

301 Rio Del Mar
Aptos, CA 95003

December 26, 1986

Mr. Pete Parkinson
Mr. Chuck Schweikert
Planning Department
County of Santa Cruz
701 Ocean Street
Santa Cruz, CA 95060

RE: Application 85-1106-MLD,CZ, APN 45-031-05

Dear Pete and Chuck:

There exists a lack of understanding concerning the above referenced Minor Land Division application. This letter is to express why this application continues to take such a drastic course; and why we feel the need to obtain information from the County during the processing of this application.

For the past thirteen months we have been confronted with consistent efforts by County government to obstruct a legitimate right to divide our property. We have expended at least 1,000 hours of time and spent in excess of \$16,000 in pursuit of a Minor Land Division of a 67 acre parcel that even both of you acknowledge 'is compatible with the guidelines of the Santa Cruz County General Plan.'

We would like you to understand that we too, are not appreciative of the immense amount of time and energy spent on this application. However, we are convinced that we need to continue to prepare ourselves with adequate understanding and knowledge so as to obtain an approval based on fairness and an appropriate application of the law. Attempts on behalf of the County Planning Department to suppress through intimidation, our asking of legitimate or pertinent questions will continue to be unsuccessful.

The record demonstrates that the County Planning Department has consistently withheld information, mislead, misinterpreted and blatantly misrepresented the legal framework and factual conditions affecting this application. To help the County Planning Department understand our position in this regard, we will proceed to outline the significant events that have lead us to believe we are dealing with a local governmental agency that does not adhere to notions of fair play and full disclosure.

APPLICATION PROCESS

A four lot minor subdivision was applied for on November 4, 1985, consistent with the guidelines of the Santa Cruz County General Plan. Fees of \$3,520.00 were paid to the County of Santa Cruz upon filing.

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It was not until January of 1986 that the County communicated to us their desire to view the site. This was the first movement experienced by us on this application since its November filing.

We have requested and never been offered any written comprehensive guide to the overall application and permit process nor information required by the County during the process.

We continue to experience an unwillingness by the County Planning staff to communicate pertinent information to us verbally or in writing. Due to this lack of information, we ask questions in an effort to understand, expedite and anticipate the process. Our questions have been interpreted by County staff as harassment. When we are confronted with continual bits of incorrect or incomplete information, statement reversals and new conditions, we are left with no alternative but to try to mitigate the consequences of these actions by asking legitimate and relevant questions. Examples of these actions will be cited in the following pages.

GEOLOGIC REPORT

In January of 1986, David Leslie conducted a site analysis. At the conclusion of that visit, Michael asked Mr. Leslie if he observed any troubles regarding geologic conditions requiring further analysis. He indicated to Michael, Steve Stiles and others that he did not. (Refer to Michael Shaw letter to David Leslie November 18, 1986.) Contrary to Mr. Leslie's January site visit and subsequent comments, his letter four months later expresses concern over Seismic and Slope Stability Hazards. A full geologic report conducted by a state registered geologist becomes suddenly mandatory, the fees for which are to be paid by us, the applicants. (Refer to David Leslie letter to Michael Shaw of May 8, 1986.)

The County's authority in being able to mandate such a geologic study is still in question to us. Please refer to Michael's letter to David Leslie of November 18, where we express confusion as to why we are required to conduct a full geologic investigation. General Plan section 3.2.2 requires a Geological Hazards Assessment of:

1. All "discretionary permits" in areas of "known slope instability".
2. Where development is planned on slopes greater than 30%.
3. Projects in the designated Landslide Review Area.

Since categories #2 and #3 clearly do not apply, we have requested information as to how category #1 applies to us. Since no information has ever been made available to us stating that we are in an area of "known slope instability", we do not understand the necessity of the

Geologic Hazards Assessment. An explanation with supporting documentation is still required.

Section 16.10.050 of the County Code goes on to say that "A Geologic Hazards Assessment shall be required for all development activities and applications in the following designated areas: fault zones, landslide review zones, one-hundred year floodplains and floodways, and coastal hazard areas...". To our knowledge, our property does not fall into any of these categories. Instead, the Planning Department appears to have resorted, after 4 months of consideration, to a generalized and as yet, undocumented and unsupported basis for requiring a geologic investigation.

ENVIRONMENTAL REVIEW

Beginning in February we were told that Environmental Review would take place in March. However, the month of March passed and the scheduled date continued to be pushed out indefinitely. We were eventually advised that the review would take place on July 14. Even after David Leslie's May 8 communication, it had been expressed to us that Environmental Review would take place before proceeding with the geologic investigation.

Much to our surprise on July 9 (5 days before the scheduled Environmental Review) we were advised over the telephone that the geologic report, to be conducted by a third party geologist, would be necessary before completing Environmental Review.

Although the application had been in the process at this time for over 8 months, many non-geologic Environmental Review issues remained unresolved, such as:

1. The basis for requiring a geologic investigation.
2. Access requirements, including the application of General Plan Section 3.5.5 and County Counsel's opinion on this issue.
3. Septic Approvals
4. Water Source
5. Effect of groundwater recharge on minimum lot size (accurate information was not provided until October 16, 1986).
6. Scenic corridor determinations (Chuck required a site analysis as late as August. The full ramifications of the County's position was not made clear until December 1, 1986.)
7. The 1984 matrix figures were undetermined (total point score changed on October 1, 1986 from 76 points to 58 points).

The above seven items remain unresolved as of this date.

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The original unilateral determination to mandate an Environmental Review hearing without sufficient Planning Department analysis causes us to conclude that the Planning Department does not intend to interact logically in this process. It is particularly telltale that the basis for once again making a unilateral determination (this time to postpone the Environmental Review hearing) was not predicated upon the above referenced matters, but upon Ms Williamson's new requirement that the geologic review be conducted prior to the Environmental Review.

SEPTIC ANALYSIS

In January and February of this year, septic analysis was conducted on the property in order to determine four acceptable building site locations. During that timeframe, verbal comments from Jose, of the County Health Department led Michael to believe that four specific sites would be deemed acceptable.

Since nothing in writing has ever been submitted to us regarding the subject and no other information has been forthcoming since February, on November 19, Michael wrote a letter to Ms Diane Evans, Director of Environmental Health. The letter was to ascertain the final outcome of the tests and to obtain information as to the "known septic problems" that exist relative to our land. We now discover that County Health is unable to confirm that any of the sites are approved and they recommend that further drilling is necessary. The documentation concerning our application cannot be located by the County Health Department at this time. We still await answers to what are the "known septic problems" (as stated in the matrix relative to our property) and the overall status of septic approval.

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SITE TRANSGRESSION

Our November 4 application states in note #2 that "...Planning staff may be visiting the site." We certainly understand that this would be necessary in nearly all applications of this type. We do not believe however, that this note grants authority for staff mandates to prohibit our presence during the conduct of an inspection, especially when no specific purpose is communicated to us.

It is very disturbing to know that County staff believes they can proceed on this basis, as was evidenced when Chuck and Bob Leggett visited our property, over our objection to their demand, 'that we not be present during the inspection.' We still do not understand the purpose of that visit, as no report or comments have ever been forthcoming. We believe that action to be violative of basic American notions of governmental respect for individual privacy and property rights.

SCENIC CORRIDOR

Between January and April 1986, balloon tests were conducted in order to determine visibility of specific sites from Highway 1. Photographs were submitted to County Planning and the scenic corridor issue was resolved (see Chuck's letter of June 2). However, Chuck's subsequent letter of July 22 surprisingly advised us that a closer look at the scenic corridor issue was once again necessary.

Another site visit was conducted with Chuck, Steve Stiles and Joanne in early August 1986 to once more assess visibility. The issue was again thought to be resolved per Chuck's letter of August 21, wherein it states 'that the proposed sites do not appear to be visible from San Andreas Road but they could be visible from Highway 1 if enough tree cover were removed during construction.'

We currently disagree with the amount of scenic corridor exclusions that were added by County Planning on the Exclusionary Area Map (submitted by us on November 12) as expressed in Chuck's letter of December 1. Nowhere in the 13 month history of this application were we ever advised that approximately 30% of our property would be excluded as potential building sites for scenic corridor reasons. We are of the position that this is an incorrect application of the scenic corridor guidelines as they affect our property.

We are unable to locate a reference to scenic corridor matters in Volume II of the County Code. Our review of the General Plan establishes that development should minimally obstruct the scenic corridor and that the "visual characteristics of the corridor should be enhanced through landscaping". A ravine approximately 75 feet wide crosses the freeway and enters our property at the northeastern corner. In order to view our property through this passage, a southbound motorist would essentially have to stop his vehicle and look directly over his right shoulder. Any such view could easily be eliminated through landscaping. No view is possible for northbound traffic.

A complete elimination from development considerations of an area in excess of 10 acres based on this position, is unwarranted and constitutes a flagrant abuse of the power granted by the General Plan. We believe the County's position, in effect, unreasonably condemns portions of our land without just compensation.

We do not intend to develop a site that views the freeway and accordingly, our proposed sites will not be visible from the freeway. As a result of the position taken by Chuck in the letter of December 1, we require a written determination by County Counsel regarding the basis for the Planning Department's authority in delineating a scenic corridor exclusion on a parcel map. In the event that such authority exists, we will require a further analysis of areas indicated by Chuck as visible from Highway 1 in the December 1 correspondence.

MATRIX

Groundwater Recharge

Information, new to us, was finally obtained in October and November pertaining to the Water Resource Protection and Septic Category of the matrix. We now know that only a portion of the property is within primary groundwater recharge. This information is a vital criterion in determining lot size. The information is available only as a result of our persistent efforts to obtain some insight into the "Santa Cruz County" definition and application of the water recharge issue. (See our letters dated September 19, 1986, October 10, 1986 and October 27, 1986 to Chuck.)

The information contained in Pete's letter of November 4, 1986 and the copy of the map received through Chuck on October 16, 1986, although helpful, remains a sketchy disclosure at best. The copy of a map presented to us mid-October is untitled and is on a scale of 1" to approximately 2,000 ft. Also, boundary criteria is not stated in either document. (See Don Dahl letter of November 17, 1986 to David Leslie and our correspondence to Mr. Leslie of November 12, 1986 and November 18, 1986.)

As we have explained to you, had we known that only a portion of our property was indeed in a designated Primary Recharge Area, we would have approached our land division on a different basis (i.e. smaller lot sizes on some of the 4 parcels). Because this information was not made available to us until very recently and because we have been misled by possible incorrect matrix scores in this area, we feel justified in persisting in our efforts to obtain accurate information. Given that the property is not entirely within primary water recharge, our matrix score appears to allow minimum lot sizes of five acres or less (rather than 10 acres). Information from the County relating to boundary criteria will be necessary for our geologist to properly analyze this groundwater recharge issue. We also still await comments from Environmental Health concerning the basis for the determination that the property is in an "area of known septic problems", as this was stated on both the 1984 and 1986 matrices.

Difference between 1984 and 1986 Matrices

The original matrix prepared in 1984 yielded 76 points; the most recent matrix prepared in October 1986 yields a mere 58 points. A full disclosure of the data used to substantiate this major reduction in the matrix score has not yet been made available to us. This information is important because an accurate final matrix score ultimately affects lot sizes.

1. Liquefaction/Faults

Our point score dropped from 9 to 7 points because as Chuck stated in his October 20th letter, "...the matrix map for liquefaction indicates some areas of high potential.

This caused the drop in score." However, the 1984 matrix states we are in an area of "Low Liquefaction Potential". Chuck's response does not explain the nature of the new information substantiating this change.

We have been advised that "conditional points for liquefaction may be earned; provided that analysis is performed, indicating building sites are not subject to liquefaction". We are not convinced that the county's effort to reduce our point scores and impose this new condition, (without any apparent basis for changing the liquefaction designation from "low" to "high potential") was innocent.

2. Landslide & Geology

We are still awaiting information explaining the "recalculation according to the formula specified in the matrix ordinance" which substantially dropped our point score in the areas of geology and landslide. Upon further review of the formula calculation, we discovered a difference between 1984 and 1986 matrix information. The 1984 matrix states "alluvium soil" in the categories of Erosion and Landslide while the 1986 matrix indicates "aromas sands" in similar categories. The effect of this as yet unsubstantiated change, reduced our matrix score by approximately 8 1/2 points. Pete's letter of November 4 states that the change was not due to a geotechnical issue. We do not understand this position, as something as basic as soil type would clearly seem to be a geotechnical issue. In any event, an explanation of the County's basis for determining the presence of a different soil type is warranted.

Due to the inconsistent and sometimes incorrect information and the lack of adequate response to our inquiries, we feel it has become necessary to challenge the input received from the County Planning Department in determining matrix scores.

Inconsistent Statements from the County Planning Department

It has been communicated to us by County Staff on numerous occasions that 'the Rural Density Matrix is only a preliminary review of available information. The decision to approve or deny development takes place only after thorough evaluation of the site and finalization of the matrix figures.' However, Pete's letter of November 4, 1986 completely reverses this statement, making it seem ludicrous that our geologist is even involved in matrix issues.

During the course of this application, we have continuously been given the impression that a geologic study by a state registered geologist is necessary to support and/or challenge various matrix scores. We will proceed to point out various communications from the county substantiating this posture:

1. Chuck Schweikert's letter of June 2, 1986 states that "Information from the required geologic report is necessary to finalize the matrix results."
2. David Leslie's letter of May 8 explains that "full density credit (rather than a deduction in acreage) will be given to landslide areas determined by a geologic report to be stable and suitable for development".
3. The 1984 Matrix states with regard to measures to increase point score that a "Report conducted by a soils engineer and registered geologist or hydrogeologist which establishes something to the contrary (Primary Recharge) will be necessary to consider less than 10 acre minimum".
4. The October 1, 1986 Matrix states "Conditional points (can be obtained) if acceptable information indicates building sites are not subject to liquefaction".

Given all of the above statements and our expression of the relevance of the matrix as stated in the previous pages, we conclude that much of the geologic study is hinged to the information contained in the matrix. Therefore, we take strong disagreement with Pete's November 4 letter which states "...that it does not appear necessary, that you have a geologist investigate issues related to the matrix calculation or groundwater recharge...".

We conclude that the County's policy is to avoid dissemination of information as requested by the applicant so that the county can maintain a unilateral and preordained disposition of subdivision applications.

We remain convinced that additional information regarding the matrix issues be supplied to us before proceeding with the geological study.

ACCESS

Chuck's letter of June 2 states that "the new access road proposed does not exceed the 1,000 ft (criteria) to the farthest structure." In the correspondence of December 1, we were told, for the first time, that the same access road now exceeds 1,000 feet and that the length "could be approved provided residential sprinkler systems are utilized".

Chuck's letter of October 20 states that "The five sites discussed appear to meet the non-geological concerns of the County." Yet in the December 1 letter, we were advised that one of those same five sites is now outside of the 1/2 mile distance to San Andreas Road and therefore the site must be relocated.

3.5.5 EXCLUSION

The County's interpretation of General Plan Section 3.5.5 results.

in a parcel map which excludes all areas outside the 1/2 mile mark as potential future building sites. This exclusion is mandated as a condition to approval of this Minor Land Division. This interpretation was expressed in Chuck's July 24th letter, even though the prior June 2nd letter explains that envelope exclusions were to be based on the exclusive categories of Scenic Corridor, Riparian Protection, Geologic Hazards, Erosion and Ag buffer areas. No mention of access was made.

It is our opinion that the language of 3.5.5 does not warrant the County's position, which affects approximately 25 acres including the ocean view section of the property. We understand the necessity to comply with 3.5.5 as a condition to developing any homesites. No development is currently sought however, with respect to these 25 acres. Chuck is aware that various potential access routes exist that would service these areas and comply with the requirements of 3.5.5. The Planning Department is aware of our interest to ultimately locate our home on this section of the land.

Nowhere in the law is the county empowered with the ability to make a current designation resulting in the nondevelopability of land, which is not presently sought to be developed on the basis of a lack of present access. David Lee's basis for such a determination as expressed in his letter of September 15 is "County policy." The nature of this "policy" has never been described despite our inquiry. We have requested you to obtain an opinion on this issue from County Counsel.

We conclude that the County Planning Department's attempts to manufacture application of 3.5.5 is for the sole purpose of causing unwarranted and significant adverse affects on the ultimate use of these 25 acres including the development of our home. We do not believe that the motive nor the method adopted by the county is either fair, rational or consistent with the County Code.

RARE AND ENDANGERED SPECIES

On numerous occasions we have discussed the issue of Rare and Endangered Species as it affects our property. You have both told us that our division will not be subject to adverse determinations in this regard. You have verbally indicated that there are no County maps or reports showing the existence of rare or endangered species on the land. Your site visits have not uncovered the existence of any issues.

We have requested that the County state its position in writing so that this issue does not suddenly become a concern. (See our letters of October 10, 1986 and November 12, 1986) We understand of course, that state or federal mandates could arise later which are beyond the scope of County control. Yet, your refusal to put any comment in writing to us on this subject, makes us very skeptical regarding the County's intentions. We do not intend to proceed with the expenditure of money in connection with this land division until you communicate in writing the process and timing for any required Rare and Endangered Species analysis.

AVAILABILITY OF INFORMATION

It was not until May of this year that we realized this application was becoming increasingly and unduly complicated. At that time it became necessary to equip ourselves with adequate background in order to understand the application process. Since July, we have attempted to obtain information relevant to helping us proceed with this application.

Relevant information includes such things as 1) the Santa Cruz County Code Volume II, 2) the County General Plan, 3) the Local Coastal Plan, 4) the various supporting documentation used by the County in drawing conclusions affecting the use of the land, 5) the names, titles, responsibility and accountability of the numerous people involved in our application and 6) information regarding other County agencies involved in the application process.

It has been exceedingly difficult to obtain any of the above documentation. We have been confronted with continual non-responsiveness and have found ourselves having to explore numerous different avenues, people and departments before ever (if at all) being able to obtain the information. The following list cites the instances justifying our complaint in this regard.

Codification

We have had continual difficulty in obtaining copies of relevant law applying to the Minor Land Division process. We have received two of the three primary documents (The County General Plan and Code Vol. II) after having expended considerable energy and efforts. (Detail of the difficulty can be provided). We were not surprised when in a discussion with our District Supervisor's aide, Nicki Pecchenino, she expressed her surprise that we had been able to obtain a copy of Vol. II of the County Code. She indicated that typically the County Ordinances are available only for review at the Research Desk of the public library. We believe, this circumstance to be outrageous, as it is necessary for any applicant to have ready access to the complicated web of interrelated legal guidelines set forth in this very lengthy document. The Planning Department's apparent effort to make the rules of the game inaccessible to the citizenry is an abusive tactic. After thirteen months we have still not been able to obtain information as to how to obtain a copy of the Local Coastal Plan.

Maps

Throughout the course of this application, we have tried to understand the basis for many of the adverse conclusions drawn by the Planning Department relative to this application. It has been discovered that many of the conclusions are derived through maps. We have requested all maps relevant to our application. Following numerous requests and significant time delays, some maps have been provided. To our knowledge, not all maps relevant to our application have yet been provided.

Those maps received have been untitled, not dated, without source identification, and the quality of reproduction has been poor. The scales have typically been on the ratio of 2,000' to 1", rendering such maps useless as a tool for making legitimate determinations relevant to the issues presented in this application.

Access to Decisionmaker

The responsibility and accountability of the personnel assigned to this application has never been communicated to us, despite our requests. The County Planning Department has engaged in a process wherein no individual has become accountable or responsible for representations made. This condition is further demonstrated by the unorthodox "double salutary" oftentimes used by county personnel. (Refer to our letter of November 12, 1986 to Chuck and David Lee.) We conclude that this process is intentionally directed by County government managers to confuse and further harass the applicant.

We have requested meaningful discussions between ourselves and appropriate County personnel including a decisionmaker. No such meetings have taken place nor has there been any expressed desire by any decisionmaker to hold such meetings.

Only the two of you have been consistently responsive in returning phone calls.

Outstanding Information

Various outstanding necessary information includes but is not limited to:

1. Groundwater Recharge Boundary Criteria
2. Written Septic Approval
3. Explanation of the known "Septic Problems" relative to this land.
4. Resolution of the Scenic Corridor Exclusions including all mapping criteria for parcel map exclusions, County Counsel opinions, etc.
5. County Counsel opinion regarding the 3.5.5 exclusion.
6. Written clarification of the matrix change in the areas of Liquefaction, Geology and Landslide.
7. Written statement regarding the County's position on Rare and Endangered Species as it affects this application.

8. Explanation of "Known Slope Instability" as it relates to the necessity of a Geologic Investigation.
9. The basis for requiring a full geologic study by a state registered geologist, including a full response from David Leslie to the inquiries made to him in our letter of November 18.
10. Copy of the Local Coastal Plan.
11. Copies of any map which has an affect on this division. Please identify the source and use of the map. Reproduction should be on a meaningful and legible scale.
12. Detailed disclosure of all analysis, procedures and issues that may arise during the balance of this application process.
13. A detailed timetable for completion of this application.
14. Detailed information as to the nature of all referral agencies and their requirements.

CONCLUSION

In a conversation on or about November 13, 1986 between Pete and Michael, you acknowledged that the environmental implications resulting from the application of the County's Groundwater Recharge Policy were not meaningful. You said that there would be no adverse environmental impact on this property resulting from the development of four homesites, (given a total land mass of 3 million square feet of ground). I then inquired as to the reason for the County's emphasis on groundwater recharge as applied to this case. You responded that the County electorate in 1978 adopted a "Stop Growth" policy and that in essence, it was your job to carry out this goal.

We are not aware of the existence of any official moratorium intended to "stop growth" or preclude land divisions in Santa Cruz County. Your belief that this policy exists, in our opinion, provides the foundation for the harassment we have encountered during the processing of this application.

The apparent reason for the County's failure to timely process this application is due to the extraordinary efforts by the County government to indefinitely delay project approval. Legitimate issues, if addressed with candor and fairness, would have been discovered, analyzed and concluded in a fraction of the staff time that has been expended.

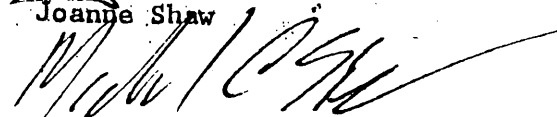
We remain prepared to allow County government to redress the insidious tyranny that has lead to violations which result from the inaccuracies, misinterpretations and statement reversals made during this process.

We are hopeful that upon the Planning Departments reassessment of this application, a spirit of due process will emerge and that issues related to this application will be concluded in a timely and fair manner.

Very truly yours,



Joanne Shaw



Michael Shaw

JS/MCS:rp

cc: Kris Schenk