

County of Placer
Planning Department

BOARD SUBMITTAL COVER SHEET

TO: Board of Supervisors

FROM: Michael Johnson, Planning Director

DATE: September 12, 2006

SUBJECT: VAA-4274 / GIARRITTA VARIANCE TO FRONT SETBACK

SUMMARY:

At its June 22, 2006 meeting, the Planning Commission denied the appeal filed by Mark Giarritta, which upheld the Zoning Administrator's denial of a portion of the requested Variance related to the front setback. The Variance sought to legalize the location of the existing improvements (the 1,759 square foot modular home, a 10-foot, 8-inch tall fence, and pump house). The Zoning Administrator's decision approved the fence and pump house portion of the Variance, but denied the front setback variance for the illegally sited modular residence.

CEQA COMPLIANCE:

This project is Categorical Exempt from the provisions of CEQA per Section 18.36.070 (Class 5)(A)(1)[Minor alterations in land use limitations] of the Placer County Environmental Review Ordinance.

FISCAL IMPACT: None

RECOMMENDATION:

Staff recommends the Board of Supervisors uphold the Planning Commission's decision and deny the appeal.

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MEMORANDUM
County of Placer
Planning Department

TO: Honorable Board of Supervisors
FROM: Michael Johnson, Planning Director
DATE: August 23, 2006

SUBJECT: APPEAL - VAA-4274 / GIARRITTA VARIANCE TO FRONT SETBACK

BACKGROUND:

The Giarritta property is an approximately 5.09 acre parcel that is located at the end of Dusty Road in the Colfax area. A 60-foot-wide roadway easement and Public Utility Easement (PUE) is located along the eastern property line. The subject property contains a steep downward slope away from Dusty Road, with the exception of the northeast and southeastern corners of the property which were graded over the past few years. This activity had begun without the benefit of a grading permit; however, the applicant has since obtained the approval of a grading permit and has worked with the Engineering and Surveying Department to resolve this violation. At the time of the original Variance submittal, the site was undeveloped with the exception of a 6-foot to 10-foot, 8-inch tall solid wood fence and retaining wall that is located on the northern property line.

The project site has been the subject of Code Enforcement action for several years. Initially, the violations related to grading without a grading permit and the construction of a retaining wall and fence. In 2003, the applicant submitted a Variance application to place a modular home on the project site in a manner consistent with the current location of the structure. At the time of the Variance submittal, the site improvements for the subject parcel were limited to the two graded building pads and the retaining wall and fence.

The Variance request had been scheduled on several occasions before the Zoning Administrator, but issues related to the grading permit violations (particularly related to soil compaction and slope stability) caused several continuances. The last continuance was on October 7, 2004. Staff and the applicant were instructed that the items should not be rescheduled for a Variance hearing until all the violations, with the exception of issues that would be corrected through the Variance application, had been resolved and/or removed from the site, as required by County Code Section 17.58.040- (Filing of Applications).

On May 2, 2005, the property owners, Mark and Janet Giarritta, applied for a building permit to locate a modular home on this project site. The site plan that accompanied the application indicated that the modular home would comply with the setback requirements for the site, with the corner of the structure shown a minimum 50 feet from

the edge of easement from the eastern property line and 30 feet from the side northern property line. The Building Permit application, as submitted, did not need a Variance to setbacks. The Building Permit was conditioned to require the Giarritta's to obtain the approval of a Temporary Use Permit to allow them to reside in the mobile home during the construction of the modular residence in order to address the existing code violation for occupying a temporary dwelling. The building permit (BMHP18218.05) was issued on July 29, 2005.

The Code Enforcement Department received an additional complaint with regards to the construction of a modular home. On August 4, 2005, an inspection was made by Code Enforcement staff who determined that the modular home, which was constructed on a permanent foundation, was illegally placed on the project site in a manner not consistent with the approved building permit. On August 12, 2005, the Building Department inspected the subject property and determined that the foundation was poured without the benefit of inspections. The site inspections for the property revealed that the modular home was placed in the exact location of the originally requested Variance that had yet to be considered by the Zoning Administrator. A "Stop Work" notice was issued.

A public hearing before the Zoning Administrator was held on May 16, 2006, to consider this application. At the hearing, staff recommended denial of the Variance, as staff was unable to make the findings necessary to support the Variance as requested. The Zoning Administrator considered staff's recommendation, written testimony and the testimony given by the applicant and testimony given by several neighboring property owners in opposition to the setback Variance. The Zoning Administrator decided to approve the water pump house setback and the 10-foot, 8-inch high fence portion of the requested Variance, but denied the Variance request that would have permitted the location of the residence. The Zoning Administrator stated that there were other options available (perhaps a retaining wall) that would allow the residence to comply with the 50-foot from edge of easement requirement.

PROJECT DESCRIPTION:

The applicant is seeking approval of a Variance that would legalize the location of the existing improvements (the 1,759 square foot modular home, a 10-foot, 8-inch tall fence, and pump house). As the site plan shows, this new residence is located 14 feet from the edge of easement along the eastern property line. The pump house is located on the edge of easement (50 foot is required), and the 10-foot, 8-inch tall solid wood fence is situated on the northern property line, where 30 feet is required.

As mentioned in the Background section of this report, the site contains a 60-foot-wide roadway easement along the eastern property line. This causes the eastern property line to be the front property line for the purposes of determining setbacks. The applicant had intended to abandon that roadway easement which would shift the front property line to the northern property line, in doing so due to unsuccessful negotiations with those holding interest to said easement.

ACTION OF THE PLANNING COMMISSION:

On May 4, 2006, the appellant submitted a letter appealing the denial of the Variance request. The appeal of the Zoning Administrator's denial of a portion of the requested Variance was considered before the Planning Commission on June 22, 2006. The Commission considered staff's recommendation, the testimony provided by the applicant and several neighbors. The appellant provided the Commission with his justification for the events related to the code violations indicating honest mistakes on his past. Most of the neighbor's concerns were centered on the illegal grading activity, the blocking of the roadway easement with a gate, and the road easement itself.

Some of the discussion of the Planning Commission focused on the applicant's testimony, questioning whether the past violation and building permit site plan errors were innocent. One Commissioner questioned whether or not it was their role to determine whether applicants are providing accurate testimony. Another Commissioner suggested that they are charged with evaluating the credibility of the testimony presented to them. However the Planning Commission focused on the necessary Variance findings in their final discussion.

After reviewing photographs submitted by the applicant/appellant, the majority of the Commissioners noted that other houses in the area were able to address the topography of the area with construction methods such as foundations supported with beams. A motion was made and seconded to deny the appeal finding that the required Variance findings could not be made. The dissenting Commissioners cited the steep topography and the testimony of the neighbors about the amount of grading that has already occurred. Without the Variance, any solution for placement of the residence would require more grading.

After receiving testimony, the Planning Commission adopted a motion (5:2, with Commissioners Stafford and Burris dissenting) to uphold the Zoning Administrator's decision and deny the appeal of Mark and Janet Giarritta.

ANALYSIS OF APPEAL:

On June 23, 2006, the appellant submitted a letter appealing the Planning Commission's denial of the Variance request. The appellant indicated in the appeal to the Planning Commission of the Zoning Administrator's decision that moving the house to meet setbacks would place it over his septic system. He also indicated that the Zoning Administrator's suggestion to add an additional retaining wall to create a new location for the house would not be feasible and that he cannot afford to move his residence. The applicant/appellant provided no additional grounds for the appeal in their appeal of the Planning Commission's June 22, 2006 decision.

STAFF ANALYSIS:

In rendering the decision, the Zoning Administrator and Planning Commission concluded that there may be other design options possible, such as the utilization of retaining walls that would allow the improvements to be moved further south and west on the parcel, thereby eliminating the need for a Variance for the residence. Both the Zoning Administrator and Planning Commission expressed disappointment that the appellant

chose to place the structure on the site in a manner inconsistent with the approved building permit. Staff agrees with the Planning Commission and the Zoning Administrator that there are other design options available that would allow the applicant to construct a residence with a septic system on this 5-acre parcel without needing a Variance to setbacks.


Although requiring the relocation of the recent improvements would clearly create a hardship for the applicant, the fact that the appellant illegally constructed these improvements without proper approvals (inaccurate setback information on the site plan for building permit submittal, grading work without proper permit approval) does not constitute the special or unique circumstance required of a Variance approval.

If the Variance is denied, the appellant will be required to relocate this illegally-sited modular residence. Should the wish to proceed with residential development on this parcel, he will be required to submit revisions to the building permit application which include an accurate site plan (locating the structure outside the required setbacks) and a notation that the existing foundation be removed and that area be returned to a natural state (i.e., revegetated). The Zoning Administrator suggested that this may require some additional grading and or the construction of a retaining wall. In the event that the appellant does not wish to proceed with residential development on this parcel, removal of the modular residence and foundation will still be required.

RECOMMENDATION: Staff recommends the Board of Supervisors uphold the Planning Commission's decision and deny the appeal.

Should it be the desire of the Board of Supervisors to grant this Variance, staff recommends that the Board refer this matter back to staff for the preparation of the Conditions of Approval, based upon the testimony entered in the record.

Respectfully submitted,



MICHAEL J. JOHNSON, AICP
Planning Director

MJ:SB:KH

ATTACHMENTS:

- Exhibit 1 - Appeal
- Exhibit 2 - Vicinity Map
- Exhibit 3 - Planning Commission Staff Report
- Exhibit 4 - Site Plan

cc: Mark & Janet Giamitta – Owner/Appellant

Copies sent by Planning:

Mike Foster – Public Works Department
Mojan Gonapathy – Environmental Health Services
Brent Backus – Air Pollution Control District
Bob Reiss - Building Department
Bill Schulze - Building Department
Christa Darlington– County Counsel
Michael Johnson – Planning Director
Bill Combs – Principal Planner
Allen Breuch – Supervising Planner
Subject/chrono files
Steve Buelna – Senior Planner
Weimar/Applegate/Colfax Municipal



PLACER COUNTY PLANNING DEPARTMENT

Reserved for Date Stamp

AUBURN OFFICE
11414 B Avenue
Auburn, CA 95603
530-886-3000/FAX 530-886-3080
Web page: www.placer.ca.gov/planning

TAHOE OFFICE
565 W. Lake Blvd./P. O. Box 1909
Tahoe City CA 96145
530-581-6280/FAX 530-581-6282
E-Mail: planning@placer.ca.gov

JUN 23 2006

PLANNING APPEALS

The specific regulations regarding appeal procedures may be found in the Placer County Code, Chapters 16 (Subdivision); 17 (Planning and Zoning), and 18 (Environmental Review Ordinance).

PLANNING DEPT
JUN 25 2006

-----OFFICE USE ONLY-----

Last Day to Appeal 7/3/06 (5 pm)
Letter to Placer County Planning
Oral Testimony at Planning Commission
Zoning 1 (use of 19004)
Maps: 7-full size and 1 reduced for Planning Commission items

Appeal Fee \$ 400
Date Appeal Filed 6/23/06
Receipt # CG-190606
Received by [Signature]
Geographic Area Tahoe

-----TO BE COMPLETED BY THE APPLICANT-----

- Project name North Granite Hill
- Appellant(s) Same
Address 1562 Trusty rd
Telephone Number 530 346 7107
City Colfax State CA Zip Code 95715
Fax Number 95715
- Assessor's Parcel Number(s): _____
- Application being appealed (check all those that apply):
 Administrative Approval (AA-____)
 Use Permit (CUP/MUP-____)
 Parcel Map (P-____)
 General Plan Amendment (GPA-____)
 Specific Plan (SPA-____)
 Planning Director Interpretation _____ (date)
 Minor Boundary Line Adj. (MBR-____)
 Tentative Map (SU B-____)
 Variance (VAA- 4274)
 Design Review (DSA-____)
 Rezoning (REA -____)
 Rafting Permit (RPA -____)
 Env. Review (EIAQ-____)
 Other: Appeal
- Whose decision is being appealed: Planning Commission
(see reverse)
- Appeal to be heard by: Board of Supervisors
(see reverse)
- Reason for appeal (attach additional sheet if necessary and be specific):
see attached

(If you are appealing a project condition only, please state the condition number)

Note: Applicants may be required to submit additional project plans/maps.

Signature of Appellant(s) _____

[Signature] [Signature]

Planner - Steve Buelna
ESD - Richard Kai
EH - Dana Winyinger
APCD - Brent Backus
Parks - Vance Kimbrell

Michael Johnson, Planning Director
Scott Finley, Co. Counsel
Christa Darlington, Co. Counsel

TACMD/CMDPA Application & Brochure

EXHIBIT 1

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RECEIVED
JUN 23 2006

PLANNING DEPT.

June 26, 2006

RECEIVED
JUN 23 2006

PLANNING DEPT.

Placer County Planning Department
11414 B Avenue
Auburn, CA 95603

Re: Planning Appeal/Giarriatta

Please modify line 7, Reason for appeal of the Planning Appeals form:

Appeal for variance/s before the planning commission on 06/22/2006, denied.
Action by planning commission appealed to Placer County Board of Supervisors.

Thanks,

Mark Giarriatta

P.O.Box 597
Colfax, CA 95713

June 22, 2006

Placer County Planning Commission
11414 B Avenue
Auburn, CA 95603

RE: APPEAL - VAA-4274 / Giarritta, APN 99-190-061

Honorable Commissioners:

The unresolved issues of referenced application have been exacerbated. The variance requested should be DENIED.

I. Issues of GRADING VIOLATION unresolved

As detailed in my May 4, 2006 letter significant issues of the illegal grading remain unresolved.

II. Issues AFFECTING ADJACENT PROPERTY remain unresolved

Allowing and approving code violations makes the County a party to the action, taking away the rights of others for the personal benefit of the applicant.

III. Issue of WELL IN ROADWAY unresolved

The well permit was based on misinformation. Well vault was constructed in roadway in defiance to the County Health Dept.

Is the ground water supply in danger of contamination?

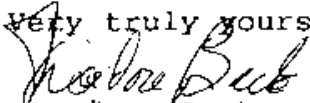
The pump house is located on the edge of the road easement NOT 14 feet away as stated in the staff report.

IV. Issues of VARIANCE

These issues are well addressed in letters included within the staff report.

The ISSUES and PROBLEMS are the result of Mr Giarritta's ILLEGAL ACTIONS. Granting a variance exacerbates the situation.

Please DENY the variance requested and require that ALL issues be resolved.

Very truly yours,

Theodore Back

PLACER COUNTY
DATE RECEIVED

JUN 22 2006

PLANNING COMMISSION
Submitted by Ted Back

185

Julie

Variance Appeal, Mark Giarritta
VAA-4274

Purpose: The purpose of this paper is to voice strong objection to the variance appeal by Mr. Giarritta. The information contained here-in is for the hearing on June 22, 2006. I cannot attend in person due to the short notice.

Introduction: Our property, 099-190-046, lies directly to the easterly border of the property in question. This code violation impacts us more than any other property. In my opinion, Mr. Giarritta has thumbed his nose at zoning laws, the California Code, Placer County and his neighbors. The appearance of his property is far below the standards of the neighboring properties in the area. I believe that his reckless regard for other people has degraded and reduced our property value. We have hired a Real Estate Attorney who will assess the total impact of his actions.

Definition: Simply put, a variance is a *limited exception* to the usual requirements of local zoning. While examining if there is any unusual circumstance that would justify a variance, we need to keep in mind why setbacks are established in the first place.

Specifics: The following is my understanding of the basic variance. References are from the California Government Code, specifically Section 65906. The government entity, e.g., city or county, when confronted with the development of an unusual piece of property, can consider a variance in order to give some flexibility to the normal standards of zoning. (*Note the word "unusual."*)

This variance would allow the property owner the use of the property basically within established regulations, but with minor variation that would give him or her parity with the common property owners in the same areas or zone. (*Note the word "minor."*)

Comment: Mr. Giarritta's property does not meet the criteria of unusual nor does the status quo deprive the property of privileges enjoyed by other property in the area.

Limitations on the Common Variance: In accordance with Section 65906, a variance may be granted when: (1) there are specific physical circumstances that distinguish the project site from its surroundings, and (2) these unique circumstances would create an unnecessary hardship for the applicant if the usual zoning standards were imposed.

Comment: Mr. Giarritta's property does not meet these criteria. It is a common, normally shaped, typical property. There is no basis for granting a variance if his circumstances cannot be distinguished from other surrounding properties. Mr. Giarritta bears the burden of proving that special circumstances exist (PMI Mortgage Ins. Co. v. City of Pacific Grove (1982) 128 Cal.App.3d 724).

When to consider variances: Variances shall be granted only when, because of special circumstances applicable to the property, including size, shape, topography, location or surroundings, deprive the property of privileges enjoyed by other property in the vicinity.

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JUN 19 2006

PLANNING DEPT. 186

Comment: There are no special circumstances to Mr. Giarritta's property. He has a typical lot, 5.09 acres. He can build his house in many other locations on the property.

Summary: We have had our land up for sale, but prospective buyers have shied away, stating that Mr. Giarrittas's property has an "unfriendly atmosphere." Since we can't sell the land, we plan to build our retirement home. The home that we plan to build would come close to the property line in question since the property slopes off into the canyon on the eastern side. The approval of a variance would rob us of the generally accepted house spacing enjoyed by the other residents in the surrounding area. The variance would ruin the serenity of the open spaces afforded by the terrain and natural beauty--the reason we were so taken by the property when we purchased it. The county needs to consider noise exposure, visibility of structures, circulation and access.


Since we plan on only removing the minimal vegetation necessary for building, the close proximity of our houses would, in all certainty, lead to the destruction of both houses in the event of a fire.

Our last observations are in the form of a few questions. Why did Mr. Giarritta, with 5-plus acres, decide to build right next to our property, ignoring the zoning laws? Why did he violate the local code? Is there a possibility that he took advantage of the situation knowing his adjacent neighbors were "absentee" owners?

In addition to encroaching on the setback, he has erected a gate across the road that impedes access to our property. The gate structure is a code violation in itself; constructed well within the established setbacks.

To date, we have spent thousands of dollars in surveying and lawyer fees. If the county approves this variance, I feel that Mr. Giarritta will continue to do harm to the area as well as our pocketbooks. It's time for the county to take a stand and not take the easy way out. Uphold the California code and the court cases on the books. Observe the intent of those laws and put a stop to this now. If this violation is waived, the county would be setting precedence and in essence be sending a message to other property owners that they can violate code, then ask for and receive approval.

Lastly, and in accordance with State law, granting a variance is approved only when there are special circumstances applicable to the proposal site which distinguish it from nearby properties with the same zoning. If there is a circumstance, it has to be one or more of the following: size, shape, topography, location or surroundings. Additionally, the circumstance has to create an "unnecessary hardship" unique to the involved property which would deprive it of privileges enjoyed by nearby properties with the same zoning. None apply.


Rodney J. Ward

June 15, 2006

R E C E I V E D
JUN 19 2006

PLANNING DEPT.

187



PLACER COUNTY PLANNING DEPARTMENT

AUBURN OFFICE
11414 B Avenue
Auburn, CA 95603
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Tahoe City CA 96145
530-581-6280/FAX 530-581-6282
E-Mail: planning@placer.ca.gov

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MAY 04 2006
PLANNING DEPT.

(6/22/06 PL searching)
PLANNING APPEALS

Taxes ok
5-4-06
KT

The specific regulations regarding appeal procedures may be found in the Placer County Code, Chapters 16 (Subdivision), 17 (Planning and Zoning), and 18 (Environmental Review Ordinance).

-----OFFICE USE ONLY-----

Last Day to Appeal 05-15-06 (5 pm)
Letter _____
Oral Testimony _____
Zoning _____
Maps: 7-full size and 1 reduced for Planning Commission items

Appeal Fee \$ 445
Date Appeal Filed 5/4/06
Receipt # _____
Received by KT
Geographic Area East

-----TO BE COMPLETED BY THE APPLICANT-----

1. Project name VAA-4274 Appeal
2. Appellant(s) Mark Giarritta
Address 1562 Dusty Rd, Colfax Telephone Number _____ Fax Number 95713
City _____ State _____ Zip Code _____
3. Assessor's Parcel Number(s): 099-190-061

4. Application being appealed (check all those that apply):
- | | |
|--|---|
| <input type="checkbox"/> Administrative Approval (AA-____) | <input type="checkbox"/> Tentative Map (SU B-____) |
| <input type="checkbox"/> Use Permit (CUP/MUP-____) | <input checked="" type="checkbox"/> Variance (VAA-____) |
| <input type="checkbox"/> Parcel Map (P-____) | <input type="checkbox"/> Design Review (DSA-____) |
| <input type="checkbox"/> General Plan Amendment (GPA-____) | <input type="checkbox"/> Rezoning (REA -____) |
| <input type="checkbox"/> Specific Plan (SPA-____) | <input type="checkbox"/> Rafting Permit (RPA -____) |
| <input type="checkbox"/> Planning Director Interpretation _____ (date) | <input type="checkbox"/> Env. Review (EIAQ-____) |
| <input type="checkbox"/> Minor Boundary Line Adj. (MBR-____) | <input type="checkbox"/> Other: _____ |

5. Whose decision is being appealed: ZA (see reverse)
6. Appeal to be heard by: PC (see reverse)

7. Reason for appeal (attach additional sheet if necessary and be specific):
To move my home; giving 50' off the 30' of road easement would put my house in my septic system. I was advised by board to possi
(If you are appealing a project condition only, please state the condition number)

Note: Applicants may be required to submit additional project plans/maps.

Signature of Appellant(s) X [Signature]

- PLANNER: Steve Buelna
- DPW - PHIL FRANTZ
- EH - DANA WIYNINGER
- APCD - BRENT BACKUS
- PARKS - VANCE KIMBRELL
- BUILDING DEPT.

PLACER COUNTY ZONING ORDINANCE SECTION 17.60.110

Rulings made by the below are considered by the Planning Commission:

Planning Director (interpretations)

Zoning Administrator

Design/Site Review Committee

Parcel Review Committee - other than road improvements which should be appealed to the Director of Public Works

Environmental Review Committee

Rulings made by the Planning Commission are appealed directly to the Board of Supervisors.

Rulings made by the Development Review Committee are appealed to the hearing body having original jurisdiction

Note: An appeal must be filed within 10 calendar days of the date of the decision. Appeals filed more than 10 days after the decision shall not be accepted by the Planning Department.

For exact specifications on an appeal, please refer to Section 17.60.110 of the Placer County Code.

Put retaining wall then move house. I would still not be far enough out.
Right now the house is 50' off ^(east property line) Front line which is the minimum set back. It puts me 20' Feet off the 30' road easement. We have a gravel road built.

So we are asking for MERCY.
Even if we could move it technically we just have no money to do it.

PLEASE help us.

MEMORANDUM
County of Placer
Planning Department

HEARING DATE: June 22, 2006
ITEM NO.: 6
TIME: 11:15 AM

TO: Placer County Planning Commission
FROM: Steve Buelna, Associate Planner
DATE: June 8, 2006
SUBJECT: APPEAL - VAA-4274 / GIARRITTA VARIANCE TO FRONT AND SIDE SETBACKS

COMMUNITY PLAN: Colfax

GENERAL/COMMUNITY PLAN DESIGNATION: Ranchette

ZONING: F-B-100,000 square foot minimum (Farm combining Building Site Size of 10,000 square foot minimum)

STAFF PLANNER: Steve Buelna, Associate Planner

LOCATION: The project site is located on the east side of Interstate 80, north of the Colfax City limits, at the End of Dusty Road in the Colfax area.

APPLICANT/APPELLANT: Mark Giarritta

PROPOSAL: Consider an Appeal from Mark Giarritta of the Zoning Administrator's decision to deny a portion of the requested Variance, which would have allowed a reduction to the front (eastern) setback requirement from 50 feet from edge of easement to 20 feet in order to legalize a recently constructed, illegally sited single-family dwelling.

CEQA COMPLIANCE:

This project is Categoricaly Exempt from the provisions of CEQA per Section 18.36.070 (Class 5)(A)(1)[Minor alterations in land use limitations] of the Placer County Environmental Review Ordinance, October 4, 2001.

PUBLIC NOTICES AND REFERRAL FOR COMMENTS:

Public notices were mailed to property owners of record within 300 feet of the project site. Community Development Resource Agency staff and the Departments of Public Works, Environmental Health, Air Pollution Control District and Weimar/Applegate/Colfax Municipal Advisory Council (MAC) were transmitted copies of the project plans and application for review and comment. All County comments have been addressed and conditions have been incorporated into the staff report. Staff has received letters from surrounding neighbors indicating opposition to the request, although one neighbor indicated no objection. Those opposed to the Variance cite past and on-going violations, view/privacy impacts and lack of grounds for a Variance.

BACKGROUND:

The project site has been the subject of Code Enforcement action for several years. Initially, the violations related to grading without a grading permit and the construction of a retaining wall and a 10-foot, 8-inch high fence. In 2003, the applicant submitted a Variance application to place a modular home within the required setbacks as currently proposed. At the time of the Variance submittal, with the site improvements for the subject parcel were limited to the two graded building pads and the retaining wall and fence.

This Variance request has been scheduled on several occasions before the Zoning Administrator, however issues related to the grading permit violations (particularly related to soil compaction and slope stability) have caused several continuances. The last continuance was on October 7, 2004. Staff and the applicant were instructed that the items should not be rescheduled for a Variance hearing until all the violations, with the exception of what would be corrected through the Variance application, had been resolved and/or removed from the site, as required by County Code Section 17.58.040-(Filing of Applications).

On May 2, 2005, the property owners, Mark and Janet Giarritta, applied for a building permit to locate a modular home on this parcel in the Colfax area. The site plan that accompanied the application indicated that the modular home would comply with the setback requirements for the area, with the corner of the structure being a minimum 50 feet from the edge of easement from the eastern property line and 30 feet from the side northern property line. The Building Permit application as submitted did not need a Variance to setbacks. The Building kept them was conditioned to require the Giarritta's to obtain the approval of a Temporary Use Permit to allow them to reside in the mobile home during the construction of the modular residence in order to address the existing code violation for occupying a temporary dwelling. The building permit (BMHP18218.05) was issued on July 29, 2005.

The Code Enforcement Department received an additional complaint with regards to the construction of a modular home. On August 4, 2005, an inspection was made by Code Enforcement staff who determined that the modular home, which was constructed on a permanent foundation, did not meet the setback requirements for this property. On August 12, 2005, the Building Department inspected the subject property and determined that the foundation was poured without inspections as well. The site inspections for the property revealed that the modular home was placed in the exact location of the originally requested Variance that had yet to be considered by the Zoning Administrator. A "Stop Work" and notice was issued.

PROJECT DESCRIPTION:

The applicant is seeking approval of a Variance that would legalize the location of the existing improvements (the 1,759 square foot modular home, a 10-foot, 8-inch tall fence, and pump house). As the site plan shows, this new residence is located 10 feet from the northern property line and 20 feet from the edge of easement along the eastern property line. The pump house is located 14 feet from edge of easement (50 foot is required) and the 10 foot - 8 inch tall solid wood fence is 0 feet from the northern property line, where 30 feet is required.

As mentioned in the background section of this report, the site contains a 60-foot-wide roadway easement along the eastern property line. This causes the eastern property line to be the front property line for the purposes of determining setbacks. The applicant had intended to abandon that roadway easement which would shift the front property line to the northern property line, but was not successful in doing so.

SITE CHARACTERISTICS:

The Giarritta property is an approximately 5.09 acre parcel that is located at the end of Dusty Road in the Colfax area. A 60-foot-wide roadway easement and Public Utility Easement (PUE) is located along the eastern property line. The subject property contains a steep downward slope away from Dusty Road, with the exception of the northeast and southeastern corners of the property which were graded over the past few years. This activity had begun without the benefit of a grading permit; however the applicant has since obtained the approval of a grading permit and has worked with the Engineering and Surveying Department to resolve this violation. At the time of the original Variance submittal, the site was undeveloped with the exception of a 6-foot to 10-foot, 8-inch tall solid wood fence and retaining wall that is located along the northern property line.

EXISTING LAND USE AND ZONING:

	<u>LAND USE</u>	<u>ZONING</u>
SITE	Residential	F-B-100,000 square foot minimum
NORTH	Residential	F-B-100,000 square foot minimum
SOUTH	Unimproved/BLM	RF BX 80 Acre Minimum
EAST	Unimproved	F-B-100,000 square foot minimum
WEST	Residential	F-B-100,000 square foot minimum

DISCUSSION OF ISSUES:

Zoning Administrator Hearing:

A public hearing was held on May 16, 2006, to consider this application. At the hearing, staff recommended denial of the Variance, as staff was unable to make the findings necessary to support the Variance as requested. The Zoning Administrator considered staff's recommendation, written testimony and the testimony given by the applicant and testimony given by several neighboring property owners in opposition to the setback Variance. The Zoning Administrator decided to approve the water pump house setback and the 10-foot 8-inch high fence portion of the requested Variance, but denied the Variance request that would have permitted the location of the residence. The Zoning Administrator stated that there were other

options available (perhaps a retaining wall) that would allow the residence to comply with the 50-foot from edge of easement requirement.

Letter of Appeal:

The appellant indicates that moving the house to meet setbacks would place it over his septic system. He also indicates that the Zoning Administrator's suggestion to add an additional retaining wall to create a new location for the house would not be feasible and that he cannot afford to move his residence.

Staff Response:

In rendering the decision, the Zoning Administrator stated that there may be other design options possible, such as the utilization of retaining walls that would allow the improvements to be moved further south and west on the parcel, thereby eliminating the need for a Variance for the residence. Staff agrees with the Zoning Administrator that there are other design options available that would allow the applicant to realize a residence with a septic system on this 5-acre parcel without needing a Variance to setbacks.

Although requiring the relocation of the recent improvements would clearly create a hardship for the applicant, the fact that the applicant constructed these improvements without proper approvals (inaccurate setback information on the site plan for building permit submittal, grading work without proper permit approval) does not constitute the special or unique circumstance required of a Variance approval.

By this Variance being denied, the applicant will be required to relocate this illegally sited modular residence. Should the applicant wish to proceed with residential development on this parcel, they will be required to submit revisions their building permit application which shall include an accurate site plan (locating the structure outside the required setbacks) and a notation that the existing foundation be removed to and that area be returned to a natural state (i.e. revegetated). The Zoning Administrator suggested that this may require some additional grading and or the construction of a retaining wall. In the event that they do not wish to proceed with residential development on this parcel, the modular residence and foundation will still be required to be removed.

RECOMMENDATION:

Staff recommends the Planning Commission uphold the Zoning Administrator's decision and deny the appeal based on the following findings:

Should it be the desire of the Planning Commission to grant this Variance, staff recommends that the Planning Commission refer this matter back to staff for the preparation of the Conditions of Approval, based upon the information entered in the record.

FINDINGS:


VARIANCE

1. There are no special circumstances present at the project site and would create a hardship based on the strict application of Chapter 17.060.100(D) [Action on a Variance], Placer

County Code. Denial of the variance for request will not deprive the applicant of the privileges consistent with the limitations upon other properties in the vicinity under the identical zoning classification.

2. If authorized, the Variance could constitute a grant of special privilege inconsistent with the limitations upon other properties in the vicinity and in the same zone district, as the applicant illegally placed the modular all the property when there is sufficient area available to place the structure in a manner consistent with the requirements of the Placer County Code.
3. The granting of a Variance could, under the circumstances and conditions applied in this particular case, adversely affect public safety by locating a structure(s) closer to the property lines than otherwise allowed as well as the potential impacts to the roadway easement which serves an additional parcel beyond this site.
4. The requested Variance is not the minimum departure from the requirements of the ordinance necessary to grant relief to the applicant, since the residence could have been placed in another location had the grading not been performed without the proper approvals consistent with Chapter 17.60.100(D) (Action on a Variance), Placer County Code.

Respectfully submitted,


Steve Buelna, Associate Planner

SB:KH

ATTACHMENTS:

- Attachment A – Site Plan
- Attachment B – Zoning/Vicinity Map
- Attachment C - Aerial Plan
- Attachment D - Appeal
- Attachment E - Zoning Administrator Staff Report
- Attachment F - Correspondence received in 2006

cc:

Mark Giaritta - Property Owner
Richard Kai - Engineering and Surveying Division
Dana Wiyninger - Environmental Health Services
Brent Backus - Air Pollution Control District
Vance Kimbrell - Parks Department
Scott Finley - County Counsel
Christa Darlington - County Counsel
Michael Johnson - Planning Director
Allen Breuch - Supervising Planner
Kathy Wisted - Code Enforcement
Subject/chrono files

BLM

(01) 27 4111

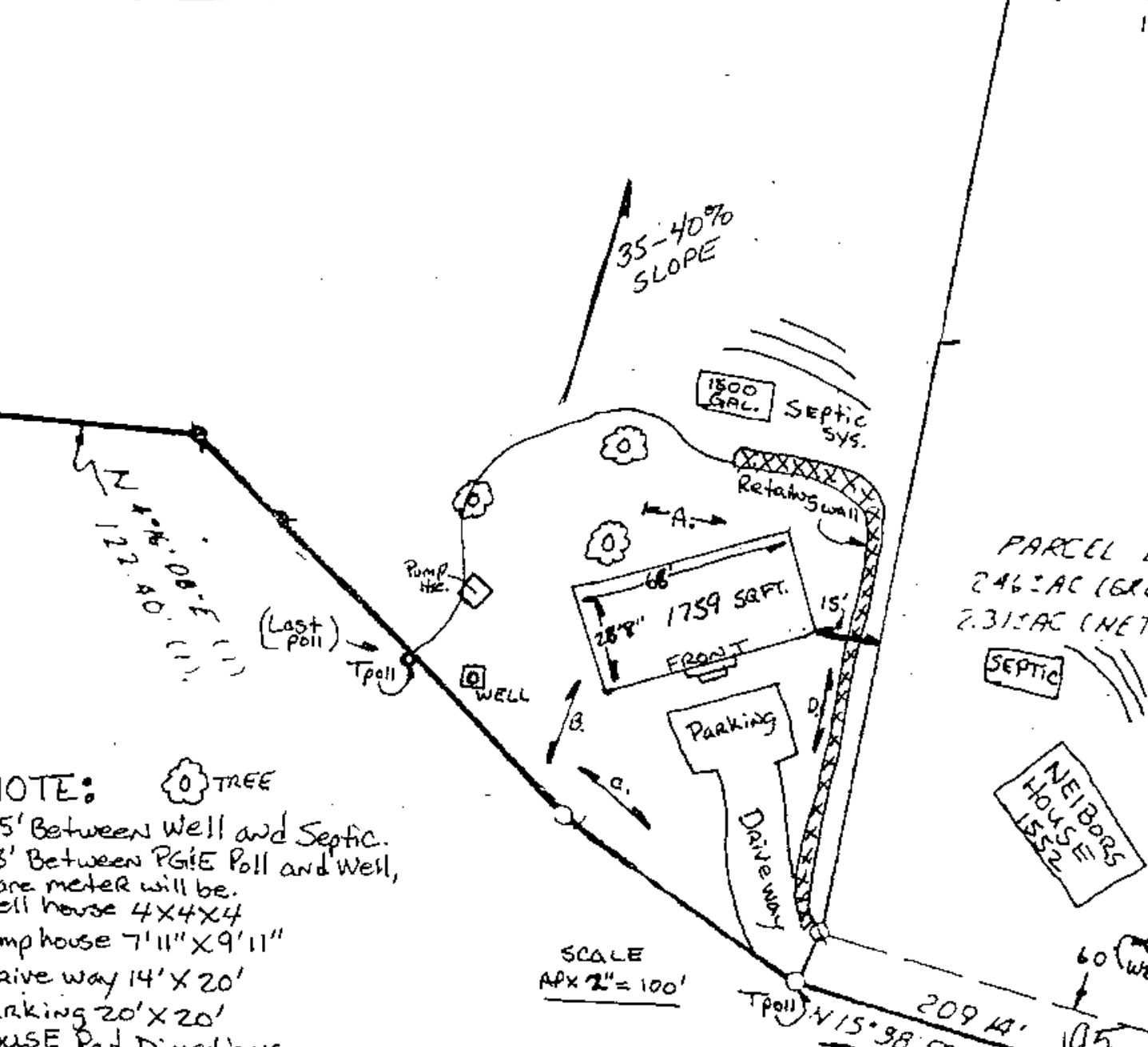
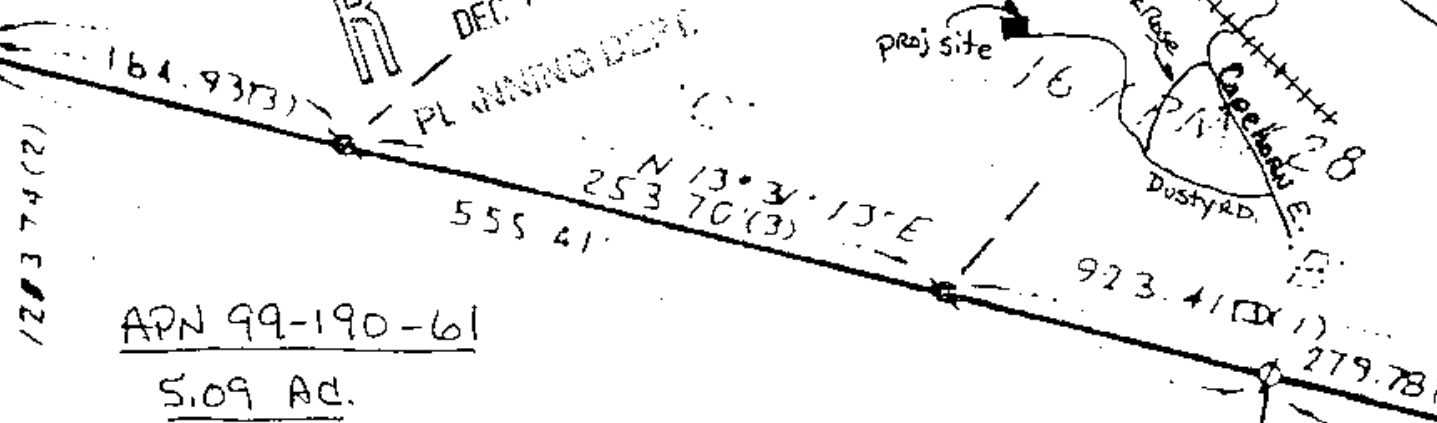
BLM LAND

(01) 56 10721

BLM

1562 DUSTY RD.
Col Fax, Co. 95713
APN 99-190-61
12/9/03

RECEIVED
DEC 16 2003
PLANNING DEPT.



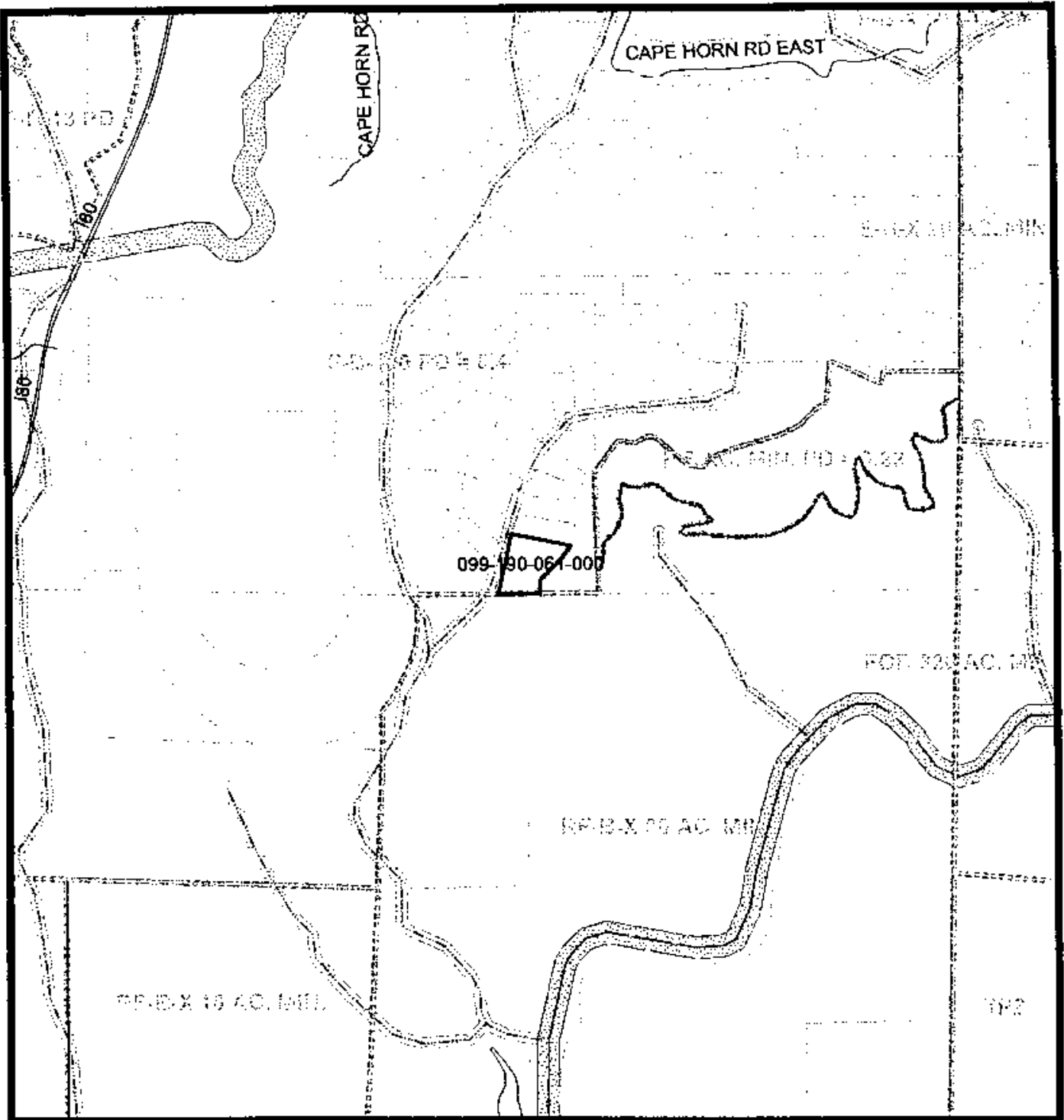
PARCEL L
2.46 AC (GROSS)
2.31 AC (NET)
SEPTIC

NEIGHBORS
HOUSE
1552

NOTE: TREE
 125' Between Well and Septic.
 33' Between PG&E Poll and Well,
 where meter will be.
 Well house 4'x4'x4'
 Pump house 7'11" x 9'11"
 Drive way 14' x 20'
 Parking 20' x 20'
 HOUSE Pad Dimensions
 A. 60'
 B. 62'
 C. 93'
 D. 112'

SCALE
APX 2" = 100'

EXHIBIT 2
ATTACHMENT A (Dusty RD is a County Rd.)
DUSTY RD



Giarritta

Planning Commission



SYMBOL	DESCRIPTION	SYMBOL	DESCRIPTION
(Symbol)	Proposed Subdivision	(Symbol)	Water
(Symbol)	Proposed Lot	(Symbol)	Shaded Area
(Symbol)	Proposed Street	(Symbol)	Proposed Street
(Symbol)	Proposed Right-of-Way	(Symbol)	Proposed Right-of-Way
(Symbol)	Proposed Easement	(Symbol)	Proposed Easement
(Symbol)	Proposed Utility	(Symbol)	Proposed Utility
(Symbol)	Proposed Boundary	(Symbol)	Proposed Boundary
(Symbol)	Proposed Area	(Symbol)	Proposed Area
(Symbol)	Proposed Feature	(Symbol)	Proposed Feature
(Symbol)	Proposed Detail	(Symbol)	Proposed Detail
(Symbol)	Proposed Note	(Symbol)	Proposed Note
(Symbol)	Proposed Label	(Symbol)	Proposed Label
(Symbol)	Proposed Title	(Symbol)	Proposed Title
(Symbol)	Proposed Footer	(Symbol)	Proposed Footer

EXHIBIT 2

ATTACHMENT B

196



PLACER COUNTY PLANNING DEPARTMENT

AUBURN OFFICE
11414 B Avenue
Auburn, CA 95603
530-886-3000/FAX 530-886-3080
Web page: www.placer.ca.gov/planning

TAHOE OFFICE
565 W. Lake Blvd./P. O. Box 1909
Tahoe City CA 96145
530-581-6280/FAX 530-581-6282
E-Mail: planning@placer.ca.gov

RECEIVED
MAY 04 2006
PLANNING DEPT.

PLANNING APPEALS

The specific regulations regarding appeal procedures may be found in the Placer County Code, Chapters 16 (Subdivision), 17 (Planning and Zoning), and 18 (Environmental Review Ordinance).

OFFICE USE ONLY

Last Day to Appeal 5/15/06 (5 pm)
Letter _____
Oral Testimony _____
Zoning _____
Maps: 7-full size and 1 reduced for Planning Commission items

Appeal Fee \$ 445
Date Appeal Filed 5/4/06
Receipt # _____
Received by KT
Geographic Area EAST

TO BE COMPLETED BY THE APPLICANT

- Project name VAA-4274 Appeal
- Appellant(s) Mark Guarritta
Address 1562 Dusty Rd, Colfax Telephone Number _____ Fax Number 95713
City _____ State _____ Zip Code _____
- Assessor's Parcel Number(s): 099-190-061
- Application being appealed (check all those that apply):

<input type="checkbox"/> Administrative Approval (AA-_____)	<input type="checkbox"/> Tentative Map (SU B-_____)
<input type="checkbox"/> Use Permit (CUP/MUP-_____)	<input checked="" type="checkbox"/> Variance (VAA-_____)
<input type="checkbox"/> Parcel Map (P-_____)	<input type="checkbox"/> Design Review (DSA-_____)
<input type="checkbox"/> General Plan Amendment (GPA-_____)	<input type="checkbox"/> Rezoning (REA -_____)
<input type="checkbox"/> Specific Plan (SPA-_____)	<input type="checkbox"/> Rafting Permit (RPA -_____)
<input type="checkbox"/> Planning Director Interpretation _____ (date)	<input type="checkbox"/> Env. Review (EIAQ-_____)
<input type="checkbox"/> Minor Boundary Line Adj. (MBR-_____)	<input type="checkbox"/> Other: _____

- Whose decision is being appealed: ZA (see reverse)
- Appeal to be heard by: PC (see reverse)

7. Reason for appeal (attach additional sheet if necessary and be specific):
To move my home; giving 50' off the 30' of road easement would put my house in my septic system. I was advised by board to possibly
(If you are appealing a project condition only, please state the condition number)

Note: Applicants may be required to submit additional project plans/maps.

Signature of Appellant(s) [Signature]

PLANNER: Steve Buchner
DPW - PHIL FRANTZ
EH - DANA WIYNINGER
APCD - BRENT BACKUS
PARKS - VANCE KIMBRELL
BUILDING DEPT.

EXHIBIT 2
ATTACHMENT D

PLACER COUNTY ZONING ORDINANCE SECTION 17.60.110

Rulings made by the below are considered by the Planning Commission:

Planning Director (interpretations)

Zoning Administrator

Design/Site Review Committee

Parcel Review Committee - other than road improvements which should be appealed to the Director of Public Works

Environmental Review Committee

Rulings made by the Planning Commission are appealed directly to the Board of Supervisors.

Rulings made by the Development Review Committee are appealed to the hearing body having original jurisdiction

Note: An appeal must be filed within 10 calendar days of the date of the decision. Appeals filed more than 10 days after the decision shall not be accepted by the Planning Department.

For exact specifications on an appeal, please refer to Section 17.60.110 of the Placer County Code.

Put retaining wall then move house. I would still not be far enough out.
Right now the house is 50' off ^(east property line) Front line which is the minimum set back. It puts me 20' feet off the 30' road easement. We have a gravel road built.

So we are asking for MERCY.
Even if we could move it technically we just have no money to do it.

PLEASE help us.

**MEMORANDUM
PLACER COUNTY
PLANNING DEPARTMENT**

Date: May 4, 2006

Time: 10:00 am

DATE: April 26, 2006

TO: Zoning Administrator

FROM: Planning Department

SUBJECT: VAA-4274 - Variance to Front Setback

APPLICANT: Mark Giarritta

STAFF PLANNER: Steve Buelna

ZONING: F-B-100 square foot minimum (Farm combining Building Site Size of 10,000 square foot minimum)

LOCATION: End of Dusty Road in the Colfax area.

APN: 099-190-061

PROPOSAL:

Applicant requests a variance to the following: 1) the front (eastern) setback requirement of 50 foot from edge of easement to allow for a setback of 20 foot to bring into conformance a recently constructed single family dwelling, 2) the front (eastern) setback requirement of 50 foot from edge of easement to allow for a setback of 14 foot to bring into conformance the existing pump house, 3) the front (eastern) setback requirement of 50 foot from edge of easement to allow for a setback of 15 foot in order to construct a detached garage on the existing building pad, 4) the side (southern) setback requirement of 30 foot from property line to allow for a setback of 10 foot for the construction of the previously mentioned residence, and 5) the side (northern) setback requirement of 30 foot from property line to allow for a setback of 0 foot in order to bring into conformance the existing 10 foot-8 inch tall fence.

CEQA COMPLIANCE:

This project is categorically exempt from the provisions of CEQA per Section 18.36.070 (Class 5)(A)(1)[Minor alterations in land use limitations] of the Placer County Environmental Review Ordinance, October 4, 2001.

BACKGROUND:

EXHIBIT 2

ATTACHMENT E

200

The Giarritta property is an approximately 5.09 acre parcel that is located at the end of Dusty Road in the Colfax area. A 60 foot wide roadway easement and Public Utility Easement (PUE) is located along the eastern property line. The subject property contains a steep downslope away from Dusty Road, with the exception of the northeast and southeastern corners of the property where recent (past few years) grading activity that has occurred. This activity had begun without the benefit of a grading permit, however the applicant has since obtained the approval of a grading permit and has worked with the DPW to resolve this violation. At the time of the original variance submittal, the site was vacant with the exception of a 6 foot to 10 foot-6 inch tall solid wood fence and retaining wall that is located along the northern property line.

This item (variance request) has been scheduled on several occasions for hearing, however issues related to the grading permit violations (particularly related to soil compaction, slope stability, etc.) have caused several continuances. The last continuance was on October 7, 2004. Staff and the applicant were instructed that the items should not be rescheduled for a hearing until such time as all the violations with the exception of what would be corrected through the variance application had been resolved and/or removed from the site.

On May 2, 2005, the property owners, Mark and Janet Giarritta, applied for a building permit to locate a modular home on this parcel in the Colfax area. The site plan that accompanied the application indicated that the modular home would comply with the setback requirements for the area with the corner of the structure being a minimum 50 feet from the edge of easement from the eastern property line and 30 feet from the side northern property line. The permit was conditioned to require the Giarritta's to obtain the approval of a temporary use permit to allow them to reside in the temporary mobilehome during the construction of the modular residence. The building permit (BMHP18218.05) was issued on July 29, 2005.

The Code Enforcement Department received a complaint with regards to the construction of this residence. On August 4, 2005 an inspection was made which determined that the modular home, which was constructed on a permanent foundation, did not meet the setback requirements for this property. On August 12, 2005 the building department inspected the subject property and determined that the foundation was poured without inspection and required the applicant to provide an as built letter from an engineer or architect which approved the foundation. The site inspection for the property revealed that the modular home was placed in the exact location of the originally requested variance. A stop work notice was issued.

ANALYSIS:

The applicant is seeking approval of a variance which would allow for the locations of the existing improvements (the 1,759 square foot modular home, fence, and pump house) and for the construction of a 40 foot by 40 foot garage on the lower building pad. As the site plan shows, this new residence is located 10 feet from the northern property line and 20 feet from the edge of easement along the eastern property line.

As mentioned in the background section of this report, the site contains a 60 foot wide roadway easement along the eastern property line. This would cause the eastern property line to be the front property line for the purposes of determining setbacks. The applicant had intended to

abandon that roadway easement which would shift the front property line to the northern property line, but was not successful in doing so.

Staff acknowledges that although the parcel is relatively large in area, the slope introduces for a buildable homesite. Additionally, this area of the parcel abuts Bureau of Land Management (BLM) lands and is not likely to adversely affect this adjoining use. However, staff is not convinced that, had the grading work not been nearly complete at the time of the variance submittal, a location perhaps more conforming to setbacks could have been realized with a similar amount of grading. Additionally, the current location of the residence (along with the gate to the entrance of the property) serves to restrict or impede potential use of the roadway easement. As a result, staff cannot make the findings that the variances requested are the minimum departure, that the variance would not affect the neighboring properties, nor that the characteristics of the site would require the proposed structures to be located within the required setbacks.

Included in this variance request is a variance to bring into conformance the existing 6 foot to 10 foot-6 inch tall fence that is located along the northern property line. The Zoning Ordinance considers a fence that exceeds 6 foot in height a structure and prohibits such structures from being located within the setbacks for the parcel. This fence is located approximately 0 foot from the northern (side) property line and is within the required setbacks for the parcel. Staff is not convinced of the necessity for such a structure within the setbacks for this particular property and, therefore, staff is not able to make the findings to support a variance to allow this to remain at its current height.

RECOMMENDATION:

Staff recommends the Zoning Administrator deny the requested variance (VAA-4274), subject to the attached set of findings and recommended conditions of approval.

FINDINGS:

CEQA FINDINGS - VARIANCE:

This project is categorically exempt from the provisions of CEQA per Section 18.36.070 (Class 5)(A)(1)[Minor alterations in land use limitations] of the Placer County Environmental Review Ordinance, October 4, 2001.

PROJECT FINDINGS: VARIANCE

1. The special circumstances present at the project site would not make the strict application of Chapter 17.060.100(D) [Action on a Variance], Placer County Code, resulting in depriving the applicant of the privileges inconsistent with the limitations upon other properties in the vicinity under the identical zoning classification.
2. If authorized, the variance could constitute a grant of special privilege inconsistent with the limitations upon other properties in the vicinity and in the same zone district.

3. The granting of a variance could, under the circumstances and conditions applied in this particular case, adversely affect public safety by locating a structure(s) closer to the property lines than otherwise allowed as well as the potential impacts to the roadway easement.

4. The requested variance is not the minimum departure from the requirements of the ordinance necessary to grant relief to the applicant, since the residence could have been placed in another location had the grading not been performed without the proper approvals consistent with Chapter 17.60.100(D) (Action on a variance), Placer County Code.

RECOMMENDED CONDITIONS:

1. The applicants shall be required to pay code enforcement fees in the amount of \$650.00 within 30 days of today's date.

2. The applicant shall be required to reduce the fence height within the setback area to 6 feet above natural grade and apply for a building permit to relocate or remove the structures outside the required setback within 45 days of the date of the hearing.

3. The applicant shall comply with any conditions imposed by CDF or the serving fire district.

6. This approval shall expire on May 15, 2008 unless it is exercised by satisfying the conditions of approval.

t:\cmd\cmdp\steve\ZA items\variance\Giarritta2

MEMORANDUM

COMMUNITY DEVELOPMENT RESOURCE AGENCY
County of Placer

TO: Zoning Administrator DATE: April 26, 2006

FROM: Richard Kai, Engineering & Surveying Department

SUBJECT: PVAA-4274: FRONT S/B & FENCE HEIGHT
DUSTY ROAD, COLFAX
GIARRITTA; (APN: 099-190-061)

The Engineering & Surveying Department (ESD) supports the Development Review Committee's recommendation of the Variance application subject to the following recommended conditions:

1. **ADVISORY COMMENT:** The lower pad has not been certified as a building site. Prior to any building permit issuance on the lower pad, the pad shall be certified, as required by the UBC and the Building Department, by a Registered Civil Engineer or Geotechnical Engineer.

MEMORANDUM

Department of Health & Human Services
ENVIRONMENTAL HEALTH SERVICES
11454 B Avenue, Auburn, CA 95603
(530) 889-7335 FAX (530) 889-7370

TO: Zoning Administrator

FROM: Mohan Ganapathy, R.E.H.S. *MG*
Land Use and Water Resources Section

DATE: January 23, 2004

SUBJECT: VAA 4274, GIARRITTA, APN # 099-190-061

The Division of Environmental Health has no objections or list of conditions of approval for the
aforementioned variance request as proposed.

MG/gf

ref: d:\ganapathy\vaa4274

205

PLACER COUNTY
DATE RECEIVED
MAY 04 2006

P.O.Box 597
Colfax, CA 95713

PLANNING COMMISSION

May 4, 2006

Zoning Administrator
Placer County Planning Department
11414 B Avenue
Auburn, CA 95603

RE: VAA-4274, Mark A. Giarritta, APN 99-190-061

Gentleman:

The unresolved issues of referenced application have been exacerbated. The variance requested should be DENIED.

Applicable code sections referenced are provided herein for your convenience followed by comments.

I. GRADING VIOLATION

Numerous violations to Article 15.48, Placer County grading and erosion prevention ordinance, have occurred. Requirements of the ordinance are not satisfied. Granting the variance will further exacerbate the situation.

A. Section 15.48.240 Permit conditions (A). No permit shall be granted unless the project conforms to the Placer County general plan, any community or specific plans adopted thereto and applicable Placer County ordinances including the zoning ordinance.

A(1). Placer County Land Development Manual Chapter 19, Subchapter III, Section 19.332 (9), para 1. When the road serving a minor subdivision also serves off-site parcels beyond the development (such service defined by existing roads or easements), then the easement shall be extended to the boundaries of the parcels being divided.

COMMENT: Prior to subdivision activity, all parcels served by Dusty Road including the 72 acre parcel southerly of subject parcel (beyond) were in one common ownership.

The roadway, public utility and drainage easement traversing the easterly portion of subject parcel existed BEFORE subject parcel was created.

A(2). Section 19.332 (9), para 2. Where the County finds that

EXHIBIT 2 206
ATTACHMENT F

TB page 2
4 MAY 06

a parcel beyond the development is landlocked or the topography of the area is such that access can be gained in no other acceptable manor, then a corridor shall be established with appropriate building setbacks and shall be identified on the parcel map as a future road corridor ...

COMMENT: The portion of the Dusty Road easement which traverses subject parcel serves a 72 acre land parcel southerly of ("beyond") the subject parcel and is the only practical access location.

Said easement is identified and clearly shown on land subdivision maps 18 PM 2 and 18 PM 138.

The owner of said 72 acre parcel intentions are clear: Please see ATTH A. Recorded document: NOTICE OF INTENT TO PRESERVE EASEMENTS

B. Section 15.48.240 (C). The permit shall be limited to work shown on the grading plans as approved by the director of public works. In granting a permit, the director of public works may impose any condition deemed necessary to protect the health, safety and welfare of the public, to prevent the creation of a hazard to public or private property, prevent erosion and assure proper completion of the grading, including ...

QUESTION: Why were grading plans to bring the grading violation into compliance not prepared as required by the grading ordinance in Part 4. Plans and Specifications?

Why would the County issue a grading permit in violation of its ordinance? Why would the County allow a 20 foot high fill from illegal grading block necessary access to a parcel of land?

Submittal of as-built plans which shows violations DOES NOT CORRECT the violations.

C. Section 15.48.480 (B). Protection of Adjacent Property. The property owner is responsible for prevention of damage to adjacent property. No person(s) shall excavate on land sufficiently close to the property line to endanger any adjoining ... public or private property, or easement ...

COMMENT: The illegal grading obstructing the Dusty Road easement landlocked the 72 acre parcel "beyond" the subject parcel and deprives its owner beneficial use of said land. Clearly, a significant code violation.

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TB page 3
4 MAY 06

D. Section 15.48.160 Denial of other permits. No building permit, septic, water, sewer, electrical permit, or any other permit shall be issued by the county to any person for any premises or portion thereof which is in violation of this article.

QUESTION: Why were other such permits granted in obvious violation of the grading ordinance?

II. WELL ISSUE

A. The applicant obtained a well permit by providing information that the well would be located outside of the Dusty Road easement.

In a letter dated February 25, 2005, the County Health Department requested verification and compliance that the well be located outside of said road easement.

In defiance to said letter, the applicant lowered the top of the well casing to below grade, covering the well location with a lid marked "SEWER".

QUESTION: What is the potential for contamination or danger to ground water supplies?

What is the water source (if any) for the fire plug located alongside Dusty Road near the northerly boundary of subject parcel?

III. VARIANCE ISSUE

The variance requested is not justified and is forbidden by Placer County Code and ordinances.

A. The criteria required by Government Code for a variance approval and by Placer County Code Section 17.60.100 D(1) is NOT satisfied.

1. There are NO special circumstances existing for this parcel that are different from other parcels in the vicinity.

Site problems were created by the applicant's behavior and illegal grading activity. Relief "sought after a violation of the standard is willfully and illegally created" is NOT justification for special circumstances.

2. If authorized, the variance would constitute the grant of special privileges not enjoyed by other property in the vicinity.

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TB page 4
4 MAY 06

3. Under the circumstances and conditions in this particular case, granting the variance is materially detrimental to public welfare. Public health and safety could be adversely affected.

4. If the variance is authorized, the County would become a party to the action, taking away the rights of others for the personal benefit of the applicant.

5. Granting the variance is injurious to nearby property and exacerbates the problems resulting from numerous code violations.

IV. Issues noted at previous hearings and in letters, memo's, correspondence, etc relative to referenced subject, including from others, are hereby made a part of this letter.

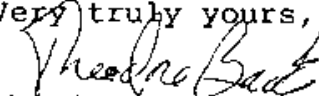
V. The issues of this project need to be resolved instead of further exacerbating the situation prompting additional actions of administrative, legal, and/or other recourse.

1. A plan which brings subject parcel into compliance should be required.

2. Financial guarantees, such as a bond, to assure subject property is brought into code compliance needs to be required.

The only reasonable option is to deny the variance.

Thank you for your consideration of this matter.

Very truly yours,

Theodore Back

Variance Request, Mark Giarritta
VAA-4274

Purpose: The purpose of this paper is to explain my strong objections to each and every variance request by Mr. Giarritta. The information contained here-in is for the hearing on May 4, 2006.

Background: Our property, 099-190-046, lies directly to the easterly border of the property in question. We have always planned on building a retirement home on this location, but recently put it up for sale after seeing that Mr. Giarritta, in our opinion, has ruined the serene setting of this location. Our listing runs out in July. My real estate agent has mentioned several times that potential buyers shied away from buying the property because of the situation at hand.

Definition: Simply put, a variance is a *limited exception* to the usual requirements of local zoning.

Specifics. The following is my understanding of the basic variance. References are from the California Government Code, specifically Section 65906. The government entity, e.g., city or county, when confronted with the development of an unusual piece of property, can consider a variance in order to give some flexibility to the normal standards of zoning. (*Note the word "unusual."*)

This variance would allow the property owner the use of the property basically within established regulations, but with minor variation that would give him or her parity with the common property owners in the same areas or zone. (*Note the word "minor."*)

Comment: Mr. Giarritta's property does not meet the criteria of unusual nor does the status quo deprive the property of privileges enjoyed by other property in the area.

Limitations on the Common Variance. In accordance with Section 65906, a variance may be granted when: (1) there are specific physical circumstances that distinguish the project site from its surroundings, and (2) these unique circumstances would create an unnecessary hardship for the applicant if the usual zoning standards were imposed.

Comment: Mr. Giarritta's property does not meet these criteria. It is a common, normally shaped, typical property. There is no basis for granting a variance if his circumstances cannot be distinguished from other surrounding properties. Mr. Giarritta bears the burden of proving that special circumstances exist (PMI Mortgage Ins. Co. v. City of Pacific Grove (1982)

128 Cal.App.3d 724).

When to consider variances. Variances shall be granted only when, because of special circumstances applicable to the property, including size, shape, topography, location or surroundings, deprive the property of privileges enjoyed by other property in the vicinity.

Comment. There are no special circumstances to Mr. Giarritta's property. He has a typical lot, 5.09 acres. He can build his house in many other locations on the property.

Summary: Since we can't sell the land, we plan to build our retirement home. The home that we plan to build would come close to the property line in question. The approval of a variance would rob us of the generally accepted house spacing enjoyed by the other residents in the surrounding area. The variance would ruin the serenity of the open spaces afforded by the terrain and natural beauty--the reason we were so taken by the property when we purchased it.

Since we plan on only removing the minimal vegetation necessary for building, the close proximity of our houses would, in all certainty, lead to the destruction of both houses in the event of a fire. I would guess that the county might assume some liability if this were the case.

Our last observations are in the form of a few questions. Why did Mr. Giarritta, with 5-plus acres, decide to build right next to our property, ignoring the zoning laws? Why did he violate the local code? Is there a possibility that he took advantage of the situation knowing his adjacent neighbors were "absentee" owners? In addition to encroaching on the setback, he has erected a gate across the road that impedes access to our property. Since he has told our realtor that he would like to offer a price far below our asking price, are his actions an effort to de-value our property?

To date, we have spent thousands of dollars in surveying and lawyer fees. If the county approves any of the variations, I feel that Mr. Giarritta will continue to do harm to the area as well as our pocketbooks. It's time for the county to take a stand and not take the easy way out. Uphold the California code and the court cases on the books. Observe the intent of those laws and put a stop to this now. If any of the violations are waived, the county would be setting a precedence and in essence be notifying owners with an open invitation that they can violate code, then ask for and receive approval.

(signed)
Rodney J. Ward

Date: May 3, 2006

JOHANSON, KOONS & CONSTANTINO, LLP

ATTORNEYS AT LAW

1155 High Street
Auburn, California 95603

Edward C. Koons
Alexander L. Constantino
T. L. Johanson 1933-1999

Telephone (530) 885-7538
Telecopy No. (530) 885-7559

January 9, 2006

Steve Buelna
Placer County Planning Commission
11414 B Avenue
Auburn, CA 95603

PLACER COUNTY
DATE RECEIVED
MAY 04 2006
PLANNING COMMISSION

RE: Mark Giarritta
1562 Dusty Road, Colfax, CA

Dear Mr. Buelna:

Our office represents Andy Oyer who owns the real property adjacent to the property owned by Mark Giarritta referenced above.

My client would like to advise you that at the present time, he does not have any objection to the current configuration and location of the fence line separating the Giarritta property from the Oyer property. If I can provide additional information or assist you in any fashion, please do not hesitate to contact me.

Very truly yours;



ALEXANDER L. CONSTANTINO

ALC:sc
cc: Andy Oyer

ATTN A



PLACER County Recorder
JIM MCCAULEY

DOC- 2004-0137885

Check Number 2003 rj

Monday, OCT 18, 2004 15:47:02

MIC \$3.00 AUT \$6.00 SBS \$5.00

REC \$6.00

Ttl Pd \$22.00

Nbr-0001168248

rec/RJ/1-6

RECORDING REQUESTED BY

Theodore Back

WHEN RECORDED MAIL TO

Theodore Back
P.O. Box 597
Colfax, CA 95713

ABOVE SPACE FOR RECORDER'S USE

NOTICE OF INTENT TO PRESERVE EASEMENTS

This notice is intended to preserve easement interests in real property from extinguishment pursuant to Chapter 7 of Title 5 of Part 2 of Division 2 of the Civil Code (Marketable Record Title).

Party of record/claimants/(owners of easements):

PLACER COUNTY
DATE RECEIVED

MAY 04 2006

George H. Back - Grantor/ Grantee

Dorothy R. Back - Grantor/ Grantee

P.O. Box 597

Colfax, CA 95713

PLACER COUNTY

Preservation of easement interests:

I. Any and all easements claimed by the party of record in, on, or over any real property situated in Placer County, CA.

II. Any and all easements claimed by the party of record in Sections 25, 26, 35, 36, T15N, R9E, M.D.M., Placer County, CA.

III. A sixty foot wide easement for roadway, public utility and drainage purposes described in grant-deed (easement) recorded February 17, 1981 in vol 2357 at page 547, Placer County Official Records. A copy of said deed marked Exhibit "A" is attached and by this reference incorporated herein.

Pursuant to provisions contained in the above document, said easement is described as an appurtenance to the properties of the grantees: Kilgore, Willis, George H. Back and Dorothy R. Back.

The Back's property to which said easement is an appurtenance is located in Sections 35 and 36, T15N, R9E, M.D.M. as stated in said document.

213

5951

Order No.
Escrow No.
Loan No.

OFFICIAL RECORDS
REQUESTED BY
A. Clinton Hughes
FEB 11 11 28 AM '81

WHEN RECORDED MAIL TO:

A. Clinton Hughes
Box 351
Walnut, Ca 95736

GAY TROMELEY
PLACER CO RECORDER

5951 \$6.00

SPACE ABOVE THIS LINE FOR RECORDER'S USE

MAIL TAX STATEMENTS TO

not applicable

DOCUMENTARY TRANSFER TAX \$ 0.00

..... Computed on the consideration or value of property conveyed; OR
..... Computed on the consideration or value less liens or encumbrances
remaining at time of sale.

the undersigned
Signature of Declarant or Agent determining tax - Firm Name

APV 99-190-29+30

GRANT DEED
(Easement)

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,
JOHN R. KILGORE and DOROTHY V. KILGORE, husband and wife
and

KELLY A. WILLIS, an unmarried woman
hereby GRANT(S) to

- (1) JOHN R. KILGORE and DOROTHY V. KILGORE, husband and wife, as Joint Tenants
- (2) KELLY A. WILLIS, a single woman
- (3) GEORGE HENRY BACK and DOROTHY RUTH BACK, husband and wife, as Joint Tenants

the real property in the ~~XXXX~~ unincorporated area of the
County of Placer State of California, described as
A portion of the Southwest quarter of Section 25, Township 15 North,
Range 9 East, M.D.M., described as;

A sixty foot wide easement for roadway, public utility and drainage purposes,
lying within the bounds of property described in deed to Kilgore, recorded
January 24, 1978 in Vol 1934 at Page 37, Placer County Official Records
and in deed to Willis, recorded July 12, 1979 in Vol 2144 at Page 357,
Placer County Official Records, further described as;

(1) A sixty foot wide easement, the centerline of which is described as
beginning at a point on the South line of said Southwest quarter from which
the Southwest corner bears North 89° 55' 56" West 1253.74 feet; thence from
said Point of Beginning the following five courses;

- 1. North 42° 48' 16" East 189.36 feet;
- 2. North 54° 22' 20" East 292.67 feet;
- 3. North 37° 14' 40" East 146.95 feet;
- 4. North 15° 38' 50" East 252.14 feet;
- 5. North 04° 30' 06" East 165.78 feet to a point designated as Point A.

(2) A sixty foot wide easement, the Northwesterly line of which is described
as beginning at a point from which Point A, described above, bears South
83° 10' 51" East 30.02 feet; thence from said Point of Beginning the follow-
ing three courses:

- 1. North 04° 30' 06" East 3.73 feet;
- 2. North 30° 35' 00" East 158.04 feet;
- 3. North 41° 19' 05" East 224.86 feet to the West line of the East
660 feet of said Southwest quarter.

cont'd on Page 2

Dated *Feb 13, 1981*

STATE OF CALIFORNIA
COUNTY OF _____

On _____
before me, the undersigned, a Notary Public in and for said
State, personally appeared _____

known to me to be the person _____ whose name _____
subscribed to the within instrument and acknowledged that
_____ executed the same
WITNESS my hand and official seal.

Signature

(This area for official notarial seal.)

2357-547

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EXHIBIT A PAGE 1 of 2

PAGE 2

The above described easement is granted as an appurtenance to the properties of the Grantees described as follows:

~~Kilgore~~- Deed, Vol 1934 at Page 37, Placer County Official Records.
~~Willis~~- Deed, Vol 2144 at Page 357, Placer County Official Records.
~~Back~~- The West 1/2 of the NW 1/4 of Section 36, T15N, R9E, M.D.M., except that portion lying within the Southern Pacific Railroad Right of Way and to that portion of the North 1/2 of the NE 1/4 of Section 35, T15N, R9E, M.D.M. lying Southeasterly of said Southern Pacific Railroad Right of Way.

John R. Kilgore 2-13-81
John R. Kilgore Date

Dorothy V. Kilgore 2-13-81
Dorothy V. Kilgore Date

Kelly A. Willis 2-13-81
Kelly A. Willis Date

(Individual)

STATE OF CALIFORNIA }
COUNTY OF Sacramento } SS.

On February 13, 1981 before me, the undersigned, a Notary Public in and for said State, personally appeared Kelly A. Willis

to be the person whose name she subscribed to the within instrument and acknowledged that she executed the same.

WITNESS my hand and official seal.

Signature: Susan Gannon

Susan Gannon
Name (Typed or Printed)



SAV 191 (10/75)

(This area for official recorded use)

Vol 2357 Page 548

(Individual)

STATE OF CALIFORNIA }
COUNTY OF Sacramento } SS.

On February 13, 1981 before me, the undersigned, a Notary Public in and for said State, personally appeared Dorothy V. Kilgore and John R. Kilgore

to be the persons whose name they subscribed to the within instrument and acknowledged that they executed the same.

WITNESS my hand and official seal.

Signature: Susan Gannon

Susan Gannon
Name (Typed or Printed)



SAV 191 (10/75)

5951

(This area for official recorded use)

EXHIBIT A PAGE 2 of 2

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PARCEL MAP 72905

A PORTION OF THE SW 1/4 OF SECTION 25,
T.5N. R.20E. N.D.M., PEARCE CO., CALIFORNIA
THREAT, 1980 SCALE 1"=100'
A CLINTON HEIGHTS CE
HELMAR, CALIFORNIA

RECORDERS CERTIFICATE

THIS MAP WAS FILED FOR RECORDING ON 11/21/80 AT 10:24 AM
IN BOOK 18 OF PARCEL MAPS AT PAGE 2 OF THE
RECORDS OF CLINTON HEIGHTS CE AT THE
FILE NO. 72905
FILE NO. 72905
FILE NO. 72905
COUNTY RECORDER
HELMAR, CALIFORNIA
BY *Edgar B. Shively*
CLERK

COUNTY SURVEYOR'S CERTIFICATE

THIS MAP CONFORMS WITH THE REQUIREMENTS OF THE
SURVEYOR MAP ACT AND LOCAL ORDINANCE.
DATED: FEBRUARY 25, 1980
COUNTY SURVEYOR
HELMAR, CALIFORNIA
BY *John A. ...*
CLERK

NOTES

1. REPORT CONCERNING CURRENT REQUIREMENTS FOR THE ESTABLISHMENT OF THE PARCEL MAPS, HELD BY THE COUNTY RECORDER, HELMAR, CALIFORNIA, FILE NO. 72905, IS ATTACHED TO THIS MAP.
2. DATE APPROVED: 11/21/80 BY 10:24 AM
3. THESE PARCELS HAVE LEGAL ACCESS TO EXISTING HIGHWAY 150 (SOUTH) OVER EASEMENTS DISCLOSED IN PARAGRAPHS 1 AND 2 OF THIS MAP.
4. AREA IS APPURTENANT TO PARCELS A, B, C, D FOR ROADWAY, PUBLIC UTILITY AND DRAINAGE PURPOSES.
5. FOR A COMPLETE SECTION REFERENCE SEE MAP 72905.

ENGINEER'S CERTIFICATE

THIS MAP WAS PREPARED BY ME OR UNDER MY DIRECTION AND IS BASED UPON A FIELD SURVEY IN CONFORMANCE WITH THE REQUIREMENTS OF THE SURVEYOR MAP ACT AND LOCAL ORDINANCE AT THE POINTS OF JUMP KILGORE IN AREA A, B, C, D. I HEREBY CERTIFY THAT THIS PARCEL MAP SUBMITTED CONFORMS TO THE APPROVED AND COMPLETELY APPROVED TENTATIVE AND, IF ANY, RECORDING REQUIREMENTS.

Robert ...
REGISTERED PROFESSIONAL ENGINEER
HELMAR, CALIFORNIA



BASIS OF BEARING

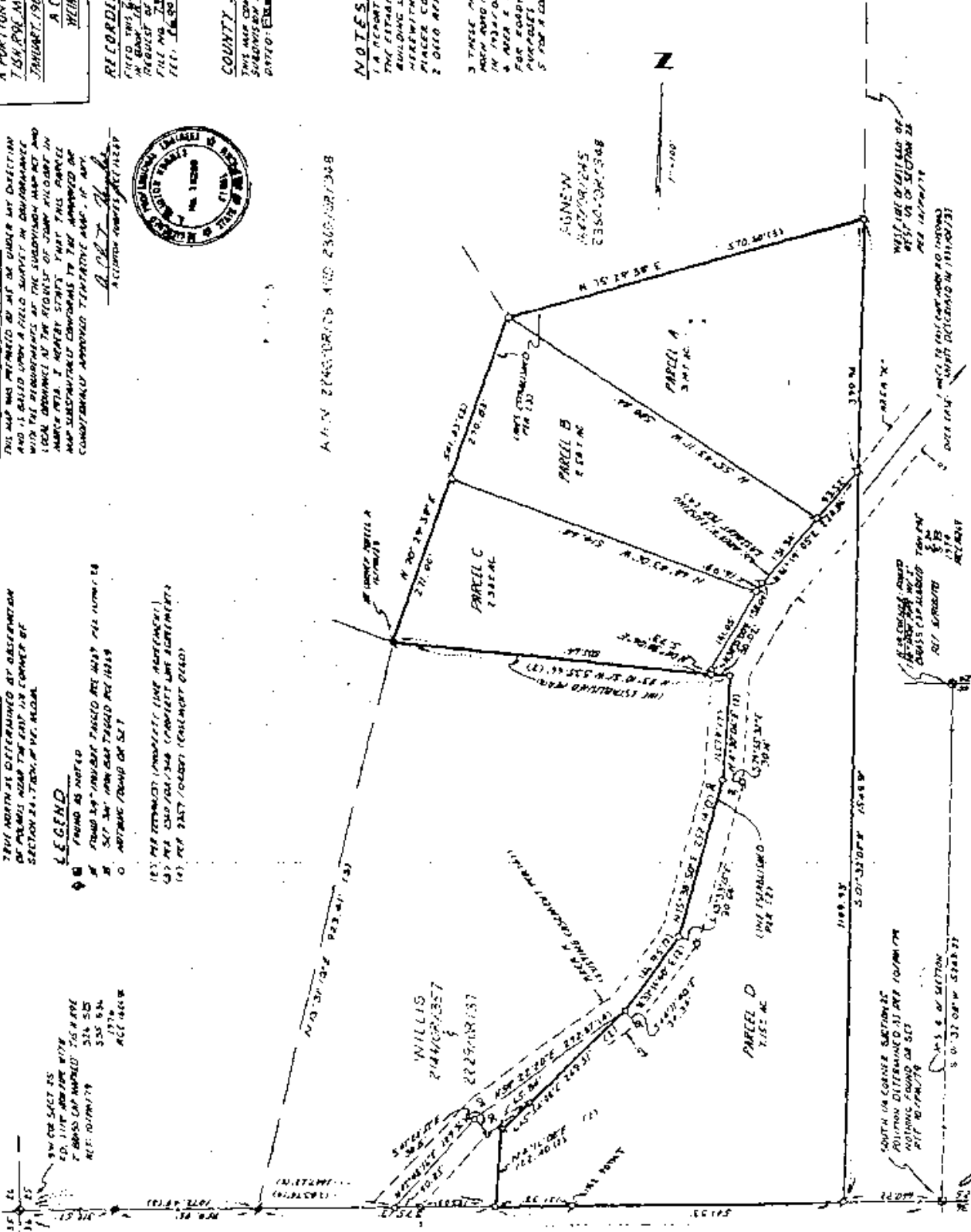
THE BEARINGS DETERMINED BY OBSERVATION ON PARCELS NEAR THE EAST CORNER OF SECTION 25, T.5N., R.20E., N.D.M.

LEGEND

- FOUND AS NOTED
- FOUND BY INSTRUMENT TACKED BY ME 11/21/80
- SET BY ... 11/21/80
- NOTHING FOUND ON SET
- (1) BY INSTRUMENT (UNNOTED) (LINE INSTRUMENT)
- (2) BY INSTRUMENT (UNNOTED) (LINE INSTRUMENT)
- (3) BY INSTRUMENT (UNNOTED) (LINE INSTRUMENT)
- (4) BY INSTRUMENT (UNNOTED) (LINE INSTRUMENT)

SW COR. SECT 25
ED. 11/21/80
T.5N. R.20E. N.D.M.
FILE NO. 72905
11/21/80
ACE 14628

A.M.N. 2345-00000 AND 2345-00000



NOTE ON CORNER SECTION 25
BEARINGS DETERMINED BY ME 10/11/80
NOTHING FOUND ON SET
11/21/80
ACE 14628

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ENGINEER'S CERTIFICATE

THIS MAP WAS PREPARED BY ME OR UNDER MY DIRECTION AND I HAVE CONDUCTED A FIELD SURVEY IN CONFORMANCE WITH THE PROVISIONS OF THE SURVEYORS' AND LAND ACT AND LOCAL ORDINANCES AND THE RECORDS OF RELEVANT RECORDS IN THE OFFICE OF THE COUNTY CLERK AND RECORDS DEPARTMENT, COUNTY OF SACRAMENTO, CALIFORNIA, AND I HEREBY CERTIFY THAT THIS MAP AND ANY INSTRUMENTS REFERRED TO THEREIN WERE PREPARED IN ACCORDANCE WITH THE PROVISIONS OF SAID ACT AND LOCAL ORDINANCES AND THE RECORDS OF RELEVANT RECORDS IN THE OFFICE OF THE COUNTY CLERK AND RECORDS DEPARTMENT, COUNTY OF SACRAMENTO, CALIFORNIA.



A. Clinton Hughes
Professional Engineer
No. 34869
State of California

COUNTY SURVEYOR'S CERTIFICATE

THIS MAP COMPLIES WITH THE REQUIREMENTS OF THE SURVEYORS' AND LAND ACT AND LOCAL ORDINANCES PASSED THEREUNDER.

CLARENCE S. HARRIS
County Surveyor
Sacramento, California

RECORDER'S CERTIFICATE

I HAVE THIS DAY OF DECEMBER 1944 AT 8:30 A.M. RECORDED THIS MAP AND INSTRUMENTS REFERRED TO THEREIN IN THE OFFICE OF THE COUNTY CLERK AND RECORDS DEPARTMENT, COUNTY OF SACRAMENTO, CALIFORNIA.

JOHN TOOLEY
County Clerk
Sacramento, California

BASIS OF BEARING

TRUE NORTH AS DETERMINED BY OBSERVATION OF THE SUN AT THE WEST END OF SECTION 24, T25N, R9E, S10M.

NOTES

1. A TRACT CONCERNING CORRECT MEASUREMENTS FOR THE ESTABLISHMENT OF THESE ANGLES AS FURTHER EXPLAINED IN PARAGRAPH 2 OF THE NOTES OF THIS PARCEL MAP IS FILED IN THE OFFICE OF THE COUNTY CLERK AND RECORDS DEPARTMENT, COUNTY OF SACRAMENTO, CALIFORNIA.
2. ALSO REFERRED TO AS PARCELS 1 AND 2 IN PARAGRAPH 1 OF THE NOTES OF THIS PARCEL MAP.
3. PUBLIC UTILITIES ARE LOCATED AS SHOWN ON THIS MAP AND THE ENGINEER'S FIELD NOTES AND INSTRUMENTS REFERRED TO THEREIN.
4. THIS MAP IS INTENDED TO PREPARE A B AND C FOR ROADWAY AND PUBLIC UTILITY PURPOSES.

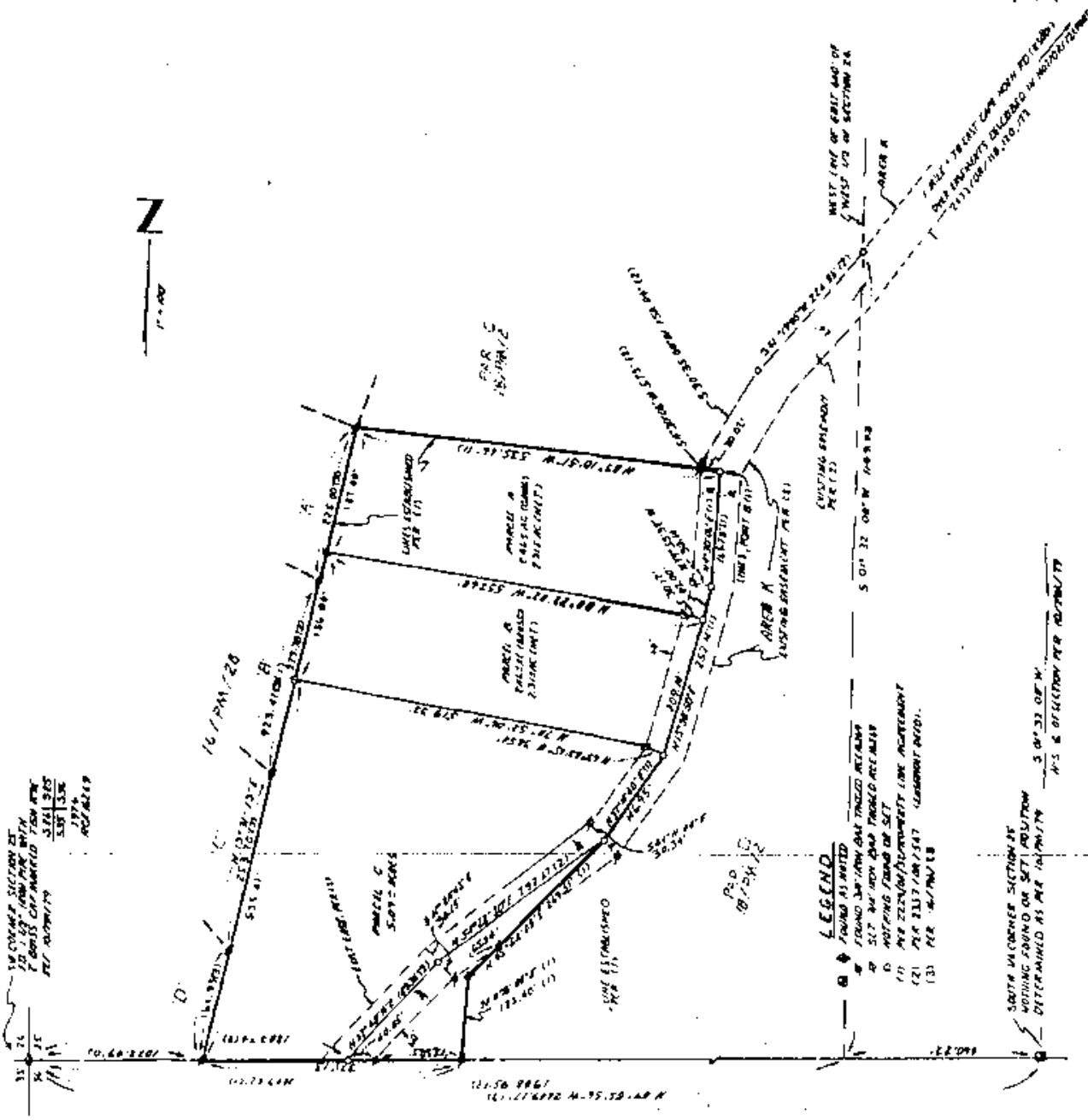
PARCEL MAP 75773

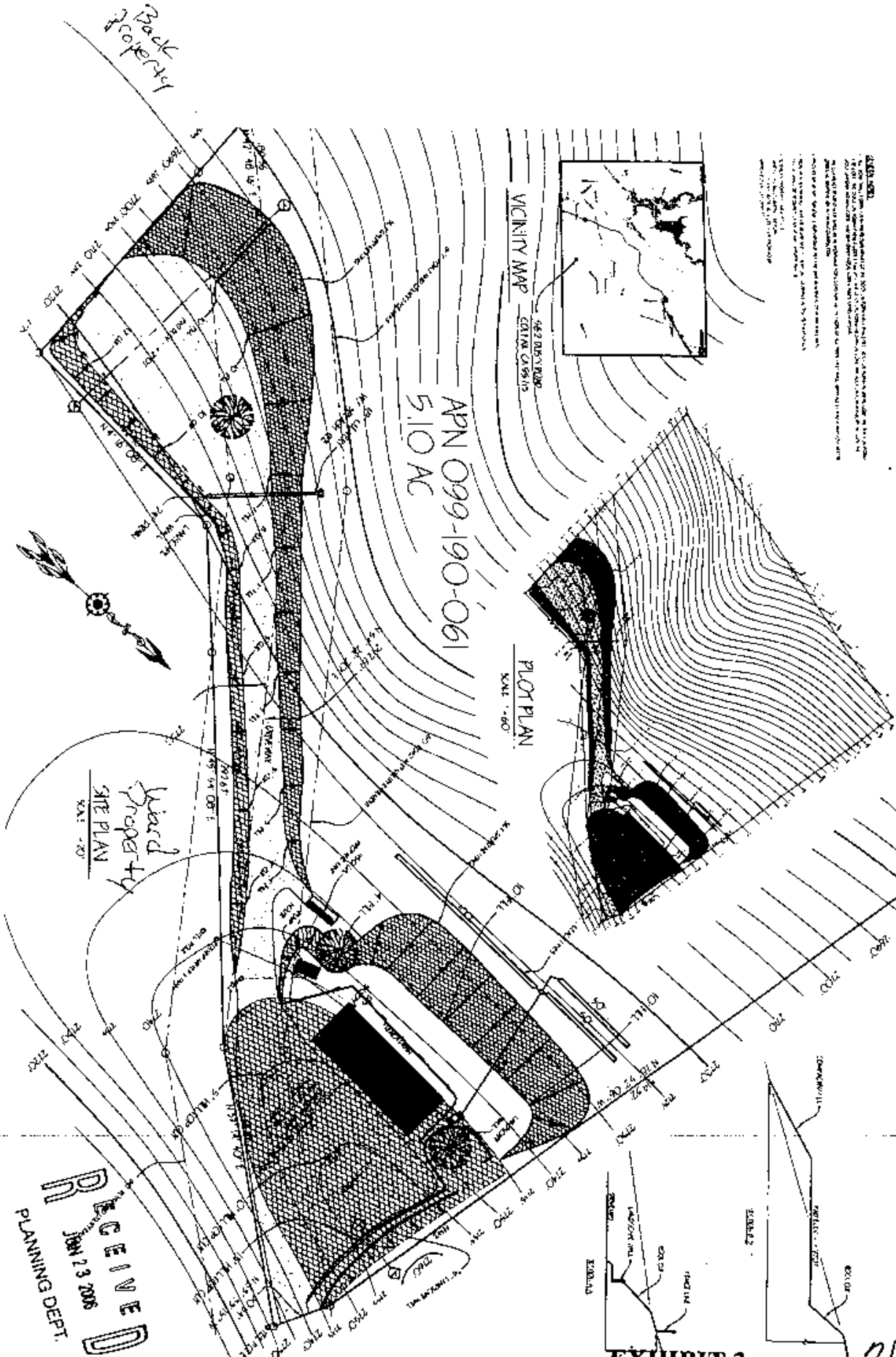
A PORTION OF THE SW 1/4 OF SECTION 25, T25N, R9E, S10M, PLACER CO., CALIFORNIA

APRIL 1940
SCALE: 1" = 100'

A. CLINTON HUGHES, C.E.
WEIMAR, CALIFORNIA

SKETCH 1071





NOTES

1. THIS PLAN IS THE PROPERTY OF PRECISION DESIGN, INC. AND IS NOT TO BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT THE WRITTEN PERMISSION OF PRECISION DESIGN, INC.

2. THIS PLAN IS TO BE USED ONLY FOR THE PROJECT AND SITE SPECIFICALLY IDENTIFIED HEREON. IT IS NOT TO BE USED FOR ANY OTHER PROJECT OR SITE.

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5. THIS PLAN IS NOT TO BE USED FOR ANY OTHER PURPOSES WITHOUT THE WRITTEN PERMISSION OF PRECISION DESIGN, INC.

DATE	0
SCALE	1" = 80'
PROJECT	AS-BUILT SITE PLAN
CLIENT	MARK GIARRITTA
DESIGNER	PRECISION DESIGN, INC.
CHECKED	
APPROVED	

AS-BUILT SITE PLAN
GIARRITTA RESIDENCE
MARK GIARRITTA, OWNER
1562 DUSTY ROAD
COLFAX, CA 95713

PRECISION DESIGN
Drafting, INC.
PHONE 925-624-6444 FAX 925-624-7170

EXHIBIT 3 219

