

**SANTA CRUZ COUNTY PLANNING DEPARTMENT POLICY/ORDINANCE
INTERPRETATION**

Interpretation No.: NDA-01 (Net developable area re: vehicular access areas in common interest developments)
Effective Date: 09/08/09
Originally Issued: 09/19/87 (Chief Deputy County Counsel Wittwer) and 8/19/03 (Assistant County Counsel Kendig)
Revised:

Question

Are internal roadways in common interest developments deducted from net developable area for the purpose of calculating density?

Applicable Regulatory Section(s)

§ Section 13.10.700-“N”

INTERPRETATION:

The area within the common area of a common interest development used for vehicular access is not deducted from net developable area for the purpose of calculating density.

Reason

The essential question is whether the area within the common area that is used for vehicular access should be considered a right-of-way for the purpose of applying the definition of Net Developable Area. The definition of “Net Developable Area” is as follows (from County Code Section 13.10.700-N):

“Net Developable area” means the portion of a parcel which can be used for density calculations; public or private road rights-of-way and land not developable (see definition of “developable land”) are not included in the net developable area of a parcel.

There is no definition of right-of-way in the zoning ordinance, however, the County’s Streets and Roads Ordinance does contain the following definition (from County Code Section 9.70.030H):

“Right-of-way” means all land or interest therein, which by deed, conveyance, agreement, easement, dedication, usage or process of law is reserved for or dedicated to the use of the general public for road and street purposes.

While the first part of the definition that states that areas reserved for or dedicated to road or street purposes by an ‘agreement’ (such as CC&Rs) or ‘usage’ (proposed driveway) seems to make the case that driveways in common interest developments (such as townhouses or condominiums) are right-of-ways, the part of the definition that refers to the use by the ‘general public’ does not. The driveways in common interest developments are not ‘reserved for or dedicated to the use of the general public’, but private driveways for the residents/owners of the common interest development. Access can be restricted, speed limits can be posted and other

use restrictions implemented by the property owners (or homeowner's association) with no deference to the general public. These driveways are not unlike those driveways that serve apartment buildings and should be treated in the same way.

Tom Burns, Planning Director

Date