

MONTEREY COUNTY PLANNING COMMISSION

Meeting: October 26, 2011 Time: 1:30	Agenda Item No.: 5
Project Description: Consider a Request for Waiver of application fee and double fee for violation paid for PLN060768, an after-the-fact Combined Development Permit to clear a violation (CE070045) and allow the continued use of an educational facility consisting of: 1) A Use Permit for an educational program facility, which includes a barn, a classroom, a library, a storage area and an office; 2) An Administrative Permit for a caretaker unit; 3) A Use Permit for exceeding the height of a standard caretaker unit; 4) A Use Permit for maintaining and exhibiting of animals; 5) A Use Permit for assemblages of people and special events not involving permanent facilities; and "after-the-fact" grading of 912 cubic yards of cut and 1,377 cubic yards of fill for repaving of the access driveway and excavation for the placement of the multipurpose building and animal corral, which requires restoration.	
Project Location: 19014 Pesante Road, Prunedale	APN: 125-091-059-000
Planning File Number: PLN060768	Owner: Gayle and Mark Comer Agent: Gail Hatter-Crawford
Planning Area: North County Area Plan	Flagged and staked: No
Zoning Designation: : "LDR/2.5" [Low Density Residential/2.5 acres per unit]	
CEQA Action: Categorically Exempt per Section 15378(a)	
Department: RMA - Planning Department	

RECOMMENDATION:

Staff recommends that the Planning Commission adopt a resolution (**Exhibit A**) to:

- 1) Deny the Fee Waiver request for PLN060768, based on the findings and evidence contained in **Exhibit A**.

PROJECT OVERVIEW:

On September 24, 2008, the Planning Commission approved the Combined Development Permit consisting of: 1) A Use Permit for an Educational Program facility pursuant to Monterey County Code Sections 21.14.050.B and 21.14.050.X, which includes a barn, a classroom, a library, a storage area and an office; 2) An Administrative Permit for a caretaker unit pursuant to Sections 21.14.040.C and 21.64.030; 3) A Use Permit for exceeding the height of a standard caretaker unit per Section 21.64.030.E; 4) A Use Permit for maintaining and exhibiting of animals pursuant to Section 21.14.050.P; 5) A Use Permit for assemblages of people and special events not involving permanent facilities, pursuant to Section 21.14.050, and "after the fact" grading of 912 cubic yards of cut and 1,377 cubic yards of fill for repaving of the access driveway and excavation for the placement of the multi-purpose building and animal corral, which requires restoration to clear CE070045 relating to the building of structures and use of the property as an educational program facility before county permits were obtained.

In 2009, the applicant began applying for building permits for the barn, caretaker unit, electrical panel relocation (400 amps), multi-purpose room, library and storage, office conversion and grading of the access road. The subject building permits have not been issued. There are 29 conditions of approval and 1 mitigation measure. More specifically, 20 conditions require clearance prior to the issuance of grading and building permits. As of the date of the publication of this staff report, 14 of the 20 conditions have been complied with.

On April 23, 2010 the applicant, Mark and Gayle Comer of Educational Resources for Monterey County (ERMCO) school submitted a request for a fee waiver from the Director of Planning for discretionary permit fees and code violation fees in the amount of \$ 31,325.81 for Planning File

No. PLN060768. The fees paid were based on the Monterey County Land Use Fee Schedule for 2006. The applicant submitted a Fee Waiver Request (**Exhibit B**) because they believe that they qualify for a Fee Waiver as a non-profit organization.

A breakdown of the fees paid are as follows:

	Permit Fees	Environmental Review	Mitigation Monitoring	Violation Fees	Department Totals
Planning	5,515.65	4,326.00	3,782.00	9,406.95	23,030.60
Public Works	824.50	388.00	504.00		1,716.50
Water Resources	1,400.80	412.00	680.00		2,492.80
Environmental Health	1,132.20	222.00	670.00		2,024.20
County Counsel	533.80	628.00	340.00		1,501.80
Document Storage	55.16	43.26			98.42
GPU	282.21	179.28			461.49
TOTALS	9,744.32	6,198.54	5,976.00	9,406.95	31,325.81
Applicant Paid	31,325.81				

The Fee Waiver policy is applicable to “discretionary permit applications.” The applicant has paid \$9,744.32 in total permit fees. Because the property is in violation of Monterey County Zoning Ordinance, the discretionary permit fee was doubled pursuant to Monterey County Code Section 21.84.160, which states that property, operated or has been otherwise established or initiated prior to the application for the permit, in violation of this Title, shall require a fee of twice the amount normally charged for the application. Lastly, because the project was not exempt from CEQA the applicant was required to pay an Initial Study fee for the preparation of environmental document. This amount was \$ 6,198.54. The Planning Commission has the jurisdiction to waive the application fee under the fee waiver. If the Planning Commission decides to waive the discretionary permit fee, this will include the discretionary permit application fee of \$ 9,744.32 and the subsequent violation fee of \$ 9,406.95 for a total of \$ 19,151.27.

On August 29, 2000, the Board of Supervisors adopted criteria (**Exhibit C**) giving the Director of Planning the authority to waive application and appeal fees for discretionary permit applications for:

1. Small Day Care Centers (less than 12 children);
2. Inclusionary portions of proposed residential developments;
3. Special Handling affordable housing projects;
4. Persons age 62 or over on a fixed, very low income;
5. Reclassification applications to bring property into conformance with the General Plan;
6. County or other government agencies;
7. Permit fees for the repair or reconstruction when Board of Supervisors declares a disaster;
8. Community facilities by a non-profit organization meeting certain criteria;
 - a. The proposed project is available for use by the general public; and
 - b. Provides a scope of benefit beyond the residents of the immediate vicinity; and,
 - c. Is of obvious public benefit. Evidence of public benefit includes, but not limited to, projects that:
 - i Meet a public need previously identified or recognized by the Board of Supervisors;

- ii. Provide a public facility not presently available in the community;
- iii. Have generated obvious, substantial community support; or,
- iv. Would either reduce County costs or increase County revenue

9. General Plan Amendments where land is inaccurately or inappropriately designated.

The project does not meet the criteria for a non-profit in that the project is not “available for use by the general public.” ERMCO school is a fee-based school primarily geared for home-schooled children. Access to the property is limited to appointments or when a program is offered for members of the school. According to ERMCO’s website, the program is currently \$100 annually per family, therefore not freely available for the general public.

The second criteria for a non-profit requires that the project “provides a benefit beyond the residents of the immediate vicinity.” In this case, the applicant has not demonstrated the project would provide a benefit beyond the immediate vicinity. As an educational program, staff finds that other educational facilities open to the general public for students on a no-fee basis are available. Not every student or family will be able to afford to attend the program therefore staff does not believe ERMCO can be considered as a program that provides a benefit beyond the immediate vicinity.

The applicant has not provided evidence that the Board of Supervisors has identified this program as a non-profit meeting an identified need in the community. The applicant has not provided evidence substantiating that the program is a public facility. The subject program is a fee-based facility and, therefore, staff does not find to be available to the community at large. The applicant has not provided evidence that the program has generated substantial community support or that the program would either reduce County costs or increase County revenue. Staff was not provided evidence that there is “substantial” community support for the program. The project was approved in 2008 and staff has spent the funds in processing the application and generating the Initial Study that was adopted for the project. Staff will continue to process condition compliance, review restoration plans for work done without permits, despite the fact that there are no funds to cover staff time.

The last criteria for a non-profit is that the project “would either reduce County costs or increase County revenue.” Since Fiscal Year 2005 to present, the Planning staff alone has spent approximately 370 hours of staff time towards processing and drafting the environmental document, which, at the hourly rate approved by the Board of Supervisors, is the equivalent of approximately \$ 55,000.00. The project would not reduce county costs or increase county revenue.

Because the request for the fee waiver does not meet the above mentioned criteria, specifically the criteria provision for a non-profit organization, the request is subject to consideration by the Planning Commission per the Fee Waiver Policy adopted by the Board of Supervisors on August 29, 2000.

According to the Fee Waiver Policy, all fees shall be paid at the time of filing the application. In this case, discretionary permit fees and violation fees of \$19,151.27 was paid on May 14, 2007.

OTHER AGENCY INVOLVEMENT: The following agencies and departments reviewed this Fee Waiver Request:

EXHIBIT A

MONTEREY COUNTY PLANNING COMMISSION

COUNTY OF MONTEREY, STATE OF CALIFORNIA

Resolution No.

Planning Commission Resolution No.)
Consider a Request for Waiver of application)
fee and double fee for violation paid for)
PLN060768, an after-the-fact Combined)
Development Permit to clear a violation)
(CE070045) and allow the continued use of an)
educational facility consisting of: 1) A Use)
Permit for an educational program facility,)
which includes a barn, a classroom, a library, a)
storage area and an office; 2) An)
Administrative Permit for a caretaker unit; 3))
A Use Permit for exceeding the height of a)
standard caretaker unit; 4) A Use Permit for)
maintaining and exhibiting of animals; 5) A)
Use Permit for assemblages of people and)
special events not involving permanent)
facilities; and "after-the-fact" grading of 912)
cubic yards of cut and 1,377 cubic yards of fill)
for repaving of the access driveway and)
excavation for the placement of the)
multipurpose building and animal corral,)
which requires restoration. The property is)
located at 19014 Pesante Road, Prunedale)
(Assessor's Parcel Number 125-091-059-000),)
North County Area Plan.

WHEREAS, the property owners contacted the county in early January of 2007 to legalize their ongoing operations and voluntarily comply with building and zoning code requirements for the as built Educational Resources of Monterey County (ERMCO) program. The property contains several structures associated with the ERMCo operation including a multi-purpose building, barn, horse corrals and stables, classroom, single family residence, office and caretaker unit, and small storage buildings (CE070045).

WHEREAS, on May 14, 2007, the applicant applied for a Combined Development Permit to allow the continued use of the existing facility. The application, included: : 1) A Use Permit for an Educational Program facility pursuant to Monterey County Code Sections 21.14.050.B and 21.14.050.X, which includes a barn, a classroom, a library, a storage area and an office; 2) An Administrative Permit for a caretaker unit pursuant to Sections 21.14.040.C and 21.64.030; 3) A

Use Permit for exceeding the height of a standard caretaker unit per Section 21.64.030.E; 4) A Use Permit for maintaining and exhibiting of animals pursuant to Section 21.14.050.P; 5) A Use Permit for assemblages of people and special events not involving permanent facilities, pursuant to Section 21.14.050, and "after the fact" grading of 912 cubic yards of cut and 1,377 cubic yards of fill for repaving of the access driveway and excavation for the placement of the multi-purpose building and animal corral, which requires restoration; and

WHEREAS, the Planning Commission adopted a Mitigated Negative Declaration and approved the Combined Development Permit for PLN060768 on September 24, 2008 pursuant to Resolution No. 08040; and

WHEREAS, In 2009, the applicant began applying for building permits for the barn, caretaker unit, electrical panel relocation (400 amps), multi-purpose room, library and storage, office conversion and grading of the access road. The subject building permits have not been issued. There are 29 conditions of approval and 1 mitigation measure. More specifically, 20 conditions require clearance prior to the issuance of grading and building permits. As of the date of the publication of this staff report, 14 of the 20 conditions have been complied with; and

WHEREAS, On April 23, 2010 the applicant, Mark and Gayle Comer of ERMCO school submitted a request for a fee waiver from the RMA-Director of Planning Department for discretionary permit fees and code violation fees in the amount of \$ 19,151.27 for Planning File No. PLN060768. The fees paid were based on the Monterey County Land Use Fee Resolution adopted for 2006; and

WHEREAS, the applicant is submitting a Fee Waiver Request because they believe that they qualify for a Fee Waiver as a non-profit organization in order for the RMA-Director of Planning to authorize a waiver for a non-profit organization the organization must meet the following criteria:

- a. The proposed project is available for use by the general public; and
- b. Provides a scope of benefit beyond the residents of the immediate vicinity; and,
- c. Is of obvious public benefit. Evidence of public benefit includes, but not limited to, projects that:
 - i Meet a public need previously identified or recognized by the Board of Supervisors;
 - ii. Provide a public facility not presently available in the community;
 - iii. Have generated obvious, substantial community support; or,
 - iv. Would either reduce County costs or increase County revenue.

WHEREAS, The Director of Planning denied the Fee Waiver Request as the request does not meet the criteria established by the Board of Supervisors; and

WHEREAS, the project does not meet the first criteria in that the project is not "available for use by the general public". ERMCO school is a fee based school primarily geared for home schooled children. Access to the property is limited to appointments and/or when a program is running for members of the school. According to ERMCO's website, the program fee is currently \$100 annually per family. Therefore the program is not "available for use by the general public"; and

WHEREAS, the second criteria for a non-profit is that, the project "provides a scope of benefit beyond the residents of the immediate vicinity". In this case, the applicant has not demonstrated

the project met the waiver criteria. The Planning Commission finds that other educational facilities open to the general public on a no-fee basis is available. Therefore, the Planning Commission finds that ERMCO can not be considered as a program that provides a benefit beyond the immediate vicinity; and

WHEREAS, the applicant has not provided evidence that the Board of Supervisors has identified this program or non-profit meeting an identified need in the community. The applicant has not provided evidence substantiating that the program is a public facility. The subject program is a fee-based facility and, therefore, the Planning Commission find does not find it to be available to the community at large. The applicant has not provided evidence that the program has generated substantial community support or that the program would reduce County costs or increase County revenue.

WHEREAS, the Planning Commission was not provided evidence that there is “substantial” community support for the program. The project was approved in 2008 and Planning staff has spent the funds in processing the application and writing the Mitigated Negative Declaration that was adopted for the project; and

WHEREAS, the RMA - Director of Planning refunded \$ 5,863.50 for Mitigation Monitoring fees; and

WHEREAS, the RMA-Planning Department referred the Fee Waiver Request to the Planning Commission as the Planning Commission shall consider waivers that do not meet the criteria of the Fee Waiver Policy adopted by the Board of Supervisors on August 29, 2000 for the RMA-Planning Director authorized fee waivers; and

WHEREAS, on October 12, 2011, the Monterey County Planning Commission conducted a public hearing for the Gayle and Mark Comer (ERMCO) Fee Waiver Request (PLN060768) for the Discretionary Permit fees and Violation fees for PLN060768, which was approved by the Planning Commission on September 24, 2008 pursuant to Resolution No.08040.

DECISION

THEREFORE, it is the decision of the Monterey County Planning Commission that the Fee Waiver Request (PLN060768) for the Discretionary Permit fees and Violation fees for Mark and Gayle Comer request be denied.

PASSED AND ADOPTED this 26th day of October, 2011 upon motion of **xxxx**, seconded by **xxxx**, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

COPY OF THIS DECISION WAS MAILED TO THE APPLICANT ON

IF ANYONE WISHE TO APPEAL THIS DECISION, AN APPEAL FORM MUST BE
COMPLETED AND SUBMITTED TO THE CLERK TO THE BOARD OF SUPERVISORS
ALONG WITH THE APPROPRIATE FILING FEE ON OR BEFORE