



County of Santa Cruz Board of Supervisors

Agenda Item Submittal

From: Community Development and Infrastructure

Subject: Public hearing to consider whether to take jurisdiction of appeal of the incompleteness determination on application 241450, a proposed minor land division and Coastal Development Permit

Meeting Date: May 6, 2025

Formal Title: Hold a jurisdictional hearing to consider whether to take jurisdiction of appeal of the incompleteness determination on Application 241450, a Minor Land Division and Coastal Development Permit to demolish an existing single family dwelling and construct three new dwellings on each of the newly formed parcels located at 22702 East Cliff Drive, Santa Cruz (Assessor Parcel Number 028-242-25), and take related actions

Recommended Actions

1. Hold a jurisdictional hearing to consider whether to take jurisdiction of appeal of the Planning Commission's action to uphold staff's incompleteness determination regarding Application 241450, a proposal to divide an approximately 16,200 square foot parcel into three parcels and construct a single-family dwelling on each of the newly created parcels at 22702 East Cliff Drive, Santa Cruz; and
2. Decline to take jurisdiction of the appeal of Application Number 241450.

Executive Summary

This item is a jurisdictional appeal hearing of the Planning Commission's February 12, 2025, action to uphold Planning staff's incompleteness determination regarding Application 241450, a proposal to divide an approximately 16,200 square foot parcel into three parcels and construct a single-family dwelling on each of the newly created parcels at 22702 East Cliff Drive, Santa Cruz.

The Planning Commission denied the appeal of Application 241450 and thereby upheld the incompleteness determination. The Commission concurred with the recommendation prepared by staff, based on non-compliance with the List of Required Information (LORI) which is a comprehensive list of application submittal requirements for staff to determine Completeness of all Discretionary applications. The Planning Commission further found that timely review of the application occurred, and the application was not deemed complete by operation of law pursuant to Government Code Section 65943.

On February 26, 2025, Nossaman LLP, representing the project Applicants, Matson Britton Architects and Alexander MacDonell, filed an appeal of the Planning Commission's action (see attached Letter of Appeal). Pursuant to SCCC Section 18.10.340, the Board of Supervisors must determine whether to accept jurisdiction and schedule a public hearing of the incompleteness determination appeal or allow the Planning Commission determination to stand. The Board also has the option of remanding the project back to the Planning Commission without taking jurisdiction. Staff have concluded that there are no substantive or procedural issues related to the Planning Commission's action, and it is recommended that the Board not take jurisdiction of the appeal.

The Board may take jurisdiction if at least one of the grounds given in SCCC 18.10.340(C)

is met. The jurisdictional process places the burden of proof on the appellant to convince the Board that jurisdiction should be taken with respect to one or more of the jurisdictional criteria. Based on the Planning Commission having considered the complete record of the project at a duly noticed hearing, staff believe there is not adequate cause to support an appeal hearing before the Board.

Discussion

Background

On November 25, 2024, an appointment was scheduled for submittal of an electronic application through the Planning Department's ePortal for consideration of the above application. On November 25, 2025, the applicant uploaded project plans and supporting documentation into the ePortal. On November 26, 2024, Planning staff created a formal application for review of the proposed project and notified the applicant of the appropriate fees due for review of the application.

On December 3, 2024, the County of Santa Cruz Planning Department received payment of applicable application fees and accepted the above referenced application. Once Planning staff receive an application, including requisite fees, staff can begin its 30-day completeness review. (See County Code §§18.10.210 and 18.10.210, and Government Code §65943.) To review an application for a development permit before fees are received would be an unlawful gift of public funds. (Cal. Const. art. XVI, §6.)

Because the requisite application fees were paid on December 3, 2024, an initial determination regarding the completeness of the subject application was required to be rendered no later than January 2, 2025, 30 days from receipt of payment.

In a letter dated December 27, 2024, Planning staff summarized the initial review of the proposed project and informed the applicant of specific information necessary for the application to be deemed complete for further processing.

On January 9, 2025, an appeal of the County's completeness determination was submitted by the applicants representative John Flynn of Nossaman LLP. Primary concerns raised in the letter assert the County violated the Permit Streamlining Act by failing to accept the application and subsequently requesting information not relevant to the project.

On February 12, 2025, the Planning Commission denied the Appellant's appeal of the staff incompleteness determination (Attachment c).

On February 26, 2025, an appeal of the Planning Commission's denial of the appeal was submitted by the applicant's representative John Flynn of Nossaman LLP (Attachment a).

Analysis

The staff report prepared for the February 12, 2025, Planning Commission meeting (Attachment d) provides analysis and the basis for denial of the applicant's appeal and support of staff's determination regarding the completeness of the application.

In response to the Planning Commission's action to deny the applicant's appeal, the applicant continues to raise the following issues:

"...the County did not send a timely incomplete letter. The County did not send any communication that the application was incomplete until after the 30-day period had passed."

The applicant's assertion that Planning staff failed to render a timely determination regarding completeness of the application is factually inaccurate. Under the Housing Accountability Act, upon receipt of an application for a development project, a public agency has 30 days to determine in writing whether the application is complete. (Gov. Code §65943(a).) Pursuant to Santa Cruz County Code Section 18.10.212 the effective time of filing a permit application is the time when all required information has been submitted and all prescribed fees paid. In other words, the County does not "receive" an application, and cannot begin its completeness review, until the applicant has paid its application fee.

As discussed in the attached staff report to the Planning Commission, the 30-day review of application 241450 began upon payment of application fees on December 3, 2024 and ended January 2, 2025. As noted above and specified in the staff letter dated December 27, 2024, Planning staff's initial review of the application determined the project to be incomplete prior to the expiration of the 30-day review period. Therefore, the County *did* communicate in a timely manner that the application was incomplete.

"In addition to the above, this appeal is based on a request for a waiver of certain LORI requirements...these LORI requirements are simply irrelevant to the development project..."

Government Code Section 65940 requires local agencies to compile a list to identify in detail the information required from an applicant for a development project. Santa Cruz County Code Section 18.10.210 references the detailed list of required information ("LORI"), the contents of which shall be included in all Discretionary applications. The items identified as incomplete in the Planning staff letter dated December 27, 2024 reference only information contained in the LORI as required by County Code. The requirements contained in the staff letter have been determined necessary in order to properly evaluate the proposed development in for compliance with applicable Codes and Policies including County Code and the General Plan/Local Coastal Program.

The Planning Commission upheld Planning staff's determination and provided no waiver from the requirements contained in the "LORI".

"...the Permit Streamlining Act requires a final written determination regarding this administrative appeal in this matter must be made no later than March 10, 2025, which is 60 calendar days after the receipt of the MacDonell's initial written appeal."

In a letter dated March 6, 2025, Planning staff provided the applicant with a Final Determination regarding the appeal of application 241450 (Attachment b). This letter memorializes the Planning Commission's action to deny the appeal meeting the requirement to provide a final written determination by the agency on the appeal within 60 days of receipt of the written appeal. (Gov. Code § 65943(c).) Under Government Code Section 65943, the County shall provide that the right of appeal is to the governing body or, at their option, the Planning Commission, or both. Pursuant to SCCC 18.10.320(A)(1), the County provides the right of appeal of a staff determination of application completeness to the Planning Commission.

Basis For Taking Jurisdiction

Pursuant to SCCC 18.10.340(C), in deciding whether to take jurisdiction of an appeal and

grant further review, the Board of Supervisors must determine that one or more of the grounds for taking jurisdiction specified in the County Code exist. If the Board finds that an appellant has established sufficient grounds for the Board to take jurisdiction, the Board may grant a public hearing limited to the record of the entire proceedings or may decide to conduct the proceedings as if no other hearing had been held (a 'de novo' public hearing). If the Board does not find sufficient grounds to take jurisdiction, the Board should decline to schedule a hearing and the Planning Commission action to deny the appeal of application 241450 will become final.

The grounds specified in County Code for taking jurisdiction of appeals and Planning staff's analysis follow:

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

No supporting evidence for an error or abuse of discretion has been provided by the Appellant. The Planning Commission has the authority to approve or deny a project based on the full record. The Commission's action on the appeal of Application 241450 is supported by the facts pertaining to the project application, including Planning Commission staff report, and public correspondence.

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

No supporting evidence for lack of a fair or impartial hearing has been provided by the Appellants.

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

The Planning Commission considered the facts presented at its meeting, including staff report; staff presentations; and testimony by the public, design and engineering professionals and applicant's representative.

As noted in the staff report to the Planning Commission, the Applicant failed to provide the necessary application requirements in order for staff to properly evaluate the proposed project and deem the application complete for further processing. Further, Planning staff provided a timely determination regarding the completeness of the application based on the date the applicant paid the requisite application fees. The decision to deny the appeal by the Planning Commission is based, in part, on the information provided to the applicant in a letter prepared by Planning staff dated December 27, 2027.

As supported by the Completeness Letter in the Staff Report to the Planning Commission (Attachment b) the Applicant's assertion that Planning staff failed to render a completeness determination within the required 30 days upon submission of the application is factually inaccurate.

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

No new evidence relevant to the decision has been presented by the Appellant.

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

hearing before the Board is necessary.

No error or abuse of discretion has been documented. The Appellant's provided no factual support that the Planning Commission made an unjustified or inappropriate determination in denying the appeal.

Conclusion

The jurisdictional process places the burden of proof on the appellant to convince the Board of Supervisors that jurisdiction should be taken with respect to one or more of the jurisdictional criteria enumerated in Chapter 18.10.340(C) of the County Code. The Planning Commission fully considered the evidentiary testimony. Based on the Appellants' letter and administrative record for Application 241450, staff believes the Appellant has not shown that there are grounds to support an appeal hearing before the Board. Therefore, staff recommend that the Board not take jurisdiction of Application 241450.

Financial Impact

This is a private development proposal and will not result in public financial and/or budgetary impacts.

Strategic Initiatives

N/A

Submitted By:

Matt Machado, Deputy CEO / Director of Community Development and Infrastructure

Recommended By:

Carlos J. Palacios, County Executive Officer

Artificial Intelligence Acknowledgment:

Artificial Intelligence (AI) did not significantly contribute to the development of this agenda item.