

I would appreciate hearing from you to discuss these issues and to learn whether you have retained an expert, and if so, what recommendations were made and what steps you have taken to implement them. Please feel free to contact me at the office, or, if you would like, you may contact Mr. and Mrs. Stevens directly at (650) 326-8277. Thank you for your cooperation.

Sincerely,

SC

SARA CLARENBACH
Attorney at Law

SC/ss
cc: Mary and Mark Stevens

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NEWMAN, MARCUS & CLARENBACH, LLP

EDWARD W. NEWMAN
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TELEPHONE 476-6622
TELEFAX 476-1422
E-MAIL: [illegible]

June 28, 2005

Oakhill Road and West Seacliff Drive Owners
Aptos, California

Re: **Our Client:** **Sea Cliff Beach Association**
Annual Reminder: **Property Owners' Duties and Responsibilities**

Dear Upslope Owner:

As you may recall from my correspondence of July 21, 2004, and from previous years, this office represents Sea Cliff Beach Association, the Homeowners Association comprised of property owners on Las Olas Drive, below the cliff on which you own property. The Association has again asked me to send this annual update and reminder message to all upslope owners.

The members of the Association continue to appreciate your attentiveness to their concerns regarding cliff issues of common interest, in particular, prevention of and clean up of "mini-slides" and "slutting," and your communication with the Association's road superintendent Robert Schultz.

Just as a reminder, as the Association has noted in the past, in respect to rights and responsibilities of adjacent landowners, the law is well-developed that adjacent owners owe each other duties of lateral and subjacent support. Also, the adjacent owners owe duties to avoid negligence which will give rise to damage to other parties. A major case in this area is Sprecher v. Adamson Companies (1981) 30 Cal.3d 358, 178 Cal.Rptr. 783, 636 P.2d 1121. Many cases have been decided in line with Sprecher. The basic message is that everyone is responsible for any injury caused to another by his want of ordinary care or skill in the management of his property. A landowner must exercise reasonable care to prevent injury to others outside of his land, whether on public roads or neighboring property. This rule applies to earth movement, fallen trees, and any other such conditions whereby a condition on land causes an injury to a person outside of the land. An upper owner is liable for all hazardous conditions which he reasonably should know, concerning his property.

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FROM : FAX NO. : May. 04 2007 04:06PM P5

ATTACHMENT 4

Distribution: All upslope owners, including State of California

cc: Sea Cliff Beach Association Board Members
Nikki Henninger, Association Business Manager
Robert Schultz, Association Road Superintendent

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NEWMAN, MARCUS & CLARENBACH, LLP

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TELEFAX 476-7423
E-MAIL nmcllp@nmcllp.com

August 1, 2005

Tom and Emily Oswalt
231 Vemana Way
Aptos, CA 95003

Re: 749 Oakhill Road
APN: 038-151-90

G.E. Weber Geologic Consultant letter

Dear Mr. & Mrs. Oswalt:

I am writing to follow through on my letter to you of June 15 regarding the above matter. As I understand it from my clients, Mark and Mary Stevens, they have not heard from you in reply to that letter, nor have I.

On approximately July 25 my clients informed me that they had observed that the fissures surrounding the blocks of material on the face of the cliff in front of and above their property at 771 and 773 Las Olas Drive had apparently increased in size, and it appeared that the blocks of material were becoming looser and looser from the cliff face. It is my understanding that Robert Schultz, who does road maintenance work on Las Olas Drive, contacted you folks about those conditions.

Because of my clients' growing concern and because they have not heard from you, my clients retained Gerald E. Weber, consulting engineering geologist, to do a brief evaluation and make recommendations concerning the issues raised in my letter of June 15 and based on the observations of my clients concerning the material on the cliff face. Mr. Weber visited the site and prepared a letter bearing date of July 28, 2005, a copy of which I enclose.

As you can see, Mr. Weber's letter notes some serious and alarming conditions, and he recommends in no uncertain terms that you retain experts to evaluate the situation and make recommendations, and that you act on those recommendations. I had made similar requests to you in my June 15 letter.

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Tom & Emily Oswalt
August 1, 2005
Page 2

On behalf of my clients Mark and Mary Stevens demand is hereby made that you immediately retain experts as Mr. Weber recommends at the end of page 2 of his letter, and that you immediately clear the incipient landslide blocks from the cliff face prior to the next rainy season.

If you have any questions or concerns about Mr. Weber's recommendations please contact me immediately. Your experts are welcome to contact me as well.

I cannot overemphasize the gravity of this situation. I have been involved with the downslope properties since the late 1980s, and I can tell you from my own experience that slippage and landslides can be very serious. May I hear from you, your experts, or your counsel as soon as possible. Thank you for your cooperation.

Sincerely,

AC

SARA CLARENBACH
Attorney at Law

SC/vs
enclosure
cc: Mary and Mark Stevens
G.E. Weber

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ATTACHMENT 4

G.E. WEBER GEOLOGIC CONSULTANT
129 Jewell Street. Santa Cruz, CA 95060
831. 469. 7219 831. 469. 3467 Fax

July 28, 2005

Ms. Sara Clarenbach, Esq.
Newman, Marcus & Clarenbach, LLP
331 Capitola Avenue
Capitola, CA 95010

Re: Landslide Hazard - Stevens' Properties, 771 & 773 Las Olas Drive, Aptos, California

Dear Ms. Clarenbach:

At your request I performed a brief field visit to the above referenced properties to evaluate the hazard posed by blocks of sandstone that are clearly detaching from the face of the sea cliff north of Las Olas Drive. This letter is to advise you regarding my concerns for the very high landslide hazard posed to the Stevens' two homes by these incipient failures. The properties on which the potential slide blocks lie appear to be 749 Oakhill Road and the adjacent property to the west. The exact location can not be determined without access to the properties at the top of the cliff.

Site Conditions:

During my visit it was obvious that several relatively small masses of sandstone had already broken loose and fallen onto the northern portion of Las Olas Drive directly across the street from the two above referenced homes. In the same area several moderately sized blocks of sandstone are slowly detaching from the cliff face; and these blocks will unquestionably fall in the near future. Above this destabilizing portion of the cliff face lays a questionably stable mass of terrace deposits at or near the angle of repose. Clearly visible at the top of the cliff is a small structure (an observation (?) deck) that is already undercut by slope failures. A portion of the foundation is hanging out over thin air. The face of the cliff is partially covered by the tattered remains of jutcing. The purpose of the jutcing is not known, but was probably placed on the cliff to aid the growth of vegetation; which in turn may have been an attempt to increase slope stability.

The great unknown factor in a geologic setting of this sort is how far back from the face of the cliff have sandstone blocks began to detach and start to move toward the free face. Without additional information on this aspect of the geology it is impossible to fully evaluate the hazard of slope failure posed to the residences on Las Olas Drive.

There appear to be no retaining structures at the top of the cliff that would stabilize the marine terrace deposits, nor is there any retaining structure associated with the cliff face. The jutcing is externally useless and provides no significant increase in stability to the cliff face. In a geologic setting of this sort, attempts to vegetate the face of and/or the top of the cliff are generally counter productive. Vegetation is generally useful only for stabilizing shallow soil masses and preventing surface erosion due to runoff. As a general rule, the extensive watering of vegetation at the top of a quasi-stable slope is more likely to precipitate ground failures than to prevent them.

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It is also of interest to note that the unstable blocks described above lie in nearly the same position as several landslide masses we had to remove from the top of the cliff following the October 17, 1989 earthquake because of the hazard they posed to residents along Las Olas Drive

Hazard Evaluation:

The detaching masses of sandstone that are now sitting in a quasi-stable manner on the steep face of the cliff will undoubtedly fall in the near future. Movement of these quasi-stable blocks could be triggered by either a large storm or by moderate to severe seismic shaking, but may simply move without warning or unusual conditions. When this material mobilizes the sandstone blocks will topple, slide and/or fall off of the cliff onto Las Olas Drive and possibly the adjacent homes. If these sandstone blocks break up and crumble as they impact the slope and the road they will probably have sufficient momentum to flow laterally seaward onto the two Stevens' properties. Depending upon how much material breaks loose in a single event the potential exists for severe damage to the two Stevens' homes. Under the right conditions (a large storm or a moderate earthquake) there is the potential for injury or even death to persons living in these homes.

The extent of the destabilization in the marine terrace deposits at the top of the cliff and also the sandstone blocks in the cliff face cannot be ascertained without a detailed geologic study of the two uphill lots. It must be understood that when the blocks on the face of the cliff fall, it will increase the instability of the overlying terrace deposits. Consequently one failure leads eventually to another further upslope. From my cursory inspection (most of the cliff face is inaccessible without climbing gear), the detaching blocks are relatively small but several of them may extend far deeper into the cliff face than it appears. Without detailed studies we do not know how far back from the cliff face some of these blocks extend.

In summation, the highest hazard (extremely high hazard) is to persons using Las Olas Drive, be it either walking or driving. The blocks of sandstone that are detaching from the cliff face could collapse or topple at any time, resulting in their falling onto the roadway. Consequently, there is the potential not only for property damage but for serious injury and death.

The hazard to the two Stevens' homes is not as high, but I would still rate it as moderate to high. If a large block detaches the fall and /or the run out could easily reach the two homes. The home at 773 Las Olas Drive, because its bottom floor is elevated about 5 feet above the ground surface, has a lower potential for damage. However, the home at 771 Las Olas Drive is not elevated, and therefore could be easily reached by the run out of a landslide or earth/rock fall.

The hazards presented to the residents of Las Olas Drive in general and to the Stevens' properties in particular are too high to ignore. A rainy season with high levels of rainfall could easily be the triggering mechanism for the detachment of these blocks and the generation of damaging slope failures. Hence, I suggest that: 1) geologic and geotechnical engineering studies should be conducted to determine the extent of the unstable masses and to recommend mitigating measures, and 2) clearly the incipient landslide blocks should be removed from the cliff face prior to the next rainy season. The removal of these blocks should be done under the direction of an engineering geologist and/or geotechnical engineer to assure that essentially all of the loose material is removed from the cliff face. The unstable blocks could be removed by hand and/or crane, in a manner similar to the cleaning of broken material from the cliff face following the October 17, 1989 earthquake.

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I hope this brief letter is sufficient to alert you to the high level of hazard posed to residents using Las Olas Drive and the Stevens' properties by the unstable blocks on the cliff face. If you have any questions regarding this letter please contact me.

Very truly yours,

Gerald E. Weber, Ph.D.
Registered Geologist #71
Certified Engineering Geologist #1495

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ATTACHMENT 4

NEWMAN, MARCUS & CLARENBACH, LLP

HOWARD W. NEWMAN
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TELEPHONE 476-6622
TELEFAX 476-1422
E-MAIL sarac@nmcllp.com

August 4, 2005

Tom and Emily Oswalt
231 Ventana Way
Aptos, CA 95003

Re: **749 Oakhill Road**
APN: 038-151-90

Site visit 1:00 p.m. Wednesday August 10, 2005

Dear Mr. & Mrs. Oswalt:

This is to follow up on my telephone message for you of today's date, and my previous telephone conversations with Mr. Oswalt. This will confirm the site visit scheduled for Wednesday, August 10 at 1:00 p.m. at the Stevens' property on Las Olas Drive. In addition to Ms. Clarenbach, Mary Stevens and Jerry Weber will be present. I have left messages for Amy Love and Marile Robinson inviting them as well. If you have any questions, please feel free to call me at the above telephone number. Thank you.

Sincerely,

VS

Victoria Sbuts
Assistant to SARA CLARENBACH
Attorney at Law

SC/vs
cc: Mary and Mark Stevens

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ATTACHMENT 4

NEWMAN, MARCUS & CLARENBACH, LLP

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E-MAIL [illegible]

August 25, 2005

Tom and Emily Oswalt
231 Ventana Way
Aptos, CA 95003

Re: **749 Oakhill Road**
APN: 038-151-90

Follow up to site visit of 8/10/05

Dear Mr. & Mrs. Oswalt:

I am writing to follow through on the discussions which we had at the site visit relative to the above matter on August 10, 2005, both on Las Olas Drive and upslope at the 749 Oakhill Road property. As of this dictation, I have heard nothing from you as to your/ your experts' follow-up to our discussions. My clients would like to know the status of your experts' study and evaluation, and would also like to know what if any recommendations have been rendered, and what if any implementation measures you have undertaken.

As you know, my clients were extremely concerned about the cliff conditions, and continue to be concerned after the landslide of August 10. The dangerous conditions continue, notwithstanding that landslide. Both your expert Rogers Johnson and the Stevens' expert Jerry Weber expressed concern about the fissure which is still apparent on the face of the cliff.

In short, that the landslide occurred on August 10 does not mean no dangerous condition exists. The contrary is true.

May I hear from you within 14 days of the date of this letter. Thanks for your cooperation.

Sincerely,

SC

SARA CLARENBACH
Attorney at Law

SC/vs
cc. Mary and Mark Stevens
Jerry Weber
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(page 430 of 455 pages)

ATTACHMENT 4

BOSSO WILLIAMS
A PROFESSIONAL CORPORATION

ROBERT E. BOSSO
LLOYD R. WILLIAMS
CHARLENE R. ATACK
JOHN M. GALLAGHER
PETER L. SANFORD*
CATHERINE A. PHILIPOVITCH
PASCHA R. STEVENS**
MICHELLE E. ANDERSON***
EDWARD L. CHEN
JENNIFER J. GRAY
THOMAS D. MORELL
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PHILIP M. NAGLIS, Of Counsel

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LOCATION:
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Santa Cruz, CA 95060

TELEPHONE
(831) 426-8484

FACSIMILE
(831) 423-2839

WEBSITE
www.sdawfirm.com

EMAIL

September 8, 2005

Sara Clarenbach, Esq.
Newman, Marcus & Clarenbach
331 Capitola Ave., Suite K
Capitola, CA 95010

RE: Oswalt/Las Olas Drive Properties

Dear Sara:

We represent Tom and Emily Oswalt, owners of the vacant lot known as APN 038-151-89. We are in receipt of the correspondence that you have sent to the Oswalts dating back to June 15, 2005.

The Oswalts have retained geotechnical engineer Rick Parks of Haro Kasunich and consulting geologists Rogers Johnson and Associates. These experts drilled into the soil and took samples last week. The samples were sent to a lab for analysis. The results are expected to be available in about a week, at which point the geotechnical and geological consultants will review the data and analyze the stability of the slope.

The Oswalts' retention of experts shall in no way be construed as an admission of any liability or of the existence of any dangerous condition. Both upslope and downslope owners owe duties of reasonable care toward one another with respect to their properties. In this case, Mr. Oswalt recalls an excavation that occurred on May 13, 2000 at the direction of the Las Olas road manager, that resulted in 10-13 truckloads of earth being removed from your client's lots and my client's vacant lot.

CCC Exhibit 7
(page 431 of 455 pages)

ATTACHMENT 4

The Oswalts stopped watering vegetation on the bluff of their vacant lot some time ago, and do not intend to resume such watering.

Very truly yours,

Catherine A. Philipovitch

cc: Tom and Emily Oswalt

CCC Exhibit 7
(page 432 of 455 pages)

ATTACHMENT 4

NEWMAN, MARCUS & CLARENBACH, LLP

EDWARD W. NEWMAN
EDWARD S. MARCUS (1941-1998)
SARA CLARENBACH

ATTORNEYS
331 CAPITOLA AVENUE
SUITE K
CAPITOLA, CA 95010

AREA CODE 831
TELEPHONE 476-6622
TELEFAX 476-1422
E-MAIL: [redacted]

September 12, 2005

Catherine A. Philipovitch, Esq.
Bosso Williams
P.O. Box 1822
Santa Cruz, CA 95060-1822

Re: NMC Client: Stevens: 773/771 Los Olas Drive
BW Client: Oswalt: 749 Oakhill Road/Empty Lot

Dear Cathy:

Thank you for your letter of September 8 regarding the above matter. I was glad to get your report to the effect that Oswalts' experts have moved forward with testing and evaluation. I hope that you, your clients, your clients' experts will be willing to share the information with us when it is available.

With respect to duties of care by upslope and downslope owners, I have consistently reinforced with my clients the duties of downslope owners. As for Mr. Oswalt's mention of a May 13, 2000 "incident," he mentioned that at our site visit on August 10. I have no personal knowledge of that "episode" and by copy of this letter am asking my clients to obtain information on whatever may have happened, if anything, and to provide it to me. I can tell you at this point, Cathy, that the Seacliff Beach Association has consistently informed its representations and/or contractors on proper procedures concerning the cliff. Indeed, the Seacliff Beach Association previously retained Jerry Weber, who is acting as the expert for Stevens in this matter, to advise it and its members about proper cliff procedures. As I understand it, Mr. Weber's advice has been followed consistently by the Association and its contractors.

Thank you again for your correspondence. I look forward to hearing from you when the Haro, Kasunich & Rogers Johnson analyses have been completed.

Sincerely,

SARA CLARENBACH
Attorney at Law

SC/ljn
cc: Mary and Mark Stevens w/enclosure
Jerry Weber w/enclosure
[illegible]

CCC Exhibit 7
(page 433 of 455 pages)

ATTACHMENT 4

From: Catherine Philipovitch
To: Sara Clarenbach
Date: 9/12/05 12:00PM
Subject: Stevens/Oswalt

Hi Sara:

I need to make a correction to the letter that I sent you. In the last paragraph on the first page, where I mention the May 13, 2000 dirt removal incident, all of the dirt was removed from my client's vacant lot.

Thanks.

Catherine A. Philipovitch
Bosso Williams, APC
Mailing Address: P.O. Box 1822, Santa Cruz, CA 95061-1822
Location: 133 Mission Street, Suite 280, Santa Cruz, CA 95060
tel: 831-426-8484
fax: 831-423-2639
cphilipovitch@bossowilliams.com

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CCC Exhibit 7
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ATTACHMENT 4

BOSSO WILLIAMS
A PROFESSIONAL CORPORATION

ROBERT F. BOSSO
LLOYD R. WILLIAMS
CHARLENE B. ATACK
JOHN M. GALLAGHER
PETER L. SANFORD *
CATHERINE A. PHILIPOVITCH
PASCHA R. STEVENS **
MICHELLE E. ANDERSON ***
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JENNIFER J. GRAY
THOMAS D. MORELL
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PHILIP M. SACHS, OF Counsel

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www.sclawfirm.com

EMAIL:

September 13, 2005

Tom and Emily Oswalt
P.O. Box 310
Aptos, CA 95001-0310

Re: Slope Stability Issue

Dear Tom and Emily:

Enclosed is a copy of a letter from Sara Clarenbach that responds to my letter to her. At this point, we'll wait to see what Rick Parks and Rogers Johnson conclude, then decide if we are going to correspond any further with Sara.

Very truly yours,

Catherine A. Philipovitch

Catherine A. Philipovitch

Enc.

CCC Exhibit 7
(page 435 of 455 pages)

ATTACHMENT 4

BOSSO WILLIAMS
A PROFESSIONAL CORPORATION

ROBERT F. BOSSO
LLOYD R. WILLIAMS
CHARLENE B. ATACK
JOHN M. GALLAGHER
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THOMAS D. MORELL
NICHOLAS C. FAZIO
PHILIP M. SACHS, Of Counsel

* Certified Specialist in Taxation Law
** Certified Specialist in Family Law
*** Certified Specialist in Estate Planning, Trust & Probate Law
State Bar of California, Board of Legal Specialization

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FACSIMILE:
(831) 423-2539

WEBSITE:
www.sclawfirm.com

EMAIL:

September 13, 2005

Tom and Emily Oswalt
P.O. Box 310
Aptos, CA 95001-0310

Re: Slope Stability Issue

Dear Tom and Emily:

Enclosed is a copy of a letter from Sara Clarenbach that responds to my letter to her. At this point, we'll wait to see what Rick Parks and Rogers Johnson conclude, then decide if we are going to correspond any further with Sara.

Very truly yours,

Catherine A. Philipovitch

Catherine A. Philipovitch

Enc.

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(page 436 of 455 pages)

CCC Exhibit 7
(page 437 of 455 pages)

EXHIBIT D

ATTACHMENT 4

HYDRO-GEO CONSULTANTS, INC.
P.O. Box 4353, Mountain View, CA 94040-4353
(650) 428-0588 • FAX (650) 428-0589

January 11, 2010
Project 10667-A

Wittwer & Parkin, LLP
147 South River Street, Suite 221
Santa Cruz, California 95060
Attention: Mr. William Parkin

Subject: Preliminary Geologic Assessment
Proposed Single-Family Parcel
Oak Hill Road (APN 38-151-89)
Aptos, Santa Cruz Co., California

Dear Bill,
At your request we visited the subject property on January 8, 2010, studied stereo-paired and oblique aerial photographs, and reviewed the available geologic data listed in the references at the end of this letter report.

BACKGROUND INFORMATION

The subject property is an undeveloped, rectangular shaped, 0.2 acre lot that is approximately 50 feet wide and 170 feet long. It is a substandard size lot for this area. The western portion of this parcel consists of a 100 foot bluff with a very steep slope of approximately 60 degrees that overlooks Las Olas Road and Seacliff State Beach in Santa Cruz County, California. The upper surface of the captioned property slopes to the east, toward Borregas Creek that flows along Oak Hill Road, approximately 250 feet from the site.

The bluff at this property has eroded several feet further eastward than the adjacent parcels to the north and south have; there also appears to be less vegetation on the face of the bluff below this lot suggesting active slope instability.

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Pampas grass indicative of high groundwater conditions is present on the face of the slope on the northside of the captioned parcel

Highly fractured Purisima Sandstone that dips 2 to 3 degrees to the southeast (Hickey, 1968) is exposed in the lower portion of this buff. The most pronounced set of joints in this sandstone typically dip seaward in this area (Griggs and Plant, 1998). A marine terrace deposit, approximately 35 feet thick, composed of relatively loose sand and gravel overlies the sandstone. These terrace sediments, which have an angle of repose of 33 degrees (Rogers E. Johnson, 2007), are over-steepened to an unstable position, near vertical slope with a Factor of Safety of less than 1 (Haro, Kasunich and Associates, 2007). This slope is subject to continuous slumping and landsliding. Haro, Kasunich and Associates (2007) recommended that a "pin pile" retaining structure tied together with a grade-beam, consisting of drilled, 24-inch diameter reinforced concrete piers on 5 foot centers, extending at least 5 feet into the Purisima Sandstone, should be installed along the top of this slope to help mitigate the unstable slope condition.

Santa Cruz County (County Code Sections 16.10.070(h)(1)(ii) & 16.1004(s)) requires that a grading and building setback be maintained within the estimated "100 year erosion setback". Rogers E. Johnson & Associates (2008) estimated the 100 year setback to be 33 feet from the top of the bluff at this site. The setback from the top edge of the bluff under the Uniform Building Code (2007) is determined by a 45 degree upward projection from the toe of the bluff which, in this case, may be greater than 33 feet.

Rogers E. Johnson (2008) has requested that an "exception" from the 100 year setback grading requirement be issued by the County to a allow for the removal of up to 3 feet of surface material and the old brick retaining wall in order to improve surface drainage and reduce some of the overburden weight (driving force) on this unstable slope.

The Loma Prieta Earthquake of October 17, 1989 (Magnitude 6.9) triggered significant landslides along the entire face of the bluff along Seacliff State Beach with head scarps 20 to 30 feet high and tension cracks that cut through several building foundations at the top of the cliff (Manson, et al, 1992). The old brick retaining wall at the western end

of the paved driveway on this site, located approximately 40 feet from the top of the bluff, is cracked and has moved approximately 1 inch. This may have occurred during the 1989 earthquake.

FINDINGS

Based on the above information, it is our opinion that the potential "100 year grading" and building setback is greater that the recommended 33 feet and should be at least 40 feet or more as suggested by the crack in the on-site brick retaining wall and a 45 degree upward projection from the base of the bluff.

We do not agree that an "exception" should be made from this setback for site grading. In our opinion, there is a greater potential to destabilize the bluff from the vibrations and weight of the grading equipment than the slight advantage that may be gained by removing some weight from the top of the bluff with heavy equipment.

We also question the feasibility of diverting and "improving" the drainage by grading at the captioned site. Boring logs in this area (Haro, Kasunich and Associates, 2997) indicate that the surface soil is more clayey and less pervious that the underlying material. Consequently, if the clayey surface material at this site is removed, it may allow surface water to seep more rapidly into the soil and contribute to the destabilization of the bluff.

Surface water diverted to a sump or French drain around the proposed residence could also more rapidly infiltrate into the soil and saturate the surrounding terrace sediments. High water conditions in the adjacent Borregas Creek may also contribute to high groundwater levels at this site. These conditions could reduce the stability of the bluff face by seepage and erosion along the contact between the highly fractured underlying sandstone that is unstable and slopes toward the beach and the generally loose terrace sediments.

We believe that the recommendations of Haro, Kasunich and Associates (2007) to install a "pin pile" retaining structure along the face of the bluff would provide a good solution for mitigating the unstable slope condition in the upper portion of the bluff at this site. An engineered retaining wall would also be needed to support the unstable Purisima Sandstone along Las Olas Road, and to provide safer conditions for the houses below this site.

CLOSURE

We trust that this information will be of assistance. If you have any questions please do hesitate to call our office

Very truly yours,
HYDRO-GEO CONSULTANTS, INC.

John T. O'Rourke

Engineering Geologist 419
Hydrogeologist 395

JO'R:jod
e-mailed:

CCC Exhibit 7
(page 446 of 455 pages)

REFERENCES

Blake, T.F., Hollingsworth, R.A., and Stewart, J.P., 2002, Recommended Procedures for Implementation of the DMG Special Publication 117 Guidelines for Analyzing and Mitigating Landslide Hazards in California: Southern California Earthquake Center.

Bloyd, R.M., 1981, Approximate Ground-Water-Level Contours, April 1981 For the Soquel-Aptos Area, Santa Cruz County, California: U.S. Geological Survey, Open-File Report81-680.

Brabb, E.E. (Compiler), 1989, Geologic Map of Santa Cruz County, California: U.S. Geological Survey, Miscellaneous Investigations Series Map I-1905.

Griggs, G.B. and Plant, N., 1998. Coastal-Bluff Failures in Northern Monterey Bay Induced by the Earthquake (pp. C33 – C50); in The Loma Prieta, California Earthquake of October 17, 1989 – Landslides: U.S. Geological Survey, Professional Paper 1551-C.

Haro, Kasunich and Associates, 2007, Geotechnical Investigation for 745 Oak Hill Road, APN 038-151-06, Santa Cruz County, California:

Hickey, J.J, 1968, Hydrogeologic Study of the Soquel-Aptos Area, Santa Cruz County, California: U.S. Geological Survey, Water Resources Division, Open-File Report.

International Code Council, 2008, 2007 California Building Code, Title 24, Part 2, Volume 2 of 2.

Manson, M.W., Keefer, D.K., and McKittrick, M.A., 1992, Landslides and Other Geologic Features in the Santa Cruz Mountains, California, Resulting From the Loma Prieta Earthquake of October 17, 1989: California Division of Mines and Geology, Open-File Report 91-05.

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(page 442 of 455 pages)

Parrish, J.G., 2008, Guidelines for Evaluating and Mitigating Seismic Hazards in California: California Geological Survey, Special Publication 117.

Rogers E. Johnson & Associates, 2007, Geologic Evaluation of Coastal Bluff Property, 745 Oak Hill Road, Aptos, California, Santa Cruz County, APN 033-151-06: unpublished report (Job No. C07006-56).

Rogers E. Johnson & Associates, 2008, Request for Exception, Oak Hill Road, Aptos, California, Santa Cruz County, APN 038-151-89, Application #07-0548: unpublished letter report (Job No. C07027-56).

WAC, 6-16-89, Stereo-paired Aerial Photographs (black & white), Flight WAC 89CA, Photographs 36-124 and 36-125, scale: 1" = ~ 2,640.

ATTACHMENT 4

County of Santa Cruz
Planning Department

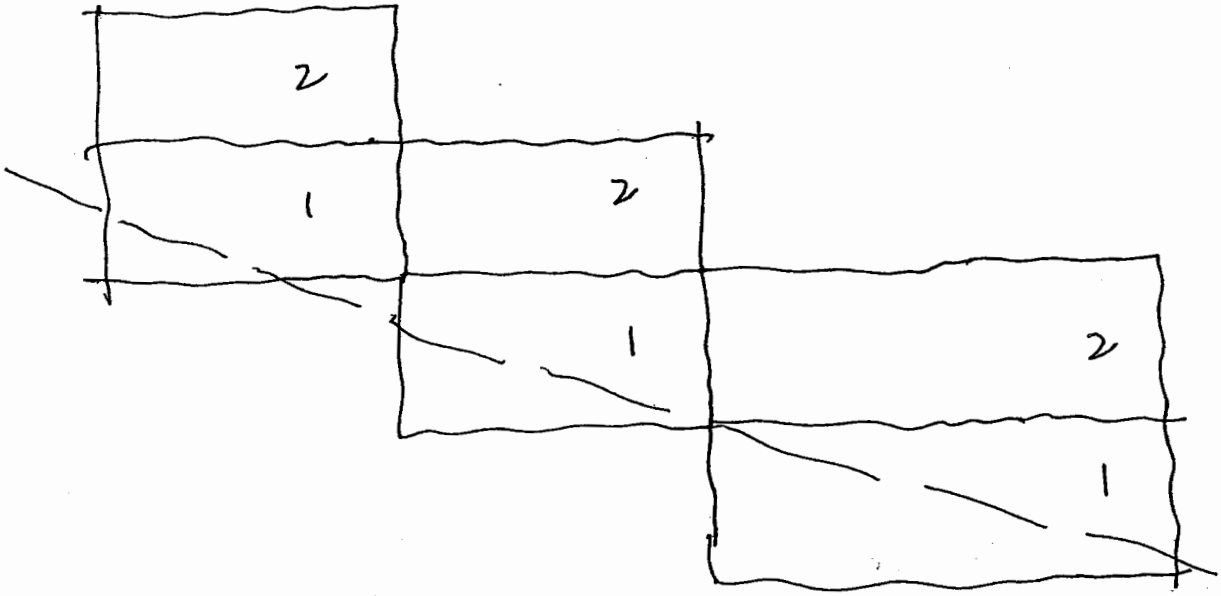
Planning Commission
Meeting Date: 3/24/10
Agenda Item: # 7
Time: After 9:00 a.m.

Planning Commission

Materials submitted during the 3/24/10 Public Hearing

Item 7: 09-0139

CCC Exhibit 7
(page 444 of 455 pages)



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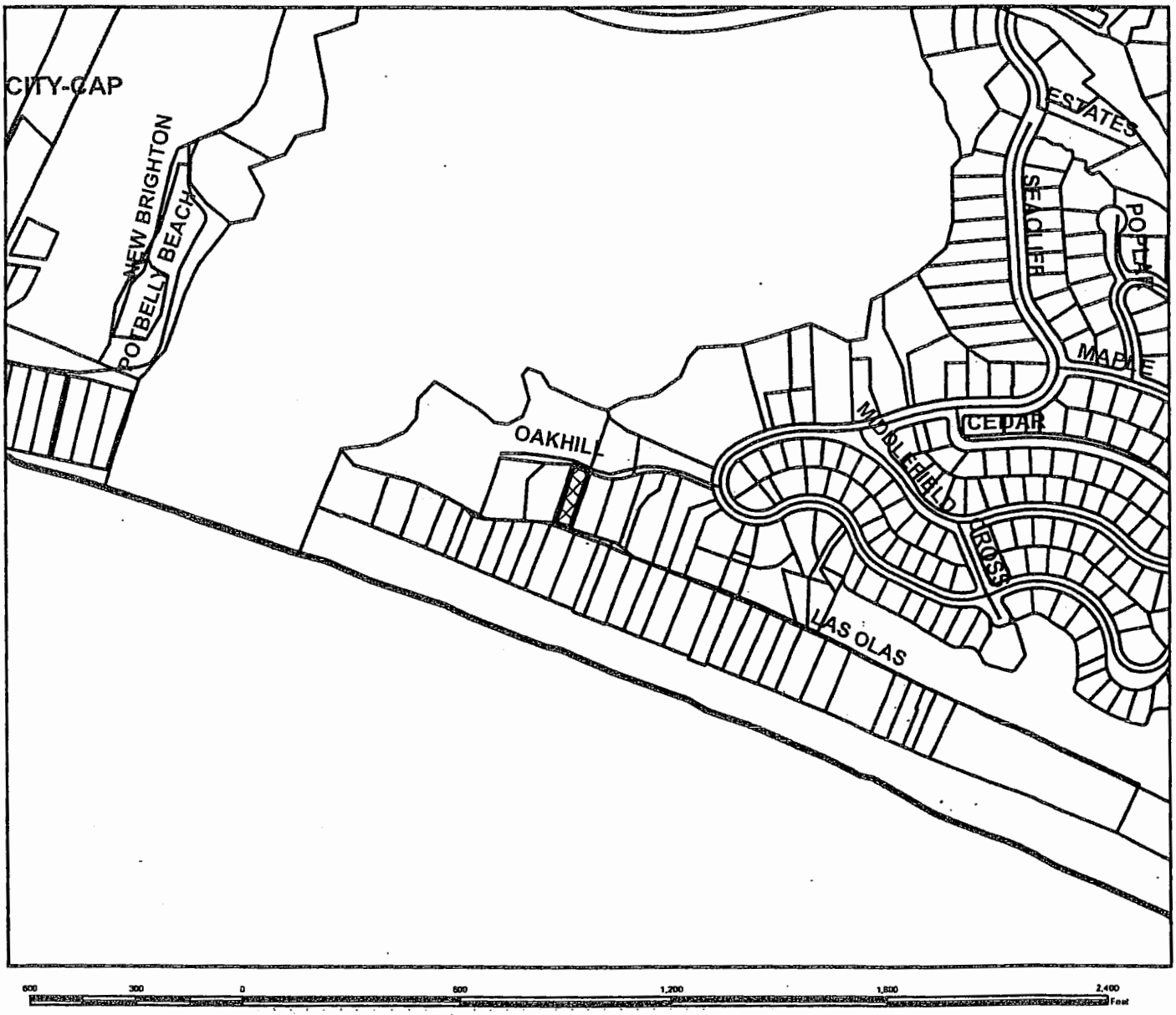
(page 445 of 455 pages)

Location Map



600 300 0 600 1,200 1,800 2,400 Feet

LEGEND

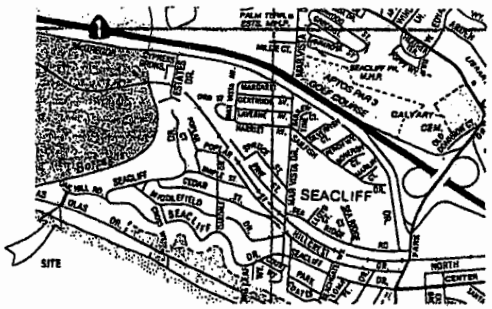
- APN: 038-151-89
- Assessors Parcels
- Streets
- CAPITOLA
- County Boundary

N W E S

Map Created by
County of Santa Cruz
Planning Department
December 2008

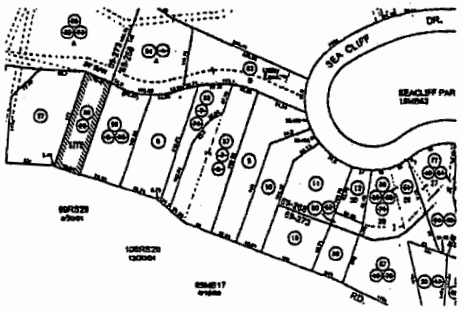
CCC Exhibit 7
(page 446 of 455 pages)

REVISIONS
△ 1-15-01 Building footprint reduced, floor areas reduced



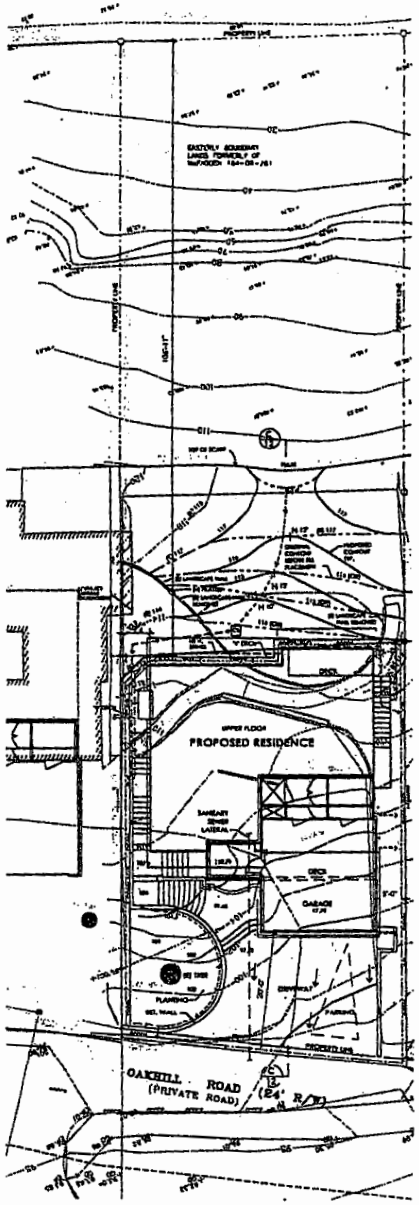
VICINITY MAP

NTS



LOCATION PLAN

NTS



SITE PLAN

1" = 10'-0" (SEE ALSO DWG 8)

Project Data

PROJECT NAME	Arthur Residence
PROJECT ADDRESS	Oakhill Road (No Stmt) Aptos, CA 95003
OWNER	Brian Arthur tel (831) 688-0260 362 Belle Mead Avenue Aptos CA 95003
APN	038-151-89
ZONING	R-1-10
CONSTRUCTION	Type VB
MUNICIPALITY	County of Santa Cruz
PROJECT DESCRIPTION	Construct two-storey 3-bedroom, 2 1/2-bathroom, single family dwelling with an elevator and attached two-car garage
△ AREA COMPUTATIONS	Site Area 4,796 sf
	Proposed Upper Floor habitable floor area 1,384
	Proposed Lower Floor habitable floor area 1,384
	Proposed total habitable floor area 2,578
	Proposed Garage and Mechanical floor area 237 (after 225 sf credit)
	Proposed total floor area 2,818 sf
	Set area Gross Building Area calculation sheets
UTILITIES	Soquel Creek Water District Santa Cruz County Sanitation District

Consultants

GEOTECHNICAL ENGINEER	Hom, Associates & Associates 116 East Lake Avenue Watsonville CA 95076 with Rick Parks	tel (831) 722 4175 fax 722 2202
GEOLOGIST	Rogers Johnson & Associates 41 Hangar Way, Suite B Watsonville CA 95076	tel (831) 729 7200 fax 729 7210
CIVIL ENGINEER	Mike Van Horn 101 Forest Avenue Santa Cruz Ca 95062	tel (831) 429 8354 fax 429 9822
SURVEYOR	Rachel Dewan, Civil Engineer 1607 Ocean Street Santa Cruz CA 95060	tel (831) 425 1017 fax 425 0224
ARBORIST	Nature First Tree Care 5782 Soquel Drive Soquel CA 95073	tel (831) 462 8233 fax 476 6736

Drawing List

1 SITE PLAN & PROJECT DATA
2 UPPER & LOWER FLOOR PLANS
3 GARAGE FLOOR PLAN
4 ELEVATIONS North & East
5 ELEVATIONS South & West
6 SECTIONS A & B
7 ROOF PLAN
8 GRADING & DRAINAGE

ARTHUR RESIDENCE

Brian Arthur
Oak Hill Road
Aptos, CA 95003 No Stmt

APN 038-151-89
ROBERT J. GOLDSPINK ARCHITECT
C 12,796

8843 Soquel Drive Aptos CA 95003
tel (831) 688-8959 fax (831) 688-4482
RobertGoldspink@gmail.net

date: 03-10-01

1

Site Plan and Project Data

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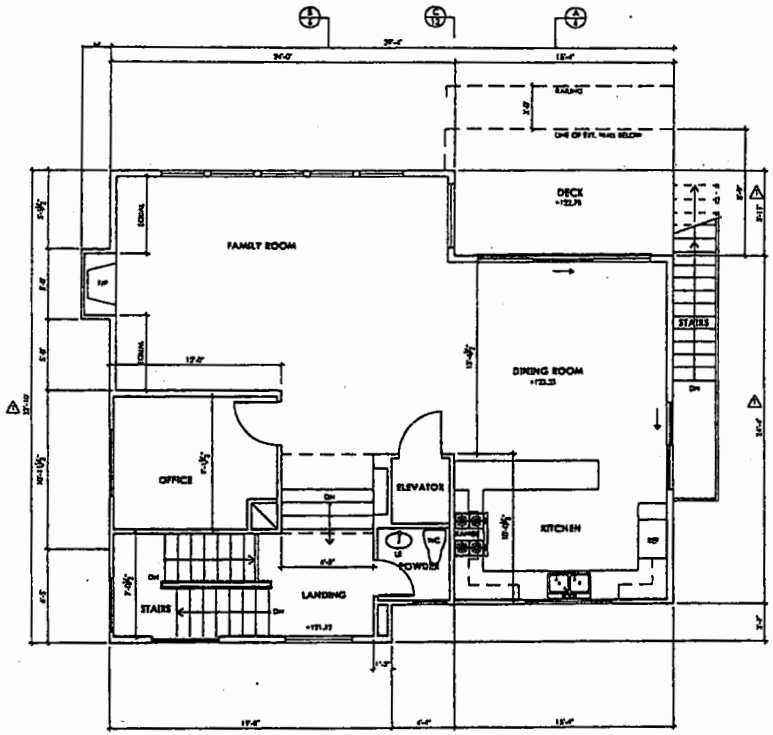
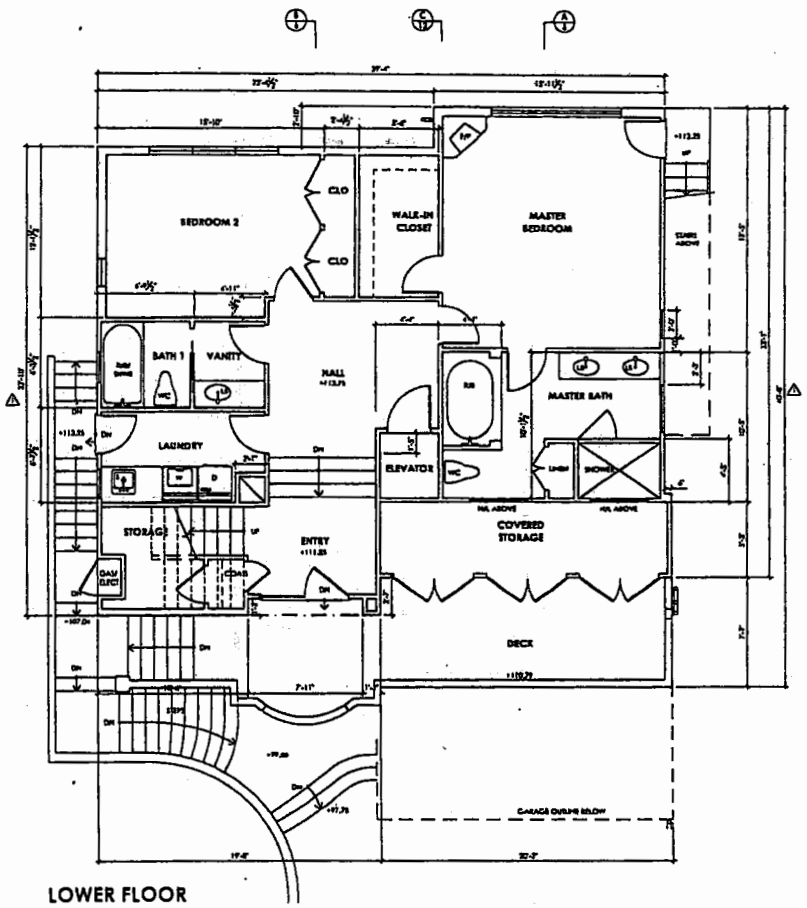
(page 447 of 455 pages)



UPPER FLOOR
1/4" =1'-0" typical



LOWER FLOOR

REVISIONS
9-18-09 Floor areas reduced

ARTHUR RESIDENCE

Brian Arthur
Oak Hill Road
Aptos, CA 95003 No Sites

APN 038-151-89
ROBERT J. GOLDSPINK ARCHITECT
C 12,796

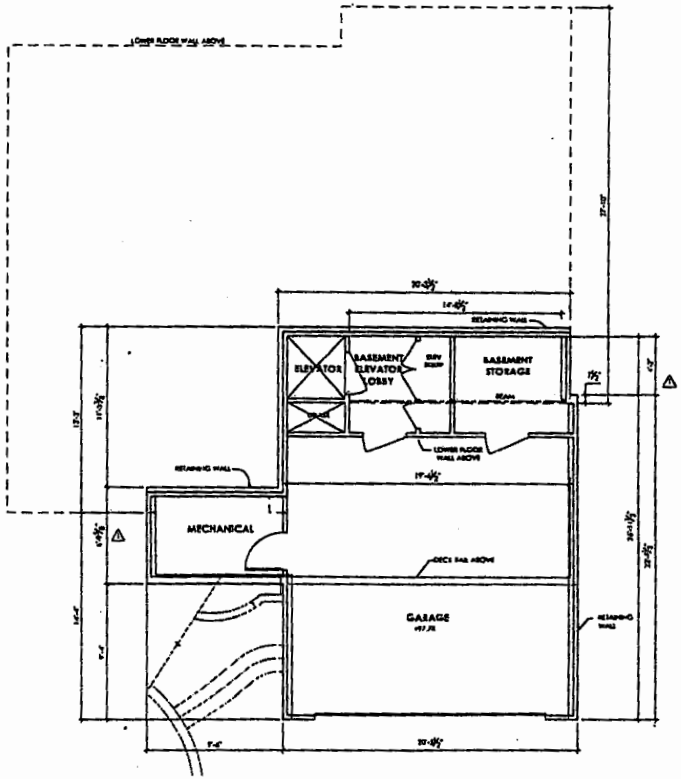
2

Upper and Lower Floor Plans

ATTACHMENT 6

CCC Exhibit 7
(page 448 of 455 pages)

REVISIONS
△ 9-18-09 Basement reduced



△ GARAGE FLOOR PLAN
1/4" = 1'-0"

ARTHUR RESIDENCE

Brian Arthur
Oak Hill Road
Aptos, CA 95003 Pin Sites

APN 038-151-29
ROBERT J. GOLDSPINK ARCHITECT
C 12,796

2843 Soquel Drive Aptos CA 95003
tel: (831) 688-8930 fax: (831) 688-4491
RobertGoldspink@gmail.net

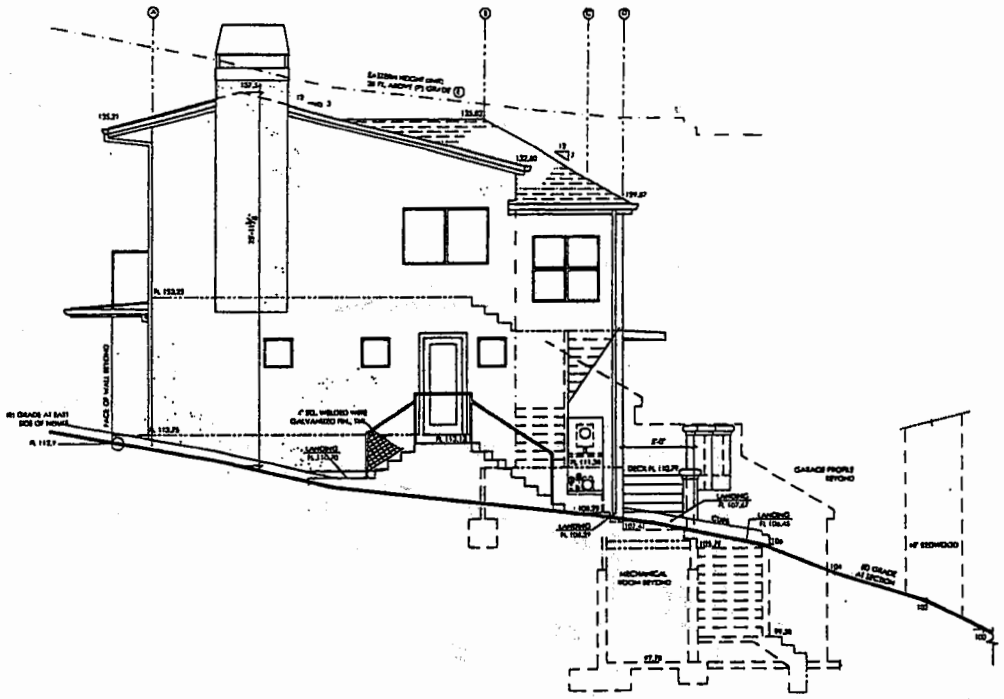
date: 03-19-09

3

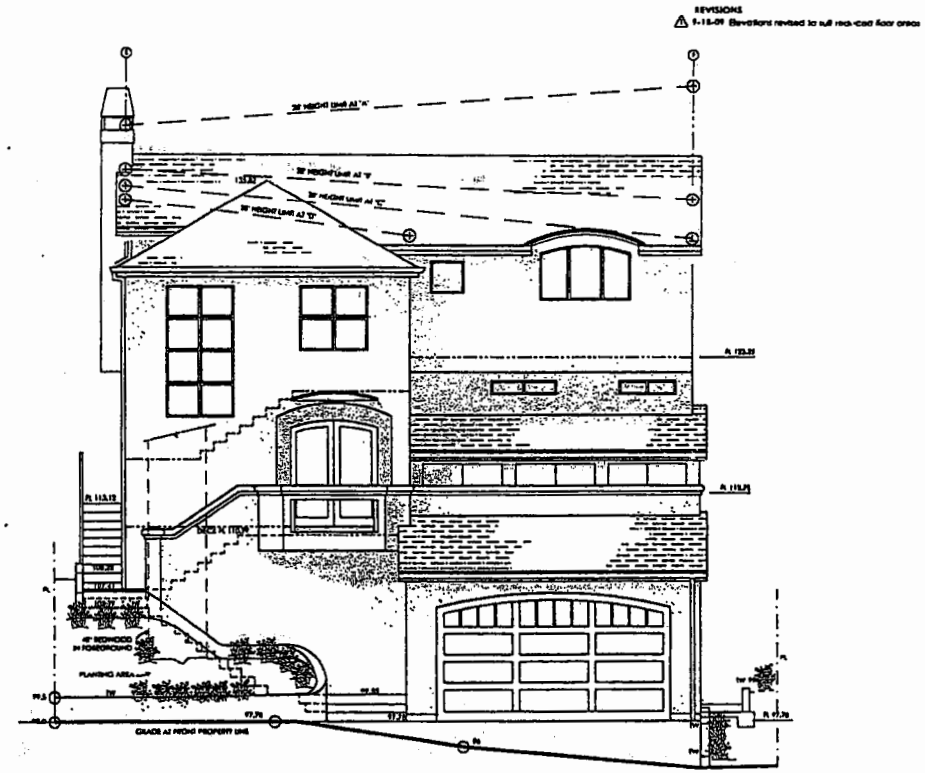
Garage Floor Plan

ATTACHMENT 6

CCC Exhibit 7
(page 449 of 455 pages)



EAST ELEVATION
1/4" =1'-0" typical



NORTH ELEVATION

Exterior Materials & Colors Schedule

Roof	Elk composition roofing, color: Antique Slate
Walls, generally	Elastomeric acrylic stucco top coat, Dryed color to match Kelly Moore 'Keystone' 5185
Garage & Stop walls	Elastomeric acrylic stucco top coat, Dryed color to match Kelly Moore 'Wood Moss' #157 with monitor texture from rest of house
Exterior Doors & Windows	White
Gutters & Downspouts	Copper
Porch Canopy	Stainless steel frame with tracked glass canopy
Fascias, Soffits & Struts	Painted wood, color: white
West Side Balustrade	Powder-coated, galvanized wire room with tube posts and handrail, color: white
South Deck Balustrade	Powder-coated tube posts and handrail, color: white, with glass panels
Steps & Landings	Colored, rock-salt concrete, color: Davis 'Slate Green'
Driveway	Colored, stamped concrete, color: Davis 'Slate Green'

CCC Exhibit 7
(page 450 of 455 pages)

ARTHUR RESIDENCE

Brian Arthur
Oak Hill Road
Aptos, CA 95003 No Sims

APN 036-151-89
ROBERT J. GOLDSPINK ARCHITECT
C 12,796

8042 Soquel Drive Aptos CA 95003
tel: (831) 683-8950 fax: (831) 683-8482
RobertGoldspink@gmail.net

date: 03-19-09

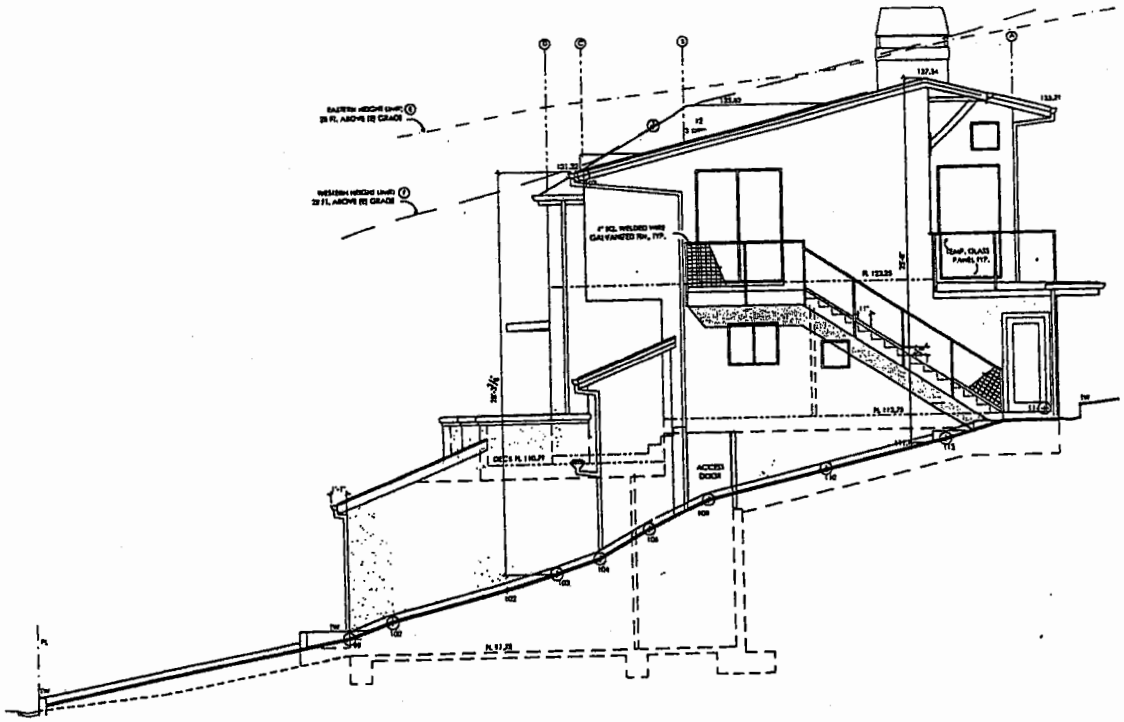
4

Elevations-North & East

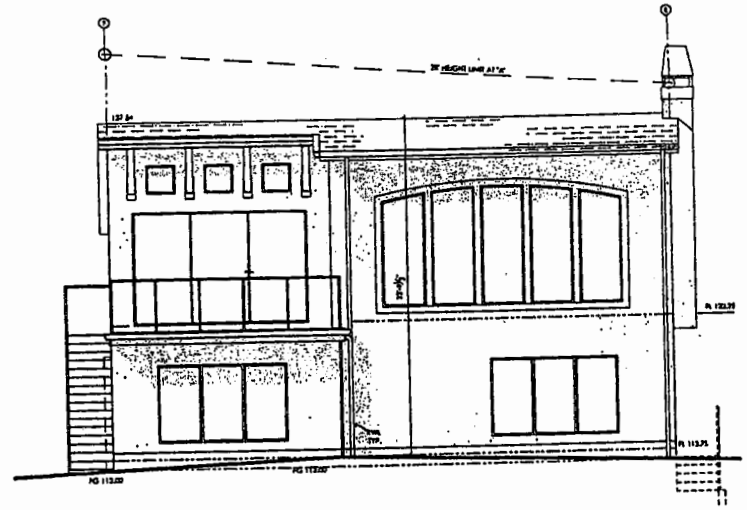
ATTACHMENT 6

C:\AUTOCAD\PROJECTS\GOLDSPINK\ARTHUR\ARTHUR SEPT1808.dwg, 9/21/2009 10:18:27 AM

REVISIONS
9-16-09 Elevations revised to suit reduced floor



1/4" =1'-0"
WEST ELEVATION



SOUTH ELEVATION
1/4" =1'-0"

ARTHUR RESIDENCE

Brian Arthur
Oak Hill Road
Apnea, CA 95003 No Sites

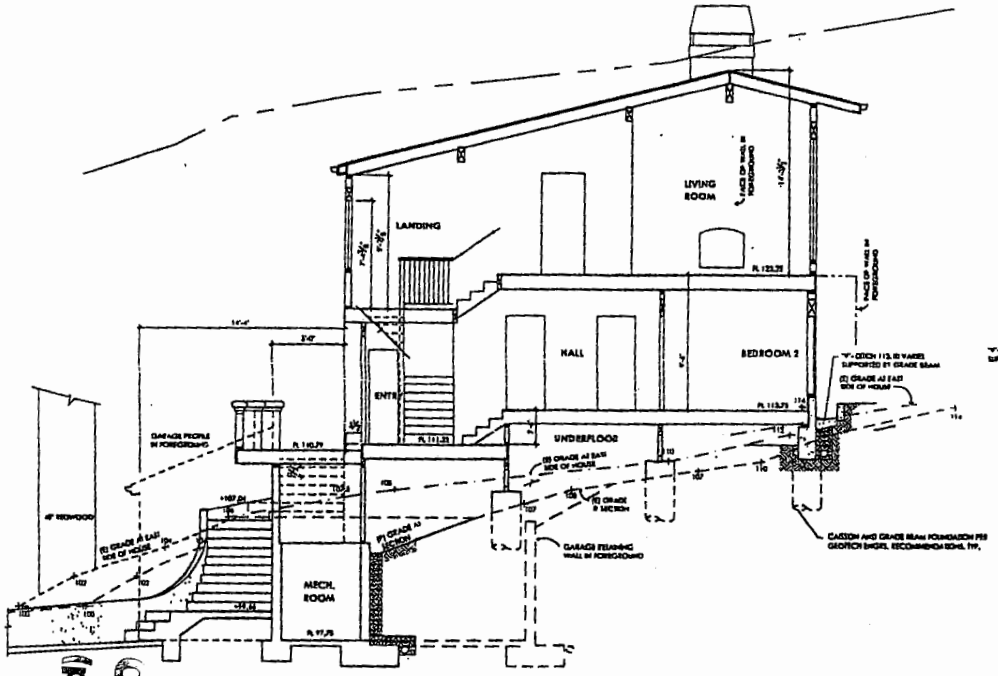
APN 036-151-09
ROBERT J. GOLDSPINK ARCHITECT
C 12,796

5

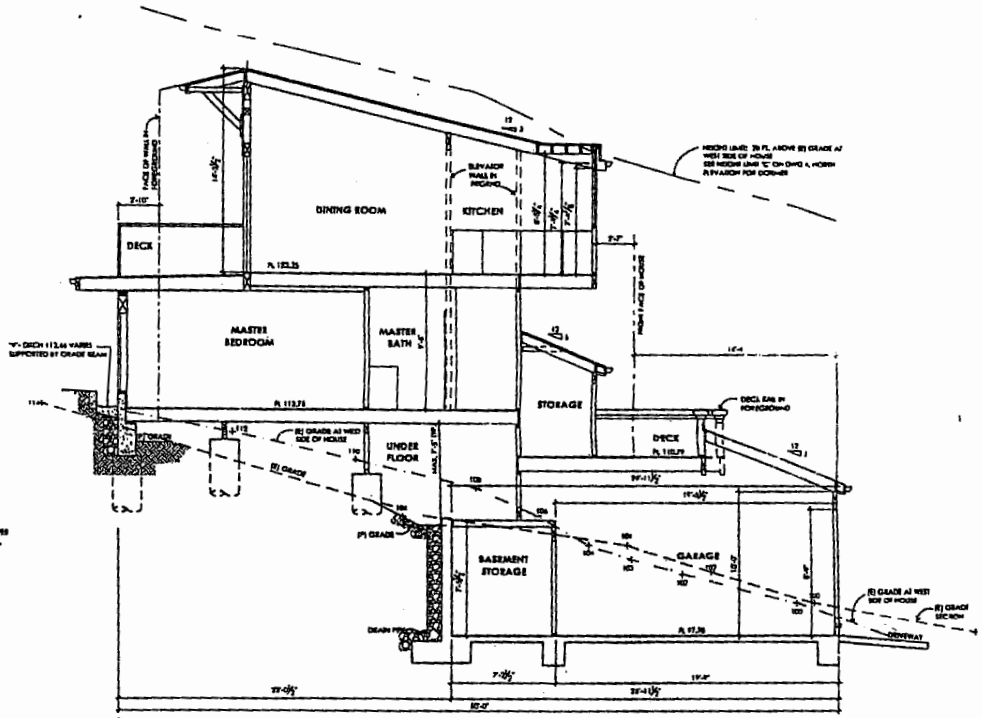
Elevations-South and West

CCC Exhibit 7
(page 451 of 455 pages)

REVISIONS
△ 9-18-09 Sections revised to suit reduced floor areas



SECTION B (through entry)
SCALE: 1/4" = 1'-0"



SECTION A (through garage)
SCALE: 1/4" = 1'-0"

ARTHUR RESIDENCE

Brian Arthur
Oak Hill Road
Aptos, CA 95003 No Sites

APN 038-151-89
ROBERT J. GOLDSPINK ARCHITECT
C 12,796

8042 Sequoia Drive Aptos CA 95003
tel: (831) 688-8958 fax: (831) 688-4487
RobertGoldspink@gmail.net

date: 05-18-09

Sections A and B

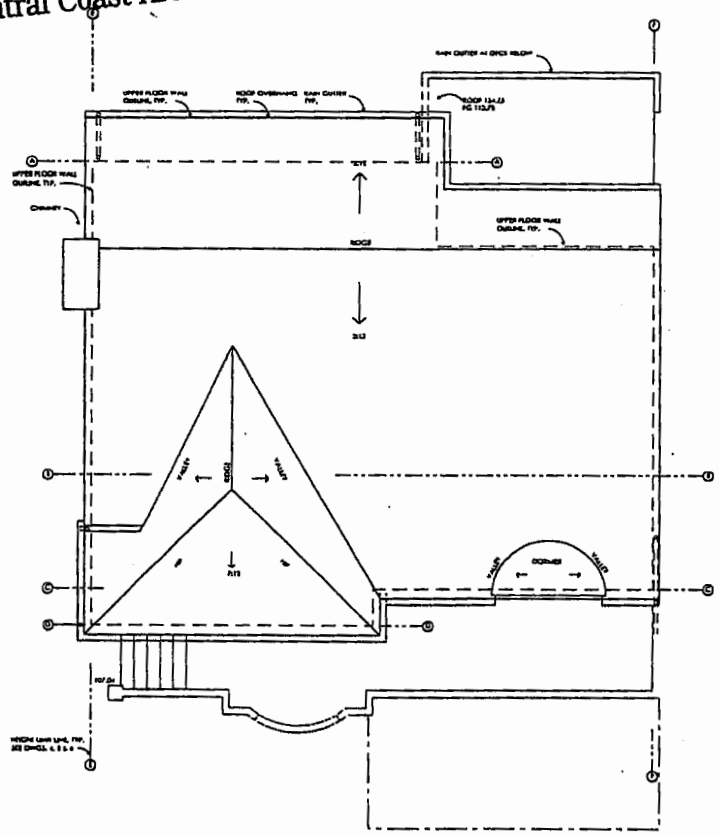
6

ATTACHMENT C

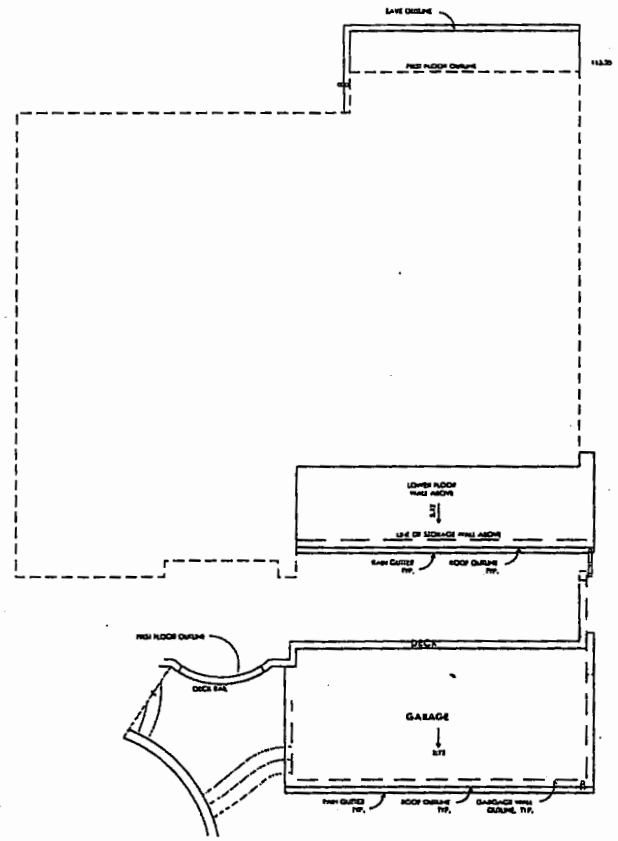
CCC Exhibit 7
(page 452 of 455 pages)

RECEIVED
OCT 05 2011
California Coastal Commission,
Central Coast Area

REVISIONS
9-18-09 Roof plan amended to sub reduced floor areas



UPPER ROOF PLAN



LOWER ROOF PLAN at garage & deck

1/4" =1'-0" Typ.

Roof Plan Notes

ARTHUR RESIDENCE

Brian Arthur
Unk Hill Road
Aptos, CA 95003 No Sites

APN 038-151-89
ROBERT J. GOLDSPINK ARCHITECT
C 12,796

3843 Soquel Drive Aptos CA 95003
tel: (831) 688-8950 fax: (831) 688-8493
RobertGoldspink@gmail.net

date: 03-10-09

Roof Plan

7

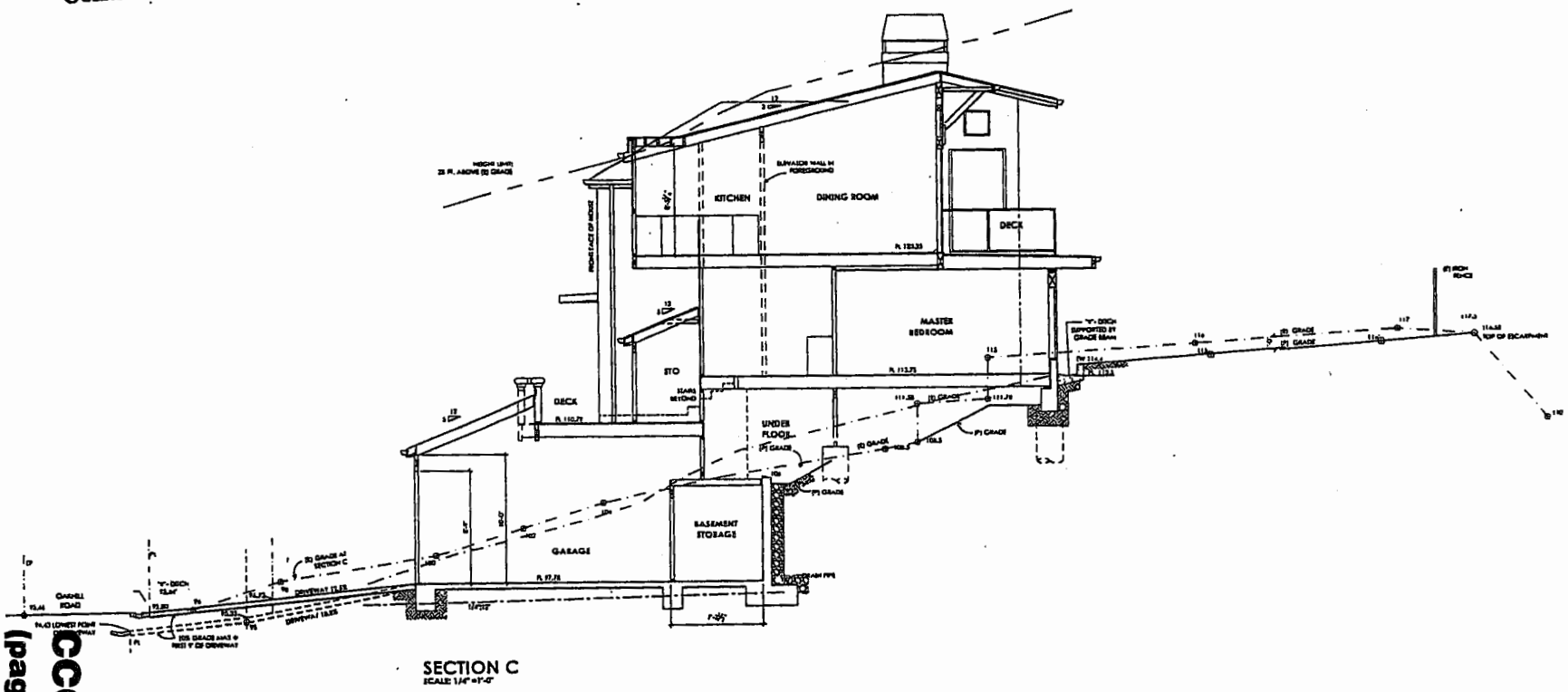
CCC Exhibit 7
(page 453 of 455 pages)

RECEIVED

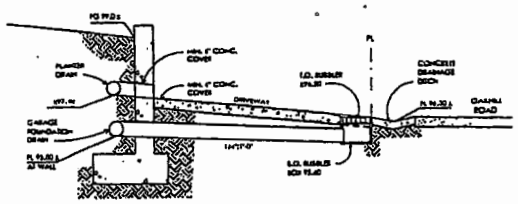
OCT 05 2011

California Coastal Commission,
Central Coast Area

REVISIONS
△1 9-16-09 building section amended to suit reduced floor areas (no change to exterior grades)



SECTION C
SCALE 1/4"=1'-0"



DETAIL A
SCALE 1/2"=1'-0"

ARTHUR RESIDENCE

Brian Arthur
Oak Hill Road
Aptos, CA 95003 (No Site)

APN 038-151-09
ROBERT J. GOLDSPINE ARCHITECT
C 12,796

Site Section C

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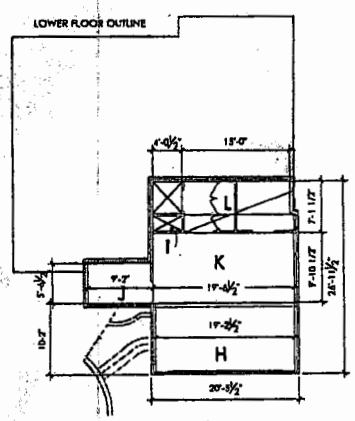
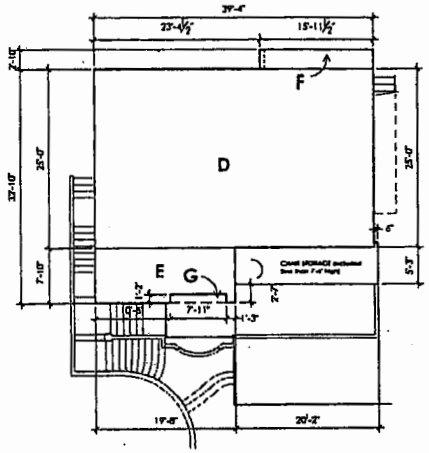
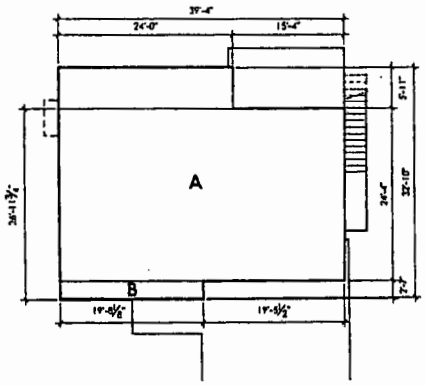
REVISIONS
△ 9-18-09 Floor areas amended to suit reduced floor areas



GARAGE FLOOR
1/8" =1'-0" typical



LOWER FLOOR



UPPER FLOOR

△ *Floor Area Calculations*

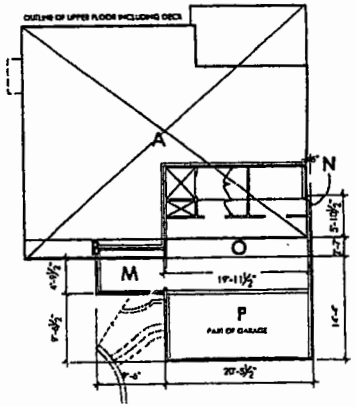
Upper Floor					
	A	27.00 x 20.38	=	1,123.7 sf	
	B	19.66 x 3.98	=	80.7	
		Subtotal		1,240.4 sf	
less	C	5.97 x 15.33	=	- 90.6	
		Total habitable		1,149.6 sf	
Lower Floor					
	D	38.23 x 25.00	=	963.2 sf	
	E	19.66 x 7.83	=	153.9	
	F	15.36 x 2.83	=	43.5	
less	G	7.92 x 1.17	=	- 9.3 sf	
		Total habitable		1,173.0 sf	
Garage & Mechanical					
	H	10.16 x 19.21	=	195.2 sf	
	I	2.1 x 4.00		8.4	
	J	5.84 x 9.17	=	50.8	
	K	19.64 x 8.87		242.7	
		Subtotal		447.3 sf	
		Less garage credit		- 225.0 sf	
		Total floor area		223.3 sf	
Basement	L	15.0 x 7.1		(134.2) sf	basement area excluded
Total Floor Area				2,544.9 sf	

△ *Building Lot Coverage Calculations*

Upper Floor				
Deck	C	5.97 x 15.33	=	40.8
Part of Garage	M	4.79 x 9.80	=	45.8
	N	3.67 x 0.90	=	3.9
	O	2.83 x 20.17	=	53.0
	P	20.46 x 14.33		293.2
		Total		348.4 sf
Total				1,534.0 sf

△ *Impermeable & Semi-Permeable Areas*

SITE AREA	5,400 sf	
PAVED AREAS		
Driveway within 30ft front yard setback	443 sf	
Driveway outside 30ft front yard setback	20 sf	
Walkway front stream, front steps and landings	313 sf	
Landings and steps at East side of house	83 sf	
Landings and steps at West side of house	37 sf	
Total	835 sf	(15.72%)
IMPERMEABLE AREA		
Landings, steps and walkways above	452 sf	
Burning hospital	1,434 sf	
Total	2,729 sf	(41.77%)
SEMI-PERMEABLE AREA		
Driveway	463 sf	(8.06%)



LOT COVERGE DIAGRAM

ARTHUR RESIDENCE

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APN 038-151-89
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date: 03-10-09

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Floor Areas
Impermeable Areas

ATTACHMENT 6

CCC Exhibit 7
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