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Th10a

Prepared April 9, 2013 (for April 11, 2013 hearing)

To: Coastal Commissioners and Interested Persons

From: Dan Carl, Deputy Director
Madeline Cavalieri, District Manager
Nicholas Dreher, Coastal Planner

Subject: STAFF REPORT ADDENDUM for Item Th10a
Reconsideration Number A-2-SMC-11-032-R (Cattermole, San Gregorio, San Mateo County)

This addendum attaches comments received from the Applicants regarding staff's recommendation that the Commission deny their proposed reconsideration request. The Applicants' comments do not alter the staff recommendation to deny the reconsideration request. Staff continues to recommend that the Commission deny the proposed reconsideration request and also recommends that the Commission incorporate into the staff report the changes identified below:

Deletions are shown in ~~strikethrough~~ and additions are shown in underline.

1. Add the Applicants' comments dated March 24, 2013 and April 7, 2013 (see attached) to Exhibit 1 of the staff report (Reconsideration Request), and insert new Section E at the end of the staff report on page 15 as follows:

E. Response to Applicant Comments

In response to the Applicants' comments dated March 24, 2013 and April 7, 2013 (see **Exhibit 1**), the Commission finds the following:

In their March 24, 2013 comments, the Applicants contend that the Commission should: (1) consider the split-zoning that applies to their property illegal (a) on its face and (b) as applied to the Applicants' property and (2) employ the Section 30519.5[1] periodic review process to recommend to San Mateo County that they pursue an LCP amendment to change the zoning at the subject property. The Commission disagrees with the Applicants' assertions for the following

[1] The Coastal Act's periodic review provision (Section30519.5) states, in part: "(a) The Commission shall, from time to time, but at least once every five years after certification, review every certified local coastal program to determine whether such program is being effectively implemented in conformity with the policies of this division. If the commission determines that a certified local coastal program is not being carried out in conformity with any policy of this division shall submit it to the affected local government recommendations of corrective actions that should be taken. Such recommendations may include recommended amendments to the affected local government's local coastal program."

reasons. First, the date by which to challenge the certified split-zoning on its face passed decades ago. Second, the two types of zoning (Planned Agricultural Development and Commercial) applied to the Applicants' property serve complementary purposes even though the agricultural land located in the commercially zoned rural service center is not designated PAD and is instead protected by LCP provisions applicable to all new development. As described more specifically above, including on pages 10-11 and incorporated here by reference, the split-zoning is rationally related to the legitimate government purpose of protecting agricultural land and serving the San Gregorio community on the same property to ensure both purposes are preserved and protected . Third, because the Commission maintains that the split-zoning is an appropriate means of protecting this agricultural land and commercial rural service center, the Commission does not believe the LCP should be amended to re-zone the Applicants' property, and would not use the periodic review process to initiate such an amendment.

In their April 7, 2013 comments, the Applicants again challenge the validity and appropriateness of the split zoning that applies to their property, and suggest that a single LCP policy was "cherry picked", and other LCP provisions "ignored", in order to support the Commission's denial. In terms of the former, and as described above, the certified split-zoning is valid and appropriate for this property. In terms of the latter, the Commission's denial was based on applying the range of applicable LCP policies to the facts of this case, as can clearly be seen in the Commission's adopted findings from December 13, 2012 wherein the range of applicable LCP policies are identified, discussed, and analyzed relative to the Applicants' proposed project (see **Exhibit 4**). There was no attempt on the Commission's part to use one LCP policy without understanding and applying others. In fact, the Commission's findings stand for just the opposite, and show that the Commission's conclusions were based on the certified LCP, including the provisions of individual applicable policy provisions and the way in which they intersect others.

Therefore, the Commission finds that these more recent contentions in the Applicants' March 24, 2013 and April 7, 2013 comments do not represent new evidence or an error of law or fact that would have had the potential of altering the Commission's unanimous December 13, 2012 decision to deny the Applicants' proposed coastal development permit application.

From: Mary Cattermole
To: Dreher, Nicholas@Coastal
Subject: Cattermole project
Date: Sunday, March 24, 2013 11:12:07 AM

Dear Coastal Commissioners:

As we have repeatedly reiterated, the County and Commission violated LCP §§5.2 and 5.4 when it designated a portion of our parcel as Agriculture. The County of San Mateo has told us that they are not willing to do a LCP Amendment to correct this error unless directed to do so by you.

Coastal Act §30519.5 **requires** you to act to make recommendations to a local government if you become aware that a LCP has not been properly implemented. You are now aware of the improper implementation in the zoning of our property. We request that you act to correct this improper zoning.

We do not believe that you were aware of this requirement at the time of your original ruling and submit this misunderstanding of the law as a ground for reconsideration.

We have filed and served you with a Petition for Writ of Mandate and Complaint for Declaratory Relief. We want to be clear that you are aware of all the issues raised by the Petition/Complaint including, but not limited to, violation of due process, equal protection, and privacy and raise these issues as additional grounds for reconsideration.

George and Mary Cattermole

From: George Cattermole
To: Dreher, Nicholas@Coastal; shari.posner@doj.ca.gov
Subject: Cattermole Project
Date: Sunday, April 07, 2013 4:27:54 PM

Dear Coastal Commissioners:

I think we need need to be clear about who is at fault here. You violated the Local Coastal Program §§ 5.2 and 5.4 when you designated a portion of our property as agriculture.

§§5.2 provides: **"Designate an parcel which contains prime agricultural land as Agriculture on the Local Coastal Program Land Use Map subject to the following exceptions: ...rural service centers...."**
§§5.4 provides: "Designate any parcel which contains other lands suitable for agriculture as Agriculture on the Local Coastal Program Land Use Plan Map subject to the following exceptions: ...rural service centers..."

Because our parcel contains the San Gregorio General Store it is of necessity in the San Gregorio Rural Service Center. Therefore, none of our parcel should have been designated as Agriculture (also known as PAD).

What you created was a PAD zoned area with one density credit. That density credit can only be used on the PAD zoned rural area. It allows the construction of one residence in this zoning area. The PAD zoned area consists of almost exclusively prime soil except for an area of nonprime soil in the north side or the property.

You created this zoning area. If its only building site is on prime soil, or the septic leach field and driveway must cover prime soil in order to use the density credit, you created those conditions. In actuality, the LCP allows construction on prime soil if there is nowhere else on the parcel for construction to take place. That may be the case for this zoning area.

It does not matter whether this PAD zoned area is on a separate legal parcel or not. You still have a situation where the only building site, or leach field, or driveway is going to be on prime soil. Do not blame us for this situation. You created it.

Secondly: Your staff has taken a definition of "subdivision" from Chapter 22 of the Zoning Regulations to say that we cannot put this zoning area on a separate parcel.

Chapter 22 of the Zoning Regulations was intended to apply to large parcels which consist entirely of PAD land. It was not intended to apply to a split zoned parcel like ours. In our case, placing the PAD zoned area on its own parcel has no effect on the PAD zoned area. There is only one density credit attached to it and we are not changing the size or shape of this zoning area.

In picking this one definition from Chapter 22, the Staff ignored the remaining provisions of Chapter 22. If we examine Chapter 22 in its entirety, we can see that if it is applied to the split zoned parcel, the zoning of the entire parcel becomes so ambiguous and contradictory that it should be declared void.

In particular, Chapter 22, section 6363 provides that if the parcel contains prime soil or land suitable for agriculture, then, the entire parcel is in the PAD. How can the entire parcel be in the PAD when a large portion of it is zoned commercial?

What we can see is that your staff cherry picked one definition from Chapter 22 which allowed them to recommend the denial of our project. They ignored the other provisions of the Chapter. What this action shows is that your staff is not providing a fair and impartial evaluation of our project. Instead, they are operating in a manner which shows bias and what we can only describe as bad faith.

We paid over $50,000 and spent a number of years to prepare this project. We put the PAD zoned area on a separate parcel because we were advised to do so by the County of San Mateo. We should not suffer a financial

loss because of your zoning errors. In addition, we should not have to deal with a staff that is operating in bad faith.

Finally, the language of the LCP will always be ambiguous and contradictory if you try to apply it to a split zoned parcel where one of the zoning areas is PAD. Zoning that is ambiguous and contradictory denies due process and should be declared void.

Your staff has suggested that we should keep parcels 3 and 4 together as one parcel. if the property line between these two parcels is eliminated, then the building envelope on Parcel #4 becomes larger. As long as the PAD zoned area is attached to another zoning area, there will be a split zoned parcel whose zoning is ambiguous and contradictory. Whoever buys this parcel from us may well blame you for the faulty zoning and could, rightly, seek to have it annulled.
The County of San Mateo was correct to recommend putting the PAD area on a separate parcel and it is in your best interest to follow that advice.

George and Mary Cattermole

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Th10a

Filed:	12/19/2012
Staff:	N.Dreher - SF
Staff report:	3/21/2013
Hearing date:	4/11/2013

STAFF REPORT: REQUEST FOR RECONSIDERATION

Appeal Number:	**A-2-SMC-11-032-R**
Applicant:	**George and Mary Cattermole**
Project Location:	7625 Stage Road, San Gregorio, San Mateo County (APN: 081-013-090).
Project Description:	Division of a partially developed 12.4-acre parcel into four parcels and the development of two single-family dwellings on one of the proposed parcels.
Staff Recommendation:	Denial

SUMMARY OF STAFF RECOMMENDATION

On December 13, 2012, the Coastal Commission unanimously denied a coastal development permit (CDP) for the proposed division of an approximately 12.4-acre parcel (containing a general store, an existing residence, and various outbuildings) into four parcels and the development of two single-family dwellings and related development on one of the proposed parcels. The Commission's regulations allow an applicant to request that the Commission reconsider its decision to deny a permit application provided that the applicant makes such a request within thirty days of the Commission's action. The grounds for reconsideration of a CDP denial are provided in Coastal Act Section 30627:

> *The basis of the request for reconsideration shall be either that there is relevant new evidence which, in the exercise of reasonable diligence, could not have been presented at*

the hearing on the matter or that an error of fact or law has occurred which has the potential of altering the initial decision.

The Applicants for the project that was denied by the Commission requested reconsideration within the required thirty-day period. The Applicants make a series of contentions as to why reconsideration is appropriate. Several of these, such as challenging the validity of the certified San Mateo County Local Coastal Program (LCP) and proposing new alternative projects for consideration, are not statutory bases for reconsideration because they neither allege relevant new evidence that could not have been presented at the Commission's December 13, 2012 hearing nor errors of fact or law that would alter the Commission's initial decision to deny the permit application. The Applicants' remaining contentions for reconsideration can be framed in three categories, representing their contention that: (1) no division of agricultural land was occurring; (2) the November 29, 2012 staff report (Staff Report) contained erroneous statements regarding the availability of density credits and the application of LCP Section 6356, thereby mischaracterizing the rights of the Applicants; and (3) the Staff Report contained an analysis of the feasibility of agriculture on site that suggested the property could support various crops, such as Brussels sprouts, contrary to the belief of the Applicants.

With respect to the contention that their project is not a division of agricultural land, this is inaccurate. The LCP defines a land division as "the creation of any new property line whether by subdivision or other means." In this case, the project would create new property lines, including a new property line roughly down the middle of the Applicants' property between the land zoned for agriculture and the land zoned commercial. Thus, the Applicants' project is a land division, including a division of agricultural land.

With respect to the contentions regarding how density credits are applied and calculated, and the viability of agriculture, these are not new claims on the part of the Applicants, and the Staff Report and hearing proceedings included discussion on the contentions raised by the Applicant as part of the Commission's deliberations. Perhaps the most important thing to note regarding these issues is that questions about density credits and agricultural viability are essentially irrelevant. As a threshold matter, the Commission denied the proposed land division primarily because it would have created an all agriculture parcel where the only building site would have been on prime agricultural land, which is prohibited by the LCP. Since the creation of the agricultural parcel was prohibited by the LCP, the secondary questions related to the level of density of development that might be allowed on the impermissible parcel and the viability of agriculture on such parcel are not relevant. Whether or not agriculture would be feasible on the all agricultural parcel if it was created, and the level of development intensity that might accrue to such a parcel if created, are not questions that are relevant because the LCP does not allow for the creation of the parcel in the first place.

Staff recommends that the Commission **deny** the request for reconsideration because there is neither relevant new evidence that could not have been presented at the Commission's December 12, 2012 hearing nor an error of fact and/or law that has occurred that has the potential of altering the Commission's original decision to deny the proposed land division and residential development project. The motion and resolution to act on this recommendation follow below on page 4.

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[1] The findings attached in **Exhibit 4** do not include the Adopted Report's Exhibits. The full Adopted Report can be accessed at http://documents.coastal.ca.gov/reports/2012/12/Th12a-12-2012.pdf. In addition, the video of the hearing can be accessed at http://www.cal-span.org/cgi-bin/media.pl?folder=CCC.

I. MOTION AND RESOLUTION

Staff recommends that the Commission, after public hearing, deny the reconsideration request. To implement this recommendation, **staff recommends a NO vote on the following motion**. Failure of the motion, by voting NO as is recommended by staff, will result in denial of the request for reconsideration. The motion passes only by an affirmative vote of a majority of Commissioners present.

Motion: *I move that the Commission grant reconsideration of Coastal Development Permit Application Number A-2-SMC-11-032.*

Resolution to Deny Reconsideration: *The Commission hereby **denies** the request for reconsideration of the Commission's December 13, 2012 decision on Coastal Development Permit Application Number A-2-SMC-11-032 on the grounds that: (a) there is no relevant new evidence which, in the exercise of reasonable diligence, could not have been presented at the December 13, 2012 hearing on the application; and (b) there is no error of fact or law which has the potential of altering the Commission's December 13, 2012 decision on the application.*

II. FINDINGS AND DECLARATIONS

The Commission finds and declares as follows:

A. APPLICANTS' RECONSIDERATION REQUEST

Applicants' Contentions

The Applicants submitted correspondence on December 19, 2012 and January 2, 2013 that identifies the grounds of their request for reconsideration (see **Exhibit 1**). The December 19, 2012 correspondence was an email, stating the following:

The density credit [2] associated with our parcel could not have been used by our residence because it is occupied by the owner of a visitor-serving facility. See Zoning Ordinance 6352 which sets forth how density credits are used. It provides in pertinent part:

"The provisions of this section will not apply to agriculture, farm labor housing, a residential dwelling unit associated with a visitor-serving facility that is occupied by the facility owner of operator, or affordable housing to the extent authorized in Policy 3.23 of

[2] A "density credit" is a term used by the San Mateo County LCP to describe units of residential development potential on Planned Agricultural Development (PAD) land. According to the LCP, every legal PAD parcel accrues at least one density credit regardless of size. For purposes of the Applicants' CDP application, the subject single parcel is split-zoned PAD and C-1 (Commercial zoning district in the rural service center). Density credits do not apply to the C-1 zoning district. Therefore, since density credits only apply to the PAD district, the credit is associated with the PAD portion of the Applicants' property. However, as described in the body of this report and the Commission's findings denying the proposed land division, the question of the number of available density credits each parcel possesses once it is created is separate from the question of whether parcels should be created in the first place, and specific LCP policies govern the proposed creation of a newly proposed parcel.

the Local Coastal Program on March 25, 1986, or other structures considered to be accessory to agriculture under the same ownership."

Mistakes were made in drawing property lines on our project because we were not fully aware of the applicable rules. We would like the opportunity to correct those errors.

We now propose merging parcels #3 and #4 and drawing the property line between parcels #3 and #1 80 feet inside the commercial area so that there is no property line touching the PAD land. [3] *This will create one parcel on which a visitor-serving development may be possible. The PAD land would still retain one density credit as it has not been used. (See above). We will not be creating a parcel whose only building site is on prime soil. Since we are not subdividing PAD land, no agricultural plan permit is required. We would like to make these changes in the context of our current CDP application. We would like to and, hereby do, apply for a reconsideration of our project based upon a misunderstanding of the law. The staff report states that we used our density credit on our residence (p. 23). We did not.*

The Applicants submitted a second email on January 2, 2013 that contained additional contentions for reconsideration. The email stated the following:

1) The split zoning of our parcel is so ambiguous and contradictory as to be unconstitutional. [4] *Because our "parcel" is of necessity in the rural service center (it contains the general store), it is exempt from designation as agriculture even if it contains prime soils (LCP section 5.2). By designating it as PAD the County and Commission violated the LCP and created a split zoning parcel. The split zoning was not anticipated by the LCP so that its provisions are ambiguous and contradictory when applied to our parcel.*

C1/S7 Zoning area: Density of development is determined by the S Table, Uses are set forth in the C1 Zoning Regs, there is no restriction on subdivision. Table 1.2 shows that the Neighborhood Commercial area does not use density credits. PAD Zoning area.: Table 1.2 shows that this area uses density credits. The LCP and Zoning Regs. use the word "parcel". This creates confusion and contradictions because we have only 1/2 a parcel.

Some examples: In the PAD area each "parcel" is entitled to one density credit. Each "parcel" must show enough density credits for existing and expanded uses. Permitted uses are different from the C1 area and subdivisions require a Master Land Division Plan. Only one nonagricultural use is allowed on each "parcel". Zoning Reg. 6363 says that any "parcel" containing prime soils is in the PAD.

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[3] The Applicants, in their request for reconsideration, have requested to amend their project description. However, revisions to the project description are outside the scope of the Commission's review under a request for reconsideration, which is limited to relevant new evidence that could not have been presented at the time of the initial permit decision and errors in law or fact that have the potential of altering the initial decision.

[4] The Applicants, in their request for reconsideration, are challenging the certification of the County's LCP. However, challenges to the certified LCP are outside the scope of the Commission's review under a request for reconsideration, which is limited to relevant new evidence that could not have been presented at the time of the initial permit decision and errors in law or fact that have the potential of altering the initial decision. Further, these findings explain why the certified zoning is not contradictory and why the Applicants' complaints about the certified zoning are inaccurate.

How can our "parcel" be in the PAD area when 1/2 is zoned Neighborhood Commercial? The Neighborhood Commercial uses are not the same as the PAD uses. How can the density credit be used on the Neighborhood Commercial when this area does not use density credits? Our zoning is so ambiguous and contradictory that it denies us due process.

2) Staff report is based on incorrect facts not in the record concerning agricultural feasibility.

The Staff Report spends two pages claiming that we can grow crops such are brussel sprouts on our property based on telephone conversations with a Mr. Winders. There is no letter or other evidence to support these assertions in the record and they are, in fact, false.

We have no surface water to water crops. Our well water cannot be used for agriculture without depleting the ground water on which the General Store depends. The Coastal Act requires the protection of ground water.

3) The zoning area labeled PAD was created by the County and Commission.

The Staff Report maintains that we are creating a parcel whose only building site is on prime soil. In fact, the County and Commission created this zoning area at the time they wrongfully designated a portion of our property as PAD. It has one density credit which can only be used on the PAD area.

4) We are "separating Off" PAD land not subdividing it.

We are not subdividing the PAD land. We are "separating off" PAD land from the urban/commercial land. We are not changing its size, shape, or the use allowed on the land. The PAD area has one density credit which allows one residence. We are not changing that.

Chapter 21A, Section 6351(i) of the Zoning Regs. which makes the "drawing of any property line" a Land Division. This definition applies only in the context of that particular Chapter of the Zoning Regs which applies only to PAD land. This provision was intended to apply only to a land division consisting entirely of PAD land. There is no indication that this definition was intended to apply to "separating off" PAD land from urban/commercial land.

5) The proposed subdivision resolves the conflicts of split zoning.

The split zoning has made our zoning so contradictory as to be unconstitutional. By putting the PAD area on a separate parcel we are resolving these contradictions.

Applicants' Contentions Exceed Scope of Reconsideration

Although the grounds asserted by the Applicants relating to whether the Commission should have denied their project application on December 13, 2012 are valid grounds for reconsideration, and will be evaluated below, the Applicants have also proposed alterations to their originally proposed project and they have challenged the validity of the previously certified split zoning of the subject property. As discussed below, these latter two assertions are not relevant to the request for reconsideration of the Commission's December 13, 2012 decision to

deny the permit application, and therefore will not be reviewed by the Commission in its action on this reconsideration request.

Regarding a revised project with a different subdivision configuration, the request for reconsideration applies only to the application that was denied at the December 13, 2012 Commission hearing. Accordingly, a revised project cannot be considered by the Commission in its action on the reconsideration request. Further, because San Mateo County has a certified LCP and CDP authority has been delegated to the County pursuant to Coastal Act Section 30519, if the Commission denies the reconsideration request, any revised CDP application would need to be processed by the County, and would only return to the Commission if the County approved the revised CDP application and that approval was appealed to the Commission.

Regarding the Applicants' contentions that the Commission's previous certification of the LCP's split zoning for the site is unconstitutional, such a claim is outside the scope of reconsideration of the Commission's decision on December 13, 2012 because it is a direct challenge to how the LCP was certified years ago, and the time to challenge the certified split zoning has long since passed.[5] Further, the certified split zoning can only be amended through a San Mateo County LCP amendment.

Applicants' Grounds for Reconsideration

Therefore, the Applicants' request to revise the project acted on by the Commission on December 13, 2012 and their challenge to the previously certified split zoning of the property are not statutory bases for reconsideration of the application because they neither allege relevant new evidence nor errors of fact or law that would alter the Commission's initial decision to deny the permit application. Although the two above-identified assertions are outside the scope of a reconsideration request, the Applicants' other contentions regarding whether or not a division of agricultural land was occurring, the availability of density credits, and the feasibility of growing crops are reviewed below to determine whether the Commission should grant reconsideration of its December 13, 2012 decision to deny the Applicants' CDP application. The Applicants assert the following three reasons in support of their request: (1) no division of agricultural land was occurring; (2) the Staff Report contained erroneous statements regarding the availability of density credits and the application of LCP Section 6356, thereby mischaracterizing the rights of the Applicants; and (3) the Staff Report contained an analysis of the feasibility of agriculture on site that suggested the property could support various crops, such as Brussels sprouts, contrary to the belief of the Applicants.

B. PROJECT DESCRIPTION

The Applicants are requesting that the Commission reconsider its decision to deny the Applicants' request for the division of a split-zoned, 12.4 acre parcel, along the boundary

[5] Regardless, these findings explain why the certified zoning is not contradictory and why the Applicants' complaints about the certified zoning are inaccurate.

between the two different zoning districts, resulting in one 6.7-acre agricultural lot and three lots, ranging from 1.2 to 2.9 acres, on the rural service center/commercial side. The existing San Gregorio General Store and existing residence were proposed to be located on one of the commercial lots (proposed parcel 2); two single-family residences (1,800 square-foot and 2,352 square-foot, respectively) with a shared 1,056 square-foot detached four-car garage were proposed to be constructed on another of the commercial lots (proposed parcel 1); the remaining commercial lot would be vacant (proposed parcel 4); and the agricultural lot would retain the existing dairy barn (proposed parcel 3). Approximately 630 cubic yards of grading would have been required for the proposed structures and associated driveway. The development was proposed to be served by two existing wells – one located on proposed parcel 1 to serve proposed parcels 1 and 2 and one on proposed parcel 3 to serve proposed parcels 3 and 4. See **Exhibit 3** for project plans.

The proposed project is located on a 12.4-acre parcel approximately 1.5 miles east/inland of Highway 1 at the intersection of State Route 84 (also known as La Honda Road) and Stage Road, south of Half Moon Bay and north of Pescadero, in the rural San Gregorio area of unincorporated San Mateo County (see **Exhibit 1**). For the most part, the larger San Gregorio area is comprised of rural agricultural lands. The parcel lies in a valley that is located between Highway 1 to the west and Skyline Boulevard on the coastal range to the east, and is currently developed with the San Gregorio General Store, an existing residence, and an historic dairy barn. Approximately half of the parcel is designated by the LCP for agriculture (and zoned PAD, or Planned Agricultural District), and half as a rural service center, for which the LCP prescribes rural commercial uses and development (zoned C-1). See **Exhibit 1** for location map and **Exhibits 2 and 5** for project area photos.

C. COMMISSION DENIAL OF CDP APPLICATION

On December 13, 2012, the Commission considered the CDP application de novo and denied the proposed development by a final vote of 10-0. The unanimous Commission action was decided by Commissioners Blank, Bochco, Brennan, Groom, Kinsey, McClure, Mitchell, Sanchez, Shallenberger, and Zimmer. Based on Commissioner comments made during the hearing and the Commission's adopted findings, the Commission's denial of the application request was based primarily on a determination that, as a threshold matter, the creation of proposed parcel 3 was inconsistent with LCP Policy 5.7(c) that prohibits the creation of a parcel whose only building site[6] would be on prime agricultural land. The proposed project would also have converted an agricultural well to commercial/residential use without an understanding of the way in which such conversion reduces the viability of agriculture, and it would also have created an agricultural parcel that was not restricted to agricultural uses only, as is also required by the LCP for agricultural parcels that can permissibly be created by subdivision. Although other resource

[6] The parcel that the Applicants are requesting be created (proposed parcel 3) is impermissible because it would create a parcel whose only building site is on prime soil, inconsistent with LUP Policy 5.7(c) and the PAD zoning applicable to the property. The only building site would be on prime soil in contravention of LUP Policy 5.7(c) because the driveway and septic leach fields would necessarily encroach into prime soil, and the driveway and septic leach fields are contained within the building site as that term is defined in LCP Section 6102.21 (i.e., a building site is not limited to the area upon which a building is constructed and includes the area abutting upon the street (see also LUP Policy 9.18)).

issues, including issues regarding visual impacts and the lot legality of an adjacent parcel, also served as bases for denial, the findings indicated that it was possible that these issues could have been resolved by condition if the proposed land division itself had been otherwise permissible.[7]

D. ANALYSIS OF RECONSIDERATION REQUEST

The grounds for reconsideration of a CDP application denial are provided in Coastal Act Section 30627, which states, in applicable part:

> *The basis of the request for reconsideration shall be either that there is relevant new evidence which, in the exercise of reasonable diligence, could not have been presented at the hearing on the matter or that an error of fact or law has occurred which has the potential of altering the initial decision.*

Thus the question before the Commission is whether there is relevant new evidence that couldn't have been presented at the hearing, and whether there was an error that had the potential to alter the Commission's decision to deny the permit application. In this case, for the reasons discussed further below, the Commission exercises its discretion and determines that the contentions concerning whether or not a land division of agricultural land was occurring, the availability of density credits, and the feasibility of growing crops do not constitute grounds for reconsideration of the Commission's denial of the permit application because none of the three contentions are either relevant new evidence or errors of law or fact that have the potential of altering the Commission's decision to deny the permit application. There is neither relevant new evidence nor an error of fact or law that has the potential to alter the Commission's decision because, as discussed further below, there is no error of fact or law about whether or not a division of agricultural land was occurring and the proposed land division is not otherwise permissible based on the application of an LCP policy unrelated to the availability of density credits and the feasibility of growing crops.

Applicants' Contention 1: There is no division of agricultural land

The Applicants contend that they are merely "separating off" agricultural (PAD) land from the commercial portion of the property rather than subdividing PAD land.[8] In support of their contention, the Applicants cite LCP Implementation Plan (IP) Chapter 21A, Section 6351(i) (Zoning Regulations), which defines a land division as "The creation of any new property line whether by subdivision or other means." The Applicants also suggest that this definition applies only in the context of that particular chapter of the LCP that applies to PAD land, and that this

[7] As stated above the Applicants now propose to remedy this inconsistency by combining proposed parcels 3 and 4. However this newly revised project configuration is outside the scope of the Commission's previous action on December 13, 2012 and is not the subject of this reconsideration request.

[8] Pursuant to Zoning Code Section 6350, the purpose of the PAD zoning applied to the portion of the property zoned PAD is to preserve and foster existing and potential agricultural operations in San Mateo County in order to keep the maximum amount of prime agricultural land and all other land suitable for agriculture in agricultural production and minimize conflicts between agricultural and non-agricultural land uses by employing techniques, including but not limited to, assuring that all land divisions of prime agricultural land do not diminish the productivity of prime agricultural land and other land suitable for agriculture.

provision was intended to apply only to a land division consisting entirely of PAD land. In support of this latter position, the Applicants state that they are not changing the size, shape, or use of the PAD land, and because it already carries one density credit which allows one residence, dividing it from the rest of the property does not divide the agricultural property itself.

First, regarding a division of agricultural land, the split zoning certified by the Commission decades ago did not create a land division; it applied agricultural zoning to the portion of the property designated for agriculture and commercial zoning to the portion of the property that would commercially support agriculture. LUP policies 1.10-1.12 confirm that the two types of zoning applied to the parcel serve complementary purposes even though agricultural land in the commercially zoned rural service center is not designated PAD and is instead protected by LCP provisions applicable to all new development, such as Policies 1.8 and 5.11. Instead, it is the Applicants' proposed division of the single parcel, including the proposed division of the PAD land from the commercial land, that meets the LCP's express definition of a land division (i.e., Section 6351(i), the same section cited by the Applicants in their reconsideration request) because it would create new property lines, including a new property line between the commercially zoned and agriculturally zoned portions of the split-zoned property (See **Exhibit 5**). The new property line between PAD land and commercial land, if created, would allow the property it divides to be sold separately, an intention the Applicants expressly acknowledged at the December 13, 2012 hearing. Thus, the project proposes a division of one agriculturally and commercially zoned parcel into multiple parcels, including a land division that creates an all PAD lot.

Second, LCP Chapter 21A, the chapter that defines a land division, is not, as the Applicants claim, intended to control only parcels that consist entirely of agriculture.[9] Pursuant to LCP Section 6363, both LUP Policy 5.7 and the Planned Agricultural District (PAD) zoning apply to the portion of property containing land zoned PAD, even if the entire parcel is not zoned PAD. The Applicants further claim that LCP Section 6363 has the effect of putting the entire parcel in PAD, including the San Gregorio General Store. However, LUP Policy 5.2 expressly exempts rural service centers from the application of the PAD zoning. Accordingly, in acting on the proposed land division, the Commission did not apply LCP policies solely applicable to land designated for agriculture to the agricultural lands located on the rural service center side of the split zoned parcel.[10]

Finally, contrary to the Applicants' assertions, the creation of a new property line between the commercially zoned and agriculturally zoned portions of the one existing parcel would indeed result in a new, smaller, all agricultural parcel disassociated from the commercially zoned rural service center, thereby altering the application of the LCP's agricultural policies as they apply to the all PAD parcel. Currently, the single parcel contains two zoning districts that are complimentary to one another. The rural service center's purpose is to provide amenities in support of agriculture and local businesses. Thus, at present, a development proposal could make use of the current land configuration in a way that could not happen if the PAD land was divided

[9] LCP Chapter 21A commonly references portions of parcels and is more concerned with the particular areas of land within parcels that contain prime agricultural land, other land suitable for agriculture and to a lesser extent non-agricultural lands within the PAD (see, for instance, Sections 6357(C) and 6360).

[10] Thus, the agricultural lands located on the commercially zoned land were not subject to all of the same LCP policies as the agriculturally zoned lands.

into a separate all agriculturally zoned parcel. Currently, for example, one owner could make agricultural use of the PAD zoned portion of the parcel while siting other nonagricultural development on the C-1 portion of the parcel, including in support of the agricultural activities as is intended for such rural service centers. However, any new property line created within the one, approximately 12-acre parcel would result in the agricultural land being contained within a smaller parcel, decreasing the ability of the owner to avoid use of prime agricultural PAD land for nonagricultural development (see **Exhibit 5**). Further, if proposed parcel 3 is created consisting entirely of agricultural PAD land and owned separately from the commercially zoned land, the potential for avoidance of agriculturally designated land is eliminated because all development would necessarily be sited on the all agricultural parcel (see **Exhibit 5**). Indeed, as discussed herein, the creation of new parcels whose only building site would be on prime agricultural land is prohibited by Policy 5.7(c).[11] Therefore, not only does the proposed creation of parcel 3 meet the express definition of a land division contained in the certified LCP, the proposed land division would result in the creation of a parcel comprised entirely of agricultural (PAD) land, thereby directly affecting the size, shape and use of the proposed parcel.

Therefore, the Applicants' contention that a division of agricultural land is not occurring is inaccurate, and is neither relevant new evidence nor an error of law or fact that has the potential of altering the Commission's initial decision to deny the proposed land division.

Applicants' Contention 2: Density credit calculations misapplied

The Applicants contend that the Commission in denying their project application incorrectly concluded that any density credit that may be attributed to the PAD portion of the subject parcel was used when the Applicants constructed their primary residence on the rural service center (C-1) portion of the property. In support of this contention, the Applicants first assert that density credits do not apply to the rural service center. Second, the Applicants assert that even if density credits did apply to the rural service center, there is an exception for residences associated with a visitor-serving facility. The Applicants cite LCP Implementation Plan Section 6356,[12] which includes the following passage:

> *The provisions of this section will not apply to agriculture, farm labor housing, a residential dwelling unit associated with a visitor-serving facility that is occupied by the facility owner of operator, or affordable housing to the extent authorized in Policy 3.23 of the Local Coastal Program on March 25, 1986, or other structures considered to be accessory to agriculture under the same ownership.*

To evaluate the Applicants' density credit contention, it is helpful to understand the way in which the LCP uses the concept of density credits. The LCP identifies the maximum density of development for the urban and rural areas of the County, and uses the term 'density credit' to describe allowed maximum density of development when referring to property zoned PAD, RM/CZ, and TP/CZ. The LCP includes a series of criteria for determining the level of density that might be allowed on such property, and identifies 40 acres as the minimum threshold for

[11] As stated above, the Applicants now propose to remedy this inconsistency by combining proposed parcels 3 and 4. However, any newly revised configuration is outside the scope of this reconsideration request and must be processed as a separate CDP application.

[12] The Applicants cite Section 6352 in their submittal, but the cited text actually resides in Section 6356.

establishing one such unit of density, and up to 160 acres in certain circumstances to establish one such unit. Legal parcels are, in any case, allotted one unit of density. The intent is to inform the decision making process regarding the LCP's allowed maximum density of development when such properties, such as the PAD-zoned property at issue in this case, are proposed for development.

Regarding the Applicant's contention that density credits do not apply to the commercially zoned land, Table 1.3 of the LCP identifies the specific zoning districts that utilize density credits, stating:

> *The rural areas of the Coastal Zone which are zoned Planned Agricultural District, Resource Management/Coastal Zone, or Timberland Preserve/Coastal Zone, determine the maximum number of density credits to which any legal parcel is entitled by using the method of calculation shown below, and further defined by the Planned Agriculture, Resource Management/Coastal Zone, and Timberland Preserve/Coastal Zone Zoning District regulations. All legal parcels shall accumulate at least one density credit.*

Thus, density credits are used as a tool when considering allowable density on property zoned PAD, Resource Management/Coastal Zone (RM/CZ), and Timberland Preserve/Coastal Zone (TP/CZ). The Applicants correctly state that density credits are not used as a tool for commercial land.

On the Applicants' point that their residence would not count towards use of a density credit even if the concept extended to commercial zoned land because they are the owner-operators of the general store, LCP Section 6356 describes the way in which density credits can be accrued and used, and this particular exception provision stands for the premise that the described use types do not count towards density credit usage. The Applicants state that their residence is occupied by the owner of a visitor-serving facility, and thus this exception to use of a density credit applies to them. LUP Policy 11.1 considers the general store to be a visitor-serving facility. As a result, the Applicant is accurate to say that the Applicant's primary residence in this case would not "use" a density credit per Section 6356's stated exemption.

Although the Applicants do not state as much explicitly, their density credit contention appears to be focused on two sections of the Commission's findings. The first, on page 21, states:

> *Policy 5.11 also indicates that each legal parcel is entitled to at least one density credit regardless of its size or constraints. In this case, the existing parcel is thus entitled to one density credit, due to its size.*

Then, on page 23, within the discussion of the County's basis for approving the subdivision (with which the findings are finding fault), the Commission's findings also state:

> *The existing parcel is already served by a primary residence, which would count towards its density credit if a subdivision were to occur.*

In light of the exception provided by Section 6356, the fact that every legal lot is entitled to a density credit, and the fact that density credits are utilized only in specified districts, the

Applicants' primary residence would not count towards its density credit were a subdivision to occur.[13] Therefore, the staff report finding discussing the County's conclusion on page 23 was confusing and in error. However, whether the Applicants' primary residence would or would not count towards its density credit were a subdivision to occur was irrelevant to the LCP consistency question before the Commission when it decided that the subdivision itself was impermissible. The density credit questions are irrelevant because, as a threshold matter, creation of the Applicants' proposed PAD parcel cannot be approved consistent with the LCP. The question of how many density credits a parcel is allotted only arises if the LCP allows the creation of the parcel and the Commission determined that that finding could not be made. The Applicants' project proposed the creation of a new property line between the PAD and C-1 zoning districts on the Applicants' single parcel. The proposed property line would create a single PAD parcel comprised almost entirely of prime agricultural land. As described earlier, LCP Policy 5.7(c) prohibits the creation of new parcels whose only building site would be on prime agricultural land. The proposed PAD parcel does contain non-prime land considered other land suitable for agriculture under the LCP, but any residential development on the PAD property would require a driveway and septic leachfield that would necessarily be sited on prime agricultural land. Therefore, the proposed division of land would create a new parcel whose only building site would be on prime agricultural land, inconsistent with LCP Policy 5.7(c). Therefore, the proposed project, by requesting this particular division of land, cannot be found consistent with the LCP.

Accordingly, whether or not the Staff Report accurately identified the number of density credits available to the all PAD parcel if it was created and any statement regarding the availability of density credits on the newly created parcel is irrelevant if, as a threshold matter, the parcel cannot be created consistent with the policies of the LCP allowing for creation. The secondary question of the availability of density credits is thus moot and not at issue in this case because the Commission denied the impermissible subdivision. It might become an issue in a future application, but it is not an issue with respect to the Commission's denial decision.[14] Therefore, the contradictory statements in the staff report do not have the potential of altering the Commission's initial decision to deny the Applicants' proposed land division.

Finally, the Commission also notes that when the Applicants raised this very same issue at the December 13, 2012 hearing, Commission staff provided a similar explanation.

[13] A density credit is not an entitlement to either create a new lot or build a single family residence, but rather is defined by LCP Section 6356 as the "maximum density of development permitted" on a parcel, consistent with all other applicable policies.

[14] On this point it is acknowledged that a legal parcel with rural agricultural PAD resources accrues a density credit. In this case, because of the split zoning, this legal parcel is also allowed other potential density under the LCP based on also applying commercial standards. Taken together, those establish a maximum potentially allowable density of development for the parcel. That maximum potentially allowable density must be understood in terms of other LCP provisions and site constraints that might not allow the maximum density, including agricultural protection policies, and including agricultural protection policies as they apply to PAD land. The maximum potentially allowed density must also be understood in terms of existing density of development, including existing residential, commercial, and related uses and development that exist currently on this parcel. All of that could become relevant in a revised project, but does not alter the Commission's December 13, 2012 decision to deny the permit application because that subdivision application was not approvable for reasons unrelated to the availability of density credits. The question of the potential availability of development post-subdivision is not ripe as the threshold LCP evaluation requires denial.

For these reasons, therefore, the calculations associated with density credits are not relevant new evidence and have no potential of altering the Commission's initial decision to deny the Applicants' proposed creation of a parcel whose only building site is on prime agricultural land.

Applicants' Contention 3: Agricultural feasibility statements in record incorrect

The Applicants contend that the agriculturally zoned land is not viable, and that the Staff Report improperly claims that the Applicants can grow crops such as Brussels sprouts on the PAD land without evidence to support these claims. Accordingly, the Applicants suggest that the Commission's reliance on such information was improper and had the potential of altering the Commission's initial decision.

The Commission was aware of the difference of opinion between the Applicants and its staff regarding the feasibility of agriculture on the proposed all PAD parcel. And the Staff Report presented the information collected regarding this point, including with respect to evidence suggesting that a small scale farming operation (not specifically for Brussels sprouts as suggested by the Applicants)[15] would be viable at this site based on historical and current farming in the area, the property's prime soils and water well, comments from the Farm Link representative,[16] and the input of the County's Agricultural Advisory Committee (suggesting that the PAD area be increased, as opposed to not confined as proposed by the Applicants). However, the question of agricultural viability is essentially irrelevant to the Commission's decision. Again, as a threshold matter, the Commission denied the proposed land division because it would have created an all PAD parcel where the only building site would have been on prime agricultural land, which is prohibited under LCP Policy 5.7(c). Since the creation of the all PAD parcel was prohibited by Policy 5.7(c), the question of the viability of agriculture on such parcel is not relevant. Whether or not agriculture would be feasible on the all PAD parcel if it was created, the creation of the PAD parcel itself was not permitted by the certified LCP. Further, an LCP Amendment, rezoning the PAD property from agricultural zoning to non-agricultural zoning, is the proper process by which to eliminate the agricultural protection provisions that currently apply to the portion of the parcel zoned PAD.

Therefore, the ability or inability of the Applicants to grow crops such as Brussels sprouts is not relevant new evidence nor an error of fact or law that has the potential to alter the Commission's initial decision to deny the proposed creation of a parcel whose only building site is on prime agricultural land.

Conclusion

For the above reasons, the Commission denies the request for reconsideration because there is neither relevant new evidence that could not have been presented at the December 13, 2012 hearing nor an error of fact or law that has the potential of altering the Commission's initial decision to deny the permit application.

[15] On this point, the Farm Link representative indicated that, given the existing well and prime soils on site, the property would be attractive for grazing uses, and that Brussels sprouts, leeks and artichokes would also likely be viable, particularly since these crops are salt-tolerant and commonly grown along the coast.

[16] Farm Link is an organization that pairs farmers with landowners who have private agricultural lands available for lease, and that provides related expertise to help such farmers successfully farm the land.

APPENDIX A – SUBSTANTIVE FILE DOCUMENTS

1. San Mateo County certified Local Coastal Program
2. Administrative record for San Mateo County CDP Application Number PLN2009-00112
3. San Gregorio Watershed Management Plan, prepared by Stillwater Sciences, Stockholm Environment Institute and San Gregorio Environmental Resource Center, dated June 2010
4. A-2-SMC-11-032 Staff Report, dated November 29, 2012.

Dreher, Nicholas@Coastal

From: George Cattermole <georgecattermole@earthlink.net>
Sent: Wednesday, December 19, 2012 1:31 PM
To: Carl, Dan@Coastal; Cavalieri, Madeline@Coastal; Dreher, Nicholas@Coastal
Subject: Request for reconsideration

December 19, 2012
Dear Coastal Commission staff:

The density credit associated with our parcel could not have been used by our residence because it is occupied by the owner of a visitor-serving facility. See Zoning Ordinance 6352 which sets forth how density credits are used. It provides in pertinent part:

"The provisions of this section will not apply to agriculture, farm labor housing, a residential dwelling unit associated with a visitor-serving facility that is occupied by the facility owner of operator, or affordable housing to the extent authorized in Policy 3.23 of the Local Coastal Program on March 25, 1986, or other structures considered to be accessory to agriculture under the same ownership."

Mistakes were made in drawing property lines on our project because we were not fully aware of the applicable rules. We would like the opportunity to correct those errors.

We now propose merging parcels #3 and #4 and drawing the property line between parcels #3 and #1 80 feet inside the commercial area so that there is no property line touching the PAD land. This will create one parcel on which a visitor-serving development may be possible. The PAD land would still retain one density credit as it has not been used. (See above). We will not be creating a parcel whose only building site is on prime soil. Since we are not subdividing PAD land, no agricultural plan permit is required.

We would like to make these changes in the context of our current CDP application. We would like to and, hereby do, apply for a reconsideration of our project based upon a misunderstanding of the law. The staff report states that we used our density credit on our residence (p. 23). We did not.

George Cattermole

Dreher, Nicholas@Coastal

From: George Cattermole <georgecattermole@earthlink.net>
Sent: Wednesday, January 02, 2013 4:16 PM
To: Dreher, Nicholas@Coastal
Subject: Re: Request for reconsideration

Hello Nick - Thanks for getting back. Here is a more complete explanation of why we believe our project should be reconsidered.

REQUEST FOR RECONSIDERATION

1. **The split zoning of our parcel is so ambiguous and contradictory as to be unconstitutional**.

Because our "parcel" is of necessity in the rural service center (it contains the general store), it is exempt from designation as agriculture even if it contains prime soils (LCP section 5.2). By designating it as PAD the County and Commission violated the LCP and created a split zoning parcel.

The split zoning was not anticipated by the LCP so that its provisions are ambiguous and contradictory when applied to our parcel.

C1/S7 Zoning area: Density of development is determined by the S Table, Uses are set forth in the C1 Zoning Regs, there is no restriction on subdivision. Table 1.2 shows that the Neighborhood Commercial area does not use density credits.

PAD Zoning area.: Table 1.2 shows that this area uses density credits. The LCP and Zoning Regs. use the word "parcel". This creates confusion and contradictions because we have only 1/2 a parcel.

Some examples: In the PAD area each "parcel" is entitled to one density credit. Each "parcel" must show enough density credits for existing and expanded uses. Permitted uses are different from the C1 area and subdivisions require a Master Land Division Plan. Only one nonagricultural use is allowed on each "parcel". Zoning Reg. 6363 says that any "parcel" containing prime soils is in the PAD.

How can our "parcel" be in the PAD area when 1/2 is zoned Neighborhood Commercial? The Neighborhood Commercial uses are not the same as the PAD uses. How can the density credit be used on the Neighborhood Commercial when this area does not use density credits? Our zoning is so ambiguous and contradictory that it denies us due process.

2) Staff report is based on incorrect facts not in the record concerning agricultural feasibility.

The Staff Report spends two pages claiming that we can grow crops such are brussel sprouts on our property based on telephone conversations with a Mr. Winders. There is no letter or other evidence to support these assertions in the record and they are, in fact, false.

We have no surface water to water crops. Our well water cannot be used for agriculture without depleting the ground water on which the General Store depends. The Coastal Act requires the protection of ground water.

3. The zoning area labeled PAD was created by the County and Commission.

The Staff Report maintains that we are creating a parcel whose only building site is on prime soil. In fact, the County and Commission created this zoning area at the time they wrongfully designated a portion of our property as PAD. It has one density credit which can only be used on the PAD area.

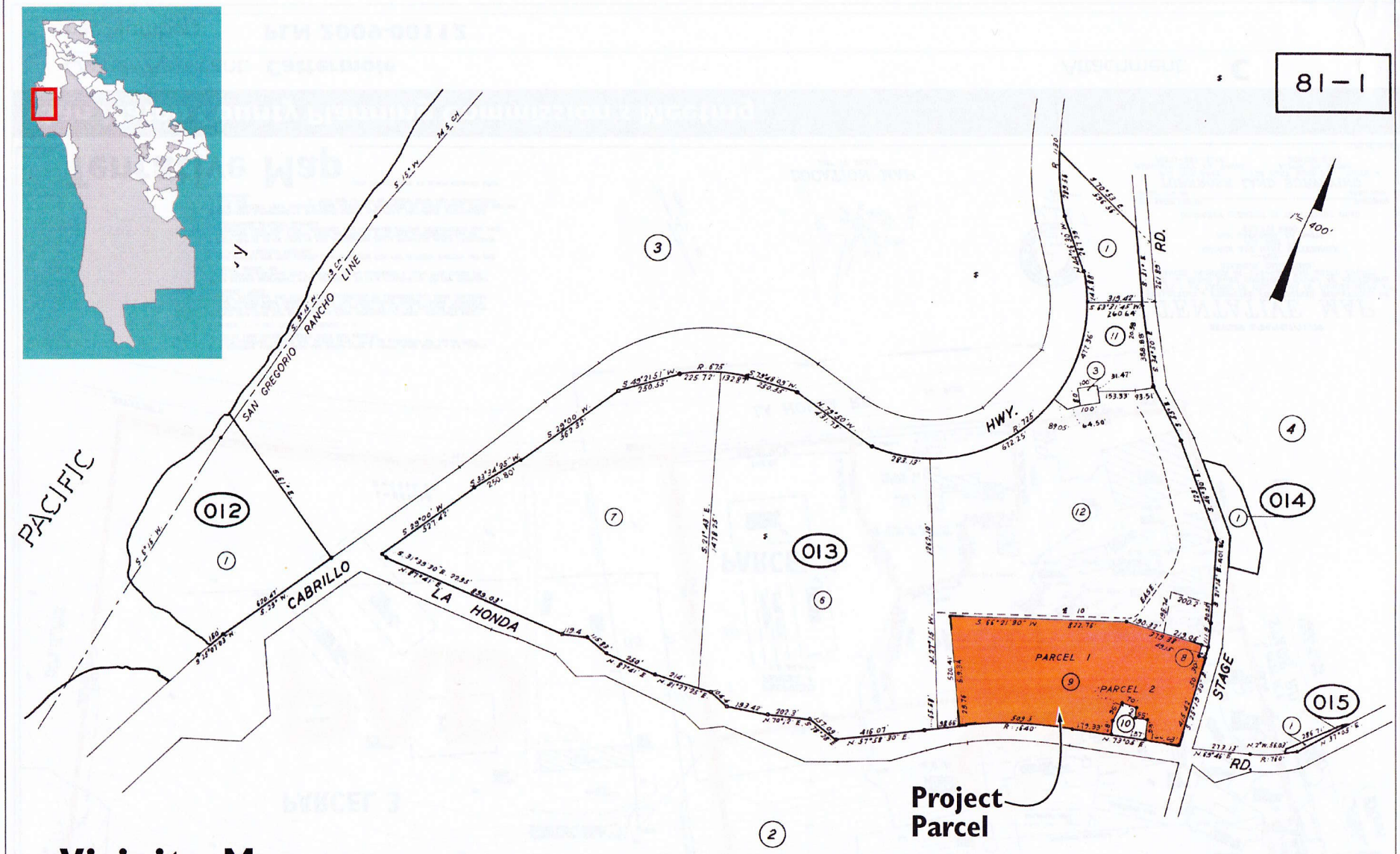
4) We are "separating Off" PAD land not subdividing it.

We are not subdividing the PAD land. We are "separating off" PAD land from the urban/commercial land. We are not changing its size, shape, or the use allowed on the land. The PAD area has one density credit which allows one residence. We are not changing that.

Chapter 21A, Section 6351(i) of the Zoning Regs. which makes the "drawing of any property line" a Land Division. This definition applies only in the context of that particular Chapter of the Zoning Regs which applies only to PAD land. This provision was intended to apply only to a land division consisting entirely of PAD land. There is no indication that this definition was intended to apply to "separating off" PAD land from urban/commercial land.

5) The proposed subdivision resolves the conflicts of split zoning.

The split zoning has made our zoning so contradictory as to be unconstitutional. By putting the PAD area on a separate parcel we are resolving these contradictions.



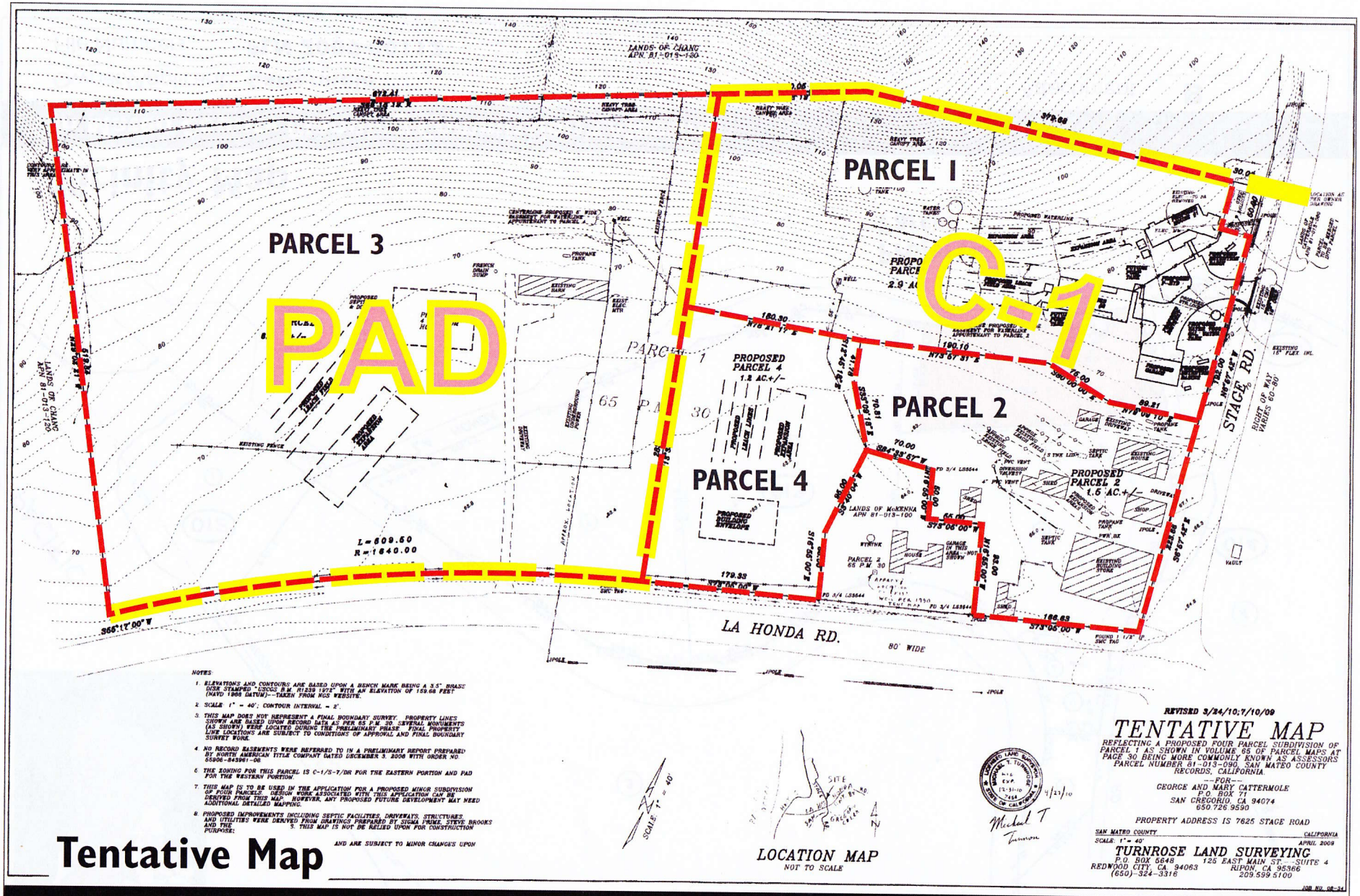
Vicinity Map

San Mateo County Planning Commission's Meeting

Owner/Applicant: **Cattermole** Attachment: **B**

File Numbers: **PLN 2009-00112**

CDR8\plan09-00112 8-19-10 rp



NOTES:

1. ELEVATIONS AND CONTOURS ARE BASED UPON A BENCH MARK BEING A 3.5" BRASS DISK STAMPED "USCGS B.M. R1839 1972" WITH AN ELEVATION OF 159.68 FEET (NAVD 1988 DATUM)--TAKEN FROM NGS WEBSITE.
2. SCALE 1" = 40'; CONTOUR INTERVAL = 2'.
3. THIS MAP DOES NOT REPRESENT A FINAL BOUNDARY SURVEY. PROPERTY LINES SHOWN ARE BASED UPON RECORD DATA AS PER 65 P.M. 30. SEVERAL MONUMENTS (AS SHOWN) WERE LOCATED DURING THE PRELIMINARY PHASE. FINAL PROPERTY LINE LOCATIONS ARE SUBJECT TO CONDITIONS OF APPROVAL AND FINAL BOUNDARY SURVEY DONE.
4. NO RECORD EASEMENTS WERE REFERRED TO IN A PRELIMINARY REPORT PREPARED BY NORTH AMERICAN TITLE COMPANY DATED DECEMBER 3, 2008 WITH ORDER NO. 55806-843961-08.
5. THE ZONING FOR THIS PARCEL IS C-1/S-7/DR FOR THE EASTERN PORTION AND PAD FOR THE WESTERN PORTION.
7. THIS MAP IS TO BE USED IN THE APPLICATION FOR A PROPOSED MINOR SUBDIVISION OF FOUR PARCELS. DESIGN WORK ASSOCIATED WITH THIS APPLICATION CAN BE DERIVED FROM THIS MAP. HOWEVER, ANY PROPOSED FUTURE DEVELOPMENT MAY NEED ADDITIONAL DETAILED MAPPING.
8. PROPOSED IMPROVEMENTS INCLUDING SEPTIC FACILITIES, DRIVEWAYS, STRUCTURES, AND UTILITIES WERE DERIVED FROM DRAWINGS PREPARED BY SIGMA PRIME, STEVE BROOKS AND THE
PURPOSES.
9. THIS MAP IS NOT BE RELIED UPON FOR CONSTRUCTION AND ARE SUBJECT TO MINOR CHANGES UPON

REVISED 3/24/10;7/10/09

TENTATIVE MAP

REFLECTING A PROPOSED FOUR PARCEL SUBDIVISION OF PARCEL 1 AS SHOWN IN VOLUME 65 OF PARCEL MAPS AT PAGE 30 BEING MORE COMMONLY KNOWN AS ASSESSORS PARCEL NUMBER 81-013-090, SAN MATEO COUNTY RECORDS, CALIFORNIA.

---FOR---

GEORGE AND MARY CATTERMOLE
P.O. BOX 71
SAN GREGORIO, CA 94074
650.726.9590

PROPERTY ADDRESS IS 7625 STAGE ROAD

SAN MATEO COUNTY CALIFORNIA
SCALE: 1" = 40' APRIL 2009

TURNROSE LAND SURVEYING
P.O. BOX 5648 125 EAST MAIN ST. - SUITE 4
REDWOOD CITY, CA 94063 RIPON, CA 95366
(650)-324-3316 209.599.5100

JOB NO. 08-34

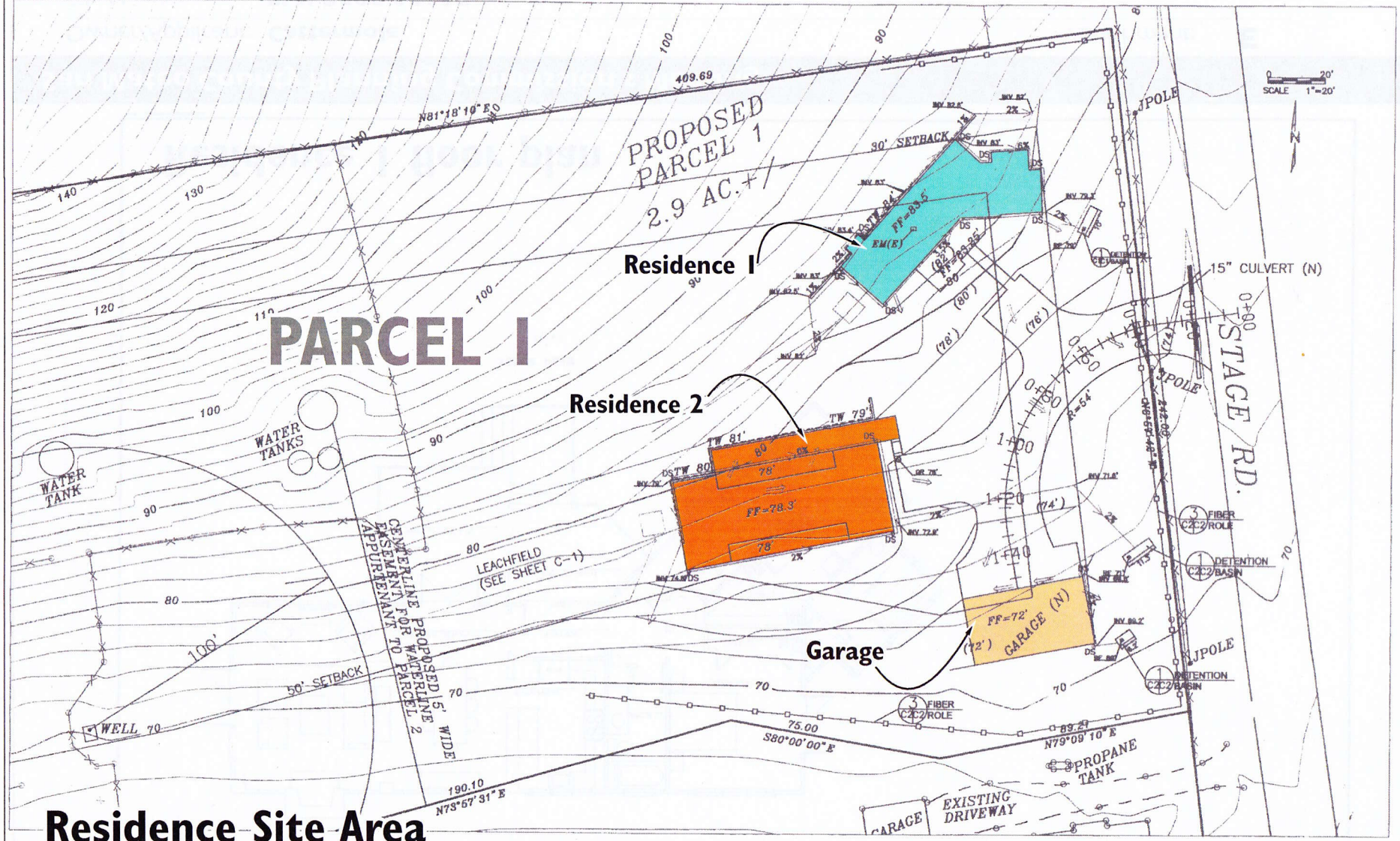
Tentative Map

San Mateo County Planning Commission's Meeting

Owner/Applicant: **Cattermole**

Attachment: **C**

File Numbers: **PLN 2009-00112**



San Mateo County Planning Commission's Meeting

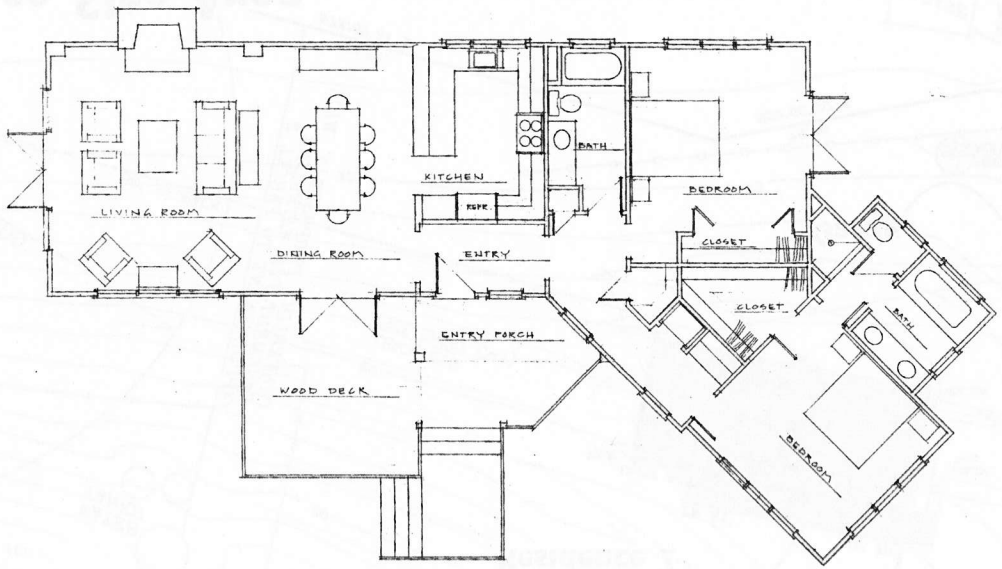
Owner/Applicant: **Cattermole** Attachment: **D**

File Numbers: **PLN 2009-00112**

CDR8\plan09-00112 8-19-10 rp

RESIDENCE #1

A 1,800 square foot wood frame single family home with two bedrooms and two bathrooms.



FLOOR PLAN

1/4" = 1'

Residence 1 floor plan

San Mateo County Planning Commission's Meeting

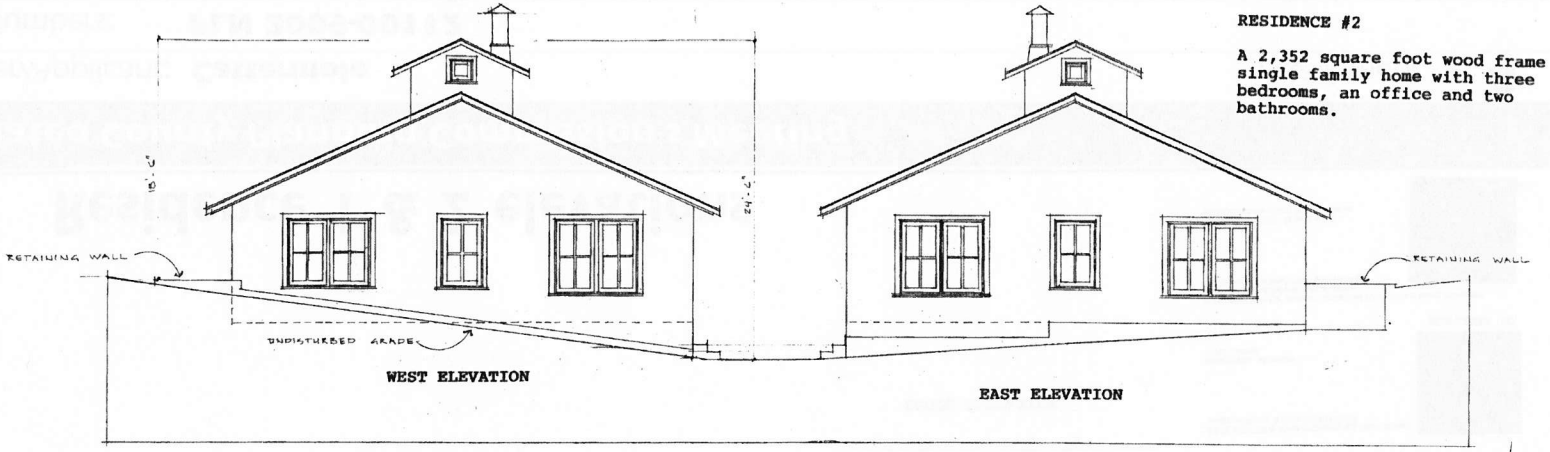
Owner/Applicant: **Cattermole** Attachment: **E**

File Numbers: **PLN 2009-00112**

CDR8\plan09-00112 8-19-10 rp

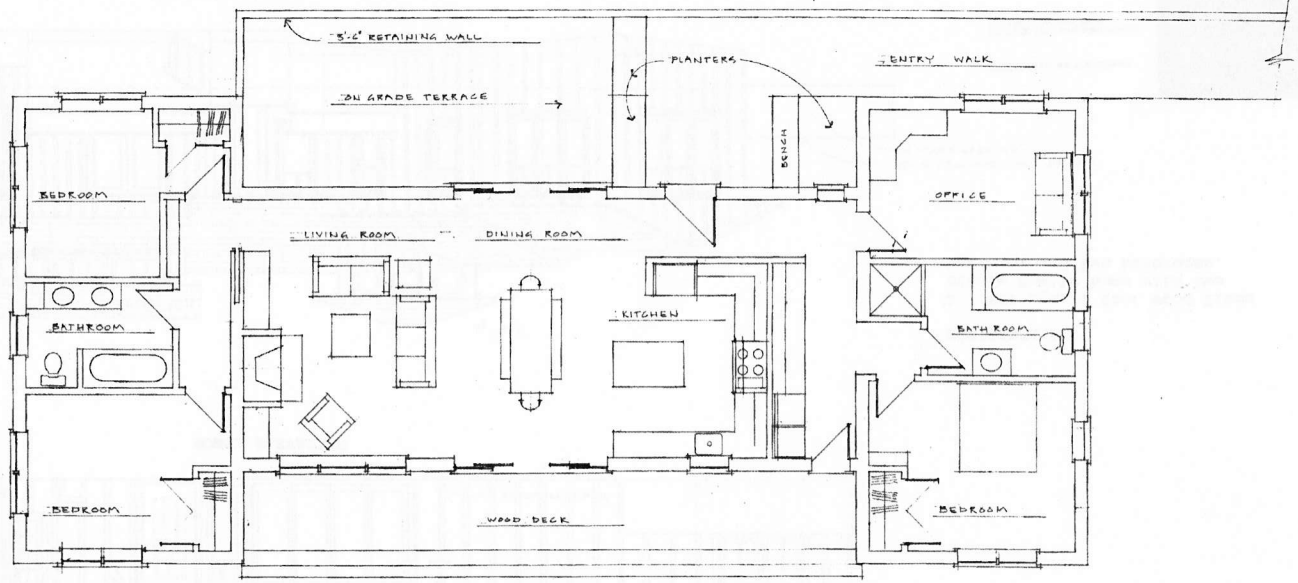
RESIDENCE #2

A 2,352 square foot wood frame single family home with three bedrooms, an office and two bathrooms.



WEST ELEVATION

EAST ELEVATION



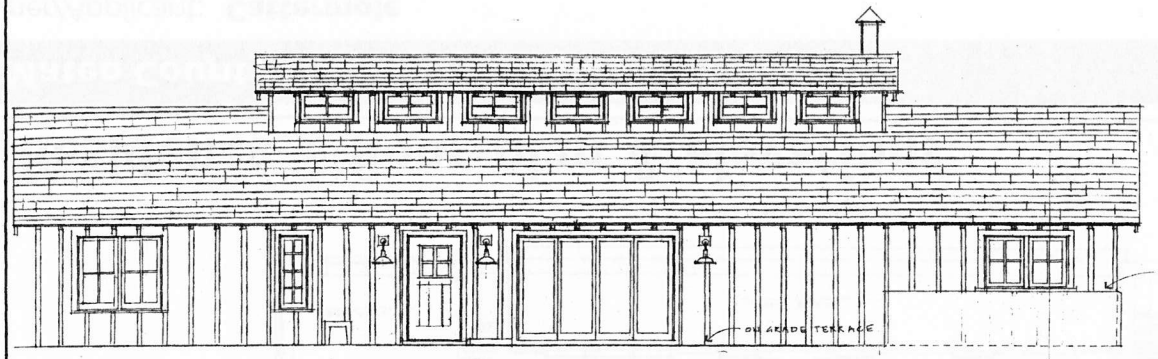
FLOOR PLAN

Residence 2 floor plan & elevations

San Mateo County Planning Commission's Meeting

Owner/Applicant: **Cattermole** Attachment: **F**

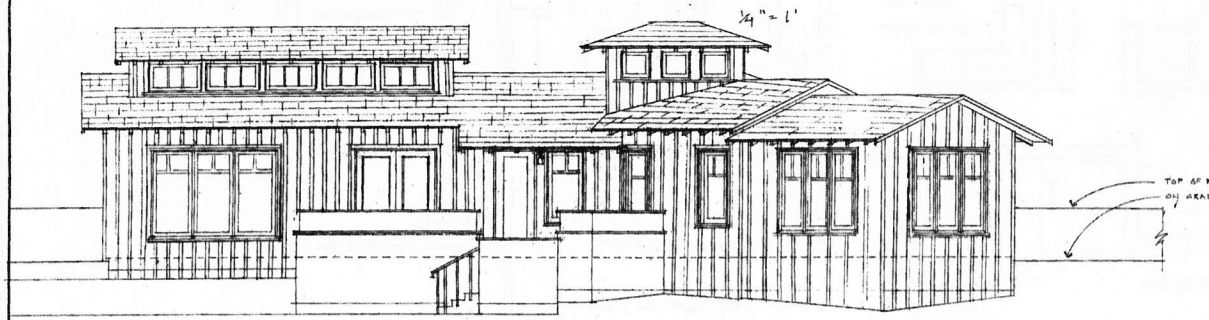
File Numbers: **PLN 2009-00112**



NORTH ELEVATION

RESIDENCE #2

A 2,352 square foot wood frame single family home with three bedrooms, an office and two bathrooms.



SOUTH ELEVATION

RESIDENCE #1

A 1,800 square foot wood frame single family home with two bedrooms and two bathrooms.

SOUTH ELEVATION

RESIDENCEs #1 and #2 and Garage

ROOFING: Asheit composition shingles
Certainteed Weathered Wood

EXTERIOR TRIM: Painted Certainteed Fiber Cement
Benjamin Moore Sussex Green HC109

WINDOWS: Aluminum
Color: Bronze

EXTERIOR WALLS: Painted Certainteed Fiber Cement board and batten smooth vertical siding with vertical battens
Benjamin Moore sandy hook grey HC108

ENTRANCE DECK: Natural wood
Redwood-Watco natural linseed oil finish

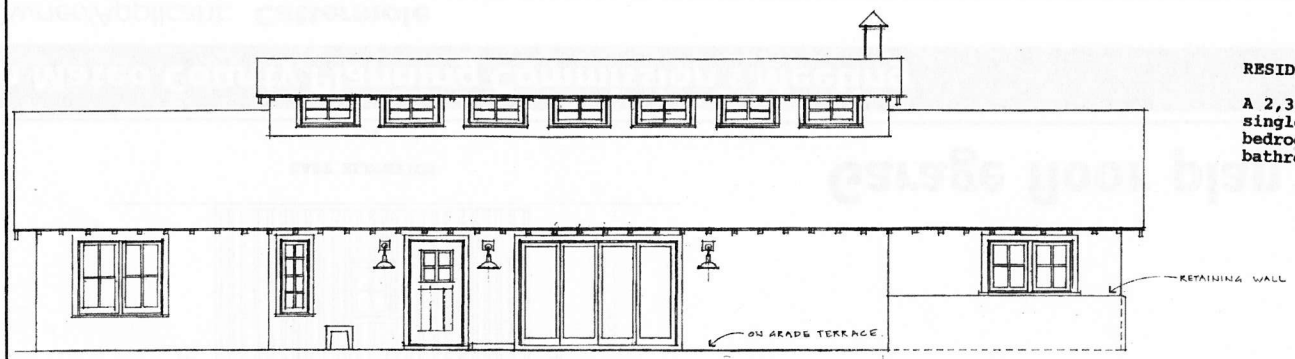
Residence 1 & 2 elevations

San Mateo County Planning Commission's Meeting

Owner/Applicant: **Cattermole** Attachment: **G**

File Numbers: **PLN 2009-00112**

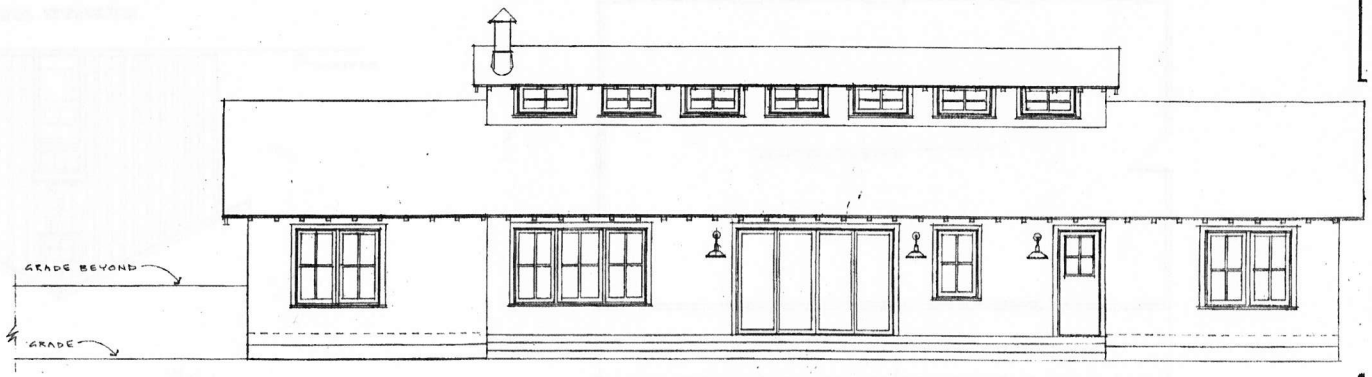
CDR8\plan09-00112 8-19-10 rp



NORTH ELEVATION

RESIDENCE #2

A 2,352 square foot wood frame single family home with three bedrooms, an office and two bathrooms.



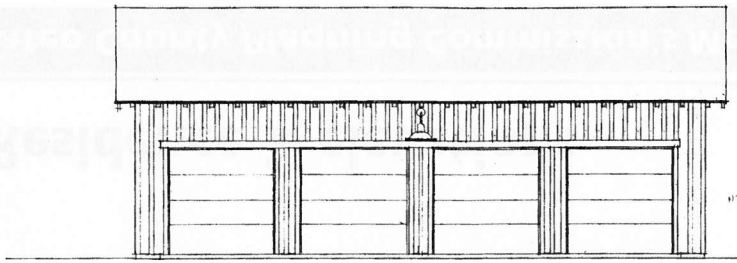
SOUTH ELEVATION

Residence 2 elevations

San Mateo County Planning Commission's Meeting

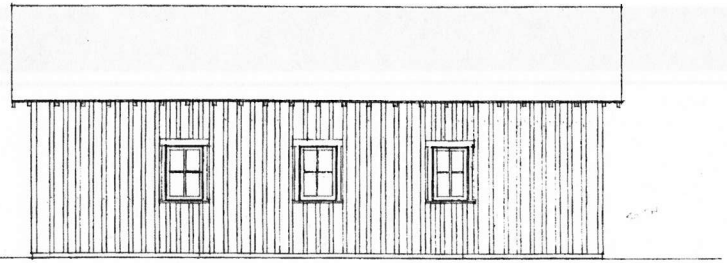
Owner/Applicant: **Cattermole** Attachment: **H**

File Numbers: **PLN 2009-00112**



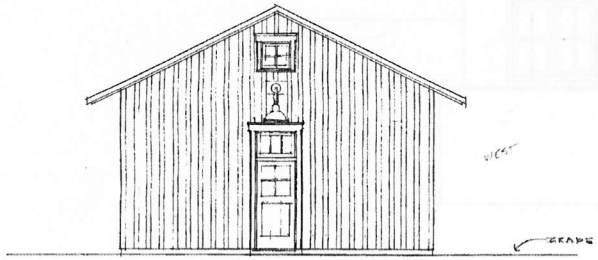
NORTH ELEVATION

¼" = 1'



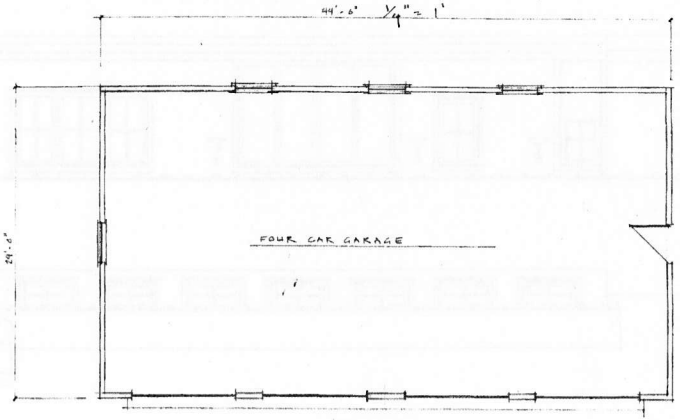
SOUTH ELEVATION

44'-0" ¼" = 1'



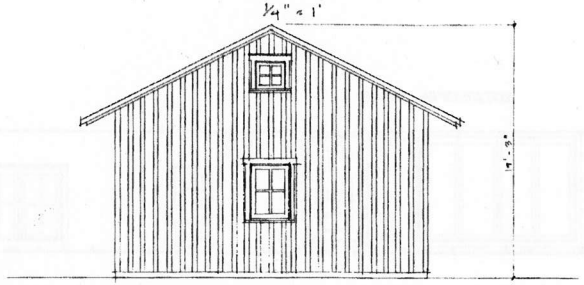
WEST ELEVATION

¼" = 1'



FLOOR PLAN

¼" = 1'



EAST ELEVATION

¼" = 1'

FOUR CAR GARAGE

Garage floor plan & elevations

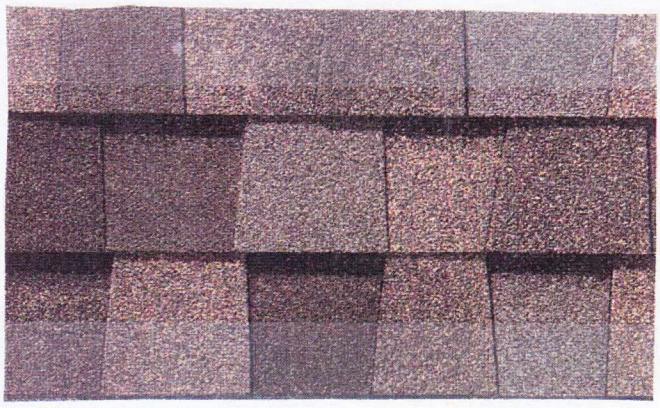
San Mateo County Planning Commission's Meeting

Owner/Applicant: **Cattermole** Attachment: **I**

File Numbers: **PLN 2009-00112**

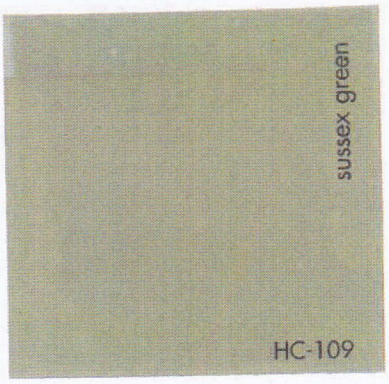
CDR8\plan09-00112 8-19-10 rp

RESIDENCEs #1 and #2 and Garage



ROOFING: Ashalt composition shingles
Certainteed Weathered Wood

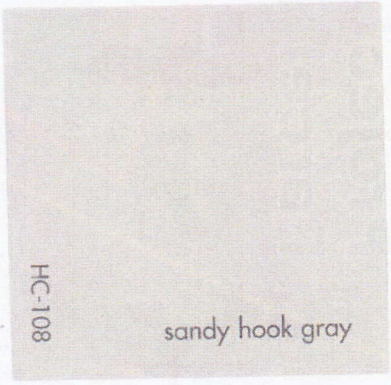
EXTERIOR TRIM: Painted Certainteed Fiber Cement
Benjamin Moore Sussex Green HC109



BENJAMIN MOORE® COLOR PREVIEW® HC

WINDOWS: Aluminum
Color: Bronze

EXTERIOR WALLS: Painted Certainteed Fiber Cement board and batten smooth vertical siding with vertical battens
Benjamin Moore sandy hook gray HC108



ENTRANCE DECK: Natural wood
Redwood-Watco natural linseed oil finish

San Mateo County Planning Commission Meeting

Applicant: **Cattermole** Attachment: **J**

File Numbers: **PLN2009-00112**

ADOPTED

Th12a

Appeal filed:	8/9/2011
49th day:	Waived
Staff:	N.Dreher-SF
Staff report:	11/29/2012
Hearing date:	12/13/2012

STAFF REPORT: SUBSTANTIAL ISSUE & DE NOVO REVIEW

Appeal Number:	**A-2-SMC-11-032**
Applicant:	**George and Mary Cattermole**
Appellants:	Shauna McKenna and David Rhodes
Local decision:	Approved by the San Mateo County Board of Supervisors on April 26, 2011 (Coastal Development Permit (CDP) Application Number PLN2009-00112).
Project Location:	7625 Stage Road, San Gregorio, San Mateo County (APN: 081-013-090).
Project Description:	Subdivision of a 12.4-acre parcel into four parcels and the development of two single-family dwellings and a four-car shared garage on one of the proposed parcels.
Staff Recommendation:	Substantial Issue Exists; Denial

SUMMARY OF STAFF RECOMMENDATION

Staff recommends that the Commission find that the appeal raises a substantial issue of conformance with the County's Local Coastal Program (LCP) and that the Commission take jurisdiction over the CDP application for the project. Further, staff recommends that the Commission deny the CDP application because it cannot be found consistent with the LCP's provisions requiring the protection of agricultural land.

San Mateo County approved a CDP to subdivide a single 12.4-acre parcel into four lots, and to construct two new single-family residences and new shared four-car garage on one of the lots.

The project site is located approximately 1.5 miles inland from the shoreline in the rural San Gregorio area of the County. The site is located at the corner of two County-designated scenic roads, State Route 84 (or La Honda Road) and Stage Road, and is currently developed with the San Gregorio General Store, an existing residence, and an historic dairy barn. The parcel is split-zoned with roughly half designated by the LCP for agriculture, and half as a rural service center, for which the LCP prescribes rural commercial uses and development. The County's approval would subdivide the parcel along the boundary between the two different use areas, resulting in one 6.7-acre agricultural lot and three lots, ranging in size from 1.2 to 2.9 acres, on the rural service center/commercial side. The existing General Store and existing residence would be located on one of the commercial lots; the two new single-family residences and the new garage would be constructed on another of the commercial lots; the remaining commercial lot would be left vacant (for the time being); and the agricultural lot would retain the existing dairy barn.

The Appellants contend that the County's approval is inconsistent with the County's LCP with regard to agricultural protection, visual resources, land use requirements, lot legality, archaeological resources, and biological resources.

With regard to agricultural protection, the County-approved agricultural lot is almost entirely made up of prime agricultural land, with the remainder designated as suitable for agricultural development. The LCP protects such agricultural resources, including by strictly limiting division of prime and suitable agricultural land to avoid fragmentation and conversion of agricultural land. In addition, the LCP specifically prohibits the creation of new parcels whose only building site would be on prime agricultural land. In this case, the County-approved project would create a parcel where the only building site is on prime agricultural land. In addition, the County's approval converts the existing agricultural well on the agricultural property to a well designed to serve development on the commercial side of the overall property, and explicitly to serve residential, not agricultural, development on the agricultural property. Converting the well to non-agricultural uses reduces the amount of water that would be available for agricultural purposes on the agricultural side of the property. Therefore, the appeal contentions related to the LCP's agricultural protection policies raise a substantial issue of conformance with the LCP.

With regard to visual resources, the subject parcel is on the corner of two LCP-designated scenic roads, and the LCP protects this scenic corridor, which has a distinct rural and natural character. The LCP requires that new parcels have building sites that minimize visibility from these roads. As approved, the new lots created lead to building sites that are prominent in the viewshed, including providing for two new residences and a shared garage off of Stage Road that would be very visible. The County did not require adequate conditions to ensure that new development would be sited to avoid visual impacts on the scenic road, nor to be screened from view and designed to blend with the surrounding environment. Therefore, the appeal contentions related to the LCP's visual resource protection policies also raise a substantial issue of conformance with the LCP. Other appeal contentions also raise LCP conformance issues as well, including prominently the questions of lot legality.

With respect to the Commission's de novo review of the CDP application, the proposed project is inconsistent with the LCP because it would result in the creation of a rural, agricultural lot

whose only building site would be on prime agricultural land, in direct conflict with LCP requirements. It would also convert an agricultural well to commercial/residential use, without an understanding of the way in which such conversion reduces the viability of agriculture. Further, it would also create an agricultural parcel that is not restricted to agricultural uses only, as is required by the LCP for agricultural parcels that can permissibly be created by subdivision. Finally, it would also lead to parcels (and residential development) prominent in the protected view corridor.

There are alternative projects that could avoid these inconsistencies, including: (1) the no project alternative because the parcel is already developed with a commercial and residential use; (2) revised numbers and configurations of lots that adequately protect agricultural and visual resources; and (3) the construction of the proposed employee housing without further land division, consistent with the Applicants' stated goals and the commercial intent of the rural services center zoning. Consideration of these and other alternative projects would depend on additional data not currently in evidence regarding agricultural viability and the number and configuration of parcels that can be developed consistent with the agricultural, new development, and public view protection provisions of the certified LCP. Staff notes that other components of the project could likely be more readily brought into LCP conformance, such as the proposed residential development that could likely be approved with thoughtful siting and design absent a subdivision here.

Therefore, project denial does not preclude the Applicants from applying for a project that addresses site constraints and is supported by the information necessary to fully evaluate the project's conformity with the LCP. Thus, denial of this project is not a final adjudication of the potential for development on this site, but is instead a finding that the project proposed is inconsistent with the LCP and cannot be approved.

As a result, staff recommends that the Commission deny the CDP application. The motions and resolutions to act on this recommendation follow below on page 5.

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I. MOTIONS AND RESOLUTIONS

A. Substantial Issue Determination

Staff recommends a **NO** vote on the following motion. Failure of this motion will result in a de novo hearing on the application, and adoption of the following resolution and findings. Passage of this motion will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by an affirmative vote of the majority of the appointed Commissioners present.

> ***Motion:*** *I move that the Commission determine that Appeal Number A-2-SMC-11-032 raises no substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act. I recommend a no vote.*
>
> ***Resolution to Find Substantial Issue:*** *The Commission hereby finds that Appeal Number A-2-SMC-11-032 presents a substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency with the certified Local Coastal Program and/or the public access and recreation policies of the Coastal Act.*

B. CDP Determination

Staff recommends a **NO** vote on the following motion. Failure of this motion will result in denial of the CDP and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

> ***Motion:*** *I move that the Commission approve Coastal Development Permit Number A-2-SMC-11-032 pursuant to the staff recommendation. I recommend a no vote.*
>
> ***Resolution to Deny a CDP:*** *The Commission hereby denies Coastal Development Permit Number A-2-SMC-11-032 and adopts the findings set forth below on grounds that the development does not conform with the policies of the San Mateo County certified Local Coastal Program and/or with the public access policies of Chapter 3 of the Coastal Act.*

II. FINDINGS AND DECLARATIONS

The Commission finds and declares as follows:

A. PROJECT LOCATION AND DESCRIPTION

Project Location

The proposed project is located on a 12.4-acre parcel approximately 1.5 miles east/inland of Highway 1 at the intersection of State Route 84 (also known as La Honda Road) and Stage Road, south of Half Moon Bay and north of Pescadero, in the rural San Gregorio area of unincorporated San Mateo County (**Exhibit 1**). For the most part, the larger San Gregorio area is comprised of rural agricultural lands. The parcel lies in a valley that is located between Highway 1 to the west and Skyline Boulevard at the top of the coast range to the east, and is currently developed with

the San Gregorio General Store, an existing residence, and an historic dairy barn. Approximately half of the parcel is designated by the LCP for agriculture (and zoned PAD, or Planned Agricultural District), and half as a rural service center, for which the LCP prescribes rural commercial uses and development (zoned C-1). See **Exhibit 1** for location map, and **Exhibit 2** for project area photos.

Project Description

The County-approved project is for the subdivision of the split-zoned, 12.4 acre parcel, along the boundary between the two different zoning districts, resulting in one 6.7-acre agricultural lot and three lots, ranging in size from 1.2 to 2.9 acres, on the rural service center/commercial side. The General Store and existing residence would be located on one of the commercial lots (Parcel 2); two single-family residences (1,800 square-foot and 2,352 square-foot, respectively) with a shared 1,056 square-foot detached four-car garage would be constructed on another of the commercial lots (Parcel 1); the remaining commercial lot would be left vacant (Parcel 4); and the agricultural lot would retain the existing dairy barn (Parcel 3). Approximately 630 cubic yards of grading would be required for the proposed structures and associated driveway. The proposed development would be served by two existing wells – one located on proposed Parcel 1 to serve proposed Parcels 1 and 2, and one an agricultural well on proposed Parcel 3 to serve proposed Parcels 3 and 4. See **Exhibit 5** for project plans.

B. SAN MATEO COUNTY CDP APPROVAL

The San Mateo County Planning Commission approved a CDP for the proposed project on October 27, 2010. The Planning Commission's CDP approval was appealed to the County Board of Supervisors, and on April 26, 2011, the Board denied the appeal and approved the CDP. Notice of the County's CDP decision was received in the Coastal Commission's North Central Coast District Office on July 28, 2011 (see **Exhibit 3**). The Coastal Commission's ten-working day appeal period for this action began on July 29, 2011 and concluded at 5 pm on August 11, 2011. One valid appeal (see **Exhibit 4**) was received during the appeal period.

C. APPEAL PROCEDURES

Coastal Act Section 30603 provides for the appeal to the Coastal Commission of certain CDP decisions in jurisdictions with certified LCPs. The following categories of local CDP decisions are appealable: (a) approval of CDPs for development that is located (1) between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tide line of the sea where there is no beach, whichever is the greater distance, (2) on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of any coastal bluff, and (3) in a sensitive coastal resource area; or (b) for counties, approval of CDPs for development that is not designated as the principal permitted use under the LCP. In addition, any local action (approval or denial) on a CDP for a major public works project (including a publicly financed recreational facility and/or a special district development) or an energy facility is appealable to the Commission. This project

is appealable because it involves development that is not designated as the principal permitted use under the LCP.

The grounds for appeal under Section 30603 are limited to allegations that the development does not conform to the certified LCP or to the public access policies of the Coastal Act. Section 30625(b) of the Coastal Act requires the Commission to conduct a de novo CDP hearing on an appealed project unless a majority of the Commission finds that "no substantial issue" is raised by such allegations. Under Section 30604(b), if the Commission conducts a de novo hearing and ultimately approves a CDP for a project, the Commission must find that the proposed development is in conformity with the certified LCP. If a CDP is approved for a project that is located between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone, Section 30604(c) also requires an additional specific finding that the development is in conformity with the public access and recreation policies of Chapter 3 of the Coastal Act. This project is not located between the nearest public road and the sea, and thus this additional finding would not need to be made if the Commission approves the project following a de novo hearing.

The only persons qualified to testify before the Commission on the substantial issue question are the Applicant, persons who made their views known before the local government (or their representatives), and the local government. Testimony from other persons regarding substantial issue must be submitted in writing. Any person may testify during the de novo CDP determination stage of an appeal.

D. SUMMARY OF APPEAL CONTENTIONS

The Appellants contend that the County-approved project raises issues with respect to the project's conformance with LCP policies related to agricultural protection, visual resource protection, locating new development, biological resource protection, archaeological resource protection, and hydrology/drainage impacts. Specifically, the Appellants contend that the project: 1) adversely impacts agricultural land by dividing and converting prime agricultural land that is protected for agricultural uses, 2) divides the parcel unnecessarily and converts the commercial rural service center to private residential development, 3) adversely impacts the public viewshed, 4) poses adverse impacts to sensitive habitats and species, and 5) poses potential impacts to cultural resources. The Appellants make additional contentions, including with regard to lot legality, water availability, drainage and parking. Please see **Exhibit 4** for the complete appeal document.

E. SUBSTANTIAL ISSUE DETERMINATION

Substantial Issue Background

The term substantial issue is not defined in the Coastal Act. The Commission's regulations simply indicate that the Commission will hear an appeal unless it "finds that the appeal raises no significant question" (California Code of Regulations, Title 14, Section 13115(b).). In previous

decisions on appeals, the Commission has been guided by the following factors in making such determinations:

1. The degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the certified LCP and with the public access policies of the Coastal Act;

2. The extent and scope of the development as approved or denied by the local government;

3. The significance of the coastal resources affected by the decision;

4. The precedential value of the local government's decision for future interpretation of its LCP; and

5. Whether the appeal raises only local issues, or those of regional or statewide significance.

Even where the Commission chooses not to hear an appeal, Appellants nevertheless may obtain judicial review of the local government's coastal permit decision by filing a petition for a writ of mandate pursuant to Code of Civil Procedure, Section 1094.5

In this case, for the reasons discussed further below, the Commission determines that the development as approved by the County presents a substantial issue.

Agricultural Resources

The LCP defines and designates prime agricultural land and land suitable for agriculture, including as a means to protect the land and ensure it is kept in agricultural production. The LCP also limits division and conversion of agricultural land, and provides incentives for merging and otherwise protecting agricultural parcels. In addition, Policy 5.7: 1) prohibits the division of parcels that consist entirely of prime agricultural land, 2) prohibits the division of prime agricultural land within a parcel unless agricultural productivity would not be reduced, and 3) prohibits the creation of new parcels whose only building site would be on prime agricultural land. The LCP specifically defines the division of prime agricultural land in IP Section 6351(i) as: "The creation of any new property line whether by subdivision or other means." Further, LCP Policy 1.8 specifies that new development in rural areas is only allowed if it does not diminish the ability to keep all prime agricultural land and other land suitable for agriculture (as defined in the Agriculture Component) in agricultural production.

The Appellants make a series of contentions related to agricultural resource impacts, including the following. First, they contend that the proposed project would adversely impact the prime soils that are located in the rural service center portion of the site. However, as described further below, the majority of the LCP's agricultural protection policies do not explicitly apply within the rural service center portion of the parcel, and therefore, these contentions do not by themselves raise substantial LCP conformance issues.

With regard to conversion of agricultural land on the PAD portion of the subject property, the Appellants contend that the existing historic dairy barn has been converted to farm labor housing

without CDP authorization. However, the County considered this alleged violation and imposed a special condition of approval on the project requiring any residential component of the development to either be legalized through a subsequent CDP (to be obtained within 60 days of approval), or to be removed from the agricultural parcel. Therefore, the County's approval does not raise substantial issues relative to the historic dairy barn contentions inasmuch as it addresses the alleged violation to ensure that any conversion of agricultural land to residential uses that are inconsistent with the LCP is eliminated.[1]

The Appellants additionally contend that the County-approved subdivision creates a substandard PAD parcel and adversely impacts agricultural resources. The approved project results in the creation of a PAD lot that is almost entirely prime agricultural land, as designated by the LCP. Although there is some non-prime land mapped on the northern portion of the PAD parcel, any building site on the parcel would need to be located, at least in part, on prime agricultural land for the following reasons. First, the non-prime area of the parcel has relatively steep slopes, and therefore, may not be feasible for a building site consistent with the LCP. Second, the septic percolation tests that were performed for the County's review of the project analyzed the feasibility of a septic system that would be located on the prime agricultural land, and determined that such a septic system would be feasible on the prime land. Finally, even if there was a feasible site to place a primary building and any necessary utility development on non-prime land, the site is configured so that any driveway access would need to cross prime agricultural land, and therefore, at the very least a portion of the building site (driveway access) would be required to be located on prime agricultural land. As discussed above, Policy 5.7 prohibits the creation of new parcels whose only building site would be on prime agricultural land. Therefore, the approved project would be inconsistent with the certified LCP in this regard, and the appeal contentions related to the subdivision of agricultural land raise a substantial issue of conformance with the County's LCP.

In addition, the County's approval converts the existing agricultural well on the agricultural property to a well designed to serve residential development on the commercial side of the overall property, and explicitly to serve residential, not agricultural, development on the agricultural property. The existing agricultural well was constructed as an agricultural well, subject to a CDP exclusion because it was for agricultural purposes. Converting the well to non-agricultural uses reduces the amount of water that would be available for agricultural purposes on the agricultural side of the property. The County did not analyze the way in which such conversion would affect agricultural productivity on the PAD land. Thus, the County-approved project raises substantial LCP conformance issues with respect to protection of agricultural land and its viability for continued or renewed agricultural operations.

Finally, with regard to other contentions related to agricultural productivity on the resulting parcels, the approved project would result in new commercially-zoned parcels and new

[1] Although it is alleged that development has taken place prior to submission of this permit application, including alleged residential use of the dairy barn without CDP authorization, consideration of this appeal and CDP application by the Commission has been based solely upon the policies of the certified LCP and the relevant Chapter 3 policies of the Coastal Act. Commission review and action on this permit does not constitute a waiver of any legal action with regard to alleged violations, nor does it constitute an implied statement of the Commission's position regarding the legality of any development undertaken on the subject site without a CDP, or that all aspects of the violation have been fully resolved.

residential development adjacent to agricultural land designated for agriculture, and the LCP requires agricultural resources on the land designated for agriculture to be protected from conflicts with other types of uses. The approval also tethers the agricultural property (proposed Parcel 3) to the commercial property (proposed Parcel 4) by converting and using the water from the agricultural well on Parcel 3 for commercial/residential uses and development on Parcel 4. The County did not require a right-to-farm restriction to be recorded over the commercially zoned parcels, did not account for the way in which the shared well use could adversely affect agricultural activities on the PAD parcel, and did not otherwise address potential compatibility impacts (through other restrictions, prescribed use and development setbacks from agricultural land, etc.). Therefore, the County-approved project fails to address these LCP requirements and the related appeal contentions raise a substantial issue of conformance with the LCP.

In conclusion, the appeal contentions raise a substantial issue of conformance with the agricultural protection policies of the LCP because the approved project would create a PAD lot where the only building site is on prime agricultural land, would convert an agricultural well to commercial/residential use without an understanding of the way in which such conversion reduces the viability of agriculture, and because the County did not require a right-to-farm restriction or any other restrictions to protect agricultural resources from incompatible use impacts associated with the newly created commercial parcels and the new residences. Therefore, the appeal contentions regarding protection of agricultural resources raise a substantial issue of conformance with the LCP.

Visual Resources

The County's LCP includes strong protections for visual resources, including along scenic corridors. The subject parcel is on the corner of two County designated scenic roads: Highway 84 (or La Honda Road) and Stage Road, and all County-approved new parcels and buildings sites therein are visible from these roads. The LCP strongly protects scenic corridors in this area, which has a distinct rural and natural character. The Appellants contend that all of the structures within the approved subdivision (the two existing structures, the two new residences, and the new garage) are within the viewshed of the coastal scenic roads. The LCP requires that new parcels have building sites that minimize visibility from those roads and other public viewpoints. In this case, the County's approval would result in visually prominent building sites on the new parcels. This is exemplified by the proposed siting of the new residences and shared garage, which would accentuate, rather than minimize visual impacts within the Stage Road viewshed (see **Exhibits 1, 2 and 5**). Additionally, the LCP requires that new development be located on a portion of the parcel where the development is least visible from State and County Scenic Roads, is least likely to significantly impact views from public viewpoints, is consistent with all other LCP requirements, and best preserves the visual and open space qualities of the parcel overall. As approved, development would be clearly visible from County scenic roads, and the County did not impose adequate conditions to minimize the visual impacts of the development, such as requirements to modify siting to avoid locations prominent in the viewshed, to design the buildings to blend with the rural character of the area, and to screen new development from scenic roads, including through maintenance of the existing trees that line the property. Therefore, the County's approval raises a substantial issue of conformance with the LCP's visual resource protection policies.

Lot Legality

The Appellants contend that the County-approved project results in a total of six new parcels: the Appellants' own parcel (APN 081-013-100), a small utility parcel owned by the Applicant (APN 081-013-080) and the four lots resulting from the subdivision of the existing 12.4-acre parcel (APN 081-013-090). The County's action did not directly involve the Appellants' property (APN 081-013-100), which was created as a result of a prior County CDP (CDP 90-20), so this appeal contention does not raise a substantial issue of the approved project with the certified LCP. In terms of the small (0.04-acre) utility lot, it was last conveyed on June 3, 1988 by deed, separate and apart from any other portion of property. According to the County, the smaller utility lot parcel was established through a public utility ordinance and is shown on a subdivision map that was recorded in 1991. However, it is not clear whether the creation of the parcel was authorized by a CDP, as required by the LCP. The utility lot is currently improved with at least a portion of a shed, and is not proposed for development individually. The small structure on this lot was a telephone utility facility at one time, and no longer serves that purpose. In its approval of the project, the County required the Applicant to merge the utility lot with proposed Parcel 1. However, it is not clear if the utility lot was legally created with the necessary CDP, or whether it is still legally a part of the subject 12.4-acre parcel. Therefore, the Appellants' contention regarding lot legality raises a substantial issue of conformance with the LCP because the legal lot configuration of the parcel to be subdivided is not clear.[2]

Rural Service Center Development

The subject property is partially within the San Gregorio rural service center, which currently contains the San Gregorio General Store (owned and operated by the Applicants) that serves the surrounding community, and the Applicants' primary residence. Per the LCP, the rural service center's purpose is to provide services to the surrounding community through a combination of land uses, and is envisioned to house mixed uses and a rural commercial center for the surrounding community. Rural service centers are typically close to agricultural land, as is the case here, and the LCP limits development in rural service centers to infilling that provides commercial facilities which support agriculture and recreation and meets housing needs which are generated by local employment. Additionally, new development in these areas must be concentrated through infilling existing residential subdivisions and commercial areas, and by discouraging urban sprawl, to protect and enhance the natural environment and revitalize existing developed areas. Taken together, LCP Policies 1.10, 1.12, 1.16, 1.17, 1.18 and 1.19 direct new development to rural service centers to revitalize existing services, to concentrate and cluster allowable commercial facilities where they won't adversely impact surrounding rural and agricultural lands, provide support for nearby agricultural production, and provide housing for local employment.

The Appellants allege that the project would convert commercial land to residential use, inconsistent with the LCP. The County approved two new single-family residences with a shared garage on one of the new lots within the rural service center (proposed Parcel 1). The existing rural service center portion of the property already contains a general store and a single-family residence. The Applicants live in the residence and own and operate the general store. According

[2] Id (Commission consideration and action not a waiver of further action, nor implied consent regarding legality, nor statement that alleged violation resolved).

to the Applicants, the approved residences are intended to provide additional housing for their family members to assist in running the general store, and therefore, the approved residences are consistent with the allowed uses in the rural service center. Further, the zoning district (C-1/S-7) allows for a relatively high density of development and the two residences are within the maximum intensity allowed. In summary, the County-approved project includes residences that are relatively small and meant for family to help operate the store, and their use is consistent with the LUP and the zoning designations for C-1 commercial zoning. Accordingly, the approved residential development on the commercial property does not raise a substantial issue of conformance with the certified LCP's land use designations.

Archaeology

LCP Policy 1.24 requires the County to determine whether or not sites proposed for new development are located within areas containing potential archaeological/paleontological resources. Where the property in question is within such an area, and prior to approval of development proposed in sensitive areas, the LCP requires that a mitigation plan, adequate to protect the resource and prepared by a qualified archaeologist/paleontologist be submitted for review and approval, and implemented as part of the project. In this case, the Appellants contend that the County did not require an adequate archaeological analysis prior to approving the project. The Appellants state that this is an area noted for habitation by pre-Europeans and that there is physical evidence of archaeological resources within 300 feet of proposed Parcel 3. The County reviewed the proposed development and did not identify any evidence of archaeological features within the project vicinity. The County consulted the California Historical Resources Information System and found no record of any previous cultural resource study performed onsite. The County used this information to determine that there is a low potential for impacts to archeological or other cultural resources. Nonetheless, to ensure consistency with the LCP, the County imposed a condition of approval to protect any resources that may be uncovered on site. County Condition 16 requires the following:

> *Should cultural resources be encountered during site work, all work shall immediately be halted in the area of discovery and the applicant shall immediately notify the Community Development Director of the discovery. The applicant shall be required to retain the services of a qualified archaeologist for the purpose of recording, protecting, or curating the discovery as appropriate. The cost of the qualified archaeologist and of any recording, protecting, or curating shall be borne solely by the applicant. The archaeologist shall be required to submit to the Community Development Director for review and approval a report of the findings and methods of curation or protection of the resources. No further site work within the area of discovery shall be allowed until the preceding has occurred. Disposition of Native American remains shall comply with CEQA Guidelines Section 15064.5(e).*

Therefore, the County's condition requires the Applicants to discontinue work in the event cultural resources are uncovered during the work on site, and to take steps to protect such resources, as required by the LCP. Therefore, with regard to archaeological resources, the appeal contentions do not raise a substantial issue of conformance related to archaeological resource protection.

Biological Resources
The County's LCP includes strong protections for biological resources, including sensitive species and riparian corridors. The LCP protects certain species and environmentally sensitive habitat areas (ESHAs) by imposing buffers, restricting development to certain uses, and requiring monitoring to prevent long-term impacts caused by encroachment of development. The Appellants contend that the Applicants' property contains sensitive habitat, such as breeding ponds for California Red-Legged Frog (CRLF), and further contend that the County should have required additional environmental studies for CRLF and San Francisco Garter Snake. The County conducted an environmental review for the proposed project, including conducting a site visit and consulting the California Natural Diversity Database and the San Mateo County Rare and Endangered Species and Sensitive Habitat Maps, and determined that there is no evidence of any endangered species, sensitive habitats, or special status plant species at the project site. In addition, although there is an existing stream on the southwest corner of the property, no development is proposed in the vicinity of the stream or potentially required stream or ESHA buffers. In fact, the approved residences would be approximately 1,000 feet away from the stream. Therefore, this appeal contention does not raise a substantial issue of conformance with the LCP.

Water and Sewer Availability
The Appellants contend that the County did not adequately investigate the availability of water to serve the subdivision and proposed residences, or the capacity for septic systems. The LCP requires an adequate water supply to serve development, primarily through its agricultural policies and urban development policies. The subject property relies upon two existing wells and septic systems. In its review of the project, the County considered septic feasibility studies that demonstrated adequate septic capacity to serve future development on all resulting lots, even though residential development is only currently proposed on Parcel 1.

In terms of the existing well that is currently used for the existing residence (and that is located on proposed Parcel 1), well tests indicate that there is sufficient capacity to serve the existing residential and commercial development on proposed Parcel 2 as well as the new residential development that would be developed on proposed Parcel 1. Well tests also indicate that the existing agricultural well on proposed Parcel 3 has adequate capacity to serve residential development on both proposed Parcel 3 (the PAD property) and proposed Parcel 4 (the new parcel on the rural service center/C-1 side of the property that would not be developed until a future date). As indicated above, though, the County did not evaluate the way in which such well conversion would affect agricultural productivity on the PAD land. So, although it may be true that the existing agricultural well could provide adequate water to serve residential development on proposed Parcels 3 and 4, it is unclear whether there is adequate water to do that and to accommodate agricultural needs on the PAD parcel. Thus, it is not clear that there is adequate water available to serve the approved development, including with respect to both agricultural viability and the residential/commercial development that would be facilitated by the subdivision on Parcel 4.

Therefore, the appeal contentions regarding septic do not raise a substantial LCP conformance issue, but the appeal contentions regarding water supply raise substantial LCP conformance issues.

Other Issues
The Appellants raise a number of other issues related to the County's approval, including related to parking. The parking needed for the general store in proposed Parcel 2 would not be impacted by the approved project and there is no indication that additional parking spaces are needed to serve the general store. These topics do not raise inconsistencies and thus, they do not raise a substantial issue.

Substantial Issue Determination Conclusion
In conclusion, the County-approved project raises substantial issues with respect to its conformance with LCP policies related to protection and enhancement of agricultural land and visual resources, as well as with respect to water availability and lot legality. Therefore, the Commission finds that a substantial issue exists with respect to the approved project's conformance with the certified San Mateo County LCP, and takes jurisdiction over the CDP application for the proposed project.

F. COASTAL DEVELOPMENT PERMIT DETERMINATION

The standard of review for this application is the San Mateo County certified LCP. All Substantial Issue Determination findings above are incorporated herein by reference.

1. Agriculture

The San Mateo County LCP's Agriculture Component contains numerous policies directed at preserving and enhancing agricultural productivity in rural areas within the San Mateo County coastal zone. First, the County's LCP establishes rural areas, rural service centers, and urban areas, and encourages allowable development to be concentrated in rural service centers and urban areas, while discouraging development in rural areas, primarily to achieve the LCP's agricultural protection objectives. For example, LCP Policy 1.8 (Land Uses and Development Densities in Rural Areas) states, in part:

> *a. Allow new development (as defined in Section 30106 of the California Coastal Act of 1976) in rural areas only if it is demonstrated that it will not: (1) have significant adverse impacts, either individually or cumulatively, on coastal resources and (2) diminish the ability to keep all prime agricultural land and other land suitable for agriculture (as defined in the Agriculture Component) in agricultural production. …*

The LCP contains policies that define and designate prime agricultural land and other land suitable for agriculture, including as a means to help identify the types of protections that accrue to each. LCP Policy 5.1 defines prime agricultural land, which includes the Class II soils that extend over a portion of the subject site. It states, in part:

> *Define prime agricultural lands as: (a) All land which qualifies for rating as Class I or Class II in the U.S. Department of Agriculture Soil Conservation Service Land Use Capability Classification, as well as all Class III lands capable of growing artichokes or Brussels sprouts. …*

Policy 5.3 defines other (non-prime) land that is suitable for agriculture. It states:

> *Define other lands suitable for agriculture as lands on which existing or potential agricultural use is feasible, including dry farming, animal grazing, and timber harvesting.*

Policies 5.2 and 5.4 designate certain land for agriculture, but specifically exclude land in the rural service center from being designated as such. They state:

> ***LCP Policy 5.2 (Designation of Prime Agricultural Lands).*** *Designate any parcel which contains prime agricultural lands as Agriculture on the Local Coastal Program Land Use Plan Map, subject to the following exceptions: State Park lands existing as of the date of Local Coastal Program certification, urban areas, rural service centers, and solid waste disposal sites necessary for the health, safety, and welfare of the County.*

> ***LCP Policy 5.4 (Designation of Lands Suitable for Agriculture).*** *Designate any parcel, which contains other lands suitable for agriculture, as Agriculture on the Local Coastal Program Land Use Plan Maps, subject to the following exceptions: urban areas, rural service centers, State Park lands existing as of the date of Land Use Plan certification, and solid waste disposal sites necessary for the health, safety and welfare of the County.*

The LCP also specifies the permitted and conditional uses allowed within each type of agricultural land, and limits the conversion of land from permitted uses to conditional or other uses. LCP Policy 5.5 (Permitted Uses on Prime Agricultural Lands Designated as Agriculture) states:

> *a. Permit agricultural and agriculturally related development on prime agricultural lands. Specifically, allow only the following uses: (1) agriculture including, but not limited to, the cultivation of food, fiber or flowers, and the grazing, growing, or pasturing of livestock; (2) nonresidential development customarily considered accessory to agricultural uses including barns, storage/equipment sheds, stables for farm animals, fences, water wells, well covers, pump houses, and water storage tanks, water impoundments, water pollution control facilities for agricultural purposes, and temporary roadstands for seasonal sale of produce grown in San Mateo County; (3) soil-dependent greenhouses and nurseries; and (4) repairs, alterations, and additions to existing single-family residences.*

> *b. Conditionally permit the following uses: (1) single-family residences, (2) farm labor housing, (3) public recreation and shoreline access trails, (4) non-soil-dependent greenhouses and nurseries, (5) onshore oil and gas exploration, production, and minimum necessary related storage, (6) uses ancillary to agriculture, (7) permanent roadstands for the sale of produce, provided the amount of prime agricultural land converted does not exceed one-quarter (1/4) acre, (8) facilities for the processing, storing, packaging and shipping of agricultural products, and (9) commercial wood lots and temporary storage of logs.*

LCP Policy 5.6 (Permitted Uses on Lands Suitable for Agriculture Designated as Agriculture) states:

a. Permit agricultural and agriculturally related development on land suitable for agriculture. Specifically, allow only the following uses: (1) agriculture including, but not limited to, the cultivation of food, fiber or flowers, and the grazing, growing, or pasturing of livestock; (2) non-residential development customarily considered accessory to agricultural uses including barns, storage/equipment sheds, fences, water wells, well covers, pump houses, water storage tanks, water impoundments, water pollution control facilities for agricultural purpose, and temporary roadstands for seasonal sale of produce grown in San Mateo County; (3) dairies; (4) greenhouses and nurseries; and (5) repairs, alterations, and additions to existing single family residences.

b. Conditionally permit the following uses: (1) single-family residences, (2) farm labor housing, (3) multi-family residences if affordable housing, (4) public recreation and shoreline access trails, (5) schools, (6) fire stations, (7) commercial recreation including country inns, stables, riding academies, campgrounds, rod and gun clubs, and private beaches, (8) aquacultural activities, (9) wineries, (10) timber harvesting, commercial wood lots, and storage of logs, (11) onshore oil and gas exploration, production, and storage, (12) facilities for the processing, storing, packaging and shipping of agricultural products, (13) uses ancillary to agriculture, (14) dog kennels and breeding facilities, (15) limited, low intensity scientific/technical research and test facilities, and (16) permanent roadstands for the sale of produce.

LCP Policy 5.8 (Conversion of Prime Agricultural Land Designated as Agriculture) states:

a. Prohibit conversion of prime agricultural land within a parcel to a conditionally permitted use unless it can be demonstrated: (1) That no alternative site exists for the use, (2) Clearly defined buffer areas are provided between agricultural and non-agricultural uses, (3) The productivity of any adjacent agricultural land will not be diminished, and (4) Public service and facility expansions and permitted uses will not impair agricultural viability, including by increased assessment costs or degraded air and water quality. …

LCP Policy 5.10 (Conversion of Land Suitable for Agriculture Designated as Agriculture) states:

a. Prohibit the conversion of lands suitable for agriculture within a parcel to conditionally permitted uses unless all of the following can be demonstrated: (1) All agriculturally unsuitable lands on the parcel have been developed or determined to be undevelopable; (2) Continued or renewed agricultural use of the soils is not feasible as defined by Section 30108 of the Coastal Act; (3) Clearly defined buffer areas are developed between agricultural and non-agricultural uses; (4) The productivity of any adjacent agricultural lands is not diminished; (5) Public service and facility expansions and permitted uses do not impair agricultural viability, including by increased assessment costs or degraded air and water quality.

b. For parcels adjacent to urban areas, permit conversion if the viability of agricultural uses is severely limited by conflicts with urban uses, the conversion of land would complete a logical and viable neighborhood and contribute to the establishment of a stable limit to urban development, and conditions (3), (4) and (5) in subsection a. are satisfied.

In addition, the LCP strictly limits the division of both prime agricultural land and land suitable for agriculture, including by limiting the maximum density of lots resulting from new subdivisions, and by requiring the protection of agricultural productivity in the resulting lot configuration. The division of agricultural land is specifically defined in the LCP's zoning regulations, as follows:

> ***6351(i).*** *Land Division. The creation of any new property line whether by subdivision or other means.*

LCP Policies 5.7 and 5.9 limit divisions of agricultural lands. LCP Policy 5.7 (Division of Prime Agricultural Land Designated as Agriculture) states:

> *a. Prohibit the division of parcels consisting entirely of prime agricultural land.*
>
> *b. Prohibit the division of prime agricultural land within a parcel, unless it can be demonstrated that existing or potential agricultural productivity would not be reduced.*
>
> *c. Prohibit the creation of new parcels whose only building site would be on prime agricultural land.*

LCP Policy 5.9 (Division of Land Suitable for Agriculture Designated as Agriculture) states:

> *Prohibit the division of lands suitable for agriculture unless it can be demonstrated that existing or potential agricultural productivity of any resulting parcel determined to be feasible for agriculture would not be reduced.*

LCP Policy 5.14 requires a Master Land Division Plan to be filed prior to any new subdivision in agricultural areas. It states:

> *a. In rural areas designated as Agriculture on the Local Coastal Program Land Use Plan Maps on March 25, 1986, require the filing of a Master Land Division Plan before the division of any parcel. The plan must demonstrate: (1) how the parcel will be ultimately divided, in accordance with permitted maximum density of development, and (2) which parcels will be used for agricultural and non-agricultural uses, if conversions to those uses are permitted. Division may occur in phases. All phased divisions must conform to the Master Land Division Plan.*
>
> *b. Exempt land divisions which solely provide affordable housing, as defined in Policy 3.7 on March 25, 1986, from the requirements in a.*
>
> *c. Limit the number of parcels created by a division to the number of density credits to which the parcel divided is entitled, prior to division, under Table 1.3 and Policy 5.11d. and e., except as authorized by Policy 3.27 on March 25, 1986.*

LCP Policy 5.11 establishes the permitted maximum density of development and total number of density credits for agricultural parcels, as described in LCP Policy 5.14. It states, in part:

a. Limit non-agricultural development densities to those permitted in rural areas of the Coastal Zone under the Locating and Planning New Development Component.

b. Further, limit non-agricultural development densities to that amount which can be accommodated without adversely affecting the viability of agriculture.

c. In any event, allow the use of one density credit on each legal parcel. …

LCP Policy 5.12 establishes the minimum parcel sizes for agricultural parcels. It states:

Determine minimum parcel sizes on a case-by-case basis to ensure maximum existing or potential agricultural productivity.

LCP Policy 5.13 establishes the minimum parcel sizes for non-agricultural parcels that can in some cases result from the division of agricultural land. It states:

a. Determine minimum parcel size on a case-by-case basis to ensure that domestic well water and on-site sewage disposal requirements are met.

b. Make all non-agricultural parcels as small as practicable (residential parcels may not exceed 5 acres) and cluster them in one or as few clusters as possible.

LCP Policy 5.15 further protects the agricultural productivity of lands designated for agricultural by reducing land use conflicts in cases where non-agricultural development is proposed adjacent to agricultural lands. It states, in part:

a. When a parcel on or adjacent to prime agricultural land or other land suitable for agriculture is subdivided for non-agricultural uses, require that the following statement be included, as a condition of approval, on all parcel and final maps and in each parcel deed: "This subdivision is adjacent to property utilized for agricultural purposes. Residents of the subdivision may be subject to inconvenience or discomfort arising from the use of agricultural chemicals, including herbicides, pesticides, and fertilizers, and from the pursuit of agricultural operations, including plowing, spraying, pruning and harvesting, which occasionally generate dust, smoke, noise, and odor. San Mateo County has established agriculture as a priority use on productive agricultural lands, and residents of adjacent property should be prepared to accept such inconvenience or discomfort from normal, necessary farm operations."

b. Require the clustering of all non-agricultural development in locations most protective of existing or potential agricultural uses.

c. Require that clearly defined buffer areas be provided between agricultural and non-agricultural uses. …

Finally, LCP Policy 5.16 requires an easement to be granted to the County to protect agricultural areas that are established through a Master Land Division Plan. It states:

As a condition of approval of a Master Land Division Plan, require the applicant to grant to the County (and the County to accept) an easement containing a covenant, running with the land in perpetuity, which limits the use of the land covered by the easement to agricultural uses, non-residential development customarily considered accessory to agriculture, and farm labor housing. The easement shall specify that, anytime after three (3) years from the date of recordation of the easement, land within the boundaries of the easement may be converted to other uses consistent with open space (as defined in the California Open Space Lands Act of 1972 on January 1, 1980) upon finding that changed circumstances beyond the control of the landowner or operator have rendered the land unusable for agriculture and upon approval by the State Coastal Commission of a Local Coastal Program amendment changing the land use designation to Open Space. Uses consistent with the definition of open space shall mean those uses specified in the Resource Management Zone (as in effect on November 18, 1980). Any land use allowed on a parcel through modification of an agricultural use easement shall recognize the site's natural resources and limitations. Such uses shall not include the removal of significant vegetation (except for renewed timber harvesting activities consistent with the policies of the Local Coastal Program), or significant alterations to natural landforms.

Analysis

The subject property contains 6.7 acres of designated agricultural land. The LCP defines and designates prime agricultural land and land suitable for agriculture, in order to protect the land and ensure it is kept in agricultural production. The LCP also limits division and conversion of agricultural land, and provides incentives for merging and otherwise protecting agricultural parcels. The LCP does not have a minimum parcel size for agricultural land, but instead determines minimum size on a case-by-case basis to ensure maximum existing or potential agricultural productivity. Further, the non-agricultural development densities, including the density permissible in the rural service center, are limited to that which can be accommodated without adversely affecting the viability of agriculture.

Designation of Agricultural Lands

LCP Policy 5.1 defines prime agricultural land, which includes all land that qualifies for rating as Class I or Class II in the U.S. Department of Agriculture Soil Conservation Service Land Use Capability Classification. LCP Policy 5.2 designates prime agricultural lands and expressly excludes rural service centers from the types of land that can be designated as prime agriculture. LCP Policy 5.3 defines non-prime agricultural land that is suitable for agriculture as lands on which existing or potential agricultural use is feasible, including dry farming, animal grazing, and timber harvesting, and LCP Policy 5.4 designates other lands suitable for agriculture and expressly excludes rural service centers from types of land that can be designated as agriculture. Although the definition of non-prime agricultural land is tied to the feasibility of using it for agricultural purposes, the criteria established to meet the definition of prime agricultural land includes criteria that solely rely on identification of the underlying soil types. Accordingly, some prime agricultural land (including land with Class I and Class II soils) is defined as such, regardless of the agricultural viability of the land.

The majority of the subject property is comprised of DwA Dublin clay, nearly level, imperfectly drained soil, which is Class II and therefore categorically defined by the LCP as prime

agricultural land (see location of prime soils in **Exhibit 1**). Pursuant to LCP Policy 5.2, the prime soils that are located in the rural area of the parcel (i.e., the 6.7-acre PAD-zoned part of the existing 12.4-acre parcel) are designated by the LCP as prime agricultural land and the prime soils that are located in the rural service center are not designated as prime agricultural land because they are inside the rural service center area. The remainder of the PAD property, which includes slopes along the northern border of the property, is not classified as prime land under the LCP's definition. However, in the past, the property, as a whole, has been used for dry farming and animal grazing. Further, the County has designated the property for agriculture by applying the PAD zoning district. Thus, the remaining non-prime land in the PAD area constitutes land suitable for agriculture under the LCP.

The agricultural resources on the PAD portion of the property are protected through the LCP policies that specifically protect land designated as agriculture (e.g., Policies 5.1 through 5.10) as well as policies applicable to all new development whether or not proposed on lands designated for agriculture (e.g., Policies 1.8 and 5.11.) In contrast, because agricultural land in the rural service center is not designated for agriculture, those agricultural resources that exist in the rural service center are only protected through policies applicable to all new development without regard to whether or not the land is specifically designated for agriculture (such as New Development Policy 1.8 and Policy 5.11, a policy protecting agriculture by regulating the density of non-agricultural development).

Allowed Uses on Agricultural Lands Designated as Agriculture

LCP Policies 5.8 and 5.10 limit conversion of agricultural land designated as agriculture by prohibiting conditional uses of the land (such as residential and other ancillary or non-agricultural uses) except where no other alternative sites exist, and, in the case of non-prime lands, where continued or renewed agricultural use of the soils is not feasible. The proposed project does not propose any uses on the PAD agricultural land, except to retain the existing historic dairy barn. Although the barn has allegedly been used in the past for residential purposes, the Applicant is now proposing to restore it to its previous use as an agricultural barn. As previously discussed, the County-approved project required the Applicant to apply for a CDP to either retain the use of the existing barn for farm labor housing or restore it to agricultural uses. Since the time of the appeal, the Applicant has modified the project description to include a proposal to restore the barn to agricultural uses and retain it in its existing location. Therefore, no new uses are proposed on the PAD agricultural land at this time.

Subdivision of Agricultural Lands Designated as Agriculture

The LCP strictly limits the division of prime and non-prime lands designated for agriculture. IP Section 6351(i) defines the division of agricultural land as the creation of any new lot line, whether by subdivision or other means. Policy 5.7 prohibits the division of parcels that consist entirely of prime agricultural land, it prohibits the division of prime agricultural land within a parcel unless agricultural productivity would not be reduced, and it prohibits the creation of new parcels whose only building site would be on prime agricultural land. In addition, Policy 5.9 prohibits the division of other lands suitable for agriculture that are designated for agriculture, unless agricultural productivity of any resulting parcels determined to be feasible for agriculture would not be reduced.

In addition, LCP Policy 5.14 requires the filing of a Master Land Division Plan before the division of any parcel in rural areas designated as Agriculture on the LCP's LUP Maps as of March 25, 1986. The Master Land Division plan must demonstrate: (1) how the parcel will be ultimately divided, in accordance with permitted maximum density of development, and (2) which parcels will be used for agricultural and non-agricultural uses, if conversions to those uses are permitted. Policy 5.14 also limits the number of parcels created by a division to the number of density credits (i.e., units of residential development) to which the parcel being divided is entitled, prior to its division. Therefore, on land designated for agriculture, the number of parcels created by a subdivision must be equal to the number of density credits that existed for the parcel prior to subdivision. The number of density credits, and thus the permitted maximum density of development, is established in Policy 5.11 and LCP Table 1.3. Table 1.3 indicates the number of density credits that land in the rural areas is entitled to. For example, on prime agricultural land, parcels are entitled to one density credit per 160 acres, on lands with a slope of more than 30% but less than 50%, parcels are entitled to one density credit per 80 acres, and for lands within the 100-year floodplain, parcels are entitled to one density credit per 60 acres. For all lands in the rural areas of the County that are not called out in specific categories in Table 1.3, parcels are entitled to one density credit per 40 acres. Policy 5.11 also indicates that each legal parcel is entitled to at least one density credit, regardless of its size or constraints. In this case, the existing parcel is thus entitled to one density credit, due to its size.

As previously described, the project site is unique in that the existing parcel is bisected by the rural area boundary, containing both a designated agricultural PAD-zoned rural area, and a designated rural service center C-1 zoned area for commercial uses. Even though there are prime soils and agricultural lands on both sides of the line, only the PAD portion of the property is subject to the LCP agricultural protection policies that apply only to land designated for agriculture. However, even within this context, the parcel does contain agricultural resources on the PAD portion that are strongly protected by the LCP. The majority of the PAD land contains prime agricultural soils, and even though it is only 6.7 acres (i.e., when nearby agricultural parcels are generally larger, ranging from 30 acres to over a couple of hundred acres) small farms and small leased lots are increasingly important given demands for locally grown food in nearby urban areas, and the ability of even very small properties to be used for such purposes.

In fact, the subject 6.7-acre PAD land can accommodate some amount of viable agricultural production, based upon site characteristics and historical use. According to the 2010 San Gregorio Watershed Management Plan,[3] farms along Highway 84 have historically contained orchards, grazing operations for beef and dairy cows and dry farming. In some cases, crops such as cauliflower, Brussels sprouts, artichokes and seed potatoes were commercially grown in the area. Currently, most farming in the area consists of various crops (including apples, cauliflower, Brussels sprouts, wine grapes, and artichokes), dry hay farming and grazing/rangeland.

The project site was subject to a Williamson Act land contract, preserving it for agricultural uses, beginning in 1967. In 1986, however, the Williamson Act contract was amended to exclude the commercially zoned portion of the lot, because under the law, land in a Williamson Act contract

[3] San Gregorio Watershed Management Plan, prepared by Stillwater Sciences, Stockholm Environment Institute and San Gregorio Environmental Resource Center, dated June 2010 (pp. 16-17).

must be preserved for agricultural or other open space uses. The Applicants have indicated that they farmed the land in the past on a very small scale, including for dry crops and cattle grazing, but that they now believe the site is not viable for agricultural production. Although the site contains an existing agricultural well, the Applicant has argued that the well is not an adequate water source to properly farm the land, and that the water produced by the well is too saline for irrigating crops (notwithstanding the Applicants' and the County's reliance on said well in the County's approval to serve two residential developments on proposed Parcels 3 and 4).

The Commission Staff contacted Farm Link, an organization that pairs farmers with landowners who have private agricultural lands available for lease, to ascertain the demand for similarly situated lots with an agricultural water source and prime/agriculturally suitable soils.[4] The Farm Link representative, Mr. E. Winders, indicated that the coastside farms within unincorporated San Mateo County are seeing moderate demand for leases, including small to mid-scale farms such as the 6.7-acre property. In addition, he indicated generally that small-scale farming is becoming increasingly prevalent in this area. In fact, Mr. Winders indicated that he was working to establish a farming lease on a small farm in close proximity to the project site. Further, given the existing well and prime soils on site, Mr. Winders indicated that the property would be attractive for grazing uses, and that Brussels sprouts, leeks and artichokes would also likely be viable, particularly since these crops are salt-tolerant and commonly grown along the coast.

Additionally, the County's Agricultural Advisory Committee recommended protecting the agricultural land for agricultural purposes, and even enlarging the PAD designation to incorporate an area of the prime soils that are located within the C-1 zoning designation in order to further protect and provide for agriculture. In fact, although the land on the rural services center side of the split zoning is not explicitly protected by the LCP for agriculture, there is nothing prohibiting or precluding the landowner form using the lands on both sides of the line for agricultural purposes, which would mean that even more area would be available for agricultural purposes since much of the C-1 side of the existing parcel is not currently developed.

Therefore, historical and current farming in the area, along with the property's prime soils and water well, the input of the County's Agricultural Advisory Committee, and comments from the Farm Link representative, evidence that a small scale farming operation would be viable at this site. Any division of the PAD portion from the C-1 portion of land would further constrain the PAD portion of land and likely result in residential development and displacement of productive agricultural soils. Likewise, allotting the agricultural well to residential use, on both sides of the line, would serve to both do the same, and to further constrain agricultural viability on the PAD land.

The entire 12.4-acre parcel is made up of almost entirely prime soils. Pursuant to the maximum density criteria, if the entire parcel was located in the rural area (as opposed to being bisected by the rural area boundary), its maximum density would be one unit, and subdivision of the parcel would not be allowed pursuant to LCP Policy 5.11 and 5.14, because pursuant to those policies, the number of parcels that may result from a subdivision is limited to the number of density credits to which the parcel being divided was entitled, prior to the division. However, as

[4] Phone conversation with E. Winders, Farm Link, Thursday, November 29, 2012.

previously discussed, the subject parcel is partly in the rural area (PAD) and partly in the rural service center (C-1). Density credits are not applicable in rural service centers, and the C-1 zoning district, which is the zoning district for the rural service center portion of the parcel, allows for one residential unit for each 5,000 square feet of lot area.

When considering this issue, the County determined that because the LCP allows each separate rural parcel a density credit, to be used for residential development, the PAD portion of land should get its own density credit. Following this interpretation, the County allowed a division between the commercial and agricultural portions of property, and indicated that the rural PAD parcel could potentially be used for future residential development, even though such a subdivision would be prohibited by the LCP if the parcel were entirely located in the rural area.

The County's conclusion is inconsistent with the LCP for several reasons. First, it ignores the fact that density credits are strictly limited to one per legal parcel. Second, the existing parcel is already served by a primary residence, which would count towards its density credit if a subdivision were to occur. And third, it does not account for the LCP's standards, which only allow one additional density credit for each additional 40-160 acres of land area, beyond the first 40-160 acres of land area.[5]

Regardless of the County's determination, however, the number of density credits applicable to the proposed PAD parcel is ultimately irrelevant because the creation of the proposed PAD parcel, which is the only area of the parcel to which density credit provisions apply, cannot be approved consistent with the LCP. First, as discussed, LCP Policy 5.7(c), in regulating the division of prime agricultural land, prohibits new parcels where the only building sites consist of prime agricultural land. In this case, the resulting PAD lot is comprised almost entirely of prime agricultural land and while the other land suitable for agriculture on the PAD land may or may not be feasible for the primary footprint of a future building, the only feasible septic leachfield that was identified was on prime land, and any driveway to access a building footprint would necessarily encroach onto the prime land as well. Therefore, as proposed, the subdivision would be inconsistent with the LCP because the LCP prohibits the creation of parcels where the only building site would be located on prime agricultural land (Policy 5.7(c)), and at a minimum, a portion of any future building site (at least the driveway) would be located on prime land.

Second, LCP Policy 5.9 prohibits the division of lands suitable for agriculture unless it can be demonstrated that agricultural productivity would not be reduced. In this case, the LCP-protected agricultural land is confined to the 6.7-acre PAD portion of the parcel (due to the way the LCP defines agricultural protection relative to rural service centers such as this). However, allowing the 6.7-acre PAD area to be developed with a residence or other non-agricultural use in the future (as would potentially be allowed pursuant to the conditional use requirements for a separate parcel of agricultural land, and as would at the least be perceived by a property owner of a legal lot, including in light of constitutional takings issues), would result in a reduction of land area available for agriculture, and a corresponding reduction in the existing or potential agricultural productivity of the land, inconsistent with LCP Policy 5.9.

[5] As previously discussed, the density credits accrue at a rate of one per 40 – 160 acres of land area, depending on the constraints of the site.

Third, LCP Policy 1.8 requires that new development in rural areas (including the proposed subdivision of the rural PAD land, which is defined by the LCP as development) only be allowed if it does not diminish the ability to keep all prime agricultural land and other land suitable for agriculture (as defined in the Agriculture Component) in agricultural production. Accordingly, enabling the future use of Parcel 3 for residential or other non-agricultural uses would be inconsistent with this policy because it would lead to the loss of land area that is designated for agriculture.

Fourth, as described earlier, the proposed project includes the conversion of the existing agricultural well on the agricultural property to a well designed to serve residential development on the commercial side of the overall property, and explicitly to serve residential, not agricultural, development on the agricultural property. The existing agricultural well was constructed as an agricultural well, subject to a CDP exclusion because it was for agricultural purposes. Converting the well to non-agricultural uses reduces the amount of water that would be available for agricultural purposes on the agricultural side of the property. The record lacks evidence indicating to what degree such conversion would affect agricultural productivity on the PAD land. If the water is allotted to residential/commercial development on the C-1 side of the line, that reduces the amount of water available for agricultural purposes. Similarly, if the water on the PAD side of the line is allotted to residential uses, that also reduces the amount of water available for agricultural purposes on the PAD side (and the residential use on the PAD side that is referenced would also reduce land area available on the PAD land and otherwise affect agricultural viability in ways not completely understood currently).

Finally, as indicated above, LCP Policy 5.14 requires a Master Land Division Plan that requires identification of which parcels will be used for agricultural purposes and which for non-agricultural purposes. It is not entirely clear that there has been an explicit acknowledgment of this requirement by the Applicants (or the County). In any case, if the PAD parcel is intended to be used for non-agricultural purposes, and that is what is proposed under Policy 5.14, such conversion is not approvable under the agricultural protection policies of the LCP, as described above in relation to the agricultural values of the PAD site. If instead the PAD parcel is intended to be used for agricultural purposes pursuant to Policy 5.14, then Policy 5.16 requires that the land be subject to an easement in favor of the County that limits its use to “agricultural uses, non-residential development customarily considered accessory to agriculture, and farm labor housing”. The only conversion from these uses allowed under LCP Policy 5.16 is to open space, subject to certain criteria. Contrary to this requirement, the Applicant intends the PAD parcel to be created to be used for residential purposes (including as evidenced by the fact that the existing agricultural well is proposed to be used for residential purposes on the PAD site; the Applicants proposed a building site to be evaluated for purposes of the CDP application on the PAD site; and the Applicants’ representations to the Commission regarding their intent for the PAD property). Thus, in either circumstance, the creation of the PAD parcel is inconsistent with LCP Policies 5.14 and 5.16.

In conclusion, the proposed project is inconsistent with the agricultural protection policies of the LCP because it creates a stand-alone agricultural parcel through subdivision whose only building site would be on prime agricultural land, and for which future non-agricultural development could be pursued to the detriment of agricultural land, including because it would preclude an

area of agricultural land (prime and/or non-prime) from being available for use as agriculture at all. It would also convert an agricultural well to commercial/residential use without an understanding of the way in which such conversion reduces the viability of agriculture on the PAD property. The proposed project also cannot be found consistent with LCP provisions requiring land divisions to explicitly define parcels for agricultural and non-agricultural uses, and where such parcels are otherwise permissible, further requiring restrictions be placed on the agricultural parcels to avoid all non-agricultural uses and development on them in the future. The proposed project is not approvable under the LCP, and must be denied.

2. Visual Resources

The County's LCP includes strong protections for visual resources, including along scenic corridors. LCP Policy 8.5 (Location of Development) states:

> *a. Require that new development be located on a portion of a parcel where the development: (1) is least visible from State and County Scenic Roads, (2) is least likely to significantly impact views from public viewpoints, and (3) is consistent with all other LCP requirements, best preserves the visual and open space qualities of the parcel overall. Where conflicts in complying with this requirement occur, resolve them in a manner which on balance most protects significant coastal resources on the parcel, consistent with Coastal Act Section 30007.5. Public viewpoints include, but are not limited to, coastal roads, roadside rests and vista points, recreation areas, trails, coastal accessways, and beaches. …*
>
> *b. Require, including by clustering if necessary, that new parcels have building sites that are not visible from State and County Scenic Roads and will not significantly impact views from other public viewpoints. If the entire property being subdivided is visible from State and County Scenic Roads or other public viewpoints, then require that new parcels have building sites that minimize visibility from those roads and other public viewpoints.*

LCP Policy 8.28 (Definition of Scenic Corridors) states:

> *Define scenic corridors as the visual boundaries of the landscape abutting a scenic highway and which contain outstanding views, flora, and geology, and other unique natural or manmade attributes and historical and cultural resources affording pleasure and instruction to the highway traveler.*

LCP Policy 8.30 (Designation of County Scenic Roads and Corridors) states, in part:

> *b. Designate…La Honda Road (State Route 84)…[and]…Stage Road….*

The subject property is located at the intersection of La Honda Road (State Route 84) and Stage Road. The LCP designates both of these roads as County scenic roads and corridors, and they both contain outstanding rural and open space views that take in the flora, geology, and other unique natural and manmade attributes, including historic and cultural resources, affording pleasure and instruction to the highway traveler. In such areas, the LCP requires protection of the viewshed when siting new development. Where the entire property being subdivided is visible from County scenic roads, as is the case at the subject site, the LCP requires that new parcels

have building sites that minimize visibility from those roads and other public viewpoints. LCP Policy 8.5(a) requires that new development be located on a portion of a parcel where the development is least visible from State and County Scenic Roads, is least likely to significantly impact views from public viewpoints, is consistent with all other LCP requirements, and best preserves the visual and open space qualities of the parcel overall.

In this case, the proposed project would subdivide the parcel into four separate lots. One lot would be developed with two residences and shared garage as part of this proposal, and all four could potentially be developed further in the future. All four parcels would be visible from the two bordering County scenic roads, even though views are occasionally obstructed by trees and existing development on the parcel. The two new residences and the new shared garage would be prominently visible from Stage Road (see **Exhibits 1, 2 and 5**).

With regard to proposed Parcel 1, the two proposed residences would be located relatively close to the road, even though the proposed parcel extends approximately 600 feet west towards the middle of the proposed parcel line (where it meets the PAD land). Therefore, a far larger setback could be achieved between the road and the residences, thereby locating the development where it would be less visible from the scenic road. With regard to proposed Parcel 4, this proposed parcel fronts La Honda and even though there is some intervening vegetation, would result in a residential or commercial building site that would be prominent in this view. The proposed parcel configuration makes development here likely, as compared to the existing parcel configuration that could allow for more sensitive siting relative to the scenic roads.

Because the existing lot configuration provides the most siting flexibility, and because it is possible to locate the proposed development where it would be less visible from the scenic road and corridor, the project, as proposed, is not consistent with this requirement. Although it is possible that different parcel configurations and different siting and design alternatives could avoid impacts to visual resources through revised (or no) subdivision and revised building envelopes and screening requirements, the fact that the proposed project is in direct conflict with the agricultural resource protection policies of the LCP prevents the identification of the appropriate siting and design in this case, until after the number and configuration of lots that can be created consistent with the new development and agricultural protection provisions of the certified LCP is first identified.

3. Lot Legality

LCP Policy 1.2 Definition of Development states, in part:

> *As stated in Section 30106 of the Coastal Act, define development to mean: 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, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use.*

LCP Policy 1.27 Confirming Legality of Parcels states:

Require a Coastal Development Permit when issuing a Certificate of Compliance to confirm the legal existence of parcels as addressed in Section 66499.35(a) of the California Government Code (e.g., lots which predated or met Subdivision Map Act and local government requirements at the time they were created), only if: (1) the land division occurred after the effective date of coastal permit requirements for such division of land (i.e., either under Proposition 20 or the Coastal Act of 1976), and (2) a coastal permit has not previously been issued for such division of land.

LCP Policy 1.28 Legalizing Parcels states:

Require a Coastal Development Permit when issuing a Certificate of Compliance to legalize parcels under Section 66499.35(b) of the California Government Code (i.e., parcels that were illegally created without benefit of government review and approval).

IP Provision 6105.0. Legal Lot Requirement states:

No permit for development shall be issued for any lot which is not a legal lot. For purposes of this ordinance, development does not include non-structural uses of property including but not limited to roads, fences or water wells.

In addition to the 12.4-acre subject lot, the Applicant also owns a 0.04-acre piece of property (APN 081-013-080) which is zoned for commercial use (C-1) adjacent to the subject property and also located within the rural service center. This property was last conveyed on June 3, 1988 by deed, separate and apart from any other portion of property. According to the County, the smaller parcel is a utility lot that was established through a public utility ordinance and is shown on a recorded map from the 1991 subdivision, which created the 0.5-acre lot adjacent to Highway 84 in the middle of the subject property (see **Exhibit 1**). The utility lot is currently improved with at least a portion of a shed, but this portion of property is not proposed for development individually. The small structure on this lot was apparently a telephone utility facility at one time, but no longer serves that purpose. In approving the proposed project, the County required merger of the utility lot with proposed Parcel 1. However it is not clear if the utility lot was legally created, or whether it is still legally a part of the subject 12.4-acre parcel. Thus, any new application for development on the subject property should include information necessary to determine the legality of the utility lot.

4. De Novo Review Conclusion

The proposed project is inconsistent with LCP requirements related to agriculture and visual resources, as well as with respect to water availability and lot legality. Therefore, the Commission must deny the proposed project. Denial of the proposed project will not eliminate all economically beneficial or productive use of the Applicants' property or unreasonably limit the owners' reasonable investment-backed expectations of the subject property. Denial of the application to develop the project site to the extent and manner proposed by the Applicants would still leave the Applicants feasible alternatives to use the property in a manner that is both economically beneficial as well as consistent with the certified LCP.

As stated above, some of the project deficiencies could be addressed by the imposition of

conditions. In fact, there are alternative projects that could avoid the identified inconsistencies, including: (1) the no project alternative because the parcel is already developed with a commercial and residential use; (2) revised numbers and configurations of lots that adequately protect agricultural and visual resources; and (3) the construction of the proposed employee housing without further land division, consistent with the Applicants' stated goals and the commercial intent of the rural services center zoning. Consideration of these and other alternative projects would depend on additional data not currently in evidence regarding agricultural viability and the number and configuration of parcels that can be developed consistent with the agricultural, new development and public view protection provisions of the certified LCP.

Project denial does not preclude the Applicants from applying for a project that addresses site constraints and is supported by the information necessary to fully evaluate the project's conformity with the LCP. For example, the subdivision could be reconfigured to enlarge Parcel 3 sufficiently to allow for a building site on the commercially zoned land, so that the newly created parcel would have a building site that is not on prime agricultural land, as required by LCP Policy 5.7(c), and that does not otherwise occupy land suitable for agriculture. Water supply issues would still need to be addressed, but at least such parcelization does not lead to the types of problems with a PAD-only agricultural lot as identified herein. In addition, building envelopes could be set back as far as possible from scenic corridors, and building designs could incorporate measures to soften visual impacts and blend with the surrounding natural environment, including through the use of natural building materials (e.g. wood, stone) and earth tones, as well as screening landscaping and berms. Other potential project permutations include eliminating any subdivision and the attendant LCP consistency issues it engenders, and instead pursuing development on the rural services center (C-1) side of the property without subdivision, including residential development similar to that proposed here, as adjusted to address visibility and agricultural impact concerns. This latter alternative is feasible, particularly in view of the Applicants' proposal to use the proposed residences for employee housing consistent with the intent of the rural service center zoning.

Thus, denial of this project is not a final adjudication of the potential for development on this site, but is instead a finding that the project proposed is inconsistent with the LCP and cannot be approved.

G. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Public Resources Code (CEQA) Section 21080(b)(5) and Sections 15270(a) and 15042 (CEQA Guidelines) of Title 14 of the California Code of Regulations (14 CCR) state in applicable parts:

> ***CEQA Guidelines (14 CCR) Section 15042. Authority to Disapprove Projects.*** *[Relevant Portion.] A public agency may disapprove a project if necessary in order to avoid one or more significant effects on the environment that would occur if the project were approved as proposed.*

Public Resources Code (CEQA) Section 21080(b)(5). Division Application and Nonapplication. *…(b) This division does not apply to any of the following activities: …(5) Projects which a public agency rejects or disapproves.*

Public Resources Code (CEQA) Section 21080.5(d)(2)(A). *Require that an activity will not be approved or adopted as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.*

CEQA Guidelines (14 CCR) Section 15270(a). Projects Which are Disapproved. *(a) CEQA does not apply to projects which a public agency rejects or disapproves.*

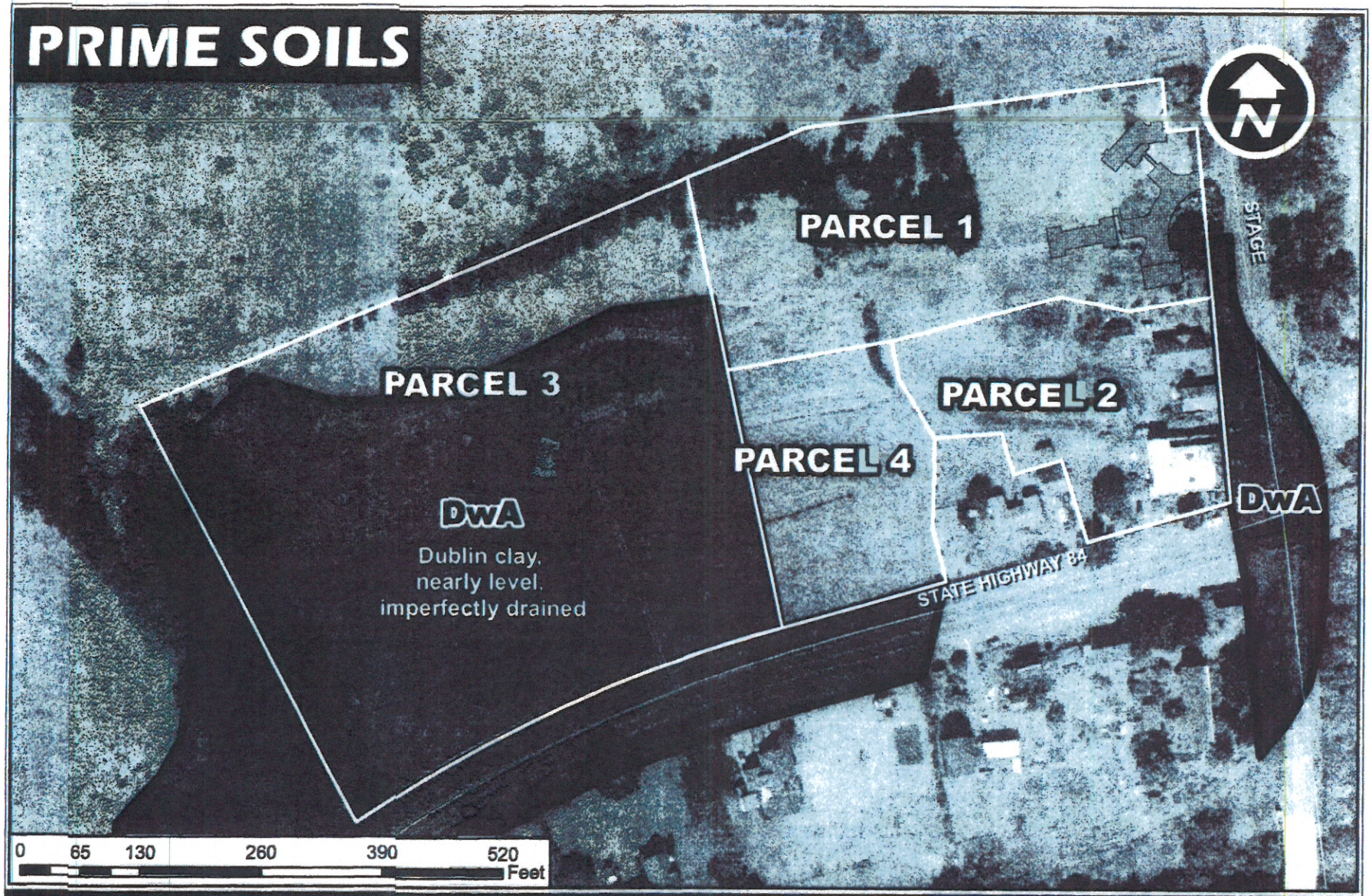
Section 13096 (14 CCR) requires that a specific finding be made in conjunction with CDP applications about the consistency of the application with any applicable requirements of CEQA. This staff report has discussed the relevant coastal resource issues with the proposal. All above LCP conformity findings are incorporated herein in their entirety by reference. As detailed in the findings above, the proposed project would have significant adverse effects on the environment as that term is understood in a CEQA context.

Pursuant to CEQA Guidelines (14 CCR) Section 15042 "a public agency may disapprove a project if necessary in order to avoid one or more significant effects on the environment that would occur if the project were approved as proposed." Section 21080(b)(5) of the CEQA, as implemented by section 15270 of the CEQA Guidelines, provides that CEQA does not apply to projects which a public agency rejects or disapproves. Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The Commission finds that denial, for the reasons stated in these findings, is necessary to avoid the significant effects on coastal resources that would occur if the project were approved as proposed and is necessary because there are feasible alternatives and mitigation measures available which would substantially lessen any significant adverse effect the project may have on the environment. Accordingly, the Commission's denial of this project represents an action to which CEQA, and all requirements contained therein that might otherwise apply to regulatory actions by the Commission, does not apply.

APPENDIX A – SUBSTANTIVE FILE DOCUMENTS

1. San Mateo County certified Local Coastal Program (LCP)
2. Administrative record for San Mateo County CDP Application Number PLN2009-00112
3. San Gregorio Watershed Management Plan, prepared by Stillwater Sciences, Stockholm Environment Institute and San Gregorio Environmental Resource Center, dated June 2010



San Mateo County Board of Supervisors

Owner/Applicant: **Cattermole** Attachment: **K**

File Numbers: **PLN 2009-00112**

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Exhibit No. 5
A-2-SMC-11-032-R (Cattermole)
Proposed Lot Configuration
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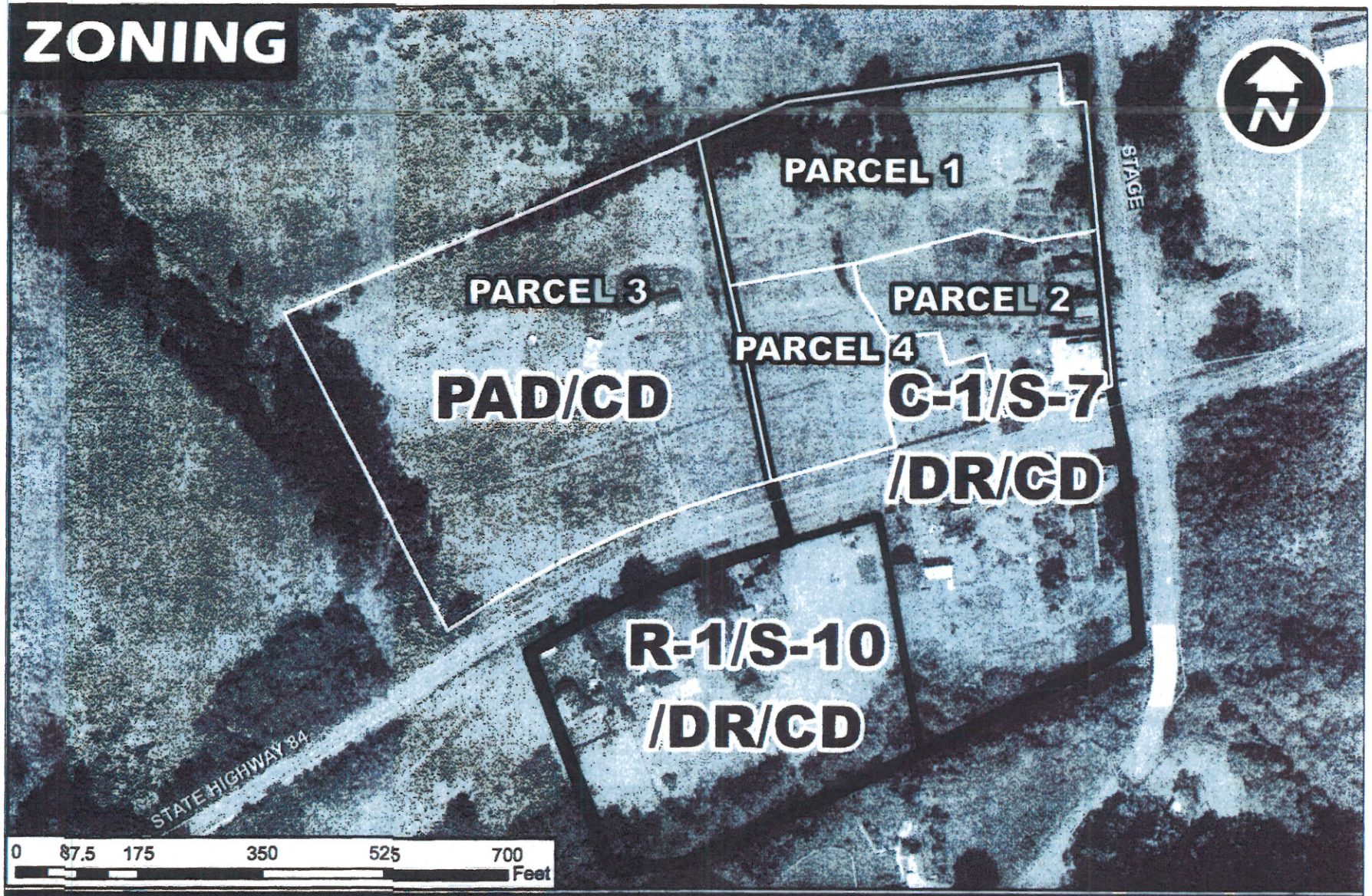

San Mateo County Board of Supervisors

Owner/Applicant: **Cattermole**

File Numbers: **PLN 2009-00112**

Attachment: **B**

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Exhibit No. 5
A-2-SMC-11-032-R (Cattermole)
Proposed Lot Configuration
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