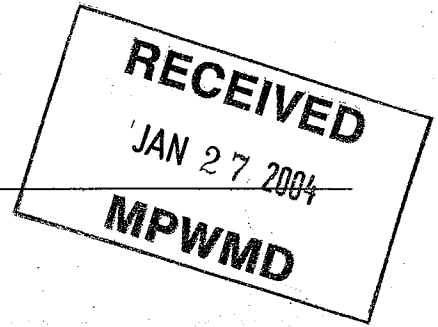




EXHIBIT 2-A

MONTEREY PENINSULA WATER MANAGEMENT DISTRICT

5 HARRIS COURT, BLDG. G
POST OFFICE BOX 85
MONTEREY, CA 93942-0085 • (831) 658-5601
FAX (831) 644-9558 • http://www.mpwmd.dst.ca.us



APPLICATION FOR APPEAL

Rule 24 of the District Rules and Regulations states that upon request an applicant may apply for an appeal from standards incorporated in the District's Rules and Regulations. Appeals may be approved when: a) special circumstances exist, as defined in the Rules and Regulations; b) when strict interpretation and enforcement of any standard would cause undue hardship; and c) when the granting of such a appeal will not tend to defeat the purpose of the Rules and Regulations.

In order to be considered for an appeal hearing, all applicants must submit a completed application and a non-refundable processing fee. Fees are based on capacity for annual water use 1) 0.5 acre-feet or less: \$250 per structure; 2) 0.5 acre-feet but not greater than 1.0 acre-feet \$500 per structure; and 3) greater than 1.0 acre-feet \$750 per structure (Rule 63). Applicants must also provide any other information necessary to evaluate the case. (It may be necessary to provide 5 years of water records from purveyor). Applications must be received within twenty-one (21) days after an appealable decision has been made pursuant to District Rule 70. All applicants are required to provide the information requested on this form and may submit additional pertinent information, if desired. This information will be used as the basis for findings on which the Board will support or deny your appeal. Submission of an incomplete application may constitute grounds for denial of your request.

APPLICANT INFORMATION

- 1. Applicant's Full Name: Jeffrey Becom and Sally Jean Aberg
Mailing Address: PO Box 534
City: Pacific Grove State: CA Zip: 93950-0534
Phone Number(s): Work (831) 373-0116 Home (831) 373-0116
2. Name of Agent(s) to Represent Applicant: self
Mailing Address:
City: State: Zip:
Phone Number(s): Work () Home ()

PROPERTY INFORMATION

- 1. Full Name of Property Owner: Jeffrey Becom and Sally Jean Aberg
Mailing Address: PO Box 534
City: Pacific Grove State: CA Zip: 93950-0534
Phone Number(s): Work (831) 373-0116 Home (831) 373-0116
2. Property Address: 116 13th St.
City: Pacific Grove State: CA Zip: 93950
3. Assessor's Parcel Number: 006-183-007
4. Property Area: Acres: less than 1 Square Feet: 2,427 sq.ft. Other: LOT SIZE = 40 x 60.68'
5. Past Land Use: residential
6. Present Land Use: single family residence - built in 1949
7. Proposed Land Use: single family residence - NEW (existing home to be donated to Habitat for Humanity)
Existing buildings? Yes [checked] 1 home No
Types of uses and square footage: currently an ~800 sq.ft. home

SEE Attached
Type written
pages

STATEMENT OF APPEAL REQUEST

*If additional space is needed for response to any question, please continue on a separate piece of paper and attach it to the back of this application.

1. From which rule(s) or staff's decision(s) are you requesting an appeal?

2. Do you feel the rule or staff's decision is applicable in most cases, or do you believe it should be revoked or changed?

3. What were the circumstances surrounding your decision to appeal?

4. Please state the special circumstances which distinguish your application from all others which are subject to enforcement of this process.

5. What difficulties or hardships would result if your appeal request was denied?

6. What specific action are you requesting that the Board take?

7. Please indicate if you intend to make a statement at the appeal hearing, and list the names of any other individuals who may speak on your behalf.

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JAN 27 2004

EXHIBIT 1

MPWMD

APPEAL APPLICATION

STATEMENT OF APPEAL REQUEST

1. From which rule(s) or staff's decision(s) are you requesting an appeal?

We are requesting an appeal based on the Water Board's precedent-setting granting of the HANLON Appeal. The Water Board agreed to grant Mr. Hanlon's appeal on November 24, 2003. On December 15, 2003, this decision was backed up with written Findings of Approval [Exhibit 17-B-1(A)].

2. Do you feel the rule or staff's decision is applicable in most cases, or do you believe it should be revoked or changed?

We feel that staff's request for further direction from the Water Board and staff's request that an amendment to District Rule 25.5 Water Use Credits to allow a select group of permit-holders to obtain said credits are absolutely necessary. Furthermore, in the spirit of fairness, we believe the amendment should contain language that prevents permit-holders from being unduly charged twice for said credits, as we feel we've been compelled to do in order to receive our Residential Water Release and Water Permit, in order to pull our building permit from the City of Pacific Grove.

3. What were the circumstances surrounding your decision to appeal?

Back in 1992, during a brief lifting of the Peninsula's water moratorium, we obtained and paid nearly \$1,500 in connection charges for additional fixture units based on multiple shower heads (a water warehousing plan suggested to us as perfectly proper by the Water Management District itself!). We did this to guarantee that this water was both legal and paid for when we eventually had the permissions and finances to proceed with our building project for the property. Now that we've had to duplicate this payment to the District, our only option is to appeal to the Board.

4. Please state the special circumstances which distinguish your application from all others which are subject to enforcement of this process.

From 1992 up until we completed the design of our proposed new home and applied for our building permit, it was our understanding—and the Water Management District's and the PG Community Development Department's opinion, too—that each shower head was safeguarding water credits that were both valid and paid for. We need nowhere near the maximum fixture unit count we may in fact be entitled to by this warehousing plan. We need just 15.4 fixture units. We are not disputing the number in fixture units. We are only disputing the District's insistence that we purchase those fixture units that we do need for a second time.

Please read the attached copy of a letter we sent to Fran Farina on December 2, 2003, for a complete history of our property and our case to call this double payment unjustified. In it we acknowledge that Resolution 2000-109, Ordinance 98, and possibly other decisions made since 1992 have changed the rules governing Peninsula water use and fixture unit credit calculating. We do not feel these changes should jeopardize our water credits or the fees we paid for them, especially without even a simple warning giving us a chance to avoid the double payment situation we find ourselves in now.

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EXHIBIT 1 (continued)

JAN 27 2004

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5. What difficulties or hardships would result if your appeal request was denied?

If this appeal is denied, we will sustain a financial hardship—an unexpected \$1,200 that we did not budget for. In addition, we've had to pay another \$250 to file this appeal.

6. What specific action are you requesting that the Board take?

We ask the Board to “grandfather in” our status as “already paid up” for our water credits and refund most or all of the \$1,226.51 that we paid to the District on January 6, 2004, for Permit #21118. And though we understand that the \$250 appeal processing fee is described as non-refundable, we also ask the Board to make an exception and refund it, given the circumstances of our case.

7. Please indicate if you intend to make a statement at the appeal hearing, and list the names of any other individuals who may speak on your behalf.

Depending on the appeal hearing date, one or both of us plan to make statements. In addition, we believe one or both Senior Planners from the Pacific Grove Department of Community Development—either Barbara Oldfield (our project's manager) or Judy McClelland (who also knows the history of the water for our property and who has documented our continuing use of the multiple shower heads)—would be willing to speak on our behalf.

Thank you all very much for your serious consideration of this Appeal.

SUBMITTED BY APPLICANT

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©

2 December 2003

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JAN 27 2004

MPWMD

Fran Farina, General Manager
Water Management District
Post Office Box 85
Monterey, California 93942

RE: 116 13th Street, Pacific Grove, APN#006-183-007

Dear Fran Farina,

After obtaining all City of Pacific Grove approvals and permits for a new home we plan at the address listed above, my wife, Sally Jean Aberg, and I recently applied for our Residential Water Release and Water Permit. We need this in order to pull our building permit from Pacific Grove's Community Development Department.

A 1949 house presently stands on the property. When construction begins for the new home, this house will be donated to Habitat for Humanity and moved to Palm Avenue in Marina. Meanwhile, it is, of course, the source of our water credits for the new project. Our new project calls for the use of 15.4 fixture units.

This should not be a problem, because the current house holds a total of 18.7 fixture units—more than we'll actually need to use. At least, this is our understanding. And it was the understanding of the Water District since 1992, which was the year after we purchased the home and the same time as a brief suspension of the water moratorium because of the discovery of some new water on the Peninsula.

You are probably quite familiar with the history of the brief lifting of the moratorium. People with house projects in the dream stage scrambled to lay claim to water credits before the window of opportunity closed again. I proposed a number of ways I could officially obtain some water for myself with my own project in mind.

However, it was an employee of your Water Management District herself who gave me permission not to, for example, add on a second bathroom at that time. Instead, knowing my plans for a new home, she suggested I install 10 additional shower heads in the existing shower. Frankly, I was surprised, but naturally, given both the District's blessing and the further blessing of the City of Pacific Grove, I paid nearly \$1,500 for these water credits and completed the installation. My work was checked by the City and since then there have been at least two "spot checks" to make certain the water credits are continuing to be properly warehoused towards the new project.

SUBMITTED BY APPLICANT

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There was only one reason I went through the time and expense of securing these additional fixture units: to guarantee that this water was both legal and paid for when I eventually had the permissions and finances to proceed with the building.

In fact, from 1992 up until I completed the design of my new home and applied for my building permit, it was my understanding—and the Water Management District's and the PG Community Development Department's opinion, too—that each shower head was valid and that each one was originally valued at 2 fixture units, for a total of 28.7 units for the house. You might want to check with our project's over-seer, Barbara Oldfield, or with Judy McClelland in the Community Development Department. They know the history of my water, and they have documented the shower heads. In addition, Barbara was aware that our existing property fixture count stood at between 18.7 and 28.7 (depending on the final eventual fixture count determination) when we applied for Planning Commission approvals, Architectural Review Board approval, and our Building Permit.

We need nowhere near the maximum fixture unit count we may in fact be entitled to (28.7) or even the reduced fixture unit count (18.7). We need just 15.4 fixture units, as mentioned above. We are not disputing the reduction in fixture units. We are only disputing the District's request that we purchase those we need for a second time.

We acknowledge that rules governing Peninsula water use and fixture unit credit calculating may have changed in the past ten years. And we have happily signed and had notarized the two deed restrictions your District requires and is about to file with the County concerning our proposed project's water. But we must protest the fee being attached to our water permit, some \$1,200. We believe our status needs to be "grandfathered in." Otherwise, we feel someone from the District was negligent in not notifying us—and perhaps other people, too?—that our water credits and fees paid were in jeopardy. A simple letter of warning would have sufficed. Instead, we were never given a chance to save the credits or avoid the double payment that is now being asked.

May we please request that you review our special situation and allow us to pick up our water permit and proceed on to the City of Pacific Grove to pull our building permit without paying any further fees to the District? Sally and I look forward to your reply.

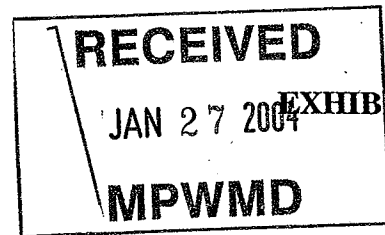
Most sincerely yours,

Jeffrey N. Becom

Post Office Box 534 Pacific Grove California 93950
tel.831/373-0116 fax.831/373-1444 jeffreymbecom@redshift.com

SUBMITTED BY APPLICANT

APPLICATION FOR APPEAL



PROJECT INFORMATION

*If additional space is needed for response to any questions, please continue on a separate piece of paper and attach it to the back of this application.

- 1. Type of Project: X New Construction Remodel/Addition
- 2. Proposed New Use: (Please refer to the District's current Fixture Unit/Use Category sheet for assistance with this question.)
X Residential No. Dwellings 1 Total No. Fixture Units (Residential Only) 15.4
 Commercial/Industrial/Governmental
Type of Use: Square Footage:
Other (Specify):

3. Current Zoning Classification: R3-PGR

4. Name of water company which services the property: Cal-Am

5. Do you feel this project will use less water than that calculated by the District? If so, please explain how much you believe the project will use, and the basis on which you make this assumption.

We agree with water use projections.

6. Has this project been approved by the local jurisdiction? If so, please list or attach a copy of all conditions which have been imposed on the project. (Attach a copy of these conditions and approvals received.)

RESOLUTION # 00-46
Yes. ① Mitigated Negative Declaration / Monitoring / Reporting
② Use Permit # 2638-00 ③ Tree Permit # CDD 3463 ④ Archaeology

7. Does the applicant intend to obtain a municipal or county building permit for the project within ninety (90) days following the granting of a water connection permit? If not, when will water be needed at the site?

Yes. Applicant has obtained a PG Building Permit (#04-0017) on Jan. 8, 2004 due to a deadline in pulling this document.

I declare under penalty of perjury that the information in the application and on accompanying attachments is correct to the best of my knowledge and belief.

Sally Jean Aburg
Signature of Applicant

27 Jan. 04 / Monterey, Ca.
Date/Location

NOTE TO APPLICANT: You may attach written findings for the Board to review and consider in support of the action you have requested.

[Fee Paid 250.00 Receipt No. 16294 Staff Initials DA 1]

⑤ Fire Sprinklers



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Monterey Peninsula Water Management District

DISCLOSURE STATEMENT
(EX PARTE COMMUNICATIONS)

Name or description of project, action, etc.: Appeal of Water District

duplicate water credit fees, 116 13th St., Pacific Grove,

Names and addresses of all persons authorized to communicate with the Board of Directors on this matter:

APN #
006-183-00

Name

Address

Jeffrey Becom

PO Box 534 PG 93950

Sally Aberg

PO Box 534 PG 93950

possibly Barbara Oldfield or

Dept. of Community Development

Judy McClelland

City of Pacific Grove
Forest Avenue

This *Disclosure Statement* is completed in my capacity as the Applicant for matter referenced in the first line, or as an authorized Agent of the Applicant. My signature evidences I am duly authorized to act on behalf of all individuals and/or entities that have an ownership interest in this matter (exceptions shall be noted by checking this box and providing a complete explanation as an attachment to this *Disclosure Statement*).

I understand this *Disclosure Statement* is required to list the names and addresses of all persons authorized to communicate with the Directors of the Water Management District on this matter. I further understand and agree to revise and amend this *Disclosure Statement* whenever any other person is authorized to communicate regarding this matter. Oral disclosure of agents shall not satisfy this requirement.

I understand and agree that failure to disclose the name of individuals who shall communicate with the District Board Members on behalf of the applicant shall subject the matter referenced above to immediate review and denial. Further, I understand that if denial is based on failure of either the applicant or of an authorized agent of the applicant to comply with these disclosure requirements, no request for approval of an identical or similar matter shall be granted for a period of twenty-four (24) months from the date this matter is denied.

I declare the foregoing to be true and correct of my own personal knowledge. I have signed this form this 27 day of January, 2004. This form is signed in the City of Monterey, State of California.

Sally Jean Aberg
Name (print)

Sally Jean Aberg
Signature

SUBMITTED BY APPLICANT

RESOLUTION NO. 00-46**RESOLUTION OF THE PLANNING COMMISSION
OF THE CITY OF PACIFIC GROVE, STATE OF CALIFORNIA****RECEIVED**

OCT 02 2000

COMMUNITY DEV. DEPT.

**ADOPTION OF A MITIGATED NEGATIVE DECLARATION AND
MITIGATION MONITORING AND REPORTING PROGRAM;
USE PERMIT APPLICATION NO. 2638-00;
TREE PERMIT APPLICATION NO. CDD 3463****RECEIVED**

JAN 27 2004

MPWMD

WHEREAS, Jeffrey Becom and Sally Aberg Becom have made an application to the Pacific Grove Planning Commission for a mitigated negative declaration and mitigation monitoring and reporting program, a use permit and a tree permit, in accordance with Title 23 of the Pacific Grove Municipal Code, to construct a new single-family residence that has less than the minimum required distance between the garage door opening and the front property line (Municipal Code Section 23.26.090). The project includes trimming an oak tree on an adjacent property, per Notice of Public Hearing for property located at Lot 16 and a portion of 14, Block 39, Pacific Grove Retreat (Zoning District: R-3-PGR; General Plan Designation: High Density Residential; Environmental Status: An Initial Study, Mitigated Negative Declaration with Mitigation Monitoring and Reporting Program have been prepared for the proposed project), generally located at 116 13th Street in the City of Pacific Grove, County of Monterey, State of California; and

WHEREAS, the Planning Commission, at its meeting of August 17, 2000, adopted the Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program, and has found and determined that the granting of said use permit and tree permit applications will be consistent with Section 23.72.050 of the Pacific Grove Municipal Code and bases said findings and conclusions on the following facts:

Findings for Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program:

Pursuant to Section 15074(b) of the California Code of Regulations, on the basis of the whole record, including the initial study and comments received, there is no substantial evidence that the project will have a significant effect on the environment, subject to the prescribed mitigations.

Findings for Use Permit No. 2638-00:

Subject to the special conditions, the establishment, maintenance and operation of the use and building that are the subject of this application will not be detrimental to the health, safety, peace, morals, comfort and general welfare of persons residing or working in the neighborhood of the proposed use or be detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the city because: (1) the

SUBMITTED BY APPLICANT

RESOLUTION NO. 00-46**Page 2**

subject property is substandard in building site area and opportunities to provide on-site parking are limited, (2) although the project eliminates one on-street parking space, one on-site parking space is provided; therefore, the requested exception will not result in a net increase or decrease in the number of parking spaces in the immediate neighborhood and (3) given the availability of on-street parking in the subject neighborhood and the limited length of the proposed driveway (9') it is unlikely that a driver would attempt to park on the driveway.

Findings for Tree Permit No. CDD 3463:

In accordance with the requirements of Municipal Code Section 12.16.210(D)(2)(a) the City Forester has determined that the proposed minimal tree trimming is necessary to construct the proposed residence.

NOW, THEREFORE, the Planning Commission hereby adopts the Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program, subject to the following mitigation measures, and grants and issues Use Permit No. 2638-00 and Tree Permit No. CDD 3463 subject to the following special and standard conditions:

Special Conditions:

1. In order to encourage vehicle parking within the garage, the garage door opening shall be equipped with an automatic door that shall be maintained in operable condition.
2. In order to maintain an adequate line of sight for vehicles exiting the garage, the design of the handrail on the front steps is required to remain open.
3. A tree permit is required prior to trimming the subject oak tree. The tree permit shall not be issued prior to issuance of the building permit for the project.
4. Erect chain link, snow drift, or field fence around the subject oak tree indicated on approved site plan.
5. Fencing shall not be located closer than 5' from the outside edge of the trunk unless a lesser distance is approved by the City Forester. Fencing shall be rigidly supported and shall stand a minimum height of 4' above grade. Fencing shall be installed prior to the commencement of any removal and/or construction activity and shall remain in place until final approval of the building permit.
6. Excavation/trenching within 3 x's the diameter of the oak tree shall be staked for review and approved by the City Forester prior to commencement of earth disturbing activities.

SUBMITTED BY APPLICANT**RECEIVED**

JAN 27 2004

MPWMD

RESOLUTION NO. 00-46

Page 3

7. Roots larger than 2" in diameter encountered during excavation/trenching are required to be bridged or tunneled. A certified arborist or the City Forester is required to be present during excavation/trenching. The applicant shall schedule the excavation /trenching work with the City Forester a minimum of five working days prior to the commencement of work.
8. On-grade patios or paving that covers more than 1/2 of the root feeding zone of the oak tree shall be constructed of permeable materials that allow aeration and water penetration.
9. Root crown grade is required to remain at the same level and shall not be raised or lowered.
10. Fill dirt shall not be placed within ten feet (10') of the base of any tree.
11. Water is required to drain away from the base of any tree.
12. Storage of building materials and/or debris within the dripline is prohibited. Heavy equipment and/or vehicles are not permitted to be parked within the dripline of the oak tree identified on the approved site plan.
13. Signs, wires, pulleys, etc. are not to be fastened to any tree.
14. Paintbrushes and tools shall not be cleaned over tree roots.
15. Chemical wastes (paint thinner, etc.) shall be disposed of properly and shall not be drained on the site. Consult Monterey Regional Waste Management District for information concerning disposal of chemical wastes.

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JAN 27 2004

MPWMD**Mitigations:**

1. An archaeological monitor shall be present during project-related earth-disturbing activities on the subject site including demolition or relocation of the existing residence and paved surfaces, and excavation for the foundation of the proposed new residence.
2. If human remains or intact archaeological artifacts/cultural features or soils are encountered at any time during project implementation, the archaeological monitor is authorized to halt excavation related work immediately on the site and in the adjacent public right-of-way until appropriate mitigation measures are formulated and implemented to the satisfaction of the Community Development Department. The Community Development Department Director shall be notified of any such find(s) immediately.

SUBMITTED BY APPLICANT

RESOLUTION NO. 00-46

Page 4

3. If significant cultural resources are discovered on the site in conjunction with project-related activities, a data recovery project shall be required. If a data recovery program is necessary it shall include the following:
- Soils excavated for the proposed driveway and basement, foundation and footings, shall be excavated under direction of the project archaeologist.
 - Any bone fragments and/or lithic artifacts recovered shall be evaluated by the archaeological monitor.
 - At least two radiocarbon dates shall be run on suitable material recovered; and other analysis as may be required, i.e., bead analysis for beads recovered on the site.
 - Subject to compliance with the prescribed mitigations, construction shall be allowed to proceed following completion of the field work required for data recovery. An archaeological monitor shall be present during any earth disturbance.
4. A FINAL TECHNICAL REPORT detailing the results of all analysis shall be completed within one year of completion of field work. This report shall be filed with the Community Development Department and the Regional Information Center at Sonoma State University.
5. To reduce project-related noise impacts, days and hours of are limited to 7:00 a.m. to 7:00 p.m. Monday through Saturday.

Standard Conditions:

1. The applicant shall comply with the provisions of Section 11.18.011 establishing criteria for sewer cleanouts and house traps.
2. The permit shall be revoked if not used within one year from date of approval. Application for extension of the permit must be made prior to the expiration date.
3. Construction shall not commence until a copy of the resolution signed by the permittee or authorized agent, acknowledging receipt of the permits and acceptance of the terms and conditions, is returned to the Community Development Department.
4. All construction must occur in strict compliance with the proposal as set forth in the applications for the permit. Any deviation from the approved plans must be reviewed and approved by the staff and may require Planning Commission approval.

SUBMITTED BY APPLICANT

RESOLUTION NO. 00-46

- 5. These terms and conditions shall be perpetual, and it is the intention of the Planning Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the City of Pacific Grove held on the 17th day of August, 2000, by the following vote:

AYES: Bennett, Blaskovich, Cort, Davis, Fletcher (Chairman), Stenman

NOES: None

ABSTAIN: None

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 JAN 27 2004
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Please note that this resolution does not take effect until the 10-day appeal period has expired.


 Daniel M. Fletcher, Chairman

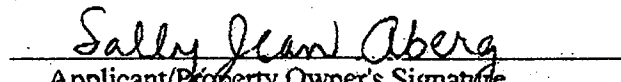
ATTEST:


 Dennis Boehlje, Secretary

The undersigned hereby acknowledge the approved terms and conditions, and, agree to fully conform to and comply with said terms and conditions.


 Applicant/Property Owner's Signature

9/30/03
 Date


 Applicant/Property Owner's Signature

30 Sept. 2000
 Date

SUBMITTED BY APPLICANT