

December 7, 2015

**VIA EMAIL**

Board of Supervisors  
County of Santa Cruz  
701 Ocean St., Room 500  
Santa Cruz, CA 96050

**Re: Agenda Item No. 60 (December 8, 2015)  
Approval of Final Map for Tract 1561, Aptos Village Project**

Dear Chairperson Caput and Members of the Board:

This law firm represents We Are Aptos, a group of residents concerned about the Aptos Village Project. For the reasons set forth below, the Board must reject the approval of the Final Map for the subdivision because it does not substantially comply with the Tentative Map.

The Aptos Village Project was submitted and approved, and widely touted, as a “mixed-use commercial and residential development including 63 residential units and up to 75,000 square feet of commercial space.” (Board of Supervisors, Staff Report, September 25, 2012.) The project was sold to the public as a “smart growth” project that included commercial and residential use that was pedestrian friendly. However, the Final Map for the Aptos Village Subdivision (“Final Map”) fails to substantially comply with the Tentative Map’s blueprint for a mixed-use commercial and residential development. The Final Map newly designates two remainder parcels which were formally a combination of mixed-use commercial and residential lots and common area parcels under the Tentative Map. Moreover, many of the common areas appearing on the Tentative Map are not within the area covered by the Final Map. Finally, the promised Future County Park parcel is not even included within the Final Map.

Santa Cruz County Code section 14.01.209(2) requires the County Surveyor to submit a certificate for Final Maps stating: “The subdivision as shown is *substantially the same* as it appeared on the tentative map and any approved alterations thereof.” (emphasis added.) Even though the County Surveyor did in fact submit such a certificate for the Aptos Village Project Final Map, the facts demonstrate that the Final Map is *not* substantially the same as the Tentative Map. As such, the Board must disapprove the Final Map. County Code section 14.01.327. This is true under the Subdivision Map Act as well.

**I. The Final Map is Not Substantially the Same as the Tentative Map Because Several of the Common Areas Appearing on the Tentative Map Are Not Within the Area Covered by the Final Map.**

The California Attorney General's office has issued an opinion concerning the phrase "substantially the same," formerly codified in state law under section 11594 of the Business and Professions Code, now under Government Code section 66442(a)(2) and adopted verbatim in County Code section 14.01.209(2). The opinion states:

This requirement ["substantially the same"] raises the question of how much, if any, variation there can be between the two [tentative and final] maps. The phrase "substantially the same" has no precise connotation, but presents a case-to-case problem. *Central Manufacturing Dist. Inc. v. Board of Supervisors* (1960) 176 Cal.App.2d 850, 853. In the instance where the only variation between the two maps is of a geographical nature, and the improvements are not altered, no difficulty in such certification would be encountered.

67 Ops. Cal. Atty. Gen 239 (1974). The opinion goes on to discuss planned developments, directly applicable here:

What we have hereinabove said concerning improvements appearing on the tentative map but not on the final map applies with even greater force to the planned development. The common area facilities distinguish it from an ordinary subdivision. ***If some of the common areas appearing on the tentative map are not within the area covered by the final map, the character of the subdivision has been changed. It may no longer qualify as a planned development.***

*Id.* (emphasis added.) For the Aptos Village Project, this exact scenario presents itself. The Aptos Village Project is Planned Development approved by the Board. And yet, several of the common areas identified in the Tentative Map are no longer common areas under the Final Map:

- Tentative Map Parcel D (common area and public utilities easement) has been subsumed into Final Map Lot 9, for which no portion is designated as a common area; and,
- Tentative Map Parcel E (common area and public utilities easement) has been subsumed into Final Map Lot 8, for which no portion is designated as a common area.

Due to the fact that these common areas no longer exist as designated in the Tentative Map, the Board must deny the Final Map because it is NOT "substantially the same" as the Tentative Map. In addition, as will be discussed further below, Tentative Map Parcel B and Tentative Map Parcel C, both designated for commercial development and as common areas and public utilities easement sites, are now both designated as remainder parcels under the Final Map and are inconsistent with the Tentative Map. The public is losing critical common areas and public utility easements if the Board approves the Final Map.

**II. The Two Remainder Parcels in the Final Map Were Not Previously Designated as Remainder Parcels. Thus, the Final Map Fails to Substantially Conform to the Tentative Map.**

In the Tentative Map, Parcel B was designated with a common area and public utilities easement area of .85 acres, Parcel C was designated with a common area and public utilities easement area of .38 acres, and Parcels P&Q were designated with a common area and public utilities easement area of .17 acres. On these parcels, Lots 6 through 8, and 10 through 15, were each designated as mixed-use commercial and residential buildings. Under the Final Map, all of the aforementioned lots and parcels have been subsumed and rendered into two remainder parcels: North Portion Remainder and South Portion Remainder. In essence, designated common areas and *NINE* mixed use buildings have been deleted. With the designation of these parcels as “remainders,” the owners of those remainder parcels can come back with a different plan than what was approved under the Tentative Map. Government Code section 66424.6(a) provides that: “When a subdivision, as defined in Section 66424, is of a portion of any unit or units of improved or unimproved land, the subdivider may designate as a remainder that portion which is not divided for the purpose of sale, lease, or financing.” But, the remainders were not designated in the Tentative Map. The Planned Development was done to ensure that the project as a whole was approved with multiple public benefits and as an integrated plan. Those benefits are illusory if the Final Map is approved.

Under the Tentative Map, the character of the parcels and lots listed in the above paragraph were clear: they were to be common area and public utilities easement areas as well as mixed-use commercial and residential buildings. By doing away with the parcels and lots and replacing them as two remainder parcels, the Final Map alters the character of the approved parcels in such a way that the Final Map no longer substantially conforms to the Tentative Map. In fact, by changing the character of the parcels and lots into remainder parcels, the Final Map allows a substantial portion of the project to be set aside for an unknown future use. Government Code section 66424.6(d) provides that “[a] designated remainder or any omitted parcel may subsequently be sold without any further requirement of the filing of a parcel map or final map, but the local agency may require a certificate of compliance or conditional certificate of compliance.”

In other words, nine mixed-use buildings and four common area parcels may now be sold and developed without any further requirements associated with filing of final maps. The parcels and lots at issue were originally contemplated as part of the Aptos Village Planned Unit Development, which was pitched and approved under a master mixed-use commercial and residential development. To allow a significant portion of the project area to be rendered into remainder parcels violates the substantial conformance requirement for Final Maps. This is not permitted under the Subdivision Map Act or the County Code.

This Board must, under Government Code section 66473<sup>1</sup> and County Code section 14.01.327, disapprove the Aptos Village Project Final Map for lack of compliance. These material variations render the Final Map substantially different from the Tentative Map, and so this Board must disapprove the Final Map for the Aptos Village Project based on the aforementioned reasons.

**III. The Future County Park Parcel is Not Included Within the Final Map**

Finally, to add insult to injury, the “Future County Park” site that is on the Tentative Map, is wholly excluded from the Final Map, and is outside the boundaries of the Final Map. This Future County Park was billed as a community benefit. This essentially created yet another “remainder” parcel by not including it in the Final Map. Government Code section 66424.6(a) states that instead of designating a remainder in a map, “the subdivider may omit entirely that portion of any unit of improved or unimproved land which is not divided for the purpose of sale, lease, or financing.” That is essentially what the subdivider has done here. Nevertheless, the fact that the Future County Park parcel is not included in the subdivision is troubling at best. Thus, the Final Map must be disapproved.

Thank you for your consideration.

Very truly yours,  
WITWER PARKIN LLP



William P. Parkin

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<sup>1</sup> “A local agency *shall* disapprove a map for failure to meet or perform any of the requirements or conditions imposed by this division or local ordinance enacted pursuant thereto; provided that a final map shall be disapproved only for failure to meet or perform requirements or conditions which were applicable to the subdivision at the time of the approval of the tentative map; and provided further that such disapproval shall be accompanied by a finding identifying the requirements or conditions which have not been met or performed.” Gov’t Code § 66473 (emphasis added).