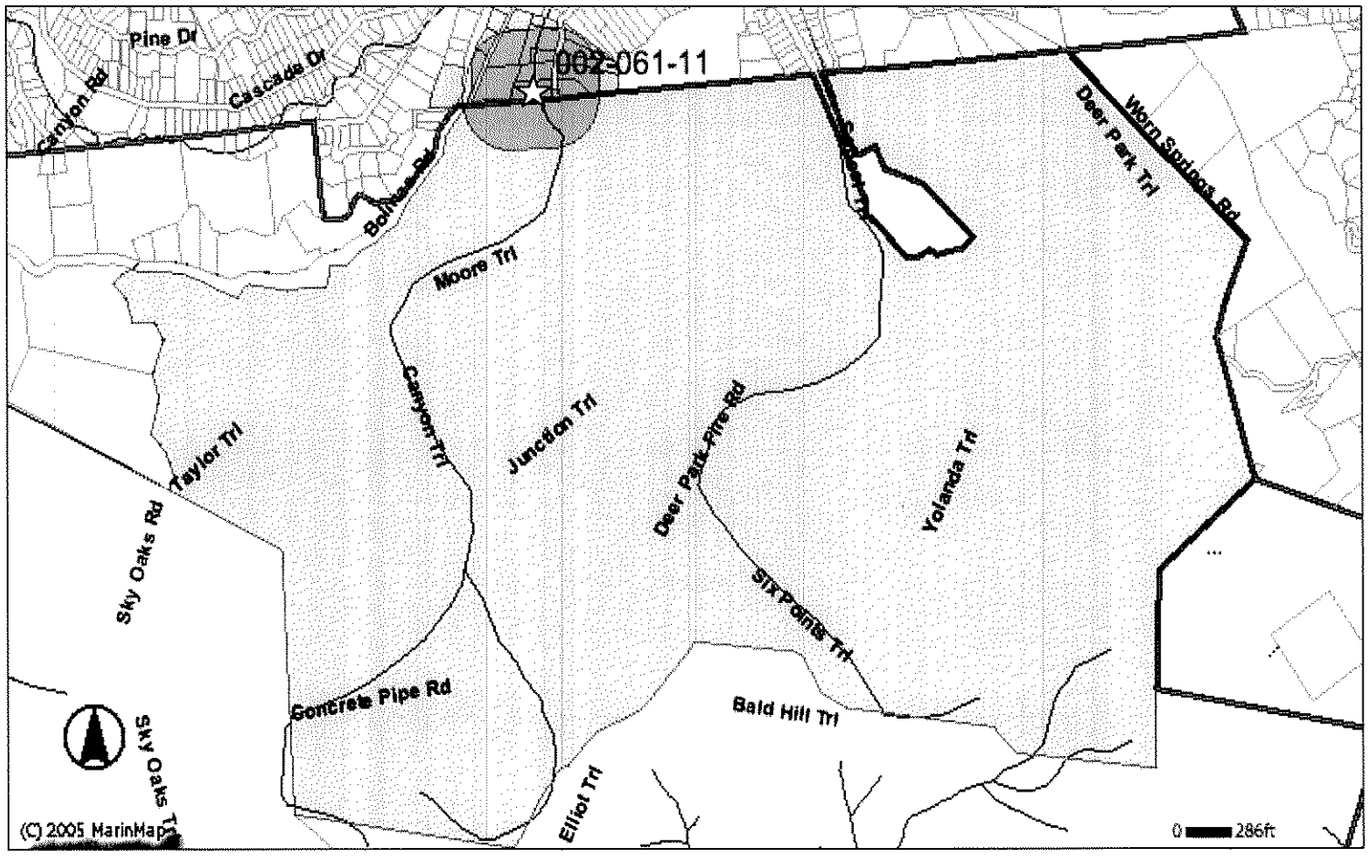
TOWN OF FAIRFAX
STAFF REPORT

To: Mayor, Members of the Town Council

From: Michael Rock, Town Manager
Jim Moore, Director of Planning and Building Services
Linda Neal, Senior Planner
Mark Lockaby, Building Official

Date: November 2, 2011

Subject: Appeal of *Stop Work Order* at 132 Wood Lane.



132 WOOD LANE

UPDATE
AGENDA ITEM # 1

RECOMMENDATION

Uphold the Stop Work Order dated October 20th and require the applicant to (i) obtain the required discretionary "entitlement" permits through Planning Commission review and (ii) obtain the proper "building" permits prior to proceeding with reconstruction of the residence.

BACKGROUND

The original 1,910 square foot residence was built directly on the southern side property line in 1916; this included 1,532 square feet on the first floor and 378 square feet of living space in the second floor attic space. Subsequently, in 1980 a building permit was issued for a 577 square foot addition which enlarged the entire house to a total of 2,487 square feet (at which time the property owner incorrectly submitted plans showing the structure 10 feet from the southern property line).

At some point in time, a combination storage shed/laundry room was built only 2 feet from the northern side property line; the Town's records are not clear about when this occurred. However, the Building Official has verified that the ancillary structure was a storage shed/laundry room during a resale inspection of the property on May 5 of 2011; prior to the new owners, John and Marla Hedlund purchasing the site (See **Exhibit A**).*

The property is located in the Residential RS 6 Zone District and has an average slope of 28% based on topographic information provided by the Marin County GIS system (See **Exhibit B**). A property with a 28% slope would have to be 104 feet wide in order to comply with the Town's Slope Ordinance [Town Code § 17.080.050(C)]. The site is only 100 feet wide. The front portion of the site is also located within a flood zone.

Reconstruction of a structure that is deemed a 50% remodel or greater requires the approval of the following discretionary permits:

- A Hill Area Residential Development Permit per Town Code sections 17.072.030(D) and 17.072.050(A).
- Variances of both the minimum and the combined side yard setbacks [Town Code sections 17.080.070(B)(2)].

The intent of the non-conforming 50% remodel regulations is to require properties to comply with new setback, Floor Area Ratio, Lot Coverage, Height and Parking requirements if substantial improvements are made (See **Exhibit C**).

DISCUSSION

On May 26, 2011 John and Marla Hedlund purchased the property located at 132 Wood Lane. Shortly thereafter John Hedlund came in to the Planning/Building Department to discuss what he wanted to do with the property in the near future - and over the long term; there were also a series of emails between staff and Mr. Hedlund. Mr. Hedlund indicated that the first phase of the project was to repair the existing foundation, and to add additional "strengthened" footings inside the existing foundation footprint for the "possibility" of a future second story addition. Mr. Hedlund was advised at this time that the approval of the second story addition would require discretionary review by the Planning Commission and therefore he would be adding the strengthened footings at his own risk.

On July 18, 2011 Mr. Hedlund requested and was granted a Building Permit to replace the roof on the garage and "cottage" and do limited exploratory demolitions work in order to find out what would be required to repair the existing foundation and walls. The permit application states that the sheetrock on the walls, and the plywood flooring would be removed on the ground floor down to the studs and floor joists (See **Exhibit D**). Please note: the total valuation for this work noted by the applicant on the Construction Permit Application was $1,500.

On September 19, 2011 a second Building Permit was requested and granted for foundation "repairs" and a limited amount of new stronger footings replacing a limited amount of existing footings for a possible second story addition within the existing foundation (See **Exhibit E**). The issuance of this second Building Permit was based on a set of plans submitted showing approximately 79 linear feet of new foundation footings (approximately 30%) plus an unspecified amount of foundation repair on the remainder out of the total linear foundation of 259 linear feet - both inside and along the perimeter of the residence (See **Exhibit F**).

Subsequent to the issuance of the two Building Permits articulated above, it came to staff's attention that the work has gone significantly beyond that contemplated by the Building Permits. The Building Official has observed that:

- 187 linear feet, or approx. 72% (not 79 linear feet, or 30%) of the foundation has been removed.
- All of the 1st floor joists have been removed; except for the 577 square feet of the newer part of the residence constructed in 1980.
- All of the exterior and interior walls on the first floor of the residence have been removed, except for the exterior walls of the 577 square feet newer part of the residence constructed in 1980. And,
- Most of the first floor ceiling had been removed.

Therefore, this project has become a 100% percent remodel (i.e., not a less than 50% remodel) and requires discretionary review by the Planning Commission (for the permit and variance described) per the Town's definition of a 50% Remodel (Ordinance No. 742). The Building Official red tagged the project on October 20, 2011, which stops construction until the owner obtains the proper entitlements. That action led to the filing of this appeal.

*Please note: the owner has indicated that his family is living in the ancillary structure that used to be a storage shed/laundry room and it is not clear whether or not improvements have been made to this building to convert it to living space without the required building permits: and/or a Residential Second Unit Use Permit if a kitchen and bathroom have been installed.

FISCAL IMPACT

It is anticipated that there will be no fiscal impact.

ATTACHMENTS

Exhibit A – May 5, 2011 Resale Report
Exhibit B – Marin County GIS System - Slope Topography Map
Exhibit C – 50% Remodel Ordinance No. 742
Exhibit D – Construction Permit Application – Permit # BLD11-187 / Issued 7/18/2011

Exhibit E – Foundation Plan Drawings (first page excerpt) Dated 9/13/2011
Exhibit F – Construction Permit Application – Permit # BLD11- 238 / Issued 9/19/2011
Exhibit G – Photos of Demolition Work
Exhibit H – Appellants Appeal Form; and Supplemental Materials Submitted by Appellant

BUILDING CODE INSPECTION REPORT

The purpose of the following inspection is to identify any building deficiencies that are unsafe. It is not the purpose of this inspection to evaluate craftsmanship or require work done under old codes to be brought up to today's codes **unless a safety and/or permit problem(s) exists.** This report does not address termite damage; this problem must be analyzed by a private termite repair service.

This inspection is performed for general compliance to the Uniform Housing Code and does not imply or intend to imply any warranty to the subject structure. This inspection does not cover engineering for soils, geotechnical, drainage, foundation, structural, or any related areas. It is recommended that any party with concerns about these or any other items contact an architect or engineer licensed by the State of California for that specific area of concern.

Building permits issued for: 132 Wood Lane, Fairfax, CA 94930

Date:	**1/15/80**	Description:	**Addition**	Number:	**1524**
Date:	**4/23/80**	Description:	**Electrical permit**	Number:	**1667**
Date:	**9/13/90**	Description:	**Kitchen remodel**	Number:	**21318**
Date:		Description:		Number:	
Date:		Description:		Number:	
Date:		Description:		Number:	
Date:		Description:		Number:	
Date:		Description:		Number:	

PHYSICAL INSPECTION OF PROPERTY

The physical inspection of the property is limited to visual site observation at the time of inspection. Please note that all measurements are estimates and this information is based on a limited investigation.

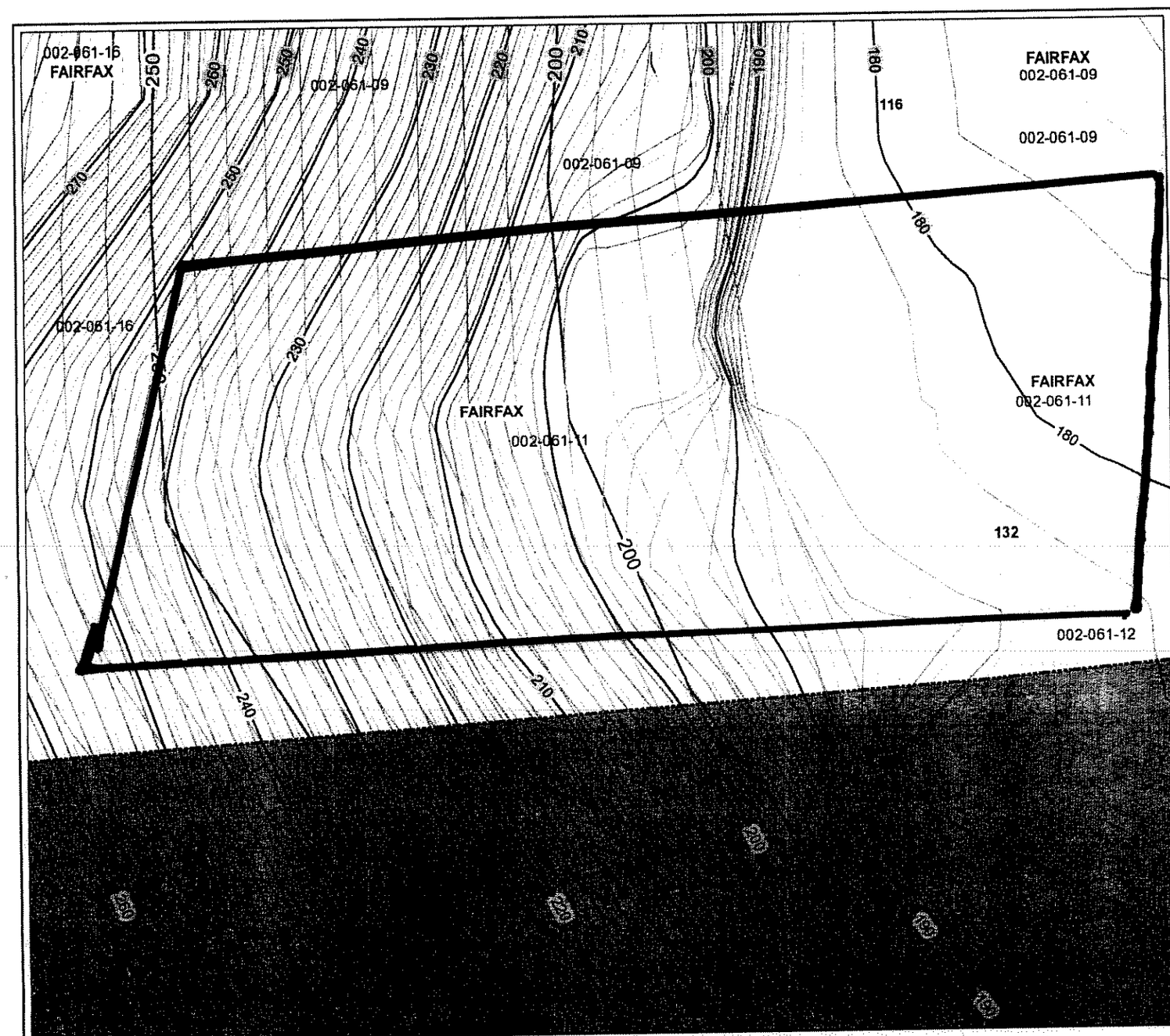
Present Use

Single Family	X	Stories:	2	Structures:	1
Condominium	☐				
Duplex	☐	Parking Open:		Covered:	2
Second Unit	☐				
Multiple Residence	☐	Parking:	Private		Public
Commercial	☐	Spaces:	2		
Accessory Structures	X				
		Setbacks:	*Side*	*Front*	*Back*
			Fencing	*Front*	*Side*	*Rear*

Accessory Use: ***garage, storage shed with electrical and utility sink, swimming pool***

Additional Comments:

EXHIBIT # A



This map is a user generated static output from an Internet mapping site and is for reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable.
THIS MAP IS REPRESENTATIONAL ONLY. DATA ARE NOT SURVEY PRECISE.

Legend

- Major Road
  - Highway 101, 580
  - Major Road
- Address
- Parcel
- City Limit Line
- County Boundary
- Park Boundary
- 2008 NAVD88 50ft index
- 2008 NAVD88 10ft index
- 2008 NAVD88 2ft urban area
- Ortho Tile East Marin
- Ortho Tile West Marin
- 2004 NGVD29 10ft/2ft
- 1997 NGVD29 urban 50ft (index)
- 1997 NGVD29 urban 5ft
- 1997 NGVD29 rural 50ft (index)
- 1997 NGVD29 rural 10ft
- Ocean Bay

EXHIBIT # B

1: 398

EFFECTIVE OCT. 2, 2009

ORDINANCE NO. 742

AN ORDINANCE OF THE TOWN OF FAIRFAX AMENDING CHAPTERS 17.008 AND 17.016 OF THE FAIRFAX TOWN CODE TO ESTABLISH A 50 PERCENT REMODEL DEFINITION AND LIMITS ON THE IMPROVEMENT OF NON-CONFORMING STRUCTURES OR PROPERTIES

The Town Council of the Town of Fairfax does ordain as follows:

Section 1. Municipal Code Amended:

Town Code § 17.008.020 shall be amended to include the following definition:

Fifty Percent Remodel or 50% Remodel; the renovation of any structure that affects more than 50% of the existing Floor Area of the structure, expands that Floor Area by more than 50% or results in the addition of a bedroom, as measured in accordance with section 17.016.040 of this title.

Section 2:

Sections 17.016.040(B) and 17.016.040 (C) of the Town Code are hereby deleted in their entirety and replaced with the following new Section 17.016.040 (B):

The aggregate amount of construction, alteration, enlargement or reconstruction on any nonconforming building or structure, or on any building or structure located on a nonconforming property during the life of the building or structure subsequent to October 2, 2009 shall not (1) affect more than 50% of the Floor Area of the building or structure or expand that Floor Area by more than 50%, or (2) result in the addition of a bedroom to such residential building or structure. For the purposes of this paragraph, when any changes are made in the building, such as walls, columns, beams or girders, floor or ceiling joists, roof rafters, roof diaphragms, foundations, piles or retaining walls or similar components, the Floor Area of all rooms affected by such changes shall be included in determining affected Floor Area.

The restriction in this section 17.016.040(B) shall not apply: (a) to projects that are limited to replacing windows and/or doors, installation of insulation to achieve greater energy efficiency, cosmetic floor or wall coverings, roof repairs that do not change the configuration of the existing roof, earthquake preparedness improvements or projects to generate alternative energy, or (b) when all of the following conditions exist:

(1) The off-street parking requirements of Title 17 are met or a variance for an exception has been granted;

(2) The work does not increase an existing or create any new nonconformity; and

(3) The structure or building is not located in an area that is subject to the provisions of

EXHIBIT # C

either Chapter 17.060(Ridgeline Development) or Chapter 17.068 (Flood Zones).

Section 3. Severability.

If any article, section, subsection, subdivision, paragraph, sentence, clause, phrase, or word of this ordinance is for any reason held to be unconstitutional or invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance or any part thereof. The Town Council of the Town of Fairfax hereby declares that it would have adopted each article, section, and sentence thereof, irrespective of the fact that any one or more of said provision be declared unconstitutional or invalid.

Copies of the foregoing ordinance shall within fifteen (15) days after its final passage and adoption be posted in three public places in the Town of Fairfax, to wit: Bulletin Board, Fairfax Town Offices, Town Hall; Bulletin Board, Fairfax Post Office; and Bulletin Board, Fairfax Women's Club Building, which said places are hereby designated for that purpose, and shall be in full force and effect thirty (30) days from and after its final passage and adoption.

The forgoing ordinance was duly and regularly introduced at a regular meeting of the Town Council of the Town of Fairfax held in said Town on the 5th day of August, 2009, and was duly passed and adopted at a regular meeting held on the 2nd day of September, 2009, by the following vote to wit:

AYES: Bragman, Brandborg, Maggiore, Tremaine, Weinsoff
NOES: None
ABSTAIN: None

David Weinsoff, Mayor

Attest:

Judy Anderson, Town Clerk

EXHIBIT A

TOWN OF FAIRFAX

PERMIT # BLD11- 187

142 Bolinas Road, Fairfax, California 94930
(415) 453-1584 / Fax (415) 453-1618

CONSTRUCTION PERMIT APPLICATION

#1 IDENTIFY YOUR BUILDING PROJECT

JOB ADDRESS: 132 Wood Ln

This permit is to be issued in the name of the ( ) Licensed Contractor or ( ) the Property Owner as the permit holder of record who will be responsible and liable for the construction.

Property Owner Information:
Name: John Hedlund
Tel No: 908 352 3137
Mailing Address: 265 Cleveland Ave
City Mill Valley State CA Zip 94941

Description of work to be performed:
Replace Roof Garage & Cottage
Dem 1st Floor House
Cleanout House & Cottage
Remove Drywall, plaster ground floor to stud / floor joyce.

Additional Square Footage: Ø

Valuation: 1500.00

#2 IDENTIFY WHO WILL PERFORM THE WORK
(Complete *either* 2a *or* 2b)

2a – CALIFORNIA LICENSED CONTRACTOR'S DECLARATION

I hereby affirm under penalty of perjury that I am licensed under provisions of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code, and my license is in full force and effect.
Contractor Name John Feller + Owner
Tel No: _____
Mailing Address: _____
City _____ State _____ Zip _____
License Class and No. _____

Contractor's Signature: _____

2b – OWNER-BUILDER'S DECLARATION

I hereby affirm under penalty of perjury that I am exempt from the Contractors' State License Law for the reason(s) indicated below by the checkmark(s) I have placed next to the applicable item(s) (Section 7031.5, Business and Professions Code: Any city or county that requires a permit to construct, alter, improve, demolish, or repair any structure, prior to its issuance, also requires the applicant for the permit to file a signed statement that he or she is licensed pursuant to the provisions of the Contractors' State License Law (Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code) or that he or she is exempt from licensure and the basis for the alleged exemption. Any violation of Section 7031.5 by any applicant for a permit subjects the applicant to a civil penalty of not more than five hundred dollars ($500).)

(✓) I, as owner of the property, or my employees with wages as their sole compensation, will do (✓) all of *or* ( ) portions of the work, and the structure is not intended or offered for sale (Section 7044, Business and Professions Code: The Contractors' State License Law does not apply to an owner of property who, through employees' or personal effort, builds or improves the property, provided that the improvements are not intended or offered for sale. If, however, the building or improvement is sold within one year of completion, the Owner-Builder will have the burden of proving that it was not built or improved for the purpose of sale.)

( ) I, as owner of the property, am exclusively contracting with licensed Contractors to construct the project (Section 7044, Business and Professions Code: The Contractors' State License Law does not apply to an owner of property who builds or improves thereon, and who contracts for the projects with a licensed Contractor pursuant to the Contractors' State License Law.)

( ) I am exempt from licensure under the Contractors' State License Law for the following reason:

_____

By my signature below I acknowledge that, except for my personal residence in which I must have resided for at least one year prior to completion of the improvements covered by this permit, I cannot legally sell a structure that I have built as an owner-builder if it has not been constructed in its entirety by licensed contractors. I understand that a copy of the applicable law, Section 7044 of the Business and Professions Code, is available upon request when this application is submitted or at the following Web site: http://www.leginfo.ca.gov/calaw.html.

Property Owner or Authorized Agent Signature: [signature] Date 7/18/11

EXHIBIT # D

TOWN OF FAIRFAX

PERMIT # BLD11-238

142 Bolinas Road, Fairfax, California 94930
(415) 453-1584 / Fax (415) 453-1618

CONSTRUCTION PERMIT APPLICATION

#1 IDENTIFY YOUR BUILDING PROJECT

JOB ADDRESS: 132 Wood Ln

This permit is to be issued in the name of the ( ) Licensed Contractor or ( ) the Property Owner as the permit holder of record who will be responsible and liable for the construction.

Property Owner Information:
Name: John + Marla Hedlund
Tel No: 415 258 9116
Mailing Address: 132 Wood LN
City Fairfax State CA Zip 94930

Description of work to be performed:
Repair existing foundation, addition of footings for future 2nd Story

Additional Square Footage: N/A

Valuation: 10 - 15K (best guess)

#2 IDENTIFY WHO WILL PERFORM THE WORK
(Complete *either* 2a *or* 2b)

2a – CALIFORNIA LICENSED CONTRACTOR'S DECLARATION

I hereby affirm under penalty of perjury that I am licensed under provisions of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code, and my license is in full force and effect.

Contractor Name FRIES CONSTRUCTION
Tel No: (415) 455-9963
Mailing Address: P.O. Box 713
City San Anselmo State CA Zip 94979
License Class and No. B 808739

Contractor's Signature:

2b – OWNER-BUILDER'S DECLARATION

I hereby affirm under penalty of perjury that I am exempt from the Contractors' State License Law for the reason(s) indicated below by the checkmark(s) I have placed next to the applicable item(s) (Section 7031.5, Business and Professions Code: Any city or county that requires a permit to construct, alter, improve, demolish, or repair any structure, prior to its issuance, also requires the applicant for the permit to file a signed statement that he or she is licensed pursuant to the provisions of the Contractors' State License Law (Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code) or that he or she is exempt from licensure and the basis for the alleged exemption. Any violation of Section 7031.5 by any applicant for a permit subjects the applicant to a civil penalty of not more than five hundred dollars ($500).)

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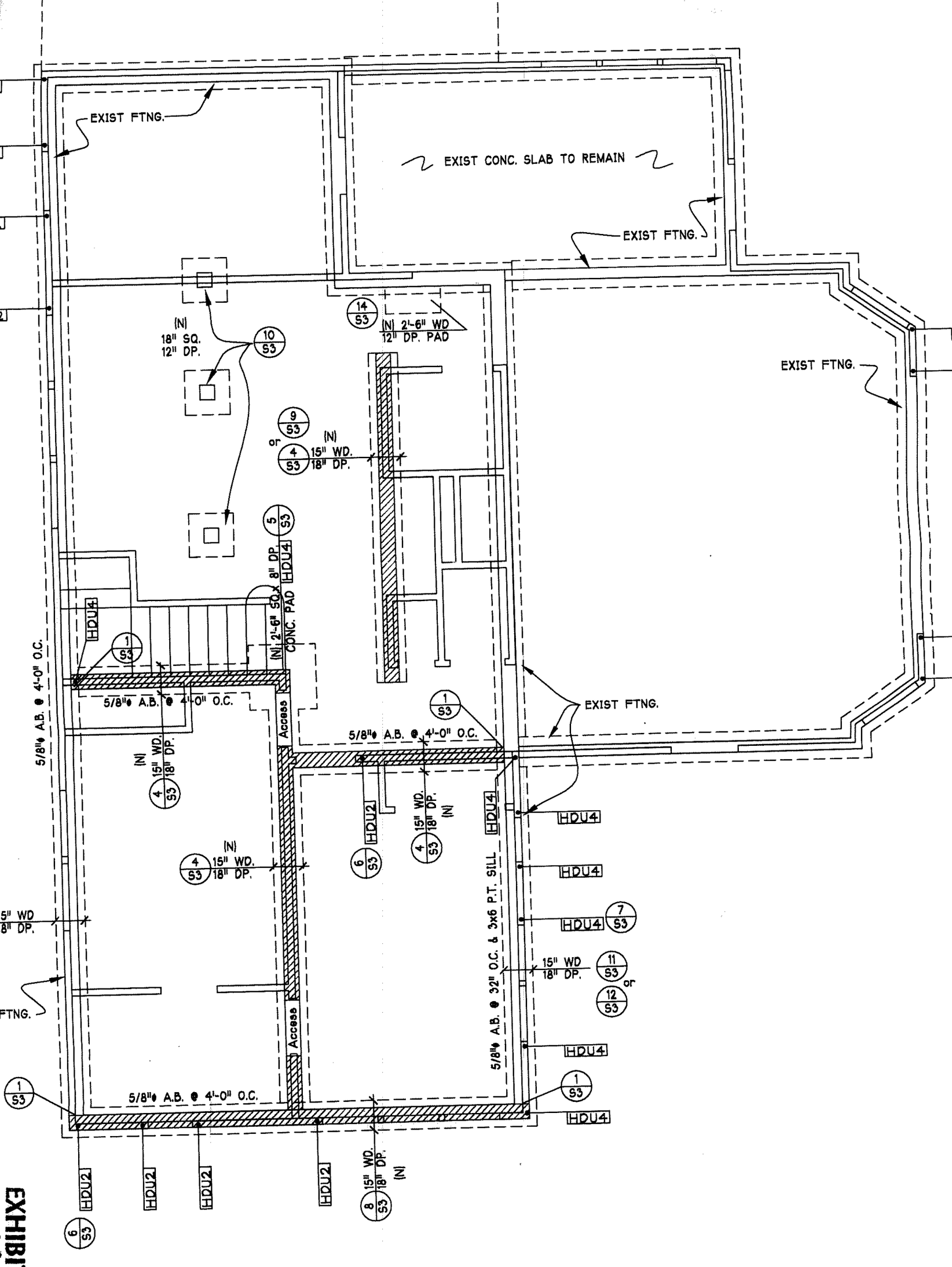
By my signature below I acknowledge that, except for my personal residence in which I must have resided for at least one year prior to completion of the improvements covered by this permit, I cannot legally sell a structure that I have built as an owner-builder if it has not been constructed in its entirety by licensed contractors. I understand that a copy of the applicable law, Section 7044 of the Business and Professions Code, is available upon request when this application is submitted or at the following Web site: http://www.leginfo.ca.gov/calaw.html.

Property Owner or Authorized Agent Signature:

Date

EXHIBIT # E



FOUNDATION PLAN

SCALE: 1/4"=1'-0"

SCOPE OF WORK: To rep
future remodel,

EXHIBIT # 1

EXHIBIT # 1