

BEFORE THE BOARD OF SUPERVISORS OF THE COUNTY OF SAN BENITO

Resolution 2022-____

A RESOLUTION OF THE SAN BENITO COUNTY BOARD OF SUPERVISORS ADDRESSING THE DENIAL BY THE COUNTY PLANNING COMMISSION OF COUNTY PLANNING FILE PLN210043, FOLLOWED BY A SUBSEQUENT APPEAL BY THE PROJECT APPLICANT, BY APPROVING THE SAID PROJECT TO ALLOW NO MORE THAN TWO TEMPORARY MOBILE HOMES ON THE SUBJECT PROPERTY.

WHEREAS, the subject parcel is located at 1740 Santa Ana Road, east of the northern end of Prater Way, approximately 2,000 feet north of Santa Ana Road, and 2 miles east-northeast of Downtown Hollister in San Benito County, California (Assessor's Parcel 019-220-068) and is 7.124 acres in area (net); and

WHEREAS, the said property currently has a General Plan land use designation of Residential Rural (RR) and a zoning designation of Rural Residential (RR); and

WHEREAS, Rocio B. Veliz-Torres (applicant) has filed an application to obtain a temporary use permit for installing three temporary mobile homes per San Benito County Code §25.25.003(E)(2), each unit 1,796 square feet with three bedrooms and two baths, for a three-year period, to be installed on existing grade on the 7.124-acre property for housing of agricultural workers and their families; and

WHEREAS, the three temporary dwellings (illustrated in **Exhibit C**) would have directed stormwater runoff to three new detention ponds each 640 square feet in surface, would have received water from an existing connection to Sunnyslope County Water District water service, and would each have used a newly installed septic system; and

WHEREAS, the said workers are presently under employment by the property owner for existing, primarily on-site agricultural work; and

WHEREAS, the said property currently contains one residence, existing agriculture including seasonally rotating crops, and non-habitable accessory buildings associated with current residents and with current agriculture; and

WHEREAS, a temporary use permit approved under County Code §25.25.003 may be renewed twice at maximum with removal required upon final term's termination per County Code §25.25.003(B); and

WHEREAS, County staff received the proposal as County Planning file PLN210043 and distributed this plan to responsible County and peer agencies for review and comment; and

WHEREAS, the Planning Commission of the County of San Benito held a duly noticed public hearing at its regularly scheduled meeting of February 16, 2022, on which date the Planning Commission heard and received all oral and written testimony and evidence that was made, presented, or filed, and all persons present at the hearing was given ample opportunity to hear and be heard with respect to any matter related to the project; and

WHEREAS, the Planning Commission hearing was publicly noticed over 10 days in advance of the hearing by publication in the February 4, 2022, Hollister *Free Lance* newspaper; mailing to owners of

property within 300 feet of the subject property's boundaries: and posting in publicly accessible locations at County offices; and

WHEREAS, at the conclusion of the public testimony, the Planning Commission closed its public hearing, deliberated, considered the merits of the proposal and evidence in the record, and denied the applicant's request for an application to obtain a temporary use permit; and

WHEREAS, within the time and manner prescribed by law, the applicant ("appellant") filed an appeal to the Board of Supervisors to contest the Planning Commission's February 16, 2022, decision; and

WHEREAS, the appellant objects to the said decision by claiming application compliance with applicable County Code provisions and County General Plan policy, applicant agreement to conditions of approval as drafted by County staff, and a lack of clarity by the Planning Commission in its rationale for the said decision; and

WHEREAS, the administrative record was forwarded and made available to the Board of Supervisors, including but not limited to the staff report, relevant communications, and any other relevant documents in the County Resource Management Agency Planning files regarding the project; and

WHEREAS, the Board of Supervisors on April 26, 2022, conducted a duly noticed public hearing regarding the appeal of the Planning Commission decision of February 16, 2022, and at the hearing the Board heard and received all oral and written testimony and evidence that was made, presented, or filed, and all persons present at the hearing were given an opportunity to hear and be heard with respect to any matter related to the appeal; and

WHEREAS, the Board of Supervisors hearing was publicly noticed over 10 days in advance of the hearing by publication in the April 15, 2022, Hollister *Free Lance* newspaper; mailing to owners of property within 300 feet of the subject property's boundaries: and posting in publicly accessible locations at County offices; and

WHEREAS, at the conclusion of the public testimony, the Board of Supervisors closed its public hearing, deliberated, and considered the merits of the appeal; and

WHEREAS, the Board of Supervisors chose to continue this item to the date certain of May 10, 2022, in a motion that further directed that the Board be presented with options, based on discussion with the project applicant and with neighboring parties, of allowing one temporary mobile home and of allowing two temporary mobile homes, each case to involve a three-year minimum term with potential for renewal up to a cumulative nine-year maximum according to the aforementioned code section, with the additional direction by the motion that, separately, the project applicant and other Prater Way owners hold a discussion on improvement of the Prater Way road condition and property addressing, with results of that discussion to be present to the Board; and

WHEREAS, the Board of Supervisors on May 10, 2022, conducted its continued public hearing regarding this project, and at the hearing the Board heard and received all oral and written testimony and evidence that was made, presented, or filed;

NOW THEREFORE BE IT RESOLVED that, based on the evidence in the record, the Board of Supervisors of the County of San Benito hereby finds as stated in **Exhibit A**.

BE IT FURTHER RESOLVED by the Board of Supervisors that, based on the evidence presented for appeal before the Board of Supervisors, on the findings and determinations by the Planning Commission and the Board of Supervisors, and on the entire record of these proceedings, the Board further finds the following regarding the issues raised by the appellant:

1. On the applicant's assertion that the "project as proposed complies with County ordinances, General Plan and Zoning":
 - **Response:** Under County Code §25.25.003, temporary mobile homes may be placed on a property in limited situations including housing full-time agricultural employees as proposed in the present application. Please see **Exhibit A** for comprehensive information on the application's consistency with the County General Plan, including multiple policies on the economic viability of agriculture and the housing of "special needs" groups such as farmworkers.
2. On the applicant's assertion that the "applicant agreed to all Conditions of Approval, including ones added by staff the night of the PC meeting":
 - **Response:** County Resource Management Agency Planning staff acknowledges that the applicant expressed acceptance of the conditions of approval that staff presented to Planning Commission and of which staff recommended adoption.
3. On the applicant's assertion that "[n]o reason was given for denial, and the questions/possible alternate conditions by Commissioners were unclear and confusing."
 - **Response:** At the February 16, 2022, regular meeting of the Planning Commission, as illustrated in the adopted minutes of said meeting, the Planning Commission moved to deny the application without first moving to continue the item to a later date, without supporting the application denial with specific evidence such as that which would demonstrate that the conditional use permit findings of County Code §25.43.004 cannot be established, and without requesting of Planning staff a draft of a formal resolution, if adopted, that would officially make said findings.

BE IT FURTHER RESOLVED by the Board of Supervisors of the County of San Benito that, based on the foregoing findings and evidence in the record, the Board of Supervisors hereby acknowledges the appellant's request to reverse the denial by the Planning Commission of the applicant's application and hereby approves the temporary use permit to allow a **maximum of two temporary mobile homes**, accompanied by at most one septic system and one detention pond per mobile home, on the project site subject to the conditions of approval found in **Exhibit B** and as illustrated in **Exhibit C**.

PASSED AND ADOPTED BY THE BOARD OF SUPERVISORS OF THE COUNTY OF SAN BENITO THIS 10TH DAY OF MAY 2022 BY THE FOLLOWING VOTE:

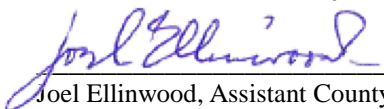
AYES Supervisor(s):
NOES Supervisor(s):
ABSENT Supervisor(s):
ABSTAIN Supervisor(s):

By: _____
Bea Gonzales, Chair of the Board of Supervisors

ATTEST:

APPROVED AS TO LEGAL FORM
Barbara J. Thompson, County Counsel

By: _____
Jennifer Frechette, Clerk of the Board of Supervisors

By:  _____
Joel Ellinwood, Assistant County Counsel

Date: _____

Date: May 10, 2022

Exhibit A to Resolution

Findings

California Environmental Quality Act (CEQA) Finding

Finding: Pursuant to San Benito County Local Guidelines for the California Environmental Quality Act, this project qualifies for an exemption from CEQA under State CEQA Guidelines Class 3 of Categorical Exemptions (California Code of Regulations §15303, New Construction or Conversion of Small Structures).

Evidence: *The project would install two temporarily-placed mobile homes to house full-time agricultural employees, permissible in the site's zoning district when considered under a temporary use permit as requested by this application. The proposed structure constitutes a smaller extent of change than the examples specified and granted CEQA exemption in the aforementioned State CEQA Guidelines section. Conditions of project approval found in Exhibit B, including standard practices and regulations, would control environmental effects and prevent any impacts that could be found significant. These conditions address cultural resources, noise, stormwater runoff, erosion, fire hazard, wastewater disposal, and hazardous materials. In addition:*

- The project site is located on and adjacent to agriculture, and this agricultural housing would complement that land use.*
- As the housing is temporary, all of the subject property other than the pond areas would remain available for long-term agriculture.*
- By allowing employees to reside at the farming site, the temporary housing has potential to reduce worker transportation along Prater Way and Santa Ana Road.*
- The site is not mapped as having high cultural and archaeological sensitivity.*
- The project site is not located along a designated scenic highway, on or near a hazardous-waste site, or among similar built land uses that through accumulation would create a significant environmental effect.*
- The site has not been identified as having environmental properties requiring special attention.*
- More intensive use of the property would potentially require further discretionary review by the County.*

Temporary Use Permit Findings

Finding 1: That the proposed use is properly located in relation to the General Plan, and the community as a whole and to other land uses, transportation, and service facilities in the vicinity.

Evidence: *Conditions of approval have been included for this project to manage impacts to the health, safety, and welfare of the surrounding residents. In addition, the project can be found consistent with the County General Plan:*

- Policy HOU-1H (regarding housing development for special needs groups). Approval of the temporary housing would serve “the needs of special needs groups including ... farm workers”*
- Policy HOU-2A (regarding encouragement of construction of a variety of affordable housing types). The temporary mobile homes would accommodate farmworkers, an underserved, lower-income population identified by the General Plan as a “special needs” group.*
- Policy HOU-2B (regarding providing housing for all income groups). The project application's identified farmworkers and their families are part of a lower-income group underserved by current local housing availability.*

- *Policy HOU-2S (regarding support for efforts to provide farmworker housing). The proposal is farmworker housing encouraged by the policy.*
- *Policy HOU-4E (regarding addressing housing needs of special groups). The identified farmworkers and their families are members of “special groups” as described by the policy.*
- *Policy LU-3.1 (Agricultural Diversification). The policy instructs that the County “support existing farms, vineyards, and other agricultural operations.”*
- *Policy LU-3.2 (Agricultural Integrity and Flexibility). The County is expected to “provide for flexibility and economic viability of farming and ranching operations.”*
- *Policy LU-3.6 (Agricultural Support Services). The policy “encourage[s] services ... to provide support for the economic viability of commercial agriculture.” Agricultural labor including the on-site residents support the site’s economic viability as agriculture.*
- *Policy LU-4.1 (Housing Stock Diversity). The temporary labor housing provides a housing type and location accommodating an underserved socioeconomic group.*
- *Policy AD-1.2 (Reducing Disproportionate Land Use Decisions). The housing would allow the application’s identified farmworkers and their families, as residents of an underserved lower-income population infrequently addressed in San Benito County use permits and housing proposals, to “live in a clean, healthy, and sustainable community.”*
- *Policy NCR-4.5 (Groundwater Recharge) and Policy NCR-4.7 (Best Management Practices). The temporary units would direct stormwater to swales that would approximate the recharge and off-site flow that would naturally occur.*
- *Policy NCR-7.12 (Archaeological Artifacts). While the project site is understood to have low sensitivity for cultural resources, compliance with standard procedures included in conditions of project approval would address potential for disturbance of any such resources.*
- *Policy NCR-9.1 (Light Pollution Reduction). A condition of approval requires compliance with exterior lighting limits under the Zone II regulations of County Code Chapter 19.31.*
- *The General Plan Land Use Element designation for the site is Residential Rural (RR). Although the district is intended for “areas of the county that are generally unsuitable for productive agriculture,” the situations of agricultural unsuitability described by the plan are more illustrative of agricultural unviability than land-use conflict. The subject property is presented by the applicant as viable agriculture, and the site also abuts not only residential lands greater than one acre but also other agricultural land.*

Finding 2: That the proposed use, if it complies with the conditions upon which approval is made contingent, will not adversely affect other properties in the vicinity or cause any damage, hazard, or nuisance to persons or property.

Evidence: County departments and responsible agencies have reviewed the application and recommended conditions of project approval to address possible effects on the vicinity and the overall County general public and to prevent hazard or nuisance to persons and property. The mobile homes’ installation would serve the existing use of the property. Planning staff has received public comment expressing concern of potential adverse effects to result from the project; these points are answered in Planning staff’s February 16, 2022, report to the Planning Commission, with said report incorporated herein by reference and portions of said concern addressed by conditions of approval. Activity beyond the scope of the proposed use as approved by the County shall require further permit review.

Exhibit B to Resolution

Conditions of Approval

Planning:

1. **Indemnification:** APPLICANT shall defend, indemnify, and hold San Benito County, its agents, officers, and/or employees (hereinafter “COUNTY”) free and harmless from any and all suits, fees, claims, demands, causes of action, proceedings (hereinafter collectively referred to as “Legal Action”), costs, losses, damages, liabilities and expenses (including, but not limited to, an award of attorneys’ fees, expert witness fees, and court costs) incurred by COUNTY arising (directly or indirectly) or resulting from the review, processing, consideration, or approval of APPLICANT’S Project or action taken by COUNTY thereon, including Legal Actions based on the negligence of COUNTY. APPLICANT will reimburse COUNTY for any damages, costs, or fees awarded pursuant to any settlement, default judgment, or other judgment taken against the County, whether the result of Applicant’s decision not to defend Legal Action or otherwise. COUNTY retains its discretion to direct counsel regarding whether to defend, settle, appeal, or take other action regarding any Legal Action. APPLICANT shall defend COUNTY’S actions with competent legal counsel of APPLICANT’S choice without charge to COUNTY, subject to COUNTY approval, which shall not be unreasonably withheld. Nothing contained in the foregoing, however, shall be construed to limit the discretion of COUNTY, in the interest of the public welfare, to settle, defend, or appeal, or to decline settlement or to terminate or forego defense or appeal of a Legal Action. Furthermore, in no event shall COUNTY have any obligation or liability to APPLICANT in connection with COUNTY’S defense or prosecution of litigation related to the Project (including, but not limited to, the outcome thereof) or in the event COUNTY elects not to prosecute a case or defend litigation brought against it. If either COUNTY or APPLICANT determines in good faith that common counsel presents a bona fide conflict of interest, then COUNTY may employ separate counsel to represent or defend the COUNTY, and APPLICANT shall pay the reasonable attorneys’ fees and costs of such counsel within thirty (30) days of receiving an itemized billing statement or statements. [Planning]
2. **Successors in Interest:** The conditions of approval are binding on all successors in interest of Applicant, whether succession is by agreement, operation of law, or other means, including but not limited to all future owners utilizing this use permit. [Planning]
3. **Conformity with Plan:** The development and use of the site shall conform substantially to the proposed project description, site plan as illustrated in **Exhibit C** except as limited herein to a maximum two temporary mobile homes, and conditions of approval as approved by the Planning Commission. Any increase in the nature or intensity of land use on the site beyond that already analyzed shall be subject to further Planning review and approval. Approved plans and specifications shall not be changed, modified or altered without written authorization from the Resource Management Agency. All work shall be in accordance with the approved plans and with San Benito County Code. [Planning]
4. **Compliance Documentation:** Prior to any approved use permit activity, the applicant shall submit a summary response in writing to these conditions of approval documenting compliance with each condition, including dates of compliance and referencing documents or other evidence of compliance. [Planning]
5. **Permit Renewal:** The permit shall be issued for a period not to exceed three years, by which time, if the applicant desires a renewal of the temporary use permit, the applicant shall obtain the Planning

Commission's approval of the renewal of the original temporary use permit. The temporary use permit shall automatically terminate upon the expiration of the third three-year term, by which time the applicant shall remove the temporary housing for the subject premises. [Planning]

- a. The permit shall be prohibited from renewal to a term extending beyond **February 16, 2031**.
6. **Removal Guarantee:** Prior to obtaining an installation permit, a one-thousand-dollar surety deposit shall be posted to guarantee removal. The applicant shall remove any temporary housing authorized by this approval within sixty (60) days after the circumstances for which it was originally permitted no longer exist or after the permit expires. Prior to removal, the applicant shall notify the Resource Management Agency Planning staff in writing of the proposed removal. If removal has not been completed by the property owner within the allowed time, the bond will be forfeited and the mobile home will be removed without prior notification by the County. [Planning]
7. **Declaration of Deed Restriction:** The property owner shall file a Declaration of Permit Restriction with the County Recorder. This Declaration shall incorporate the restrictions set forth in County Code Chapter 25.25 and any additional conditions placed on the use permit. [Planning]
8. **Occupancy by Agricultural Employees:** The permit issued through this approval shall apply to the need for temporary housing for on-site bona fide agricultural workers identified in the original application or any subsequent bona fide agricultural workers each employed 40 hours per week by the property owner or the property owner's lessees. The applicant shall maintain with Resource Management Agency Planning staff a record of the identity of the agricultural employees and evidence of the type of services performed by the agricultural employees employed on a full-time basis exclusively by the property owner or the property owner's lessee. The applicant shall annually submit to Resource Management Agency Planning staff said record and evidence. [Planning]
9. **Cultural Resources:** A note shall be placed on the project improvement plan to state that that any property owner who, at any time in the preparation for or process of excavation or otherwise disturbing the ground, discovers any human remains of any age, or any significant archaeological artifact or other evidence of an archeological site shall
 - a. cease and desist from further excavation and disturbances within two hundred feet of the discovery or in any nearby area reasonably suspected to overlie adjacent remains;
 - b. arrange for staking completely around the area of discovery by visible stakes no more than ten feet apart, forming a circle having a radius of no less than one hundred feet from the point of discovery, provided that such staking need not take place on adjoining property unless the owner of the adjoining property authorizes such staking and that said staking not include flags or other devices which may attract vandals;
 - c. notify the County Sheriff-Coroner and County Resource Management Agency of the discovery if human and/or questionable remains have been discovered; and
 - d. grant, subject to due legal process, to all duly authorized representatives of the Coroner and the Resource Management Agency permission to enter onto the property and to take all actions consistent with Chapter 19.05 of San Benito County Code, with State Health and Human Safety Code §7050.5, and with State Government Code Title 3 Division 2 Part 3 Chapter 10 (§27460 *et seq.*). [Planning]
10. **Construction Noise:** A note shall be placed on the project improvement plan to state that construction on the project site, in accordance with County Code §25.37.035 and County Code Chapter 19.39, shall be limited to the hours of 7 a.m. to 7 p.m. Monday through Saturday, with no construction activities allowed on Sundays and holidays. [Planning]

11. **Outdoor Lighting:** All development is required to comply with the Zone II regulations set within County Ordinance 748. Prior to issuance of a building permit for development on the site, the applicant shall provide details for all outdoor lighting to the building official for review and approval. [Building]
12. **Property Address:** In recognition of the subject property's approximately 1,700-foot distance from Santa Ana Road, the applicant/owner shall change the official property address to reflect its location along Prater Way by applying for a new address, subject to review and approval by the San Benito County Communications Department. [Planning, Public Works]
13. **Notice of Exemption (Fish & Game Fees):** The applicant/owner shall be required to file a Notice of Exemption for the project. The notice shall be provided by the County Planning Department and filed with the County Clerk within five (5) days of approval of the project. An administrative fee of \$50.⁰⁰ shall be submitted to the Resource Management Agency for the filing of the notice. [Planning/CDFW]

Public Works:

14. **Drainage:** The applicant shall be required to comply with County Drainage and Erosion Control standards and therefore shall construct the proposed ponds and implement drainage and erosion control mitigation measures per plans submitted for the project. The applicant shall also implement erosion control best-management practices during construction operations to mitigate storm water runoff and to avoid contamination to natural drainage easements, creeks and/or waterways. [Public Works]

Fire:

15. **Fire Protection:** The project shall meet the standards set forth in the latest adopted editions of the California Fire Code, California Building Code, San Benito County Ordinances 822 and 823, Public Resources Codes 4290 and 4291 and all other related codes as they apply to a project of this type and size. The project shall include the following:
 - a. 13d sprinkler system required, with water storage and fire hydrant served by the subject property's Sunnyslope County Water District water connection. Maintain one tank for every 3,000 square feet of floor area. Install one wharf fire hydrant within 50 to 100 feet of residence. Maintain 100 feet of defensible space (weeds mowed down).
 - b. All driveways shall provide a minimum 12-foot traffic lane and unobstructed vertical clearance of 15 feet along its entire length. Driveways exceeding 150 feet in length, but less than 800 feet in length, shall provide a turnout near the midpoint of the driveway. Where the driveway exceeds 800 feet, turnouts shall be provided no more than 400 feet apart. The roadway surface shall provide unobstructed access to conventional drive vehicles, including sedans and fire engines. Surfaces should be established in conformance with local ordinances and be capable of supporting an HS-20 and alternate load. A minimum six-inch aggregate base shall be used as a minimum standard where paving is not required. Roadside vegetation contributing to significant risk shall be removed for a distance of 10 feet on each side of the traveled section, where required by the fire protection agency.
 - c. Gate entrances shall be at least two feet wider than the width of the traffic lane(s) serving that gate. All gates providing access from a road to a driveway shall be located at least 30 feet from the roadway and shall open to allow a vehicle to stop without obstructing traffic on that road. Install knox-keys with a knox-lock on gate or utilize knox-key switch for automatic gate.

- d. To protect escape routes from radiant heat caused by wildfires, native vegetation should be thinned and dead material removed on each side of roads or highways. This may reduce radiant heat from a wildfire to an acceptable level.
- e. Update address markings to be visible and larger.

Division of Environmental Health:

- 16. **Sewage Disposal:** The proposed septic systems for the project are considered commercial systems and have been designed by a licensed Engineer. A soils profile will be required to determine feasibility for installation of a septic system. Additional soils testing may be required pending results of the soil profile. The owner shall contact the County Division of Environmental Health to set an appointment to conduct this study. The owner shall complete the application for installation of a septic system and pay all fees. [Environmental Health]
 - a. Food crops shall not be grown within 30 feet of a septic tank and its leachlines.
 - b. Each temporary mobile home shall observe the required setbacks of 5 feet from the septic tank and 10 feet from the leachfield.
- 17. **Hazardous Materials:** If any hazardous materials are to be stored on the site of the proposed project, a Hazardous Materials Business Plan shall be completed and submitted to the County Division of Environmental Health. [Environmental Health]
- 18. **Agreement with All Conditions of Approval:** Prior to or upon approval by the Planning Commission, Applicant shall sign the statement below certifying that Applicant is in agreement with all conditions of approval. [Planning]

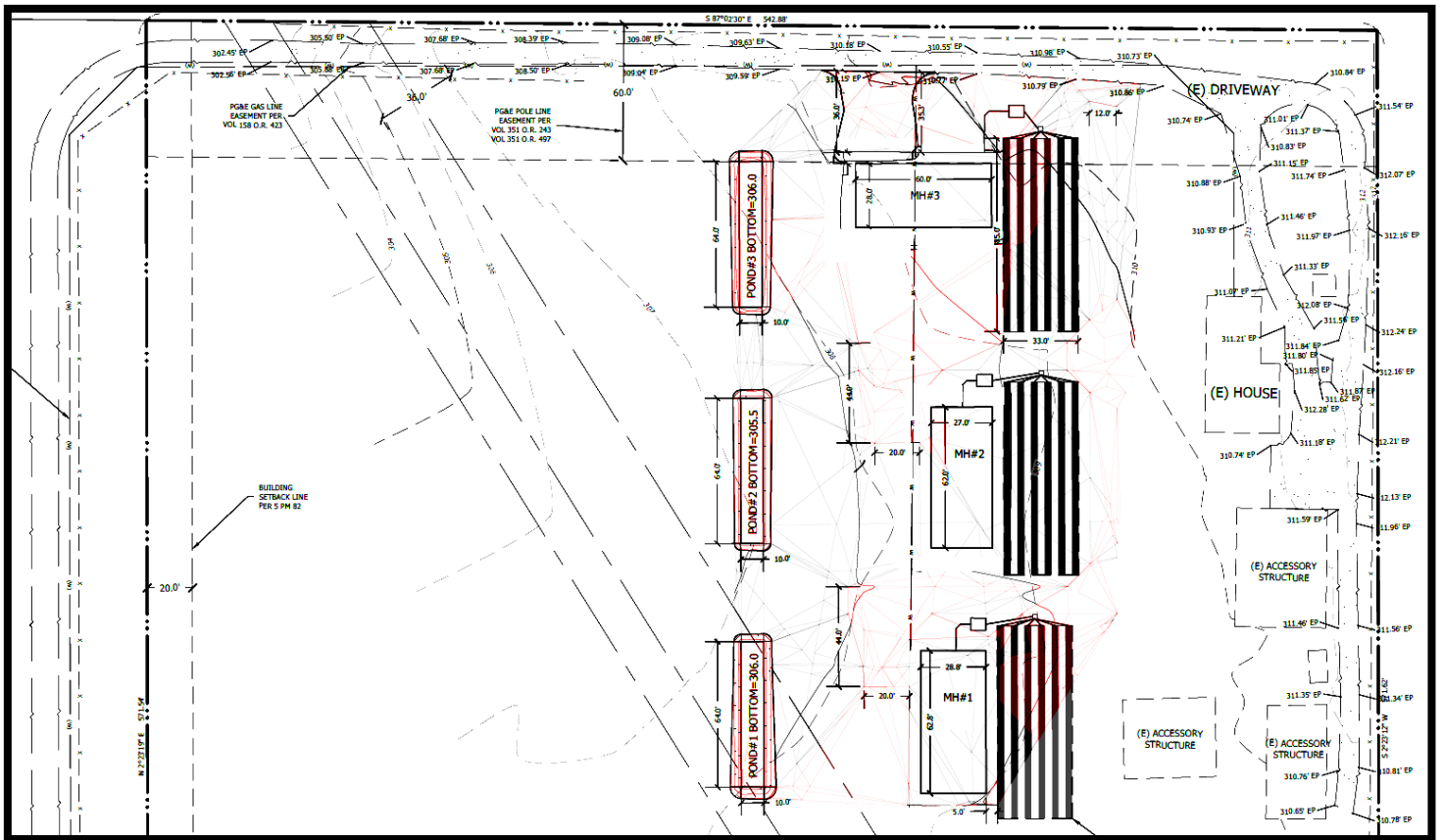
I certify that I understand and agree to comply with all Conditions of Approval imposed by the Planning Commission, or Board of Supervisors as applicable, on this Permit.

Applicant Signature: _____

Date: _____

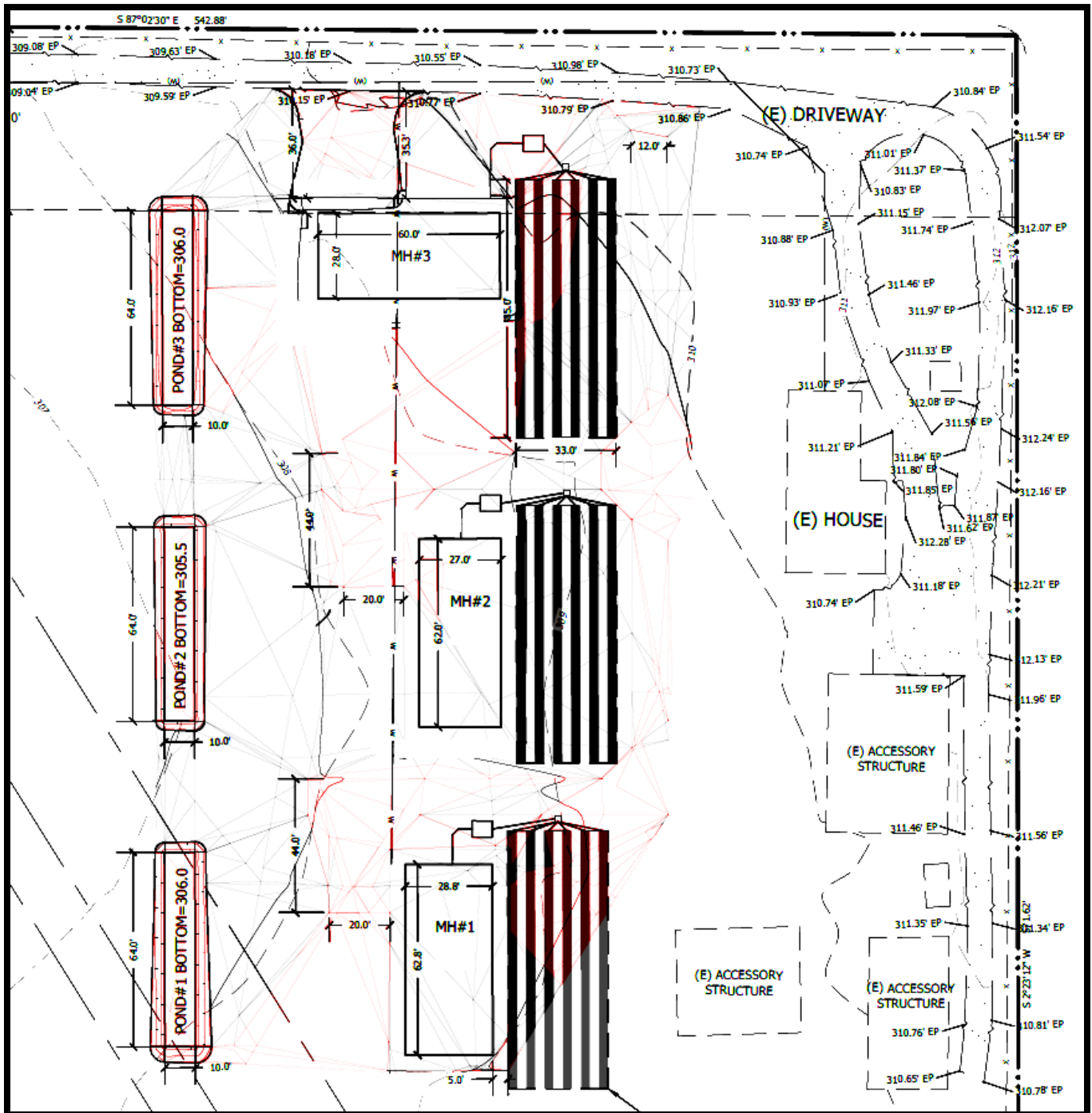
Exhibit C to Resolution

Site Illustrations



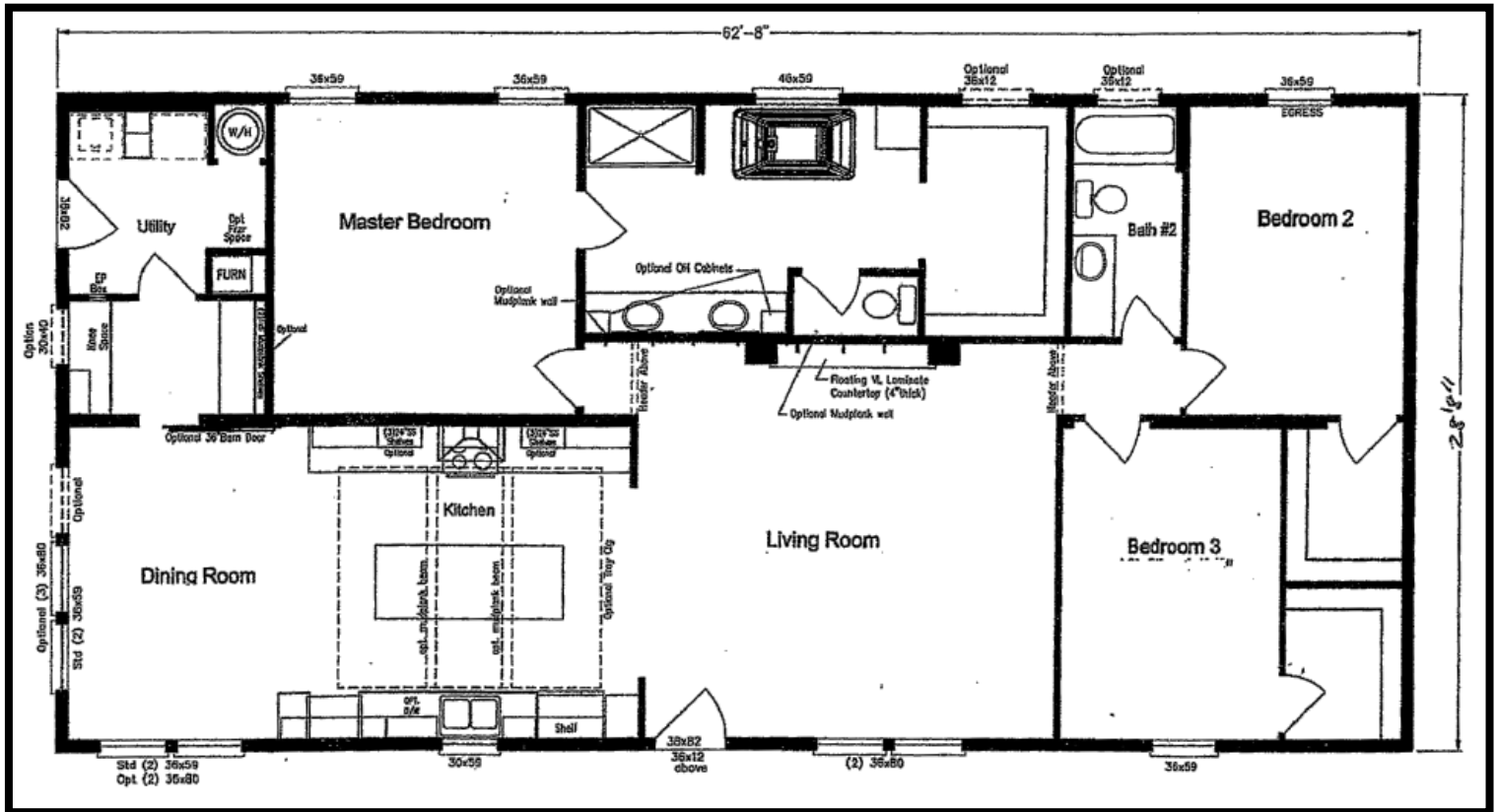
Site plan (northern half of lot) presented to the County Planning Commission on February 16, 2022.

The present approval allows no more than two temporary mobile homes on the subject property.

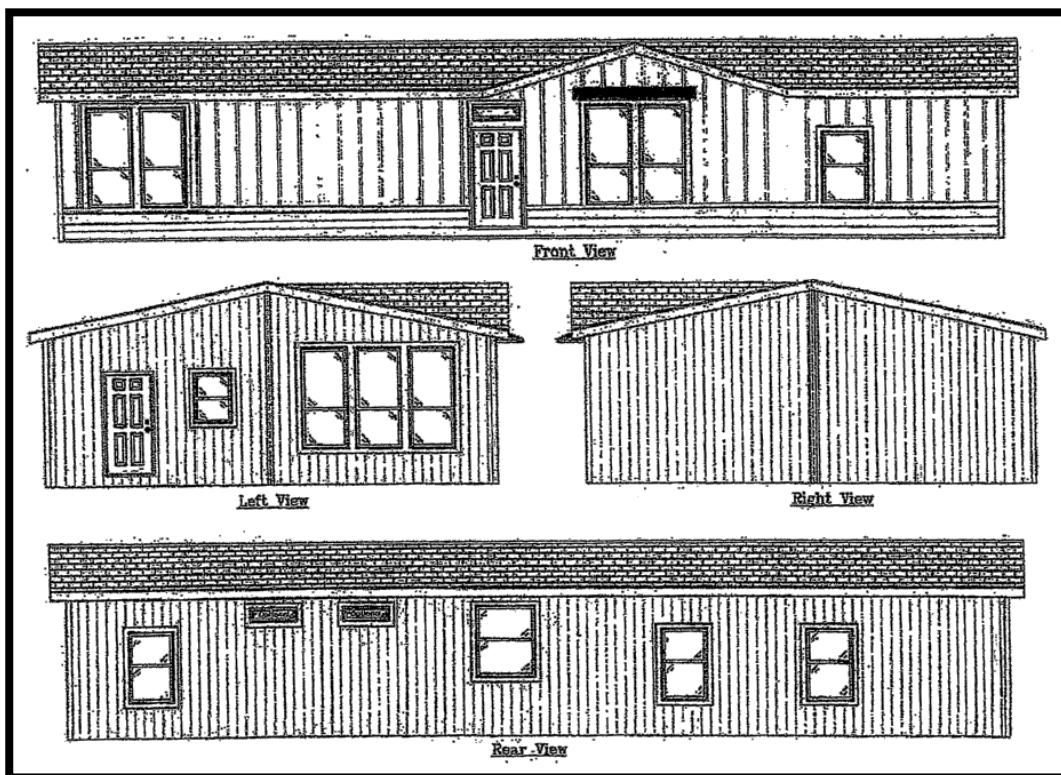


Site plan (closer view) as presented to the County Planning Commission on February 16, 2022.

The present approval allows no more than two temporary mobile homes on the subject property.



Standard floor plan of units.



Standard elevations of units.