



**TOWN OF LOS GATOS
COUNCIL MEETING AGENDA
NOVEMBER 02, 2021
110 EAST MAIN STREET
TOWN COUNCIL CHAMBERS
LOS GATOS, CA**

Marico Sayoc, Mayor

Rob Rennie, Vice Mayor

Mary Badame, Council Member

Matthew Hudes, Council Member

Marie Ristow, Council Member

PARTICIPATION IN THE PUBLIC PROCESS

How to participate: The Town of Los Gatos strongly encourages your active participation in the public process, which is the cornerstone of democracy. If you wish to speak to an item on the agenda, please follow the participation instructions on page 2 of this agenda. If you wish to speak to an item NOT on the agenda, you may do so during the “Verbal Communications” period, by following the participation instructions on page 2 of this agenda. The time allocated to speakers may change to better facilitate the Town Council meeting.

Effective Proceedings: The purpose of the Town Council meeting is to conduct the business of the community in an effective and efficient manner. For the benefit of the community, the Town of Los Gatos asks that you follow the Town’s meeting guidelines while attending Town Council meetings and treat everyone with respect and dignity. This is done by following meeting guidelines set forth in State law and in the Town Code. Disruptive conduct is not tolerated, including but not limited to: addressing the Town Council without first being recognized; interrupting speakers, Town Council or Town staff; continuing to speak after the allotted time has expired; failing to relinquish the podium when directed to do so; and repetitiously addressing the same subject. Disruption of the meeting may result in a violation of Penal Code 403.

Deadlines for Public Comment and Presentations are as follows:

- Persons wishing to make an audio/visual presentation on any agenda item must submit the presentation electronically, either in person or via email, to the Clerk’s Office no later than 3:00 p.m. on the day of the Council meeting.
- Persons wishing to submit written comments to be included in the materials provided to Town Council must provide the comments as follows:
 - For inclusion in the regular packet: by 11:00 a.m. the Thursday before the Council meeting
 - For inclusion in any Addendum: by 11:00 a.m. the Monday before the Council meeting
 - For inclusion in any Desk Item: by 11:00 a.m. on the day of the Council Meeting

Town Council Meetings Broadcast Live on KCAT, Channel 15 (on Comcast) on the 1st and 3rd Tuesdays at 7:00 p.m.

Rebroadcast of Town Council Meetings on the 2nd and 4th Mondays at 7:00 p.m.

Live & Archived Council Meetings can be viewed by going to:

www.LosGatosCA.gov/TownYouTube

IN COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT, IF YOU NEED SPECIAL ASSISTANCE TO PARTICIPATE IN THIS MEETING, PLEASE CONTACT THE CLERK DEPARTMENT AT (408) 354-6834. NOTIFICATION 48 HOURS BEFORE THE MEETING WILL ENABLE THE TOWN TO MAKE REASONABLE ARRANGEMENTS TO ENSURE ACCESSIBILITY TO THIS MEETING [28 CFR §35.102-35.104]

**TOWN OF LOS GATOS
COUNCIL MEETING AGENDA
NOVEMBER 02, 2021
7:00 PM**

IMPORTANT NOTICE REGARDING THE NOVEMBER 2, 2021 MEETING

This meeting is being conducted utilizing teleconferencing and electronic means consistent with Government Code Section 54953, as Amended by Assembly Bill 361, in response to the state of emergency relating to COVID-19 and enabling teleconferencing accommodations by suspending or waiving specified provisions in the Ralph M. Brown Act (Government Code § 54950 et seq.). Consistent with AB 361 and Town of Los Gatos Resolution 2021-044, this meeting will not be physically open to the public and the Council will be teleconferencing from remote locations. Members of the public can only participate in the meeting by joining the Zoom webinar (log in information provided below).

PARTICIPATION

Public comments can be made live during the Town Council meeting via Zoom. If you are not interested in providing oral comments in real-time during the meeting, you can view the live stream of the meeting on television (Comcast Channel 15) and/or online at www.LosGatosCA.gov/TownYouTube.

To provide oral comments in real-time during the meeting:

- **Zoom webinar:** Join from a PC, Mac, iPad, iPhone or Android device: click this link <https://us02web.zoom.us/j/81590083879?pwd=Z3pmNlozYy9xU3EramZsYys2VERaQT09>. Password: 445800. You can also type in 815 9008 3879 in the “Join a Meeting” page on the Zoom website at <https://zoom.us/join>.
- When the Chair announces the item for which you wish to speak, click the “raise hand” feature in Zoom. If you are participating by phone on the Zoom app, press *9 on your telephone keypad to raise your hand. If you are participating by calling in, press #2 on your telephone keypad to raise your hand.
- **Join by telephone:** Dial: 877-336-1839. Conference code: 969184

When called to speak, please limit your comments to three (3) minutes, or such other time as the Mayor may decide, consistent with the time limit for speakers at a Council meeting. If you wish to speak to an item or items on the Consent Calendar, please state which item number(s) you are commenting on at the beginning of your time.

If you are unable to participate in real-time, you may email to PublicComment@losgatosca.gov the subject line “Public Comment Item #__” (insert the item number relevant to your comment) or “Verbal Communications – Non-Agenda Item.” Comments received by 11:00 a.m. the day of the meeting will be reviewed and distributed before the meeting. All comments received will become part of the record.

**TOWN OF LOS GATOS
COUNCIL MEETING AGENDA
NOVEMBER 02, 2021
7:00 PM**

REMOTE LOCATION PARTICIPANTS

The following Council Members are listed to permit them to appear electronically or telephonically at the Town Council meeting: MAYOR MARICO SAYOC, VICE MAYOR ROB RENNIE, COUNCIL MEMBER MARY BADAME, COUNCIL MEMBER MATTHEW HUDES, and COUNCIL MEMBER MARIA RISTOW. All votes during the teleconferencing session will be conducted by roll call vote.

MEETING CALL TO ORDER

ROLL CALL

CLOSED SESSION REPORT

COUNCIL / MANAGER MATTERS

CONSENT ITEMS *(Items appearing on the Consent Items are considered routine Town business and may be approved by one motion. Any member of the Council may request to have an item removed from the Consent Items for comment and action. Members of the public may provide input on any or multiple Consent Item(s) when the Mayor asks for public comments on the Consent Items. If you wish to comment, please follow the Participation Instructions contained on Page 2 of this agenda. If an item is removed, the Mayor has the sole discretion to determine when the item will be heard.)*

1. Approve Closed Session Meeting Minutes of October 19, 2021.
2. Approve Meeting Minutes of October 19, 2021.
3. Adopt a Resolution Reaffirming Resolution 2021-044 Regarding Brown Act Compliance and Teleconferencing and Making Findings Pursuant to Government Code Section 54953, as Amended by Assembly Bill 361, During the COVID -19 Pandemic.
4. Adopt a Resolution to Set a Date for Consideration of the Reorganization of an Uninhabited Area Designated as Winterbrook No. 7, Approximately 0.95 Acres on Property Pre-Zoned R-1:8. APN 523-26-017. Annexation Application AN21-002. Project Location: **16010 Winterbrook Road**. Property Owner/Applicant: Drew and Kari Brown.
5. Authorize the Town Manager to Execute a Cooperative Agreement with the California Department of Transportation for the Development of a Project Initiation Document for the Highway 17 Bicycle and Pedestrian Overcrossing Project (CIP No. 818-0803) in an Amount Not to Exceed \$135,000, and Authorize the Town Manager to Execute Future Cooperative Agreements with Caltrans as Necessary for Future Project Phases.
6. Authorize the Town Manager to Execute a Second Amendment to Agreement for Consultant Services with Cuschieri Horton Architects for Additional Architectural and Engineering Design Services for PPW Project 821-2302, in an Amount of \$53,100, for a Total Agreement Not to Exceed \$218,450.

7. Authorize the Town Manager to Execute a Certificate of Acceptance and Notice of Completion for the Waterproofing Town-Wide Project (20-821-2010), Completed by California Roofing Company for a Roof Replacement on the Engineering Building and Authorize the Town Clerk to File for Recordation.

VERBAL COMMUNICATIONS *(Members of the public are welcome to address the Town Council on any matter that is not listed on the agenda consistent with the Participation Instructions contained on Page 2 of this agenda. To ensure all agenda items are heard and unless additional time is authorized by the Mayor, this portion of the agenda is limited to 30 minutes and no more than three (3) minutes per speaker. In the event additional speakers were not able to be heard during the initial Verbal Communications portion of the agenda, an additional Verbal Communications will be opened prior to adjournment.)*

OTHER BUSINESS *(Up to three minutes may be allotted to each speaker on any of the following items consistent with the Participation Instructions contained on Page 2 of this agenda.)*

8. Approve Updates to Council Policy 2-01: Town Agenda Format and Rules and Council Policy 2.04: Town Council Code of Conduct as Recommended by the Council Policy Committee and Adopt a Resolution to Rescind Resolutions 2009-002 and 2006-111.

PUBLIC HEARINGS *(Applicants/Appellants, their representative, and members of the public may address the Council on any public hearing item consistent with the Participation Instructions contained on Page 2 of this agenda. Applicants/Appellants and their representatives may be allotted up to a total of five minutes maximum for opening statements. Members of the public may be allotted up to three minutes to comment on any public hearing item. Applicants/Appellants and their representatives may be allotted up to a total of three minutes maximum for closing statements. Items requested/recommended for continuance are subject to Council's consent at the meeting.)*

9. Introduction and First Reading of an Ordinance Amending the Los Gatos Town Code Section 18.50.100 to Prohibit Targeted Residential Picketing.

OTHER BUSINESS *(Up to three minutes may be allotted to each speaker on any of the following items consistent with the Participation Instructions contained on Page 2 of this agenda.)*

10. Provide Direction to Strengthen the Town's Social Host Ordinance and Update the Youth Party Guidelines.
11. Provide Direction on the Proposed Pilot Employee Parking Program.

PUBLIC HEARINGS *(Applicants/Appellants, their representative, and members of the public may address the Council on any public hearing item consistent with the Participation Instructions contained on Page 2 of this agenda. Applicants/Appellants and their representatives may be allotted up to a total of five minutes maximum for opening statements. Members of the public may be allotted up to three minutes to comment on any public hearing item. Applicants/Appellants and their representatives may be allotted up to a total of three minutes maximum for closing statements. Items requested/recommended for continuance are subject to Council's consent at the meeting.)*

12. Consider an Appeal of a Planning Commission Decision Approving a Lot Line Adjustment Between Three Adjacent Lots on Properties Zoned R-1:20. Located at 17200 Los Robles Way. Subdivision Application M-20-012.

APNS 532-36-075, -076, -077. Property Owners: Daran Goodsell, Trustee and Mark Von Kaenel. Applicant: Tony Jeans. Appellant: Alison and David Steer. **Project Planner: Ryan Safty.**

13. Introduction and First Reading of an Ordinance Amending the Los Gatos Town Code Chapter 11 Regarding Garbage, Refuse, and Weeds to Include Organic Waste Disposal Reduction and Amending Sections Conflicting with Ordinance Definitions and Requirements.

OTHER BUSINESS (*Up to three minutes may be allotted to each speaker on any of the following items consistent with the Participation Instructions contained on Page 2 of this agenda.*)

14. Discuss and Provide Direction Regarding Shared Mobility Devices.

ADJOURNMENT (*Council policy is to adjourn no later than midnight unless a majority of Council votes for an extension of time.*)

Writings related to an item on the Town Council meeting agenda distributed to members of the Council within 72 hours of the meeting are available for review on the official Town of Los Gatos website. Copies of desk items distributed to members of the Council at the meeting are available for review in the Town Council Chambers.

Note: The Town of Los Gatos has adopted the provisions of Code of Civil Procedure §1094.6; litigation challenging a decision of the Town Council must be brought within 90 days after the decision is announced unless a shorter time is required by State or Federal law.



**DRAFT
Minutes of the Town Council Special Meeting - Closed Session
October 19, 2021**

The Town Council of the Town of Los Gatos conducted a Special Meeting in-person and utilizing teleconferencing and electronic means consistent with Government Code Section 54953, as amended by Assembly Bill 361 in response to the state of emergency relating to COVID-19 and enabling teleconferencing accommodations by suspending or waiving specified provisions in the Ralph M. Brown Act (Government Code § 54950 et seq.) and Town of Los Gatos Resolution 2021-044 on Tuesday, October 19, 2021, at 4:00 p.m. to hold a Closed Session.

MEETING CALLED TO ORDER AT 4:04 P.M.

ROLL CALL

Present: Mayor Marico Sayoc, Vice Mayor Rob Rennie, Council Member Mary Badame, Council Member Matthew Hudes, Council Member Maria Ristow.

Absent: None

VERBAL COMMUNICATIONS

No one spoke.

THE TOWN WILL MOVE TO CLOSED SESSION ON THE FOLLOWING ITEMS:

1. Public Employee Appointment, Employment, Evaluation of Performance, Discipline, and Dismissal
[Government Code Section 54957(b)(1)]
Title: Town Manager

Conference with Labor Negotiator
(Government Code Section 54957.6)
Town negotiator: Lisa Velasco, Human Resources Director
Unrepresented Employee: Town Manager

2. Public Employee Appointment, Employment, Evaluation of Performance, Discipline, and Dismissal
[Government Code Section 54957(b)(1)]
Title: Town Attorney

Conference with Labor Negotiator
(Government Code Section 54957.6)
Town negotiator: Lisa Velasco, Human Resources Director
Unrepresented Employee: Town Attorney

PAGE 2 OF 2

SUBJECT: DRAFT Minutes of the Town Council Special Meeting of October 19, 2021

DATE: October 19, 2021

Council discussed the matter.

ADJOURNMENT

Closed Session adjourned at 5:28 p.m.

Attest:

Submitted by:

Jenna De Long, Deputy Clerk

Laurel Prevetti, Town Manager



**DRAFT
Minutes of the Town Council Meeting
October 19, 2021**

The Town Council of the Town of Los Gatos conducted a regular meeting utilizing teleconference and electronic means consistent with Government Code Section 54953, as Amended by Assembly Bill 361, in response to the state of emergency relating to COVID-19 and enabling teleconferencing accommodations by suspending or waiving specified provisions in the Ralph M. Brown Act (Government Code § 54950 et seq.) and Town of Los Gatos Resolution 2021-044 on Tuesday, October 19, 2021, at 7:00 p.m.

MEETING CALLED TO ORDER AT 7:01 P.M.

ROLL CALL

Present: Mayor Marico Sayoc, Vice Mayor Rob Rennie, Council Member Mary Badame, Council Member Matthew Hudes, Council Member Maria Ristow. (All participating remotely).

Absent: None

PRESENTATIONS

- i. Recognition of Community Emergency Response Team (CERT) Leaders.

Mayor Sayoc read a commendation recognizing CERT Leaders.

CLOSED SESSION REPORT

Robert Schultz, Town Attorney, stated Council met in closed session as duly noted on the agenda and that there is no reportable action.

COUNCIL/TOWN MANAGER REPORTS

Council Matters

- Vice Mayor Rennie stated he supports the Mayor, condemns bullying and hate speech, and supports the Council's priority of making Los Gatos an inclusive town.
- Council Member Badame stated she met with the Executive Director of West Valley Solid Waste Management Authority (WVSWMA), spoke with constituents concerning the Draft 2040 General Plan, attended a Democracy Tent community meeting as an observer, attended the Finance Commission meeting as observer, participated in the Conceptual Development Advisory (CDAC) meeting, and supports Mayor Sayoc.
- Council Member Hudes stated he supports Mayor Sayoc; condemns hate speech; met with residents concerning the Senior Services Road Map and installation of artificial turf; attended the Finance Commission, CDAC, and Draft 2040 General Plan community meetings.

Council Matters – continued

- Council Member Ristow stated she attended the Finance Commission as an observer, Complete Streets and Transportation Commission (CSTC) as an observer, West Valley Sanitation District (WVSD) Board of Directors meeting, Democracy Tent community meeting, met with residents concerning Shannon Road improvements and the Draft 2040 General Plan, participated in the CSTC Bicycle Parking Survey; supports the Mayor and condemns hatred, bigotry, and incivility.
- Mayor Sayoc stated in addition to the meetings stated, she attended the Santa Clara County Cities Association meeting.

Council Member Hudes requested the following items be placed on a future agenda: Should staff prepare the following analyses for the Planning Commission hearing on the Draft 2040 General Plan: (1) Analyze the impact of SB 9 on assumptions about housing capacity and (2) Analyze an alternative based on the Regional Housing Needs.

Vice Mayor Rennie, Council Member Ristow, and Council Member Badame commented in support of the request.

Manager Matters

- Announced the first Housing Element Advisory Board (HEAB) meeting will be held on Thursday, October 21 at 7:00 p.m. via teleconference.
- Announced the Parks Commission will hold a Park for Parks event at Belgatos Park on October 23 at 10:00 a.m.
- Announced the Town Council Policy Committee will be held on October 26 at 5:00 p.m. via teleconference to address civility in the Town’s Agenda Format and Rules and Code of Conduct Policies.
- Announced Board, Commission, and Committee recruitment is underway; the application period closes 4:00 p.m. on December 3.

CONSENT ITEMS (TO BE ACTED UPON BY A SINGLE MOTION)

1. Approve Draft Minutes of the October 5, 2021 Closed Session Town Council Meeting.
2. Approve Draft Minutes of the October 5, 2021 Town Council Meeting.
3. Approve Draft Minutes of the October 7, 2021 Closed Session Town Council Meeting.
4. Authorize the Town Manager to Execute a Service Agreement with Silicon Valley Ambulance, Inc. as a One-Year Pilot Program for Transportation Services of Juvenile Patients Placed on an Involuntary Mental Health Evaluation Hold.
5. Authorize the Town Manager to Execute a Consultant Services Agreement in the Amount of \$109,960 with Hunt Design Associates, Inc for Downtown Wayfinding and Signage Design Consultant Services.
6. Authorize the Town Manager to Execute a Consultant Agreement for Executive Recruitment Services with Teri Black & Company, LLC. in an Amount Not to Exceed \$54,000.

Consent Items – continued

Council Member Hudes pulled item #5.

Opened public comment.

No one spoke.

Closed public comment.

MOTION: Motion by Vice Mayor Rennie to approve Consent Items 1 through 6, exclusive of item 5. Seconded by Council Member Badame.

VOTE: Motion passed unanimously.

VERBAL COMMUNICATIONS

Justin Jeong, Office of Representative Eshoo

- Read a letter from Congress Member Eshoo in support of Mayor Sayoc.

Jak Van Nada, Los Gatos Community Alliance

- Commented in support of Mayor Sayoc and the Council.

Raania Mohsen, Office of San Jose Vice Mayor Jones

- Read a letter on behalf of San Jose Vice Mayor Jones and other elected officials in support of Mayor Sayoc.

Assembly Member Evan Low

- Read a letter in support of Mayor Sayoc and inquired as to what steps have been taken to prevent bullying and harassment of elected officials.

Ann Ravel

- Commented that the actions of those who have disrupted previous Council meetings are not protected under the First Amendment and spoke in support of Council.

Kris Kamli

- Requested Council act to prevent further disruptions at Council meetings.

Rob Moore

- Commented that many Los Gatans support Mayor Sayoc, the Town Council, and civil discourse.

Verbal Communications – continued

Kjirste Morrell

- Commented in support of the Town’s Justice, Equity, Diversity and Inclusion (JEDI) efforts, Mayor Sayoc, and in support of additional pedestrian and bike pathways in the Draft 2040 General Plan.

-

Amy Nishide, Los Gatos Anti-Racism Coalition

- Commented in support of the Mayor and Council.

Ali Miano, Los Gatos Anti-Racism Coalition

- Commended in support of the Mayor and Town Council, and expanding public transportation and affordable housing in the Draft 2040 General Plan.

Kylie Clark

- Commented in support of Mayor Sayoc, the Town Council, and civil discourse.

Jeffrey Suzuki

- Commented in support of the Mayor and Town Council.

Mayor Sayoc stated Item #11 would be heard next.

PUBLIC HEARINGS

11. Consider Adoption of an Urgency Ordinance of the Town of Los Gatos Amending Section 18.50.100 of the Town Code to Prohibit Targeted Residential Picketing. **ORDINANCE 2322**

Robert Schultz, Town Attorney, presented the staff report.

Opened Public Comment.

Lynley Kerr Hogan

- Commented on concerns of threatening neighbors. Speaker was muted due to not speaking on the subject matter.

Wiggysy Sivertsen

- Commented on her identity as a member of the LGBTQ+ community. Speaker was stopped due to not speaking on the subject matter.

Amy Nishide

- Commented in support of the item.

Public Hearing Item #11 – continued

Angelica Ramos-Allen, President, National Women’s Political Caucus, Silicon Valley Chapter
- Commented in support of the item.

Council discussed the item.

MOTION: Motion by Council Member Ristow to adopt an Urgency Ordinance of the Town of Los Gatos amending section 18.50.100 of the Town Code to prohibit targeted residential picketing. **Seconded by Council Member Badame.**

VOTE: Motion passed unanimously.

OTHER BUSINESS

7. Staff Recommends the Following Actions for the Shannon Road Pedestrian and Bikeway Improvements (CIP No. 813-0218):
 - a. Approve Design Concept 3 and Authorize Staff to Proceed with the Final Design; and
 - b. Approve the Recommended Funding Strategy.

WooJae Kim, Town Engineer, presented the staff report.

Opened Public Comment.

Tim King

- Commented that safety on Shannon Road is statistically safer than comparable roads in the area, requested any improvements be done with as little disruption as possible, and commented in opposition of bollards.

Cheri Finalle Binkley

- Commented in opposition of design option #3.

Andy Horwitz

- Commented in opposition of design option #3 and requested the project be sent back for further review and input from the residents.

Gillian Verga

- Commented on the CSTC viewpoint for option #3; stated she is the Vice Chair of CSTC and is speaking as a member of the public, not a member of CSTC.

Maria Gerst

- Commented in opposition of design option #3.

Other Business Item #7 – continued

Ted Moorhead

- Commented in opposition of all three design options.

Simon Lonsdale

- Commented in support of design option #1.

Mark Bony

- Commented in support of design option #1.

Ryan Rosenberg

- Commented in support of increasing safety and encouraging biking; inquired if additional input can be gathered from the most effected residents.

Kendra

- Commented in opposition of the design proposals.

Varun

- Commented in opposition of the design proposals due to parking concerns.

Rebecca Heng

- Commented in support of design option #1.

Mike King

- Commented on the traffic, speed bumps, bollards, and parking.

Stephanie Martin

- Commented in support of option #1.

Helen Sun

- Commented in support of option #1.

Closed Public Comment.

Council discussed the item.

MOTION: Motion by Council Member Ristow to approve design option #3 without the bollards, with the option to add delineators at a later time and approve the recommended funding strategy. **Seconded by Council Member Hudes.**

VOTE: Motion passed unanimously.

Recessed at 9:55 p.m.

Reconvened at 10:01 p.m.

8. Receive an Update on the Implementation of the Town Council Accepted Ad Hoc Wildfire Committee Report.

Arn Andrews, Assistant Town Manager, presented the staff report.

Opened Public Comment.

Buzz Johnson

- Inquired if the Los Gatos-Monte Sereno Police Department was part of the Zonehaven determination process.

Closed Public Comment.

Council discussed the item and received the report.

9. Receive the Town Finance Commission Recommendation and Authorize the Town Manager to Issue a Request for Proposals (RFP) for Consultant Services to Evaluate and Recommend Modernization Options for the Town's Business License Tax Program.

Arn Andrews, Assistant Town Manager, presented the staff report.

Opened Public Comment.

No one spoke.

Closed Public Comment.

Council discussed the item.

MOTION: Motion by Council Member Badame to receive the Finance Commission recommendation and authorize the Town Manager to issue a Request for Proposals (RFP) for Consultant Services to evaluate and recommend modernization options for the Town's Business License Tax Program. **Seconded by Council Member Ristow.**

VOTE: Motion passed unanimously.

PUBLIC HEARINGS

10. Consider a Request for an Exception to the Height Pole and Netting Policy to Allow an Alternative to Standard Story Pole Installation to Illustrate and Provide Notice of the Proposed Project on Property Zoned R:PD Located at 110 Wood Road. APN 510-47-038. Applicant: Frank Rockwood. Property Owner: Covia Communities. Project Planner: Sean Mullin.

Council Member Ristow recused herself due to proximity to the project and left the meeting.

Sean Mullin, Associate Planner, presented the staff report.

Opened Public Comment.

Frank Rockwood and Mark Falgout, Applicants

- Commented on the project.

Closed Public Comment.

Council discussed the item.

MOTION: Motion by Council Member Hudes to approve a request for an exception to the height pole and netting policy to install story poles with two rows of rope flags in lieu of netting to illustrate and provide notice of the proposed project. **Seconded by Council Member Badame.**

VOTE: Motion passed 4/0/1. Council Member Ristow recused.

Council Member Ristow rejoined the meeting.

PULLED CONSENT ITEMS

5. Authorize the Town Manager to Execute a Consultant Services Agreement in the Amount of \$109,960 with Hunt Design Associates, Inc for Downtown Wayfinding and Signage Design Consultant Services.

Greg Borromeo, Interim Police Captain, presented the staff report.

Opened Public Comment.

Randi Chen, Chamber of Commerce

- Commented in support of the item.

Closed Public Comment.

Pulled Consent Items – continued

Council discussed the item.

MOTION: Motion by Council Member Hudes to authorize the Town Manager to execute a consultant services agreement in the amount of \$109,960 with Hunt Design Associates, Inc for Downtown Wayfinding and Signage Design Consultant Services and implement full Phase I of the Dixon Parking Study that includes electronic wayfinding. **Seconded by Council Member Ristow.**

VOTE: Motion passed unanimously.

VERBAL COMMUNICATIONS - continued

James, BAYMEC Community Foundation Board Member

- Commented in support of Mayor Sayoc and the Town Council.

Randi Chen, Chamber of Commerce

- Commented in support of Mayor Sayoc and the Town Council.

Lee Fagot

- Commented in support of Mayor Sayoc and the Town Council.

Emily Ann Ramos

- Commented in support of Mayor Sayoc and Town Council.

Angelica Ramos-Allen, President, National Women’s Political Caucus, Silicon Valley Chapter

- Commented in support of Mayor Sayoc and the Town Council.

ADJOURNMENT

The meeting adjourned at 11:07 p.m.

Respectfully submitted:

Jenna De Long, Deputy Clerk



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 11/02/2021

ITEM NO: 3

DATE: October 26, 2021
TO: Mayor and Town Council
FROM: Robert Schultz, Town Attorney
SUBJECT: Adopt a Resolution Reaffirming Resolution 2021-044 Regarding Brown Act Compliance and Teleconferencing and Making Findings Pursuant to Government Code Section 54953, as Amended by Assembly Bill 361, During the COVID -19 Pandemic

RECOMMENDATION:

Adopt a Resolution reaffirming Resolution 2021-044 and making findings pursuant to Government Code Section 54953, as amended by Assembly Bill 361, and authorizing the continued use of virtual meetings due to health and safety concerns for the public.

BACKGROUND:

On March 17, 2020, Governor Newsom issued Executive Order N-29-20, which allowed for relaxed provisions of the Ralph M. Brown Act (Brown Act) that allowed legislative bodies to conduct meetings through teleconferencing without having to meet the strict compliance of the Brown Act. All provisions of Executive Order N-29-20 concerning the conduct of public meetings expired on September 30, 2021.

DISCUSSION:

AB 361 was signed into law by the Governor on September 16, 2021, and went into effect immediately upon signing. It amends the Brown Act to allow local legislative bodies to continue using teleconferencing and virtual meeting technology after the September 30, 2021, expiration of the current Brown Act exemptions as long as there is a "proclaimed state of emergency" by the Governor. This allowance also depends on State or local officials imposing or recommending measures that promote social distancing or a legislative body finding that meeting in person would present an imminent safety risk to attendees.

Reviewed by: Town Manager and Assistant Town Manager

PAGE 2 OF 2

SUBJECT: Adopt a Resolution Regarding Brown Act Compliance and Teleconferencing

DATE: October 26 2021

DISCUSSION (Cont) :

AB 361 requires Public agencies to make findings by majority vote within 30 days of the first teleconferenced meeting under AB 361 and every 30 days thereafter that a state of emergency still exists and continues to directly impact the ability of the members to meet safely in person, or that officials continue to impose or recommend measures to promote social distancing.

CONCLUSION:

Adopt a Resolution reaffirming Resolution 2021-044 making findings pursuant to Government Code Section 54953, as amended by Assembly Bill 361, and authorizing the continued use of virtual meetings. If adopted, virtual meetings may continue for all Town Boards, Commissions, and Committees.

COORDINATION:

This report was coordinated with the Town Manager's Office.

FISCAL IMPACT:

There will be no fiscal impact to the Town at this time.

ENVIRONMENTAL ASSESSMENT:

This is not a project defined under CEQA, and no further action is required.

Attachment:

1. Draft Resolution

RESOLUTION 2021-

**RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF LOS GATOS
REAFFIRMING RESOLUTION 2021-044 REGARDING BROWN ACT COMPLIANCE AND
TELECONFERENCING PURSUANT TO GOVERNMENT CODE SECTION 54953, AS AMENDED BY
ASSEMBLY BILL 361, DURING THE COVID-19 PANDEMIC**

WHEREAS, on March 4, 2020, the Governor of the State of California declared a state of emergency to make additional resources available, formalize emergency actions already underway across multiple state agencies and departments, and help the state prepare for broader spread of COVID-19; and

WHEREAS, on March 12, 2020, the Town Manager of Los Gatos acting in the capacity of Town of Director of Emergency Services, issued a Proclamation of Local Emergency; and

WHEREAS, on March 17, 2020, Governor Newsom issued Executive Order N-29-20, which suspended and modified the teleconferencing requirements under the Brown Act (California Government Code Section 54950 et seq.) so that local legislative bodies can hold public meetings via teleconference (with audio or video communications, without a physical meeting location), as long as the meeting agenda identifies the teleconferencing procedures to be used; and

WHEREAS, on March 17, 2020, the Town Council of the Town of Los Gatos ratified the Proclamation of Local Emergency as set forth in Resolution 2020-008 and remains in full force and effect to date; and

WHEREAS, on June 4, 2021, the Governor clarified that the “reopening” of California on June 15, 2021 did not include any change to the proclaimed state of emergency or the powers exercised thereunder; and

WHEREAS, on June 11, 2021, the Governor issued Executive Order N-08-21, which extended the provision of N-29-20 concerning the conduct of public meetings through September 30, 2021, and the Governor subsequently signed legislation revising Brown Act requirements for teleconferenced public meetings (Assembly Bill 361, referred to hereinafter as “AB 361”); and

WHEREAS, on September 16, 2021 Governor Newsom signed AB 361, which added subsection (e) to Government Code section 54953 of the Brown Act, and makes provision for remote teleconferencing participation in meetings by members of a legislative body, without compliance with the requirements of Government Code section 54953(b)(3), subject to the existence of certain conditions; and

ATTACHMENT 1

WHEREAS, the Town Council of the Town of Los Gatos approved Resolution No. 2021-044 on October 5, 2021 declaring the need for the Town Council, Committees, and Commissions to continue to meet remotely in order to ensure the health and safety of the public; and

WHEREAS, the Town Council has considered all information related to this matter, including the associated staff report and other information relating to COVID-19 provided at prior public meetings of the Town Council; and

WHEREAS, the Town Council now desires to adopt a Resolution finding that the requisite conditions continue to exist for the legislative bodies of the Town of Los Gatos, as defined in the Brown Act, to conduct remote teleconference meetings without compliance with paragraph (3) of subdivision (b) of Government Code section 54953.

NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF LOS GATOS DOES HEREBY RESOLVE:

1. The Town Council hereby finds that the fact set forth in the above recitals and as contained in Resolution 2021-044 are true and correct, and establish the factual basis for the adoption of this Resolution;
2. There is an ongoing proclaimed state of emergency relating to the novel coronavirus causing the disease known as COVID-19 and as a result of that emergency, meeting in person would present imminent risks to the health or safety of attendees of in-person meetings of this legislative body and all Town advisory bodies within the meaning of California Government Code section 54953(e)(1).
3. Under the present circumstances, including the risks mentioned in the preceding paragraph, the Town Council determines that authorizing teleconferenced public meetings consistent with Assembly Bill 361 is necessary and appropriate.
4. Staff are directed to take all actions necessary to implement this Resolution for all Town meetings in accordance with the foregoing provisions and the requirements of Government Code section 54953, as amended by Assembly Bill 361, including but not limited to returning for ratification of this Resolution every 30 days after teleconferencing for the first time pursuant to Assembly Bill 361 for so long as either of the following circumstances exists: (a) the state of emergency continues to directly impact the ability of this legislative body to meet in person; and/or (b) state or local officials, including but not limited to the County Health Officer, continue to impose or recommend measures to promote social distancing.

PASSED AND ADOPTED at a regular meeting of the Town Council of the Town of Los Gatos, California, held on the 2nd day of November 2021, by the following vote:

COUNCIL MEMBERS:

AYES:

NAYS:

ABSENT:

ABSTAIN:

SIGNED:

MAYOR OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

DATE: _____

ATTEST:

TOWN CLERK OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

DATE: _____



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 11/2/2021

ITEM NO: 4

DATE: October 26, 2021
TO: Mayor and Town Council
FROM: Laurel Prevetti, Town Manager
SUBJECT: Adopt a Resolution to Set a Date for Consideration of the Reorganization of an Uninhabited Area Designated as Winterbrook No. 7, Approximately 0.95 Acres on Property Pre-Zoned R-1:8. APN 523-26-017. Annexation Application AN21-002. Project Location: 16010 Winterbrook Road. Property Owner/Applicant: Drew and Kari Brown.

RECOMMENDATION:

Adopt a resolution (Attachment 1) to set a date for consideration of the reorganization of an uninhabited area designated as Winterbrook No. 7, approximately 0.95 acres, located at 16010 Winterbrook Road (APN 523-26-017).

BACKGROUND:

The Town has an agreement with Santa Clara County that requires annexation of any property located within the Town's Urban Service Area boundary that is either contiguous to a Town boundary or within 300 feet of a Town maintained roadway if a use is proposed to intensify. The subject property is contiguous to a Town boundary. Annexation has been requested in conjunction with a proposal to demolish an existing single-family residence and construct a new single-family residence on the property. The total annexation area (0.95 acres) does not include any County street right-of-way.

Section 56757 of the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 gives cities in Santa Clara County the authority to annex territory without application to and hearing by the Santa Clara County Local Agency Formation Commission (LAFCO).

PREPARED BY: Ryan Safty
Associate Planner

Reviewed by: Town Manager, Assistant Town Manager, Town Attorney, Community Development Department Director, and Finance Director

BACKGROUND (continued):

The Town is required to hold a protest proceeding even if the area proposed for annexation is uninhabited (less than twelve registered voters) and all property owners have consented to the annexation. This first meeting and resolution establishes the date for the consideration of the annexation and the protest proceeding.

DISCUSSION:

The Town has received a petition requesting annexation to the Town of Los Gatos from Drew and Kari Brown, owners of the property at 16010 Winterbrook Road. The property is located on the east side of Winterbrook Road in an unincorporated County pocket (Attachment 2).

The property is in the Town's Urban Service Area, is contiguous to a Town boundary, and is zoned R-1:8 (Single-Family Residential, 8,000 square foot minimum lot size). Annexation would allow Town services to be extended to the property and reduce the size of an existing County pocket. Santa Clara County Planning and the County Library Service Area have been notified in writing of the annexation request. This agenda item, if approved, would set the date for consideration of the annexation application for November 16, 2021.

COORDINATION:

The preparation of this report was coordinated with the Santa Clara County Library District, Santa Clara County Infrastructure Development Division, LAFCO, Santa Clara County Assessor, Santa Clara County Surveyor, and the Santa Clara County Planning Division.

FISCAL IMPACT:

Once the annexation is certified by the State Board of Equalization, the Town will receive approximately 9.3 percent of the property taxes.

ENVIRONMENTAL ASSESSMENT:

The project is exempt pursuant to the California Environmental Quality Act Guidelines under Section 15061(b)(3): Review for Exemption, in that it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment. A Notice of Exemption will not be filed.

Attachments:

1. Resolution (includes Exhibits A and B)
2. Location Map

RESOLUTION 2021-

**RESOLUTION OF THE TOWN COUNCIL
OF THE TOWN OF LOS GATOS
TO SET A DATE FOR CONSIDERATION OF A REORGANIZATION
OF AN UNINHABITED TERRITORY AREA DESIGNATED AS
WINTERBROOK NO. 7**

**APN: 523-26-017
APPROXIMATELY 0.95 ACRES
ANNEXATION APPLICATION: AN21-002
PROPERTY LOCATION: 16010 WINTERBROOK ROAD
PROPERTY OWNER/APPLICANT: DREW AND KARI BROWN**

WHEREAS, the Town Council of the Town of Los Gatos has received a request for annexation of territory designated Winterbrook No. 7 from Drew and Kari Brown; and

WHEREAS, the property, approximately 0.95 acres and includes no County street right-of-way located at 16010 Winterbrook Road, APN: 523-26-017, is contiguous to a Town boundary and within the Town’s Urban Service Area; and

WHEREAS, the following special districts would be affected by the proposal: Santa Clara County Library Service Area; and

WHEREAS, the annexation would provide for use of Town services; and

WHEREAS, the Town Council enacted Ordinance 1267 in 1975 pre-zoning the subject territory with an R-1:8 (single-family residential, 8,000 square foot minimum lot size) zoning designation; and

WHEREAS, the Town of Los Gatos, as Lead Agency for environmental review for the reorganization, has determined annexation of the subject property is exempt from the California Environmental Quality Act guidelines, pursuant to Section 15061(b)(3); and

ATTACHMENT 1

WHEREAS, the County Surveyor of Santa Clara County has found the description and map (Exhibit A and B) to be in accordance with Government Code Section 56757, the boundaries to be definite and certain, and the proposal to be in compliance with LAFCO's road annexation policies; and

WHEREAS, as provided in Government Code Section 56757, the Town Council of the Town of Los Gatos shall be the conducting authority for a reorganization including an annexation to the Town; and

WHEREAS, the territory is uninhabited and all owners of land included in the proposal have consented to this annexation; and

WHEREAS, Government Code Section 56662(a) provides that if a petition for annexation is signed by all owners of land within the affected territory the Town Council may approve or disapprove the annexation without a public hearing; and

NOW, THEREFORE, BE IT RESOLVED, that the Town Council of the Town of Los Gatos hereby initiates annexation proceedings and will consider annexation of the territory designated as Winterbrook No. 7 at its regular meeting of November 16, 2021.

PASSED AND ADOPTED at a regular meeting of the Town Council of the Town of Los

Gatos, California, held on the 2nd day of November 2021, by the following vote:

COUNCIL MEMBERS:

AYES:

NAYS:

ABSENT:

ABSTAIN:

SIGNED:

MAYOR OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

DATE: _____

ATTEST:

TOWN CLERK OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

DATE: _____

EXHIBIT A

WINTERBROOK NO. 7 ANNEXATION TO THE TOWN OF LOS GATOS

GEOGRAPHIC DESCRIPTION

All that certain real property lying within the Rancho Rinconada De Los Gatos, in the County of Santa Clara, State of California, being more particularly described as follows:

Beginning at an angle point on the boundary of the Winterbrook No. 3 Annexation, said angle point being the northeasterly corner of Lot 5, as shown on the Map of Tract No. 505, filed for record May 20, 1952, in Book 38 of Maps, at Page 1, Records of said County; thence

(L1) North $89^{\circ}55'45''$ East 190.19 feet along the southerly boundary of the northerly portion of said Winterbrook No. 3 Annexation to the northwesterly corner of the Stephenie Lane No. 2 Annexation; thence

(L2) South $12^{\circ}47'30''$ East 50.00 feet along the westerly boundary of said Stephenie Lane No. 2 to the southwesterly corner thereof; thence

(L3) leaving said Annexation boundary South $12^{\circ}47'30''$ East 50.00 feet to a point; thence

(L4) North $89^{\circ}59'15''$ East 10.00 feet to the northwesterly corner of the easterly portion of the Stephanie Lane No. 1 Annexation; thence

(L5) South $14^{\circ}06'00''$ East 93.33 feet along the westerly boundary of said Stephanie Lane No. 1 Annexation to a point; thence

(L6) leaving said Annexation boundary South $82^{\circ}10'00''$ West 152.07 feet to a point; thence

(C1) along a non-tangent curve to the left, being concave to the southwest, the bearing to the radius point being South $66^{\circ}59'12''$ West, with a radius of 100.00 feet, through a central angle of $96^{\circ}10'48''$, an arc distance of 167.87 feet to a point on the boundary of the Winterbrook No. 5 Annexation, said point lying on common boundary between Lot 6 and Winterbrook Road as shown on said Map of Tract No. 505; thence

Page one of two

EXHIBIT A (continued)

(C2) along said boundary of the Winterbrook No. 5 Annexation and said common boundary, along a non-tangent curve to the left, being concave to the southwest, the bearing to the radius point being South 53°51'55" West, with a radius of 40.00 feet, through a central angle of 14°19'25", an arc distance of 10.00 feet to the most northerly corner of said Winterbrook No. 5 Annexation, said corner lying on the southeasterly boundary of said Winterbrook No. 3 Annexation; thence

(L7) leaving said boundary of Winterbrook No. 5 Annexation along said boundary of Winterbrook No. 3 Annexation, North 39°32'30" East 42.01 feet to an angle point thereof; thence

(L8) North 30°56'20" East 78.07 feet along said Annexation boundary to an angle point thereof; thence

(L9) North 14°15'10" West 55.41 feet along said Annexation boundary to the **Point of Beginning**.

Area of Proposed Annexation: 41,411 square feet of land, more or less.

For assessment purposes only. This description of land is not a legal property description as defined in the Subdivision Map Act and may not be used as a basis for an offer for the sale of the land described.



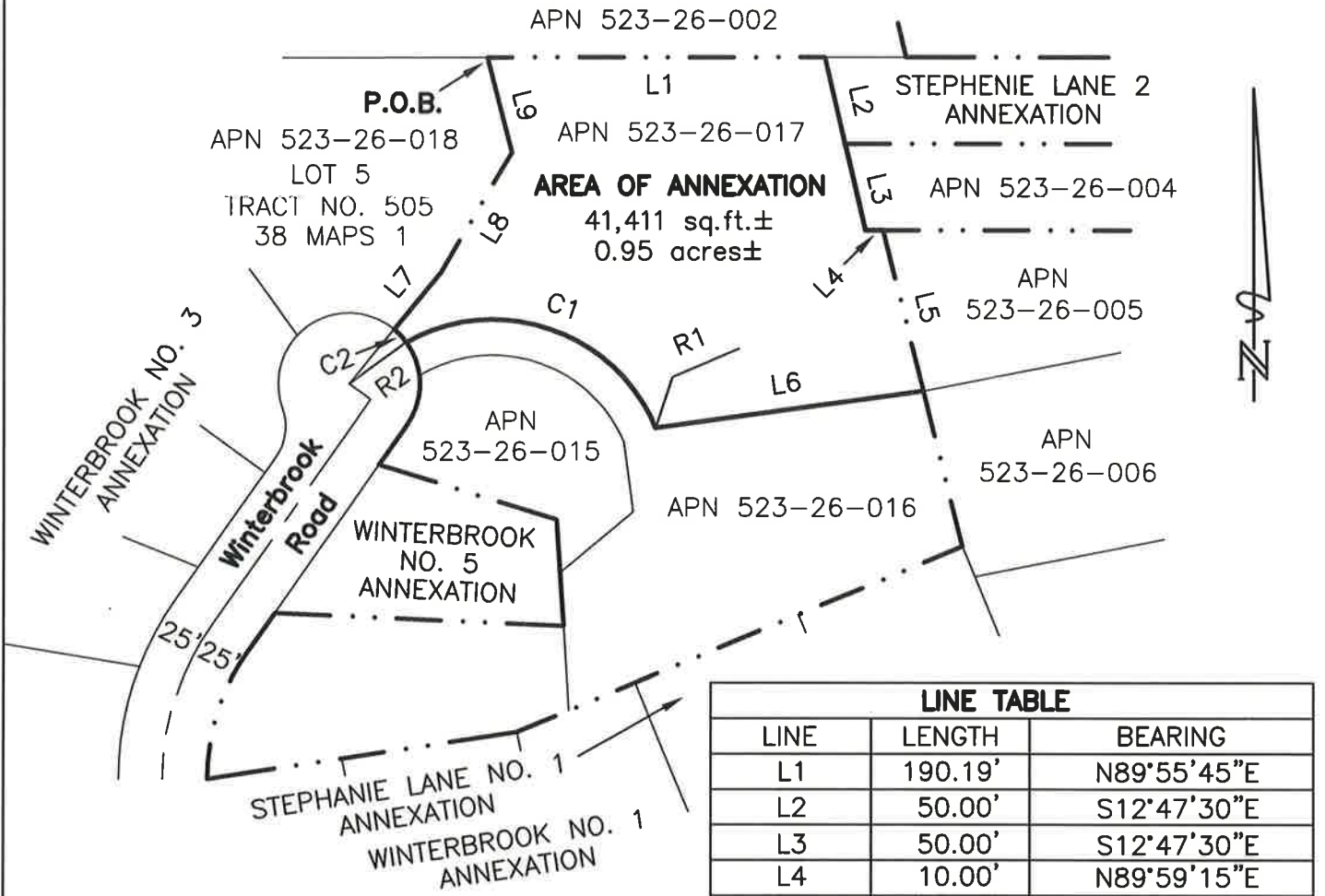
Page two of two

EXHIBIT B

ANNEXATION TO THE TOWN OF LOS GATOS – WINTERBROOK NO. 7

JULY, 2021

SCALE: 1" = 100'



LINE TABLE		
LINE	LENGTH	BEARING
L1	190.19'	N89°55'45"E
L2	50.00'	S12°47'30"E
L3	50.00'	S12°47'30"E
L4	10.00'	N89°59'15"E
L5	93.33'	S14°06'00"E
L6	152.07'	S82°10'00"W
L7	42.01'	N39°32'30"E
L8	78.07'	N30°56'20"E
L9	55.41'	N14°15'10"W

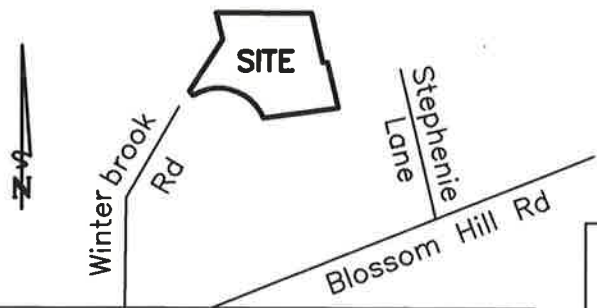
CURVE TABLE				
CURVE	LENGTH	RADIUS	DELTA	CHORD
C1	167.87'	100.00'	96°10'48"	148.84'
C2	10.00'	40.00'	14°19'25"	9.97'

RADIAL BEARING TABLE	
LINE	BEARING
R1	S66°59'12"W
R2	S53°51'55"W

LEGEND

- EXISTING LOT LINE
- - - EXISTING CENTERLINE
- · · — EXISTING TOWN BOUNDARY
- — — PROPOSED TOWN BOUNDARY

P.O.B. POINT OF BEGINNING



VICINITY MAP
NO SCALE

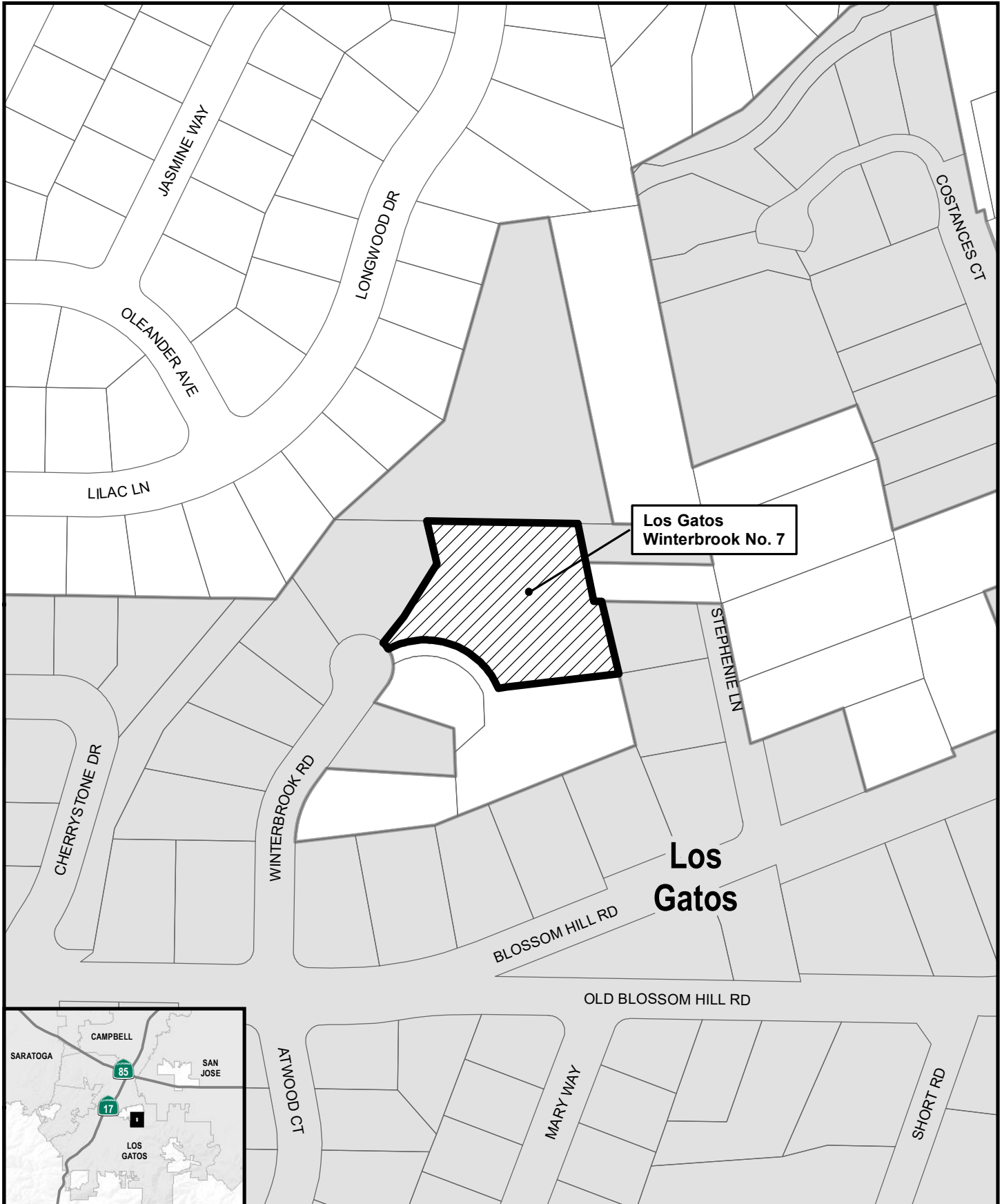
JN 19019

HANNA-BRUNETTI
EST. 1910

CIVIL ENGINEERS • LAND SURVEYORS
CONSTRUCTION MANAGERS

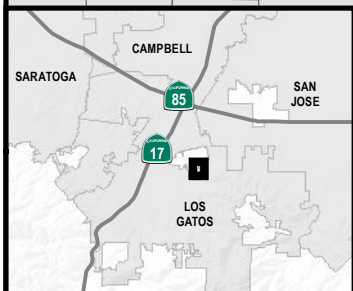
7651 EIGLEBERRY ST. | GILROY, CA 95020
408.842.2173

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Los Gatos
Winterbrook No. 7




Los
Gatos

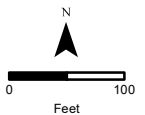


County of Santa Clara
 Department of Planning and Development
 County Government Center, East Wing
 70 West Hedding St., 7th Floor
 San Jose, California 95110

EXHIBIT A
Los Gatos - Winterbrook No. 7
0.95 acres +/-

Prepared for the Office of the County Surveyor
 August 05, 2021
 August Hanks, County Surveyor

-  Area of Annexation
-  City Limits
-  Unincorporated Lands



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**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 11/02/21

ITEM NO: 5

DATE: October 28, 2021
TO: Mayor and Town Council
FROM: Laurel Prevetti, Town Manager
SUBJECT: Authorize the Town Manager to Execute a Cooperative Agreement with the California Department of Transportation for the Development of a Project Initiation Document for the Highway 17 Bicycle and Pedestrian Overcrossing Project (CIP No. 818-0803) in an Amount Not to Exceed \$135,000, and Authorize the Town Manager to Execute Future Cooperative Agreements with Caltrans as Necessary for Future Project Phases

RECOMMENDATION:

Authorize the Town Manager to execute a Cooperative Agreement with the State Department of Transportation (Caltrans) for the development of a Project Initiation Document for the Highway 17 Bicycle and Pedestrian Overcrossing Project (CIP No. 818-0803) in an amount not to exceed \$135,000, and authorize the Town Manager to execute future Cooperative Agreements with Caltrans as necessary for future project phases.

BACKGROUND:

On September 1, 2020, the Town Council approved the Feasibility Study for the Highway 17 Bicycle and Pedestrian Overcrossing Project (BPOC) and directed staff to proceed with the design of a separate bicycle and pedestrian structure. On May 20, 2021, the firm of BKF Engineers was hired to prepare the necessary design documents for the project.

As the project will cross over Highway 17, Caltrans will be intimately involved in the design and construction of the project. Design of the project must follow the established Caltrans Project Development Procedures, and a permit will be required from Caltrans before the project can be advertised for construction bids.

PREPARED BY: WooJae Kim
Town Engineer

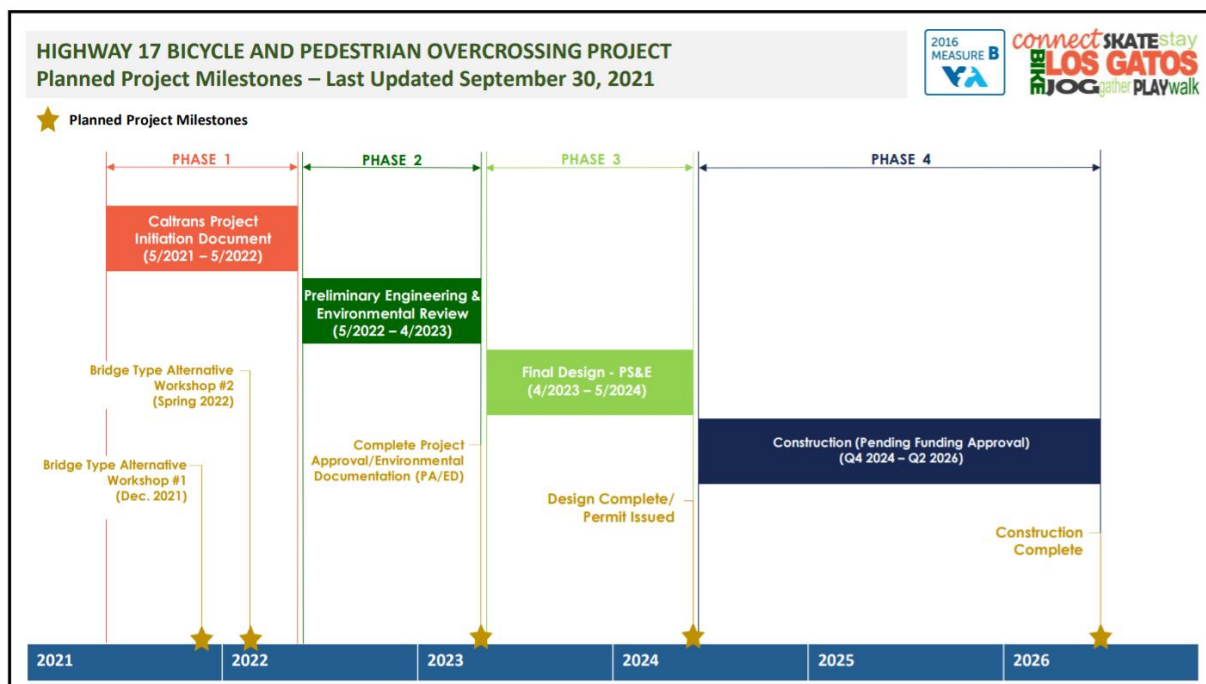
Reviewed by: Town Manager, Assistant Town Manager, Town Attorney, Finance Director, and the Director of Parks and Public Works

SUBJECT: Authorize the Town Manager to Execute a Cooperative Agreement with the California Department of Transportation for the Development of a Project Initiation Document for the Highway 17 Bicycle and Pedestrian Overcrossing Project (CIP No. 818-0803) in an Amount Not to Exceed \$135,000, and Authorize the Town Manager to Execute Future Cooperative Agreements with Caltrans as Necessary for Future Project Phases

DATE: October 20, 2021

DISCUSSION:

The Caltrans Project Development Procedures outline a series of three mandated design phases for the sponsoring agency to follow. The first is the preparation of a Project Initiation Document (PID Phase), the next phase is the Project Acceptance/Environmental Documentation (PA/ED Phase), and the last is the development of the final Plans, Specifications, and Estimates (PS&E Phase). Before starting work on each phase, the Town is required to enter into a Cooperative Agreement with Caltrans for the review of the project to ensure compliance with Caltrans requirements for facilities in the Caltrans right of way. The current project schedule reflects these three phases as shown below:



During the initial PID phase, Caltrans will designate representatives from various Caltrans departments to review and participate in the design process. A work plan with the roles and responsibilities for project team members will be developed. Much of the work that has been presented as part of the Feasibility Study will be formalized in the PID along with a developed project scope, preliminary geometric drawings, cost estimates, and schedule information.

This phase is unique in that it will require the Town to reimburse Caltrans for the cost of their project team to review and process the PID. Caltrans estimates that the oversight and

PAGE 3 OF 5

SUBJECT: Authorize the Town Manager to Execute a Cooperative Agreement with the California Department of Transportation for the Development of a Project Initiation Document for the Highway 17 Bicycle and Pedestrian Overcrossing Project (CIP No. 818-0803) in an Amount Not to Exceed \$135,000, and Authorize the Town Manager to Execute Future Cooperative Agreements with Caltrans as Necessary for Future Project Phases

DATE: October 20, 2021

DISCUSSION (continued):

processing of the PID for the BPOC project would cost \$135,000 to be invoiced based on actual costs incurred. Caltrans has prepared the Cooperative Agreement (Attachment 1) for the Town's consideration. Before Caltrans can assign a project team for the BPOC project, the Cooperative Agreement for the PID phase must be executed.

Subsequent phases will require new Cooperative Agreements with Caltrans, but they are not anticipated to require reimbursement to Caltrans for expenses associated with the future design phases. Therefore, staff is asking Council to authorize the Town Manager to execute future Cooperative Agreements with Caltrans for future design phases of the project. Funding for Caltrans involvement in the construction phase will be identified in the future Construction Cooperative Agreement to be presented to Council before the start of construction.

CONCLUSION:

Staff is requesting the Town Council to authorize the Town Manager to execute the Cooperative Agreement in substantial compliance with Caltrans provisions in the amount of \$135,000, and also to authorize the Town Manager to execute future Cooperative Agreements with Caltrans as necessary for the future project phases.

FISCAL IMPACT:

The adopted Fiscal Year (FY) 2021/22-2025/26 Capital Improvement Program (CIP) Budget designates funding for the Highway 17 Bicycle and Pedestrian Bridge – Design (CIP No. 818-0803) with a total project budget of \$3,935,444. Current project budget includes sufficient funds for the Caltrans PID Cooperative Agreement and other anticipated costs through final design. Estimated construction costs of \$25M are currently unfunded.

SUBJECT: Authorize the Town Manager to Execute a Cooperative Agreement with the California Department of Transportation for the Development of a Project Initiation Document for the Highway 17 Bicycle and Pedestrian Overcrossing Project (CIP No. 818-0803) in an Amount Not to Exceed \$135,000, and Authorize the Town Manager to Execute Future Cooperative Agreements with Caltrans as Necessary for Future Project Phases

DATE: October 20, 2021

FISCAL IMPACT (continued):

Highway 17 Bicycle and Pedestrian Overcrossing Project CIP No. 818-0803		
	Budget	Costs
GFAR	\$ 946,210	
Traffic Mitigation Fund	\$ 147,249	
TDA Article 3	\$ 87,451	
2016 Measure B	\$ 2,754,534	
Total Project Budget	\$ 3,935,444	
Expenditures + Encumbrances to Date		
BKF Engineering – Feasibility Study		\$ 234,456
BKF Engineering – Final Design (Expense + Encumbrance)		\$ 3,000,000
Caltrans PID Cooperative Agreement (Approved with this Report)		\$ 135,000
Advertising		\$ 295
Staff Costs*		\$ 54,272
Total Expenditures		\$ 3,424,023
Remaining Budget		
		\$ 511,421
Future Anticipated Costs		
Design Contingency		\$ 300,000
Staff Costs*		\$ 161,421
Misc. Project Delivery Costs		\$ 50,000
Construction		\$ 25,000,000
Anticipated Additional Costs		\$ 25,511,421
Additional Funding Needed		
		\$ 25,000,000
*Additional revenue from 2016 Measure B will be reimbursed to the Town for full-time staff.		

Parks and Public Works staff costs are tracked for all projects. Tracking of staff costs allows for accountability in the costs of the project, recovery of costs for grant funded projects, and identification of future staffing needs. This project utilized both full-time and part-time temporary staff. The costs associated with staff that are not included in the Parks and Public Works Department budget will be charged to the project through an administrative transfer of funds.

PAGE 5 OF 5

SUBJECT: Authorize the Town Manager to Execute a Cooperative Agreement with the California Department of Transportation for the Development of a Project Initiation Document for the Highway 17 Bicycle and Pedestrian Overcrossing Project (CIP No. 818-0803) in an Amount Not to Exceed \$135,000, and Authorize the Town Manager to Execute Future Cooperative Agreements with Caltrans as Necessary for Future Project Phases

DATE: October 20, 2021

ENVIRONMENTAL ASSESSMENT:

The recommended action is not a project under CEQA. In subsequent project phases, environmental assessments shall be conducted as required per the California Environmental Quality Act (CEQA) and National Environmental Policy Act (NEPA) for the project determination. It is anticipated that the Town will request Caltrans to allow the Town to be the lead agency for CEQA. Caltrans will remain the responsible party for NEPA compliance.

Attachments:

1. Caltrans PID Cooperative Agreement

COOPERATIVE AGREEMENT

This AGREEMENT, executed on and effective from _____, is between the State of California, acting through its Department of Transportation, referred to as CALTRANS, and:

Town of Los Gatos, a body politic and municipal corporation or chartered city of the State of California, referred to hereinafter as TOWN.

An individual signatory agency in this AGREEMENT is referred to as a PARTY. Collectively, the signatory agencies in this AGREEMENT are referred to as PARTIES.

RECITALS

1. PARTIES are authorized to enter into a cooperative agreement for improvements to the State Highway System per California Streets and Highways Code, Sections 114 and 130 and California Government Code, Section 65086.5.
2. For the purpose of this AGREEMENT, *the project proposes a bicycle/pedestrian overcrossing (BPOC) across Highway 17. The BPOC will be situated to the south of the existing Blossom Hill Road Bridge and connect to bicycle/pedestrian facilities along Blossom Hill Roadway between Roberts Road West and Roberts Road East* will be referred to hereinafter as PROJECT. TOWN desires that a Project Initiation Document (PID) be developed for the PROJECT. The Project Initiation Document will be a Project Study Report - Project Development Support (PSR-PDS).
3. All obligations and responsibilities assigned in this AGREEMENT to complete the following PROJECT COMPONENT will be referred to hereinafter as WORK:
 - PROJECT INITIATION DOCUMENT (PID)

Each PROJECT COMPONENT is defined in the CALTRANS Workplan Standards Guide as a distinct group of activities/products in the project planning and development process.

4. The term AGREEMENT, as used herein, includes this document and any attachments, exhibits, and amendments.

This AGREEMENT is separate from and does not modify or replace any other cooperative agreement or memorandum of understanding between the PARTIES regarding the PROJECT.

PARTIES intend this AGREEMENT to be their final expression that supersedes any oral understanding or writings pertaining to the WORK. The requirements of this AGREEMENT will preside over any conflicting requirements in any documents that are made an express part of this AGREEMENT.

If any provisions in this AGREEMENT are found by a court of competent jurisdiction to be, or are in fact, illegal, inoperative, or unenforceable, those provisions do not render any or all other AGREEMENT provisions invalid, inoperative, or unenforceable, and those provisions will be automatically severed from this AGREEMENT.

Except as otherwise provided in the AGREEMENT, PARTIES will execute a written amendment if there are any changes to the terms of this AGREEMENT.

AGREEMENT will terminate 180 days after PID is signed by PARTIES or as mutually agreed by PARTIES in writing. However, all indemnification articles will remain in effect until terminated or modified in writing by mutual agreement.

5. No PROJECT deliverables have been completed prior to this AGREEMENT.
6. In this AGREEMENT capitalized words represent defined terms, initialisms, or acronyms.
7. PARTIES hereby set forth the terms, covenants, and conditions of this AGREEMENT.

RESPONSIBILITIES

Sponsorship

8. A SPONSOR is responsible for establishing the scope of the PROJECT and securing the financial resources to fund the WORK. A SPONSOR is responsible for securing additional funds when necessary or implementing PROJECT changes to ensure the WORK can be completed with the funds obligated in this AGREEMENT.

PROJECT changes, as described in the CALTRANS Project Development Procedures Manual, will be approved by CALTRANS as the owner/operator of the State Highway System.

9. TOWN is the SPONSOR for the WORK in this AGREEMENT.

Implementing Agency

10. The IMPLEMENTING AGENCY is the PARTY responsible for managing the scope, cost, schedule, and quality of the work activities and products of a PROJECT COMPONENT.

- TOWN is the Project Initiation Document (PID) IMPLEMENTING AGENCY.

The PID identifies the PROJECT need and purpose, stakeholder input, project alternatives, anticipated right-of-way requirements, preliminary environmental analysis, initial cost estimates, and potential funding sources.

11. TOWN will provide a Quality Management Plan (QMP) for the WORK in every PROJECT COMPONENT that they are the IMPLEMENTING AGENCY of. The QMP describes the IMPLEMENTING AGENCY's quality policy and how it will be used. The QMP will include a process for resolving disputes between the PARTIES at the team level. The QMP is subject to CALTRANS review and approval.

12. Any PARTY responsible for completing WORK will make its personnel and consultants that prepare WORK available to help resolve WORK-related problems and changes for the entire duration of the PROJECT including PROJECT work that may occur under separate agreements.

Funding

13. TOWN is the only PARTY obligating funds in this AGREEMENT and will fund the cost of the WORK in accordance with this AGREEMENT.

If, in the future, CALTRANS is allocated state funds and Personnel Years (PYs) for PID review or development of this PROJECT, PARTIES will agree to amend this AGREEMENT to change the reimbursement arrangement for PID review.

14. Funding sources, PARTIES committing funds, funding amounts, and invoicing/payment details are documented in the Funding Summary section of this AGREEMENT.

PARTIES will amend this AGREEMENT by updating and replacing the Funding Summary, in its entirety, each time the funding details change. Funding Summary replacements will be executed by a legally authorized representative of the respective PARTIES. The most current fully executed Funding Summary supersedes any previous Funding Summary created for this AGREEMENT.

15. PARTIES will not be reimbursed for costs beyond the funds obligated in this AGREEMENT.

16. Unless otherwise documented in the Funding Summary, overall liability for project costs within a PROJECT COMPONENT will be in proportion to the amount contributed to that PROJECT COMPONENT by each fund type.
17. Unless otherwise documented in the Funding Summary, any savings recognized within a PROJECT COMPONENT will be credited or reimbursed, when allowed by policy or law, in proportion to the amount contributed to that PROJECT COMPONENT by each fund type.
18. WORK costs, except those that are specifically excluded in this AGREEMENT, are to be paid from the funds obligated in the Funding Summary. Costs that are specifically excluded from the funds obligated in this AGREEMENT are to be paid by the PARTY incurring the costs from funds that are independent of this AGREEMENT.

CALTRANS' Quality Management

19. CALTRANS, as the owner/operator of the State Highway System (SHS), will perform quality management work including Quality Management Assessment (QMA) and owner/operator approvals for the portions of WORK within the existing and proposed SHS right-of-way.
20. CALTRANS' Quality Management Assessment (QMA) efforts are to ensure that TOWN's quality assurance results in WORK that is in accordance with the applicable standards and the PROJECT's quality management plan (QMP). QMA does not include any efforts necessary to develop or deliver WORK or any validation by verifying or rechecking WORK.

When CALTRANS performs QMA, it does so for its own benefit. No one can assign liability to CALTRANS due to its QMA.

21. CALTRANS, as the owner/operator of the State Highway System, will approve WORK products in accordance with CALTRANS policies and guidance and as indicated in this AGREEMENT.
22. TOWN will provide WORK-related products and supporting documentation upon CALTRANS' request for the purpose of CALTRANS' quality management work.

Project Initiation Document (PID)

23. As the PID IMPLEMENTING AGENCY, TOWN is responsible for all PID WORK except those activities and responsibilities that are assigned to another PARTY in this AGREEMENT and those activities that may be specifically excluded.
24. Should TOWN request CALTRANS to perform any portion of PID preparation work, except as otherwise set forth in this AGREEMENT, TOWN agrees to reimburse CALTRANS for such work and PARTIES will amend this AGREEMENT.

25. CALTRANS will be responsible for completing the following PID activities:

CALTRANS Work Breakdown Structure Identifier (If Applicable)	AGREEMENT Funded Cost
100.05.10.xx Quality Management	Yes
150.05.05.xx Review of Existing Reports, Data, Studies, and Mapping	Yes
150.25.20 PID Circulation, Review, and Approval	Yes

26. CALTRANS will provide relevant existing proprietary information and maps related to:

- Geologic and Geotechnical information
- Utility information
- Environmental constraints
- Traffic modeling/forecasts
- Topographic and Boundary surveys
- As-built centerline and existing right-of-way

Due to the potential for data loss or errors, CALTRANS will not convert the format of existing proprietary information or maps.

27. When required, CALTRANS will perform pre-consultation with appropriate resource agencies in order to reach consensus on need and purpose, avoidance alternatives, and feasible alternatives.
28. CALTRANS will actively participate in the Project Delivery Team meetings.
29. The PID will be signed on behalf of TOWN by a Civil Engineer registered in the State of California.
30. CALTRANS will review and approve the Project Initiation Document (PID) as required by California Government Code, Section 65086.5.

CALTRANS will complete a review of the draft PID and provide its comments to TOWN within 60 calendar days from the date CALTRANS received the draft PID from TOWN. TOWN will address the comments provided by CALTRANS. If any interim reviews are requested of CALTRANS by TOWN, CALTRANS will complete those reviews within 30 calendar days from the date CALTRANS received the draft PID from TOWN.

After TOWN revises the PID to address all of CALTRANS' comments and submits the revised draft PID and all related attachments and appendices, CALTRANS will complete its review and final determination of the revised draft PID within 30 calendar days from the date CALTRANS received the revised draft PID from TOWN. Should CALTRANS require supporting data necessary to defend facts or claims cited in the revised draft PID, TOWN will provide all available supporting data in a reasonable time so that CALTRANS may conclude its review. The 30 day CALTRANS review period will be stalled during that time and will continue to run after TOWN provides the required data.

No liability will be assigned to CALTRANS, its officers and employees by TOWN under the terms of this AGREEMENT or by third parties by reason of CALTRANS' review and approval of the PID.

Additional Provisions

Standards

31. PARTIES will perform all WORK in accordance with federal and California laws, regulations, and standards; Federal Highway Administration (FHWA) standards; and CALTRANS standards. CALTRANS standards include, but are not limited to, the guidance provided in the:
 - CADD Users Manual
 - CALTRANS policies and directives
 - Plans Preparation Manual
 - Project Development Procedures Manual (PDPM)
 - Workplan Standards Guide

Noncompliant Work

32. CALTRANS retains the right to reject noncompliant WORK. TOWN agrees to suspend WORK upon request by CALTRANS for the purpose of protecting public safety, preserving property rights, and ensuring that all WORK is in the best interest of the State Highway System.

Qualifications

33. Each PARTY will ensure that personnel participating in WORK are appropriately qualified or licensed to perform the tasks assigned to them.

Consultant Selection

34. TOWN will invite CALTRANS to participate in the selection of any consultants that participate in the WORK.

Encroachment Permits

35. CALTRANS will issue, upon proper application, the encroachment permits required for WORK within State Highway System (SHS) right-of-way. TOWN, their contractors, consultants, agents and utility owners will not work within the SHS right-of-way without an encroachment permit issued in their name. CALTRANS will provide encroachment permits to TOWN, their contractors, consultants, and agents at no cost. CALTRANS will provide encroachment permits to utility owners at no cost. If the encroachment permit and this AGREEMENT conflict, the requirements of this AGREEMENT will prevail.
36. The IMPLEMENTING AGENCY for a PROJECT COMPONENT will coordinate, prepare, obtain, implement, renew, and amend any encroachment permits needed to complete the WORK.

Protected Resources

37. If any PARTY discovers unanticipated cultural, archaeological, paleontological, or other protected resources during WORK, all WORK in that area will stop and that PARTY will notify all PARTIES within 24 hours of discovery. WORK may only resume after a qualified professional has evaluated the nature and significance of the discovery and CALTRANS approves a plan for its removal or protection.

Disclosures

38. PARTIES will hold all administrative drafts and administrative final reports, studies, materials, and documentation relied upon, produced, created, or utilized for the WORK in confidence to the extent permitted by law and where applicable, the provisions of California Government Code, Section 6254.5(e) will protect the confidentiality of such documents in the event that said documents are shared between PARTIES.

PARTIES will not distribute, release, or share said documents with anyone other than employees, agents, and consultants who require access to complete the WORK without the written consent of the PARTY authorized to release them, unless required or authorized to do so by law.

39. If a PARTY receives a public records request pertaining to the WORK, that PARTY will notify PARTIES within five (5) working days of receipt and make PARTIES aware of any disclosed public records.

Hazardous Materials

40. If any hazardous materials, pursuant to Health and Safety Code 25260(d), are found within the PROJECT limits, the discovering PARTY will notify all other PARTIES within twenty-four (24) hours of discovery.
41. PARTIES agree to consider alternatives to PROJECT scope and/or alignment, to the extent practicable, in an effort to avoid any known hazardous materials within the proposed PROJECT limits.
42. If hazardous materials are discovered within PROJECT limits, but outside of State Highway System right-of-way, it is the responsibility of TOWN in concert with the local agency having land use jurisdiction over the property, and the property owner, to remedy before CALTRANS will acquire or accept title to such property.

Claims

43. Any PARTY that is responsible for completing WORK may accept, reject, compromise, settle, or litigate claims arising from the WORK without concurrence from the other PARTY.
44. PARTIES will confer on any claim that may affect the WORK or PARTIES' liability or responsibility under this AGREEMENT in order to retain resolution possibilities for potential future claims. No PARTY will prejudice the rights of another PARTY until after PARTIES confer on the claim.
45. If the WORK expends state or federal funds, each PARTY will comply with the Federal Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards of 2 CFR, Part 200. PARTIES will ensure that any for-profit consultant hired to participate in the WORK will comply with the requirements in 48 CFR, Chapter 1, Part 31. When state or federal funds are expended on the WORK these principles and requirements apply to all funding types included in this AGREEMENT.

Accounting and Audits

46. PARTIES will maintain, and will ensure that any consultant hired by PARTIES to participate in WORK will maintain, a financial management system that conforms to Generally Accepted Accounting Principles (GAAP), and that can properly accumulate and segregate incurred PROJECT costs and billings.

47. PARTIES will maintain and make available to each other all WORK-related documents, including financial data, during the term of this AGREEMENT.

PARTIES will retain all WORK-related records for three (3) years after the final voucher.

PARTIES will require that any consultants hired to participate in the WORK will comply with this Article.

48. PARTIES have the right to audit each other in accordance with generally accepted governmental audit standards.

CALTRANS, the State Auditor, FHWA (if the PROJECT utilizes federal funds), and TOWN will have access to all WORK -related records of each PARTY, and any consultant hired by a PARTY to participate in WORK, for audit, examination, excerpt, or transcription.

The examination of any records will take place in the offices and locations where said records are generated and/or stored and will be accomplished during reasonable hours of operation. The auditing PARTY will be permitted to make copies of any WORK-related records needed for the audit.

The audited PARTY will review the draft audit, findings, and recommendations, and provide written comments within thirty (30) calendar days of receipt.

Upon completion of the final audit, PARTIES have forty-five (45) calendar days to refund or invoice as necessary in order to satisfy the obligation of the audit.

Any audit dispute not resolved by PARTIES is subject to mediation. Mediation will follow the process described in the General Conditions section of this AGREEMENT.

49. If the WORK expends state or federal funds, each PARTY will undergo an annual audit in accordance with the Single Audit Act in the Federal Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards as defined in 2 CFR, Part 200.
50. When a PARTY reimburses a consultant for WORK with state or federal funds, the procurement of the consultant and the consultant overhead costs will be in accordance with the Local Assistance Procedures Manual, Chapter 10.

Interruption of Work

51. If WORK stops for any reason, IMPLEMENTING AGENCY will place the PROJECT right-of-way in a safe and operable condition acceptable to CALTRANS.

Penalties, Judgements and Settlements

52. The cost of awards, judgements, fines, interest, penalties, attorney's fees, and/or settlements generated by the WORK are considered WORK costs.
53. Any PARTY whose action or lack of action causes the levy of fines, interest, or penalties will indemnify and hold all other PARTIES harmless per the terms of this AGREEMENT.

GENERAL CONDITIONS

54. All portions of this AGREEMENT, including the Recitals Section, are enforceable.

Venue

55. PARTIES understand that this AGREEMENT is in accordance with and governed by the Constitution and laws of the State of California. This AGREEMENT will be enforceable in the State of California. Any PARTY initiating legal action arising from this AGREEMENT will file and maintain that legal action in the Superior Court of the county in which the CALTRANS district office that is signatory to this AGREEMENT resides, or in the Superior Court of the county in which the PROJECT is physically located.

Exemptions

56. All CALTRANS' obligations under this AGREEMENT are subject to the appropriation of resources by the Legislature, the State Budget Act authority, programming and allocation of funds by the California Transportation Commission (CTC).

Indemnification

57. Neither CALTRANS nor any of its officers and employees, are responsible for any injury, damage, or liability occurring by reason of anything done or omitted to be done by TOWN, its contractors, sub-contractors, and/or its agents under or in connection with any work, authority, or jurisdiction conferred upon TOWN under this AGREEMENT. It is understood and agreed that TOWN, to the extent permitted by law, will defend, indemnify, and save harmless CALTRANS and all of their officers and employees from all claims, suits, or actions of every name, kind, and description brought forth under, but not limited to, tortious, contractual, inverse condemnation, or other theories and assertions of liability occurring by reason of anything done or omitted to be done by TOWN, its contractors, sub-contractors, and/or its agents under this AGREEMENT.

58. Neither TOWN nor any of its officers and employees, are responsible for any injury, damage, or liability occurring by reason of anything done or omitted to be done by CALTRANS, its contractors, sub-contractors, and/or its agents under or in connection with any work, authority, or jurisdiction conferred upon CALTRANS under this AGREEMENT. It is understood and agreed that CALTRANS, to the extent permitted by law, will defend, indemnify, and save harmless TOWN and all of their officers and employees from all claims, suits, or actions of every name, kind, and description brought forth under, but not limited to, tortious, contractual, inverse condemnation, or other theories and assertions of liability occurring by reason of anything done or omitted to be done by CALTRANS, its contractors, sub-contractors, and/or its agents under this AGREEMENT.

Non-parties

59. PARTIES do not intend this AGREEMENT to create a third party beneficiary or define duties, obligations, or rights for entities not signatory to this AGREEMENT. PARTIES do not intend this AGREEMENT to affect their legal liability by imposing any standard of care for fulfilling the WORK different from the standards imposed by law.
60. PARTIES will not assign or attempt to assign obligations to entities not signatory to this AGREEMENT without an amendment to this AGREEMENT.

Ambiguity and Performance

61. Neither PARTY will interpret any ambiguity contained in this AGREEMENT against the other PARTY. PARTIES waive the provisions of California Civil Code, Section 1654.

A waiver of a PARTY's performance under this AGREEMENT will not constitute a continuous waiver of any other provision.

62. A delay or omission to exercise a right or power due to a default does not negate the use of that right or power in the future when deemed necessary.

Defaults

63. If any PARTY defaults in its performance of the WORK, a non-defaulting PARTY will request in writing that the default be remedied within thirty (30) calendar days. If the defaulting PARTY fails to do so, the non-defaulting PARTY may initiate dispute resolution.

Dispute Resolution

64. PARTIES will first attempt to resolve AGREEMENT disputes at the PROJECT team level as described in the Quality Management Plan. If they cannot resolve the dispute themselves, the CALTRANS District Director and the Executive Officer of TOWN will attempt to negotiate a resolution. If PARTIES do not reach a resolution, PARTIES' legal counsel will initiate mediation. PARTIES agree to participate in mediation in good faith and will share equally in its costs.

Neither the dispute nor the mediation process relieves PARTIES from full and timely performance of the WORK in accordance with the terms of this AGREEMENT. However, if any PARTY stops fulfilling its obligations, any other PARTY may seek equitable relief to ensure that the WORK continues.

Except for equitable relief, no PARTY may file a civil complaint until after mediation, or forty-five (45) calendar days after filing the written mediation request, whichever occurs first.

PARTIES will file any civil complaints in the Superior Court of the county in which the CALTRANS District Office signatory to this AGREEMENT resides or in the Superior Court of the county in which the PROJECT is physically located.

65. PARTIES maintain the ability to pursue alternative or additional dispute remedies if a previously selected remedy does not achieve resolution.

Prevailing Wage

66. When WORK falls within the Labor Code § 1720(a)(1) definition of "public works" in that it is construction, alteration, demolition, installation, or repair; or maintenance work under Labor Code § 1771, PARTIES will conform to the provisions of Labor Code §§ 1720-1815, and all applicable provisions of California Code of Regulations, Title 8, Division 1, Chapter 8, Subchapter 3, Articles 1-7. PARTIES will include prevailing wage requirements in contracts for public work and require contractors to include the same prevailing wage requirements in all subcontracts.

Work performed by a PARTY's own employees is exempt from the Labor Code's Prevailing Wage requirements.

If WORK is paid for, in whole or part, with federal funds and is of the type of work subject to federal prevailing wage requirements, PARTIES will conform to the provisions of the Davis-Bacon and Related Acts, 40 U.S.C. §§ 3141-3148.

When applicable, PARTIES will include federal prevailing wage requirements in contracts for public works. WORK performed by a PARTY's employees is exempt from federal prevailing wage requirements.

Contact Information

CALTRANS

Joon Kang, Regional Project Manager

111 Grand Avenue

Oakland , CA 94612

Office Phone: (510) 622-0130

Mobile Phone: (510) 290-7279

Email: joon.kang@dot.ca.gov

TOWN OF LOS GATOS

Michelle Quinney, Special Projects Manager

41 Miles Avenue

Los Gatos, CA 95030

Office Phone: (408) 827-3552

Email: MQuinney@losgatosca.gov

SIGNATURES

PARTIES are authorized to enter into this AGREEMENT and have delegated to the undersigned the authority to execute this AGREEMENT on behalf of the respective agencies and hereby covenants to have followed all the necessary legal requirements to validly execute this AGREEMENT.

The PARTIES acknowledge that executed copies of this AGREEMENT may be exchanged by facsimile or email, and that such copies shall be deemed to be effective as originals.

**STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION**

Helena (Lenka) Culik-Caro
Deputy District Director, Design

Verification of funds and authority:

Jeffrey Kuehnel
District Budget Manager

Certified as to financial terms and policies:

Nadine Karavan
HQ Accounting Supervisor

TOWN OF LOS GATOS

Laurel Prevetti
Town Manager

Attest:

Shelley Neis
Town Clerk

Approved as to form and procedure:

Robert W. Schultz
Town Attorney

FUNDING SUMMARY NO. 01

<u>FUNDING TABLE</u> v. 1			
Source	Party	Fund Type	PID
			Totals
LOCAL	TOWN	Measure B	135,000
Totals			135,000

<u>SPENDING SUMMARY</u> v 2			
Fund Type	PID		Totals
	CALTRANS	<u>TOWN</u>	
Measure B	135,000	0	135,000
Totals	135,000	0	135,000

Funding

1. Per the State Budget Act of 2012, Chapter 603, amending item 2660-001-0042 of Section 2.00, the cost of any engineering support performed by CALTRANS towards any local government agency-sponsored PID project will only include direct costs. Indirect or overhead costs will not be applied during the development of the PID document.
2. Notwithstanding the terms of this AGREEMENT, PARTIES agree to abide by the STIP guidelines that require the PARTIES to apportion the project cost increases and savings in the same proportion as the current programmed ratio of funds that are not strictly a one-time only grant. In the alternate, PARTIES may be able to apportion cost increases and savings according to a cost sharing arrangement between the PARTIES that is approved by the CTC.

Invoicing and Payment

3. PARTIES will invoice for funds where the SPENDING SUMMARY shows that one PARTY provides funds for use by another PARTY. PARTIES will pay invoices within forty-five (45) calendar days of receipt of invoice when not paying with Electronic Funds Transfer (EFT). When paying with EFT, TOWN will pay invoices within five (5) calendar days of receipt of invoice.
4. If TOWN has received EFT certification from CALTRANS then TOWN will use the EFT mechanism and follow all EFT procedures to pay all invoices issued from CALTRANS.
5. When a PARTY is reimbursed for actual cost, invoices will be submitted each month for the prior month's expenditures. After all PROJECT COMPONENT WORK is complete, PARTIES will submit a final accounting of all PROJECT COMPONENT costs. Based on the final accounting, PARTIES will invoice or refund as necessary to satisfy the financial commitments of this AGREEMENT.

Project Initiation Document (PID)

6. CALTRANS will invoice TOWN for a \$30,000 initial deposit after execution of this AGREEMENT and forty-five (45) working days prior to the commencement of PID expenditures. This deposit represents two (2) months' estimated costs.

Thereafter, CALTRANS will invoice and TOWN will reimburse for actual costs incurred and paid.



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 11/02/2021

ITEM NO: 6

DATE: October 22, 2021

TO: Mayor and Town Council

FROM: Laurel Prevetti, Town Manager

SUBJECT: Authorize the Town Manager to Execute a Second Amendment to Agreement for Consultant Services with Cuschieri Horton Architects for Additional Architectural and Engineering Design Services for PPW Project 821-2302, in an Amount of \$53,100, for a Total Agreement Not to Exceed \$218,450

RECOMMENDATION:

Authorize the Town Manager to execute a second amendment to Agreement for Consultant Services with Cuschieri Horton Architects for additional architectural and engineering design services for PPW Project 821-2302, in an amount of \$53,100, for a total agreement not to exceed \$218,450.

BACKGROUND:

The Town's adopted FY 2021/22 Capital Improvement Program Budget designates funding for Town projects, including Project 821-2302, Building Replacement at the Corporation Yard. This is a two phased project that converts warehouse space to office space and then replaces an old portable building with a steel storage building at the northwest corner of the Parks and Public Works (PPW) Corporation Yard on Miles Avenue.

On October 2, 2018, the Town Council authorized the Town Manager to execute an agreement with Cuschieri Horton Architects for the Design of Corporation Yard Building Replacement and Engineering Tenant Improvement project.

On August 18, 2020, the Town Council authorized the Town Manager to execute a construction contract with DesignTek Consulting Group, LLC for the construction of Phase 1 of the project which included tenant improvements of Engineering staff offices and conversion of warehouse space into staff office space. The Phase 1 construction work has been completed. The

PREPARED BY: Matt Morley
PPW Director

Reviewed by: Town Manager, Assistant Town Manager, Town Attorney, and Finance Director

PAGE 2 OF 3

SUBJECT: Second Amendment to Agreement for Consultant Services with Cuschieri Horton Architects

DATE: October 22, 2021

BACKGROUND (continued):

Maintenance staff has relocated to the new offices and Police evidence have been moved to a temporary trailer in preparation for Phase 2 of the project.

DISCUSSION:

Phase 2 of the project includes purchasing and installation of a steel storage building to replace the existing building that is currently used as Police evidence storage facility.

The permit process for the storage building includes review by the Santa Clara County Fire Department. The review comments from the Fire Department added a requirement for the proposed steel building to have either a one-hour fire rated wall or to place the building at least 10 feet away from the property lines. The cost of a steel building with one-hour fire rated walls is substantially high so placement of the building at the required distance from the property line is a more cost-effective solution. This option necessitates additional design work and revision of plans for approval by the Fire Department. This amendment is for this additional design work and construction administration work to be performed by Cuschieri Horton Architects.

Bidding for construction of Phase 2 of the project will follow the completion of the additional design work.

CONCLUSION:

Staff recommends that Town Council authorize the Town Manager to execute the contract to allow for this project to progress.

COORDINATION:

The design of this project has been coordinated with Community Development Department and County Fire through the building permit process.

SUBJECT: Second Amendment to Agreement for Consultant Services with Cuschieri Horton Architects

DATE: October 22, 2021

FISCAL IMPACT:

Building Replacement at Corporation Yard Project 821-2302		
	Budget	Costs
GFAR	\$1,915,800	
Total Budget	\$1,915,800	
Construction (Including Contingencies)		\$696,447
Consultation Services (Expense + Encumbrance)		\$210,884
Solutions Office Interiors		\$108,000
Consultation Services (Approved with this Report)		\$53,100
Other Construction		\$73,664
Modular Unit Rental		\$10,637
Construction Inspection		\$7,443
Equipment Acquisition/Installation		\$6,055
Blueprint/Copy/Postage		\$1,772
Advertising		\$1,064
Total Expenditures		\$1,169,066
Remaining Budget		\$746,734

There are sufficient funds available in the project budget for the contract amendment.

ENVIRONMENTAL ASSESSMENT:

This is a project as defined under CEQA but is Categorically Exempt (Section 15301 a and d). A Notice of Exemption will not be filed.

Attachment:

1. Draft Second Amendment with the Original Agreement with Cuschieri Horton Architects dated October 3, 2018 and First Amendment dated March 2, 2021.

SECOND AMENDMENT TO AGREEMENT FOR CONSULTANT SERVICES

This SECOND AMENDMENT TO AGREEMENT FOR CONSULTANT SERVICES is dated for identification this 2nd day of November 2021 and amends that certain AGREEMENT FOR CONSULTANT SERVICES dated October 3, 2018, and FIRST AMENDMENT TO AGREEMENT dated March 3, 2021 made by and between the **TOWN OF LOS GATOS**, ("Town,") and **Cuschieri Horton Architects** ("Consultant").

RECITALS

- A. Town and Consultant entered into an Agreement for Consultant Services on October 3, 2018 ("Agreement"), a copy of which is attached hereto and incorporated by reference as Attachment 1 to this Amendment.
- B. Town and Consultant entered into First Amendment to the Agreement for Consultant Services on March 3, 2021 ("Agreement"), a copy of which is attached hereto and incorporated by reference as Attachment 2 to this Amendment.
- C. Town desires to make second amendment the Agreement to add to the scope of services and provide additional compensation for additional architectural and engineering design services to support building replacement at Parks and Public Works Corp Yard.

AMENDMENT

1. Section 2.1 Scope of Services is amended to read:

Consultant shall provide services as described in that certain Cost Proposal sent to the Town on October 14, 2021, which is hereby incorporated by referenced and attached as Exhibit C.

2. Section 2.6 Compensation is amended to read:

Additional compensation for Consultant's professional services shall be \$53,100, for a total agreement not to exceed \$218,450.

3. All other terms and conditions of the Agreement remain in full force and effect.

IN WITNESS WHEREOF, the Town and Consultant have executed this Amendment.

Town of Los Gatos by:

Consultant by:

Laurel Prevetti
Town Manager

Name/Title

Recommended by:

Matt Morley
Director of Parks and Public Works

Approved as to Form:

Robert Schultz, Town Attorney

Attest:

Shelley Neis, MMC, CPMC, Town Clerk

14 October 2021
CHA# 1826.05

Matt Morley
Director
Parks and Public Works Department
Town of Los Gatos
41 Miles Avenue, Los Gatos, CA 95030

Project / Location:
TLG – Engineering TI and Storage Building
41 Miles Avenue, Los Gatos, CA 95030

RE: Additional Services #5 Fee Proposal for Additional Construction Administration Services for the Storage Building

Dear Matt,

Please find enclosed Cuschieri Horton Architects (CHA) request for approval of additional Architectural and Engineering services for the above noted project. This proposal represents an additional scope of work for an additional (4) month Construction Administration services in connection to the proposed Storage Building, which was not covered within our original project proposal #201832, dated 06/01/18, nor any prior additional design service proposals.

SCOPE OF WORK:

This added scope of work includes:

- Extended Construction Administration Services for four (4) months for the Storage Building construction.

Therefore, this fully executed agreement will constitute approval for A/E services expended as noted above, as well as incorporation into the overall permitted project set during CA phase of work.

ASSUMPTIONS:

- AOR efforts in assisting the contractor in evaluating and ensuring compliance with the contract documents, coordinate and inspect contractor's work. Coordination with the Design team, Contractor and the Owner in reviewing submittals and responding to RFIs. Attend weekly construction meetings.
- Change in Scope, increase in Schedule, &/or any unforeseen conditions may result in add services.
- All prior assumptions and scope noted within original and prior approved proposal(s) remain applicable for this additional service proposal unless otherwise updated or noted above.
- See attached Consulting Engineer's proposal for their respective Assumptions.

EXCLUSIONS (can be provided as an additional service & billed at current SOC, if needed):

- Preparation of documentation beyond those described above and within this proposal.
- Additional revisions during CA period.
- All prior exclusions and scope noted within original approved proposal remain applicable for this additional service proposal unless otherwise updated or noted above.
- See attached Consulting Engineer's proposal for their respective Exclusions.

EXHIBIT C

PROFESSIONAL FEES:

Town of Los Gatos Engineering Building TI and Storage Building Additional Services #5		Fees
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(4) Month Extended Construction Administration Services

CHA – Cuschieri Horton Architects	Construction Administration Services	\$ 21,500
BASE Design	Structural Construction Administration Services	\$ 1,200
Sandis	Civil Construction Administration	\$ 3,000
ACIES Engineering	MEP Construction Administration Services	\$ 3,000

(Add Services): \$ 28,700

We propose the following CHA Staff and SOC rates for this project:

Project Manager– Dan Cuschieri, Architect, (Hourly rate: \$170/hr.)

Senior Designer – Ray Bolisay (Hourly rate: \$150/hr.)

Job Captain – Sanobar Girap (Hourly rate: \$135/hr.)

CAD drafter (Hourly rate: \$115/hr.)

Reimbursable Charges: Computed at cost + 10%.

AGREEMENT FOR SERVICES:

Above noted services will be provided in accordance with the standard AIA agreement, to be provided by CHA. If the TLG has their own agreement, please provide to CHA for review and execution. CHA will proceed with these services following distribution, review and our receipt of TLG signed approval followed by an executed Agreement between CHA and TLG, issued for these services. Services outside this proposed scope of work will be billed hourly per CHA and CHA's engineering consultant's current schedule of charges, following Owner approval of such additional work.

Thank you for your consideration and approval of this additional work. Please call with any questions.

Sincerely



Dan Cuschieri, AIA, Principal

By signing below, you have acknowledged acceptance of the terms, fees, & conditions of this proposal letter, and authorize Cuschieri Horton Architects to proceed with the proposed services, included with any amendment to the fully executed prime agreement.
(Please email signed/executed color copy to CHA)

Signature of Owner representative (s)

Date

Full Name of Owner representative(s)

Cc: Tony Cuschieri (CHA), Kristi Pearce-Percy (CHA), Jeannette Keplinger (CHA)

September 15, 2021

Dan Cuschieri
Cuschieri Horton Architects
20 S. Santa Cruz Avenue
Suite 108
Los Gatos, CA
95030

RE: TLG Storage Building
Construction Administration Schedule
Cuschieri Horton Architects Project No. 1826
BASE Design Project No. 18174, Add Service #2

Dear Mr. Cuschieri,

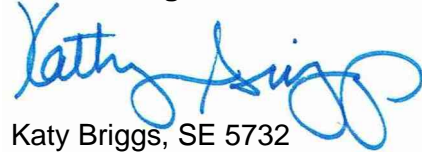
Per emails from Ray Bolisay of your office sent September 14, 2021, the construction phase of the Storage Building will be extended by four months. This extended construction schedule will require additional time for construction administration.

BASE Design proposes to provide the scope of services described above for the new storage building construction at an hourly rate of \$150, not to exceed of **\$1,200 (One Thousand and Two Hundred Dollars)**.

We hope that this add service proposal is acceptable to you. If the fees and terms provided herein are acceptable, this letter can serve as our agreement and our authorization to proceed.

Sincerely,

BASE Design



Katy Briggs, SE 5732
Principal

ACCEPTED BY:

Cuschieri Horton Architects

BY: _____

DATE: _____

September 16, 2021
Project No. 218290

Dan Cuschieri
Cuschieri Horton Architects
1475 S. Bascom Avenue, Suite 204
Campbell, CA 95008
T: 408.371.8200
E: dan@charch.com

RE: **LOS GATOS ENGINEERING BUILDING TI**
ASR #2 - STORAGE BUILDING RELOCATION
LOS GATOS, CA

ASR #3 - Extended 4-Month
Construction Administration

Dear Dan,

This letter is our amendment to the original proposal dated May 23, 2018 for the above referenced project. The following scope of work is included in this amendment, per the email received on 09/14/21 from Ray Bolisay, Cuschieri Horton Architects:

1. **Extended 4-month construction administration.**
 - ~~1. Adjust storage building an additional five (5) feet from property line.~~
 - ~~2. Adjust all grading and utility improvements with respect to building relocation.~~
 - ~~3. Revise civil plan set to architectural team for town submittal.~~
 - ~~4. Respond to one (1) round of town review comments.~~
- ~~• Construction Documents - \$7,000~~
 - **Construction Administration - \$3,000**

These services will be provided for the sum of ~~\$10,000 (Ten Thousand Dollars)~~ and will be performed under the terms and conditions of our original contract. Please return one signed copy of this letter to our Campbell office as your authorization to proceed.

Regards,

SANDIS



Chad Browning, PE, LEED AP, QSD/P
Associate Principal



Steve Yazalina
Project Manager

Approved

CUSCHIERI HORTON ARCHITECTS

By: _____

Title: _____

Date: _____

AUTHORIZATION FOR REQUESTED ADDITIONAL SERVICES

CLIENT: **Cuschieri Horton Architects** **DATE:** 09-15-2021
 20 S. Santa Cruz Ave, Suite 108
 Los Gatos, CA 95030
 Tel: (408) 371-8200 x1121

AUTHORIZED REPRESENTATIVE: Ray Bolisay *rbolisay@charch.com*

PROJECT: **Los Gatos Engineering TI**
41 Miles Avenue
Los Gatos, CA 95030

PROJECT NUMBER: 180541.03

**DESCRIPTION OF
 ADDITIONAL
 SERVICES:**

Additional MEP Engineering and Design assistance to provide Construction Administration support services (4 months) for the Storage building.

**ADDITIONAL
 SERVICE FEE:**

Time and Material But Not To Exceed \$3,000.00

REIMBURSABLE EXPENSES shall refer to those out-of-pocket costs, expenses, fees, or charges which ACIES incurs on the CLIENT's behalf. "Reimbursable Expenses" include but are not limited to:

- Production of drawings, calculations, etc.
- Travel expenses
- Shipping and postage
- All fees paid to local agencies or government offices on behalf of the CLIENT or the project.

Prevailing in-house reimbursable expense rates are as follows:

Item	Price
Reimbursement - Bond 11 x 17	\$0.75
Reimbursement - Bond 17 x 22	\$1.00
Reimbursement - Bond 18 x 24	\$1.00
Reimbursement - Bond 22 x 34	\$1.50
Reimbursement - Bond 24 x 22	\$1.00
Reimbursement - Bond 30 x 42	\$2.75
Reimbursement - Bond 36 x 24	\$2.50
Reimbursement - Bond 36 x 48	\$4.00
Reimbursement - Vellums	\$10.00
Reimbursement - Mileage	\$0.58/mile
Reimbursement - Acies Messenger	\$25.00
Reimbursement - Drawings Delivery	Varies
Reimbursement - Copies	\$0.10/sheet

PREVAILING HOURLY BILLING RATES:

Principal	\$230.00/hr
Associate	\$190.00/hr
Project Director	\$175.00/hr
Project Manager	\$150.00/hr
Project Engineer	\$130.00/hr
Designer	\$115.00/hr
REVIT / CAD Operator	\$120.00/hr
Administrator	\$85.00/hr

All terms and conditions from original proposal dated 06-19-2018 apply to this additional service agreement. Reimbursable expenses such as drawing reproduction, copying, fax, travel expenses, long distance telephone and toll calls, shipping, postage & etc will be charged at 1.1 times their cost to Acies.

EXECUTION: *In witness whereof, the parties hereto have accepted, made and executed this Agreement upon the terms, conditions and provisions above stated, the day and year first above written.*

SUBMITTED BY:
ACIES ENGINEERING



SRDJAN REBRACA, PE
PRINCIPAL
DATE: SEPTEMBER 15, 2021

APPROVED BY:

PRINT:
DATE:

14 October 2021
CHA# 1826.06

Matt Morley
Director
Parks and Public Works Department
Town of Los Gatos
41 Miles Avenue, Los Gatos, CA 95030

Project / Location:
TLG – Engineering TI and Storage Building
41 Miles Avenue, Los Gatos, CA 95030

RE: Additional Services #6 Rev01 Fee Proposal for Additional Design Services to Relocate the Storage Building

Dear Matt,

Please find enclosed Cuschieri Horton Architects (CHA) request for approval of additional Architectural and Engineering services for the above noted project. This proposal represents an additional scope of work for relocation of the Storage building, which was not covered within our original project proposal #201832, dated 06/01/18, nor any prior additional design service proposals.

SCOPE OF WORK:

This added scope of work includes:

- Relocate the proposed Storage building 10 feet away from the north property line.
- Rearrange HVAC unit for the Storage building due to the relocation of the building.
- Adjust grades, elevations, and utility improvements with respect to the relocation of the Storage building.
- Redesign parking and ramps in front of the relocated Storage building.

Therefore, this fully executed agreement will constitute approval for A/E services expended as noted above, as well as incorporation into the overall permitted project set during CA phase of work.

ASSUMPTIONS:

- AOR efforts in coordination and preparation of the revised drawings and resubmission to the Town of Los Gatos Building Department.
- Change in Scope, increase in Schedule, &/or any unforeseen conditions may result in add services.
- All prior assumptions and scope noted within original and prior approved proposal(s) remain applicable for this additional service proposal unless otherwise updated or noted above.
- See attached Consulting Engineer's proposal for their respective Assumptions.

EXCLUSIONS (can be provided as an additional service & billed at current SOC, if needed):

- Preparation of documentation beyond those described above and within this proposal.
- Additional revisions during CA period.
- All prior exclusions and scope noted within original approved proposal remain applicable for this additional service proposal unless otherwise updated or noted above.
- See attached Consulting Engineer's proposal for their respective Exclusions.

PROFESSIONAL FEES:

Town of Los Gatos Engineering Building TI and Storage Building Additional Services #6		Fees
<u>Relocation of Storage Building</u>		
CHA – Cuschieri Horton Architects	Architectural Design Fee	\$ 11,900
Sandis	Civil Design Fee	\$ 7,000
ACIES Engineering	MEP Design Fee	\$ 5,500
(Add Services):		\$ 24,400

We propose the following CHA Staff and SOC rates for this project:

- Project Manager– Dan Cuschieri, Architect, (Hourly rate: \$170/hr.)
- Senior Designer – Ray Bolisay (Hourly rate: \$150/hr.)
- Job Captain – Sanobar Girap (Hourly rate: \$135/hr.)
- CAD drafter (Hourly rate: \$115/hr.)
- Reimbursable Charges: Computed at cost + 10%.

AGREEMENT FOR SERVICES:

Above noted services will be provided in accordance with the standard AIA agreement, to be provided by CHA. If the TLG has their own agreement, please provide to CHA for review and execution. CHA will proceed with these services following distribution, review and our receipt of TLG signed approval followed by an executed Agreement between CHA and TLG, issued for these services. Services outside this proposed scope of work will be billed hourly per CHA and CHA's engineering consultant's current schedule of charges, following Owner approval of such additional work.

Thank you for your consideration and approval of this additional work. Please call with any questions.

Sincerely



Dan Cuschieri, AIA, Principal

By signing below, you have acknowledged acceptance of the terms, fees, & conditions of this proposal letter, and authorize Cuschieri Horton Architects to proceed with the proposed services, included with any amendment to the fully executed prime agreement.
 (Please email signed/executed color copy to CHA)

 Signature of Owner representative (s)

 Date

 Full Name of Owner representative(s)

Cc: Tony Cuschieri (CHA), Kristi Pearce-Percy (CHA), Jeannette Keplinger (CHA)

September 16, 2021
Project No. 218290

Dan Cuschieri
Cuschieri Horton Architects
1475 S. Bascom Avenue, Suite 204
Campbell, CA 95008
T: 408.371.8200
E: dan@charch.com

**RE: LOS GATOS ENGINEERING BUILDING TI
ASR #2 – STORAGE BUILDING RELOCATION
LOS GATOS, CA**

Dear Dan,

This letter is our amendment to the original proposal dated May 23, 2018 for the above referenced project. The following scope of work is included in this amendment, per the email received on 09/14/21 from Ray Bolisay, Cuschieri Horton Architects:

1. Adjust storage building an additional five (5) feet from property line.
 2. Adjust all grading and utility improvements with respect to building relocation.
 3. Revise civil plan set to architectural team for town submittal.
 4. Respond to one (1) round of town review comments.
- **Construction Documents – \$7,000**
 - ~~Construction Administration \$7,000~~

These services will be provided for the sum of ~~\$10,000 (Ten Thousand Dollars)~~ and will be performed under the terms and conditions of our original contract. Please return one signed copy of this letter to our Campbell office as your authorization to proceed.

Regards,

SANDIS



Chad Browning, PE, LEED AP, QSD/P
Associate Principal



Steve Yazalina
Project Manager

Approved

CUSCHIERI HORTON ARCHITECTS

By: _____

Title: _____

Date: _____

AUTHORIZATION FOR REQUESTED ADDITIONAL SERVICES

CLIENT:	Cuschieri Horton Architects 20 S. Santa Cruz Ave, Suite 108 Los Gatos, CA 95030 Tel: (408) 371-8200 x1121	DATE: Revised 10-12-2021
AUTHORIZED REPRESENTATIVE:	<u>Ray Bolisay</u>	<u><i>rbolisay@charch.com</i></u>
PROJECT:	Los Gatos Engineering TI 41 Miles Avenue Los Gatos, CA 95030	
PROJECT NUMBER:	<u>180541.05</u>	

DESCRIPTION OF ADDITIONAL SERVICES:

<p>Additional MEP Engineering and Design assistance for a proposed revision on the location of the Town of Los Gatos storage building. The scope of work includes:</p> <ul style="list-style-type: none"> • <i>Move Storage Building away from the northwest property line by 10'-0" per "Additonal Scope - Storage Building Relocation.pdf" sketch.</i> • <i>Relocate HVAC unit and reconfigure ductwork going inside the building.</i> • <i>Ramp and parking areas in front of the storage building shall also move to the proposed location.</i>
--

ADDITIONAL SERVICE FEE:

\$5,500

REIMBURSABLE EXPENSES shall refer to those out-of-pocket costs, expenses, fees, or charges which ACIES incurs on the CLIENT's behalf. "Reimbursable Expenses" include but are not limited to:

- Production of drawings, calculations, etc.
- Travel expenses
- Shipping and postage
- All fees paid to local agencies or government offices on behalf of the CLIENT or the project.

Prevailing in-house reimbursable expense rates are as follows:

Item	Price
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PREVAILING HOURLY BILLING RATES:

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Project Director	\$175.00/hr
Project Manager	\$150.00/hr
Project Engineer	\$130.00/hr
Designer	\$115.00/hr
REVIT / CAD Operator	\$120.00/hr
Administrator	\$85.00/hr

All terms and conditions from original proposal dated 06-19-2018 apply to this additional service agreement. Reimbursable expenses such as drawing reproduction, copying, fax, travel expenses, long distance telephone and toll calls, shipping, postage & etc will be charged at 1.1 times their cost to Acies.

EXECUTION: *In witness whereof, the parties hereto have accepted, made and executed this Agreement upon the terms, conditions and provisions above stated, the day and year first above written.*

SUBMITTED BY:
ACIES ENGINEERING



TOMISLAV GAJIC, PE

PRINCIPAL

DATE: REVISED OCTOBER 12, 2021

APPROVED BY:

PRINT:

DATE:

AGREEMENT FOR CONSULTANT SERVICES

THIS AGREEMENT is made and entered into on October 3, 2018 by and between TOWN OF LOS GATOS, a California municipal corporation, ("Town") Cuschieri Horton Architects, ("Consultant"), whose address is 1475 S. Bascom Avenue, Suite 204, Campbell, CA 95008. This Agreement is made with reference to the following facts.

I. RECITALS

- 1.1 The Town desire to engage Consultant to provide design services to support tenant improvements (TI) at the Town's Engineering Building, including new construction evidence storage.
- 1.2 The Consultant represents and affirms that it is willing to perform the desired work pursuant to this Agreement.
- 1.3 Consultant warrants it possesses the distinct professional skills, qualifications, experience, and resources necessary to timely perform the services described in this Agreement. Consultant acknowledges Town has relied upon these warranties to retain Consultant.

II. AGREEMENTS

- 2.1 Scope of Services. Consultant shall provide services as described in that certain Cost Proposal sent to the Town on June 1, 2018, which is hereby incorporated by reference and attached as Exhibit A.
- 2.2 Term and Time of Performance. This contract will remain in effect from October 3, 2018 to December 31, 2021.
- 2.3 Compliance with Laws. The Consultant shall comply with all applicable laws, codes, ordinances, and regulations of governing federal, state and local laws. Consultant represents and warrants to Town that it has all licenses, permits, qualifications and approvals of whatsoever nature which are legally required for Consultant to practice its profession. Consultant shall maintain a Town of Los Gatos business license pursuant to Chapter 14 of the Code of the Town of Los Gatos.
- 2.4 Sole Responsibility. Consultant shall be responsible for employing or engaging all persons necessary to perform the services under this Agreement.
- 2.5 Information/Report Handling. All documents furnished to Consultant by the Town and all reports and supportive data prepared by the Consultant under this Agreement are the Town's property and shall be delivered to the Town upon the completion of Consultant's services or at the Town's written request. All reports, information, data, and exhibits

prepared or assembled by Consultant in connection with the performance of its services pursuant to this Agreement are confidential until released by the Town to the public, and the Consultant shall not make any of these documents or information available to any individual or organization not employed by the Consultant or the Town without the written consent of the Town before such release. The Town acknowledges that the reports to be prepared by the Consultant pursuant to this Agreement are for the purpose of evaluating a defined project, and Town's use of the information contained in the reports prepared by the Consultant in connection with other projects shall be solely at Town's risk, unless Consultant expressly consents to such use in writing. Town further agrees that it will not appropriate any methodology or technique of Consultant which is and has been confirmed in writing by Consultant to be a trade secret of Consultant.

- 2.6 **Compensation.** Compensation for Consultant's professional services shall not exceed **\$149,000**, inclusive of all costs. Payment shall be based upon Town approval of each task.
- 2.7 **Billing.** Billing shall be monthly by invoice within thirty (30) days of the rendering of the service and shall be accompanied by a detailed explanation of the work performed by whom at what rate and on what date. Also, plans, specifications, documents or other pertinent materials shall be submitted for Town review, even if only in partial or draft form.

Payment shall be net thirty (30) days. All invoices and statements to the Town shall be addressed as follows:

Invoices:
Town of Los Gatos
Attn: Accounts Payable
P.O. Box 655
Los Gatos, CA 95031-0655

- 2.8 **Availability of Records.** Consultant shall maintain the records supporting this billing for not less than three years following completion of the work under this Agreement. Consultant shall make these records available to authorized personnel of the Town at the Consultant's offices during business hours upon written request of the Town.
- 2.9 **Assignability and Subcontracting.** The services to be performed under this Agreement are unique and personal to the Consultant. No portion of these services shall be assigned or subcontracted without the written consent of the Town.
- 2.10 **Independent Contractor.** It is understood that the Consultant, in the performance of the work and services agreed to be performed, shall act as and be an independent contractor and not an agent or employee of the Town. As an independent contractor he/she shall not obtain any rights to retirement benefits or other benefits which accrue to Town employee(s). With prior written consent, the Consultant may perform some obligations

under this Agreement by subcontracting but may not delegate ultimate responsibility for performance or assign or transfer interests under this Agreement. Consultant agrees to testify in any litigation brought regarding the subject of the work to be performed under this Agreement. Consultant shall be compensated for its costs and expenses in preparing for, traveling to, and testifying in such matters at its then current hourly rates of compensation, unless such litigation is brought by Consultant or is based on allegations of Consultant's negligent performance or wrongdoing.

- 2.11 **Conflict of Interest.** Consultant understands that its professional responsibilities are solely to the Town. The Consultant has and shall not obtain any holding or interest within the Town of Los Gatos. Consultant has no business holdings or agreements with any individual member of the Staff or management of the Town or its representatives nor shall it enter into any such holdings or agreements. In addition, Consultant warrants that it does not presently and shall not acquire any direct or indirect interest adverse to those of the Town in the subject of this Agreement, and it shall immediately disassociate itself from such an interest, should it discover it has done so and shall, at the Town's sole discretion, divest itself of such interest. Consultant shall not knowingly and shall take reasonable steps to ensure that it does not employ a person having such an interest in this performance of this Agreement. If after employment of a person, Consultant discovers it has employed a person with a direct or indirect interest that would conflict with its performance of this Agreement, Consultant shall promptly notify Town of this employment relationship, and shall, at the Town's sole discretion, sever any such employment relationship.
- 2.12 **Equal Employment Opportunity.** Consultant warrants that it is an equal opportunity employer and shall comply with applicable regulations governing equal employment opportunity. Neither Consultant nor its subcontractors do and neither shall discriminate against persons employed or seeking employment with them on the basis of age, sex, color, race, marital status, sexual orientation, ancestry, physical or mental disability, national origin, religion, or medical condition, unless based upon a bona fide occupational qualification pursuant to the California Fair Employment & Housing Act.

III. INSURANCE AND INDEMNIFICATION

3.1 Minimum Scope of Insurance:

- i. Consultant agrees to have and maintain, for the duration of the contract, General Liability insurance policies insuring him/her and his/her firm to an amount not less than: one million dollars (\$1,000,000) combined single limit per occurrence for bodily injury, personal injury and property damage.
- ii. Consultant agrees to have and maintain for the duration of the contract, an Automobile Liability insurance policy ensuring him/her and his/her staff to an amount not less than one million dollars (\$1,000,000) combined single limit per accident for bodily injury and property damage.

- iii. Consultant shall provide to the Town all certificates of insurance, with original endorsements effecting coverage. Consultant agrees that all certificates and endorsements are to be received and approved by the Town before work commences.
- iv. Consultant agrees to have and maintain, for the duration of the contract, professional liability insurance in amounts not less than \$1,000,000 which is sufficient to insure Consultant for professional errors or omissions in the performance of the particular scope of work under this agreement.

General Liability:

- i. The Town, its officers, officials, employees and volunteers are to be covered as insured as respects: liability arising out of activities performed by or on behalf of the Consultant; products and completed operations of Consultant, premises owned or used by the Consultant. This requirement does not apply to the professional liability insurance required for professional errors and omissions.
- ii. The Consultant's insurance coverage shall be primary insurance as respects the Town, its officers, officials, employees and volunteers. Any insurance or self-insurances maintained by the Town, its officers, officials, employees or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.
- iii. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Town, its officers, officials, employees or volunteers.
- iv. The Consultant's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

3.2 **All Coverages.** Each insurance policy required in this item shall be endorsed to state that coverage shall not be suspended, voided, cancelled, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the Town. Current certification of such insurance shall be kept on file at all times during the term of this agreement with the Town Clerk.

3.3 **Workers' Compensation.** In addition to these policies, Consultant shall have and maintain Workers' Compensation insurance as required by California law and shall provide evidence of such policy to the Town before beginning services under this Agreement. Further, Consultant shall ensure that all subcontractors employed by Consultant provide the required Workers' Compensation insurance for their respective employees.

- 3.4 **Indemnification.** The Consultant shall save, keep, hold harmless and indemnify and defend the Town its officers, agent, employees and volunteers from all damages, liabilities, penalties, costs, or expenses in law or equity that may at any time arise or be set up because of damages to property or personal injury received by reason of, or in the course of performing work which may be occasioned by a willful or negligent act or omissions of the Consultant, or any of the Consultant's officers, employees, or agents or any subconsultant.

IV. GENERAL TERMS

- 4.1 **Waiver.** No failure on the part of either party to exercise any right or remedy hereunder shall operate as a waiver of any other right or remedy that party may have hereunder, nor does waiver of a breach or default under this Agreement constitute a continuing waiver of a subsequent breach of the same or any other provision of this Agreement.
- 4.2 **Governing Law.** This Agreement, regardless of where executed, shall be governed by and construed to the laws of the State of California. Venue for any action regarding this Agreement shall be in the Superior Court of the County of Santa Clara.
- 4.3 **Termination of Agreement.** The Town and the Consultant shall have the right to terminate this agreement with or without cause by giving not less than fifteen days (15) written notice of termination. In the event of termination, the Consultant shall deliver to the Town all plans, files, documents, reports, performed to date by the Consultant. In the event of such termination, Town shall pay Consultant an amount that bears the same ratio to the maximum contract price as the work delivered to the Town bears to completed services contemplated under this Agreement, unless such termination is made for cause, in which event, compensation, if any, shall be adjusted in light of the particular facts and circumstances involved in such termination.
- 4.4 **Amendment.** No modification, waiver, mutual termination, or amendment of this Agreement is effective unless made in writing and signed by the Town and the Consultant.
- 4.5 **Disputes.** In any dispute over any aspect of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, including costs of appeal.
- 4.6 **Notices.** Any notice required to be given shall be deemed to be duly and properly given if mailed postage prepaid, and addressed to:

Town of Los Gatos
Attn: Town Clerk
110 E. Main Street
Los Gatos, CA 95030

Cuschieri Horton Architects
1475 S. Bascom Avenue, Suite 104
Campbell, CA 95008

or personally delivered to Consultant to such address or such other address as Consultant designates in writing to Town.

4.7 Order of Precedence. In the event of any conflict, contradiction, or ambiguity between the terms and conditions of this Agreement in respect of the Products or Services and any attachments to this Agreement, then the terms and conditions of this Agreement shall prevail over attachments or other writings.

4.8 Entire Agreement. This Agreement, including all Exhibits, constitutes the complete and exclusive statement of the Agreement between the Town and Consultant. No terms, conditions, understandings or agreements purporting to modify or vary this Agreement, unless hereafter made in writing and signed by the party to be bound, shall be binding on either party.

IN WITNESS WHEREOF, the Town and Consultant have executed this Agreement.

Town of Los Gatos by:




Laurel Prevetti, Town Manager

Consultant, by:



Daniel Cuschieri, AIA
Cuschieri Horton Architects

Recommended by:




Matt Morley, Director of Parks and Public Works

Principal / Architect

Title

Approved as to Form:



Robert Schultz, Town Attorney

Cost Proposal Format

Consultant shall provide a detailed itemized schedule of rates and fees which includes all billing amounts and costs for each Task as follows:

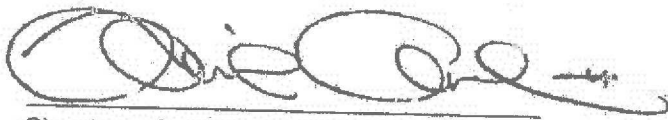
Basic Services:

Compensation shall be on a time and materials basis in proportion to services rendered and shall be billed monthly as percentages of completion for each Task as follows:

Task 1: Design Project Management and Coordination	\$	<u>6,780</u>
Task 2: Data Collection and Review (35%)	\$	<u>35,935</u>
Task 3: Construction Documents: 70% & 100%		
A. 70% Complete Plans	\$	<u>46,532</u>
B. 100% Complete Plans	\$	<u>23,208</u>
Task 4: Construction Management and Other Services (as needed)	\$5,000	
Task 5: Construction Administration (as needed)	\$	<u>30,540</u>
Task 6: Record Drawings and Project Close-Out	\$	<u>6,720</u>
TOTAL (Not-To-Exceed)	\$	<u>154,715</u>

Consultant Rate Schedule*:

* Attach Consultant rate schedule



Signature of CHA Representative

DAN CUSCHIERI, AIA, Principal

Typed name & Title

*Request for Proposal
Design Professional Services for Engineering Building Tenant Improvement*



CHA # 201832 / 06-01-18
TLG Engineering Building Tenant Improvements
COST PROPOSAL SUPPLEMENT - CHA Design Team

1 June 2018

Town of Los Gatos (TLG - Owner)

Parks and Public Works Department (41 Miles Avenue, Los Gatos, CA 95030)

Attention: Lisa Petersen, Assistant Director / Town Engineer

Cc: Brett Stoltenwerk, Project Manager

Re: COST PROPOSAL SUPPLEMENT - Professional Services Fee Proposal for A/E Design Services (Tasks 1 thru 6)
Town of Los Gatos Engineering Building Tenant Improvement
Project Location: 41 Miles Avenue, Los Gatos, CA 95030

Dear Lisa,

We at Cuschieri Horton Architects (CHA) would like to thank you & the Town of Los Gatos for this great opportunity to provide our Architectural and Consultant Engineering services Cost proposal for the above noted project & as a supplement to Attachment D - Cost Proposal Format. We include herewith our understanding of the scope of services & key staff assigned for this project, including our design services fees for your review and approval. If each building (engineering + storage) project was to be separate due to budgetary constraints, this can be discussed during the interview process regarding fee & schedule impacts.

Following recent communication via telephone & email communication with additional scoping at the project site walk with Kinjal Buch, we have developed the following scope of services & fees for your review.

SCOPE OF SERVICES: The scope of services follow the scope and requirements set forth within the Town of Los Gatos (TLG) issued RFP and plan attachments received on 05/03/18 & Addendums. This RFP for design services to support tenant improvements (TI) at the TLG's Engineering Building, including new construction work for the replacement of a small portable building that currently houses TLG field crew & TLG Police evidence storage, both located at the TLG's service yard at 41 Miles Avenue, Los Gatos, CA. The existing Engineering building is currently separated into two areas; One area contains the existing engineering department office cubicles, one unisex bathroom, plan/file storage area, conference room, entry counter, etc.. The second area contains an equipment storage area. Proposed design services are to complete the TI of the building which would include relocating the existing engineering area to a new office area in the converted equipment/material storage location & changing the existing engineering area into an office for Town maintenance staff. At the location of the old portable building, the scope proposes a new basic steel storage building approximately 90 ft. long by 60 ft. wide by 20 ft. high (5400 sf +/-) with a recommended pre-fabricated structure on a concrete slab. This new building will be sectioned off into two areas with no toilets or staff work areas; One area will be for general TLG storage to accommodate a fork lift, tall racking storage, & HVAC unconditioned. The second area will be for TLG police evidence storage that meets Police Dept. evidence storage specifications and is approximately 2,000 sf & HVAC conditioned. Attachment E & F, included with the original RFP, show the locations of these structures and the existing engineering building layout. Per our completed RFP submittal package, our design team will prepare the appropriate design documents to facilitate the RFP scope of work as noted above and within the RFP's identified (6) Tasks as follows (please note that the tasks are noted differently between RFP pages 7 thru 9 Task summary and "Attachment D", so we are following "Attachment D," noting (6) tasks, which now incorporate CA services:

Task 1: Design Project Management and Coordination

Task 2: Data Collection and Review (35% plan / documentation submission milestone)

Task 3: Construction Documents (at 70% and 100% plan submission milestones)

Task 4: Construction Management and Other Services (as needed - allowance)

Task 5: Construction Administration (as needed - allowance)

Task 6: Record Drawings and Project Close-out



SUMMARY OF EACH "TASK" BASIC SERVICES FOR CHA:

TASK 1 - DESIGN PROJECT MANAGEMENT AND COORDINATION:

- 1.0** General Items (relating to this Task):
- SCHEDULE - Estimated Task completion time frame: Up to (2) weeks
 - Engineering Consultants' Scope: See also the attached/included CHA's Engineering Consultants fee proposals for their scope/fees for this Task.
- 1.1** Coordinate with the TLG throughout the duration of this project design Task,
- 1.2.** Manage Design Team and overall project design activities consistent with the direction from the TLG in order to meet the project schedule and budget.
- 1.3.** Prepare a work plan phase schedule in MS Project format showing significant milestones for the project.
- 1.4.** Update the schedule monthly and notify TLG if there are delays in any phase of the project. If needed, prepare the schedule in subsequent phases of the project or provide information to TLG substantiating a time extension. Estimated to be (1) permit document package covering up to (3) construction phases.
- 1.5.** Prepare for and attend in-person project meetings with the TLG to discuss project progress, decisions and direction, and to coordinate activities, as required. The meetings shall include the following for this Task:
- Up to (1) Kick-off Meeting (on-site)
 - Up to (2) Project Status Meetings with TLG via conference calls.
- 1.6.** Be available to Town staff for consultation by phone, or email to discuss project activities and schedules, or as required through the duration of this project Task.
- 1.7.** Deliverables:
- Monthly progress schedule in MS Project format (electronic file).
 - Monthly progress reports and invoices (electronic file). Invoices will indicate, but not be limited to, the following:
 1. Invoice Number
 2. Complete Title of Project
 3. Period for work performed
 4. Listed Tasks per the Contract/Agreement
 5. Hours and percentage of Work Performed to Date of Invoice
 6. Balance of Account from Previous Invoices

TASK 2 - DATA COLLECTION AND REVIEW:

- 2.0** General Items (relating to this Task):
- SCHEDULE - Estimated Task completion time frame: Up to (4) weeks
 - Engineering Consultants' Scope: See also the attached/included CHA's Engineering Consultants fee proposals for their scope/fees for this Task
 - Allow up to (1) revision to plans per TLG comments following 35% review.
- 2.1** Review as-built documents (Hard Copy and Softcopy of PDF + AutoCAD files) and any other project information available for the Project site, provided by TLG at start of this Task. Assume existing as-built AutoCAD editable softcopy files and Hardcopy plans of project areas available for CHA use and review.
- 2.2** Coordinate development and collection of data.
- 2.3** Verify existing conditions and current code / zoning requirements (per 2.4 site visit).
- 2.4** Up to (1) site visit to view and inspect site conditions and existing facilities with TLG provided as-builts.
- 2.5** Perform necessary site analysis in order to identify opportunities and constraints.
- 2.6** Up to (3) meetings with TLG staff to obtain additional info & input, as well as misc. review as needed.
- 2.7** (Civil Engineer) Locate and verify depths of utilities including Ground Penetrating Radar (GPR), and potholing as needed (Civil Engineer services only per their proposal and within their identified area(s) of work, if identified and applicable to their scope/services).



- 2.8 SCHEMATIC DESIGN** - Prepare and submit, for TLG's review and approval, Schematic Design documents at thirty-five percent (35%) plan submittal. The submittal shall consist of the following plans: Site Plan, Demo and Proposed Floor Plan, some Elevations, Roof Plan), a general narrative description of basic components, and other documents necessary to illustrate the scale and relationship of Project components and provide a preliminary cost estimate.

TASK 3 - CONSTRUCTION DOCUMENTS (at 70% and 100%):

3.0 General Items (relating to this Task):

- **SCHEDULE** - Estimated Task completion time frames: Up to (8) weeks to complete and issue 100% Construction Document package for TLG expedited review with up to an additional *(4) weeks for TLG Review and Permit issuance. * Note: Review schedule has assumed an expedited review per addendum 1 response and considering TLG's involvement starting from Task 1 up to the end of Task 3.
- **Engineering Consultants' Scope:** See also the attached/included CHA's Engineering Consultants fee proposals for their scope/fees for this Task
- Based on the approved Schematic Design documents and any adjustments authorized or directed by TLG staff, Design team shall develop and refine the design, and prepare construction documents to fix and describe the size and character of the Project
- Allow up to (1) revision to plans per TLG comments following 70% review.

3.1 Prepare 70% and 100% complete construction documents and supporting information, which may include but is not limited to:

a) Plans with details of major design components such as:

- Architectural drawings and details (Title Sheet, Site Plan Demo/Proposed Floor Plans, Ceiling Plan, Roof Plan, Elevations, Details, sheet specs, FF&E Plans with the assistance of TLG hired FF&E vendor if applicable)
- Mechanical, electrical and plumbing drawings (See MEP Engineer proposal)
- Civil Drawings (see Civil Engineer proposal)
- Structural Drawings (See Structural Engineer fee proposal)
- Fire Alarm and Fire Sprinkler design consultant hired by TLG, possibly a deferred approval)
- Furniture, Fixtures, and Equipment (FF&E) Plans coordinated with TLG Furniture vendor & TLG Security / IT consultants and or TLG staff.

b) Draft technical specifications with TLG's input (Sheet Specs)

c) Estimate of probable construction cost

3.2 Submit for TLG 70% plan review.

3.3 Meet with TLG staff as needed to review TLG comments on 70% submittal, and gain concurrence as to how the documents will be revised as appropriate to incorporate TLG comments.

3.4 Deliverables (70% and 100%):

1. Complete Plans conforming to TLG Standard Drawings format [five (5) sets of D size (24"x36") and two (2) sets of B-size (11"x17") hard copies]. Electronic copies of plans shall also be made available to TLG in PDF format.
2. Draft Technical Specifications (70%) and Final (100%) [five (5) sets]. Specifications shall be prepared in MS Word and PDF formats.
3. 70% and 100% Estimates of Construction costs. Estimates shall be prepared in MS Excel and PDF formats. (Cost Estimator allowance provided in fee summary, if needed)
4. Miscellaneous Project information as requested.

3.5 Submit for TLG issuance of 100% permit plan set (no fee by TLG) to the TLG Building Department. Plans shall reflect compliance with all applicable codes and requirements. All changes from the Building Department permit plan review shall be reflected in 100% Construction Documents and will be used for bidding purposes.



TASK 4 - CONSTRUCTION MANAGEMENT AND OTHER SERVICES ("as needed" – ALLOWANCE):

4.0 General Items (relating to this Task):

- SCHEDULE - Estimated Task time frame TBD.
- Engineering Consultants' Scope: See also the attached/included CHA's Engineering Consultants fee proposals for their scope/fees for this Task. If any or referencing hourly per Schedule of Charges (SOC).
- Assisting the TLG in providing information beyond standard support of developed design documents on an as needed basis, and billed on an hourly basis up to \$5,000 of work per SOC. See Cost Proposal Format "Attachment D" and fee breakdowns below, which note A/E team combined use of \$5,000.
- This Task is separated in the fee matrix as an allowance since it is noted in the proposal, "as needed."

4.1 Assist TLG with preparing exhibits for addenda as necessary

4.2 Preparation of design details to respond to unforeseen field conditions

4.3 Submittal Reviews

4.4 RFI responses outside of standard support needed for clarification of the permitted design documents

4.5 Other services as identified by the TLG

TASK 5 - CONSTRUCTION ADMINISTRATION ("as needed" – ALLOWANCE):

5.0 General Items (relating to this Task):

- SCHEDULE - Estimated Task time to be up to (9) months. This estimate to be developed further through each prior Task completion for final scope of work and following contractor bid and schedule.
- Engineering Consultants' Scope: See also the attached/included CHA's Engineering Consultants fee proposals for their scope/fees for this Task, if any or referencing hourly per Schedule of Charges (SOC).
- This Task is separated in the fee matrix as an allowance since it is noted in the proposal, "as needed."
- This Task is noted differently between RFP pages 7 thru 9 Task summary and "Attachment D", so we are following "Attachment D," noting (6) tasks, which incorporate CA services
- SITE VISITS – Up to (9) site visits, up to (1) hour each and once a month, to observe ongoing work.
- Assume weekly OAC meeting conference calls with TLG, up to a maximum duration of 30 minutes each.
- Address RFI's and review Submittals (request submittal log at construction kick-off)
- Communication with TLG or Contractor's Fire Alarm and Fire Sprinkler design-build efforts, as needed.
- PHASING – This Task will likely have construction and occupancy in multiple phases through (1) permit document package.
 - 1) **Phase 1** – Complete Demo of the existing engineering building storage area and construct a new interior office space, infilling the roll up doors with storefronts to move-in the adjacent office TLG engineering staff occupants. TLG will be responsible for a temporary storage location for all the displaced FF&E and such to be removed prior to start of demolition.
 - 2) **Phase 2** – Demo adjacent existing engineering staff office space where occupants were moved from and construct a new interior office space to house the TLG Maintenance Staff that are being moved out of the existing portable building to be demolished. Retain existing public entry.
 - 3) **Phase 3** – Demo existing portable building and remove existing shipping containers. Construct a new basic steel storage building, approximately 90 ft long by 60 ft wide by 20 ft high (5400 sf +/-) (Pre-fab if cost effective) on slab on grade and re-attach displaced antenna. Once complete, this new building will house the Police Department evidence storage as well as a separate storage area to support the displaced TLG maintenance storage items and misc general storage needs. TLG will be responsible for temporary storage of any equipment, materials, furniture, police evidence, etc....that will need to be removed prior to demolition.



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 TLG Engineering Building Tenant Improvements
 COST PROPOSAL SUPPLEMENT – CHA Design Team

TASK 6 - RECORD DRAWINGS AND PROJECT CLOSEOUT:

6.0 General Items (relating to this Task):

- Schedule - Estimated Task time frame up to (2) weeks.
- Engineering Consultants' Scope: See also the attached/included CHA's Engineering Consultants fee proposals for their scope/fees for this Task.

6.1 At completion of Project and with no reimburseable compensation, provide TLG with one set of Record Drawings (24" x 36") that reflect the changes to the work during construction based upon any issued ASI's or other documents issued by the Architect/Engineers and upon marked up prints, drawings, and other data furnished by the Contractor and TLG in a timely and legible manner. Any additional sheets added to the plans shall be properly numbered, properly referenced on other affected drawings and included in the drawing index. Also provide TLG with a complete hard copy set of Record Drawings and one soft copy in AutoCAD and PDF formats. CHA and Consulting engineers, at our own expense, may prepare and retain a copy of each drawing for our permanent file.

6.2 Deliverables:

- Submit a punchlist during final the site visit to submit to Contractor and TLG to correct or accept.
- Record Drawings in PDF format and AutoCAD format sent through downloadable link / media.
- Record Drawings (24" x 36") produced on good quality bond (minimum 20-lb weight paper).

ASSUMPTIONS:

- This proposal and attached consulting engineer proposals cover Task 1, 2, 3, and 6 services. Task 4 and 5 services are noted separately in this proposal as fee allowances since the RFP references these Tasks to be delivered "as needed."
- Project Scope developed from TLG RFP, plans & addendum 1 + 2 responses from the TLG, phone & email responses, as well as a scoping site visit, & as identified above & within this proposal.
- Existing dry utilities can be used to support the new steel building and existing power at the project sites will be able to support all existing and proposed project needs. Proposed equipment supporting infrastructure & distribution systems are assumed to have adequate capacity to support scope of work outlined within this proposal. Existing building structure will be adequate to support project scope components/equipment proposed loads with no additional required strengthening of existing building structure.
- Accessible compliance will be addressed only within areas of work. It is assumed existing adjacent site and existing adjacent buildings and spaces are compliant or will not need to be upgraded or meet current accessible compliance and not need to meet current accessible and life-safety egress code compliance, under the current California Building Code and with any current local Regulatory Agencies' code/requirements, and Federal ADA regulations.
- The TLG noted in addendum 1 that they will assist CHA in preparation and documentation for permit issuance through an expedited review or OTC review / approval.
- Change in scope, changes in assumed schedule (noted above), and/or any unforeseen conditions may result in an add service. Reimbursables have not been included & value can be discussed.
- See included Engineer proposals for their noted assumptions

EXCLUSIONS (can be provided as an additional service and billed to current Schedule of Charges (SOC))

- All engineering & other consultant services other than noted in this proposal & not noted within fee table below.
- Changes to TLG RFP scope (Exhibit A), including any changes to FC/Owner provided supplemental documentation (Exhibit B and other email noted information).
- Revisions to CHA's design resulting in changes by Owner, Owner's vendor(s), and/or Contractor after 100% plan completion. Additional round(s) of comments/revisions following completion of first round of revisions for 35% and 70% plan issuance.



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 TLG Engineering Building Tenant Improvements
 COST PROPOSAL SUPPLEMENT - CHA Design Team

- Toilet Rooms in new building. HVAC Conditioned space for new building engineering storage space.
- PV/Solar design or EV charging stations
- ADA/accessibility upgrades outside project area.
- BIM/REVIT, 3D presentation & Modelling
- Services: Testing/Inspection, Commissioning, Vibration/Acoustic, Value Engineering, LEED Certification, IT/AV/Security Systems and Design, Move-in/Support, asbestos/hazmat assessment and abatement, Furniture Design, Fire Sprinkler and Fire Alarm design, signage, Panel reads, CASP & Accessibility/ADA compliance & other interpretation services.
- Changes to Design and Construction Documents after TLG initial review approval or to Town Permit Documents unless otherwise noted.
- Any required plan and documentation submittals to/for and coordination with regulatory agencies other than Town of Los Gatos.
- All regulatory/jurisdictional processing & permit fees, testing/inspection fees & other services.
- See included Engineer proposals for their noted exclusions.

FEES AND ALLOWANCES (SECTION A + B): CHA and Consulting Engineer fees for proposal noted services:

A) Fees (NTE) for Professional Services (per RFP and as referenced in Attachment D)

Task(s) not noted in this "Section A" are either not applicable or noted as part of "Section B" allowance:

Discipline / Firm	TASK	\$ Amount
ARCHITECTURAL Cuschieri Horton Architects (CHA)	TASK 1	4,980
	TASK 2	18,750
	TASK 3a	30,100
	TASK 3b	14,210
	TASK 6	3,750
	SUBTOTAL	71,790
CIVIL Sandis	TASK 2	14,175
	TASK 3a	8,232
	TASK 3b	5,488
	TASK 6	1,000
	SUBTOTAL	28,895
STRUCTURAL Base Design	TASK 2	510
	TASK 3a	1,700
	TASK 3b	510
	TASK 6	170
	SUBTOTAL	2,890
MEP ACIES ENGINEERING	TASK 1	1,800
	TASK 2	2,500
	TASK 3a	6,500
	TASK 3b	3,000
	TASK 6	1,800
	SUBTOTAL	15,600
TOTAL (A)		119,175



CHA 4 201832 / 06 01 18
 TLG Engineering Building Tenant Improvements
 COST PROPOSAL SUPPLEMENT - CHA Design Team

B) Fee Allowances - ("as needed" per RFP)

Task 4 & 5 allowances (not included in "Section A" fees)

Discipline / Firm	TASK	\$ Amount
ARCHITECTURAL Cuschieri Horton Architects (CHA)	TASK 4	*5,000
	TASK 5	<u>21,600</u>
	SUBTOTAL	26,600
CIVIL Sandis	TASK 4	*hourly(+)
	TASK 5	<u>3,430</u>
	SUBTOTAL	3,430+
STRUCTURAL Base Design	TASK 4	*hourly(+)
	TASK 5	<u>510</u>
	SUBTOTAL	510+
MEP ACIES Engineering	TASK 4	*hourly(+)
	TASK 5	<u>5,000</u>
	SUBTOTAL	5,000+
TOTAL (B)		35,540
Reimbursables (not included in Attachment D - sum to be discussed, if allowed)	ALL TASKS	---

We propose the following CHA key staff for this project (with the following 2018 billing rates):

- Project Manager - Dan Cuschieri, AIA, Architect (Hourly rate: \$170/hr.)
- Senior Designer - Ray Bollsay (Hourly rate: \$150/hr)
- Job Captain/Designer - Sanobar Girap or Other (Hourly rate: \$135/hr.)
- CAD Drafter - Other (Hourly rate: \$115/hr.)

AGREEMENT FOR SERVICES:

Above noted services will be provided in accordance with the standard AIA agreement, to be provided by CHA. If the TLG has their own agreement, please provide to CHA for review and execution. CHA will proceed with these services following distribution, review and our receipt of TLG signed approval (next page) followed by an executed Agreement between CHA and TLG, issued for these services. Services outside this proposed scope of work will be billed hourly per CHA and CHA's engineering consultant's current schedule of charges, following Owner approval of such additional work. We will provide CHA's latest Certificate of Insurance (COI) and tax paperwork (W-9) upon TLG's request.

Thank you again for this opportunity to propose our services for this project and we look forward to the opportunity for an interview as well as potentially being awarded the project to work with the TLG staff. If you have any questions or comments, please feel free to contact me directly.

Sincerely,
 Dan Cuschieri, AIA, Principal (408-375-2365 cell)
 Cuschieri Horton Architects



CHA # 201832 / 06-01-18
TLG Engineering Building Tenant Improvements
COST PROPOSAL SUPPLEMENT - CHA Design Team

By signing below, you have acknowledged acceptance of the terms, fees, and conditions of this proposal letter, and authorize Cuschieri Horton Architects to proceed with the proposed services following an executed agreement
(Please email signed/executed color copy to CHA)

Date _____

Signature of Town of Los Gatos Representative (s) _____

Full Name of Town of Los Gatos Representative(s) _____

CC: Tony Cuschieri (CHA), Kristi Pearce-Percy (CHA).

CHA SCHEDULE OF CHARGES (SOC)

Effective: January 01, 2018

CHA PERSONNEL/ STAFF RATES:

(Per Hour)

Project Director	\$ 190
Project Manager	\$ 170
Project Architect / Senior Designer	\$ 150
Job Captain / Designer	\$ 135
CAD Drafter	\$ 115

EXPERT WITNESS TESTIMONY: Charged at a minimum of 8 hours at \$500.00/hour.

ADDITIONAL INFORMATION: In the absence of specific arrangements to the contrary, monthly statements will be submitted for services completed in the previous month. Payments are required to be made promptly. Unpaid accounts exceeding 30 days after the original invoice, without prior approval, will be charged a 1.5% per month, late payment service charge.

Personnel Charges and Rates noted above are subject to change annually.



Revised May 23, 2018

May 22, 2018

Project No. 218290

Dan Cuschieri
Cuschieri Horton Architects
1475 S. Bascom Avenue Suite 204
Campbell, California 95008
T: 408.371.8200 x115
E: dan@charch.com

**RE: LOS GATOS ENGINEERING BUILDING TI
LOS GATOS, CA**

Dear Dan,

We are pleased to submit our revised proposal to provide surveying and engineering services for the above referenced project. Our proposal is based your email and attachments of March 19, 2018 and our follow up email correspondence.

PROJECT UNDERSTANDING: Civil engineering services to support tenant improvements in one building and replacement of a separate storage building. Efficient and cost conscience design that aids in overall project cost controls as well as maximizing the budget effectiveness. Where possible, offer enhancements as an option for the client to review.

We propose to provide the following scope of services:

SURVEYING SERVICES

TOPOGRAPHIC SURVEY – TASK 2

\$6,340

- See attached Exhibit "A" for the approximate Limit of Work.
- Provide field and office work to produce a survey at a scale of 1" = 20'. This survey will show planimetric and elevation data for pavement, parking area, building corners, sidewalk, ramps, building points of ingress/egress and visible utility information within the project area. Mechanical utility location is not included in this proposal but can be provided for an additional fee.
- Spot elevations collected by ground surveys, including finish floor elevations, will be shown to an accuracy of 0.01' (one hundredth) of a foot.

ENGINEERING SERVICES

SCHEMATIC DESIGN - TASK 2

\$7,835

- Attend one (1) design meeting to discuss site/civil related issues. All other project coordination is assumed to be done via phone and email or other web-based project coordination platforms.
- Prepare civil related schematic design documents for CHA limited to:
 - Demolition plan
 - Grading and utility plan
 - Schematic cost estimate

1700 S. Winchester Boulevard | Campbell, CA 95008 | P. 408.636.0900 | www.sandis.net



Revised May 31, 2018

May 22, 2018

Dan Cuschieri

Cuschieri Horton Architects

Project No. 218290

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- Attend one (1) coordination meeting with each of the following agencies to coordinate design expectations, particulars of the design or non-standard concepts being proposed:
 - Town of Los Gatos
- Issue schematic civil plans to Cuschieri Horton in electronic format for internal review

CONSTRUCTION DOCUMENTS

TASK 3A: \$8,232

TASK 3B: \$5,488

- Attend one (1) design meeting to discuss site/civil related issues. All other project coordination is assumed to be done via phone and email.
- Prepare civil related construction documents for CHA limited to:
 - Civil cover sheet and notes
 - Topographic survey
 - Grading, drainage and Utility plan
 - Construction details
 - Technical specifications (may be sheet specifications)
 - Site work cost estimate
- Coordinate our work with the architect and other design team consultants.
- Attend one (1) coordination meeting with Town of Los Gatos to coordinate design expectations, particulars of the design or non-standard concepts being proposed.
- Issue construction document civil documents to Cuschieri Horton in electronic format, assumes that submittals will be issued in no more than two (2) submittals; 50% and 100% for permit review/approval.
- It is assumed that construction documents will be done as one (1) package or phase. Separate packages, submittals or phases will be done as additional service.

PERMIT

TASK 5: \$3,430

TASK 6: \$1,000

- Submit plans to Town of Los Gatos for permit.

ADDITIONAL SERVICES (not included in proposal, but can be provided upon request)

The additional services/design items that we think are possible for this project include project phasing, landscape enhancements, site planning (site vehicular circulation), and master planning of storm water management and pollution controls. While some of these items may be beyond the scope and budget for this project, this project affords the opportunity to discuss and conceptualize betterments for the future.



Revised May 31, 2018

May 22, 2018

Dan Cuschieri

Cuschieri Horton Architects

Project No. 218290

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SCOPE OF WORK ASSUMPTIONS

- It is assumed that the project will be designed in no more than two (2) phase.
- It is assumed that the following will be designed and detailed by other consultants unless specifically listed in the above proposal: site lighting, telecom, electric, gas, structural design of retaining walls, irrigation design, landscape, and design for subdrains or for drainage in areas below, inside or on top of any existing or proposed structures.
- We assume that our plans will be constructed in accordance with industry standards, utilizing a licensed land surveyor for construction layout and staking.
- The scope of work does not include the design of any offsite improvements, or capacity studies for utilities or street work other than what is specifically stated in the above and in the Project RFP.
- Our work will be performed using AutoCAD Version 2017, MS Office 365, and Blue Beam Revu 2016.
- The above services will be provided under the assumption that boundary corners or other suitable horizontal control has been established for this project and is available for our use.

TERMS AND CONDITIONS

- Our services will be provided in a manner consistent with the degree and skill ordinarily exercised by a member of the civil engineering and survey profession practicing in the State of California.
- All reports, plans, specifications, field data, notes and other documents (either electronic or hardcopy) prepared by our office as instruments of service shall remain the property of SANDIS.
- The client acknowledges the instruments of service of SANDIS shall become the property of the client when the documents are complete and when compensation for services is paid in full. The client is prohibited from making any alterations to the instruments of service without the written consent of SANDIS.
- Neither SANDIS nor the client shall be liable to the other for consequential damages incurred due to the fault of the other party, regardless of the nature of this fault or whether it was committed by the client, SANDIS, their employees, agents, subconsultants or vendors.
- The scope of work included in the proposal is limited to the specific scope included and specified only. Any exclusions listed are for clarity only and do not represent a complete list of exclusions to the scope. Any additional scope proposed or done other than that listed in the proposal as included shall be done as an additional service.
- Agency review and recordation fees will not be paid by SANDIS and are not included in this proposal.



Revised May 31, 2018
May 22, 2018
Dan Cuschieri
Cuschieri Horton Architects
Project No. 218290
Page 4

- This proposal is firm for thirty (30) days from the date of this letter.

Our services will be provided for the amounts listed above and will be performed under the master services agreement provided by CHA. Should a master services agreement not be provided, SANDIS will provide the provisions of the agreement for professional surveying and engineering services.

Pursuant to state law, no work can proceed on this project without written acceptance. Please return one signed copy of this proposal and one signed copy of the master services agreement to our office as our authorization to proceed.

Regards,

Approved

SANDIS

CUSCHIERI HORTON ARCHITECTS

Jeffrey M. Setera, P.E.
Vice President

By: _____

Title: _____

Date: _____

Attachments: Exhibit "A" Survey Limits
Standard Hourly Rates



Revised March, 2018

SANDIS STANDARD HOURLY CHARGE RATES

Enforced: September 1, 2017 through August 31, 2018

ENGINEERING SERVICES / QSD & QSP SERVICES **Hourly Rate**

Project Specialist/Clerical		\$90.00
Computer/Field/Engineer Technician	Level I	\$95.00
	Level II	\$105.00
	Level III	\$110.00
Sr. Engineer Technician		\$130.00
Design Engineer	Level I	\$100.00
	Level II	\$110.00
	Level III	\$115.00
Project Engineer/Traffic Engineer	Level I	\$120.00
	Level II	\$135.00
	Level III	\$150.00
Engineering Project Manager Level 1		\$175.00
Engineering Project Manager Level 2		\$200.00
Associate Principal/Senior Project Manager/Senior Traffic Engineer		\$225.00
Principal		\$350.00
Forensic Review/Analysis/Claim Support		\$250.00

SURVEYING SERVICES / HIGH DEFINITION SCANNING/ 3-D MODELING SERVICES

Computer/Surveying/Scanning Technician	Level I	\$95.00
	Level II	\$105.00
	Level III/Steel Draft Person	\$110.00
Project Surveyor/Scanning Specialist	Level I	\$120.00
	Level II	\$135.00
	Level III/Steel Draft Person	\$150.00
Steel Office Support (LSIT)		\$175.00
Survey Manager Level 1 / Steel Office Support (PLS)		\$175.00
Survey Project Manager Level 2		\$200.00
Senior Field Survey Supervisor/AISC, Steel Supervisor		\$225.00
Senior Survey Manager		\$225.00
1-Person Survey Crew		\$215.00
2-Person Survey Crew		\$295.00
2-Person Survey Crew for Structural Steel Surveys		\$295.00
2-Person Survey Crew with Apprentice		\$355.00
3-Person Survey Crew		\$370.00

REIMBURSABLE COSTS: Printing, monuments, materials, outside services and consultants, courier/delivery services, express/overnight mail, travel/per diem, agency fees advanced, etc., at cost plus 10%.

OVERTIME: All overtime charges are invoiced on the basis of one and one-half times the above rates. Double time invoiced at two times above rates.

ESCALATION: Escalation for future years shall be at a minimum of 3.5% increase per year.

Sandis at its sole discretion may utilize its subsidiaries (BSI) to perform the services presented in this proposal. Bryant Survey Inc.



Via Email:

May 23, 2018

Dan Cuschieri
Cuschieri Horton Architects
1475 S. Bascom Avenue, Suite 204
Campbell, CA
95008

RE: Town of Los Gatos Engineering Building Tenant Improvement
BASE Design Project No. P18174

Dear Mr. Cuschieri,

BASE Design (Structural Consultant) is pleased to submit this proposal to you (the Client) to provide structural engineering services for the Town of Los Gatos Engineering Building Tenant Improvement project in Los Gatos, CA. Our scope of services is based on your email sent May 21, 2018 and the attachments within.

I. DESCRIPTION OF THE PROJECT

The Town of Los Gatos is planning a tenant improvement of their existing engineering building located at their service yard at 41 Miles Avenue in Los Gatos, CA. The existing engineering building is a single-story concrete block wall with a wood-framed roof. Currently, one portion of it has been built out while the other portion is used as storage. The tenant improvements will involve converting the existing storage area into office space and converting the office space currently used by the engineering staff into office space used by the maintenance staff.

As part of these tenant improvements, an existing portable building located in the service yard will be demolished. In its place, a new, prefabricated steel building will be erected, and it will house general storage (items currently stored in the engineering building will be relocated here) and police evidence storage.

II. SCOPE OF SERVICES

Our structural consulting services will consist of the following.

- A. Visit the site to observe the existing engineering building and review any available as-built drawings of the existing engineering building.
- B. Prepare structural drawings as required for the tenant improvement of the engineering building.
- C. Prepare structural drawings for the foundations supporting the prefabricated steel building housing general storage and police evidence storage.
- D. Prepare structural calculations for the tenant improvement of the engineering building as required.

RE: Town of Los Gatos Engineering Building Tenant Improvement

May 23, 2018

- E. Prepare structural calculations for the foundations supporting the prefabricated steel building.
- F. Provide mark ups of structural details provided on the architectural and MEP drawings for the tenant improvements of the engineering building and for the prefabricated steel building.
- G. Assist in responding to structural plan check comments.
- H. Provide support during construction of the work as required, including one site visit.

III. FEES

- A. We propose to provide the scope of services described above at the hourly rates listed below, not to exceed **\$3,400 (Three Thousand Four Hundred Dollars)**.

<u>Position</u>	<u>Hourly Rate</u>
Principal	\$140
Staff Engineer	\$110
Drafter/BIM Modeler	\$60

- A. BASE Design invoices will be as set forth below:

Data Collection and Review	15%	\$510
70% Construction Documents	50%	\$1,700
100% Construction Documents	15%	\$510
Construction Administration	15%	\$510
Record Drawings and Project Close Out	5%	\$170

- B. Payment
 - 1. BASE Design will bill on a monthly basis for services rendered.
 - 2. Payments will be due from the Client to BASE Design within 30 days of the invoice date.

IV. CLIENT RESPONSIBILITY

The Client will:

- A. Provide BASE Design with structural drawings and calculations for the prefabricated steel structure.
- B. Provide BASE Design with cutsheets for new equipment and non-structural components (such as racks, partitions, etc.) requiring seismic anchorage.
- C. Provide BASE Design with available as-built drawings for the existing engineering department building.
- D. Provide BASE Design with architectural and MEP drawings for the project.

RE: Town of Los Gatos Engineering Building Tenant Improvement

May 23, 2018

- E. Provide access to the Project. Any site visits will be coordinated with you and/or the property owner.

It is understood that BASE Design has the right to rely on the accuracy and completeness of data and information furnished to BASE Design.

V. ASSUMPTIONS AND LIMITATIONS

- A. The temporary excavation systems and any other temporary system required for construction, including but not limited to shoring and underpinning, are not included in BASE Design's scope of services.
- B. It is assumed that a geotechnical report will not be provided for this project. The new foundations will be designed using allowable bearing pressures provided in the 2016 California Building Code.
- C. Testing and special inspections required during the construction of the project are not included in BASE Design's scope of services. It is assumed that a third-party testing and inspection agency will be retained by the owner.
- D. It is assumed that the tenant improvements of the existing engineering building will not trigger a seismic upgrade of this building. Local strengthening to support new loads imposed on the existing structure by the tenant improvement modifications will be included in our design.

VI. TERMS AND CONDITIONS

The following Standard Terms and Conditions apply:

- A. The services provided by BASE Design will be in accordance with the standards of professional skill and care ordinarily exercised by other design firms performing the same services, in the same locale, acting under similar circumstances and conditions ("Standard of Care"). Notwithstanding anything in this Agreement to the contrary and subject to below paragraphs, BASE Design shall only be liable to pay damages to Client arising out of or in connection with the Services or this Agreement, to the extent that such damages are caused by, and are in proportion to, the negligence of, or breach of the Standard of Care by BASE Design. If BASE Design is considered to be liable jointly with any third parties, the portion of damages payable by BASE Design shall be limited to the portion of liability which is attributable to BASE Design's breach of the Standard of Care on a comparative fault basis. Client acknowledges that BASE Design's services will be rendered without any warranty, express or implied and all such warranties are expressly waived by Client. Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party, including any contractor, subcontractor, vendor, or material supplier, against either the Client or BASE Design.
- B. BASE Design shall not be responsible for and shall not have control or charge of construction methods, means, sequences, techniques, or procedures, for safety precautions in connection with work or activities at the project (job) site, for the acts or omissions of any contractor, subcontractors or any other

RE: Town of Los Gatos Engineering Building Tenant Improvement

May 23, 2018

persons performing any work or undertaking any activities at the project site, or for the failure of any of them to carry out any work or perform their activities in accordance with their contractual obligations, including, but not limited to, the requirements of any drawings or other documents prepared by BASE Design.

- C. BASE Design shall have no responsibility for the presence, discovery, handling, removal or disposal of or exposure of persons to hazardous materials in any form in connection with the Project or related to "Scope of Services".
- D. It is expressly understood and agreed that, to the fullest extent permitted by law and not withstanding any other provision of this Agreement, the aggregate total of BASE Design's liability (and the liability of its owners, directors, officers and employees, if any such liability otherwise exists) arising from any and all claims, suits, demands, damages, losses, judgments, payments, awards, and expenses relating to the Project, Services and/or this Agreement shall be limited to and in no event exceed three times the fee actually received by BASE Design for Services rendered on the project.
- E. Site visits for any purpose or the observation by BASE Design of any contractor's work are included in BASE Design's Scope of Services as described in the proposal unless specifically directed by the client not to be included. It is clearly understood and agreed that the purpose of such observations is to become generally familiar with the progress and quality of the construction work designed by BASE Design or described in the drawings, specifications or other documents specifically identified in the Proposal. BASE Design shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of such construction work.

Thank you for considering BASE Design to be your Structural Consultant and for giving us the opportunity to submit this proposal. We look forward to working on this project with you. If the above is acceptable to you, please sign and return this agreement.

Very truly yours,

BASE Design:



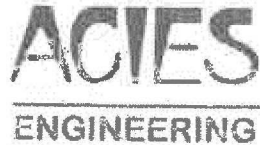
Katy Briggs, SE 5732
Principal

ACCEPTED BY:

Dan Cuschieri
Cuschieri Horton Architects

BY:

DATE:



AUTHORIZATION FOR ENGINEERING SERVICES

CLIENT: Cuschieri Horton Architects **DATE:** 05-23-2018
 1475 S. Bascom Ave., Suite 204
 Campbell, CA 95008
 Tel: (408) 371-8200 x115

AUTHORIZED REPRESENTATIVE: Dan Cuschieri *dcuschieri@charch.com*

PROJECT: Los Gatos Engineering TI
 41 Miles Avenue
 Los Gatos, CA 95030

PROJECT NUMBER: 180541

DESCRIPTION OF SERVICES:

Mechanical, Electrical and Plumbing Engineering and Design assistance as it relates to the tenant improvements of the Town's Engineering Building and replacement of a small portable building that currently houses field crew and Police Evidence storage, both located at the Town's service yard in Los Gatos, CA. Currently the building is separated into two areas – one area contains the existing engineering department office cubicles, one unisex bathroom, plan/file storage area, conference room and entry counter. The second area contains an equipment storage area. The scope of work for the tenant improvement is to include relocating the existing engineering area to a new office area in the converted equipment/material storage location and changing the existing engineering area into an office for Town maintenance staff. At the location of the old portable building, the Town will place a new basic steel storage building. This building will be sectioned off into two areas. One area will be for general storage and the second area will be for police evidence storage that meets Police Department evidence storage specification.

Engineering Building TI:

- Staff Cubicles (size and layouts based on manufacturer specific dimensions)
- Hard wall offices and conference rooms
- Plan room, plotting, and document storage
- Reception
- Traffic signal control room
- Restroom facilities
- Privacy room
- Kitchenette
- Custodial storage
- Noise absorption materials
- HVAC and Plumbing upgrades to support TI work
- Interior finishes including t-bar ceiling, lighting, wall, and flooring
- Electrical distribution from the existing 225amp service (if needed service upgrade for the building is included)
- IT distribution (substructures only, no low voltage system design is included)
- Replacement of existing roll up doors with glazing system

**ENGINEERING
SERVICE FEE:**

<u>Portable Replacement</u>	
<ul style="list-style-type: none"> o Demolition and removal of existing Portable building o Placement of new Steel Storage building o Layout of storage areas and shelving o HVAC for Police storage only, for the rest ventilation only o New interior lighting throughout 	
Phase	Fee
Task 1: Design Project Management and Coordination	\$1,800
Task 2: Data Collection and Review (35%)	\$2,500
Task 3A: 70% Construction Documents	\$6,500
Task 3B: 100% Construction Documents	\$3,000
Task 4: Construction Management and Other Services (as needed)	Hourly
Task 5: Construction Administration (as needed)	\$5,000
Task 6: Record Drawings and Project Close-Out	\$1,800
TOTAL (Not-To-Exceed)	\$20,600

**SCOPE OF
ADDITIONAL
SERVICES:**

Work performed beyond basic scope and involving rework or redesign beyond date of project submission for permit will be considered additional service. This includes but is not limited to changes to permit set prior to bid.

Additional services will not be performed unless requested by the Architect or Owner. Fees will be based upon billing rates in effect at the time services are performed.

Items considered Additional Services include:

- o Contractor re-engineering
- o Electrical service upgrade except for engineering building
- o Design coordination meetings
- o Electrical Short Circuit Current study
- o Arc Flash Evaluation study
- o Time-Current Coordination study performed using SKM software
- o Acoustical engineering
- o Structural engineering
- o Kitchen design and food equipment selection
- o All work associated with hazardous materials handling and abatement Management
- o Revisions to Construction Documents: Preparation of revised Construction Documents due to revisions either generated by an architectural design change or unforeseen conditions, which could not have been reasonably discovered during the field survey or the preparation of Construction Documents.
- o Energy Simulations: Computerized energy usage simulations required for energy compliance by performance approach, in evaluating cost of operating systems, or in the selection and comparison of two or more systems types.
- o Evaluating Substitutions: Providing services in connection with

evaluating substitutions proposed by the Contractor(s) and making subsequent revisions to drawings, specifications and other documentation resulting there from.

- **Construction Change Orders:** Preparing and reviewing Change Orders for the Owner's approval and execution in accordance with the Contract Documents.
- **Attend Hearings:** At Owner's request, ACIES Engineering shall attend such federal, state, district and local hearings and meetings as necessary to assist Owner to obtain required permits, licenses and approvals.
- **Field Evaluation Services:** Prior to the commencement of design efforts, ACIES Engineering may be required to provide an evaluation of the potential Project site. Such evaluation shall identify base building systems that may affect the future design potential of the site. Items of review would typically include, but not be limited to, heating, ventilating, and air conditioning systems, electrical service, plumbing and waste systems, fire sprinkler mains, base building equipment and mains and any other existing conditions which would require relocation to accommodate the architectural design. ACIES Engineering will provide CAD documentation on block out floor plan of existing conditions and clearances, including photo references of existing conditions and areas of concern, bound and identified to match the field survey block out. ACIES Engineering will summarize findings and provide recommendations as to future potential of the space and all areas of concern that should be addressed prior to accepting location in a report, which shall be complete such that any engineer providing design services will require no additional site information.
- **Expert Witness:** Preparing to serve or serving as an expert witness in connection with any arbitration proceeding or legal proceeding, unless ACIES Engineering is legally required to attend such arbitration proceeding or legal proceeding.
- **Life safety system design services.** Design of smoke evacuation systems, interlock with Landlord's system if applicable.
- **Demolition Drawings.** No drawings will be provided for use in demolishing existing systems within or outside of the tenant space
- **Redesign due to lack of information in the survey report or incorrect information in the survey report regardless of when the report is received.**
- **Issuing more than one set of drawings for permit, other than responses to building department comments.**

REIMBURSABLE EXPENSES shall refer to those out-of-pocket costs, expenses, fees, or charges which ACIES incurs on the CLIENT's behalf. "Reimbursable Expenses" include but are not limited to:

- Production of drawings, calculations, etc.
- Travel expenses
- Shipping and postage
- All fees paid to local agencies or government offices on behalf of the CLIENT or the project.

Prevailing in-house reimbursable expense rates are as follows:

LOS GATOS ENGINEERING TI

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180541

Item	Price
Reimbursement - Bond 11 x 17	\$0.75
Reimbursement - Bond 17 x 22	\$1.00
Reimbursement - Bond 18 x 24	\$1.00
Reimbursement - Bond 22 x 34	\$1.50
Reimbursement - Bond 24 x 22	\$1.00
Reimbursement - Bond 30 x 42	\$2.75
Reimbursement - Bond 36 x 24	\$2.50
Reimbursement - Bond 36 x 48	\$4.00
Reimbursement - Vellums	\$10.00
Reimbursement - Mileage	\$0.55/mile
Reimbursement - Acies Messenger	\$25.00
Reimbursement - Drawings Delivery	Varies
Reimbursement - Copies	\$0.10/sheet

PREVAILING HOURLY BILLING RATES:

Principal	\$230.00/hr
Associate	\$190.00/hr
Project Director	\$175.00/hr
Project Manager	\$150.00/hr
Project Engineer	\$130.00/hr
Designer	\$115.00/hr
REVIT / CAD Operator	\$120.00/hr
Administrator	\$85.00/hr

BILLING: ACIES shall submit invoices on a monthly basis, on or about the 25th of each month, for services performed to date based on the percent completed of the services indicated in this Agreement. A final invoice shall be issued when ACIES has completed the services under this Agreement. The net invoice amount shall be due and payable within thirty (30) calendar days of the invoice date. Past due accounts will be subject to a late payment charge of 18% APR compounded daily. Payment thereafter shall first be applied to accrued interest and then to the unpaid principal amount. Payment of invoices is in no case subject to unilateral discounting or setoffs by CLIENT. No deductions shall be made from ACIES' compensation because of penalty, liquidated damages, or other sums withheld from payments to contractors.

LATE PAYMENTS: If undisputed invoiced amounts are unpaid after eighty (80) calendar days of the date of invoice, ACIES may at any time, without waiving any other claim against CLIENT and without thereby incurring any liability to CLIENT, suspend or terminate this Agreement, as provided in the "Dispute Resolution," "Project Suspension," "Attorneys' Fees" and "Termination" sections of this Agreement. If suspended, services shall remain suspended until all outstanding invoices have been paid in full by CLIENT.

DISPUTED AMOUNTS: If the CLIENT objects to any portion of an invoice, CLIENT shall notify ACIES of the dispute in writing, including the reason for the dispute, within fourteen (14) calendar days of the invoice date, and pay when due that portion of the invoice, if any, which is not in dispute.

PERFORMANCE OF SERVICES: ACIES hereby agrees to provide such services as are described in this Agreement in accordance with generally accepted Professional practices and standards for the locality in which the services are provided and for the intended use of the project at the time such services are performed. ACIES makes no other warranty, either expressed or implied.

CLIENT RESPONSIBILITIES: CLIENT shall provide complete, accurate, and timely information regarding its requirements for the project and shall designate by name a "Project Representative" authorized to act on its behalf. CLIENT shall examine documents or other instruments of service submitted by ACIES in a timely fashion and shall render any decisions necessary promptly in order to avoid unreasonable delay.

GOOD FAITH: In all matters pertaining to this Agreement, the parties shall deal with each other in fairness and good faith.

LIABILITY: ACIES has errors and omissions insurance coverage of \$1,000,000. ACIES shall only be responsible for the cost of change orders due to their negligent acts, errors, or omissions where the services performed are not in accordance with generally accepted professional practices and if they are not discovered in a timely manner during construction. Any value received by Owner for such change orders shall be deducted from any liability costs to ACIES and ACIES shall be given the opportunity to negotiate with the job contractors and/or other contractors of ACIES choice on any items that will result in liability cost to ACIES prior to the work proceeding. ACIES shall not be responsible for any costs that result from concealed conditions or any other conditions that are beyond their control or that they would not reasonably be expected to have considered as part of a normal design process. Any charges assessed to ACIES shall be reduced by the difference between fixed fee and the actual amount previously paid to ACIES. The total liability shall be limited to the amount of fee actually paid.

INDEMNIFICATION: CLIENT shall, to the fullest extent permitted by law, indemnify and hold harmless ACIES, its officers, directors, employees, agents, and consultants from all damage, liability and cost, including reasonable attorney's fees and defense costs, arising out of or in any way connected with the performance by any of the parties above named of the services under this Agreement, excepting only those damages, liabilities or costs attributed to the sole negligence or willful misconduct of ACIES.

CERTIFICATIONS, GUARANTEES, AND WARRANTIES: ACIES shall not be required to execute any document that would result in certifying, guaranteeing or warranting the existence of conditions whose existence ACIES cannot ascertain.

HAZARDOUS MATERIALS: ACIES shall have no responsibility for the discovery, presence, handling, removal and disposal of or exposure of persons to hazardous materials in any form at the project site, including but not limited to asbestos, asbestos products, polychlorinated biphenyl (PCB) or other toxic substances.

DISPUTE RESOLUTION: All claims, disputes and other matters in question between the parties to this Agreement, arising out of, or relating to, the Agreement or the breach thereof, shall be submitted to mediation under the auspices of a mutually agreed upon mediation service, experienced in the resolution of construction disputes, prior to initiation of any lawsuit or other litigation unless the parties mutually agree otherwise. The cost of said mediation shall be split equally between the parties. This agreement to mediate and any agreement to mediate with any additional person or persons duly consented to be the parties to this Agreement shall be specifically enforceable under the prevailing law of the jurisdiction in which this Agreement was signed.

ATTORNEYS' FEES: In any action to enforce this Agreement or arising from or related to this Agreement, except for mediation as provided elsewhere in this Section, the prevailing party shall be entitled to reasonable attorney's fees and costs.

PROJECT SUSPENSION: If the project is suspended for more than thirty (30) calendar days or abandoned in whole or in part, CLIENT shall pay ACIES for all services rendered to the date of project suspension, as well as all reimbursable expenses, including but not limited to reimbursable termination expenses resulting from such suspension or abandonment. If the project is resumed after being suspended, ACIES' compensation shall be subject to renegotiation.

TERMINATION: This Agreement may be terminated by either party upon seven (7) days written notice in the event of substantial failure of the other party to perform in accordance with the terms of this Agreement. In the event of termination, CLIENT shall pay ACIES for all services rendered to the date of termination, as well as all reimbursable expenses, including but not limited to reimbursable termination expenses.

LOS GATOS ENGINEERING TI

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180641

OWNERSHIP OF DOCUMENTS: Drawings, specifications, and any other instruments of service provided by ACIES shall remain the property of ACIES and shall not be used by CLIENT on any other project or for completion of this project by others without ACIES' prior written authorization.

ACCESS TO SITE: Unless otherwise stated, ACIES will have access to the site for any and all activities necessary for the performance of the services. ACIES will take precautions to minimize damage due to these activities; however, CLIENT hereby agrees that ACIES shall not be liable for any resulting damage nor for the cost of restoration of any resulting damage.

ENTIRE AGREEMENT: This Agreement constitutes the entire and only Agreement between the parties and all other prior negotiations, representations, agreements, and understandings are superseded hereby. No agreements altering or supplementing the terms hereof may be made except by a written document signed by both parties.

HEADINGS and captions are for reference only.

SUCCESSORS AND ASSIGNS: This Agreement shall be binding upon and inure to the benefit of the heirs and successors of each of the parties. Neither CLIENT nor ACIES shall assign or transfer its interests in this Agreement without the prior written consent of the other.

WAIVER: Failure of a party to enforce a right under this Agreement will not act as a waiver of that right or the ability to later assert that right relative to the particular situation involved.

SEVERABILITY: In the event any provisions of this Agreement shall be held to be valid or unenforceable, all remaining provisions shall be valid and binding upon the parties.

CONSTRUCTION AND VENUE: This Agreement will be construed and enforced in accordance with the laws of the United States of America and of the state of California. Any action arising out of or related to this Agreement shall be brought in state or federal court, as appropriate, in Santa Clara County, California.

UNCONTROLLED CONDITIONS: Neither party shall hold the other responsible for damages or delay in performance caused by natural disasters, strikes, lockouts, accidents or other events or conditions beyond the other party's control.

EXECUTION: *In witness whereof, the parties hereto have accepted, made and executed this Agreement upon the terms, conditions and provisions above stated, the day and year first above written.*

SUBMITTED BY:
ACIES ENGINEERING



TOMISLAV GAJIC, PE
PRINCIPAL
DATE: MAY 23, 2018

APPROVED BY:

PRINT:
DATE:

FIRST AMENDMENT TO AGREEMENT FOR CONSULTANT SERVICES

This FIRST AMENDMENT TO AGREEMENT FOR CONSULTANT SERVICES is dated for identification this 2nd day of March 2021 and amends that certain AGREEMENT FOR CONSULTANT SERVICES dated October 3, 2018, made by and between the **TOWN OF LOS GATOS**, ("Town,") and **Cuschieri Horton Architects** ("Consultant").

RECITALS

- A. Town and Consultant entered into an Agreement for Consultant Services on October 3, 2018 ("Agreement"), a copy of which is attached hereto and incorporated by reference as Attachment 1 to this Amendment.
- B. Town desires to amend the Agreement to add to the scope of services and provide additional compensation for Design Services and Fire Water Underground Design Services to support tenant improvements (TI) at the Town's Engineering Building.

AMENDMENT

1. Section 2.1 Scope of Services is amended to read:

Consultant shall provide services as described in that certain Cost Proposal sent to the Town on October 10, 2020, which is hereby incorporated by referenced and attached as Exhibit B.

2. Section 2.6 Compensation is amended to read:

Additional compensation for Consultant's professional services shall be \$16,350, for a total agreement not to exceed \$165,350.

3. All other terms and conditions of the Agreement remain in full force and effect.

IN WITNESS WHEREOF, the Town and Consultant have executed this Amendment.

Town of Los Gatos by:

Consultant by:

DocuSigned by:
Laurel Prevetti 3/11/2021
859FEEA2ED39470...
Laurel Prevetti
Town Manager

DocuSigned by:
Dan Cuschieri 3/10/2021
A90D10B2B193487...
Dan Cuschieri, AIA, Principal Architect
Name/Title

Recommended by:

DocuSigned by:
Matt Morley 3/10/2021
BBA0B3B0D8F4484...
Matt Morley
Director of Parks and Public Works

Approved as to Form:

DocuSigned by:
Robert W. Schultz 3/11/2021
2FE0938556B744C...
Robert Schultz, Town Attorney

Attest:

DocuSigned by:
Shelley Neis 3/11/2021
B0666F66B4F34F6...
Shelley Neis, MMC, CPMC, Town Clerk



10 October 2020
CHA Add Service 1 - Proposal

10 October 2020
CHA# 1826.01

Matt Morley
Director
Parks and Public Works Department
Town of Los Gatos
41 Miles Avenue, Los Gatos, CA 95030

Project / Location:
TLG – Engineering Building TI & Storage Building
41 Miles Avenue, Los Gatos, CA 95030

RE: Additional Services #1 Fee Proposal for Additional Design Services for Fire Water Underground Design Submittal to Connect to the Proposed Storage Building.

Dear Matt,

Please find enclosed Cuschieri Horton Architects (CHA) request for approval of additional Architectural and Engineering services for the above noted project. This proposal represents an additional scope of work for Fire Water underground work connection to the proposed Storage Building, which was not covered within our original project proposal #201832, dated 06/01/18, nor any prior additional design service proposals, and a result of the Santa Clara County Fire Department Review comments and requirements.

SCOPE OF WORK:

This added scope of work includes:

- Provide plans for a new fire water connection to the proposed Storage Building.
- Provide supplemental topographic survey of the area showing existing water features (hydrants and valves), locations of utility vaults, manholes, catch basins and invert information of storm and sanitary sewers, underground utility lines such as gas, water, electric, and any onsite utilities.
- Address 2nd review comments relating to the fire water connection to the proposed Storage Building (Civil comments only).

This will require modifications and additional drawings to be issued for the Town of Los Gatos Building Dept for review and approval.

Therefore, this fully executed agreement will constitute approval for A/E services expended as noted above, as well as incorporation into the overall permitted project set during CA phase of work.

ASSUMPTIONS:

- AOR efforts in the coordination and preparation of the Fire Water underground drawing revisions for the proposed Storage Building to be submitted to the Town of Los Gatos Building Department review and approval.
- Change in Scope, increase in Schedule, &/or any unforeseen conditions may result in add services.
- All prior assumptions and scope noted within original and prior approved proposal(s) remain applicable for this additional service proposal unless otherwise updated or noted above.
- See attached Consulting Engineer's proposal for their respective Assumptions.

EXCLUSIONS (can be provided as an additional service & billed at current SOC, if needed):

Preparation of documentation beyond those described above and within this proposal.



10 October 2020
CHA Add Service 1 - Proposal

- Additional revisions during CA period.
- All prior exclusions and scope noted within original approved proposal remain applicable for this additional service proposal unless otherwise updated or noted above.
- See attached Consulting Engineer's proposal for their respective Exclusions.

PROFESSIONAL FEES:

Town of Los Gatos Engineering Building TI and Storage Building Additional Services #1		Fees
<u>Fire Alarm/Fire Sprinkler/Fire Water Underground Submittal</u>		
CHA – Cuschieri Horton Architects	Architectural Design Services	\$ 8,500
Sandis	Fire Water Underground Design Services	<u>\$ 7,850</u>
	(Add Services):	\$16,350

We propose the following CHA Staff and SOC rates for this project:

- Project Manager– Dan Cuschieri, Architect, (Hourly rate: \$170/hr.)
- Senior Designer – Ray Bolisay (Hourly rate: \$150/hr.)
- Job Captain – Sanobar Girap (Hourly rate: \$135/hr.)
- CAD drafter (Hourly rate: \$115/hr.)
- Reimbursable Charges: Computed at cost + 10%.

AGREEMENT FOR SERVICES:

Above noted services will be provided in accordance with the standard AIA agreement, to be provided by CHA. If the TLG has their own agreement, please provide to CHA for review and execution. CHA will proceed with these services following distribution, review and our receipt of TLG signed approval followed by an executed Agreement between CHA and TLG, issued for these services. Services outside this proposed scope of work will be billed hourly per CHA and CHA's engineering consultant's current schedule of charges, following Owner approval of such additional work.

Thank you for your consideration and approval of this additional work. Please call with any questions.

Sincerely

Dan Cuschieri, AIA, Principal

By signing below, you have acknowledged acceptance of the terms, fees, & conditions of this proposal letter, and authorize Cuschieri Horton Architects to proceed with the proposed services, included with any amendment to the fully executed prime agreement.
(Please email signed/executed color copy to CHA)

Signature of Owner representative (s)

Date

Full Name of Owner representative(s)

Cc: Tony Cuschieri (CHA), Kristi Pearce-Percy (CHA), Jeannette Keplinger (CHA)



August 12, 2020
Project No. 218290

Dan Cuschieri
Cuschieri Horton Architects
1475 S. Bascom Avenue, Suite 204
Campbell, CA 95008
T: 408.371.8200
E: dan@charch.com

**RE: LOS GATOS ENGINEERING BUILDING TI
ASR #1 – SURVEYING & ENGINEERING SERVICES
LOS GATOS, CA**

Dear Dan,

This letter is our amendment to the original proposal dated May 23, 2018, for the above referenced project. The following scope of work is included in this amendment:

SUPPLEMENTAL TOPOGRAPHIC SURVEY \$3,600

- Perform a supplemental topographic survey of the area per the attached Exhibit A.
- Provide field and office work to produce a supplemental topographic survey at a scale of 1" = 20'. This survey will show the location of the underground utility locating paint marks. The location of utility vaults, manholes, catch basins and invert information of storm and sanitary sewers will be shown based upon a field survey. The location of underground utility lines such as gas, water, electric, and any onsite utilities will be shown based upon available agency records and mechanical detection of existing utilities.
- Existing water features (hydrants and valves) in the area of the proposed POC will also be documented.
- Mechanical locating services will be provided for detectable utilities using standard locating methods as listed in the California Government Code section 4216 through 4216.9. Depths and sizes of conduits will not be provided unless specifically requested in advance. Empty conduits, irrigation lines, hose bibs and abandoned utilities will also not be located unless specifically requested in advance. A reasonable effort will be made to locate existing subsurface utilities but individual field conditions will dictate the thoroughness of our survey. Only actual excavation will reveal the locations of such utilities.
- We reserve the right to utilize aerial survey techniques if deemed appropriate for scope and site features. Aerial survey will be supplemented with conventional survey for utility information and survey under trees or areas not visible from above. Aerial spot elevations for aerial survey will be shown to an accuracy of ± 0.1 (one tenth) of a foot.

ENGINEERING SERVICES \$4,250

- Provide a utility plan for a new fire water connection to the proposed structure.
- Submit to San Jose Water for review and approval.
- Coordinate with the subconsultants.
- Respond to two (2) rounds of review comments.



August 12, 2020
Project No. 218290
Dan Cuschieri
Cuschieri Horton Architects
Page 2

These services will be provided for the amounts listed above and will be performed under the terms and conditions of our original contract.

Please return one signed copy of this letter to our Campbell office as your authorization to proceed.

Regards

Approved

SANDIS

CUSCHIERI HORTON ARCHITECTS

Stephen Yazalina
Project Manager

By: _____

Title: _____

Chad Browning, PE, LEED AP, QSD/P
Associate Principal

Date: _____

Attachments: Exhibit A

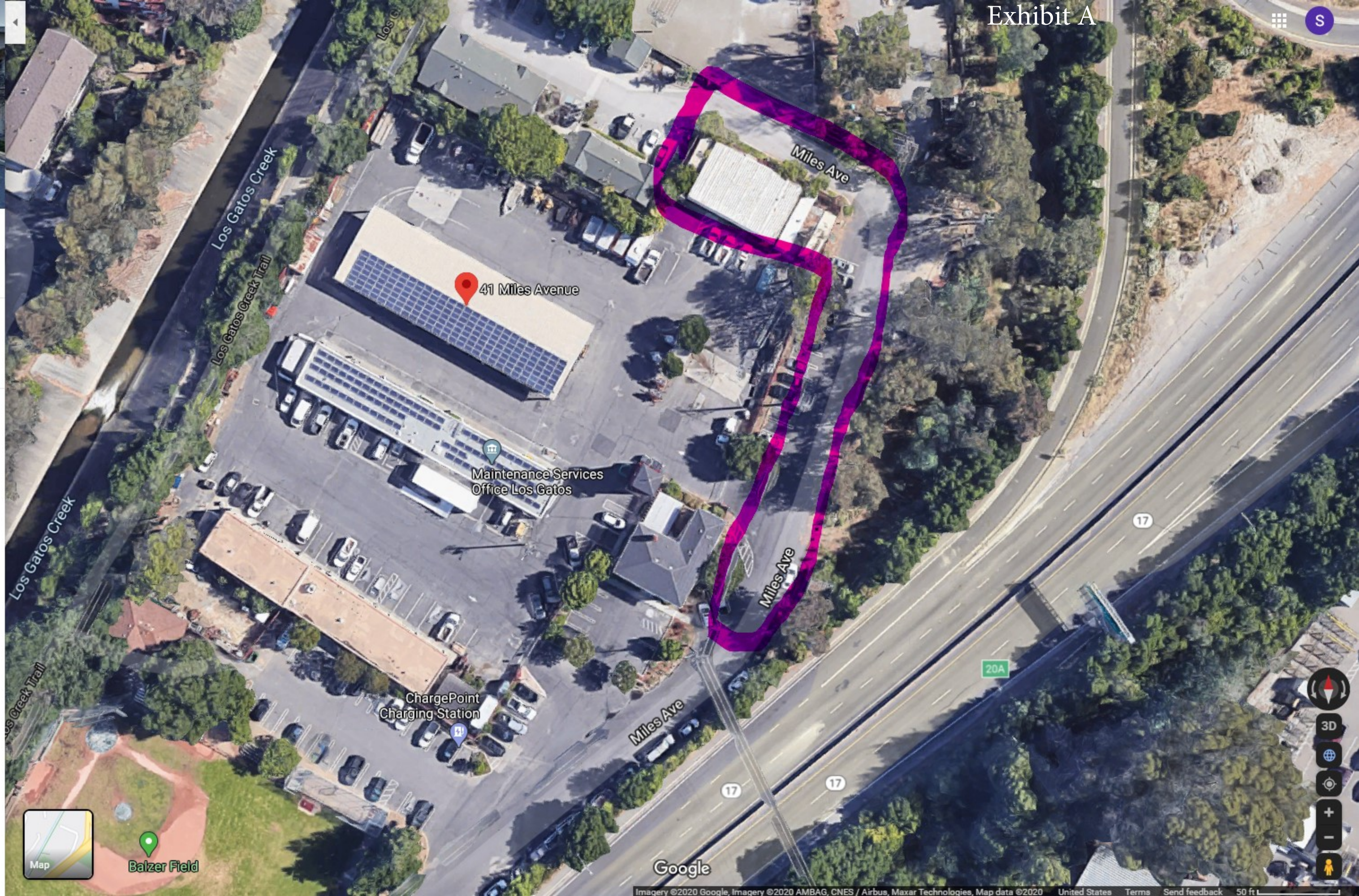


41 Miles Ave
Los Gatos, CA 95030
Building

- Directions
- Save
- Nearby
- Send to your phone
- Share

- Suggest an edit on 41 Miles Ave
- Add a missing place
- Add your business
- Add a label

Photos





**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 11/02/2021

ITEM NO: 7

DATE: October 21, 2021
TO: Mayor and Town Council
FROM: Laurel Prevetti, Town Manager
SUBJECT: Authorize the Town Manager to Execute a Certificate of Acceptance and Notice of Completion for the Waterproofing Town-Wide Project (20-821-2010), Completed by California Roofing Company for a Roof Replacement on the Engineering Building and Authorize the Town Clerk to File for Recordation

RECOMMENDATION:

Authorize the Town Manager to execute a Certificate of Acceptance and Notice of Completion for the Waterproofing Town-Wide Project (20-821-2010), completed by California Roofing Company for a roof replacement on the engineering building and authorize the Town Clerk to file for recordation (Attachment 1).

BACKGROUND:

The adopted Fiscal Year (FY) 2019/20-2023/24 Capital Improvement Program (CIP) Budget designates funding for Waterproofing Town-Wide (20-821-2010). The engineering building roof replacement was identified as a priority project for use of this funding.

On April 20, 2021, the Town Council approved the Engineering Building Roof Replacement Project and authorized the Town Manager to award a construction contract to California Roofing Company, the lowest responsible bidder in an amount not to exceed \$56,122, including construction contingencies.

DISCUSSION:

The project replaced the roof on the engineering building that had reached the end of its serviceable life with a more energy efficient roof with a lifespan of 30 years.

PREPARED BY: Dan Keller
Facilities & Environmental Services Manager

Reviewed by: Town Manager, Assistant Town Manager, Town Attorney, Finance Director, and Director of Parks and Public Works

SUBJECT: Authorize the Town Manager to Execute a Certificate of Acceptance and Notice of Completion for the Waterproofing Town-Wide Project (20-821-2010), Completed by California Roofing Company for a Roof Replacement on the Engineering Building and authorize the Town Clerk to File for Recordation

DATE: October 21, 2021

CONCLUSION:

Authorize the Town Manager to Execute a Certificate of Acceptance and Notice of Completion for the Waterproofing Town-Wide Project (20-821-2010), completed by California Roofing Company for a roof replacement on the engineering building and authorize the Town Clerk to file for recordation

FISCAL IMPACT:

There were sufficient funds available in the CIP Budget for Waterproofing - Town-wide Project as displayed in the fiscal table.

Waterproofing - Town-wide CIP No. 821-2010		
	Budget	Costs
GFAR	\$75,000	
Total Budget	\$75,000	
Construction		\$53,204
Total Expenditures		\$53,204
Available Balance		\$21,796

ENVIRONMENTAL ASSESSMENT:

This is not a project defined under CEQA, and not further action was required.

Attachment:

1. Certificate of Acceptance and Notice of Completion

Recording Requested by:

TOWN OF LOS GATOS

WHEN RECORDED MAIL TO:

TOWN CLERK
TOWN OF LOS GATOS
110 E MAIN ST
LOS GATOS, CA 95030

(SPACE ABOVE BAR FOR RECORDER'S USE)

(RECORD WITHOUT FEE UNDER GOVERNMENT CODE SECTIONS 27383 AND 6103)

TYPE OF RECORDING
CERTIFICATE OF ACCEPTANCE AND NOTICE OF COMPLETION
CIP NO. 821-2010 Waterproofing Town-Wide Project

TO WHOM IT MAY CONCERN:

I do hereby certify that **California Roofing Co. Inc.** completed the work called for in the agreement with the Town of Los Gatos dated April 5, 2021. The work is outlined in the Town's bid process prepared by the Town of Los Gatos and generally consisted of furnishing all labor, materials, tools, equipment, and services required for completion of the CIP No. 20-821-2010 located in the TOWN OF LOS GATOS, County of Santa Clara, State of California and was completed, approved and accepted **June 15, 2021.**

Bond No.: ES00008722

Date: May 7, 2021

TOWN OF LOS GATOS

By: _____
Laurel Prevetti, Town Manager

Acknowledgement Required

AFFIDAVIT
To Accompany Certificate of Acceptance and Notice of Completion
CIP NO. 20-821-2010 Engineering Roof Replacement Project

I, **LAUREL PREVETTI**, the Town Manager of the Town of Los Gatos, have read the foregoing CERTIFICATE OF ACCEPTANCE AND NOTICE OF COMPLETION and know the contents thereof. The same is true of my own knowledge, except as to the matters which are therein alleged on information or belief, and as to those matters I believe it to be true.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on _____, 2021 at Los Gatos, California.

LAUREL PREVETTI, TOWN MANAGER
Town of Los Gatos

RECOMMENDED BY:

Matt Morley
Director of Parks and Public Works

Date: _____

APPROVED AS TO FORM:

Robert Schultz, Town Attorney

Date: _____

Notary Jurat Required



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 11/02/2021

ITEM NO: 8

DATE: October 28, 2021
TO: Mayor and Town Council
FROM: Laurel Prevetti, Town Manager
SUBJECT: Approve Updates to Council Policy 2-01: Town Agenda Format and Rules and Council Policy 2.04: Town Council Code of Conduct as Recommended by the Council Policy Committee and Adopt a Resolution to Rescind Resolutions 2009-002 and 2006-111.

RECOMMENDATION:

Approve updates to Council Policy 2-01: Town Agenda Format and Rules and Council Policy (Attachment 1) 2.04: Town Council Code of Conduct as recommended by the Council Policy Committee (Attachment 2) and adopt a Resolution (Attachment 6) to Rescind Resolutions 2009-002 and 2006-111.

BACKGROUND:

Since April 2021, the Town Council has listened to public comments at its meeting that have become increasingly hateful and harassing, escalating to disturbances at in-person Council meetings this fall. Proposed updates to Council Policy 2-01: Town Agenda Format and Rules and Council Policy 2.04: Town Council Code of Conduct intend to clarify rules for civility and decorum as well as identify enforcement mechanisms if these rules are not followed.

On October 26, 2021, the Council Policy Committee listened to public testimony and voted unanimously to forward a recommendation to the Town Council to approve the proposed updates with additional language clarifying the process of handling a person disrupting the meeting and stating that the Code of Conduct Policy applies to all Town Boards, Committees, and Commissions.

DISCUSSION:

Both Council Policies should be amended to include specific rules for civility at Town Council meetings. Attachments 1 and 2 contain the proposed redline additions, including the recommendation of the Council Policy Committee.

Reviewed by: Town Manager, Town Clerk, and Town Attorney

SUBJECT: Proposed Updates to Council Policy 2-01: Town Agenda Format and Rules and Council Policy 2.04: Town Council Code of Conduct, and Adopt a Resolution to Rescind Outdated Resolutions

DATE: October 28, 2016

DISCUSSION (Continued):

Consistent with case law, the proposed rules state:

- The purpose of the Town Council meeting is to conduct the important business of the community in an effective and efficient manner.
- For the benefit of the entire community, the Town of Los Gatos asks that all speakers follow the Town's meeting guidelines by treating everyone with respect and dignity. This is done by following meeting guidelines set forth in State law, in the Town Code (e.g., Section 2.20.020 contained in Attachment 3), and on the cover sheet of the Council agenda.
- The Town embraces diversity and strongly condemns hate speech and offensive, hateful language or racial intolerance of any kind at Council Meetings.
- Town Council and staff are well aware of the public's right to disagree with their professional opinion on various Town issues. However, anti-social behavior, slander, hatred, and bigotry statements are completely unacceptable and will not be tolerated in any way, shape, or form at Town Council meetings.
- All public comments at the Town Council meeting must pertain to items within the subject matter jurisdiction of the Town and shall not contain slanderous statements, hatred, and bigotry against non-public officials.
- Any disturbance resulting from a member of the public not following these rules can be muted if participating remotely or required to leave if participating in-person. Violators may be cited for violation of the California Penal Code Section 403.

Once these additional rules are in place, the Mayor should explain these rules to the public at each meeting. This practice serves multiple purposes. First, it reminds the Mayor and other Council Members of how disruptions must be handled, and that the rules must be applied in an even-handed manner. Second, it lets the audience know at the outset that the Council has adopted rules prohibiting disruptions, and what the consequences will be if someone chooses to engage in conduct that willfully disrupts the meeting. Third, should someone be removed from the meeting, and later challenge the removal in court, it will assist in the defense of the action.

As recommended by the Council Policy Committee, the steps for addressing a violation have been added to the redlined Policies. Specifically:

- a. If participating remotely, Town staff may mute the individual with an explanation for the record of why muting occurred consistent with this Policy.
- b. If participating in-person, the Mayor may call a recess for violation of this Policy, resulting in the immediate cessation of the audio and video recording and the Council exiting the Chamber. Staff will determine if the individual should be removed or if all members of the public should leave depending on the extent of the disturbance. In the event that all public members exit, only the press would be allowed back in the

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SUBJECT: Proposed Updates to Council Policy 2-01: Town Agenda Format and Rules and Council Policy 2.04: Town Council Code of Conduct, and Adopt a Resolution to Rescind Outdated Resolutions

DATE: October 28, 2016

DISCUSSION (Continued):

meeting. Once the individual(s) leave, the Council would return to the Chamber and the Mayor would resume the meeting.

- c. Persons disrupting a Council meeting may be cited for violation of the California Penal Code Section 403.

As this process would also be in place for other Town Boards, Committees, and Commissions, the staff liaison will need to assist the Chair to call a recess and address the disturbance.

In the past, the Council adopted its Policies by Resolution. This practice ended several years ago with the Council adopting its Council Policies through direction action. The Agenda Format Policy and Code of Conduct Policy have old Resolutions (Attachments 4 and 5, respectively) that need to be rescinded. For this reason, staff is recommending that the Council adopt a Resolution to rescind these outdated Resolutions and set forth the current adoption practice for Council Policies.

CONCLUSION:

Staff recommends that the Town Council approve the updates to the Policies (Attachments 1 and 2) as recommended by the Council Policy Committee and adopt a Resolution (Attachment 6) to rescind outdated Resolutions.

COORDINATION:

The information contained in this report was coordinated with the Town Clerk and Town Attorney.

FISCAL IMPACT:

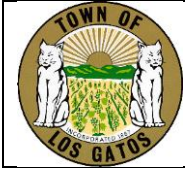
Adoption of these Policy updates has no fiscal impact.

ENVIRONMENTAL ASSESSMENT:

This is not a project defined under CEQA, and no further action is required.

Attachments:

1. Redlined Updates to Council Policy 2-01: Town Agenda Format and Rules
2. Redlined Updates to Council Policy 2.04: Town Council Code of Conduct
3. Town Code Section 2.20.020
4. Resolution 2009-002
5. Resolution 2006-111.
6. Proposed Resolution to Rescind Resolutions 2009-002 and 2006-111



COUNCIL POLICY MANUAL
Small Town Service Community Stewardship Future Focus

TITLE: Town Agenda Format and Rules

POLICY NUMBER: 2-01

EFFECTIVE DATE: 12/15/1986

PAGES: 7

ENABLING ACTIONS: 1986-183; 1987-024; 1988-124; 1993-181; 1994-057; 1996-108; 2001-077; 2004-033; 2009-002

REVISED DATES: 12/15/1986; 3/2/1987; 6/6/1988; 6/15/1992; 12/6/1993; 4/4/1994; 8/5/1996; 7/2/2001; 4/5/2004; 1/20/2009; 3/16/2009; 12/6/2010; 8/5/2013; 3/3/2015; 9/20/2016; 6/20/2017; 8/1/2017; 12/4/18/; 8/20/19; 12/3/19; 6/1/2021

APPROVED:

PURPOSE

To establish procedures which standardize Town agendas and insure an orderly meeting. This Policy applies to Town Council and all Town Boards, Commissions, and Committees.

POLICY

The following policies have been established:

A. Order of the Agenda

Subject to the Mayor's, or Chair's, discretion to change the order of consideration of any agenda item during any individual meeting:

- Meeting Call to Order
- Roll Call
- Pledge of Allegiance
- Appointments
- Presentations
- Closed Session Report
- Council Matters
- Manager Matters
- Consent Calendar
- Verbal Communications
- Public Hearings
- Other Business
- Adjournment (No later than midnight without vote)

TITLE: Town Agenda Format and Rules	PAGE: 2 of 7	POLICY NUMBER: 2-01
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B. Closed Session Report

At the first Council meeting following any Closed Session, the Town Attorney will report on the Closed Session describing what occurred, but without reporting any information which could damage the Town's position on a) potential or existing litigation, b) the acquisition or disposition of property, or c) any employee's privacy interests. In addition, the Closed Session agenda shall clearly identify the subject of each agenda item consistent with the requirements of the *Brown Act*.

C. Communications by Members of the Public

1. *Verbal Communications.* Comments by members of the public during the initial Verbal Communications portion of the agenda on items not on the Council agenda shall be limited to 30 minutes and no more than three (3) minutes per speaker. As an item not listed on the agenda, no response is required from Town staff or the Council and no action can be taken. However, the Council may instruct the Town Manager to place the item on a future agenda. At the conclusion of the first Verbal Communications, the agenda will proceed onto the Public Hearings and Other Business sections of the agenda. In the event additional speakers were not able to be heard during the initial Verbal Communications portion of the agenda, an additional Verbal Communications section can be opened prior to Adjournment.
2. *Public Hearings.* Presentations during the Public Hearings portion of the agenda by appellants and applicants, including any expert or consultant assisting with the presentation, shall be limited to a total of no more than five (5) minutes for all speakers. Appellants and applicants shall be provided no more than three (3) minutes to rebut at the end of the public hearing. Other members of the public testifying at public hearings shall be limited to no more than three (3) minutes.
3. *Submittal of written materials by Applicant and Appellant.* To allow Town Council, Boards, Commissions, Committees, Town Staff, and the public the opportunity to review material in advance of a hearing, all materials submitted by the Applicant or Appellant must be received by the Town Clerk fourteen (14) days prior to the scheduled public hearing. Documents and materials received from the Applicant or Appellant after the deadline will be accepted; however, the Town Staff may not have the time to analyze the documents and material, and Town Council may not have the time to consider materials submitted after the deadline. The submittal of any additional material by the Applicant or Appellant shall not be considered prima facie evidence (sufficient to establish a fact or raise a presumption) under Town Code Section 29.20.300.
4. *Other Agenda Items.* Comments by members of the public concerning any other item on an agenda shall be limited to no more than three (3) minutes per item.
5. *Mayor's Discretion.* All time limits noted above shall be subject to change at the Mayor's discretion. If a member of the public speaks on the wrong item, the time used would be deducted from the speaker's overall public comment time allowance on the correct item.

TITLE: Town Agenda Format and Rules	PAGE: 3 of 7	POLICY NUMBER: 2-01
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D. Consent Calendar

Items on the Council agenda that are considered to be of a routine and non-controversial nature are placed on the Consent Calendar. Typical items include meeting minutes, final reading and adoption of ordinances, resolutions approving agreements, awards of contracts, status staff reports, etc.

Consent items shall be approved by a single Council motion unless a member of the Council requests that an item be removed for separate Council action. Members of the public may speak on an item on the Consent Calendar during the public comment portion before the Council votes on the Consent Calendar. Items removed from the Consent Calendar may be considered at that meeting at the Mayor’s discretion. If an item is removed for discussion, members of the public may speak to that item even if they previously spoke on the item during public comment.

E. Presentations

The Presentations portion of the agenda is intended to allow organized groups to make formal presentations to the Council and to recognize and honor deserving individuals and organizations. All matters included on the Presentations portion of the agenda require the prior approval of the Mayor and shall be limited to no more than ten (10) minutes, unless the Mayor grants additional time.

F. Council Matters

Members of Council may report on the activities of the committees to which they belong or the meetings they attend, question staff briefly on matters upon which the Council has taken action or given direction, make brief announcements, or discuss whether to place particular items on future agendas for action by the Council. Future agenda items to be briefly discussed here shall be identified consistent with Section G of this policy, or may be raised for the first time under this item.

G. Adjournment

Council meetings will be adjourned at midnight unless a majority of the Council Members present vote to extend the adjournment time.

H. Americans with Disabilities Notice on Town Agendas

As part of the requirements under the Americans with Disabilities Act, the Town is required to provide notice of whom to contact in advance of a public meeting for assistance to disabled individuals who might wish to participate. The following notice shall be provided in at least one location on each Town agenda for Council, Boards, Commissions, or Committees.

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In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the Clerk Administrator at (408) 354-6834. Notification 48 hours before the meeting will enable the Town to make reasonable arrangements to ensure accessibility to this meeting [28 CFR §35.102-35.104]

I. Preparation of the Agenda

The agenda is prepared by staff in consultation with the Mayor for the Mayor’s final approval. If there is a disagreement between the Mayor and staff, the Mayor makes the ultimate call on the Agenda and its items. Any member of the Council may submit a request through the Town Manager or directly to the Mayor to make a change or addition to the agenda. In no event may the subject of whether to amend the agenda be discussed outside of a public meeting by more than two (2) members of the Council.

Items thus proposed to be added to the agenda require the Mayor’s agreement to be added for action. If the Mayor does not agree, the item shall be listed on the agenda for discussion purposes only under the Council Matters section of the agenda. Council may then discuss whether to place the item on a future agenda for action. Two (2) or more members of the Council must vote in favor of placing an item on a future agenda for action. The Mayor in good faith will make every effort to place the item on the first available Council agenda in consultation with the Town Manager.

If the wish of the Council is to add an item on the agenda of the current meeting, then the *Brown Act* generally requires a two-thirds (2/3) vote or a unanimous vote of those present if less than five (5) Council Members are present, with a finding that there is a need to take immediate action and the need for action came to the attention of the Town after the agenda was posted.

J. Agenda Schedule and Preparation

In general, questions or inquiries from Council Members to the Town Manager and/or Town Attorney regarding agenda items should be responded to within 24 hours, and then placed into Addenda and/or Desk Items, as appropriate.

Thursday, prior to the meeting Written agenda is finalized and printed. Agenda packets distributed to Town Council Members. Public comments on agenda items received by 11:00 a.m. will be included in the agenda packet.

Friday, prior to the meeting Additional information from staff available after the Thursday distribution of the agenda packet, and public comments received prior to 11:00 a.m. on Friday will be distributed to Town Council members as an Addendum to a staff report.

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Monday, prior to the meeting Additional information from staff available after the Friday Addendum and public comment received prior to 11:00 a.m. on Monday will be distributed to Town Council members as an Addendum to a staff report.

Day of Council Meeting Council comments and questions received by 7:00 a.m. and public comments received by 11:00 a.m. on the morning of a Council meeting will be included in a Desk Item for distribution to Town Council members by 3:00 p.m. on the afternoon of a Council meeting. Council comments and questions received after 7:00 a.m. may be addressed during the Council meeting. Public comment received after 11:00 a.m. will not be distributed to the Council in the Desk Item; however, public comment may be submitted by individuals during the Council meeting.

In general, questions or inquiries from Council Members to the Town Manager and/or Town Attorney regarding agenda items should be responded to within 24 hours, and then placed into Addenda and/or Desk Items, as appropriate.

K. Agenda Posting

Council Agendas shall be posted at least 72 hours prior to a regular meeting, and at least 24 hours prior to a special meeting. Notice of any meeting of a formally appointed Committee where two Council Members could be present shall be posted at least 24 hours in advance of any such meeting with a note as to the time and location, and an invitation to the public to attend.

L. Conduct of Town Council Meetings

The Council shall adopt:

1. Robert's *Rules of Order* or
2. Some other rules of order, or
3. Allow the Mayor to conduct the meeting as deemed appropriate so long as all members of the Town Council concur.

M. Attendance at Meetings

The Town Council Rules provisions concerning Remote Attendance shall apply to all Boards, Commissions, and Committees as well as the Town Council as follows:

1. Requests by Council Members to attend a regular Council meeting via remote appearance are allowed on a limited basis and with no more than two remote participations in a row. Remote attendance shall be permitted for a medical, family or work event requiring a Council Member's absence or in the event the Council Member is out of the area on official Town business. In addition, at least a quorum of the Council must participate from a location within the Town.

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2. Requests by Commissioners to attend a Commission meeting via remote appearance should be allowed on a limited basis to mirror the existing attendance requirements and with no more than two remote participations in a row.
3. When a Council Member or Commissioner is participating remotely, they shall have their camera on and be visible for the duration of the meeting.
4. The public may participate in all public meetings remotely by following the remote participation instructions that are provided on the agenda. The remote participation instructions shall be provided on all Town Council and Commission agendas.

N. Proposed Reconsideration of Prior Council Actions

Reconsideration of prior Council actions is discouraged and may only occur in special circumstances subject to the procedural restrictions outlined herein. Reconsideration does not include, and this Policy does not prohibit, the repeal of a resolution or ordinance in response to a lawsuit or a referendum challenging that adoption.

Step 1 – Motion to Place Reconsideration of a Prior Action on a Future Council Agenda

- a) The motion must be made by a Council Member who previously voted on the prevailing side of the prior action;
- b) The maker of the motion shall specifically articulate the new information, analysis and/or circumstances that warrant(s) reconsideration of the prior action;
- c) The motion must be adopted by a majority of the full Council; and
- d) The motion may only be made and considered at the next regularly scheduled meeting of the Council after the item was originally acted upon.

Step 2 – Full Reconsideration of the Prior Action, if a motion as outlined in Step 1 is approved.

- a) The full reconsideration of the prior action will be placed on the next available Council agenda following the agenda-setting and required public notification process.
- b) The agenda, public notification and staff report for the full reconsideration of the prior action shall clearly state that the item has been previously acted upon by the Council and is being reconsidered by the Council.
- c) Action on the reconsideration of the prior action shall adhere to regular Council policies and practices as if the item was being heard for the first time.
- d) The full reconsideration of the prior action (whether sustained, reversed or otherwise modified) will be the final action on that item, and no further reconsiderations will be considered.

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O. Motions by the Chairperson

The Chairperson of the meeting may make or second motions. The Chairperson may also restate, or ask that the maker restate, all motions immediately prior to any vote.

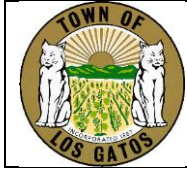
P. Behavior Expectations and Consequences at Town Council Meetings:

The public is welcome to participate in the meetings, understanding that the purpose of the meeting is to conduct the important business of the Town in an efficient and effective manner. At each meeting, the Mayor should state:

1. For the benefit of the entire community, the Town of Los Gatos asks that all speakers follow the Town's meeting guidelines by treating everyone with respect and dignity. This is done by following meeting guidelines set forth in State law, in the Town Code, and on the cover sheet of the Council agenda.
2. The Town embraces diversity and strongly condemns hate speech and offensive, hateful language or racial intolerance of any kind at Council meetings.
3. Town Council and staff are well aware of the public's right to disagree with their professional opinion on various Town issues. However, anti-social behavior, slander, hatred, and bigotry statements are completely unacceptable and will not be tolerated in any way, shape, or form at Town Council meetings.
4. All public comments at the Town Council meeting must pertain to items within the subject matter jurisdiction of the Town and shall not contain slanderous statements, hatred, and bigotry against non-public officials.
5. The Town will go through the following steps if a disturbance results from a member of the public not following these rules:
 - a. If participating remotely, Town staff may mute the individual with an explanation for the record of why muting occurred consistent with this Policy.
 - b. If participating in-person, the Mayor may call a recess for violation of this Policy, resulting in the immediate cessation of the audio and video recording and the Council exiting the Chamber. Staff will determine if the individual should be removed or if all members of the public should leave depending on the extent of the disturbance. In the event that all public members exit, only the press would be allowed back in the meeting. Once the individual(s) leave, the Council would return to the Chamber and the Mayor would resume the meeting.
 - c. Persons disrupting a Council meeting may be cited for violation of the California Penal Code Section 403.

APPROVED AS TO FORM:

Robert Schultz, Town Attorney



TITLE: Town Council Code of Conduct		POLICY NUMBER: 2-04
EFFECTIVE DATE: 5/3/2004		PAGES: 8
ENABLING ACTIONS: 2004-059; 2006-111	REVISED DATES: 12/17/2012; 3/3/2015; 12/17/2019	
APPROVED:		

I. Preamble

The legal responsibilities of the Los Gatos Town Council are set forth by applicable state and federal laws. In addition, the Town Council has adopted regulations, including this Code of Conduct Policy, that hold Council Members to standards of conduct above and beyond what is required by law. This Policy is written with the assumption that Council Members, through training, are aware of their legal and ethical responsibilities as elected officials. **These expectations of conduct also apply to all members of the Town’s Boards, Committees, and Commissions.**

II. Form of Government

The Town of Los Gatos operates under a Council-Manager form of government as prescribed by Town Code, Section 2.30.305. Accordingly, members of the Council are elected at-large, provide legislative direction, set Town policy, and ultimately answer to the public. The Town Manager serves as the Town’s chief administrative officer and is responsible for directing the day-to-day operations of the Town and implementing policy direction.

III. Town Council Roles and Responsibilities

The role of the Town Council is to act as a legislative and quasi-judicial body. Through its legislative and policy authority, the Council is responsible for assessing and achieving the community’s desire for its present and future and for establishing policy direction to achieve its desired outcomes. All members of the Town Council, including those who serve as Mayor and Vice Mayor, have equal votes.

Members of the Town Council fulfill their role and responsibilities through the relationships they have with each other and the public. Town Council Members should approach their work, each other, and the public in a manner that reflects ethical behavior, honesty and integrity. The commitment of Town Council Members to their work is characterized by open constructive communication, innovation, and creative problem solving.

TITLE: Town Council Code of Conduct	PAGE: 2 of 9	POLICY NUMBER: 2-04
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IV. Mayoral and Vice Mayoral Selection Process

Per Town Municipal Code, Section 2.20.035, the selection of the Mayor and Vice Mayor occurs annually at a special meeting in December by majority vote of the Town Council. The Mayor and Vice Mayor serve at the pleasure of the Town Council and may be replaced by a majority vote of the Council.

V. Mayoral and Vice Mayoral Roles, Responsibilities, Relationships

The following outlines some of the key roles, responsibilities, and relationships as they relate to the positions of Mayor and Vice Mayor:

Mayor

- A. The Mayor is the presiding officer of the Town Council. In this capacity, the Mayor is responsible for developing Council agendas in cooperation with the Town Manager and leading Council meetings.
- B. The Mayor recommends various standing committee appointments to the Council for approval.¹ This will be done at a Council meeting in December of each year. When making committee recommendations, the Mayor should attempt to balance shared responsibilities and opportunities among Council Members. The Mayor may also appoint citizens to committees not established by Town ordinance or resolution as s/he deems appropriate.
- C. The title of Mayor carries with it the responsibility of communicating with the Town Council, Town Manager, and members of the public. In this capacity, the Mayor serves as the Town “spokesperson” representing the Council in official and ceremonial occasions.
- D. As the official Town spokesperson, the Mayor performs special duties consistent with the Mayoral office, including, but not limited to: signing of documents on behalf of the Town, issuing proclamations, serving as the official voting delegate for various municipal advocacy groups, and delivering the State of the Town Address at his or her discretion.² The Town Council will determine any additional authority or duties that the Mayor shall perform.
- E. Special duties consistent with the Mayoral office may be delegated to the Vice Mayor or any other member of the Town Council.
- F. In the event that one or more members of a Town Board, Commission, or Committee acts in a manner contrary to approved Board/Commission policies and procedures, the Mayor may counsel those members about the rules set forth in the Town Commissioner Handbook.³

¹ Council Agenda Format and Rules Policy

² Council Commendation and Proclamation Policy

³ Resolution 1999-167

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Vice Mayor

- A. In the Mayor’s absence, the Vice Mayor shall perform the formal duties of the Mayor.⁴
- B. When the Vice Mayor performs the duties of the Mayor in his/her absence, the Vice Mayor also carries the responsibility of communicating with the Town Manager, Town Council, and members of the public.

VI. Council Conduct in Public Meetings

To ensure the highest standards of respect and integrity during public meetings, Council Members should:

- A. *Use formal titles.* The Council should refer to one another formally during Council meetings such as Mayor, Vice Mayor or Council Member or Mr., Mrs., or Ms., followed by the individual’s last name.
- B. *Practice civility and decorum in discussions and debate.* Difficult questions, tough challenges to a particular point of view, and criticism of ideas and information are legitimate elements of free democracy in action. During public discussions, Council Members should be respectful of others and diverse opinions and allow for the debate of issues.
- C. *Honor the role of the presiding officer in maintaining order and equity.* Respect the Mayor/Chair's efforts to focus discussion on current agenda items.
- D. *Council decisions should be reserved until all applicable information has been presented.*
- E. *Conduct during public hearings.* During public testimony, Council Members should refrain from engaging the speaker in dialogue. For purposes of clarification, Council Members may ask the speaker questions. Council comment and discussion should commence upon the conclusion of all public testimony

VII. Maintaining Civility at Council Meetings

The public is welcome to participate at Town Council meetings and the Mayor should remind the public of the Town’s expectations for civility in order for the business of the Town to be completed efficiently and effectively. These expectations include and are not limited to:

- A. For the benefit of the entire community, the Town of Los Gatos asks that all speakers follow the Town’s meeting guidelines by treating everyone with respect and dignity. This is done by following meeting guidelines set forth in State law, in the Town Code, and on the cover sheet of the Council agenda.
- B. The Town embraces diversity and strongly condemns hate speech and offensive, hateful language or racial intolerance of any kind at Council Meetings.
- C. Town Council and staff are well aware of the public’s right to disagree with their professional opinion on various Town issues. However, anti-social behavior, slander, hatred,

⁴Council Agenda Format and Rules Policy

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and bigotry statements are completely unacceptable and will not be tolerated in any way, shape or form at Town Council meetings.

- D. All public comments at the Town Council meeting must pertain to items within the subject matter jurisdiction of the Town and shall not contain slanderous statements, hatred, and bigotry against non-public officials.
- E. The Town will go through the following steps if a disturbance results from a member of the public not following these rules:
 - 1. If participating remotely, Town staff may mute the individual with an explanation for the record of why muting occurred consistent with this Policy.
 - 2. If participating in-person, the Mayor may call a recess for violation of this Policy, resulting in the immediate cessation of the audio and video recording and the Council exiting the Chamber. Staff will determine if the individual should be removed or if all members of the public should leave depending on the extent of the disturbance. In the event that all public members exit, only the press would be allowed back in the meeting. Once the individual(s) leave, the Council would return to the Chamber and the Mayor would resume the meeting.
 - 3. Persons disrupting a Council meeting may be cited for violation of the California Penal Code Section 403.

VIII. Legal Requirements

The Town Council operates under a series of laws that regulate its operations as well as the conduct of its members. The Town Attorney serves as the Town’s legal officer and is available to advise the Council on these matters.

A. Training

Biannual training in the following areas shall be provided by staff to Council Members:

- 1. The Ralph M. Brown Act
- 2. Town / CA State Law on Conflict of Interest (AB 1234)
- 3. Government Section 1090
- 4. Incompatible Offices
- 5. The Fair Political Practices Commission Forms
- 6. Bias
- 7. Town / CA State Law on Harassment (SB 1343)

B. Procurement

Unless authorized by the Town Council, Council Members shall not become involved in administrative processes for acquiring goods and services.

C. Land Use Applications

The merits of an application shall only be evaluated on information included in the public record. Council Members shall disclose ex parte communication and any information obtained outside of the public record that may influence his/her decision on a matter pending before the

TITLE: Town Council Code of Conduct	PAGE: 5 of 9	POLICY NUMBER: 2-04
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Town Council. Council disclosure shall occur after the Public Hearing section of the agenda, and before Council deliberations.

D. Code of Conduct Policy

Newly elected Council Members are strongly encouraged to sign a statement affirming they have read and understand the Town of Los Gatos Council Code of Conduct Policy.

E. Non-Profit Organizations

Council Members may not sit on boards of directors of non-profit organizations which receive funding or in-kind contributions from the Town, unless the role serves a legitimate Town purpose, such as the League of California Cities, and the participation is approved by the full Council.

IX. Council Participation in Boards, Commissions and Committees, and Reporting Requirements

There are several committees that Town Council Members have been appointed to or have an interest in, including but not limited to: Town Council standing and ad hoc committees, Town boards and commissions, regional boards and commissions, and community-generated committees.

Primary Council representatives should update the Council about board, commission, and committee activities. When serving as the primary Council representative on any board, commission, or committee, Council Members should periodically provide updated reports to the Council during the “Council Matters” opportunity on the Council meeting agenda.

Recommended actions by Council Committees should be reported to the Council. When serving on a Council Committee, whether standing or ad hoc, all work undertaken by the Committee must be directed by the Council, and all recommended actions of a Council Committee shall be reported to the Council.

X. Council Relationship with Town Staff

The Town Council has adopted a Council-Manager form of government. The Town Manager’s powers and duties are outlined in the Town Code, Section 2.30.295.

Council Conduct and Communication with Town Staff

To enhance its working relationship with staff, Council should be mindful of the support and resources needed to accomplish Council goals. When communicating and working with staff, Council should follow these guidelines:

- A. *Council Members should treat staff as professionals.* Clear, honest communication that respects the abilities, experience, and dignity of each individual is expected. As with Council colleagues, practice civility and decorum in all interactions with Town staff.

TITLE: Town Council Code of Conduct	PAGE: 6 of 9	POLICY NUMBER: 2-04
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- B. *Council Members should direct questions about policy, budget, or professional opinion to the Town Manager, Town Attorney or Department Directors. Council Members can direct questions and inquiries to any staff for information that is readily available to the general public or easily retrievable by staff.*
- C. *The Town Manager and staff are responsible for implementing Town policy and/or Council action. The processing of Council policy and decisions takes place with the Town Manager and staff. Council should not direct policy/program administrative functions and implementation; rather it should provide policy guidance to the Town Manager.*
- D. *Council Members should attempt to communicate questions, corrections, and/or clarifications about reports requiring official action to staff prior to Council meetings. Early feedback will enable staff to address Council questions and incorporate minor corrections or changes to a Council report, resulting in a more efficient Council meeting discussion; however, this does not preclude Council Members from asking questions at Council Meetings.*
- E. *Council Members should not direct the Town Manager to initiate any action, change a course of action, or prepare any report without the approval of Council. The Town Manager's responsibility is to advise on resources available and required for a particular course of action as it relates to the direction of the majority of the Council.*
- F. *Council Members should not attend department staff meetings unless requested by the Town Manager.*
- G. *All Council Members should have the same information with which to make decisions. Information requested by one Council Member will be shared with all members of the Council.*
- H. *Concerns related to the behavior or work of a Town employee should be directed to the Town Manager. Council Members should not reprimand employees.*
- I. *Per California Government Code, Sections 3201-3209, Council Members should not solicit financial contributions from Town staff or use promises or threats regarding future employment. Although Town staff may, as private citizens with constitutional rights, support political candidates, such activities cannot take place during work hours, at the workplace, or in uniform.*

XI. Council Communication with the Public and other Council Members

The Public has a reasonable expectation that it may engage its Council Members on matters of community concern. In response, Council Members may express a preliminary opinion on issues or projects raised. Any such preliminary statement shall not constitute a prejudgment or create a presumption of bias on any issue or a project. In addition, Council Members may from time to time express opinions regarding broad policy matters which may be in conflict with currently adopted Council policies. Such statements are permissible if clearly characterized as personal opinion or policy change objectives.

XII. Enforcement

A. Purpose

TITLE: Town Council Code of Conduct	PAGE: 7 of 9	POLICY NUMBER: 2-04
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The Council Code of Conduct Policy establishes guiding principles for appropriate conduct and behavior and sets forth the expectations of Council Members. The purpose of the policy language is to establish a process and procedure that:

1. Allows the public, Town Council, and Town employees to report Code of Conduct policy violations or other misconduct.
2. Provides guidelines to evaluate Code of Conduct policy violations or other misconduct and implement appropriate disciplinary action when necessary.

B. Procedures

1. Reporting of Complaints

The following section outlines the process for reporting Council Member Code of Conduct Policy violations or other misconduct:

- a. Complaints made by members of the public, the Town Manager, and Town Attorney should be reported to the Mayor. If a complaint involves the Mayor, it should be reported to the Vice Mayor.
- b. Complaints made by Council Members should be reported to the Town Manager or Town Attorney to adhere to Brown Act requirements.
- c. Complaints made by Town employees should be reported to the Town Manager, who will direct them to the Mayor or Vice Mayor.

2. Evaluation of Complaints Alleging Violations

Upon report of a written complaint, the Town Manager and Town Attorney will join the Mayor or Vice Mayor as an evaluation committee to determine the validity of the complaint and, if appropriate, an initial course of action as discussed below. If the Town Manager or Town Attorney is the complainant, the longest serving uninvolved Council Member will replace the Town Manager or Town Attorney on the evaluation committee.

Within seventy-two (72) hours of receipt of the complaint by the Mayor or Vice Mayor, the Council Member in question shall be notified of the reported complaint by the Mayor or his/her designee. The notification shall include a copy of the written complaint and supporting documentation, if any, the identity of the complainant and nature of the complaint.

3. Unsubstantiated or Minor Violations

If the majority of the Committee agrees that the reported violation is without substance, no further action will be taken. If the reported violation is deemed valid but minor in nature, the Mayor or Vice Mayor shall counsel and, if appropriate, admonish the Council Member privately to resolve the matter. Admonishment is considered to be a reproof or warning directed to a Council Member about a particular type of behavior that violates Town policy.

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4. Allegations of Major Violations

If the reported violation is considered to be serious in nature, the matter shall be referred to outside legal counsel selected by the Committee for the purpose of conducting an initial interview with the subject Council Member. The outside counsel shall report his/her initial findings back to the Committee.

If the Committee then determines that an investigation is warranted, the Committee shall direct the outside legal counsel to conduct an investigation. The investigation process would include, but is not limited to, the ascertainment of facts relevant to the complaint through interviews and the examination of any documented materials.

5. Report of Findings

At the conclusion of the investigation, outside legal counsel shall report back to the Committee in writing. The report shall either (1) recommend that the Council Member be exonerated based on a finding that the investigation did not reveal evidence of a serious violation of the Code of Conduct, or (2) recommend disciplinary proceedings based on findings that one or more provisions of the Code of Conduct or other Town policies have been violated. In the latter event, the report shall specify the provisions violated along with the facts and evidence supporting each finding.

The Committee shall review the report and its recommendations. If the consensus of the Committee is to accept the report and recommendations, the Committee shall implement the recommendations. Where the recommendation is exoneration, no further action shall be taken. Where the recommendation is to initiate disciplinary proceedings, the matter shall be referred to the Council. Where there is no consensus of the Committee regarding the recommendations, the matter shall be referred to the Council.

The subject Council Member shall be notified in writing of the Committee's decision within 72 hours. Where the decision is to refer the matter to the Council, a copy of the full report, including documents relied on by the investigator shall be provided with the notification, and a copy of both shall be provided to the whole Council.

6. Proceedings

Investigative findings and recommended proceedings and disciplinary action that are brought forward to Council as a result of a significant policy violation shall be considered at a public hearing. The public hearing should be set far enough in advance to allow the Council Member in question reasonably sufficient time to prepare a response.

TITLE: Town Council Code of Conduct	PAGE: 9 of 9	POLICY NUMBER: 2-04
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Investigative findings shall be presented to the Town Council at a public hearing. The rules of evidence do not apply to the public hearing. It shall not be conducted as an adversarial proceeding.

C. Disciplinary Action

1. Considerations in Determining Disciplinary Action

Disciplinary action may be imposed by Council upon Council Members who have violated the Council Code of Conduct Policy. Disciplinary action or sanctions are considered when a serious violation of Town policy has occurred by a Council Member. In determining the type of sanction imposed, the following factors may be considered:

- a. Nature of the violation
- b. Prior violations by the same individual
- c. Other factors which bear upon the seriousness of the violation

2. Types of Sanctions

At the discretion of the Council, sanctions may be imposed for violating the Code of Conduct or engaging in other misconduct. These actions may be applied individually or in combination. They include, but are not limited to:

- a. *Public Admonishment* – A reproof or warning directed to a Council Member about a particular type of behavior that violates Town policy.
- b. *Revocation of Special Privileges* – A revocation of a Council Member’s Council Committee assignments, including standing and ad hoc committees, regional boards and commissions, and community-generated board/committee appointments. Other revocations may include temporary suspension of official travel, conference participation, and ceremonial titles.
- c. *Censure* – A formal statement or resolution by the Council officially reprimanding a Council Member.

APPROVED AS TO FORM:

Robert Schultz, Town Attorney

Sec. 2.20.020. Same—Interruptions and rules for conduct.

- (a) Understanding that the purpose of the meetings of the Town Council is to conduct the people's business for the benefit of all the people, in the event that any meeting of the Town Council is willfully interrupted by a person or group of persons so as to render the orderly conduct of the meeting impossible, the Mayor, Vice-Mayor or any other member of the Town Council acting as the chair, may order the removal of the person or persons responsible for the disruption and bar them from further attendance at the Council meeting, or otherwise proceed pursuant to Government Code section 54957.9 or any applicable penal statute or Town ordinance. For purposes of these rules "willfully interrupt" includes, but is not limited to, doing any of the following after being directed by the chair to cease and being warned that continuing to do so will be a violation of law:
- (1) Addressing the Town Council without first being recognized.
 - (2) Persisting in addressing a subject or subjects other than that before the Town Council.
 - (3) Repetitiously addressing the same subject.
 - (4) Continuing to speak after the allotted time has expired.
 - (5) Failing to relinquish the podium when directed to do so.
 - (6) As a speaker, interrupting or attempting to interrupt members of the Town Council or members of the Town staff.
 - (7) From the audience, interrupting or attempting to interrupt, a speaker, members of the Town Council or members of the Town staff, or shouting or attempting to shout over a speaker, members of the Town Council or members of the Town staff, or displays such as clapping, stamping, loud talking, hissing and booing.
 - (8) Violations of rules of conduct established by the Town Council.
- (b) The Town Council may establish rules for the conduct of its proceedings by resolution.
- (c) Nothing in this section or any rules of conduct that may be adopted by the Town Council shall be construed to prohibit public criticism of the policies, procedures, programs or services of the Town or of the acts or omissions of the Town Council or Town staff.
- (d) Any person who violates any of the provisions of this section 2.20.020 shall be guilty of a misdemeanor.
- (e) If any subsection, sentence, clause or phrase of this section 2.20.020 is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this section. The Town Council hereby declares that it would have passed this section and each subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more subsections, sections, clauses or phrases had been declared invalid or unconstitutional.

(Code 1968, § 2-3; Ord. No. 2074, § I, 11-6-00)

ATTACHMENT 3

Created: 2021-07-02 11:59:43 [EST]

(Supp. No. 86)

RESOLUTION NO. 2006-111

RESOLUTION OF THE TOWN OF LOS GATOS RESCINDING COUNCIL CODE OF CONDUCT RESOLUTION 2004-59 AND ADOPTING AMENDED VERSION OF THE COUNCIL CODE OF CONDUCT ADDING RECOMMENDED ENFORCEMENT PROCEDURES

WHEREAS, in 2004, the Council adopted a Code of Conduct Policy that established guiding principles for appropriate conduct and behavior and set forth the expectations for Council Members; and

WHEREAS, the provisions of Council Code of Conduct reflect a commitment by Council Members to the people they serve and to each other, and more importantly, a desire to seek what is good for the community; and

WHEREAS, at the April 19, 2006 Special Council Meeting, the Council directed the Council Policy Committee to develop amendments to the Council Code of Conduct that would establish disciplinary procedures and actions should policy violations occur; and

WHEREAS, the amended Council Code of Conduct policy incorporates recommended procedures and processes related to policy enforcement, including but not limited to: policy violation complaints, investigations, findings, proceedings, and disciplinary actions.

THEREFORE, BE IT RESOLVED, the Town of Los Gatos does hereby rescind Council Code of Conduct Resolution 2004-59 and adopt amended version of the Council Code of Conduct adding recommended enforcement procedures as reflected in Exhibit A.

PASSED AND ADOPTED at a regular meeting of the Town Council of the Town of Los Gatos, California, held on the sixteenth day of October, 2006 by the following vote:

COUNCIL MEMBERS:

AYES: Joe Pirzynski, Barbara Spector, Mike Wasserman,
Mayor Diane McNutt

NAYS: Steve Glickman

ABSENT:

ABSTAIN:

SIGNED: *Diane McNutt*

**MAYOR OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA**

ATTEST: *Jade Rose*
**CLERK ADMINISTRATOR OF THE
TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA**

RESOLUTION 2009-002

**RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF LOS GATOS
AMENDING TOWN COUNCIL AGENDA FORMAT AND RULES**

WHEREAS, the Town Council has adopted Town Council Agenda Format Rules, which, among other things, sets forth the order of items for Council meeting agendas; and

WHEREAS, that the Town Council Agenda Format and Rules were last amended by the Town Council on April 5, 2004; and

WHEREAS, the Town Council Agenda Format and Rules sets a standard agenda order with consideration of Council Matters and Manager Matters at the end of the agenda prior to Adjournment; and

WHEREAS, the Town Council Agenda Format and Rules sets deadlines for citizens and Council members to place items on the agenda; and

WHEREAS, Town Council desires to change the order of consideration of Council Matters and Manager Matters to after Presentations and before the Consent Calendar in order to provide an opportunity for the Council and Manager to share information and make announcements earlier in the meeting when more members of the public are typically present and to delete the language setting deadlines for citizens and Council members on the agenda which is inconsistent with current practice

RESOLVED, by the Town Council of the Town of Los Gatos, County of Santa Clara, State of California, that the Town of Los Gatos

1. That the Town Council Agenda Format and Rules are amended to read as shown in Exhibit A attached to this resolution, which is by this reference incorporated herein.
2. That Resolution 2004-33 is hereby rescinded.

PASSED AND ADOPTED at a regular meeting of the Town Council of the Town of Los Gatos, California, held on the 20th day of January, 2009 by the following vote:

COUNCIL MEMBERS:

AYES: Diane McNutt, Joe Pirzynski, Steve Rice, Barbara Spector, and Mayor Mike Wasserman

NAYS:

ABSENT:

ABSTAIN:

SIGNED: 

MAYOR OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

ATTEST:


CLERK OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

**COUNCIL POLICY
TOWN OF LOS GATOS**

Subject: Town Council Agenda
Format and Rules

Enabling Actions:
1986-183; 1987-24; 1988-
124; 1993-181; 1994-57;
1996-108; 2001-77; 2004-33

Approved:

Effective:
12/15/86

Revised Date:
12/15/86; 3/2/87; 6/6/88;
6/15/92; 12/6/93; 4/4/94;
8/5/96; 7/2/01; 4/5/04

PURPOSE

To establish procedures which standardize the Town Council agenda and insure an orderly meeting.

POLICY

The following policies have been established:

A. Order of the Agenda

Subject to the Mayor's discretion to change the order of consideration of any agenda item during any individual meeting:

Closed Session
Interviews
Meeting Called to Order
Roll Call
Pledge of Allegiance
Closed Session Report
Appointments
Presentations
Council Matters
Manager Matters
Consent Calendar
Verbal Communications
Public Hearings
Other Business
Adjournment (No later than midnight without vote)

B. Closed Session Report

At the first Council meeting following any Closed Session, the Town Attorney will report on the Closed Session describing what occurred, but without reporting any information which could damage the Town's position on a) potential or existing litigation, b) the acquisition or disposition of property, or c) any employee's privacy interests. In addition, the Closed Session agenda shall clearly identify the subject of each agenda item consistent with the requirements of the *Brown Act*.

C. Communications by Members of the Public

- (1) Verbal Communications. Comments by members of the public during the Verbal Communications portion of the agenda shall be limited to no more than three (3) minutes per speaker.
- (2) Public Hearings. Presentations during the Public Hearings portion of the agenda by appellants and applicants, including any expert or consultant assisting with the presentation, shall be limited to a total of no more than ten (10) minutes for all speakers. Appellants and applicants shall be provided no more than five (5) minutes to rebut the end of the public hearing. Other members of the public testifying at public hearings shall be limited to no more than three (3) minutes.
- (3) Other Agenda Items. Comments by members of the public concerning any other item on an agenda shall be limited to no more than three (3) minutes per item.
- (4) Mayor's Discretion. All time limits shall be subject to change at the Mayor's discretion in order to control the length of a meeting.

B. Consent Calendar

The Mayor will ask if any member of the Council, Town staff or public wishes to comment on any item on the consent calendar. At the Mayor's discretion, items removed from the consent calendar may be considered either before or after the Public Hearings portion of the agenda.

E. Presentations

The Presentations portion of the agenda is intended to allow organized groups to make formal presentations to the Council and to recognize and honor deserving individuals and organizations. All matters included on the Presentations portion of the agenda require the prior approval of the Mayor and shall be limited to no more than ten (10) minutes, unless the Mayor grants additional time.

F. Council Matters

Members of Council may report on the activities of the committees to which they belong or the meetings they attend, question staff briefly on matters upon which the Council has taken action or given direction, make brief announcements, or discuss whether to place particular items on future agendas for action by the Council. Future agenda items to be briefly discussed here shall be identified consistent with Section G of this policy, or may be raised for the first time under this item.

G. Adjournment

Council meetings will be adjourned at midnight unless a majority of the Council Members present vote to extend the adjournment time.

H. Preparation of the Agenda

The agenda is prepared by staff for the Mayor's approval. In this manner the Mayor determines the agenda. Any member of the Council may request that the Mayor make a change or addition to the agenda. Such requests may be made through the Town Manager or directly to the Mayor. In no event may the subject of whether to amend the agenda be discussed outside of a public meeting by more than two (2) members of the Council.

Items thus proposed to be added to the agenda require the Mayor's agreement to be added for action. If the Mayor does not agree, the item shall be listed on the agenda for discussion purposes only under the Council Matters portion of the agenda. Council may then discuss whether to place the item on a future agenda for action. Two (2) or more members of the Council must vote in favor of placing an item on a future agenda for action.

If the wish of the Council is to add an item on the agenda of the current meeting, then the *Brown Act* generally requires a two-thirds (2/3) vote or a unanimous vote of those present if less than five (5) Council Members are present, with a finding that there is a need to take immediate action and the need for action came to the attention of the Town after the agenda was posted.

I. Agenda Schedule and Preparation of Schedule

Thursday, 11 days prior to meeting

All agenda reports are due to the Town Manager's Administrative Assistant. Reports should be submitted as soon as possible to allow time for review and revision. The deadline for all reports is the Wednesday prior to the Council meeting.

Thursday, prior to meeting

Written agenda is finalized and printed.
Agenda packets distributed to Town Council members.

J. Conduct of Town Council Meetings

The Council shall adopt:

1. Robert's *Rules of Order* or
2. Some other rules of order, or
3. Allow the Mayor to conduct the meeting as deemed appropriate so long as all members of the Town Council concur.

K. Reconsideration of Items

No item acted upon by the Town Council will be reconsidered by the Council within ninety (90) days of the Council action unless the item is requested for reconsideration by a member of the Town Council. A motion for reconsideration may only be made at the meeting of the original Council action or at the meeting immediately following the original action provided the matter appears on the agenda, unless a request for reconsideration is made by at least two (2) members of the Council at the meeting immediately following the original action, in which event the item will be placed on the next available agenda for Council action. See schedule in Section H concerning placement of items on the regular agenda by members of the Town Council.

L. Motions by the Chair

The Chairperson of the meeting may make or second motions.

The Mayor may restate, or ask that the maker restate, all motions immediately prior to any vote.

APPROVED AS TO FORM:

Orry P, Korb, Town Attorney

RESOLUTION 20 -xx

RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF LOS GATOS TO RESCIND RESOLUTION 2006-111 PERTAINING TO THE COUNCIL CODE OF CONDUCT POLICY AND RESOLUTION 2009-002 PERTAINING TO THE COUNCIL AGENDA FORMAT AND RULES POLICY

WHEREAS, the Town of Los Gatos Town Council adopted Resolution 2006-111 on October 16, 2006 pertaining to the Code of Conduct Policy; and

WHEREAS, the Town Council has adopted the Town Council Code of Conduct as a Council Policy (2-04) on December 17, 2012 with Council approved revisions on March 3, 2015 and December 17, 2019; and

WHEREAS, the Town of Los Gatos Town Council adopted Resolution 2009-002 on January 20, 2009 pertaining to the Council Agenda Format and Rules; and

WHEREAS, the Town Council has adopted the Town Agenda Format and Rules as a Council Policy (2-01) on August 5, 2013 with Council approved revisions on March 3, 2015, September 20, 2016, June 20, 2017, August 1, 2017, December 4, 2018, August 20, 2019, and June 1, 2021; and

WHEREAS, all Town Council Policies are adopted and/or revised directly without Resolutions.

NOW, THEREFORE, BE IT RESOLVED, the Town Council hereby rescinds Resolution 2006-111 pertaining to the Council Code of Conduct Policy and Resolution 2009-002 pertaining to the Council Agenda Format and Rules Policy; and that the Town Council practice of adopting and/or revising all Town Council Policies directly without Resolutions is hereby memorialized in this Resolution.

ATTACHMENT 6

PASSED AND ADOPTED at a regular meeting of the Town Council of the Town of Los Gatos, California, held on the 2nd day of November, 2021, by the following vote:

COUNCIL MEMBERS:

AYES:

NAYS:

ABSENT:

ABSTAIN:

SIGNED:

MAYOR OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

DATE: _____

ATTEST:

TOWN CLERK OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

DATE: _____



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 10/19/2021

ITEM NO: 9

DATE: October 18, 2021
TO: Mayor and Town Council
FROM: Robert Schultz, Town Attorney
SUBJECT: Introduction and First Reading of an Ordinance Amending the Los Gatos Town Code Section 18.50.100 to Prohibit Targeted Residential Picketing

RECOMMENDATION:

Accept public comment then move for the introduction and first reading of an Ordinance (Attachment 1), by title only, amending the Los Gatos Town Code Section 18.50.100 to Prohibit Targeted Residential Picketing.

BACKGROUND:

On October 19, 2021, the Town Council enacted an urgency ordinance prohibiting targeted picketing within 300 feet of the residence of a particular person. Urgency ordinances expire in 45 days unless they are extended or are made permanent. The introduction and first reading of this ordinance will begin the process of making the urgency ordinance permanent.

DISCUSSION:

Targeted picketing is defined as picketing activity that is targeted at a particular residential dwelling and proceeds on a definite course or route in front of or around that particular residential dwelling. Picketing activity that is targeted at a particular residence may harass and intimidate such occupants, is inherently and unreasonably offensive to and intrusive upon the right to privacy in the home, and may cause the occupants of such home to experience great emotional distress. Such unwelcome and targeted picketing activity creates a 'captive audience' situation because the occupants of a residence or household cannot readily move to another residence or household in order to avoid the unwelcome picketing activity being directed at them.

The ordinance, as amended, is narrowly tailored to protect the safety and tranquility of residents while leaving open ample alternative channels of communication. The ordinance is content neutral and merely restricts the time, place and manner of picketing. Adopting this

Reviewed by: Town Manager and Assistant Town Manager

PAGE 2 OF 2

SUBJECT: Introduction and First Reading of an Ordinance Amending the Los Gatos Town Code Section 18.50.100 to Prohibit Targeted Residential Picketing

DATE: October 18, 2021

ordinance will protect residents from being individually targeted while not prohibiting other lawful demonstrations. Ordinances similar to this have been adopted by many cities in the State of California and around the country and have withstood legal challenge.

CONCLUSION:

It is recommended that the Town Council move for the introduction and first reading of an Ordinance (Attachment 1), by title only, amending the Los Gatos Town Code Section 18.50.100 to Prohibit Targeted Residential Picketing

COORDINATION:

This report was coordinated with the Town Manager's Office.

FISCAL IMPACT:

There will be no fiscal impact to the Town at this time.

ENVIRONMENTAL ASSESSMENT:

This is not a project defined under CEQA, and no further action is required.

Attachment:

1. Draft Ordinance

**DRAFT
ORDINANCE NO. ____**

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF LOS GATOS
AMENDING SECTION 18.50.100 OF THE TOWN CODE
TO PROHIBIT TARGETED RESIDENTIAL PICKETING**

WHEREAS, pursuant to the Town’s police power, as granted broadly under Article XI, Section 7 of the California Constitution, the Town Council has the authority to enact and enforce ordinances and regulations for the public peace, morals and welfare of the Town and its residents; and

WHEREAS, picketing activity that is targeted at a particular residence or household whose occupants do not welcome such activity may harass and intimidate such occupants, is inherently and unreasonably offensive to and intrusive upon the right to privacy in the home and may cause the occupants of such home to experience great emotional distress; and

WHEREAS, such unwelcome and targeted picketing activity creates a ‘captive audience’ situation because the occupants of a residence or household cannot readily move to another residence or household in order to avoid the unwelcome picketing activity being directed at them; and

WHEREAS, the purpose of this ordinance is to reasonably regulate the time, place and manner of picketing activity targeted at a particular residential dwelling. The regulations are content neutral and are intended to protect against the devastating effect of targeted picketing on the quiet enjoyment of the home; and

WHEREAS, this ordinance is not intended to and do not restrict the rights of free speech or alternative channels of communication. The ordinance leaves ample room for dissemination of ideas in a general way through marches, demonstrations, and placards employed in residential neighborhoods and other places, provided individuals are not targeted within 300 feet of their home; and

WHEREAS, in developing this ordinance, the Town Council has been mindful of legal principles relating to the regulations of targeted residential picketing. The Town Council has considered decisions of the United States Supreme Court, including but not limited to: *Frisby vs Schultz* (1988) 487 U.S. 474, and *Village of Belle Terre vs Boraas* (1974) 416 U.S. 1, 9; several California cases, including but not limited to: *City of San Jose vs Superior Court* (1995) 32 Cal.App.4th 330; *Sundance Saloon, Inc. vs City of San Diego* (1989) 213 Cal.App.3d 807; and, *Concerned Citizens of Murphys vs Jackson* (1977) 72 Cal.App.3d 1021; and

ATTACHMENT 1

Council Meeting Date

WHEREAS, the California Appellate Court decision in the City of San Jose vs Superior Court, referenced above, supports the language of this chapter on its face and in its application as a content neutral time, place and manner restriction. Consistent with the City of San Jose decision, the Town Council has reasonably chosen this 300 foot buffer zone to provide a minimum degree of protection to the residents of targeted homes.

NOW, THEREFORE, BE IT ORDAINED by the Town Council of the Town of Los Gatos as follows:

SECTION 1. Section 18.50.100 of the Los Gatos Town Code is amended to read as follows:

Sec. 18.50.100. - Targeted residential picketing prohibited.

- A. No person shall engage in picketing activity that is targeted at and is within three hundred feet of a residential dwelling.
- B. For purposes of this chapter, the term "residential dwelling" means any permanent building being used by its occupants solely for non-transient residential uses.
- C. For purposes of this chapter, the term "targeted" picketing means picketing activity that is targeted at a particular residential dwelling and proceeds on a definite course or route in front of or around that particular residential dwelling.
- D. This chapter does not and shall not be interpreted to preclude picketing in a residential area that is not targeted at a particular residential dwelling.

Sec. 18.50.110. - Picketing before or about a residential dwelling prohibited.

- A. It is unlawful for any person to engage in picketing before or about a residential dwelling of any individual in the Town of Los Gatos.
- B. Enforcement of this section shall be limited to those situations where the picketing proceeds on a definite course or route in front of a residential dwelling and is directed at that residential dwelling.
- C. This section does not and shall not be interpreted to preclude general marching through residential neighborhoods.

Sec. 18.50.120. - Private right of action.

- A. Any person who is aggrieved by an act prohibited by this Chapter may bring an action for damages, injunctive and/or declaratory relief, as appropriate, in a court of competent jurisdiction against any person who has violated, has conspired to violate, or proposes to violate the provisions of this chapter.
- B. Any aggrieved person who prevails in such an action shall be entitled to recover from the violator those damages, costs, attorneys' fees and such other relief as determined by the court. In addition to all other damages or relief, the court may award to the aggrieved person a civil penalty of up to one thousand dollars for each violation of this chapter.

- C. The remedies provided by this chapter are in addition to any other legal or equitable remedies the aggrieved person may have and are not intended to be exclusive.

Sec. 18.50.130 - Penalty.

In addition to any civil remedy created herein, the violation of any provision of Sections 18.50.100 or 18.50.110 shall constitute a misdemeanor and shall be punishable by a fine not to exceed one thousand dollars or by imprisonment for a period not to exceed six months, or by both such fine and imprisonment. Each and every day such a violation exists shall constitute a separate and distinct violation of those sections. In addition to the foregoing, any violation of Sections 18.50.100 or 18.50.110 shall constitute a public nuisance and shall be subject to abatement as provided by all applicable provisions of law.

SECTION 2. The approval of this ordinance is exempt from the California Environmental Quality Act (Public Resources Code §§ 21000 et seq., "CEQA," and 14 Cal. Code Reg. §§ 15000 et seq., "CEQA Guidelines"). This ordinance imposes a general tax that can be used for any legitimate governmental purpose; it is not a commitment to any particular action. As such, under CEQA Guidelines section 15378(b)(4), the ordinance is not a "project" within the meaning of CEQA because it creates a government funding mechanism that does not involve any commitment to any specific project that may result in a potentially significant physical impact on the environment. If revenue from the tax were used for a purpose that would have either such effect, the Town would undertake the required CEQA review for that project. Therefore, pursuant to CEQA Guidelines section 15060, CEQA analysis is not required.

SECTION 3. If any section, subsection, sentence, clause, phrase, or portion of this ordinance is for any reason held to be unconstitutional or otherwise invalid by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The Town Council of the Town of Los Gatos hereby declares that it would have adopted the remainder of this ordinance, including each section, subsection, sentence, clause, phrase, or portion irrespective of the invalidity of any other article, section, subsection, sentence, clause, phrase, or portion.

SECTION 4. This Ordinance was introduced at a regular meeting of the Town Council of the Town of Los Gatos on the 2nd day of November 2021 and adopted by the following vote as an ordinance of the Town of Los Gatos at a regular meeting of the Town Council of the Town of Los Gatos on the 16th day of November 2021. This ordinance takes effect 30 days after it is adopted. In lieu of publication of the full text of the ordinance within fifteen (15) days after its passage a summary of the ordinance may be published at least five (5) days prior to and fifteen (15) days after adoption by the Town Council and a certified copy shall be posted in the office of the Town Clerk, pursuant to GC 36933(c)(1).

PASSED AND ADOPTED at a regular meeting of the Town Council of the Town of Los Gatos, California, held on the _____ day of _____ 2021, by the following vote:

COUNCIL MEMBERS:

AYES:

NAYS:

ABSENT:

ABSTAIN:

SIGNED:

MAYOR OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

DATE: _____

ATTEST:

TOWN CLERK OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

DATE: _____

ATTACHMENT 1



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 11/02/2021

ITEM NO: 10

DATE: October 28, 2021
TO: Mayor and Town Council
FROM: Laurel Prevetti, Town Manager
SUBJECT: Provide Direction to Strengthen the Town's Social Host Ordinance and Update the Youth Party Guidelines

RECOMMENDATION:

Provide direction to strengthen the Town's Social Host Ordinance and update the Youth Party Guidelines.

BACKGROUND:

The Town Council adopted modifications to its Municipal Code provisions regarding alcohol use by minors ("social host") in 1989, and in 1997 the Council established a youth curfew (Attachment 1). Under the leadership of former Police Chief Scott Seaman, the Police Department worked with the Youth Commission to establish Youth Party Guidelines in 2005 (Attachment 2).

Unfortunately, the use of alcohol by Los Gatos youth has become more prevalent and can lead to other serious health and safety concerns [see Attachment 3, letter from Los Gatos Saratoga Union High School District (LGSUHSD) Superintendent Dr. Grove]. In response, the Mayor has placed this topic on the agenda to obtain direction from the Town Council to strengthen the Town Code and update the Youth Party Guidelines.

DISCUSSION:

The issue of underage drinking is not unique to Los Gatos. An initial search of ordinances from other municipalities found examples from Larkspur, Santa Barbara, Manhattan Beach, Ross, and Sebastopol (see Attachments 4 through 8). The approaches of the other communities may provide ideas for how Los Gatos can strengthen its own Ordinance. Alternatively, the Council may have other direction based on public testimony received at the Council meeting. The LGSUHSD will be making a presentation to the Council of its findings and concerns.

Reviewed by: Town Manager and Town Attorney

PAGE 2 OF 2

SUBJECT: Social Host Ordinance

DATE: October 28, 2021

CONCLUSION:

Staff is looking forward to the Council's discussion and direction to modernize the Town Code on this topic, create a deterrent for underage alcohol consumption, and identify more meaningful enforcement for youth and adults who may violate the new provisions. Staff also recommends that the Youth Party Guidelines be referred to the Youth Commission for an update.

COORDINATION:

The preparation of this report was coordinated with the Town Attorney.

FISCAL IMPACT:

As with any Ordinance change, the Town does incur costs with MuniCode to incorporate the modifications to the online and hardcopy versions of the Code. These expected expenditures are budgeted annually.

ENVIRONMENTAL ASSESSMENT:

This is not a project defined under CEQA, and no further action is required.

Attachments:

1. Existing Social Host Ordinance
2. Existing Youth Party Guidelines
3. Letter from Dr. Grove, LGSUHSD Superintendent
4. Larkspur
5. Santa Barbara
6. Manhattan Beach
7. Town of Ross
8. Sebastopol

ARTICLE III. MINORS

DIVISION 1. GENERALLY

Sec. 18.30.010. Supervision by parent or guardian of alcoholic beverage possession or consumption by persons under twenty-one.

- (a) No person under the age of twenty-one (21) years shall possess or consume any alcoholic beverage at any place not open to the public, unless that person is being supervised by the person's parent or legal guardian.
- (b) No person shall suffer, permit, allow or host a social gathering at the person's place of residence where one (1) or more persons under the age of twenty-one (21) are present and alcoholic beverages are in the possession of or being consumed by any person under the age of twenty-one (21) years and there is no supervision by the parent or legal guardian of each of the participants under the age of twenty-one (21).
- (c) Any person violating this section is guilty of a misdemeanor.

(Code 1968, § 17-44; Ord. No. 1791, § 1, 5-1-89)

Secs. 18.30.015—18.30.045. Reserved.

DIVISION 2. CURFEW

Sec. 18.30.050. Definitions.

For the purpose of this article, the following definitions shall apply:

Curfew hours means the period from 10:00 p.m. any night until 6:00 a.m. the following morning for minors under the age of eighteen (18) years.

Emergency means an unforeseen circumstance or circumstances or the resulting situation that calls for immediate action to prevent serious bodily injury or loss of life. The term includes, but is not limited to, a fire or explosion, a natural disaster, an automobile accident, or any situation requiring immediate action to prevent bodily injury or loss of life.

Establishment means any privately-owned place of business to which the public is invited including, but not limited to, any place of amusement, entertainment, or recreation.

Guardian means (a) a person who, under court order, is the guardian of the minor; or (b) a public or private agency with whom a minor has been placed by a court.

Minor means any person under eighteen (18) years of age.

Operator means any individual, firm, association, partnership or corporation operating, managing or conducting any establishment.

Parent means a person who is a natural parent, adoptive parent or step-parent of a minor.

Public place means any outdoor area to which the public or a substantial group of the public has access and includes, but is not limited to streets, highways, sidewalks, alleys, parks, playgrounds, other public grounds, common areas of schools, hospitals, apartment houses, office buildings, transport facilities and shops.

Remain means to (a) linger, stay or be present; or (b) fail to leave the premises when requested to do so by a peace officer, the owner, operator or other person in control of the premises.

Responsible adult means a person at least eighteen (18) years of age and authorized by a parent or guardian to have the care and custody of a minor.

Serious bodily injury means bodily injury that creates a substantial risk of death or that causes death, serious permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

Tarry means remaining, wandering, strolling or playing without apparent purpose and while not under the supervision of a parent, guardian or adult designated by a parent or guardian.

(Ord. No. 2038, § II, 12-1-97)

Sec. 18.30.055. Offenses.

It is unlawful for:

- (1) Any minor to tarry in any public place or on the premises of any establishment within the Town during curfew hours, or,
- (2) Any parent or guardian of a minor to knowingly permit, or by insufficient control allow, the minor to tarry in any public place or on the premises of any establishment with the Town during curfew hours, or,
- (3) Any owner, operator or employee of any establishment to knowingly permit a minor to tarry in or upon the premises of an establishment during curfew hours.

(Ord. No. 2038, § IV, 12-1-97)

Sec. 18.30.060. Defenses.

It is a defense to prosecution of the above offenses that the minor was:

- (1) Accompanied by the minor's parent or guardian or by a responsible adult;
- (2) On an errand at the direction of the minor's parent or guardian or responsible adult, without detour or stop;
- (3) In a motor vehicle involved in interstate travel;
- (4) Engaged in a lawful employment activity, or going to or returning home from a lawful employment activity, without detour or stop;
- (5) Acting in response to an emergency;
- (6) On the sidewalk abutting the minor's residence or abutting any residence when in the company of the resident, providing the minor is not otherwise violating the law;
- (7) Returning directly home, without detour or stop, from a school, religious, cultural, sport, amusement, entertainment, movie or recreation activity; or any organized rally, demonstration, meeting or similar activity;

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- (8) Waiting at a bus stop or bus station for transportation, providing the next bus is scheduled to arrive in no more than one (1) hour;
 - (9) On the plaza level of the Town Civic Center, providing the minor is not otherwise violating the law;
 - (10) Emancipated in accordance with the California Family Code or other applicable state law.

It is a defense to prosecution under offense (3) above, that the owner, operator or employee of an establishment promptly notified the police department that a minor was present on the premises of the establishment during curfew hours and refused to leave.

(Ord. No. 2038, § VI, 12-1-97)

Sec. 18.30.065. Enforcement.

Before taking any enforcement action under this article, a peace officer shall ask the apparent offender's age and reason for being in a public place or on the premises of an establishment during curfew hours. The officer shall not issue a citation or detain a minor under this article unless the officer has probable cause to believe an offense has occurred and based upon the minor's responses(s) and other circumstances, no defense under this article appears present or applicable.

(Ord. No. 2038, § VIII, 12-1-97)

Sec. 18.30.070. Penalties.

Any person who violates a provision of this article is guilty of a separate offense for each day or part of a day during which the violation is committed, continued or permitted. Any person who violates the offenses described in this article shall be guilty of a misdemeanor. Minors shall be dealt with in accordance with juvenile court law and procedure.

(Ord. No. 2038, § IX, 12-1-97)

Sec. 18.30.075. Severability.

If any section, subsection, sentence, clause, phrase or portion of this article is for any reason deemed or held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portion of this article. The town council hereby declares that it would have adopted this ordinance and each section, subsection, sentence, clause, phrase or portion thereof, irrespective of the fact any one or more sections, subsections, sentences, clauses, phrases or other portions might subsequently be declared invalid or unconstitutional.

(Ord. No. 2038, § XI, 12-1-97)

Sec. 18.30.080. Minors under eighteen; exception.

It shall be unlawful for any minor under the age of eighteen (18) years to loiter, idle, wander, stroll or play in or upon the public streets, highways, roads, alleys, parks, playgrounds or other public grounds, public places and public buildings, places of amusement and entertainment, vacant lots or other unsupervised places in the Town between the hours of 10:00 p.m. and daylight of the following day; provided, that the provisions of this section do not apply when the minor is accompanied by the minor's parent, guardian or other adult person having the care and custody of the minor, or where the minor is upon an emergency errand or legitimate business directed by the

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minor's parent, guardian or other adult person having the care and custody of the minor or where the minor is returning directly home from a meeting, dance, entertainment or recreational activity.

(Code 1968, § 17-3; Ord. No. 1773, § 1, 12-5-88; Ord. No. 2038, § III, 12-1-97)

Sec. 18.30.085. Responsibility of parents, guardians, etc.

It shall be unlawful for the parent, guardian or other adult person having the care and custody of a minor under the age of eighteen (18) years to permit such minor to loiter, idle, wander, stroll or play in or upon the public streets, highways, roads, alleys, parks, playgrounds or other public grounds, public places and public buildings, places of amusement and entertainment, vacant lots or other unsupervised places in the Town in violation of this division; provided, that the provisions of this section do not apply when the minor is accompanied by the minor's parent, guardian or other adult person having the care and custody of the minor, or where the minor is upon an emergency errand or legitimate business directed by the minor's parent, guardian or other adult person having the care and custody of the minor or where the minor is returning directly home from a meeting, dance, entertainment or recreational activity.

(Code 1968, § 17-4; Ord. No. 1773, § 1, 12-5-88; Ord. No. 2038, § V, 12-1-97)

Sec. 18.30.090. Processing after detention.

Whenever any Police or other officer charged with the duty of enforcing the laws of the State or ordinances of the Town discovers or has attention called to the fact that any minor under the age of eighteen (18) years is upon the public streets, highways, roads, alleys, parks, playgrounds or other public grounds, public places and public buildings, places of amusement and entertainment, vacant lots or other unsupervised places in the Town in violation of this division, and that such minor is not accompanied by the minor's parent, guardian or other adult person having the care and custody of the minor, or where the minor is not upon an emergency errand or legitimate business directed by the minor's parent, guardian or other adult person having the care and custody of the minor or where the minor is not returning directly home from a meeting, dance, entertainment or recreational activity, such officer shall have the authority to make an immediate investigation for the purpose of ascertaining whether or not the presence of such minor upon or in any of the places designated is not prohibited by the provisions of section 18.30.055.

(Code 1968, § 17-5; Ord. No. 1773, § 1, 12-5-88; Ord. No. 2038, § VII, 12-1-97)



Los Gatos

Monte Sereno

POLICE DEPARTMENT

The Los Gatos/Monte Sereno Police Department has recently instituted an innovative approach to address issues of youth and alcohol use, particularly as it relates to teen parties. The new 'Youth Party Guidelines' serve both to inform the community what can be expected of police officers when they respond to parties involving youth, but also what is expected of youth and adults in the community to be accountable and responsible for their actions. A key element of the program is the establishment of a "Party Notification Process" which allows parents to notify the department if they are going to be out of town and are concerned that youth may have a party at their home. Additionally, any person/teen holding a party can notify the department. Calls to the department involving low level disturbances will cause the department to contact the party giver by phone, instead of responding an officer to the home for the first instance.

The document will be used by the department to engage in discussions and education with teens and adults to improve our community's ability to address this issue. The Police Department invites you to review these guidelines, share them with your children and family and to call the department with questions or for assistance.

This program is innovative in that it addresses teen parties and alcohol use as an on-going issue requiring the coordination and cooperation of all segments of the community including schools, law enforcement, teens, parents, community groups and business. The department has established working relationships to focus on improving everyone's ability to maintain a safe and healthy community for our youth.



Los Gatos

POLICE DEPARTMENT

Monte Sereno

TO: All Personnel

**FROM: Scott R. Seaman
Chief of Police**

SUBJECT: Youth Party Guidelines

DATE: March 21, 2005

I. STATEMENT OF PHILOSOPHY:

It is the policy of the Los Gatos/Monte Sereno Police Department to handle youth parties with an appropriate response consistent with community safety through measured, focused action and following the principle of shared community responsibility and accountability. The Police Department believes in a partnership based approach to cultivate change in the way the community addresses issues of youth and alcohol. The police response to a party should be handled in a low profile manner unless the situation is clearly out of hand, beyond the control of the person responsible, or endangering public safety or property. Those responsible for the party should be given the initial opportunity to alleviate and correct the reporting party's complaints without police interference, as long as the primary complaint is disturbing the peace.

To accomplish this mission, the Los Gatos/Monte Sereno Police Department has a disciplined, well-trained and educated police force, respectful of every citizen's right to be dealt with fairly, respectfully, and always from a perspective of protecting the safety of persons and property within the Town.

It is the policy of the Los Gatos/Monte Sereno Police Department to work closely with the community in explaining and enforcing the laws concerning the illegal use/possession of alcohol. Further, the Department will partner with youth, parents, schools, community organizations and other law enforcement agencies in issues of youth and alcohol.

II. LAWS CONCERNING YOUTH AND ALCOHOL:

The primary laws affecting youth, alcohol, and youth parties include:

Youth and Alcohol

25662 B&P Person under 21 years of age in possession of alcohol.

25661 B&P Person in possession another's identification, or a false identification to obtain alcohol.

18.10.015 TC Drink or possess an open container of alcohol in a public place.

Vehicles, Youth, and Alcohol

23136 VC Driver under 21 with a blood alcohol concentration (B.A.C.) of .01 or greater, license suspension of 1-3 years.

23140 VC DUI by a person under the age of 21, with a B.A.C. of .05 or greater, or under the influence of drugs.

23152 VC DUI by a person 21 or older, with a B.A.C. of .08 or greater, or under the influence of drugs.

23153 VC Felony DUI, which causes the injury or death of another.

23190 VC Felony DUI, third or subsequent DUI conviction.

23222 VC Driver possess an open alcohol container or marijuana in a vehicle.

23223 VC Passenger possess an open alcohol container.

23224(a) VC Driver under 21 possesses alcohol in a vehicle.

23224(b) VC Passenger under 21 possess alcohol in a vehicle

21200.5 VC DUI on a Bicycle. Operate a bicycle under the influence of alcohol or drugs.

Parties

415(2) PC Disturbing the peace of another.

18.50.115 TC Civil liability for the cost of providing second response police services at a party where the responsible person has been warned to control the threat to public peace.

Adults, Youth, and Alcohol

Another group of state and local laws govern the use of alcohol by minors involving parents or adults. The following statutes relate to adult accountability in underage drinking situations.

272 PC Contributing to the Delinquency of a Minor. Commit any act causing a minor under 18 to be in violation of law.

25658 B&P Furnish alcohol to a person under 21.

25658.2 B&P

Parent permitting a person under age 18 to drive DUI, which results in an accident.

18.30.010 (b)TC

Host or allow a party where persons under the age of 21 are present and alcohol is being served.

Parents should always be cautious about leaving their homes in the care and custody of teenagers for extended periods of time. Although children can be responsible, other youth can be attracted to the premises of an unsupervised house resulting in a party where alcohol may be present.

If the police department is called, or if it responds to a home left supervised by a minor child, and if there is a gathering in which alcohol is present, the preferred response of the police department will be: obtaining order, ensuring the safety of those attending and accountability of responsible persons to include the enforcement of laws.

An adult may not legally serve alcohol to a minor unless the adult is the parent or guardian of that minor. Therefore, if a planned event will involve providing liquor to an underage youth, the host of the event should be aware that this activity constitutes a criminal offense. This offense may be prosecuted upon complaint of the minor, his/her parent, the police, or the district attorney. Furthermore, the risks associated with hosting such an event could lead to civil sanctions.

While any of the offenses listed above could result in a criminal prosecution, the following circumstances would dictate that the preferred police response would be arrest and prosecution.

- A. Youths who are flagrant or repeat offenders of alcoholic beverage laws
- B. Youths who are transporting or providing alcohol to others
- C. Hosts of underage drinking parties, including parents and/or guardians

III. PARTY RESPONSE GUIDELINES:

Recognizing that every party situation is different, the Los Gatos/Monte Sereno Police Department uses the following guidelines in responding to youth parties. These guidelines serve only as a suggested basis for response and do not represent guaranteed actions in incidents of underage drinking or youth parties which are compromising public safety or the peace or another or, in the judgment of the officer, require other specific action. The Department will approach party situations in the least authoritarian manner, as long as the situation does not jeopardize the public safety of the community, the security of property, or the safety of emergency services personnel.

GUIDELINE 1

When practical, or in circumstances where the Police Department does not have specific information that alcohol is present at a party where minors have congregated, the Police Department will contact the person responsible for the party by telephone to explain the complaint being made about the party. The responsible person should be given the opportunity to rectify the problem and alleviate the need for police response. The complainant should be told that if the problem is not resolved, they should recall the police.

After a reasonable period of time, an officer should attempt to check the area of the party to ensure that the complainant's concerns are resolved. If there is illegal activity or a dangerous situation presents itself, officers will respond as appropriate.

GUIDELINE 2

If police response is necessary, i.e., the responsible person cannot be reached by telephone or there are violations reported which endanger the safety of persons or property, the Police Department will respond to the scene and pursue the following actions:

Take action(s) necessary to ensure the safety of persons and property.

When possible, unless emergency conditions dictate, a low-profile response and approach to the scene should be conducted by officers. They should evaluate and measure the situation, using discretion, and encourage personal responsibility and accountability, including speaking to parents, whether or not they are present at the scene.

Contact and advise the responsible person about the complaint and any associated violations. Ask the responsible person for their cooperation by quelling the disturbance without further police intervention. Set a reasonable time limit to accomplish this task. Explain that police enforcement action may be necessary if there is a return call regarding the disturbance.

Provide the responsible person with a "Second Response to a Disturbance" (pink) card, and explain what it means. An exception to this might be that the party is out of control or creating a situation that endangers persons or property.

Handle parking violations or other collateral violations with discretion.

Whenever practical, in cases where juveniles are contacted at a party where alcohol or drugs are being used, or other criminal or hazardous conduct is taking place, parents of those juveniles should be contacted and informed of the situation, and, when appropriate, asked to come to the scene.

IV. PARTY NOTIFICATION LINE:

Public peace and safety can often be best achieved through community and police partnerships. In the case of social gatherings, which result in a complaint to police about noise, parking, or other relatively benign issues, a simple call from police to the person responsible for the party may resolve the problem. Clearing a call for service in this way will minimize the use of police personnel resources, freeing them to respond to more critical calls.

To accomplish this, the Party Notification Line has been established. Any community members, adults or youth, who are planning to hold a party are invited to call the Party Notification Line (408 354-8600) and provide the communications dispatcher with the responsible person's name, telephone number, the date and time of the party, and the location of the party. That information will be noted in the party notification log in Communications. If a complaint, as described above, is received, the dispatcher will then call the person responsible for the party and inform them of the nature of the

complaint.

The responsible person will be given a reasonable time period to resolve the problem, typically five to ten minutes to quiet loud music or guests, or ten to fifteen minutes to address guest vehicle parking problems. The problem and the agreed upon time for resolution will be noted in the CAD incident detail. If the agreed upon time has elapsed and additional complaints are received, officers will be dispatched to the scene to assist in solving the problem. (Reference guideline 2)

If a party complaint is received which reports violations of the law, or conditions, which endanger public safety or property, officers will be dispatched whether or not the party is listed in the party notification log.

V. "NO BUST PARTY" FLYER:

The Police Department will produce and distribute a "No Bust Party" flyer that contains information on how to hold a party in Los Gatos or Monte Sereno and reduce the likelihood of generating complaints and police responses. The flyer will include information on the Party Notification Line. The flyer will be publicized in the media and distributed throughout the community, via schools, businesses, and community-based organizations.

VI. INTER-AGENCY COORDINATION:

The problem of juvenile parties, which provide the youth of our community with the opportunity to engage in alcohol/drug use, or other unsafe conduct, is a regional condition, which transcends the borders of Los Gatos and Monte Sereno. The youth of other communities attend parties here, and the youth of Los Gatos and Monte Sereno attend parties in other jurisdictions. To effectively deal with individuals or establishments which sell or provide alcohol to minors, individuals who chronically throw parties which result in criminal violations or complaints, locations at which parties are routinely held, or other situations compromising the safety of the youth of our community, inter-agency communication and coordination is critical.

To accomplish that coordination, a representative of the Police Department should on a regular basis be in contact with representatives of the following stakeholder agencies and organizations. Coordination will be accomplished by creating an e-mail group of identified personnel from stakeholder agencies. This way, the Police Department can take a systematic approach to disruptive parties and take an active role in enhancing the community's ability to hold individuals accountable for their actions.

Los Gatos High School
Other schools as appropriate
San Jose Police Department
Campbell Police Department
Santa Clara County Sheriff's Department
Santa Clara County District Attorney's Office
Santa Cruz County Sheriff's Department
Santa Clara County Juvenile Probation Department
California Department of Alcoholic Beverage Control

CASA (Community Against Substance Abuse)-(As appropriate given confidentiality issues)

Alive...and Loving Life-(As appropriate given confidentiality issues)

Only that information which may be legally shared will be so communicated with a particular agency/organization. When possible, information received regarding a youth party will be dealt with prior to the event, including the contacting of parents or party hosts, documenting the information, and coordinating with other law enforcement agencies or stakeholder organizations, as appropriate.

In those cases where violence occurs or is threatened at a party, or any other significant incident occurs, and it can reasonably be expected to impact a school environment, the police department will be responsible for notifying school administrators at the earliest opportunity, even during non-school hours, if appropriate.

VII. PROMULGATION OF POLICY

These guidelines will be shared with the community and used to promote education and discussion of the roles and expectations of both the police department and the community in addressing the dynamics of youth and alcohol issues.

VIII. ATTACHMENTS:

1. "No Bust Party" flyer
2. Party Notification Log sheet

October 18, 2021

The Honorable Marico Sayoc
Mayor
Town of Los Gatos
110 E. Main Street
Los Gatos, CA 95030

Dear Mayor Sayoc:

As the Los Gatos-Saratoga Union High School District settles into a new academic year, I write to you seeking partnership with the Town of Los Gatos in addressing a community issue. Specifically, the District would like your assistance in combating the issue of under-age alcohol consumption at private house parties held in the Los Gatos community.

As an educator, I am extremely concerned about this issue since teen alcohol consumption at these parties has become the epicenter for a litany of serious health and safety issues that can have serious lifelong consequences for our young people and our community. Research indicates clear links between teen alcohol use and drunk driving, sexual assault, vandalism, and other criminal acts related to impaired judgement, not to mention alcohol overdose and further drug use. The aftermath of these incidents often impact other students and play themselves out on our campuses. As a result of the prevalence and seriousness of these issues, our District has made major investments in order to provide our students with prevention education and support services.

To put this issue into context, in the most recent statewide *California Healthy Kids Survey* (Winter 2020), 11th graders were asked if they had engaged in binge drinking (5 more drinks in a row) during the last 30 days. The data indicating how many 11th grade students engaged in binge drinking breaks down as follows:

- California State Average - 12%
- Los Gatos High School - 16%
- Saratoga High School - 7%
- Mountain View Los Altos UHSD - 10%
- Palo Alto USD - 11%

As the data illustrates, the Los Gatos community clearly has a higher rate of teen binge drinking than the state average and higher than similar communities within our region. As one step to combat this, the District has invested in a curricular effort to address a series of topics intended to provide our students with the necessary information, tools, and confidence to be able to make good decisions and to push back on peer pressure. In doing so, we are also seeking to eradicate the negative issues that arise as a result of underage drinking.

By working together, through a combination of education and enforcement, I am confident we will be able to combat an issue that is causing a tremendous amount of harm to our Los Gatos High School student population and our community at large. We are thankful that the Town of Los Gatos has an existing social host ordinance in place to help address teen alcohol use. We are requesting that the Town partner with us to send a powerful message to our community regarding the seriousness of teen alcohol use and to create a stronger deterrent to hosting events with underage drinking by updating the Town's existing social host ordinance to make it the strongest in the state.

Social host laws serve two purposes*:

- 1) To create a disincentive for social hosts to furnish alcohol to individuals under age 21 due to the risk of possible criminal charge, litigation, and possible substantial monetary losses; and
- 2) To allow those injured due to illegal furnishing of alcohol to individuals under age 21 to gain compensation from the person(s) responsible for their injuries.

I thank you in advance for your time, and I look forward to further conversation around this topic.

Respectfully,

A handwritten signature in blue ink, appearing to read 'Michael Grove', with a long horizontal line extending to the right.

Michael Grove, Ed.D.
Superintendent

cc: Los Gatos Town Council

**Cited from [Substance Abuse and Mental Health Services Administration](#) "Preventing and Reducing Underage Drinking."*



**CITY OF LARKSPUR
Staff Report**

December 5, 2018 City Council Meeting

DATE: November 13, 2018

TO: Honorable Mayor Hillmer and the Larkspur City Council

FROM: Dan Schwarz, City Manager

SUBJECT: CONSIDERATION OF ORDINANCE 1031 AMENDING CHAPTER 19.01 OF THE LARKSPUR MUNICIPAL CODE ENTITLED "SOCIAL HOST ACCOUNTABILITY ORDINANCE" TO ADD CONTROLLED SUBSTANCES AND MARIJUANA, INCLUDE PARTY BUSES AND LIMOUSINES, AND ADD PROVISIONS FOR REQUIRING PARTICIPATION BY OFFENDERS IN A RESTORATIVE JUSTICE PROGRAM

ACTION REQUESTED

Waive first reading and introduce Ordinance 1031.

SUMMARY AND BACKGROUND

In 2008, the City Council adopted a Social Host Accountability Ordinance. The Ordinance prohibited any person from permitting, allowing or hosting a party or other gathering at premises under his or her control where two or more minors are present and alcoholic beverages are in the possession of or being consumed by one or more minors. The Ordinance vested discretion in the arresting officer to treat any violation as a criminal offense or as an administrative penalty.

On January 1, 2013, the Central Marin Police Authority (CMPA) was created, made up of the City/Towns of Corte Madera, Larkspur and San Anselmo. The Town of Corte Madera and the Town of San Anselmo also had Social Host Accountability Ordinances which were codified in their municipal codes. On June 13, 2017, the Marin County Board of Supervisors approved an amendment to the County Social Host Ordinance extending its application to unruly gatherings where marijuana is present as well as encompassing any unruly gatherings on "party buses and limousines".

DISCUSSION

On May 3, 2018, after three prior discussions regarding potential amendments to the current Social Host Accountability Ordinance, the Central Marin Police Council directed staff to address the following items in the proposed ordinance amendment:

1. Add the ingestion of controlled substances and marijuana to the ordinance;
2. Expand the definition of "premises" to include public premises, party bus, or limousine;
3. Expand "the person in charge of the event" to include the owner, renter, or lessor;
4. Add a restorative justice element to the ordinance that would not place a burden on the Police Authority or the individual cities/towns to implement and facilitate.

The Town/City Managers have been asked to bring the amended ordinance request back to the respective councils for adoption. The intent is to mirror our ordinances to the best of our ability to assist Central Marin Police Authority with their enforcement efforts.

FISCAL IMPACT

There is no fiscal impact associated with the requested action.

STAFF RECOMMENDATION

Staff recommends that Council waive first reading and introduce Ordinance 1031.

Respectfully submitted,

Jamie Kuryllo, City Clerk

Attachments

1. Amended Ordinance (Clean Version)
2. Amended Ordinance (Red Line Version)

Chapter 19.01
Social Host Accountability Ordinance

Sections:

- 19.01.010 Purpose and Findings.
- 19.01.020 Definitions.
- 19.01.030 Unlawful Minor Gatherings
- 19.01.040 Enforcement and Penalties
- 19.01.050 Administrative Penalty Authority and Notice.
- 19.01.060 Hearing Request and Procedure.
- 19.01.070 Administrative Order.
- 19.01.080 Collections and Lien Proceedings.
- 19.01.090 Judicial Review.
- 19.01.100 Supplementary Enforcement Authority.

19.01.010 Purpose and Findings.

The City Council of the City of Larkspur does hereby find and declare all of the following:

- A. The intent of this chapter is to protect the public health, safety and general welfare, rather than to punish;
- B. The consumption of alcohol, the ingestion of controlled substances and the use or possession of marijuana by persons under the age of twenty-one years is unlawful and presents a threat to the well-being of the minor and other persons having contact with the minor who has consumed alcohol or used controlled substances or marijuana;
- C. Any party or gathering where the person owning or controlling the premises or event suffers or permits any minor to consume alcohol or ingest controlled substances and/or marijuana is being conducted in a manner that is not properly supervised or controlled and presents a threat to the public safety, health, and welfare;
- D. Unsupervised parties on private or public property where alcohol, marijuana or controlled substances are consumed by minors constitute a potential hazard for the partygoers and those who might come into contact with them during the party or after the minor leaves the party and enters the public domain;
- E. Control by the police of unsupervised parties, gatherings, or events as described above is necessary when such activity is determined to be a threat to the peace, health, safety, or general welfare of the public;
- F. The occurrence of parties or gatherings as described above contributes to an increase in alcohol and drug abuse and driving under the influence by minors, excessive noise, traffic, and vandalism within the neighborhood or area of the party or gathering, and threatens public safety

Chapter 19.01 SOCIAL HOST ACCOUNTABILITY ORDINANCE

by permitting violations of law to go unpunished and unabated and increasing the risks of alcohol or drug related incidents causing personal injury and/or death; and

G. State law prohibiting conduct which contributes to the delinquency of minors does not address liability for allowing consumption of alcohol by persons who are eighteen years of age or older, but under the legal drinking age, on premises under the control of the adult. (Ord. 1007 § 1, 2015; Ord. 1002 §§ 2, 3, 2015; Ord. 961 § 1 (part), 2008. Formerly 9.56.010)

19.01.020 Definitions.

As used in this chapter, the following terms shall be defined as follows:

A. “Alcohol” means ethyl alcohol, hydrated oxide of ethyl, or spirits of wine, from whatever source or by whatever process produced.

B. “Alcoholic beverage” includes alcohol, spirits, liquor, wine, beer, and every liquid or solid containing alcohol, spirits, liquor, wine or beer, and which contains one-half of one percent or more of alcohol by volume and which is fit for beverage purposes either alone or when diluted, mixed, or combined with other substances.

C. “Controlled Substance” means a drug or substance the possession and use of which are regulated under the California Controlled Substances Act (California Health and Safety Code Section 11000 et seq.). Such term does not include any drug or substance for which the individual found to have consumed or possessed such substances has a valid prescription issued by a licensed medical practitioner authorized to issue such a prescription, or in the case of medical cannabis, a recommendation for medical marijuana from an approved provider, or a State of California medical marijuana ID card.

D. “Marijuana” is defined as any and all parts of the plant Cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or resin and includes concentrated marijuana. The prohibition herein includes marijuana in any form including but not limited to cigarettes, vapor, food products containing marijuana or concentrated marijuana, hash oil and any other product of marijuana that can be smoked or ingested.

E. “Person responsible for the event” means and includes, but is not limited to:

- (1) The person who owns, rents, leases or otherwise has control of the private or public premises, party bus, limousine or other conveyance where the gathering occurs; and/or
- (2) The person in charge of such premises; and/or
- (3) The person who organized the event. If the person responsible for the event is a juvenile, then the juvenile and the parents or guardians of that juvenile will be jointly and severally liable under this chapter.

F. “Hearing Officer” means an individual selected by the City Manager from an existing list of duly qualified hearing officers maintained for the purpose of hearing appeals under LMC 19.01.060. The employment, performance, evaluation, compensation and benefits of the Hearing Officer, if any, shall not be directly or indirectly conditioned upon the amount of administrative

citation fines upheld by the Hearing Officer.

G. “Minor” means any person less than twenty-one years of age.

H. “Juvenile” means any person less than eighteen years of age.

I. “City” means the City of Larkspur and its officers, employees, and all other persons acting on its behalf.

J. “Party, gathering, or event” means a group of persons who have assembled, or are assembling, for a social occasion or for a social activity that is loud or unruly and which is occurring at a place where alcohol is being consumed or controlled substances/marijuana is being ingested by one or more persons.

K. “Loud or unruly gathering” means a party or gathering of two or more persons at a residence or on other private or public property or a party bus, limousine or other conveyance or rented property upon which loud or unruly conduct occurs. Such loud or unruly conduct constitutes a public nuisance and includes but is not limited to:

1. Excessive noise;
2. Excessive traffic;
3. Obstruction of public streets and/or the presence of unruly crowds that have spilled into public streets;
4. Public drunkenness or unlawful public consumption of alcohol or alcoholic beverages;
5. Assaults, batteries, fights, domestic violence or other disturbances of the peace;
6. Vandalism;
7. Litter; or
8. Any other conduct which constitutes a threat to the public health, safety, or quiet enjoyment of residential property or the general welfare. (Ord. 1007 § 1, 2015; Ord. 1002 §§ 2, 3, 2015; Ord. 961 § 1 (part), 2008. Formerly 9.56.020)

19.01.030 Unlawful Minor Gatherings

Except as permitted by Article 1, Section 4, of the California Constitution, no person responsible for an event shall suffer, permit, allow, or host a loud or unruly party, gathering, or event at his or her place of residence or other private property, place, or premises under his or her control or host a gathering at a public place under his or her control or arrange for a party bus, limousine or other conveyance or the renting of same where two or more minors are present and alcoholic beverages, controlled substances or marijuana are in the possession of, or being consumed by or ingested by, one or more minors. Any violation of this section shall be deemed a public nuisance.

(Ord. 1007 § 1, 2015; Ord. 1002 §§ 2, 3, 2015; Ord. 961 § 1 (part), 2008. Formerly 9.56.030)

19.01.040 Enforcement and Penalties

A. Upon a determination that a violation of LMC 19.01.030 has been committed, a public safety officer of the Central Marin Police Authority may issue a notice of violation. A notice of violation shall indicate whether the violation shall be enforced as a criminal offense or administrative penalty. If the violation is enforced as a criminal offense, the notice of violation shall be issued and forwarded for prosecution in the same manner as all other criminal offenses punishable as misdemeanors under this code. If the violation is enforced as an administrative penalty, then the administrative penalty procedures in this chapter shall be followed.

B. In determining whether the offense should be subject to criminal prosecution, the officer shall exercise his or her discretion in considering the following factors: the circumstances surrounding the incident; the number of complaints received regarding similar incidents at the same location or involving the same persons within a twelve-month period; the number of minors attending the party, gathering, or event, the number of minors consuming or in possession of alcohol and/or marijuana or controlled substances, and the conduct of the minors attending the gathering; and any other factors that would support criminal prosecution. The selection of criminal or administrative enforcement under this section shall not be subject to any form of challenge or appeal.

C. If enforced as a criminal offense, a violation of LMC 19.01.030 is punishable as a misdemeanor and subject to a fine not to exceed one thousand dollars (\$1,000) per violation.

D. If enforced as an administrative penalty, a first violation of LMC 19.01.030 shall be subject to an administrative penalty of a fine in the amount of seven hundred fifty dollars (\$750.00). A second violation within a twelve-month period shall be subject to an administrative penalty of a fine in the amount of eight hundred fifty dollars (\$850.00). A third or subsequent violation within a twelve-month period shall be subject to an administrative penalty of a fine in the amount of one thousand dollars (\$1,000) for each violation. The Hearing Officer may in his or her discretion require community service for a violation of LMC 19.01.030 in addition to or in lieu of an administrative fine.

E. In the event that a person in violation of LMC 19.01.030 is a juvenile, then the juvenile and the parents or guardians of that juvenile will be jointly and severally liable for any administrative fine imposed under this chapter. (Ord. 1007 § 1, 2015; Ord. 1002 §§ 2, 3, 2015; Ord. 961 § 1 (part), 2008. Formerly 9.56.040)

19.01.050 Administrative Penalty Authority and Notice.

A. The administrative penalty proceedings described by this chapter shall be applicable to violations of this chapter only. The fines and administrative penalties provided under this chapter are enacted under the authority of Government Code Sections 36901, 38773.5 and 53069.4.

B. A notice of violation enforceable by administrative penalties under this chapter shall include the following information:

Chapter 19.01 SOCIAL HOST ACCOUNTABILITY ORDINANCE

1. Date and location of the violation, including the address or definite description of the location where the violation occurred or is occurring;
2. Section of the code being violated and a description of the violation;
3. Notice that the violator may, within fifteen days of the date of the notice of violation, appeal said violation to the Hearing Officer;
4. An order prohibiting the continuation or repeated occurrence of a violation of this code described in the notice of violation; and
5. The signature of the citing enforcement officer.

C. The notice of violation required under this section shall be personally served on the violator, or shall be sent by registered or certified United States mail to the property owner at the last known address listed on the most recent tax assessor's records. In the case of service by registered mail or certified mail upon the property owner, a copy of the notice of violation shall be conspicuously posted at the property which is the subject of the notice of violation. The failure of any person to receive a notice of violation that was sent via registered or certified mail shall not affect the validity of any enforcement proceedings under this chapter.

D. The Central Marin Police Authority shall retain a declaration of the person making service, declaring the date, time and manner that service was made, and the date and place of posting if applicable. (Ord. 1007 § 1, 2015; Ord. 1002 §§ 2, 3, 2015)

19.01.060 Hearing Request and Procedure.

A. Any recipient of a notice of violation enforceable by administrative penalties under this chapter may request an appeal hearing to contest there was a violation, as specified in the notice of violation, or that he or she is responsible for said violation, by completing a "request for hearing form" and returning it to the City Clerk within fifteen days from the date of the notice of violation. At the time of returning the request for hearing form to the City Clerk, the person or entity requesting the appeal hearing shall pay an appeal processing fee of one hundred fifty dollars (\$150.00). Failure to pay the appeal processing fee, or make arrangements for the payment of the fee, may result in the hearing being postponed until the payment of such fee.

B. Any hearing conducted pursuant to this section shall be set for a date not less than fifteen days nor more than sixty days from the date that the request for hearing form is filed in accordance with this chapter, unless the matter is urgent or good cause exists for an extension of time, in which case the date for such hearing may be shortened, or extended, as warranted by the circumstances.

C. Any hearing provided under this section shall provide a full opportunity for the person or persons subject to a notice of violation to appear and contest the determination that a violation has occurred and/or that the violation continues to exist. If the appeal hearing involves a juvenile,

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such a hearing shall be private and confidential unless the juvenile's parents/guardians specifically request that the hearing be public. The failure of any interested party to appear at a requested appeals hearing shall constitute a failure by such party to exhaust his/her/their administrative remedies, and a waiver of the same.

D. At the place and time set forth in the notice of hearing, the Hearing Officer shall conduct a hearing on the notice of violation. The Hearing Officer shall consider any written or oral evidence regarding the violation that may be presented by the violator, real property owner, any officer or agent of the Authority and/or City, and any other interested party.

E. After receiving all of the evidence presented, the public testimony portion of the hearing shall be closed. The hearing officer may then consider what action, or actions, if any, should be taken, including the imposition of any fines or penalties.

F. Within thirty days following the conclusion of the hearing, the Hearing Officer shall issue written findings and make a determination regarding the existence of the violation. If the Hearing Officer finds by a preponderance of the evidence that a violation occurred, the Hearing Officer shall issue a written finding of those facts. The decision of the Hearing Officer shall be final.

G. The recipient or recipients of a notice of violation shall be served with a copy of the decision of the Hearing Officer, including an administrative order if one is issued, in the manner and method set forth by LMC 19.01.050(C). (Ord. 1007 § 1, 2015; Ord. 1002 §§ 2, 3, 2015)

19.01.070 Administrative Order.

If the Hearing Officer determines that a violation occurred as set forth by the notice of violation, the Hearing Officer shall issue an administrative order.

A. An administrative order may impose an administrative fine in the applicable amount set forth by LMC 19.01.040(D) per violation, or, in the alternative, a number of hours of community service as determined by the Hearing Officer. The denial of community service by the Hearing Officer may not be appealed under Government Code Section 53069.4.

B. Any appeal processing fee that is paid pursuant to LMC 19.01.060(A) shall be refunded to the payee if it is determined, after a hearing, that the person charged in the notice of violation was not responsible for the violation or that there was no violation as charged in said notice. (Ord. 1007 § 1, 2015; Ord. 1002 §§ 2, 3, 2015)

19.01.080 Collections and Lien Proceedings.

A. Any administrative fine or penalty in the amount set forth by the notice of violation, if an appeal is not requested in a timely manner, or as ordered by the Hearing Officer, if the matter is timely appealed, shall be paid to the City within thirty days of service of the notice of violation or administrative order, unless an extension of time is requested by the violator and granted by the City.

B. Payment of a fine or penalty imposed pursuant to this chapter shall not excuse or permit any

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continuation or repeated occurrence of the violation that is the subject of the notice of violation.

C. Any administrative penalty or fines imposed within the notice of violation, if no timely appeal is made, or ordered by the Hearing Officer, if the matter is appealed, are a debt owed to the City. In addition to all other means of enforcement, any fines or penalties specified in the notice of violation, if no timely appeal is made, or specified in the administrative order of the Hearing Officer, may be enforced as a personal obligation of the violator.

D. If the violation is connected with real property and the violator is an owner of the real property, any fines or penalties may be enforced by imposition of a lien on the real property. The Central Marin Police Authority shall prepare and file with the City Clerk a report stating the amount due and owing. The City may record notice of this lien after a hearing before the City Council to consider any protest or objection to the lien. The City shall serve notice of the hearing upon the owner of record of the real property, based on the last equalized assessment roll or the supplemental roll, whichever is more current. The notice of hearing shall include the time, date, and place of the hearing and the amount of the lien to be imposed, and shall be served in the same manner as a summons in a civil action. If the owner of record cannot be found after a diligent search, the notice may be served by posting a copy thereof in a conspicuous place upon the property for a period of ten days and publication thereof in a newspaper of general circulation published in Marin County, California. If the City Council determines that the lien should be imposed, the City may cause notice of the lien to be recorded with the County Recorder. Once recorded, the lien shall have the force and effect and priority of a judgment lien. Any fee imposed on the City by the County Recorder for costs of processing and recording the lien and the cost of providing notice to the property owner in the manner described herein may be recovered from the property owner in any foreclosure action to enforce the lien after recordation.

E. The remedies set forth in this section are not exclusive. The City may collect administrative penalties and fines by the use of the small claims court or by any other legal remedy. (Ord. 1007 § 1, 2015; Ord. 1002 §§ 2, 3, 2015)

19.01.090 Judicial Review.

Any person aggrieved by an administrative fine determination of the Hearing Officer may obtain review of that decision by filing a petition for review in the Marin County Superior Court, in accordance with Government Code Section 53069.4. (Ord. 1007 § 1, 2015; Ord. 1002 §§ 2, 3, 2015; Ord. 961 § 1 (part), 2008. Formerly 9.56.050)

19.01.100 Supplementary Enforcement Authority.

Nothing in this chapter shall prevent the City from initiating a civil or administrative action, or any other legal or equitable proceeding, to obtain compliance or to discourage noncompliance with the provisions of this code. The enforcement procedures described by this chapter are intended to be alternative methods of obtaining compliance and/or discouraging noncompliance with the provisions of this code and are expressly intended to be in addition to any other remedies provided by law. It is the intent of the City Council that the immunities prescribed in Penal Code Section 836.5 shall be applicable to personnel of the Central Marin Police Authority and of the City acting in the course and scope of employment pursuant to this chapter. (Ord.

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1007 § 1, 2015; Ord. 1002 §§ 2, 3, 2015; Ord. 961 § 1 (part), 2008. Formerly 9.56.060)

The Larkspur Municipal Code is current through Ordinance 1025, passed November 15, 2017, and other legislation passed December 6, 2017.

Disclaimer: The City Clerk's Office has the official version of the Larkspur Municipal Code. Users should contact the City Clerk's Office for ordinances passed subsequent to the ordinance cited above.

Chapter 19.01 SOCIAL HOST ACCOUNTABILITY ORDINANCE

Chapter 19.01
Social Host Accountability Ordinance

Sections:

- 19.01.010 Purpose and Findings.
- 19.01.020 Definitions.
- 19.01.030 Unlawful Minor Gatherings
- 19.01.040 Enforcement and Penalties
- 19.01.050 Administrative Penalty Authority and Notice.
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- 19.01.100 Supplementary Enforcement Authority.

19.01.010 Purpose and Findings.

The City Council of the City of Larkspur does hereby find and declare all of the following:

A. The intent of this chapter is to protect the public health, safety and general welfare, rather than to punish;

A.B. The consumption of ~~alcohol~~ alcohol, the ingestion of controlled substances and the use or possession of marijuana by persons under the age of twenty-one years is unlawful and presents a threat to the well-being of the minor ~~consuming alcohol~~ and other persons having contact with the minor ~~that who~~ has consumed alcohol or used controlled substances or marijuana;

B.C. Any party or gathering where the person owning or controlling the premises or event suffers or permits any minor to consume alcohol or ingest controlled substances and/or marijuana is being conducted in a manner that is not properly supervised or controlled and presents a threat to the public safety, health, and welfare;

C.D. Unsupervised parties on private or public property where alcohol, marijuana or controlled substances are- is consumed by minors constitute a potential hazard for the partygoers and those who might come into contact with them during the party or after the minor leaves the party and enters the public domain;

D.E. Control by the police of unsupervised parties, gatherings, or events ~~on private property at which alcohol is consumed by minors~~ as described above is necessary when such activity is determined to be a threat to the peace, health, safety, or general welfare of the public;

E.F. The occurrence of parties or gatherings ~~at which minors consume alcohol~~ as described above contributes to an increase in alcohol and drug abuse and driving under the influence by minors, excessive noise, traffic, and vandalism within the neighborhood or area of the party or

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gathering, and threatens public safety by permitting violations of law to go unpunished and unabated and increasing the risks of alcohol or drug-related incidents causing personal injury and/or death; and

F.G. State law prohibiting conduct which contributes to the delinquency of minors does not address liability for allowing consumption of alcohol by persons who are eighteen years of age or older, but under the legal drinking age, on premises under the control of the adult. (Ord. 1007 § 1, 2015; Ord. 1002 §§ 2, 3, 2015; Ord. 961 § 1 (part), 2008. Formerly 9.56.010)

19.01.020 Definitions.

As used in this chapter, the following terms shall be defined as follows:

A. "Alcohol" means ethyl alcohol, hydrated oxide of ethyl, or spirits of wine, from whatever source or by whatever process produced.

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B. "Alcoholic beverage" includes alcohol, spirits, liquor, wine, beer, and every liquid or solid containing alcohol, spirits, liquor, wine or beer, and which contains one-half of one percent or more of alcohol by volume and which is fit for beverage purposes either alone or when diluted, mixed, or combined with other substances.

C. "Controlled Substance" means a drug or substance the possession and use of which are regulated under the California Controlled Substances Act (California Health and Safety Code Section 11000 et seq.). Such term does not include any drug or substance for which the individual found to have consumed or possessed such substances has a valid prescription issued by a licensed medical practitioner authorized to issue such a prescription, or in the case of medical cannabis, a recommendation for medical marijuana from an approved provider, or a State of California medical marijuana ID card.

D. "Marijuana" is defined as any and all parts of the plant Cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or resin and includes concentrated marijuana. The prohibition herein includes marijuana in any form including but not limited to cigarettes, vapor, food products containing marijuana or concentrated marijuana, hash oil and any other product of marijuana that can be smoked or ingested.

E. "Person responsible for the event" means and includes, but is not limited to:

(1) The person who owns, rents, leases or otherwise has control of the private or public premises, party bus, limousine or other conveyance where the gathering occurs; and/or

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(2) The person in charge of such premises; and/or

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~~B.~~ (3) The person who organized the event. If the person responsible for the event is a juvenile, then the juvenile and the parents or guardians of that juvenile will be jointly and severally liable under this chapter.

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~~E.F.~~ "Hearing Officer" means an individual selected by the City Manager from an existing list of duly qualified hearing officers maintained for the purpose of hearing appeals under LMC 19.01.060. The employment, performance, evaluation, compensation and benefits of the Hearing

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Officer, if any, shall not be directly or indirectly conditioned upon the amount of administrative citation fines upheld by the Hearing Officer.

~~D.G.~~ “Minor” means any person less than twenty-one years of age.

~~E.H.~~ “Juvenile” means any person less than eighteen years of age.

~~F.I.~~ “City” means the City of Larkspur and its officers, employees, and all other persons acting on its behalf.

~~G.J.~~ “Party, gathering, or event” means a group of persons who have assembled, or are assembling, for a social occasion or for a social activity that is loud or unruly and which is occurring at a place where alcohol is being consumed or controlled substances/marijuana is being ingested by one or more persons.

~~H.K.~~ “Loud or unruly gathering” means a party or gathering of two or more persons at a residence or on other private or public property or a party bus, limousine or other conveyance or rented ~~public~~ property upon which loud or unruly conduct occurs. Such loud or unruly conduct constitutes a public nuisance and includes but is not limited to:

1. Excessive noise;
2. Excessive traffic;
3. Obstruction of public streets and/or the presence of unruly crowds that have spilled into public streets;
4. Public drunkenness or unlawful public consumption of alcohol or alcoholic beverages;
5. Assaults, batteries, fights, domestic violence or other disturbances of the peace;
6. Vandalism;
7. Litter; or
8. Any other conduct which constitutes a threat to the public health, safety, or quiet enjoyment of residential property or the general welfare. (Ord. 1007 § 1, 2015; Ord. 1002 §§ 2, 3, 2015; Ord. 961 § 1 (part), 2008. Formerly 9.56.020)

19.01.030 Unlawful Minor Gatherings ~~on Private Property.~~

Except as permitted by Article 1, Section 4, of the California Constitution, no person responsible for an event shall suffer, permit, allow, or host a loud or unruly party, gathering, or event at his or her place of residence or other private property, place, or premises under his or her control or host a gathering at a public place under his or her control or arrange for a party bus, limousine or other conveyance or the renting of same where two or more minors are present and alcoholic beverages, controlled substances or marijuana are in the possession of, or being consumed by or

ingested by, one or more minors. Any violation of this section shall be deemed a public nuisance. (Ord. 1007 § 1, 2015; Ord. 1002 §§ 2, 3, 2015; Ord. 961 § 1 (part), 2008. Formerly 9.56.030)

19.01.040 Enforcement and Penalties

A. Upon a determination that a violation of LMC 19.01.030 has been committed, a public safety officer of the Central Marin Police Authority may issue a notice of violation. A notice of violation shall indicate whether the violation shall be enforced as a criminal offense or administrative penalty. If the violation is enforced as a criminal offense, the notice of violation shall be issued and forwarded for prosecution in the same manner as all other criminal offenses punishable as misdemeanors under this code. If the violation is enforced as an administrative penalty, then the administrative penalty procedures in this chapter shall be followed.

B. In determining whether the offense should be subject to criminal prosecution, the officer shall exercise his or her discretion in considering the following factors: the circumstances surrounding the incident; the number of complaints received regarding similar incidents at the same location or involving the same persons within a twelve-month period; the number of minors attending the party, gathering, or event, the number of minors consuming or in possession of alcohol and/or marijuana or controlled substances, and the conduct of the minors attending the gathering; and any other factors that would support criminal prosecution. The selection of criminal or administrative enforcement under this section shall not be subject to any form of challenge or appeal.

C. If enforced as a criminal offense, a violation of LMC 19.01.030 is punishable as a misdemeanor and subject to a fine not to exceed one thousand dollars (\$1,000) per violation.

D. If enforced as an administrative penalty, a first violation of LMC 19.01.030 shall be subject to an administrative penalty of a fine in the amount of seven hundred fifty dollars (\$750.00). A second violation within a twelve-month period shall be subject to an administrative penalty of a fine in the amount of eight hundred fifty dollars (\$850.00). A third or subsequent violation within a twelve-month period shall be subject to an administrative penalty of a fine in the amount of one thousand dollars (\$1,000) for each violation. The Hearing Officer may in his or her discretion require community service for a violation of LMC 19.01.030 in addition to or in lieu of an administrative fine.

E. In the event that a person in violation of LMC 19.01.030 is a juvenile, then the juvenile and the parents or guardians of that juvenile will be jointly and severally liable for any administrative fine imposed under this chapter. (Ord. 1007 § 1, 2015; Ord. 1002 §§ 2, 3, 2015; Ord. 961 § 1 (part), 2008. Formerly 9.56.040)

19.01.050 Administrative Penalty Authority and Notice.

A. The administrative penalty proceedings described by this chapter shall be applicable to violations of this chapter only. The fines and administrative penalties provided under this chapter are enacted under the authority of Government Code Sections 36901, 38773.5 and 53069.4.

B. A notice of violation enforceable by administrative penalties under this chapter shall include

the following information:

1. Date and location of the violation, including the address or definite description of the location where the violation occurred or is occurring;
2. Section of the code being violated and a description of the violation;
3. Notice that the violator may, within fifteen days of the date of the notice of violation, appeal said violation to the Hearing Officer;
4. An order prohibiting the continuation or repeated occurrence of a violation of this code described in the notice of violation; and
5. The signature of the citing enforcement officer.

C. The notice of violation required under this section shall be personally served on the violator, or shall be sent by registered or certified United States mail to the property owner at the last known address listed on the most recent tax assessor's records. In the case of service by registered mail or certified mail upon the property owner, a copy of the notice of violation shall be conspicuously posted at the property which is the subject of the notice of violation. The failure of any person to receive a notice of violation that was sent via registered or certified mail shall not affect the validity of any enforcement proceedings under this chapter.

D. The Central Marin Police Authority shall retain a declaration of the person making service, declaring the date, time and manner that service was made, and the date and place of posting if applicable. (Ord. 1007 § 1, 2015; Ord. 1002 §§ 2, 3, 2015)

19.01.060 Hearing Request and Procedure.

A. Any recipient of a notice of violation enforceable by administrative penalties under this chapter may request an appeal hearing to contest there was a violation, as specified in the notice of violation, or that he or she is responsible for said violation, by completing a "request for hearing form" and returning it to the City Clerk within fifteen days from the date of the notice of violation. At the time of returning the request for hearing form to the City Clerk, the person or entity requesting the appeal hearing shall pay an appeal processing fee of one hundred fifty dollars (\$150.00). Failure to pay the appeal processing fee, or make arrangements for the payment of the fee, may result in the hearing being postponed until the payment of such fee.

B. Any hearing conducted pursuant to this section shall be set for a date not less than fifteen days nor more than sixty days from the date that the request for hearing form is filed in accordance with this chapter, unless the matter is urgent or good cause exists for an extension of time, in which case the date for such hearing may be shortened, or extended, as warranted by the circumstances.

C. Any hearing provided under this section shall provide a full opportunity for the person or persons subject to a notice of violation to appear and contest the determination that a violation

has occurred and/or that the violation continues to exist. If the appeal hearing involves a juvenile, such a hearing shall be private and confidential unless the juvenile's parents/guardians specifically request that the hearing be public. The failure of any interested party to appear at a requested appeals hearing shall constitute a failure by such party to exhaust his/her/their administrative remedies, and a waiver of the same.

D. At the place and time set forth in the notice of hearing, the Hearing Officer shall conduct a hearing on the notice of violation. The Hearing Officer shall consider any written or oral evidence regarding the violation that may be presented by the violator, real property owner, any officer or agent of the Authority and/or City, and any other interested party.

E. After receiving all of the evidence presented, the public testimony portion of the hearing shall be closed. The hearing officer may then consider what action, or actions, if any, should be taken, including the imposition of any fines or penalties.

F. Within thirty days following the conclusion of the hearing, the Hearing Officer shall issue written findings and make a determination regarding the existence of the violation. If the Hearing Officer finds by a preponderance of the evidence that a violation occurred, the Hearing Officer shall issue a written finding of those facts. The decision of the Hearing Officer shall be final.

G. The recipient or recipients of a notice of violation shall be served with a copy of the decision of the Hearing Officer, including an administrative order if one is issued, in the manner and method set forth by LMC 19.01.050(C). (Ord. 1007 § 1, 2015; Ord. 1002 §§ 2, 3, 2015)

19.01.070 Administrative Order.

If the Hearing Officer determines that a violation occurred as set forth by the notice of violation, the Hearing Officer shall issue an administrative order.

A. An administrative order may impose an administrative fine in the applicable amount set forth by LMC 19.01.040(D) per violation, or, in the alternative, a number of hours of community service as determined by the Hearing Officer. The denial of community service by the Hearing Officer may not be appealed under Government Code Section 53069.4.

B. Any appeal processing fee that is paid pursuant to LMC 19.01.060(A) shall be refunded to the payee if it is determined, after a hearing, that the person charged in the notice of violation was not responsible for the violation or that there was no violation as charged in said notice. (Ord. 1007 § 1, 2015; Ord. 1002 §§ 2, 3, 2015)

19.01.080 Collections and Lien Proceedings.

A. Any administrative fine or penalty in the amount set forth by the notice of violation, if an appeal is not requested in a timely manner, or as ordered by the Hearing Officer, if the matter is timely appealed, shall be paid to the City within thirty days of service of the notice of violation or administrative order, unless an extension of time is requested by the violator and granted by the City.

B. Payment of a fine or penalty imposed pursuant to this chapter shall not excuse or permit any continuation or repeated occurrence of the violation that is the subject of the notice of violation.

C. Any administrative penalty or fines imposed within the notice of violation, if no timely appeal is made, or ordered by the Hearing Officer, if the matter is appealed, are a debt owed to the City. In addition to all other means of enforcement, any fines or penalties specified in the notice of violation, if no timely appeal is made, or specified in the administrative order of the Hearing Officer, may be enforced as a personal obligation of the violator.

D. If the violation is connected with real property and the violator is an owner of the real property, any fines or penalties may be enforced by imposition of a lien on the real property. The Central Marin Police Authority shall prepare and file with the City Clerk a report stating the amount due and owing. The City may record notice of this lien after a hearing before the City Council to consider any protest or objection to the lien. The City shall serve notice of the hearing upon the owner of record of the real property, based on the last equalized assessment roll or the supplemental roll, whichever is more current. The notice of hearing shall include the time, date, and place of the hearing and the amount of the lien to be imposed, and shall be served in the same manner as a summons in a civil action. If the owner of record cannot be found after a diligent search, the notice may be served by posting a copy thereof in a conspicuous place upon the property for a period of ten days and publication thereof in a newspaper of general circulation published in Marin County, California. If the City Council determines that the lien should be imposed, the City may cause notice of the lien to be recorded with the County Recorder. Once recorded, the lien shall have the force and effect and priority of a judgment lien. Any fee imposed on the City by the County Recorder for costs of processing and recording the lien and the cost of providing notice to the property owner in the manner described herein may be recovered from the property owner in any foreclosure action to enforce the lien after recordation.

E. The remedies set forth in this section are not exclusive. The City may collect administrative penalties and fines by the use of the small claims court or by any other legal remedy. (Ord. 1007 § 1, 2015; Ord. 1002 §§ 2, 3, 2015)

19.01.090 Judicial Review.

Any person aggrieved by an administrative fine determination of the Hearing Officer may obtain review of that decision by filing a petition for review in the Marin County Superior Court, in accordance with Government Code Section 53069.4. (Ord. 1007 § 1, 2015; Ord. 1002 §§ 2, 3, 2015; Ord. 961 § 1 (part), 2008. Formerly 9.56.050)

19.01.100 Supplementary Enforcement Authority.

Nothing in this chapter shall prevent the City from initiating a civil or administrative action, or any other legal or equitable proceeding, to obtain compliance or to discourage noncompliance with the provisions of this code. The enforcement procedures described by this chapter are intended to be alternative methods of obtaining compliance and/or discouraging noncompliance with the provisions of this code and are expressly intended to be in addition to any other remedies provided by law. It is the intent of the City Council that the immunities prescribed in Penal Code Section 836.5 shall be applicable to personnel of the Central Marin Police Authority

Chapter 19.01 SOCIAL HOST ACCOUNTABILITY ORDINANCE

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and of the City acting in the course and scope of employment pursuant to this chapter. (Ord. 1007 § 1, 2015; Ord. 1002 §§ 2, 3, 2015; Ord. 961 § 1 (part), 2008. Formerly 9.56.060)

The Larkspur Municipal Code is current through Ordinance 1025, passed November 15, 2017, and other legislation passed December 6, 2017.

Disclaimer: The City Clerk's Office has the official version of the Larkspur Municipal Code. Users should contact the City Clerk's Office for ordinances passed subsequent to the ordinance cited above.



CITY OF SANTA BARBARA

PARK AND RECREATION COMMISSION REPORT

AGENDA DATE: April 23, 2008

TO: Parks and Recreation Commission

FROM: Teen Programs, Parks and Recreation Department

SUBJECT: Proposed Social Host Ordinance

RECOMMENDATION: That Commission hears a report from staff regarding a Proposed Social Host Ordinance under consideration by the City Council Ordinance Committee.

DISCUSSION:

The Alcohol and Drug Abuse Prevention (ADAP) Teen Coalition, in conjunction with Council on Drug and Alcohol (CADA) Fighting Back's Public Policy Task Force, Friday Night Live, Future Leaders of America, and the Santa Barbara Youth Council is advocating for passage of a Social Host Ordinance in the City of Santa Barbara.

Background and Accomplishments

The ADAP Teen Coalition, supported by a grant from the County of Santa Barbara Alcohol, Drug, and Mental Health Services for the past five years, has worked to reduce underage drinking in the City of Santa Barbara, generally through education and environmental prevention. Their focus has ranged from gathering local drug and alcohol data to youth access to alcohol in the retail environment. Currently, their focus has been on public policy.

As part of this focus, the ADAP Teen Coalition has partnered with several other agencies, including Fighting Back's Public Policy Task Force, Future Leaders of America, Friday Night Live/Club Live, the Santa Barbara Police Department, and the Santa Barbara Youth Council. With their partners, the ADAP Teen Coalition has performed an extensive review, conducted research, and gathered support for a Social Host Ordinance in the City of Santa Barbara. This research has included Peer Focus Groups conducted by ADAP Teen Coalition members at 4 middle and high schools. It was found that over 90% of the students said that 'home' was the number 1 place to get and consume alcohol, and 80% saw a direct connection between underage drinking and youth violence. The research also included gathering data from other cities and counties with existing ordinances, including the County of Ventura, and cities of Carpinteria and Santa Maria.

Underage drinking costs the nation at least \$53 billion a year, mostly because of traffic deaths and violent crimes, according to a 2003 report by the National Research Council's Institute of Medicine. The report, which urged communities to hold hosts

accountable for teen drinking, was a catalyst for many recent Social Host Ordinances. Most cities have focused on the civil liability and have been successful.

Social Host Ordinance

Purchase, possession, or consumption of alcohol by minors in public or commercial settings is already prohibited under state law. However, state law does not prohibit youth consumption of alcohol on private property. A Social Host Ordinance is a law that holds non-commercial individuals responsible for underage drinking at parties, on property they own, lease, or otherwise control. Establishing a Social Host Ordinance can fill the gap in the law by providing law enforcement a tool to help address the problem of underage drinking. It allows law enforcement to pro-actively look at underage drinking at private parties and allows an officer to cite responsible hosts before a party becomes unruly. This ordinance also gives the police an additional tool to remind "hosts" of the ramifications of underage drinking at their party. Currently, officers can only address parties that are unruly or violate the City's noise ordinance. Included in the ordinance, would be exceptions in any such ordinance to protect family, cultural, and religious events where parents or guardians give their permission for their children to take part in events which may involve the consumption of alcohol.

On November 5, 2007, the Santa Barbara Youth Council held a workshop on the Social Host Ordinance. It was the unanimous decision of the Youth Council to endorse the proposed Ordinance and join the ADAP Teen Coalition to recommend that this matter be submitted to the City's Ordinance Committee with the following recommendations:

- That there is an educational component to the ordinance in lieu of paying the fine.
- That a portion of any paid fine goes to supporting teen prevention programs and services
- That youth are intricately involved in the drafting of the ordinance and the educational component.
- That an awareness campaign is undertaken to educate the community about the new ordinance.

On April 8, 2008, Teen Programs, Santa Barbara Youth Council and ADAP gave a presentation to City Council regarding the Social Host Ordinance. The Council unanimously approved the recommendation to direct staff to submit a proposed Social Host Ordinance to the Ordinance Committee for consideration and return with a recommendation to Council. It was also recommended that a Santa Barbara Youth Council and ADAP member serve on the Ordinance Committee during meetings when the ordinance was being discussed. It is expected to take a few months to complete the draft ordinance.

Park and Recreation Commission Report
Social Host Ordinance
April 23, 2008
Page 3

PREPARED BY: Susan Young, Recreation Supervisor

SUBMITTED BY: Sarah Hanna, Recreation Programs Manager

APPROVED BY: Nancy L. Rapp, Parks and Recreation Director



Staff Report

City of Manhattan Beach

TO: Honorable Mayor Tell and Members of the City Council

THROUGH: Geoff Dolan, City Manager

FROM: Rod Uyeda, Chief of Police
Randy Leaf, Captain

DATE: February 20, 2007

SUBJECT: Adoption of an Ordinance that Holds Non-Commercial Individuals Responsible for Underage Drinking of Alcoholic Beverages on Property they Own, Lease or Otherwise Control, Known as a Social Host Ordinance.

RECOMMENDATION:

Staff recommends that the City Council **Adopt Ordinance No. 2096.**

FISCAL IMPLICATION:

Implementation of this ordinance may require some additional staff time for enforcement and fine collection, however the increase is expected to be slight and accomplished by existing staff and resources.

BACKGROUND:

On February 6, 2007, the City Council unanimously approved the introduction of Ordinance No. 2096, which creates a Civil Social Host Ordinance and adds Chapter 4.128 to the Manhattan Beach Municipal Code.

DISCUSSION:

As part of the City Council's 2005-2007 Work Plan, the Police Department was tasked with researching a Social Host Ordinance; similar to what exists in San Diego and Ventura Counties, as an additional tool to help address unruly parties and underage drinking

A Social Host Ordinance is a law that holds non-commercial individuals responsible for underage drinking at parties on property they own, lease, or otherwise control. Purchase, possession or consumption of alcohol by minors in public or commercial settings is already prohibited under state law. However, state law does not prohibit youth consumption of alcohol on private property.

Establishing a Social Host Ordinance can fill the gap in the law by providing law enforcement a tool to help address the problem of underage drinking at parties. There would be exceptions in

any such ordinance to protect family and cultural events where parents or guardians give their permission for their children to take part in events which may involve the consumption of alcohol.

Social Host Ordinances were created on these basic premises:

- Municipalities have the authority to enact laws that promote public health, safety, and general welfare.
- The occurrence of underage drinking parties on private property is harmful to the underage persons, and is a threat to public safety and the general welfare of the community.
- Persons responsible for the occurrence of parties, or in possession/control of the property, have a duty to ensure that alcoholic beverages are not served to, or consumed by, underage persons.
- Police authority at such gatherings is necessary when such activities are determined to be a threat to the peace, health, safety, or general welfare of the public.
- Police Officers are often required to make multiple responses to the location of a gathering where alcoholic beverages are consumed by minors in order to disperse uncooperative participants – causing a drain on public safety resources, and in some cases, leaving other areas of the City with delayed police response.
- Problems associated with such gatherings are difficult to prevent and deter unless law enforcement officers have the legal authority to do so.
- Penalties against the responsible party will serve as an effective strategy for deterring underage drinking parties – thereby reducing alcohol consumption and abuse by minors, physical altercations and injuries, neighborhood vandalism, and excessive noise disturbance, and thus improving public safety.

Different Types of Social Host Ordinances

Two main types of Social Host Ordinances have been enacted in Southern California cities – one which penalizes violators civilly, and one which criminalizes the violation as a misdemeanor.

Criminal Liability Ordinances – About two-thirds of the cities in San Diego County have established criminal liability ordinances. San Diego was the first city to implement a social host ordinance to help reduce underage drinking. However, in October 2004, the San Diego’s ordinance was deemed unconstitutional by a panel of Superior Court judges. Their ruling was on the grounds that the ordinance was “constitutionally impermissible” because of “the lack of *mens rea*”, or criminal intent, and because it violated a person’s right to due process. Under San Diego’s ordinance, a person could be convicted even if they were unaware, or would not reasonably know, (1) that a party was taking place, or (2) that minors were present and consuming alcohol.

The City of San Diego has recently implemented a revised ordinance, approved by City Council in April 2006. The amendments (1) impose a duty on social hosts to take all reasonable steps to ensure that a minor is not consuming alcoholic beverages, and (2) add the requisite *mens rea*, or *knowledge* element. Further, the ordinance now clarifies the remedies available to the City of San Diego, including criminal prosecution, civil enforcement, and recovery of response costs. Many San Diego County cities that patterned their ordinance after San Diego’s ordinance have suspended enforcement of their social host ordinances until they too can revisit and amend their ordinances. In the interim, ordinances in those cities remain on the books as a deterrent.

The Los Angeles County District Attorney's Office was contacted regarding a criminal social host ordinance. Their office felt that due to the number of issues being raised about the legality of the ordinance being attacked in San Diego, their office would recommend against the implementation of a similar ordinance.

Civil Liability Ordinances – Ventura County cities have also established Social Host ordinances - shifting penalties from criminal to civil, and charging administrative fines of \$1,000 or more for similar offenses.

The City of Ojai was the first city in Ventura County to adopt a social host ordinance. The City of Ojai determined that a town of their size (population 8,000) could not afford a court challenge like the City of San Diego and created an ordinance that focused on civil liability instead and has been successful.

Other municipalities in Ventura County were also interested in pursuing a civil social host ordinance. The County of Ventura's legal counsel noted that they were in favor of a civil citation because it is less likely to be contested, but is still effective in deterring adults from allowing underage drinking parties. Counsel also felt that the adoption of a civil liability ordinance would be easier to defend as the burden of proof is higher in criminal cases.

Additionally, agencies in Ventura County have found it difficult to prosecute local law infractions in a regional court setting; the civil liability ordinance has allowed them to bypass the court system for the most part. As Manhattan Beach files most criminal cases with the Los Angeles County District Attorney's office in the county courthouse in Torrance, we are similar to the agencies in Ventura County.

The civil social host ordinance allows officers to proactively look at underage drinking at private parties and allow officers to cite irresponsible "hosts" before a party becomes unruly. This ordinance also gives the police an additional tool to remind any "host" the ramifications of underage drinking occurring at their party. Currently, officers can only address parties that are unruly or violate the city's noise ordinance.

A "host" is defined, but is not limited to, as the person or persons in control of the residence or other private property and can include owners and/or lessee, the host themselves, a parent or legal guardian, a minor who is also the "host", or a tenant. A landlord could also be considered a "host" provided that the landlord has received notice of prior unruly parties at their property involving underage drinking.

Thus far, more than fifteen civil citations have been issued and paid in Ventura County for a 100% success rate in the County. The cities of Ojai, Thousand Oaks, Camarillo and County of Ventura have each successfully cited several "hosts" for violating their social host ordinance and fines have been paid. The cities of Simi Valley, Fillmore, Moorpark and Santa Paula have also implemented civil Social Host Ordinances, but have not yet officially cited any persons yet. Law enforcement agencies from all of the cities have found the civil ordinance to be a useful tool.

Fines and Penalties of Social Host Ordinances

Both criminal and civil ordinances present fines/penalties in two parts.

Part 1: A single-occasion house party where underage drinking is occurring is subject to a citation and fine (and possible imprisonment under the criminal liability law).

Part 2: If the police have to return to a home party location within one year of the first occurrence, the host would receive a citation and fine, and make restitution for the costs associated with responding to the unruly gathering, including costs incurred by law enforcement, fire, and/or other emergency response providers.

The majority of cities with civil social host ordinances adopted fines of approximately \$1,000 for each offense (plus response costs). The City of Thousand Oaks, which also adopted a civil ordinance, set their fine standard well above other cities in the County – raising fines to \$2,500 for the first offense, \$3,500 for the second and \$5,000 for the third and subsequent offenses (plus response costs). These were fines that the City Council of Thousand Oaks felt were more appropriate to sufficiently deter “hosts” and to convey the severity of the offense. Community service may be substituted in cases where the financial burden is too great or where the “host” is a juvenile.

The proposed civil Social Host Ordinance for Manhattan Beach has an administrative fine of \$1000 per incident, not including response costs for the first incident within any consecutive 12 month period. For a second such incident within a consecutive 12 month period the fine is \$2000 and for a third such incident within any consecutive 12 month period, the fine is \$5000.

CONCLUSION

The police department feels that a social host ordinance will be another tool to assist them in the handling of unruly parties in addition to current laws that are available to deal with such disturbances. Currently, parties are only addressed by the police when they become loud and unruly. With a social host ordinance, a party would be considered unruly should the police find underage drinking occurring and cite the host of such party immediately. This will likely prevent a number of parties from escalating to a neighborhood disturbance. There will also be clear message sent throughout the community that underage drinking under the guise of a private party will not be tolerated and that “hosts” of such parties will be held accountable for such activity occurring on their property.

Attachments: A. Ordinance No. 2096



Staff Report

Date: August 9, 2018

To: Mayor Kuhl and Council Members

From: Erik Masterson, Police Chief

Subject: Introduction of Ordinance No. 693 Amending Ross Municipal Code Chapter 9.60 to change the title to "Social Host Ordinance" and update the regulations governing Loud and Unruly Gatherings.

Recommendation

Council waive the first reading and introduce Ordinance No. 693 to change the title to "Social Host Ordinance" and amending Chapter 9.60 to update the regulations regarding loud and unruly gatherings.

Background and discussion

"Social Host" ordinances were passed throughout most jurisdictions to address large unruly underage parties/gatherings where alcohol was being consumed and emergency response personnel were spending excessive time and manpower to handle these parties. Since the passage of such ordinances, the number of such parties/gatherings has been greatly reduced.

Our Town ordinance needs to be updated to include substances that have become increasingly used by underage persons with Marin and throughout the country. Advocacy groups that work with juveniles have noted this increased use and have suggested changes to current "Social Host" type ordinances to include both cannabis and controlled substances along with the use of alcohol (which is already included in these ordinances).

Most jurisdictions in Marin have followed these suggestions and have made amendments to their "Social Host" ordinances.

In the proposed amendment; vehicles of any type, such as vehicles for hire was added to residences and properties as locations where such activity is prohibited. This inclusion is due to a recent incident in Marin involving underage drinking in a for-hire, vehicle.

Fiscal, resource and timeline impacts

None

Alternative actions

Council could revise the proposed language.

Environmental review (if applicable)

N/A

Attachments

- Ordinance No. 693
- Ordinance redline version

TOWN OF ROSS

ORDINANCE NO. 693

AN ORDINANCE OF THE TOWN OF ROSS AMENDING TITLE 9 (PEACE, SAFETY AND MORALS) OF THE ROSS MUNICIPAL CODE BY AMENDING CHAPTER 9.60 TO CHANGE THE TITLE TO "SOCIAL HOST ORDINANCE" AND UPDATE THE REGULATIONS GOVERNING LOUD AND UNRULY GATHERINGS

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

SECTION 1: Section 9.60 of the Ross Municipal Code is amended and restated as follows:

"Sections:

<u>9.60.010</u>	Title
<u>9.60.020</u>	Definitions
<u>9.60.030</u>	Prohibition of loud or unruly gatherings where intoxicants are served to, consumed by, or in the possession of underage persons.
<u>9.60.040</u>	Violations/administrative fines.
<u>9.60.050</u>	Imposition of cost recovery fee for public safety response.
<u>9.60.060</u>	Hearings on the imposition of administrative fines; Appeals.
<u>9.60.070</u>	Administrative fines-debt to town; Enforcement
<u>9.60.080</u>	Severability.

9.60.010 Title. This chapter shall be known as the Social Host Ordinance. (Ord. 607 (part), 2008).

9.60.020 Definitions. The Following words and phrases, whenever used in this article, shall have the following meanings:

(a) "Alcohol" means ethyl alcohol, hydrated oxide of alcohol, or spirits of wine, from whatever source or by whatever process produced.

(b) "Alcoholic beverage" includes alcohol, spirits, liquor, wine, beer, and every liquid or solid containing alcohol, spirits, liquor, wine or beer, and which contains one-half of one percent or more of alcohol by volume and which is fit for beverage purposes either alone or when diluted, mixed, or combined with other substances.

(c) "Controlled Substance" means a drug or substance whose possession and use are regulated under the California Controlled Substances Act (Health & Safety Code Section 11000 et seq.). Such term does not include any drug or substance for which the individual found to have consumed or possessed such substance has a valid prescription issued by a licensed medical practitioner authorized to issue such a prescription, or in the case of medical cannabis, a recommendation for medical marijuana from an approved provider, or a State of California medical ID card.

(d) "Marijuana" is defined as any part of the plant Cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or resin and includes concentrated marijuana. The prohibition herein includes marijuana in any form including but not limited to cigarettes, vapor, food products containing marijuana and any other product of marijuana that can be smoked or ingested; provided that, notwithstanding the foregoing, it does not include a substance for which the individual found to have consumed or possessed such substance has a recommendation for medical marijuana from a licensed physician.

(e) "Intoxicants" means alcohol, controlled substances and/or marijuana as defined herein.

(f) "Juvenile" means any person less than eighteen (18) years of age.

(g) "Loud or unruly gathering" means any of the following:

(1) a gathering of five or more persons at a residence or on other private property or rented public property where loud and unruly conduct occurs;

(2) a motor vehicle engaged in the transportation of persons for compensation, whether in common or contract carriage, or any other entity engaged in the provision of a hired driver service when a rented motor vehicle is being operated by a hired driver upon which loud or unruly conduct occurs.

(h) Loud or unruly conduct constitutes a public nuisance and includes but is not limited to the following:

(1) Excessive noise;

(2) Excessive traffic;

(3) Obstruction of public streets and/or the presence of unruly crowds that have spilled into public streets;

(4) Public drunkenness or unlawful public consumption of intoxicants;

(5) Assaults, batteries, fights, domestic violence or other disturbances of the peace;

(6) Vandalism;

(7) Litter; or

(8) Any other conduct that constitutes a threat to the public health, safety, or quiet enjoyment of residential property of the general welfare.

(i) "Person Responsible for the event" Means and includes, but is not limited to:

(1) The person that owns, rents, leases or otherwise has control of the premises upon which a loud or unruly gathering occurs

(2) The person or entity that owns or operates the motor vehicle deemed to constitute a loud or unruly gathering

(3) The person that organized the loud or unruly gathering. If the person responsible for the loud or unruly gathering is a juvenile, then the juvenile and the parents or guardians of that juvenile will be jointly and severally liable for the Administrative Fine and/or for the costs incurred for the public safety services pursuant to this chapter.

(j) "Public Safety Services Costs" and/or "Response Costs" means the costs associated with responses by law enforcement, fire and other emergency response providers to loud or unruly gatherings, including but not limited to:

(1) The cost of law enforcement, fire or other response personnel for the amount of time spent responding to, remaining at, or otherwise dealing with the loud or unruly gathering, calculated as the public safety rate plus benefits times the number of public safety officer hours at the scene of the emergency response plus thirty-three percent overhead; and

(2) The cost of any medical treatment to or for any law enforcement, fire or other emergency response personnel injured responding to, remaining at or leaving the scene of the loud or unruly gathering; and

(3) The cost of any Town equipment or property, and the cost of repairing any Town equipment or property damaged, in responding to, remaining at or leaving the scene of a loud or unruly gathering.

(k) "Underage person" means any person less than twenty-one (21) years of age. (Ord. 607 (part), 2008).

9.60.030 Prohibition of loud or unruly gatherings and gatherings where alcohol is intoxicants are served to, consumed by, or in the possession of underage persons. Except as permitted by Article 1, Section 4, of the California Constitution, no person shall knowingly suffer, permit or host a loud or unruly gathering or a gathering under his or her control where persons under the age of twenty-one (21) are present, and where intoxicants are in the possession of, being consumed by, or served to any person under the age of twenty-one (21). (Ord. 607 (part), 2008).

9.60.040 Violations/administrative fines.

(a) It shall be a civil violation for a person to knowingly conduct or allow a gathering of five or more persons under the age of twenty-one where alcohol is intoxicants are served to, consumed by, or in the possession of an underage person or persons. The enforcement officer, at his or her discretion, may immediately issue a citation for this civil violation upon evidence of the violation. There is no requirement of a first warning in order for the enforcement officer to issue this citation.

(b) Administrative Fine: A first violation of this chapter shall result in a citation with a \$750 fine. A second violation and subsequent violations shall result in a citation with a \$1,000 fine.

(c) The enforcement officer shall give notice of a violation of this chapter by issuing a citation to any and all responsible persons identified by the chapter within 10 days of the violation. The citation shall also give notice of the right to request an administrative hearing to challenge the validity of the citation and the time for requesting that hearing.

(d) The administrative fine prescribed in this section is in addition to any cost recovery fee for public safety responses that may be assessed pursuant to section 9.60.050 (b).

(e) In the event that the responsible person who is in violation of this chapter is a juvenile, then the juvenile and the parents or guardians of that juvenile will be jointly and severally liable for the civil violation. (Ord. 607 (part), 2008).

9.60.050 Imposition of cost recovery fee for public safety responses.

(a) In addition to any administrative fine imposed for violation of this section, when any gathering where alcohol is intoxicants are served to, consumed by or in the possession of underage person(s) occurs on private property and a public safety officer at the scene determines that there is a threat to the public peace, health, safety or general welfare, the public safety officer shall give to the person(s) responsible for the event a warning that a second or follow up violation of this section on the same date or any later date will result in his/her/their liability for the cost of providing public safety services (i.e., fire, ambulance, sheriff, and other emergency providers). The requirement of a first warning does not limit the ability of public safety personnel to issue a civil citation for the imposition of civil penalties for cost recovery on the same day that the warning is given if the warning does not end the serving, consumption of or possession of intoxicants by underage person(s) at any gathering. The cost recovery for public safety responses shall be separate and distinct from a citation and administrative fine for a violation described in section 9.60.040.

(b) The amount of cost recovery under this subsection shall be calculated pursuant to the Ross Town Fee Schedule.

(c) In the event that the responsible person who is in violation of this section is a juvenile, then the juvenile and the parents or guardians of that juvenile will be jointly and severally liable for the imposition of penalties for the cost of providing public safety services.

(d) Cost recovery fee(s) will not be imposed for emergency services provided in response to an actual emergency at the premises. (Ord. 607 (part), 2008).

9.60.060 Hearings on the imposition of administrative fines; Appeals.

(a) Administrative Hearing. Any person subject to an administrative fine pursuant to Section 9.60.040 or subject to a civil cost recovery fee for public safety responses pursuant to Section 9.60.050 shall have the right to request an administrative hearing within 45 days of the issuance of a citation for a civil violation of this ordinance and/or the issuance of a citation for the imposition of civil cost recovery fees for a public safety response as specified in this ordinance . To request such a hearing, the person requesting the hearing shall notify the Town Manager in writing within 45 days of the issuance of the citation.

The Town Manager shall refer any request for a hearing to an Administrative Law Judge. The Administrative Law Judge shall conduct a hearing on the matter within 90 days of the request for the hearing unless one of the parties requests a continuance for good cause. The Administrative Law Judge shall render a decision with 30 days of the conclusion of the hearing. Either party may appeal the decision of the Administrative Law Judge pursuant to the requirements set forth below in subsection (b).

(b) Appeal from Decision of Administrative Law Judge. The person issued an administrative fine pursuant to this Chapter may appeal the decision of the Administrative Law

Judge. The Town may also appeal the decision of the Administrative Law Judge. No appeal can lie unless the party filing the appeal has first properly requested and obtained a hearing under Section 9.60.060(a).

The Appeal must be filed within 20 days after service of the final decision issued by the Administrative Law Judge pursuant to California Government Code Section 53069.4, subdivision (b). The procedures outlined in Government Code 53069.4 shall apply. (Ord. 607 (part), 2008).

9.60.070 Administrative fines- debt to town; Enforcement. The amount of an administrative fine and/or civil cost recovery fee for public safety responses pursuant to Section 9.60.050 shall be deemed a debt owed to the Town by the person found in violation of this Chapter and, if that person is a juvenile, then also his/her parents or guardians. Any person owing such fine shall be liable in an action brought in the name of the Town for recovery of such fine and/or fees. These recovery costs may include reasonable attorney fees incurred in the action if the Town prevails, as the Town reserves the right to seek to recover reasonable attorney fees, on a case by case basis, pursuant to California Government Code Section 38773.5 (b). In those cases in which the Town seeks to recover reasonable attorney fees, the other party may likewise do so. (Ord. 607 (part), 2008).

9.60.080 Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this chapter, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this chapter, or its application to any other person or circumstance. The Ross Town Council hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases is declared invalid or unenforceable. (Ord. 607 (part), 2008)."

SECTION 3: Severability. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and each and every section, subsection, sentence, clause or phrase not declared invalid or unconstitutional without regard to whether any portion of the Ordinance would be subsequently declared invalid or unconstitutional.

SECTION 4: CEQA. The Town Council hereby finds that this Ordinance is not a "project" under the California Environmental Quality Act ("CEQA") because the Ordinance does not involve any commitment to a specific project which may result in a potentially significant physical impact on the environment as contemplated by Title 14, California Code of Regulations Section 1578(b)(4). The proposed ordinance is exempt from CEQA pursuant to CEQA Guidelines Section 15061(b)(3) because it can be seen with certainty that there is no possibility that the proposed updates to the Town's regulations of loud and unruly gatherings will have a significant effect on the environment. The proposed Ordinance imposes rules restricting the consumption of intoxicants.

Therefore, the proposed Ordinance by itself will not result in any physical changes on the environment. A Notice of Exemption will be prepared.

SECTION 5: Savings Clause. Neither the adoption of this Ordinance nor the repeal of any other Ordinance of this City shall in any manner affect the prosecution for violations of ordinances, which violations were committed prior to the effective date hereof, nor be construed as a waiver of any penalty or the penal provisions applicable to any violation thereof.

SECTION 6: Certification. The Town Clerk shall certify to the passage and adoption of this Ordinance and shall cause this Ordinance to be posted within 15 days after its passage, in accordance with Section 36933 of the Government Code.

SECTION 7: Effective Date. This ordinance shall take effect thirty (30) days after its final passage and adoption, and shall be posted in three public places in Town.

THE FOREGOING ORDINANCE was first read at a regular meeting of the Ross Town Council on the 9th day of August, 2018, and was adopted at a regular meeting of the Ross Town Council on the ___ day of _____, 2018 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

P. Beach Kuhl, Mayor

ATTEST:

Linda Lopez, Town Clerk

Chapter 9.60

UNDERAGE DRINKING SOCIAL HOST ORDINANCE

Sections:

- 9.60.010 Title
- 9.60.020 Definitions
- 9.60.030 Prohibition of loud or unruly gatherings where alcohol intoxicants is are served to, Consumed by, or in the possession of underage persons.
- 9.60.040 Violations/administrative fines.
- 9.60.050 Imposition of cost recovery fee for public safety response.
- 9.60.060 Hearings on the imposition of administrative fines; Appeals.
- 9.60.070 Administrative fines-debt to town; Enforcement
- 9.60.080 Severability.

9.60.010 Title. This chapter shall be known as the ~~Ross Underage Drinking~~ Social Host Ordinance. (Ord. 607 (part), 2008).

9.60.020 Definitions. The Following words and phrases, whenever used in this article, shall have the following meanings:

- (a) "Alcohol" means ethyl alcohol, hydrated oxide of alcohol, or spirits of wine, from whatever source or by whatever process produced.
- (b) "Alcoholic beverage" includes alcohol, spirits, liquor, wine, beer, and every liquid or solid containing alcohol, spirits, liquor, wine or beer, and which contains one-half of one percent or more of alcohol by volume and which is fit for beverage purposes either alone or when diluted, mixed, or combined with other substances.
- (c) "Controlled Substance" means a drug or substance whose possession and use are regulated under the California Controlled Substances Act (Health & Safety Code Section 11000 et seq.). Such term does not include any drug or substance for which the individual found to have consumed or possessed such substance has a valid prescription issued by a licensed medical practitioner authorized to issue such a prescription, or in the case of medical cannabis, a recommendation for medical marijuana from an approved provider, or a State of California medical ID card.
- (d) "Marijuana" is defined as any part of the plant Cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or resin and includes concentrated marijuana. The prohibition herein includes marijuana in any form including but not limited to cigarettes, vapor, food products containing marijuana and any other product of marijuana that can be smoked or ingested; provided that, notwithstanding the foregoing, it does not include a substance for which the individual found to have consumed or possessed such substance has a recommendation for medical marijuana from a licensed physician.

(e) "Intoxicants" means alcohol, controlled substances and/or marijuana as defined herein.

(f) ~~(e)~~ "Juvenile" means any person less than eighteen (18) years of age.

~~(g)~~ ~~(d)~~ "Loud or unruly gathering" means any of the following:

(1) a party or gathering of five or more persons at a residence or on other private property or rented public property where loud and unruly conduct occurs;

(2) a motor vehicle engaged in the transportation of persons for compensation, whether in common or contract carriage, or any other entity engaged in the provision of a hired driver service when a rented motor vehicle is being operated by a hired driver, owned or rented, of any type, or vehicles of any type licensed and/or hired to transport passengers in return for payment of a fare, which are under the ownership or control of a private person, entity, or organization of any kind,; upon which loud or unruly conduct occurs.

~~(g)~~ ~~(h)~~ Such loud or unruly conduct constitutes a public nuisance and includes but is not limited to the following:

(1) -Excessive noise;

(2) Excessive traffic;

(3) Obstruction of public streets and/or the presence of unruly crowds that have spilled into public streets;

(4) Public drunkenness or unlawful public consumption of alcohol or alcoholic beverages intoxicants;

(5) Assaults, batteries, fights, domestic violence or other disturbances of the peace;

(6) Vandalism;

(7) Litter; or

(8) Any other conduct that constitutes a threat to the public health, safety, or quiet enjoyment of residential property of the general welfare.

~~(h)~~ ~~(i)~~ ~~(e)~~ "Person Responsible for the event" Means and includes, but is not limited to:

(1) The person that owns, rents, leases or otherwise has control of the premises upon which a loud or unruly gathering occurs

~~(1)~~ ~~(2)~~ The person or entity that owns or operates, or the motor vehicles, owned or rented, of any type, or vehicles of any type licensed and/or hired to transport passengers in return for payment of a fare, which are under the ownership or control of a private person, entity, or organization, where the loud or unruly gathering occurs; and/or deemed to constitute a loud or unruly gathering

~~(2)~~ The person in charge of the premises or vehicles of any type; and/or

(3) The person that organized the event loud or unruly gathering. If the person responsible for the loud or unruly gathering event is a juvenile, then the juvenile and the parents or guardians of that juvenile will be jointly and severally liable for the Administrative Fine and/or for the costs incurred for the public safety services pursuant to this chapter.

~~(i)~~ ~~(j)~~ ~~(f)~~ "Public Safety Services Costs" and/or "Response Costs" means the costs associated with responses by law enforcement, fire and other emergency response providers to loud or unruly gatherings, including but not limited to:

- (1) The cost of law enforcement, fire or other response personnel for the amount of time spent responding to, remaining at, or otherwise dealing with the loud or unruly gathering, calculated as the public safety rate plus benefits times the number of public safety officer hours at the scene of the emergency response plus thirty-three percent overhead; and
- (2) The cost of any medical treatment to or for any law enforcement, fire or other emergency response personnel injured responding to, remaining at or leaving the scene of the loud or unruly gathering; and
- (3) The cost of any Town equipment or property, and the cost of repairing any Town equipment or property damaged, in responding to, remaining at or leaving the scene of a loud or unruly gathering.

~~(j)~~(k) ~~(g)~~ "Underage person" means any person less than twenty-one (21) years of age. (Ord. 607 (part), 2008).

9.60.030 Prohibition of loud or unruly gatherings and gatherings where alcohol is intoxicants are served to, consumed by, or in the possession of underage persons. Except as permitted by Article 1, Section 4, of the California Constitution, no person shall knowingly suffer, permit or host a loud or unruly gathering ~~at his or her place of residence or other private property, place or premises, or motor vehicles, owned or rented, of any type, or vehicles of any type licensed and/or hired to transport passengers in return for payment of a fare, which are under the ownership or control of a private person, entity, or organization of any kind, or host a loud or unruly gathering at a public place~~ under his or her control where ~~five or more~~ persons under the age of twenty-one (21) are present, and where alcoholic beverages intoxicants are in the possession of, being consumed by, or served to any ~~underage person~~ person under the age of twenty-one (21). (Ord. 607 (part), 2008).

9.60.040 Violations/administrative fines. (a) It shall be a civil violation for a person to knowingly conduct or allow a ~~loud or unruly~~ gathering of five or more persons under the age of twenty-one where ~~alcohol~~ intoxicants are served to, consumed by, or in the possession of an underage person or persons ~~on premises owned by the person responsible for the event, on premises rented by or to the person responsible for the event, on premises where the person responsible for the event resides or on premises where the person responsible for the event is in control of such premises during the loud or unruly gathering.~~ The enforcement officer, at his or her discretion, may immediately issue a citation for this civil violation upon evidence of the violation. There is no requirement of a first warning in order for the enforcement officer to issue this citation.

(b) Administrative Fine: A first violation of this chapter shall result in a citation with a \$750.00 fine. A second violation and subsequent violations shall result in a citation with a \$1,000.00 fine.

(c) The enforcement officer shall give notice of a violation of this chapter by issuing a citation to any and all responsible persons identified by the chapter within 10 days of the violation. The citation shall also give notice of the right to request an administrative hearing to challenge the validity of the citation and the time for requesting that hearing.

(d) The administrative fine prescribed in this section is in addition to any cost recovery fee for public safety responses that may be assessed pursuant to section 9.60.050 (b).

(e) In the event that the responsible person who is in violation of this chapter is a juvenile, then the juvenile and the parents or guardians of that juvenile will be jointly and severally liable for the civil violation. (Ord. 607 (part), 2008).

9.60.050 Imposition of cost recovery fee for public safety responses.

(a) In addition to any administrative fine imposed for violation of this section, when any ~~loud or unruly~~ gathering where ~~alcohol~~ intoxicants are served to, consumed by or in the possession of underage person(s) occurs on private property and a public safety officer at the scene determines that there is a threat to the public peace, health, safety or general welfare, the public safety officer shall give to the person(s) responsible for the event a warning that a second or follow up violation of this section on the same date or any later date will result in his/her/their liability for the cost of providing public safety services (i.e., fire, ambulance, sheriff, and other emergency providers). The requirement of a first warning does not limit the ability of public safety personnel to issue a civil citation for the imposition of civil penalties for cost recovery on the same day that the warning is given if the warning does not end the ~~underage drinking-serving, consumption of or possession of intoxicants by underage person(s) at a~~ ~~loud or unruly~~ gathering. The cost recovery for public safety responses shall be separate and distinct from a citation and administrative fine for a violation described in section 9.60.040.

(b) The amount of cost recovery under this subsection shall be calculated pursuant to ~~9.60.020 (e) of this chapter~~ the Ross Town Fee Schedule.

(c) In the event that the responsible person who is in violation of this section is a juvenile, then the juvenile and the parents or guardians of that juvenile will be jointly and severally liable for the imposition of penalties for the cost of providing public safety services.

(d) Cost recovery fee(s) will not be imposed ~~in those situations where those present at the gathering~~ for emergency services ~~for provided in response to~~ an actual emergency at the premises. (Ord. 607 (part), 2008).

9.60.060 Hearings on the imposition of administrative fines; Appeals.

(a) Administrative Hearing. Any person subject to an administrative fine pursuant to Section 9.60.043 or subject to a civil cost recovery fee for public safety responses pursuant to Section 9.60.050 shall have the right to request an administrative hearing within 45 days of the issuance of a citation for a civil violation of this ordinance ~~[Section 9.60.030]~~ and/or the issuance of a citation for the imposition of civil cost recovery fees for a public safety response as specified in this ordinance ~~[Section 9.60.050]~~. To request such a hearing, the person requesting the hearing shall notify the Town Manager in writing within 45 days of the issuance of the citation.

The Town Manager shall refer any request for a hearing ~~under Section 9.60.030 and/or Section 9.60.050~~ to an Administrative Law Judge. The Administrative Law Judge shall conduct a hearing on the matter within 90 days of the request for the hearing unless one of the parties requests a continuance for good cause. The Administrative Law Judge shall render a decision with 30 days of the conclusion of the hearing. Either party may appeal the decision of the Administrative Law Judge pursuant to the requirements set forth below in subsection (b).

(b) Appeal from Decision of Administrative Law Judge. The person ~~upon whom an issued an~~ administrative fine ~~is imposed~~ pursuant to ~~Section 9.60.030 and/or a civil cost recovery fee for public safety responses pursuant to Section 9.60.050~~ this Chapter may appeal the decision of the

Administrative Law Judge. The Town may also appeal the decision of the Administrative Law Judge. No appeal can lie unless the party filing the appeal has first properly requested and obtained a hearing under Section 9.60.060(a).

The Appeal must be filed within 20 days after service of the final decision issued by the Administrative Law Judge pursuant to California Government Code Section 53069.4, subdivision (b). The procedures outlined in Government Code 53069.4 shall apply. (Ord. 607 (part), 2008).

9.60.070 Administrative fines- debt to town; Enforcement. The amount of an administrative fine and/or civil cost recovery fee for public safety responses pursuant to Section 9.60.050 shall be deemed a debt owed to the Town by the person found in violation of ~~Section 9.60.030~~ this Chapter and, if that person is a juvenile, then also his/her parents or guardians. Any person owing such fine shall be liable in an action brought in the name of the Town for recovery of such fine and/or fees. These recovery costs may include reasonable attorney fees incurred in the action if the Town prevails, as the Town reserves the right to seek to recover reasonable attorney fees, on a case by case basis, pursuant to California Government Code Section 38773.5 (b). In those cases in which the Town seeks to recover reasonable attorney fees, the other party may likewise do so. (Ord. 607 (part), 2008).

9.60.080 Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this chapter, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this chapter, or its application to any other person or circumstance. The Ross Town Council hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases is declared invalid or unenforceable. (Ord. 607 (part), 2008).

CITY OF SEBASTOPOL
CITY COUNCIL
STAFF REPORT

Meeting Date: October 30, 2018
To: Honorable Mayor and Honorable City Councilmembers
From: Police Chief James Conner
Subject: Approval of Waiving of Second Reading and Adoption of Ordinance #1114
Amending Municipal Code Chapter 810, Social Host Ordinance
Recommendation: Approval of Second Reading, Waiving of Further Reading and Adoption of
Ordinance 1114
Funding: Currently Budgeted: _____ Yes _____ No X N/A
Net General Fund Cost: _____
Amount: _____

Introduction:

At its October 16, 2018, City Council Meeting, the City Council received the staff report, conducted a public hearing, and discussed the ordinance Amending Municipal Code Chapter 810, Social Host.

Discussion:

Following the deliberations, the Council introduced and waived the first reading of Ordinance No. 1114.

As discussed at this meeting, Sebastopol Municipal Code Section 8.10 SOCIAL HOST ORDINANCE is amended to include cannabis products possessed for non-medicinal purposes, in recognition that youth access to the substance is equally contrary to the public health and safety as is alcohol. It's inclusion in the ordinance would allow for those in control of a property where youth access is allowed to be cited for violation of this code in the same way they are currently for allowing youth access to alcohol.

The ordinance is now presented for adoption. The Ordinance will go into effect in 30 days after adoption.

Recommendation:

That the City Council approve Second Reading; waiving of further reading, and Adoption of Ordinance 1114

Attachment:

Ordinance No. 1114

ORDINANCE NUMBER 1114

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SEBASTOPOL
ADOPTING A NEW CHAPTER 8.10 ENTITLED "SOCIAL HOST ORDINANCE"

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SEBASTOPOL AS FOLLOWS:

Title 8 of the Sebastopol Municipal Code is hereby amended by adding a new Chapter 8.10 entitled "Social Host Ordinance" to read as follows:

CHAPTER 8.10
SOCIAL HOST ORDINANCE

8.10.010	Title
8.10.020	Findings and Purpose
8.10.030	Definitions
8.10.040	Duty of the Social Host
8.10.050	Prohibition of Underage Gatherings on Private Property and Public Premises
8.10.060	Exception
8.10.070	Hosting by Juvenile
8.10.080	Enforcement
8.10.090	Penalties for Violations
8.10.100	Recovery of Response Costs
8.10.110	No Mandatory Duty of Care
8.10.120	Statutory Severability
8.10.130	CEQA

8.10.010 Title.

This ordinance shall be known as the "Social Host Ordinance" of the City of Sebastopol.

8.10.020 Findings and Purpose.

The City Council of the City of Sebastopol does hereby find that:

- (1) The occurrence of underage social gatherings, defined in this ordinance as a gathering of two or more underage persons on private or public property where alcoholic beverages or cannabis products are consumed by underage persons, is harmful to such persons and a threat to public welfare, health and safety. The Surgeon General's Call to Action (2007) is hereby incorporated by reference, to further establish the health, safety and public welfare concerns that exist with underage drinking or cannabis use.

(2) Reliable research indicates that underage consumption of alcohol is a contributing factor in the three leading causes of teenage deaths: 1) unintentional injury, 2) homicide and 3) suicide. Underage drinking is associated with alcohol abuse and a negative impact on the developing brain of youth. Likewise, it is associated with violent crimes including sexual offenses, DUI and alcohol-related traffic deaths. Underage drinking is a common factor in public disturbances, vandalism and physical altercations, all of which may require intervention by local law enforcement.

(3) Research has identified easy access to alcohol or cannabis products and permissive attitudes as two key factors that contribute to underage drinking or cannabis use.

(4) Local, state and national studies have established that underage youth most commonly procure alcohol or cannabis from social sources (parties, friends, homes) and others who purchase it for them.

(5) Underage social gatherings frequently occur on private or public property where adults who own or control the property have failed to ensure that alcoholic beverages or cannabis products are neither served to, nor consumed by underage persons. Furthermore, there are times when parents or other adults are present at the social gathering who condone the underage drinking or cannabis use and provide the alcohol or cannabis products.

(6) Problems associated with underage social gatherings on private or public property are difficult to prevent and deter unless the Sebastopol Police Department has the legal authority to direct the social host to disperse the gathering and to cite the social host.

(7) Law enforcement personnel have in the past been required to respond to underage social gatherings on private and public property where alcoholic beverages or cannabis products are provided to and consumed by underage persons. Such calls for service can result in a disproportionate expenditure of public safety resources, and delay official responses to other calls.

(8) The City Council of the City of Sebastopol, pursuant to the City's police powers under Article XI, sections 3 and 5 of the California Constitution, and the City Charter established pursuant to such sections, has the authority to enact and enforce laws that promote the public health, safety and general welfare of its residents.

(9) An ordinance that imposes liability with penalties on social hosts is necessary to deter and prevent such gatherings. Social hosts or anyone who organizes, supervises, aids, conducts, permits, or controls the underage social gathering need not be present at such gathering to incur liability under this ordinance.

(10) The purposes of this ordinance are to:

- a) protect the public health, safety and welfare by deterring the service to and consumption of alcoholic beverages or cannabis products by underage persons; and
- b) to reduce the cost to the public of providing police response services. These purposes are achieved by issuing a criminal citation which requires the social host to pay a fine and fees for the actual costs incurred by the City.

The City Council, therefore finds that underage social underage gatherings held on private or public property are a threat to the public peace, health, safety and general welfare, and a public nuisance as they affect the entire Sebastopol community as well as the neighborhoods in which they occur.

8.10.030 Definitions.

For the purposes of this chapter, the following definitions apply:

- (a) "Alcohol." The definition of "alcohol" in Section 23003 of the California Business & Professions Code, as amended from time to time, shall apply to this chapter. As of the introduction of this chapter, section 23003 defines "alcohol" to mean "ethyl alcohol, hydrated oxide of ethyl, or spirits of wine, from whatever source or by whatever process produced."
- (b) "Alcoholic beverage." The definition of "alcoholic beverage" in Section 23004 of the California Business & Professions Code, as amended from time to time, shall apply to this chapter. As of the introduction of this chapter, section 23004 defines "alcoholic beverage" to mean alcohol, spirits, liquor, wine, beer that contains one-half of one percent or more alcohol by volume and that is fit for beverage purposes either alone or when diluted, mixed or combined with other substances."
- (c) "Cannabis" means all parts of the plant Cannabis Sativa Linnaeus, Cannabis Indica, or Cannabis Ruderalis, or any other strain or varietal of the genus Cannabis that may exist or hereafter be discovered or developed that has psychoactive or medicinal purposes. "Cannabis" also means marijuana as defined by section 11018 of the Health and Safety Code, and amended by the California Control, Regulate, and Tax Adult use of Marijuana Initiative, and as defined by other applicable state laws. "Cannabis" does not mean "industrial hemp" as defined by section 11018.5 of the Health and Safety Code. Cannabis is classified as an agricultural product separately from other agricultural crops.
- (d) "Cannabis Product" means cannabis or a cannabis product, respectfully, intended to be sold for either medical or adult use.
- (e) "City" means the City of Sebastopol.
- (f) "Juvenile" means any person under eighteen years of age.

- (g) "Private or public property" means any location such as a residence and adjoining property, an apartment, condominium, hotel or motel room, or other dwelling unit, or a hall or meeting room, park or any other place of assembly, public or private, whether occupied on a temporary or permanent basis, whether occupied as a dwelling or specifically for a party or other social function, or used with or without permission or compensation.
- (h) "Response costs" means the costs associated with responses by law enforcement to underage social gatherings including but not limited to:
- 1) salaries and benefits of law enforcement personnel for the amount of time spent responding to, remaining at, or otherwise dealing with unruly or underage gatherings
 - 2) the cost of any medical treatment to or for any law enforcement personnel injured responding to, remaining at or leaving the scene of an underage social gathering;
 - 3) the cost of repairing any City equipment or property damage, and the cost of the use of any such equipment, in responding to, remaining at or leaving the scene of an underage social gathering; and
 - 4) any costs recoverable in accordance with California Civil Code section 1714.9.
- (i) "Social Host" means any person or persons with a right of possession of private or public property at which an underage social gathering occurs, including, but not limited to the following:
- 1) the owner of record as of the time of the underage social gathering or tenant or lessee of the property;
 - 2) any person who exercises control over the private or public property at the time of the underage social gathering;
 - 3) anyone who organizes, supervises, officiates, aids, conducts, allows, permits or controls the underage social gathering.
 - 4) A social host need not be present at such gathering to incur liability under this ordinance.
- (j) "Underage social gathering" means a party or gathering of two or more persons held on private or public property in the City where alcoholic beverages or cannabis products are consumed by any underage person.
- (k) "Underage person" means any person under twenty-one years of age.

8.10.040 Duty of Social Host.

It is the duty of the Social Host to take reasonable steps to prevent underage access to alcoholic beverages or cannabis products on private and public property. Such steps include, but are not limited to: controlling the quantity of alcoholic beverages or cannabis products present at the gathering; verifying the age of persons attending the gathering by inspecting drivers' licenses or other government-issued identification cards to ensure that underage persons do not consume alcoholic beverages or cannabis products while at the gathering; and supervising the activities of underage persons at the gathering.

8.10.050 Prohibition of Underage Social Gatherings on Private and Public Property.

It is unlawful and a public nuisance for any person to knowingly host an underage social gathering on private or public property in the City. For purposes of this chapter, a person knowingly hosts an underage social gathering whenever the social host is aware that an underage person has consumed an alcoholic beverage or cannabis product or reasonably should have been aware had the social host taken reasonable steps to prevent consumption of alcoholic beverages or cannabis products by underage persons in accordance with section **8.10.040**. Violation of this section by any person is an infraction in addition to liability for recovery of response costs in accordance with section **8.10.100**, and any other applicable penalties under applicable law.

8.10.060 Exception.

This chapter does not apply to conduct involving the use of alcoholic beverages that is protected by Article I, section 4 of the California Constitution.

8.10.070 Hosting by Juvenile.

In the event that a juvenile hosts an underage social gathering at a residence or on other private or public property in the City in violation of this chapter, the parents or guardians of that juvenile may be jointly and severally liable for any penalties and response costs imposed pursuant to this chapter.

8.10.080 Enforcement.

Enforcement of this ordinance shall be the responsibility of the Chief of Police or his/her designee.

8.10.090 Penalties for Violations.

Any person violating any of the provisions of this ordinance shall be deemed guilty of an infraction.

8.10.100 Recovery of Response Costs.

When the police make an initial response to an underage social gathering on private or public property and a police officer issues a citation for violation of this chapter, the officer shall, in writing, inform any responsible person(s) at the property or location that:

- 1) An underage social gathering exists; and
- 2) The social host(s) will be charged for any response costs incurred for subsequent responses to the property for hosting an underage social gathering within a 12-month period.

This warning will be given to all social hosts at the time of the first response to an underage social gathering where a citation is issued for violation of this chapter. Within 30 calendar days of the initial citation, a written warning will be delivered via certified mail to the owner of record of the involved property. When a police officer responds to an underage social gathering at a residence or other private property within the City within 12 months of a citation and warning given to social hosts at the same property, and such officer issues a second or subsequent citation pursuant to this chapter, all responsible persons shall be jointly and severally liable for the City's response costs concerning such second or subsequent underage social gathering, but only to the extent that the identified social host(s) concerning the first citation at such property remain the social host(s) for the second or subsequent citation at such property.

8.10.110 No Mandatory Duty of Care.

This chapter is not intended to impose, and shall not be construed or given effect in a manner that imposes upon the City, or any officer, employee, agent, or representative of the City, a mandatory duty of care toward persons or property within or without the City limits, so as to provide a basis of civil liability for damages, except as may otherwise be imposed by law.

8.10.120 Statutory Severability.

If any section, subsection, sentence, clause or phrase or word of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council of the City of Sebastopol hereby declares that it would have passed and adopted this ordinance and each and all provisions thereof irrespective of the fact that any one or more of said provisions be declared unconstitutional, unlawful or otherwise invalid.

8.10.130 CEQA.

The City Council finds that adoption of this ordinance is exempt from the California Environmental Quality Act ("CEQA"), pursuant to Sections 15061(b)(3) (no possibility that the activity may have a significant impact on the environment) of the CEQA Guidelines (Title 14, Chapter 3 of the California Code of Regulations).

This ordinance shall become effective thirty (30) days after the date of its adoption by the Sebastopol City Council.

The City Clerk is hereby directed to publish or post this ordinance or a synopsis for the period and in the manner required by Section 45 of the City Charter or as otherwise required by law.

Approved for First Reading and Introduction on this 16th day of October, 2018.

Approved for Second Reading and Adoption on this 30th day of October, 2018.

VOTE:

Ayes:

Noes:

Abstain:

Absent:

APPROVED: _____

Mayor Patrick Slayter

ATTEST:

Mary Gourley, Assistant City Manager/City Clerk, MMC

APPROVED AS TO FORM:

Larry McLaughlin, City Attorney



Community Partnership to Prevent Underage Drinking: Awareness to Action

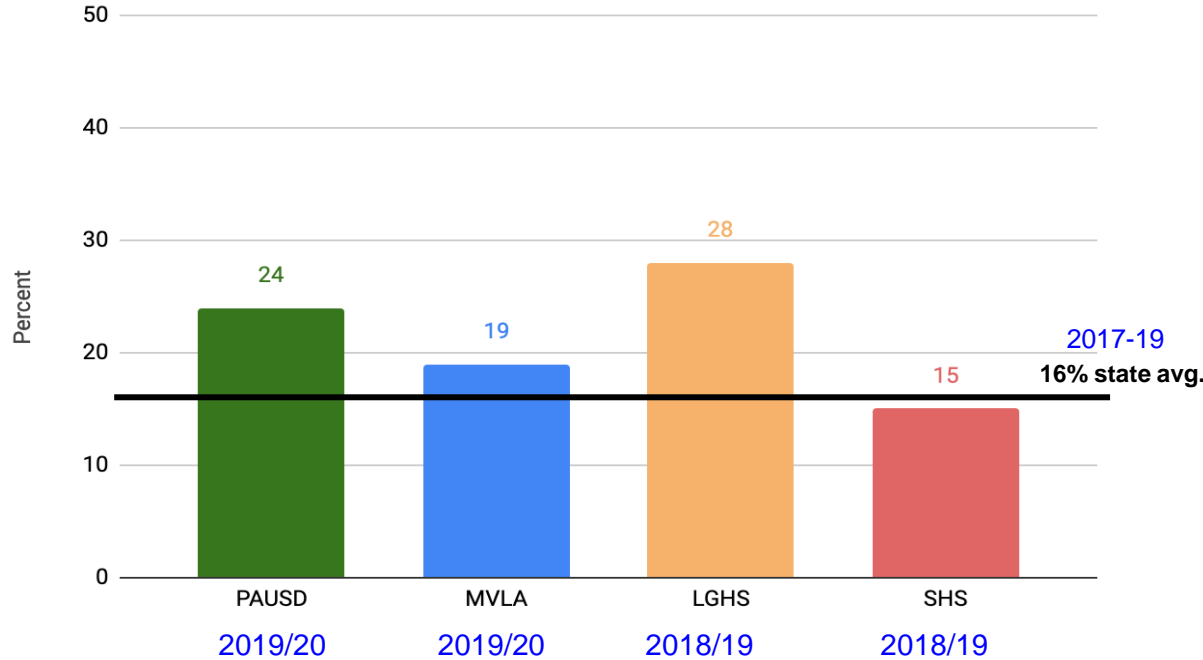


California Healthy Kids Survey

The California Healthy Kids Survey (CHKS) is the largest statewide survey of resiliency, protective factors, and risk behaviors in the nation.

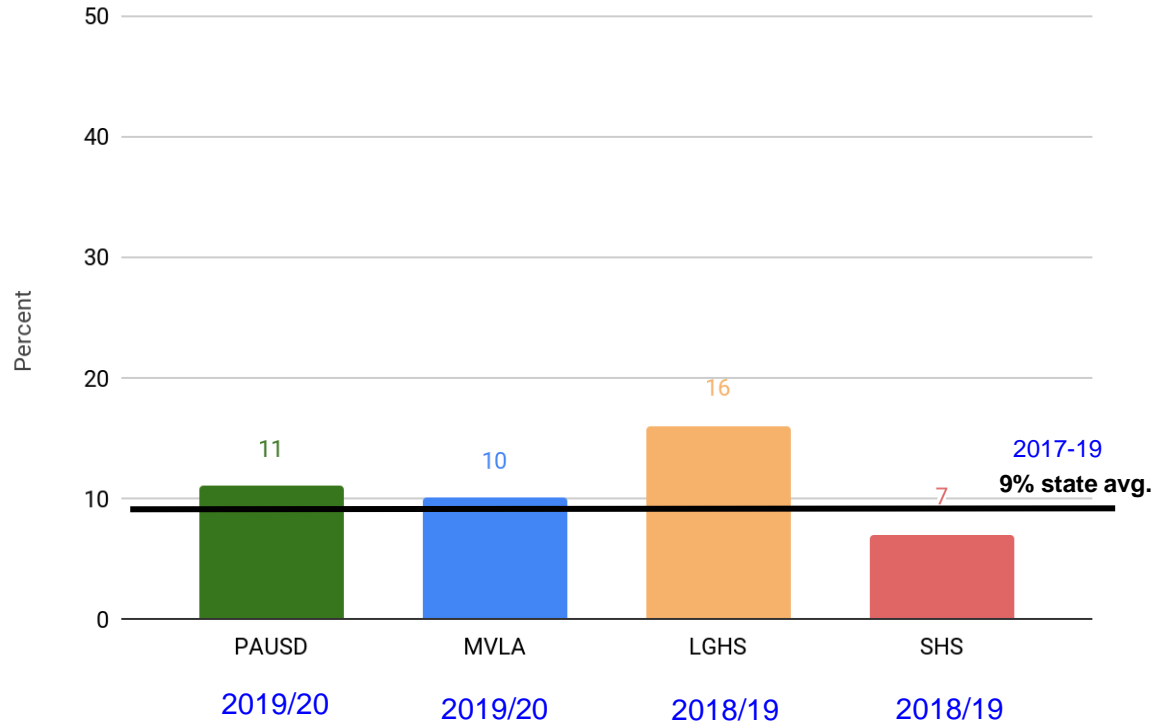
Across California, the CHKS has led to a better understanding of the relationship between students' health behaviors and academic performance, and is frequently cited by state policymakers and the media as a critical component of school improvement efforts to help guide the development of more effective health, prevention, and youth development programs.


It provides a means to confidentially obtain data on student knowledge, attitudes, perceptions, and behaviors related to the topics it covers.



During the past 30 days, did you have one or more drinks of alcohol?
11th Grade

During the past
30 days, have
you engaged in
binge drinking?
(5 or more
drinks
in a row)
11th Grade





Teen drinking leads to other social issues that negatively impact our entire community:

- Community:
 - Drunk driving
 - Vandalism
 - Sexual harassment & assault
 - Physical assaults
 - Gateway to other drug use
- Individual:
 - Addiction
 - Legal consequences
 - Emotional consequences - bullying/harassment/social media
- School:
 - Fallout from inappropriate behavior impacts school
 - Resulting gossip/bullying/harassment
 - Social-Emotional impact from sexual harassment & assault
 - Victims feel unsafe at school which interferes with learning

Impacts of Underage Alcohol Use

LGSUHSD Efforts to Combat Underage Drinking & its Consequences

- **Education & Prevention:**
 - Increasing education and prevention efforts related to substance use, healthy relationships, sexual harassment/assault, discrimination, and wellness
- **Expectations & Enforcement:**
 - Code of Conduct updated to express clear & consistent expectations for school-related behavior
 - Our legal limits:
 - A school district may discipline a student ***only for acts that are related to school activity or attendance***, including those occurring:
 - While on school grounds;
 - While going to or coming from school;
 - During the lunch period whether on or off campus; or
 - During or while going to or coming from a school-sponsored activity

2020-2021 Interventions

Tier 3 - Interventions

- Assist (Therapeutic Program)
- WRAP Around Services (Home)
- CASSY Services

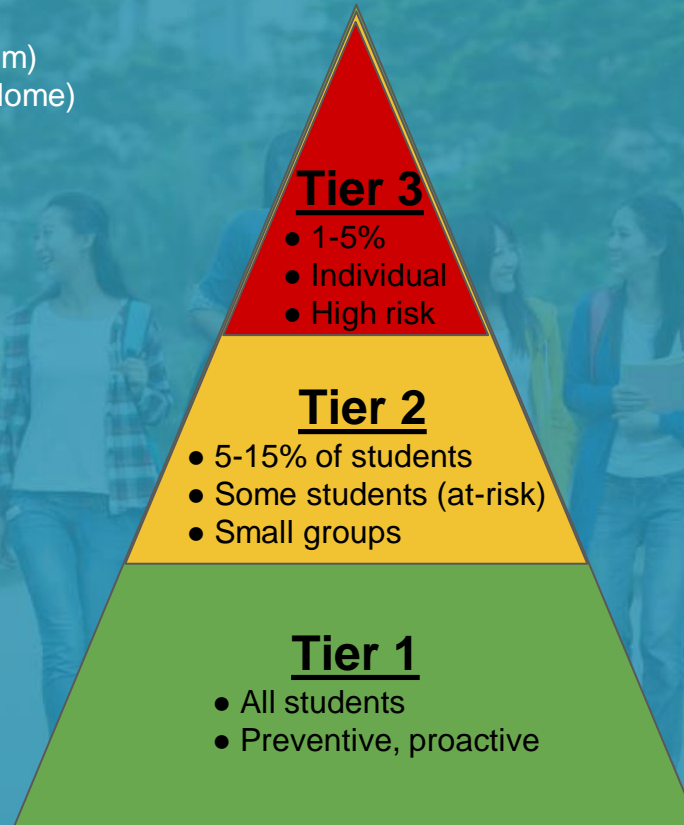
Tier 2 - Interventions

- CASSY Services

Tier 1 - Interventions

- Advisory 1.0

MTSS



2021-2022 Interventions

Tier 3 - Interventions

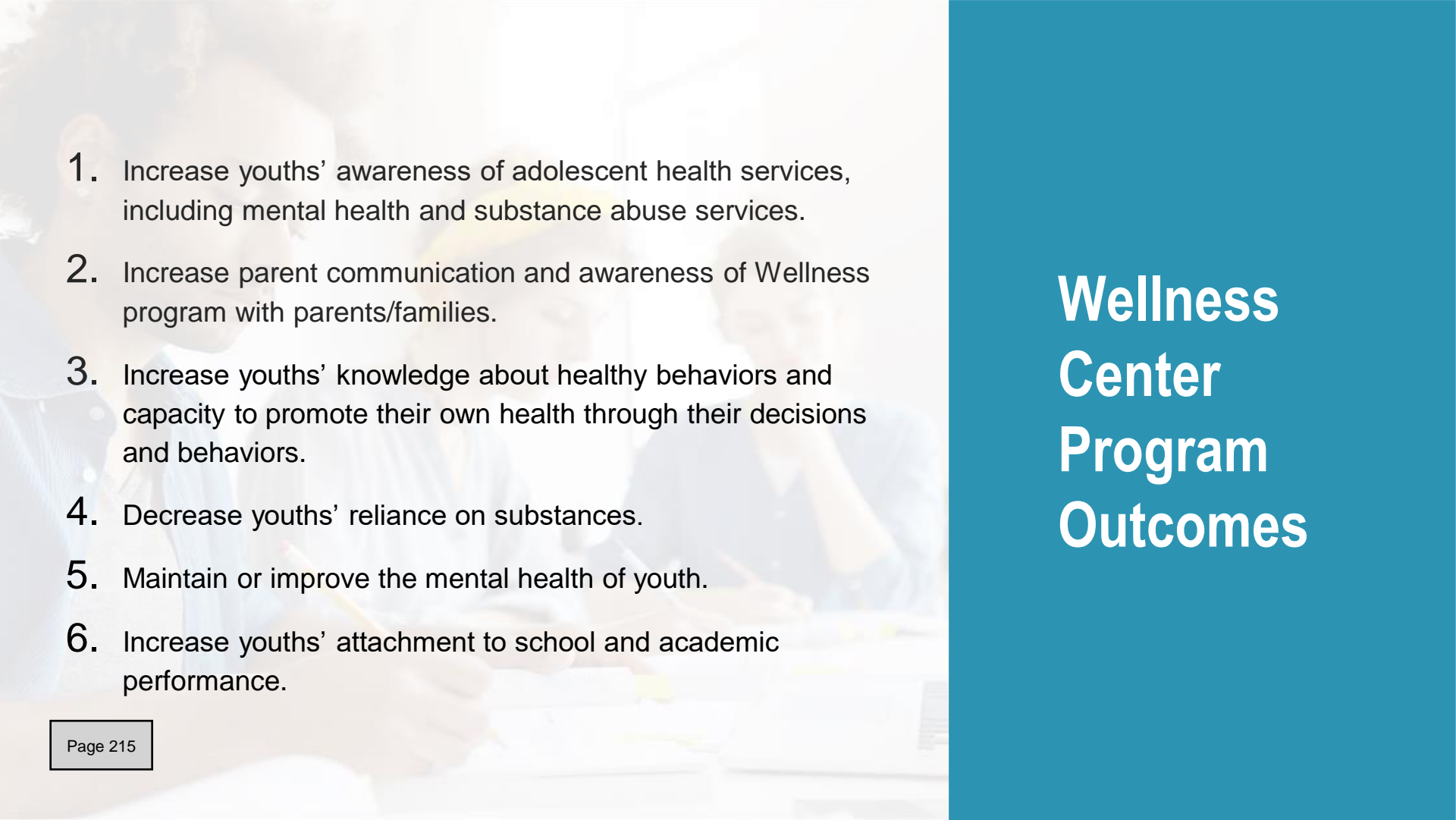
- Assist (Therapeutic Program)
- WRAP Around Services (Home)
- Wellness Center
 - District Lead Therapists
 - CASSY Therapists

Tier 2 - Interventions

- Wellness Center
 - Short-term Intervention Groups
 - Restorative Practices

Tier 1 - Interventions

- Advisory 2.0
- Improved Education/Outreach re: Title IX
- Text/Audio/Video Therapy (Talkspace)
- Wellness Center
 - Clinical Health Outreach Worker
 - Youth Outreach Workers

- 
1. Increase youths' awareness of adolescent health services, including mental health and substance abuse services.
 2. Increase parent communication and awareness of Wellness program with parents/families.
 3. Increase youths' knowledge about healthy behaviors and capacity to promote their own health through their decisions and behaviors.
 4. Decrease youths' reliance on substances.
 5. Maintain or improve the mental health of youth.
 6. Increase youths' attachment to school and academic performance.

Wellness Center Program Outcomes

Substance Abuse and Mental Health Services Administration Recommendations to Move Communities from Awareness to Action

- Promote the idea that underage alcohol use is a local problem that local citizens can solve through concerted and dedicated action;
- Establish organizations and coalitions committed to forming a local culture that disapproves of underage alcohol use, that works diligently to prevent and reduce it, and that is dedicated to informing the public about the extent and consequences of underage drinking; and
- Work to ensure that members of the community are aware of the latest research on adolescent alcohol use and, in particular, the adverse consequences of alcohol use on underage drinkers and other members of the community who suffer from its secondhand effects.

Next Steps

- Our community can & should address this issue. It is possible to reduce underage drinking & its consequences.
- LGSUHSD embraces our responsibility in addressing this issue, but we cannot do it alone.
- This is a community issue on which we need to work together with families & community partners.
- Potential Next Steps:
 - Strengthen LG Social Host ordinance and its enforcement
 - Community awareness and education efforts
- Strengthening the SH Ordinance will not solve this issue by itself, but it is a powerful message to our community and a deterrent to underage drinking.
- Our Board and District are fully supportive of this ordinance and other joint efforts.



TOWN OF LOS GATOS
Staff Report

MEETING DATE:

ITEM NO: 11

DATE: November 2, 2021
TO: Mayor and Town Council
FROM: Laurel Prevetti, Town Manager
SUBJECT: Provide Direction on the Proposed Pilot Employee Parking Program

RECOMMENDATION:

Provide direction on the proposed Pilot Employee Parking Program.

BACKGROUND:

On April 20, 2021, the Town Council directed staff to move forward with a pilot Employee Parking Program. Staff began this work by implementing a survey to determine the demand and locations for the employee parking spaces. Business owner and employee surveys were distributed via email and in person during door-to-door outreach. Distribution efforts occurred with collaboration and support of the Town's Complete Streets and Transportation Commission, and the Los Gatos Chamber of Commerce. The surveys helped to determine how many employee spaces are needed, preferences of where employees want to park, and parking concerns of employees and business owners.

There were 330 businesses surveyed from downtown, in which both business owner and employee surveys were distributed. Staff received responses from 103 businesses and 272 employees. With approximately one-third of the businesses responding and a vast disparity in the size and type of downtown businesses, the surveys provided a limited representation of the business community's parking needs. Restaurants, professional and personal services have the highest percentage of employees and were significantly under-represented in the survey responses.

With such limited business owner and employee response, including an under representation of the larger employers, further data were necessary to establish an accurate demand for employee parking. Staff collected the additional data as described in the report below.

PREPARED BY: Greg Borromeo, Interim Captain and
Jim Renelle, Parking Program Manager

Reviewed by: Town Manager, Town Attorney, Public Works Director, and Acting Police Chief

DISCUSSION:

The primary purpose of the pilot Employee Parking Program is to manage parking during peak business and provide plenty of convenient parking for patrons. Peak demand for parking has been identified in the Dixon Study as occurring on Thursdays and Fridays from 11:00 a.m. to 2:00 p.m. To accommodate this goal, spaces would need to be reserved for employees Monday through Friday from 9:00 a.m. to 6:00 p.m. Outside of those hours, the spaces would revert to all-day public parking, providing unlimited timed parking for evening visitors.

The employee survey indicated that the vast majority of the respondents are not willing to pay for employee parking. The remaining employees indicated that they are only willing to pay up to \$20 per month. To highly encourage full participation, staff is proposing that employee parking permits would be free of charge during the pilot period. The employee parking rate would be determined at the end of the pilot period taking into consideration the multiple factors that increase overall parking compliance.

To provide a more complete picture of the employee parking needs and fill in some of the missing data, staff created a comprehensive downtown business list. The list tracks the type of business, hours of operation, peak number of patrons, and number of employees parking in public lots at peak business hours. This also provides staff with a methodology to estimate for the businesses that did not respond to the survey. The list provides a relatively accurate picture of peak employee parking demand and may be used to determine how many employee spaces are needed in various locations of downtown.

While the initial demand analysis revealed a larger than expected number of employees working at peak times, several factors reduce the overall downtown employee public parking demand. Private parking lots and employees using alternative transportation reduce the overall demand by 18%. The chart below provides information on employee parking needs.

Total Employees at Peak (Thu. & Fri. 11 AM – 2 PM)	Employees Needing Parking	Employees Using Private Spaces	Employees Using Municipal Spaces
1028	956	121	843

It is likely that the number of employee spaces needed will increase over time; however, staff recommends that the program pilots with a more conservative number of employee designated parking spaces to avoid creating under-utilized spaces. This starting number would be determined based on the number of employees that initially register for the program, then spaces can be added as the demand increases. Employee permits would be oversold as not all employees would be utilizing a space at the same time and so that the Town may continue to prioritize and balance the parking needs of customers.

DISCUSSION: (continued)

In addition to public parking lots, a fixed number of employees would be permitted to park in designated on-street parking areas that would include a small number of spaces in the residential parking permit zones. The chart below illustrates the current parking space inventory.

Downtown Parking Inventory	Spaces
Downtown Municipal Off-Street Parking	1095
Downtown On-Street Parking	540 *This number is approximate pending final parklet build out and restriping
Commercial Private Parking	289
Residential Permit Parking	631
Total Downtown Parking	2,555

Pilot Employee Parking Permit Program Implementation

There will be several steps to implement the pilot Employee Parking Program including employee registration, parking space designation, signage design, and long-term parking solutions (three or more hours) for customers. Beginning as soon as February 2022, staff expects to assign designated employee parking spaces and begin installing appropriate signage. When all required signage is installed, the pilot Employee Parking Program will go live. This implementation timeline is reflected in the chart below.

Task	4 th Quarter 2021	1 st Quarter 2022	2 nd Quarter 2022
Employee Wait List	X		
Parking Wayfinding		X	
Parking Lot Signage		X	
Begin Employee Parking		X	
Other Wayfinding Tasks			X

Employee Registration and Permits

Staff has created a process called the Waitlist to begin registering interested employees using the existing parking management software, Turbo Data. This process, with a planned launch in November 2021, will provide a mechanism for downtown employees to register for the pilot program, and assist with data collection determining the number and locations of employee parking spaces being requested. When an employee joins the Waitlist, they will be in line to receive a parking permit and will be asked to provide specific data that will aide staff in verifying the demand for employee parking. The Waitlist will also help staff by dispersing the

DISCUSSION: (continued)

administrative workload of the initial permit registration. The need for additional employee designated spaces will be assessed and adjusted on an on-going basis.

Designating Employee Parking Spaces

Employee parking spaces must be well marked with signage or surface markings so that the parameters of the spaces are understood by all. The wayfinding portion of this project will begin in November 2021 with the first phase including the design of employee parking related signage as the signage must be installed before the pilot Employee Parking Program can begin. It is anticipated that parking signage will be installed during first quarter of 2022.

To incentivize employees to participate in the pilot Employee Parking Program, the option for employees to park in the unlimited public parking spaces must be significantly reduced or eliminated in the core municipal parking lots. As employee spaces are added, unlimited all-day spaces will need to be progressively eliminated. Doing this will have a negative effect on some downtown visitors as many need the ability to park for more than three hours without having to relocate their vehicle.

As more employee spaces are added, and unlimited public parking spaces are reduced, visitors will need another option. The “pay-to-stay” model was recommended by the Dixon Parking Study. Town staff has received feedback from customers that a pay option is preferred over shuffling their car or receiving a parking ticket. Thus, it is understood by staff that the extra convenience provided by the “pay-to-stay” option could outweigh the small fee incurred. Pay stations and a mobile payment application are needed to provide access to this option. Payment methods including the procurement of a mobile payment application will be benchmarked over the next few months and staff will return to the Town Council with further information.

CONCLUSION:

Los Gatos-Monte Sereno Police Department Parking Unit continues to work on moving forward the Parking Roadmap. The Department is focused on improving the Downtown visitor experience by managing employee parking. Staff looks forward to the Council’s feedback and direction of the elements of the pilot as outlined in this report.

COORDINATION:

This report was coordinated with the Parks and Public Works Department and Economic Vitality.

PAGE 5 OF 5

SUBJECT: Pilot Employee Parking Program

DATE: November 2, 2021

FISCAL IMPACT:

None.

ENVIRONMENTAL ASSESSMENT:

This is not a project as defined under CEQA, and no further action is required.



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 11/02/2021

ITEM NO: 12

DATE: October 27, 2021
TO: Town Council
FROM: Joel Paulson, Community Development Director
SUBJECT: Consider an Appeal of a Planning Commission Decision Approving a Lot Line Adjustment Between Three Adjacent Lots on Properties Zoned R-1:20. Located at 17200 Los Robles Way. Subdivision Application M-20-012. APNS 532-36-075, -076, -077. Property Owners: Daran Goodsell, Trustree and Mark Von Kaenel. Applicant: Tony Jeans. Appellant: Alison and David Steer. Project Planner: Ryan Safty.

RECOMMENDATION:

Deny an appeal of a Planning Commission decision approving a Lot Line Adjustment application (M-20-012) between three adjacent lots on properties zoned R-1:20, located at 17200 Los Robles Way.

BACKGROUND:

The subject parcels are located at the terminus of Los Robles Way and Worcester Lane (Exhibit 1 of Attachment 1). The application proposes to take three adjacent parcels and reconfigure the lot lines. The existing configuration has several non-conformities, most of which would be remedied with this proposed Lot Line Adjustment application. There is an existing residence on Parcel 1 (APN 532-36-076) that would remain, and the other two parcels are vacant. No construction is proposed with this application.

On May 25, 2021, the Development Review Committee (DRC) approved two Certificate of Compliance applications, verifying the legality of vacant Parcels 2 and 3. Following verification of the legality of Parcels 2 and 3, the applicant proceeded with the Lot Line Adjustment application for the three parcels.

PREPARED BY: Ryan Safty
Associate Planner

Reviewed by: Town Manager, Assistant Town Manager, Town Attorney, and Community Development Director

BACKGROUND (continued):

On July 13, 2021, the DRC found that the Lot Line Adjustment application was complete and in compliance with the Town Code and Subdivision Map Act (SMA) and approved the Lot Line Adjustment application (Exhibit 10 of Attachment 1).

On July 22, 2021, the decision of the DRC was appealed to the Planning Commission due to concerns regarding the legality of the parcels, legal access of the parcels, buildability of the parcels, and future construction activities. The appeal form was signed by five neighbors near the subject property, located at 304 Harding Avenue, 308 Harding Avenue, 111 Worcester Lane, 112 Worcester Lane, and 110 Worcester Loop (Exhibit 11 of Attachment 1).

On September 8, 2021, the Planning Commission denied the appeal and approved the Lot Line Adjustment application with a 5-0-1 vote with one Commissioner abstaining and one absent (Attachment 2). On September 20, 2021, the decision of the Planning Commission was appealed to the Town Council by interested persons, Alison and David Steer, who reside at 304 Harding Avenue (Attachment 3).

Pursuant to the Town Code, any interested person as defined by Section 29.10.020 may appeal to the Council any decision of the Planning Commission. For residential projects an interested person is defined as "a person or entity who owns property or resides within 1,000 feet of a property for which a decision has been rendered and can demonstrate that their property will be injured by the decision." The appellants meet the requirements.

Pursuant to Town Code Section 29.20.280, the appeal must be heard within 56 days of the Planning Commission hearing and in this case, by November 15, 2021. The Council must at least open the public hearing for the item and may continue the matter to a date certain if the Council does not complete its deliberations on the item.

Pursuant to Town Code Section 29.20.295, in the appeal, and based on the record, the appellant bears the burden to prove that there was an error or abuse of discretion by the Planning Commission as required by Section 29.20.275. If neither is proved, the appeal should be denied. If the appellant meets the burden, the Town Council shall grant the appeal and may modify, in whole or in part, the determination from which the appeal was taken or, at its discretion, return the matter to Planning Commission. If the basis for granting the appeal is, in whole or in part, information not presented to or considered by the Planning Commission, the matter shall be returned to the Planning Commission for review.

DISCUSSION:

A. Project Summary

The application is proposing to reconfigure the lot lines of three adjacent parcels. There is an existing residence on Parcel 1, which would remain. Parcels 2 and 3 are vacant. Parcels 1 and 3 take access off Los Robles Way (Exhibit 13 of Attachment 1). Parcel 2 is land-locked, as the previous 10-foot ingress and egress easement running along the east property line, as noted on the project plans, was quitclaimed as stated in the DRC appeal package (Exhibit 11 of Attachment 1).

The existing configuration consists of four nonconformities: the existing residence on Parcel 1 does not meet the required 15-foot side yard setback; Parcel 1 does not meet the minimum frontage requirement of 100 feet for lots not fronting on a cul-de-sac bulb; Parcel 2 does not meet the minimum lot size of 20,000 square feet; and Parcel 2 does not meet the minimum frontage requirement of 100 feet for lots not fronting on a cul-de-sac bulb.

The proposed lot line adjustment would reconfigure the lot lines so that Parcel 1 abuts and continues to take access off Los Robles Way, while Parcels 2 and 3 take access off a future proposed cul-de-sac bulb at the terminus of Worcester Lane. The Town has reviewed the conceptual configuration with access provided via a future cul-de-sac bulb at the terminus of Worcester Lane. Worcester Lane is a public right-of-way and can be used to provide access.

All existing nonconformities would be resolved, except that the Parcel 1 frontage on Los Robles Way will continue to be nonconforming. The proposed lot configurations would comply with the minimum lot size, lot depth, and setback requirements for the R-1:20 zone. No construction is proposed at this time. Future construction activities associated with the conceptual cul-de-sac, driveways, grading, and residences shown on the plans will require discretionary applications with separate environmental review.

B. Planning Commission

On September 8, 2021, the Planning Commission received the staff report (Attachment 1), opened the public hearing, and considered testimony from the appellant, applicant, and the public. The appellant was present and spoke in opposition to the proposed project. After asking questions of the applicant, the Planning Commission closed the public hearing and discussed the project. The Commission approved the application with a 5-0-1 vote with one Commissioner abstaining and one absent. Attachment 2 contains the verbatim minutes.

DISCUSSION (continued):

C. Appeal to Town Council

The decision of the Planning Commission was appealed on September 20, 2021, prior to the 5:00 p.m. deadline, by interested persons, Alison and David Steer (Attachment 3).

The appeal states that the Planning Commission's decision is not supported by substantial evidence in the record. A summary of the specific reasons listed in the appeal form are provided below as verbatim excerpts followed by the applicant's verbatim responses in *italic* font. The Town Attorney's Office has provided a response to the legal questions related to the Town Code and the SMA below the appeal discussion. This analysis, along with the Project Summary and Environmental Review sections of this report, constitutes staff's analysis of these issues.

For more detail, the full 169-page appeal packet with case studies is included as Attachment 3. The appellant also submitted an additional 54-page packet to accompany the appeal packet, related to the California Environmental Quality Act (CEQA), included as Attachment 5. The applicant's response letters are included as Attachment 4 and Exhibit 12 of Attachment 1.

1. Appellant: Town Ordinance §29.10.070 states that, "Any parcel under the same or substantially the same ownership that do not meet the criteria listed above shall be considered merged. In addition, no parcel shall be modified through a lot line adjustment procedure in order to meet the criteria listed above." SMA §66451.11 specifies that, "a local agency may, by ordinance which conforms to and implements the procedures prescribed by this article, provide for the merger of a parcel or unit with a contiguous parcel or unit held by the same owner if any one of the contiguous parcels or units held by the same owner does not conform to standards." Why, when the town ordinance states "shall" and the SMA states "may" is the Town not following its own ordinance for Lot Merger? Previously submitted quit claim deeds along with exhibits prove incontestably that APN 532-36-077 has no legal access which is adequate for vehicular and safety equipment access and maneuverability.

DISCUSSION (continued):

Applicant: The Appellant has gone to great lengths to attempt to hijack this appeal hearing and turn it into a Request for Merger hearing. As a pre-cursor to the LLA application, the Town required the Owner to address the legality of the Parcels in question. Town has essentially made "Determination of Non-Merger" by providing, after exhaustive research and consultant reviews, a recorded Certificate of Compliance document for the Parcel 536-32-077 in which it explicitly states, "This certificate relates only to the issues of compliance or noncompliance with the Subdivision Map Act of the State of California and the Town of Los Gatos Subdivision Ordinance enacted pursuant hereto. The parcels described herein may be sold, leased, or financed without further compliance with the Subdivision Map Act or any local ordinance enacted pursuant thereto. Development of the parcels may require issuance of a permit or permits, or other grant or grants of approval."

2. Appellant: Town Ordinance §29.10.070 states that the lot line adjustment procedure cannot be used for parcels that lack legal access or parcels that do not meet slope stability standards. APN 532-36-077 is landlocked due to quit claim deeds signed in 1978 for Harding right-of-way. Parcel non-conforming to current zoning requirements, is land-locked, and non-buildable with regard to Least Restrictive Development Area and slopes exceeding 30 percent. Town of Los Gatos Lot Line Procedure requires that lot frontage remain conforming (APN 532-36-077 has no frontage) and that, "the existing buildings meet the requirement of the Uniform Building Code for fire separation or fire wall construction." Existing building on APN 532-36-076 is derelict.

Applicant: The legal creation of Lot 077 was considered by the Town Consultant Surveyor, when the Certification of Compliance was applied for and approved. An access corridor to Harding Lane was reserved in the creation of this lot. This has since been quitclaimed (in 1980 per appellant, to allow a neighbor to build a home on Harding Ave), but the legal access at Los Robles Way can provide frontage at any time the applicant (Von Kaenel) chooses to develop the parcel.

The vacating of the access by the Town reduces the street (Los Robles Way) from public to private – but it is still legal – for access to 075 (Thompson Trust) and 076/077 (Von Kaenel) via the defined easement. The right-of-way width is 20 feet – also legal.

Potential Geologic and Geotechnical concerns are addressed at the time of a Building Application through a comprehensive process involving Town Engineering and consultant peer reviews. Slopes in excess of 30 percent can be avoided on the present site.

DISCUSSION (continued):

3. Appellant: If the Town believes the broad language in SMA 66412(d) preempts the Town Ordinance Section 29.10.070, how is it that other town and counties will not allow a non-buildable parcel to be made buildable? It's because SMA §66451.11 exists. Why does the Town not follow the guidance provided by SMA §66541.10 and §66541.11, along with §66541.13 and §66541.14? If the Town allows the developer to skirt the lot merger ordinance, they are setting a precedent for illegal use of the Lot Line Adjustment procedure to establish a buildable parcel where none existed, and increase density without formal review of the development.

Applicant: The appellant also uses sections of the SMA that are inapplicable to this LLA. The Subdivision Map Act Section 66412 explicitly singles out LLAs of this nature by excluding other provisions of the Act, which the appellant is attempting to use to disqualify it: "This division (SMA) shall be inapplicable to any of the following: (d) A lot line adjustment between four or fewer existing adjoining parcels, where the land taken from one parcel is added to an adjoining parcel, and where a greater number of parcels than originally existed is not thereby created, if the lot line adjustment is approved by the local agency, or advisory agency." A local agency or advisory agency shall limit its review and approval to a determination of whether or not the parcels resulting from the lot line adjustment will conform to the local general plan, any applicable specific plan, any applicable coastal plan, and zoning and building ordinances.

4. Appellant: We also request that the remaining two buildable parcels, APN 532-36-075 and merged APN 532-36-076/77, maintain access from Los Robles Way to avoid unnecessary scarring and destabilization of the hillside through grading and removal of trees, and to preserve the natural scenic character of the Town. In addition, this would assure the buildable parcels share a driveway to minimize impervious surface. The hillside causes flooding issues to residents on Worcester Lane and visible landslide concerns to 246 Harding.

Applicant: The Appellant has gone to great lengths to attempt to hijack this appeal hearing and turn it into a Request for Merger hearing. As a pre-cursor to the LLA application, the Town required the Owner to address the legality of the Parcels in question. Town has essentially made "Determination of Non-Merger" by providing, after exhaustive research and consultant reviews, a recorded Certificate of Compliance document for the Parcel 536-32-077.

Potential Geologic and Geotechnical concerns are addressed at the time of a Building Application through a comprehensive process involving Town Engineering and consultant peer reviews. Slopes in excess of 30 percent can be avoided on the present site.

DISCUSSION (continued):

It was clearly the intention of the Town that Worcester Lane would eventually continue past the fence. If they had wanted to preclude access from Worcester Lane to the property in question, they would have terminated it with a cul-de-sac originally.

5. Appellant: We would also like to appeal the required findings made by the DRC. Required findings state that the project is not subject to CEQA. 17200 Los Robles Way Lot Line Adjustment application is not categorically exempt from CEQA. CEQA Class 5, "Minor Alterations in Land use Limitations," exemption excludes slopes greater than 20 percent and lot line adjustments that result in changes to land use density. 17200 Los Robles Way has a 26 percent average slope. We would request compliance to CEQA should a lot line adjustment on 17200 Los Robles Way be approved. Findings by DRC in conflict, "no development proposed," yet DRC/Planning Commission makes the affirmative findings that the site is physically suitable for proposed density of development and the type of development, and proposed improvement not likely to cause substantial environmental damage nor injure wildlife or their habitat. A coyote den exists on the property and deer and wildlife frequent the property. Planning Commission did not visit the land, nor did they review any plans for the development as the developer has not shared the development plans with the Town. How can the Town approve the suitability of the development without knowing what will be built, or whether it is in conformance to the surrounding established neighborhood? We are appealing the decision of the DRC to approve suitability of development before they have reviewed the proposed development and parcel maps.

Applicant: *The project is Categorically Exempt pursuant to the adopted Guidelines for the Implementation of the California Environmental Quality Act, Section 15061(b)(3): A project is exempt from CEQA when the activity is covered by the common sense exemption that CEQA only applies to Projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question will have a significant effect on the environment, the activity is not subject to CEQA. The project simply proposes to modify lot lines between three legal, adjacent parcels. No development is proposed at this time. So there can be no Environmental Impact with the LLA.*

The appeal packet requires that interested parties may appeal residential projects if they are: "a person or persons or entity or entities who own property or reside within 1,000 feet of a property for which a decision has been rendered, and can demonstrate that their property will be injured by this decision". So I really have to question the grounds for an appeal at all. This is a second appeal and 'loss of privacy' is not an injury.

DISCUSSION (continued):

D. Town Attorney's Analysis

Part (b) of Town Code Section 29.10.070, requiring involuntary lot mergers, was adopted in 1976 and amended in 1988. However, this provision of the Town Code is unenforceable as it is inconsistent with the SMA. The SMA has contained express merger provisions since 1976 and the current SMA merger provisions were enacted in 1986. Government Code Section 66451.10 states that, "two or more contiguous parcels or units of land which have been created under the provisions of this division [...] shall not be deemed merged by virtue of the fact that contiguous parcels or units are held by the same owner."

The SMA's current merger provisions reflect two overall concerns. First, they provide landowners with elaborate procedural safeguards of notice and opportunity to be heard before their lots can be involuntarily merged (*Morehart v. County of Santa Barbara*). Second, they reveal, "a state concern over local regulation of parcel merger for purposes of development," as well as for purposes of sale, lease, or financing. In addition, California Civil Code Section 1093 requires an, "express written statement of the grantor," of their intent to alter or affect the separate and distinct nature of the parcels described therein. Therefore, the legal merger of two parcels occurs only through the express written statement of the grantor (*ibid.*) or through a local agency's compliance with the merger procedures contained in Sections 66451.10 and 66451.11 of the SMA, including the due process requirements contained therein (See *Morehart v. County of Santa Barbara*, *supra*, 7 Cal. 4th at p. 761 [SMA preempts the field for parcel mergers]).

Additionally, part (b) of Town Code Section 29.10.070, disallowing a, "parcel to be modified through a lot line adjustment procedure in order to meet the criteria listed above," is also unenforceable as it is inconsistent with the SMA. The SMA states that for a lot line adjustment, "a local agency or advisory agency shall limit its review and approval to a determination of whether or not the parcels resulting from the lot line adjustment will conform to the local general plan, any applicable specific plan, any applicable coastal plan, and zoning and building ordinances." Therefore, the Town cannot impose as conditions to a lot line adjustment that the current configuration of the lots meet certain criteria. Instead, the Town must confine its approval of a lot line adjustment on its conformance to the local general plan, any applicable specific plan, any applicable coastal plan, and zoning and building ordinances resulting from the lot line adjustment.

PUBLIC COMMENTS:

Written notice of the Town Council hearing was sent to property owners and tenants within 300 feet of the subject property. Public comments received following the Planning Commission hearing and prior to publication of this report are included as Attachment 9. The applicant's response to these comments is included as Attachment 10.

COORDINATION:

The Community Development Department coordinated with the Town Attorney Office in the review of the appeal.

ENVIRONMENTAL REVIEW:

The project is Categorically Exempt pursuant to the adopted Guidelines for the Implementation of the California Environmental Quality Act, Section 15061(b)(3): "A project is exempt from CEQA if: The activity is covered by the common sense exemption that CEQA only applies to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question will have a significant effect on the environment, the activity is not subject to CEQA." The project proposes to modify lot lines between three legal, adjacent parcels. No development is proposed at this time. Future construction activities associated with the conceptual cul-de-sac, driveways, grading, and residences shown on the plans will require discretionary applications with separate environmental review. The appellant has submitted additional information (Attachment 5) contesting this CEQA determination.

CONCLUSION:

A. Recommendation

For the reasons stated in this report, it is recommended that the Town Council uphold the decision of the Planning Commission and adopt a resolution (Attachment 6) denying the appeal and approving the application with the required findings (Attachment 6, Exhibit A), conditions of approval (Attachment 6, Exhibit B), and development plans (Attachment 1, Exhibit 13).

B. Alternatives

Alternatively, the Town Council could:

1. Adopt a resolution (Attachment 7) to grant the appeal and remand the application back to the Planning Commission with specific direction;
2. Adopt a resolution granting the appeal and denying the application (Attachment 8); or
3. Continue the application to a date certain with specific direction.

PAGE 10 OF 10

SUBJECT: 17200 Los Robles Way/M-20-012

DATE: October 27, 2021

Attachments:

1. September 8, 2021 Planning Commission Staff Report, with Exhibits 1-14
2. September 8, 2021 Planning Commission Verbatim Minutes
3. Appeal of the Planning Commission Decision, received September 20, 2021
4. Applicant's Response to Appeal, received October 8, 2021
5. Additional Information from the Appellant, received October 21, 2021
6. Draft Resolution to Deny Appeal and Approve Project, with Exhibits A and B
7. Draft Resolution to Grant Appeal and Remand Project to Planning Commission
8. Draft Resolution to Grant Appeal and Deny Project
9. Public Comments received between 11:01 a.m., September 8, 2021 and 11:00 a.m., October 28, 2021
10. Applicant's Response to Public Comments received between 11:01 a.m., September 8, 2021 and 11:00 a.m., October 28, 2021



**TOWN OF LOS GATOS
PLANNING COMMISSION
REPORT**

MEETING DATE: 09/08/2021

ITEM NO: 2

DATE: September 3, 2021
TO: Planning Commission
FROM: Joel Paulson, Community Development Director
SUBJECT: Consider an Appeal of a Development Review Committee Decision Approving a Lot Line Adjustment Between Three Adjacent Lots on Properties Zoned R-1:20. Located at 17200 Los Robles Way. APNs 532-36-075, -076, and -077. Lot Line Adjustment Application M-20-012. Property Owners: Daran Goodsell, Trustee and Mark Von Kaenel. Applicant: Tony Jeans. Appellants: Alison and David Steer, Terry and Bob Rinehart, Nancy and Jim Neipp, Gary and Michelle Gysin, and Gianfranco and Eileen De Feo. Project Planner: Ryan Safty.

RECOMMENDATION:

Deny the appeal of a Development Review Committee decision approving a lot line adjustment between three adjacent lots on properties zoned R-1:20, located at 17200 Los Robles Way.

PROJECT DATA:

General Plan Designation: Low Density Residential
Zoning Designation: R-1:20
Applicable Plans & Standards: General Plan
Existing Parcel Sizes: Parcel 1: 74,832 square feet, Parcel 2: 11,226 square feet, and Parcel 3: 50,239 square feet

Surrounding Area:

	Existing Land Use	General Plan	Zoning
North	Residential	Low Density Residential	R-1:8
South	Residential, Open Space	Low Density Residential, Open Space	R-1:10
East	Residential	Low Density Residential	R-1:8, R-1:10
West	Residential	Low Density Residential	R-1:8, R-1:20

PREPARED BY: RYAN SAFTY
Associate Planner

Reviewed by: Planning Manager and Community Development Director

CEQA:

The project is Categorical Exempt pursuant to the adopted Guidelines for the Implementation of the California Environmental Quality Act, Section 15061(b)(3): A project is exempt from CEQA when the activity is covered by the common sense exemption that CEQA only applies to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question will have a significant effect on the environment, the activity is not subject to CEQA. The project proposes to modify lot lines between three legal, adjacent parcels. No development is proposed at this time.

FINDINGS:

- The project is Categorical Exempt pursuant to the adopted Guidelines for the Implementation of the California Environmental Quality Act, Section 15061(b)(3).
- As required by Section 66474 of the Subdivision Map Act.

ACTION:

The decision of the Planning Commission is final unless appealed within ten days.

BACKGROUND:

The subject parcels are located at the terminus of Los Robles Way and Worcester Lane (Exhibit 1). The application proposes to take three adjacent parcels and reconfigure the lot lines. The existing configuration has several non-conformities, most of which would be remedied with this proposed Lot Line Adjustment application. There is an existing residence on Parcel 1 (APN 532-36-076) that would remain, and the other two parcels are vacant. No construction is proposed with this application.

On November 11, 2020, the applicant submitted a Lot Line Adjustment application for the three parcels. After the initial review, the applicant was informed that they must verify the legality of Parcel 2 (APN 532-36-077) and Parcel 3 (APN 532-36-075).

On February 23, 2021, the applicant submitted Certificate of Compliance applications to verify the legality of Parcels 2 and 3. The Town's Consulting Surveyor reviewed the applications and determined that the parcels were legally created (Exhibit 7).

On May 25, 2021, the Development Review Committee (DRC) approved the Certificate of Compliance applications (Exhibit 8). Following verification of Parcels 2 and 3, the applicant continued with the Lot Line Adjustment application for the three parcels.

BACKGROUND (continued):

On July 13, 2021, the DRC approved the Lot Line Adjustment application (Exhibit 10).

On July 22, 2021, the decision of the DRC was appealed to the Planning Commission by adjacent neighbors (Exhibit 11).

PROJECT DESCRIPTION:

A. Location and Surrounding Neighborhood

The subject parcels are located at the terminus of Los Robles Way and Worcester Lane (Exhibit 1). The surrounding properties are low density single-family residences and open space at Worcester Park.

B. Project Summary

The applicant is proposing to reconfigure the lot lines between three legal, adjacent parcels at 17200 Los Robles Way. All existing non-conformities would be resolved, except that Parcel 1 frontage on Los Robles Way will remain non-conforming.

C. Zoning Compliance

The proposed lot configurations would comply with the minimum lot size, lot depth, and setback requirements for the R-1:20 zone. There are four existing non-conformities associated with the three parcels. The proposal would remedy three out of the four, with one non-conformity remaining.

DISCUSSION:

A. Lot Line Adjustment Analysis

The application is proposing to reconfigure the lot lines of three adjacent parcels. There is an existing residence on Parcel 1, which would remain. Parcels 2 and 3 are vacant. Parcels 1 and 3 take access off Los Robles Way (Exhibit 13). Parcel 2 is land-locked, as the previous 10-foot ingress and egress easement running along the east property line, as noted on the project plans, was quitclaimed as stated in the appeal package (Exhibit 11).

DISCUSSION (continued):

The existing configuration consists of four nonconformities: the existing residence on Parcel 1 does not meet the required 15-foot side yard setbacks, Parcel 1 does not meet the minimum frontage requirement of 100 feet for lots not fronting on a cul-de-sac bulb, Parcel 2 does not meet the minimum lot size of 20,000 square feet, and Parcel 2 does not meet the minimum frontage requirement of 100 feet for lots not fronting on a cul-de-sac bulb.

The proposed lot line adjustment would reconfigure the lot lines so that Parcel 1 abuts and continues to take access off Los Robles Way, and Parcels 2 and 3 will take access off a future proposed cul-de-sac bulb at the terminus of Worcester Lane. All existing non-conformities would be resolved, except that Parcel 1 frontage on Los Robles Way will continue to be non-conforming.

No construction is proposed at this time. All driveway, cul-de-sac, and "future residence" footprints shown on the plans would require separate Architecture and Site applications.

B. Development Review Committee

The DRC considered the Certificate of Compliance applications for Parcels 2 and 3 on May 25, 2021. Written public hearing notices were sent to surrounding property owners and occupants within 300 feet of the subject property.

At the May 25, 2021 DRC hearing, three neighbors were present to speak in opposition to the Certificate of Compliance applications. The neighbors asked that the applications be denied due to the history of the area being used as a single parcel and stated that it should remain one parcel. The neighbors were also concerned with the potential impacts of the future construction of these vacant parcels (Exhibit 8).

Based on the determinations made by the Town's Consulting Surveyor (Exhibit 7), the DRC approved the Certificate of Compliance applications. No appeal on the DRC action was received, and the Certificate of Compliance applications were deemed approved.

The DRC considered the Lot Line Adjustment application on July 13, 2021. Written public hearing notices were sent to surrounding property owners and occupants within 300 feet of the subject property.

Prior to the hearing, several neighbors submitted comments in opposition to the proposed project. The comments were generally related to the proposed lot configurations and location of future construction activities. The comment letters, and responses from the applicant, are included in Exhibit 9.

DISCUSSION (continued):

At the July 13, 2021 DRC hearing, four neighbors were present and opposed the proposed Lot Line Adjustment application. The neighbors were concerned with the legality of the three parcels, as well as construction associated with the future residences and driveways (Exhibit 10).

The DRC found that the Lot Line Adjustment application was complete and in compliance with the Town Code and Subdivision Map Act (SMA). Based on the findings, the DRC approved the proposed project, subject to the recommended conditions of approval.

C. Appeal

On July 22, 2021, the decision of the DRC to approve the Lot Line Adjustment application was appealed to the Planning Commission by five neighbors to the east of the subject property, located at 304 Harding Avenue, 308 Harding Avenue, 111 Worcester Lane, 112 Worcester Lane, and 110 Worcester Loop.

A summary of the specific reasons for the appeal are provided below (verbatim), followed by the applicant's responses in *italic* font (verbatim). For more detail, the full 90-page appeal packet (Exhibit 11) and applicant's response letter (Exhibit 12) are attached to this report.

- Certificate of Compliance does not confer building rights or other privileges. No proof of buildability has been provided for parcel 532-36-077.

We agree that Certificate of Compliance does not confer building rights. There are now three legal lots.

- This parcel (-077) lacks legal and no access for emergency services, parcel not consistent with the general plan, does not meet current standards for domestic water supply (no will serve letter). Has not proven meets slope stability standards, site safety/geologic hazards.

In the slides following the appeal form, the appellants state that "buildability" consists of six criteria: parcel legality, legal access, access to water, sanitation, emergency access, and site safety/geologic hazards.

The issue of "Buildability" has been raised, but it should be noted that the owners are not requesting to build – so it is not relevant for this this hearing – that will come later. But I will address why I do think that these 3 lots are "Buildable Parcels", generally – using the Appellants' 6-point criteria.

DISCUSSION (continued):

1. *Parcel Legality: The Certificate of Compliance has recognized the legality of the 3 lots.*
 2. *Legal Access: The vacating of the access by the Town reduces the street (Los Robles Way) from public to private – but it is still legal – for access to 075 (Thompson Trust) and -076/-077 (Von Kaenel) via the defined easement. The right-of-way width is 20 feet – also legal.*
 3. *Access to Water: San Jose Water presently provides water to the site along Los Robles Way. San Jose Water is also available in the public right-of-way at Worcester Lane.*
 4. *Sanitation: The current home is on septic, but it is proposed that any new construction would tie into West Valley Sanitation District sewer. There is a sewer main on the property.*
 5. *Emergency Access: Emergency vehicles absolutely can turn around at the Los Robles Way terminus on the parcel – and serve 075 and 076. APN-077 could also take access from Los Robles Way. The proposed configuration with the Lot Line Adjustment would make emergency access simpler to all 3 parcels and is supported by the Santa Clara County Fire Department for this application.*
 6. *Site Safety/Geologic Hazards: Potential geologic and geotechnical concerns are addressed at the time of a Building Application through a comprehensive process involving Town Engineering and consultant peer reviews. Slopes in excess of 30 percent can be avoided on the present site. A JCP report is an advisory document only, produced without the benefit of any site visit, to alert the owner or any potential buyer of the property of potential hazards to investigate at the site.*
- While Parcel 1 and 3 now owned by separate owners (still unrecorded with the SCC clerk recorder office), structure is built over common property line and ROW access to parcel 1 was abandoned. Section 29.10.070 of Town’s code of ordinances (copied below) states that no parcel shall be modified through a lot line adjustment procedure to meet criteria listed in the ordinance. Town would be setting precedent to allow developer to bypass formal subdivision application process. Buildability of existing site needs to be proven.

Sec. 29.10.070. - Lot merger.

- (a) A parcel of land does lawfully exist separately from other land and is a lot when the parcel meets each of the following criteria:
- 1) Comprises at least five thousand (5,000) square feet in area.
 - 2) Was created in compliance with applicable laws and ordinances in effect at the time of its creation.
 - 3) Meets current standards for sewage disposal and domestic water supply.

DISCUSSION (continued):

- 4) Meets slope stability standards.
 - 5) Has legal access which is adequate for vehicular and safety equipment access and maneuverability.
 - 6) Development of the parcel would create no health or safety hazards.
 - 7) The parcel would be consistent with the applicable general plan and any applicable specific plan, other than minimum lot size or density standards.
 - 8) No structures are built over a common property line which is shared with another parcel under the same or substantially the same ownership.
- (b) Any parcels under the same or substantially the same ownership that do not meet the criteria listed above shall be considered merged. In addition, no parcel shall be modified through a lot line adjustment procedure in order to meet the criteria listed above.

Appellant is suggesting that some of the properties should be considered “merged” if any of the following 8 criteria are not met – but they are all met.

1. *Parcels are all over 5,000 square feet (74,832, 11,226 and 50,239 sf);*
2. *Parcels were legal when created and a Certificate of Compliance issued by the Town was recorded;*
3. *Sewage Disposal (West Valley Sanitation District sewer on site);*
4. *Slope Stability (Building Permit Determination);*
5. *Legal Emergency Vehicle Access (20-foot right-of-way at Los Robles Way);*
6. *Health or Safety (Architecture and Site application hearing determination);*
7. *Consistent with General Plan and Zoning – except for size (conforms); and*
8. *No building built across property line (house is completely on 076).*

The Subdivision Map Act would require the Town to allow development of these parcels to be considered if a formal application were submitted.

[...]

In summary, this is a simple application that takes 3 non-conforming legal parcels that are not optimal for development and adjusts the lot lines to address the requirements of the Town General Plan and R-1:20 Zoning Laws. The owners have every right to propose reasonable improvements to their property and the Town has an obligation to apply the objective criteria in the approval of this Lot Line Adjustment per Town Code and the Subdivision Map Act.

DISCUSSION (continued):

D. Town Attorney's Office

Part (b) of Town Code Section 29.10.070, requiring involuntary lot mergers, was adopted in 1976 and amended in 1988. However, this provision of the Town Code is unenforceable as it is inconsistent with the SMA. The SMA has contained express merger provisions since 1976 and the current SMA merger provisions were enacted in 1986. Government Code Section 66451.10 states that, "two or more contiguous parcels or units of land which have been created under the provisions of this division [...] shall not be deemed merged by virtue of the fact that contiguous parcels or units are held by the same owner." The SMA's current merger provisions reflect two overall concerns. First, they provide landowners with elaborate procedural safeguards of notice and opportunity to be heard before their lots can be involuntarily merged (*Morehart v. County of Santa Barbara*). Second, they reveal, "a state concern over local regulation of parcel merger for purposes of development," as well as for purposes of sale, lease, or financing. In addition, California Civil Code Section 1093 requires an, "express written statement of the grantor," of their intent to alter or affect the separate and distinct nature of the parcels described therein. Therefore, the legal merger of two parcels occurs only through the express written statement of the grantor (*ibid.*) or through a local agency's compliance with the merger procedures contained in Sections 66451.10 and 66451.11 of the SMA, including the due process requirements contained therein (See *Morehart v. County of Santa Barbara*, *supra*, 7 Cal. 4th at p. 761 [SMA preempts the field for parcel mergers]).

Additionally, part (b) of Town Code Section 29.10.070, disallowing a, "parcel to be modified through a lot line adjustment procedure in order to meet the criteria listed above," is also unenforceable as it is inconsistent with the SMA. The SMA states that for a lot line adjustment, "a local agency or advisory agency shall limit its review and approval to a determination of whether or not the parcels resulting from the lot line adjustment will conform to the local general plan, any applicable specific plan, any applicable coastal plan, and zoning and building ordinances." Therefore, the Town cannot impose as conditions to a lot line adjustment that the current configuration of the lots meet certain criteria. Instead, the Town must confine its approval of a lot line adjustment on its conformance to the local general plan, any applicable specific plan, any applicable coastal plan, and zoning and building ordinances resulting from the lot line adjustment.

DISCUSSION (continued):

E. Environmental Review

The project is Categorical Exempt pursuant to the adopted Guidelines for the Implementation of the California Environmental Quality Act, Section 15061(b)(3): A project is exempt from CEQA when the activity is covered by the common sense exemption that CEQA only applies to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question will have a significant effect on the environment, the activity is not subject to CEQA.

PUBLIC COMMENTS:

Written notice of the DRC public hearing was sent to neighboring property owners and occupants. Following the appeal, written notice of the Planning Commission hearing was sent to neighboring property owners and occupants. At the time of preparation of this report, no additional public comment (outside of Exhibits 9 and 11) was received.

CONCLUSION:

A. Summary

The applicant is requesting approval of a Lot Line Adjustment application to reconfigure the lot lines between three adjacent, legal parcels at 17200 Los Robles Way. All existing non-conformities would be resolved, except that Parcel 1 frontage on Los Robles Way will continue to be non-conforming. No construction is proposed with this application. None of the findings from Section 66474 of the SMA could be made to deny the application (Exhibit 2).

B. Recommendation

Staff recommends that the Planning Commission take the following actions to deny the appeal, uphold the decision of the DRC, and approve the Lot Line Adjustment application:

1. Make the finding that the proposed project is categorically exempt pursuant to the adopted Guidelines for the Implementation of the California Environmental Quality Act, Section 15061(b)(3): A project is exempt from CEQA when the activity is covered by the common sense exemption that CEQA only applies to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question will have a significant effect on the environment, the activity is not subject to CEQA (Exhibit 2);

CONCLUSION (continued):

2. Make the required findings as required by Section 66474 of the Subdivision Map Act (Exhibit 2); and
3. Approve Lot Line Adjustment application M-20-012 with the conditions contained in Exhibit 3 and the development plans in Exhibit 13.

C. Alternatives

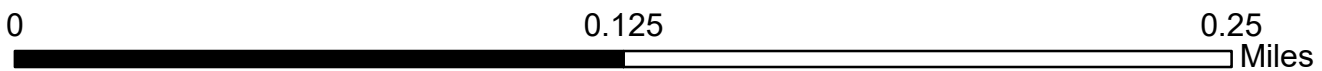
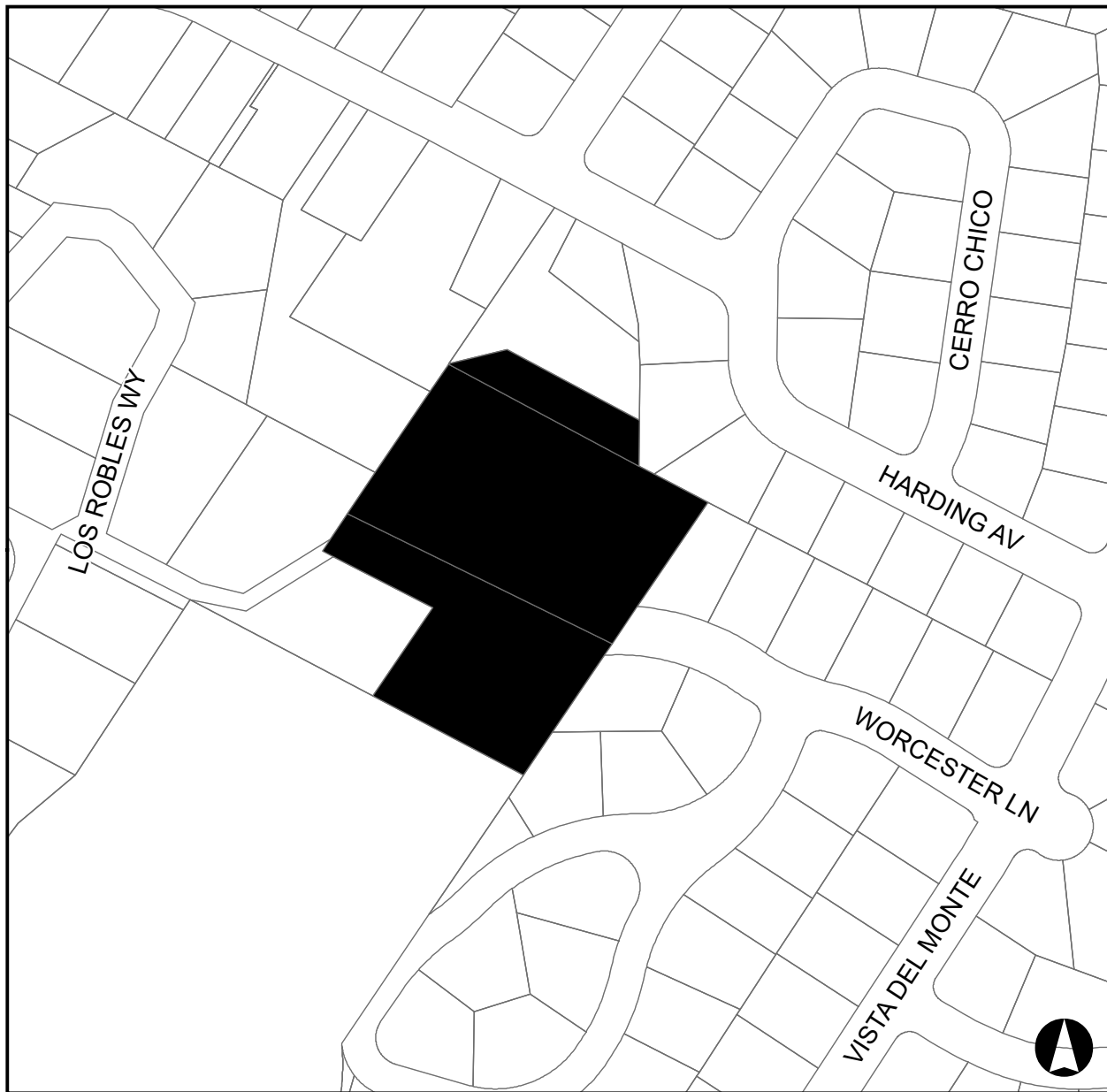
Alternatively, the Commission can:

1. Continue the matter to a date certain with specific direction;
2. Deny the appeal and approve the application with additional and/or modified conditions;
3. Grant the appeal and remand the application to the DRC with direction for revisions; or
4. Grant the appeal and deny the Lot Line Adjustment application.

EXHIBITS:

1. Location Map
2. Required Findings
3. Recommended Conditions of Approval
4. Pictures of subject properties, received January 8, 2021
5. Project Description and Letter of Justification, received February 19, 2021
6. Summary of neighborhood outreach, received March 31, 2021
7. Certificate of Compliance Consulting Surveyor Reviews, received April 14, 2021 and May 17, 2021
8. May 25, 2021 Development Review Committee meeting minutes
9. Public Comments and Applicant Responses received prior to 10:00 a.m., Tuesday, July 13, 2021
10. July 13, 2021 Development Review Committee meeting minutes
11. Appeal of Development Review Committee, received July 22, 2021
12. Applicant's response to appeal, received July 27, 2021
13. Development Plans approved by Development Review Committee on July 13, 2021

17200 Los Robles Way (Three Lots)



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PLANNING COMMISSION – September 8, 2021
REQUIRED FINDINGS FOR:

17200 Los Robles Way
Subdivision Application M-20-012

Consider an Appeal of a Development Review Committee Decision Approving a Lot Line Adjustment Between Three Adjacent Lots on Properties Zoned R-1:20. APNs 532-36-075, -076, and -077. PROPERTY OWNERS: Daren Goodsell, Trustee and Mark Von Kaenel. APPLICANT: Tony Jean. APPELLANTS: Alison and David Steer, Terry and Bob Rinehart, Nancy and Jim Neipp, Gary and Michelle Gysin, and Gianfranco and Eileen De Feo. PROJECT PLANNER: Ryan Safty.

FINDINGS

Required findings for CEQA:

- The project is not subject to the California Environmental Quality Act pursuant to the adopted Guidelines for the Implementation of CEQA, Section 15061(b)(3): A project is exempt from CEQA when the activity is covered by the common sense exemption that CEQA only applies to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question will have a significant effect on the environment, the activity is not subject to CEQA. The project proposes to modify lot lines between three legal, adjacent parcels. No development is proposed at this time.

Required findings to deny a Subdivision application:

- As required by Section 66474 of the State Subdivision Map Act the map shall be denied if any of the following findings are made: **None of the findings could be made to deny the application.**

Instead, the Planning Commission makes the following affirmative findings:

- a. That the proposed map is consistent with all elements of the General Plan.
- b. That the design and improvement of the proposed subdivision is consistent with all elements of the General Plan.
- c. That the site is physically suitable for the type of development.
- d. That the site is physically suitable for the proposed density of development.
- e. That the design of the subdivision and the proposed improvements are not likely to cause substantial environmental damage nor substantially and avoidably injure fish or wildlife or their habitat.
- f. That the design of the subdivision and type of improvements is not likely to cause serious public health problems.

EXHIBIT 2

- g. That the design of the subdivision and the type of improvements will not conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision.

PLANNING COMMISSION – September 8, 2021
CONDITIONS OF APPROVAL

17200 Los Robles Way
Subdivision Application M-20-012

Consider an Appeal of a Development Review Committee Decision Approving a Lot Line Adjustment Between Three Adjacent Lots on Properties Zoned R-1:20. APNs 532-36-075, -076, and -077. PROPERTY OWNERS: Daren Goodsell, Trustee and Mark Von Kaenel. APPLICANT: Tony Jean. APPELLANTS: Alison and David Steer, Terry and Bob Rinehart, Nancy and Jim Neipp, Gary and Michelle Gysin, and Gianfranco and Eileen De Feo. PROJECT PLANNER: Ryan Safty.

TO THE SATISFACTION OF THE DIRECTOR OF COMMUNITY DEVELOPMENT:

Planning Division

1. APPROVAL: This application shall be completed in accordance with all of the conditions of approval listed below. Any changes or modifications to the approved plans shall be approved by the Community Development Director, the Development Review Committee, the Planning Commission, or Town Council, depending on the scope of the changes.
2. EXPIRATION: The Subdivision Application will expire two years from the date of approval, unless the approval is used before expiration. Section 29.20.335 defines what constitutes the use of an approval granted under the Zoning Ordinance.
3. ARCHITECTURE & SITE APPROVAL: Approval of an Architecture & Site Application is required for construction of the cul-de-sac, driveways, residences, and related grading.
4. TOWN INDEMNITY: Applicants are notified that Town Code Section 1.10.115 requires that any applicant who receives a permit or entitlement from the Town shall defend, indemnify, and hold harmless the Town and its officials in any action brought by a third party to overturn, set aside, or void the permit or entitlement. This requirement is a condition of approval of all such permits and entitlements whether or not expressly set forth in the approval.

TO THE SATISFACTION OF THE DIRECTOR OF PARKS AND PUBLIC WORKS:

Engineering Division

5. APPROVAL: This application shall be completed in accordance with all the conditions of approval listed below and in substantial compliance with the latest reviewed and approved development plans. Any changes or modifications to the approved plans or conditions of approvals shall be approved by the Town Engineer.
6. ENGINEERING FEES: Engineering fees associated with the Lot Line Adjustment (see item 270 in the Town’s [Comprehensive Fee Schedule](#)) shall be deposited with the Engineering Division of the Parks and Public Works Department prior to recordation.

EXHIBIT 3

7. GENERAL: The Owner and/or Applicant shall comply with all Town, County, State and Federal laws and regulations applicable to this land division. No other proposed development is included in this particular application of the Lot Line Adjustment. Issuance of a Lot Line Adjustment will acknowledge the Town's acceptance of the parcel as legally created in accordance with the Subdivision Map Act. Any subsequent development will be required to demonstrate compliance with the Town Development Standards and Codes.
8. CERTIFICATE OF LOT LINE ADJUSTMENT: A Certificate of Lot Line Adjustment shall be recorded. An electronic copy (PDF) of the legal description for each new lot configuration, a plat map (8-½ in. X 11 in.) and of the legal description of the land to be exchanged shall be submitted to the Engineering Division of the Parks and Public Works Department for review and approval. The submittal shall include closure calculations, title reports less than ninety (90) days old and the appropriate fee. The certificate shall be recorded prior to the issuance of any permits.
9. CERTIFICATE OF COMPLIANCE: A Certificate of compliance shall be recorded. Two (2) copies of the legal description for each lot configuration, a plat map (8-½ in. X 11 in.) shall be submitted to the Engineering Division of the Parks and Public Works Department for review and approval. The submittal shall include closure calculations, title reports less than ninety (90) days old and the appropriate fee. The certificate shall be recorded prior to the issuance of any permits.
10. PRIVATE EASEMENTS: Agreements detailing rights, limitations, and responsibilities of involved parties shall accompany each private easement. An electronic copy (PDF) of the recorded agreement(s) shall be submitted to the Engineering Division of the Parks and Public Works Department prior to the issuance of any permit.



Los Robles Way



Worcester Lane

17200 Los Robles Way

The House



View from Los Robles Way



Front of House

17200 Los Robles Way

The House



The Right Side



The Left Side



The Rear + Pool



View from the House to Parcel #2



View from Worcester Lane to Parcel #2



View from the House to Parcel #3



View from Worcester Lane to Parcel #3

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Town of Los Gatos
110E Main St,
Los Gatos CA 95030
Attn: Planning/Engineering

February 19th, 2021

17200 Los Robles Way, Los Gatos
Tentative Map Application M 21-001

The Property:

The Property comprises 3 parcels of land in the R1:20 zoning district [APN: 532-36/075/6/7] at the end of Los Robles Way totaling 3.13 Acres. The overall slope of the property is 26%. At the moment there is one dilapidated house on the entire property with an empty swimming pool. The property is on a septic system.

The Parcel Configuration:

2 of the 3 parcels are accessed from the end of Los Robles Way
532-36-075 is traversed by an extension of Los Robles Way with 115 ft of frontage on a RoW considered vacated by the Town. It also has a small amount of frontage at the termination of Worcester Lane.

532-36-076 is at the terminus of the Los Robles Way extension with 37' of frontage. It also has frontage at the termination of Worcester Lane.

532-36-77 is a landlocked parcel with no street access, other than along a disputed easement to Harding which has never been used.

The Proposed LLA Solution:

It is proposed to reconfigure the 3 parcels to make them all more compliant with the Town Standards for the zoning district. They would be $1\frac{1}{2}$, 1 and $\frac{1}{2}$ acres in size. In doing so, the plan is to access only one of the resulting parcels from the narrow driveway at Los Robles Way and the other 2 from a cul-de-sac at Worcester Lane. In addition to improving the compatibility of the 3 parcels themselves, it will bring the setbacks for the existing residence into compliance.

Public Right of Way Changes:

The Town has determined that the extension of Los Robles Way as a RoW across 532-36-075 has been Vacated. We have shown it on the plans as such. The street frontage here for Parcel 1 would be very similar to the existing [sub-standard] frontage and we would explore enhancing safety measures with a subsequent A&S application for a house at this site.

At Worcester Lane the trees and topography were examined and it is deemed virtually impossible to install a Town standard Cul-de-Sac as a terminus for the street [which presently just stops!]. We do believe that a "Hillside" cul-de-sac can be reasonably accommodated and would be in compliance with the intent of allowing such a design where topography dictates.

This would require the removal of 5 medium sized oak trees [8", 10", 16" 18" & 18"], and a retaining wall no higher than 5 ft would be needed to terminate the street. The cul-de-sac proposal as drawn does provide legal street frontage for Parcels 2 and 3 at Worcester Lane as well as improving the termination of the street itself. We have revised the plans to show this as a Private extension.

Development Plans:

There are no plans being submitted with this application, but we are anticipating submitting plans for a new home on Parcel #1 to replace the existing, dilapidated home at 17200 Los Robles Way. There are no specific development plans for Parcels #2 and #3 at this time so all house placements are conceptual. Even with the cul-de-sac termination at Worcester Lane, we have left a Fire turnaround here to show that it would be possible if needed. It shows that compliance can be achieved moving forward.

Request for Minor Subdivision Approval:

We have modified the plan set, which includes:

A Cover Sheet.

A preliminary Tentative Map.

Existing and Proposed Site Plans

Aerial Topos at 20 and 30 scale.

We have also submitted a Certificate of Compliance application for the existing 532-36-077 parcel #2 to show that it was created legally, according to the Town rules and the Subdivision Map Act.

Thank you

Tony Jeans (408) 354-1833

Town Of Los Gatos
110 East Main St
Los Gatos CA 95030
Attn: Planning/Engineering

March 31st, 2021

17200 Los Robles Way, Los Gatos
Response to Neighbor Concerns M 21-001

I have conducted extensive neighborhood outreach commencing with a letter sent in February to all homes adjacent to the property [see attached]. I have since met with many of the individuals personally, or by phone and for the most part, have met with positive reactions to the project. A few neighbors chose to respond to the Town directly and voice their opposition as letters of public comment without responding to my outreach. It would appear that they are also contacting other nearby residents to encourage them to voice their concerns on their behalf as friends.

I will continue personal outreach on an ongoing basis to those who are prepared to respond, but for now would like to address these voiced concerns collectively as those being raised are common to several parties.

The concerns pretty much fall into 3 categories and I will address them separately:

1. "The Property is classified as a Landslide Hazard Zone by the JCP Report".
Comments by 3 immediate neighbors at 304,308 Harding & 111 Worcester Lane, and subsequently mentioned in comments by some of their friends.
2. "My Privacy will be Jeopardized if this Project is Allowed".
Comments by 3 immediate neighbors at 304,308 Harding & 111 Worcester Lane and also voiced by neighbors with whom I have spoken and suggested solutions.
3. "Wildlife will be restricted more if this Project is allowed".
Mentioned in comments, together with landslides, by a nearby resident friend.

It is my belief, having spoken privately to some of the parties who have written letters, that the real concern is simply one of privacy - and the fact that this 3 acres of land has remained under-developed for well over half a century and is seen by them as a natural extension to Worcester Park and is viewed as "their Private Back Yard".

I would also observe that it was never expected that Worcester Lane would "terminate" at the property boundary in such an abrupt manner. The proposed solution suggested by the Town and included in the Tentative Map is a significant enhancement to the streetscape.

Tony Jeans
Attachments: Hazard Analysis, Privacy Analysis.

17200 Los Robles Way, Los Gatos
Response to Neighbor Concerns M 21-001

Concern #1. "The Property is classified as a Landslide Hazard Zone by the JCP Report".

There appears to be some misunderstanding as to the intention of a JCP Hazard Report as it relates to a property. A JCP report is intended to alert the purchasers of any property as to potential hazards that should be considered when buying a property. It does not rely on any site-specific investigations or evaluations and any owner [and the Town] will require further detailed analyses at the time any construction is proposed.

I obtained a copy of the JCP report, and spoke to a JCP geographer [Jack Stark] about it at length and received clarification as to the various hazard zones listed. The report relies on a number of hazard maps from a variety of sources. As it states, it is very general in nature, but does call out specific hazard zones that would be applicable to this property.

Of those, the most relevant is the **"Very High Fire Hazard Severity Zone"**, identified in the attached statutory JCP Hazard Map as the "green shaded area" from the Legend, which also covers much of Los Gatos. The Report suggests certain specific building techniques that might be required, together with home maintenance for designing and living in a home.

A **"Seismic Hazard Zone - Landslide"** is also called out in the JCP report as a "bricked" Legend area - but when you look carefully at the map, it barely touches the property at the western most corner and reflects an area around Hollywood and Los Robles Way - not the Harding/Worcester Lane eastern most corner. This potential hazard zone is on the opposite side of the property from the neighbors who have expressed concern about 'Landslide Hazard' as being a high priority issue and there is no indication that construction on the proposed Parcel#2 would be problematic.

This property is not in the **"Special Flood Hazard Area"** and is classified as Flood Zone X in FEMA Maps. It is difficult to see how flooding of neighboring properties would be an issue with this LLA, as mentioned as a further concern of some neighbors.

Attached is the JCP Hazard Map for the property at 17200 Los Robles Way. Please look at it carefully - as it shows clearly that neighbors at the eastern-most corner of the property should not be concerned about landslides based on a true reading of this report.

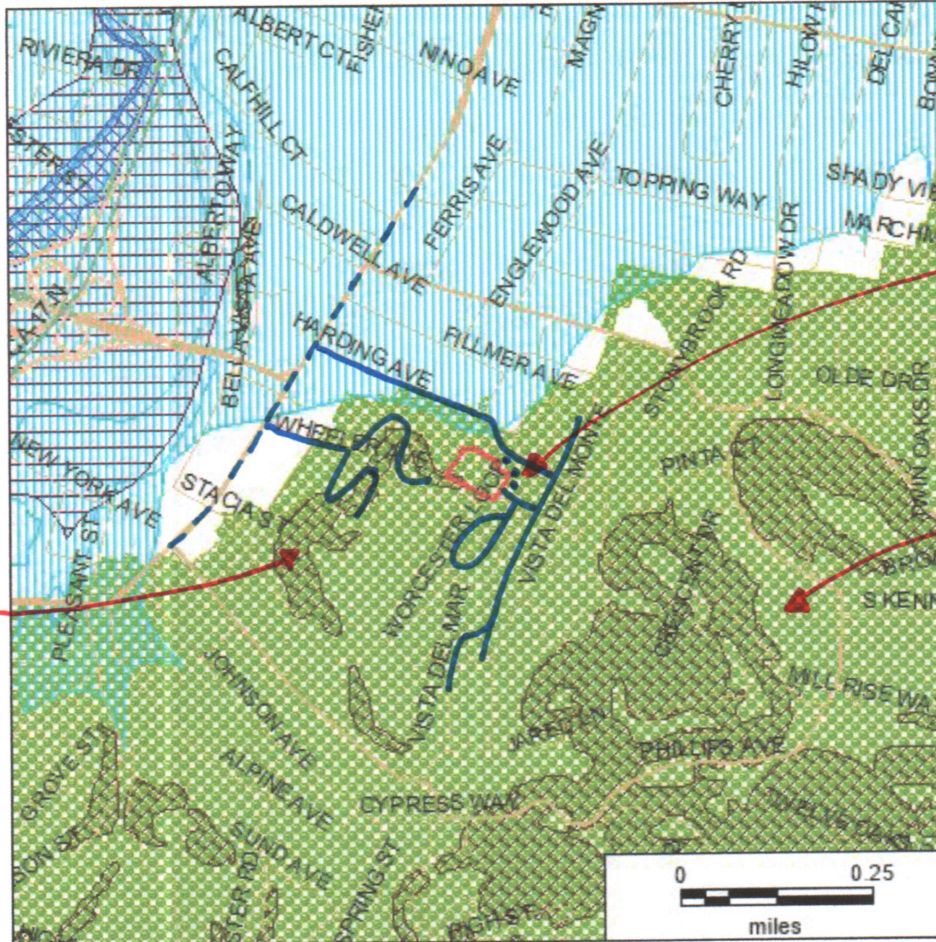
Attached: JCP Hazards Map for 17200 Los Robles Way.

**Map of Statutory Natural Hazards
For SANTA CLARA County**

Property Address: 17200 LOS ROBLES WAY
LOS GATOS, SANTA CLARA COUNTY, CA 95030
("Property")

APN: See Addendum
Report Date: 04/17/2020
Report Number: 2642519

Map of Statutory Natural Hazard Zones



LANDSLIDE HAZARD ZONE IS AT LOS ROBLES WAY & HOLLYWOOD AVE.
(NOT AT HARDING & WORCESTER LANE)

LOCATION OF CONCERNED PARTIES AT 304+308 HARDING & 111 WORCESTER LANE.

THE ENTIRE AREA IS IN A FIRE HAZARD ZONE.

Subject Property

NO		Special Flood Hazard Area
NO		Area of Potential Flooding, Dam Failure
YES		<u>Very High Fire Hazard Severity Zone</u>
NO		Wildland Area, Substantial Forest Fire Risk
NO		Earthquake Fault Zone
PARTIAL		<u>Seismic Hazard Zone, Landslide</u>
NO		Seismic Hazard Zone, Liquefaction



This map is provided for convenience only to show the approximate location of the Property and is not based on a field survey.

Received Pg 1-50:

Sign _____ DATE _____

Sign _____ DATE _____

17200 Los Robles Way, Los Gatos
Response to Neighbor Concerns M 21-001

Concern #2. "Neighboring Homes and Privacy at the End of our Private Cul-de-Sac".

In my 35 or so years of developing property and designing homes in and around Los Gatos and across the country, "Privacy" and "Fear of the Unknown" are the two most common factors which concern people at the outset of any project. That is why I have always tried to communicate with the immediate neighbors first. I also find that it is also a good way in which to learn a great deal about the neighborhood. In fact on this project I chatted with one neighbor who remembered the previous owner - deceased at 71 - as "a young attorney".

I believe also that an owner has the right to develop his or her property in any responsible manner as long as it is within the objective standards and guidelines of [in this case] the Town of Los Gatos. Additionally, if I were asked to design homes on the property, I would consider the more subjective guidelines, which the Town uses to constrain development so that neighborhoods remain consistent in their overall appearance and character.

I am afraid that "To be the last home on the street" is not a guarantee. It is clear from the existing street termination on Worcester Lane that was never the intent. But it is also reasonable to believe that with parcels of land over $\frac{1}{2}$ acre in size next to you that your next-door-neighbor would have room for reasonable screening so that privacy would not be an issue. Combined with responsible home design to further address privacy I feel that there will be plenty of room to address any "proximity concerns".

In the attachments, I have tried to show how privacy concerns of 304, 308 Harding and 111 Worcester Lane can be reasonably addressed in the future if and when a home is designed for Parcel #2 as identified in the Map Exhibits for the LLA.

308 Harding: Privacy does not need to be considered a concern for this home.

I recently walked the property with the owners [James & Nancy Neipp] and with the mature oak grove currently in the corner of Parcel #2 acts as a significant buffer. Some large shrubs or small trees placed about 150 ft away would aid in the obscuring any new home on Parcel #1 a couple of hundred feet away.

111 Worcester Lane: The potential privacy impact is from one window and the rear yard.

I have addressed this in the Proposed Site Plan by suggesting a house placement, with the home approximately 35 ft away from the side yard of 111 Worcester Lane allowing room for tree screening of the window in question. The mature oak grove in the corner of the property would also remain as a privacy buffer to their rear yard.

304 Harding: The privacy impact is presently a direct line of sight to the back yard.

Here house placement on Parcel #2 is important and I have suggested placing a home 50ft from 304 Harding's rear property line and would see a screen of trees placed there.

Attached: Photographs from Parcel #2 towards 111 Worcester Lane 308 & 304 Harding.

Please also note that I have located a potential building site on Parcel #2 that would not impact any of the mature oaks on the property, nor the eucalyptus trees. There are some privacy issues that can be reasonably mitigated if needed if and when an actual residence is proposed and these should be considered at that time.

NO TREE PLACEMENT NECESSARY AT 308 HARDING.



308 Harding is barely visible behind the Mature Oak Grove [mainly *quercus agrifolia*], which is a native California evergreen oak.

Any reasonable home designed for Parcel #2 would not be a privacy issue.

TREE PLACEMENT FOR PRIVACY AT 111 WORCESTER LANE



With a house 30 ft from the fence, Tree screening would be reasonable.

TREE PLACEMENT FOR PRIVACY AT 304 HARDING.



The Valley Oak on 304 Harding is deciduous – so evergreen tree screening would be beneficial close to the fence – and a house on Parcel #2 placed at a distance of 50 ft from the fence would allow plenty of room for this. This photograph is taken from the potential house location.

Date: February, 2021
To: All Neighbors of and nearby Residents.
From: Tony Jeans of T.H.I.S. Design and Development.
Subject: Proposed Lot Line Adjustment at 17200 Los Robles Way

Nearby Residents:

I am writing to introduce myself and to let you know that the owners of 17200 Los Robles Way have contracted with me to undertake some design/development work for them. The initial plan is to adjust the property lines of the 3 parcels that make up their property so that they are more in compliance with the Town zoning ordinances for this property. So we have applied to the Town to undertake a Lot Line Adjustment, which will take the 3 existing parcels and reconfigure them so that only one will continue to be accessed from Los Robles Way. The other 2 parcels will, in the future be accessed from Worcester Lane.

At present, the Town has asked us to consider installing a cul-de-sac turnaround at the end of Worcester Lane to better terminate the street. There are no immediate plans for the improvement of those 2 parcels, but this is obviously possible in the future. At Los Robles Way the plan is to design a new house at 17200 - but the details of that are still under discussion and I will contact nearby residents again when we get some more detailed ideas on paper. Suffice it to say that when this does happen, we will probably be asked to improve the Los Robles Way extension in some measure. It has deteriorated over the years and I am sure that the Fire Dept will want to see some upgrades.

The plans we have submitted for review so far show that the resulting parcel layouts are more conforming than the existing configuration and meet Town Zoning rules for any future development in terms of size, setbacks, frontage and other regulations. They also show that they would result in parcels that would sensibly allow for a house to be placed on each of the resulting lots. For those of you who are interested to see in more detail what I have put together, please contact me and we can talk on the phone or I can come by and we can have a socially distanced conversation and you can review the plans. I understand that disruption and privacy will be of concern to those close by, but I have tried to be considerate of neighbor sensibilities with what we have planned.

I have been developing properties, designing new homes, additions and remodels in Los Gatos, Monte Sereno, Saratoga and beyond for over 35 years and my wife, Carol and I are long-time local residents ourselves. If you have any questions, please call me at (408)354-1833 or email me at Tony@thisdesign.com . I would be happy to discuss them with you.

Tony Jeans

Neighbor Communication [as of April 1st, 2021]:

Sheet 6 of the Plans shows the relationship of neighbors who have been contacted to the Subject Property - 17200 Los Robles Way.

Neighborhood outreach commenced on January 24th has been ongoing and continues to this day. All immediate neighbors - those deemed most likely to be impacted by any future changes - were visited in January and early February and plans for the LLA proposal were shown to them and discussed with them. As a result of the proposed changes to the Worcester Lane termination, the Worcester Lane neighbors will again be contacted and the changes in the plans discussed.

Address	Name	Communication
110 Worcester Lane:	De Feo	Meetings, discussions, emails and phone calls
111 Worcester Lane:	[Renter]	Meeting and discussion.
111 Worcester Lane:	Gysin	[owner] Phone call after meeting with tenant.
109 Worcester Lane:	Bentinck	Phone conversation and discussion.
112 Worcester Loop:	Rinehart	Meetings, discussions, emails and phone calls.
17121 Los Robles Way:	Fenn	Meeting, plans, discussion and follow up emails.
17150 Los Robles Way:	Family	Meeting, plans and discussion.

The neighbors who will be less impacted by this project, and those who were repeatedly not at home when I visited them, I sent a letter explaining in broad-brush strokes the immediate and future scope of the project. I invited them to contact me by email or phone to either set up a meeting or to discuss the project in more detail.

Address	Name	Communication
308 Harding Ave:	Neipp	Letter, Email, Site Visit, Discussions.
304 Harding Ave:	Steer	Letter
246A Harding Ave:	Merrick	Letter + Meeting/Discussion
246B Harding Ave:	Clifford	Letter + Meeting/Discussion
242 Harding Ave:	Heller	Letter
236 Harding Ave:	Rector	Letter + Meeting/Discussion

To date I have met with and had discussions with 50% of the people who received letters. I continue to meet with the immediate neighbors and respond to their questions.

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April 14, 2021

TOWN OF LOS GATOS, PARK AND PUBLIC WORKS DEPARTMENT

Attn: Mike Weisz, P.E., Associate Engineer
41 Miles Avenue
Los Gatos, CA 95030

**SUBJECT: Certificate of Compliance Review for 17200 Los Robles Way
Second Submittal Comments**

Dear Mike,

I have completed the review of the Second Submittal of the Certificate of Compliance for 17200 Los Robles Road. Comments can be found below and on attached red-line prints.

General Comments

- From the information provided I can recommend approval of a Certificate of Compliance per California Subdivision Map Act 66499.35 (a) for Assessor's Parcel 532-36-77.

Plat & Legal for 532-36-77

- The plat and legal description appear to be technically correct.

If you or the Surveyor have any questions concerning these comments, please feel free to call me at 209-328-1123 extension 105 or email me at djurado@kierwright.com.

Sincerely,

KIER & WRIGHT

Dean A. Jurado PLS

SENIOR SURVEYOR

djurado@kierwright.com, 209-328-1123 ext. 3105



May 17, 2021

TOWN OF LOS GATOS, PARK AND PUBLIC WORKS DEPARTMENT

Attn: Mike Weisz, P.E., Associate Engineer

41 Miles Avenue

Los Gatos, CA 95030

**SUBJECT: Certificate of Compliance Review for 17200 Los Robles Way
First Submittal Comments**

Dear Mike,

I have completed the review of the First Submittal of the Certificate of Compliance for 17200 Los Robles Road. Comments can be found below and on attached red-line prints.

General Comments

- From the information provided I can recommend approval of a Certificate of Compliance per California Subdivision Map Act 66499.35 (a) for Assessor's Parcel 532-36-75.

Plat & Legal for 532-36-75

- The legal description appear to be technically correct.

If you or the Surveyor have any questions concerning these comments, please feel free to call me at 209-328-1123 extension 105 or email me at djurado@kierwright.com.

Sincerely,

KIER & WRIGHT

Dean A. Jurado PLS

SENIOR SURVEYOR

djurado@kierwright.com, 209-328-1123 ext. 3105



**TOWN OF LOS GATOS
DEVELOPMENT REVIEW
COMMITTEE REPORT**

**MINUTES OF THE DEVELOPMENT REVIEW COMMITTEE MEETING
MAY 25, 2021**

The Development Review Committee of the Town of Los Gatos conducted a Regular Teleconference Meeting on May 25, 2021, at 10:00 a.m.

This meeting was conducted utilizing teleconferencing and electronic means consistent with State of California Executive Order N-29-20 dated March 17, 2020, regarding the COVID-19 pandemic and was conducted via Zoom. All committee members and staff participated from remote locations and all voting was conducted via roll call vote. In accordance with Executive Order N-29-20, the public could only view the meeting online and not in the Council Chamber.

ROLL CALL

Present: Sally Zarnowitz, CDD Planning; Robert Gray, CDD Building; Corvell Sparks, PPW Engineering; Kenny Ip, SCCFD.

Absent: None.

Staff: Erin Walters, CDD Planning; Ryan Safty, CDD Planning; Mike Weisz, PPW Engineering; Robert Schultz, Town Attorney.

MEETING CALLED TO ORDER AT 10:00 AM

VERBAL COMMUNICATIONS

- None.

CONSENT ITEMS

1. Approval of Minutes – May 4, 2021.

MOTION: Motion by Robert Gray to approve the consent calendar. **Seconded** by Kenny Ip.

VOTE: Motion passed unanimously 4-0.

PUBLIC HEARINGS

2. 21 W. Main Street

Conditional Use Permit Application U -21-009

Requesting approval of a Conditional Use Permit to allow a wine tasting room (Gali Vineyards) on a property zoned C-2-LHP. APN 529-01-018.

PROPERTY OWNER: Shari Flick

APPLICANT: Janice Gali

PROJECT PLANNER: Erin Walters

The project planner, Erin Walters, presented the staff report.

Opened Public Comment.

Janice Gali

Applicant speaking on behalf of the project. Her husband and she have lived in Los Gatos for over 30 years. They would like to open a tasting room in Downtown Los Gatos. They feel that it would be great for the community.

Janice Gali

In closing, she hopes that this application will be approved to allow a tasting room at this address.

Closed Public Comment.

MOTION: Motion by **Kenny Ip** to approve with the required findings and recommended conditions of approval. **Seconded** by **Robert Gray**.

VOTE: **Motion passed unanimously 4-0.**

Appeal rights were recited.

3. 17200 Los Robles Way

Certificate of Compliance M-21-001

Requesting issuance of a Certificate of Compliance for property zoned R-1:20. APNs 523-36-075 and 523-36-077.

PROPERTY OWNER: Daran Goodsell, Trustee

APPLICANT: Tony Jeans

PROJECT PLANNER: Ryan Safty

The project planner, Ryan Safty, presented the staff report. Public comments were received and shared with the applicant and committee.

Opened Public Comment.

Tony Jeans

Applicant speaking on behalf of the project. A presentation has been provided. This is the first step in a multi-step process. First is to obtain a Certificate of Compliance, then a request for a lot-line adjustment, and finally a proposal to build a new home on the lot(s). Application materials provided to the Town, and reviewed by the Town's Consultant Surveyor, verify the legality of the two parcels in question.

Alison and David Steer, 304 Harding Avenue

Asking for this application to be denied. A presentation has been provided, including history of the property in question.

Terry Rinehart, 110 Worlester Loop

Neighbors to the property. She and her husband are in agreement with the comments made from those requesting this application be denied. They state they were never notified of the lots going from one to three lots. There will be substantial economic damage to properties. There will also be significant flood damage. Comments and photos were provided prior to this meeting.

Nancy Neipp, 308 Harding

In agreement with the comments the Steers made. There will be flooding issues. There will be potential damages to the properties when getting this property up to code compliance with the earthquake safety guidelines. They request that this parcel be resubmitted as a single parcel and allow for an open and transparent process.

Tony Jeans

In closing, the owners of the property are asking that the Town recognizes that this is a three-parcel property. We are aware that these lots are considered non-conforming and that they may not be legal anymore. We are looking to legalize the lots.

Closed Public Comment.

MOTION: Motion by **Robert Gray** to approve with the required findings and recommended conditions of approval. **Seconded** by **Corvell Sparks**.

VOTE: **Motion passed unanimously 4-0.**

Appeal rights were recited.

OTHER BUSINESS

- None.

ADJOURNMENT

The meeting adjourned 10:36 AM

This is to certify that the foregoing is a true and correct copy of the minutes of the May 25, 2021 meeting as approved by the Development Review Committee.

Prepared by:

/s/Sally Zarnowitz, AIA, LEED AP, Planning Manager

Town of Los Gatos
110 East Main St
Los Gatos, CA 95030

Attention: Mr. Ryan Safty

RE: Lot Line Adjustment Application M-20-012

May 11, 2021

Dear Mr. Safty,

We are writing to object to the proposed lot line adjustment on the property located at 17200 Los Robles Way, Los Gatos. We bought our property at 112 Worcester Lane, directly adjacent to the 17200 Los Robles Way lot, in 2003. Our objections fall into 4 categories:

1) water drainage off the lot into our backyard will be exacerbated thereby risking significant damage to our house,

2) the current proposal by Tony Jeans demonstrating that the resulting 'lot 3' is buildable requires the construction of a road that will bury what is now a natural rain drainage 'stream' that will significantly exacerbate run-off into our yard and our basement,

3) the proposal by Tony Jeans submitted to the town (which differs from the final plan he showed us) also includes a loss of some of our property in our front yard including the removal of a 30+ foot pine tree, and,

4) this same proposed road in 2) above will require cutting down portions of an Oak grove that is directly adjacent to our yard.

Below we detail the issues enumerated above.

- 1) Water drainage issues. When we purchased our home we learned that the previous owner had already experienced significant damage to the basement of our home due to run-off from the hill on the 17200 Los Robles Way lot. In subsequent years we also experienced flooding of our yard and basement as a result of this run-off leading us to make significant investments in French drains surrounding the house and on the edge of our yard adjacent to the lot, as well as a sump pump in the basement. In addition, we had to replace much of the subfloor in the section of our house closest to the areas that flood during rains. By allowing 3

additional structures and their associated hardscaping, this run-off will be significantly exacerbated.

- 2) Road construction on 'lot 3' (the proposed lot directly adjacent to our property). This road, which we were told was proposed in order to show that 'lot 3' is 'buildable', and is required as a turn-around for emergency vehicles for the lot to be viable, is directly on top of a natural rain drainage stream that empties into our yard. This construction will also severely exacerbate the run-off into our property. According to Mr. Jeans, the proposed 'lot 3' is not buildable without this road. The plan submitted to the town differs from the plan showed to us by Tony Jeans that addressed some of our concerns by pushing the road deeper into the lot (not over the drainage stream), thereby reducing the impact on the Oaks (see 4 below) and did not have the impacts on our front yard as does the plan currently submitted to the town. The plan showed to us is below at bottom.
- 3) Loss of property and large Pine tree in front yard. In order to create a cul-de-sac at the end Worcester Lane, the current proposed plan requires the sidewalk, street light and most significantly, a large Pine Tree in our yard to be removed. We strenuously object to the removal of the tree and any loss in property in our front yard.
- 4) Impacts on Oak trees adjacent to our property. I have attached several photos below showing what exists today where the proposed road would traverse. Currently there is an extensive and dense Oak grove that extends throughout the area. Removing these will not only reduce the number of mature Oak trees in the area but would also itself contribute to water run-off issues into our yard.

Thank you for your consideration in this matter,

Gianfranco and Eileen de Feo

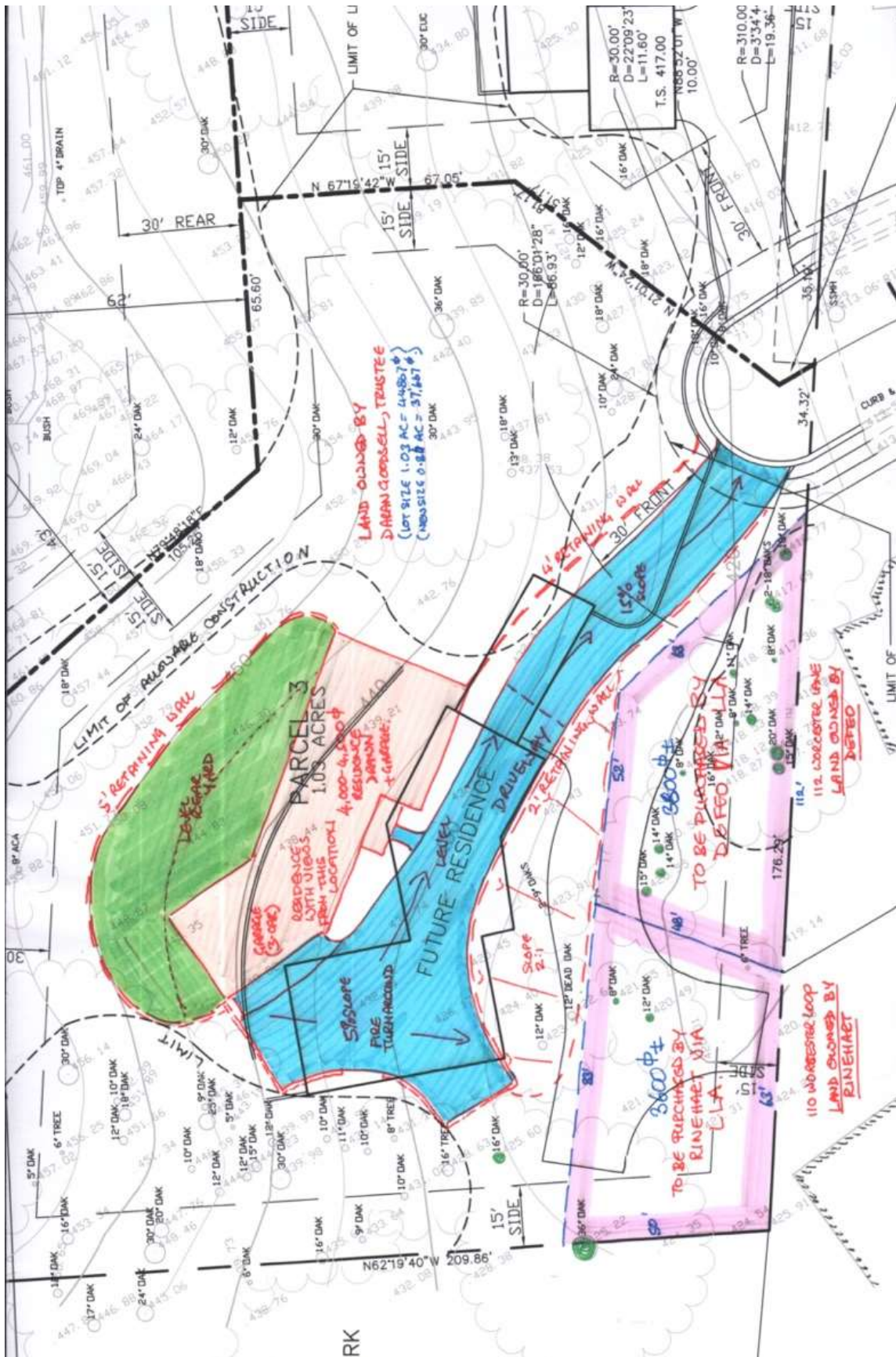
112 Worcester Lane

(408) 455-3720









IRK

This is a picture from our property at 110 Worcester Loop looking towards Parcel 3

Showing the many oaks that would be impacted with this development.



Thank you for your consideration of these issues.

Yours Sincerely,

Terry and Bob Rinehart
110 Worcester Loop
Los Gatos, CA 95030
tlrinehart@comcast.net
rwrinehart@comcast.net

Ryan Safty

From: Gary Gysin <garymgysin@gmail.com>
Sent: Sunday, July 11, 2021 3:19 PM
To: Ryan Safty; Michelle
Subject: 17200 Los Robles Way

Follow Up Flag: Flag for follow up
Flag Status: Flagged

Ryan:

We have previously sent a letter stating our objection to the proposed project on 17200 Los Robles Way, but want to send our view again as it seems that there is an upcoming hearing.

We are not supportive of the lot line adjustment and even further not supportive of opening up Worcester Ln to access the property. We purchased our property at 111 Worcester Ln specifically to be at the end of a cul de sac and are not eager to have traffic going by the house.

We are not sure whether these objections matter to the city or not but want to be on record that we do not support this proposed plan.

Best,

Gary & Michelle Gysin
111 Worcester Ln

--

Gary M Gysin
garymgysin@gmail.com
[linkedin.com/in/gysin](https://www.linkedin.com/in/gysin)
mobile - 408-656-0475

Los Gatos Planning Department
2021
110 E. Main St
Los Gatos

March 16th

RE: Subdivision Application M-20-012

Dear Mr Safty,

We are writing to express our objection to the planned lot line adjustment for a 3-parcel development of 17200 Los Robles Way. When we bought our property at 111 Worcester Ln in March 2017, there was only one buildable parcel next to our property and that was located at the top of the hill on Parcel 1. If the new owners wish to build on that parcel, we will have no objection. But any other development on this unstable hill (we understand that the hill is a seismic hazard zone and landslide risk per the JCP Hazard Disclosure reports) we would not support. In addition, we are currently at the end of a cul de sac and would not support opening up the street to traffic to access the 3 new properties. Being at the end of a cul de sac was very important to our decision to buy the property due to little traffic and a very quiet neighborhood and we do not wish to devalue our property should such a development move ahead.

Given the existence of the JCP hazard report, we would also be very concerned about any excavation done to the hillside or any trees being removed that would result in landslide or flood risk to our property, and/or destabilize our foundations.

As you can see in the property listing this was promoted as two adjacent **hilltop** parcels that were to be accessed from Los Robles Way. The second parcel 523-36-077 is clearly not a buildable lot, and it's unclear why the property was originally divided this way.

<https://search.kwbae.com/idx/details/listing/b011/ML81798535/17200-Los-Robles-WAY-LOS-GATOS-CA-95030>

In summary, we do not support the creation of access from Worcester Lane to add three new properties that would require extensive excavation into an already unstable hillside. Please advise of any upcoming hearings regarding this proposed development.

Sincerely,

Gary and Michelle Gysin
111 Worcester Ln
Los Gatos
Ph: 408-656-0475
garymgysin@gmail.com

Ryan Safty

From: Babette Ito <babetteito@gmail.com>
Sent: Saturday, March 13, 2021 1:48 PM
To: Ryan Safty
Cc: Babette Ito
Subject: Subdivision Application M-20-012

Follow Up Flag: Flag for follow up
Flag Status: Flagged

Subject: Subdivision Application M-20-012.

Hi Ryan - We have lived at 127 Worcester Loop, Los Gatos, for 16 years. We oppose the application to add more houses and build into the hillside area. Construction will deplete even more wildlife and make that hillside unstable and possibly add to the fire and flood hazard in that area of which we're already at issue where insurance co's won't insure the area. Pls do not allow new building of homes and a new cul de sac in that small space by Worcester Lane.

We will try to attend any events but if not, please allow this to be our "voice" in this matter.

Babette and Doug Ito
127 Worcester Loop, Los Gatos, CA 95030

--
Yours,
Babette Ito
mobile: 408-279-9064

--
Yours,
Babette Ito
mobile: 408-279-9064

Ryan Safty

From: Planning Comment
Sent: Monday, May 24, 2021 9:37 AM
To: AAI
Cc: Ryan Safty
Subject: RE: Proposed Development for 17200 Los Robles Way - Meeting on Tuesday, May 25, 2021

Attachments: Maintain this easement (top photo).pdf; Shows easement to be eliminated.pdf

Follow Up Flag: Flag for follow up
Flag Status: Flagged

Hello,

Thank you for providing your comments for 17200 Los Robles Way. Your comments have been forwarded to the Planner assigned to this project, copied here. Should you have additional comments, you can share them directly with the Planner.

Sincerely,



Planning Department

Community Development Department • 110 E. Main Street, Los Gatos CA 95030

Ph: 408.354.6874 • PlanningComment@losgatosca.gov

www.losgatosca.gov • <https://www.facebook.com/losgatosca>

COMMUNITY DEVELOPMENT HOURS:

Phone Hours: 8:00 AM – 5:00 PM, Monday – Friday

In accordance with the Santa Clara County Public Health order issued March 16, all Town Offices are closed until further notice. If you have questions pertaining to County Public Health information please visit the Santa Clara County website. If this is an emergency, please dial 911. Thank you.



General Plan update, learn more at www.losgatos2040.com

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This e-mail is intended only for the use of the individual(s) named in this e-mail. If you receive this e-mail and are not a named recipient, any use, dissemination, distribution or copying of the e-mail is strictly prohibited. If you have received this communication in error, please immediately notify us at the above e-mail address.



Think Green, please consider the environment before printing this e-mail.

From: AAI <36kibo@gmail.com>
Sent: Monday, May 24, 2021 9:12 AM
To: Planning Comment <PlanningComment@losgatosca.gov>
Subject: Proposed Development for 17200 Los Robles Way - Meeting on Tuesday, May 25, 2021

My property is located adjacent to 17200 Los Robles Way, Los Gatos. I would like to express my concern about the proposal submitted. It appears that the new plan is to eliminate the existing easement adjacent to our property. Am I correct? Can lot lines be changed without both parties agreeing to it? I would like to keep the easement down to our iron gates. My

understanding is that this agreement was set up years ago. We purchased this home last March, 2020.

Where is the entrance going to be for Parcel 1? 2? 3? I am not very good at reading these plans.

I plan to sign into the meeting tomorrow at 10:00am via Zoom webinar.

I look forward to finding out more about the plans to develop the property adjacent to us (Parcel 1) and below us (Parcel 3)

Sincerely,

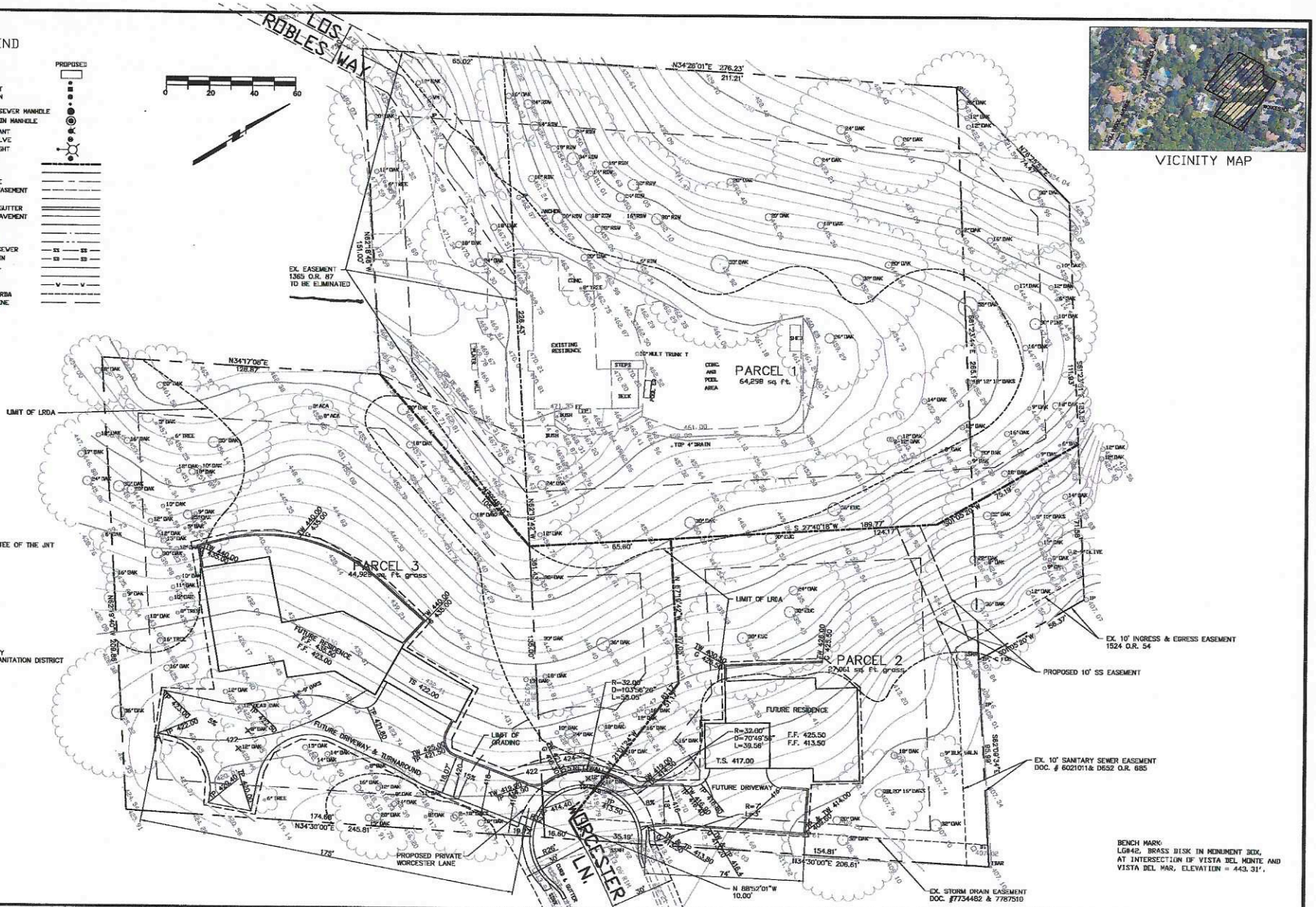
Andrea Immelt
17150 Los Robles Way
Los Gatos, CA 95030

LEGEND

EXISTING	PROPOSED



VICINITY MAP



NOTES:
 OWNER: DARAN GOODSELL, SUCCESSOR TRUSTEE OF THE JNT TRUST
 D.GOODSELL@CSUCHICO.EDU
 CHICO, CA 95913
 530-52-6754
 ENGINEERS: WESTFALL ENGINEERS, INC.
 14983 BIG BASIN WAY
 SARATOGA, CA 95070
 408-867-0244
 UTILITIES:
 WATER - SAN JOSE WATER COMPANY
 SANITARY SEWER - WEST VALLEY SANITATION DISTRICT
 GAS AND ELECTRIC - P.G.&E.
 TELEPHONE - ATT
 CABLE - COMCAST

EX. 10' INGRESS & EGRESS EASEMENT
 1924 O.R. 54
 PROPOSED 10' SS EASEMENT
 EX. 10' SANITARY SEWER EASEMENT
 DOC. # 6021011 & D632 O.R. 685
 BENCH MARK:
 LG#42, BRASS DISK IN MENDICANT BOX,
 AT INTERSECTION OF VISTA DEL MONTE AND
 VISTA DEL MAR, ELEVATION = 443.31'

NO.	BY	DATE	REVISION

DATE: FEBRUARY, 2021
 SCALE: HOR. 1"=20'
 VERT. 1"=10'
 DESIGNED: HB
 DRAWN: JC
 PROJ. ENGR: HB
 BY: HARRY BABICKA, LS 4933
 DATE:
WESTFALL ENGINEERS, INC.
 14983 BIG BASIN WAY, SARATOGA, CA 95070 (408) 867-0244

PROPOSAL FOR LOT LINE ADJUSTMENT
WORCESTER LANE & LOS ROBLES WAY, LOS GATOS, CA
 JOB NO. 2020-021
 SHEET 2
 OF 6

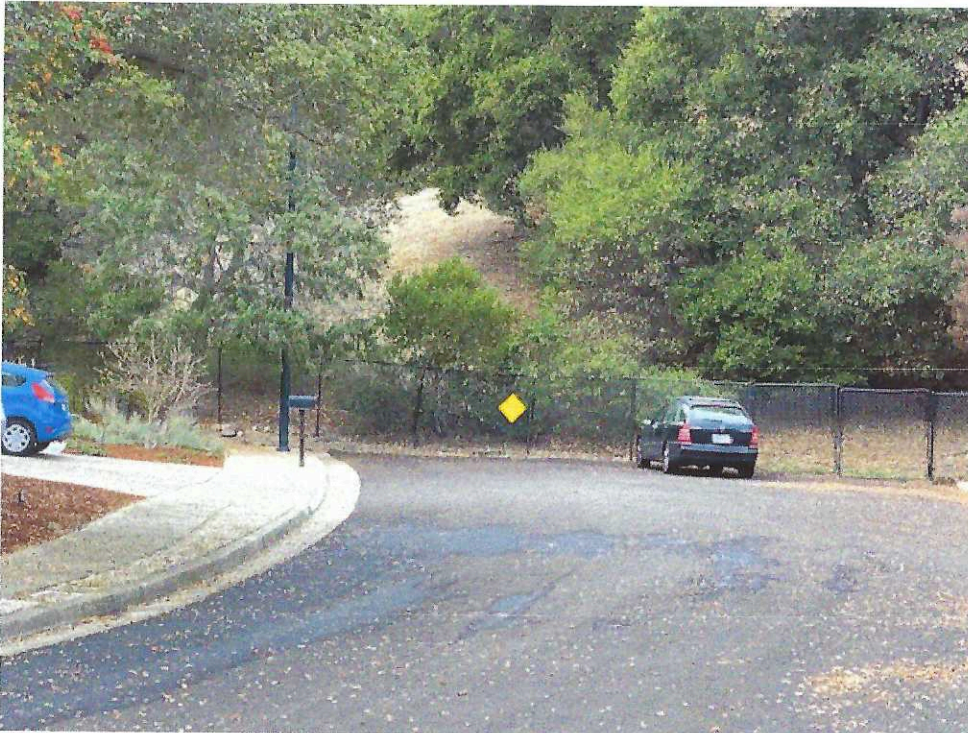
17200 Los Robles Way

Access to Property



REQUEST
THIS EASEMENT
TO BE
MAINTAINED
DOWN TO
IRON GATES

Los Robles Way



Worcester Lane

Ryan Safty

From: Tony Jeans <tony@thisdesign.com>
Sent: Monday, May 24, 2021 5:25 PM
Cc: AAI; Ryan Safty
Subject: Re: Proposed Development for 17200 Los Robles Way - Easement Documentation
Attachments: Map APN 532-36 Los Robles.pdf; Map Subdivision XM48.pdf; Map RoS 580M20 End Los Robles Rt.pdf; Map RoS 579M33 End Los Robles Lt.pdf

Andrea:

I can help with this as the Town is not normally a resource for this type of information, unfortunately.

Firstly the APN map of your property and the neighboring properties [with which you might be familiar.

Here is the documentation I found relating to the extension of Los Robles Way to the 17200 Property. and how all these properties were initially created. Hope it is not too confusing.

It describes its original creation in 1927 of the Los Robles Subdivision:

More recently a Record of Survey of your property done in 1987. This shows your property in relation to the Los Robles Way Right of Way which is 10 ft on your side and 10 ft on the other side for a 20 ft RoW in total [which I am calling the Los Robles Way extension] but might in fact be part of Los Robles Way itself. The Town is confused about this. We can chat about this sometime.

This is a similar Record of Survey [also in 1987] for the owner's property across the other side of the Los Robles Way Extension:

Hope this helps. You would otherwise have to get this from a Title company or surveyor. It should have been included to in your Preliminary Title Report when you purchased the property.

Tony

On May 24, 2021, at 3:59 PM, Planning Comment <PlanningComment@losgatosca.gov> wrote:

Hello,

Thank you for your question on 17200 Los Robles Way. Your question has been forwarded to the Planner assigned to this project, copied here. Should you have additional questions or comments, you can share them directly with the Planner (RSafty@losgatosca.gov).

Sincerely,

<image004.jpg> **Planning Department**

Community Development Department • 110 E. Main Street, Los Gatos CA 95030

Ph: 408.354.6874 • PlanningComment@losgatosca.gov

www.losgatosca.gov • <https://www.facebook.com/losgatosca>

COMMUNITY DEVELOPMENT HOURS:

Phone Hours: 8:00 AM – 5:00 PM, Monday – Friday


In accordance with the Santa Clara County Public Health order issued March 16, all Town Offices are closed until further notice. If you have questions pertaining to County Public Health information please visit the Santa Clara County website. If this is an emergency, please dial 911. Thank you.

<image002.jpg>

General Plan update, learn more at www.losgatos2040.com

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 Think Green, please consider the environment before printing this e-mail.

From: AAI <36kibo@gmail.com>

Sent: Monday, May 24, 2021 3:43 PM

To: Planning Comment <PlanningComment@losgatosca.gov>

Cc: tony@thisdesign.com

Subject: Re: Proposed Development for 17200 Los Robles Way - Easement Documentation

Hi Ryan,

I have one more question regarding the easement that is owned by us and our neighbor. Is there any documentation re the easement, detailing right of way across our property? I did not receive any information from the previous owners when we purchased this property last March.

I appreciate your follow up on this matter.

Thanks,

Andrea Immelt

17150 Los Robles Way

Los Gatos, CA 95030

On Mon, May 24, 2021 at 9:37 AM Planning Comment <PlanningComment@losgatosca.gov> wrote:

Hello,

Thank you for providing your comments for 17200 Los Robles Way. Your comments have been forwarded to the Planner assigned to this project, copied here. Should you have additional comments, you can share them directly with the Planner.

Sincerely,

<image001.jpg> **Planning Department**

Community Development Department • 110 E. Main Street, Los Gatos CA 95030

Ph: 408.354.6874 • PlanningComment@losgatosca.gov

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<image002.jpg>

General Plan update, learn more at www.losgatos2040.com

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Think Green, please consider the environment before printing this e-mail.

From: AAI <36kibo@gmail.com>

Sent: Monday, May 24, 2021 9:12 AM

To: Planning Comment <PlanningComment@losgatosca.gov>

Subject: Proposed Development for 17200 Los Robles Way - Meeting on Tuesday, May 25, 2021

My property is located adjacent to 17200 Los Robles Way, Los Gatos. I would like to express my concern about the proposal submitted. It appears that the new plan is to eliminate the existing easement adjacent to our property. Am I correct? Can lot lines be changed without both parties agreeing to it? I would like to keep the easement down to our iron gates. My understanding is that this agreement was set up years ago. We purchased this home last March, 2020.

Where is the entrance going to be for Parcel 1? 2? 3? I am not very good at reading these plans.

I plan to sign into the meeting tomorrow at 10:00am via Zoom webinar.

I look forward to finding out more about the plans to develop the property adjacent to us (Parcel 1) and below us (Parcel 3)

Sincerely,

Andrea Immelt

17150 Los Robles Way

Los Gatos, CA 95030

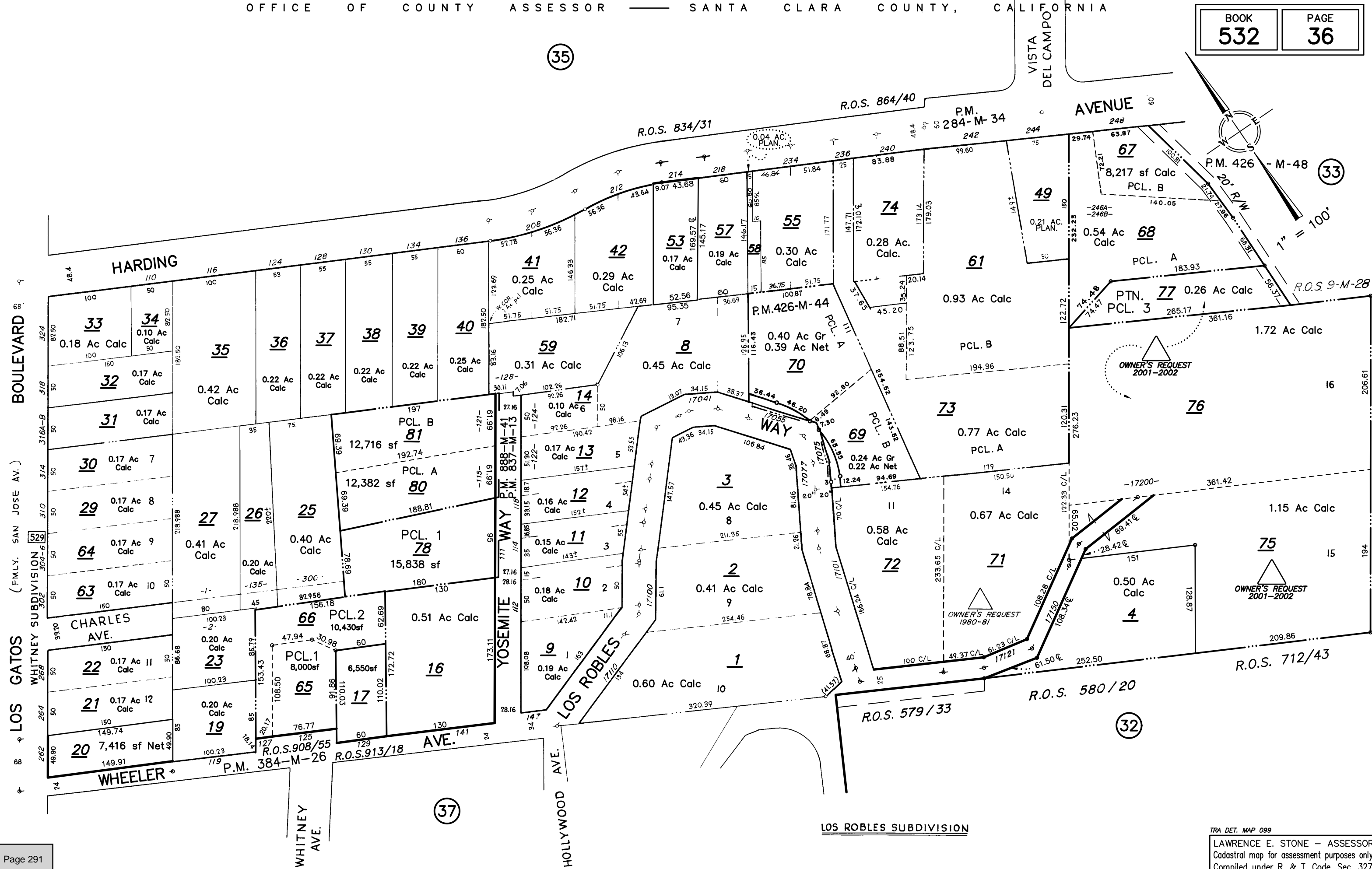
<Easement (Top Photo).pdf>

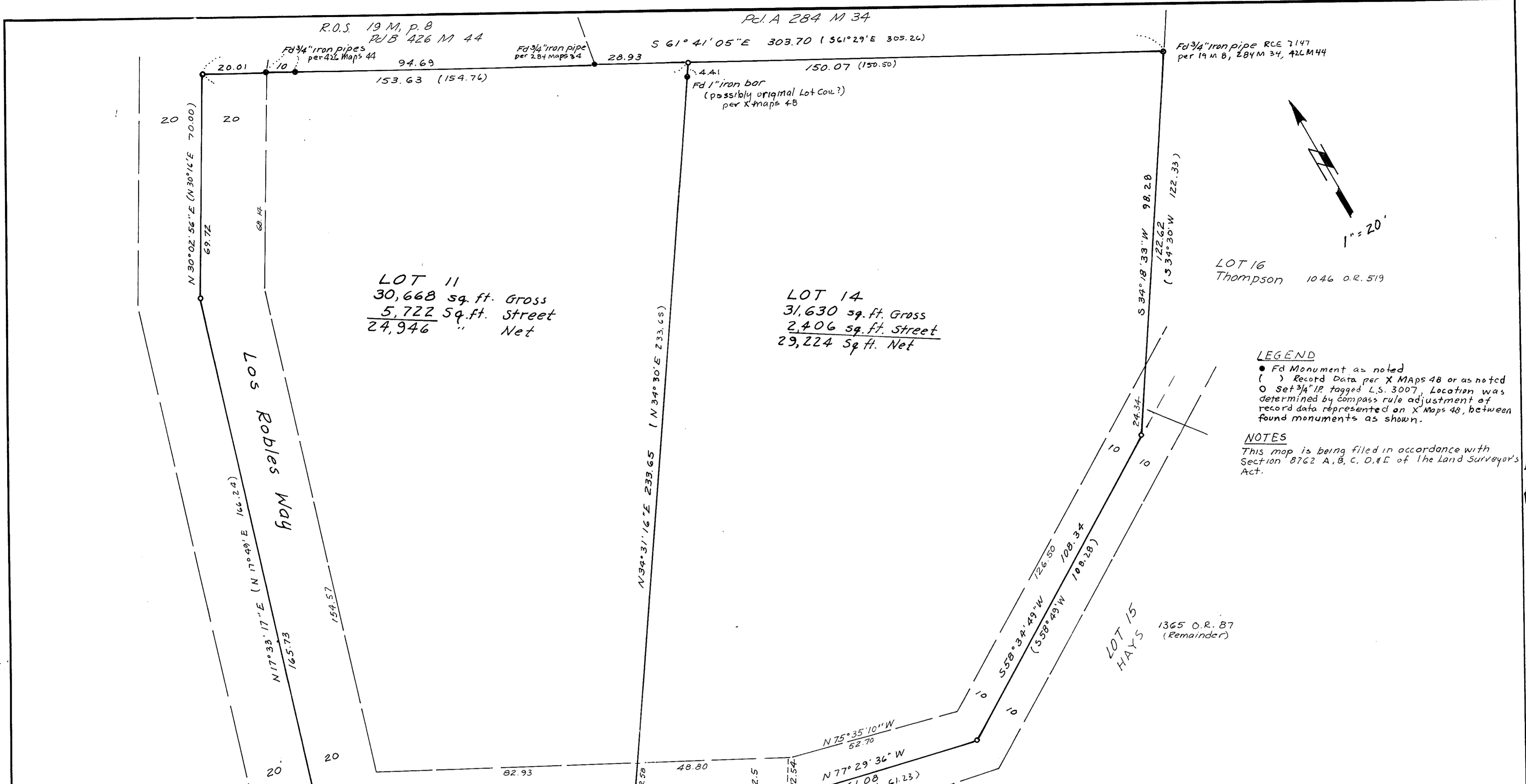
35

33

32

37





LOT 16
Thompson 1046 O.R. 519

LEGEND
 ● Fd Monument as noted
 () Record Data per X MAPS 48 or as noted
 O Set 3/4" IP tagged L.S. 3007, Location was determined by compass rule adjustment of record data represented on X Maps 48, between found monuments as shown.

NOTES
 This map is being filed in accordance with Section 8762 A, B, C, D, & E of The Land Surveyor's Act.

Book 579
Page 33

579
33

RECORD of SURVEY

of
LOTS 11 & 14 (BK X MAPS 48)
LOS ROBLES SUBDIVISION
 in the
TOWN of LOS GATOS
SANTA GLARA COUNTY, CALIF.
AUGUST 1987 1" = 20'

GRID No: 139-30-51

SURVEYOR'S STATEMENT

This map correctly represents a survey made by me in person, or by a duly qualified assistant, in accordance with the requirements of the Land Surveyor's Act at the request of **OLD NATIONAL FINANCIAL Co.** in July 1987.
 Thomas H. Kelly
 L.L.S. No 3007
 Exp: 6-30-88

COUNTY SURVEYOR'S STATEMENT

This map has been examined in accordance with Section 8766 of the Land Surveyor's Act this 10th day of October 1987.
 JAMES F. SIRR
 County Surveyor
 By Deputy: Martin D. Marcond
 Exp: 6-30-88

RECORDER'S STATEMENT

Filed this 20th day of **OCTOBER**, 1987 at 2:51 pm in Book **579** of Maps at page **33** at the request of **OLD NATIONAL FINANCE CO.** File No. **9472711** Fee: \$ **6.00**
 LAURIE KANE
 County Recorder
 By Deputy: Robert L. Horvath

BASIS OF BEARING

The bearing N 61° 49' W of the southwesterly line of LOS ROBLES WAY as shown on the map of LOS ROBLES SUBDIVISION filed in book X of maps, pages 48 & 49 SANTA CLARA COUNTY records was the basis of bearings for this survey.

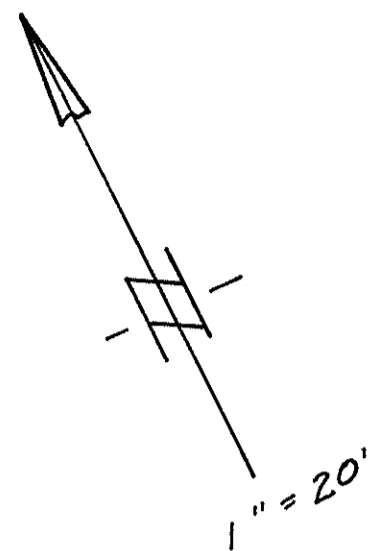
L O S

LOT 16
ROBLES SUBDIVISION X MAPS 48

Thompson
1046 O.R. 519

LOT 15

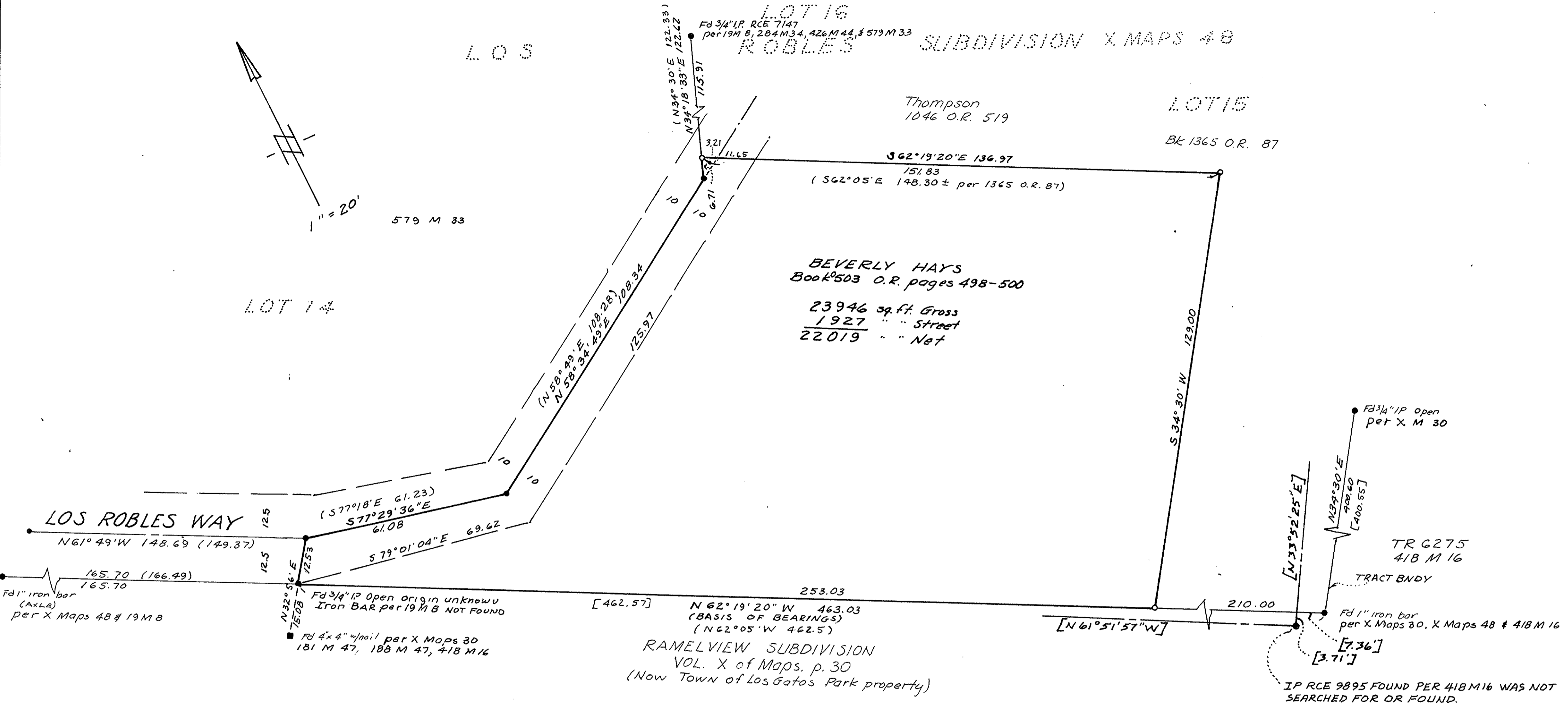
Bk 1365 O.R. 87



579 M 33

LOT 14

BEVERLY HAYS
Book 503 O.R. pages 498-500
23946 sq. ft. Gross
1927 " " Street
22019 " " Net



Book 580
Page 20

580
20

LEGEND:
○ 3/4" iron pipe set tagged L.S. 3007.
● 3/4" iron pipe found, per 579 M 33, tagged L.S. 3007, or as noted.
() Record data per X Maps 48, or as noted.
[] Record data per 418 M 16.

RECORD OF SURVEY

of
LAND OF BEVERLY HAYS
being a portion of
LOTS 15 & 16
LOS ROBLES SUBDIVISION
X MAPS, 48
TOWN OF LOS GATOS
SANTA CLARA COUNTY, CALIF.
SEPTEMBER 1987 1" = 20'

SURVEYOR'S STATEMENT

This map correctly represents a survey made by me or under my direction in accordance with the requirements of the Land Surveyor's Act at the request of BEVERLY HAYS in AUGUST 1987.
Thomas H. Riley
LLS No 3007
Expires: 6-30-88

COUNTY SURVEYOR'S STATEMENT

This map has been examined in accordance with Section 8766 of the Land Surveyor's Act this 12th day of November 1987.
JAMES F. SIRR
County Surveyor
Martin D. Mancuso
Deputy
Exp 6-30-88

RECORDER'S STATEMENT

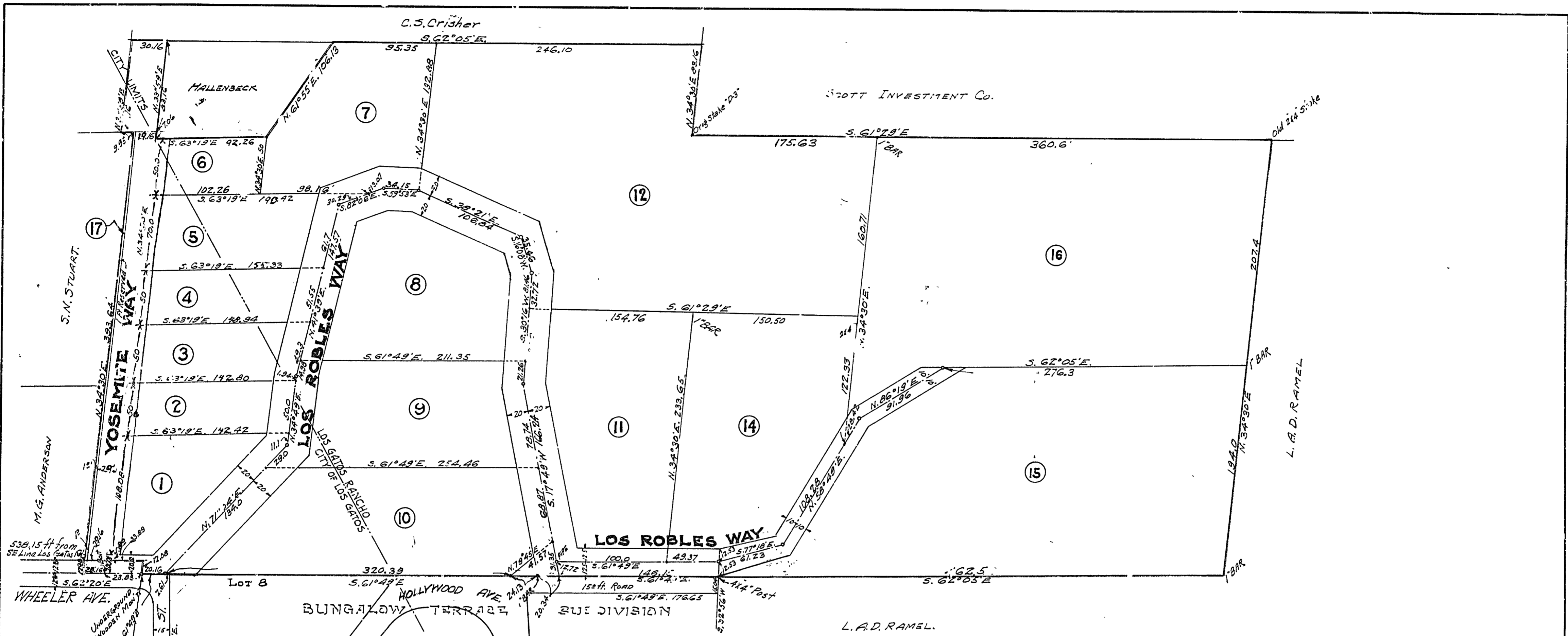
Filed this 12th day of November 1987 at 2:45 p.m. in Book 580 of Maps at page 20 at the request of BEVERLY HAYS
File No. 9502318 Fee: \$ 6.00
LAURIE KANE
County Recorder
By Deputy: [Signature]

BASIS OF BEARING

The bearing S62°19'20"E as shown on Map of RAMELVIEW, filed in Book X of Maps, page 30 Santa Clara County records was the basis of bearings for this survey.
This map is being filed in accordance with section 8762 A, B, C, D, E of the Land Surveyor's Act.

Thomas H. Riley, Land Surveyor
Los Gatos, California.

GRID No. 139-30-51



MAP OF
LOS ROBLES SUBDIVISION
 SITUATED IN THE
CITY OF LOS GATOS
 AND
RANCHO RINCONADA DE LOS GATOS
 SANTA CLARA COUNTY-CALIF.

McMILLAN & McMILLAN - CIVIL ENGRS.
 AUGUST, 1927 SAN JOSE, CALIF.
 SCALE 1 IN. = 60 FT.

NOTE: All Lot Lines run to the center line of Los Robles Way
 and to the sides of Wheeler Ave and Yosemite Way

H 17864

SHEET No 1

118

MAP OF LOS ROBLES SUBDIVISION

SITUATED IN THE CITY OF LOS GATOS

AND RANCHO RINCONADA DE LOS GATOS

SANTA CLARA COUNTY-CALIF.

McMILLAN & McMILLAN - CIVIL ENGRS. AUGUST, 1927 SAN JOSE, CALIF.

H 17864

FILED FOR RECORD at the request of S. G. Hays on the 12 day of August A.D. 1927, at 24 Minutes past 3 o'clock P.M., and recorded in Volume X of Maps, Pages 48444, Records of Santa Clara County, California

May E. Flannery County Recorder

Edmund Tully Deputy

\$5.00

This is to certify that Josephine M. Hays and S.G. Hays, her husband, and Fern L. Nuss are the owners of that tract of land embraced within the red lines on sheet No. 1 of a map entitled "Map of Los Robles Subdivision" that F.H. Benson is the Trustee under that certain Deed of Trust recorded in Book 338 of Official Records, Page 307, Records of Santa Clara County, California, and Nellie J. Heal, is the Beneficiary, are the only persons whose consent is necessary to pass a clear and legal title to that certain tract of land shown on the within map, and that they hereby dedicate all streets and parts of streets, as shown on said map, as public thoroughfares.

Josephine M. Hays

S. G. Hays

Fern L. Nuss

F. H. Benson Trustee

Nellie J. Heal Beneficiary

STATE OF CALIFORNIA COUNTY OF SANTA CLARA } s.s.

It is hereby certified that a bond in an amount fixed by the Board of Supervisors inuring to the benefit of said county, and conditioned for the payment of taxes which were at the time of the filing of the annexed map, a lien against the tract or subdivision delineated on said map, but not yet payable, has been filed with the Board of Supervisors, as approved by law.

IN WITNESS WHEREOF: I have set my hand and affixed the seal of the Board of Supervisors, this 12 day of August A.D. 1927.

Henry A. Butler Clerk of the Board of Supervisors of Santa Clara County, California.

Edmund Tully Deputy

STATE OF CALIFORNIA COUNTY OF SANTA CLARA } s.s.

On this 2nd day of October, A.D. 1927, before me L. H. Walper a Notary Public in and for the County of Santa Clara, State of California, residing therein, duly commissioned and sworn, personally appeared Josephine M. Hays, S. G. Hays, Fern L. Nuss, F. H. Benson and Nellie J. Heal as stated above.

known to me to be the persons whose names are subscribed to the within instrument, and duly acknowledged to me that they executed the same.

IN WITNESS WHEREOF: I have hereunto set my hand, and affixed my official seal this 2nd day of October, A.D. 1927.

L. H. Walper Notary Public in and for the County of Santa Clara, State of California

STATE OF CALIFORNIA COUNTY OF SANTA CLARA } s.s.

The within map, having been presented to the Board of Supervisors of Santa Clara County, California, on the 21 day of November A.D. 1927, it is hereby ordered by said Board that said map be, and the same is hereby approved.

It is further ordered that all streets and parts of streets offered for dedication on sheet No. 1 of said map, be rejected as public thoroughfares on behalf of the public.

IN WITNESS WHEREOF: I have hereunto set my hand and affixed the seal of the Board of Supervisors this 21 day of November A.D. 1927.

Henry A. Butler Clerk of the Board of Supervisors of Santa Clara County - California

By Eugene M. Don Deputy

STATE OF CALIFORNIA COUNTY OF SANTA CLARA } s.s.

It is hereby certified that a bond in an amount fixed by the Board of Supervisors inuring to the benefit of said county, and conditioned for the payment of taxes which were at the time of the filing of the annexed map, a lien against the tract or subdivision of land delineated on said map, but not yet payable, has been filed with the Board of Supervisors, as approved by law.

IN WITNESS WHEREOF: I have set my hand and affixed the seal of the Board of Supervisors, this day of A.D. 1927.

Clerk of the Board of Supervisors of Santa Clara County, California

Deputy

STATE OF CALIFORNIA COUNTY OF SANTA CLARA } s.s.

I Arthur B. Langford, County Auditor of Santa Clara County, California, do hereby certify that there are no liens for unpaid State, County or Municipal, or other taxes, except taxes not yet payable against the tract or subdivision of land described in and by the annexed map or any other part thereof.

Signed and Sealed this 21 day of November A.D. 1927

Arthur B. Langford County Auditor

By J. M. Sublette Deputy

STATE OF CALIFORNIA COUNTY OF SANTA CLARA } s.s.

On this day of A.D. 1927, before me, a Notary Public in and for the County of Santa Clara, State of California, residing therein, duly commissioned and sworn, personally appeared

known to me to be the person whose name is subscribed to the within instrument, and duly acknowledged to me that executed the same.

IN WITNESS WHEREOF: I have hereunto set my hand and affixed my official seal this day of A.D. 1927.

Notary Public in and for the County of Santa Clara, State of California.

STATE OF CALIFORNIA COUNTY OF SANTA CLARA } s.s.

On this day of A.D. 1927, before me, a Notary Public in and for the County of Santa Clara, State of California, residing therein, duly commissioned and sworn, personally appeared

known to me to be the person whose name is subscribed to the within instrument, and duly acknowledged to me that executed the same.

Notary Public in and for the County of Santa Clara, California.

This is to certify that Yosemite Way is dedicated to public use forever, that the 12 foot strip shown as Lot 17 on the within map to be dedicated to public use forever, whenever the adjacent property owners dedicate a 20.0 foot strip for public use.

Josephine M. Hays

S. G. Hays

Fern L. Nuss

F. H. Benson

STATE OF CALIFORNIA COUNTY OF SANTA CLARA } s.s.

We, R. B. Chandler and C. Y. Pitman County Surveyor and County Assessor, respectively of Santa Clara County, California, do hereby certify that we have examined the annexed map, and that the lots delineated thereon are suitable for residence and commercial purposes.

Robert B. Chandler County Surveyor

Deputy

C. Y. Pitman County Assessor

By J. E. Spitzer Deputy

I hereby certify that the subdivision shown on the annexed map is made from my own survey of the ground, and that the monuments are of the nature and in locations shown on said map.

Percy W. McMullan Licensed Surveyor

Approved by the City Planning Commission of the City of Los Gatos

Edmund Tully Secretary

The accompanying map having been presented to the City Board of Trustees of the City of Los Gatos, California on this day of November A.D. 1927, it is hereby ordered by said board that said map be and the same is hereby approved. It is further ordered that all streets and parts of streets as shown on said map be accepted as public highways on behalf of the public.

IN WITNESS WHEREOF: I have hereunto set my hand and affixed the Seal of the City of Los Gatos this 7 day of November A.D. 1927.

Donna M. Cunningham City Clerk.

STATE OF CALIFORNIA COUNTY OF SANTA CLARA } s.s.

I, H. B. Fisher, City Engineer of the City of Los Gatos, California, do hereby certify that I have examined the annexed map, and that the lots delineated thereon are suitable for residence and commercial purposes.

Henry B. Fisher City Engineer of the City of Los Gatos. SHEET 2

Town of Los Gatos
110 East Main St
Los Gatos, CA 95030

Attention: Mr. Ryan Safty

May 25, 2021

Dear Mr. Safty,

My husband Jason and I live at 246 Harding Avenue, which is the property that backs up to 17200 Los Robles, more specifically, APN 532-36-077. Mr Jeans came by in February of this year (2021), to talk with us about the proposed lot line adjustment of the property mentioned above.

Our main concern is the hillside behind our house that shares the property line of APN 532-36-077. My family has owned our property, at 246 Harding Avenue, since 1974, and in that time there has been quite a bit of movement and erosion of the hillside. One year, after an earthquake, loads of rock and debris ended up in our backyard, where a structure currently stands. Following the earthquake, there was a deep chasm at the top of the cliff/hillside. I have included in this letter several photos of our current hillside condition.

With the proposed new build, we feel that the earth movers, other construction vehicles, and the building of a structure, will further push the earth on the hill to continue to erode our hillside/property, and ultimately bring most of the hillside down into our yard.

We would like to see that there will be measures taken to ensure the safety of the hillside, and ultimately the safety of our home/property.

Our hope is that the town, and the new property owners of APN 532-36-077, will hear our concerns and take actions to ensure that our property is protected.

Best,

Shelley Clifford Merrick and Jason Merrick



Caption



Los Gatos Planning Department
110 E. Main St
Los Gatos

March 23rd 2021

RE: Subdivision Application M-20-012

Dear Ryan,

I am writing as a follow up to my earlier email to formalize our objection to the planned lot line adjustment for a 3 parcel development of 17200 Los Robles Way.

When we purchased our 308 Harding property, we signed a disclosure acknowledging that we were aware that the property at 17200 Los Robles was declared a "A SEISMIC HAZARD ZONE pursuant to Section 2696 of the Public Resources Code" – landslide zone". I have a current copy of the JCP report for the 17200 property and that declaration remains in place today.

The only way to build on Parcel 2 and 3 is to cut down several historic oaks and a grove of large eucalyptus trees and to excavate deep into the steep slope to accommodate a new cul de sac and two building pads. This would further destabilize the hillside and create landslide and flooding risk. In addition, the process of excavating could impact the integrity of the foundations, hardscape and swimming pools in the surrounding area.

We did meet with Tony and discussed the privacy issue. He offered to plant trees along the hillside, which we appreciated. However, the bigger concern is the instability issue.

What is the expected timeframe for the public hearing on this matter? I want to be sure we are available to participate.

Thanks,

Jim and Nancy Neipp

nancyneipp@gmail.com

jimneipp@gmail.com

408 981-1748

Ryan Safty

From: Nancy Neipp <nancyneipp@gmail.com>
Sent: Wednesday, March 10, 2021 11:00 AM
To: Ryan Safty
Subject: Re: Los Robles property development plan?

Importance: High

Follow Up Flag: Flag for follow up
Flag Status: Flagged

Hi Ryan

On behalf of the property owners surrounding 17200 Los Robles, we would like to go on record with our concerns about the proposed lot line adjustments.

The primary issue is with the development of the proposed Parcel 2, directly behind 304 and 308 Harding, and alongside 111 Worcester Lane. When we purchased the 308 property, we signed a disclosure acknowledging that we were aware that the property at 17200 was declared a “A SEISMIC HAZARD ZONE pursuant to Section 2696 of the Public Resources Code” – landslide zone”.

I have a current copy of the JCP report for 17200 and that declaration remains in place today.

The only way to build on Parcel 2 is to cut down several historic oaks and a grove of large eucalyptus trees and to excavate into the steep slope behind our homes. This would further destabilize the hillside and create landslide and flooding risk.

What’s the next step in the process to halt the lot line adjustment proposal?

Thanks

Nancy

408 981 1748

Ryan Safty

From: Tony Jeans <tony@thisdesign.com>
Sent: Sunday, March 14, 2021 3:20 PM
To: Ryan Safty
Cc: Sally Zarnowitz
Subject: Re: Objection to Subdivision Application M-20-012
Attachments: WorcesterHarding Neighbors.pdf

Follow Up Flag: Flag for follow up
Flag Status: Flagged

Ryan:

Just spent an hour with Nancy and James Neipp [308 Harding]. We walked the property and also went to their house. I did not feel that they were serious objectors, but perhaps might want to support their neighbors at 304 [Alison and Dave Steer].

I am attaching 3 photographs:

With 111 Worcester Lane there is one window where screening would help - but that is easy.

The second photo perhaps mostly explains Alison's concern - as there is a direct line of sight into the backyard of 304 Harding which I will need to mitigate - but for that I will need to talk to Alison and she does not want to talk for now. The house on Parcel 2 would be 50 or so feet away - so plenty of room for screening.

With 308 Harding there is no privacy issue as they are very well screened and you can barely see the house.

No response required - just keeping you informed.

Tony

On Mar 12, 2021, at 10:17 AM, Ryan Safty <RSafty@losgatosca.gov> wrote:

Please see additional public comment below regarding the proposed lot-line adjustment at 17200 Los Robles Way.

Respectfully,
Ryan Safty

From: Alison Steer <alison.steer@gmail.com>
Sent: Friday, March 12, 2021 6:05 AM
To: Ryan Safty <RSafty@losgatosca.gov>
Subject: Objection to Subdivision Application M-20-012

Hi Ryan,

Please find attached letter that we would like to submit to the public record.







Town of Los Gatos
110 East Main St
Los Gatos, CA 95030

Attention: My Ryan Safty

RE: Lot Line Adjustment Application M-20-012

May 11, 2021

Dear Mr. Safty,

We are writing to object to the proposed lot line adjustment on the property located at 17200 Los Robles Way, Los Gatos, and are also questioning the process that was undergone to divide this property into three separate lots without notification to surrounding neighbors. When we bought our property at 110 Worcester Loop in 1980, we backed onto a single lot which was listed as accessible only from Los Robles Way. We recognized and appreciated the natural beauty of our backyard with view of historic California oaks. The proposed development behind our home would certainly result in devaluation of our property. As the proposal stands now, the driveway is inches from our property line with no setback or easement. This has a direct negative impact on our property value and quality of life from our yard. We object in the strongest terms the building of a driveway and home in the place it is represented on the drawing to the town.

In addition, one issue that is not stated on the drawings submitted to the city, is the natural drainage that runs through the property at the proposed site of Parcel 3. During very rainy years this becomes a stream that has flooded the adjacent property (112 Worcester Lane) several times and has caused extensive damage. The installation of a driveway and home will create an additional impervious surface that would cause further flooding.

On discussion with Tony Jeans he provided us a revised proposal that does not appear to have been submitted to the town, as attached, that attempts to mitigate the issue of the driveway immediately beside our fence. However; there has been no commitment that we would be able to purchase this additional land that currently belongs to "Parcel 3", or that any future home would be developed further up the hillside. The

impact of a house on Parcel 3 would also severely impact the several mature oaks in the area. I have included some pictures from our deck of the adjacent trees.

This is a link to the plans submitted to the Town of Los Gatos

<https://www.losgatosca.gov/DocumentCenter/View/27125/Neighborhood-Outreach-and-Response---17200-Los-Robles-Way>

This is the drawing done for us with the purchase of the land adjacent to our property at 110 Worcester Loop and the home and driveway considerably farther up the hill and not inches from our property. We are concerned that if the LLA is approved with the drawing of a home on Parcel 3 as it is now presented it will a tacit approval of that proposed home location on the parcel.

This is a picture from our property at 110 Worcester Loop looking towards Parcel 3

Showing the many oaks that would be impacted with this development.



Thank you for your consideration of these issues.

Yours Sincerely,

Terry and Bob Rinehart
110 Worcester Loop
Los Gatos, CA 95030
tlrinehart@comcast.net
rwrinehart@comcast.net

Town Of Los Gatos
110 East Main St
Los Gatos CA 95030
Attn: Planning/Engineering

May 13th, 2021

17200 Los Robles Way, Los Gatos
Response to Rinehart Concerns M 21-001

This response is to the letter from the Rineharts, dated May 11th, 2021, which I received yesterday. I have previously met with them and their neighbors [the De Feos] who both live adjacent to the proposed future 1-acre Parcel 3 identified in the LLA application.

Firstly - a couple of points: The property in question has had a single house on it for many years, and this is possibly the cause of some confusion. When first created in 1929, 2 separate parcels were established as part of the original subdivision. A third was purchased later and together they have been used by the longtime owner as a single property. The town's consultant Civil Engineer and Land Surveyor is undertaking an analysis of their legal creation. This is part of the Certificate of Compliance process.

As is obvious, their configuration is unusual, but it did not matter when the owner was using the whole property. It is now the intention to sell the property and a very interested party would like to build on one of them at the top, but a Lot Line Adjustment process was necessary in order to make the 3 parcels more conforming than they are now. The town has asked that we consider a cul-de-sac termination for Worcester Lane, which would be a conforming street termination and the new Parcels 2 and 3 would be accessed from there.

With the LLA, I am required to show that a house and driveway could be placed on each of the new resulting parcels. This is to indicate to the town and the fire dept that it would be better than what is there now. Yes - Parcel 3 is one acre and there are other options and we discussed some of those when we all met at your property. However the owners want first to complete their application to make certain that the general concept of what they want to do is acceptable to the town. At that point, there could be room for discussion of other options that might work better for all parties. In part because of Covid, this process is taking a lot longer than we all had hoped. The owners have been patient with the process so far but they do not want to slow the process down further with anything new.

Drainage would be addressed when a house application is considered. It is required by the town not to make things worse, but at that time there might also be the opportunity to improve the situation somewhat.

I hope that this helps clarify the situation.

Tony Jeans

Los Gatos Planning Department
110 E. Main St
Los Gatos

March 11th 2021

RE: Subdivision Application M-20-012

Dear Mr Safty,

We are writing to express our objection to the planned lot line adjustment for a 3 parcel development of 17200 Los Robles Way. When we bought our property at 304 Harding Ave in December 2015, there was only one buildable parcel behind our property and that was located at the top of the hill on "LOT B", per image below. In addition, given we had privacy concerns that anything built behind our home would have direct line of sight into our backyard, we were informed that the hillside had been deemed as a seismic hazard zone and landslide risk per the JCP Hazard Disclosure reports. This information was important to our decision to buy the property due to the specific privacy issues mentioned, and devaluation of our property should such a development move ahead.

Given the existence of the JCP hazard report, we would also be very concerned about any excavation done to the hillside or any trees being removed that would result in landslide or flood risk to our property, and/or destabilize our foundations.

As you can see in the property listing this was promoted as two adjacent **hilltop** parcels that were to be accessed from Los Robles Way. The second parcel 523-36-077 is clearly not a buildable lot, and it's unclear why the property was originally divided this way. The image below showing lot A and lot B are both to be accessed from Los Robles Way.

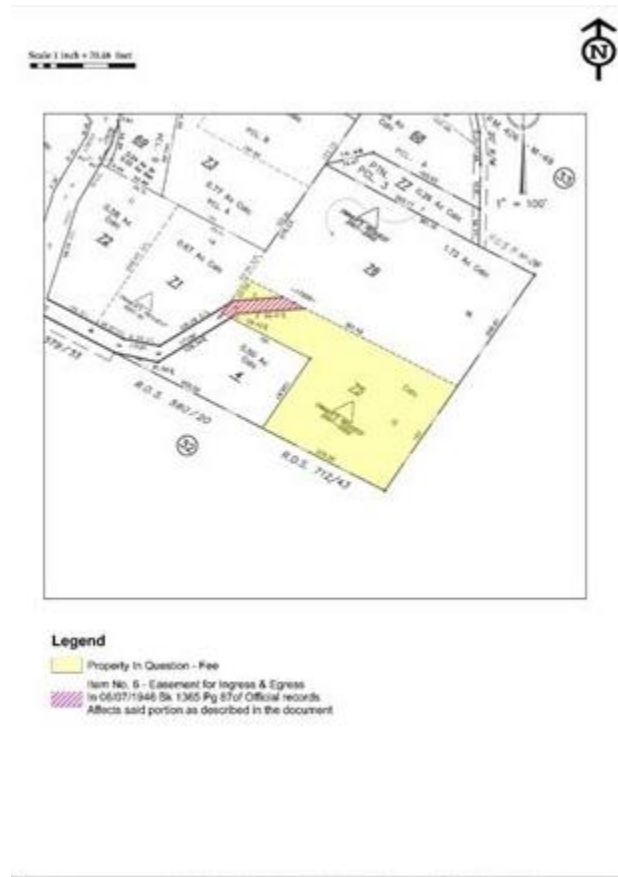
<https://search.kwbae.com/idx/details/listing/b011/ML81798535/17200-Los-Robles-WAY-LOS-GATOS-CA-95030>

In summary, we do not support the creation of access from Worcester Lane to add two new properties that would require extensive excavation into an already unstable hillside and put our home and our neighbors at substantial risk.

Please advise of any upcoming hearings regarding this proposed development.

Sincerely,

David and Alison Steer
304 Harding Ave
Los Gatos
Ph: 650-996-5809
Alison.steer@gmail.com





Ryan Safty

From: Tony Jeans <tony@thisdesign.com>
Sent: Sunday, March 14, 2021 9:04 AM
To: Alison Steer
Subject: Re: 17200 Los Robles Way LLA

Follow Up Flag: Flag for follow up
Flag Status: Flagged

Alison:

I fully understand your potential concerns of privacy and possible potential earth movement - per your email. What I had hoped to do was visit with you and look at the 17200 from your side of the fence to see whether there are creative ways in which I might be able to address some of the privacy concerns that you might have.

A JCP report gives an owner and a buyer a very broad brush overview of potential issues to be addressed in the sale/purchase or development of any property. But it is only an overview. It is my experience that the Town of Los Gatos is very careful in not allowing anything to be built that would be unstable and they usually require much more rigorous investigations before any construction is allowed to begin.

I can only say at this time that the suggested locations for any structures on Parcel 2 are conceptual - just to show the Town that there is a reasonable location for a house to be built in a responsible way. That is one of the reasons that I really would like to take this opportunity to meet, talk, and see for myself what could be done to allay your privacy concerns. Privacy is a 2-way street and I am sure that any potential owner of the Parcel 2 property would like to ensure that there is privacy also. I have also tried to show a potential house location that would require little or no tree removal and not impact the slope in any significant way.

So - if you do change your mind in allowing me to meet with you, I would welcome it. It would enable me to do a better job for all concerned. Yes - you might still choose to object, but you would at least be more knowledgeable and you would know that you have worked hard to try to get the best solution possible. Maybe I will even be able to allay your fears?

I will still keep you in the loop as to what is planned as time goes on and maybe we can chat later.

Thank you

Tony

(408)354-1833

On Mar 13, 2021, at 4:22 PM, Alison Steer <alison.steer@gmail.com> wrote:

Hi Tony,

We don't see the benefit of meeting since we are definitively opposed to the proposal, period.

Sincerely,
Alison and Dave Steer

On Sat, Mar 13, 2021 at 10:51 AM Tony Jeans <tony@thisdesign.com> wrote:

Alison and Dave:

I just sent a similar email to Nancy at 308 - so we could all get together - if you feel comfortable with covid. We can socially distance - and I have been vaccinated 2x. But I would not want to slow things down by making that more difficult.

Thanks again

Tony

> On Mar 13, 2021, at 10:43 AM, Tony Jeans <tony@thisdesign.com> wrote:

>

> Alison & Dave:

>

> I am the person who dropped off an introductory letter last month when I knocked on your door and no-one was home.

>

> Now that I have a better way of contacting you, I would like an opportunity to meet with you both to see what things look like "from your side of the fence" before any serious planning goes into this project. I would also like to take the opportunity of letting you know what is generally being planned and hear from you directly your real areas of concern.

>

> I have read your letter to the town and we can talk about that and other things too.

>

> Are you available this weekend? I am available today and tomorrow in the afternoons after 1:00.

>

> I look forward to meeting with you both.

>

> Tony

>

>

15th March 2021

Ryan Safty

Los Gatos, Planning Department
110 E Main St
Los Gatos, CA 95030

RE: Subdivision Application M-20-012

Dear Mr. Safty,

I am writing to express my opposition to the planning proposal **Subdivision Application M-20-012**. This design has requested approval for a lot line adjustment between three adjacent lots on properties zoned R-1:20. APNs 523-36-075,-076, -077 and **build two new properties** in these new lots. While I respect that planning permission is under the jurisdiction of the council I would like to lead my support to my constituents in their opposition to this proposal.

I am opposed to this development for the following reasons:

- The land itself is an important and valuable piece of green space and wildlife, and building two separate properties will irreversibly damage the biodiversity of the area
- The removal of historic trees will reduce privacy and increase flood and mudslide risk for other residents on Worcester Lane and Harding Avenue

In summary, **we oppose the creation of access from Worcester Lane to add two new properties** that would require extensive excavation into an already unstable hillside and put our home and our neighbors at substantial risk.

Please advise of any upcoming hearings regarding this proposed development.

Sincerely,

Ben Wu and Irene Lee

105 Worcester Loop
Los Gatos, CA 95030
(408) 256-2508
wubenhe@gmail.com

**17200 Los Robles Way, Los Gatos
Stated Neighbor Hazard Concerns**

"The Property is classified as a Landslide Hazard Zone by the JCP Report".

There appears to be some misunderstanding as to the intention of a JCP Hazard Report as it relates to this property, or in fact any property. A JCP report is intended to alert possible purchasers as to potential hazards that should be considered when buying a property. It does not rely on any site-specific investigations or evaluations and any owner [and the Town] will require further detailed analyses at the time any construction is proposed.

I obtained a copy of the JCP report, and spoke to a JCP geographer [Jack Stark] about it at length and received clarification as to the various hazard zones listed. The report relies on a number of hazard maps from a variety of sources. As it states, it is very general in nature, but does call out specific hazard zones that would be applicable to this property.

Of those, the most relevant is the **"Very High Fire Hazard Severity Zone"**, identified in the attached statutory JCP Hazard Map as the "green shaded area" from the Legend, which also covers much of Los Gatos. The Report suggests certain specific building techniques that might be required, together with home maintenance for designing and living in a home.

A **"Seismic Hazard Zone - Landslide"** is also called out in the JCP report as a "bricked" Legend area - but when you look carefully at the map, it barely touches the property at the western most corner and reflects an area around Hollywood and Los Robles Way - not the Harding/Worcester Lane eastern most corner. This potential hazard zone is on the opposite side of the property from the neighbors who have expressed concern about Hazard as being a high priority issue and there is no indication that construction on the proposed Parcel#2 would be problematic.

This property is not in the **"Special Flood Hazard Area"** and it is difficult to see how flooding of neighboring properties would be an issue with this LLA

Attached is the JCP Hazard Map for the property at 17200 Los Robles Way. It shows the eastern-most corner of the property is far from any Landslide Hazard.

Please also note that I have located a potential building site on Parcel #2 that would not impact any of the mature oaks on the property, nor the eucalyptus trees. There are some privacy issues that can be reasonably mitigated if needed if and when an actual residence is proposed and these should be considered at that time.

Tony Jeans

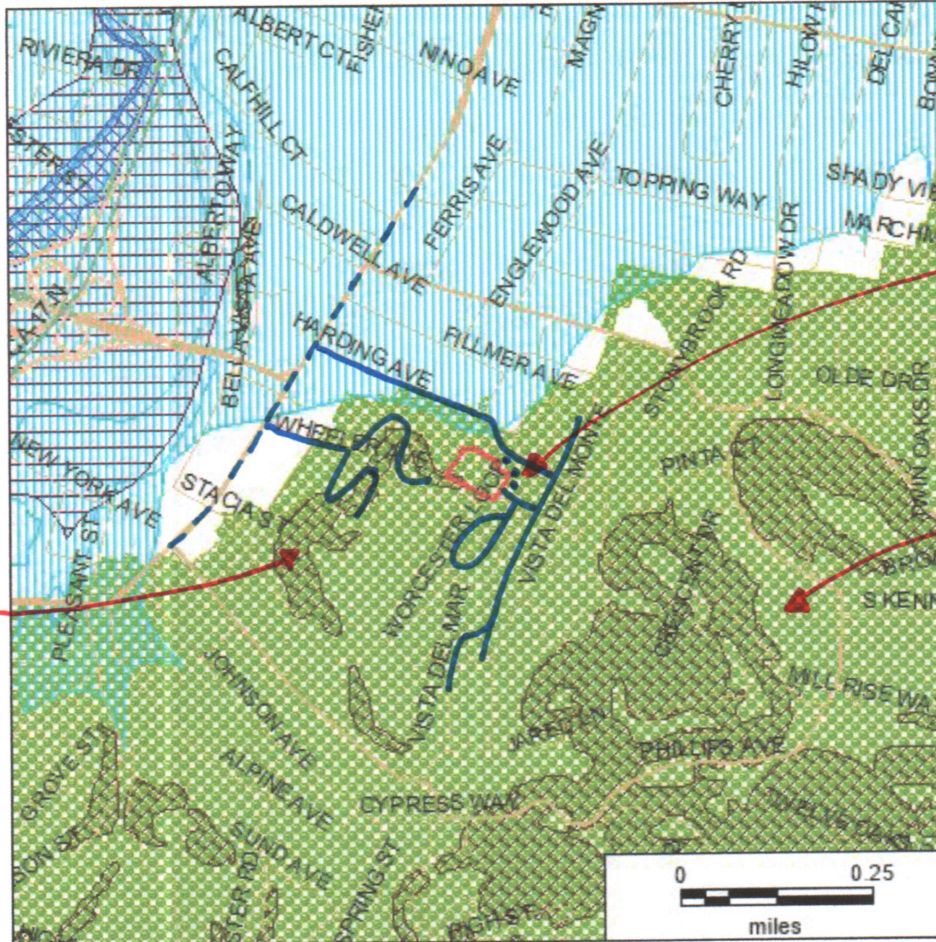
March 2021

**Map of Statutory Natural Hazards
For SANTA CLARA County**

Property Address: 17200 LOS ROBLES WAY
LOS GATOS, SANTA CLARA COUNTY, CA 95030
("Property")

APN: See Addendum
Report Date: 04/17/2020
Report Number: 2642519

Map of Statutory Natural Hazard Zones



LANDSLIDE HAZARD ZONE IS AT LOS ROBLES WAY & HOLLYWOOD AVE.
(NOT AT HARDING & WORCESTER LANE)

LOCATION OF CONCERNED PARTIES AT 304+308 HARDING & 111 WORCESTER LANE.

THE ENTIRE AREA IS IN A FIRE HAZARD ZONE.

		Subject Property
NO		Special Flood Hazard Area
NO		Area of Potential Flooding, Dam Failure
YES		<u>Very High Fire Hazard Severity Zone</u>
NO		Wildland Area, Substantial Forest Fire Risk
NO		Earthquake Fault Zone
PARTIAL		<u>Seismic Hazard Zone, Landslide</u>
NO		Seismic Hazard Zone, Liquefaction



This map is provided for convenience only to show the approximate location of the Property and is not based on a field survey.

Received Pg 1-50:

Sign _____ DATE _____

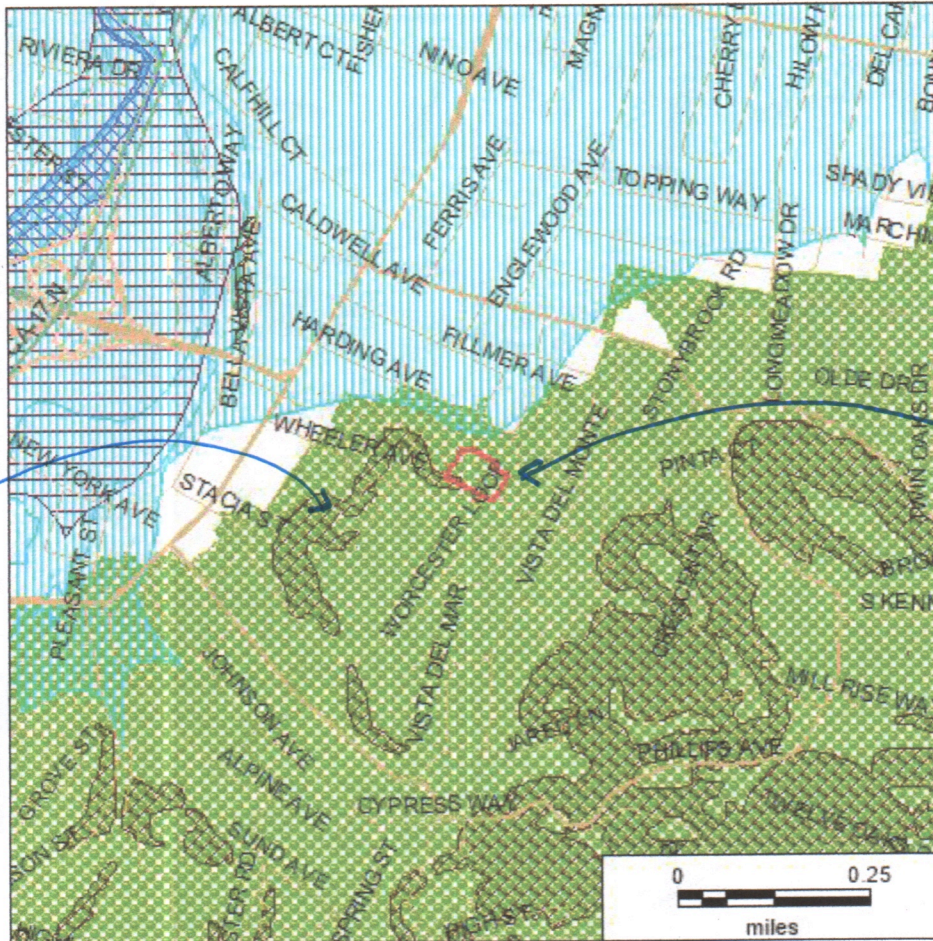
Sign _____ DATE _____

**Map of Statutory Natural Hazards
For SANTA CLARA County**

Property Address: 17200 LOS ROBLES WAY
LOS GATOS, SANTA CLARA COUNTY, CA 95030
("Property")

APN: See Addendum
Report Date: 04/17/2020
Report Number: 2642519

Map of Statutory Natural Hazard Zones



POTENTIAL
LANDSLIDE
ZONE

LOCATION OF
304, 308 HARDING
& 11 WORCESTER LANE
[NOT ADJACENT TO
POTENTIAL LANDSLIDE
HAZARD ZONE]

Subject Property

NO	[Blue diagonal lines]	Special Flood Hazard Area
NO	[Light blue]	Area of Potential Flooding, Dam Failure
✓	[Green]	Very High Fire Hazard Severity Zone
NO	[Orange]	Wildland Area, Substantial Forest Fire Risk
NO	[Red diagonal lines]	Earthquake Fault Zone
PARTIAL	[Yellow diagonal lines]	Seismic Hazard Zone, Landslide - AT WESTERN MOST CORNER.
NO	[Purple]	Seismic Hazard Zone, Liquefaction

This map is provided for convenience only to show the approximate location of the Property and is not based on a field survey.

Received Pg 1-50:

Sign _____ DATE _____

Sign _____ DATE _____

Ryan Safty

From: Tony Jeans <tony@thisdesign.com>
Sent: Friday, March 12, 2021 10:50 AM
To: Ryan Safty
Cc: Sally Zarnowitz
Subject: Re: Objection to Subdivision Application M-20-012

Follow Up Flag: Flag for follow up
Flag Status: Flagged

Ryan

Thank you for forwarding these comments (from 304 & 308 Harding and 111 Worcester Lane). I have sent letters to both Harding properties and knocked on the door several times, but nobody has been home. The 111 renter says that his main concerns were loss of privacy and construction.

Now that I have their email addresses, I will try to set up a meeting with them as continued outreach.

For what it is worth, the JCP report for the property (in fact for any property) is explicitly generic and is not based on any site visit or site specific analysis. It points out potential hazards which would need to be addressed prior to construction, which the Town would require in any event.

As these neighbors are being specific (JCP Report) as to a potential negative impact of any development of Parcel 2 on their property, I will respond to their concerns separately. It should be noted that the proposed building site on Parcel 2 avoids the LRDA and requires no tree removals, especially of mature oaks. Grading would be minimal and a resulting home, designed as shown, is more likely to provide a buffer to them from any potential "landslides" - and "flooding" just does not make sense at all in this location.

Thanks again.

Tony

Sent from my iPhone

> On Mar 12, 2021, at 10:17 AM, Ryan Safty <RSafty@losgatosca.gov> wrote:

>

> Please see additional public comment below regarding the proposed lot-line adjustment at 17200 Los Robles Way.

>

> Respectfully,

> Ryan Safty

>

> From: Alison Steer <alison.steer@gmail.com>

> Sent: Friday, March 12, 2021 6:05 AM

> To: Ryan Safty <RSafty@losgatosca.gov>

> Subject: Objection to Subdivision Application M-20-012

>

> Hi Ryan,

>

Ryan Safty

From: Tony Jeans <tony@thisdesign.com>
Sent: Sunday, March 14, 2021 12:26 PM
To: Ryan Safty
Cc: Sally Zarnowitz
Subject: Re: Objection to Subdivision Application M-20-012
Attachments: JCP Hazard Map.pdf

Ryan:

I obtained a copy of the JCP report and have gone through it. It is very general in nature, but does call out specific hazard zones that would be applicable to this property.

Of those, the most relevant is the “very high hazard severity zone” which requires certain specific building techniques and home maintenance.

A “seismic hazard zone, landslide” is also called out - but when you look at the map, it only just touches the property at the western most corner and reflects an area around Hollywood and Los Robles - not the Harding/Worcester Lane eastern most corner.

Flooding is not an issue at all for this property and it is unclear from the map how any activity on the property would exacerbate the situation.
for any neighbors on Harding.

I am convinced that the real issue is “change” and “privacy”. I am continuing to reach out to the 2 neighbors on Harding and am meeting Nancy Neipp at 1:00 today to talk to her personally.

Attached is the JCP Hazard Map for the property.

I will keep you informed of progress.

Tony

On Mar 12, 2021, at 10:17 AM, Ryan Safty <RSafty@losgatosca.gov> wrote:

Please see additional public comment below regarding the proposed lot-line adjustment at 17200 Los Robles Way.

Respectfully,
Ryan Safty

Ryan Safty

From: Tony Jeans <tony@thisdesign.com>
Sent: Friday, March 26, 2021 2:41 PM
To: Alison Steer; Nancy Neipp; garymgysin@gmail.com
Subject: A Hazard Discussion re: 17200 Los Robles Way
Attachments: Hazard DiscussionMap - Neighbors.pdf

Follow Up Flag: Flag for follow up
Flag Status: Flagged

All:

I am addressing this email to those neighbors who have expressed a concern relating to the Proposed Lot Line Adjustment at 17200 Los Robles Way based on 'Hazard Concerns' noted in the JCP Report for the property. I am happy to let you know that there is no 'Seismic Hazard Concern - Landslide' noted in the JCP Report as it relates to any portion of the property adjacent to Harding Ave and Worcester Lane where you live.

Please look at the attached 'Hazard Discussion' and review it carefully and call me if you have any questions. I hope that this puts your minds at rest, and if you are talking to neighbors - please let them know too.

I would welcome talking to those of you who are like to talk about privacy - but this would be on an individual basis as each of your properties has different aspects to consider. I find that meeting at the property in person works best and I can make myself available when you have time.

Again - the owner is only looking for a Lot Line Adjustment at this time and any future development of the property would require more rigorous investigation to be undertaken before a house could be built.

Thank you

Tony Jeans

(408)354-1833



**TOWN OF LOS GATOS
DEVELOPMENT REVIEW
COMMITTEE REPORT**

**MINUTES OF THE DEVELOPMENT REVIEW COMMITTEE MEETING
JULY 13, 2021**

The Development Review Committee of the Town of Los Gatos conducted a Regular Teleconference Meeting on July 13, 2021, at 10:00 a.m.

This meeting was conducted utilizing teleconferencing and electronic means consistent with State of California Executive Order N-29-20 dated March 17, 2020, regarding the COVID-19 pandemic and was conducted via Zoom. All committee members and staff participated from remote locations and all voting was conducted via roll call vote. In accordance with Executive Order N-29-20, the public could only view the meeting online and not in the Council Chamber.

ROLL CALL

Present: Jennifer Armer, CDD Planning; Robert Gray, CDD Building; Mike Weisz, PPW Engineering; Corvell Sparks, PPW Engineering; Kenny Ip, SCCFD.

Absent: None.

Staff: Ryan Safty, CDD Planning; Robert Schultz, Town Attorney.

MEETING CALLED TO ORDER AT 10:00 AM

VERBAL COMMUNICATIONS

- None.

CONSENT ITEMS

1. Approval of Minutes – June 22, 2021.

MOTION: **Motion by Robert Gray to approve the consent calendar. Seconded by Mike Weisz.**

VOTE: **Motion passed unanimously 4-0.**

PUBLIC HEARINGS

2. 17200 Los Robles Way
Lot Line Adjustment Application M-20-012

Requesting approval for a lot line adjustment between three adjacent lots on properties zoned R-1:20. APNs 532-36-075, -076, and -077.

PROPERTY OWNER: Daran Goodsell, Trustee and Mark Von Kaenel

APPLICANT: Tony Jeans

PROJECT PLANNER: Ryan Safty

The project planner, Ryan Safty, presented the staff report.

Opened Public Comment.

Tony Jeans, Applicant

This application is to take three non-conforming lots and make them more conforming. Parcel 1 will have the house and access from Los Robles, Parcel 2 will be enlarged to comply with Town Code with access from Worcester Ln, and Parcel 3 will remain one acre of land and will take access from Worcester Ln. No construction is being proposed with the Lot Line Adjustment application. He is available for questions.

Alison Steer, Neighbor

She wants clarification on the access of Parcel 2 from Worcester Ln as there hasn't been documentation of this and no access has been granted. It has always been from Los Robles. She also stated that the APNs on the site plans are incorrect (should be 532 vs 533) and asks that they be corrected. She noted that she thought this application was withdrawn because it was removed from the website. She wants to know why that was. She wants to understand what is happening today as far as what is being approved. She understands that it is for the lot line adjustment, but it leads to fear of next steps with building on the lands. She is concerned with the necessary tree removals and that more than just a lot line adjustment is being approved.

Geoff Defeo, Neighbor

He has four major concerns. First, is water run-off and flooding associated with future construction and impervious surfaces. Second, Lot 3, as proposed, would have a fire truck turn-around directly adjacent to their property. Third, he is concerned that several mature trees will need removal. Lastly, the future cul-de-sac would also require several tree removals and the removal of existing right-of-way improvements.

Terry Rinehart, Neighbor

They want to confirm whether this access to Parcel 3 from Worcester Ln as there hasn't been approval in the past. It has always been from Los Robles. There is concern that in the lot line adjustment conceptual plan has building sites on them which would cause trees to be

removed. There has been no soil or earthquake analysis as of yet but should take place as there are concerns.

Nancy Neipp, Neighbor

There are general concerns on this lot line adjustment around tree removal requirement as well as possible damages occurring when building starts later. There is concern with the stability of the hillside where these lots are. She questioned who is responsible if damages occur to her property during construction.

Tony Jeans, Applicant

Most of the comments are related to the future construction, which is not being reviewed with this Lot Line Adjustment application. These concerns will be reviewed in detail once Architecture and Site application are submitted. Regarding Worcester Lane access, the two properties border Worcester Lane, which is a public street. He stated that a future sewer line would be oriented to avoid tree removals. Regarding construction run-off, he commented on the construction requirements that already address this. Lastly, he will discuss moving the house on Parcel 3 up the hill for the neighbor.

Closed Public Comment.

Committee Discussion.

Ryan Safty, Planner

He was not aware that the application was removed from Pending Projects. It may have been removed by mistake when the Certificate of Compliance project was being removed. This project is on the Pending Projects website for viewing at this time, and required noticing was completed. Staff clarified that the conceptual driveways and building footprints were requested by staff so the Town can ensure that future development is feasible. He reiterated that the only thing being approved and reviewed at today's DRC hearing is the request to move lot lines.

Mike Weisz, Engineering

The properties in question have access on Worcester Lane. All future construction notes on the plans are conceptual and in no way approved at this time. There is no easement being proposed or approved at this time. At Architecture and Site application stage, a detailed study on geotechnical impacts will be conducted. He clarified that the developer is responsible if damages occur during construction.

MOTION: **Motion by Robert Gray** to approve with the required findings and recommended conditions of approval. **Seconded by Corvell Sparks.**

VOTE: **Motion passed unanimously 4-0.**

Appeal rights were recited.

3. 15897 Camino Del Cerro
Architecture and Site Application S-20-006

Requesting approval for demolition of an existing single-family residence, construction of a new single-family residence to exceed the floor area ratio standards, and site work requiring a grading permit on property zoned R-1:8. APN 523-24-044.

PROPERTY OWNER: Francesco Iacopino and Leire Carbone Aguero

APPLICANT: Robin McCarthy

PROJECT PLANNER: Ryan Safty

The project planner, Ryan Safty, presented the staff report.

Opened Public Comment.

Robin McCarthy, Applicant and Architect

Representing a family of four who are excited for this new farm-house style single-story home. Because the Town requires the first 10 feet of the property to be dedicated to the Town, they have had to downsize the original plan to accommodate this. They feel the design is modest in size and fits the neighborhood.

Tiffany Finocchio, Neighbor

They are very excited about this project as it will replace an existing unsightly building.

Jack and Barbra Hardin, Neighbors

They are very happy to welcome this young family to our neighborhood. They are excited about the design to come. The one concern they have is that their views of their hillside for the last 31 years will be considerably diminished. They are requesting the roofline be adjusted a bit to allow no distribution of their views. They would also like learn about what trees would be planted.

Robin McCarthy, Applicant

Solar panels will be part of the building permit and will go on the north facing side. We plan to plant some young ornamental trees at the front of the home since there are already so many beautiful, mature trees. The proposed roof is only increasing by a few feet, and the existing 13.5-foot detached garage in the rear yard would be removed. The home owner is happy to meet with the Hardins to discuss further.

Francesco Iacopino, Owner

He would be happy to discuss further any issues neighbors may have.

Closed Public Comment.

MOTION: **Motion** by **Robert Gray** to approve with the required findings and recommended conditions of approval. **Seconded** by **Kenny Ip**.

VOTE: **Motion passed unanimously 4-0.**

Appeal rights were recited.

OTHER BUSINESS

- None.

ADJOURNMENT

The meeting adjourned 10:51 AM

This is to certify that the foregoing is a true and correct copy of the minutes of the July 13, 2021 meeting as approved by the Development Review Committee.

Prepared by:

Jennifer Armer, Senior Planner

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**TOWN OF LOS GATOS
COMMUNITY DEVELOPMENT DEPARTMENT**

110 E. Main Street
Los Gatos, CA 95030



**APPEAL OF THE DECISION OF
DEVELOPMENT REVIEW COMMITTEE**

PLEASE TYPE or PRINT NEATLY

I, the undersigned, do hereby appeal a decision of the DEVELOPMENT REVIEW

COMMITTEE as follows: DATE OF DECISION: 07/13/2021 _____

PROJECT/APPLICATION: 17200 Los Robles Way Lot Line Adjustment M-20-012 ____

LOCATION: 17200 Los Robles Way _____

Pursuant to the Town Code, any interested person as defined in Section 29.10.020 may appeal to the Council any decision of the Planning Commission.

Interested person means:

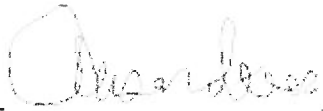
1. *Residential projects.* Any person or persons or entity or entities who own property or reside within 1,000 feet of a property for which a decision has been rendered, and can demonstrate that their property will be injured by the decision.
2. *Non-residential and mixed-use projects.* Any person or persons or entity or entities who can demonstrate that their property will be injured by the decision.

LIST REASONS WHY THE APPEAL SHOULD BE GRANTED: Certificate of Compliance does not confer building rights or other privileges. No proof of buildability has been provided for parcel 532-36-077. This parcel lacks legal and no access for emergency services, parcel not consistent with the general plan, does not meet current standards for domestic water supply (no will serve letter). Has not proven meets slope stability standards, site safety/geologic hazards. In addition, while parcel 1 and 3 now owned by separate owners (still unrecorded with the SCC clerk recorder office), structure is built over common property line and ROW access to parcel 1 was abandoned. Sec 29.10.070 of Town's code of ordinances states that no parcel shall be modified through a lot line adjustment procedure to meet criteria listed in the ordinance. Town would be setting precedent to allow developer to bypass formal subdivision application process. Buildability of existing site needs to be proven.

IMPORTANT:

1. Appeal must be filed not more than ten (10) days after the decision is rendered by the Development Review Committee. If the tenth (10th) day is a Saturday, Sunday, or Town holiday, then the appeal may be filed on the workday immediately following the tenth (10th) day, usually a Monday.
2. The appeal shall be set for the first regular meeting of the Planning Commission which the business of the planning commission will permit, more than five (5) days after the date of the filing of the appeal. The Planning Commission may hear the matter a new and render a new decision in the matter.
3. You will be notified, in writing, of the appeal date.
4. Contact the project planner to determine what material is required to be submitted for the public

hearing. **RETURN APPEAL FORM TO COMMUNITY DEVELOPMENT DEPARTMENT**

PRINT NAME:Alison and David Steer SIGNATURE: 
DATE: July 21st 2021. ADDRESS:304 Harding Ave, Los Gatos, CA 95030
PHONE: 650-996-5809. EMAIL: Alison.steer@gmail.com

PRINT NAME:Nancy and Jim Neipp SIGNATURE: 
DATE: July 21st 2021. ADDRESS:308 Harding Ave, Los Gatos, CA 95030
PHONE:408-981-1748. EMAIL: Nancyneipp@gmail.com

PRINT NAME:Gary and Michelle Gysin SIGNATURE: 
DATE: July 21st 2021. ADDRESS: 111 Worcester Lane, Los Gatos, CA 95030
PHONE: 408-656-0475 EMAIL: garymgysin@gmail.com

PRINT NAME:Gianfranco and Eileen De Feo SIGNATURE: 
DATE: July 21st 2021. ADDRESS: 112 Worcester Lane, Los Gatos, CA 95030
PHONE: 408-455-3720. EMAIL: defeohome@yahoo.com

PRINT NAME:Terry and Bob Rinehart SIGNATURE: 
DATE: July 21st 2021. ADDRESS: 110 Worcester Loop, Los Gatos, CA 95030
PHONE: 408-391-4932 EMAIL: TLRinehart@comcast.net

*****OFFICE USE ONLY

DATE OF PLANNING COMMISSION HEARING: _____

COMMISSION ACTION: 1. DATE: 2. DATE: 3. DATE:
PLAPPEAL \$ 221.00 Residential
PLAPPEAL \$ 882.00 Commercial
PLAPPEAL \$ 90.00 Tree Appeals

Appeal of DRC Lot Line Adjustment Approval for 532-36-075/76/77

Vista Neighborhood

304 and 308 Harding Ave, 111 and 112 Worcester Lane, 110
Worcester Loop

What a Certificate of Compliance Signifies

- Many property owners fail to realize that Compliance Certificates are distinct from local zoning approvals, building codes and other legal structures. A Compliance Certificate merely confirms that the parcel to which it applies was created legally and remains in compliance with local property laws. **It doesn't confer building rights, zoning variances or other privileges.** In fact, Compliance Certificates are often issued for "interior" parcels that lack legal means of access and can't be built upon under existing zoning codes

Buildability consists of six criteria

- Parcel legality - parcel must be a legal parcel of record. (Accomplished with CofC).
- Legal Access - parcel may not be used as a building site unless its principal frontage and access is located on a public or private right-of-way.
- Access to Water - is there a will serve letter from the local water company/department?
- Sanitation - parcel must have access to sewer or be suitable for septic.
- Emergency access - the building site must be accessible to emergency vehicles.
- Site Safety/Geologic Hazards: The building site must be free from geologic hazards to the extent that the safety of the structure can be ensured. A soils (also called geotechnical) and/or geological report may be required to assess or address environmental/safety concerns. This also includes slopes in excess of 30%.

Letter from Tony Jeans to Town

The Property:

The Property comprises 3 parcels of land in the R1:20 zoning district [APN: 532-36/075/6/7] at the end of Los Robles Way totaling 3.13 Acres. The overall slope of the property is 26%. At the moment there is one dilapidated house on the entire property with an empty swimming pool. The property is on a septic system.

The Parcel Configuration:

2 of the 3 parcels are accessed from the end of Los Robles Way
532-36-075 is traversed by an extension of Los Robles Way with 115 ft of frontage on a RoW considered vacated by the Town. It also has a small amount of frontage at the termination of Worcester Lane.

532-36-076 is at the terminus of the Los Robles Way extension with 37' of frontage. It also has frontage at the termination of Worcester Lane.

532-36-77 is a landlocked parcel with no street access, other than along a disputed easement to Harding which has never been used.

- If ROW is considered vacated by the Town, how does 532-36-076 have any frontage on Los Robles Way?

532-36-077 "Parcel 2"

- Parcel legality - parcel must be a legal parcel of record. (Accomplished with CofC).
- Legal Access - parcel may not be used as a building site unless its principal frontage and access is located on a public or private right-of-way. Subject parcel has a 10ft ROW, but does not meet current standards for access for ingress/egress. Minimum driveway width is 12 ft.)
- Access to Water - is there a will serve letter from the local water company/departement?
- Sanitation - parcel must have access to sewer or be suitable for septic.
- Emergency access - the building site must be accessible to emergency vehicles. Parcel is landlocked
- Site Safety/Geologic Hazards: The building site must be free from geologic hazards to the extent that the safety of the structure can be ensured. A soils (also called geotechnical) and/or geological report may be required to assess or address environmental/safety concerns. This also includes slopes in excess of 30%.

532-36-076
"Parcel 1"

- Parcel legality - parcel must be a legal parcel of record. (Accomplished with CofC).
- Legal Access - parcel may not be used as a building site unless its principal frontage and access is located on a public or private right-of-way. Subject parcel has a ROW considered vacated by the town
- Access to Water - is there a will serve letter from the local water company/departement?
- Sanitation - parcel must have access to sewer or be suitable for septic.
- Emergency access - the building site must be accessible to emergency vehicles. Emergency vehicles cannot turnaround
- Site Safety/Geologic Hazards: The building site must be free from geologic hazards to the extent that the safety of the structure can be ensured. A soils (also called geotechnical) and/or geological report may be required to assess or address environmental/safety concerns. JCP report states 17200 Los Robles is Seismic and Landslide risk.

532-36-075
"Parcel 3"

- Parcel legality - parcel must be a legal parcel of record. (Accomplished with CofC).
- Legal Access - parcel may not be used as a building site unless its principal frontage and access is located on a public or private right-of-way. **Principal frontage is from Los Robles Way**
- Access to Water - **is there a will serve letter from the local water company/departement?**
- Sanitation - parcel must have access to sewer or be suitable for septic.
- Emergency access - the building site must be accessible to emergency vehicles. **Emergency vehicles cannot turnaround**
- Site Safety/Geologic Hazards: The building site must be free from geologic hazards to the extent that the safety of the structure can be ensured. A soils (also called geotechnical) and/or geological report may be required to assess or address environmental/safety concerns.

Town of Los Gatos Code of Ordinances

Zoning Regulations

Sec. 29.10.070. - Lot merger.

- (a) A parcel of land does lawfully exist separately from other land and is a lot when the parcel meets each of the following criteria:
 - (1) Comprises at least five thousand (5,000) square feet in area.
 - (2) Was created in compliance with applicable laws and ordinances in effect at the time of its creation.
 - (3) Meets current standards for sewage disposal and domestic water supply.
 - (4) Meets slope stability standards.
 - (5) Has legal access which is adequate for vehicular and safety equipment access and maneuverability.
 - (6) Development of the parcel would create no health or safety hazards.
 - (7) The parcel would be consistent with the applicable general plan and any applicable specific plan, other than minimum lot size or density standards.
 - (8) No structures are built over a common property line which is shared with another parcel under the same or substantially the same ownership.
- (b) Any parcels under the same or substantially the same ownership that do not meet the criteria listed above shall be considered merged. In addition, no parcel shall be modified through a lot line adjustment procedure in order to meet the criteria listed above.
- (Ord. No. 1316, § 3.10.010, 6-7-76; Ord. No. 1337, 11-1-76; Ord. No. 1432, 6-4-79; Ord. No. 1438, 8-6-79; Ord. No. 1756, § 1, 8-1-88)

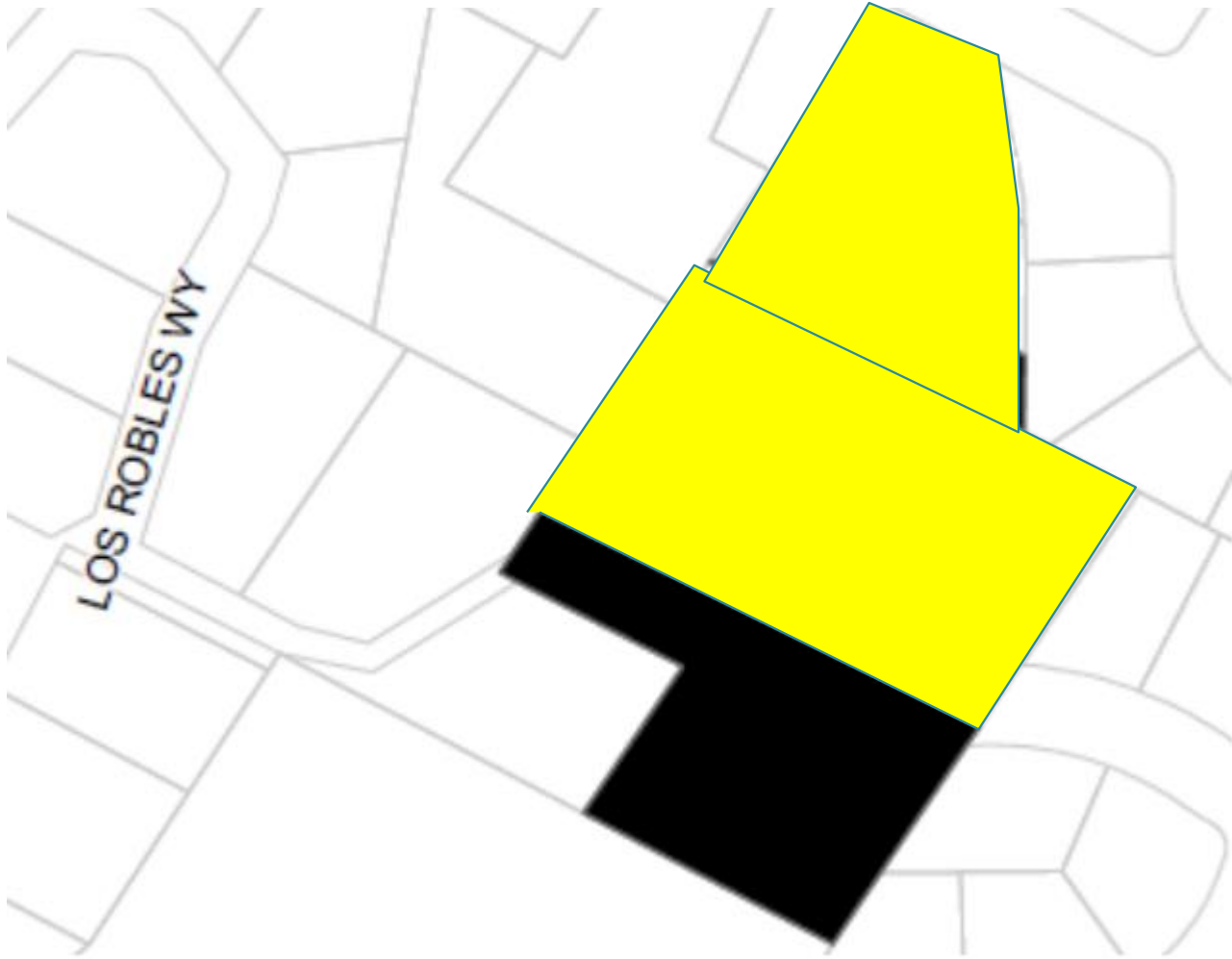
Are there any CA Towns that allow Lot Line Adjustments on non- buildable parcels?

https://library.municode.com/ca/napa_county/codes/code_of_ordinances?nodeId=TIT17SU_C17.46LOLIAD

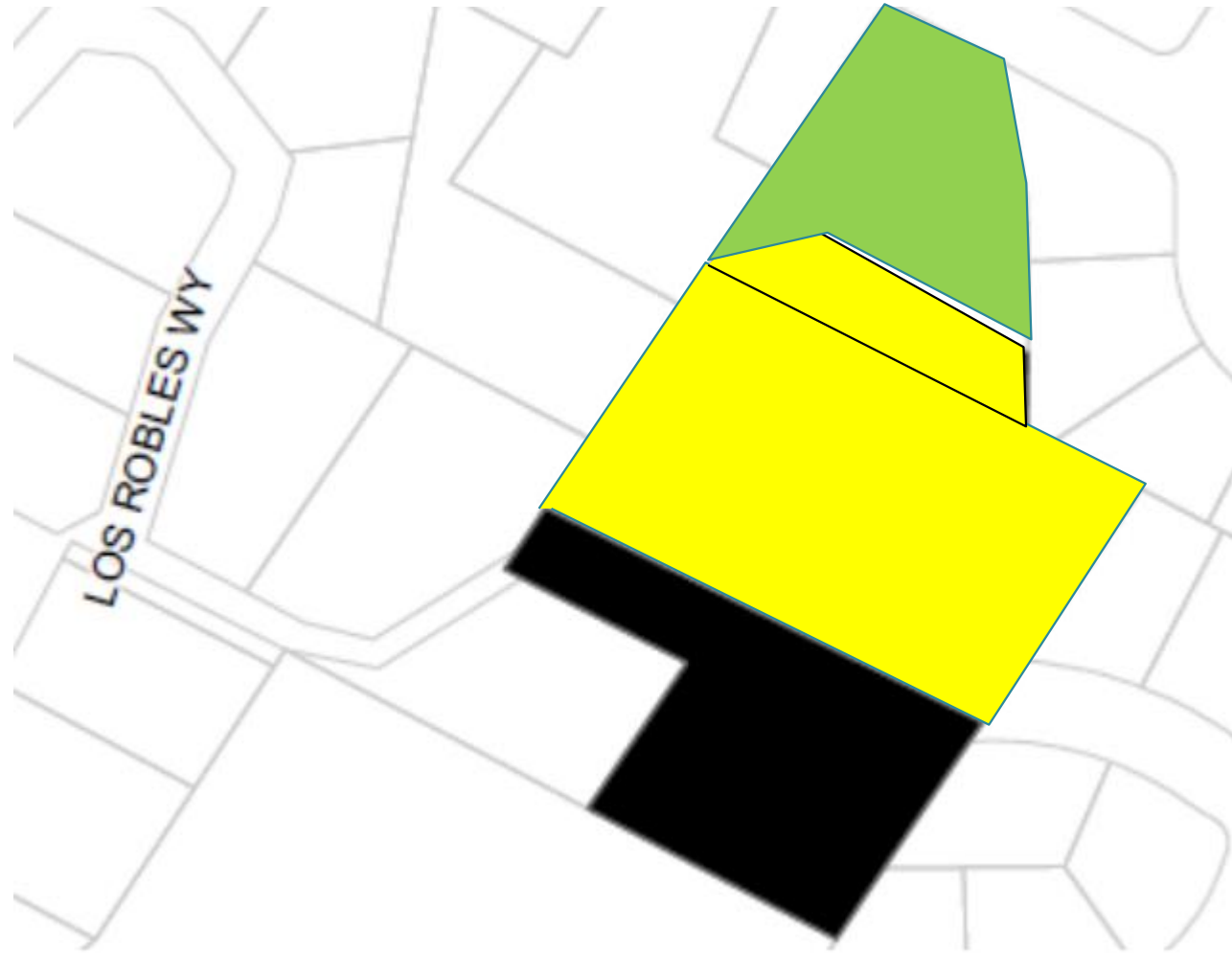
A non-buildable parcel **will not be made buildable** by the lot line adjustment. For purposes of this standard, a lot is considered buildable if it meets all three of the following criteria:

- a. The parcel contains a minimum two thousand four hundred square feet of net lot area as defined in [Section 17.02.350](#);
- b. The parcel has existing access rights to a public street as defined in [Section 17.02.020](#); and
- c. The parcel contains a building site, as defined in [Section 17.02.080](#), which is a minimum of twenty-five feet wide and twenty-five feet deep;

Land owned
by Tom C.
Haire in 1947
Deeds



Orphaned land
with no
frontage or
access created
between Haire
and Oatle
Land



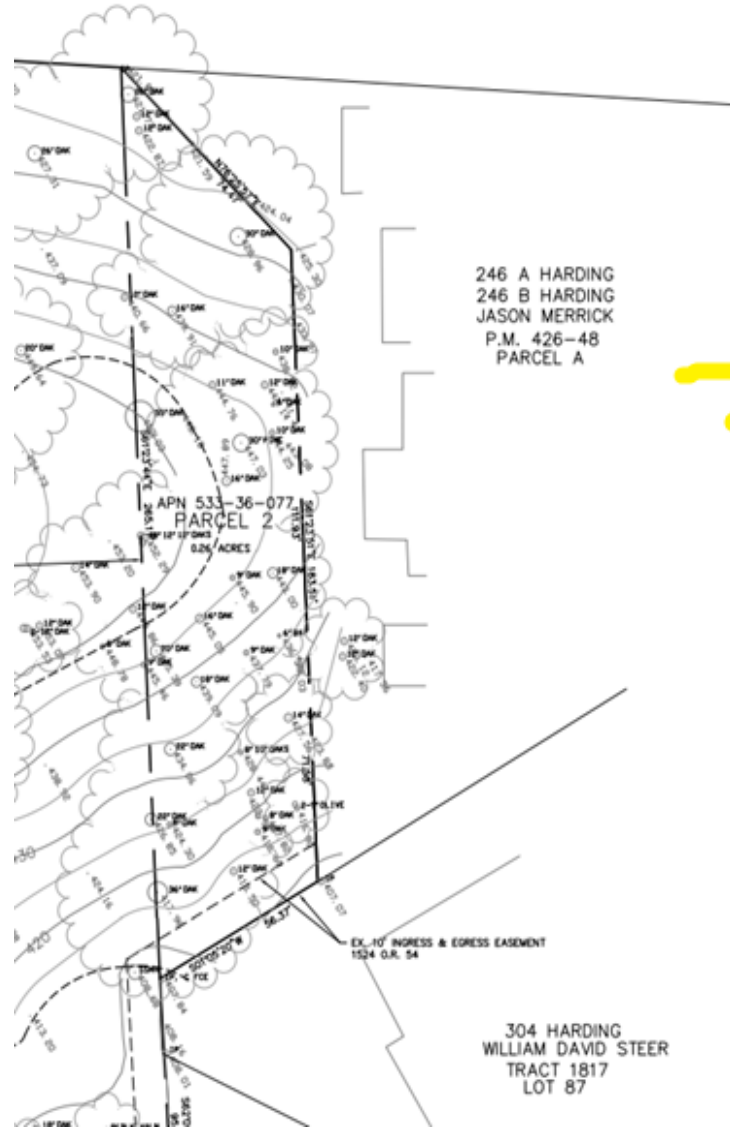
California Subdivision Map Act 66499.35 (a)

PARCEL	FRONTAGES		DEPTH	WIDTH	SETBACKS			
	LOS ROBLES	WORCESTER			FRONT	LT.SIDE	RT.SIDE	REAR
1	37'	42'	211'	360'	90'	0	153'	200'
2	NONE	NONE	50'	174'	--	--	--	--
3	115'	19'	245'	360'	--	--	--	--

66499.35.

(a) Any person owning real property or a vendee of that person pursuant to a contract of sale of the real property may request, and **a local agency shall determine, whether the real property complies with** the provisions of this division and of **local ordinances enacted pursuant to this division**. If a local agency determines that the real property complies, the city or the county shall cause a certificate of compliance to be filed for record with the recorder of the county in which the real property is located. The certificate of compliance shall identify the real property and shall state that the division of the real property complies with applicable provisions of this division and of local ordinances enacted pursuant to this division. The local agency may impose a reasonable fee to cover the cost of issuing and recording the certificate of compliance.

APN 532-36-077 has no frontage and only 50' depth. Has no frontage and no buildable area



→

PARCEL	FRONTAGES		DEPTH	WIDTH	SETBACKS			
	LOS ROBLES	WORCESTER			FRONT	LT.SIDE	RT.SIDE	REAR
1	37'	42'	211'	360'	90'	0	153'	200'
2	NONE	NONE	50'	174'	--	--	--	--
3	115'	19'	245'	360'	--	--	--	--

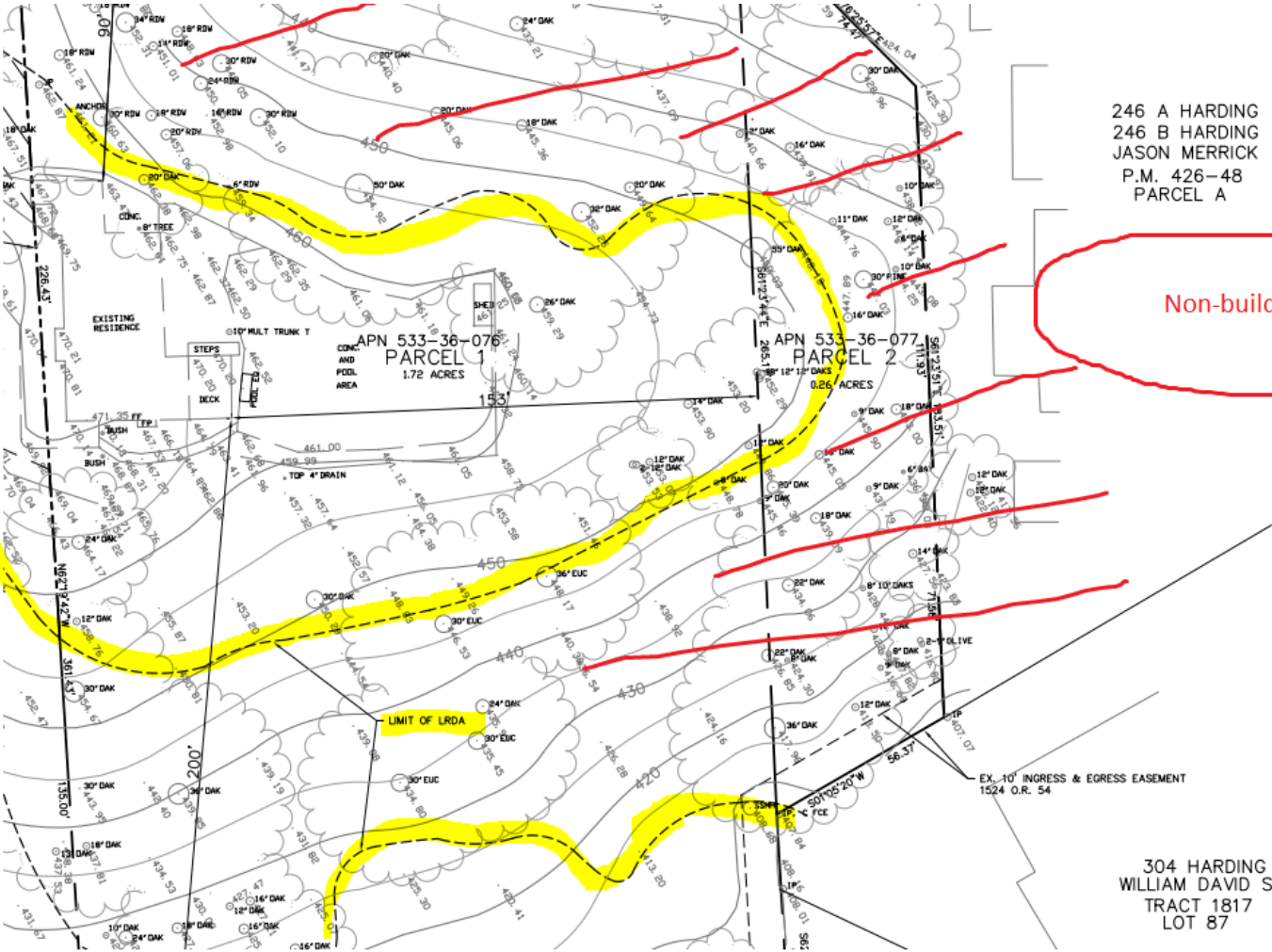
AVERAGE SLOPE CALCULATIONS:
(ENTIRE PROPERTY)

CONTOUR INTERVAL (I) 5 FEET
CONTOUR LENGTH (L) 7102 FEET
AREA (A) 3.13 ACRES 136343 SQUARE FEET

AVERAGE SLOPE (S)

$$S = IL/A = 5' * 7102' / 136343 \text{ S.F.} = 26\%$$

Limit of LRDA



246 A HARDING
246 B HARDING
JASON MERRICK
P.M. 426-48
PARCEL A

Non-buildable area

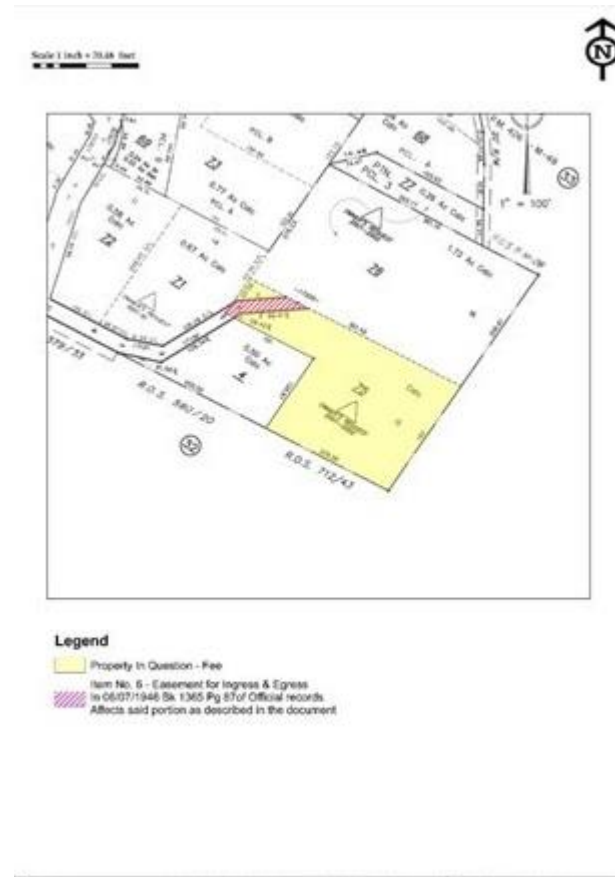
304 HARDING
WILLIAM DAVID STEER
TRACT 1817
LOT 87

Processing

- 1) All Lot Line Adjustment applications will be reviewed by the Development Review Committee (DRC). The DRC must limit its review to the following items:
 - a) Lot size remains conforming to the existing zoning ordinance. If the lots are currently nonconforming as to size, they cannot become more nonconforming (smaller).
 - b) Setbacks remain conforming or do not become more nonconforming.
 - c) Lot frontage and lot depth requirements **remain** conforming.

Lot Line Adjustment Procedures

Property Listing shows two large adjacent lots as shown here. Access from Los Robles



Attention developers, investors and contractors! Rare, once in a lifetime opportunity to own one of the last large view parcels close to downtown Los Gatos to build your dream home or estate. Two adjacent hilltop parcels (532-36-076 & 532-36-077) sold together totaling just under 2 acres of rolling hills situated with an amazing building pad and sweeping views from San Jose to Mountain View and beyond above and through the treetops! Existing 2,715 SF structure for easier building approval.



Town of Los Gatos
110 East Main St
Los Gatos, CA 95030

Attention: Mr. Ryan Safty

May 25, 2021

Dear Mr. Safty,

My husband Jason and I live at 246 Harding Avenue, which is the property that backs up to 17200 Los Robles, more specifically, APN 532-36-077. Mr Jeans came by in February of this year (2021), to talk with us about the proposed lot line adjustment of the property mentioned above.

Our main concern is the hillside behind our house that shares the property line of APN 532-36-077. My family has owned our property, at 246 Harding Avenue, since 1974, and in that time there has been quite a bit of movement and erosion of the hillside. One year, after an earthquake, loads of rock and debris ended up in our backyard, where a structure currently stands. Following the earthquake, there was a deep chasm at the top of the cliff/hillside. I have included in this letter several photos of our current hillside condition.

With the proposed new build, we feel that the earth movers, other construction vehicles, and the building of a structure, will further push the earth on the hill to continue to erode our hillside/property, and ultimately bring most of the hillside down into our yard.

We would like to see that there will be measures taken to ensure the safety of the hillside, and ultimately the safety of our home/property.

Our hope is that the town, and the new property owners of APN 532-36-077, will hear our concerns and take actions to ensure that our property is protected.

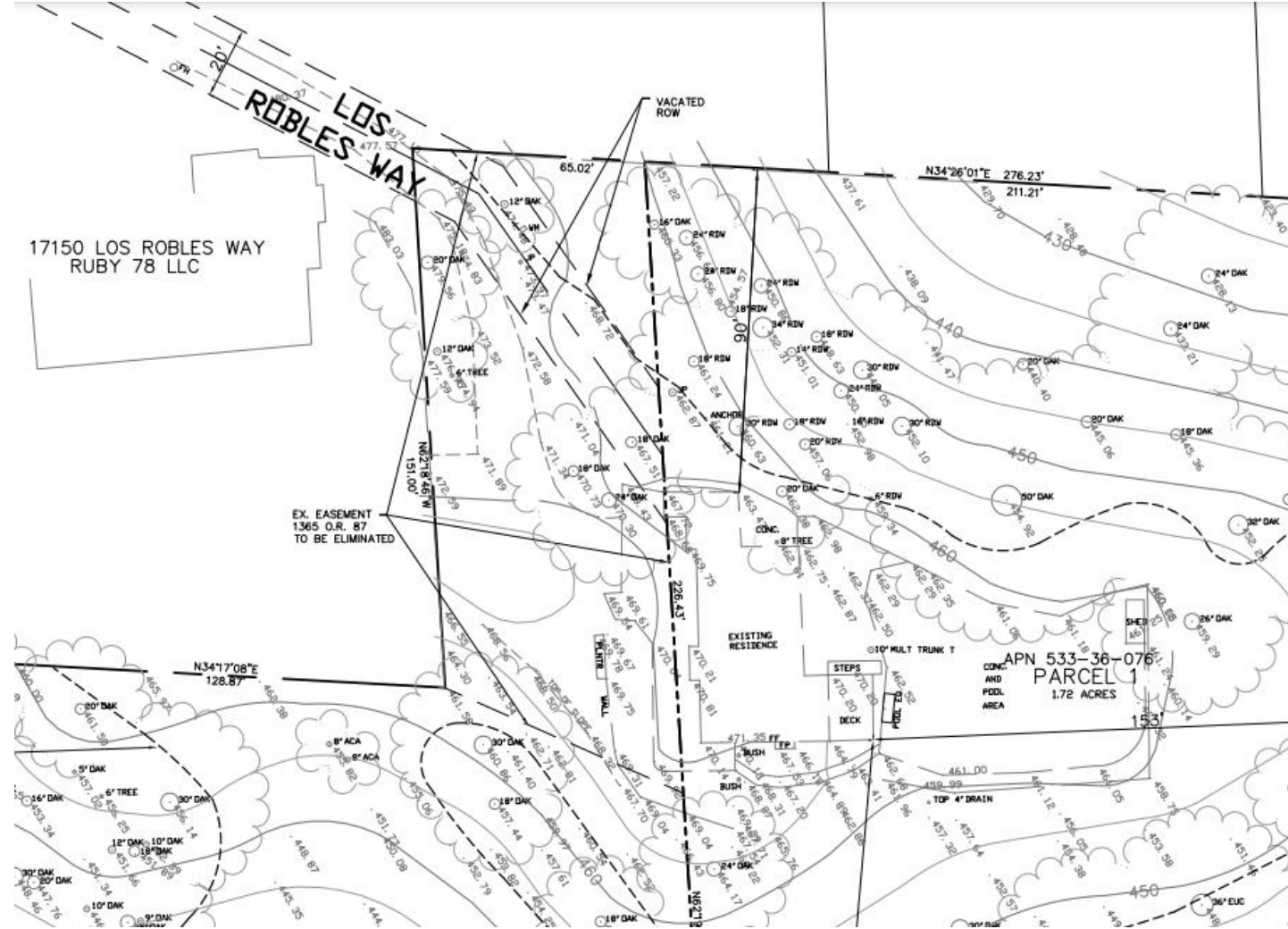
Best,

Shelley Clifford Merrick and Jason Merrick

View of land
locked Parcel
2, from 304
Harding Ave



Structure on Parcel 1, including planter wall situated such that Parcel 1 and 3 were effectively merged



Reserving from the property herein conveyed a right of way over the northwesterly 148.30 feet of the northeasterly 65 feet thereof, for ingress and egress to the lands of the party of the first part.

In this recent case, building was removed before Lot Line Adjustment could be recorded

C. & D. C., Inc.

5901 Cadiz Drive
San Jose, CA 95123
(408) 966-0165

September 5, 2020
Job No. 20-020

Mr. Ryan Safty
Associate Planner
Community Development Department
Planning Division
Town of Los Gatos
110 East Main Street
Los Gatos, CA 95030

Re: 16484 South Kennedy Road
Lot Line Adjustment Application M-20-006
Project Description Letter / Justification Letter

Dear Mr. Safty:

There are presently two legal lots, which will remain at two lots with a lot line adjustment. The existing rectangular Parcel 1, 53,171 square feet in size, lying adjacent to and south of South Kennedy Road, is relatively flat and fully developed with an existing residence, detached garage and asphalt driveway, parking and turnaround area. The existing rectangular shaped Parcel 2, 39,609 square feet in size, lying adjacent to and north of Los Cerritos Road, is a vacant sloped lot with a heavy growth of trees.

With a lot line adjustment, the Parcel sizes will be more equal and rectangular in shape, with access only to South Kennedy Road. The new Parcel 1 will contain 46,671 square feet of land. And, the Parcel 2 will contain 46,110 square feet of land.

To develop the existing vacant Parcel 2 would require the removal of numerous trees and substantial grading. The proposed lot line adjustment will provide substantially better access from South Kennedy Road, will preserve numerous trees, and will reduce grading to the bare minimum, almost none.

As stated above, there are existing structures on the property (Parcel 1) which must be removed before the lot line adjustment can be recorded. We would like to request a demolition permit for those structures, so that the lot line adjustment can be recorded as soon as possible.

As you know, cities' LLA processing parameters are pretty severely limited by GC section 66412 subpart (d), which states relevant here:

A local agency or advisory agency shall limit its review and approval to a determination of whether or not the parcels resulting from the lot line adjustment will conform to the local general plan, any applicable specific plan, any applicable coastal plan, and zoning and building ordinances.

Based on the above, please approve this lot line adjustment. If you need more information, please do not hesitate to call at your convenience.

Very truly yours,
C. & D.C., Inc.



Velimir Sulic
Principal

Supreme Court Ruling Merging non- conforming lot under same ownership

The Murr Property and Alleged Taking

The two lots are located along the picturesque St. Croix River in the town of Troy, Wisconsin. The Murr siblings' parents purchased the first lot in 1960 in the name of the family plumbing company. The Murr parents then purchased the second adjacent lot in 1963 in their personal names and built a family cabin on the first lot. The Murr parents held title to the two parcels under two different names until 1994 and 1995 when the lots were conveyed to the Murr adult children.

As a result of the passage of the Wild and Scenic Rivers Act in the late 1960s, the State of Wisconsin was required to develop rules governing the development of the land around the St. Croix River. In the 1970s, St. Croix County adopted zoning ordinances that paralleled the state rules, including limitations on the minimum developable area of lots along the St. Croix River.

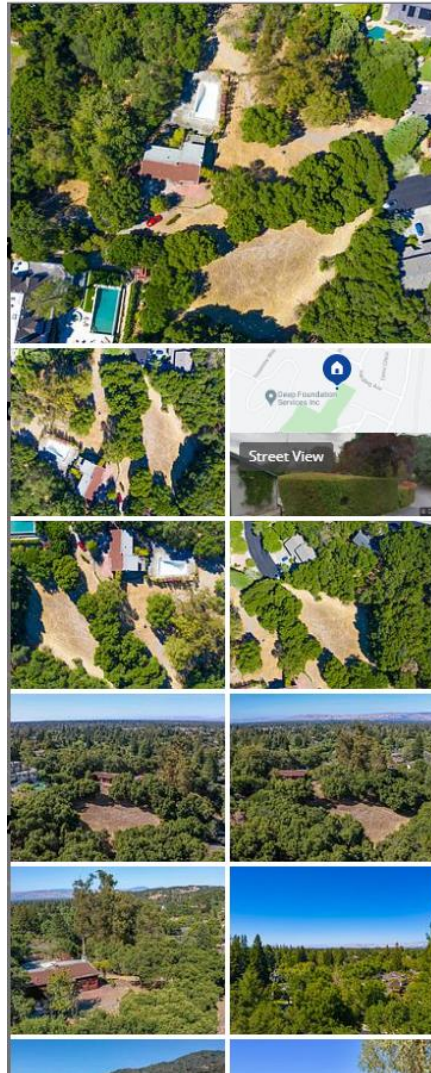
Under the new zoning ordinances, neither of the parcels meet the new minimum developable area requirements and both are therefore undevelopable. The new zoning ordinance contains a grandfather clause that allowed substandard lots to be developed so long as they were not under common ownership. Further, the zoning ordinance contained a merger provision that merged adjacent substandard lots under common ownership so that the lots could not be sold or developed as separate lots. Thus, under the zoning laws enacted in the 1970s, the Murr lots could be separately sold and developed until they came under common ownership in 1995.

In 2011, the Murr siblings sought to move the family cabin on one of the lots and fund that move with the sale of the adjacent lot. The zoning ordinances prohibited the sale of the adjacent lot separate from the lot on which the cabin existed and the Murr siblings brought suit alleging that the zoning ordinances rose to a taking of the adjacent lot by the government without just compensation, a violation of the Fifth Amendment of the U.S. Constitution.

The New Zoning Ordinances Did Not Constitute a Taking

After working its way through the Wisconsin state courts, the Murr siblings appealed to the U.S. Supreme Court. The Supreme Court noted the established right of state and local governments to adjust the rights of property owners for the public benefit; and further noted the Court's longstanding precedent that every loss of a property right caused by regulation does not arise to a taking under the Fifth Amendment.

Parcel 1 and Parcel 2 sold on June 7th



Zillow

Edit Save Share More

3 bd | 3 ba | 2,715 sqft
17200 Los Robles Way, Los Gatos, CA 95030

Sold: \$2,300,000 | Sold on 06/07/21 | Zestimate®: \$2,560,300

Est. refi payment: \$9,990/mo Refinance your loan

Home value Owner tools Home details Neighborhood details



Looking to save?

Refinancing your mortgage at a lower interest rate could mean significant savings. Find a lender in minutes and see if you could save.

Start saving

Zillow Group Marketplace, Inc. NMLS #1303160

Home value



Zestimate

\$2,560,300



Zestimate range

\$2.43M - \$2.69M



Last 30-day change

+ \$46,099 (+1.8%)

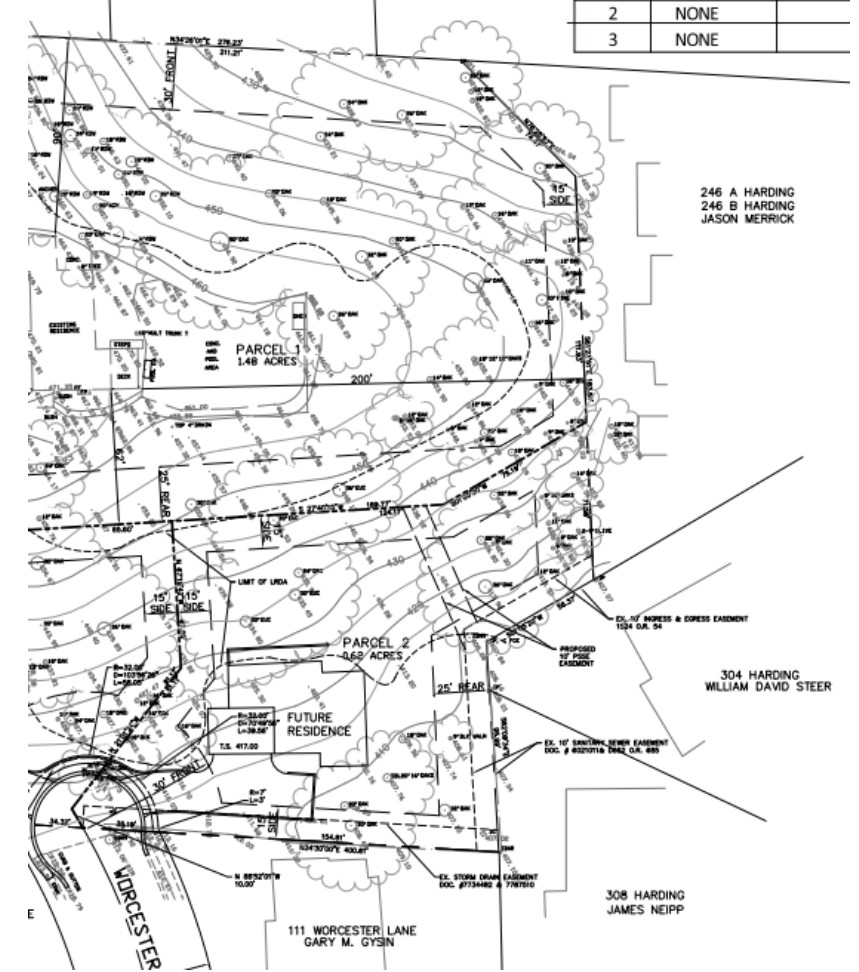


Zestimate per sqft

\$943

(b) Any parcels under the same or substantially the same ownership that do not meet the criteria listed above shall be considered merged. In addition, no parcel shall be modified through a lot line adjustment procedure in order to meet the criteria listed above.

Parcels 1 & 2
sold on June
6th to the
Trust's realtor.



🏠 IN CONTRACT 322 Days
\$2,599,000 3 Bd 3 Ba 2,715 Sqft

17200 Los Robles Way,
Los Gatos, CA 95030

- Page 353 pwn was informed on June 7, 2021, that Mark Von Kaenel closed on the purchase of 2 of the lots (-076 and -077).

Town Code Section 29.40.400 Ordinance No. 1571 from 3/7/83

Shows Depth requirement for R-1-20 as 140ft. APN 532-36-077 is only 50 ft.

APN 532-36-076 and 077 now under
NEW OWNERSHIP

Sec. 29.40.400. - Lot frontage and depth.

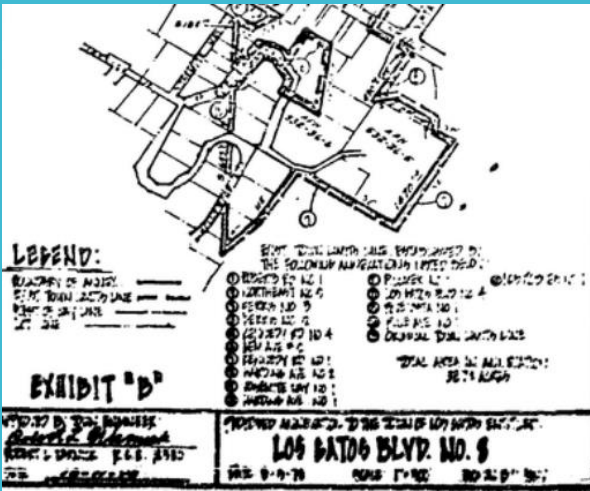


The following are the frontage and depth requirements for lots in the R-1 or single-family residential zone:

EXPAND

Zone	Frontage Interior Lot	Frontage Corner Lot	Depth
R-1: 8,000	60 ft.	80 ft.	90 ft.
R-1: 10,000	80 ft.	90 ft.	100 ft.
R-1: 12,000	90 ft.	95 ft.	100 ft.
R-1: 15,000	100 ft.	100 ft.	100 ft.
R-1: 20,000	100 ft.	115 ft.	140 ft.
R-1: 30,000	100 ft.	120 ft.	145 ft.

History of APN 532-36-005



- “APN 532-36-005 was the APN prior to 2001. It **subdivided** to APNs 532-36-075, 532-36-076, and 532-36-077 in 2001 per owner’s request.”
 - Tuan Au
Office of the Assessor
Mapping & Property I.D. Supervisor
- APN-532-36-005 shown in drawing to left as single lot, not combination of multiple lots. It was operated this way for over 50 years.
- Structure on 17200 Los Robles was located such that the lot 15 and 16 (Parcel 1 and 3) were merged per Town Ordinance. The assigning of three APNs in 2001 created two non-conforming lots: APN 532-36-076 and APN 532-36-077
- APN 532-36-077 was never intended as a buildable lot, but is an orphaned piece of land due to steep ravine between two properties.

Closing Statement

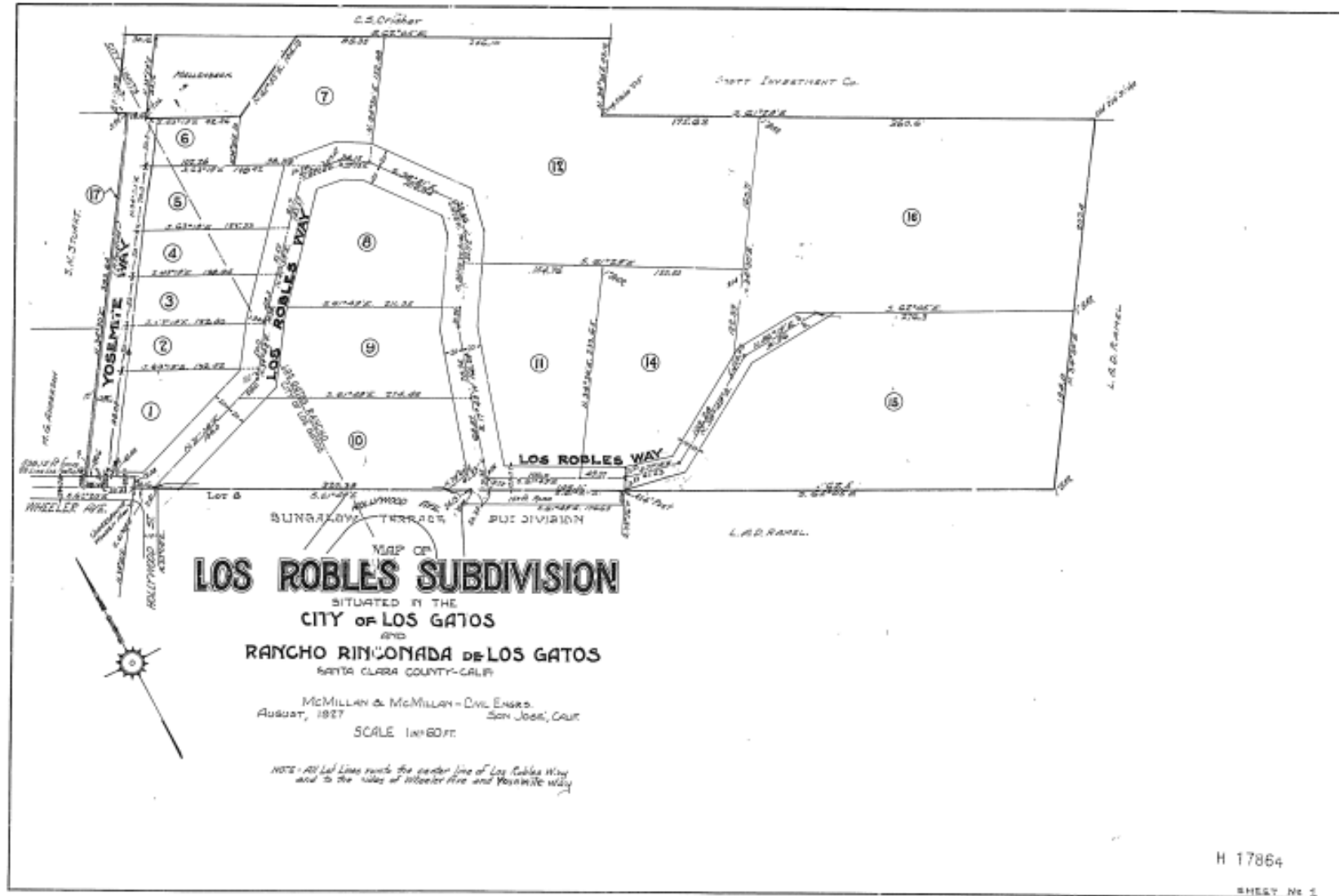
- Per Town Ordinance Lot Line Adjustment procedure cannot be used. You cannot take a non-buildable lot and make it buildable through Lot Line Adjustment procedure
- APN 532-36-077 is a non-conforming lot with no frontage , accessible access for vehicular or safety equipment . Has landslide concerns (see letter from the Merrick's).
- 17200 Los Robles Way is recorded as Landslide risk on JCP reports.
- There is only one potentially “buildable” parcel on this entire lot.
- Developer needs to show buildability of all three parcels before Lot Line adjustment application could be approved. Otherwise this is a subdivision application. Two lots already sold.
- Parcel 1 and Parcel 2 have effectively been merged due to purchase on June 7th.

Appendix

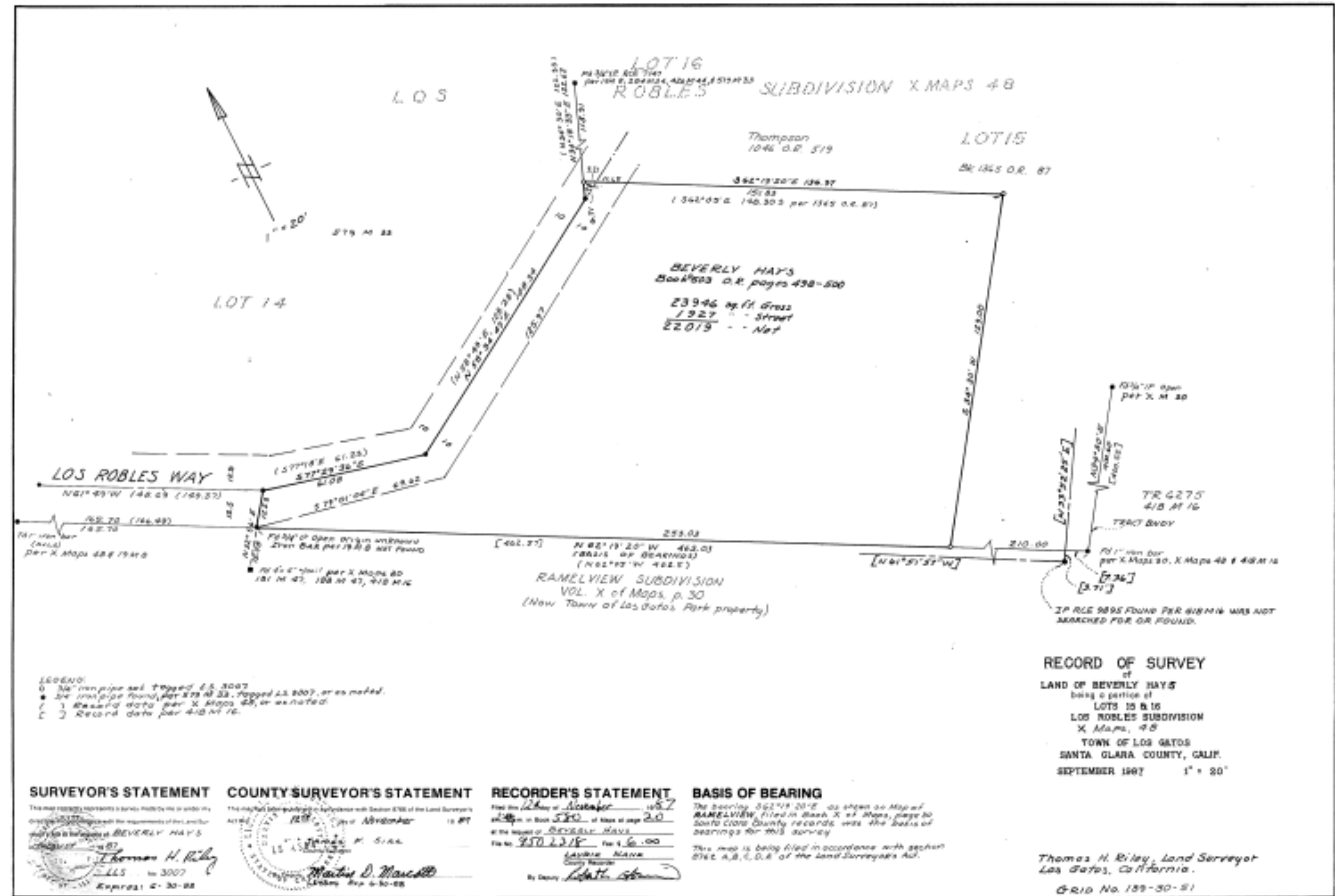
Original Subdivision Map 1927 – Land owned by Hays and Nuss

Lot 15 was carved into
separate lot (now APN 532-36-
004) for Hays leaving flag lot.

Lot 16 and Remainder of Lot
15 and orphaned strip of land
became APN 532-36-005 in
1947



Land Carved out for Beverly Hays prior to 1947

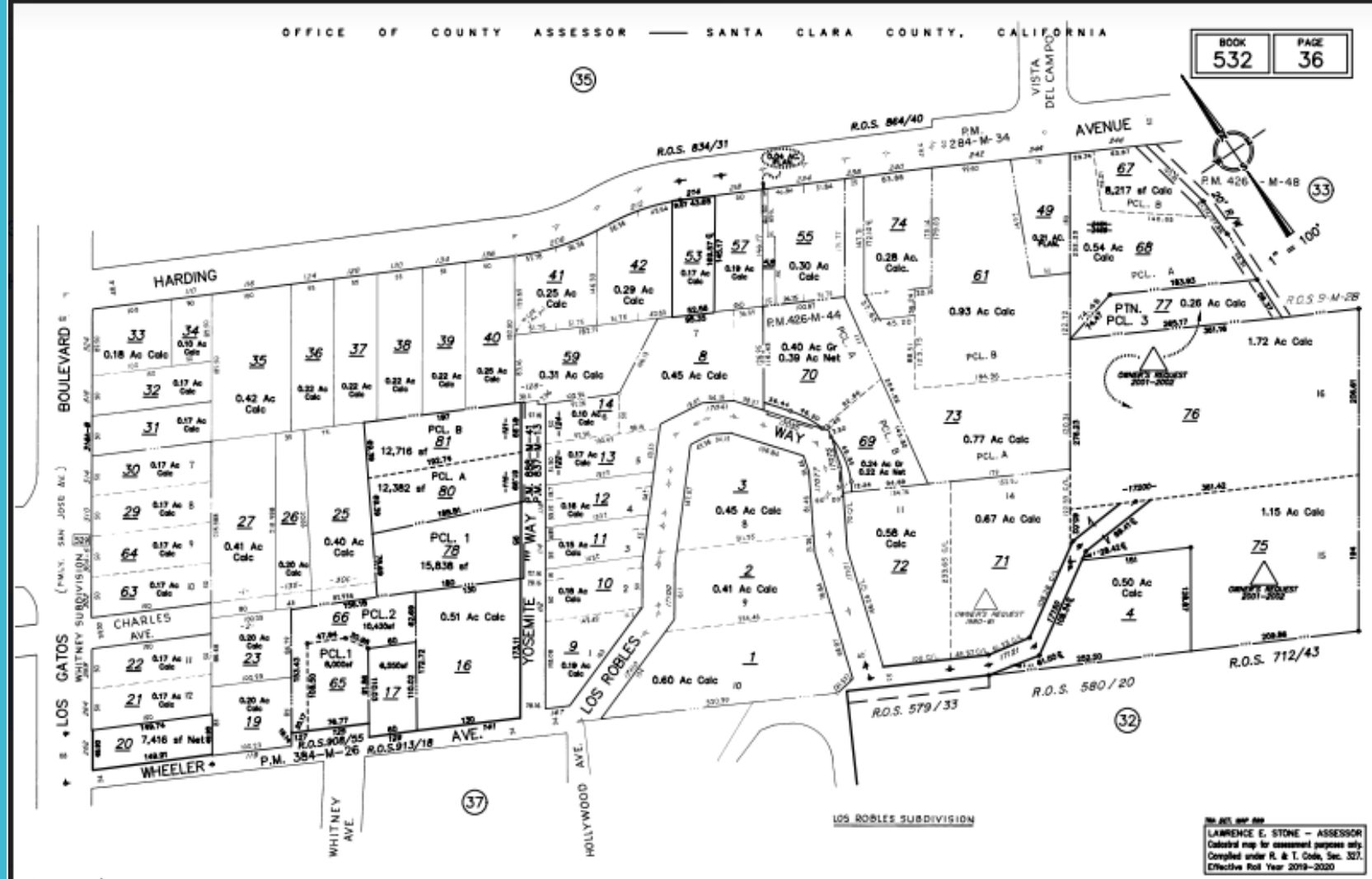


Book
Ref.

570
20

2c

Map APN 532-36 Los Robles



Town of Los Gatos
110 East Main St
Los Gatos, CA 95030

Attention: Mr. Ryan Safty

May 25, 2021

Dear Mr. Safty,

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Our main concern is the hillside behind our house that shares the property line of APN 532-36-077. My family has owned our property, at 246 Harding Avenue, since 1974, and in that time there has been quite a bit of movement and erosion of the hillside. One year, after an earthquake, loads of rock and debris ended up in our backyard, where a structure currently stands. Following the earthquake, there was a deep chasm at the top of the cliff/hillside. I have included in this letter several photos of our current hillside condition.

With the proposed new build, we feel that the earth movers, other construction vehicles, and the building of a structure, will further push the earth on the hill to continue to erode our hillside/property, and ultimately bring most of the hillside down into our yard.

We would like to see that there will be measures taken to ensure the safety of the hillside, and ultimately the safety of our home/property.

Our hope is that the town, and the new property owners of APN 532-36-077, will hear our concerns and take actions to ensure that our property is protected.

Best,

Shelley Clifford Merrick and Jason Merrick



Caption



**Disclosure Report Summary Pages
For SANTA CLARA County**

Property Address: 17200 LOS ROBLES WAY
LOS GATOS, SANTA CLARA COUNTY, CA 95030
("Property")

APN: 532-36-076
Report Date: 03/08/2021
Report Number: 2814395

**Statutory Natural Hazard Disclosure ("NHD") Statement
and Acknowledgment of Receipt**

DISCLAIMER: This NHD Summary (a) is not valid unless delivered with the complete JCP-LGS Disclosure Report which buyer must read and acknowledge before close of escrow, and (b) is subject to the Terms and Conditions contained in that complete Disclosure Report.

The seller and seller's agent(s) or a third-party consultant disclose the following information with the knowledge that even though this is not a warranty, prospective buyers may rely on this information in deciding whether and on what terms to purchase the Property. Seller hereby authorizes any agent(s) representing any principal(s) in this action to provide a copy of this statement to any person or entity in connection with any actual or anticipated sale of the Property.

The following are representations made by the seller and seller's agent(s) based on their knowledge and maps drawn by the state and federal governments. This information is a disclosure and is not intended to be part of any contract between the seller and buyer. THIS REAL PROPERTY LIES WITHIN THE FOLLOWING HAZARDOUS AREA(S):

A SPECIAL FLOOD HAZARD AREA (Any type Zone "A" or "V") designated by the Federal Emergency Management Agency
Yes ___ No **X** Do not know and information not available from local jurisdiction ___

AN AREA OF POTENTIAL FLOODING shown on a dam failure inundation map pursuant to Section 8589.5 of the Government Code.
Yes ___ No **X** Do not know and information not available from local jurisdiction ___

A VERY HIGH FIRE HAZARD SEVERITY ZONE pursuant to Section 51178 or 51179 of the Government Code. The owner of this Property is subject to the maintenance requirements of Section 51182 of the Government Code.
Yes **X** No ___

A WILDLAND AREA THAT MAY CONTAIN SUBSTANTIAL FOREST FIRE RISKS AND HAZARDS pursuant to Section 4125 of the Public Resources Code. The owner of this Property is subject to the maintenance requirements of Section 4291 of the Public Resources Code. Additionally, it is not the state's responsibility to provide fire protection services to any building or structure located within the wildlands unless the Department of Forestry and Fire Protection has entered into a cooperative agreement with a local agency for those purposes pursuant to Section 4142 of the Public Resources Code.
Yes ___ No **X**

AN EARTHQUAKE FAULT ZONE pursuant to Section 2622 of the Public Resources Code.
Yes ___ No **X**

A SEISMIC HAZARD ZONE pursuant to Section 2696 of the Public Resources Code.
Yes (Landslide Zone) **X** Yes (Liquefaction Zone) ___
No ___ Map not yet released by state ___

THESE HAZARDS MAY LIMIT YOUR ABILITY TO DEVELOP THE REAL PROPERTY, TO OBTAIN INSURANCE, OR TO RECEIVE ASSISTANCE AFTER A DISASTER. THE MAPS ON WHICH THESE DISCLOSURES ARE BASED ESTIMATE WHERE NATURAL HAZARDS EXIST. THEY ARE NOT DEFINITIVE INDICATORS OF WHETHER OR NOT A PROPERTY WILL BE AFFECTED BY A NATURAL DISASTER. SELLER(S) AND BUYER(S) MAY WISH TO OBTAIN PROFESSIONAL ADVICE REGARDING THOSE HAZARDS AND OTHER HAZARDS THAT MAY AFFECT THE PROPERTY.

Signature of Seller(s)	Date	Signature of Seller(s)	Date
Signature of Seller's Agent	Date	Signature of Seller's Agent	Date

- Seller(s) and their agent(s) represent that the information herein is true and correct to the best of their knowledge as of the date signed by the transferor(s) and agent(s).
- Seller(s) and their agent(s) acknowledge that they have exercised good faith in the selection of a third-party report provider as required in Section 1103.7 of the Civil Code, and that the representations made in this Natural Hazard Disclosure Statement are based upon information provided by the independent third-party disclosure provider as a substituted disclosure pursuant to Section 1103.4 of the Civil Code. Neither seller(s) nor their agent(s) (1) has independently verified the information contained in this statement and Report or (2) is personally aware of any errors or inaccuracies in the information contained on the statement. This statement was prepared by the provider below:

Third-Party Disclosure Provider(s) FIRST AMERICAN PROFESSIONAL REAL ESTATE SERVICES, INC. OPERATING THROUGH ITS JCP-LGS DIVISION.
Date 08 March 2021

Buyer represents that he or she has read and understands this document. Pursuant to Civil Code Section 1103.8, the representations made in this Natural Hazard Disclosure Statement do not constitute all of the seller(s) or agent's disclosure obligations in this transaction.

Signature of Buyer(s)	Date	Signature of Buyer(s)	Date
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BUYER(S) REPRESENTS ABOVE HE/SHE HAS RECEIVED, READ AND UNDERSTANDS THE COMPLETE JCP-LGS DISCLOSURE REPORT DELIVERED WITH THIS SUMMARY:

- A. Additional Property-specific Statutory Disclosures: Fire Hazard Severity Zone (AB 38), Former Military Ordnance Site, Commercial/Industrial Use Zone, Airport Influence Area, Airport Noise, San Francisco Bay Conservation and Development District Jurisdiction (in S.F. Bay counties only), California Energy Commission Duct Sealing Requirement, Notice of Statewide Right to Farm, Notice of Mining Operations, Sex Offender Database (Megan's Law), Gas and Hazardous Liquid Transmission Pipeline Database.
- B. Additional County and City Regulatory Determinations as applicable: Airports, Avalanche, Blow Sand, Coastal Zone, Dam/Levee Failure Inundation, Debris Flow, Erosion, Flood, Fault Zone, Fire, Groundwater, Landslide, Liquefaction, Methane Gas, Mines, Naturally Occurring Asbestos, Redevelopment Area, Right to Farm, Runoff Area, Seiche, Seismic Shaking, Seismic Ground Failure, Slope Stability, Soil Stability, Subsidence, TRPA, Tsunami.
- C. General advisories: Methamphetamine Contamination, Mold, Radon, Endangered Species Act, Abandoned Mines, Oil & Gas Wells, Tsunami Maps (coastal only), Wood-burning fireplaces.
- D. Additional Reports - Enclosed if ordered: (1) PROPERTY TAX REPORT (includes state-required Notices of Mello-Roos and 1915 Bond Act Assessments, and Notice of Supplemental Property Tax Bill, (2) ENVIRONMENTAL SCREENING REPORT (discloses Transmission Pipelines, Contaminated Sites, and Oil & Gas Wells). Enclosed if applicable: Local Addenda.
- E. Government Guides in Combined Booklet with Report. Refer to Booklet: (1) ENVIRONMENTAL HAZARDS: "A Guide for Homeowners, Buyers, Landlords and Agents"; (2) EARTHQUAKE SAFETY: "The Homeowners Guide To Earthquake Safety" and included "RESIDENTIAL EARTHQUAKE HAZARDS REPORT FORM"; (3) LEAD-BASED PAINT: "Protect Your Family From Lead In Your Home"; (4) BRIEF GUIDE TO MOLD, MOISTURE AND YOUR HOME; (5) WHAT IS YOUR HOME RISK RATING? Government Guides are also available on the Company's "Electronic Bookshelf" at <http://www.disclosures.com/>.

**JCP-LGS Residential Resale Property Disclosure Reports
Disclosure Report Summary Pages
For SANTA CLARA County**

Property Address: 17200 LOS ROBLES WAY
LOS GATOS, SANTA CLARA COUNTY, CA 95030
("Property")

APN: 532-36-076
Report Date: 03/08/2021
Report Number: 2814395

PROPERTY DISCLOSURE SUMMARY - READ FULL REPORT

Statutory NHD Determinations	IN	NOT IN	Map N/A*	Property is:	NHD Report page:
Flood		X		NOT IN a Special Flood Hazard Area. The Property is IN a FEMA-designated Flood Zone(s) D, X500.	6
Dam		X		NOT IN an area of potential dam inundation.	6
Very High Fire Hazard Severity	X			IN a very high fire hazard severity zone.	7
Wildland Fire Area		X		Not in a wildland-state responsibility area.	7
Fault		X		NOT IN an earthquake fault zone designated pursuant to the Alquist-Priolo Act.	8
Landslide	X			IN an area of earthquake-induced land sliding designated pursuant to the Seismic Hazard Mapping Act.	8
Liquefaction		X		NOT IN an area of potential liquefaction designated pursuant to the Seismic Hazard Mapping Act.	8

County-level NHD Determinations	IN	NOT IN	Map N/A*	Property is:	NHD Report page:
Compressible Soils		X		NOT IN a county-designated compressible soils hazard zone	10
Dike Failure		X		NOT IN a county-designated dike failure flooding hazard zone	10
Fault	X			IN a county-designated fault rupture hazard zone	10
Landslide	X			IN a county-designated landslide hazard zone	10
Liquefaction		X		NOT IN a county-designated liquefaction hazard zone	10

City-level NHD Determinations	IN	NOT IN	Map N/A*	Property is:	NHD Report page:
Fault	X			IN a High Fault Rupture Hazard Management Zone.	11
Fire	X			IN Very High Fire Hazard Area for Fire hazard area.	11

Additional Statutory Disclosures	IN	NOT IN	Map N/A*	Property is:	NHD Report page:
Fire Hazard Severity Zone (AB 38)	X			IN a mapped Very High Fire Hazard Severity Zone.	13
Former Military Ordnance		X		NOT WITHIN one mile of a formerly used ordnance site.	14
Commercial or Industrial	X			WITHIN one mile of a property zoned to allow commercial or industrial use.	14
Airport Influence Area		X		NOT IN an airport influence area.	15
Airport Noise Area for 65 Decibel		X		NOT IN a delineated 65 dB CNEL or greater aviation noise zone.	16
Bay Conservation and Development Commission		X		NOT IN an area that is within the jurisdiction of the San Francisco Bay Conservation and Development Commission.	17
California Energy Commission	X			IN a climate zone where properties are usually subject to duct sealing and testing requirements	18
Right to Farm Act		X		NOT IN a one mile radius of designated Important Farmland.	19
Notice of Mining Operations		X		NOT IN a one mile radius of a mapped mining operation that requires a statutory "Notice of Mining Operation" be provided in this Report:	20

General Advisories	Description	NHD Report page:
Registered Sex Offender Data Base (Megan's Law) Notice	Provides an advisory required pursuant to Section 290.46 of the Penal Code. Information about specified registered sex offenders is made available to the public.	21

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General Advisories	Description	NHD Report page:
Gas and Hazardous Liquid Transmission Pipeline Database Notice	Provides a notice required pursuant to Section 2079.10.5(a) of the Civil Code. Information about transmission pipeline location maps is made available to the public.	22
Methamphetamine Contamination	Provides an advisory that a disclosure may be required pursuant to the "Methamphetamine Contaminated Property Cleanup Act of 2005".	23
Mold	Provides an advisory that all prospective purchasers of residential and commercial property should thoroughly inspect the subject property for mold and sources for additional information on the origins of and the damage caused by mold.	24
Radon	Provides an advisory on the risk associated with Radon gas concentrations.	25
Endangered Species	Provides an advisory on resources to educate the public on locales of endangered or threatened species.	25
Abandoned Mines	Provides an advisory on resources to educate the public on the hazards posed by, and some of the general locales of, abandoned mines.	26
Oil and Gas Wells	Provides an advisory on the potential existence of oil and gas wells and sources for additional general and/or specific information.	26
Electromagnetic Fields Advisory	Provides an advisory about electromagnetic fields in the local environment and their assessment.	27
Tsunami Map Advisory	Provides an advisory about maximum tsunami inundation maps issued for jurisdictional emergency planning.	28
Residential Fireplace Disclosure	Provides disclosure of restrictions on the use of wood-burning fireplaces imposed by the Bay Area Air Quality Management District.	29

Determined by First American Professional Real Estate Services, Inc.

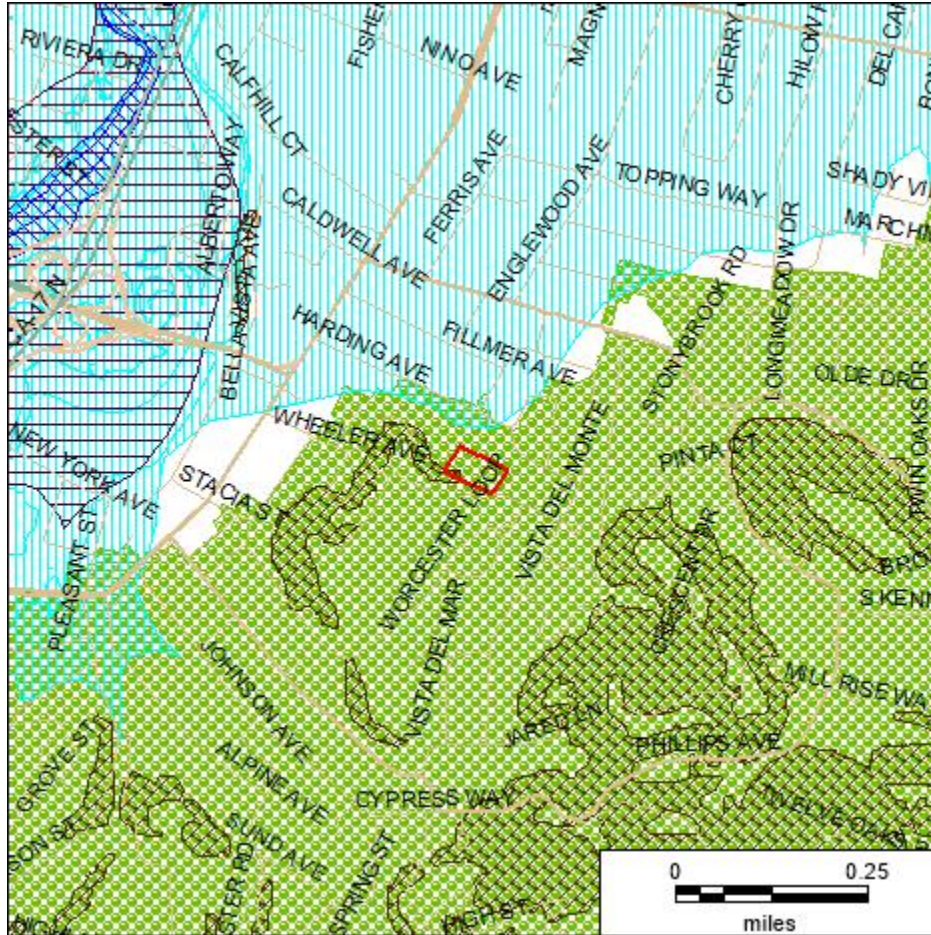
For more detailed information as to the foregoing determinations, please read this entire Report.

**Map of Statutory Natural Hazards
For SANTA CLARA County**

Property Address: 17200 LOS ROBLES WAY
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Map of Statutory Natural Hazard Zones



Subject Property

	Special Flood Hazard Area
	Area of Potential Flooding, Dam Failure
	Very High Fire Hazard Severity Zone
	Wildland Area, Substantial Forest Fire Risk
	Earthquake Fault Zone
	Seismic Hazard Zone, Landslide
	Seismic Hazard Zone, Liquefaction



This map is provided for convenience only to show the approximate location of the Property and is not based on a field survey.

**JCP-LGS Residential Resale Property Disclosure Reports
Natural Hazard Disclosure (NHD) Report
For SANTA CLARA County**

Property Address: 17200 LOS ROBLES WAY
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("Property")

APN: 532-36-076
Report Date: 03/08/2021
Report Number: 2814395

**Statutory Natural Hazard Disclosure ("NHD") Statement
and Acknowledgment of Receipt**

The seller and seller's agent(s) or a third-party consultant disclose the following information with the knowledge that even though this is not a warranty, prospective buyers may rely on this information in deciding whether and on what terms to purchase the Property. Seller hereby authorizes any agent(s) representing any principal(s) in this action to provide a copy of this statement to any person or entity in connection with any actual or anticipated sale of the Property.

The following are representations made by the seller and seller's agent(s) based on their knowledge and maps drawn by the state and federal governments. This information is a disclosure and is not intended to be part of any contract between the seller and buyer. THIS REAL PROPERTY LIES WITHIN THE FOLLOWING HAZARDOUS AREA(S):

A SPECIAL FLOOD HAZARD AREA (Any type Zone "A" or "V") designated by the Federal Emergency Management Agency

Yes ___ No **X** Do not know and information not available from local jurisdiction ___

AN AREA OF POTENTIAL FLOODING shown on a dam failure inundation map pursuant to Section 8589.5 of the Government Code.

Yes ___ No **X** Do not know and information not available from local jurisdiction ___

A VERY HIGH FIRE HAZARD SEVERITY ZONE pursuant to Section 51178 or 51179 of the Government Code. The owner of this Property is subject to the maintenance requirements of Section 51182 of the Government Code.

Yes **X** No ___

A WILDLAND AREA THAT MAY CONTAIN SUBSTANTIAL FOREST FIRE RISKS AND HAZARDS pursuant to Section 4125 of the Public Resources Code. The owner of this Property is subject to the maintenance requirements of Section 4291 of the Public Resources Code. Additionally, it is not the state's responsibility to provide fire protection services to any building or structure located within the wildlands unless the Department of Forestry and Fire Protection has entered into a cooperative agreement with a local agency for those purposes pursuant to Section 4142 of the Public Resources Code.

Yes ___ No **X**

AN EARTHQUAKE FAULT ZONE pursuant to Section 2622 of the Public Resources Code.

Yes ___ No **X**

A SEISMIC HAZARD ZONE pursuant to Section 2696 of the Public Resources Code.

Yes (Landslide Zone) **X** Yes (Liquefaction Zone) ___

No ___ Map not yet released by state ___

THESE HAZARDS MAY LIMIT YOUR ABILITY TO DEVELOP THE REAL PROPERTY, TO OBTAIN INSURANCE, OR TO RECEIVE ASSISTANCE AFTER A DISASTER. THE MAPS ON WHICH THESE DISCLOSURES ARE BASED ESTIMATE WHERE NATURAL HAZARDS EXIST. THEY ARE NOT DEFINITIVE INDICATORS OF WHETHER OR NOT A PROPERTY WILL BE AFFECTED BY A NATURAL DISASTER. SELLER(S) AND BUYER(S) MAY WISH TO OBTAIN PROFESSIONAL ADVICE REGARDING THOSE HAZARDS AND OTHER HAZARDS THAT MAY AFFECT THE PROPERTY.

Signature of Seller(s) _____ Date _____ Signature of Seller(s) _____ Date _____

Signature of Seller's Agent _____ Date _____ Signature of Seller's Agent _____ Date _____

Seller(s) and their agent(s) represent that the information herein is true and correct to the best of their knowledge as of the date signed by the transferor(s) and agent(s).

Seller(s) and their agent(s) acknowledge that they have exercised good faith in the selection of a third-party report provider as required in Section 1103.7 of the Civil Code, and that the representations made in this Natural Hazard Disclosure Statement are based upon information provided by the independent third-party disclosure provider as a substituted disclosure pursuant to Section 1103.4 of the Civil Code. Neither seller(s) nor their agent(s) (1) has independently verified the information contained in this statement and Report or (2) is personally aware of any errors or inaccuracies in the information contained on the statement. This statement was prepared by the provider below:

Third-Party Disclosure Provider(s) FIRST AMERICAN PROFESSIONAL REAL ESTATE SERVICES, INC. OPERATING THROUGH ITS JCP-LGS DIVISION.
Date 08 March 2021

Buyer represents that he or she has read and understands this document. Pursuant to Civil Code Section 1103.8, the representations made in this Natural Hazard Disclosure Statement do not constitute all of the seller(s) or agent's disclosure obligations in this transaction.

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BUYER(S) REPRESENTS ABOVE HE/SHE HAS RECEIVED, READ AND UNDERSTANDS THE COMPLETE JCP-LGS DISCLOSURE REPORT DELIVERED WITH THIS SUMMARY:

- A. Additional Property-specific Statutory Disclosures: Fire Hazard Severity Zone (AB 38), Former Military Ordnance Site, Commercial/Industrial Use Zone, Airport Influence Area, Airport Noise, San Francisco Bay Conservation and Development District Jurisdiction (in S.F. Bay counties only), California Energy Commission Duct Sealing Requirement, Notice of Statewide Right to Farm, Notice of Mining Operations, Sex Offender Database (Megan's Law), Gas and Hazardous Liquid Transmission Pipeline Database.
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For SANTA CLARA County

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**JCP-LGS Residential Resale Property Disclosure Reports
Summary of Disclosure Determinations
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Airport Noise Area for 65 Decibel		X		NOT IN a delineated 65 dB CNEL or greater aviation noise zone.	16
Bay Conservation and Development Commission		X		NOT IN an area that is within the jurisdiction of the San Francisco Bay Conservation and Development Commission.	17
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Right to Farm Act		X		NOT IN a one mile radius of designated Important Farmland.	19
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Electromagnetic Fields Advisory	Provides an advisory about electromagnetic fields in the local environment and their assessment.	27
Tsunami Map Advisory	Provides an advisory about maximum tsunami inundation maps issued for jurisdictional emergency planning.	28
Residential Fireplace Disclosure	Provides disclosure of restrictions on the use of wood-burning fireplaces imposed by the Bay Area Air Quality Management District.	29

Determined by First American Professional Real Estate Services, Inc.

For more detailed information as to the foregoing determinations, please read this entire Report.

JCP-LGS Residential Resale Property Disclosure Reports
Natural Hazard Disclosure (NHD) Report
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Natural Hazard Disclosure Report

Part 1. State Defined Natural Hazard Zones

Statutory Natural Hazard Disclosures

Section 1103 of the California Civil Code mandates the disclosure of six (6) natural hazard zones if the Property is located within any such zone. Those six "statutory" hazard zones, disclosed on the **Natural Hazard Disclosure Statement** ("NHDS") on Page one of this Report, are explained below. Note that the NHDS does not provide for informing buyers if a property is only partially within any of the delineated zones or provide additional flood zone information which could be very important to the process. The following summary is intended to give buyers additional information they may need to help them in the decision-making process and to place the information in perspective.

SPECIAL FLOOD HAZARD AREA

DISCUSSION: Property in a Special Flood Hazard Area (any type of Zone "A" or "V" as designated by the Federal Emergency Management Agency ("FEMA")) is subject to flooding in a "100-year rainstorm." Federally connected lenders require homeowners to maintain flood insurance for buildings in these zones. A 100-year flood occurs on average once every 100 years, but may not occur in 1,000 years or may occur in successive years. According to FEMA, a home located within a SFHA has a 26% chance of suffering flood damage during the term of a 30-year mortgage. Other types of flooding, such as dam failure, are not considered in developing these zones. Flood insurance for properties in Zones B, C, D, X, X500, and X500_Levee is available but is not required.

Zones A, AO, AE, AH, AR, A1-A30: Area of "100-year" flooding - a 1% or greater chance of annual flooding.

Zone A99: An "adequate progress" determination for flood control system construction projects that, once completed, may significantly limit the area of a community that will be included in the Special Flood Hazard Area (SFHA). Such projects reduce but do not eliminate, the risk of flooding to people and structures in "levee-impacted" areas, and allow mandatory flood insurance to be available at a lower cost.

Zones V, V1-V30: Area of "100-year" flooding in coastal (shore front) areas subject to wave action.

Zone B: Area of moderate flood risk. These are areas between the "100" and "500" year flood-risk levels.

Zones C, D: NOT IN an area of "100-year" flooding. Area of minimal (Zone C) or undetermined (Zone D) flood hazard.

Zones X: An area of minimal flood risk. These are areas outside the "500" year flood-risk level.

Zone X500: An area of moderate flood risk. These are areas between the "100" and "500" year flood-risk levels.

Zone X500_LEVEE: An area of moderate flood risk that is protected from "100-year flood" by levee and that is subject to revision to high risk (Zone A) if levee is decertified by FEMA.

Zone N: Area Not Included, no flood zone designation has been assigned or not participating in the National Flood Insurance Program.

Notice: The Company is not always able to determine if the Property is subject to a FEMA Letter of Map Revision ("LOMR") or other FEMA letters of map change. If Seller is aware that the Property is subject to a LOMR or other letters of map change, the Seller shall disclose the map change and attach a copy of the FEMA letter(s) to the Report. Contact FEMA at <http://msc.fema.gov> for additional information.

For more information about flood zones, visit:

https://efotg.sc.egov.usda.gov/references/public/NM/FEMA_FLD_HAZ_guide.pdf

PUBLIC RECORD: Official Flood Insurance Rate Maps ("FIRM") compiled and issued by the Federal Emergency Management Agency ("FEMA") pursuant to 42 United States Code §4001, et seq.

AREA OF POTENTIAL FLOODING (DAM FAILURE)

Since 1998 California law has required seller disclosure of areas of potential inundation due to sudden or total dam failure as delineated on inundation maps submitted by dam owners to the California Office of Emergency Services ("OES") for review and approval; however, as of June 27, 2017, the date on which Senate Bill 92 (SB 92) became operative, the review and approval of inundation maps prepared by licensed civil engineers and submitted by dam owners became the statutory responsibility of the California Department of Water Resources ("DWR") Division of Safety of Dams ("DSOD") as required by California Water Code Section 6161. These inundation maps are a component of emergency action plans submitted by dam owners to comply with statutory requirements set forth under the California Water Code for extremely high, high, and significant hazard dams and their critical appurtenant structures. Inundation maps are not required by the California Water Code for low hazard dams. SB 92 further requires dam owners to update the emergency action plan, including an inundation map, no less frequently than every 10 years or sooner.

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To date DWR has yet to review, approve, and make publicly available inundation maps and data for many facilities with inundation areas that are subject to disclosure requirements. Inundation maps will continue to be posted and updated maps will replace outdated maps as they are approved by DSOD. In the absence of DSOD-approved data, inundation maps previously approved by the OES will be used by the Company to facilitate compliance with specified statutory real estate transfer disclosure requirements. These include inundation maps for federally owned dams over which DSOD has no jurisdictional authority and for which inundation maps are not available from DSOD. These dams include, among others, Folsom Dam, Isabella Dam, Hansen Dam, Prado Dam, and Seven Oaks Reservoir (owned by the U.S. Army Corps of Engineers) as well as Monticello Dam, New Melones Dam, and Shasta Dam (owned by the U.S. Bureau of Reclamation). The Company may also use OES-approved maps should the mapped inundation area for a given facility be greater than that depicted on a DSOD-approved map.

PUBLIC RECORD: (1) Official dam inundation maps made publicly available prior to June 27, 2017 by the State of California Office of Emergency Services ("OES") pursuant to California Government Code §8589.5; (2) Official inundation boundary digital data made publicly available since June 28, 2017 by the State of California Department of Water Resources (DWR) pursuant to California Water Code §6161. DWR states that its inundation boundary data typically includes flooding depths greater than one foot but some information may be redacted for security purposes.

VERY HIGH FIRE HAZARD SEVERITY ZONE (VHFHSZ)

DISCUSSION: VHFHSZs can be defined by the California Department of Forestry and Fire Protection ("Calfire") as well as by local fire authorities within "Local Responsibility Areas" where fire suppression is the responsibility of a local fire department. Properties located within VHFHS Zones may have a higher risk for fire damage and, therefore, may be subject to (i) additional construction requirements such as a "Class A" roof for new construction or replacement of existing roofs; and (ii) additional maintenance responsibilities such as adequate vegetation clearance near the structure, spark screens on chimneys and stovepipes, leaf removal from roofs, and other basic fire-safety practices. Contact the local fire department for a complete list of requirements and exceptions.

PUBLIC RECORD: Maps issued by Calfire pursuant to California Government Code § 51178 recommending VHFHSZs to be adopted by the local jurisdiction within its Local Responsibility Area, or VHFHSZs adopted by the local jurisdiction within the statutory 120-day period defined in California Government Code § 51179.

WILDLAND FIRE AREA (STATE RESPONSIBILITY AREA)

DISCUSSION: The State Board of Forestry classifies all lands within the State of California based on various factors such as ground cover, beneficial use of water from watersheds, probable damage from erosion, and fire risks. Fire prevention and suppression in all areas which are not within a Wildland - State Responsibility Area ("WSRA") is primarily the responsibility of the local or federal agencies, as applicable.

For property located within a WSRA, please note that (1) there may be substantial forest fire risks and hazards; (2) except for property located within a county which has assumed responsibility for prevention and suppression of all fires, it is NOT the state's responsibility to provide fire protection services to any building or structure located within a WSRA unless the Department has entered into a cooperative agreement with a local agency; and (3) the property owner may be subject to (i) additional construction requirements such as a "Class A" roof for new construction or replacement of existing roofs; and (ii) additional maintenance responsibilities such as adequate vegetation clearance near the structure, spark screens on chimneys and stovepipes, leaf removal from roofs, and other basic fire-safety practices.

The existence of local agreements for fire service is not available in the Public Record and, therefore, is not included in this disclosure. For very isolated properties with no local fire services or only seasonal fire services there may be significant fire risk. If the Property is located within a WSRA, please contact the local fire department for more detailed information.

PUBLIC RECORD: Official maps issued by the California Department of Forestry and Fire Protection ("Calfire") pursuant to California Public Resources Code § 4125.

SRA Fire Prevention Benefit Fee Advisory: In 2011, the California Legislature and Governor enacted a "Fire Prevention Fee" on habitable structures in the State's wildland fire responsibility area. Effective July 1, 2017, as authorized by Assembly Bill 398 and signed by the Governor, that fire prevention fee is suspended until 2031. For more information, please refer to "Part 6. State Responsibility Area Fire Prevention Fee" in the JCP-LGS Property Tax Report.

High or Very High Fire Hazard Severity Zone (AB 38)

Effective January 1, 2021, a new disclosure law specifies a notice to be provided to the buyer under certain conditions regarding wildfire hazard severity zones. Please see "**Additional Statutory Disclosures**" in the Property Disclosure Summary table (above) and "Part 3. Additional Property Specific Disclosures" (below) for that AB 38 disclosure.

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EARTHQUAKE FAULT ZONE

DISCUSSION: Earthquake Fault Zones are delineated and adopted by California as part of the Alquist-Priolo Earthquake Fault Zone Act of 1972. Property in an Earthquake Fault Zone ("EF Zone") does not necessarily have a fault trace existing on the site. EF Zones are areas or bands delineated on both sides of known active earthquake faults. EF Zones vary in width but average one-quarter (1/4) mile in width with the "typical" zone boundaries set back approximately 660 feet on either side of the fault trace. The potential for "fault rupture" damage (ground cracking along the fault trace) is relatively high only if a structure is located directly on a fault trace. If a structure is not on a fault trace, shaking will be the primary effect of an earthquake. During a major earthquake, shaking will be strong in the vicinity of the fault and may be strong at some distance from the fault depending on soil and bedrock conditions. It is generally accepted that properly constructed wood-frame houses are resistant to shaking damage.

PUBLIC RECORD: Official earthquake fault zone or special study zone maps approved by the State Geologist and issued by the California Department of Conservation, California Geological Survey pursuant to California Public Resources Code §2622.

SEISMIC HAZARD MAPPING ACT ZONE

DISCUSSION: Official Seismic Hazard Zone ("SH Zone") maps delineate Areas of Potential Liquefaction and Areas of Earthquake-Induced Landsliding. A property that lies partially or entirely within a designated SH Zone may be subject to requirements for site-specific geologic studies and mitigation before any new or additional construction may take place.

Earthquake-Induced Landslide Hazard Zones are areas where the potential for earthquake-induced landslides is relatively high. Areas most susceptible to these landslides are steep slopes in poorly cemented or highly fractured rocks, areas underlain by loose, weak soils, and areas on or adjacent to existing landslide deposits. The CGS cautions these maps do not capture all potential earthquake-induced landslide hazards and that earthquake-induced ground failures are not addressed by these maps. Furthermore, no effort has been made to map potential run-out areas of triggered landslides. It is possible that such run-out areas may extend beyond the zone boundaries. An earthquake capable of causing liquefaction or triggering a landslide may not uniformly affect all areas within a SH Zone.

Liquefaction Hazard Zones are areas where there is a potential for, or an historic occurrence of liquefaction. Liquefaction is a soil phenomenon that can occur when loose, water saturated granular sediment within 40 feet of the ground surface, are shaken in a significant earthquake. The soil temporarily becomes liquid-like and structures may settle unevenly. The Public Record is intended to identify areas with a relatively high potential for liquefaction but not to predict the amount or direction of liquefaction-related ground displacement, nor the amount of damage caused by liquefaction. The many factors that control ground failure resulting from liquefaction must be evaluated on a site specific basis.

PUBLIC RECORD: Official seismic hazard maps or digital data thereof approved by the State Geologist and issued by the California Department of Conservation, California Geological Survey pursuant to California Public Resources Code §2696.

STATUTORY NATURAL HAZARD DISCLOSURE REPORTING STANDARD: "IN" shall be reported if any portion of the Property is located within any of the above zones as delineated in the Public Record. "NOT IN" shall be reported if no portion of the Property is located within any of the above zones as delineated in the Public Record. Map Not Available shall be reported in areas not yet evaluated by the governing agency according to the Public Record. Please note that "MAP NOT AVAILABLE" will be applicable to most portions of the state. Official Seismic Hazard Zone ("SH Zone") maps delineate Areas of Potential Liquefaction and Areas of Earthquake-Induced Landsliding.

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Part 2. County and City Defined Natural Hazard Zones

HAZARD MAPS IN THE LOCAL GENERAL PLAN

General Plan regulates property development. There are currently over 530 incorporated cities and counties in California. The state Government Code (Sections 65000 et seq.) requires each of those jurisdictions to adopt a comprehensive, long-term "General Plan" for its physical development. That General Plan regulates land uses within the local jurisdiction in order to protect the public from hazards in the environment and conserve local natural resources. The General Plan is the official city or county policy regarding the location of housing, business, industry, roads, parks, and other land uses.

Municipal hazard zones can affect the cost of ownership. Each county and city adopts its own distinct General Plan according to that jurisdiction's unique vegetation, landscape, terrain, and other geographic and geologic conditions. The "Safety Element" (or Seismic Safety Element) of that General Plan identifies the constraints of earthquake fault, landslide, flood, fire and other natural hazards on local land use, and it delineates hazard zones within which private property improvements may be regulated through the building-permit approval process, which can affect the future cost of ownership. Those locally regulated hazard zones are in addition to the federal and state defined hazard zones associated with statutory disclosures in the preceding section.

City and/or County natural hazard zones explained below. Unless otherwise specified, only those officially adopted Safety Element or Seismic Safety Element maps (or digital data thereof) which are publicly available, are of a scale, resolution, and quality that readily enable parcel-specific hazard determinations, and are consistent in character with those statutory federal or state disclosures will be considered for eligible for use as the basis for county- or city-level disclosures set forth in this Report. Please also note:

- If an officially adopted Safety Element or Seismic Safety Element map relies on data which is redundant of that used for state-level disclosures, this Report will indicate so and advise Report recipients to refer to the state-level hazard discussion section for more information.
- If an officially adopted Safety Element or Seismic Safety Element cites underlying maps created by another agency, those maps may be regarded as incorporated by reference and may be used as the basis for parcel-specific determinations if those maps meet the criteria set forth in this section.
- Because county- and city-level maps are developed independently and do not necessarily define or delineate a given hazard the same way, the boundaries for the "same" hazard may be different.

If one or more maps contained in the Safety Element and/or Seismic Safety Element of an officially adopted General Plan are used as the basis for local disclosure, those maps will appear under the "Public Record(s) Searched" for that county or city.

REPORTING STANDARDS

A good faith effort has been made to disclose all hazard features on pertinent Safety Element and Seismic Safety Element maps with well-defined boundaries; however, those hazards with boundaries that are not delineated will be deemed not suitable for parcel-specific hazard determinations. Some map features, such as lines drawn to represent the location of a fault trace, may be buffered to create a zone to facilitate disclosure. Those map features which can not be readily distinguished from those representing hazards may be included to prevent an omission of a hazard feature. If the width of a hazard zone boundary is in question, "IN" will be reported if that boundary impacts any portion of a property. Further explanations concerning specific map features peculiar to a given county or city will appear under the "Reporting Standards" for that jurisdiction.

PUBLIC RECORDS VS. ON-SITE EVALUATIONS

Mapped hazard zones represent evaluations of generalized hazard information. Any specific site within a mapped zone could be at less or more relative risk than is indicated by the zone designation. A site-specific evaluation conducted by a geotechnical consultant or other qualified professional may provide more detailed and definitive information about the Property and any conditions which may or do affect it.

PROPERTY USE AND PERMITTING

No maps beyond those identified as "Public Record(s)" have been consulted for the purpose of these local disclosures. These disclosures are intended solely to make Report recipient(s) aware of the presence of mapped hazards. For this reason -- and because local authorities may use on these or additional maps or data differently to determine property-specific land use and permitting approvals -- Report recipients are advised to contact the appropriate local agency, usually Community Development, Planning, and/or Building, prior to the transaction to ascertain if these or any other conditions or related regulations may impact the Property use or improvement.

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SANTA CLARA COUNTY GEOLOGIC ZONES DISCUSSION

PUBLIC RECORD(S) SEARCHED: The following Public Records are utilized for those county-level disclosures below: Officially adopted digital data of "County Geologic Hazard Zones" as prepared by Santa Clara County Department of Planning and disclosure of which is required by County Ordinance Sec C12-624 as revised March 19, 2002.

FAULT

The County identifies Fault Rupture Hazard Zones as both "active" and "potentially active" fault zones as well as other faulting-related geologic features. Active faults are known to have experienced fault rupture in the last 11,000 years and are usually seismically active (produce earthquakes periodically). Potentially active faults are not seismically active, and it cannot be definitely proven that these faults have moved in the last 11,000 years. Potentially active faults far outnumber active faults in Santa Clara County. Because potentially active faults are included in the zone description, all Fault Rupture Hazard Zone are not necessarily equal to an Alquist-Priolo Earthquake Fault Zone which only includes active faults.

Reporting Standards: If any portion of the Property is situated within a fault zone as delineated in the Public Record, "WITHIN" shall be reported.

LANDSLIDE

Landslide Hazard Zones include areas with a high potential for earthquake-induced landslides. It does not necessarily mean that landslides exist on the Property or that landsliding is imminent or probable in the area. It does mean that the designated area has a greater chance of landsliding than properties in flat-lying areas. The County has also included a United States Geological Survey Report and State of California Geologic Survey Earthquake-Induced Landslide Hazard Zones into the zone description. These include areas where there has been a recent landslide, or where local slope, geological, geotechnical, and ground moisture conditions indicate a potential for landslides as a result of earthquake shaking.

Reporting Standards: If any portion of the Property is situated within a landslide zone as delineated in the Public Record, "IN" shall be reported.

LIQUEFACTION

Liquefaction Hazard Zones include areas the California Geological Survey has defined as areas of historic occurrence or potential for liquefaction. Liquefaction is a rare soil phenomenon that can occur when loose, water saturated, fine-grained sands and silty sands that lie within 50 feet of the ground surface are shaken in a significant earthquake. The soil temporarily becomes liquid-like and structures may settle unevenly. The County has also included zones of liquefaction susceptibility from a United States Geological Survey Report of soil deposits that may be prone to liquefaction.

Reporting Standards: If any portion of the Property is situated within an area of potential liquefaction as delineated in the Public Record, "IN" shall be reported.

COMPRESSIBLE SOILS

Compressible Soils Zones include areas where there is a chance that the ground will settle locally during severe shaking due to the potential compression of peaty-type soils in these areas. Risk of injury is relatively low in these areas as a result of settlement alone.

Reporting Standards: If any portion of the Property is situated within an area of compressible soils as delineated in the Public Record, "IN" shall be reported.

DIKE FAILURE

Dike Failure Flooding Zones include areas where there is a significant chance of flooding following a large earthquake if the perimeter dike systems of the bay fail.

Reporting Standards: If any portion of the Property is situated within an area of potential dike failure as delineated in the Public Record, "IN" shall be reported.

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CITY OF LOS GATOS GEOLOGIC DISCUSSION

PUBLIC RECORD(S) SEARCHED: The following Public Record(s), contained in the Safety Element of the City General Plan adopted by the Los Gatos Town Council in 2011 and the companion Background Report, is/are utilized for those city-level disclosure(s) below: "Figure SAF-3: Wildland Urban Interface Fire Area", "Figure 16-2: Fault Rupture Hazard Zones".

FAULT

According to the Geology Chapter of the General Plan Background Report, fault traces belonging to numerous faults, including the Shannon and Monte Vista Faults, are located in the vicinity of Los Gatos. As a result, significant bands of both high and moderate fault rupture hazard cover most of the Town of Los Gatos. These zones are generally northwest/southeast running, in conformance with the direction of the surrounding San Andreas and Monte Vista Fault systems. Nearly the entire southern portion of the Town is an area of high fault rupture hazard. Smaller portions of central Los Gatos are of moderate rupture hazard, while a large zone of high rupture hazard intersects the northern portion of Town. The Public Record indicates only small portions of northern, central and southern Los Gatos lie outside of fault rupture areas. According to the Town of Los Gatos Geotechnical Report Guidelines, proposed development in fault rupture hazard zones is subject to full geologic evaluation, including description of site conditions and appropriate design recommendations.

Reporting Standards: "IN" shall be reported as will the more severe hazard designation ("High" or "Moderate") if any portion of the Property is located within one or more Fault Rupture Potential Hazard Zone(s) within the City's Sphere of Influence as delineated in the Public Record. "NOT IN" shall be reported if no portion of the Property is located within a mapped Fault Rupture Potential Hazard Zone.

FIRE

Los Gatos is susceptible to destruction from both urban and wildland fires. There are several factors that influence the potential for fire hazard, including population growth, vegetation, slope of topography, and weather. The Town's Emergency Operations Plan identifies wildfire risk as a seasonal risk. The types of vegetation and typically high moisture content reduce the wildfire risk in the area. During drought years winds blow from the east, dry out the hillsides and increase the wildfire potential. In addition to Very High Fire Hazard Areas (VHFHA), modeled largely after CalFire Recommended Very High Fire Hazard Severity Zones in Local Responsibility Areas, the City has also designated Wildland-Urban Interface Fire Areas (WUIFA). As defined in Chapter 9 of the City's Municipal Code, a WUIFA is "a geographic area identified by the State as a 'Fire Hazard Severity Zone' or other areas by the enforcing agency to be at a significant risk from wildfires." Hazard vegetation and fuel management standards (including defensible space) for building and structures located within VHFHA and WUIFA are detailed in the City's Municipal Code and available from the local fire authority.

Reporting Standards: "IN" shall be reported as well as the Fire Area designation shall be reported if any portion of the Property is located within a Very High Fire Hazard Area (VHFHA) or Wildland-Urban Interface Fire Area (WUIFA) within the City's Sphere of Influence as delineated in the Public Record. "NOT IN" shall be reported if no portion of the Property is located within a VHFHA or WUIFA as delineated in the Public Record.

OTHER HAZARDS

The fault zones depicted in "Figure SAF-1: Regional Faults" are mapped at a scale which does not permit property-specific disclosure. "Figure SAF-2: Seismic Hazards" demonstrates that the Town of Los Gatos has adopted Areas of Potential Liquefaction and Earthquake-Induced Landslides delineated on official maps issued by the California Geological Survey pursuant to the Seismic Hazard Mapping Act. For more information about these seismic hazards, please refer to the state-level discussion and disclosure of Seismic Hazard Mapping Act Zones in the preceding section of this Report. For the most current FEMA flood information please refer to the state-level discussion and disclosure of Special Flood Hazard Area in the preceding section of this Report. Likewise, please refer to the state-level discussion and disclosure of Areas of Potential Flooding (due to Dam Inundation) in the preceding section of this Report for identification of mapped areas susceptible to potential inundation due to dam failure.

The Safety Element and Background Report discuss but do not provide boundary maps for the following hazards:

GROUND SHAKING

Los Gatos is within a seismically active region and earthquakes have the potential to cause ground shaking of significant intensity. Any slip along all or part of a fault surface releases accumulated energy that radiates in all directions away from the source, in the form of earthquake waves. Associated ground shaking varies in intensity depending on the severity of earthquake activity, proximity to that activity and local soil and geological conditions. Because Los Gatos is within the "near source" zone of both the San Andreas and Monte Vista Faults, the Town is subject to particularly strong ground shaking effects.

Reporting Standards: No determination is reported because the Public Record does not include a map which delineates the boundaries for this hazard within the City.

SHRINK-SWELL POTENTIAL

Certain types of soils have characteristics that make them more susceptible to geotechnical hazards such as erosion and expansion. Identifying local soil types and understanding their associated characteristics help cities to establish appropriate

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engineering and construction standards for new buildings and remodeling. The primary soil types in the Los Gatos area are clay and clay loam. Due to the presence of clay minerals, these soils tend to expand when wet and shrink upon drying, a phenomena known as shrink-swell potential. This action can cause seasonal uplifting of structural foundations and roads, accompanied by significant and often dangerous cracking. As a result, clay and clay loam soils have limitations as substrates for engineering and construction purposes. Due to the predominance of clays, most of the Town of Los Gatos is identified as having moderate to high shrink-swell potential. Although there are small pockets of land with low potential for such soil action, soils throughout most of the central area of the Town exhibit moderate risk of shrink-swell action. Shrink-swell potential increases towards the south of the Town, and areas of the highest potential are concentrated in the very southeastern corner of Los Gatos.

Reporting Standards: No determination is reported because the Public Record does not include a map which delineates the boundaries for this hazard within the City.

EROSION POTENTIAL

The potential for erosion generally increases with steepness of slope and rainfall and is greater in areas where the protective soil and/or vegetation cover has been removed by fire or grading. Due to the varied topography of Los Gatos, the erosion potential within the Town ranges from low to very high. The potential for erosion in Los Gatos is highest in the eastern, southern and southwestern areas of the Town. Erosion potential decreases toward the center of Town, and is non-existent in the flat areas just east of the Highway 17 corridor. However, erosion potential is high to very high in the areas surrounding the north end of the Los Gatos Creek corridor.

Reporting Standards: No determination is reported because the Public Record does not include a map which delineates the boundaries for this hazard within the City.

END OF LOCAL AREA DISCLOSURES AND DISCUSSIONS SECTION

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Part 3. Additional Property Specific Disclosures

NOTICE REGARDING FIRE HAZARD SEVERITY ZONE (AB 38)

DISCUSSION: The California Legislature finds and declares that wildfires, among other things, have grown larger and have increased in intensity over the last several decades. More than 2,000,000 California households, approximately one in four residential structures in California, are located within or in wildfire movement proximity of "high" or "very high" fire hazard severity zones identified on maps drawn by the Department of Forestry and Fire Protection ("CAL FIRE"). There is a pressing need to increase wildfire resistance within developed areas to minimize wildfire impacts and implement comprehensive vegetation management measures in wildlands to minimize wildfire size and severity. [Source: Calif. Assembly Bill 38 as amends the law on November 18, 2019]

As codified in California Civil Code Section 1102: On or after January 1, 2021, in addition to any other disclosure required pursuant to this article, the seller of any real property subject to this article that is located in a high or very high fire hazard severity zone, as identified by the Director of Forestry and Fire Protection pursuant to Section 51178 of the Government Code or Article 9 (commencing with Section 4201) of Chapter 1 of Part 2 of Division 4 of the Public Resources Code, shall provide the following prescribed disclosure notice to the buyer, if the home was constructed before January 1, 2010 [Subsection 1102.6f.(a)]:

This home is located in a high or very high fire hazard severity zone and this home was built before the implementation of the Wildfire Urban Interface building codes which help to fire harden a home. To better protect your home from wildfire, you might need to consider improvements. Information on fire hardening, including current building standards and information on minimum annual vegetation management standards to protect homes from wildfires, can be obtained on the internet website <http://www.readyforwildfire.org> (California Civil Code Section 1102.6f.(a)(1))

Seller's Documentation of Compliance or Inspection.

On and after July 1, 2021, a seller of a real property subject to this article that is located in a high or very high fire hazard severity zone, as identified by the Director of Forestry and Fire Protection pursuant to Section 51178 of the Government Code or Article 9 (commencing with Section 4201) of Chapter 1 of Part 2 of Division 4 of the Public Resources Code, shall provide to the buyer documentation stating that the property is in compliance with Section 4291 of the Public Resources Code or local vegetation management ordinances, as follows [Section 1102.19.(a)]:

- (1) In a local jurisdiction that has enacted an ordinance requiring an owner of real property to obtain documentation that the property is in compliance with Section 4291 of the Public Resources Code or a local vegetation management ordinance, the seller shall provide the buyer with a copy of the documentation that complies with the requirements of that local ordinance and information on the local agency from which a copy of that documentation may be obtained.
- (2) In a local jurisdiction that has not enacted an ordinance for an owner of real property to obtain documentation that a property is in compliance with Section 4291 of the Public Resources Code or a local vegetation management ordinance, and if a state or local agency, or other government entity, or other qualified nonprofit entity, provides an inspection with documentation for the jurisdiction in which the property is located, the seller shall provide the buyer with the documentation obtained in the six-month period preceding the date the seller enters into a transaction to sell that real property and provide information on the local agency from which a copy of that documentation may be obtained.

Buyer's Written Agreement to Comply.

On and after July 1, 2021, if the seller of a real property described in subdivision (a) has not obtained documentation of compliance in accordance with paragraph (1) or (2) of subdivision (a), the seller and the buyer shall enter into a written agreement pursuant to which the buyer agrees to obtain documentation of compliance with Section 4291 of the Public Resources Code or a local vegetation management ordinance as follows [Subsection 1102.19.(b)]:

- (1) In a local jurisdiction that has enacted an ordinance requiring an owner or buyer to obtain documentation of compliance with Section 4291 of the Public Resources Code or a local vegetation management ordinance, the buyer shall comply with that ordinance.
- (2) In a local jurisdiction that has not enacted an ordinance requiring an owner or buyer to obtain documentation of compliance, and if a state or local agency, or other government entity, or other qualified nonprofit entity, provides an inspection with documentation for the jurisdiction in which the property is located, the buyer shall obtain documentation of compliance within one year of the date of the close of escrow.

About the Fire Hazard Severity Zone Maps.

According to the Office of the State Fire Marshal, CAL FIRE is required by law to map areas of significant fire hazards based on fuels, terrain, weather, and other relevant factors. These designations, referred to as Fire Hazard Severity Zones ("FHSZ"),

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mandate how people construct buildings and protect property to reduce risk associated with wildland fires. These maps were last updated in 2007-2010 and are currently being updated to incorporate improved fire science, data and mapping techniques. The proposed FHSZ maps denote lands of similar hazards where the state has financial responsibility for wildland fire protection, known as state responsibility area or SRA, and will be available for review and public comment. It is anticipated that in late 2020 or 2021 CAL FIRE will produce FHSZ maps for the areas of California where local governments have financial responsibility for wildland fire protection, known as Local Responsibility Area or LRA. Per law, only lands zoned as Very High Fire Hazard Severity are currently identified within local responsibility areas. [Source: "Fire Hazard Severity Zones", CAL FIRE website, current on December 8, 2020:

<https://osfm.fire.ca.gov/divisions/wildfire-planning-engineering/wildfire-prevention-engineering/fire-hazard-severity-zones/>]

PUBLIC RECORD: Until further notice, per guidance of the California State Fire Marshal's Office (December 2020), maps relied upon for this FHSZ determination shall be the official digital data of "Fire Hazard Severity Zones in State Responsibility Areas ["SRA"]" as adopted by CAL FIRE on November 7, 2007, pursuant to California Public Resources Code Section 4201-4204; and the official digital data for separate "Very High Fire Hazard Severity Zones in LRA [Local Responsibility Areas]" as recommended by CAL FIRE on various dates (2008-2011) and subject to modification by local jurisdictions, pursuant to California Government Code Section 51175-89. For more information please refer to the statutory disclosures of Wildland Fire Area (in SRA) and Very High Fire Hazard Severity Zones (in LRA) discussed in the previous section of this Report.

REPORTING STANDARD: "IN" shall be reported as will the more severe mapped Fire Hazard Severity Zone (High or Very High) affecting any portion of the Property. "NOT IN" shall be reported if no portion of the Property is located within a mapped High or Very High Fire Hazard Severity Zone.

FORMER MILITARY ORDNANCE SITE DISCLOSURE

DISCUSSION: Former Military Ordnance (FUD) sites can include sites with common industrial waste (such as fuels), ordnance or other warfare materiel, unsafe structures to be demolished, or debris for removal. California Civil Code Section 1102 requires disclosure of those sites containing unexploded ordnance. "Military ordnance" is any kind of munitions, explosive device/material or chemical agent used in military weapons. Unexploded ordnance are munitions that did not detonate. NOTE: **MOST** FUD sites do not contain unexploded ordnance. Only those FUD sites that the U.S. Army Corps of Engineers (USACE) has identified to contain Military Ordnance or have mitigation projects planned for them are disclosed in this Report. Additional sites may be added as military installations are released under the Federal Base Realignment and Closure (BRAC) Act. Active military sites are NOT included on the FUD site list.

PUBLIC RECORD: Data contained in Inventory Project Reports, Archives Search Reports, and related materials produced for, and made publicly available in conjunction with, the Defense Environmental Restoration Program for Formerly Used Defense Sites by the U.S. Army Corps of Engineers. Sites for which no map has been made publicly available shall not be disclosed.

REPORTING STANDARD: If one or more facility identified in the Public Record is situated within a one (1) mile radius of the Property, "**WITHIN**" shall be reported. The name of that facility or facilities shall also be reported.

COMMERCIAL OR INDUSTRIAL ZONING DISCLOSURE

DISCUSSION: The seller of real property who has actual knowledge that the property is affected by or zoned to allow commercial or industrial use described in Section 731a of the Code of Civil Procedure shall give written notice of that knowledge to purchasers as soon as practicable before transfer of title (California Civil Code Section 1102.17). The Code of Civil Procedure Section 731a defines industrial use as areas in which a city and/or county has established zones or districts under authority of law wherein certain manufacturing or commercial or airport uses are expressly permitted. The "Zoning Disclosure" made in this Report DOES NOT purport to determine whether the subject property is or is not affected by a commercial or industrial zone. As stated above, that determination is based solely upon ACTUAL KNOWLEDGE of the seller of the subject property.

In an effort to help determine areas where this may be applicable, this disclosure identifies if a property exists within one mile of the seller's property that is zoned to allow for commercial or industrial use. Very commonly, a home will have in its vicinity one or more properties that are zoned for commercial or industrial use such as restaurants, gasoline stations, convenience stores, golf courses, country club etc.

PUBLIC RECORD: Based on publicly-available hardcopy and/or digital zoning and land use records for California cities and counties.

REPORTING STANDARD: If one or more property identified in the Public Record as "commercial," "industrial," or "mixed use" is situated within a one (1) mile radius of the Property, "**WITHIN**" shall be reported. Please note that an airport facility that may be classified as public use facility in the Public Record will be reported as "commercial/industrial" in this disclosure.

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AIRPORT INFLUENCE AREA DISCLOSURE

DISCUSSION:

Certain airports are not disclosed in this Report. JCP-LGS has made a good faith effort to identify the airports covered under Section 1102.6a. Sources consulted include official land use maps and/or digital data made available by a governing Airport Land Use Commission (ALUC) or other designated government body. Most facilities for which an Airport Influence Area has been designated are included on the "California Airports List" maintained by the California Department of Transportation's Division of Aeronautics. Not disclosed in this Report are public use airports that are not in the "California Airports List", airports that are physically located outside California, heliports and seaplane bases that do not have regularly scheduled commercial service, and private airports or military air facilities unless specifically identified in the "California Airports List". **If the seller has actual knowledge of an airport in the vicinity of the subject property that is not disclosed in this Report, and that is material to the transaction, the seller should disclose this actual knowledge in writing to the buyer.**

Most facilities for which an Airport Influence Area has been designated are included on the "California Airports List" maintained by the California Department of Transportation's Division of Aeronautics. The inclusion of military and private airports varies by County, and heliports and seaplane bases are not included, therefore, airports in these categories may or may not be included in this disclosure.

NOTE: Proximity to an airport does not necessarily mean that the property is exposed to significant aviation noise levels. Alternatively, there may be properties exposed to aviation noise that are greater than two miles from an airport. Factors that affect the level of aviation noise include weather, aircraft type and size, frequency of aircraft operations, airport layout, flight patterns or nighttime operations. Buyer should be aware that aviation noise levels can vary seasonally or change if airport usage changes.

PUBLIC RECORD: Based on officially adopted land use maps and/or digital data made publicly available by the governing ALUC or other designated government body. If the ALUC or other designated government body has not made publicly available a current officially adopted airport influence area map, then California law states that "a written disclosure of an airport within two (2) statute miles shall be deemed to satisfy any city or county requirements for the disclosure of airports in connection with transfers of real property."

REPORTING STANDARD: "IN" shall be reported along with the facility name(s) and the "Notice of Airport in Vicinity" if any portion of the Property is situated within either (a) an Airport Influence Area as designated on officially adopted maps or digital data or (b) a two (2) mile radius of a qualifying facility for which an official Airport Influence Area map or digital data has not been made publicly available by the ALUC or other designated governing body. "NOT IN" shall be reported if no portion of the Property is within either area.

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("Property")

APN: 532-36-076
Report Date: 03/08/2021
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AIRPORT NOISE DISCLOSURE

DISCUSSION: California Civil Code §1102.17 requires the seller(s) of residential real property who has/have actual knowledge that the property in the transaction is affected by airport use must give written notice of that knowledge, as soon as practicable, before transfer of title.

Under the Federal Aviation Administration's *Airport Noise Compatibility Planning Program Part 150*, certain 65 decibel (dB) Community Noise Equivalent Level (CNEL) contour maps have been produced for some airports. Not all airports have produced noise exposure maps. A property may be near or at some distance from an airport and not be within a delineated noise exposure area, but still experience aviation noise. Unless 65dB CNEL contour maps are published, helipads and military sites are not included in this section of the Report.

The *Airport Noise Compatibility Planning Program* is voluntary and not all airports have elected to participate. Furthermore, not all property in the vicinity of an airport is exposed to 65dB CNEL or greater average aviation noise levels. Conversely a property may be at some distance from an airport and still experience aviation noise. Buyer should be aware that aviation noise levels can vary seasonally or change if airport usage changes after a map is published or after the Report Date. JCP-LGS uses the most seasonally conservative noise exposures provided.

Federal funding may be available to help airports implement noise reduction programs. Such programs vary and may include purchasing properties, rezoning, and insulating homes for sound within 65dB areas delineated on CNEL maps. Airport owners have also cooperated by imposing airport use restrictions that include curfews, modifying flight paths, and aircraft limitations.

PUBLIC RECORD: Certain 65 decibel (dB) Community Noise Equivalent Level (CNEL) contour maps produced under the Federal Aviation Administration's *Airport Noise Compatibility Planning Program Part 150*.

REPORTING STANDARD: "IN" shall be reported if any portion of the Property is situated within a 65 decibel Community Noise Equivalent Level contour identified in the Public Record. "NOT IN" shall be reported if no portion of the Property is situated within a 65 decibel Community Noise Equivalent Level contour identified in the Public Record.

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**SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT
COMMISSION DISCLOSURE**

DISCUSSION: As of July 1, 2005, Civil Code §1103.4 mandates disclosure to buyers of certain real estate if the boundary of the property is determined to be (1) within 100 feet of the San Francisco Bay shoreline as mapped in 1997 by the National Ocean Survey (NOS), an agency of the National Oceanographic and Atmospheric Administration (NOAA); or (2) within another mapped zone established by the Bay Conservation and Development Commission (BCDC). The BCDC has regulatory jurisdiction within 100 feet inland from the point of "mean higher high water" as mapped by the NOS, and within other zones the agency has defined along the San Francisco Bay margin (BCDC Memo entitled "Guidance on Determining Commission Jurisdiction Pursuant to Senate Bill 1568").

Notice is required to prevent unknowing violations of the law by new owners who were unaware that certain activities on the real property are subject to the BCDC's permit requirements. The BCDC notes that the Bay is a highly dynamic environment and the shoreline changes over time (see Discussion below). In addition, there is inherent uncertainty in the shoreline position as mapped by the NOS or any agency. The BCDC advises the buyer and other interested parties to contact its office if a more authoritative jurisdictional determination is desired. The BCDC office is located at 50 California Street, Suite 2600, San Francisco, California 94111, and can be reached at (415) 352-3600, or by email to info@bcdc.ca.gov

The BCDC has issued maps for some parts of its jurisdiction, including the San Francisco Bay Plan maps (California Code of Regulations, Title 14, Section 10121) and the Suisun Marsh Plan maps (Nejedly-Bagley-Z'berg Suisun Marsh Preservation Act of 1974). Official maps have not been issued for other parts of the BCDC jurisdiction (McAteer-Petris Act areas) because the Bay is a highly dynamic environment and the shoreline changes over time (in part because the sea level also changes over time). In those areas where official BCDC maps are not available or along the edges of the BCDC's mapped jurisdiction, to meet the disclosure requirements, this Report will indicate that the property "could be within" the BCDC's jurisdiction and that a location-specific jurisdictional determination should be made by consulting the BCDC. This determination of "could be within" the BCDC's jurisdiction was recommended by the BCDC in that certain Memo entitled "Guidance on Determining Commission Jurisdiction Pursuant to Senate Bill 1568" issued in February 2005 and posted on the BCDC website.

PUBLIC RECORDS: San Francisco Bay Plan maps (California Code of Regulations, Title 14, Section 10121) and the Suisun Marsh Plan maps (Nejedly-Bagley-Z'berg Suisun Marsh Preservation Act of 1974) made publicly available by BCDC and that certain Memo entitled "Guidance on Determining Commission Jurisdiction Pursuant to Senate Bill 1568" issued by BCDC in February 2005 and posted on the BCDC website ("BCDC Memo").

REPORTING STANDARD: "WITHIN" shall be reported if any portion of the Property is situated within an areas mapped by BCDC or is within the 100-foot shoreline band. "COULD BE WITHIN" shall be reported if any portion of the Property is situated within one-quarter (1/4) mile of either an area mapped by BCDC or the 100-foot shoreline band. "NOT WITHIN" shall be reported if no portion of the Property is situated within an area that would otherwise be reported as either "WITHIN" or "COULD BE WITHIN".

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CALIFORNIA ENERGY COMMISSION DUCT SEALING & TESTING REQUIREMENT

DISCUSSION: According to the California Energy Commission ("CEC") most California homes have improperly sealed central air conditioning and heating system ducts such that approximately 30 percent of the conditioned air actually leaks outside the home.

Effective July 1, 2014, in order to combat this waste of energy and money, the CEC updated its residential duct sealing and testing requirements in the 2013 Building Energy Efficiency Standards (Title 24). Previously, such duct sealing and testing was required only in certain CEC-designated climate zones when a central air conditioner or furnace is installed or replaced. **The revised standards now make duct sealing and testing mandatory in all California climate zones when such a system is installed or replaced.** Ducts found to leak more than 15 percent or more must be repaired. Once a contractor tests and fixes these ducts, you must have an approved third-party verifier determine that the ducts have been properly sealed. The CEC cautions homeowners that a contractor who fails to obtain a required building permit and fails to test and repair your ducts "is violating the law and exposing you to additional costs and liability." If you do not obtain a permit, you may be required to bring your home into compliance with code requirements for that work and may incur additional penalties and fines that have to be paid prior to selling your home. Remember that you have a duty to disclose whether you obtained required permits for work performed to prospective Buyers and appraisers. Local governments may mandate more stringent requirements.

Please note there are specific alternatives that allow high efficiency equipment and added duct insulation to be installed instead of fixing duct leaks. Please also be advised that there are separate regulations which govern duct insulation levels required by climate zone and HVAC system.

For more information please contact the California Energy Commission or visit the official CEC "2013 Building Energy Efficiency Standards" portal at: <http://www.energy.ca.gov/title24/2013standards/index.html>

PUBLIC RECORD: 2013 Building Energy Efficiency Standards (Title 24).

REPORTING STANDARD: "WITHIN" shall be reported regardless of CEC-designated climate zone pursuant to the revised Title 24 Standards.

COOLING AND HEATING ENERGY-EFFICIENCY ADVISORY

Effective January 1, 2015, new federal energy-efficiency standards apply to the repair and replacement of residential heating, ventilation and air conditioning ("HVAC") systems. The new standards raise the minimum efficiency requirements for air conditioning systems and certain types of heating systems. Energy efficiency is measured by the Seasonal Energy Efficiency Ratio ("SEER"), which compares the amount of cooling (or heating) output by an HVAC system to the amount of energy (electricity or gas) input over its operating season. The higher the system's SEER value, the more energy-efficient it is and the lower the unit cost of cooling (or heating) a home.

For the first time, federal minimum-efficiency standards will vary by region. Prior to 2015 one standard, called SEER 13, applied nationwide. Now, in California, Nevada, Arizona and New Mexico (the Southwestern Region), SEER 13 has been replaced by the more efficient SEER 14 standard. In the Southwestern Region the new rule allows repairs to existing SEER 13-compliant systems. However, in many cases a full system replacement (both the indoor and outdoor unit) will be necessary to make the system compatible, and replacement is allowed only with a SEER 14-compliant unit. The higher standard may increase the replacement cost to the property owner because the SEER 14 efficiency improvements require increased complexity of the new equipment, and the SEER 14 units may not fit in the existing space, requiring structural modifications at the owner's expense. In some cases the SEER 14 standard could double the cost of replacement over the earlier replacement cost. For applicable details and codes, see the California Energy Commission web page at: http://www.energy.ca.gov/title24/2013standards/residential_manual.html (The new federal standards go into effect on January 1, 2015, which is six months after the July 1, 2014, effective date of the 2013 Standards.) Federal energy-efficiency standards are updated from time to time. To determine the current applicable federal standard inquire with a home inspector or other appropriately licensed professional.

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STATEWIDE RIGHT TO FARM DISCLOSURE

DISCUSSION:

California has a "Right to Farm Act" (Civil Code Section 3482.5) to protect farming operations. When agricultural land within the State's agricultural areas is bought and sold, the purchasers are often not made aware of the fact that there are right-to-farm laws. This has led to confusion and a misunderstanding of the actual uses of the land or uses of the surrounding agricultural lands.

In 2008 the State of California enacted Assembly Bill 2881 to limit the exposure of farmers to nuisance lawsuits by homeowners in neighboring developments. The mechanism of this bill is a formal notification of the Buyer, through a "Notice of Right to Farm" in an expert disclosure report that advises the Buyer if the subject property is within one mile of farmland as defined in the bill.

If the seller has actual knowledge of an agricultural operation in the vicinity of the subject property that is not disclosed in this Report, and that is material to the transaction, the seller should disclose this actual knowledge in writing to the Buyer.

PUBLIC RECORD: Based on the most current available version of the "Important Farmland Map" issued by the California Department of Conservation, Division of Land Resource Protection, utilizing solely the county-level GIS map data, if any, available on the Division's Farmland Mapping and Monitoring Program website, pursuant to Section 11010 of the Business and Professions Code, and Section 1103.4 of the California Civil Code.

REPORTING STANDARD: "IN" shall be reported and the "Notice of Right to Farm" provided if any portion of the Property is situated within, or within one mile of, a parcel of real property designated as "Prime Farmland," "Farmland of Statewide Importance," "Unique Farmland," "Farmland of Local Importance," or "Grazing Land" in the public record. "NOT IN" shall be reported if no portion of the Property is within that area.

Some counties, or parts thereof, are not included in the Public Record because they have not been mapped for farmland parcels under this State program. Typically, this is because the county area is public land and not planned for incorporation, or, in the case of San Francisco, the county is entirely incorporated. In those instances, we report "Map Not Available" above, or "Map N/A" in the table of summary determinations at the beginning of this Report.

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NOTICE OF MINING OPERATIONS DISCLOSURE

DISCUSSION: Historically mining operations have been located in remote areas. However, increasing urbanization has resulted in some residential projects being developed near existing mining operations.

California Public Resources Code §2207 requires owners and operators of mining operations to provide annually specific information to the California Department of Conservation ("DOC"), including but not limited to, (i) ownership and contact information, and (ii) the latitude, longitude, and approximate boundaries of the mining operation marked on a specific United States Geological Survey map. The Office of Mining Reclamation ("OMR") is a division of the DOC. Using the mandatory data specified above, OMR provides map coordinate data that can be used by GIS systems to create points representing mine locations ("OMR Maps"). For more information please visit OMR's Mines OnLine Map Viewer (<http://maps.conservation.ca.gov/mol/index.html>).

Effective January 1, 2012, California Civil Code §1103.4 requires the seller of residential property to disclose to a Buyer if the residential property is located with one (1) mile of mining operations as specified on OMR Maps.

Special Notes:

1. This statutory disclosure does not rely on the OMR's "AB 3098 List," a list of mines regulated under the Surface Mining and Reclamation Act of 1975 ("SMARA") that meet provisions set forth under California Public Resources Code §2717(b). The AB 3098 List does not include map coordinate data as required under California Public Resources Code §2207 and may not include all mining operations subject to the "Notice of Mining Operations" disclosure.

2. This "Notice of Mining Operations" disclosure is not satisfied by disclosing abandoned mines. An abandoned mine is NOT an operating mine. California Civil Code §1103.4 is satisfied only by disclosing based on OMR Maps.

PUBLIC RECORD: Mining operations as provided on OMR Maps made publicly available by DOC pursuant to California law.

REPORTING STANDARD: "IN" is reported if any portion of the Property is located within a one (1) mile radius of one or more mining operation(s) identified in the Public Record for which map coordinate data is provided. If "IN", the name of the mining operation(s) as it appears in the Public Record is also reported. "NOT IN" is reported if no portion of the Property is located within a one (1) mile radius of a mining operation specified on OMR Maps.

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Part 4. General Advisories

REGISTERED SEX OFFENDER DATABASE DISCLOSURE REQUIREMENT ("MEGAN'S LAW")

Notice: Pursuant to Section 290.46 of the Penal Code, information about specified registered sex offenders is made available to the public via an Internet Web site maintained by the Department of Justice at www.meganslaw.ca.gov. Depending on an offender's criminal history, this information will include either the address at which the offender resides or the community of residence and ZIP Code in which he or she resides.

DISCUSSION: California law (AB 488), signed by the Governor on September 24, 2004, provides the public with Internet access to detailed information on registered sex offenders. The Sex Offender Tracking Program of the California Department of Justice (DOJ) maintains the database of the locations of persons required to register pursuant to paragraph (1) of subdivision (a) of Section 290.46 of the Penal Code. The online database is updated with data provided by local sheriff and police agencies on an ongoing basis. It presents offender information in 13 languages; may be searched by a sex offender's specific name, zip code, or city/county; provides access to detailed personal profile information on each registrant; and includes a map of your neighborhood.

California Department of Justice Information Sources:

Megan's Law Sex Offender Locator Web Site: <http://www.meganslaw.ca.gov>

California Department of Justice Megan's Law Email Address: meganslaw@doj.ca.gov

Local Information Locations For The Property:

All sheriff's departments and every police department in jurisdictions with a population of 200,000 or more are required to make a CD-ROM available free to the public for viewing. Although not required, many other law enforcement departments in smaller jurisdictions make the CD-ROM available as well. Please call the local law enforcement department to investigate availability.

The following are the law enforcement departments in your county that are REQUIRED to make information available:

Santa Clara County Sheriff's Department	(408) 808-4400
San Jose Police Department	(408) 277-8900

Explanation and How to Obtain Information

For over 50 years, California has required certain sex offenders to register with their local law enforcement agencies. However, information on the whereabouts of the sex offenders was not available to the public until implementation of the Child Molester Identification Line in July 1995. The available information was expanded by California's "Megan's Law" in 1996 (Chapter 908, Stats. of 1996). Megan's Law provides certain information on the whereabouts of "serious" and "high-risk" sex offenders. The law specifically prohibits using the information to harass or commit any crime against the offender. The information on a registered sex offender includes: name and known aliases; age and sex; physical description, including scars, marks and tattoos; photograph, if available; crimes resulting in registration; county of residence; and zip code (from last registration). Accessing the online database requires agreement to the DOJ's terms of use on the web page.

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**GAS AND HAZARDOUS LIQUID TRANSMISSION PIPELINE
DATABASE DISCLOSURE REQUIREMENT**

DISCUSSION: Following a number of pipeline disasters in the U.S., such as the 2010 San Bruno explosion in Northern California, there is an increased awareness of the potential dangers associated with underground transmission pipelines. As a result, the California Legislature unanimously passed Assembly Bill 1511 (Bradford), signed by Governor Jerry Brown on July 13, 2012. This law, which becomes effective January 1, 2013, is chaptered as California Civil Code Section 2079.10.5 and mandates the disclosure of the following notice to Buyers:

**NOTICE REGARDING GAS AND HAZARDOUS LIQUID
TRANSMISSION PIPELINES**

This notice is being provided simply to inform you that information about the general location of gas and hazardous liquid transmission pipelines is available to the public via the National Pipeline Mapping System (NPMS) Internet Web site maintained by the United States Department of Transportation at <http://www.npms.phmsa.dot.gov/>. To seek further information about possible transmission pipelines near the property, you may contact your local gas utility or other pipeline operators in the area. Contact information for pipeline operators is searchable by ZIP Code and county on the NPMS Internet Web site. (California Civil Code Section 2079.10.5(a))

Civil Code Section 2079.10.5(c) adds, "Nothing in this section shall alter any existing duty under any other statute or decisional law imposed upon the seller or broker, including, but not limited to, the duties of a seller or broker under this article, or the duties of a seller or broker under Article 1.5 (commencing with Section 1102) of Chapter 2 of Title 4 of Part 4 of Division 2."

Such "existing duties" include the disclosure of actual knowledge about a potential hazard, such as may be created by the delivery of a letter from the local utility company informing the seller that a gas transmission pipeline exists within 2,000 feet of the Property.

Beginning on the law's January 1, 2013, effective date, except where such "existing duties" apply, "Upon delivery of the notice to the transferee of the real property, the seller or broker is not required to provide information in addition to that contained in the notice regarding gas and hazardous liquid transmission pipelines in subdivision (a). The information in the notice shall be deemed to be adequate to inform the transferee about the existence of a statewide database of the locations of gas and hazardous liquid transmission pipelines and information from the database regarding those locations." (California Civil Code Section 2079.10.5(b))

The disclosure of underground transmission pipelines helps the parties in a real estate transaction make an informed decision and is in the best interest of the public. Buyer should be aware that, according to the NPMS Internet Web site, gas and/or hazardous liquid transmission pipelines are known to exist in 49 of California's 58 counties, the exceptions being in rural mountainous parts of the state. Every home that utilizes natural gas is connected to a gas "distribution" pipeline, which is generally of smaller size and lower pressure than a transmission pipeline.

For More Information

To investigate whether any pipeline easement (right-of-way) exists on the Property, Buyer should review the Preliminary Title Report. Buyer should consult an attorney for interpretation of any law. This notice is for information purposes only and should not be construed as legal advice.

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METHAMPHETAMINE CONTAMINATED PROPERTY DISCLOSURE ADVISORY

DISCUSSION: According to the "Methamphetamine Contaminated Property Cleanup Act of 2005" a property owner must disclose in writing to a prospective buyer if local health officials have issued an order prohibiting the use or occupancy of a property contaminated by meth lab activity. The owner must also give a copy of the pending order to the buyer to acknowledge receipt in writing. Failure to comply with these requirements may subject an owner to, among other things, a civil penalty up to \$5,000. Aside from disclosure requirements, this new law also sets forth procedures for local authorities to deal with meth-contaminated properties, including the filing of a lien against a property until the owner cleans up the contamination or pays for the cleanup costs.

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MOLD ADVISORY

DISCUSSION: The Buyer is hereby advised that naturally occurring molds may exist both inside and outside of any home and may not be visible to casual inspection. Persons exposed to extensive mold levels can become sensitized and develop allergies to the mold or other health problems. Extensive mold growth can damage a structure and its contents. All prospective purchasers of residential and commercial property are advised to thoroughly inspect the Property for mold. Be sure to inspect the Property inside and out for sources of excess moisture, current water leaks and evidence of past water damage.

As part of a buyer's physical inspection of the condition of a property, the buyer should consider engaging an appropriate and qualified professional to inspect and test for the presence of harmful molds and to advise the buyer of any potential risk and options available. This advisory is not a disclosure of whether harmful mold conditions exist at a property or not. No testing or inspections of any kind have been performed by The Company. Any use of this form is acknowledgement and acceptance that The Company does not disclose, warrant or indemnify mold conditions at a property in any way and is not responsible in any way for mold conditions that may exist. Information is available from the California Department of Health Services Indoor Air Quality Section fact sheet entitled, "Mold in My Home: What Do I Do?" The fact sheet is available at <https://archive.cdph.ca.gov/programs/IAQ/Pages/IndoorMold.aspx> or by calling (510) 620-3620.

The Toxic Mold Protection Act of 2001 requires that information be developed regarding the potential issues surrounding naturally occurring molds within a home. Information was written by environmental authorities for inclusion in the *Residential Environmental Hazards: A Guide for Homeowners, Buyers, Landlords and Tenants* booklet developed by the California Environmental Protection Agency and the Department of Health Services. It is found in Chapter VII of that booklet, and includes references to sources for additional information.

For local assistance, contact your county or city Department of Health, Housing, or Environmental Health.

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RADON ADVISORY

DISCUSSION: For its Radon Advisory, JCP-LGS uses the updated assessment of radon exposure published in 1999 by the Lawrence Berkeley National Laboratory (LBNL) and Columbia University, under support from the U.S. Environmental Protection Agency (EPA), the National Science Foundation, and the US Department of Energy (published online at <http://www2.lbl.gov/Science-Articles/Archive/radon-risk-website.html>). Based on this recent assessment, JCP-LGS radon advisory is as follows:

All of California's 58 counties have a predicted median annual-average living-area concentration of radon below 2.0 pCi/L (picocuries per liter of indoor air) -- which is well below the EPA's guideline level of 4 pCi/L and equivalent to the lowest hazard zone (Zone 3) on the 1993 EPA Map of Radon Zones.

The "median concentration" means that half of the homes in a county are expected to be below this value and half to be above it. All houses contain some radon, and a few houses will contain much more than the median concentration. **The only way to accurately assess long-term exposure to radon in a specific house is through long-term testing (sampling the indoor air for a year or more). The EPA recommends that all homes be tested for radon.** Columbia University's "Radon Project" website offers help to homeowners in assessing the cost vs. benefit of testing a specific house for radon or modifying it for radon reduction (see <http://www.stat.columbia.edu/~radon/>).

NOTE: JCP-LGS does not use the EPA's 1993 map for advisory purposes because that map shows "short-term" radon exposure averaged by county. It was based on "screening measurements" that were intentionally designed to sample the worst-case conditions for indoor air in US homes--using spot checks (sampling for just a few days), in the poorest air quality (with sealed doors and windows), at the worst time of the year (winter), in the worst part of the house (the basement, if one was available). These short-term, winter, basement measurements are both biased and variable compared to long-term radon concentrations (averaged over a year) in the living area of a house. Long-term concentrations are a more accurate way to judge the long-term health risk from radon. For the above reasons, the EPA expressly disclaims the use of its 1993 map for determining whether any house should be tested for radon, and authorizes no other use of its map for property-specific purposes. For additional information about EPA guidelines and radon testing, see "Chapter VII--Radon", in the California Department of Real Estate's *Residential Environmental Hazards: A Guide for Homeowners, Homebuyers, Landlords and Tenants*.

ENDANGERED SPECIES ACT ADVISORY

DISCUSSION: The Federal Endangered Species Act of 1973 ("ESA"), as amended, requires that plant and animal species identified and classified ("listed") by the Federal government as "threatened" or "endangered" be protected under U.S. law. Areas of habitat considered essential to the conservation of a listed species may be designated as "critical habitat" and may require special management considerations or protection. All threatened and endangered species -- even if critical habitat is not designated for them -- are equally afforded the full range of protections available under the ESA.

In California alone, over 300 species of plants and animals have been designated under the ESA as threatened or endangered, and over 80 species have critical habitats designated for them. Most California counties are host to a dozen or more protected species and, in many cases, 10 or more species have designated critical habitats within a county.

ADVISORY: An awareness of threatened and endangered species and/or critical habitats is not reasonably expected to be within the actual knowledge of a seller.

No federal or state law or regulation requires a seller or seller's agent to disclose threatened or endangered species or critical habitats, or to otherwise investigate their possible existence on real property. Therefore, Buyer is advised that, prior to purchasing a vacant land parcel or other real property, Buyer should consider investigating the existence of threatened or endangered species, or designated critical habitats, on or in the vicinity of the Property which could affect the use of the Property or the success of any proposed (re)development.

FOR MORE INFORMATION: Complete and current information about the threatened and endangered species in California that are Federally listed in each county -- including all critical habitats designated there -- is available on the website of the U.S. Fish & Wildlife Service, the Federal authority which has enforcement responsibility for the ESA.

U.S. Fish & Wildlife Service Endangered Species Database (TESS)

http://ecos.fws.gov/tess_public/

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ABANDONED MINES ADVISORY

DISCUSSION: According to the California Department of Conservation, Office of Mine Reclamation, since the Gold Rush of 1849, tens of thousands of mines have been dug in California. Many were abandoned when they became unproductive or unprofitable. The result is that California's landscape contains many thousands of abandoned mines, which can pose health, safety, or environmental hazards on and around the mine property. Mines can present serious physical safety hazards, such as open shafts or adits (mine tunnel), and they may create the potential to contaminate surface water, groundwater, or air quality. Some abandoned mines are such massive problems as to earn a spot on the Federal Superfund environmental hazard list.

No California law requires the disclosure of abandoned mines in a real estate transaction, unless the existence of an abandoned mine is within the actual knowledge of the Seller and is deemed to be a fact material to the transaction.

The Office of Mine Reclamation (OMR) and the U.S. Geological Survey maintain a database of abandoned mines -- however, it is known to be incomplete and based on maps that are often decades out of date. Many mines are not mapped because they are on private land. The OMR warns that, **"Many old and abandoned mines are not recorded in electronic databases, and when they are, the information may not be detailed enough to accurately define, differentiate or locate the mine feature, such as a potentially hazardous vertical shaft or horizontal adit or mine waste."** (See reference below.)

Accordingly, this Report does not contain an abandoned mines disclosure from any government database or map or any other source, in order to protect the seller from liability for non-disclosure of unrecorded abandoned mines.

Parties concerned about the possible existence or impact of abandoned mines in the vicinity of the Property are advised to retain a State-licensed geotechnical consultant to study the site and issue a report. Other sources of information include, but are not limited to, the State Office of Mine Reclamation at (916) 323-9198 (website: <http://www.conservation.ca.gov/OMR>), and the Engineering, Planning or Building Departments in the subject City and County.

FOR MORE INFORMATION: For more information visit the State Office of Mine Reclamation's website at: http://www.conservation.ca.gov/omr/abandoned_mine_lands/Pages/index.aspx

OIL & GAS WELL ADVISORY

California is currently ranked fourth in the nation among oil producing states. Surface oil production is concentrated mainly in the Los Angeles Basin and Kern County, and in districts elsewhere in the state. In recent decades, real estate development has rapidly encroached into areas where oil production has occurred. Because the state's oil production has been in decline since the 1980's, thousands of oil and gas wells have been shut down or abandoned, and many of those wells are in areas where residential neighborhoods now exist.

According to the California Department of Conservation ("DOC"), to date, about 230,000 oil and gas wells have been drilled in California and around 105,000 are still in use. The majority of remaining wells have been sealed ("capped") under the supervision of the DOC's Geologic Energy Management Division (CalGEM). A smaller number have been abandoned and have no known responsible operator -- these are called "orphan" wells. The state has a special fund that pays the cost of safely capping orphan wells, however, that program is limited in its scope and progress.

Buyer should be aware that, while the DOC database is the most comprehensive source available for California oil and gas well information, the DOC makes no warranties that the database is absolutely complete, or that reported well locations are known with absolute accuracy.

For More Information

For a search of the state's databases of oil and gas wells and sites of known environmental contamination on or near the Property, please obtain the JCP-LGS Residential Environmental Report. For general information, visit the California Department of Conservation, Geologic Energy Management Division (CalGEM) at <https://www.conservation.ca.gov/CalGEM/>.

JCP-LGS Residential Resale Property Disclosure Reports

Natural Hazard Disclosure (NHD) Report

For SANTA CLARA County

Property Address: 17200 LOS ROBLES WAY
LOS GATOS, SANTA CLARA COUNTY, CA 95030
("Property")

APN: 532-36-076
Report Date: 03/08/2021
Report Number: 2814395

ELECTROMAGNETIC FIELD ("EMF") ADVISORY

According to the National Cancer Institute ("NCI") a 1979 study pointed to a possible association between living near electric power lines and childhood leukemia. More recent studies have not found an association or have found one only for those children who lived in homes with very high levels of magnetic fields present in few residences. The NCI also notes that a majority of epidemiological studies have also shown no relationship between breast cancer in women and exposure to extremely low frequency EMFs ("ELF-EMF"s) in the home, although a few individual studies have suggested an association; only one reported results that were statistically significant. Sources of extremely low frequency ELF-EMF include power lines, electrical wiring, and electrical appliances such as shavers, hair dryers, and electric blankets. For more information please visit the NCI Electromagnetic Fields and Cancer portal at <https://www.cancer.gov/about-cancer/causes-prevention/risk/radiation/electromagnetic-fields-fact-sheet>

Weighing in on the same matter The World Health Organization ("WHO") states, "Based on a recent in-depth review of the scientific literature, the WHO concluded that current evidence does not confirm the existence of any health consequences from exposure to low level electromagnetic fields. However, some gaps in knowledge about biological effects exist and need further research." WHO also asserts, "Despite many studies, the evidence for any effect remains highly controversial. However, it is clear that if electromagnetic fields do have an effect on cancer, then any increase in risk will be extremely small. The results to date contain many inconsistencies, but no large increases in risk have been found for any cancer in children or adults." For more information please visit WHO's EMF Q&A website at <https://www.who.int/news-room/q-a-detail/electromagnetic-fields>

The National Institute of Environmental Health Science ("NIEHS") Electric & Magnetic Fields web page at <https://www.niehs.nih.gov/health/topics/agents/emf/index.cfm> states, "If you are concerned about EMFs emitted by a power line or substation in your area, you can contact your local power company to schedule an on-site reading. You can also measure EMFs yourself with the use of a gaussmeter, which is available for purchase online through a number of retailers."

For further information and additional reading please visit:

- United States Environmental Protection Agency ("U.S. EPA")
<https://www.epa.gov/radtown/electric-and-magnetic-fields-power-lines>
- The National Institute of Environmental Health Sciences ("NIEHS") & National Institutes of Health ("NIH")
https://www.niehs.nih.gov/health/materials/electric_and_magnetic_fields_associated_with_the_use_of_electric_power_questions_and_answers_english_508.pdf

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TSUNAMI MAP ADVISORY

DISCUSSION: The California Emergency Management Agency (CalEMA), the University of Southern California Tsunami Research Center (USC), and the California Geological Survey (CGS) have prepared maps that depict areas of maximum tsunami inundation for all populated areas at risk to tsunamis in California (20 coastal counties). The maps were publicly released in December 2009 with the stated purpose that the maps are to assist cities and counties in identifying their tsunami hazard and developing their coastal evacuation routes and emergency response plans only.

These maps specifically contain the following disclaimer:

Map Disclaimer: This tsunami inundation map was prepared to assist cities and counties in identifying their tsunami hazard. It is intended for local jurisdictional, coastal evacuation planning uses only. This map, and the information presented herein, **is not a legal document and does not meet disclosure requirements for real estate transactions nor for any other regulatory purpose.** The California Emergency Management Agency (CalEMA), the University of Southern California (USC), and the California Geological Survey (CGS) make no representation or warranties regarding the accuracy of this inundation map nor the data from which the map was derived. Neither the State of California nor USC shall be liable under any circumstances for any direct, indirect, special, incidental or consequential damages with respect to any claim by any user or any third party on account of or arising from the use of this map.

A tsunami is a series of ocean waves or surges most commonly caused by an earthquake beneath the sea floor. These maps show the maximum tsunami inundation line for each area expected from tsunamis generated by undersea earthquakes and landslides in the Pacific Ocean. Because tsunamis are rare events in the historical record, the maps provide no information about the probability of any tsunami affecting any area within a specific period of time.

Although these maps may not be used as a legal basis for real estate disclosure or any other regulatory purpose, the CGS has, however, provided diagrams of the maps online which the public can view. To see a maximum tsunami inundation map for a specific coastal community, or for additional information about the construction and/or intended use of the tsunami inundation maps, visit the websites below:

State of California Emergency Management Agency, Earthquake and Tsunami Program:
<http://myhazards.calema.ca.gov/>

University of Southern California -- Tsunami Research Center:
<http://www.usc.edu/dept/tsunamis/2005/index.php>

State of California Geological Survey Tsunami Information:
http://www.conservation.ca.gov/cgs/geologic_hazards/Tsunami/index.htm

National Oceanic and Atmospheric Agency Center for Tsunami Research (MOST model):
<http://nctr.pmel.noaa.gov/time/background/models.html>

**JCP-LGS Residential Resale Property Disclosure Reports
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RESIDENTIAL FIREPLACE DISCLOSURE

Residential wood burning is the leading source of wintertime air pollution in the Bay Area and studies have confirmed there are significant health impacts from exposure to fine particulate matter found in wood smoke. The Bay Area Air Quality Management District ("BAAQMD") established the Wood Burning Devices (Wood Smoke Rule), Regulation 6, Rule 3 to reduce wintertime smoke pollution and protect public health. The Wood Smoke Rule requires anyone selling, renting or leasing a property in the Bay Area to disclose the potential health impacts from air pollution caused from burning wood. Fine particulate matter, also known as PM2.5, can travel deep into the respiratory system, bypass the lungs and enter the blood stream. Exposure may cause short term and long term health effects, including eye, nose and throat irritation, reduced lung function, asthma, heart attacks, chronic bronchitis, cancer and premature deaths. Exposure to fine particulates can worsen existing respiratory conditions. High PM2.5 levels are associated with increased respiratory and cardiovascular hospital admissions, emergency department visits, and even deaths. Children, the elderly and those with pre-existing respiratory or heart conditions are most at risk from negative health effects of PM2.5 exposure. The Buyer should consult with a licensed professional to inspect, properly maintain, and operate a wood burning stove or fireplace insert according to manufacturer's specifications to help reduce wood smoke pollution. The Air District encourages the use of cleaner and more efficient, non-wood burning heating options such as gas-fueled or electric fireplace inserts to help reduce emissions and exposure to fine particulates.

When the BAAQMD issues a Winter Spare the Air Alert during the winter season from November 1 through the end of February, it is illegal to burn wood, manufactured fire logs, pellets or any solid fuels in fireplaces, wood stoves or outdoor fire pits. To check when a Winter Spare the Air Alert is issued and it is illegal to burn wood, please call 1-877-4NO-BURN or visit www.baaqmd.gov or www.sparetheair.org.

END OF NATURAL HAZARD DISCLOSURE REPORT SECTION
See Terms and Conditions at end of this Report.

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TERMS and CONDITIONS

ACCEPTANCE OR USE OF THE WEBSITE, CUSTOMER SERVICE, OR ANY REPORT CONSTITUTES APPROVAL AND ACCEPTANCE OF THESE TERMS AND CONDITIONS AS STATED HEREIN.

The Website (defined below), Customer Service (defined below) and any Report (defined below) are subject to each of the following Terms and Conditions. Any User (defined below) accessing, using, or reviewing the Website, Customer Service, or any Report, including any portion thereof, agrees that the Website, Customer Service and Reports are subject to the following Terms and Conditions, and such User agrees to be bound by these Terms and Conditions, regardless of whether the User ordered a Report on the Website or over the telephone through Customer Service, and regardless of whether the User paid for the Report. Use of any kind of the Website or a Report by any User constitutes acceptance of these Terms and Conditions, which are incorporated by this reference into every Report.

A Report is not an insurance policy.

A Report is made for the Property (defined below) and solely for the transaction for which it was originally purchased ("Transaction"). The Property shall not include any property beyond the boundaries of the real property described in a Report. The Property shall not include any structures (whether located on the Property, or not), easements, or any right, title, interest, estate, or easement in any abutting streets, roads, alleys, lanes, ways, or waterways.

IMPORTANT NOTICE: Transferor(s) and transferee(s) shall read a complete Report in its entirety before the close of escrow. A "Signature Page" or "Summary Pages" document may be included in the electronic delivery of the Report. Those documents do not replace the complete Report or remove the need to read a complete Report, and do not remove the requirement to disclose. The Signature Page and Summary Pages documents are subject to these Terms and Conditions.

1) Definitions.

- a. **"Company"** shall mean First American Professional Real Estate Services, Inc., a California corporation, operating through its Natural Hazard Disclosure division, "JCP-LGS."
- b. **"Company Content"** shall mean all editorial content, graphics, data, and information contained in the Report or on the Website, any portion thereof, including the selection, coordination, and arrangement of the editorial content, graphics, data, and information on the Website, and the hierarchy of the Website.
- c. **"Customer Service"** shall mean Company's customer service telephone service department or representatives.
- d. **"User"** shall mean any person or entity.
- e. **"Property"** shall mean the real property specifically described in a Report.
- f. **"Report"** shall mean any residential disclosure report prepared by the Company, including but not limited to a JCP-LGS Residential Property Disclosure Report, available through the Website or Customer Service.
- g. **"Website"** shall mean the www.fanhd.com website, the www.disclosures.com website, the www.reodisclosure.com website, and any other individual sites as may be added to, or available through, the foregoing or any other Company website, including, without limitation, the data and computer code, underlying, contained on, or transmitted from the Website, a Report, and the Company Content. Any reference herein to the Website shall be to each individual item and also to the Website as a whole.

2) **No Third Party Reliance on Any Report.** Only the transferor(s) and transferee(s), and their agents/brokers, if any, involved in the Transaction (collectively, the "Recipients") may use and rely on a Report and only after they have paid in full for the Report. While disclosures made on the Natural Hazard Disclosure Statement in a Report may indicate certain risks to the Property, the disclosures are only "...between the transferor, the transferor's agents, and the transferee, and shall not be used by any other party, including, but not limited to, insurance companies, lenders, or governmental agencies, for any purpose." Cal. Civil Code section 1103.2, subdivision (g).

3) **Seller and Seller's Agent's Responsibility of Full Disclosure.** Recipients are obligated to make disclosures, and always disclose material facts, that are within their actual knowledge.

4) **Scope of Any Report.** A Report is limited to determining whether the Property is located in those specified natural hazard zones and property tax districts, and in proximity to those specified environmental sites (depending on the report product ordered), as defined in the Report. The Report is not a geologic report or a land survey, and no site inspection has been made in producing the Report. Company makes no determination, expresses no opinion or view, and assumes no responsibility in any Report concerning the right, entitlement, or ability to develop or improve the Property. Company has no information concerning whether the Property can be developed or improved. No determination is made, and no opinion is expressed or intended by any Report concerning structures or soils on or outside of the Property, including, without limitation, habitability of structures or the Property, suitability of the Property for construction or improvement, potential for soil settlement, drainage, soil subsidence, or other soil or site conditions. The Recipient(s) is advised to consult the local Planning Department to determine whether factors beyond the scope of any Report may limit the transferee(s) ability to use or improve the Property.

The Report is not a title report, and no determination is made and no opinion is expressed, or intended, by the Report as to title to the Property or liens against the Property, recorded or otherwise, or whether the Property is comprised of legal lots in conformance with the California Subdivision Map Act or local ordinances. The Report is not a property inspection report, and no determination is made and no opinion is expressed, or intended, by the Report concerning architectural, structural, mechanical, engineering, or legal matters, or the marketability or value of the Property. Company has not conducted any testing or physical or visual examination or inspection of the Property, nor is the Report a substitute for any such testing, physical or visual examination, or inspection.

5) **Tax and Environmental Disclosures (if included in Report).** No determination is made and no opinion is expressed, or intended, by a Report concerning the existence of property tax liabilities, or the existence of hazardous or toxic materials or substances, or any other defects, on, under, or in proximity to the Property, unless specifically described in the Report.

6) **Company Database Updates.** To the extent databases are used in preparing a Report, each database is updated by the responsible agency at various intervals. Updates for a database are determined by the responsible agency and may be made at any time and without notice. The Company maintains an update schedule

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and makes reasonable efforts to use updated information. For these reasons, the Company reports information as of the date when the database was last updated by the Company. That date is specified as the "Database Date" for each database. The Tax Report discloses Mello Roos Community Facilities Districts, 1915 Bond Act Assessments and PACE assessments documented in the county's Fiscal Year annual secured property tax roll. The Report may disclose PACE contracts where PACE taxes were first assessed or liens were recorded after the Fiscal Year secured property tax roll, where recordation data is available to JCP-LGS. To discover a PACE lien on the Property executed more recently, the buyer should read the preliminary title report and obtain and read all exceptions listed therein. Note that, in the title report, lien exceptions are named as recorded with the county; therefore, a PACE lien may be listed under a name that is not obvious.

- 7) **Statutory and Additional Disclosures, Advisories, and Local Addenda (if included in Report).** No determination is made and no opinion is expressed, or intended, by a Report concerning the need to purchase earthquake or flood insurance for the Property. In preparing the Report, Company accurately reported on information contained in public maps and databases ("Government Records"). Company reviewed and relied upon those Government Records specifically identified and described in the Report. Company has not reviewed or relied upon any Government Records that are not specifically identified in the Report. Company also has not reviewed any plat maps, survey maps, surveyor maps, assessor maps, assessor parcel maps, developer maps, or engineering maps, whether or not such maps have been recorded. No determination is made and no opinion is expressed, or intended, by the Report concerning any matters identified in Government Records that were not reviewed by Company. Local Addenda, where applicable, are included "AS IS" as an accommodation to the local real estate board that provided the content; Company assumes no responsibility for the accuracy of any information included in the Local Addenda.
- 8) **FEMA Flood Determination Certificate (if accompanying the Report).** No determination is made, and no opinion is expressed or intended by a Report concerning the requirement for or cost of flood insurance on the Property. Recipient(s) understands that a lender may require flood insurance to secure its loan collateral independent of whether FEMA may require flood insurance under the National Flood Insurance Program on a federally backed mortgage. The FEMA Flood Determination Certificate ("Flood Certificate") that may accompany the Report, is produced by a third-party expert certified by FEMA to provide Flood Certificates. Company assumes no liability for errors in that third-party flood determination.
- 9) **Changes to Government Record after Report Date.** A Report is issued as of the Report Date identified in the Report. Company shall have no obligation to advise any Recipient of any information learned or obtained after the Report Date even if such information would modify or otherwise affect the Report. Subsequent to Company's acquisition of Government Records, changes may be made to said Government Records, and Company is not responsible for advising Recipients of any changes. Company will update the Report upon request and at no charge during the transaction process for which the Report was issued, but not to exceed one year from the date of the Report. Likewise, Company is not liable for any impact on the Property that any change to the Government Records may have.
- 10) **Government Record Sources.** Company relies upon the Government Records specifically identified in a Report without conducting an independent investigation of their accuracy. Company assumes no responsibility for the accuracy of the Government Records identified in the Report. Company makes no warranty or representation of any kind, express or implied, with respect to the Report. Company expressly disclaims and excludes any and all other express and implied warranties, including, without limitation, warranties of merchantability or fitness for a particular purpose. The Company Report is "AS IS."
- 11) **Not for Credit Purposes.**

The Company Content available in any Report has not been collected for credit purposes and is not intended to be indicative of any consumer's credit worthiness, credit standing, credit capacity, or other characteristics listed in Section 1681(a) of the Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq. The Report shall not be used:

- a. as a factor in establishing an individual's eligibility for credit or insurance,
- b. in connection with underwriting individual insurance,
- c. in evaluating an individual for employment purposes,
- d. in connection with a determination of an individual's eligibility for a license or other benefit granted by a governmental authority,
- e. in any way that would cause the Report to constitute a "consumer report" under the Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq., or
- f. in any other manner that would cause such use of the Report to be construed as a consumer report by any pertinent governmental authority.

12) Limitation of Company's Liability

- a. Company is not responsible for:
 - Any inaccuracies or incompleteness of the information in the Public Records.
 - Inaccurate address information provided for the Property.
 - Any other information not contained in the Public Records as of the Report Date.
 - Any information which would be disclosed by a physical inspection of the Property.
 - Any information known by you, a Recipient, a User, the transferor or transferee, or their agents/brokers.
 - The health or risk to humans or animals that may be associated with any of the disclosed hazards.
 - The costs of investigating or remediating any of the disclosed hazards.
- b. In no event shall Company or its data suppliers be liable for any damages resulting from the inability or failure to access or interface with the Website or Customer Service.
- c. Except as otherwise expressly set forth in these Terms and Conditions, Company's total liability and responsibility to all Users accessing the Website, Customer Service, or any Report collectively for any and all liabilities, causes of action, claim or claims, including, but not limited to, claims for breach of contract or negligence, shall be for actual proven damages only caused directly by Company's error. In no event shall Company's total liability exceed the difference between the amount actually paid for the Property and the fair market value on the date of the disclosure, as measured by a retrospective appraisal performed by - an MAI Designated Member of the Appraisal Institute specializing in the subject property category (e.g., residential, commercial or vacant land). Company expressly disclaims any liability for Recipients' or Users' indirect, incidental and/or consequential damages, including, without limitation, lost profits, even if such damages are foreseeable, and you, User and Recipients hereby waive and release any right to assert a claim against Company for such amounts.
- d. **Product and Service Claims.** User shall provide prompt notice to Company, and a reasonable opportunity to cure, any known error, omission or mistake that may result in a claim on products or services provided under these Terms and Conditions, prior to making a claim against the Company. In addition, User shall

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use their best efforts to mitigate any losses resulting from any products or services provided pursuant to these Terms and Conditions. If User does not perform according to the requirements of this section, Company will not be liable. User also must provide sufficient documentation, as deemed appropriate by Company, to evidence any out-of-pocket, actual monetary loss.

- e. **Links.** Where Company provides hypertext links to other Internet websites on the Website, or in any Report, the Company does so for informational purposes only, and such links are not endorsements by Company of any products or services on such sites. Company shall not accept, and shall not incur, any liability for such products or services and makes no endorsement or approval of the same.

13) Reporting of Risk Elements for Condominium Projects, Planned Unit Developments, and Other Properties with Common or Undivided Interests ("Common Interests") Unless otherwise noted, this report is based solely on the real Property referenced by the Property's Assessor's Parcel Number ("APN"). An APN whose boundary does not include all Common Interests associated with the parcel will generate a report which does not identify the natural hazards relating to the Common Interests that extend beyond the APN parcel boundary. Accordingly, it is imperative that you consult with the property's homeowners association(s) to determine those risks.

14) User Account and Information.

- a. To obtain and use a Report, User must order the Report through the Website or over the telephone through Customer Service or by email. To order the Report online, User must register for an account on the Website and provide information required in the Website registration form. As part of that registration, User agrees to accurately furnish all contact and other information requested by Company and notify Company immediately of any change in the information.
- b. Company reserves the right to refuse or reject any request to create an account for any or no reason at Company's sole discretion. User solely is responsible for their account, contact information and other information made available through User's account or otherwise via the Website. User shall use reasonable care to protect the confidentiality of their account log-in information and will not share it with any other person or entity. User will be entirely responsible for the conduct of any person using their account information to access the Website, Customer Service, or any Report.
- c. User only shall access the Website using a password or other security mechanism to prevent unauthorized access. Sharing of User access is prohibited, and any automation of accessing information is strictly prohibited unless expressly authorized in writing by Company. It is User's sole responsibility to maintain the confidentiality of all usernames and passwords, and User shall be responsible for all charges relating to the use of said usernames and passwords whether or not authorized by User. In no event shall User use the Website, Customer Service, or any Report for illegal purposes or in any manner that is defamatory, libelous, unlawfully threatening or unlawfully harassing, or that otherwise violates any federal, state or local statute, law or regulation, for debt collection, skip tracing, or electronic telephone directory assistance or otherwise breaches or violates these Terms and Conditions.

15) Confidentiality. User acknowledges that the Website and any Report contain valuable commercial products, the development of which has involved the expenditure of substantial time and money. User shall take appropriate measures and shall initiate strict security measures to prevent the accidental or otherwise unauthorized use or release of any and all proprietary and confidential information of the Company and any third parties associated with the Report or provided through the Website or Customer Service.

16) License to Use Website, Customer Service, and Any Report. Subject to User's compliance with these Terms and Conditions, Company grants User a limited, non-exclusive, revocable, non-assignable, personal and non-transferable license to access and make use of the Website, Customer Service, and any Report solely for the purposes specified in these Terms and Conditions, and not for any other purpose whatsoever. The foregoing license does not include any resale or commercial use of the Website, Customer Service, Report, or Company Content obtained from the Website, Customer Service, or any Report. The Website, Report, and the Company Content therein, and any portion thereof, may not be reproduced, duplicated, copied, sold, resold, visited, or otherwise exploited for any commercial purposes without Company's express written consent. This license does not include any derivative use of this Website or the Report, or any Company Content therein nor any use of data mining, robots, or similar data gathering and extraction tools. User may not frame or utilize framing techniques to enclose any trademark, logo, or other proprietary information (including images, text, page layout, or form) of the Website, the Report or the Company Content without express written consent of the Company. User may not use any meta tags or any other "hidden text" or trademarks without the express written consent of the Company. Any unauthorized use terminates the permission or license granted by the Company.

17) Use of the Website, Customer Service, and Report. User acknowledges and agrees that their use of and access to the Website, Customer Service, and any Report may be logged and monitored. User agrees that Company controls the terms of all access to, and use of, the Website (including any upgrades, modifications or updates thereto), Customer Service, and all products, services, and materials contained therein that are delivered by means of the Website, including the Reports, and all third-party products and information and data that may be included therein. The Company reserves the right to revise or alter the Website, Customer Service, the Reports, and the provisions of these Terms and Conditions at any time, in its sole discretion. By accessing or using the Website, Customer Service, or a Report, User agrees not to use the Website, Customer Service, or Report in any way that:

- is unlawful, fraudulent, tortious, or in any other manner Company deems in its sole discretion to be inappropriate or impermissible;
- may harm Company, any Recipient, or any other person or entity;
- violates or infringes the rights of the Company or any third party;
- gains or tries to gain unauthorized access to the Website, Customer Service, Company's computers and networks, any Report, or the Company's data, or that otherwise modifies or interferes with the permitted use or operation of the Website or Customer Service, or the permitted use of the Report;
- imposes an unreasonable or disproportionately large load on Company's infrastructure, including but not limited to transmitting spam or using other unsolicited communications or techniques;
- repurposes, copies, excerpts, disassembles, decompiles, manipulates, alters, damages, or deletes any Company Content or removes or modifies any copyright or other intellectual property notices that appear on the Website or any Report;
- contains computer viruses or other disruptive, damaging or harmful files or programs; or
- otherwise violates these Terms and Conditions, or any other terms, guidelines, or policies provided by Company.

In addition, User represents and warrants that:

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- the information and other content that User provides using the Website, Customer Service, or Report does not infringe, violate, misappropriate or otherwise conflict with the rights of the Company or any third party; complies with all applicable local, state, national, and other laws, rules and regulations; and does not violate these Terms and Conditions;
- User will use their true legal name, address, electronic mail address, and only provide true, accurate and complete information on the Website;
- User will not impersonate another party or misrepresent or falsify their affiliation with another person, such as by using another user name, password or other account information or another name, likeness, image or photograph, or using fictitious personal or address information;
- User is at least 18 years of age, or the legal age of majority where User resides;
- User has all requisite rights and authority to use the Website, Customer Service, and Report, and to enter into these Terms and Conditions; and
- the performance of User's obligations under these Terms and Conditions will not violate, conflict with, or result in a default under any other agreement, including confidentiality agreements between User and third parties.

18) User Content. User hereby represents and warrants that any content that they upload to the Website, if permitted, or content that User uses in connection with any Report shall not be used in any manner that is defamatory, libelous, unlawfully threatening or unlawfully harassing, and does not and shall not infringe upon or misappropriate any rights, including, without limitation, intellectual property rights, proprietary rights or confidentiality rights, or rights of publicity or privacy of any third parties or the Company, and that such content is free of worms, viruses, Trojan Horses and other disabling code. For the avoidance of doubt, "content" as used in this section in connection with the User shall be construed broadly so as to include, but not be limited to, all materials, documents, data, information or other materials that User may upload to the Website or use in connection with any Report.

19) Intellectual Property.

- Unless otherwise provided, Company owns the copyrights, trademarks, service marks, and trade dress rights to all materials and content displayed on and from the Website and any Report (including visual interfaces, interactive features, graphics, designs, databases and their data, computer code, products, software and all other elements and components of the Website and Report). User may not reproduce, repurpose, modify, excerpt, create derivative works, display, frame, perform, publish, distribute, sell, disseminate, transmit, broadcast, sell, or circulate any such materials or content, including, without limitation, the Report or Website, or the contents thereof, to any third party (including displaying or distributing the material using a third-party website) without Company's prior written consent.
- Copyrights.** The Website and any Report are owned and copyrighted by Company. No ownership rights are being granted to User by these Terms and Conditions. Subject to the limited license provided in these Terms and Conditions, Company reserves all rights in and to Website and any Report, including, but not limited to, the exclusive rights under copyright and other intellectual property and the right to grant further licenses. User shall only use the Website as specifically stated herein. Company and its licensors reserve and retain all copyright, intellectual property and other proprietary rights in and to Company Content, including without limitation, all rights in any public information that may have been gathered, including as a compilation. All Company Content is protected by U.S. and/or international copyright laws, international treaties and/or other applicable laws. Unauthorized use of the Website or the Company Content is strictly prohibited and may subject User to prosecution. User acknowledges that all information accessed through the Website and any Report are proprietary information of Company, including any third-party suppliers (including, without limitation, real property ownership information) under copyright, and have been furnished to User in trust. Any revision, republication and re-use of Company Content or the Website for any purpose are strictly prohibited in whole or in part. Except as expressly permitted herein, the materials from the Website including, but not limited to, Company Content may be used solely for limited non-commercial informational purposes only as necessary to do business with the Company or for evaluating or purchasing Company's products and services. Except for downloading as may be expressly authorized by Company within specific portions of the Website, the Company Content may not be reproduced, licensed, copied, displayed, published, sold, modified, transmitted or distributed without the Company's prior written permission which may be withheld in Company's sole discretion. Linking to and/or framing the Website is strictly prohibited unless Company expressly consents in writing to such a link or frame, and User enters into a further agreement for such linking to and/or framings. Any person or entity wishing to establish a link to the Website, frame the Website, or request the Company's consent to other uses of the Website or Company Content, may send their request by e-mail to the Company Webmaster. All other uses of the Website and/or Company Content not expressly addressed in these Terms and Conditions are strictly prohibited.
- Trademarks.** Company and/or its parent company, subsidiaries or affiliates own several trademarks and service marks that are used in connection with, among other things, the Website and any Report, including, but not limited to, First American, JCP-LGS, the Eagle logo ® ("Company Marks"). Any use of the Company Marks requires prior approval in writing by the Company which may be withheld in Company's sole discretion. The "look and feel" of the Website and any Report, and the contents thereof, including, without limitation, the Company Content, such as the color combinations, buttons, layout, and other graphical elements are protected by applicable U.S. and international intellectual property laws, including, without limitation, trademark, copyright and trade dress laws. Nothing contained herein shall constitute a license (either express or implied) for User to use any of the Company Marks or trade dress, including the elements that constitute the "look and feel" of the Website and any Report.
- Company retains all rights that are not otherwise expressly granted in these Terms and Conditions.
- At Company's request, User shall return or delete any and all Website or Report content or portion thereof in their possession.

20) In the event of a dispute involving a violation of Paragraphs 15, 16, 17, 18, or 19 of these Terms and Conditions, such dispute shall not be subject to the Small Claims or Arbitration provisions set forth in Paragraph 23 below. In any litigation to stop a violation of those Paragraphs, the prevailing party shall be entitled to recover its reasonable attorneys' fees, expert fees and costs.

21) Pricings/Billing and Payment Processing. Company reserves the right to change any Report pricing, including whether a Report is billed for, at any time without notice. To the extent applicable, charges or fees for any Report will be accumulated under the licensee account number and will be invoiced either through escrow or directly to licensee, depending upon how licensee sets up their account.

In the event that any credit card payments are processed by a third-party card processing company, such third-party card processing company will be contractually required by Company to use commercially adequate security and confidentiality measures. That agreement requires the card processing company to use adequate security and confidentiality measures to protect User's payment information. All payment information that User provides through the Website will be transmitted directly to the card processing company over a secure connection. Company will not record User's credit card number, expiration date, or CVV number. However, this information may be stored by the card processing company in the normal course of its business, or as required or authorized by law, statute, regulation, or Payment Card Industry standard.

Property Address: 17200 LOS ROBLES WAY
LOS GATOS, SANTA CLARA COUNTY, CA 95030
("Property")

APN: 532-36-076
Report Date: 03/08/2021
Report Number: 2814395

- 22) **Governing Law.** These Terms and Conditions, and a User's use of the Website, Customer Service, or any Report shall be governed by, and construed in accordance with, the laws of the State of California.
- 23) **Small Claims or Arbitration.** This provision constitutes an agreement to arbitrate disputes on an individual basis. Any party may bring an individual action in small claims court instead of pursuing arbitration, so long as the action remains in that court. All disputes and claims arising out of or relating to the Website, Customer Service, or any Report, except for those covered by Paragraph 20 above, must be resolved by binding arbitration. This agreement to arbitrate includes, but is not limited to, all disputes and claims between Company, transferor(s) and transferee(s) and claims that arose prior to purchase of the Report, but it excludes disputes and claims covered by Paragraph 20 above. This agreement to arbitrate applies to transferor(s) and transferee(s) successors in interest, assigns, heirs, spouses, and children. As noted above, a party may elect to bring an individual action in small claims court instead of arbitration, so long as the dispute falls within the jurisdictional requirements of small claims court.
- Any arbitration must take place on an individual basis. Company, transferor(s) and transferee(s) agree that they are waiving any right to a jury trial and to bring or participate in a class, representative, or private attorney general action, and further agree that the arbitrator lacks the power to grant relief affecting anyone other than the individual claimant. If a court decides that any of the provisions of this paragraph are invalid or unenforceable as to a particular claim or request for a particular remedy (such as a request for public injunctive relief), then that claim or request for that remedy must be brought in court and all other claims and requests for remedies must be arbitrated in accordance with this agreement
- The arbitration is governed by the Consumer Arbitration Rules (the "AAA Rules") of the American Arbitration Association ("AAA"), as modified by this Agreement, and will be administered by the AAA. Company will pay all AAA filing, administration and arbitrator fees for any arbitration it initiates and for any arbitration initiated by another party for which the value of the claims is \$75,000 or less, unless an arbitrator determines that the claims have been brought in bad faith or for an improper purpose, in which case the payment of AAA fees will be governed by the AAA Rules #A COPY OF THESE RULES IS AVAILABLE FROM THE AAA'S WEB SITE AT WWW.ADR.ORG OR ON REQUEST FROM THE COMPANY. THE ARBITRATION AWARD MAY INCLUDE ATTORNEY'S FEES IF ALLOWED BY FEDERAL, STATE, OR OTHER APPLICABLE LAW AND MAY BE ENTERED AS A JUDGMENT IN ANY COURT OF PROPER JURISDICTION.
- The arbitration will take place in the same county in which the property covered by the Report is located. The Federal Arbitration Act will govern the interpretation, applicability and enforcement of this arbitration agreement. This arbitration agreement will survive the termination of the Report.
- 24) **Term; Termination.** The application of these Terms and Conditions will commence upon User's acceptance of the provisions of these Terms and Conditions by clicking "I Accept," calling Customer Service, or in any way accessing any Report or portion thereof and shall continue in perpetuity, unless sooner terminated pursuant to the terms hereof (the "Term"). Notwithstanding the foregoing, upon written notice to User, the Company may immediately terminate these Terms and Conditions, and terminate User's access to and use of the Website, Customer Service, and all Reports, for any reason at any time.
- 25) **Notices.** Any notice or other communication required or permitted under these Terms and Conditions shall be sufficiently given if delivered in person or sent by one of the following methods:
- Registered U.S. mail, return receipt requested (postage prepaid);
 - Certified U.S. mail, return receipt requested (postage prepaid); or
 - Commercially recognized overnight service with tracking capabilities.
- Notices to the Company shall be sent to 4 First American Way, Santa Ana, California 92707, with a copy to the Company's counsel at the same address marked Attention: Legal Department. Notices to User shall be sent to the address entered by User in the Website. Notices or communications shall be deemed properly delivered as of the date personally delivered or sent by mail or overnight service.
- 26) **Severability.** Except as otherwise provided above, if any provision of these Terms and Conditions is determined to be invalid or unenforceable for any reason, then such provision shall be treated as severed from the remainder of the Terms and Conditions, and shall not affect the validity and enforceability of all of the other provisions of the Terms and Conditions.
- 27) **Other Agreements.** These Terms and Conditions constitute the entire, integrated agreement between Company and any User using, possessing, or accessing the Website and/or Report, and supersede and replace all prior statements, representations, negotiations, and agreements.

END OF REPORT

Ryan Safty

From: Alison Steer <alison.steer@gmail.com>
Sent: Thursday, August 5, 2021 5:54 PM
To: Ryan Safty
Cc: Nancy Neipp; Gary Gysin; E and G De Feo; Terry Rinehart
Subject: Re: Applicant Response to Appeal - 17200 Los Robles Way
Attachments: complete boundary survey.pdf

Follow Up Flag: Flag for follow up
Flag Status: Flagged

Thanks Ryan,

This does highlight that my documentation was actually incorrect in one regard. The access to Harding Ave has actually been closed off for over 40 years now there was an assumed quit claim between Blaine Thompson (17200 Los Robles) and Brad Clifford (246 Harding) , as well as Daniel Williams (304 Harding Ave) that enabled the building of 248 Harding Ave in 1980 over the contested easement as shown below.

I have requested documentation of the same from the SCC recorder office; it's not clear whether this was fully documented with the county however the issue still stands that the easement has been blocked off with fencing for over 40 years and a residence now built over the easement. I am not confident we will receive the documents before August 25th since they must first research then mail to us, and we are not allowed to do this in person. Is it possible to push out the appeal meeting several weeks to ensure we receive this information in time to add to the staff report packet, or does the town already acknowledge the quit claim release of this easement based on the creation of 248 Harding Ave?

Please see attached which we received when we purchased the 304 Harding Ave property.



On Wed, Aug 4, 2021 at 3:12 PM Ryan Safty <RSafty@losgatosca.gov> wrote:

Good afternoon,

Please see attached response letter to the appeal of 17200 Los Robles Way. Both your appeal letter and this response letter will be included within the staff report packet.

Respectfully,

Ryan Safty • Associate Planner
Community Development Department • 110 E. Main Street, Los Gatos CA 95030
Ph: 408.354.6802 • rsafty@losgatosca.gov
www.losgatosca.gov • <https://www.facebook.com/losgatosca>

COMMUNITY DEVELOPMENT HOURS:
Phone Hours: 8:00 AM – 5:00 PM, Monday – Friday



Learn more at www.losgatos2040.com

In accordance with the Santa Clara County Public Health Office Order, Town Offices are closed until further notice. No in-person counter services are currently available, but the Town is open for business and we are working towards full reopening for in-person services. Inspections that can be completed via video are being scheduled and other on-site inspection services are evaluated on a case by case basis. Staff resources are available to perform work on permits remotely and meet with the public via Zoom, Microsoft Teams, or phone. Electronic permit submittal, resubmittal, and issuance is available. Please visit the [Building](#) and [Planning](#) webpages for further information on electronic permit submittal.

JAMES & NANCY THOMPSON
17200 LOS ROBLES WAY
LOS GATOS CA 95030

January 23, 1999

Daniel E. Williams
304 Harding
Los Gatos Ca

^{DS}
KWBT

^{DS}
DS

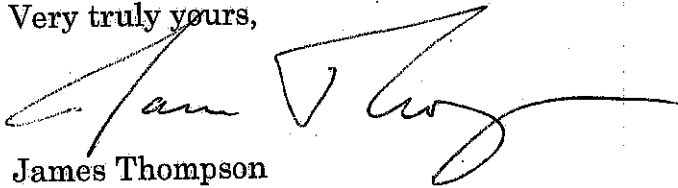
^{DS}
AS

Dear Mr. Williams,

We have recently completed a boundary survey of our property, which adjoins your back yard. It appears from that survey that you have constructed a fence which is actually several inches onto our property.

So long as you are not seeking to adversely possess any part of our property or otherwise disparage in any way our title as described by our deed, we make no present demand that you move or alter the fence. Please advise us of your position at your earliest convenience.

Very truly yours,



James Thompson

~~THIS~~ LTR NOT SENT IN THIS FORM

DANIEL ENOCH & RAYBORNA S. WILLIAMS
304 HARDING AVE
LOS GATOS, CA 95030

See next page

January 31, 1999

James Thompson
17200 Los Robles Way
Los Gatos, CA

DS
KWBT

DS
DS

DS
AS

Dear Mr. Thompson

SENT

I acknowledge your letter of January 23, 1999, and your request that I advise you of my position on the matter therein discussed.

I agree that the centerline of my fence lies approximately 3 1/2 inches west of the center of the surveyor's stake; and, at this point, the northeast boundary of your property, my fence is entirely on your property.

I am sorry for this intrusion. I did not at the time, nor do I on this or on any future date, seek to adversely possess any part of your property or otherwise disparage in any way your title as described by your deed. I sincerely wish that it had not happened.

I would like to make a statement of fact as to the reason for my relocation of the fence approximately 20 years ago. In all of the following I do not state that I remember word for word conversations that occurred at that time, but to the best of my recollection the following is what transpired and what was said.

NOT SENT

On several occasions between 1967, when I moved here, and the late 70's, Blaine Thompson and I discussed problems related to and arising from trespass on his and my property. The problem became acute after the Wooster development and Wilderness Park were completed. At that time there was daily trespass, with weekend intrusions of groups of persons of all ages. Children used the easement as a short cut to Harding on their way to and from school. On one occasion a group of approximately 20 teen-age boys, a troop of scouts, or some such, trekked through, apparently entering your father's property from the Los Robles park gate, traversing across his property and exiting onto Harding between the residences at 246 and 300 Harding Ave. No Trespassing signs were ignored, destroyed, and/or defaced.

On one occasion Blaine Thompson telephoned and I met with him behind my house. He said he had been approached by Brad Clifford; and after several discussions with him, and personal investigation of town and county codes, had determined that his easement to Harding Ave was no longer viable. He asked if I had any objection to his giving Clifford a quitclaim for the easement on the east of his property. He said the reason for issuing

not sent

the quitclaim was to permit Clifford to subdivide his property. He also asked if I would like to have a quitclaim release of his interest in my property.

I responded that if the easement was not viable, there was no reason for the quitclaim. My reason (not stated) was that I didn't want to pay for something of no value. Blaine Thompson then stated that in part, or in total consideration of his release of interest in Brad Clifford's property, Clifford was to construct a fence on the boundary between the Clifford and Thompson properties. Blaine Thompson said he was not asking me for cash money, but if I would move my fence to the property line, the fence Clifford was to erect, and my relocated fence, would close the area to through traffic, and that would be compensation enough from me.

I agreed to relocate my fence. Brad Clifford then came to our home and had my wife and me sign some papers. At a later date Clifford personally gave me a copy of the Quitclaim Deed to my property, and shortly thereafter I moved my fence.

The relocation of my fence and subdivision of the Clifford property resolved the traffic problem. But trespass continues. Just this fall, four teenaged girls used an area just west and south of my southwest boundary as a place to meet, chat and smoke. On one occasion this fall I removed about two dozen empty glass beer and malt containers from behind my fence. On several other occasions I removed smaller quantities. Litter and cigarettes are a continuing problem.

I appreciate your decision not to make any present demand that I move or alter the fence. In my 49 years of home ownership I have always tried to be a considerate and cooperative neighbor, and my desire is to continue in this tradition with you.

Very truly yours,

Daniel Enoch Williams

For record only. Point of all this.
moved fence to control traffic. BUT
(1) Clifford never BUILT FENCE.
(2) Thompson has never secured his south boundary
& so trespass continues & litter & etc continues.
Fire hazard has increased since Blaine
Thompson died.

Order No.
Escrow No.
Loan No.

PHOTOCOPY -

1 COPY IN BANK BOX

1 " " FILE/DEED DATA

DS
DS

DS
AS

DS
KWBT

WHEN RECORDED MAIL TO:

Daniel E. Williams
304 Harding Ave
Los Gatos, CA 95030

SPACE ABOVE THIS LINE FOR RECORDER'S USE

MAIL TAX STATEMENTS TO:

Daniel & Rayborna Williams
304 Harding Ave
Los Gatos, CA 95030

DOCUMENTARY TRANSFER TAX \$

COMPUTED ON FULL VALUE OF PROPERTY CONVEYED

COMPUTED ON FULL VALUE LESS LIENS AND

ENCUMBRANCES REMAINING AT TIME OF SALE

Signature of Declarant or Agent determining tax - Firm Name

QUITCLAIM DEED

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

R. BLAINE THOMPSON and WINIFRED M. THOMPSON, his wife

do hereby REMISE, RELEASE AND FOREVER QUITCLAIM to

DANIEL ENOCH WILLIAMS and RAYBORNA S. WILLIAMS,
his wife, as joint tenants

the real property in the City of Los Gatos
County of Santa Clara

, State of California, described as

Lot 67 as shown on the Map of Tract No. 1817 Los Gatos Terrace
Unit No. 2, which Map was filed for record in the office of
the Recorder of the County of Santa Clara, State of California,
on July 2, 1958 in Book 95 of Maps, at page 2.

1524 540

No Revenue Stamps Required

Grant Deed

L. N. BALL and GRACE BALL, his wife,

the first parties, hereby Grant to

TOM C. HAIRE

the second party, all that real property situated in the

County of Santa Clara, State of California, described as follows:

Beginning at a one inch bar in the Southwesterly boundary of that certain 24.98 acre tract of land conveyed by Scott Investment Company, a corporation, to L. N. Ball and Grace Ball, his wife, by Deed dated February 27, 1945 and recorded March 21, 1945 in Book 1250 of Official Records, at page 168, Santa Clara County Records, and distant thereon S.62°E. 174.60 feet from the Westerly corner of said 24.98 acre tract of land; thence parallel with the Northwesterly boundary of said 24.98 acre tract of land N.34°E. 232.45 feet to a 3/4 inch iron pipe set in the Southwesterly line of the proposed extension of Harding Avenue; thence along the Southwesterly line of proposed extension of Harding Avenue, S.62°E. 93.65 feet to a point in the center line of a right of way 20 feet wide, hereinafter referred to; thence along the center line of said 20 foot right of way, S.11°52'E. 100.82 feet; S.2°14'E. 50.04 feet and S.0°33'W. 124.61 feet to a point in the Southwesterly boundary of said 24.98 acre tract of land, said point being distant along said Southwesterly boundary S.62°00'E. 265.30 feet from the point of beginning of this description; thence along said Southwesterly boundary, N.62°00'W. 265.30 feet to the point of beginning and containing 1 acre of land, more or less, and being a portion of said 24.98 acre tract in the Rancho Rinconada de Los Gatos, and also being a portion of that parcel of land designated as Parcel No. 3, on that certain Map entitled, "Record of Survey of a portion of land of L. N. and Grace Ball, being a portion of the Kennedy Tract in the Rancho Rinconada de Los Gatos, Santa Clara County, Calif.", and which said Map was recorded in the office of the Recorder of the County of Santa Clara, State of California, on August 8, 1946 in Book 9 of Maps, at page 28.

Reserving therefrom a right of way for ingress and egress over the Easterly 10 feet of said lands, said Easterly 10 feet being a strip of land 10 feet wide adjacent to and Westerly of the Easterly line of said lands.

Together with a right of way for ingress and egress over a strip of land 10 feet wide adjacent to and Easterly of the Easterly line of the parcel of land hereinabove described said strip extending from the Southeasterly prolongation of the Northeasterly line of said lands hereinabove described to the Southwesterly line of said 24.98 acre tract.

In Witness Whereof, the said first parties have executed this conveyance this

4th day of November, 1947

L. N. Ball
Grace Ball

State of California,
County of Santa Clara } ss.

On this 4th day of November, 1947, before me

Leeta Wicker, a Notary Public in and for said

County, personally appeared L. N. Ball and Grace Ball

known to me to be the person whose name are subscribed to the foregoing instrument and acknowledged that they executed the same.

Witness my hand and official Seal.



Leeta Wicker
Notary Public in and for the County of Santa Clara, State of California.

487634

Grant Deed
INDIVIDUAL

L. N. Ball, et ux.

— TO —

Tom C. Haire

Dated November 4, 1947

INDEXED
GRANTOR
GRANTEE
SPECIAL

Filed for record at the Request of
San Jose Abstract & Title Insurance Co.
NOV 5 1947 at 10:29 AM
Recorded in Vol. _____ of Official Records,
County of Santa Clara

San Jose Abstract & Title Insurance Co.
76 NORTH FIRST STREET
SAN JOSE, CALIF.

Grace Ball

200

No. 13715

When recorded please mail this deed to

Deliver to Joseph W. Oettle

BOOK 1524 PAGE 546

Grant Deed

JOINT TENANCY

(~~RECORD~~) TO: C. HAIRE and MARYON E. HAIRE, husband and wife

Do hereby Grant to CUBERT W. OSTLE and MARGARET E. OSTLE, husband and wife,

as joint tenants

all that real property situate in the

County of Santa Clara, State of California, described as follows:

Beginning at a one inch bar in the Southwesterly boundary of that certain 24.98 acre tract of land conveyed by Scott Investment Company, a corporation, to L. N. Ball and Grace Ball, his wife, by Deed dated February 27, 1945 and recorded March 21, 1945 in Book 1250 of Official Records, at page 168, Santa Clara County Records, and distant thereon S. 62° E. 174.60 feet from the Westerly corner of said 24.98 acre tract of land; thence parallel with the Northwesterly boundary of said 24.98 acre tract of land N. 34° E. 232.45 feet to a 3/4 inch iron pipe set in the Southwesterly line of the proposed extension of Harding Avenue; thence along the Southwesterly line of proposed extension of Harding Avenue, S. 62° E. 93.65 feet to a point in the center line of a right of way 20 feet wide, hereinafter referred to; thence along the center line of said 20 foot right of way, S. 11° 52' E. 100.82 feet, S. 2° 14' E. 50.04 feet and S. 0° 33' W. 69.27 feet to the point of intersection of said center line with a line running parallel with and distant Northeasterly at right angles 50 feet from the Southwesterly line of said 24.98 acre tract, said point of intersection being distant N. 0° 33' E. 56.34 feet from a point in the Southwesterly line of said 24.98 acre tract, said last mentioned point being distant along said Southwesterly line S. 62° E. 265.30 feet from the point of beginning of this description; thence leaving the center line of said 20 foot right of way and running along said line that is parallel with and distant Northeasterly 50 feet at right angles from the Southwesterly line of said 24.98 acre tract, N. 62° W. 124.02 feet to a point in said parallel line that is distant thereon S. 62° E. 50 feet from the intersection of said parallel line with the first course of this description; thence S. 75° 51' W. 74.51 feet to the point of beginning and containing 0.75 acres of land, more or less, and being a portion of said 24.98 acre tract in the Rancho Rinconada de Los Gatos, and also being a portion of that parcel of land designated as Parcel No. 7, on that certain Map entitled, "Record of Survey of a portion of Land of L. N. and Grace Ball, being a portion of the Kennedy Tract in the Rancho Rinconada de Los Gatos, Santa Clara County, Calif.", and which said Map was recorded in the office of the Recorder of the County of Santa Clara, State of California, on August 8, 1946 in Book 9 of Maps, at page 28.

Together with a right of way for ingress and egress over a strip of land 10 feet wide adjacent to and Easterly of the Easterly line of the parcel of land hereinabove described, said strip extending from the Southeastern prolongation of the Northeasterly line of said lands to the Southeastern prolongation of the Southwesterly line of said lands hereinabove described.

Reserving therefrom a right of way for ingress and egress over the Easterly 10 feet of said lands, said Easterly 10 feet wide strip of land 10 feet wide adjacent to and Easterly of the Easterly line of said lands.

4th day of November 1947

Tom C. Haire
Maryon E. Haire

BOOK 1524 PAGES 548

State of California,
County of Santa Clara

On this 4th day of November 1947 before me

Leeta Wicker, a Notary Public in and for said

County, personally appeared Tom C. Haire and Maryon E. Haire

known to me to be the person, whose name subscribed to the foregoing instrument and acknowledged to me that they executed the same.

Witness my hand and official Seal.

Leeta Wicker

Notary Public in and for the County of Santa Clara, State of California



③ 1487635

Grant Deed
(JOINT TENANCY)

Tom C. Haire, et ux

TO

Joseph H. Grille, et ux

INDEXED FILED
GRANTOR GRANTEE
GRATILE SPECIAL

Filed for record at the Request of

San Jose Abstract & Title Insurance Co.

NOV 5 1947

Recorder in Vol. of Official Records

page at 800, Santa Clara

County Records.

Release of Grant Deed

San Jose Abstract & Title Insurance Co.

76 NORTH FIRST STREET

San Jose, California

Created By: SSCHILLING
Created On: 2/13/2021 8:34 AM
Last Search Date: 2/13/2021 8:34 AM

Search Type	Search Parameters	State/County	Status
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6293381

Local Agency Formation Commission
County Administration Building
70 West Hedding Street
San Jose, California 95110
Area Code 408
299-4321

County of Santa Clara
California

E 302 PAGE 489

E 302 PAGE 489

D.H.

[Handwritten signature]

6293381

CERTIFICATE OF COMPLETION

I, Paul E. Sagers, the Assistant Executive Officer of the Santa Clara County Local Agency Formation Commission, issue this Certificate of Completion pursuant to Section ~~56450-56451~~ 35351 of the Government Code.

I hereby certify that I have examined the resolution for a change in organization/~~reorganization~~ attached hereto and have found this document to be in compliance with the resolution adopted on December 6, 1978 by the Santa Clara County Local Agency Formation Commission approving said change in organization or reorganization.

The name of the ~~District~~/City is: Los Gatos

The entire ~~District~~/City is located in Santa Clara County.

The change of organization completed is a n annexation.
A map and description of the boundaries of the change of organization is appended hereto.

The title of this proceeding is: LOS GATOS BLVD. NO. 8

The change of organization was ordered subject to the following terms and conditions:

None

The date of adoption of the resolution ordering the change of organization/~~reorganization~~ is Feb. 20, 1979.

Dated Feb. 23, 1979

Paul E. Sagers
Assistant Executive Officer
Santa Clara County
Local Agency Formation Commission

E 302-490

RESOLUTION AND ORDER OF THE BOARD OF SUPERVISORS
OF THE COUNTY OF SANTA CLARA ANNEXING TERRITORY
DESIGNATED AS LOS GATOS BLVD. NO. 8
TO THE ~~CITY~~/TOWN OF LOS GATOS
PURSUANT TO GOVERNMENT CODE SECTION 35150(f) OF
THE MUNICIPAL ORGANIZATION ACT OF 1977

WHEREAS, the Board of Supervisors of the County of Santa Clara has held a duly noticed public hearing pursuant to the Municipal Organization Act of 1977 on the proposed annexation of territory designated as Los Gatos Blvd. No. 8 to the ~~CITY~~/Town of Los Gatos; and

WHEREAS, the Board of Supervisors is authorized by the Santa Clara County Local Agency Formation Commission to order annexation of this territory without an election pursuant to Government Code Section 35150(f) of the Municipal Organization Act of 1977;

NOW, THEREFORE, the Board of Supervisors of the County of Santa Clara does hereby resolve, determine and order as follows:

1. The territory described in Exhibit A is annexed to the ~~CITY~~/Town of Los Gatos. A map of this territory, marked Exhibit B, is attached.
2. The Clerk of the Board of Supervisors is directed to make the filings necessary to complete the annexation pursuant to Government Code Section 35350.

PASSED AND ADOPTED by the Board of Supervisors of the County of Santa Clara, State of California, on FEB 20 1979, by the following vote:

AYES: Supervisors CORTESE, MCGRODDALE, STEINBERG, DIRIDON, WILSON
 NOES: Supervisors NONE
 ABSENT: Supervisors NONE

Donald M. Rains
Chairperson, Board of Supervisors

ATTEST: DONALD M. RAINS, Clerk
Board of Supervisors
Donald M. Rains

EXHIBIT "A"

E 302~~MS~~ 451

TOWN OF LOS GATOS
LOS GATOS BOULEVARD #6 ANNEXATION

All that real property situate in the County of Santa Clara, State of California, described as follows:

Beginning at the Southernmost corner of Ferris Avenue No. 3 annexation to the Town of Los Gatos, said corner being on the centerline of Kennedy Road; thence along the Northeasterly line of said annexation, the following courses and distances: Northeasterly 432 feet more or less; thence Northwesterly 188 feet more or less to the intersection thereof with the Westerly line of last said annexation, the last said line also being the centerline of San Jose Avenue; thence along last said line Northeasterly 164 feet more or less to the intersection thereof with the Southerly line of Northeast No. 9 annexation to the Town of Los Gatos; thence along the boundary of last said annexation Northwesterly 320 feet more or less; thence Northeasterly 228 feet more or less, thence Northwesterly 101 feet more or less; thence Northeasterly 140 feet more or less to the intersection thereof with a Southeasterly line of last said annexation, the last said line also being a Westerly line of Roberts Road No. 1 annexation to the Town of Los Gatos; thence along last said line Northwesterly 400 feet more or less to the intersection thereof with the Easterly line of Pine Avenue No. 1 annexation to the Town of Los Gatos; thence along the boundary of last said annexation the following courses and distances:

South 33°28' West 503.79 feet; thence
North 56°31' West 100 feet more or less; thence
North 33°28' East 488.92 feet; to the intersection
thereof with said Westerly line of Roberts Road No. 1 annexation;
thence along last said line Northwesterly 210 feet more or less
to the Northeasterly corner of Pine Vista No. 1 annexation to the
Town of Los Gatos; thence along the perimeter of last said
annexation the following courses and distances:
Southwest 459.56 feet; thence
Northwesterly 275.02 feet; thence
Southwesterly 67 feet more or less; thence
Southeasterly 23 feet more or less; thence
Southerly 129 feet more or less; thence
Southeasterly 299 feet more or less; thence
Southwesterly 123 feet more or less to the
intersection with the Original Town of Los Gatos Boundary; thence
along the Original Town of Los Gatos Boundary Southeasterly 410
feet more or less to the intersection with the westerly line of
Los Gatos Boulevard No. 4 annexation to the Town of Los Gatos;

E 302-492

thence along last said annexation boundary the following courses and distances:

North 33°30' East 122.75 feet; thence

South 56°25' East 435.00 feet; thence

South 33°30' West 122.75 feet to the intersection

thereof with said original Town of Los Gatos boundary; thence

along last said boundary the following two courses and distances:

Southeast 60 feet more or less; thence

South 230 feet more or less to the Northerly corner

of the Fillmer Avenue No. 1 annexation; thence along the boundary

of the last said annexation Southeast, Southwest, and Northwest

503 feet to the intersection thereof with said original boundary

of the Town of Los Gatos; thence along said boundary South 260

feet more or less to the Northerly corner of Harding Avenue No.

1 annexation to the Town of Los Gatos; thence along the boundary

of last said annexation Southeast and Southwest 341 feet more or

less to the intersection with the original boundary of the Town

of Los Gatos; thence along said boundary Southerly 170 feet more

or less to the Northerly corner of Yosemite Way No. 1 annexation

to the Town of Los Gatos; thence along the boundary of last said

annexation Southeast, Southwest and Northwest 365 feet more or

less to the intersection thereof with said original boundary of

the Town of Los Gatos; thence South along last said boundary 165

feet more or less to the intersection thereof with the Easterly

boundary of Los Robles Way No. 1 annexation to the Town of Los

Gatos; thence along the perimeter of last said annexation generally

Northeast, Southwest, Northeast and Southwest 1290 feet more or

less to the intersection thereof with said original boundary of

the Town of Los Gatos; thence along last said line South 645 feet

more or less to the Northwest corner of Kennedy Road No. 1

annexation to the Town of Los Gatos; thence along the boundary of

last said annexation Northeast, Southeast, Northeast and Northwest

1470 feet more or less to the Southerly corner of Harding Avenue

No. 2 annexation to the Town of Los Gatos; thence along the boundary

of last said annexation Northwest, Southwest and Northeast 490

feet more or less to the South side of Harding Avenue, last said

line also being the boundary of Kennedy Road No. 1 annexation;

thence along the boundary of last said annexation the following

two courses and distances:

Northwesterly 170 feet more or less; thence

Northeasterly 500 feet more or less to the Southwest

line of Kennedy Road No. 4 annexation to the Town of Los Gatos;

thence along last said line Northwest 110 feet more or less to the

Easterly corner of Gem Avenue No. 2 annexation to the Town of Los

Gatos; thence along the boundary of last said annexation Southwest,

Northwest, Southwest, Northwest and Northeast 615 feet more or less

to the intersection thereof with said boundary of Kennedy Road

no. 4 annexation; thence along last said line Northwest 220 feet

more or less to the Southwesterly corner of last said annexation;

E 302 PAGE 493

thence along the Northwesterly line of last said annexation
northeasterly 180 feet more or less to the intersection thereof
with the Southwest line of Ferris Avenue No. 2 annexation to the
Town of Los Gatos, said line also being the centerline of Kennedy
Road; thence along last said line and along said Southwest line of
last said annexation Northwest 110 feet more or less to the
Southeasterly corner of Ferris Avenue No. 3 annexation to the
Town of Los Gatos; thence continuing along last said centerline
and along the Southerly line of last said annexation Northwest
210 feet more or less to the point of beginning.

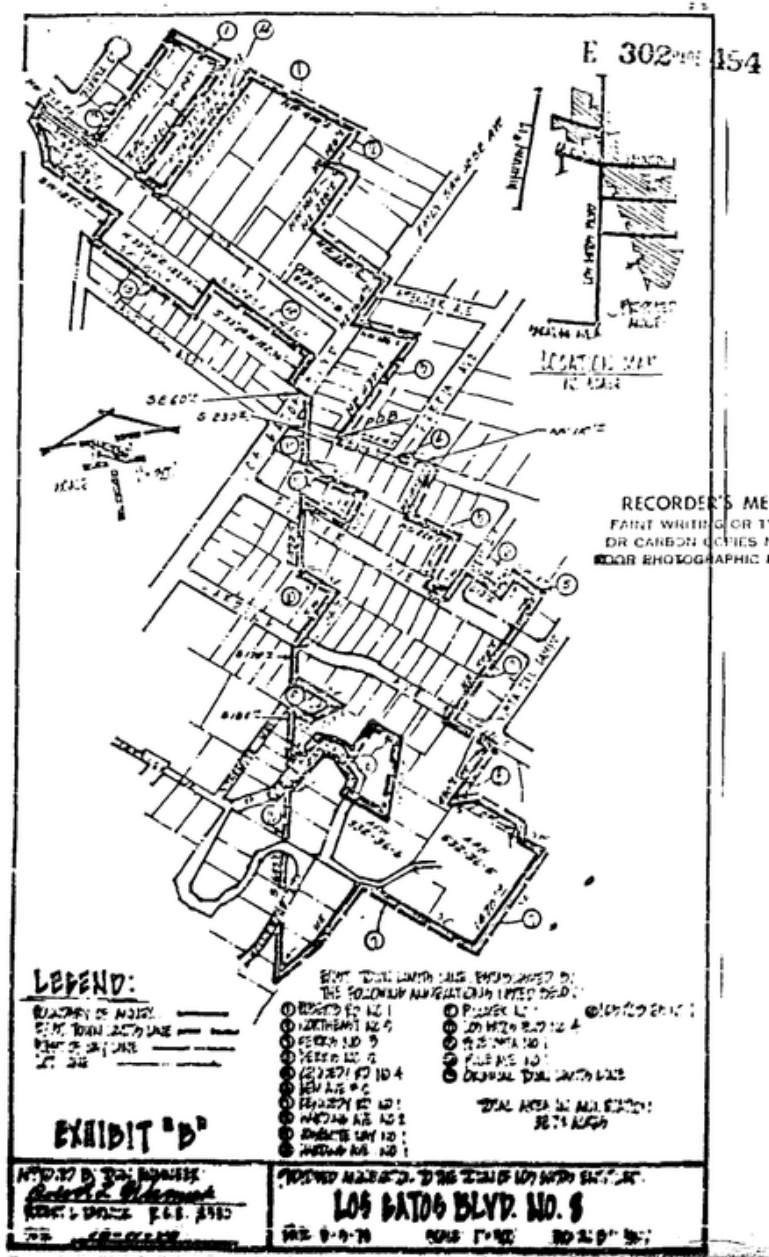
Containing 38.7 acres more or less.

The foregoing instrument is a
correct copy of the original
ATTEST: DONALD M. RAINS
Clerk of the Board
BY Anna Ferguson DEPUTY CLERK
FEB 23 1979

THE FOREGOING INSTRUMENT IS A
CORRECT COPY OF THE ORIGINAL
ATTEST: DONALD M. RAINS
CLERK, BOARD OF SUPERVISORS

BY Anna Ferguson
Deputy Clerk

DATE: 12-8-78



Town of Los Gatos
110 E Main St,
Los Gatos CA 95030
Attn: Planning Commission

Revised: August 25th, 2021

**17200 Los Robles Way, Los Gatos
Appeal Rebuttal re: LLA M 21-001**

Commission Members:

I have updated this rebuttal based on receipt of the neighbors' letter August 22nd, 2021.

I have visited with all the neighbors who are adjacent to the property, except the Steers at 304 Harding Ave, who did not want to meet with me or discuss the project, and the common thread would appear to be one of privacy and not wanting to lose the park-like setting they have enjoyed for many decades. It is disappointing that we have to be here.

That said, I will address the various technical aspects of the Appeal [slideshow] point by point in this Rebuttal, as I cannot do so at the Hearing in a 5 minute presentation.

Statement/Slide by the Appellant:

CoC does not confer Building Rights. It just proves Legality.

Response: We agree - there are now 3 legal lots.

- | | | |
|-----------------------------|-------------|--------------------------------|
| 1. Parcel 1: APN 532-36-076 | 1.718 Acres | Owned by Mark VonKaenel |
| 2. Parcel 2: APN 532-36-077 | 0.258 Acres | Owned by Mark VonKaenel |
| 3. Parcel 3: APN 532-36-075 | 1.153 Acres | Owned by Thompson Family Trust |

Statement/Numerous Slides by the Appellant:

Are these really Buildable Lots?

Response: The issue of "Buildability" has been raised, but it should be noted that the Owners are not requesting to build - so it is **Not Relevant for This Hearing** - that will come later. But I will address why I do think that these 3 lots are "Buildable Parcels", generally - using the Appellants' 6-point criteria.

• Parcel Legality.

The CoC has recognized the Legality of the 3 lots.

• Legal Access.

The 'vacating' of the access by the Town reduces the street [Los Robles Way] from Public to Private - but it is still legal - for access to 075 [Thompson Trust] and 076/077 [Von Kaenel] via the defined easement. The RoW width is 20 ft - also legal.

• Access to Water.

San Jose Water presently provides water to the site along Los Robles Way. San Jose Water is also available in the public RoW at Worcester Lane.

• Sanitation.

The current home is on septic, but it is proposed that any new construction would tie in to WVSD sewer. There is a sewer main on the property.

- **Emergency Access.**

Emergency Vehicles absolutely CAN turn around at the Los Robles Way terminus on the parcel - and serve 075 and 076. APN-077 could also take access from Los Robles Way. The proposed configuration with the LLA would make Emergency Access simpler to all 3 parcels and is supported by SCFD for this application.

- **Site Safety/Geologic Hazards.**

Potential Geologic and Geotechnical concerns are addressed at the time of a Building Application through a comprehensive process involving Town Engineering and consultant Peer Reviews. Slopes in excess of 30% can be avoided on the present site. A JCP report is an advisory document only, produced without the benefit of any site visit, to alert the owner or any potential buyer of the property of potential hazards to investigate at the site.

Statement/Slide by the Appellant:

Merger of properties - per Los Gatos Town Code: 29.10.070 is Required.

Response: Appellant is suggesting that some of the properties should be considered "Merged" if any of the following 8 criteria are not met - **but they are all met.**

1. Parcels are all over 5,000 sf. [74,832, 11,226 & 50,239 SF]
2. Parcels were legal when created and a CoC issued by the Town was recorded.
3. Sewage Disposal [WVSD sewer on site]
4. Slope Stability [Building Permit Determination]
5. Legal Emergency Vehicle Access [20' RoW at Los Robles Way]
6. Health or Safety [A&S Hearing Determination]
7. Consistent with GP & Zoning - except for size. [Conforms]
8. No Building built across Property Line [House is completely on 076]

The Subdivision Map Act would require the Town to allow development of these parcels to be considered if a formal application were to be submitted.

Statement/Slide by the Appellant:

Napa County Code has three Criteria for non-buildability.

Response: So this would be allowed in Napa too!

1. Property is less than 2,400 sq ft
2. Parcel does not have Access to a Public Street.
3. Parcel does not contain a Building site 25' x 25'.

Statement/Two Slides by the Appellant:

Parcel 2: APN 532-36-077 has no Frontage or Legal Access

Response: The Legal Creation of Lot 077 was considered by the Town Consultant Surveyor, when the CoC was applied for and approved. An access corridor 'Flag Lot' to Harding Lane was reserved in the creation of this lot. This has since been quitclaimed [in 1980 per Appellant, to allow a neighbor to build a home on Harding Ave], but the legal access at Los Robles Way can provide frontage at any time the applicant [Von Kaenel] chooses to develop the parcel. I am not certain whether the Appellant is questioning the CoC approval with these slides but it is not relevant to this LLA application.

Statement/Two Slides by the Appellant:

Parcel 2: APN 532-36-077 has no Frontage, is only 50' wide and has no Buildable Area

Response: The Town of Los Gatos issued a Certificate of Compliance for 077. We have shown only the Frontages on Los Robles Way and Worcester Lane - as these will be applicable for the resulting parcels. 077 is only 50 Ft wide - which was conforming when it was created. The Appellant is also representing the LRDA as the only allowable building area on the property. It is not. It is desirable to stay within the LRDA, but not required.

Statement/Slide by the Appellant:

In its Processing, the DRC must review an LLA Application as to 3 items

Response: The implication by highlighting the word 'REMAIN' is that the Lot Frontage and Lot Depth need to be conforming initially, in order to Remain so. 077 was a legally created Flag Lot with Access and Frontage on Harding Ave. As such, in reality its 'Front from a Planning Perspective remains at 56.34 ft, its Depth is $(183.93+265.17)/2 = 224.55$ [legal, conforming]. But even if this were not the case, because it was legal, conforming when created - 'Remain' would still apply.

Statement/Slide by the Appellant:

In an earlier 'Listing' 2 Lots, both accessed from Los Robles Way were shown.

Response: It was clearly the intention of the Town that Worcester Lane would eventually continue past 'the fence'. If they had wanted to preclude access from Worcester Lane to the Property in Question, they would have terminated it with a cul-de-sac originally.

Slide by the Appellant:

Letter from Shelley Clifford Merrick and Jason Merrick

Response: When I met with Shelley at 246 Harding, we discussed the property behind her, which is 077. She asked if her fence could be moved to the property line, from its current location at the bottom of the hill. I spoke to Mark VonKaenel and he immediately agreed. Additionally, during any construction, 'debris collection' fencing should be placed along the hillside, in addition to standard erosion control measures. But that is for another day. This is not an LLA matter.

Statement/Slide by the Appellant:

View of 'Land-locked' 077 from 304 Harding Ave

Response: The one property I was unable to visit, unfortunately. It is not landlocked because it could be developed with Los Robles Access.

Statement/Slide by the Appellant:

A 2 ft high Planter, crossing a property line Merges a lot.

Response: No it does not. It does not even require a permit.

In Summary:

This is a simple application that takes 3 non-conforming legal parcels that are not optimal for development and adjusts the lot lines to address the requirements of the Town General Plan and R1:20 Zoning Laws. The owners have every right to propose Reasonable Improvements to their Property and the Town has an obligation to apply the objective criteria in the approval of this LLA per Town Code and the Subdivision Map Act.

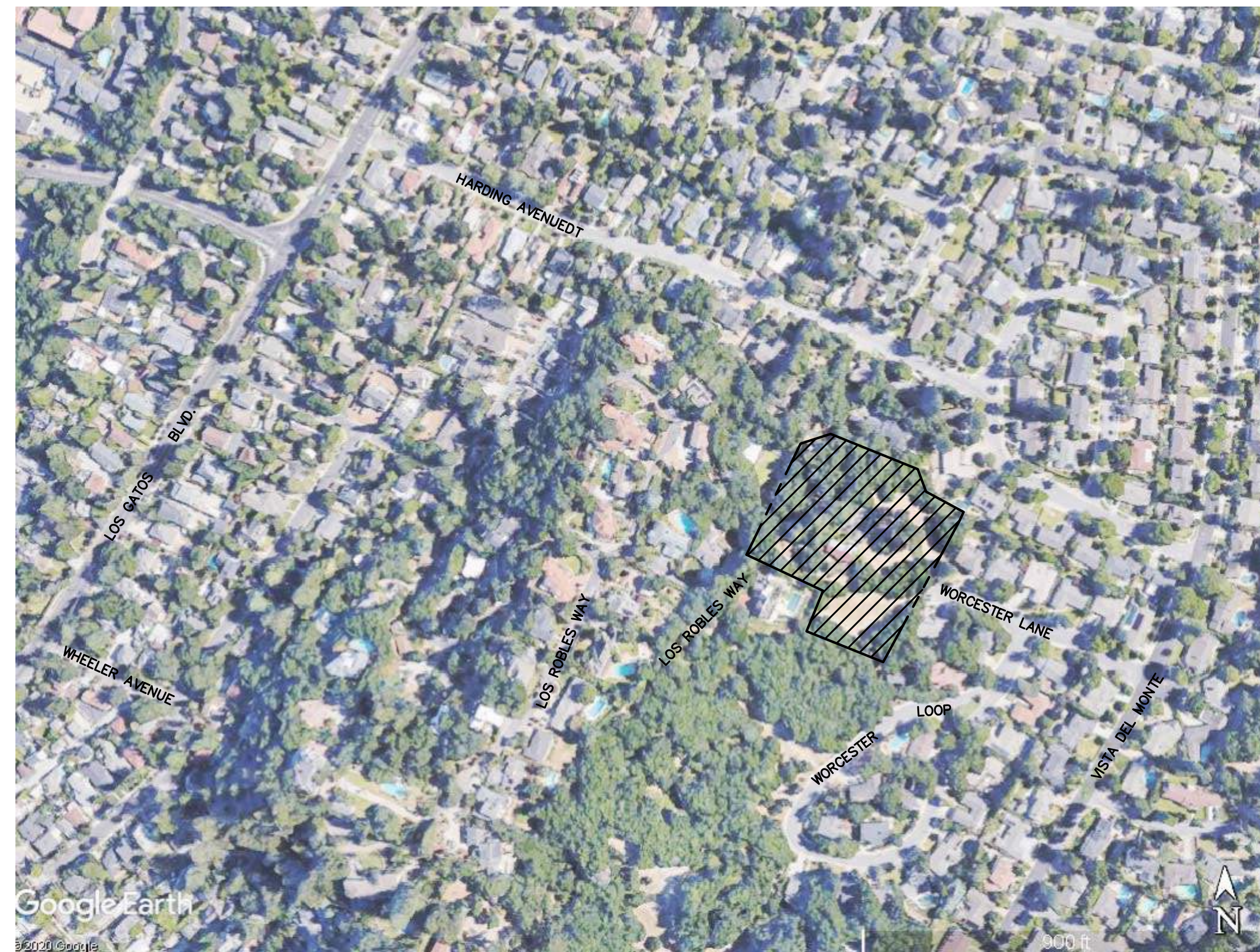
Tony Jeans (408) 354-1833

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BENCH MARK:
 LG#42, BRASS DISK IN MONUMENT BOX,
 AT INTERSECTION OF VISTA DEL MONTE AND
 VISTA DEL MAR, ELEVATION = 443.31'

LEGEND

EXISTING		PROPOSED
	BUILDING	
	MONUMENT	
	CURB INLET	
	AREA DRAIN	
	POLE	
	SANITARY SEWER MANHOLE	
	STORM DRAIN MANHOLE	
	FIRE HYDRANT	
	WATER VALVE	
	STREET LIGHT	
	CLEANDOUT	
	BOUNDARY	
	LOT LINE	
	CENTERLINE	
	LIMIT OF EASEMENT	
	CURB	
	CURB AND GUTTER	
	EDGE OF PAVEMENT	
	CONTOUR	
	FENCE	
	FLOW LINE	
	SANITARY SEWER	
	STORM DRAIN	
	ELECTRICAL	
	GAS	
	WATER	
	LIMIT OF LRDA	
	SETBACK LINE	



VICINITY MAP

NOTES:

OWNER:
 DARAN GOODSSELL SUCCESSOR TRUSTEE OF THE JNT TRUST
 DLGOODSELL@CSUCHICO.EDU
 CHICO, CA 95973
 530-521-6754

ENGINEER:
 WESTFALL ENGINEERS, INC.
 14583 BIG BASIN WAY
 SARATOGA, CA 95070
 408-867-0244

UTILITIES:

WATER - SAN JOSE WATER COMPANY
 SANITARY SEWER - WEST VALLEY SANITATION DISTRICT
 GAS AND ELECTRIC - P.G.&E.
 TELEPHONE - ATT
 CABLE - COMCAST
 THE SUBJECT PROPERTY IS NOT SUBJECT TO INUNDATION.
 ZONE X - AREA DETERMINED TO BE OUTSIDE OF THE 0.2%
 ANNUAL CHANCE FLOOD PLAN

	EXISTING	PROPOSED
PARCEL 1	74,832 s.f.	64,300 s.f.
PARCEL 2	11,226 s.f.	27,073 s.f.
PARCEL 3	50,239 s.f.	44,925 s.f.

INDEX

- SHEET 1 COVER SHEET
- SHEET 2 PROPOSAL FOR LOT LINE ADJUSTMENT
- SHEET 3 EXISTING SITE PLAN
- SHEET 4 PROPOSED SITE PLAN
- SHEET 5 AERIAL TOPO 1"=20'
- SHEET 6 AERIAL TOPO 1"=30'



Harry Belick

NO.	BY	DATE	REVISION

DATE: April 2021
 SCALE: HOR. N. T. S. VERT.
 DESIGNED: JC
 CHECKED: KC
 PROJ. ENGR: JC

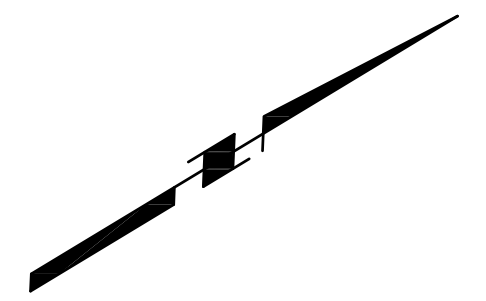
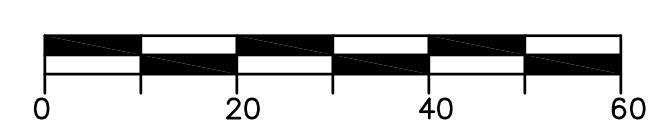
WESTFALL ENGINEERS, INC.
 14583 BIG BASIN WAY, SARATOGA, CA 95070 (408)867-0244

COVER SHEET
 WORCESTER LANE & LOS ROBLES WAY, LOS GATOS

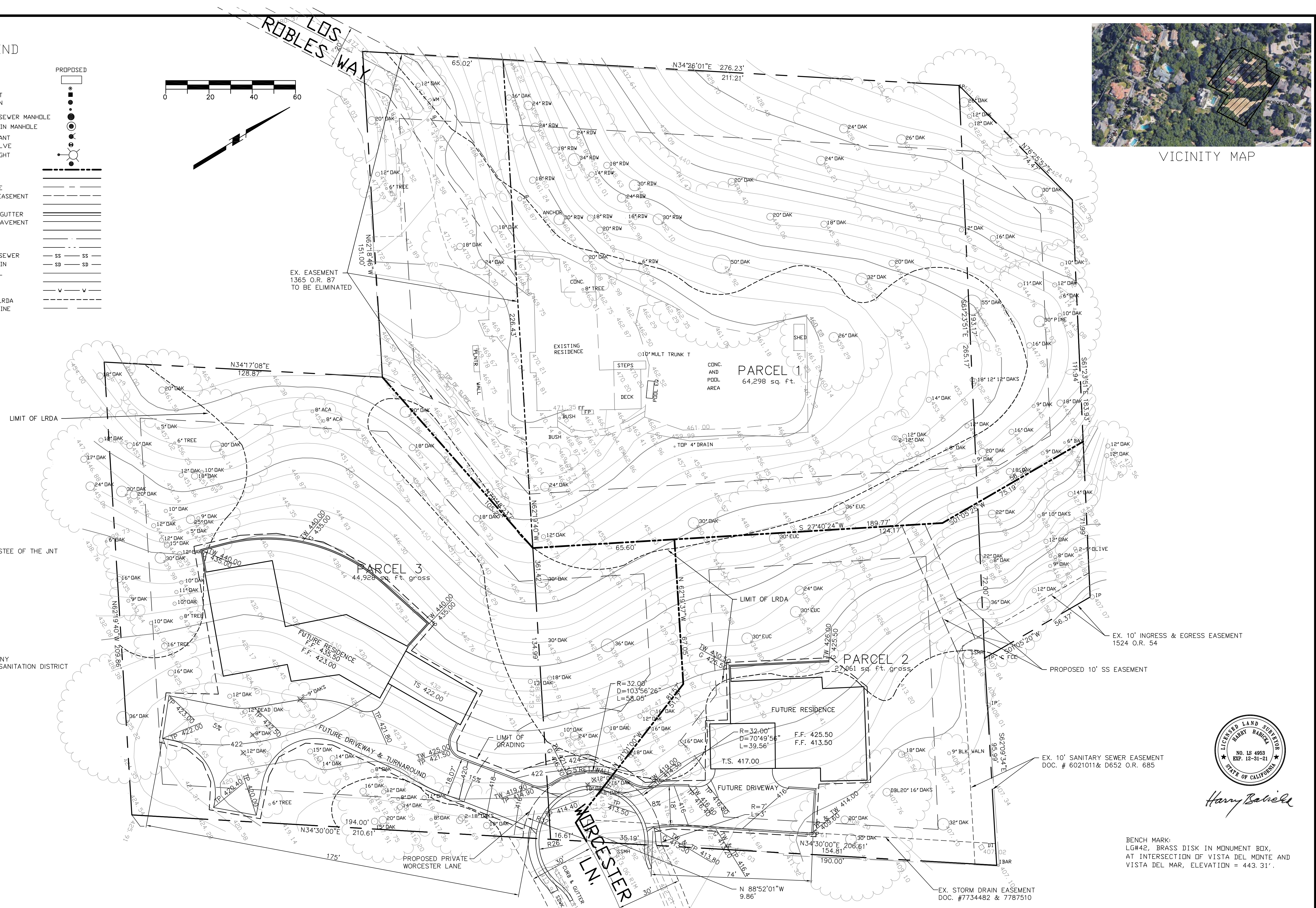
JOB NO.
 2020-021
 SHEET
 1
 OF
 6

LEGEND

EXISTING	PROPOSED



VICINITY MAP



NOTES:
 OWNER:
 DARAN GOOSELL SUCCESSOR TRUSTEE OF THE JNT TRUST
 DLGOOSELL@CSUCHICO.EDU
 CHICO, CA 95913
 530-521-6754

ENGINEER:
 WESTFALL ENGINEERS, INC.
 14583 BIG BASIN WAY
 SARATOGA, CA 95070
 408-867-0244

UTILITIES:
 WATER - SAN JOSE WATER COMPANY
 SANITARY SEWER - WEST VALLEY SANITATION DISTRICT
 GAS AND ELECTRIC - P.G.&E.
 TELEPHONE - ATT
 CABLE - COMCAST



Harry Babicka

BENCH MARK:
 LG#42, BRASS DISK IN MONUMENT BOX,
 AT INTERSECTION OF VISTA DEL MONTE AND
 VISTA DEL MAR, ELEVATION = 443.31'.

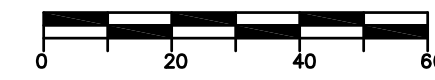
NO.	BY	DATE	REVISION

DATE: April, 2021
 SCALE: HOR. 1"=20'
 VERT.
 DESIGNED: HB
 DRAWN: JC
 PROJ. ENGR: HB

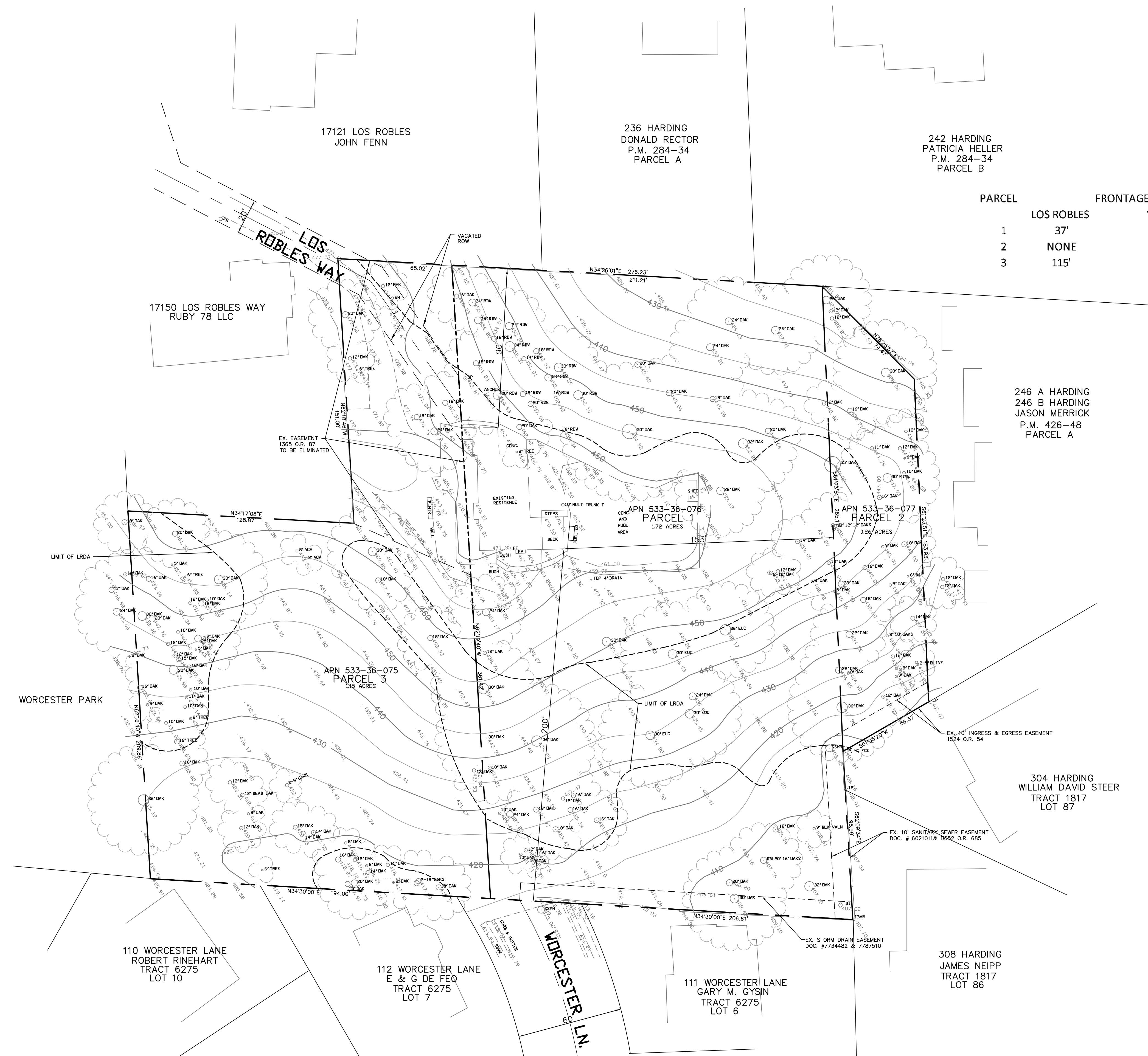
WESTFALL ENGINEERS, INC.
 14583 BIG BASIN WAY, SARATOGA, CA 95070 (408) 867-0244

PROPOSAL FOR LOT LINE ADJUSTMENT
 WORCESTER LANE & LOS ROBLES WAY, LOS GATOS, CA

JOB NO.
 2020-021
 SHEET 2
 OF 6



BENCH MARK:
LG#42, BRASS DISK IN MONUMENT BDK,
AT INTERSECTION OF VISTA DEL MONTE AND
VISTA DEL MAR, ELEVATION = 443.31'



PARCEL	FRONTAGES		DEPTH	WIDTH	SETBACKS			
	LOS ROBLES	WORCESTER			FRONT	LT.SIDE	RT.SIDE	REAR
1	37'	42'	211'	360'	90'	0	153'	200'
2	NONE	NONE	50'	174'	--	--	--	--
3	115'	19'	245'	360'	--	--	--	--

AVERAGE SLOPE CALCULATIONS:
(ENTIRE PROPERTY)
CONTOUR INTERVAL (I) 5 FEET
CONTOUR LENGTH (L) 7102 FEET
AREA (A) 3.13 ACRES 136343 SQUARE FEET
AVERAGE SLOPE (S)
 $S=IL/A = 5 \times 7102 / 136343.S.F. = 26\%$



Harry Benelli

NO.	BY	DATE	REVISION

DATE: April 2021
SCALE: HOR. 1"=30'
VERT.
DESIGNED: JC
CHECKED: KC
PROJ. ENGR: JC

BY: KAREL CYMBAL, RCE 34534
DATE:

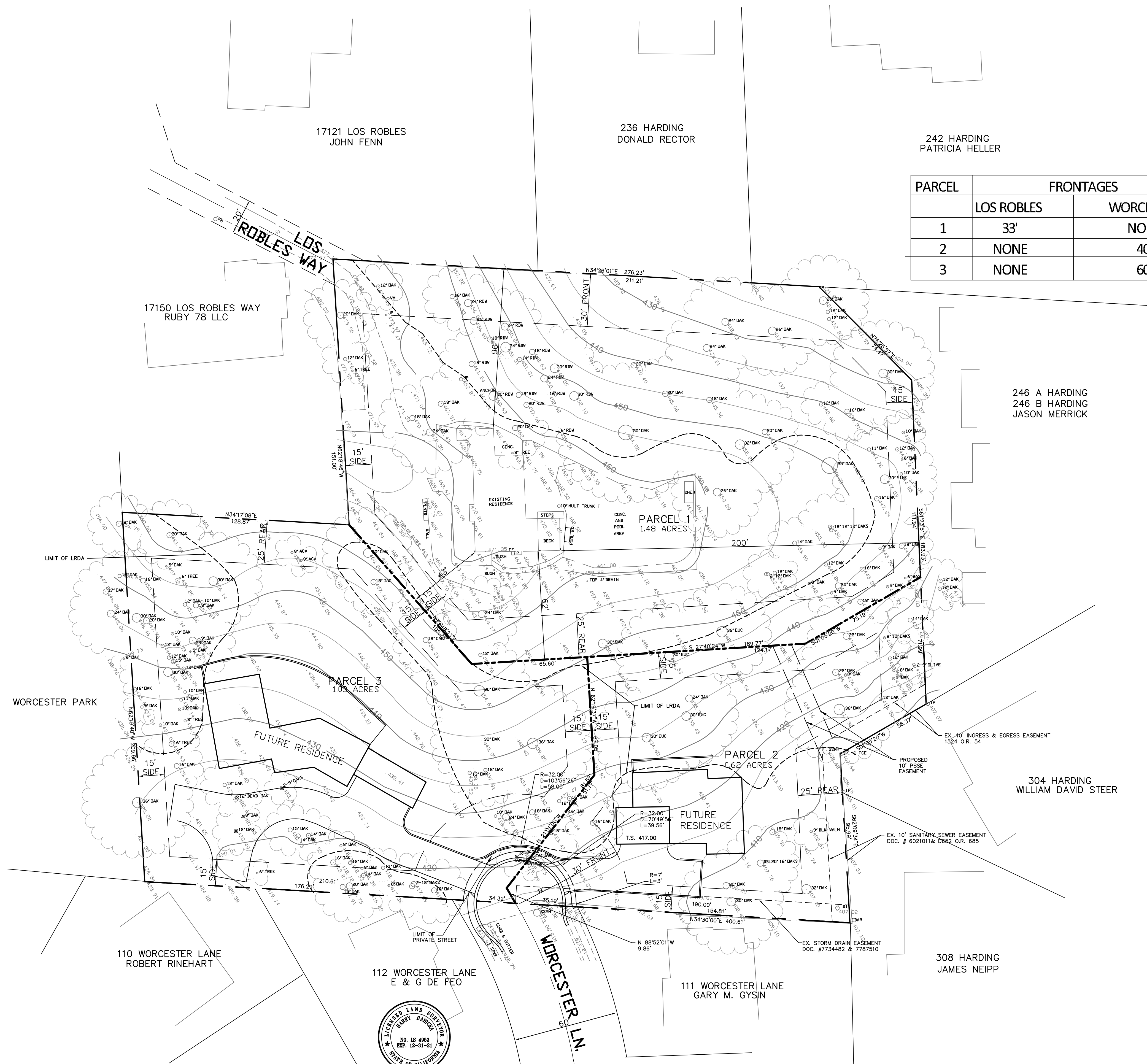
WESTFALL ENGINEERS, INC.
14583 BIG BASIN WAY, SARATOGA, CA 95070 (408) 867-0244

EXISTING SITE PLAN
WORCESTER LANE & LOS ROBLES WAY, LOS GATOS

JOB NO.	2020-021
SHEET	3
OF	6



BENCH MARK:
LGM#42, BRASS DISK IN MONUMENT BOX,
AT INTERSECTION OF VISTA DEL MONTE AND
VISTA DEL MAR, ELEVATION = 443.91'

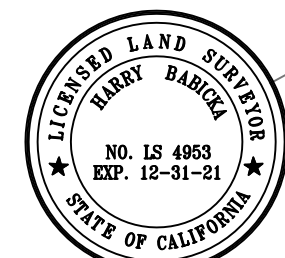


PARCEL	FRONTAGES		DEPTH	WIDTH	SETBACKS			AVERAGE SLOPE
	LOS ROBLES	WORCESTER			FRONT	SIDE	REAR	
1	33'	NONE	225'	323'	90'	43'	153'	25%
2	NONE	40'	200'	150'	30'	15'	25'	27%
3	NONE	60'	210'	258'	30'	15'	25'	26%

PARCELS 2 & 3 FRONTAGES ARE ON CUL-DE-SAC

TREE REMOVALS (STREET)

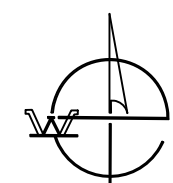
- 8" OAK (Q.A.)
- 10" OAK (Q.A.)
- 16" OAK (Q.A.)
- 18" OAK (Q.A.)
- 18" OAK (Q.A.)
- 18" OAK (Q.A.)



NO.	BY	DATE	REVISION	BY	DATE

DATE: April 2021
SCALE: HDR. 1"=30'
VERT.
DESIGNED: JC
CHECKED: KC
PROJ. ENGR: JC

Harry Baniell
BY: KAREL CYMBAL, RCE 34534
DATE:



WESTFALL ENGINEERS, INC.
14583 BIG BASIN WAY, SARATOGA, CA 95070 (408) 867-0244

PROPOSED SITE PLAN
WORCESTER LANE & LOS ROBLES WAY, LOS GATOS

JOB NO. 2020-021
SHEET 4
OF 6

- L1 S01°05'25"W 75.19'
- L2 S88°52'01"W 9.86'
- L3 N62°19'37"W 67.05'
- L4 S01°05'20"W 56.37'
- L5 N34°30'00"E 16.61'

EXISTING PARCELS

PARCEL 2
APN 532-36-077

PARCEL 1
APN 532-36-076

PARCEL 3
APN 532-36-075

PARCEL 1
EX.1.718 AC.
ADJ. 1.476 AC.

PARCEL 2
EX.0.258 AC.
ADJ. 0.622 AC.

PARCEL 3
EX.1.153 AC.
ADJ. 1.031 AC.



ADJUSTED PARCELS

PARCEL 1
APN 532-36-076

PARCEL 2
APN 532-36-077

PARCEL 3
APN 532-36-075

LINE TO BE REMOVED

LINE TO BE REMOVED

1"=100'

LEGEND

- EXISTING BOUNDARY
- LIMIT OF EASEMENT
- POINT OF BEGINNING
- CENTERLINE
- TRUE POINT OF BEGINNING
- EXISTING R.O.W.

EXHIBIT "A"
A PLAT TO ACCOMPANY A DESCRIPTION
FOR LOT LINE ADJUSTMENT

WESTFALL ENGINEERS, INC.

EXHIBIT "B"

Adjustment #1 (from APN 532-36-075 to APN 532-36-076)

Being a portion of Lot 15 of the "Map of Los Robles Subdivision" filed for record August 12, 1929 in Volume X of Maps at pages 48 and 49, Santa Clara County Record, situated in the Town of Los Gatos, County of Santa Clara, State of California, more particularly described as follows:

Beginning at a property corner described as found 1 inch diameter axle with no tag, and shown on the Record of Survey Map filed for record February 23, 1999 in Book 712 of Maps at Page 43, Santa Clara County Records, said point being South 34 Degrees 32 Minutes 20 Seconds West a length of 232.23 feet from the southerly right of way line of Harding Avenue; thence along the Westerly line of parcel 16 as shown on said subdivision map South 34 Degrees 26 Minutes 01 Seconds a length of 276.23 feet to the true point of beginning;

Thence North 34 Degrees 26 Minutes 26 Seconds 01 Seconds East a length of 65.02 feet; thence South 62 Degrees 19 Minutes 40 Seconds East a length of 226.43 feet; thence South 79 Degrees 48 Minutes 23 Seconds West a length of 105.25 feet; thence North 62 Degrees 18 Minutes 46 Seconds West a length of 151.00 feet to the true point of beginning.

Containing 0.280 acres more or less.



Harry Babicka

Adjustment #2 (from APN 532-36-076 to APN 532-36-075)

Being a portion of Lot 16 of the "Map of Los Robles Subdivision" filed for record August 12, 1929 in Volume X of Maps at pages 48 and 49, Santa Clara County Records, situated in the Town of Los Gatos, County of Santa Clara, State of California, more particularly described as follows:

Beginning at a property corner described as found 1 inch diameter axle with no tag, and shown on the Record of Survey Map filed for record February 23, 1999 in Book 712 of Maps at Page 43, Santa Clara County Records, said point being South 34 Degrees 32 Minutes 20 Seconds West a length of 232.23 feet from the southerly right of way line of Harding Avenue; thence South 34 Degrees 26 Minutes 01 Seconds a length of 211.21 feet; thence South 62 Degrees 19 Minutes 40 Seconds East a length of 226.43 feet to the true point of beginning;

Thence North 27 Degrees 40 Minutes 24 Seconds East a length of 65.60 feet; thence South 62 Degrees 19 Minutes 37 Seconds East a length of 67.05 feet; thence South 21 Degrees 01 Minutes 00 Seconds East a length of 81.57 feet; thence North 88 Degrees 52 Minutes 01 Seconds East a length of 9.86 feet to the point on a center line of Worcester Lane; thence South 34 Degrees 30 Minutes 00 Seconds West a length of 16.61 feet; thence North 62 Degrees 19 Minutes 40 Seconds West a length of 134.99 feet to the true point of beginning.

Containing 0.158 acres more or less.



Harry Babicka

Adjustment #3 (from APN 532-36-077 to APN 532-36-076)

Being a portion of Parcel 3 as shown on the Record of Survey Map filed for a record on August 8, 1946 in Book 9 of Maps at Page 28 Santa Clara County Records, situated in the Town of Los Gatos, County of Santa Clara, State of California, , more particularly described as follows:

Beginning at a property corner described as found 1 inch diameter axle with no tag, and shown on the Record of Survey Map filed for record February 23, 1999 in Book 712 of Maps at Page 43, Santa Clara County Records, said point being South 34 Degrees 32 Minutes 20 Seconds West a length of 232.23 feet from the southerly right of way line of Harding Avenue;

Thence North 76 Degrees 25 Minutes 57 Seconds East a length of 74.47 feet; thence South 61 Degrees 23 Minutes 51 Seconds East a length of 111.94 feet; thence South 01 Degrees 05 Minutes 25 Seconds West a length of 56.38 feet; thence North 61 Degrees 23 Minutes 51 Seconds West a length of 193.17 feet to the point of beginning.

Containing 0.175 acres more or less.



Harry Babicka

Existing Parcel 1 APN 532-36-076)

Being a portion of Lot 15 of the "Map of Los Robles Subdivision" filed August 12, 1929 for record in Volume X of Maps at pages 48 and 49, Santa Clara County Record, situated in the Town of Los Gatos, County of Santa Clara, State of California, more particularly described as follows:

Beginning at a property corner described as found 1 inch diameter axle with no tag, and shown on the Record of Survey Map filed for record February 23, 1999 in Book 712 of Maps at Page 43, Santa Clara County Records, said point being South 34 Degrees 32 Minutes 20 Seconds West a length of 232.23 feet from the southerly right of way line of Harding Avenue;
Thence South 61 Degrees 23 minutes 51 Seconds East a length of 265.17 feet; thence South 62 Degrees 09 Minutes 34 Seconds East a length of 95.99 feet; thence South 34 Degrees 30 Minutes 00 Seconds West a length of 206.61 feet; thence North 62 Degrees 19 Minutes 40 Seconds West a length of 361.42 feet; thence North 34 Degrees 26 Minutes 01 Seconds East a length of 211.21 feet to the point of beginning.

Containing 1.718 acres more or less.



Harry Babicka

Existing Parcel 2 (APN 532-36-077)

Being a portion of Parcel 3 as shown on the Record of Survey Map filed for a record on August 8, 1946 in Book 9 of Maps at Page 28 Santa Clara County Records , situated in the Town of Los Gatos, County of Santa Clara, State of California, , more particularly described as follows:

Beginning at a property corner described as found 1 inch diameter axle with no tag, and shown on the Record of Survey Map filed February 23, 1999 for record in Book 712 of Maps at Page 43, Santa Clara County Records, said point being South 34 Degrees 32 Minutes 20 Seconds West a length of 232.23 feet from the southerly right of way line of Harding Avenue;

Thence North 76 Degrees 25 Minutes 57 Seconds East a length of 74.47 feet; thence South 61 Degrees 23 Minutes 51 Seconds East a length of 183.93 feet to the center of existing 20 feet wide ingress and egress easement recorded in Book 1524, Page 546 Official Records of Santa Clara County; thence along said centerline South 01 Degree 05 Minutes 20 Seconds West a length of 56.37 feet ; thence leaving said centerline along original Southerly boundary of parcel of land described in a deed from L. N. Ball to Tom C Haire North 61 Degrees 23 Minutes 51 Seconds West a length of 265.17 feet to the point of beginning.

Containing 0.258 acres more or less.



Harry Babicka

Existing Parcel 3 APN 532-36-075)

Being a portion of Lot 15 of the "Map of Los Robles Subdivision" filed August 12, 1929 for record in Volume X of Maps at pages 48 and 49, Santa Clara County Record, situated in the Town of Los Gatos, County of Santa Clara, State of California, more particularly described as follows:

Beginning at a property corner described as found 1 inch diameter axle with no tag, and shown on the Record of Survey Map filed February 23, 1999 for record in Book 712 of Maps at Page 43, Santa Clara County Records, said point being South 34 Degrees 32 Minutes 20 Seconds West a length of 232.23 feet from the southerly right of way line of Harding Avenue; thence South 34 Degrees 26 Minutes 01 Seconds East a length of 276.23 feet to the true point of beginning;
Thence North 34 Degrees 26 Minutes 01 Seconds West a length of 65.02 feet; thence South 62 Degrees 19 Minutes 40 Seconds East a length of 361.42 feet; thence South 34 Degrees 30 Minutes 00 Seconds West a length of 194.00 feet; thence North 62 Degrees 19 Minutes 40 Seconds West a length of 209.86 feet; thence North 34 Degrees 17 Minutes 08 Seconds East a length of 128.87 feet; thence North 62 Degrees 18 Minutes 46 Seconds West a length of 151.00 feet to the true point of beginning.

Containing 1.153 acres more or less.



Harry Babicka

Adjusted Parcel 1

Being a portion of Lot 16 of the "Map of Los Robles Subdivision" filed for record August 12, 1929 in Volume X of Maps at pages 48 and 49, Santa Clara County Records, and Parcel 3 as shown on the Record of Survey Map filed for a record on August 8, 1946 in Book 9 of Maps at Page 28 Santa Clara County Records situated in the Town of Los Gatos, County of Santa Clara, State of California, more particularly described as follows:

Beginning at a property corner described as found 1 inch diameter axle with no tag, and shown on the Record of Survey Map filed for record February 23, 1999 in Book 712 of Maps at Page 43, Santa Clara County Records, said point being South 34 Degrees 32 Minutes 20 Seconds West a length of 232.23 feet from the southerly right of way line of Harding Avenue; thence South 34 Degrees 26 Minutes 01 Seconds a length of 276.23 feet to the true point of beginning;
Thence North 34 Degrees 26 Minutes 01 Seconds East a length of 276.23 feet; thence North 76 Degrees 25 Minutes 57 Seconds East a length of 74.47 feet; thence South 61 Degrees 23 Minutes 51 Seconds East a length of 111.94 feet; thence South 01 Degrees 05 Minutes 25 Seconds West a length of 75.19 feet; thence South 27 Degrees 40 Minutes 24 Seconds West a length of 189.77 feet; thence South 79 Degrees 48 Minutes 23 Seconds West a length of 105.25 feet; thence North 62 Degrees 18 Minutes 46 Seconds West a length of 151.00 feet to the point of beginning.

Containing 1.476 acres more or less.



Harry Babicka

Adjusted Parcel 2

Being a portion of Lot 16 of the "Map of Los Robles Subdivision" filed for record August 12, 1929 in Volume X of Maps at pages 48 and 49, Santa Clara County Records, and Parcel 3 as shown on the Record of Survey Map filed for a record on August 8, 1946 in Book 9 of Maps at Page 28 Santa Clara County Records situated in the Town of Los Gatos, County of Santa Clara, State of California, more particularly described as follows:

Beginning at a property corner described as found 1 inch diameter axle with no tag, and shown on the Record of Survey Map filed for record February 23, 1999 in Book 712 of Maps at Page 43, Santa Clara County Records, said point being South 34 Degrees 32 Minutes 20 Seconds West a length of 232.23 feet from the southerly right of way line of Harding Avenue; thence South 61 Degrees 23 Minutes 51 Seconds East a length of 265.17 feet to the true point of beginning;
Thence South 62 Degrees 09 Minutes 34 Seconds East a length of 95.99 feet; thence South 34 Degrees 30 Minutes 00 Seconds West a length of 190.00 feet; thence South 88 Degrees 52 Minutes 01 Seconds West a length of 9.86 feet to the point on a centerline of Worcester Lane; thence North 21 Degrees 01 Minutes 00 Seconds West a length of 81.57 feet; thence North 62 Degrees 19 Minutes 37 Seconds West a length of 67.05 feet; thence North 27 Degrees 40 Minutes 24 Seconds East a length of 124.17 feet; thence North 01 Degree 05 Minutes 25 Seconds East a length of 75.19 feet; thence South 61 Degrees 23 Minutes 51 Seconds East a length of 71.99 feet; thence South 01 Degree 05 Minutes 20 Seconds West a length of 56.37 feet to the true point of beginning.

Containing 0.622 acres more or less.



Harry Babicka

Adjusted Parcel 3

Being a portion of Lot 15 and 16 of the "Map of Los Robles Subdivision" filed for record August 12, 1929 in Volume X of Maps at pages 48 and 49, Santa Clara County Records, situated in the Town of Los Gatos, County of Santa Clara, State of California, more particularly described as follows:

Beginning at a property corner described as found 1 inch diameter axle with no tag, and shown on the Record of Survey Map filed for record February 23, 1999 in Book 712 of Maps at Page 43, Santa Clara County Records, said point being South 34 Degrees 32 Minutes 20 Seconds West a length of 232.23 feet from the southerly right of way line of Harding Avenue; thence South 34 Degrees 26 Minutes 01 Seconds a length of 211.21 feet; thence South 62 Degrees 19 Minutes 40 Seconds East a length of 226.43 feet to the true point of beginning;
Thence North 27 Degrees 40 Minutes 24 Seconds East a length of 65.60 feet; thence South 62 Degrees 19 Minutes 37 Seconds East a length of 67.05 feet; thence South 21 Degrees 01 Minutes 00 Seconds East a length of 81.57 feet; thence North 88 Degrees 52 Minutes 01 Seconds East a length of 9.86 feet to the point on a center line of Worcester Lane; thence South 34 Degrees 30 Minutes 00 Seconds West a length of 210.61 feet; thence North 62 Degrees 19 Minutes 40 Seconds West a length of 209.86 feet; thence North 34 Degrees 17 Minutes 08 Seconds East a length of 128.87 feet; thence North 79 Degrees 48 Minutes 23 Seconds East a length of 105.25 to the true point of beginning.

Containing 1.031 acres more or less.



Harry Babicka



**TOWN OF LOS GATOS
PLANNING COMMISSION
REPORT**

MEETING DATE: 09/08/2021

ITEM NO: 2

DESK ITEM

DATE: September 8, 2021
TO: Planning Commission
FROM: Joel Paulson, Community Development Director
SUBJECT: Consider an Appeal of a Development Review Committee Decision Approving a Lot Line Adjustment Between Three Adjacent Lots on Properties Zoned R-1:20. Located at 17200 Los Robles Way. APNs 532-36-075, -076, and -077. Lot Line Adjustment Application M-20-012. Property Owners: Daran Goodsell, Trustee and Mark Von Kaenel. Applicant: Tony Jeans. Appellants: Alison and David Steer, Terry and Bob Rinehart, Nancy and Jim Neipp, Gary and Michelle Gysin, and Gianfranco and Eileen De Feo. Project Planner: Ryan Safty.

REMARKS:

Town staff has added a draft condition of approval to ensure consent from all holders of Deeds of Trust on the parcels is provided. Exhibit 14 includes the updated draft conditions of approval, with the added condition (Condition #11) shown underlined.

EXHIBITS:

Previously received with the September 8, 2021 Staff Report:

1. Location Map
2. Required Findings
3. Recommended Conditions of Approval
4. Pictures of subject properties, received January 8, 2021
5. Project Description and Letter of Justification, received February 19, 2021
6. Summary of neighborhood outreach, received March 31, 2021
7. Certificate of Compliance Consulting Surveyor Reviews, received April 14, 2021 and May 17, 2021
8. May 25, 2021 Development Review Committee meeting minutes
9. Public Comments and Applicant Responses received prior to 10:00 a.m., Tuesday, July 13, 2021

PREPARED BY: RYAN SAFTY
Associate Planner

Reviewed by: Planning Manager and Community Development Director

PAGE 2 OF 2

SUBJECT: 17200 Los Robles Way/M-20-012

DATE: September 8, 2021

EXHIBITS (continued):

10. July 13, 2021 Development Review Committee meeting minutes
11. Appeal of Development Review Committee, received July 22, 2021
12. Applicant's response to appeal, received July 27, 2021
13. Development Plans approved by Development Review Committee on July 13, 2021

Received with this Desk Item:

14. Amended Conditions of Approval

PLANNING COMMISSION – September 8, 2021
CONDITIONS OF APPROVAL

17200 Los Robles Way
Subdivision Application M-20-012

Consider an Appeal of a Development Review Committee Decision Approving a Lot Line Adjustment Between Three Adjacent Lots on Properties Zoned R-1:20. APNs 532-36-075, -076, and -077. PROPERTY OWNERS: Daren Goodsell, Trustee and Mark Von Kaenel. APPLICANT: Tony Jean. APPELLANTS: Alison and David Steer, Terry and Bob Rinehart, Nancy and Jim Neipp, Gary and Michelle Gysin, and Gianfranco and Eileen De Feo. PROJECT PLANNER: Ryan Safty.

TO THE SATISFACTION OF THE DIRECTOR OF COMMUNITY DEVELOPMENT:

Planning Division

1. APPROVAL: This application shall be completed in accordance with all of the conditions of approval listed below. Any changes or modifications to the approved plans shall be approved by the Community Development Director, the Development Review Committee, the Planning Commission, or Town Council, depending on the scope of the changes.
2. EXPIRATION: The Subdivision Application will expire two years from the date of approval, unless the approval is used before expiration. Section 29.20.335 defines what constitutes the use of an approval granted under the Zoning Ordinance.
3. ARCHITECTURE & SITE APPROVAL: Approval of an Architecture & Site Application is required for construction of the cul-de-sac, driveways, residences, and related grading.
4. TOWN INDEMNITY: Applicants are notified that Town Code Section 1.10.115 requires that any applicant who receives a permit or entitlement from the Town shall defend, indemnify, and hold harmless the Town and its officials in any action brought by a third party to overturn, set aside, or void the permit or entitlement. This requirement is a condition of approval of all such permits and entitlements whether or not expressly set forth in the approval.

TO THE SATISFACTION OF THE DIRECTOR OF PARKS AND PUBLIC WORKS:

Engineering Division

5. APPROVAL: This application shall be completed in accordance with all the conditions of approval listed below and in substantial compliance with the latest reviewed and approved development plans. Any changes or modifications to the approved plans or conditions of approvals shall be approved by the Town Engineer.
6. ENGINEERING FEES: Engineering fees associated with the Lot Line Adjustment (see item 270 in the Town’s [Comprehensive Fee Schedule](#)) shall be deposited with the Engineering Division of the Parks and Public Works Department prior to recordation.

EXHIBIT 14

7. GENERAL: The Owner and/or Applicant shall comply with all Town, County, State and Federal laws and regulations applicable to this land division. No other proposed development is included in this particular application of the Lot Line Adjustment. Issuance of a Lot Line Adjustment will acknowledge the Town's acceptance of the parcel as legally created in accordance with the Subdivision Map Act. Any subsequent development will be required to demonstrate compliance with the Town Development Standards and Codes.
8. CERTIFICATE OF LOT LINE ADJUSTMENT: A Certificate of Lot Line Adjustment shall be recorded. An electronic copy (PDF) of the legal description for each new lot configuration, a plat map (8-½ in. X 11 in.) and of the legal description of the land to be exchanged shall be submitted to the Engineering Division of the Parks and Public Works Department for review and approval. The submittal shall include closure calculations, title reports less than ninety (90) days old and the appropriate fee. The certificate shall be recorded prior to the issuance of any permits.
9. CERTIFICATE OF COMPLIANCE: A Certificate of compliance shall be recorded. Two (2) copies of the legal description for each lot configuration, a plat map (8-½ in. X 11 in.) shall be submitted to the Engineering Division of the Parks and Public Works Department for review and approval. The submittal shall include closure calculations, title reports less than ninety (90) days old and the appropriate fee. The certificate shall be recorded prior to the issuance of any permits.
10. PRIVATE EASEMENTS: Agreements detailing rights, limitations, and responsibilities of involved parties shall accompany each private easement. An electronic copy (PDF) of the recorded agreement(s) shall be submitted to the Engineering Division of the Parks and Public Works Department prior to the issuance of any permit.
11. LENDER CONSENT: Prior to recording the map, evidence of consent from all holders of Deeds of Trust associated with the parcels shall be provided to the Town.

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A P P E A R A N C E S:

Los Gatos Planning Commissioners:
Kathryn Janoff, Chair
Kendra Burch, Vice Chair
Jeffrey Barnett
Melanie Hanssen
Jeffrey Suzuki
Reza Tavana
Emily Thomas

Town Manager: Laurel Prevetti

Community Development Director: Joel Paulson

Town Attorney: Robert Schultz

Transcribed by: Vicki L. Blandin
(619) 541-3405

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P R O C E E D I N G S:

CHAIR JANOFF: Now we'll move on to the public hearing, Agenda Item 2, which is to consider an appeal of a Development Review Committee decision approving a lot line adjustment between three adjacent lots on property zoned R-1:20 located at 17200 Los Robles Way. APNs are 532-36-075, -076, and -077. Lot Line Adjustment Application M-20-012. Property owner is Daran Goodsell, Trustee and Mark Von Kaenel. Applicant, Tony Jeans; and Appellants Alison and David Steer, Terry and Bob Rinehart, Nancy and Jim Neipp, Gary and Michelle Gysin, and Gianfranco and Eileen De Feo; and project planner is Ryan Safty.

Are there any disclosures related to this item? I don't see any hands raised. I understand, Mr. Safty, you'll be giving the Staff Report tonight.

RYAN SAFTY: Thank you. Good evening, Planning Commissioners. Before you is an appeal of a Development Review Committee decision approving a lot line adjustment between three existing legal parcels at 17200 Los Robles Way zoned R-1:20.

No construction is proposed at this time. The future driveway and building footprints shown in the

1 project plans are conceptual and are not being reviewed
2 with the Lot Line Adjustment Application. A future
3 Architecture and Site Application will be required for the
4 construction and grading work.

5 There is an existing residence on Parcel 1, which
6 would remain. Parcels 2 and 3 are vacant. Parcels 1 and 3
7 take access off Los Robles Way and Parcel 2 is landlocked.

8 There are four existing nonconformities
9 associated with the three parcels, including setback of the
10 existing residence, minimum lot size of Parcel 2, and
11 minimum frontage requirements for both Parcels 1 and 2.

12 The proposed lot line adjustment would have
13 Parcels 2 and 3 take access off of Worcester Lane while
14 Parcel 1 would continue to access off of Los Robles Way.
15 All existing nonconformities would be resolved except that
16 Parcel 1 frontage on Los Robles Way will continue to be
17 nonconforming.

18 The DRC approval was appealed for a variety of
19 reasons, which are summarized in the Staff Report. The
20 whole 90-page appeal packet is included as Exhibit 11 and
21 the Applicant has responded to the Appellant's concerns,
22 included as Exhibit 12.

23 Staff recommends that the Planning Commission
24 deny the appeal, uphold the decision of the Development
25

1 Review Committee, and approve the Lot Line Adjustment
2 Application.

3 A Desk Item was prepared and distributed today
4 amending the Parks and Public Works Conditions of Approval
5 to insure the consent from all holders of deeds of trust on
6 the parcels I provided prior to recordation of the map.

7 This concludes Staff's presentation. Planning
8 Staff, Parks and Public Works Staff, and the Town Attorney
9 are available for questions. Thank you.
10

11 CHAIR JANOFF: All right, thank you for your
12 report, Mr. Safty. Do any commissioners have questions for
13 Mr. Safty or other members of Staff at this time?
14 Commissioner Hanssen.

15 COMMISSIONER HANSSSEN: I have two questions if I
16 may, Chair?

17 My first one is one of the things we're asked to
18 look at is the compliance with the provisions of the
19 General Plan, so I'm asking Staff what aspects of the
20 General Plan should we be considering relative to this
21 specific application? And then I have a second question.

22 JOEL PAULSON: I can jump in. Most projects you
23 have to consider the General Plan. With this becoming more
24 conforming for the most part except for, as Mr. Safty
25 mentioned, the one nonconforming frontage that's going to

1 continue, they'll continue to have a nonconforming frontage
2 for one of the lots.

3 Right now this is simply putting parcel lines on
4 the paper, so there's no development. That development
5 would be in line with provisions in the General Plan such
6 as looking for ensuring that we're minimizing grading and
7 tree removal and things like that, so this project really
8 doesn't affect any of that, but ultimately the future
9 projects as Architecture and Site Applications and/or
10 associated Grading Permits come forward, then we'd be
11 looking at specific items related to development.
12

13 COMMISSIONER HANSSEN: Just to summarize what I
14 thought I heard is that the real issue that's on the table
15 today is a zoning code, not a general plan, and that when
16 the Architecture and Site Application comes in, then we'll
17 be considering aspects of the General Plan, is that
18 correct?

19 JOEL PAULSON: That's correct.

20 COMMISSIONER HANSSEN: Okay. So, my follow up
21 question is on the findings in Exhibit 2, and it's about
22 this Subdivision Map Application and it talks about in C
23 and D that the site is physically suitable for the type of
24 development and that the site is physically suitable for
25 the proposed density of developments, so my question is

1 since there is no Architecture and Site Application how do
2 we weigh that into this decision that is about the lot line
3 adjustment without considering the broader implications of
4 this, which is that there will be development at least on
5 Lot 1, if not on the others?

6 JOEL PAULSON: Those are related to the
7 Subdivision Map Act findings. This is technically a
8 Subdivision Application for the Town, but they're not
9 creating any new lots, so I wouldn't take that very much
10 into consideration. We do, as Mr. Safty mentioned, ask them
11 to put conceptual access and conceptual building areas on
12 there, but ultimately all of those details will be dealt
13 with moving forward.
14

15 Again, this is a little unique; it's not an
16 actual subdivision. If this was one parcel and they were
17 subdividing into three lots, then I think a lot of that
18 stuff would come into play similarly with the General Plan,
19 because it is simply lot line adjustment for three existing
20 parcels that were legalized and certified with a
21 Certificate of Compliance.

22 COMMISSIONER HANSSEN: So, what you're saying is
23 that we shouldn't give a lot of weight to the Subdivision
24 Application findings relative to this hearing?
25

1 JOEL PAULSON: From Staff's perspective none of
2 those findings for denial can be made, so we look at them
3 as whether they're applicable or not. None of those from
4 Staff's perspective can be made.

5 COMMISSIONER HANSSEN: Okay, thank you.

6 CHAIR JANOFF: Other questions for Staff? I do
7 have one.

8 Staff, I'd like to ask you to confirm—perhaps
9 this is for the Town Attorney—but I wanted to draw
10 attention to the last sentence of the Staff Report, page 8.
11 This is the Town Attorney's Office comment and I quote from
12 that. It says, "The Town must confine its approval of a lot
13 line adjustment on its conformance to the local General
14 Plan, any Specific Plan, any applicable coastal plan, and
15 zoning and building ordinances resulting from the lot line
16 adjustment."
17

18 So this is a pretty narrow scope for the Planning
19 Commission. Could the Staff or the Town Attorney speak a
20 moment to the narrowness of our task tonight?

21 ROBERT SCHULTZ: I think exactly what you said is
22 exactly your task, to look how the lot line adjustment will
23 comply with our General Plan and zoning. The reason for
24 this statement and the law that cited it is that the
25 Appellants are trying to state that you can't do a lot line

1 adjustment if it currently is nonconforming to make it
2 conforming, and that simply isn't how state law in cases
3 are. You don't look at what currently exists, it's what is
4 it going to be when the lot line is completed and how does
5 that comply with your General Plan and ordinances. So,
6 that's why that statement and that law were explained to
7 you. It's they're trying to say because it currently these
8 lots are nonconforming you can't change them and that's
9 simply not what the law states.

10
11 CHAIR JANOFF: So, that clarifies that. Any other
12 questions for Staff? I don't see any hands raised.

13 Now we will open the public hearing, and we'll
14 start with the Appellants who will receive five minutes to
15 address the Commission. There are a number of parties
16 speaking on behalf of the Appellants, so we're looking for
17 primary speakers to summarize your appeal.

18 JOEL PAULSON: Thank you, Chair. The Appellant,
19 Ms. Steer, will be allowed to talk. And again, Ms. Steer,
20 you and your group have up to five minutes.

21 ALISON STEER: Okay, thank you. Just a minute, I'm
22 going to start my clock.

23 All right, so good evening and thank you very
24 much for your time this evening. I'm speaking on behalf of
25 the Appellants.

1 First of all I'd just like to speak to that
2 discussion you just had regarding the Subdivision Map Act.
3 The Town Attorney cites the Subdivision Map Act Section
4 66412, shown here, but I respectfully contest this
5 interpretation of the government code to be overly broad.
6 The Subdivision Map Act is silent on when lot line
7 adjustment procedures can be used, whereas the ordinance is
8 explicit that it cannot be used under these circumstances
9 and therefore takes precedence.
10

11 The Subdivision Map Act in fact allows
12 jurisdictions to decide how they regulate lot line
13 adjustment procedure and loosely provides the minimum
14 requirements that need to be met, so I would just contest
15 exactly what was just said prior to us being able to speak.
16 I would encourage the Planning Commission to read this
17 Subdivision Map Act section and draw its own conclusions.
18

19 Again, if you read it really carefully the
20 Subdivision Map Act states that, "If the lot line
21 adjustment is approved by the local agency, then the local
22 agency shall limit its review to whether or not the parcels
23 resulting from the lot line adjustment will conform to the
24 local general plan and that no conditions shall be
25 imposed." Again, I encourage you all to read it carefully
for your own conclusion before you make a decision.

1 Taking a non-buildable site and making it
2 buildable is not allowed in Los Gatos, and I've found
3 examples of other counties that do the same. I also have
4 found this with the land use (inaudible).

5 We contend that this ordinance is not in any way
6 inconsistent with the Subdivision Map Act and is in fact
7 enforceable. The Town's Zoning Ordinance 2910-070 exists
8 specifically to prevent developers and property owners from
9 taking a non-buildable parcel and turning it into a
10 buildable parcel using lot line adjustment procedure. The
11 Town ordinance includes the requirement of a Certificate of
12 Compliance but also lays out seven other requirements
13 before lot line adjustment procedure can be used.

14 In Napa County, for example, they also reference
15 compliance with the section of the Subdivision Map Act, but
16 they specifically state that a non-buildable parcel will
17 not be made buildable by lot line adjustment procedure and
18 then go into what they determine as a building site, which
19 it has to be free of geotechnical hazards and also has
20 reasonable access, which this land does not; it's a
21 landlocked parcel.
22

23 And the same goes for Santa Cruz County where it
24 states that the lot must be buildable before a lot line
25 adjustment can be approved. A lot that is not buildable for

1 whatever reason, for example, lack of access or an unstable
2 slope, it cannot be make buildable by means of a lot line
3 adjustment. Essentially Santa Cruz says that the lot line
4 adjustment between parcels cannot result in more buildable
5 parcels than before, which is what this developer is trying
6 to do. We only have two buildable parcels on this lot and
7 you are turning it into three buildable parcels.

8
9 We have provided incontestable evidence to the
10 signed Harding Avenue quit claim deeds that no legal access
11 exists today for APN 532-36-077 and therefore this land
12 fails to meet the criteria and the Town's Zoning Ordinance
13 for a lawful parcel of land. This alone is sufficient
14 grounds for the Planning Commission to grant this appeal
15 and deny the lot line adjustment.

16 Staff has made a recommendation to deny our
17 appeal, but for the Town to blatantly disregard their own
18 Town ordinance would set the stage for legal challenges and
19 set a precedent for future illegal use of the lot line
20 adjustment procedure to establish a conforming parcel. We
21 are specifically focusing on Bullet 5, which requires there
22 to be legal and adequate access of vehicles and safety
23 equipment, while I would also call into question Bullet 4,
24 the Slope Stability Standards. Here this lot has slopes in
25 excess of 30-percent. I would ask why the Town has not

1 required the developer to provide evidence of slope
2 stability on this hillside before utilizing the lot line
3 adjustment procedure, and why would this ordinance even
4 exist?

5 The developer has contested that it would not in
6 fact be required to build within the LRDA but the Los Gatos
7 Hillside Development Standards says otherwise. The Hillside
8 Standard also applies to R-1 zones with hillside
9 sensitivity. There is no suitable place (inaudible)
10 emergency vehicle turnaround on this parcel with the
11 consideration to the LRDA, and we have already proved there
12 is no legal access.
13

14 So, hypothetically if a right-of-way existed the
15 driveway to exit this property would be greater than 150
16 feet and would need an over 70-foot turnaround implemented,
17 not exceeding 5-percent grade in any one direction. Where
18 and how would this be implemented on the existing parcel?
19 You must clearly show you meet all eight criteria in the
20 Town ordinance before you can use LRDA procedure.
21

22 Next slide please, which I'm probably not going
23 to get to because of the time limit, but thank you very
24 much for your time tonight and I hope that your decision
25 was already made before you came that you would take

1 careful consideration of the interpretation of the
2 Subdivision Map Act section that was referenced earlier.

3 CHAIR JANOFF: All right, thank you for your
4 presentation, and I have a question for the Town Attorney
5 at this time.

6 Based on the presentation by Ms. Steer can you
7 please comment on whether the points she's asking us to
8 reconsider are valid or not? We do trust our Town Attorney
9 also, and so for the Planning Commission to do a legal
10 interpretation of material just presented, we'll call on
11 you to guide us.
12

13 ROBERT SCHULTZ: I've given my legal opinion in
14 that the changes, the lot merge language, is inapplicable
15 and unenforceable by the Subdivision Map Act and we'll show
16 the lot line adjustment language that she quotes. If you
17 read the next sentence it says exactly your narrow scope is
18 to look at the lots when they're completed and not as they
19 currently exist.

20 CHAIR JANOFF: And so just to clarify, is it fair
21 to say that the establishing criteria that this is
22 developable property is at this time theoretical in the
23 sense that we don't have plans for development, and should
24 the development plans come forward and it's determined by
25 engineering review or experts that it is not a buildable

1 site, that it is unstable, then it would practically not be
2 possible to build, is that correct? Question for Staff.

3 ROBERT SCHULTZ: It is possible at the end of the
4 day to find out there's no buildable space. We've had many
5 projects where there might be slope stability or grading
6 issues and other things where the building pad is very
7 limited. I'm thinking of Bella Vista, how many changes we
8 went through that to limit the development of that that
9 went through a lot line and certification and so we could
10 have that same situation. When you're said and done it
11 could be a very limited building envelope at the end of the
12 day, but that's what will occur during the Architecture and
13 Site review.
14

15 CHAIR JANOFF: All right. Thank you for that
16 clarification, and again just to confirm, that discussion
17 about buildability is not really the purview of the
18 Planning Commission's task this evening, is that correct?

19 ROBERT SCHULTZ: That's correct.

20 CHAIR JANOFF: All right, thank you. Any other
21 Commissioners have questions for the speaker or for Staff?
22 Commissioner Suzuki.

23 COMMISSIONER SUZUKI: Because this is very
24 important I'd like to ask the Town Attorney to repeat his
25

1 opinion on the presentation. I'm just taking pretty close
2 notes right now. Specifically on what is disputed.

3 ROBERT SCHULTZ: The Appellant's argument is that
4 our ordinance overrules the Subdivision Map Act and the
5 case law that has determined how mergers occur—but I don't
6 hear much on mergers so I think maybe they've dropped that
7 argument and now we're concentrating on the lot line
8 adjustment—and the Subdivision Map Act is very clear in
9 what your scope is and it's limited to the effect of after
10 the lot line is completed.

11
12 I've been doing this 32 years and the argument
13 has never been that if there are unbuildable lots you
14 cannot do a lot line adjustment, and I'm trying to look up
15 Napa County's to see where they have, but I do know that's
16 a county, there might be different rules with counties, but
17 I have not found any city that has the same language that
18 we have that requires you to apply the lot line beforehand,
19 and all I can assume is the ordinance is very old, around
20 the time the Subdivision Map Act was applied, and we do
21 need to go back and change the merger language and the lot
22 line language so it confirms the Subdivision Map Act. The
23 Subdivision Map Act language is very clear that you apply
24 what the lots will be afterwards and not before.
25

1 CHAIR JANOFF: And just to clarify, the
2 Subdivision Map Act takes precedent over our local
3 ordinance?

4 JOEL PAULSON: Yes.

5 ROBERT SCHULTZ: State and case law will always
6 take precedence over (inaudible).

7 CHAIR JANOFF: All right, thank you. Any other
8 questions at this time? Commissioner Barnett.

9 COMMISSIONER BARNETT: For Mr. Schultz. Is it
10 correct that the lot line adjustment if approved would
11 obviate the need for a subdivision map?
12

13 ROBERT SCHULTZ: Yes, it does. I mean, you don't
14 need a subdivision map because they already have three
15 legal lots there, so they're just doing a lot line
16 adjustment.

17 COMMISSIONER BARNETT: Thank you.

18 CHAIR JANOFF: Now we will move on and give the
19 Applicant up to five minutes to address the Commission.

20 JOEL PAULSON: Thank you, Chair. Looks like the
21 Applicant, Mr. Jeans, we'll now allow him to speak and you
22 have up to five minutes.

23 TONY JEANS: Yes, could you put my first slide up
24 so that we can start when that is up? Thank you.
25

1 All right, well, as we've heard these are already
2 three legal lots recognized by the Town of Los Gatos. A
3 Certificate of Compliance has been recorded.

4 Parcels 1 and 2 can be accessed from Los Robles
5 Way but also have access from Worcester Lane; it's just
6 never been used. Parcel 2 was created with Harding access
7 and never used; it's now accessed from Los Robles Way.
8 Parcel 1 and Parcel 2 have common ownership and the owner
9 can decide how to access that and where to put the
10 emergency turnaround.
11

12 A portion of Parcel 2 is buildable. The LRDA, one
13 main configuration there is just showing that there are
14 trees, so we tried to avoid trees when showing the LRDA,
15 but that it is buildable.

16 So this is the current configuration. This is how
17 we want it to be. You can see that it's a much more
18 appropriate use of the space. Parcel 1 would continue to
19 have the house on it and it would no longer have
20 nonconforming setbacks. Parcel 2 and Parcel 3 would be
21 accessed from Worcester Lane and the current dead end of
22 Worcester Lane, which terminates at a fence, would be
23 improved by a cul de sac, again not part of this
24 application but when Parcels 2 and 3 would be developed
25

1 this would be the configuration that would provide
2 conforming access to Parcel 2 and Parcel 3.

3 So if you look at what the land is all about you
4 can see the three parcels, 1, 2, and 3 and you can see how
5 close the property is to the lot line between 3 and 1,
6 which is why we want to reconfigure the lot lines. Also,
7 you can see a good amount of space that is available
8 reasonably for building without dramatically impacting
9 trees. There's an area on Parcel 1 where the house is.
10 There's a further area on Parcel 1 towards Worcester Lane,
11 and an area on Parcel 3, which is fully accessible from
12 Worcester Lane and could be built on.
13

14 So if you look at how the configurations move on
15 the next slide you can see that Parcel 1 retains better use
16 of the land for the existing house, Parcel 3 would have
17 good access for a buildable area right in the center, and
18 Parcel 2 would have a very nice almost one-acre area. Even
19 though it's R-1:20 and the adjacent areas R-1:8 it would
20 have plenty of room to get separation from any existing
21 homes on the adjacent lots, which has been one of the
22 primary concerns that people have had. Using access as a
23 means to shoot this down really just belies the fact that
24 what they don't want is a couple of additional houses next
25 to them.

1 If you have questions about this the details are
2 on the plans and I have put rebuttals in for each of the
3 points that have been brought up by the Appellant. I think
4 that this is a reasonable reconfiguration of the three lots
5 which as has been determined are currently legal, and the
6 Subdivision Map Act and the Town of Los Gatos rules really
7 don't give you a lot of room to disallow this
8 configuration, so I ask you to ratify the unanimous
9 decision of the approval of the Development Review
10 Committee, which found no reasons, and deny the appeal.
11 Thank you very much.

13 CHAIR JANOFF: All right, thank you, Mr. Jeans.
14 Do members of the Commission have any questions for the
15 Applicant? Commissioner Barnett.

16 COMMISSIONER BARNETT: Although it may not be
17 technically before us, can you clarify whether you've had
18 communications with the Fire Department concerning the
19 turnaround feasibility?

20 TONY JEANS: Yes, we have, and the Fire
21 Department said either with or without the cul de sac it
22 would be workable as long as we were to put turnarounds on
23 the sites themselves, Parcel 2 and Parcel 3. Parcel 1, we
24 have not had a discussion as to how we would improve that
25 to give better access and turnaround at the end of Los

1 Robles Way, but when it is only one site involved we would
2 expect to put either a cul de sac at the end of the Los
3 Gatos Way extension or to put a fire truck turnaround there
4 in any event.

5 COMMISSIONER BARNETT: Good. Thank you for that.

6 CHAIR JANOFF: I do have a question for the
7 Applicant. Mr. Jeans, in one of your communications in our
8 report you... This won't be verbatim, but there was a comment
9 regarding whether or not you would be allowed to build
10 strictly within the LRDA or not strictly within the LRDA
11 and your comment was it's guidance and it's not something
12 that you're expected to hold fast to.
13

14 My question for you is this: Are you aware of the
15 recent decisions by this planning commission and previous
16 planning commissions and the trend of the Planning
17 Commission to restrict build within the LRDA and not allow
18 any build outside the LRDA?

19 TONY JEAN: Yes, I am, and I think that is
20 definitely the right way to go. The building sites that
21 have been shown on the map that accompanied this
22 application show that it is entirely reasonable to
23 configure the house, the turnaround, the driveway, all in
24 entirely the appropriate LRDA area.
25

1 CHAIR JANOFF: Thank you for that. I just wanted
2 to make sure that you understood what the Planning
3 Commission has been deciding recently. This is not germane
4 to tonight's conversation, but it would be germane should
5 plans come back to the Planning Commission.

6 TONY JEAN: I think it absolutely should be and I
7 am in favor of that.

8 CHAIR JANOFF: Great. All right, thank you. Do we
9 have questions? I don't see any hands raised from the
10 Commissioners, therefore we will move on to the public
11 comments. Members of the public may choose to state your
12 name and/or address or speak anonymously, however please
13 understand this meeting is being recorded for the public
14 record. We ask that you limit your comments to three
15 minutes. Director Paulson, do we have any members of the
16 public who would like to speak on this item?
17

18 JOEL PAULSON: Thank you, Chair Janoff. I do not
19 see any members of the public with their hand raised at
20 this point. Let's give it a second here. Seeing none,
21 Chair.

22 CHAIR JANOFF: All right, thank you. We will
23 close the loop back. We now give the Applicant and then the
24 Appellant each three minutes to provide concluding
25 comments. First up would be the Applicant. Mr. Jeans.

1 JOEL PAULSON: Mr. Jeans, I've allowed you to
2 speak. If other members from your team want to speak,
3 that's perfectly fine as well.

4 TONY JEANS: Sorry, is it my opportunity to
5 speak? Thank you.

6 In the absence of any comment from the public
7 other than the original Appellant I have nothing further to
8 add other than to say that I think that the direction that
9 I was given and that I just had to comply with the Town
10 zoning and rules and Subdivision Map Act are applicable
11 here, and one of the things that we have ensured is that we
12 do not a have as many of the nonconformities that exist now
13 in the new configuration, and I think that you will agree
14 that the planned proposed configuration is substantially
15 better than the one that it is now, so I ask you to approve
16 it. Thank you.

18 CHAIR JANOFF: All right, thank you for that wrap
19 up. And now at this time we'll ask the Appellant if the
20 Appellant has any further comments to add to close this
21 item?

22 JOEL PAULSON: Thank you, give me one second and
23 I will give the Appellant back the ability to speak. Ms.
24 Steer?
25

1 ALISON STEER: Thank you. At the beginning of
2 this meeting Mr. Paulson mentioned this is a subdivision.
3 I'd like to question why we're using the lot line
4 adjustment procedure for the changes that are being made
5 today?

6 I just really want to reiterate that the
7 Subdivision Map Act in fact allows jurisdictions to decide
8 how they regulate the lot line adjustment procedure. We're
9 not talking about buildability, we haven't seen what
10 they're going to build, but there is Bullet 5 that says you
11 need legal access and a turnaround and that is in the Town
12 Ordinance. It says that you have to have a parcel...parcel
13 (inaudible) as we call it does not have this today and
14 that's written in the ordinance.

15 What we're asking for is for you to basically
16 deny this lot line adjustment and grant our appeal, but
17 also ask that you maintain the existing primary access for
18 these parcels from Los Robles Way. Quoting from the
19 Hillside Standard this would, "avoid unnecessary scaring
20 and destabilization of the hillside through grading and
21 removal of trees," because if you've been to the property
22 you've seen what it looks like at the bottom of (inaudible)
23 Worcester Lane, and would, "assure a preservation of the
24 natural scenic character of the Town."
25

1 In addition, this would ensure that the two
2 remaining buildable parcels, because there are only two
3 buildable parcels on this property, share a driveway and
4 minimize the impervious surface, because we have had issues
5 with flooding from this hillside, we've had issues with
6 landslide; it's falling into people's properties. We would
7 like to keep the property access from the top of Los Robles
8 Way the way it was originally intended.

9
10 Again, the Subdivision Map Act is very loosely
11 worded. Actually, when you read it it's only defining what
12 would happen after the jurisdiction agrees to the Lot Line
13 Application, and the Lot Line Application does not meet the
14 requirements in the Town ordinance. I respectfully disagree
15 with the Town Attorney on this. I would ask to see if there
16 are any legal things that he can cite of court cases where
17 people have been able to overthrow lot line adjustment
18 using the Subdivision Map Act section that was specified
19 here.

20 You know, we know that Tony Jeans is talking
21 about these parcels being legal, but they're only legal in
22 terms of the Certificate of Compliance and we know that
23 that is often issued on interior parcels that lack legal
24 means of access and can't be built upon under existing
25 zoning codes. So yeah, unless you want to take the

1 ordinance off the website and tell us what other ordinances
2 aren't actually defensible in court, then I think this is a
3 valid ordinance.

4 CHAIR JANOFF: Thank you for your comments. Do
5 any Commissioners have questions for Ms. Steer at this
6 point? I do have one.

7 Ms. Steer, the Town Attorney has advised us that
8 state law takes precedence over local ordinances in this
9 instance. Do you still assert that we should be following
10 the ordinance contrary to state law? And that's just a
11 simple yes or no question, please.
12

13 ALISON STEER: Yes, because the state law is very
14 loose in its requirements. It's actually giving
15 jurisdiction to the local agency. There's nothing in there
16 specific to how they're to regulate the lot line adjustment
17 procedure.

18 CHAIR JANOFF: All right, thank you for your
19 answer. Any other questions from Commissioners? I don't see
20 hands raised, so at this time I will now close the public
21 hearing on this item and ask if the Commissioners have
22 questions of Staff, wish to comment on the application, or
23 introduce a motion? Commissioner Hanssen.
24

25 COMMISSIONER HANSSEN: I have a question for
staff and then a comment.

1 After listening to all of this here's what's
2 troubling me. We have these findings in front of us in
3 Exhibit 2 and the findings are primarily in two areas: it's
4 CEQA and the subdivision application. And if I go back to
5 what was said earlier by Staff and the Town Attorney we're
6 basically not to consider any of the actual findings for
7 denial in the Subdivision Map Application because they're
8 not relevant, but then we don't have anything else to
9 consider in terms of making findings.
10

11 And if you just consider the worthwhileness of
12 the lot line adjustment in terms of making the property
13 more usable and more buildable, that's very clear, but
14 that's not in our findings.

15 And so I remain troubled. I understand that state
16 law trumps local law, but I can look at several of the
17 findings in the Subdivision Map Application, findings that
18 we have in Exhibit 2, and say that they don't apply to this
19 project, but we're not supposed to regard those.

20 So, I'm just wondering if Staff can tell me how
21 to sort through what we have to finding findings for versus
22 what I see in front of me?

23 JOEL PAULSON: So again, this is a Subdivision
24 Application, and so what you look at is whether it's these
25 findings or we have other Town Code findings that you have

1 to make on a regular basis, and sometimes some of them
2 aren't applicable. We still include them, or we say it's
3 not applicable, and so maybe that would have been clear.

4 This one is a little bit different in that it's
5 in the reverse. Typically you make these findings to deny a
6 Subdivision Application but the reverse actually is what
7 we're looking to do here, which is make affirmative
8 findings. I think that was based on a case from not too
9 long ago regarding an actual Subdivision Application, not
10 in the Town but somewhere in the state.

11 I'm not sure if the Town Attorney has any
12 additional comments. From Staff's standpoint we have three
13 legal lots and we have done a Certificate of Compliance
14 creating legal lots. They're now looking to modify those
15 lots, the configuration of them, through a lot line
16 adjustment, and that's the path that we would go forward
17 with and that's why DRC considered it and approved it. I'm
18 trying to remember the last lot line adjustment that was
19 appealed but this is how this has been done for the last 21
20 years I've been here. I'm not sure if the Town Attorney has
21 any additional comments on that.
22

23 ROBERT SCHULTZ: I mean, my comment just goes
24 back to what the Subdivision Map Act says about lot line
25 adjustments, and even though the Appellant wants to say

1 that you have local authority under our local ordinances,
2 and it's very clear, the language in it: "A local agency
3 shall limit,"—it's a limit—"it's review and approval to a
4 determination,"—so you're going to make a determination—"of
5 whether or not the parcel's *resulting* from the lot line
6 adjustment."

7 So you're limited to your review and approval and
8 determination of whether the resulting lot line adjustment
9 will conform to your General Plan and Specific Plan—there
10 isn't in this case, we're not in a coastal plan—and zoning
11 or building ordinances. So you're limited to your review of
12 when the lots are completed. Not what's there and whether
13 they're buildable or not buildable, but when they're
14 completed, these three lots, and are there any General Plan
15 or Zoning Ordinance that it's in conflict with? And that's
16 for your review.

18 COMMISSIONER HANSSEN: I think I understand it.
19 So, then if the Chair would allow me I would like to make a
20 comment.

21 My comment is this, that I totally understand
22 what is being said by Staff and the Town Attorney, and I
23 also understand what the Appellant is saying, and so aside
24 from the very narrow legal interpretation of this I feel
25 like the steps of this thing were all wrong.

1 It's already been decided that there are three
2 lots, so subdividing a single parcel into three is already
3 a done deal, and so now we're asking to reconfigure those
4 so that they appear more like buildable lots, which I
5 understand, and then we're going to be forced into this
6 situation later on where we have property that's in the
7 very-high Wildfire Interface Zone, which is very clear in
8 our upcoming Draft General Plan that we don't encourage
9 additional density, and so we're going to be forcing this
10 situation where when we get an Architecture and Site
11 Application it's going to be very difficult. It might not
12 be possible to get the access approved to Lots 2 and 3, but
13 now the lots are bigger and people will assume that they're
14 buildable and then we're going to run into Bella Vista all
15 over again.

17 So, that's my comment. I just consider the order
18 to things a bit problematic and that we're putting the cart
19 before the horse by making all these things to appear that
20 it's more buildable and sellable, and then we have to do
21 the hard stuff later. So, that's all I have to say.

22 CHAIR JANOFF: Just to follow up on your first
23 question having to do with what the findings might look
24 like, I actually was surprised to see that there isn't a
25 finding that says we can find conformance with the General

1 Plan, and it would make me feel more comfortable given the
2 guidance from the Town Attorney that we at least include
3 that as a finding should this motion go forward.

4 And I think because the current General Plan and
5 the upcoming General Plan both are asking for a residential
6 build, so you can argue that even though this is not the
7 ideal spot, this may not be where the Planning Commission
8 would approve a lot, in theory you're consistent with the
9 General Plan because the General Plan is asking for a
10 residential build, so I'm comfortable with that if that
11 makes sense to the rest of the Commission.
12

13 CHAIR JANOFF: Mr. Suzuki, did you have your hand
14 up?

15 COMMISSIONER SUZUKI: Yes, I did.

16 CHAIR JANOFF: Commissioner Suzuki.

17 COMMISSIONER SUZUKI: I have a question for
18 Staff. In the Planning Commission account, from my
19 understanding we can only account for what the completed
20 lots will look like, which leads me to my question. Can we
21 account for a reduction in nonconformities? For example,
22 from like four nonconformities to the one nonconformity
23 that exists, or is the Commission only allowed to account
24 for the one existing nonconformity? In other words, can we
25 account for this lot line adjustment fixes a bunch of

1 nonconformities, or do we just scrap the before and we only
2 look at the after? We only account for the one
3 nonconformity at the end of the day, not the reduction in
4 the nonconformities? Thank you.

5 JOEL PAULSON: Yes, I'd offer, and then if the
6 Town Attorney has any additional comments.

7 You're free to take in whatever information you
8 want to which you use to base your decision ultimately.
9 From Staff's perspective as you've mentioned, which is
10 outlined in the Staff Report, we're generally trying to
11 reduce as many nonconformities as possible; this reduces
12 three of four. We are still left with one outstanding
13 nonconformity but there currently exists a nonconformity
14 for that parcel for the frontage, and so Staff, from our
15 perspective, this is improving the situation.
16

17 And I would just, back to Commissioner Hanssen's
18 comments earlier, I think I mentioned earlier, if this was
19 one lot right now and they were coming in to subdivide it
20 for three lots, a lot more of this stuff would come into
21 play. It's really a distinction between an actual
22 subdivision through a parcel map versus lot line
23 adjustments of three existing legal parcels.
24
25

1 So, hopefully that answers your questions, Mr.
2 Suzuki, and I'm not sure if Mr. Schultz had anything
3 additional on that one.

4 CHAIR JANOFF: I see Mr. Schultz shaking his head
5 no. Commissioner Thomas, did I see your hand up?

6 COMMISSIONER THOMAS: Yes, I was trying to just
7 add on to what you were saying, Chair. My interpretation
8 maybe is that if we find that this does comply with the
9 General Plan that is because that is written into the
10 Subdivision Map Act, there's an assumption that that is
11 included as one of the findings, but I also agree with you
12 wanting to add that as a separate finding.

14 CHAIR JANOFF: All right. Any other comments or
15 concerns? Commissioner Barnett and then Vice Chair Burch.

16 COMMISSIONER BARNETT: My concern is that we have
17 a property owner in the Town of Los Gatos who has certain
18 legal rights, they've been confirmed by the Town Attorney,
19 and I think it would be inappropriate to deny the property
20 owner with these legal rights.

21 CHAIR JANOFF: Thank you for that comment. Vice
22 Chair Burch.

23 VICE CHAIR BIRCH: My question is a bit more to
24 the what next? The Appellants did a good deal of research
25 and obviously they care very passionately about it. The

1 Planning Commission as a rule is rather limited to very
2 factual findings that we have to work with and then we are
3 not able to look down the road and make any decisions right
4 now based on future conditions, although I do believe that
5 Commissioner Hanssen is correct. When these come before the
6 Planning Commission there's going to probably be some
7 difficult conversations and compromises are going to need
8 to be made.

9
10 Depending on how we go here I would just like to
11 understand from the Staff, do the Appellants then have the
12 ability to appeal our decision and move on to Council, or
13 does this end with the Planning Commission?

14 JOEL PAULSON: Thank you for your question, Vice
15 Chair. Every action that the Planning Commission takes from
16 a decision standpoint is appealable either by the current
17 Appellant or by the property owner or Applicant, depending
18 on the situation. So yes, after the Planning Commission
19 takes action, whatever that might be tonight, I will be
20 reciting those appeal rights.

21 VICE CHAIR BIRCH: Chair, if I may then make a
22 comment?

23
24 I do very much see both sides onto this, and I do
25 appreciate on both sides the amount of research that has
gone into this. It's been actually a pretty enlightening

1 packet on both the history and the different ordinances and
2 different ways to view this, however, based on what we are
3 tied to as a Planning Commission for what we base our
4 decisions on I feel that we cannot grant the appeal, that
5 we will need to stay with the DRC's decision, but I would
6 be very interested in hearing what my other commissioners
7 think before I attempt a motion.

8 CHAIR JANOFF: I'll just weight in on that. I
9 think it's very clear what the limitations of the Planning
10 Commission are tonight. We could continue this matter to do
11 more research, but I'm not a lawyer, I'm not prepared to
12 interpret the case law; that's what I rely on our Town
13 Attorney to do. So, we've been advised in that capacity and
14 I think Commissioner Barnett raised a very important point.

15 And again, the only thing that we are doing is
16 approving the change in lot lines; we're not approving a
17 development. The development that was presented as
18 potential was a required threshold or step to take in order
19 to say that these lot line revisions are reasonable, so
20 what we get in front of us, we can't predict what will
21 come, if anything, before the Planning Commission, so we
22 really are constrained by this one pretty straightforward
23 question.
24
25

1 So, unless there are further comments I'd be
2 looking for a motion. Vice Chair Burch.

3 VICE CHAIR BIRCH: I'll make a motion, and if I
4 misspeak I'm sure somebody can jump in and let me know.

5 I make a motion to deny the appeal of a DRC
6 decision approving a lot line adjustment between three
7 adjacent lots on property zoned R-1:20 located at 17200 Los
8 Robles Way. I can make the findings that the project is
9 categorically exempt from CEQA, and I can make the findings
10 as required by Section 66474 of the Subdivision Map Act,
11 and the findings in I believe Exhibit 2.

12 And I do believe however, it might have been
13 Commissioner Janoff or Hanssen, I'm not sure, there was
14 something you wanted me to add with the findings about the
15 General Plan. Can you remind me?

16 CHAIR JANOFF: I was concerned that we might want
17 to make the consistency with our General Plan more
18 specific, however, Commissioner Thomas did point out that
19 that's already included in Item B of the next finding, so
20 I'm comfortable with it being there.

21 COMMISSIONER BADAME: Okay, great. Then that is
22 my motion.

23 CHAIR JANOFF: And so we want to add Exhibit 13?
24 I think that was also part of the...

1 VICE CHAIR BIRCH: My apologies. I knew I missed
2 a note. Yes, I do.

3 CHAIR JANOFF: Do we have a second for this
4 motion? Commissioner Barnett.

5 COMMISSIONER BARNETT: I second the motion.

6 CHAIR JANOFF: Thank you for that. Any further
7 comments or discussion of the motion on the table? I don't
8 see any hands raised, so I'll call the question.
9 Commissioner Suzuki.

10 COMMISSIONER SUZUKI: Yes.

11 CHAIR JANOFF: Commissioner Barnett.

12 COMMISSIONER BARNETT: Yes.

13 CHAIR JANOFF: Commissioner Hanssen.

14 COMMISSIONER HANSEN: Abstain.

15 CHAIR JANOFF: Commissioner Thomas.

16 COMMISSIONER THOMAS: Yes.

17 CHAIR JANOFF: Vice Chair Burch.

18 VICE CHAIR BIRCH: Yes.

19 CHAIR JANOFF: And I vote yes as well, so the
20 motion passes, I guess it's five with one abstention.
21

22 And Director Paulson, could you please comment on
23 the appeal rights for this item?

24 JOEL PAULSON: Yes, thank you, Chair Janoff. The
25 decision of the Planning Commission is appealable to the

1 Town Council. The forms are available online. The appeal
2 must be filed within ten days and there is a fee for filing
3 that appeal.

4 CHAIR JANOFF: All right, thank you.
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FILING FEES

\$438.00 (PLAPPEAL) Residential \$1,763.00 (PLAPPEAL), per Commercial, Multi-family, or Tentative Map Appeal

TRANSCRIPTION \$500 (PLTRANS)

**Town of Los Gatos
Office of the Town Clerk**

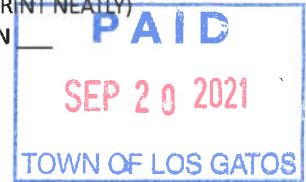
110 E. Main St., Los Gatos CA 95030

**APPEAL OF PLANNING COMMISSION
DECISION**

I, the undersigned, do hereby appeal a decision of the Planning Commission as follows: (PLEASE TYPE OR PRINT NEATLY)

DATE OF PLANNING COMMISSION DECISION _____

Sept 8th 2021 _____



BP32347

PROJECT / APPLICATION NO: M-20-012_____ ADDRESS LOCATION: 17200 Los

Robles Way, Los Gatos_____

Pursuant to the Town Code, any interested person as defined in Section 29.10.020 may appeal to the Council any decision of the Planning Commission.

Interested person means:

- 1. *Residential projects.* Any person or persons or entity or entities who own property or reside within 1,000 feet of a property for which a decision has been rendered, and can demonstrate that their property will be injured by the decision.
- 2. *Non-residential and mixed-use projects.* Any person or persons or entity or entities who can demonstrate that their property will be injured by the decision.

Section 29.20.275 The notice of appeal shall state specifically wherein it is claimed there was an error or abuse of discretion by the Commission or wherein its decision is not supported by substantial evidence in the record.

1. There was an error or abuse of discretion by the Planning Commission:

_____ ; OR

2. The Planning Commission's decision is not supported by substantial evidence in the record:

i) Town ordinance §29.10.70 (exhibit 1) states that "Any parcels under the same or substantially the same ownership that do not meet the criteria listed above shall be considered merged. In addition, no parcel shall be modified through a lot line adjustment procedure in order to meet the criteria listed above."

ii) Subdivision Maps Act § 66451.11 (exhibit 2) specifies that "a local agency may, by ordinance which conforms to and implements the procedures prescribed by this article, provide for the merger of a parcel or unit with a contiguous parcel or unit held by the same owner if any one of the contiguous parcels or units held by the same owner does not conform to standards..."

ii) Why, when the town ordinance states **SHALL** and the SMA states **MAY** is the Town not following its own ordinance for Lot Merger?

Previously submitted quit claim deeds (exhibit 19) along with exhibits 14 and 15 prove incontestably that APN 532-36-077 has no legal access which is adequate for vehicular and safety equipment access and maneuverability. Exhibit 18, 2005 Title Deed for 17200 Los Robles Way acknowledges the quit claim to Harding Ave ROW (see parcel 4 description). All the conditions have been in place since 1978 that this merge technically should have happened per the Town Ordinance, it just hasn't been procedurally implemented, given this information was not disclosed to the DRC at the time of Lot Line application. The fact that the Town has not done this should not be a reason to permit the use of the LLA procedure. Other towns and counties (Exhibit 11) have similar lot merger ordinances that follow the Subdivision Map Act, and lot line

adjustment procedures which exclude non-developable parcels from being made developable. If a lot is deemed merged, then SMA §66412(d) is irrelevant. Per [§ 29.20.745](#) (exhibit 3) it states that the Development Review Committee “ Under the provisions of [§29.10.070](#) of this chapter and section 66424.2 of the Subdivision Map Act, determine whether lots have merged.” We understand that the Community Development Director would make the initial determination to start the lot merger process, with the DRC being the deciding body. We expect this would also happen per the direction of the Planning commission or Town Council.

We have an example of City of Berkeley merging parcels (exhibit 16) due to both parcels not meeting the requirement for 5,000 square ft in area :

https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Commissions/Commission_for_Planning/2013-10-16_Item%2010_Appeal%20of%20Merger-Combined.pdf

In addition, we have exhibit 12, Big Sur lot line adjustment application, that was denied due to creation of new developable lots based on the Big Sur LUP Policy, which also specified slopes >30% as non-developable.

<https://documents.coastal.ca.gov/reports/2009/9/W19a-9-2009.pdf>

There does not appear to be any rulings that support denials of Lot Line Adjustment applications, due to the language specified in SMA §66412(d) (exhibit 13). This is most likely attributed to towns, cities and counties implementing their Lot Merger ordinances on parcels that do not meet the requirements described in SMA §66451.11. SMA §66451.11 clearly describes a parcel of land, that based on the criteria provided, would be unbuildable/undevelopable.

Town Ordinance [§29.10.070](#) states that the lot line adjustment procedure cannot be used for parcels that lack legal access or parcels that do not meet slope stability standards. APN 532-36-077 is landlocked due to quit claim deeds signed in 1978 for Harding ROW. Parcel non-conforming to current zoning requirements, is land-locked and non-buildable with regard to LRDA and slopes >30%. [Hillside Development and Standards Guidelines](#) also apply to R-1 zones with slope stability issues. [Town of Los Gatos Lot Line Procedure](#) (exhibit 5) requires that lot frontage remains conforming (APN 532-36-077 has no frontage) and that “The existing buildings meet the requirement of the Uniform Building code for fire separation or fire wall construction”. Existing building on APN 532-36-076 is derelict.

Please refer to highlighted sections in attached [Sierra Club vs Napa County ruling](#) (exhibit 17) on sequential lot line adjustments which explains that the local ordinances for lot line adjustment ensure land speculators and developers cannot exploit loopholes in the SMA to turn non-buildable parcels into buildable lots, and this is supported in the other Town Ordinances for Lot Line adjustments (exhibit 11). The Los Gatos Town Ordinance [§29.10.070](#) provides direction that Lot Line Adjustment procedures cannot be used for land-locked parcels or lots with slope stability issues.

If the Town believes the broad language in SMA 66412(d) preempts the Town Ordinance Sec 29.10.070 , how is it that other towns and counties will not allow a non-buildable parcel to be made buildable (exhibit 11)? It's because SMA §66451.11 exists. Why does the Town not follow the guidance provided by Subdivision Maps Act §66541.10 and §66541.11, along with §66541.13 and §66541.14? If the Town allows the developer to skirt the lot merger ordinance, they are setting a precedent for illegal use of the LLA procedure to establish a buildable parcel where none existed, and increase density without formal review of the development.

Per Town Attorney's Office:

"California Civil Code Section 1093 requires an, "express written statement of the grantor," of their intent to alter or affect the separate and distinct nature of the parcels described therein. Therefore, the legal merger of two parcels occurs only through the express written statement of the grantor (ibid.) or through a local agency's compliance with the merger procedures contained in Sections 66451.10 and 66451.11 of the SMA, including the due process requirements contained therein"

We are asking for the Town to follow this requirement for Lot Merger of APNs 532-36-076 and 532-36-077 by notifying the owner of the merger proposal pursuant to, SMA §66451.13, and afford a hearing pursuant to SMA §66451.14.

We also request that the remaining two buildable parcels, APN 532-36-075 and merged APN 532-36-076/77 maintain access from Los Robles Way, to avoid unnecessary scarring and destabilization of the hillside through grading and removal of trees, and to preserve the natural scenic character of the Town. In addition, this would assure the buildable parcels share a driveway to minimize impervious surface. This hillside causes flooding issues to residents on Worcester Lane, and visible landslide concerns to 246 Harding Ave.

We'd also like to appeal the Required Findings made by the DRC.

Required Findings (exhibit 10) states that the project is not subject to the California Environmental Quality Act (CEQA). 17200 Los Robles Way lot line adjustment application is not categorically exempt from CEQA. CEQA Class 5, "Minor Alterations in Land Use Limitations," exemption per [Section 15305](#) of the CEQA Guidelines excludes slopes >20% and lot line adjustments that result in changes to land use density. Exhibit 6 and exhibit 7 clearly state these requirements, and exhibit 8 shows that the City of Santa Barbara includes this in their Environmental Review. Per Exhibit 9, 17200 Los Robles Way has 26% average slope. We would request compliance to CEQA should a lot line adjustment on 17200 Los Robles Way be approved.

Section 15305 - Minor Alterations in Land Use Limitations

Class 5 consists of minor alterations in land use limitations in areas with an average slope of less than 20%, which do not result in any changes in land use or density, including but not limited to:

- (a) Minor lot line adjustments, side yard, and set back variances not resulting in the creation of any new parcel;
- (b) Issuance of minor encroachment permits;
- (c) Reversion to acreage in accordance with the Subdivision Map Act.

Cal. Code Regs. Tit. 14, § 15305

Exhibit 10 Findings by DRC in conflict "**No development proposed**", yet DRC/Planning Commission makes the affirmative findings that the site is physically suitable for **proposed density** of development and the **type of development**, and **proposed improvement not likely to cause substantial environmental damage nor injure wildlife or their habitat**.

A coyote den exists on the property and deer and wildlife frequent the property. Planning commission did not visit the

land nor did they review any plans for the development as the developer has not shared the development plans with the town. How can the Town approve the suitability of the development without knowing what will be built, or whether it is in conformance to the surrounding established neighborhood? We are appealing the decision of the DRC to approve suitability of development before they have reviewed the proposed development and parcel maps.

We would very much like to meet with the Town Council members individually at the proposed site at Worcester Lane to hear our concerns.

IF MORE SPACE IS NEEDED, PLEASE ATTACH ADDITIONAL SHEETS.

IMPORTANT:

1. Appellant is responsible for fees for transcription of minutes. A \$500.00 deposit is required at the time of filing. 2. Appeal must be filed within ten (10) calendar days of Planning Commission Decision accompanied by the required filing fee. Deadline is 5:00 p.m. on the 10th day following the decision. If the 10th day is a Saturday, Sunday, or Town holiday, then it may be filed on the workday immediately following the 10th day, usually a Monday.
3. The Town Clerk will set the hearing within 56 days of the date of the Planning Commission Decision (Town Ordinance No. 1967).
4. Once filed, the appeal will be heard by the Town Council.
5. If the basis for granting the appeal is, in whole or in part, information not presented to or considered by the Planning Commission, the matter shall be returned to the Planning Commission for review.



PRINT NAME: Alison and David Steer

SIGNATURE: _____

DATE: Sept 19th 2021

ADDRESS: 304 Harding Ave, Los Gatos, CA 95030

PHONE: 650-996-5809

EMAIL: alison.steer@gmail.com

***** OFFICIAL USE ONLY *****

DATE OF PUBLIC HEARING: _____

CONFIRMATION LETTER SENT: Date:

Pending Planning Department Confirmation

TO APPLICANT & APPELLANT BY:

DATE TO SEND PUBLICATION: _____

DATE OF PUBLICATION:

EXHIBITS

Exh.#	Item
1	Town of Los Gatos Lot Merger Ordinance (Sec 29.10.070)
2	Sub Division Maps Act Gov Code 66451.11
3	Requirements of the Development Review Committee (Sec. 29.20.745)
4	Sierra Club vs Napa County Superior Court Ruling on Lot Line Adjustment for Sequential Lots.
5	Town Lot Line Adjustment Procedure Handout.
6	CEQA Categorical Exemption Class 5, Guidelines Section 15305 (minor alterations in land use limitations).
7	List of CEQA Exemption Types
8	City of Santa Barbara criteria for Environmental Review
9	17200 Los Robles Way Average Slope Calculations
10	Required Findings For 17200 Los Robles Way
11	Links to other CA Town and County Lot Line Adjustment Ordinances: <ul style="list-style-type: none">a. Santa Cruz Countyb. Napa Countyc. Saratogad. Laguna Beache. Sonoma Countyf. City of Fillmoreg. Marin County
12	Burke Lot Line Adjustment- Big Sur
13	Subdivision Maps Act Gov Code 66412(d)
14	Santa Clara County Fire Department Requirements for driveways >150ft.
15	Non-Buildable Area of APN 532-36-077 outside the LRDA
16	Berkeley Merger of Two Parcels
17	Attached Sierra Club vs Napa County Highlighted PDF
18	Thompson Title Deed for 17200 Los Robles Way showing acknowledgement of the Thompson/Clifford Quit Claim to Harding Ave ROW (Parcel 4 description)

Exhibit 1: Town of Los Gatos Lot Merger Ordinance

Sec. 29.10.070. - Lot merger.

(a) A parcel of land does lawfully exist separately from other land and is a lot when the parcel meets each of the following criteria:

(1) Comprises at least five thousand (5,000) square feet in area.

(2) Was created in compliance with applicable laws and ordinances in effect at the time of its creation.

(3) Meets current standards for sewage disposal and domestic water supply.

(4) Meets slope stability standards.

(5) Has legal access which is adequate for vehicular and safety equipment access and maneuverability.

(6) Development of the parcel would create no health or safety hazards.

(7) The parcel would be consistent with the applicable general plan and any applicable specific plan, other than minimum lot size or density standards.

(8) No structures are built over a common property line which is shared with another parcel under the same or substantially the same ownership.

(b) Any parcels under the same or substantially the same ownership that do not meet the criteria listed above shall be considered merged. In addition, no parcel shall be modified through a lot line adjustment procedure in order to meet the criteria listed above.

(Ord. No. 1316, § 3.10.010, 6-7-76; Ord. No. 1337, 11-1-76; Ord. No. 1432, 6-4-79; Ord. No. 1438, 8-6-79; Ord. No. 1756, § I, 8-1-88)

Exhibit 2: Subdivision Maps Act Gov Code 66451.11

https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=GOV§ionNum=66451.11

GOVERNMENT CODE - GOV

TITLE 7. PLANNING AND LAND USE [65000 - 66499.58] (*Heading of Title 7 amended by Stats. 1974, Ch. 1536.*)

DIVISION 2. SUBDIVISIONS [66410 - 66499.38] (*Division 2 added by Stats. 1974, Ch. 1536.*)

CHAPTER 3. Procedure [66451 - 66472.1] (*Chapter 3 added by Stats. 1974, Ch. 1536.*)

ARTICLE 1.5. Merger of Parcels [66451.10 - 66451.24] (*Article 1.5 added by Stats. 1983, Ch. 845, Sec. 2.*)

66451.11.

A local agency may, by ordinance which conforms to and implements the procedures prescribed by this article, provide for the merger of a parcel or unit with a contiguous parcel or unit held by the same owner if any one of the contiguous parcels or units held by the same owner does not conform to standards for minimum parcel size, under the zoning ordinance of the local agency applicable to the parcels or units of land and if all of the following requirements are satisfied:

(a) At least one of the affected parcels is undeveloped by any structure for which a building permit was issued or for which a building permit was not required at the time of construction, or is developed only with an accessory structure or accessory structures, or is developed with a single structure, other than an accessory structure, that is also partially sited on a contiguous parcel or unit.

(b) With respect to any affected parcel, one or more of the following conditions exists:

- (1) Comprises less than 5,000 square feet in area at the time of the determination of merger.
- (2) Was not created in compliance with applicable laws and ordinances in effect at the time of its creation.
- (3) Does not meet current standards for sewage disposal and domestic water supply.
- (4) Does not meet slope stability standards.
- (5) Has no legal access which is adequate for vehicular and safety equipment access and maneuverability.
- (6) Its development would create health or safety hazards.

(7) Is inconsistent with the applicable general plan and any applicable specific plan, other than minimum lot size or density standards.

The ordinance may establish the standards specified in paragraphs (3) to (7), inclusive, which shall be applicable to parcels to be merged.

This subdivision shall not apply if one of the following conditions exist:

(A) On or before July 1, 1981, one or more of the contiguous parcels or units of land is enforceably restricted open-space land pursuant to a contract, agreement, scenic restriction, or open-space easement, as defined and set forth in Section 421 of the Revenue and Taxation Code.

(B) On July 1, 1981, one or more of the contiguous parcels or units of land is timberland as defined in subdivision (f) of Section 51104, or is land devoted to an agricultural use as defined in subdivision (b) of Section 51201.

(C) On July 1, 1981, one or more of the contiguous parcels or units of land is located within 2,000 feet of the site on which an existing commercial mineral resource extraction use is being made, whether or not the extraction is being made pursuant to a use permit issued by the local agency.

(D) On July 1, 1981, one or more of the contiguous parcels or units of land is located within 2,000 feet of a future commercial mineral extraction site as shown on a plan for which a use permit or other permit authorizing commercial mineral resource extraction has been issued by the local agency.

(E) Within the coastal zone, as defined in Section 30103 of the Public Resources Code, one or more of the contiguous parcels or units of land has, prior to July 1, 1981, been identified or designated as being of insufficient size to support residential development and where the identification or designation has either (i) been included in the land use plan portion of a local coastal program prepared and adopted pursuant to the California Coastal Act of 1976 (Division 20 of the Public Resources Code), or (ii) prior to the adoption of a land use plan, been made by formal action of the California Coastal Commission pursuant to the provisions of the California Coastal Act of 1976 in a coastal development permit decision or in an approved land use plan work program or an approved issue identification on which the preparation of a land use plan pursuant to the provisions of the California Coastal Act is based.

For purposes of paragraphs (C) and (D) of this subdivision, "mineral resource extraction" means gas, oil, hydrocarbon, gravel, or sand extraction, geothermal wells, or other similar commercial mining activity.

(c) The owner of the affected parcels has been notified of the merger proposal pursuant to Section 66451.13, and is afforded the opportunity for a hearing pursuant to Section 66451.14.

For purposes of this section, when determining whether contiguous parcels are held by the same owner, ownership shall be determined as of the date that notice of intention to determine status is recorded.

(Amended by Stats. 1995, Ch. 162, Sec. 1. Effective January 1, 1996.)

Exhibit 3: Requirements of the Development Review Committee

Sec. 29.20.745. - Development Review Committee.

The Development Review Committee shall:

- (1) Regularly review and make recommendations to the Planning Commission concerning the determination of all matters which come before the Planning Commission except zoning ordinance amendments, zone changes (not including rezoning to PD), general plan adoptions and amendments, specific plan adoptions and amendments, and capital improvement plans.
- (2) Review and make recommendations to the Council concerning community-oriented bulletin boards and kiosks proposed to be erected on public property.
- (3) May on its own motion review and make recommendations concerning matters not assigned to it.
- (4) Reserved.
- (5) Determine and issue zoning approval for the storage of hazardous materials as provided in division 1 of article VII of this chapter.
- (6) Determine appropriate screening (fencing, landscaping or a combination) for hazardous materials storage sites as provided in division 1 of article VII of this chapter.
- (7) Determine and issue zoning approval for grading permits as provided in [section 29.10.09045](#)(b) and (c) of this chapter.
- (8) Reserved.
- (9) Determine and issue zoning approval for lot line adjustments and lot mergers.
- (10) Reserved.
- (11) Under the provisions of [section 29.10.070](#) of this chapter and section 66424.2 of the Subdivision Map Act, determine whether lots have merged.

Exhibit 4: Sierra Club vs Napa County Superior Court Ruling on Lot Line Adjustment for Sequential Lots. (See highlighted sections in attached pdf)

[Sierra-Club-v.-Napa-County-Board-of-Supervisors.pdf](#)

Exhibit 5: Town Lot Line Adjustment Procedure Handout.

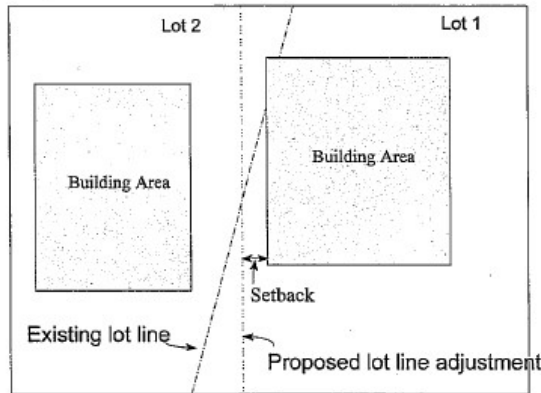
This procedure cannot be used because of State Law SMA 66451.11 stating lots meet merger criteria. Building on APN 532-36-076 is derelict. APN 532-36-077 is land-locked due to quit claim deeds signed in 1978 and has no frontage. Is non-conforming.

<https://www.losgatosca.gov/DocumentCenter/View/348>

What is a lot line adjustment?

Lot line adjustment is the relocation of an interior lot line between two or more neighboring parcels. Lot line adjustments are reviewed according to Section 66412(d) of the Government Code of the State of California. The applicant has the option of using this procedure or completing the lot line adjustment by filing a Parcel Map.

Example illustration:



How to apply for a lot line adjustment?

Application for lot line adjustments (boundary changes) shall be made to the Community Development Department on the prescribed form. Application forms and pertinent information can be obtained at the Community Development Department.

What items shall be submitted with the application?

- All owners of record must sign the application.
- Evidence that any holders of Deeds of Trust have no objections to the proposed boundary changes.
- Title reports covering all parcel involved

dated *within 30 days*.

- The required Community Development Department processing fee.
- Seven (7) copies of a drawing no larger than 24" x 36" showing existing and proposed boundaries, all improvements (houses, driveways, trees, etc.) and required building setbacks that may be affected by the proposed boundary change.

What is the lot line adjustment process?

Once an application is accepted at the Community Development Department, all Lot Line Adjustment application will be reviewed by the Development Review Committee (DRC) and sent to pertinent departments and organizations for review and recommendation.

1. The DRC will limit its review to the following items:

- Lot size remains conforming to the existing zoning ordinance. If the lots are currently nonconforming as to size, they cannot become more nonconforming (smaller).
- Setbacks remain conforming or do not become more nonconforming.
- Lot frontage and lot depth requirements remain conforming.
- The existing houses do not become nonconforming as for Floor Area Ratio (FAR) requirements of the zone.
- The existing buildings meet the requirement of the Uniform Building Code for fire separation or fire wall construction.

2. After final action by the DRC, the applicant will be notified by the Community Development Department that the

Exhibit 6: CEQA Categorical Exemption Class 5, Guidelines Section 15305 (minor alterations in land use limitations).

[Cal. Code Regs. tit. 14 § 15305](#)

Section 15305 - Minor Alterations in Land Use Limitations

Class 5 consists of minor alterations in land use limitations in areas with an average slope of less than 20%, which do not result in any changes in land use or density, including but not limited to:

(a) Minor lot line adjustments, side yard, and set back variances not resulting in the creation of any new parcel;(b) Issuance of minor encroachment permits;(c) Reversion to acreage in accordance with the Subdivision Map Act.

Exhibit 7: List of CEQA Exemption Types

<https://sfplanning.org/list-ceqa-exemption-types>

Categorical Exemptions from the California Environmental Quality Act (CEQA)

The California Environmental Quality Act (CEQA) and the Guidelines for implementation of CEQA adopted by the Secretary of the California Resources Agency require that local agencies adopt a list of categorical exemptions from CEQA. Such list must show those specific activities at the local level that fall within each of the classes of exemptions set forth in Article 19 of the CEQA Guidelines, and must be consistent with both the letter and the intent expressed in such classes.

In the list that follows, the classes set forth in CEQA Guidelines Sections 15301 - 15332 are shown *in bold italics*, with further elaboration or explanation for applying these exemptions in San Francisco shown in normal upper- and lower-case type. The Secretary of the California Resources Agency has determined that the projects in these classes do not have significant effect on the environment, and therefore are categorically exempt from CEQA. The following exceptions, however, are noted in the State Guidelines.

*** CLASS 5: MINOR ALTERATIONS IN LAND USE LIMITATIONS**

Class 5 consists of minor alterations in land use limitations in areas with an average slope of less than 20%, which do not result in any changes in land use or density, including but not limited to:

(a) Minor lot line adjustments, side yard and setback variances not resulting in the creation of any new parcel.

This item covers only the granting of lot line adjustments and variances, not construction that could occur as a result of such approvals. Setback variances include both front and rear yard variances and modification or abolition of legislated setback lines. Class 15 may also apply for minor land divisions into four or fewer parcels when no variance is required.

CLASS 15: MINOR LAND DIVISIONS

*Class 15 consists of the division of property in urbanized areas zoned for residential, commercial, or industrial use into four or fewer parcels when the division is in conformance with the General Plan and zoning, no variances or exceptions are required, all services and access to the proposed parcels to local standards are available, the parcel was not involved in a division of a larger parcel within the previous two years, and the **parcel does not have an average slope greater than 20 percent.***

Only land divisions into four or fewer parcels requiring no variances from the City Planning Code and no exceptions from the San Francisco Subdivision Ordinance are covered by this Class.

Exhibit 8: City of Santa Barbara criteria for Environmental Review

https://www.santabarbaraca.gov/SBdocuments/Advisory_Groups/Staff_Hearing_Officer/Archive/2018_Archives/03_Staff_Reports/2018_06_20_June_20_2018_Item_IV.D_125-127_Eucalyptus_Hill_Circle_Staff_Report.pdf



City of Santa Barbara California

STAFF HEARING OFFICER STAFF REPORT

REPORT DATE: June 13, 2018
AGENDA DATE: June 20, 2018
PROJECT ADDRESS: 125-127 Eucalyptus Hill Circle (MST2017-00756)
Lot Line Adjustment in Eucalyptus Hill Planned Unit Development
TO: Susan Reardon, Senior Planner, Staff Hearing Officer
FROM: Planning Division, (805) 564-5470
Beatriz Gularte, Senior Planner *BGG*
Megan Arciniega, Associate Planner *MAA*

VIII. ENVIRONMENTAL REVIEW

The project is a minor land transfer between two lots developed under a PUD for 28 residential units. The City's list of projects qualifying as categorically exempt from the provisions of CEQA includes an exemption for projects involving minor lot line adjustments where no new building site has an average slope greater than 20%, and there would be no changes in land use or density. Because there is no change to land use or increase in density associated with the Lot Line Adjustment since it would not create a new building site, as the building site was already approved, the Environmental Analyst has determined that the project is exempt from further environmental review pursuant to the California Environmental Quality guidelines Section §15305 (Minor Alteration in Land Use Limitations).

Exhibit 9 Los Robles Way Average Slope Calculations:

AVERAGE SLOPE CALCULATIONS:
(ENTIRE PROPERTY)

CONTOUR INTERVAL (I) 5 FEET
CONTOUR LENGTH (L) 7102 FEET
AREA (A) 3.13 ACRES 136343 SQUARE FEET

AVERAGE SLOPE (S)

$$S=IL/A = 5 \cdot 7102' / 136343 \text{ S.F.} = 26\%$$

Exhibit 10 Required Findings For 17200 Los Robles Way:
(No development proposed yet Town is able to make these affirmative findings without review of proposed development?)

PLANNING COMMISSION – *September 8, 2021*

REQUIRED FINDINGS FOR:

17200 Los Robles Way

Subdivision Application M-20-012

Consider an Appeal of a Development Review Committee Decision Approving a Lot Line Adjustment Between Three Adjacent Lots on Properties Zoned R-1:20. APNs 532-36-075, -076, and -077. PROPERTY OWNERS: Daren Goodsell, Trustee and Mark Von Kaenel.

APPLICANT: Tony Jean. APPELLANTS: Alison and David Steer, Terry and Bob Rinehart, Nancy and Jim Neipp, Gary and Michelle Gysin, and Gianfranco and Eileen De Feo.

PROJECT PLANNER: Ryan Safty.

FINDINGS

Required findings for CEQA:

■ The project is not subject to the California Environmental Quality Act pursuant to the adopted Guidelines for the Implementation of CEQA, Section 15061(b)(3): A project is exempt from CEQA when the activity is covered by the common sense exemption that CEQA only applies to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question will have a significant effect on the environment, the activity is not subject to CEQA. The project proposes to modify lot lines between three legal, adjacent parcels. **No development is proposed at this time.**

Required findings to deny a Subdivision application:

■ As required by Section 66474 of the State Subdivision Map Act the map shall be denied if any of the following findings are made: **None of the findings could be made to deny the application.**

Instead, the Planning Commission makes the following **affirmative findings:**

- a. That the proposed map is consistent with all elements of the General Plan.
- b. That the design and improvement of the proposed subdivision is consistent with all elements of the General Plan.
- c. That the site is physically **suitable for the type of development.**
- d. That the site is physically suitable for the **proposed density of development.**
- e. That the design of the subdivision and the proposed improvements are not likely to cause **substantial environmental damage nor substantially and avoidably injure fish or wildlife or their habitat.**
- f. That the design of the subdivision and type of improvements is not likely to cause serious public health problems.
- g. That the design of the subdivision and the type of improvements will not conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision.

EXHIBIT 11 Links to other CA Town and County Lot Line Adjustment Ordinances:

A) Santa Cruz County

<https://www.sccoplanning.com/LinkClick.aspx?fileticket=qoSS8epYHGU%3D&tabid=1097>

SANTA CRUZ COUNTY PLANNING DEPARTMENT POLICY/ORDINANCE INTERPRETATION

Interpretation No.: LD-02 (Lot Line Adjustments)
Effective Date: 06/30/06
Originally Issued: 06/30/06 (LD-02 replaces a portion of LD-01)

Question:

What standards are applied when processing Lot Line Adjustments?

**Applicable Ordinance Section(s)
and/or General Plan/LUP Policy(ies)**
§13.10.673; §14.01.105-L; §14.01.107.4

Interpretation:

In addition to the regulations found in the County Code Sections listed above, the following standards will be applied to Lot Line Adjustment applications:

1. Maximum number of parcels. Lot line adjustments shall involve four or fewer parcels, in conformance with Senate Bill 497. Adjustments of five or greater parcels require Tentative and Final Maps;
2. Proximity of parcels. The parcels must be adjoining, i.e. touching, and not merely adjacent or nearby, in conformance with Senate Bill 497;
3. Additional Building Sites. No additional building sites may be created by a lot line adjustment. A lot must be buildable before a lot line adjustment can be approved, except where the entirety of the unbuildable lot will become part of one or more buildable, legally created parcels. A lot that is not buildable for whatever reason (lack of access, unstable slopes, inadequate sewage disposal, etc.) cannot be made buildable by means of a lot line adjustment.

B) Napa County Lot Line Adjustment Ordinance

https://library.municode.com/ca/napa_county/codes/code_of_ordinances?nodeId=TIT17SU_CH17.46LOLIAD_17.46.030LOLIADPPDECO

C. The county surveyor shall tentatively approve the lot line adjustment if it meets the following standards at the time the filed application is deemed complete, provided however that the county surveyor may impose conditions as part of such tentative approval to ensure that the standard established by subsection (E) of [Section 17.46.060](#) will be satisfied prior to recordation of the deed(s) consummating the lot line adjustment. Applications complying with the following standards are deemed to conform to the county general plan, any applicable specific plan, and county zoning and building ordinances:

1. The lot line adjustment will result in the transfer of property between at least two, but no more than four, existing adjoining legal parcels. Parcels are adjoining only if each of the parcels proposed for adjustment abuts at least one of the other parcels involved;

2. A greater number of parcels than originally existed will not result from the lot line adjustment;

3. A nonbuildable parcel will not be made buildable by the lot line adjustment. For purposes of this standard, a lot is considered buildable if it meets all three of the following criteria:

a. The parcel contains a minimum two thousand four hundred square feet of net lot area as defined in [Section 17.02.350](#);

b. The parcel **has existing access rights to a public street** as defined in [Section 17.02.020](#); and

c. The parcel contains a building site, as defined in [Section 17.02.080](#), which is a minimum of twenty-five feet wide and twenty-five feet deep;

- **17.02.080 - Building site.**

"Building site" means a site on a lot which is suitable for construction of a main building and is reasonably free from geotechnical hazards such as settlement, landsliding, mudsliding and flood hazards, and to which there is reasonable access.

(Ord. 854 § 2 (part), 1987: prior code § 11602.2 (b))

C) Town of Saratoga

https://library.municode.com/ca/saratoga/codes/code_of_ordinances?nodeId=CH14SU_ART14-50LOLIAD

Category 1—No increase in number of Developable Lots.

- (1) No substandard lot is reduced or further reduced in area; and
- (2) Each adjusted lot retains at least ninety percent of the real property included in the lot prior to the proposed lot line adjustment; and
- (3) The lot line adjustment would not result in any additional developable lots or a greater allowable density than prior to the lot line adjustment. In determining if a lot is developable, the lot must meet at least one of the following criteria.
 - (i) Contain a legal dwelling constructed pursuant to and in compliance with a validly issued design review and subsequent building permit; or
 - (ii) Be subject to an unexpired design review approval and or building permit; or
 - (iii) Be a whole lot on a numbered tract map or parcel map issued pursuant to a legal subdivision.

[14-65.010 - Requirements for parcel merger. | Code of Ordinances | Saratoga, CA | Municode Library](#)

14-65.010 - Requirements for parcel merger.



A parcel or unit of land may be merged with a contiguous parcel or unit of land held by the same owner if any one of such parcels or units does not conform to the applicable standard for minimum site area as prescribed in the Zoning Ordinance, and all of the following requirements are satisfied:

- (a) At least one of the affected parcels is undeveloped by any structure for which a building permit was issued or for which a building permit was not required at the time of construction, or is developed only with an accessory structure or accessory structures, or is developed with a single structure other than an accessory structure that is also partially sited on a contiguous parcel or unit.
- (b) With respect to any affected parcel, one or more of the following conditions exist:
 - (1) The parcel comprises less than five thousand square feet in gross site area at the time of the determination of merger.
 - (2) The parcel was not created in compliance with applicable laws and ordinances in effect at the time of its creation.
 - (3) The parcel does not meet current standards for sewage disposal and domestic water supply.
 - (4) The parcel does not meet slope stability standards.
 - (5) The parcel has no legal access which is adequate for vehicular and safety equipment access and maneuverability.
 - (6) Development of the parcel would create health or safety hazards.
 - (7) The parcel is inconsistent with the General Plan and any applicable specific plan, other than minimum lot size or density standards.
- (c) For purposes of determining whether contiguous parcels are held by the same owner, ownership shall be determined as of the date that notice of intention to determine status is recorded pursuant to [Section 14-65.020](#) of this Article.

14-65.020 - Notice of intended merger.



Whenever the Community Development Director believes that a parcel or unit of land may satisfy the requirements set forth in [Section 14-65.010](#) and ought to be merged, or whenever the Planning Commission or the City Council makes such determination and instructs the Community Development Director to initiate proceedings under this Article, the Director shall cause to be mailed by certified mail to the then current owner of the property a notice of intention to determine status, notifying the owner that the affected parcels may be merged pursuant to the standards of this Article, and advising the owner of the opportunity to request a hearing on determination of status and to present evidence at the hearing that the property does not meet the criteria for merger. The notice of intention to determine status shall be filed for record in the office of the County Recorder on the date such notice is mailed to the property owner.

(Amended by Ord. 221 § 2 (part), 2003)

D) Laguna Beach

http://qcode.us/codes/lagunabeach/view.php?topic=21-21_08-21_08_030

21.08.030 Lot line adjustments exempted.

In accordance with Section 66412(d) of the California Government Code, a lot line adjustment between two or more existing building sites, or between parcels of land contained within an existing building site, where the land taken from one building site is added to an adjacent building site, or where interior parcel lines are eliminated for the purpose of consolidation, and where a greater number of parcels than originally existed is not thereby created, is exempt from this chapter, provided the lot line adjustment is approved by the city council of the city of Laguna Beach and observes the following requirements:

- (a) The project site described in the proposal consists of legal building sites as defined in Title 25 (Zoning) of this code;
- (b) **The proposal does not create one or more building site(s);**
- (c) Any land taken from one site will be added to an adjacent site and no additional sites will result from the lot line adjustment;
- (d) The project **complies** with the requirements of the **California Environmental Quality Act**;
- (e) The proposal is consistent with the general plan;
- (f) The parcels proposed to be adjusted by the lot line adjustment comply with all applicable zoning regulations or, in the case of existing, legal nonconforming lots, do not significantly or adversely increase the extent of such nonconformity;
- (g) The lot line adjustment, in and of itself, will not result in the need for additional improvements and/or facilities;
- (h) The proposal does not include any lots or parcels created illegally;
- (i) The project does not impair any existing access, create a need for new access, impair any existing easements or create a need for any new easements serving any adjacent lots or parcels.

Lot line adjustment applications shall be filed by the legal owner(s) on a form prescribed by the director of community development and submitted with a fee as established by resolution of the city council. Since the forms, if approved, must be filed for record with the Orange County recorder they shall be drawn in a clear, legible and professional manner using conventional surveying or civil engineering techniques. An acceptable current title report, except or lot book report that verifies the legal ownership of the parcels under consideration shall be submitted.

Any failure to file for the record an approved lot line adjustment form within ninety days from the date of approval by the city council shall result in a termination of approval unless prior to expiration an application for extension not to exceed an additional ninety days is submitted in writing for approval by the director of community development. (Ord. 1216 § 2, 1991).

E) Sonoma County

<https://sonomacounty.ca.gov/PRMD/Instructions-and-Forms/PJR-030-Lot-Line-Adjustment/>

Minor Lot Line Adjustment:

A request for a LLA shall be deemed minor only if all of the following statements are true:

1. No parcel is completely relocated;
2. No parcel is reduced in size by more than 30% or enlarged by more than 100%;
3. **No existing parcel is subject to merger or otherwise undevelopable; and**
4. The adjustment is not subject to the California Environmental Quality Act, (CEQA) pursuant to Section 25-70.2 of the Subdivision Ordinance.

Major Lot Line Adjustment:

A request for a LLA shall be deemed major, unless exempted by the Director of Permit Sonoma, if any of the following statements are true:

1. A parcel is completely relocated;
2. A parcel is reduced in size by more than 30% or enlarged by more than 100%;
3. An existing parcel is subject to merger or otherwise undevelopable;
4. The adjustment is subject to the California Environmental Quality Act (CEQA), pursuant to Section 25-70.2 of the Subdivision Ordinance.

F) CITY OF FILLMORE Lot Line Adjustment Criteria

<https://www.fillmoreca.com/home/showpublisheddocument/6559/637245227149470000>

CRITERIA:

- LLAs and LMs are not valid until such time as the forms and exhibits are approved and signed by the Community Development Director and recorded in the Ventura County Recorder's Office in conformance with the requirements of the Fillmore Municipal Code. In addition, all deeds granting the merged/adjusted lots to the respective owners must also be recorded with the Ventura County Recorder's Office.
- For LLAs and LMs to be processed ministerially, they must involve only legal lots (per the Subdivision Map Act) provided that the adjustment or merger is consistent with the Fillmore Municipal Code, and that either: (1) all of the resulting lot(s) will conform to all applicable zoning and subdivision requirements (e.g., area, width, frontage and yard requirements), (2) will not change land use or density, or (3) no conforming lot will be made nonconforming with applicable zoning requirements and the adjustment or merger will not reduce the aggregate area of all affected lots which do not meet the minimum area requirements of their zoning designations.

G) Marin County Lot Merger Ordinance

https://library.municode.com/ca/marin_county/codes/municipal_code?nodetid=TIT22DECO_ARTVISU_CH22.92MEPA_22.92.02OREME

22.92.020 - Requirements for Merger.

On or after January 1, 1984, when any one of two or more contiguous parcels or units of land, which are held by the same owner or owners, does not conform to the minimum lot area requirements of the applicable zoning district or the minimum lot area requirements based on lot slope (Section [22.82.050](#) - Hillside Subdivision Design), the contiguous parcels shall merge if required by Subsection A of this Section (Merger Required), except where otherwise provided by Subsection B of this Section (Exemptions from Merger Requirements). Such mergers may be initiated either by the County or by the property owner.

A. Merger required. Contiguous, nonconforming parcels held by the same owner or owners shall merge if both of the following requirements are satisfied:

1. At least one of the affected parcels is undeveloped by any structure for which a Building Permit was issued or for which a Building Permit was not required at the time of construction, or is developed only with an accessory structure or accessory structures, or is developed with a single structure, other than an accessory structure, that is also partially sited on a contiguous parcel or unit of land; and

2. With respect to any affected parcel, one or more of the following conditions exist:

a. Comprises less than 5,000 square feet in area at the time of the determination of merger;

b. Was not created in compliance with applicable laws and ordinances in effect at the time of its creation;

c. Does not meet current standards for sewage disposal in [Title 18](#) (Sewers) of the County Code;

d. Does not meet current standards for domestic water supply in [Title 7](#) (Health and Sanitation) of the County Code;

e. Does not meet slope stability standards. A parcel will be deemed to not meet slope stability standards if more than 50 percent of its gross area is located within slope stability zone 3 or 4 as shown on the latest slope stability maps on file with the Agency;

f. Has no legal access which is adequate for vehicular and safety equipment access and maneuverability. The standards of access shall be those contained in [Title 24](#) (Improvement and Construction Standards) of the County Code;

g. Its development would create health or safety hazards; or

h. Is inconsistent with the Marin Countywide Plan, the Local Coastal Plan or any applicable Community Plan or Specific Plan, other than minimum lot size or density standards.

For purposes of determining whether contiguous parcels are held by the same owner, ownership shall be determined as of the date that the Notice of Intent to Determine Status is recorded in compliance with [Section 22.92.040](#) (Notice of Intent to Determine Status).

Exhibit 12: Burke Lot Line Adjustment- Big Sur

<https://documents.coastal.ca.gov/reports/2009/9/W19a-9-2009.pdf>

"The LUP contains a policy that encourages lot line adjustments when no **new developable lots are created** and when plan policies are better met through the adjustment. In other words, a lot line adjustment must not take unbuildable parcels and make them buildable, and the new lot configuration must improve the potential development's consistency with the LUP. This emphasis on only encouraging lot line adjustments when they would facilitate less and more sensitive development is consistent with the LCP's strong policy to minimize development in Big Sur. The three existing Burke parcels contain numerous constraints that would preclude them from being deemed buildable under the LCP's guidelines, including 30% or greater average slopes, sensitive riparian corridor habitat, and substandard sizes relative to minimum parcel size requirement"

A. Relevant LCP Provisions

The LCP contains numerous references to and provisions for residential compatibility with sensitive coastal resources in Big Sur. The LCP also includes provisions that identify when a parcel is considered buildable in the context of parcel creation and adjustment.

LUP Policy 5.4.2.1. All development and use of the land whether public or private shall conform to all applicable policies of this plan and shall meet the same resource protection standards.

LUP Policy 5.4.2.5. Existing parcels of record are considered buildable parcels and are suitable for development of uses consistent with the plan map provided all resource protection policies can be fully satisfied, there is adequate building areas of less than 30% cross slope, and they are not merged by provisions elsewhere in this plan.

LUP Policy 5.4.3.H.4. Resubdivisions and lot line adjustments are encouraged when no new developable lots are created and when plan policies are better met by this action.

LUP Policy 5.4.2.8. It is the policy of Monterey County that lands in excess of thirty percent cross slope, located east of Highway 1, shall not be developed. Those portions of a parcel in this area that have a cross slope of thirty percent or more shall receive a density of one dwelling unit (d.u.) for 320 acres.

The calculation of residential development potential on property east of Highway 1 will be based on the following slope density formula:

Exhibit 13: SMA Gov Code 66412(d).

(Irrelevant due to APN 532-36-077 meeting criteria for merger.)

GOVERNMENT CODE – GOV

TITLE 7. PLANNING AND LAND USE [65000 - 66499.58] (*Heading of Title 7 amended by Stats. 1974, Ch. 1536.*)

DIVISION 2. SUBDIVISIONS [66410 - 66499.38] (*Division 2 added by Stats. 1974, Ch. 1536.*)

CHAPTER 1. General Provisions and Definitions [66410 - 66424.6] (*Chapter 1 added by Stats. 1974, Ch. 1536.*)

ARTICLE 1. General Provisions [66410 - 66413.5] (*Article 1 added by Stats. 1974, Ch. 1536.*)

66412.

This division shall be inapplicable to any of the following:

- (a) The financing or leasing of apartments, offices, stores, or similar space within apartment buildings, industrial buildings, commercial buildings, mobilehome parks, or trailer parks.
- (b) Mineral, oil, or gas leases.
- (c) Land dedicated for cemetery purposes under the Health and Safety Code.
- (d) A lot line adjustment between four or fewer existing adjoining parcels, where the land taken from one parcel is added to an adjoining parcel, and where a greater number of parcels than originally existed is not thereby created, if the lot line adjustment is approved by the local agency, or advisory agency. A local agency or advisory agency shall limit its review and approval to a determination of whether or not the parcels resulting from the lot line adjustment will conform to the local general plan, any applicable specific plan, any applicable coastal plan, and zoning and building ordinances. An advisory agency or local agency shall not impose conditions or exactions on its approval of a lot line adjustment except to conform to the local general plan, any applicable specific plan, any applicable coastal plan, and zoning and building ordinances, to require the prepayment of real property taxes prior to the approval of the lot line adjustment, or to facilitate the relocation of existing utilities, infrastructure, or easements. No tentative map, parcel map, or final map shall be required as a condition to the approval of a lot line adjustment. The lot line adjustment shall be reflected in a deed, which shall be recorded. No record of survey shall be required for a lot line adjustment unless required by Section 8762 of the Business and Professions Code. A local agency shall approve or disapprove a lot line adjustment pursuant to the Permit Streamlining Act (Chapter 4.5 (commencing with Section 65920) of Division 1).

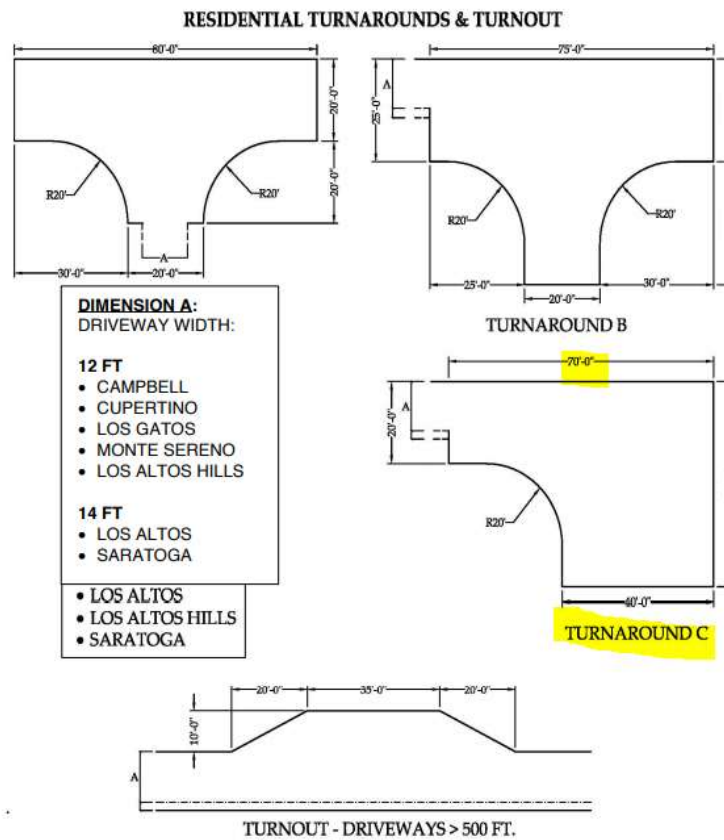
Exhibit 14: Santa Clara County Fire Department Requirements for driveways >150ft.

17200 Los Robles Way does not have an adequate turnaround for emergency vehicle access.

https://www.sccfd.org/images/documents/fire_prevention/standards/DS_D-1_DrivewaysTurnaroundsTurnOuts_04272021_1.pdf

X. TURNAROUNDS:

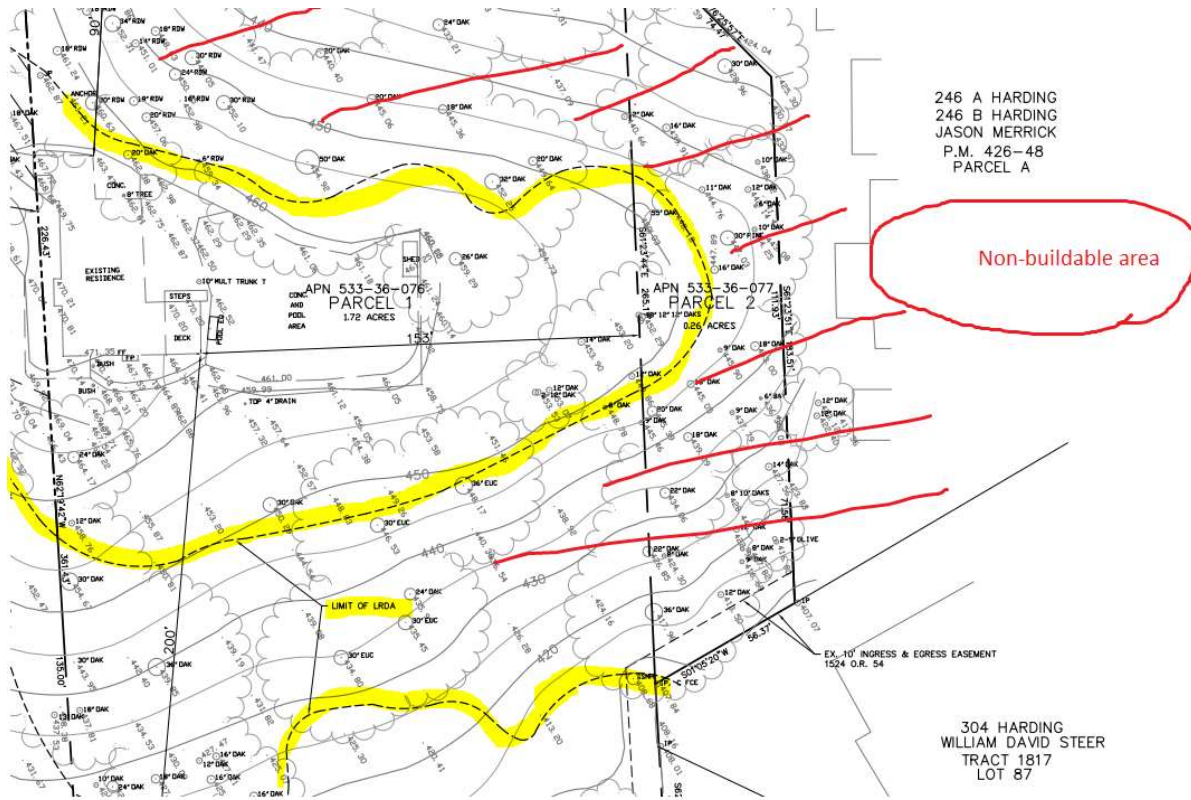
Turnarounds are required for all driveways with a length in excess of 150 feet.



NOTE: Turnarounds cannot exceed 5% in any one direction.

Exhibit 15: Non Buildable Area of APN 532-36-077 outside the LRDA

(note APN error on the surveyor drawings)



CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
 725 FRONT STREET, SUITE 300
 SANTA CRUZ, CA 95060
 PHONE: (831) 427-4863
 FAX: (831) 427-4877
 WEB: WWW.COASTAL.CA.GOV

W19a

Appeal filed:	1/31/2007
49th day:	waived
Staff report prepared:	8/19/2009
Staff report prepared by:	Katie Morange
Staff report approved by:	Dan Carl
Hearing date:	9/9/2009

APPEAL STAFF REPORT SUBSTANTIAL ISSUE DETERMINATION & DE NOVO HEARING

Appeal numberA-3-MCO-07-004, Burke Lot Line Adjustment

Applicant.....Timothy and Dana Burke

AppellantsCommissioners Sara Wan and Meg Caldwell

Local governmentMonterey County

Local decisionApproved by the Monterey County on December 14, 2006 (Monterey County Coastal Development Permit (CDP) Application Number PLN060189).

Project locationThree undeveloped parcels (APNs 418-011-041, 418-011-042, and 418-011-043) accessed via private road from Palo Colorado Road, south of Twin Peaks and immediately west of the Ventana Wilderness of the Los Padres National Forest, Big Sur, Monterey County.

Project descriptionLot line adjustment to reconfigure three undeveloped parcels to result in three lots measuring 6.69 acres, 7.58 acres and 39.92 acres.

File documents.....Administrative record for Monterey County CDP Number PLN060189; Correspondence Submitted by the Applicant; Monterey County certified Local Coastal Program (LCP), including Big Sur Coast Land Use Plan (LUP) and Coastal Implementation Plan (IP).

Staff recommendation ...**Substantial Issue Exists; Deny Coastal Development Permit**

A. Staff Recommendation

1. Summary of Staff Recommendation

On December 14, 2006, the Monterey County Minor Subdivision Committee approved a CDP for a lot line adjustment among three undeveloped parcels resulting in three reconfigured parcels remaining at the existing sizes of 6.69 acres, 7.58 acres and 39.92 acres. The parcels are located immediately west of the Ventana Wilderness area of the Los Padres National Forest and south of Twin Peaks in northern Big Sur. The Appellants contend that the lot line adjustment would convert currently unbuildable parcels to buildable parcels and result in the creation of parcels that do not meet the minimum density standard, thereby placing greater demands on limited water supplies and contribute to cumulative adverse impacts



on traffic and circulation, subsequently adversely affecting public access and recreation along the Big Sur coast. **Staff recommends that the Commission find that the appeal raises a substantial issue and take jurisdiction over the CDP for the project.**

The primary land use planning objective for Big Sur, as stated in the Big Sur Land Use Plan, is to minimize development of the Big Sur coast in order to preserve it as a scenic rural area. The LUP acknowledges that certain areas of Big Sur are not suitable for full development because of the potential for resource degradation, and in order to guide and determine where future land use development should occur, one of the LUP's development policies (Policy 5.4.2.5) characterizes what constitutes a buildable parcel. Under this policy, parcels are considered buildable parcels provided that all resource protection policies can be fully satisfied, there are adequate building areas of less than 30% cross slope, and they are not merged by other provisions of the LCP.

The LUP contains a policy that encourages lot line adjustments when no new developable lots are created and when plan policies are better met through the adjustment. In other words, a lot line adjustment must not take unbuildable parcels and make them buildable, and the new lot configuration must improve the potential development's consistency with the LUP. This emphasis on only encouraging lot line adjustments when they would facilitate less and more sensitive development is consistent with the LCP's strong policy to minimize development in Big Sur. The three existing Burke parcels contain numerous constraints that would preclude them from being deemed buildable under the LCP's guidelines, including 30% or greater average slopes, sensitive riparian corridor habitat, and substandard sizes relative to minimum parcel size requirements. The proposed lot line adjustment also does not include any elements that would allow for plan policies to be better met beyond what exists under the current parcel configuration. Although the lot line adjustment could result in shorter access roads and greater clustering of development than if the parcels were developed in their current configuration (assuming each of the parcels can be approved for development through the use of waivers and policy exceptions), all development would still be inconsistent with slope policies, etc. The lot line adjustment does not offer anything additional to ensure that plan policies are better met, such as a reduction in potential overall development density, retirement of development credit elsewhere, or protective easements.

The LCP envisions lot line adjustments as a useful tool for existing buildable parcels (i.e., those parcels with suitable building, septic, and access road area under 30% slopes, outside the critical viewshed, outside of ESHA, and consistent with all other LCP requirements) if an adjustment would improve the resource setting and thereby further the intent of the LCP to protect coastal resources and public access and recreation. There is no evidence in the LCP that lot line adjustments and resubdivisions were meant to be a means solely to achieve a more marketable parcel configuration, regardless of existing constraints. In fact, the LCP is designed to "substantially curtail" new residential development that could be facilitated through subdivisions or other land intensification mechanisms, such as lot line adjustments.

Since the purpose of the proposed lot line adjustment is to transform nonresidential lots into buildable residential lots, it is not a proper use of the LUP's lot line adjustment tool and it is inconsistent with the



LCP's policies designed to minimize residential development. It would undermine the (already very low) residential buildout assumptions upon which the Big Sur Coast Area LUP was founded. **Accordingly, staff recommends denial of the proposed lot line adjustment.** The motions and resolution on the substantial issue determination and CDP application follow.

2. Staff Recommendation on Substantial Issue

Staff recommends that the Commission determine that a **substantial issue** exists with respect to the grounds on which the appeal was filed. A finding of substantial issue would bring the project under the jurisdiction of the Commission for hearing and action.

Motion. I move that the Commission determine that Appeal Number A-3-MCO-07-004 raises no substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act.

Staff Recommendation of Substantial Issue. Staff recommends a **NO** vote. Failure of this motion will result in a de novo hearing on the application, and adoption of the following resolution and findings. Passage of this motion will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by an affirmative vote of the majority of the appointed Commissioners present.

Resolution to Find Substantial Issue. The Commission hereby finds that Appeal Number A-3-MCO-07-004 presents a substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency with the certified Local Coastal Program.

3. Staff Recommendation on CDP Application

Staff recommends that the Commission, after public hearing, **deny** the CDP for the proposed development subject to the standard and special conditions below.

Motion. I move that the Commission approve Coastal Development Permit Number A-3-MCO-07-004 pursuant to the staff recommendation.

Staff Recommendation of Approval. Staff recommends a **NO** vote. Failure of this motion will result in denial of the coastal development permit and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

Resolution to Deny the Coastal Development Permit. The Commission hereby denies the coastal development permit on the grounds that the development will not conform with the policies of the Monterey County Local Coastal Program. Approval of the coastal development permit would not comply with the California Environmental Quality Act because there are feasible mitigation measures or alternatives that would substantially lessen the significant adverse impacts of the development on the environment.



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B. Findings and Declarations

The Commission finds and declares as follows:

1. Project Location and Description

The project site is located immediately west of the Ventana Wilderness area of the Los Padres National Forest and south of Twin Peaks in the northern Big Sur area (Exhibit C). Access to the site is provided via a private, unpaved access road (the “Zufich” road, as referred to by local residents) that extends to the site from Palo Colorado Road, and continues on toward Twin Peaks. The three existing parcels (APNs 418-011-041, 418-011-042, and 418-011-043, also known as Lots 17, 18, and 1, respectively) are undeveloped except for several footpaths on Lot 17 and an old springbox on Lot 18. The three parcels cover mountainous terrain and range in elevation from approximately 2,250 to 3,000 feet.

The County approval adjusts these three parcels, resulting in three reconfigured parcels remaining at the existing sizes of 6.69, 7.58 and 39.92 acres, as shown in Exhibit D.

2. Monterey County CDP Approval

On December 14, 2006, the Monterey County Minor Subdivision Committee approved the proposed project subject to multiple conditions (see Exhibit A for the County's staff report, findings and conditions on the project). The Minor Subdivision Committee's approval was not appealed locally (i.e., to the Board of Supervisors). Notice of the Minor Subdivision Committee's action on the coastal development permit (CDP) was received in the Commission's Central Coast District Office on January 17, 2007. The Commission's ten-working day appeal period for this action began on January 18, 2007 and concluded at 5pm on January 31, 2007. One valid appeal (see below) was received during the appeal period.

3. Appeal Procedures

Coastal Act Section 30603 provides for the appeal of approved coastal development permits in jurisdictions with certified local coastal programs for development that is (1) between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tideline of the sea where there is no beach, whichever is the greater distance; (2) on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of any coastal bluff; (3) in a sensitive coastal resource area; (4) approved by counties, unless it is designated as the principal permitted use under the zoning ordinance or zoning district map; and (5) any action on a major public works project or energy facility. This project is appealable because a lot line adjustment is not the principally permitted use in the Watershed and Scenic Conservation zoning district.

The grounds for appeal under Section 30603 are limited to allegations that the development does not conform to the standards set forth in the certified LCP and/or the public access policies of the Coastal Act. Section 30625(b) of the Coastal Act requires the Commission to conduct a de novo coastal development permit hearing on an appealed project unless a majority of the Commission finds that "no substantial issue" is raised by such allegations. Under Section 30604(b), if the Commission conducts a de novo hearing and approves a CDP, the Commission must find that the proposed development is in conformity with the certified LCP. If approved, Section 30604(c) also requires an additional specific finding that the development is in conformity with the public access and recreation policies of Chapter 3 of the Coastal Act if the project is located between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone.

The only persons qualified to testify before the Commission on the substantial issue question are the Applicant, persons who made their views known before the local government (or their representatives), and the local government. Testimony from other persons regarding substantial issue must be submitted in writing. Any person may testify during the de novo stage of an appeal.

4. Summary of Appeal Contentions

The two Commissioner Appellants contend that the lot line adjustment would result in the creation of



parcels that do not meet the 40-acre minimum density standard and convert currently unbuildable parcels to buildable parcels, inconsistent with LCP provisions that do not support such a conversion. The Appellants also contend that the increase in development density facilitated by the lot line adjustment will place greater demands on limited water supplies and contribute to cumulative adverse impacts on traffic and circulation, subsequently adversely affecting public access and recreation along the Big Sur coast. See Exhibit B for the Appellants' complete appeal document.

5. Substantial Issue Determination

Monterey County's approval of the Burke lot line adjustment has been appealed to the Coastal Commission on the basis that: (1) none of the new lots created by the lot line adjustment conform to LCP minimum parcel size requirements; (2) the adjustment will increase the density of residential development beyond that which is allowed by the LCP; and (3) the increase in development density resulting from the lot line adjustment will have cumulative adverse impacts on coastal access and recreation, water supplies, and the unique coastal resources of the Big Sur coast. Project location and plans are attached as Exhibits C and D. The County's Final Local Action Notice (FLAN), approving the project (Minor Subdivision Committee Resolution Number 06030), is attached to the report as Exhibit A. The submitted reasons for appeal are attached to this report as Exhibit B.

The Commission finds that the appeal raises a substantial issue regarding the project's conformance to the Monterey County certified LCP.

First, the project area is governed by the Big Sur LCP and is within the LCP's Watershed and Scenic Conservation (WSC) land use designation and zoning district. Sections 20.17.060.B, 20.145.140.A.6, and 20.145.140.A.7 of the LCP's Coastal Implementation Plan (IP) establish a 40-acre minimum parcel size for such areas. In this case, there is no way the density standard of 40-acre minimum parcel size could be met, since a minimum of 120 acres is necessary to have three conforming lots. With a combined total area for the three lots (which currently measure 6.69, 7.58 and 39.92 acres each) of 54.19 acres, conformance with the 40-acre minimum required by IP sections 20.17.060.B, 20.145.140.A.6, and 20.145.140.A.7 can not be accomplished by this lot line adjustment because it results in establishing three lots that are non-conforming with regards to minimum lot size. This raises a substantial issue.

Second, LUP Policy 5.4.2.8 and IP Section 20.145.140.A.7 prescribe that for steep parcels (those with a slope of more than 30%) that are designated WSC, the maximum allowable density for development is 1 unit/320 acres. The lot line adjustment approved by the County thus raises a substantial issue of consistency with the minimum lot size requirements, as well as with Big Sur IP Section 20.145.140.A.1,¹ because the project would adjust and facilitate development of three substandard parcels.

Finally, a substantial issue is also raised by the fact that the existing parcels are not considered buildable by LCP standards, creating a conflict with Big Sur LUP Policy 5.4.3.H.4 which states that "lot line

¹ Section 20.145.140.A.1 of the IP requires the development to conform and be consistent with the development standards of the IP.



adjustments are encouraged when no new developable lots are created and when plan policies are better met by this action” (emphasis added). In other words, Policy 5.4.3.H.4 encourages reconfiguration of buildable parcels so that coastal resources can be better protected, and discourages adjustments that convert unbuildable parcels into buildable parcels. LUP Policy 5.4.2.5 and IP Section 20.145.140.A.15 state that existing parcels of record are considered buildable when there is adequate building area on less than 30% slopes and all other resource protection policies and standards can be fully met. The three Burke parcels consist largely of 30% slopes or greater and contain a riparian corridor (an environmentally sensitive habitat area) raising LCP conflicts for development of residences, septic systems, and access roads, and rendering them unbuildable under these LCP standards. As such, the County approval raises a substantial issue of consistency with Policy 5.4.3.H.4 because it converts what are unbuildable sub-standard parcels into potentially buildable parcels, and sets a precedent that would have significant adverse cumulative impacts on the coastal resources of Big Sur (for example, through increased traffic on Highway 1 during peak visitor times, impacting coastal access and recreation) that do not advance the policies and intent of the Big Sur LCP.

6. Coastal Development Permit Determination

The standard of review for this application is the Monterey County certified LCP. All Substantial Issue Determination findings above are incorporated herein by reference.

A. Relevant LCP Provisions

The LCP contains numerous references to and provisions for residential compatibility with sensitive coastal resources in Big Sur. The LCP also includes provisions that identify when a parcel is considered buildable in the context of parcel creation and adjustment.

LUP Policy 5.4.2.1. All development and use of the land whether public or private shall conform to all applicable policies of this plan and shall meet the same resource protection standards.

LUP Policy 5.4.2.5. Existing parcels of record are considered buildable parcels and are suitable for development of uses consistent with the plan map provided all resource protection policies can be fully satisfied, there is adequate building areas of less than 30% cross slope, and they are not merged by provisions elsewhere in this plan.

LUP Policy 5.4.3.H.4. Resubdivisions and lot line adjustments are encouraged when no new developable lots are created and when plan policies are better met by this action.

LUP Policy 5.4.2.8. It is the policy of Monterey County that lands in excess of thirty percent cross slope, located east of Highway 1, shall not be developed. Those portions of a parcel in this area that have a cross slope of thirty percent or more shall receive a density of one dwelling unit (d.u.) for 320 acres.

The calculation of residential development potential on property east of Highway 1 will be based on the following slope density formula:



<u>CROSS SLOPE</u>	<u>DWELLING UNIT/ACRE</u>
Under - 15%	1 - 40
15 - 30%	1 - 80
Over - 30%	1 - 320

LUP Policy 3.3.3.A.4 - *Setbacks of 150' on each side of the streambank shall be required for all streams to protect riparian plant communities unless a narrower corridor can be demonstrated to be sufficient to protect existing vegetation and provide for restoration of previously disturbed vegetation.*

LUP Key Policy 3.2.1. *Recognizing the Big Sur coast's outstanding beauty and its great benefit to the people of the State and Nation, it is the County's objective to preserve these scenic resources in perpetuity and to promote the restoration of the natural beauty of visually degraded areas wherever possible. To this end, it is the County's policy to prohibit all future public or private development visible from Highway 1 and major public viewing areas (the critical viewshed), and to condition all new development in areas not visible from Highway 1 or major public viewing areas on the siting and design criteria set forth in Sections 3.2.3, 3.2.4, and 3.2.5 of this plan. This applies to all structures, the construction of public and private roads, utilities, lighting, grading and removal or extraction of natural materials.*

LUP Policy 3.2.3.A.4. *New roads, grading or excavations will not be allowed to damage or intrude upon the critical viewshed. Such road construction or other work shall not commence until the entire project has completed the permit and appeal process. Grading or excavation shall include all alterations of natural landforms by earthmoving equipment. These restrictions shall not be interpreted as prohibiting restoration of severely eroded water course channels or gullying, provided a plan is submitted and approved prior to commencing work.*

Monterey County Code Section 19.09.025 *Action on the lot line adjustment.*

- A. *Upon completion of the environmental documents, or finding that the proposed adjustment is exempt from CEQA the Director of Planning and Building Inspection shall set the matter before the appropriate decision making body which shall approve, disapprove, or conditionally approve the lot line adjustment in conformance with standards set forth in the Subdivision Map Act and this Chapter.*
- B. *A lot line adjustment application may be granted based upon the following findings:*
 - 1. *That the lot line adjustment is between two (or more) existing adjacent parcels.*
 - 2. *A greater number of parcels than originally existed will not be created as a result of the lot line adjustment.*
 - 3. *The parcels resulting from the lot line adjustment conform to County zoning and building ordinances.*

IP Section 20.145.140.A.1. All development and land use, whether public or private, shall conform to and be consistent with the policies of the Big Sur Coast Land Use Plan and with the development standards of this ordinance. (Ref. Policy 5.4.2.1)

IP Section 20.145.140.A.4. Development shall not be located on slopes of 30% or greater. The Director of Planning may grant a waiver to the standard upon applicant request and explanation of the request justification if: a. there is no alternative which would allow development to occur on slopes of less than 30%; or, b. the proposed development better achieves the resource protection objectives and policies of the Big Sur Coast Land Use Plan and development standards of this ordinance.

IP Section 20.145.140.A.5. Development of a parcel shall be limited to density, land use, and site development standards specific to that parcel's land use designation, as shown in Attachment 3.

IP Section 20.145.140.A.6. East of Highway 1, residential development in "RDR" (Rural Density Residential) and "WSC" (Watershed and Scenic Conservation) zoning districts shall be allowed at maximum densities established according to the following steps:

- a. The maximum density is established by the zoning district in which the parcel lies, e.g., "Watershed and Scenic Conservation/40 (CZ)" provides a 40 acre minimum building site.
- b. The maximum density is established according to the slope density analysis required for the project according to Section 20.145.140.A.7.
- c. The development standards of this ordinance and the policies of the Big Sur Coast Land Use Plan are applied to the parcel. Any policy or standard resulting in a decrease in density are then tabulated and subtracted from the maximum density allowed under the slope density formula.
- d. Whichever of the two resulting densities, from the slope formula and from zoning, the lesser is then established as the maximum allowable density for the parcel. (Ref. Policy 5.4.2.8)

IP Section 20.145.140.A.7. A slope density analysis shall be required for applications for residential development beyond the first residential unit on parcels which are east of Highway 1 and in a "WSC" (Watershed and scenic Conservation) or "RDR" (Rural Density Residential) zoning district. The analysis shall be required and submitted to the County prior to the application being considered complete. The slope density analysis shall include the following elements:

- a. topographic map of the entire parcel at an appropriate scale and contour interval of 40 feet or less ;
- b. table showing the calculation of average cross slope as per Sec. 19.08.030 and 20.145.020.W;



- c. *the resulting maximum allowable number of dwelling units using the following slope density formula:*

<u>Existing Slope</u>	<u>Maximum Allowable Density</u>
Under 15%	1 unit/40 acres
15 - 30%	1 unit/80 acres
Over 30%	1 unit/320 acres

(Ref. Policy 5.4.2.8)

IP Section 20.145.140.A.13. On-site septic or other waste disposal systems shall not be permitted on slopes exceeding 30%. One acre shall be considered to be the minimum area for development of a septic system.

IP Section 20.145.140.A.15. Existing parcels of record are considered to be buildable parcels suitable for development of uses consistent with the provisions of the ordinance and land use plan, provided that: a) all resource protection policies of the land use plan and standards of the ordinance can be met; b) there is adequate building area on less than 30% slopes; and, c) that all other provisions of the Coastal Implementation Plan can be fully met. (Ref. LUP Policy 5.4.2.5)

B. Big Sur Parcelization

Most of the original parcels in Big Sur were created under the original Township and Range survey system, under which the lands of Monterey County not within recognized Mexican-era land grants were divided into square-mile blocks termed “townships.” Each township was further divided into 36 square sections of 640 acres each. Settlers were given the opportunity to homestead and eventually patent a quarter-section, amounting to 160 acres, as sufficient to maintain a farmstead. Some quarter sections were further divided into quarters (a sixteenth section, a quarter of a square mile), i.e. 40-acre lots. The smallest unit of survey was the “U.S. Lot” comprising 10 acres. These U.S. Lots could be aggregated under a single deed to define a particular homestead claim. Hundreds of homesteads were attempted in Big Sur’s pioneer days, and dozens of successfully-patented homesteads remain to this day.

Review of the parcelization of Big Sur finds that certain anomalies exist in the pattern of square sections of lots. When the townships westerly of the Mount Diablo Meridian were first surveyed, some of the U.S. lots within Township 18 North, Range 1 East (in which the Burke parcels are located) turned out to have irregular shapes. Specifically, a sliver of land remained between Sections 1 and 2. This appears to have resulted from the desire to have a rectilinear land survey system, with future homestead parcels having consistent shapes and dimensions. Of course, the problem in drawing north-south section lines along the presumed lines of longitude is that the lines of longitude are not in fact exactly parallel but gently curved along the Earth’s surface. So, Commission staff’s research shows that some small “make-up” lots were inserted to keep the principal tiers of townships and sections regularly-shaped and parallel. These lots are identified in Exhibit E. The Burke Lot 17 appears to be one of the original 40-acre lots (although it measures just under 40 acres at 39.92 acres), and Lots 18 and 1 (6.60 acres and 7.58 acres, respectively) are two of these remnant “make-up” lots that lie on the border of Sections 1 and 2.



C. LCP Framework

The Big Sur Coast LUP is premised on preservation of the area's natural and scenic qualities, and repeatedly demonstrates a strong policy objective to strictly limit new development of the area. The LUP's basic objective for land use and development (Section 2.2.4) states:

The County's primary land use planning objective is to minimize development of the Big Sur coast in order to preserve the coast as a scenic rural area where residents' individual lifestyles can flourish, traditional ranching uses can continue, and the public can come to enjoy nature and find refuge from the pace of urban life.

The County's basic policy is that future land use development on the Big Sur coast shall be extremely limited, in keeping with the larger goal of preserving the Coast as a natural scenic area. In all cases, new land uses must remain subordinate to the character and grandeur of the Big Sur coast. All proposed uses, whether public or private, must meet the same exacting environmental standards and must not degrade the Big Sur landscape.

The LUP describes that the majority of residential development in Big Sur is located in a number of residential areas (designated Rural Residential) that have generally been developed to a level where the natural environment is perceived to have been significantly altered, and where residential development is very apparent on the land. These areas include Otter Cove, Garrapata Ridge/Rocky Point, Garrapata and Palo Colorado Canyon, Bixby Canyon, Pfeiffer Ridge, Sycamore Canyon, Coastlands, Partington Ridge, and Buck Creek to Lime Creek. The LUP states that the size and density of these residential areas varies, but in all cases, they are more densely developed than surrounding lands. They contain a number of subdivided and residentially-zoned lots in close proximity, yet do not contain resources or land use activities which generate significant employment services for the public. The Big Sur Coast LUP acknowledges that while these areas would continue to be developed, full buildout of all other existing parcels raises inconsistencies with the rural, scenic character of Big Sur and that certain parcels are not suitable for development. Section 5.1.1 of the LUP states:

While there are historic expectations that buildout of these areas [the identified Rural Residential areas] would proceed, a number of areas are not suitable for full development of all existing parcels because of conflicts with the broad objectives of this plan – particularly the protection of water and scenic resources or limited capacity of local roads.

Big Sur Coast LUP Section 5.3.3 goes on to state:

The plan is flexible concerning the siting of new development, allowing a range of land use proposals to be made at any particular location. Yet the plan's resource protection standards, and slope and road requirements, are stringent, ultimately causing new development to be sited on the most physically suitable locations and limiting buildout to a level that can be accommodated on those sites that can meet all of the plan's requirements.

The development of all parcels in Big Sur, regardless of their physical suitability or buildability, would result in significant cumulative impacts to the area's natural and scenic resources as well as place



additional burden on existing residents. State Highway 1, for example, is already frequently at capacity and operates at the worst level of service (LOS F) during the peak summer period, and can not be widened to accommodate more residential traffic. An increase in the projected residential buildout would also cumulatively exacerbate impacts to water supplies, sensitive habitats, and the area's other natural and limited manmade features beyond the area's capacity to sustain such development. In general, an increase in residential development potential (beyond that which is contemplated by the LCP) could alter the unique character of Big Sur that makes it such a popular destination for coastal access and recreation.

Accordingly, the LUP's Key Policy 5.4.1 for development states that "future land use development on the Big Sur coast should be extremely limited, in keeping with the larger goal of preserving the coast as a scenic natural area." In order to guide and determine where future land use development should occur, one of the LUP's development policies (Policy 5.4.2.5) characterizes what constitutes a buildable parcel. Under this policy, parcels are considered buildable parcels provided that "all resource protection policies can be fully satisfied, there are adequate building areas of less than 30% cross slope, and they are not merged by provisions elsewhere in this plan." A sampling of the resource protection policies of the LUP includes the prohibition against development in the critical viewshed, prohibition against development on 30% slopes, and protection of ESHA (including a 150-foot stream setback requirement).

In addition, the LCP prescribes maximum allowable densities for parcels east of Highway 1 based on slopes in order to protect against excessive development in steep mountainous terrain. IP Section 20.145.140.A.6 requires a 40-acre minimum parcel size in the WSC designation (or, in other words, a maximum of 1 residential unit per 40 acres), assuming a site of less than 15% average slope. Under the slope density analysis also required in that section of the IP and LUP Policy 5.4.2.8, the minimum parcel size for areas with slopes that average 30% or more is 320 acres (1 unit per 320 acres). Thus, a minimum of 40 acres is required for parcels that average less than 15% slopes and a minimum of 320 acres is required for steep parcels that average 30% or greater slopes, and the creation of parcels that do not meet these criteria is inconsistent with the LCP.

In general, the Big Sur LUP's resource protection policies are borne out of the basic goal of the LUP:

To preserve for posterity the incomparable beauty of the Big Sur country, its special cultural and natural resources, its landforms and seascapes and inspirational vistas. To this end, all development must harmonize with and be subordinate to the wild and natural character of the land.

Despite the LUP's resource protection goals, objectives, and policies and the basic premise of minimal development, the LCP includes various waivers and exceptions to its resource protection policies. These waiver and exception allowances include exceptions to 30% slope restrictions, riparian setback requirements, and other development restrictions. It is understood that these waiver and exception allowances were built into the LCP because it was acknowledged that some departure from the resource protection policies was necessary to allow for a limited level of development on a number of existing



legal parcels. Although these exceptions to the resource protection policies exist in the LCP, they are discretionary, and may only be employed when no alternatives exist (to development on 30% slopes, for example) and when some level of development must be granted to allow reasonable economic use of a property consistent with the prohibition against the governmental taking of private property without just compensation. Any deviation from the LCP's resource protection policies requires careful consideration since, as discussed above, the Big Sur Coast LCP is premised on minimal development and protection of the area's natural and scenic qualities, and maximum protection of public access to and along the Big Sur shoreline.

There are some circumstances in which the Big Sur LUP encourages lot line adjustments. Policy 5.4.3.H.4 states that "resubdivisions and lot line adjustments are encouraged when no new developable lots are created and when plan policies are better met by this action." For this policy to apply, however, the lot line adjustment must not result in the creation of new developable parcels, and the new configuration must improve the potential development's consistency with the LUP. This emphasis on only encouraging lot line adjustments when they would facilitate less and more sensitive development is consistent with the LCP's strong policy to minimize development in Big Sur, and is supported by LUP Section 5.2 which states:

A major challenge of this plan is to find a way to substantially curtail further commitment to residential development resulting from subdivision or other land use intensification while also assisting landowners in achieving the most sensitive possible development of existing parcels.

Thus, the LCP is designed to curtail the manipulation of parcels that would facilitate further residential development. Instead, it appears that subdivisions and lot line adjustments were seen as tools for protecting the public interest, by allowing shifts in the location of buildable density to better comply with the LUP's resource protection policies and/or to simply correct property line mistakes or adjust poorly-shaped parcels or acreages for logistical purposes.

The LCP envisions lot line adjustments as useful for existing buildable parcels (i.e., those parcels with suitable building, septic, and access road area under 30% slopes, outside the critical viewshed, outside of ESHA, and consistent with all other LCP requirements) if an adjustment would improve the resource setting and thereby further the intent of the LCP to protect coastal resources and public access and recreation. By correcting obsolete or unhelpful property lines, lot line adjustments have the potential to be used as a tool for protecting coastal resources. There is no evidence in the LCP that lot line adjustments and resubdivisions were meant to be a means solely to achieve a more marketable parcel configuration, regardless of existing constraints. In fact, the LCP is designed to "substantially curtail" new residential development that could be facilitated through subdivisions or other land intensification mechanisms, such as lot line adjustments.

D. LCP Consistency Analysis

The three existing undeveloped Burke parcels that are the subject of the County-approved lot line adjustment contain a variety of resource constraints that make them unbuildable under Policy 5.4.2.5. First, the majority of all three parcels contain slopes greater than 30%, as shown in Exhibit F. LUP



Policy 5.4.2.5 and IP Sections 20.145.140.A.15 require adequate building area (for all development) on less than 30% slopes in order for a parcel to be considered buildable, and IP Section 20.145.140.A.4 prohibits development on slopes of 30% or greater. While there may be enough area under 30% slopes for a small residence on each of the existing parcels, there would be no way to develop access roads to those residences, without slope waivers, because of the prevalence of steep slopes. Furthermore, the LCP prohibits onsite septic systems or other waste disposal systems on slopes exceeding 30% and requires a minimum one-acre area on less than 30% slopes for development of a septic system (CIP Section 20.145.140.A.13). A septic system(s) would be necessary for these parcels, given that a sewer system does not exist for Big Sur. As shown in Exhibit F, no one-acre areas on less than 30% slopes exist on any of the three existing parcels.

Even if the small pockets of relatively flat area could be accessed on Lots 1 and 18 without the use of slope waivers and even if one-acre areas on less than 30% slopes existed on each of the parcels, development of residences would be precluded by their proximity to the north fork of Rocky Creek. LUP Policy 3.3.3.A.4 requires 150-foot setbacks from all streams, and much of the area under 30% slopes on Lot 18 lies within 150 feet from Rocky Creek, and the area of Lot 1 that would be closest to an access road from the other commonly-owned parcels would also be within 150 feet of Rocky Creek.

In addition, access roads to Lots 1 and 18 would have to traverse steep slopes that could be visible from Highway 1 and/or other public viewing areas (possibly from trails in the Los Padres National Forest), and they would therefore be subject to the critical viewshed policies of the LCP. (This would require field verification, but appears to be the case based on aerial photograph and map review.). The LCP prohibits all new development in the critical viewshed (LUP Policies 3.2.1 and 3.2.3.A.4).

In sum, the three existing parcels would not meet the Policy 5.4.2.5 definition of buildable parcels because all resource protection policies of the LUP (including prohibition of development on slopes greater than 30%) cannot be met on them. As described above, it is possible that the parcels could be developed with allowed uses through the discretionary granting of slope waivers and other exceptions, if some level of development must be granted to allow reasonable economic use of the properties. Also as discussed above, such granting of waivers and exceptions on these properties would require careful consideration, and the merits of any project(s) on these properties would need to be weighed against the LCP's resource protection policies and the basic LCP premise of extremely minimal development in Big Sur. As part of that consideration, the parcels' land use designation and the LUP priorities for that designation would need to be evaluated and weighed. These three parcels are designated Watershed and Scenic Conservation (WSC), the LUP's primary objective of which is protection of watersheds, streams, plant communities and scenic values. The principal uses in the proposed WSC LUP land use designation include agriculture/grazing and supporting ranch houses and related ranch buildings. Residential use is a secondary, conditional use in this land use designation. Unlike the Rural Residential land use designation, described above, residential use of WSC land was deemed of secondary importance to protection of the natural environment.

The proposed lot line adjustment would reconfigure these three lots to facilitate the development of Lots 1 and 18, which are currently exceedingly constrained, as described above. While lot line adjustments



are encouraged under some circumstances, this lot line adjustment does not meet the standard in Policy 5.4.3.H.4 because it attempts to create new buildable parcels. Not only would the lot line adjustment make currently unbuildable parcels more buildable, it would also facilitate the development of lots that are substandard as to minimum parcel size. The zoning for the Burke parcels (WSC/40) requires the parcels to be a minimum of 40 acres. The parcels, due to the prevalence of 30% slopes or greater, are also subject to additional density requirements. Namely, LUP Policy 5.4.2.8 and CIP Section 20.145.140.A.7 prescribe that for parcels with an average slope of 30% or greater, the allowable density is 1 unit per 320 acres. These minimum parcel sizes were determined to be the appropriate sizes for WSC lands, given the prevalence of difficult terrain and the LCP's primary objectives for this zoning district, described above. The County-approved lot line adjustment does not correct existing substandard parcel size deficiencies, and it reconfigures sub-standard parcels to facilitate their development, thus encouraging the development of parcels that are a fraction of the required minimum size. Such development is inconsistent with the minimum lot size requirements of the LCP that are designed to ensure that new development occurs only on lots of sufficient size in order to protect the area's natural and scenic resources.

Furthermore, with respect to the developability and the substandard sizes of the existing parcels, it does not appear that the applicant's two small easterly parcels (Lots 1 and 18) were meant as homestead sites. Instead, as discussed under the "Big Sur Parcelization" section above, they are artifacts of an early-day land survey process that produced leftover odd fragments of land. Their purpose was not for settlement, but to keep the survey lines straight. At the time of their creation, there could not have been any reasonable expectation that either of the Applicants' very steep, brush-covered, extremely-remote "sliver" parcels would match the homestead ideal of a freestanding, self sufficient residential ownership. By the standards of County zoning in effect for many decades, as well as the more recent California Subdivision Map Act and the certified Monterey County LCP, these lots are substandard.²

Recognition of the Applicants' existing "sliver" parcels as developable and fully eligible for ordinary residential construction would intensify the incentive to develop other substandard lots, the amount of which is unknown but potentially substantial.³ Each vacant parcel cumulatively adds to Big Sur's potential total residential buildout. The LCP stresses minimal development in Big Sur because full buildout of all lots will place an untenable stress on the area's high quality natural and scenic resources, public access to the coast, as well as unfairly burden owners of existing developed properties with added congestion and diminished water supplies, among other things. Highway 1, for example, is already frequently at capacity, and can not be widened to accommodate more visitor-serving let alone residential traffic.

² Nonetheless, each of these lots has been treated as a separate legal parcel. These findings do not dispute such claim of separate standing.

³ The Big Sur Coast Area has more than 300 residences on existing, developed parcels. In addition, there are possibly an equal or greater number of vacant parcels. The total parcel count is indeterminate. The main reason for this is that from time to time more parcels are identified and submitted to the County for Certificates of Compliance (COCs). Essentially, the County may issue a COC for the purposes of recognizing a particular, separate parcel of land that was legally-created under whatever parcelization rules were in existence at the time.



The County-approved lot line adjustment also does not include any elements that would allow for plan policies to be better met (another requirement of Policy 5.4.3.H.4) beyond what exists under the current parcel configuration. Although the lot line adjustment could result in shorter access roads and greater clustering of residential development than if the parcels were each residentially developed in their current configuration (assuming each of the parcels can be approved for development through the use of waivers and policy exceptions), all development would still be inconsistent with slope policies, etc. The County-approved lot line adjustment does not offer anything additional to ensure that plan policies are better met, such as reduction in overall development density, retirement of development credit elsewhere, or protective easements.

Since the purpose of the proposed lot line adjustment is to transform nonresidential lots into buildable residential lots, it is not a proper use of the LUP's lot line adjustment tool and it is inconsistent with the LCP's policies designed to minimize residential development. It would undermine the (already very low) residential buildout assumptions upon which the Big Sur Coast Area LUP was founded. As stated in Section 5.2 of the LUP, "Continued residential development and subdivision for residential purposes is a trend at odds with the preservation of the coast's natural, scenic, and rural character." Therefore, the lot line adjustment cannot be found consistent with the LCP and must be denied.

E. Conclusion

The County-approved lot line adjustment is inconsistent with the Big Sur Coast LUP's basic premise of extremely limited development. In addition, the proposed project would facilitate the development of significantly substandard parcels, inconsistent with LCP policies designed to minimize residential development where such development is inconsistent with protection of coastal resources. While lot line adjustments are encouraged under one provision of the LUP, this lot line adjustment does not meet the standards for when a lot line adjustment should be encouraged, as it is designed to facilitate development of undevelopable lots and plan policies are not better met by this action. Therefore, the proposed lot line adjustment is denied, and the parcels remain as currently configured, subject to all applicable LCP policies.

7. California Environmental Quality Act (CEQA)

Public Resources Code (CEQA) Section 21080(b)(5) and Sections 15270(a) and 15042 (CEQA Guidelines) of Title 14 of the California Code of Regulations (14 CCR) state in applicable part:

CEQA Guidelines (14 CCR) Section 15042. Authority to Disapprove Projects. [Relevant Portion.] A public agency may disapprove a project if necessary in order to avoid one or more significant effects on the environment that would occur if the project were approved as proposed.

Public Resources Code (CEQA) Section 21080(b)(5). Division Application and Nonapplication. ... (b) This division does not apply to any of the following activities: ... (5) Projects which a public agency rejects or disapproves.



Public Resources Code (CEQA) Section 21080.5(d)(2)(A). Require that an activity will not be approved or adopted as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

CEQA Guidelines (14 CCR) Section 15270(a). Projects Which are Disapproved. (a) CEQA does not apply to projects which a public agency rejects or disapproves.

Section 13096 (14 CCR) requires that a specific finding be made in conjunction with coastal development permit applications about the consistency of the application with any applicable requirements of CEQA. This staff report has discussed the relevant coastal resource issues with the proposal. All above LCP conformity findings are incorporated herein in their entirety by reference. As detailed in the findings above, the proposed project would have significant adverse effects on the environment as that term is understood in a CEQA context.

Pursuant to CEQA Guidelines (14 CCR) Section 15042 “a public agency may disapprove a project if necessary in order to avoid one or more significant effects on the environment that would occur if the project were approved as proposed.” Section 21080(b)(5) of CEQA, as implemented by Section 15270 of the CEQA Guidelines, provides that CEQA does not apply to projects which a public agency rejects or disapproves. Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

Monterey County, the lead agency for the project, determined that there is no substantial evidence that the project may have a significant effect on the environment, and therefore issued a categorical exemption for the project. On appeal, the Commission finds that denial, for the reasons stated in the findings in this report, is necessary to avoid the significant effects on coastal resources that would occur if the project were approved as proposed. Accordingly, the Commission’s denial of this project represents an action to which CEQA, and all requirements contained therein that might otherwise apply to regulatory actions by the Commission, does not apply.



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MONTEREY COUNTY

RESOURCE MANAGEMENT AGENCY

PLANNING DEPARTMENT, Mike Novo, Interim Director

168 W. Alisal St., 2nd Floor
Salinas, CA 93901

(831) 755-5025
FAX (831) 757-9516

Date: January 12, 2007

To: California Coastal Commission, Central Coast District Office
Applicant/Representative: Sam Bose
Other Interested Parties: Peter MacLaggan (incorrect)

From: Monterey County Planning and Building Inspection Department

Subject: Final Local Action on Coastal Permit
Application PLN060189

FINAL LOCAL ACTION NOTICE

REFERENCE # 3-MCO-07-024
APPEAL PERIOD 1/18/07-1/31/07

Please note the following **Final Monterey County Action** for the following coastal development permit type:

- CDP/CAP CDP Amendment Extension Emergency CDP
- Exemption Exclusion Other: _____
- All local appeals processes have been exhausted for this matter
- The project includes an amendment to the LCP

Project Information

Application #: PLN060189

Project Applicant: Timothy & Dana Burke

Applicant's Rep: Arden Handshy
P.O. 51758
Pacific Grove, CA 93950

Project Location: On Palo Colorado Road, South of Twin Peaks, Big Sur area

Project Description: COASTAL DEVELOPMENT PERMIT TO ALLOW A LOT LINE ADJUSTMENT THAT WOULD RECONFIGURE THREE EXISTING VACANT LOTS RESULTING IN TWO OF THE SMALLER LOTS BEING MOVED FROM THE EASTERLY LOCATION TO THE WESTERLY LOCATION FOR THE PURPOSES OF BETTER ACCESS. THE RESULTING LOT SIZES WOULD REMAIN AT EXISTING SIZES TO INCLUDE 39.92, 6.60 AND 7.56 ACRES (ASSESSOR'S PARCEL NUMBERS 418-011-041-000, 418-011-043-000, 418-011-042-000). THE PROJECT IS LOCATED ON PALO COLORADO ROAD, SOUTH OF TWIN PEAKS, BIG SUR AREA, COASTAL ZONE.

Final Action Information

Final Action Date:

Final Action: Approved w/conditions Approved w/o conditions Denied

Final Action Body: Zoning Administrator Planning Commission Minor Subdivision Committee

MCO

Reference #:

FLAN received:

Appeal period:

Final Local Action Notice Attachments Included

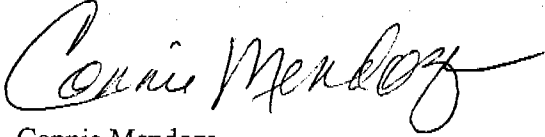
Required Materials Supporting the Final Action	Enclosed	Previously Sent (date)	Notes/Comments
Adopted Staff Report	✓		
Adopted Findings	✓		
Adopted Conditions	✓		
Site Plans	✓		
Elevations	✓		
Location/Vicinity Map	✓		
Additional Materials Supporting the Final Action	Enclosed	Previously Sent (date)	Notes/Comments
CEQA Document(s)			
Geotechnical Report(s)			
Biotic Report(s)			
Forest Management Plan(s)			
Other _____			
Other _____			

Coastal Commission Appeal Information

Monterey County has determined that this Final Local Action is:

- NOT APPEALABLE** to the California Coastal Commission. The Final Monterey County Action is now effective.
- APPEALABLE** to the California Coastal Commission. The Coastal Commission's 10-working day appeal period begins the first working day after the Coastal Commission receives adequate notice of this Final Monterey County Action. The Final Monterey County Action is not effective until after the Coastal Commission's appeal period has expired and no appeal has been filed. Any such appeal must be made directly to the California Coastal Commission Central Coast District Office in Santa Cruz; there is no fee for such an appeal. Should you have any questions regarding the Coastal Commission appeal period or process, please contact the Central Coast District Office at 725 Front Street, Suite 300, Santa Cruz, CA 95060, (831) 427-4863.

Submitted by

Signature: 
Name: Connie Mendoza
Title: Land Use Technician
Phone/Fax: (831) 755-5184 fax (831) 757-9516
email: mendozac@co.monterey.ca.us

Planner: David Lutes
Title: Senior Planner
Phone/Fax: 831-755-5304 / 831-757-9516 (fax)
Email: lutesd@co.monterey.ca.us

MINOR SUBDIVISION COMMITTEE
COUNTY OF MONTEREY, STATE OF CALIFORNIA

RECEIVED

JAN 17 2007

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

RESOLUTION NO. 06030

A.P. #: 418-011-041-000;
418-011-042-000; and
418-011-043-000

FINDINGS AND DECISION

In the matter of the application of
Timothy and Dana Burke (PLN060189)

for a Coastal Development Permit in accordance with Title 20 (Monterey County Coastal Implementation Plan Ordinances) Chapter 20.140 (Coastal Development Permits) of the Monterey County Code, to allow a lot line adjustment between three contiguous legal lots of record, resulting in 3 reconfigured parcels remaining at existing sizes to include: Parcel "A" (6.60 acres), Parcel "B" (7.58 acres), and Parcel "C" (39.92 acres). No existing development occurs on the property except for an access road off Palo Colorado Canyon Road that reaches the northeast corner of the proposed Parcel "A" through mountainous terrain. The project is located on Palo Colorado Road, south of Twin Peaks, west of the Los Padres National Forest, in the Big Sur Coast Area, Coastal Zone, and came on regularly for hearing before the Minor Subdivision Committee on December 14, 2006.

Said Zoning Administrator, having considered the application and the evidence presented relating thereto,

FINDINGS OF FACT

1. **FINDING: CONSISTENCY** – The project, as described in Condition No. 1 and as conditioned, conforms to the policies, requirements, and standards of the Monterey County General Plan, Big Sur Coast Land Use Plan, Title 20 Monterey County Codes, Monterey County Coastal Implementation Plan - Part 3 (Chapter 20.145), and Monterey County Code Title 19, Subdivision Ordinance which designates this area as appropriate for development.

EVIDENCE: (a) The text, policies, and regulations in the above referenced documents have been evaluated during the course of review of applications. No conflicts were found to exist. No communications were received during the course of review of the project indicating any inconsistencies with the text, policies, and regulations in these documents.

(b) The property is located off of Palo Colorado Road, south of Twin Peaks, west of the Ventanna Wilderness in the Los Padres National Forest (418-011-041-000; 418-011-042-000; 418-011-043-000, between parcels in Section 2, Township 18 South, Range 1 East), in the Big Sur Coast Area of the Coastal Zone. The parcels are designated as in a Watershed and Scenic Conservation area allowing for 40 acre minimum parcel sizes (WSC/40 [CZ]). The subject properties contain development constraints such as the prevalence of 30% slopes and environmentally-sensitive habitats, as well as non-conforming parcel sizes in an area requiring 40 acre minimum parcel sizes. The legal status of the parcels as lots of record require that the lot line adjustment result in a reconfiguration of the parcels to minimize the potential impacts of these development constraints such that future development will be achieved with minimal adverse effect and will be subordinate to the resources of the particular site and area, pursuant to the states purposes of Section 20.17.010 of Title 20, the Coastal Zoning Ordinance. As a lot line adjustment, the resulting parcels are made more compatible with, and do not obstruct, the objectives and policies of the WSC zoning, the Big Sur Coast Land Use Plan and Coastal

Implementation Plan, as required by Government Code Section 66412 (d) of the Subdivision Map Act.

- (c) The project was not referred to the Big Sur Land Use Advisory Committee (LUAC) for review. Based on the current review guidelines adopted by the Monterey County Board of Supervisors (Resolution No. 04-236), this application did not warrant referral to the LUAC for the following reasons: the project is exempt from CEQA review per Section 15305 and implementation of the project will not require the issuance of a Variance.
- (d) The application, plans, and related support materials submitted by the project applicant to the RMA- Planning Department for the proposed development found in Project File PLN060189.

2. FINDING: SITE SUITABILITY – The site is physically suitable for the use proposed.

EVIDENCE: (a) The project has been reviewed for site suitability by the following departments and agencies: California Coastal Commission, RMA-Planning Department, California Department of Forestry, Big Sur Coast Fire Protection District, Public Works, Environmental Health Division, and Water Resources Agency. There has been no indication from these departments/agencies that the site is not suitable for the proposed development. Conditions recommended have been incorporated.

- (d) Materials in Project File PLN060189.

3. FINDING: CEQA (Exempt): - The project is categorically exempt from environmental review.

EVIDENCE: (a) Section 15305(a) (Class 5) of the CEQA Guidelines (minor lot line adjustments not resulting in the creation of any new parcel) categorically exempts the proposed development from environmental review.

- (b) The lot line adjustment is intended to move the 6.60 acre and 7.58 acre parcels closer to the existing access road at the northwest portion of the properties such that all 3 proposed building sites can be relatively clustered and the driveways can be much shorter from the existing access road, resulting in less grading, and thereby less impact to the land.
- (c) Potential adverse environmental effects were identified during staff review of the lot line adjustment application such as the prevalence of 30% slopes and environmentally sensitive habitats. The tentatively proposed building sites remove future development from Oak Woodland and Canyon Riparian habitat as reported by consulting ecologist, Nicole Nedeff in a letter dated August 20, 2006, after conducting a preliminary site assessment on August 19th, 2006 pursuant to RMA - Planning Department requirements for biology reports. Her report shall be identified as a note on the recorded Record of Survey, as required in Condition 3 of this Minor Subdivision Committee Resolution.
- (d) In a letter dated July 31, 2006, consulting geotechnical engineer, Lawrence E. Grice, states that in general he finds the proposed lot line adjustment will provide suitable areas for installation of septic leachfields within the new boundary of the parcels.
- (e) Based on available information, there is no reasonable possibility that the proposed lot line adjustment will have a significant effect on the environment due to unusual circumstances, but future development proposals shall require additional discretionary review. It is considered that the proposed lot line adjustment will serve to help mitigate future potential environmental effects on the environment.
- (e) See preceding and following findings and supporting evidence.
- (f) Materials in project file PLN060189.

4. FINDING: SUBDIVISION ORDINANCE (TITLE 19) LOT LINE ADJUSTMENTS (CHAPTER 19.09) The Burke Lot Line Adjustment (PLN060189) is consistent with the requirements as specified within Title 19.

Timothy and Dana Burke (PLN060189)

EVIDENCE: (a) The lot line adjustment is between three contiguous legal lots of record:

- Parcel 17, Assessor's Parcel Number 413-011-041-000, as established by Certificate of Compliance, recorded Document G 22368 (39.92 acres);
- Parcel 18, Assessor's Parcel Number 413-011-042-000, as established by Certificate of Compliance, recorded Document G 22367 (6.60 acres);
- Lot 1, Assessor's Parcel Number 418-011-043-000, as established by Certificate of Compliance, recorded Document G 22370 (7.58 acres).

- (b) A greater number of parcels than originally existed will not be created as a result of the lot line adjustment.
- (c) The two smaller parcels are being moved from the easterly location to the northwesterly location for the purposes of better access, with the resulting parcel adjustments remaining at existing sizes.
- (d) Upon approval of the lot line adjustment, Parcel "A," Parcel "B," and Parcel "C" will remain non-conforming as to designated 40 acre parcel sizes, but shall further the WSC purpose to subordinate future proposed development to the resources of the particular site and area, mainly the watershed, plant, streams and riparian corridors found at the site.
- (e) The Lot Line Adjustment Map contains all items required for processing including slope contours, trails, and general locations of future building areas and roadways.
- (f) A Condition of Approval has been incorporated requiring the applicant to record a Record of Survey as approved.

5. FINDING: PUBLIC ACCESS – The project is in conformance with the public access and public recreation policies of the Coastal Act and Local Coastal Program, and does not interfere with any form of historic public use or trust rights (see 20.70.050.B.4). No access is required as part of the project as no substantial adverse impact on access, either individually or cumulatively, as described in Section 20.70.050.B.4.c of the Monterey County Coastal Implementation Plan, can be demonstrated.

EVIDENCE (a) The subject property is not described as an area where the Local Coastal Program requires access.

(b) The subject property is not indicated as part of any designated trails or shoreline access as specified in Policy 6.1.6 and Figure 2, Shoreline Access Plan of the Big Sur Coast Land Use Plan. The trails eastward off Palo Colorado Canyon Road are "inappropriate for access or suitability not yet determined."

(c) No evidence or documentation has been submitted or found showing the existence of historic public use or trust rights over this property.

6. FINDING: NO VIOLATIONS – The subject property is in compliance with all rules and regulations pertaining to zoning uses, subdivision, and any other applicable provisions of the County's zoning ordinance. No violations exist on the property. Zoning violation abatement costs, if any, have been paid.

EVIDENCE: Staff reviewed RMA- Planning Department and RMA-Building Services records and is not aware of any violations existing on subject property.

7. FINDING: HEALTH AND SAFETY – The establishment, maintenance, or operation of the project applied for will not under the circumstances of this particular case be detrimental to the health, safety, peace, morals, comfort, and general welfare of persons residing or working in the neighborhood of such proposed use, or be detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the County.

EVIDENCE: Preceding findings and supporting evidence.

8. **FINDING: APPEALABILITY** – The decision on this project is appealable to the Board of Supervisors and the California Coastal Commission.

EVIDENCE: (a) Section 20.86.030 and 20.86.080 of the Monterey County Zoning Ordinance.

DECISION

It is the decision of said Minor Subdivision Committee that said request for a Coastal Development Permit be approved as shown on the attached sketch, subject to the attached conditions.

PASSED AND ADOPTED this 14th day of December 2006, by the following vote.

AYES: Moss, Main, Hori, Treffry, Vandevere

NOES: None

ABSENT: Burgess, McPharlin



Jeff Main, Secretary Pro Tem

COPY OF THIS DECISION MAILED TO APPLICANT ON JAN - 3 2007

THIS APPLICATION IS APPEALABLE TO THE BOARD OF SUPERVISORS. IF ANYONE WISHES TO APPEAL THIS DECISION, AN APPEAL FORM MUST BE COMPLETED AND SUBMITTED TO THE CLERK OF THE BOARD OF SUPERVISORS ALONG WITH THE APPROPRIATE FILING FEE ON OR BEFORE JAN 13 2007

THIS APPLICATION IS ALSO APPEALABLE TO THE COASTAL COMMISSION. UPON RECEIPT OF NOTIFICATION OF THE DECISION BY THE BOARD OF SUPERVISORS, THE COMMISSION ESTABLISHES A 10 WORKING DAY APPEAL PERIOD. AN APPEAL FORM MUST BE FILED WITH THE COASTAL COMMISSION. FOR FURTHER INFORMATION, CONTACT THE COASTAL COMMISSION AT (831) 427-4863 OR AT 725 FRONT STREET, SUITE 300, SANTA CRUZ, CA

This decision, if this is the final administrative decision, is subject to judicial review pursuant to California Code of Civil Procedure Sections 1094.5 and 1094.6. Any Petition for Writ of Mandate must be filed with the Court no later than the 90th day following the date on which this decision becomes final.

Project Name: BURKE, Timothy and Dana
 File No: PLN060189
 APNs: 418-011-041-000, 418-011-042-000, 418-011-043-000
 Approved by: MINOR SUBDIVISION COMMITTEE
 Date: DECEMBER 14, 2006

Monterey County RMA-Planning Department
 Condition Compliance and/or Mitigation Monitoring
 Reporting Plan

**Monitoring or Reporting refers to projects with an EIR or adopted Mitigated Negative Declaration per Section 21081.6 of the Public Resources Code.*

Permit Cond Number	Mitig Number	Conditions of Approval and/or Mitigation Measures and Responsible Land Use Department	Compliance or Monitoring Actions to be performed. Where applicable a certified professional is required for action to be accepted.	Responsible Party for Compliance	Timing	Verification of Compliance (from date)
1.		<p>FB029 - SPECIFIC USES ONLY This Coastal Development Permit (PLN060189/Burke) allows a lot line adjustment that would reconfigure three (3) existing vacant parcels, resulting in two of the smaller parcels being moved from the easterly location to the westerly location for the purposes of better access. The resulting parcel sizes would remain at existing sizes to include 39.92, 6.60 and 7.56 acres (Assessor's Parcel Numbers 418-011-041-000, 418-011-043-000, 418-011-042-000). The project is located on Palo Colorado Road, south of Twin Peaks, west of the Los Padres National Forest, in the Big Sur Coast Area, Coastal Zone. This permit was approved in accordance with County ordinances and land use regulations subject to the following terms and conditions. Neither the uses nor the construction allowed by this permit shall commence unless and until all of the conditions of this permit are met to the satisfaction</p>	Adhere to conditions and uses specified in the permit.	Owner/Applicant	Ongoing unless otherwise stated	

				<p>of the Director of the RMA-Planning Department. Any use or construction not in substantial conformance with the terms and conditions of this permit is a violation of County regulations and may result in modification or revocation of this permit and subsequent legal action. No use or construction other than that specified by this permit is allowed unless additional permits are approved by the appropriate authorities. (RMA-Planning Dept.)</p>
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Permit Cond. Number	Permit Ming. Number	Conditions of Approval and/or Mitigation Measures and Responsible Land Use Department	Compliance or Monitoring Actions to be performed. Where applicable, a certified professional is required for action to be accepted.	Responsible Party for Compliance	Timing	Verifi- cation of Comp- liance (from date)
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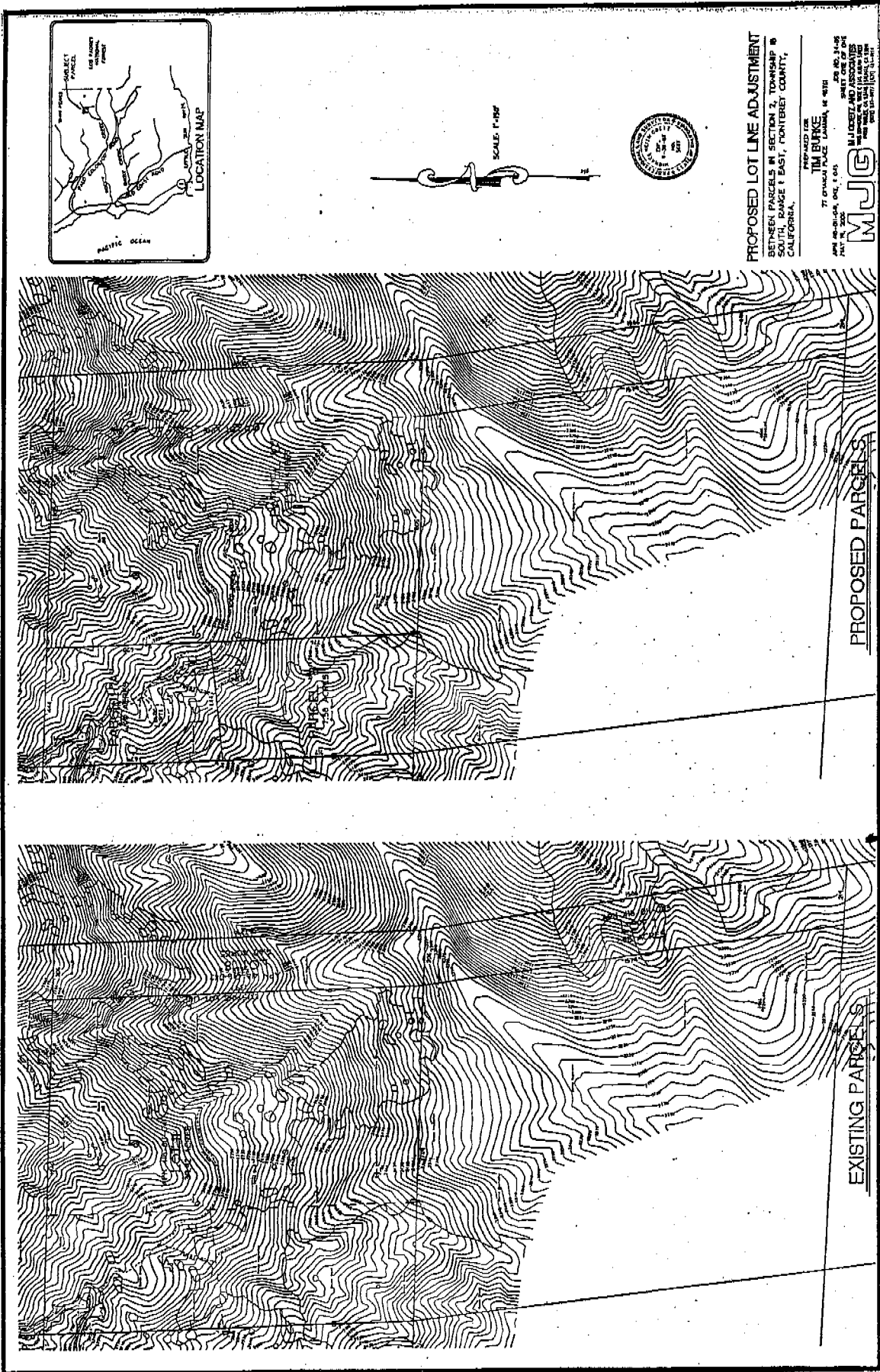
**RESOURCES MANAGEMENT AGENCY - PLANNING DEPARTMENT
CONDITIONS OF APPROVAL**

2.	<p>PBD025 - NOTICE-PERMIT APPROVAL</p> <p>The applicant shall record a notice which states: "A permit (Resolution 060189) was approved by the Minor Subdivision Committee for Assessor's Parcel Numbers 418-011-041-000, 418-011-042-000, 418-011-043-000 on December 14, 2006. The permit was granted subject to <u>5</u> conditions of approval which run with the land. A copy of the permit is on file with the RMA-Planning Department." Proof of recordation of this notice shall be furnished to the Director of the RMA-Planning Department prior to issuance of building permits or commencement of the use. (RMA - Planning Department)</p>	Proof of recordation of this notice shall be furnished to the RMA-Planning Department.	Owner/ Applicant	Prior to Recordation of Record of Survey	
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Permit Condition Number	Mitig. Measure Number	Conditions of Approval and/or Mitigation Measures and Responsible Land Use Department	Compliance or Monitoring Actions to be performed Where applicable certified professionals required for action to be accepted	Responsible Party for Compliance	Timing of Record of Survey	Verification of Compliance (name (date)
3.		<p>PD015 - NOTE ON MAP-STUDIES A note shall be placed on the Record of Survey map or a separate sheet to be recorded with the Record of Survey map stating that: "A letter report dated August 20, 2006, has been prepared on this property by consulting biologist, Nicole Nedeff, and is on file in the Monterey County RMA - Planning Department. The recommendations contained in said report shall be followed in all further development of this property; namely, that detailed assessments should be included as a component of future development plan on any of the proposed parcels under consideration in the proposed lot line adjustment." The note shall be located in a conspicuous location, subject to the approval of the County Surveyor. (RMA - Planning Department)</p>	<p>Final recorded Record of Survey map with notes shall be submitted to the RMA - Planning Department and Public Works for review and approval.</p>	Owner/ Applicant	Prior to recording of Record of Survey	
<p>PUBLIC WORKS DEPARTMENT CONDITIONS OF APPROVAL</p>						
4.		<p>PW0034 - LOT LINE ADJUSTMENT Obtain a survey of the new line and have the line monumented. (Public Works)</p>	<p>Owner shall have a surveyor monument the new lines. Evidence of completion of monumentation shall be submitted to DPW for review and approval.</p>	Owner/ Applicant/ Surveyor		

Permit Cond. Number	Mitig. Number	Conditions of Approval and/or Mitigation Measures and Responsible Entity's Department	Compliance of Monitoring Actions to be performed. Where applicable a certified professional is required for action to be accepted.	Responsible Party for Compliance	Timing	Verifi- cation of Com- pliance (name /date)
5.		PW0035 – RECORD OF SURVEY File a Record of Survey showing the new line and its monumentation. (Public Works)	Owner's Surveyor to prepare record of survey and submit to DPW for review and approval.	Owner/ Surveyor	Prior to Recordation of Record of Survey	

END OF CONDITIONS



PLND000189

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
 725 FRONT STREET, SUITE 300
 SANTA CRUZ, CA 95060
 (831) 427-4863
 www.coastal.ca.gov

**COMMISSION NOTIFICATION OF APPEAL**

DATE: February 1, 2007

TO: Mike Novo, Interim Director
 County of Monterey, Planning Department
 168 West Alisal St., 2nd Flr.
 Salinas, CA 93901

FROM: Steve Monowitz, District Manager

RE: Commission Appeal No. A-3-MCO-07-004

Please be advised that the coastal development permit decision described below has been appealed to the California Coastal Commission pursuant to Public Resources Code Sections 30603 and 30625. Therefore, the decision has been stayed pending Commission action on the appeal pursuant to Public Resources Code Section 30623.

Local Permit #: PLN060189

Applicant(s): Timothy & Dana Burke

Description: Lot line adjustment between three contiguous legal lots of record, resulting in three reconfigured parcels remaining at existing sizes of 6.60, 7.58 and 39.92 acres.

Location: Palo Colorado Rd. (South of Twin Peaks and west of Ventana Wilderness in the Los Padres National Forest), Big Sur (Monterey County) (APN(s) 418-011-041, 418-011-042, 418-011-043)

Local Decision: Approved w/ Conditions

Appellant(s): California Coastal Commission, Attn: Commissioner Meg Caldwell; Commissioner Sara J. Wan

Date Appeal Filed: 1/31/2007

The Commission appeal number assigned to this appeal is A-3-MCO-07-004. The Commission hearing date has not yet been established for this appeal. Within 5 working days of receipt of this Commission Notification of Appeal, copies of all relevant documents and materials used in the County of Monterey's consideration of this coastal development permit must be delivered to the Central Coast District office of the Coastal Commission (California Administrative Code Section 13112). Please include copies of plans, relevant photographs, staff reports and related documents, findings (if not already forwarded), all correspondence, and a list, with addresses, of all who provided verbal testimony.

A Commission staff report and notice of the hearing will be forwarded to you prior to the hearing. If you have any questions, please contact Katie Morange at the Central Coast District office.

cc: Timothy & Dana Burke
 Arden Handshy
 David Lutes, MCO Plng. Dept.

CCC Exhibit B
(page 1 of 7 pages)

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
(831) 427-4863



APPEAL FROM COASTAL PERMIT
DECISION OF LOCAL GOVERNMENT

Please review attached appeal information sheet prior to completing this form.

SECTION I. Appellant(s):

Name, mailing address and telephone number of appellant(s):

Commissioner Caldwell Commissioner Wan
California Coastal Commission California Coastal Commission
45 Fremont Street, Suite 2000 45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219 San Francisco, CA 94105-2219
(415) 904-5200 (415) 904-5200

SECTION II. Decision Being Appealed

1. Name of local/port government:
Monterey County

2. Brief description of development being appealed:
PLN060189 - Lot line adjustment between three contiguous legal lots of record, resulting in
three reconfigured parcels remaining at existing sizes (6.60, 7.58, and 39.92 acres).

3. Development's location (street address, assessor's parcel number, cross street, etc.):
APNs 418-011-041, 418-011-042, and 418-011-043, located off Palo Colorado Road, south
of Twin Peaks and west of the Ventana Wilderness in the Los Padres National Forest, in the
Big Sur Area of Monterey County.

4. Description of decision being appealed:
a. Approval; no special conditions:
b. Approval with special conditions: xx
c. Denial:

Note: For jurisdictions with a total LCP, denial decisions by a local government cannot be
appealed unless the development is a major energy or public works project. Denial decisions
by port governments are not appealable.

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-3-MCO-07-004
DATE FILED: 1/31/07
DISTRICT: Central Coast District

RECEIVED

JAN 31 2007

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

CCC Exhibit B
(page 2 of 7 pages)

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (PAGE 2)

5. Decision being appealed was made by (check one):

- a. Planning Director/Zoning Administrator
- b. City Council/Board of Supervisors
- c. Planning Commission
- d. Other: Minor Subdivision Cmte.

6. Date of local government's decision: December 14, 2006

7. Local government's file number: PLN060189 (Resolution No. 06030)

SECTION III Identification of Other Interested Persons

Give the names and addresses of the following parties: (Use additional paper as necessary.)

a. Name and mailing address of permit applicant:

Timothy and Dana Burke
77 Omaikai Place
Lahaina, HI 96761

b. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearings (s). Include other parties which you know to be interested and should receive notice of this appeal.

(1) David Lutes
Monterey County Planning & Building Inspection
168 West Alisal Street, 2nd Floor, Salinas, CA 93902

(2) Arden Handshy (Representative)
P.O. Box 51758
Pacific Grove, CA 93950

(3) _____

SECTION IV. Reasons Supporting This Appeal

See attached "Reasons for Appeal"

Note: Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section, which continues on the next page.

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

Page 3

State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

See Attached.

Note: The above description need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.

Signed: Meg Caldwell
Appellant or Agent

Date: January 31, 2007

Agent Authorization: I designate the above identified person(s) to act as my agent in all matters pertaining to this appeal.

Signed: _____

Date: _____

(Document2)

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

Page 3

State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

See Attached.

Note: The above description need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.

Signed: 
Appellant or Agent

Date: January 31, 2007

Agent Authorization: I designate the above identified person(s) to act as my agent in all matters pertaining to this appeal.

Signed: _____

Date: _____

(Document2)

**Reasons for Appeal of Monterey County Coastal Development Permit PLN060189
(Burke Lot Line Adjustment)**

Monterey County Coastal Development Permit PLN060189 authorizes a lot line adjustment among three parcels off Palo Colorado Road, south of Twin Peaks and west of the Ventana Wilderness in the Los Padres National Forest, in the Big Sur Area of Monterey County. The approval allows a lot line adjustment between three contiguous legal lots of record, resulting in three reconfigured parcels remaining at existing sizes (6.60, 7.58, and 39.92 acres). The County's approval of the project is inconsistent with the Monterey County certified Local Coastal Program for the following reasons:

1. None of the new lots created by the lot line adjustment conform to LCP minimum parcel size requirements.

The project area is within the LCP's Rural Density Residential (RDR) land use designation and Watershed and Scenic Conservation (WSC) zoning district. Sections 20.17.060.B and 20.145.140.A.8 of the LCP's Coastal Implementation Plan (CIP) establish a forty acre minimum parcel size for such areas. In this case, the proposed lots are inconsistent with these LCP density standards (120 acres is necessary to have three buildable lots; the lots proposed for adjustment total only 54.1 acres). Conformance with the 40-acre density standard could be achieved by merging the three parcels into one legally conforming parcel, as provided for by the Big Sur LUP Policy 5.4.3.G,¹ provided there is substantial evidence demonstrating that there is at least one currently buildable lot.

2. The adjustment will increase the density of residential development beyond that which is allowed by the LCP.

CIP Section 20.145.140.A.5 states that development of a parcel shall be limited to density, land use, and site development standards specific to that parcel's land use designation. Furthermore, CIP Section 20.145.140.A.15 states that existing parcels of record are considered to be buildable provided that: a) all resource protection policies of the land use plan and standards of the ordinance can be met; b) there is adequate building area on less than 30% slopes; and, c) that all other provisions of the Coastal Implementation Plan can be fully met (Ref. LUP Policy 5.4.2.5). Pursuant to these standards, the buildability of the existing parcels is called into question. The County approval does not provide evidence as to the extent of the site area with 30% slopes or greater, however it appears as though the existing parcels consist largely of 30% slopes or greater. As such, these parcels would not be considered buildable pursuant to CIP Section 20.145.140.A.4. Furthermore, the existing parcels would not meet the on-site wastewater treatment standards established by CIP Section 20.145.140.A.13 which prohibit onsite septic systems on slopes exceeding 30%. In addition, the County's approval of the lot line adjustment does not contain evidence of an adequate water supply

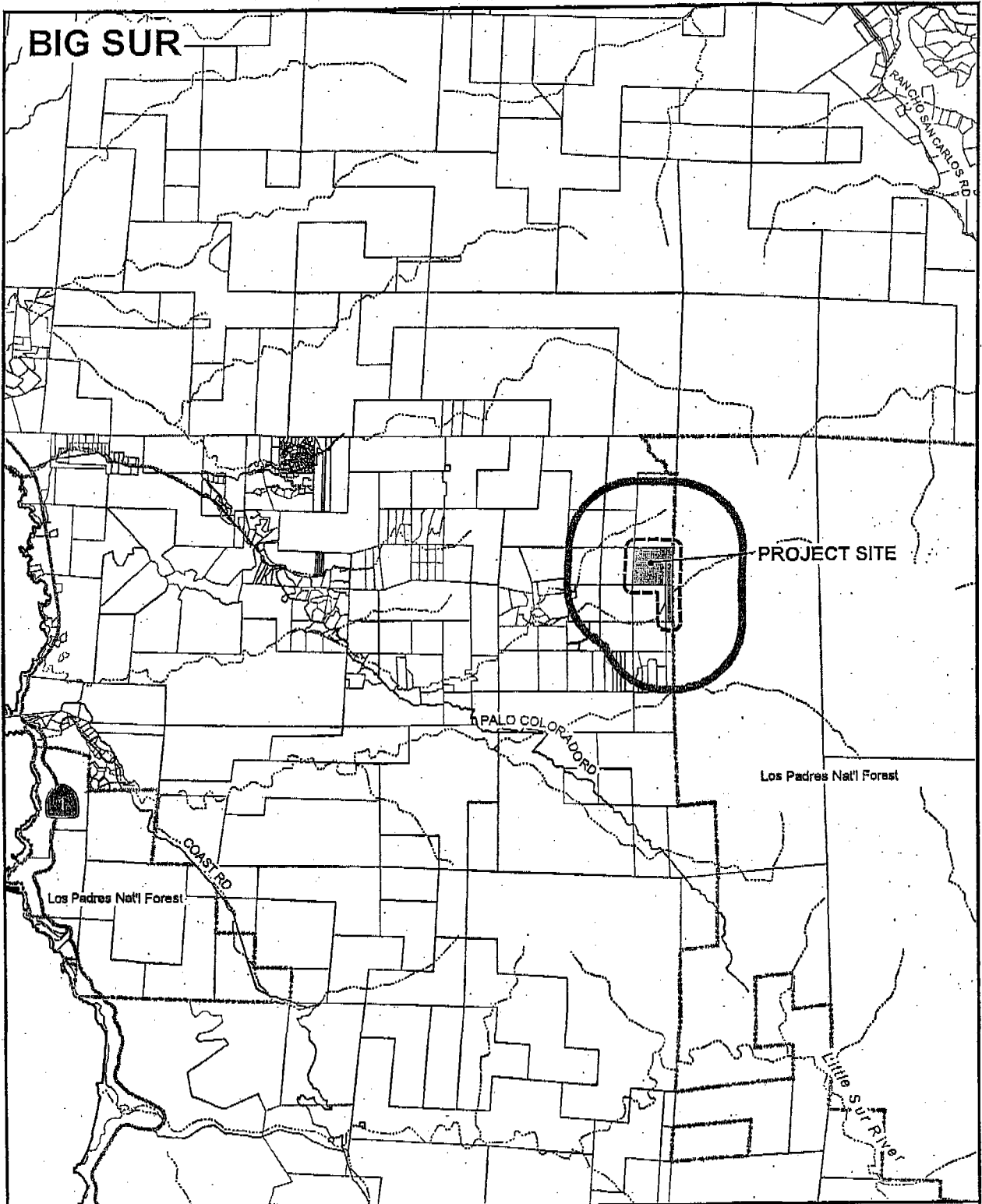
¹ Big Sur LUP Policy 5.4.3.G – Specific Policies for Rural Residential land uses – Reconstitution of parcels or mergers may be required for any area of the coast where past land divisions have resulted in parcels being unusable under current standards or where cumulative impacts on coastal resources require limitations on further development. Parcel mergers shall be based on the following criteria: a) the minimum buildable parcel shall be one acre; b) each parcel must contain a suitable septic and drainfield location on slopes less than 30%, and must be able to meet regional Water Quality and County stream setback and septic system requirements; and c) each parcel must conform to all Plan policies for residential development on existing parcels.

to support future residential development, and thereby does not address the requirements of Big Sur LUP Policy 3.4.2.3, which limits development to prevent overuse of limited water supplies, protect the public's health and safety, and preserve the natural value of streams and watersheds.

In summary, the increase in residential development enabled by the adjustment conflicts with Big Sur LUP Policy 5.4.3.H.4, which states that "lot line adjustments are encouraged when no new developable lots are created and when plan policies are better met by this action (emphasis added)." The County approved lot line adjustment is inconsistent with Policy 5.4.3.H.4 because it converts sub-standard parcels that appear to not be developable with residential uses into buildable parcels, and sets a precedent that would have significant adverse cumulative impacts on coastal resources that run contrary to LCP policies, as discussed further below.

3. The increase in development density resulting from the lot line adjustment will have cumulative adverse impacts on coastal access and recreation, water supplies, and the unique coastal resources of the Big Sur coast.

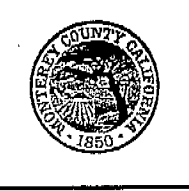
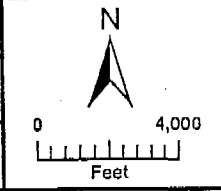
The reconfiguration of sub-standard parcels that cannot safely accommodate residential development into new buildable parcels would cumulatively increase the level of residential development in Big Sur well beyond that which is anticipated and allowed by the LCP. This will result in increased traffic on Highway One, which currently operates at the worst level of service (LOS F) at peak times, and would thereby interfere with the public's ability to access and recreate on the Big Sur Coast. Such an increase in residential development will also place greater demands on limited water supplies, which would, in turn, adversely impact riparian habitats. Furthermore, increases in residential development potential (over and above that already contemplated in the LCP) throughout the planning area could alter the unique character of Big Sur that makes it such a popular destination for coastal access and recreation. Because of these cumulative impacts, the lot line adjustment is inconsistent with Big Sur LUP Policy 5.4.3.G.3, as well as with Coastal Act Sections 30211 and 30213.



APPLICANT: BURKE

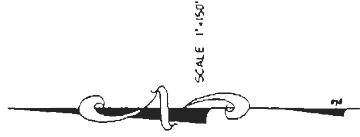
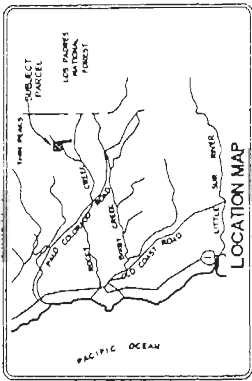
APN: 418-011-041,042,043-000 FILE # PLN060189

300' Limit
 2500' Limit
 City Limits



Source: Monterey County Resource Management Agency, Dec. 2006

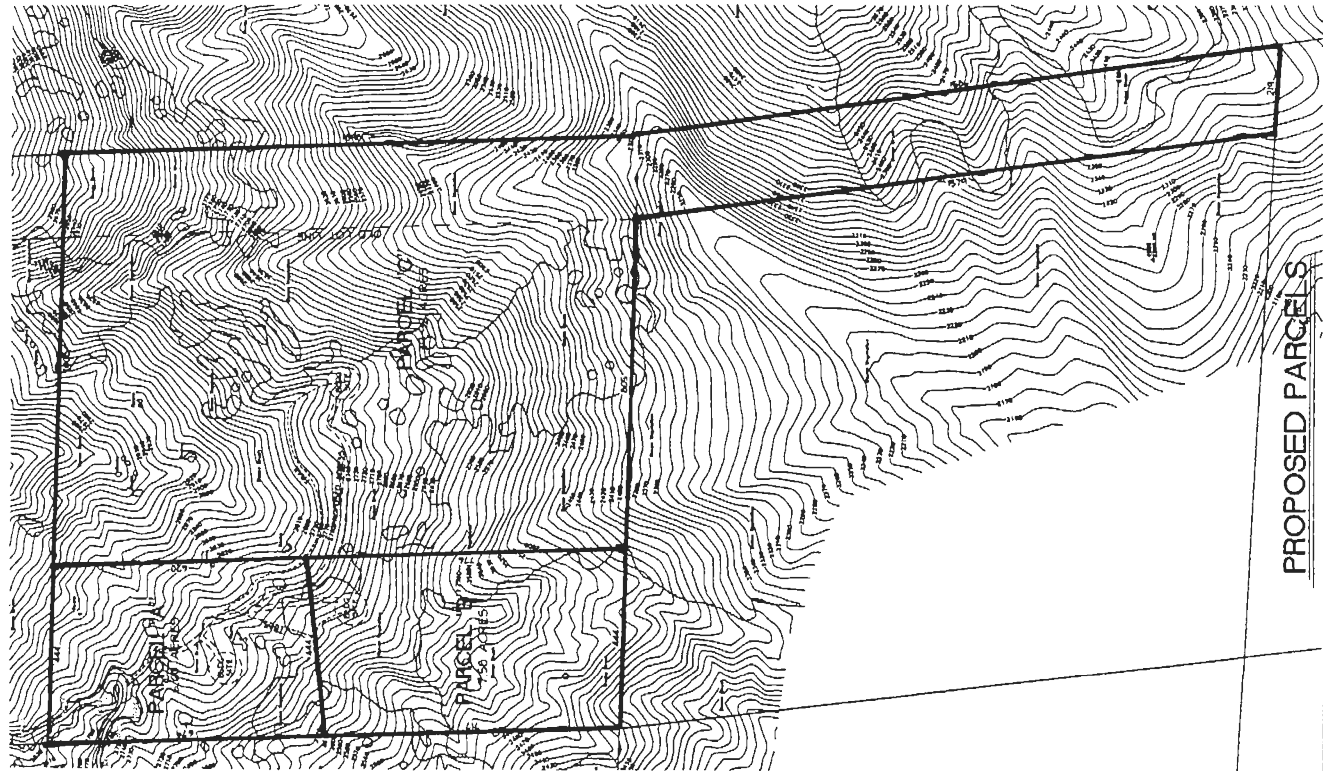
PLANNER: BONEKEMPER



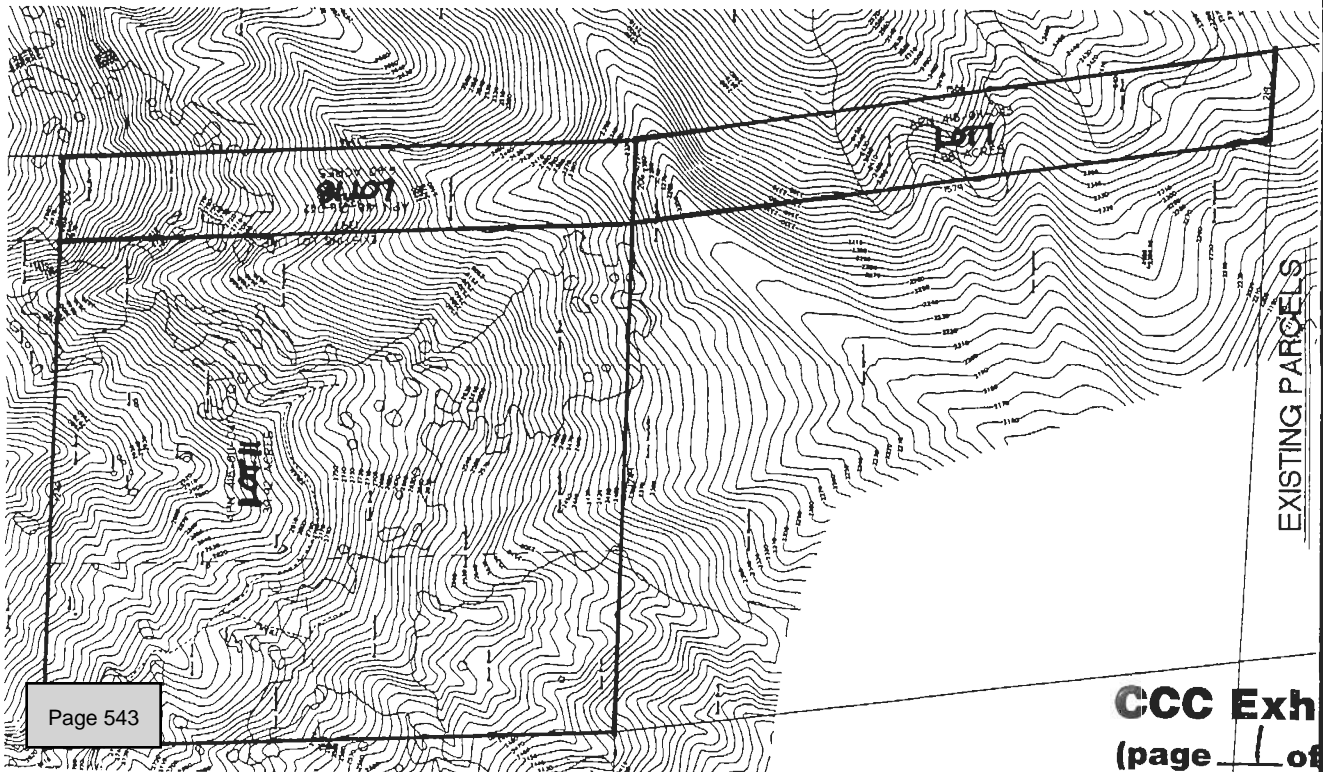
PROPOSED LOT LINE ADJUSTMENT
 BETWEEN PARCELS IN SECTION 2, TOWNSHIP 18
 SOUTH, RANGE 1 EAST, MONTEREY COUNTY,
 CALIFORNIA.

PREPARED FOR
TIM BURKE
 71 OPTICAL AVENUE LAMONA, CA 95741
 MAY 16, 2011, 041, 1040

DESIGNED BY
M.J. COETZ AND ASSOCIATES
 1000 CORNER AVENUE SUITE 100
 SAN JOSE, CA 95128
 (408) 233-8471 FAX (408) 233-1118



PROPOSED PARCELS



EXISTING PARCELS

PLN 0000189

3
Burke
parcels

BIG SUR COAST
PLANNING AREA BDRY

LODGE ROCKS

SOBERANES PT

KASLER PT

ROCKY PT

SEE DETAIL AREA "F" FOR
COMMERCIAL FACILITIES

Castle Rock

BIXBY LANDING

HURRICANE PT

PT SLUR

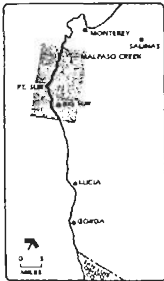
Fate Pt Slur

COOPER PT

Pfeiffer Beach
PFEIFFER PT

PACIFIC
OCEAN

AREA SHOWN
ON THIS MAP



- National Forest
- Watershed & Scenic Conservation
- Agriculture
 - Outdoor Recreation
 - Visitor Serving Facilities
 - Rural Residential
- Wetlands & Coastal Strand Resource Conservation
- Forest & Upland Habitat Resource Conservation
- Outdoor Recreation
- Rural Residential
- Military
- Rural Community Center (See detailed map)

Adapted by Board of Supervisors November 3, 1985.

NORTH SECTION

BIG SUR COAST
LOCAL COASTAL PROGRAM
FIGURE 1
LAND USE
PLAN



SEE DETAIL AREA "B" FOR
RURAL COMMUNITY CENTER

CCC Exhibit
(page 1 of 1 page)

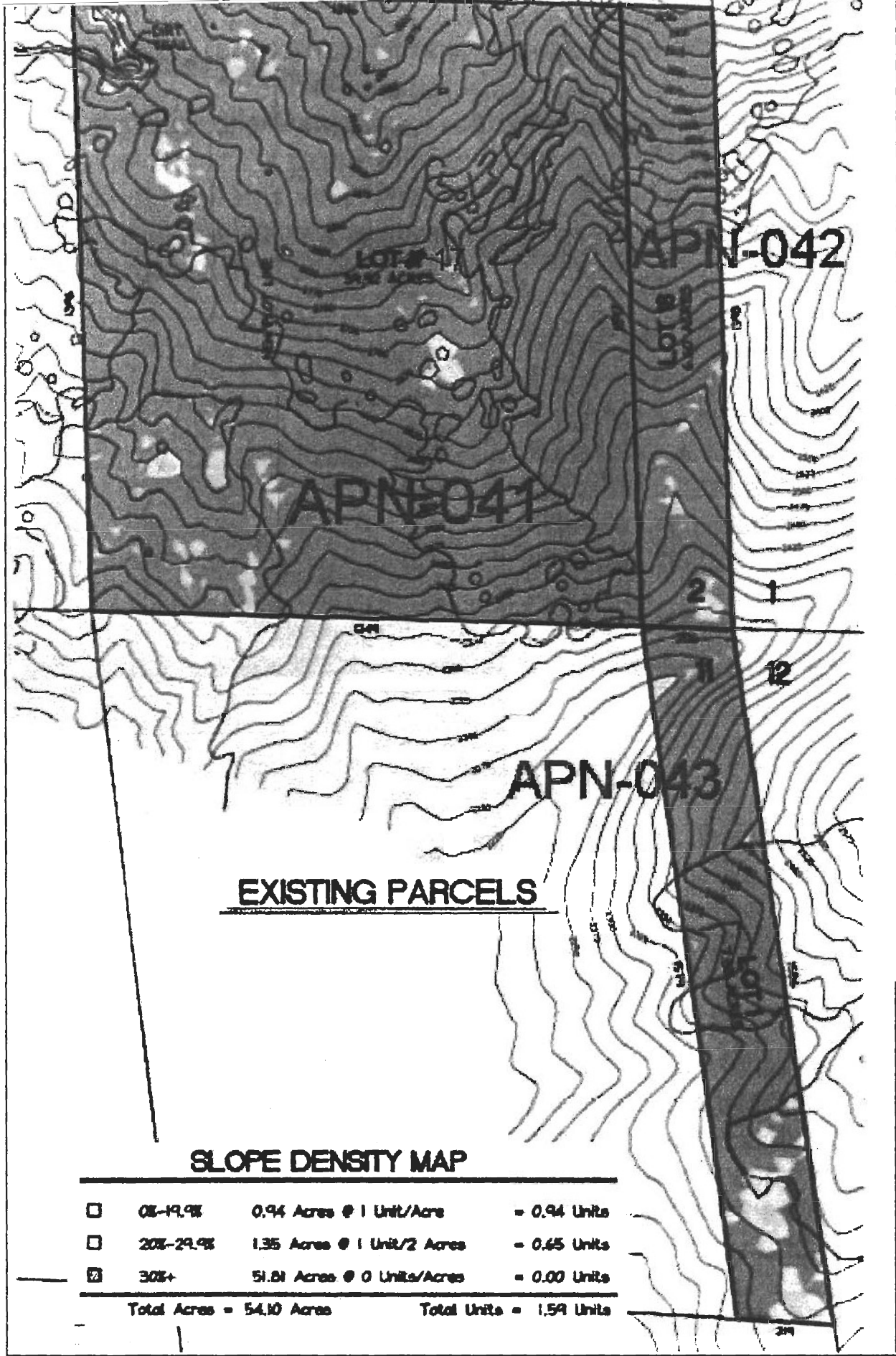


Figure 2 - Slope Density Map of existing Burke Assessor's Parcels. Prepared from aerial survey by M.J. Goetz and Associates, Licensed Surveyor.

ARDEN HANDSHY

P.O. BOX 51758 PACIFIC GROVE CA 93950

LAND USE FACILITATOR

(831) 649-6420 FAX: 649-1338

e-mail: arden@handshy.com

April 2, 2007

To: California Coastal Commission
Central Coast District Office
725 Front Street, Suite 300
Santa Cruz, CA 95060

Attention: Katie Morange
Sent via email: kmorange@coastal.ca.gov

From: Arden Handshy, representing Tim and Dana Burke

Re: APPLICANT RESPONSE TO CCC APPEAL NO. A-3-MCO-07-004 (BURKE)

The purpose of this letter is to respond to the "Reasons for Appeal" given by the CCC, and to more fully explain the circumstances of the lot line adjustment that was approved by Monterey County. It is hoped that this dialog will continue in meetings with CCC staff, and result in withdrawal of the appeal.

PROJECT DESCRIPTION:

Tim and Dana Burke have owned these three parcels since 1983, and plan to sell two lots and keep the third for a retirement home. The only access to the property is over an unpaved private and gated road that crosses the northwest corner of the 40 acre parcel, and continues up toward Twin Peaks, providing access to at least three parcels that have received development permits from Monterey County since 1996. This area is more than four miles east of Highway 1.

The Burke property contains several fresh water springs, and viable building sites for residential development. Geotechnical/civil engineer Lawrence Grice has visited the site and found soil conditions suitable for septic systems and road construction, as long as prudent engineering and erosion control design is followed. Consulting Ecologist Nicole Nedeff has visited the site and provided an August 20, 2006 report, and a follow-up letter dated March 30, 2007. She concludes that the existing parcel configuration could support development, but that the proposed configuration would reduce impacts.

Regardless whether boundaries are adjusted, access driveways must traverse slopes greater than 30%. However, the driveways will be shorter and thus less impactful after the lot line adjustment approved by Monterey County. The Burkes have chosen to make this adjustment prior to selling the two smaller parcels, thereby ensuring that all development will occur near the existing access road and further away from Los Padres National Forest. It is anticipated that as a condition of the future Coastal Development Permits that will enable residential development, a conservation easement will be required that will provide a permanent buffer between the clustered development, Los Padres National Forest and Rocky Creek.

APPLICANT RESPONSE TO APPEAL:**RECEIVED**

AUG 29 2007

CCC Appeal, Reason #1: *"None of the new lots created by the lot line adjustment conform to LCP minimum parcel size requirements."*

Response to #1: The three parcels are legal, non-conforming as to size, per the Big Sur LCP, as certified in 1986/87. (The largest is a nominal 40 acre parcel, being only 0.08 acre under.) The legality of the parcels was determined by Monterey County, and Unconditional Certificates of Compliance were issued for each in 1982.

There are many examples of lot line adjustments approved by Monterey County between parcels that are not consistent as to minimum parcel size, where findings were made that the resultant building sites will better meet resource protection requirements. Such findings and evidence are presented in County Resolution No. 06030, approving the Burke lot line adjustment.

The Appeal cites CIP Section **20.145.140.A.8** (re: 40 acre zoning) but that section is for parcels west of Highway 1. The subject parcel is over four miles east of Hwy.1. The correct reference is **20.145.140.A.6**.

The Appeal cites LUP Policy **5.4.3.G** (re: merger of parcels) and provides a footnote quoting a portion thereof, **5.4.3.G.3**, without identifying the quote as a subsection. Section **5.4.3.G** is entitled "Rural Residential" and includes a variety of policies that discuss the clustering of residential units, limiting rural residential areas to residential uses, and targeting Garrapatos Redwoods for merger. Consideration of the quoted Policy **5.4.3.G.3** leads one to conclude that merger should be recommended for extreme cases, such as Garrapatos Redwoods (subdivided into tiny parcels long ago), and reconstitution for less impactful situations.

Considering the phrase "Reconstitution of parcels or mergers may be required" it is understood that reconstitution is a less restrictive option than merger. The dictionary tells us that reconstitute means to reconstruct, to reassemble, to constitute again. Constitute means to set up, to establish, to form. That is exactly what a lot line adjustment does, it reconstructs the boundaries. This policy was designed by the authors of the Big Sur LCP to suggest either reconstitution (lot line adjustment) or merger as available, but not required, options, depending on the particular circumstances. The three criteria listed in the final sentence of **5.4.3.G.3** refer to mergers, not reconstitution of parcels, and the following Policy **5.4.3.G.4** specifically tie those criteria, as "merger provisions", to Garrapatos Redwoods.

CCC Appeal, Reason #2: *"The adjustment will increase the density of residential development beyond that which is allowed by the LCP"*

Response to #2: The density allowed is one unit per 40 acres, but LUP Policy **5.4.2.5** allows development of smaller existing parcels of record as long as resource protection policies can be met. The Burke proposal computes to one unit per 18 acres. This is ample room for resource protection by use of avoidance and mitigation. Many smaller Big Sur parcels are routinely approved for development. With the proposed lot line adjustment, all development will be clustered close to the existing access road and relocated further from the Los Padres National Forest.

The appeal correctly cites CIP Section **20.145.140.A.5** (re: density, land use, and site development standards being limited to land use designation.) That CIP section concludes with a reference to "Attachment 3" in which it is stated that, in a WSC zoning district, the site development standard is "1 acre minimum with clustering"

The Appeal calls into question the buildability of the existing parcels based on the prevalence of slopes greater than 30%, and the provisions of CIP Section **20.145.140.A.4**. That section actually *allows* development on 30% slopes if there is no alternative, with the granting of a waiver by the Director of Planning. CIP Section **20.145.140.A.13** is cited in the Appeal as a prohibition of septic systems on slopes greater than 30%. Where there is no alternative, septic systems can be designed for 30% slopes (or with a less than 50 foot setback from 30% slope) with a variance application to and approval by the Monterey County Division of Environmental Health (EH), in addition to the slope waiver from the Planning Department.

The Burke application included a slope map that clearly shows that the preponderance of the property is over 30% slope, but that there are areas of less than 30% on each parcel, existing and proposed. A slope waiver will be required for road access to building sites, as allowed by LUP Policy **5.4.3.K.2.e**, with or without the lot line adjustment, but there will be available land less than 30% for structures and septic systems.

The Appeal states that the County approval does not contain evidence of an adequate water supply, and cites LUP Policy **3.4.2.3** "*which limits development to prevent overuse of limited water supplies.*" Policy **3.4.2.3** actually says: "Where watersheds are affected or are threatened by overuse of the water supply..." There is no evidence that the Rocky Creek watershed is so affected or threatened. The subject property has several springs on it, indicating ample ground water which will be developed to supply each parcel. With or without a lot line adjustment, such water supply will have to be demonstrated to the satisfaction of EH at the time of a Coastal Development permit for development of each of the three parcels.

In a summary to *Reason #2*, the Appeal claims that the County-approved lot line adjustment enables an increase in residential development that conflicts with LUP Policy **5.4.3.H.4** because it converts sub-standard parcels into buildable parcels.

LUP Section **5.4.3.H** is entitled "Residential Subdivision" and **5.4.3.H.4** describes an alternative to subdivision (the policy begins: "Resubdivision and lot line adjustments are encouraged...") which is preferable to the creation of new lots, when policies are thereby better met.

The Burke proposal does not create new developable lots. There are 3 lots before and 3 lots after adjustment. With or without lot line adjustment, development will be a challenge, as it is with most Big Sur parcels. With or without lot line adjustment, there are available building sites, septic sites, and water supply, and access driveways will have to traverse 30% slopes. The primary difference is that driveways will be shorter after the lot line adjustment.

CCC Appeal, Reason #3: "*The increase in development density resulting from the lot line adjustment will have cumulative adverse impacts on coastal access and recreation, water supplies, and the unique coastal resources of the Big Sur Coast.*"

Response to #3: The development of the three Burke parcels was anticipated by the LCP. Even if it had not been, the impact on Highway 1 traffic is less than significant, the impact on coastal access even less, and the impact on water supplies non-existent.

The Appeal states that the development of the Burke parcels “*would cumulatively increase the level of residential development in Big Sur well beyond that which is anticipated and allowed by the LCP.*” In fact, the Monterey County Planning Commission adopted the LUP in February, 1981. County planners included consideration of LUP policies when they issued Unconditional Certificates of Compliance in May, 1982. The certificates say: “The County of Monterey has determined that the herein described real property complies with the applicable provisions of the Subdivision Map Act of the State of California, and other applicable laws of the State of California with respect to subdivisions and complies with the provisions of local ordinances enacted pursuant thereto...” and the three lots constitute separate legal parcels.

The recordation of the three certificates of compliance provided constructive knowledge of the existence of, and availability for development of, the Burke parcels prior to certification of the LCP by the CCC.

The Appeal claims that increased residential development (presumably two residences) will increase traffic on Highway 1, which “*currently operates at the worst level of service (LOS F) at peak times*” It is not clear what portion of Highway 1 is referred to, but it should be noted that traffic from the Burke property would be expected to have impacts primarily on only the northernmost ten miles of the Big Sur coast portion of Highway 1. It should also be noted that residents, as opposed to visitors, learn to avoid Highway 1 at peak times.

The Big Sur LUP states in *Section 4.1* that recreation traffic comprises 95% of all summer traffic on Highway 1, and that “efforts to reduce highway congestion by limiting land use development within Big Sur itself can have only marginal effects.” In this context, two residences more or less is a considerably less than significant impact. The situation today can be assumed to even more extreme, with a greater percentage of visitor to resident traffic and a number of parcels having been acquired by public agencies.

As to cumulative impacts on water supplies, it has been stated above that the 54 acre Burke property contains ample water reserves to develop 3 lots without adverse impacts, either internally or externally.

The Appeal discussion of *Reason #3* concludes by stating that the lot line adjustment is inconsistent with LUP Policy *5.4.3.G.3* and Coastal Act Sections *30211* and *30213*. As discussed above, *5.4.3.G.3* actually implies that lot line adjustments may be a preferred option for development. The two Coastal Act sections are not applicable as they deal with public access to the sea and low cost visitor and recreational facilities, respectively.

CONCLUSION:

After reviewing other lot line adjustments appealed by the CCC and noting the similar wording to the Burke appeal, it appears that CCC staff may have thought the Burke project had similar

deficiencies. However, there are substantive differences that support the Monterey County approval of Burke: Unlike the other appeals, the Burke property is not on the coast, is not between the first public road and the sea, but is in fact over four miles east of Highway 1, in an area inaccessible to the public. There are no Burke parcels which are too small to develop; the smallest is 6.60 acres, the largest nearly 40 acres. There are no identified environmentally sensitive habitats on the existing parcels (Redwood Forest and Canyon Riparian) that cannot be avoided or mitigated. The necessity of development on slopes greater than 30% is the single unavoidable factor common to existing and proposed configurations. LCP policies discussed above provide procedures that allow development on slopes greater than 30% where there is no alternative or where other policies are better served. *LUP Section 3.3* even permits roads in environmentally sensitive habitats where there is no alternative access, and as long as no significant adverse impacts will result.

Approval of this lot line adjustment provides an opportunity to minimize future impacts of the inevitable development of these three parcels, by ensuring that all three building sites will be clustered near the existing access road, and internal driveways will be as short as possible. If this lot line adjustment is disallowed, the Burkes will sell the two smaller parcels and grant road and utility easements over the larger parcel. Then the new owners will be forced to develop parcels in the current configuration.

I look forward to discussing this project with you further. Thank you,



Arden Handshy

Attached: Nikki Nedeff 3/30/2007 Memo

c/c: Tim and Dana Burke
John Briscoe
Nikki Nedeff

MEMO

TO: Arden Handshy
FROM: Nikki Nedeff
DATE: March 30, 2007
SUBJECT: BURKE Lot Line Adjustment, APN 418-011-041, 042, 043

Tim and Dana Burke have proposed a lot line adjustment to reconfigure their three lots in the Upper Rocky Creek watershed. The acreage for each lot will remain the same when reconfigured. The purpose of the Lot Line Adjustment is to facilitate access and shorten the distance that driveways will have to traverse across slopes that in some places are in excess of 30%.

On August 19, 2006, I conducted a preliminary site assessment and prepared a letter report (dated August 20, 2006) that describes general habitat features on the Burke property. No special status plant or wildlife species were observed on the Burke property during the preliminary site inspection.

As noted in my August 20, 2006 report, the Burke property supports a mosaic of coastal and inland natural communities typical of Pacific slope watersheds. The patchwork of habitat types reveals significant microclimatic variability over relatively short geographic distances due to soil differences, moisture retention, slope steepness, aspect, and the inland extension of marine influences.

As presently configured, each of the Assessor's Parcels owned by the Burkes could support development sites on gentle terrain with slopes less than 20%. However, the construction of driveway access to reach these more gently sloped house sites would involve very long traverses across slopes that are 30% and greater. To reach a potential development envelope on the "flag pole" lot would also require crossing a perennial tributary of Rocky Creek and working through Redwood Forest habitat on the north-facing side of Long Ridge. With appropriate engineering, erosion control and restoration, reaching developable areas on the currently configured lots is technically feasible, although impacts to natural resources would be significantly reduced if the proposed lot line adjustment is finalized.

The environmental impacts to habitat resources on the Burke property would be greatly reduced with the proposed lot line adjustment. The reconfigured parcels cluster tentative development sites according to the placement of buildable locations on more gently sloped sites. The construction of driveway access from each proposed lot would still involve traversing across slopes 30% and greater, however the distance from each of the proposed building locations to the shared route that cuts across the northwest corner of proposed Parcel A would involve far less environmental impact.

CCC Exhibit 5
(page 6 of 28 page 1)



BIOLOGICAL ASSESSMENT

BURKE PROPERTY - ROCKY CREEK

APN 418-011-041, 042 and 043

Prepared for:
Tim and Dana Burke
77 Omaikai Place
Lahaina, HA 96761

Prepared by:

Nicole Nedeff
Consulting Ecologist
11630 McCarthy Road
Carmel Valley, CA 93924
831/659-4252
nikki@ventanaview.net

August 20, 2007

RECEIVED

AUG 29 2007

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

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PROJECT PROFILE

DATE: August 20, 2007

PREPARED BY: Nicole Nedeff

SITE NAME: Burke

APN: 418-011-041, 39.92 acres, U.S. Lot 17, Section 2. Referenced in report as APN-041.
418-011-042, 6.60 acres, U.S. Lot 18, Section 2. Referenced in report as APN-042.
418-011-043, 7.58 acres, U.S. Lot 1, Section 11. Referenced in report as APN-043.

PHYSICAL ADDRESS: Upper Rocky Creek Watershed, south of Twin Peaks

ACREAGE: Total acreage in project area = 54.1 acres

USGS QUAD: Mt. Carmel 7.5'. T18S, R1E, SE1/4 of the SE1/4, Section 2, and a portion of the NE1/4 of the NE1/4 Section 11.

OWNER: Tim and Dana Burke, 77 Omaikai Place, Lahaina, HA 96761.

OWNER REPRESENTATIVE: Arden Handshy, Land Use Facilitator, P.O. Box 51758, Pacific Grove, CA 93950. 831/649-6420.

MONTEREY COUNTY PLANNING AREA: Big Sur LUP. Lot Line Adjustment application approved by Monterey County Minor Subdivision Committee on December 14, 2006, PLN: 060189.

ZONING/PRESENT LAND USE: WSC/40 (CZ) = Watershed and Scenic Conservation Residential, with a maximum gross density of one unit per 40 acres, within the Coastal Zone. The site occurs in the Big Sur Land Use Plan Area in the mountainous upper drainage of Rocky Creek. Similar rural residential parcels are in the vicinity.

SITE LOCATION: The Burke property is located in the Rocky Creek watershed approximately 4.5 miles inland from Highway 1. The property is accessed from Palo Colorado Road and a gated private road that veers northward from the local landmark called "The Hoist". The property abuts the western boundary of the Ventana Wilderness in the Los Padres National Forest.

PROJECT DESCRIPTION: Coastal Development Permit for Lot Line Adjustment to reconfigure exiting parcels to facilitate access and reduce environmental impacts associated with building access roads. Biological Assessment pertains to overall habitat conditions on existing lots of record and proposed reconfigured parcels.

SITE VISITS: August 20, 2006, May 12, 2007, July 30, 2007.

HABITAT IN PROJECT AREA: Mixed Evergreen Forest, Oak Woodland, Canyon Riparian, Chaparral.

SIGNIFICANT BIOLOGICAL ATTRIBUTES:

- √ Riparian habitat along primary tributaries to Rocky Creek

BIOLOGICAL ASSESSMENT
APN 418 - 011- 041, 042, 043

EXECUTIVE SUMMARY

Tim and Dana Burke have proposed a lot line adjustment to reconfigure their three lots in the Upper Rocky Creek Watershed. The number of legal lots will be the same and the acreage for each lot will remain unchanged when reconfigured. The purpose of the Lot Line Adjustment is to cluster developable areas and shorten the distance that access roads will have to traverse across slopes that are in excess of 30%.

On August 20, 2006, I prepared a letter report describing general habitat features on the Burke property in the vicinity of feasible building areas on the three reconfigured parcels. No special status plants, wildlife or natural communities were observed in the vicinity of clustered development sites during the preliminary site inspection. It was noted that Canyon Riparian, Oak Woodland, Mixed Evergreen Forest and indicators of moist soil conditions (willows, big-leaved maples and sycamores) occur on the Burke property.

On May 12, 2007 and July 30, 2007, I conducted more extensive field work and visited each of the existing lots of record to assess environmental conditions in feasible building areas. The proposed roadway connecting the "flag-pole" lots (APN-042 and APN-043) to the main access road was also inspected. In addition, the proposed project was evaluated for potential impacts to natural resources that exist in the project site, and in the Upper Rocky Creek Watershed.

The existing Assessor's Parcels support:

- APN-041 - 39.92 acres, square parcel closest to existing road access. Canyon Riparian, Mixed Evergreen Forest, Oak Woodland, Chaparral, and disjunct indicators of moist soils: sparse willows near road, sycamores near building site "B", chain fern stand.
- APN-042- 6.6 acres, narrow northeastern parcel adjacent to Ventana Wilderness, Canyon Riparian, Mixed Evergreen Forest, Oak Woodland, Chaparral.
- APN-043- 7.58 acres, narrow southeastern parcel adjacent to Ventana Wilderness. Canyon Riparian, Mixed Evergreen Forest, Oak Woodland, Chaparral, primary tributary to Rocky Creek (Rocky Creek is known for the presence of steelhead in the South/Central California Ecologically Significant Unit - ESU).

No occurrences of plants or wildlife species protected under either the federal or California Endangered Species Acts were documented in the project area. However, all three existing parcels support Canyon Riparian habitat in narrow, steep canyons. A primary tributary to Rocky Creek crosses the northern edge of APN-043. Rocky Creek is known to sustain the federally threatened steelhead in its lower reaches. Potential habitat exists in Canyon Riparian areas on APN-042 and APN-043 for a number of sensitive species, including California spotted owl, Coast Range newt and foothill yellow-legged frog.

No occurrences of special status plants listed by the California Native Plant Society or the Los Padres National Forest, Monterey District were documented on the Burke property.

Based on field reconnaissance and analysis of maps and aerial photography, it is my determination that the potential development of each of the existing Assessor's Parcels is possible. With appropriate engineering, erosion control and restoration, reaching developable areas on the existing lots is feasible, however road construction impacts to natural resources would be significantly reduced if the proposed Lot Line Adjustment is finalized.

If suggestions to minimize potential biological impacts are incorporated into future development plans, reconfiguring the existing Assessor's Parcels according to the proposed Lot Line Adjustment will not significantly affect biological resources in the Upper Rocky Creek Watershed of the Big Sur Planning Area. The reconfigured parcels will require less road construction for access and will not be adjacent to sensitive riparian habitat or the edge of the Ventana Wilderness.

This Biological Assessment pertains to habitat conditions on the existing Assessor's Parcels and on the reconfigured lots under consideration in the proposed Lot Line Adjustment. Specific and focused biological assessments should be completed and mitigation measures recommended if infrastructure and construction is proposed pursuant to Combined Development Permit applications for road and residential development on any of the individual parcels in the project area.

~~~~~  
The Monterey County Minor Subdivision Committee approved the Coastal Development Permit to implement the Burke Lot Line Adjustment on December 14, 2006, PLN 060189.



## I. SURVEY METHODS

Local maps, written references, Internet-based searches and consultations with knowledgeable individuals were used during the preparation of this Biological Assessment. In addition, maps and aerial photographs were provided by Land Use Facilitator Arden Handsby.

Botanical and habitat surveys were conducted in August 2006, May 2007 and July 2007. Prior to on-site field visits, the California Department of Fish and Game Natural Diversity Data Base (CNDDDB) maps and computer print-outs for the vicinity of the Burke property (Soberanes Point, Mt. Carmel, Big Sur and Pt. Sur USGS 7.5' quadrangles) were consulted. Appendix A lists the CNDDDB species that were considered during site visits to the Burke property. In addition, because the project area abuts the Los Padres National Forest, lists of sensitive species found on the Monterey Ranger District of the Los Padres National Forest were also reviewed and potential occurrences of noted species listed in Appendix B were considered during surveys on the Burke property.

CNDDDB maps for the Mt. Carmel quadrangle display no specific records or element occurrences of sensitive species recorded in the vicinity of the Burke property. Most of the species listed in Appendix A and Appendix B do not have potential habitat on the Burke parcels.

No sensitive or special status plants or animals were observed on the Burke property during on-the-ground field surveys, however the property supports "Canyon" Riparian habitat. This natural community is a local phase of Riparian habitat, which is considered an Environmentally Sensitive Habitat Area (ESHA) in the Monterey County Big Sur Land Use Plan, Local Coastal Program. Potential habitat exists in appropriate Canyon Riparian communities on APN-042 and APN-043 for a number of sensitive species, including Coast Range newt and foothill yellow-legged frog. Potential habitat exists in heavily forested areas in the general region for California spotted owl.

Policies pertaining to Riparian habitat are detailed in chapter 3.3.3, page 20 of the 1985 LUP and Section 20.145.040.C.1 (Specific Development Standards, Terrestrial Plant, Riparian and Wildlife Habitats), in the 1988 Coastal Implementation Plan.

A complete list of species observed on the Burke property is included in Appendix C.

Common names for plant species are used throughout the text.

## II. SITE DESCRIPTION and EXISTING CONDITIONS

Assessor's Parcel Numbers for existing lots of record:

418-011-041, 39.92 acres. Referenced in this report as APN-041.

418-011-042, 6.60 acres. Referenced in this report as APN-042.

418-011-043, 7.58 acres. Referenced in this report as APN-043.

The Burke property is located approximately 4.5 miles inland from Highway 1 in the upper portion of the Rocky Creek Watershed. The three Assessor's Parcels owned by Tim and Dana Burke are situated between the prominent geographic features of Twin Peaks and Long Ridge, and are adjacent to large, rural, residential properties developed in similar terrain. Two of the existing Burke parcels (APN 042 and APN-043) are immediately adjacent to the northwestern border of the Ventana Wilderness in the Los Padres National Forest. Figure 1 is a general regional map depicting the Burke project area.

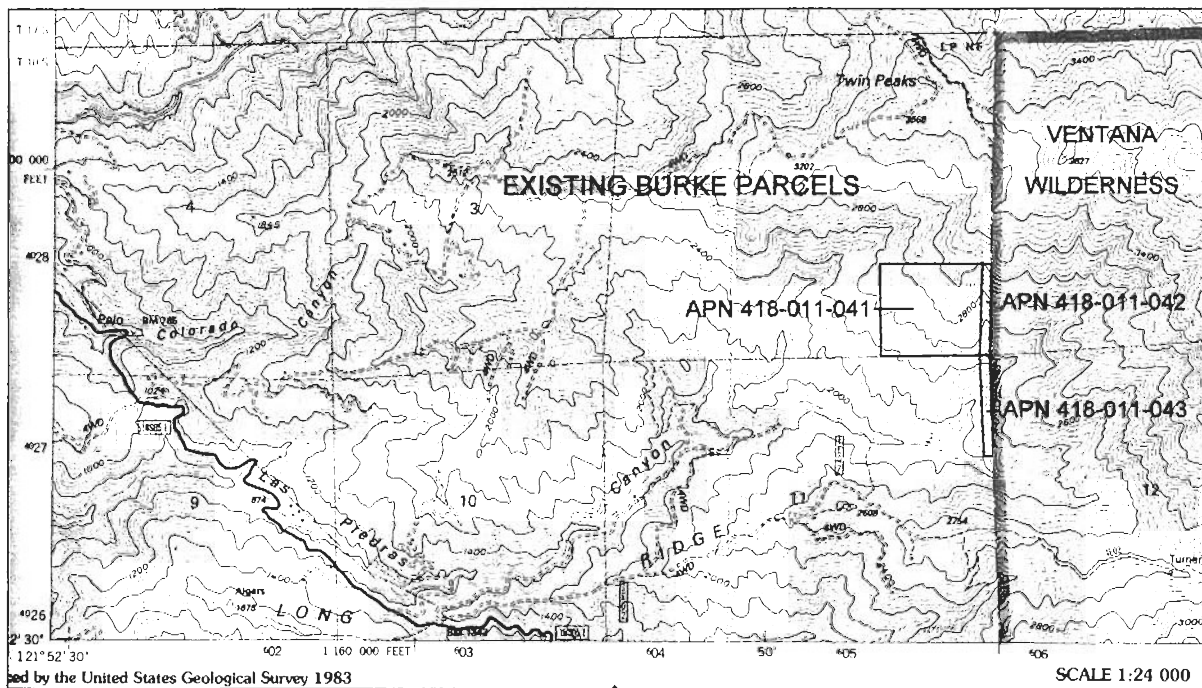


Figure 1 - A portion of the USGS Mt. Carmel 7.5' quadrangle with the existing Burke parcels outlined. Highway 1 is approximately 1.5 miles to the left of the western edge of the map.

The majority of the Burke property is positioned on steep slopes that face west, south and east. Most of the Burke property has slopes in excess of 30%. The topography levels out to more gentle slopes along the southerly extensions of several short ridges and towards the canyon bottom along a principal tributary to Rocky Creek. A slope density map based on an aerial survey is presented in Figure 2.

The northern edge of APN-043 crosses a primary tributary to Rocky Creek (the North Fork of Rocky Creek), while APN-041 and APN-042 are situated at higher elevations on the lower flanks of Twin Peaks. Elevations range from a low of 2250' at the stream crossing on APN-043, to approximately 3030' at the highest location on APN-041.

7

The vehicular approach to the Burke property is located at the western edge of APN-041 along a private dirt road that is accessed through a locked gate at the Hoist along Palo Colorado Road, approximately three miles inland from Highway 1. This road is referred to by locals as the "Zufich" Road in the vicinity of the Burke property.

The three existing Burke parcels are completely undeveloped, except for an old springbox located in the southerly portion of APN-042. Several footpaths have been created in APN-041 to facilitate access to the eastern portion of the property.

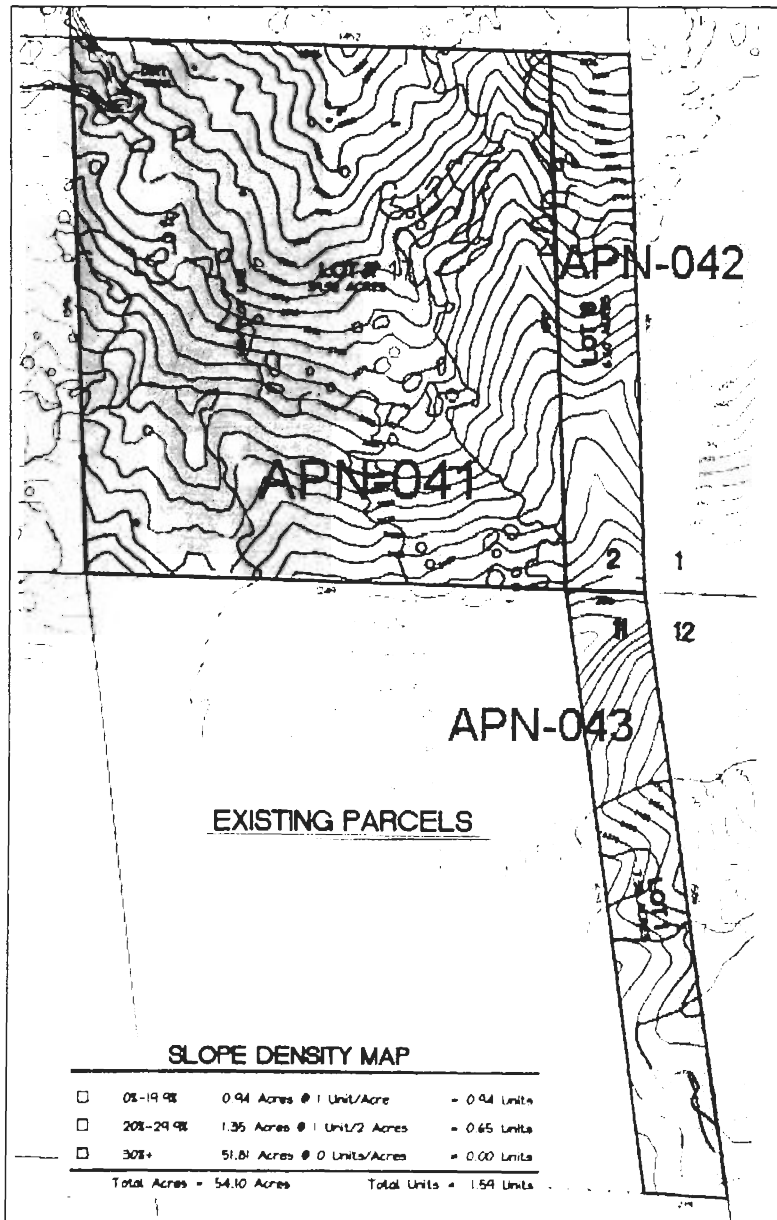


Figure 2 - Slope Density Map of existing Burke Assessor's Parcels.  
Prepared from aerial survey by M.J. Goetz and Associates, Licensed Surveyor.

## A. GENERAL HABITAT

The Burke property supports a classic mosaic of natural communities and plant associations typical of Pacific slope watersheds in central California. The Upper Rocky Creek Watershed below Twin Peaks is in a transitional area where inland conditions predominate and marine influence in the form of cooling fog penetrates only rarely. The patchwork of habitat types reveals significant microclimatic variability over relatively short geographic distances due to soil differences, slope steepness, aspect, and moisture.

The underlying bedrock geology is composed of granitic rock types that weather to coarse soils of varying depth. Large boulders outcrop in scattered locations on the Burke property and create unusual and interesting landforms. Sunny, exposed, generally south and west-facing slopes are mantled with dense chamise-dominated Chaparral, with patches of Oak Woodland tucked into pockets of deeper soils and folds of narrow canyons. The drainage bottoms in APN-042 and APN-043 support linear Canyon Riparian communities that snake their way along increasingly steep gradients towards watershed divides. Small areas of north-facing slopes on APN-042 and APN-043, and several of the canyons with seasonal streams tend to be vegetated with stands of Mixed Evergreen Forest vegetation.



Vegetation classifications utilized in the September 2003 publication "List of California Terrestrial Natural Communities Recognized by the California Natural Diversity Database" (CA Dept. of Fish and Game) are noted in the descriptive sections below.

Figure 3 - Granitic boulder outcrop on APN-041.

**1. Chaparral:** DFG Chamise Chaparral Shrubland Alliance, *Adenostoma fasciculatum* 37.101.00, with occasional Associations featuring co-dominant Eastwood's manzanita, 37.101.07 *Adenostoma Fasciculatum* - *Arctostaphylos glandulosa*. Eastwood's manzanita has gone through a recent taxonomic revision and the previous taxon description for the subspecies found on the Burke property, *Arctostaphylos glandulosa* ssp. *zacaensis* (Matthews 1997 and 2006) has been reclassified as *A. glandulosa* ssp. *leucophylla* (Vasey and Parker, March 2007).

On the hottest, driest slopes that are often the poorest in term of soil development, shrub-dominated Chaparral vegetation is characterized by a predominance of chamise. Chamise is the signature plant of Chaparral habitat on the Burke property and other attendant species tend to be widely separated in this natural community. Chamise Chaparral is one of the most common natural communities in California, covering approximately 6 million acres in the state.

In Chaparral on the Burke property, yerba santa occurs in small patches along the access road, while Eastwood's manzanita, black sage, deerweed, toyon and golden fleece can be found scattered in the shrub matrix dominated by chamise. Occasional stands of Eastwood's manzanita create bright green patches in otherwise nearly pure chamise. A few specimens of buck brush, coffeeberry and redberry were seen and small groves of Coast live oak were noted in areas of deeper soil.



Figure 4 - Chamise-dominated Chaparral with scattered stands of coast live oak and Eastwood's manzanita. Black sage in the foreground. View is looking west across the middle of existing APN-041 along route of proposed driveway. Note vehicles parked along "Zufich" access road in top right of photograph - this is the approximate location of where the driveway entrance would be placed to access all three Monterey County-approved building areas in the lot line adjustment (currently existing APN-041). Chamise Chaparral is the dominant plant community throughout the developable areas on the lots proposed under the Lot Line Adjustment. Building site A is marked by a white PVC pole immediately above the boulder outcrop left of center.

**2. Coast Live Oak Woodland:** DFG Coast Live Oak Forest and Woodland Alliance, *Quercus agrifolia* 71.060.00, with Associations of Central Coast Live Oak Forest 71.060.21 and Coast Live Oak - Canyon Live Oak Woodland, *Quercus agrifolia* - *Q. chrysolepis* (no DFG code).

Discontinuous patches of Oak Woodland and Forest are found in pockets of deeper soils and along seasonal drainages where soil moisture tends to persist. Coast live oak is the dominant

oak species on the Burke property. Canyon live oak, a species indicative of higher elevation and more inland environments, also occurs on the Burke property and black oaks were observed near the Rocky Creek tributary on APN-043. Canyon live oak was seen growing adjacent to coast live oak in mixed populations in some locations, which is an interesting sign marking the transition zone between coastal and inland climates. Several large, stately madrone and a few California bay trees were also observed in association with oak-dominated woodland/forest vegetation on the Burke property.



Figure 5 - Mosaic of Chaparral and Coast Live Oak Woodland. View is towards the east across the northern portion of existing APN-041. Note boulder outcrops on the steep hillslope. This photograph depicts the very steep terrain upslope of Monterey County-approved building areas and road alignment proposed under the Lot Line Adjustment.

**3. Mixed Evergreen Forest:** DFG Mixed Oak Woodland and Forest Alliance, 71.100.00, is the most inclusive classification category for this highly variable natural community. Stands of single species trees (oaks, tanbark oaks, bays, madrones) are intermixed with individuals of all species in a changeable mosaic that reflects microclimate and soil differences.

The only significant north and northwest-facing hillslopes on the Burke property occur on APN-042 and APN-043 flanking the narrow drainages of Rocky Creek tributaries. These aspects support restricted stands of Mixed Evergreen Forest vegetation. Forested hill-slopes on north-facing aspects of the Burke property and similar sites in typical central coast watersheds are

generally damper, more shaded and vegetated with a variety of tree species, including tanbark oak, coast live oak, canyon live oak, madrone, California bay and a variety of shrubs, ferns and herbaceous species in the shaded understory. It appears that the pathogen responsible for Sudden Oak Death, *Phytophthora ramorum*, has infected many tanbark oak trees in Mixed Evergreen Forest habitat in the Rocky Creek Watershed. Fuel loads are extremely high, since many tanbarks display dead foliage or have already died from the disease.

Understory vegetation in Mixed Evergreen Forest communities can be quite variable, with poison oak, straggly gooseberry, coffeeberry, sword fern, western bracken and California blackberry intermixed with shade-tolerant wildflowers and native grasses. Potential habitat occurs in the forest habitat on the Burke property for the California spotted owl (*Strix occidentalis occidentalis*, a California Species of Concern and Forest Service Sensitive Species).

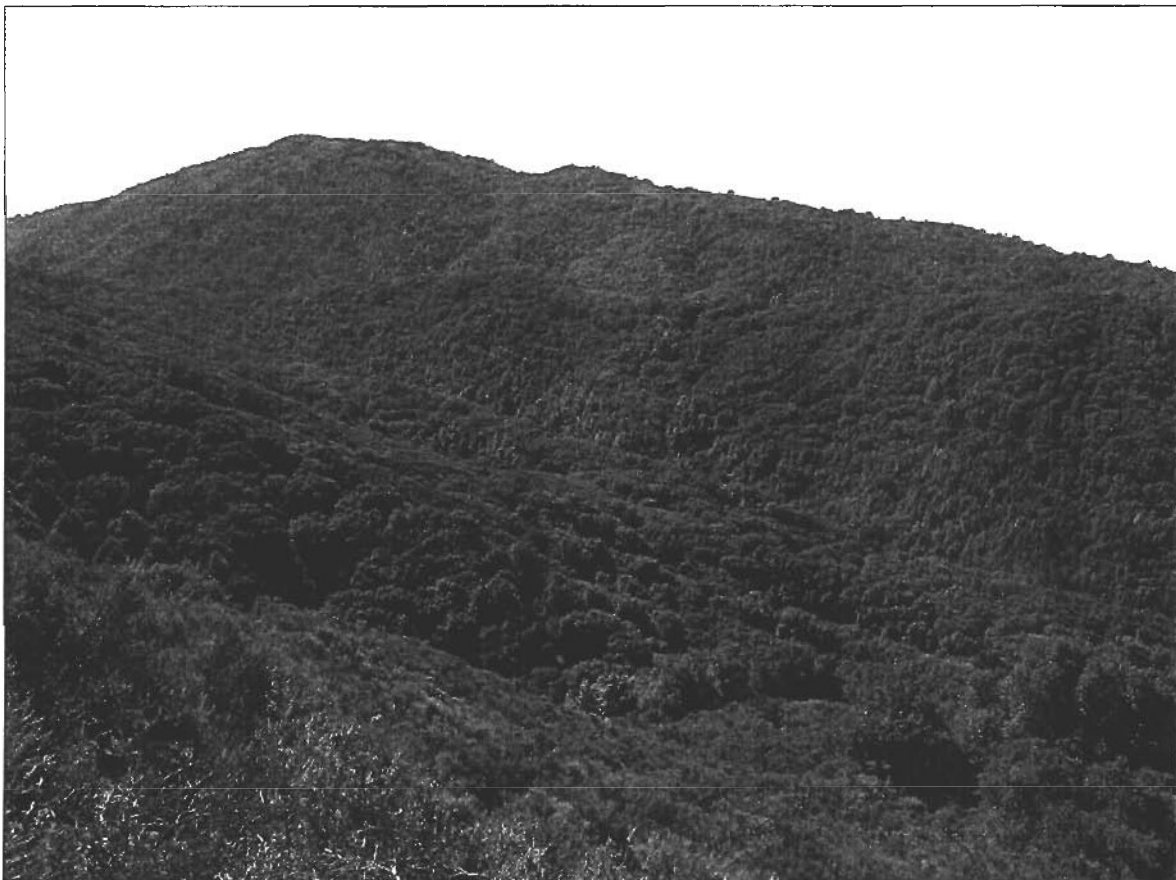


Figure 6 - Looking southeast across Burke property towards dense Mixed Evergreen Forest on north-facing slopes of the Ventana Wilderness, Devil's Peak, Skinner Ridge and Long Ridge. Foreground of Chaparral and middle ground vegetated mostly with Coast Live Oak Woodland.

**4. Canyon Riparian Habitat:** The 2003 DFG List of California Terrestrial Natural Communities includes Riparian and Bottomland Habitat, 60.000.00, and an Association for Central Coast Arroyo Willow Riparian, *Salix lasiolepis*, \*61.201.01 (the \* indicates this is a rare community). White Alder Forest and Woodland, *Alnus rhombifolia*, 61.420.00, is also



referenced. Riparian habitat is considered Environmentally Sensitive Habitat Area (ESHA) in the Big Sur LUP.

Stands of arroyo willow and white alder that are typically associated with Riparian habitat do not occur on the Burke property, however individuals of each of these species are found in areas of damp soil (e.g., willow seedlings along the Zufich road) and in the narrow canyon riparian corridors, where these trees are associated with other indicator species like big-leaved maple, sycamore, chain fern and elk clover. Riparian plants are scattered along the drainage bottoms in widely separated locations and floristic changes occur within relatively short distances. As elevations increase, the number of obligate and facultative wetland or riparian species along the seasonal creeks lowers as the number of upland taxa increases. Eventually, Riparian habitat found in the damp canyons gives way to communities of Chaparral, Oak Woodland or Mixed Evergreen Forest at the higher elevations.

There does not appear to be a DFG Vegetation Classification that adequately characterizes the highly variable Riparian vegetation found on the Burke property, or in other Central Coast watersheds where narrow canyons gain elevation dramatically along steep gradients. At any single location along the longitudinal profile of these steep drainages, the species composition of the vegetation can be described in a specific and definitive way. Generally, "stands" of vegetation (where collections of a single species of plant can be found) do not occur with any regularity and species composition along the drainages changes very quickly. Species composition reveals differences in moisture availability, amount of sunlight received and width of the riparian recruitment zone. Riparian indicators can be intermixed with plants more typical of xeric habitats, depending on amount and seasonality of streamflow and the width of the "floodplain" available for plant colonization.

Canyon Riparian habitat on the Burke property is restricted to the narrow canyon bottoms in APN-042 and APN-043, and at the eastern edge of APN-041. The moisture dependent vegetation is densest and most diverse along the portion of the drainage at the northern edge of APN-043, where less than 0.5 cfs (cubic feet per second) of streamflow was observed on May 12, 2007. Slopes in the drainage bottom are relatively level at this particular location and the composition and structure of the riparian habitat reflects this accommodating plant environment. Riparian habitat on APN-043 includes black oak, white alder, big-leaved maple, sycamore, leather root, elk clover, thimbleberry and madrone. The side tributary that snakes upstream onto APN-041 and APN-042 becomes increasingly steep, however short reaches support dense stands of chain fern and occasional sycamore. To illustrate the complexity of environmental conditions in APN-042, at one point along the drainage, yucca, an indicator of dry rocky conditions, was growing within a short, damp section of the creek covered with mugwort and chain fern.

The upper reaches of steelhead spawning (*Onchorhynchus mykiss*, listed as federally threatened) are not known in the Rocky Creek Watershed, however it is doubtful that the North Fork of Rocky Creek maintains perennial flow through the Burke property. It is possible that there are reaches of the narrow side canyons where moisture remains all year long in pockets and short reaches where groundwater is forced to the surface over shallow bedrock.

Potential habitat occurs in the wettest riparian areas on the Burke property for foothill yellow-legged frog (*Rana boylei*) and Coast Range newt (*Taricha torosa torosa*).



Figure 7 - North Fork Rocky Creek in APN-043, looking downstream. Thimbleberry on left bank and large woody debris in streambed.

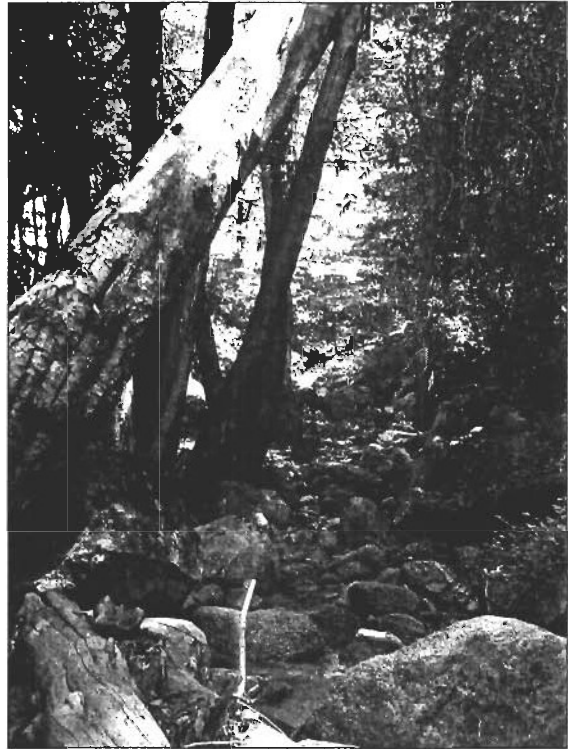


Figure 8 - North Fork Rocky Creek in APN-043, looking upstream.

### III. POTENTIAL DEVELOPMENT OF EXISTING ASSESSOR'S PARCELS

Figure 9 depicts potential road alignments to possible building areas on existing Assessor's Parcels on the Burke property, which are referenced as APN-041, APN-042 and APN-043 in this report. The potential road alignments and each of the possible building areas were field surveyed on May 12, 2007 and July 30, 2007. Note that APN-041 has three possible building areas identified as A, B and C; each of these generally corresponds to building areas on reconfigured lots, as approved by Monterey County in December 2006. There is one additional building area on the southern edge of existing APN-043, however this site was not field checked as it must be accessed from an illegal road constructed on to the Burke's land from the adjoining private Kitaji property. The southern portion of APN-043 is not shown on Figure 9.

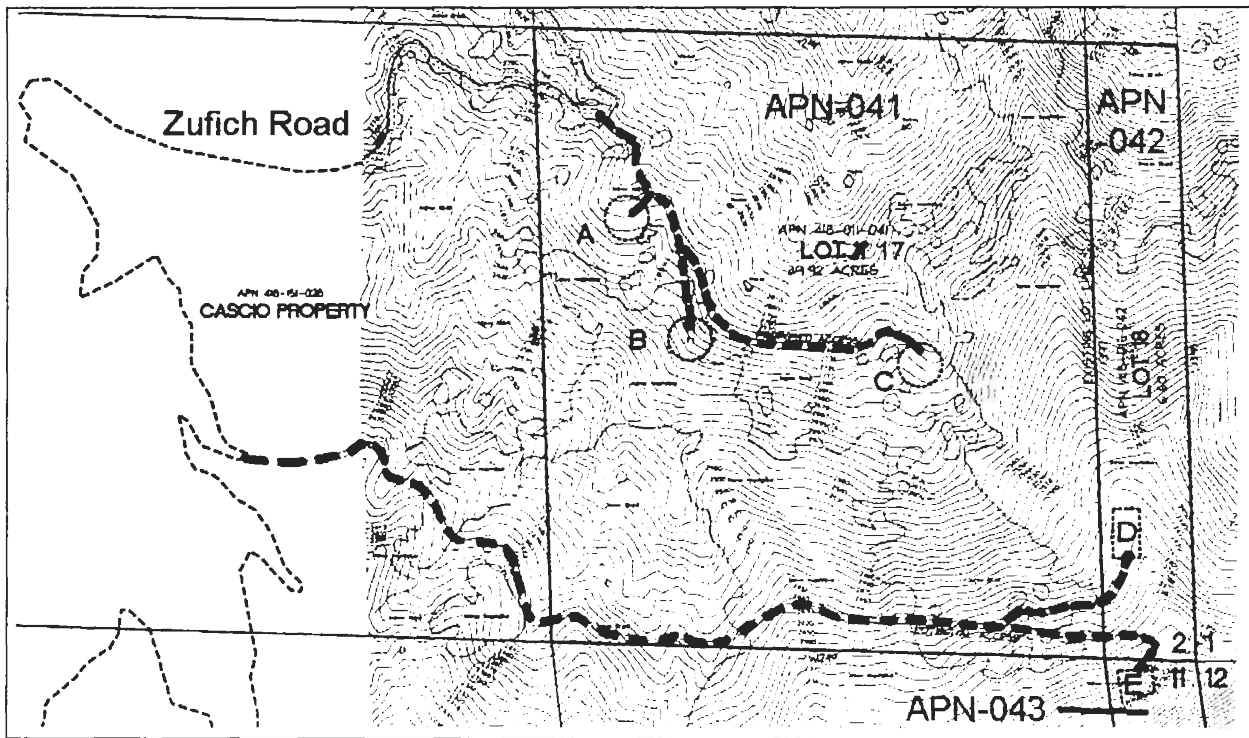


Figure 9 - Map of potential road alignments and building areas, July 2007. Possible building areas on APN-041, which would be located on three reconfigured parcels approved by Monterey County, are labeled A, B and C. Alternative building areas located on the existing "flag-pole" parcels APN-042 and APN-043 are noted as D and E. The potential lower road alignment is the dashed dark green line and the upper road alignment is the dashed red line.

#### A. CONDITIONS AT POTENTIAL BUILDING SITES

1. **APN-041:** the large, 39.92-acre square parcel. There are at least three possible building areas on APN-041 and each of these has been placed into reconfigured lots approved by the Monterey County Minor Subdivision Committee. Building areas "A" and "C" are in chamise-

dominated Chaparral habitat, with occasional black sage, Eastwood manzanita, deerweed and toyon. The shrub canopy is too dense to support a significant understory. A large boulder outcropping occurs in "A".

The possible building area at site "B" straddles the margin of Coast Live Oak Woodland and Chaparral natural communities. The Oak Woodland has deep leaf litter with a very sparse understory. An interesting collection of sycamores occurs under the canopy near this location. About 20 sycamore trees were noted, each between 2" and 10" DBH (diameter at breast height, 5' above ground surface). The presence of the moisture-dependent sycamores indicates relatively shallow soil moisture in this area. No other moisture-dependent vegetation was observed - no spring, wetland or riparian plants were seen in what is otherwise a typical upland Oak Woodland setting at the lower margin of building area "B". The sycamores are an anomaly at this site and likely reflect some sort of past growing environment that is no longer operative at this location. The sycamores are probably being sustained today by shallow groundwater conditions, however the attendant environment that promoted the original propagation or sprouting of the sycamores is no longer in place. Environmental conditions that favor the development of Coast Live Oak Woodland habitat currently prevail at this site. Sycamores were not observed under the canopy of other Oak Woodland areas on other portions of the Burke property, except along narrow drainages where Canyon Riparian habitat was present.

**2. APN-042:** narrow northeastern parcel adjacent to the Ventana Wilderness. The possible building area "D" is near the confluence of two small side canyons that each support sparse and discontinuous Canyon Riparian vegetation. Locating structures at this site may require slope waivers to build on slopes greater than 30%, and will require building within the 150' setback from Canyon Riparian ESHA. A water source could easily be developed from an old, existing springbox upstream in the westerly canyon.

The building location at "D" is situated in Coast Live Oak Woodland near sparse Canyon Riparian habitat that is confined to the narrow canyon bottom. The westerly drainage supports a small stand of chain fern, with mugwort, western bracken and stinging nettle under an open canopy dominated by coast live oak. Two straggly sycamores struggle for light from the drainage bottom. This possible development area is within 175-feet of the Ventana Wilderness.

**3. APN-043:** narrow southeastern parcel adjacent to the Ventana Wilderness. The possible building area "E" is above the North Fork Rocky Creek, where the photographs in Figures 7 and 8 were taken. This site is situated on the steep slope (over 30%) above the canyon bottom and just within the 150 lineal-foot setback from ESHA. The overstory is composed of coast live oak, with California bay and black oak occurring on lower slopes closer to the stream. The very open understory has widely scattered poison oak, native western ryegrass, and non-native annual grasses. A few notable populations of the beautiful elongate rein-orchid also occur under the oak canopy in this general vicinity.

Developing the suggested building area "E" on APN-043 would avoid a problematic stream crossing over the primary tributary of Rocky Creek and a difficult traverse across extremely steep terrain on the south side of the stream channel. Good possible building areas occur in the southerly portion of APN-043, however unless access can be obtained from the illegal road crossing the neighboring Kitaji parcel, road construction to the very south of APN-043 on the Burke property would be prohibitive because of topographic difficulty. Site "E" is within approximately 175-feet of the border of the Los Padres National Forest and the Ventana Wilderness.

## B. CONDITIONS ALONG ROAD ALIGNMENTS

There are two suggested road alignments to access possible building areas on the existing Burke parcels (see Figure 9).

**1. Lower Route:** Access to APN-042 (building site "D") and APN-043 (building site "E") would be across neighboring private land and the southern portion of APN-041. The tentative alignment for the lower route would depart from the private "Zufich" road and cross the intervening Cascio property to the southwestern corner of the Burke property in APN-041. This route involves securing an access easement from Mr. Cascio, who has agreed to this proposal. The suggested route crosses open slopes vegetated with dense Chaparral, as well as several pockets of Coast Live Oak Woodland and small stands of Mixed Evergreen Forest (with coast live oak, bay, sycamore and big-leaved maple in small, narrow drainages on the Cascio property). The tentative alignment has been designed to minimize disturbance to Oak Woodland habitat by situating the roadway in Chaparral as much as possible.

This roadway would traverse approximately 2400-feet across slopes in excess of 30% for most of its route to provide access to building areas on APN-042 and APN-043. The proposed route aims for areas of more gradual terrain in the southwestern portion of APN-041, however the majority of this route will occur on slopes of 30% and greater. The access across the Cascio property would take advantage of existing trails and clearings.

Of note are several small patches of chain fern that appear in one location on APN-041 below the understory of Oak Woodland habitat. This species is typically considered an indicator of extremely high soil moisture levels, and in fact requires abundant moisture to persist. No other wetland or riparian indicators are present with the chain ferns, which appear as discrete and isolated patches mid-slope under the oak canopy. It is possible that these chain ferns are somehow connected to the subsurface hydrology that sustains the small stand of sycamores farther upslope near building area "B".



**2. Upper Route:** The tentative 1050-foot alignment for the upper route would depart from the private "Zufich" road at the northwestern corner of the Burke property on APN-041. The road alignment to the three building sites on APN-041 is entirely in Chaparral habitat, with a spur driveway to site "B".

Across from the point at which the proposed upper roadway would depart from the "Zufich" road is a spring area where several small arroyo willow saplings and patches of mosses indicate damp soil conditions. The individual willow plants do not constitute a "stand" at this location, however the presence of these phreatophytes is indicative of wetland-like conditions. Clearly the site supports high soil moisture levels.

Figure 10 - Arroyo willows in damp soils along "Zufich" road in the northwestern corner of APN-041.

## C. POTENTIAL IMPACTS OF DEVELOPING EXISTING PARCELS

Tim and Dana Burke own three lots that have challenging slope constraints, however each parcel has adequate building areas that could be accessed with carefully engineered roadways. Water sources exist at several locations where springs and surface drainage could be tapped. At the present time, no specific construction plans have been prepared for either the existing parcels, or the reconfigured parcels in the Monterey County-approved Lot Line Adjustment. Tentative building areas and road alignments have been identified on the existing parcels and also on the reconfigured lots, although the implementation of any proposed project will require specific Coastal Development Permit applications with additional focused biological survey.

**1. Biological Impacts:** The primary potential biological impacts associated with developing the Burke lots (either the existing Assessor's Parcels or the reconfigured lots) will result from the required removal of vegetation and soil disturbance related to construction of roads and structures. Removal or modification of additional vegetation will likely ensue for fire clearance and landscaping. The removal and/or modification of vegetation for road development and building sites will eliminate Chaparral habitat and a minor amount of Oak Woodland in all parcels. Development of building site "D" on APN-042 will require construction well within the 150-foot ESHA setbacks for Canyon Riparian habitat, however sensitive Canyon Riparian habitat can be avoided at this site. Potential impacts may result for Canyon Riparian-associated species like Coast Range newt and yellow-legged frog. No other special status species would likely be impacted.

Developing road access to APN-042 and APN-043 will involve an easement across adjoining private land and approximately 2400-feet of new road construction across steep terrain. Developing road access to buildable areas on APN-041 will involve between 600-feet and 1050-feet of new road construction, depending on where development is situated. The preferred building site identified by the Burke family is site "C", which would require 1050-feet of new road construction. New road construction to "D" and "E" would occur in Mixed Evergreen Forest, Oak Woodland and Chaparral communities, while the road to "A", "B" and "C" would be entirely in Chaparral.

Ecological impacts may result from potential erosion following vegetation removal and the creation of bare soil conditions, as well as erosion and sedimentation associated with increased runoff from impervious surfaces. Soils on the Burke property are primarily derived from granitic bedrock and tend to be coarse and highly erosive. Sediment delivery to Rocky Creek tributaries could impact the steelhead fishery downstream in the mainstem of Rocky Creek.

**2. Wilderness Impacts:** The development of APN-042 and APN-043 will require locating structures within a couple hundred feet, or less, of the boundary of the Ventana Wilderness in the Los Padres National Forest. Private land uses so close to designated wilderness could compromise the wilderness values sustained in the Ventana backcountry, where opportunities for solitude and quiet recreation are preserved. The biotic refuge provided by untrammelled wilderness could be affected by having developed home sites so close to the wilderness boundary, which should be buffered from rural residential development to the maximum extent possible.

### **3. Cumulative Impacts:**

a. Habitat Value: Development of the Burke parcels, whether the existing configuration or the County-approved lot line adjustment, will result in the ongoing fragmentation of natural communities and wildlife habitat. Habitat fragmentation will continue as the pattern of rural residential development proceeds in Pacific slope watersheds like the upper Rocky Creek

drainage, where extensive tracts of undeveloped wildlife habitat are undergoing persistent and incremental change. With the introduction of roads, structures, pets, livestock and horticultural vegetation, pressure on native species of plants and wildlife increases. The impact of potential development in areas particularly close to the boundary of the Ventana Wilderness diminishes the effectiveness of the wilderness boundary as a line where human-induced alterations to the environment should be minimized.

b. Water Resources: Potential biological impacts associated with the development of domestic water sources could occur in localized riparian or wetland-type habitat around springs and in areas of shallow groundwater. The diversion of spring, surface and groundwater could reduce the local availability of water for wildlife and moisture-dependent plants, particularly during dry seasons and periods of drought. Long-term soil water depletion in wetland or riparian habitat results in the conversion of these natural communities to more xeric associations typically found in upland locations.

The incremental reduction of regional watershed drainage resulting from the development of water sources for the three parcels on the Burke property is expected to be minimal - this is important for the upstream inflow provided for steelhead and other aquatic organisms that occur in downstream reaches of the Rocky Creek watershed. The Rocky Creek drainage basin is not identified as a Water Resource Study Area in the Big Sur LUP.

c. Visual Impacts: Although not addressed in this Biological Assessment, there will be visual impacts associated with the development of roads and structures on the prominent mid-slope landscape in the project area. The open nature of the chaparral habitat provides little screening of building areas and the steepness of the slopes will likely result in road cut and fill scars that will take time to revegetate. Developing the existing Burke parcels will result in the creation of two parallel road scars across the flank of Twin Peaks.





A. BUILDING SITES

Tentative building sites have been identified in each of the Monterey County-approved reconfigured lots. Parcel A has a building site centered near a boulder outcrop surrounded by chamise-dominated Chaparral. Parcel B has a proposed building site at a location that straddles Chaparral and Oak Woodland habitat, with an unusual stand of light-starved sycamore growing under the oak canopy. Parcel C has a building site entirely surrounded by Chaparral.

Developing these three clustered building sites would eliminate construction within Canyon Riparian ESHA on APN-042 and at the edge of the 150-foot buffer for APN-043. In addition, pursuing development on the reconfigured parcels would move the building areas on APN-042 and APN-043 westward well away from the Ventana Wilderness.

B. ROADS

The development of the three proposed building sites on lots reconfigured under the Monterey County-approved lot line adjustment would entirely eliminate the need to construct a new "lower" road across the southern margin of the Burke property. This "lower" road alignment crosses pockets of Mixed Evergreen Forest on the neighboring Cascio property, small areas of Oak Woodland and large expanses of Chaparral on slopes in excess of 30% for most of its 2400-foot traverse.

As proposed under the lot line adjustment, the "upper" road would provide access to each of the tentative building sites. This route would be constructed from the Zufich Road for approximately 1050 feet across open slopes of Chaparral to the Burke's preferred building site at location "C". A short driveway spur would connect building site B, which is located in both Chaparral and Oak Woodland habitat.

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Although development of the existing Assessor's Parcels 418-011-041, 042 and 043 is feasible, the reduction of road construction and the placement of clustered building sites away from wilderness and ESHA through lot line adjustment is recommended.

Approving the Lot Line Adjustment previously endorsed by Monterey County will result in the elimination of: 2400 feet of new road construction, development within ESHA set-backs, building sites adjacent to the Ventana Wilderness, impacts to oak woodland habitat at sites "D" and "E".

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Appendices A-C are available for review upon request at the Central Coast District Office of the Coastal Commission.



SANTA CLARA COUNTY FIRE DEPARTMENT

14700 Winchester Blvd., Los Gatos, CA 95032 | (408) 378-4010 | www.sccfd.org

STANDARD DETAILS & SPECIFICATIONS	Spec No	<u>D-1</u>
	Rev. Date	<u>04/27/21</u>
	Eff. Date	<u>01/23/97</u>
	Approved By	<u>[Signature]</u>
	Page <u>1</u>	of <u>4</u>

SUBJECT: Specifications for Driveways, Turnarounds and Turn Outs Serving up to Two (2) Single Family Dwellings

SCOPE

This standard is applicable to driveways serving up to two (2) single family dwellings where any portion of the dwelling(s) is greater than 200 feet from the center line of a public roadway. The specifications contained in this standard apply only to properties located within the incorporated city/town services areas of the Santa Clara County Fire Department. Fire department access for dwellings in unincorporated County areas shall conform to County of Santa Clara driveway/roadway standards.

AUTHORITY

California Fire Code (C.F.C), Applicable Municipal/Town Codes and Standards

DEFINITIONS

Driveway: A vehicular access roadway less than 20 feet in width and serving no more than two single-family dwellings.

Roadway: A vehicular access roadway greater than or equal to 20 feet in width serving more than two single-family dwellings.

REQUIREMENTS

I. DRIVEWAY WIDTH

- A. For Campbell, Cupertino, Los Gatos, Monte Sereno, and Los Altos Hills: A 12-foot-wide paved surface.
- B. For Los Altos: A 14-foot-wide paved surface.
- C. For Saratoga: A 14-foot-wide paved surface.

II. VERTICAL CLEARANCE

- A. The vertical clearance above the entire length of the driveway shall be in accordance with the CFC; 13 feet 6 inches.

III. GRADE

NOTE: When approved by the Fire Code official, grades up to 20% may be allowed. In no case shall the portion of driveway exceeding 15% gradient be longer than 300-feet in length. For longer driveways, there shall be at least 100-feet of driveway at 15% or less gradient between each 300-foot section that exceeds 15%.

IV. GATES

The installation of gates or other barricades across driveways shall comply with Santa Clara County Fire Department's Standard G-1.

V. PAVEMENT SURFACE:

Driveways shall be an all-weather surface of either asphalt, concrete or another engineered surface acceptable to the fire department. The surface shall be approved by a civil engineer and be able to support apparatus weighing at least 75,000 pounds.

NOTE: For alternative roadway surfaces such as "Turf Block" or other materials that blend into landscaping and/or that do not readily appear to be driving surfaces, the boundary edges of the alternate material shall be delineated as approved by the fire code official. Delineation shall be by concrete curbs, borders, posts, or other means that clearly indicate the location and extent of the driving surface.

VI. BRIDGES AND CULVERTS:

- A. Where a bridge or an elevated surface is part of a fire apparatus access road, the bridge shall be constructed and maintained in accordance with AASHTO HB-17.
- B. All bridges, elevated surfaces and culverts shall be designed for a live load sufficient to carry the imposed load of a fire apparatus weighing at least 75,000 pounds. Vehicle load limits shall be posted at the entrance to the bridge. Additional signs may be required by the fire code official. Where elevated surfaces designed for emergency vehicle use are adjacent to surfaces which are not designed for such use, approved barriers, approved signs or both shall be installed and maintained when required by the fire code official.



VII. ANGLES OF APPROACH AND DEPARTURE:

For driveways sloping upward from the access roadway, the angles of approach and departure shall be as approved by the fire code official.

VIII. TURNING RADIUS:

The minimum outside turning radius is 40 feet, unless otherwise specified.

Exception: Modified turning radius may be allowed by the fire code official in cases where conditions acceptable under the CFC allow for such deviation. Requests for such modifications must be made in writing to the fire code official for review.

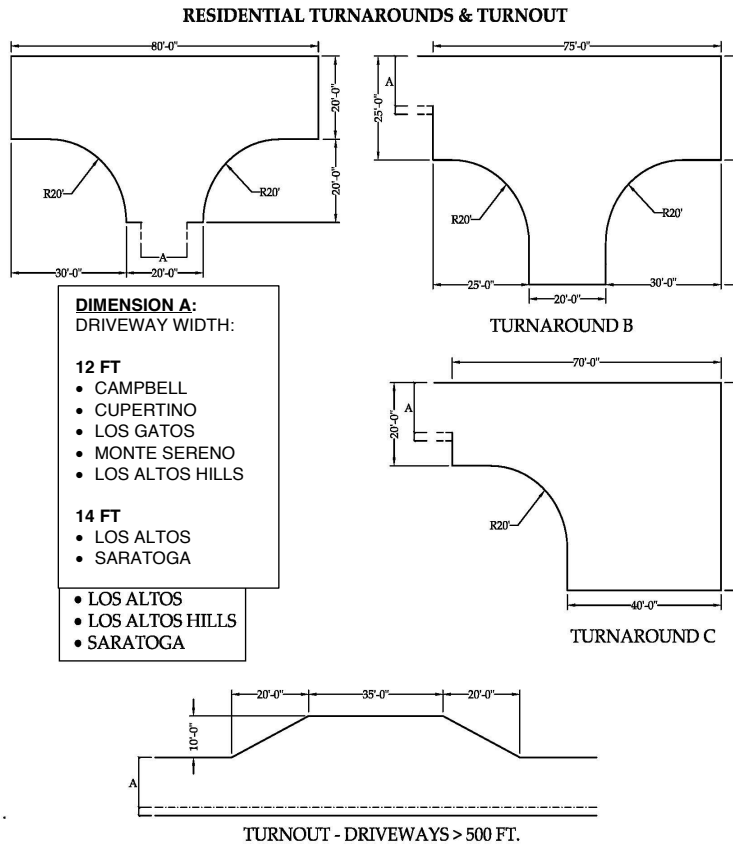
IX. TURNOUTS:

Turnouts are required every 500 feet for driveways in excess of 500 feet.



X. TURNAROUNDS:

Turnarounds are required for all driveways with a length in excess of 150 feet.



NOTE: Turnarounds cannot exceed 5% in any one direction.



Planning and Development Department

October 16, 2013

TO: Planning Commission

FROM: Wendy Cosin, Deputy Planning Director

SUBJECT: Appeal of Proposal to Merge Two Lots at 2750 Cedar Street (Assessor's Parcel No. 058 2211 02 000) and 0 La Vereda (Assessor's Parcel No. 058 2211 01 1802)

RECOMMENDATION

Affirm the determination of the Director of Planning and Development that the property known as 2750 Cedar Street (Assessor's Parcel No. 058 2211 02 000) and 0 La Vereda (Assessor's Parcel No. 058 2211 01 1802) is merged pursuant to the requirements of the City's Merger Ordinance, Chapter 21.52 of the Berkeley Municipal Code, and Section 66451.11 of the California Government Code.

BACKGROUND

In response to several inquiries regarding the proposed sale and development potential of 2750 Cedar Street (Assessor's Parcel No. 058 2211 02 000) and 0 La Vereda (Assessor's Parcel No. 058 2211 01 1802), the Planning Director recorded the attached "Notice of Intention to Determine Status" for the properties. The purpose of the City action is to merge the two lots and to limit the development potential to that which could be constructed on one R-1H lot, rather than two lots. The current property owner, Lisa Iwamoto, filed an appeal of the determination. Michael Tolleson, the architect for the new owner, Louis B. Lin, filed the basis for the appeal.

The State Subdivision Map Act sets forth procedures and requirements for cities and counties to merge legally established and contiguous lots under common ownership. To merge parcels, the local agency must have an ordinance that conforms to the requirements of Government Code Section 66451 et. seq. In 1987, Berkeley adopted a Merger Ordinance that is part of the Subdivision Ordinance and is codified as BMC Chapter 21.52.

The Map Act authorizes local agencies to merge contiguous parcels that are under the same ownership if they meet criteria in the law. Any one of the parcels must be smaller than the minimum parcel size that the local Zoning Ordinance specifies, and at least one parcel must not be developed with any structure for which a building permit was issued or for which a building permit was not required at the time of construction, or must be developed only with

an accessory structure or structures, or with a structure other than an accessory structure that is partially sited on a contiguous parcel (Gov. Code Sec. 66451.11). In addition, any of the parcels to be merged must meet one or more of the following conditions:

1. Less than 5,000 square feet in area;
2. Not created in compliance with applicable laws and ordinances;
3. Not meet current standards for sewage disposal and domestic water supply;
4. Not meet slope stability standards;
5. No legal access adequate for vehicular and safety equipment access and maneuverability;
6. Development would create health or safety hazards; or
7. Inconsistent with any applicable general plan or specific plan, other than minimum lot size or density standards.

Summary of Applicability of Merger Criteria

Merger Criteria	Subject Property
Any one of the parcels must be smaller than the minimum parcel size that the local zoning ordinance specifies, and at least one parcel must not be developed with any structure for which a building permit was issued or for which a building permit was not required at the time of construction, or must be developed only with an accessory structure or structures or with a structure other than an accessory structure that is partially sited on a contiguous parcel.	Each parcel is less than 5,000 square feet in area. One parcel is vacant (0 La Vereda Road - Assessor’s Parcel No. 058 2211 01 1802)
Any of the parcels to be merged must meet one or more of the following conditions: 1. Less than 5,000 square feet in area.	Each parcel is less than 5,000 square feet in area.

PROPERTY DESCRIPTION

A map is attached to the Public Hearing Notice showing the location of the property. The steeply sloped properties are briefly described below:

- 2750 Cedar Street (Assessor’s Parcel No. 058 2211 02 000) is a 3,125 square foot lot (based on City records), developed with an uninhabitable single-family dwelling. The architect for the new owner represents the lot size as 3,106 square feet. The property has street frontage on an undeveloped portion of the Cedar Street right-of-way and is located behind 1601 La Vereda.
- 0 La Vereda Road (Assessor’s Parcel No. 058 2211 01 1802) is a 3,892 square foot (based on City records) vacant flag lot with approximately 14 feet of street frontage on La Vereda Road. The architect for the new owner represents the lot size as 4,007 square feet. The lot is located between and behind 1601 and 1611 La Vereda.

The Building and Safety Division of the Planning Department recently sent a Notice of Violation to the property owners regarding structural issues with the porch at 2750 Cedar Street. In addition, the Parks Department recently sent a citation for \$1,200 to the property owners due to the illegal removal of one Coast Live Oak tree.

Vehicular access to the properties is not currently possible, and is likely impossible in the future. Although 2750 Cedar Street is located adjacent to a public right-of-way, Cedar Street is not developed, nor does the City have plans for the street to be developed. It is steeply sloped (estimated slope is 40 – 50 percent) and is heavily vegetated, including Coast Live Oak trees. For a street to be developed, significant grading would be required, and at least four protected Coast Live Oak trees would need to be removed, which is not allowed.

The structure located on 2750 Cedar was constructed in 1950. It is a one-story building, approximately 52 feet long and 14 feet wide. It is dilapidated and not habitable in its current condition. The 25-foot wide lot slopes from contour line 174 to 188, which would be more than a 50 percent slope if the property were not already graded for the existing structure. There is no vehicular access to the property; the stairs through the La Vereda lot provide pedestrian access.

The La Vereda lot, which is vacant, has access from a narrow portion of the lot with street frontage on La Vereda. At the street, the lot is 14 feet wide, but it narrows to 10 feet approximately 25 feet behind the front property line. The slope of this portion of the lot is more than 40 percent, with elevations increasing from contour line 102 at the front property line to 164 over the 145 foot length of the north lot line leading to the 2750 Cedar structure. There are stairs in this area. There is no vehicular access. The area of the La Vereda lot that could potentially be developed if the lots are not merged is approximately 47 feet x 52 feet, with the slope increasing at approximately 65 percent from contour line 132 at the southwest corner of this area to 162 at the northeast corner.

The property is located in the R-1H zoning district. The R-1 district is a low density, single-family residential district. The purposes of the Hillside (H) districts are to:

- A. Implement the Master Plan's policies regarding Hillside Development;
- B. Protect the character of Berkeley's hill Districts and their immediate environs;
- C. Give reasonable protection to views yet allow appropriate development of all property;
- D. Allow modifications in standard yard and height requirements when justified because of steep topography, irregular lot pattern, unusual street conditions, or other special aspects of the Hillside District area.

Merger of the lots is consistent with the R-1H district purposes because limiting development to one single-family dwelling and any other development allowable in the R-1H district would be more protective of the sensitive hillside area than allowing separate development of the two lots. This is especially true, given that there is no vehicular access to the property, it is steeply sloped, and there are Coast Live Oak trees on the property and on the Cedar Street right-of-way.

The property is in Fire Zone Two, one of two fire zones that the City established following the 1991 Oakland-Berkeley Hills Fire to encompass the City's urban/wild land interface areas. These are areas where structures may be more vulnerable to fire due to topography, vegetation and their location close to extensive parks and other wild land areas. The City amended the Building and Fire Codes to impose more stringent requirements in these zones. In Fire Zone Two, the Building Code requires that new structures and alterations to existing buildings include

non-combustible decks, Class A roofs, protection of exterior walls with fire-resistive materials, double glazed windows, protection of eaves and overhangs, and the enclosing of under floor areas.

As described above, the property and the Cedar Street right-of-way are very steeply sloped, varying from 40 – 65 percent. The City is not citing the lack of “legal access adequate for vehicular and safety equipment access and maneuverability” as a basis for merger because the Fire Department has the ability to allow exceptions regarding provision of fire apparatus access roads. However, the topography and vegetation are additional reasons that it is appropriate to limit development of the property. In particular, emergency vehicular access cannot be provided to either lot, and while response to fires may be mitigated through provision of standpipes and sprinklers, emergency response personnel may not be able to assist individuals with medical difficulties since the only access is from a steep, narrow staircase.

APPEAL AND RESPONSE

Michael Tolleson, Architect, submitted a September 17, 2013, letter and attachments on behalf of his client, Dr. Louis B. Lin, who was in escrow to purchase the property at the time.

The points raised in the letter are briefly summarized below, with a response provided.

Comment: The Notice of Intention to Determine Status was in error.

Response: Mr. Tolleson does not state how he believes the Notice was in error. The Notice was not in error - it was prepared in accordance with Government Code Sections 66451.1 - 66451.18 and Berkeley Municipal Code Chapter 21.52.

Comment: The letter quotes sections of the zoning regulations regarding nonconforming uses and lots. In particular, Mr. Tolleson cites the following sections as the basis of his conclusion that the lots cannot be merged because their combined square footage exceeds the 5,000 square foot minimum requirements for the R-1H zoning district.

23C.04.020 Establishment of Lawful Non-Conforming Uses, Buildings, Structures & Lots

A. Any ***Use, structure or building which is a Lawful Non-Conforming Use***, structure or building shall be deemed to be in compliance with this Ordinance if it has remained in ***continuous existence***. The non-conformity may result from any inconsistency with the requirements of this Ordinance, whether substantive or procedural, including, but not limited to, the inconsistency of the Use, building or structure or aspects thereof, with any requirement of this Ordinance or the lack of a Zoning Certificate or Use Permit.

B. The following ***lots which have areas less than the minimum lot size required*** by this Ordinance shall be considered ***Lawful Non-Conforming Lots***. Such lots may be used as ***building sites*** subject to all other requirements of this Ordinance, ***except that if the total area of all contiguous vacant lots fronting on the same street and under the same ownership on or after September 1, 1958 is less than that required for one lot under this Ordinance, such lots may be used as only one building site.***

1. ***Any lot*** described in the official records on file in the office of the ***County Recorder of Alameda County*** or Contra Costa County as a ***lot of record under one ownership prior to November 30, 1950*** or which was shown as a lot on any recorded subdivision map, filed prior to November 30, 1950; ...

Response: Staff concurs that under Section 23C.04.020, the two existing lots appear to be “lawful nonconforming lots”, and that each lot is less than the minimum lot size required by the zoning district. The language in Subsection A, regarding Lawful Non-Conforming **Uses**, is

not relevant to the question of whether the property has two legal nonconforming lots. The language in Subsection B that that lawful nonconforming lots are buildable does not prevent their merger, as the authority to merge the lots derives from the Subdivision map Act and the City's local implementing ordinance, which are independent of the Zoning Ordinance. Nothing in the zoning regulations regarding nonconforming lots limits the City's ability to follow the merger provisions of state and local subdivision law. The zoning regulations speak only to whether the use and development of such lots is permissible *under the Zoning Ordinance*.

Comment: The following section of the City's Subdivision Ordinance provides that the above zoning ordinance sections are an exception to the City's merger authority.

21.52.020 Mergers required.

*If any one of two or more contiguous parcels or units held by the same owner does not conform to existing zoning regulations regarding site area to permit development (whether or not already developed), and at least one parcel or unit has not been developed with a building for which a building permit is required and was issued, or which was built prior to the time such permits were required, then such parcels shall be considered as merged for the purposes of this title, **subject to any exceptions provided in the Berkeley zoning ordinance**, (Ord. 6478-N.S.) ...*

Response: Mr. Tolleson's position appears to be that because the Zoning Ordinance acknowledges lawful nonconforming lots, such lots are an "exception" and cannot be merged. There is no basis for this. The purpose of state and local merger laws is to provide a process for jurisdictions to combine contiguous parcels *that were created legally*, but that do not meet current local standards. Reading this provision and Section 23C.04.020.B as prohibiting the merger of lawful nonconforming lots would render the merger provision of the local subdivision ordinance meaningless. Such interpretations are to be avoided.

Comment: Individual deeds for the lots were provided.

Response: Not relevant; as indicated above, the City accepts that the two lots are Lawful Non-Conforming Lots pursuant to BMC Section 23C.04.020.

Comment: Fire Codes are cited. In particular, the Codes state that when approved fire apparatus access roads cannot be provided within 150 feet of all portions of a building, the Fire Department official may increase the dimension when a sprinkler system is installed, an alternative to fire access roads is provided, and there are not more than two buildings. Mr. Tolleson notes that most of the existing structure at 2750 Cedar Street is greater than 150 feet from Fire Department access on La Vereda, but its use can be continued, and that while there are areas of the vacant site that are less than 150 feet from La Vereda, exceptions could be allowed for development further from the street.

Response: Noted. While the Berkeley Fire Department has the option of approving modified requirements for any fire access roadways for houses with a full fire sprinkler system, it is not required to do so, and generally requires additional mitigations as well.

Comment: Excerpt from Subdivision Map Act cited regarding presumption of lawful creation of certain parcels.

Response: Not relevant. Government Code Section 66451 et. seq. establishes the process for merger of lawful parcels.

Comment: The letter's conclusions are summarized below:

Utilizing all provided Code sections and supporting documents, the two parcels may remain separate; the vacant parcel may be developed with a new single-family dwelling consistent with the R-1(H) zoning requirements, provided that an easement be provided to the 2750 Cedar Street parcel; required parking could be provided with mechanical stacking; and the City could request a Certificate of Compliance to assure Chain of Title.

Response: Not relevant. The statement is true -- if the parcels are not merged, the vacant parcel could be developed with a new single family dwelling. However, Government Code Section 66451 et. seq. establishes the process for merger of lawful parcels, which the City has followed.

Responses to individual points raised in the appeal are provided above. In summary, the two adjoining parcels are subject to merger into one parcel because City records and County Assessor's records show that they meet the criteria of Government Code Section 66451.11 and BMC Chapter 21.52 (the Berkeley Subdivision Ordinance), as follows:

1. Each parcel is smaller than the minimum 5,000 square foot minimum lot size in the R-1 District (BMC 23D.16.070A), and
2. One of the parcels (0 La Vereda - Assessor's Parcel No. 058 2211 01 1802) is undeveloped by any structure for which a building permit was issued, or for which a building permit was not required, or is developed only with an accessory structure.

In addition to meeting the aforementioned criteria, which are sufficient legal basis for merging the two lots, any further development on this property would exacerbate existing access problems. 2750 Cedar Street only has access from an undeveloped street which is steeply sloped and heavily vegetated, 0 La Vereda only has access via a 10 – 14 foot strip of land that is steeply sloped and not accessible to vehicles or emergency equipment.

OPTIONS FOR ACTIONS ON APPEALS

California Government Code Section 66451.16 states that the owner of property proposed for merger shall be given an opportunity to present any evidence that the affected property does not meet the standards for merger. Following the hearing, the local agency shall make a determination that the affected parcels are to be merged or are not to be merged and shall notify the owner of its determination. Section 21.52.030 of the Subdivision Ordinance, of the City of Berkeley, provides that the Planning Commission shall conduct hearings if there are appeals of any of the proposed lot mergers. The decision of the Planning Commission is final.

RECOMMENDATION

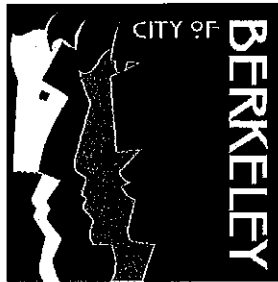
Staff recommends that the Planning Commission affirm the decision of the Planning and Development Director to merge the subject properties and reject the appeal based on the following findings:

1. City and county records identify Lisa Iwamoto and Craig Scott as the owners of two contiguous parcels identified as 2750 Cedar Street (Assessor's Parcel No. 058 2211 02 000) and 0 La Vereda (Assessor's Parcel No. 058 2211 01 1802).

2. A "Notice of Intention to Determine Status" was recorded on September 4, 2013, and was sent by Certified Mail to the property owner of record on the same date.
3. A notice of the time, date, and place for the hearing was sent by Certified Mail to the property owner of record on September 30, 2013.
4. The two parcels described above meet the requirements for merger under the Subdivision Map Act (Gov. Code §§66451.10, et seq.) and City Ordinance (BMC 21.52) for the following reasons:
 - A. The two parcels are contiguous;
 - B. Each parcel is smaller than the minimum 5,000 square foot minimum lot size in the R-1 District. According to City records, 2750 Cedar is a 3,125 square foot lot; 0 La Vereda is a 3,892 square foot lot;
 - C. One of the parcels (0 La Vereda - Assessor's Parcel No. 058 2211 01 1802) is undeveloped by any structure for which a building permit was issued, or for which a building permit was not required, or is developed only with an accessory structure. The other parcel is developed with a residential structure;
 - D. There are no exceptions in the Berkeley Zoning Ordinance that limit the City's ability to merge the parcels pursuant to state and local subdivision regulations.

Attachments:

- A. Public Hearing Notice, with Map of Property
- B. Notice of Intention to Determine Status, including Attachments (Letter to Owner, Recorded Notice, Assessor Parcel Map, Government Code Section 66451 et. seq., R- 1 and H Zoning Regulations, & Fire Department Requirements)
- C. Appeal Letter from Lisa Iwamoto, dated September 20, 2013
- D. Letter and Attachments (Site Plan, Deed, Perspective View of Existing Single Family Dwelling to be Repaired) from Michael Tolleson, Architect, dated September 17, 2013
- E. E-mail from Michael Tolleson, Architect, dated October 7, 2013
- F. BMC Chapter 21.52 - Parcel Mergers
- G. Moratorium on the Removal of Coast Live Oak Trees (Ordinance No. 6,905-N.S.)



PLANNING COMMISSION

NOTICE OF PUBLIC HEARING

OCTOBER 16, 2013

LOT MERGER HEARING

ASSESSOR'S PARCEL NOS. 058 2211 01 1802 & 058 2211 02 000
2750 Cedar Street and 0 La Vereda

The Planning Commission of the City of Berkeley will hold a public hearing on the above matter, on **Wednesday October 16, 2013** at the North Berkeley Senior Center, 1901 Hearst Ave. (at Martin Luther King, Jr. Way), Berkeley (wheelchair accessible). The meeting starts at 7:00 p.m.

PROPOSED PROJECT SCOPE:

The City recorded a "Notice of Intention to Determine Status" for the above property, shown on the reverse side of this notice, because the two lots are in common ownership, neither lot meets the City's current zoning and subdivision requirements and one of the lots is undeveloped. The purpose of the City action is to merge the two lots and to limit the number of houses that can be constructed on the property. The current property owner, Lisa Iwamoto, filed an appeal of the determination.

- 2750 Cedar is a 3,125 square foot lot, developed with a single-family dwelling; the lot has street frontage on an undeveloped portion of Cedar Street.
- 0 La Vereda Road is a 3,892 square foot vacant flag lot with approximately 14 feet of street frontage on La Vereda Road.

The State Subdivision Map Act sets forth procedures and requirements for merger of legally established and contiguous lots under common ownership. Pursuant to the City's Subdivision Ordinance, the Planning Commission conducts hearings if there are appeals of proposed lot mergers. At the hearing, the owner of property proposed for merger is given an opportunity to present any evidence that the affected property does not meet the standards for merger. Following the hearing, the Planning Commission will make a determination that the affected parcels are to be merged or are not to be merged. The decision of the Planning Commission is final.

ENVIRONMENTAL REVIEW STATUS: Exempt

PUBLIC COMMENT & FURTHER INFORMATION

Comments may be made verbally at the public hearing and in writing before the hearing. Written comments or questions concerning this project should be directed to:

Planning Commission
Alex Amoroso, PC Secretary
aamoroso@cityofberkeley.info
Land Use Planning Division
2120 Milvia Street
Berkeley, CA 94704

E-mail:
(510) 981-7410

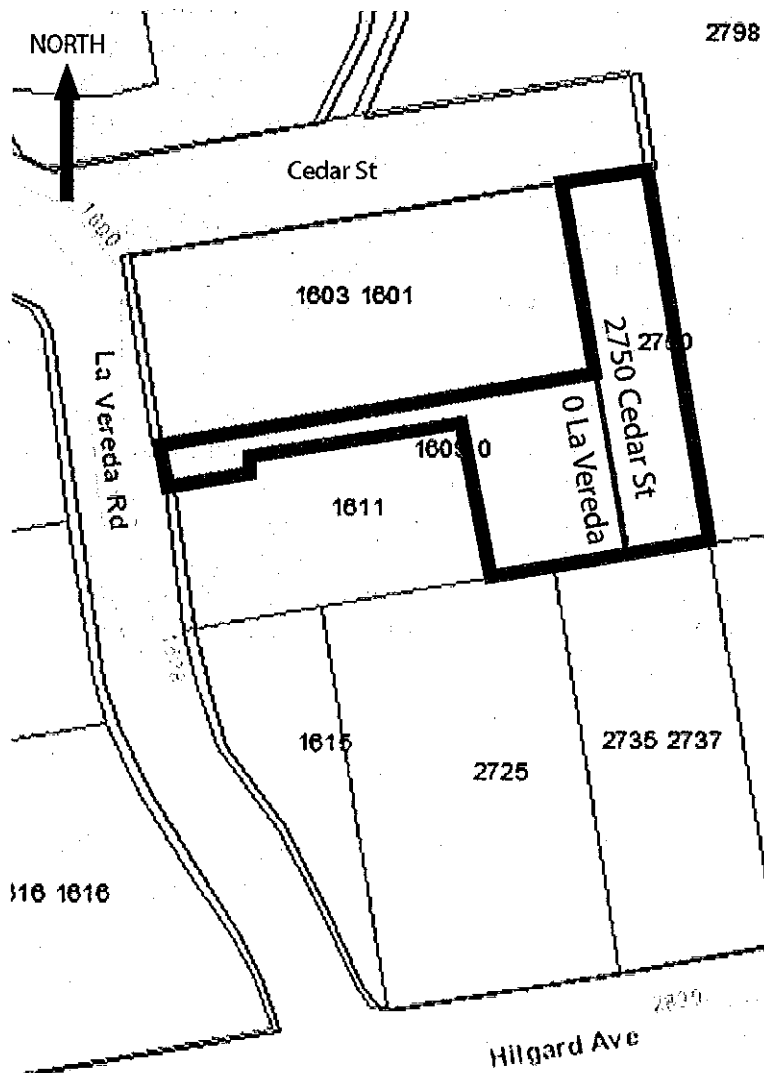
To assure distribution to Commission members prior to the meeting, **correspondence must be received by 12:00 noon, seven (7) days before the meeting.** For items with more than ten (10) pages 15 copies must be submitted to the Secretary by this deadline. For any item submitted less than seven days before the meeting 15 copies must be submitted to the Secretary prior to the meeting date.

COMMUNICATION ACCESS

To request a meeting agenda in large print, Braille, or on audiocassette, or to request a sign language interpreter for the meeting, call (510) 981-7410 (voice) or 981-6903 (TDD). Notice of at least five (5) business days will ensure availability. Agendas are also available on the Internet at: www.ci.berkeley.ca.us.

FURTHER INFORMATION

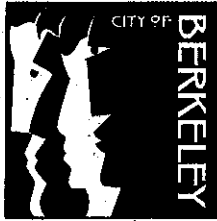
Questions should be directed to Alex Amoroso, at 981-7410, or aamoroso@cityofberkeley.info.



Outlined in bold:

Assessor Parcel Nos. to be merged:
058 2211 01 1802 & 058 2211 02 000
2750 Cedar Street and 0 La Vereda

Located between 1601 & 1611 La Vereda



Planning and Development Department

September 4, 2013

Lisa Iwamoto and Craig Scott
1306 20th Street
San Francisco, CA 94107

Re: Notice of Intention to Determine Status -1609 La Verada Road (058 221101802) and 2750 Cedar Street (058 221102000)

Dear Lisa Iwamoto and Craig Scott:

This letter is to let you know that the City is taking action to combine separate lots that you own into one lot. Your property at 2750 Cedar Street and 0 La Verada Road (aka 1609 La Verada), Berkeley, encompasses one or more lots that do not meet the City's current zoning and subdivision requirements. The lots in question are shown on the enclosed map. The purpose of the proposed lot merger is to limit the number of houses that can be constructed on the property.

Local and state laws allow the City to merge all of the lots that you own into a single residential parcel in certain situations. As described further in the attached excerpt from state law, any one of two or more contiguous parcels that do not conform to the zoning regulations regarding site area needed to permit development can be merged if at least one parcel has not been developed and if other conditions exist with respect to lot size, access or other factors. I have attached the following documents to provide you with additional information.

- Government Code Sections 66451.11 – 66451.18
- The zoning standards for your property
- Berkeley Fire Code requirements that would apply to any new development

The purpose of the attached "Notice of Intention to Determine Status", which has been recorded, is to provide the required legal notice and to let you know that you have the right to request a public hearing on this determination. If you do not file a written request for a hearing within 30 days of this notice or, if a hearing does occur followed by a decision to support this determination, we will record a notice that the lots in question have been merged.

You may wish to consult an attorney regarding this matter. If you have any questions, please feel free to call Deputy Planning Director Wendy Cosin at 510-981-7402.

Sincerely,

A handwritten signature in black ink, appearing to read "Eric Angstadt".

Eric Angstadt
Director, Planning and Development

Enc.

cc: Zach Cowan, Assistant City Attorney
Wendy Cosin, Deputy Director, Planning and Development

2118 Milvia Street, 3rd Floor Berkeley, CA 94704 Tel: 510.981-7400 Fax: 510 981-7490 TDD:510 981-7474
E-mail: planning@ci.berkeley.ca.us

PLEASE COMPLETE THIS INFORMATION

RECORDING REQUESTED BY:

WENDY COSIN, Deputy
Planning Director, City of
Berkeley

WHEN RECORDED MAIL TO:

2118 Milvia St.
Berkeley CA 94704



2013298794

09/04/2013 02:23 PM

OFFICIAL RECORDS OF ALAMEDA COUNTY
PATRICK O'CONNELL
RECORDING FEE: 0.00



2 PGS

018
94

(THIS SPACE FOR RECORDER'S USE ONLY)

G.C. 6103

Determination of Merger

TITLE OF DOCUMENT

Property owner: LISA Iwamoto + CRAIG SCOTT

NOTICE OF INTENTION TO DETERMINE STATUS
(California Government Code Section 66451.13)
(Berkeley Municipal Code Section 21.52.030)

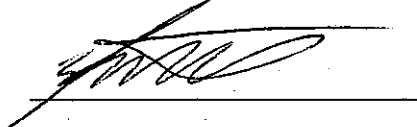
NOTICE IS HEREBY GIVEN to Owner, that the real property within the City of Berkeley, as more specifically described below, may be merged pursuant to standards specified in the City's merger ordinance, Chapter 21.52 of the Berkeley Municipal Code, and Section 66451.11 of the California Government Code.

This notice shall be deemed to be constructive notice of the City's intent to merge the affected parcels based on a determination of their status. You may request a hearing on this determination within 30 days of this notice to present evidence and argument that the property does meet the criteria for merger. If you do not file a written request for a hearing within 30 days of this notice, the City may, at any time thereafter, make a determination that the following parcels are merged:

AP No. 058 221101802 (1609 La Verada Road, aka 0 La Verada Road)
AP No. 058 221102000 (2750 Cedar Street)

DETERMINATION OF MERGER

I hereby certify that I have reviewed the above-cited property and have found it to be subject to merger under the applicable provisions of the Berkeley Municipal Code and California Government Code Section 66451.11 et. seq.. The parcels are subject to merger into one parcel because each parcel has an area less than 5,000 square feet, which is less than the standard for minimum parcel size under the Berkeley Zoning Ordinance, one is undeveloped by any structure for which a building permit was issued or for which a building permit was not required at the time of construction, and both parcels lack required access for emergency vehicles.


By: Eric Angstadt, Planning and Development Director
City of Berkeley

Date: 9/4/2013

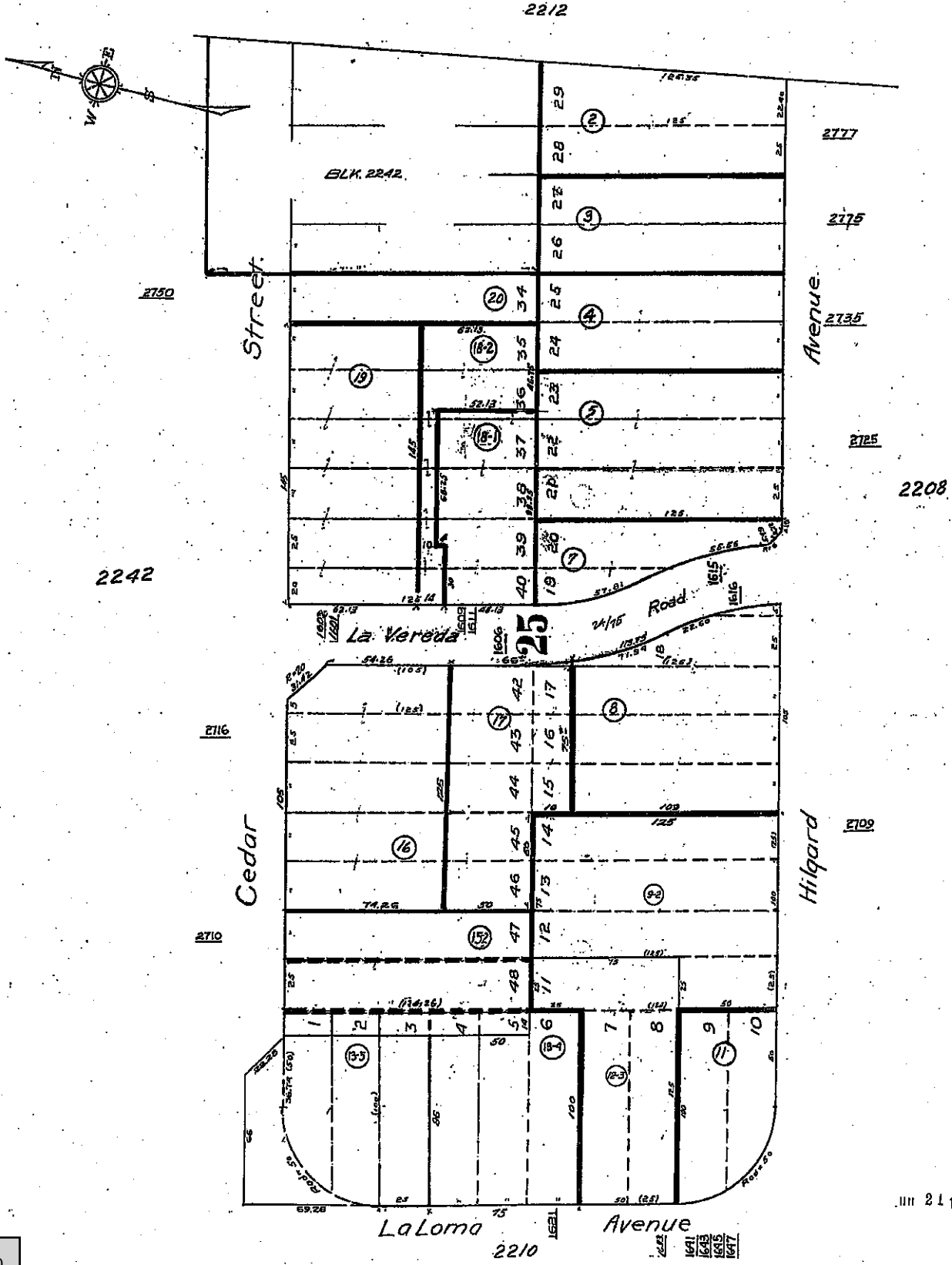
ASSESSOR'S MAP 58 Code Area No. 13-000

Map showing subdivision of Block 25 and resubdivision of Lots
 21-22-23-24 Block 15, Lot 6, Block 16, Lot 6 Block 24, Lot 6 Block 23
 Lot 8-9 Block 26, in Daleys Scenic Park. —○— (Bk. 9, Pg. 95)

2211

Scale 1 in = 40 ft

1-1-1995
 2-1-95 JT
 12-22-94 271
 12-22-94 271



1111 21 1995

GOVERNMENT CODE SECTIONS 66451.10 – 66451.18

66451.10. (a) Notwithstanding Section 66424, except as is otherwise provided for in this article, two or more contiguous parcels or units of land which have been created under the provisions of this division, or any prior law regulating the division of land, or a local ordinance enacted pursuant thereto, or which were not subject to those provisions at the time of their creation, shall not be deemed merged by virtue of the fact that the contiguous parcels or units are held by the same owner, and no further proceeding under the provisions of this division or a local ordinance enacted pursuant thereto shall be required for the purpose of sale, lease, or financing of the contiguous parcels or units, or any of them.

(b) This article shall provide the sole and exclusive authority for local agency initiated merger of contiguous parcels. On and after January 1, 1984, parcels may be merged by local agencies only in accordance with the authority and procedures prescribed by this article. This exclusive authority does not, however, abrogate or limit the authority of a local agency or a subdivider with respect to the following procedures within this division:

- (1) Lot line adjustments.
- (2) Amendment or correction of a final or parcel map.
- (3) Reversions to acreage.
- (4) Exclusions.
- (5) Tentative, parcel, or final maps which create fewer parcels.

66451.11. A local agency may, by ordinance which conforms to and implements the procedures prescribed by this article, provide for the merger of a parcel or unit with a contiguous parcel or unit held by the same owner if any one of the contiguous parcels or units held by the same owner does not conform to standards for minimum parcel size, under the zoning ordinance of the local agency applicable to the parcels or units of land and if all of the following requirements are satisfied:

(a) At least one of the affected parcels is undeveloped by any structure for which a building permit was issued or for which a building permit was not required at the time of construction, or is developed only with an accessory structure or accessory structures, or is developed with a single structure, other than an accessory structure, that is also partially sited on a contiguous parcel or unit.

(b) With respect to any affected parcel, one or more of the following conditions exists:

- (1) Comprises less than 5,000 square feet in area at the time of the determination of merger.
- (2) Was not created in compliance with applicable laws and ordinances in effect at the time of its creation.
- (3) Does not meet current standards for sewage disposal and domestic water supply.
- (4) Does not meet slope stability standards.
- (5) Has no legal access which is adequate for vehicular and safety equipment access and maneuverability.
- (6) Its development would create health or safety hazards.
- (7) Is inconsistent with the applicable general plan and any applicable specific plan, other than minimum lot size or density standards. The ordinance may establish the standards

specified in paragraphs (3) to (7), inclusive, which shall be applicable to parcels to be merged. This subdivision shall not apply if one of the following conditions exist:

(A) On or before July 1, 1981, one or more of the contiguous parcels or units of land is enforceably restricted open-space land pursuant to a contract, agreement, scenic restriction, or open-space easement, as defined and set forth in Section 421 of the Revenue and Taxation Code.

(B) On July 1, 1981, one or more of the contiguous parcels or units of land is timberland as defined in subdivision (f) of Section 51104, or is land devoted to an agricultural use as defined in subdivision (b) of Section 51201.

(C) On July 1, 1981, one or more of the contiguous parcels or units of land is located within 2,000 feet of the site on which an existing commercial mineral resource extraction use is being made, whether or not the extraction is being made pursuant to a use permit issued by the local agency.

(D) On July 1, 1981, one or more of the contiguous parcels or units of land is located within 2,000 feet of a future commercial mineral extraction site as shown on a plan for which a use permit or other permit authorizing commercial mineral resource extraction has been issued by the local agency.

(E) Within the coastal zone, as defined in Section 30103 of the Public Resources Code, one or more of the contiguous parcels or units of land has, prior to July 1, 1981, been identified or designated as being of insufficient size to support residential development and where the identification or designation has either (i) been included in the land use plan portion of a local coastal program prepared and adopted pursuant to the California Coastal Act of 1976 (Division 20 of the Public Resources Code), or (ii) prior to the adoption of a land use plan, been made by formal action of the California Coastal Commission pursuant to the provisions of the California Coastal Act of 1976 in a coastal development permit decision or in an approved land use plan work program or an approved issue identification on which the preparation of a land use plan pursuant to the provisions of the California Coastal Act is based. For purposes of paragraphs (C) and (D) of this subdivision, "mineral resource extraction" means gas, oil, hydrocarbon, gravel, or ore and extraction, geothermal wells, or other similar commercial mining activity.

(c) The owner of the affected parcels has been notified of the merger proposal pursuant to Section 66451.13, and is afforded the opportunity for a hearing pursuant to Section 66451.14. For purposes of this section, when determining whether contiguous parcels are held by the same owner, ownership shall be determined as of the date that notice of intention to determine status is recorded.

66451.12. A merger of parcels becomes effective when the local agency causes to be filed for record with the recorder of the county in which the real property is located, a notice of merger specifying the names of the record owners and particularly describing the real property.

66451.13. Prior to recording a notice of merger, the local agency shall cause to be mailed by certified mail to the then current record owner of the property a notice of intention to determine status, notifying the owner that the affected parcels may be merged pursuant to standards specified in the merger ordinance, and advising the owner of the opportunity to request a hearing on determination of status and to present evidence at the hearing that

the property does not meet the criteria for merger. The notice of intention to determine status shall be filed for record with the recorder of the county in which the real property is located on the date that notice is mailed to the property owner.

66451.14. At any time within 30 days after recording of the notice of intention to determine status, the owner of the affected property may file with the local agency a request for a hearing on determination of status.

66451.15. Upon receiving a request for a hearing on determination of status from the owner of the affected property pursuant to Section 66451.14, the local agency shall fix a time, date, and place for hearing to be conducted by the legislative body or an advisory agency, and shall notify the property owner of that time, date, and place for the hearing by certified mail. The hearing shall be conducted not more than 60 days following the local agency's receipt of the property owner's request for the hearing, but may be postponed or continued with the mutual consent of the local agency and the property owner.

66451.16. At the hearing, the property owner shall be given the opportunity to present any evidence that the affected property does not meet the standards for merger specified in the merger ordinance. At the conclusion of the hearing, the local agency shall make a determination that the affected parcels are to be merged or are not to be merged and shall so notify the owner of its determination. If the merger ordinance so provides, a determination of nonmerger may be made whether or not the affected property meets the standards for merger specified in Section 66451.11. A determination of merger shall be recorded within 30 days after conclusion of the hearing, as provided for in Section 66451.12.

66451.17. If, within the 30-day period specified in Section 66451.14, the owner does not file a request for a hearing in accordance with Section 66451.16, the local agency may, at any time thereafter, make a determination that the affected parcels are to be merged or are not to be merged. A determination of merger shall be recorded as provided for in Section 66451.12 no later than 90 days following the mailing of notice required by Section 66451.13.

66451.18. If, in accordance with Section 66451.16 or 66451.17, the local agency determines that the subject property shall not be merged, it shall cause to be recorded in the manner specified in Section 66451.12 a release of the notice of intention to determine status, recorded pursuant to Section 66451.13, and shall mail a clearance letter to the then current owner of record.

Chapter 23D.16: R-1 Single Family Residential District Provisions

Chapter 23D.16

R-1 SINGLE FAMILY RESIDENTIAL DISTRICT PROVISIONS

Sections:

23D.16.010	Applicability of Regulations
23D.16.020	Purposes
23D.16.030	Uses Permitted
23D.16.040	Special Provisions: Development Standards for Accessory Dwelling Units
23D.16.050	Reserved
23D.16.060	Reserved
23D.16.070	Development Standards
23D.16.080	Parking -- Number of Spaces
23D.16.090	Findings

Section 23D.16.010 Applicability of Regulations

The regulations in this Chapter shall apply in all R-1 Districts. In addition, the general provisions contained in Subtitle 23C shall apply. Where the H District overlays a property so as to be classified R-1(H), the Hillside District provisions of Chapter 23E.96 shall also apply. (Ord. 6478-NS § 4 (part), 1999)

Section 23D.16.020 Purposes

The purposes of the Single Family Residential (R-1) Districts are to:

- A. Recognize and protect the existing pattern of development in the low density, single family residential areas of the City in accordance with the Master Plan;
- B. Make available housing for persons who desire detached housing accommodations and a relatively large amount of Usable Open Space;
- C. Protect adjacent properties from unreasonable obstruction of light and air; and
- D. Permit the construction of community facilities such as places for religious assembly, Schools, parks and libraries which are designed to serve the local population when such will not be detrimental to the immediate neighborhood. (Ord. 6478-NS § 4 (part), 1999)

Section 23D.16.030 Uses Permitted

The following table sets forth the Permits required for each listed item. Each Use or structure shall be subject to either a Zoning Certificate (ZC), an Administrative Use Permit (AUP), a Use Permit approved after a public hearing (UP(PH)) or is Prohibited.

Chapter 23D.16: R-1 Single Family Residential District Provisions

<i>Table 23D.16.030</i>		
Use and Required Permits		
Use	Classification	Special Requirements (if any)
Uses Permitted		
Child Care Centers	UP(PH)	
Clubs, Lodges	UP(PH)	
Community Care Facilities/Homes Changes of Use New Construction	ZC UP(PH)	Subject to parking requirements. See Section 23D.16.080.A
Community Centers	UP(PH)	
Dwelling Units, Single-family, subject to R-1 Standards	UP(PH)	
Residential Additions (up to 15% of lot area or 600 square feet, whichever is more restrictive)	ZC	See Section 23D.16.070 for restrictions.
Major Residential Additions	AUP	See definition in Sub-title F. Denial subject to Section 23D.16.090.B.
Libraries	UP(PH)	Subject to parking requirements. See Section 23D.16.080.A
Parks and Playgrounds	ZC	
Parking Lots	UP(PH)	Subject to Section 23D.12.090
Public Safety and Emergency Services	UP(PH)	
Religious Assembly Uses	UP(PH)	
Schools, Public or Private	UP(PH)	
Accessory Uses and Structures		
Accessory Buildings or Structures	ZC	Must satisfy the requirements of Chapter 23D.08
If has either habitable space and/or exceeds the requirements under Chapter 23D.08	AUP	
When located on a vacant lot without a Main Building	AUP	
Accessory Dwelling Units in compliance with applicable standards	ZC	Subject to Section 23D.16.040
Accessory Dwelling Unit which does not comply with requirements under Section 23D.16.080	AUP	Subject to making applicable findings in Section 23D.16.090
Accessory Dwelling Unit which involves a Major Residential Addition (500 sq. ft. or more)	AUP	Denial subject to Section 23D.16.090.B
Accessory Dwelling Unit which involves meeting the on-site parking requirement with tandem parking (See Section 23D.16.040.F)	AUP	Subject to making applicable findings in Section 23D.16.090.D
Accessory Dwelling Unit in a detached Accessory Building which does not conform to the setbacks in 23D.16.070	AUP	In no case shall side or rear setbacks be allowed to be less than four feet, or the front setback to be less than 20 feet. Subject to making the finding in Section 23D.16.090.A

Chapter 23D.16: R-1 Single Family Residential District Provisions

Use and Required Permits		
Use	Classification	Special Requirements (if any)
Accessory Dwelling Unit in a detached Accessory Building which does not conform to the height limit in Section 23D.16.040.E.2	AUP	Subject to making applicable findings in Section 23D.16.090
Child Care; Family Day Care		
Small Family Day Care Homes: of eight or fewer children	ZC	
Large Family Day Care Homes: of nine to 14 children	AUP	
Fences		
If six ft. or less in height	ZC	
Exceed six ft. in height	AUP	In required setbacks
Home Occupations		
Low Impact	ZC	If the requirements of Section 23C.16.020 are met
Moderate Impact, teaching-related	AUP	Subject to the requirements of Section 23C.16.030.A
Moderate Impact	UP(PH)	Subject to the requirements of Section 23C.16.030.B
Hot Tubs, Jacuzzis, Spas	AUP	See Section 23D.08.060.C
Stables for Horses	AUP	
Miscellaneous Uses		
Cemeteries, Crematories, Mausoleums	Prohibited	
Columbaria	AUP	Allowed with a ZC if incidental to a Community and Institutional Use, limited to 400 niches, and no more than 5% of the subject property area. When located outside of the main building columbaria structures are subject to Chapter 23D.08.
Commercial Excavation	UP(PH)	Including earth, gravel, minerals, or other building materials including drilling for, or removal of, oil or natural gas
Public Utility Substations, Tanks	UP(PH)	
Wireless Telecommunications Facilities		
Microcell Facilities	AUP	Subject to the requirements and findings of Section 23C.17.100
All Other Telecommunication Facilities	UP	Subject to the requirements and findings of Section 23C.17.100
Legend:	UP(PH) -- Use Permit, public hearing required ZC -- Zoning Certificate AUP -- Administrative Use Permit Prohibited -- Use not permitted	

(Ord. 7155-NS § 1, 2010; Ord. 7129-NS § 2, 2010; Ord. 6949-NS § 2 (part), 2006; Ord. 6909-NS § 2 (part), 2006; Ord. 6854-NS § 3 (part), 2005; Ord. 6763-NS § 4 (part), 2003; Ord. 6671-NS § 6, 2001; Ord. 6644-NS § 1, 2001; Ord. 6478-NS § 4 (part), 1999)

Chapter 23D.16: R-1 Single Family Residential District Provisions

Section 23D.16.040 Special Provisions: Development Standards for Accessory Dwelling Units

- A. The Zoning Officer shall issue a Zoning Certificate to establish an Accessory Dwelling Unit in compliance with this section if all requirements of the R-1 District and other applicable requirements are met. The Zoning Officer may approve an AUP for cases not in compliance as set forth in Section 23D.16.030.
- B. Accessory Dwelling Units shall conform to the following standards in all cases:
1. The gross floor area of an Accessory Dwelling Unit shall contain no more than 25% of the gross floor area of the main dwelling in existence prior to the construction of the Accessory Dwelling Unit, except that if the house is less than 1,200 sq. ft., an Accessory Dwelling Unit of 300 sq. ft. will be allowed.
 2. The gross floor area of an Accessory Dwelling Unit shall be no less than 300 square feet but no greater than 640 square feet.
 3. No subdivision of land, air rights or condominium is allowed so as to enable the sale or transfer of the Accessory Dwelling Unit independently of the main Dwelling Unit or other portions of the property.
 4. Each application shall be on a lot with access from a roadway that meets the fire apparatus access road requirements of the California Fire Code Section 902.2.2.1 (as it may be amended or renumbered from time to time), to be determined prior to either issuance of a Zoning Certificate or approval of an AUP.
 5. Prior to issuance of a Building Permit, all owners of record of the subject property shall sign and file a Declaration of Restrictions with the County Recorder, in a form satisfactory to the Zoning Officer, which makes any transfer of the property specifically subject to the restrictions contained in this section, and requires that either the primary Dwelling Unit or the Accessory Dwelling Unit be occupied by the owner of the subject property. Non-occupancy of an owner for periods of up to three years are allowed before the property will be found to be in non-compliance with this requirement.
- C. An Accessory Dwelling Unit may be converted from a portion of the floor area of a pre-existing main Dwelling Unit subject to the following:
1. There shall be a separate entrance for the Accessory Dwelling Unit, but it shall not be located on the front of the existing building.
- D. An Accessory Dwelling Unit may be created through a building addition to an existing main dwelling subject to the following:
1. There shall be a separate entrance for the Accessory Dwelling Unit, but it shall not be located on the front of the existing building.
 2. The subject lot shall have an area not less than 4,500 square feet.
- E. An Accessory Dwelling Unit may be created in a new or existing detached Accessory Building subject to the following:
1. The subject lot shall have an area not less than 4,500 square feet.
 2. An Accessory Dwelling Unit located in an Accessory Building shall not exceed 12 feet in average height.
 3. The detached accessory building shall conform to the setbacks in Section 23D.16.070.D to be allowed by right. Any reduction from the setbacks is subject to review and approval of an Administrative Use Permit, but in no case shall the setbacks be reduced below four feet on the side or 20 feet on the front setback.

Chapter 23D.16: R-1 Single Family Residential District Provisions

F. Where off-street parking in conformance with Section 23D.16.080 would cause detriment to the property due to reduction of open space on the lot, the Zoning Officer may approve an AUP to allow tandem parking. (Ord. 6763-NS § 5 (part), 2003; Ord. 6478-NS § 4 (part), 1999)

Section 23D.16.050 Reserved

Section 23D.16.060 Reserved

Section 23D.16.070 Development Standards

- A. No lot of less than 5,000 square feet may be created.
- B. No Dwelling Unit may be established on a lot with an area of less than 5,000 square feet, except that Accessory Dwelling Units may be created in a detached accessory building, or in an addition to an existing Main Building, on lots which have an area of no less than 4,500 square feet.
- C. Each Main Building shall be limited in height as follows:

	Height limit average (ft.)	Stories limit (number)
Main Building	28*	3
All Residential Additions	14**	Not applicable

* The Zoning Officer may issue an Administrative Use Permit to allow Main Buildings to exceed 28 feet in average height, up to 35 feet in average height
** The Zoning Officer may issue an Administrative Use Permit to allow residential additions to exceed 14 feet in average height, up to the district limit.

- D. The Main Building shall be set back from the respective lot lines as follows:

Chapter 23D.16: R-1 Single Family Residential

<u>Stories (number)</u>	<u>Yard location</u>		
	<u>Front</u>	<u>Rear*</u>	<u>Side**</u>
1-3	20 ft.	20 ft.	4 ft.
* See Section 23D.16.070.D.1			
**See Sections 23D.16.070.D.2 and D.3			

1. When the depth of any lot is less than 100 feet, the Rear Yard may be reduced to 20% of the lot depth.
 2. When the width of any lot is less than 40 feet, the width of each Side Yard may be reduced to 10% of the lot width, but in no case to less than three feet.
 3. The side yards on a corner lot shall be as follows:
 - a. On a corner lot, where there is a key lot to the rear thereof, the street side yard of the corner lot shall be not less than one-half the Front Yard required or existent on the key lot, whichever is smaller. This regulation shall not be applied so as to reduce the buildable area of the lot to a width of less than 20 feet, or to require the side yard to be in excess of ten feet.
 - b. Where a rear yard of not less than 50 feet in depth is maintained on a corner lot, adjacent to a key lot, the side yard may be reduced to four feet.
- E. Maximum lot coverage may not exceed 40% of the lot area.
- F. Each lot shall contain minimum usable open space area for each Dwelling Unit, including Accessory Dwelling Units: 400 square feet. (Ord. 6949-NS § 3 (part), 2006; Ord. 6478-NS § 4 (part), 1999)

Section 23D.16.080 Parking -- Number of Spaces

- A. A lot shall contain the following minimum number of Off-street Parking Spaces:

<i>Table 23D.16.080</i>	
Parking Required	
<u>Use</u>	<u>Number of spaces</u>
Dwellings	One per unit
Employees	One per two non-resident employees for a Community Care Facility**
Libraries	One per 500 sq. ft. of floor area that is publicly accessible
Rental of Rooms	One per each two roomers or boarders
* This also shall include Accessory Dwelling Units. An application for an Accessory Dwelling Unit that does not meet this standard may apply for an AUP to waive this requirement subject to a special finding under Section 23D.16.090.C.	
**This requirement does not apply to those Community Care Facilities which under state law must be treated in the same manner as a single family residence	

Chapter 23D.16: R-1 Single Family Residential

- B. Other Uses requiring Use Permits, including, but not limited to, Child Care Centers, Clubs, Lodges, and community centers, shall provide the number of Off-street Parking Spaces determined by the Board, based on the amount of traffic generated by the particular Use and comparable with specified standards for other Uses.
- C. Schools having a total gross floor area exceeding 10,000 square feet, shall provide off-street loading spaces at the rates of:
 - 1. One space for the first 10,000 square feet of gross floor area; and
 - 2. One additional space for each additional 40,000 square feet of gross floor area. (Ord. 6854-NS § 4 (part), 2005; Ord. 6763-NS § 6 (part), 2003; Ord. 6478-NS § 4 (part), 1999)

Section 23D.16.090 Findings

- A. In order to approve any Permit under this chapter, the Zoning Officer or Board must make the finding required by Section 23B.32.040. The Zoning Officer or Board must also make the findings required by the following paragraphs of this section to the extent applicable:
- B. To deny a Use Permit for a major residential addition or residential addition subject to 23D.16.070 the Zoning Officer or Board must find that although the proposed residential addition satisfies all other standards of this Ordinance, the addition would unreasonably obstruct sunlight, air or views.
- C. To approve a parking waiver the Zoning Officer or Board must find that additional or new on-site parking would be detrimental, and that the existing parking supply in the immediate neighborhood is adequate, or that other mitigating conditions are present and apply to the property.
- D. To approve tandem parking for an Accessory Dwelling Unit, the Zoning Officer or Board must find that additional or new on-site parking consistent with applicable standards would be detrimental due to reduction of open space on the lot, and that the oversight over the parking which will be provided by the resident owner, which is guaranteed by the requirement of owner-occupancy, will mitigate any potential detrimental effects of the tandem parking. (Ord. 6980-NS § 1 (part), 2007; Ord. 6763-NS § 7 (part), 2003; Ord. 6478-NS § 4 (part), 1999)

Chapter 23E.96: H Hillside Overlay

Chapter 23E.96

H HILLSIDE OVERLAY DISTRICT PROVISIONS

Sections:

23E.96.010	Applicability of Regulations
23E.96.020	Purposes
23E.96.030	Uses Permitted
23E.96.040	Reserved
23E.96.050	Reserved
23E.96.060	Reserved
23E.96.070	Development Standards
23E.96.080	Reserved
23E.96.090	Findings
23E.96.100	Repealed by Ord. 6658-N.S.

Section 23E.96.010 Applicability of Regulations

The regulations in this chapter shall apply in all H Overlay Districts and which shall be combined with the underlying Districts as shown on the official Zoning Map. Construction of buildings shall also be subject to the building standards set forth in Ordinance No. 6128-N.S. or Chapter 19.68 of the BMC. (Ord. 6478-NS § 4 (part), 1999)

Section 23E.96.020 Purposes

The purposes of the Hillside (H) Districts are to:

- A. Implement the Master Plan's policies regarding Hillside Development;
- B. Protect the character of Berkeley's hill Districts and their immediate environs;
- C. Give reasonable protection to views yet allow appropriate development of all property;
- D. Allow modifications in standard yard and height requirements when justified because of steep topography, irregular lot pattern, unusual street conditions, or other special aspects of the Hillside District area. (Ord. 6478-NS § 4 (part), 1999)

Section 23E.96.030 Uses Permitted

- A. Any use permitted in the underlying District which is combined with an H Overlay District, shall be allowed subject to obtaining a Use Permit when required in the underlying District, except as provided below:
- B. No multiple dwellings shall be permitted in any H District which is combined with any R-2 District. (Ord. 6478-NS § 4 (part), 1999)

Section 23E.96.040 Reserved

Section 23E.96.050 Reserved

Chapter 23E.96: H Hillside Overlay District Provisions

Section 23E.96.060 Reserved

Section 23E.96.070 Development Standards

- A. Building height and yard setbacks in any combined H District shall be as set forth below. All other development standards, including but not limited to lot size, density, lot coverage, FAR, usable open space and off-street parking spaces, shall be as specified in the underlying Zoning District.
- B. The height for main and accessory buildings shall be limited as follows; provided, however, that the limits may be exceeded subject to obtaining an AUP and the required finding under Section 23E.96.090.B. In addition, building heights shall also be subject to the limitation and exception provisions set forth in Sections 23D.04.020 and 23E.04.020, as the case may be.
 - 1. Main buildings shall be limited in average and maximum height, and in the number of stories in accordance with the following requirements:

Underlying Zoning District	Height limit average (ft.)		Stories limit (number)
	Avg	Max	
R-1, R-1A, R-2, R-2A	28	35	3
R-3, R-4, R-5, R-S, C-N, C-NS	35	35	3
All Residential Additions	See district standards or the highest portion of the roof, whichever is more restrictive	20	Not Applicable

- 2. Notwithstanding the definition of average height in Section 23F.04.010, for residential additions located above the lowest existing story that is partially or fully above grade, is not habitable, and projects beyond the footprint of the habitable portion of the building, the average height of such additions shall be measured from the floor plate of the lowest habitable story. However, the maximum height shall be measured from grade in all cases.
 - 3. Accessory buildings shall be limited to 12 feet in average height and one story, provided, however, that increased height or stories may be allowed subject to obtaining an AUP and making the findings required under Sections 23D.08.010.B and 23E.96.090.B.
- C. Main buildings shall be set back from the respective lot lines, and separated between one another, as required by the regulations for the underlying District which is combined with the H District, except that such setbacks and building separations may be reduced subject to obtaining an AUP and making the required finding under Section 23E.96.090.B. In addition, yards and building separation shall also be subject to the limitation and exception provisions set forth in Sections 23D.04.030 or 23E.04.030, as the case may be. (Ord. 7210-NS § 25, 2011; Ord. 6949-NS § 18 (part), 2006; Ord. 6848-NS § 16 (part), 2005; Ord. 6478-NS § 4 (part), 1999)

Section 23E.96.080 Reserved

Section 23E.96.090 Findings

- A. No Use Permit shall be granted under the H District's provisions unless the Board or the Zoning Officer makes the finding under Section 23B.32.040.

Chapter 23E.96: H Hillside Overlay District Provisions

- B. In order for an Administrative Use Permit to be granted under Sections 23E.96.070.B or C, a finding shall be made that the height modification or the yard reduction is consistent with the purposes for the H District. (Ord. 6854-NS § 21 (part), 2005; Ord. 6478-NS § 4 (part), 1999)

FIRE DEPARTMENT REQUIREMENTS

Berkeley Fire Code BMC 19.48 Sec. 902.2.1 Required access. Fire apparatus access roads shall be provided in accordance with Sections 901 and 902.2 for every facility, building or portion of a building hereafter constructed or moved into or within the jurisdiction when any portion of the facility or any portion of an exterior wall of the first story of the building is located more than 150 feet (45 720 mm) from fire apparatus access as measured by an approved route around the exterior of the building or facility.

Berkeley Fire Code BMC 19.48 Sec. 903.2 Required Water Supply for Fire Protection. An approved water supply capable of supplying the required fire flow for fire protection shall be provided to all premises upon which facilities, buildings or portions of buildings are hereafter constructed or moved into or within the jurisdiction. When any portion of the facility or building protected is in excess of 150 feet (45,720 mm) from a water supply on a public street as measured by an approved route around the exterior of the facility or building, on-site fire hydrants and mains capable of supplying the required fire flow shall be provided when required by the chief. See Section 903.4.

IWAMOTOSCOTT ARCHITECTURE
729 TENNESSEE STREET
SAN FRANCISCO CA 94107
415 643 7773

September 20, 2013

Wendy Cosin
Fax 510-981-7470

Re: 2750 Cedar Street & 1609 La Vereda Rd
APN 058-2211-20 & 058-2211-18-2

Dear Wendy

We are requesting a hearing to respond to the Notice of Intention to Determine Status dated September 4, 2013.

Please let me know if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'L Iwamoto', with a long horizontal flourish extending to the right.

Lisa Iwamoto

M I C H A E L T O L L E S O N , A R C H I T E C T

1331 40TH ST
UNIT 309
EMERYVILLE, CA 94608
MICHAEL@MICHAELTOLLESON.COM

17 September 2013

Wendy Cosin, Deputy Planning Director
Planning & Development
2118 Milvia St
3rd Floor
Berkeley, CA 94704

Re Notice of Intention to Determine Status - 2750 Cedar St & <1609 La Vereda Rd
APN 058-2211-20 & 058-2211-18-2

Wendy,

Thank you for your time yesterday and acceptance of this correspondence on behalf of my client, Dr Louis B Lin, the forthcoming Owner of the subject parcels, currently in escrow.

As the period for response to the Notice is thirty days and I have just received the documents contained in the package sent to the prior owners, it would be greatly appreciated if we could resolve the difference in our positions as soon as possible. My recommendation below is that the Notice is in error and that a Hearing is not required.

Please provide a reply that includes consensus with Eric Angstadt and Zach Cowan. This is a priority in my schedule and I am available to meet with you on short notice.

Berkeley Municipal Code states:

23C.04.020 Establishment of Lawful Non-Conforming Uses, Buildings, Structures & Lots

A. Any Use, structure or building which is a Lawful Non-Conforming Use, structure or building shall be deemed to be in compliance with this Ordinance if it has remained in continuous existence. The non-conformity may result from any inconsistency with the requirements of this Ordinance, whether substantive or procedural, including, but not limited to, the inconsistency of the Use, building or structure or aspects thereof, with any requirement of this Ordinance or the lack of a Zoning Certificate or Use Permit.

B. The following lots which have areas less than the minimum lot size required by this Ordinance shall be considered Lawful Non-Conforming Lots. Such lots may be used as building sites subject to all other requirements of this Ordinance, except that if the total area of all contiguous vacant lots fronting on the same street and under the same ownership on or after September 1, 1958 is less than that required for one lot under this Ordinance, such lots may be used as only one building site.

1. Any lot described in the official records on file in the office of the County Recorder of Alameda County or Contra Costa County as a lot of record under one ownership prior to November 30, 1950 or which was shown as a lot on any recorded subdivision map, filed prior to November 30, 1950; ...

The subject parcels are 3,106 sf and 4,007 st, respectively.

Their combined square footage of 7,113 sf is greater than the 5,000 sf minimum requirement for the R-1(H) zone.

5 1 0 6 5 8 2 9 4 5

www.michaeltolleson.com

The parcels cannot be merged based on combined size.
(Note that the parcels do not front on the same street.)
See attached Site Plan (A-PLAN-SITE-002.pdf).

An extensive title search, including Chain of Title extending back before 1950, has been generated for the purchase of these parcels. Parcel 058-2211-18-2 is described in the official records of the County Recorder of Alameda County on 15 June 1948 and meets the requirements of 23C.04.020.B.1 for a Lawful Non-Conforming Use.
See attached Deed (Deed_1948_058-2211-18-2.pdf).

California Fire Code adopted by the Berkeley Municipal Code states:

SECTION 503 FIRE APPARATUS ACCESS ROADS

503.1 Where required. Fire apparatus access roads shall be provided and maintained in accordance with Sections 503.1.1 through 503.1.3.

503.1.1 Buildings and facilities. Approved fire apparatus access roads shall be provided for every facility, building or portion of a building hereafter constructed or moved into or within the jurisdiction. The fire apparatus access road shall comply with the requirements of this section and shall extend to within 150 feet (45 720 mm) of all portions of the facility and all portions of the exterior walls of the first story of the building as measured by an approved route around the exterior of the building or facility.

Exception: The fire code official is authorized to increase the dimension of 150 feet (45 720 mm) where:

- 1. The building is equipped throughout with an approved automatic sprinkler system installed in accordance with Section 903.3.1.1, 903.3.1.2 or 903.3.1.3.*
- 2. Fire apparatus access roads cannot be installed because of location on property, topography, waterways, nonnegotiable grades or other similar conditions, and an approved alternative means of fire protection is provided.*
- 3. There are not more than two Group R-3 or Group U occupancies.*

Parcel 058-2211-20 contains an existing SFR, which is to be repaired and improved at its current square footage and height.
See attached Perspective View (A-COVR-001.pdf).

Most of the structure is greater than 150' from the Access at La Vereda.
(Note that its legal frontage is on the unimproved section of Cedar St.)

As no additional square footage is planned, it may be repaired without fire sprinklers, though the forthcoming Owner is likely to include them in improvements.

See also Sam Law, Berkeley Fire & Safety, 510 981 7447, slaw@ci.berkeley.ca.us.

Parcel 058-2211-18-2 provides buildable site area less than 150' from La Vereda.
Exceptions 1-3 can be utilized for areas greater than 150' from La Vereda.

The Notice-quoted California Government Code 66451.10.a states:

...two or more contiguous parcels...shall not be deemed merged by virtue of the fact that the contiguous parcels...are held by the same owner...

The California Government Code states:

Subdivision Map Act (Excerpt)

66412.6. Presumption of Lawful Creation of Certain Parcels

(a) For purposes of this division or of a local ordinance enacted pursuant thereto, any parcel created prior to March 4, 1972, shall be conclusively presumed to have been lawfully created if the parcel resulted from a division of land in which fewer than five parcels were created

and if at the time of the creation of the parcel, there was no local ordinance in effect which regulated divisions of land creating fewer than five parcels.

(b) For purposes of this division or of a local ordinance enacted pursuant thereto, any parcel created prior to March 4, 1972, shall be conclusively presumed to have been lawfully created if any subsequent purchaser acquired that parcel for valuable consideration without actual or constructive knowledge of a violation of this division or the local ordinance. Owners of parcels or units of land affected by the provisions of this subdivision shall be required to obtain a certificate of compliance or a conditional certificate of compliance pursuant to Section 66499.35 prior to obtaining a permit or other grant of approval for development of the parcel or unit of land.

(c) This section shall become operative January 1, 1995.

Either 66412.6.a or 66412.6.b may be utilized.

Utilizing all provided Code sections and Supporting Documents, Parcel 058-2211-18-2 may remain separate from Parcel 058-2211-20 and may be developed to include construction of a new SFR within current R-1(H) requirements. An easement through Parcel 058-2211-18-2 to access Parcel 058-2211-20 must be created prior to construction of the new SFR. Required Parking must be mechanically stacked to provide Parking to both parcels.

The City of Berkeley may request a Certificate of Compliance to assure Chain of Title.

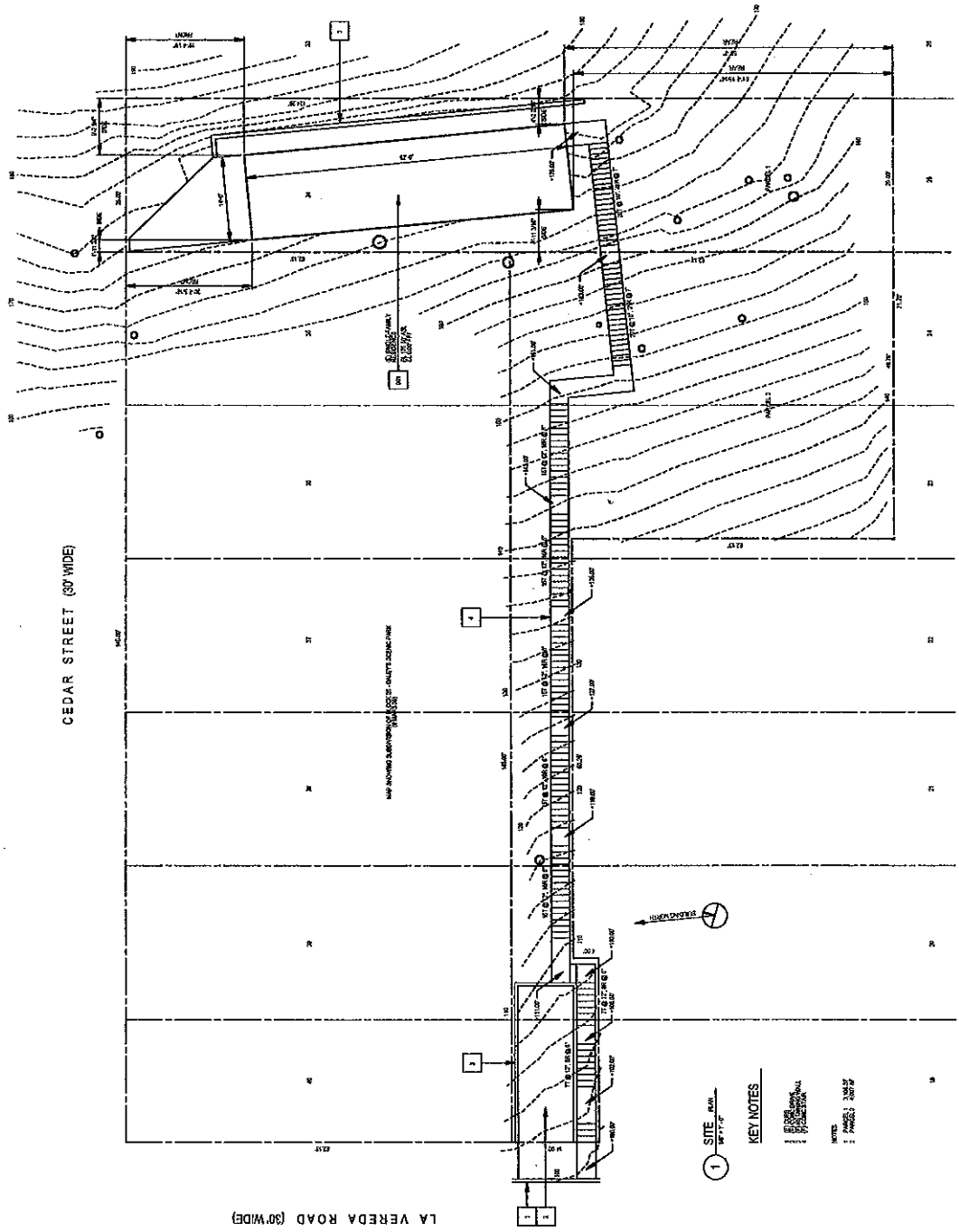
My recommendation is that the Notice of Intention to Determine Status is in error, relying on Code sections superseded by the those provided. The Notice should be withdrawn and the Status recommended herein permanently recorded with Alameda County Records. The City of Berkeley may request a Certificate of Compliance to assure Chain of Title.

Sincerely,



Michael Tolleson, Architect, LEED AP
1331 40th St, Unit 309
Emeryville, CA 94608
510 658 2945
michael@michaeltolleson.com

cc Eric Angstadt, Director, Planning & Development
Zach Cowan, Assistant City Attorney



1 SITE PLAN
 1/8" = 1'-0"

KEY NOTES

- 1 EXISTING BUILDING
- 2 EXISTING PARKING
- 3 EXISTING LANDSCAPE
- 4 EXISTING TREES
- 5 EXISTING UTILITIES
- 6 EXISTING ELEVATION
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THIS SPACE FOR RECORDING LINE ONLY

AC17787

10
361-c

Deed

(JOINT TENANCY)

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

EDGAR DORSEY TAYLOR

herby

GRANTS to P. K. BUSKIRK and GLEMENS JAMESON BUSKIRK, his wife,

AS JOINT TENANTS

all that real property situated in the City of Berkeley, County of Alameda, State of California, described as follows:

Portion of Lots 35, 36, 37, 38, 39 and 40, in Block 25, as said lots and Block are shown on the "Map showing subdivision of Block 25, and resubdivision of lots 21, 22, 23, 24, Block 15; lot 6, block 16; lot 6, block 24; lot 6, block 23; lots 8 and 9, block 26 in Daley's Scenic Park, Berkeley, Cal.", filed September 16, 1889, in Book 9 of Maps, page 36, in the office of the County Recorder of Alameda County, bounded as follows:

Beginning at a point on the eastern line of Highland Place, formerly LaVereda, as said line is described in the deed to the City of Berkeley, dated September 23, 1909 and recorded September 25, 1909, in Book 1643 of Deeds, page 289, Alameda County Records, distant thereon southerly 62.13 feet from the southern line of Cedar Street as said street is shown on said map; running thence along said line of Highland Place southerly 14.00 feet; thence easterly parallel with the said line of Cedar Street 30.00 feet; thence northerly parallel with the said line of Highland Place 4.00 feet; thence easterly parallel with the said line of Cedar Street 68.25 feet; thence southerly parallel with the said line of Highland Place 52.13 feet to a point on the southern boundary line of said lot 36; thence easterly along the southern boundary lines of said lots 36 and 35, a distance of 46.75 feet to a point on the eastern line of said lot 35; thence along the last mentioned line northerly 62.13 feet to a line drawn easterly from the point of beginning and parallel with the said line of Cedar Street; thence parallel with the said line of Cedar Street westerly 145.00 feet to the point of beginning.

question
or
18-2

DATED June 15th, 1948

Edgar Dorsey Taylor

STATE OF CALIFORNIA
COUNTY OF ALAMEDA

On June 15th, 1948 before me, the undersigned a Notary Public in and for said County and State personally appeared

Edgar Dorsey Taylor

Known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

(Seal) *[Signature]*
Notary Public in and for said County and State.

When recorded mail to:
Name P. K. BUSKIRK
Address 421 COLUSA AVE
City EL CERRITO State CALIF
Appl. No. 404940 No.

FOR RECORDER'S USE ONLY

RECORDED at REQUEST OF
ALAMEDA COUNTY
EAST BAY TITLE INS. CO.
AT 9 A. M.

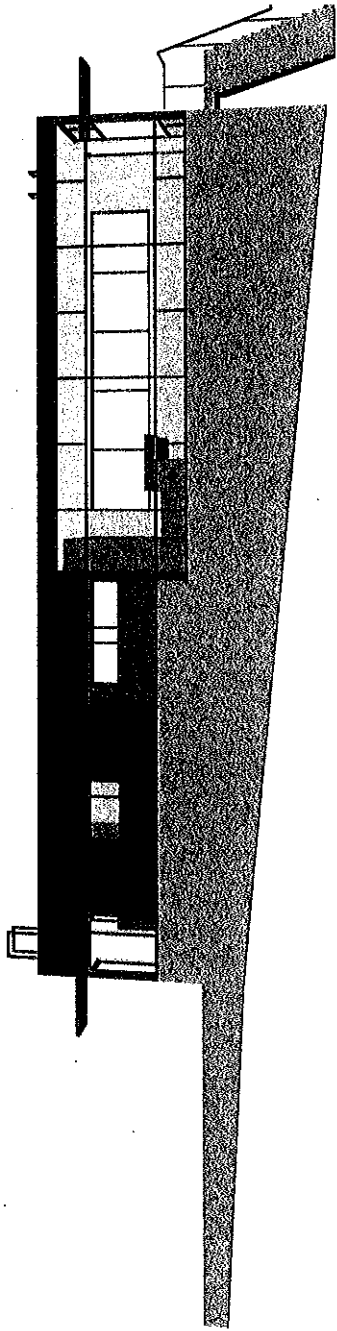
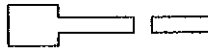
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BOOK 5531, PAGE 204

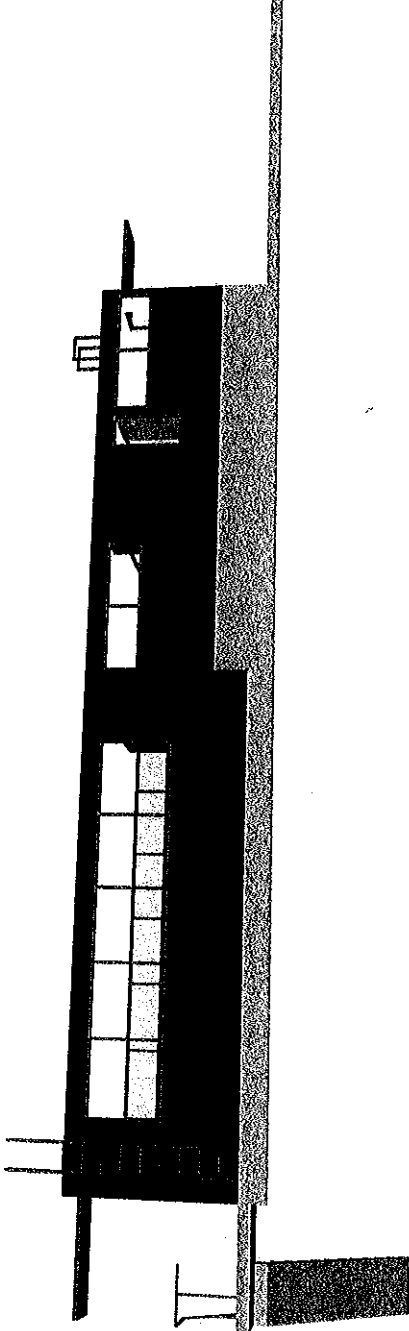
OFFICIAL RECORDS OF
ALAMEDA COUNTY, CALIFORNIA
Thomas W. Fitzmaurice
COUNTY RECORDER

200

7F



1 PERSPECTIVE
WEST SIDE
VIEW



2 PERSPECTIVE
WEST SIDE
VIEW

Cosin, Wendy

Subject: FW: Notice-2750 Cedar

From: Michael Tolleson, Architect [<mailto:michael@michaeltolleson.com>]
Sent: Monday, October 07, 2013 3:39 PM
To: Cosin, Wendy
Subject: Re: Notice-2750 Cedar

Wendy,

I have further reviewed State and Berkeley Codes.

I am adding the following as Supplemental reference as of today:

21.52.020 Mergers required.

If any one of two or more contiguous parcels or units held by the same owner does not conform to existing zoning regulations regarding site area to permit development (whether or not already developed), and at least one parcel or unit has not been developed with a building for which a building permit is required and was issued, or which was built prior to the time such permits were required, then such parcels shall be considered as merged for the purposes of this title, subject to any exceptions provided in the Berkeley zoning ordinance, (Ord. 6478-N.S.), ...

The specific Exceptions are noted in my original, provided Response.

If you could provide the Staff Report in PDF so that I may have adequate time to review it prior to the Hearing, it would be greatly appreciated.

Sincerely,

Michael Tolleson, Architect, LEED AP
1331 40th St
Unit 309
Emeryville, CA 94608
510 658 2945
510 332 9520 iPhone
michael@michaeltolleson.com
www.michaeltolleson.com

Chapter 21.52

PARCEL MERGERS

Sections:

- 21.52.010 Mergers not required.**
- 21.52.020 Mergers required.**
- 21.52.030 Intention to merger and hearing.**
- 21.52.040 Determination of merger.**
- 21.52.050 Release of the notice of intention to determine status.**
- 21.52.060 Request by property owner.**

Section 21.52.010 Mergers not required.

Two or more contiguous parcels or units of land which have been subdivided under the provisions of this title or the Subdivision Map Act shall not merge by virtue of the fact that such contiguous parcels are held by the same ownership. No further proceedings under this title shall be required for the purpose of sale, lease or financing, except as provided by this chapter. (Ord. 5793-NS § 2 (part), 1987)

Section 21.52.020 Mergers required.

If any one of two or more contiguous parcels or units held by the same owner does not conform to existing zoning regulations regarding site area to permit development (whether or not already developed), and at least one parcel or unit has not been developed with a building for which a building permit is required and was issued, or which was built prior to the time such permits were required, then such parcels shall be considered as merged for the purposes of this title, subject to any exceptions provided in the Berkeley zoning ordinance, (Ord. 6478-N.S.), and provided that the requirements of Article 1.5, Sections 66451.10 through 66451.21 of the Subdivision Map Act are satisfied. (Ord. 5793-NS § 2 (part), 1987)

Section 21.52.030 Intention to merger and hearing.

Whenever the Director of Planning has knowledge that real property has merged pursuant to this chapter, he/she shall carry out the duties of the local agency specified in Sections 66451.13 through 66451.18 of the Subdivision Map Act, in a manner which assures that the specified time limits will be met. Hearings shall be conducted by the Planning Commission. (Ord. 5793-NS § 2 (part), 1987)

Section 21.52.040 Determination of merger.

Whenever the Director of Planning has knowledge that real property has merged pursuant to this chapter, and that the requirements specified in Section 21.52.030 have been met, he/she shall cause to be filed with the County Recorder a determination of merger in accordance with Sections 66451.16 or 66451.17 of the Subdivision Map Act. (Ord. 5793-NS § 2 (part), 1987)

Section 21.52.050 Release of the notice of intention to determine status.

If, at the conclusion of a hearing, the Planning Commission determines that affected parcels are not to be merged, the Director of Planning shall cause to be recorded a release of the notice of intention to determine status, and shall notify the owner, in accordance with Section 66451.18 of the Subdivision Map Act. (Ord. 5793-NS § 2 (part), 1987)

Section 21.52.060 Request by property owner.

Upon request of the legal owner of contiguous parcels, the Director of Planning may approve the merger of the property. Such request shall be in writing and shall be accompanied by such data and documents as

ORDINANCE NO. 6,905-N.S.

AMENDING SECTION 1 OF ORDINANCE 6,321-N.S., AS AMENDED (ORDINANCES 6,462-N.S., 6,484-N.S., 6,550-N.S., AND 6,796-N.S.), DECLARING A MORATORIUM ON THE REMOVAL OF COAST LIVE OAK TREES, TO PROHIBIT ANY PRUNING OF A COAST LIVE OAK THAT IS EXCESSIVE AND INJURIOUS TO THE TREE

BE IT ORDAINED by the City Council of the City of Berkeley as follows:

Section 1. That Section 1 of Ordinance No. 6,321-N.S., declaring a Moratorium on the removal of Coast Live Oak Trees, as amended, by Ordinances 6,462-N.S., 6,484-N.S., 6,550-N.S., and 6,796-N.S., is hereby amended to read as follows:

Section 1.

- a. A Moratorium is declared on the removal of any single stem Coast Live Oak tree of a circumference of 18 inches or more and any multi-stemmed Coast Live Oak with an aggregate circumference of 26 inches or more at a distance of four feet up from the ground within the City of Berkeley.
- b. Any pruning of a Coast Live Oak that is excessive and injurious to the tree is prohibited. Excessive and injurious pruning is defined as the removal of more than one-fourth of the functioning leaf, stem or root system of a tree in any 24 month period.
- c. An exception may be made to this Section if the City Manager, or his designee, finds that any tree described in this Ordinance is a potential danger to life or limb due to the condition of the tree, or is a danger to property, and that the only reasonable mitigation would be removal of the tree.
- d. This Section will not prevent the one-time removal, to be determined by the Director of Parks and Waterfront in consultation with the Parks and Recreation Commission of up to four young Coast Live Oaks, 14 inches or less in diameter (DBH), from the area adjacent to the Berkeley Rose Garden deer fence at the Euclid Avenue Overlook, for the purposes of restoring or maintaining public view corridors at the Berkeley Rose Garden.
- e. This Section will not prevent the one-time relocation on-site of one Coast Live Oak tree at 3000 Shasta Road, on the site of the proposed Hills Fire Station, consistent with condition 16 of Use Permit 01-10000057 as approved by the Zoning Adjustments Board, or, removal of said tree if the City Council so determines on appeal of said Use Permit. This paragraph shall be ineffective if the Hills Fire Station is not built.

Section 2.

Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Old City Hall, 2134 Martin Luther King, Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

At a regular meeting of the Council of the City of Berkeley held on January 24, 2006, this Ordinance was passed to print and ordered published by posting by the following vote:

Ayes: Councilmembers Anderson, Capitelli, Maio, Moore, Olds, Spring, Worthington, and Wozniak.

Noes: None.

Absent: Mayor Bates.

At a regular meeting of the Council of the City of Berkeley held on February 7, 2006, this Ordinance was adopted by the following vote:

Ayes: Councilmembers Anderson, Capitelli, Maio, Moore, Olds, Spring, Worthington, Wozniak, and Mayor Bates.

Noes: None.

Absent: None.

ATTEST:

Sara T. Cox
Sara T. Cox, City Clerk

Tom Bates
Tom Bates, Mayor

In effect: March 9, 2006

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

SIERRA CLUB,

Plaintiff and Appellant,

v.

NAPA COUNTY BOARD OF
SUPERVISORS et al.,

Defendants and Respondents.

A130980

(Napa County
Super. Ct. No. 26-51193)

In 2009 respondent Napa County Board of Supervisors¹ adopted clarifying lot line adjustment Ordinance No. 1331 (Ordinance). Subject to provisos, sequential lot line adjustments are included within the definition of “lot line adjustment.” (Napa County Code, § 17.02.360.) Appellant Sierra Club has facially challenged the Ordinance as violative of both the Subdivision Map Act² (Map Act or act) and the California Environmental Quality Act³ (CEQA). We hold that the provisions of the Ordinance allowing sequential lot line adjustments are consistent with the Map Act’s exclusion of lot line adjustments from the requirements of the act. Further, since the Ordinance spells out a ministerial lot line adjustment approval process, the Ordinance is exempt from CEQA purview. Finally, we reject respondents’ claim that appellant’s action is time-barred. Accordingly, we affirm the judgment.

¹ We refer collectively to respondents Napa County Board of Supervisors (Board) and the County of Napa as “County” or “respondents.”

² Government Code section 66410 et seq. Unless otherwise noted, all statutory references are to the Government Code.

³ Public Resources Code section 21000 et seq.

I. BACKGROUND

A. *History of Lot Line Adjustment Provisions under the Map Act*

In 1976 the Legislature amended the Map Act to exempt from the procedures of the act any lot line adjustment between two or more adjacent parcels, where the land taken from one parcel was added to an adjacent parcel but no additional parcels were thereby created, and provided the lot line adjustment was approved by the local agency. (§ 66412, as amended by Stats. 1976, ch. 92, § 1, p. 150.) Prior to that time, some local jurisdictions required that a parcel map be filed before a conveyance could be made to effect a lot line adjustment. The amendment eliminated the need to file a parcel map for minor adjustments to lot lines between adjacent parcels. (Dept. of Real Estate, Enrolled Bill Rep. on Assem. Bill No. 2381 (1975-1976 Reg. Sess.) Mar. 26, 1976.) The legislation was also described as allowing a “ ‘friendly neighbor’ [lot line] adjustment without going through procedures provided in the map act ” (Sen. Local Gov. Com., Staff Analysis on Assem. Bill No. 2381, as amended Jan 15, 1976.)

Fifteen years later, the Legislature enacted a bill that restricted the scope of the exemption to lot line adjustments “between four or fewer existing adjoining parcels,” with the same proviso that a greater number of parcels than originally existed is not thereby created. (§ 66412, subd. (d) (§ 66412(d)).) The statute further provides that the lot line adjustment must be approved by the local agency or advisory agency, and the agency’s review and approval shall be limited “to a determination of whether or not the parcels resulting from the lot line adjustment will conform to the local general plan, any applicable specific plan, any applicable coastal plan, and zoning and building ordinances.” (*Ibid.*)

B. *History Of Napa Ordinances Governing Lot Line Adjustments*

In 2002 the County revised its local ordinance to coincide with the changes set forth in the amended section 66412(d), specifically reflecting that lot line adjustments involving four or fewer adjoining parcels were exempt from the Map Act. The ordinance also prohibited lot line adjustments that transformed nonbuilding parcels into buildable ones, as determined by parcel size, shape, geographic features, legal restrictions and other

unspecified factors. The ordinance was silent on whether sequential adjustments affecting four or fewer parcels would be permitted.

Around December 2007, the County planning director solicited direction from the Board concerning whether sequential lot line adjustments should be permitted, and if so, to what degree. At the time there were pending applications from one owner for lot line adjustments affecting 16 contiguous parcels, in which each application only affected four parcels but were sequential in that a lot adjusted under one application was further adjusted under a sequential application. A survey of other county practices revealed that one county prohibited sequential lot line adjustments outright and another allowed them with a waiting period between each sequential application. Another option would allow sequential adjustments outright without delay. At the time, there were less than 100 instances countywide in which a single owner owned more than four contiguous parcels, but that ownership affected nearly 100,000 acres. The director recommended an ordinance allowing the processing of successive applications, but with a waiting period or delay of six to eight weeks between applications during which time the first reconfiguration would be recorded. The Board accepted the recommendation and directed staff to prepare an ordinance.

In 2008 the County received lot line adjustment applications from Calness Vintners affecting a total of six parcels located within the Agricultural Preserve Zoning District. The Town of Yountville objected to the lot line adjustments, complaining that the adjustment of parcels adjacent to its boundaries appeared to set the stage for future residential development that would reduce agricultural use and raise other potential environmental impacts. At least one property owner appealed. At the hearing, the Board asked staff to prepare an agenda item enabling it to reconsider its position on sequential lot line adjustments specifically, and the approval process generally.

In May 2009 a draft ordinance was presented to the Board. The draft distinguished between “major” lot line adjustments dependent on discretionary approval subject to CEQA, and “minor” adjustments treated as ministerial and thus outside CEQA’s purview. Sequential lot line adjustments and adjustments requiring a variance

would be considered “major,” as would those entirely relocating an existing parcel, or seeking to enlarge a parcel to more than 10 acres.⁴ “Sequential lot line adjustment” was defined as any readjustment of a parcel which had been previously adjusted in the past five years. As well, the draft ordinance revised the definition of “buildability” to provide further guidance as to what was a “buildable” lot eligible for adjustment.

At the hearing, the Board grappled with how to distinguish between major and minor lot line adjustments. One supervisor put it this way: “I think there is a sequential lot line adjustment that is used to subvert—to get around CEQA and that’s what we . . . want to include as a major lot line adjustment, but how you distinguish that from the tractor turn around and the other adjustment that is sometimes . . . needed” The Board directed staff to develop a draft ordinance in concert with stakeholders representing a variety of interests. Four meetings were held over the summer, resulting in a substantially revised ordinance. Gone was the distinction between major and minor lot line adjustments. Additionally, all adjustments were deemed ministerial except those requiring a variance or processed concurrently with a discretionary permit. As well, the ordinance revised the definition of “buildability” and continued to authorize sequential lot line adjustments.⁵

The revised ordinance went to the planning commission in October 2009, with the commission recommending Board approval. During the hearing, the chairperson expressed concern that although the ordinance did not allow for the creation of new

⁴ Ten acres is the minimum parcel size on which a winery may be built in the County. (Napa County Code, § 18.104.240, subd. B.)

⁵ Specifically, the ordinance provides that “[l]ot line adjustments shall include sequential lot line adjustments, in which parcels which have been previously adjusted are subsequently readjusted, provided that the prior adjustment has been completed and resulting deeds recorded prior to the sequential lot line adjustment application being filed.” (Napa County Code, § 17.02.360, subd. B.) The ordinance defines “[l]ot line adjustment” as “a reorientation of a property line or lines between four or fewer existing adjoining parcels, where the land taken from one parcel is added to an adjoining parcel and where a greater number of parcels than originally existed is not thereby created.” (*Id.*, § 17.02.360, subd. A.)

parcels, “maybe you’re modifying something that is gonna lead to more development. And I struggle with that one philosophically [W]hat are we really doing here?”

The Board adopted the Ordinance in December 2009, with an effective date of January 7, 2010. The approvals asserted that the Ordinance was exempt from CEQA based on a class 5 categorical exemption⁶ and general rule.⁷ At the hearing, questions again arose as to the ministerial-discretionary distinction, particularly where there are ministerial lot line adjustments proposed concurrently with discretionary approvals. The planning director acknowledged that “if someone wants to game the system and has the time to invest in a long process of sequential applications,” an applicant could “get around this.”

The Ordinance as adopted continued the County’s existing administrative practice of allowing lot line adjustments impacting four or fewer parcels to readjust lots included in a prior application, provided the prior adjustments had been completed and recorded. So, too, the new Ordinance continued existing policy and practice such that line adjustments are ministerial acts not subject to CEQA.

⁶ A class 5 exemption “consists of minor alterations in land use limitations in areas with an average slope of less than 20%, which do not result in any changes in land use or density, including but not limited to: [¶] (a) Minor lot line adjustments” (Cal. Code Regs., tit. 14, § 15305 (hereafter Regs.))

⁷ A project is exempt from CEQA if “[t]he activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.” (Regs., § 15061, subd. (b)(3).)

C. *Litigation*

Sierra Club challenged the Ordinance by a petition for writ of mandate, alleging (1) violation of the Map Act's limited lot line adjustment exemption; (2) violation of the Map Act and CEQA due to classifying all lot line adjustment approvals as ministerial; (3) violation of CEQA's prohibition on piecemealing; and (4) that the Ordinance did not qualify for any CEQA exemption.

Sierra Club requested that the County stipulate to a court order extending its time to prepare the record, pursuant to Public Resources Code section 21167.6, subdivision (c). The County agreed and the court ordered that the deadline to prepare the record was extended to May 14, 2010.

The County demurred on grounds that Sierra Club failed to effect summons within 90 days of the decision, as required by section 66499.37, for any proceeding challenging a decision "concerning a subdivision." (*Ibid.*) Overruling the demurrer, the trial court held that the County's stipulation to extend time to prepare the record amounted to a general appearance, and thus the County waived any irregularities in the service of summons.

Thereafter the court denied the petition on the merits, ruling that the language of the Map Act was clear on its face and did not bar sequential lot line adjustments. It concluded that while the legislative history of the applicable amendment demonstrated a concern over unfettered land reconfiguration through the lot line adjustment process, it was plausible that rather than seeking to ban all sequential lot line adjustments, the Legislature was attempting to find a balance for "an appropriate pace of land reconfiguration." (*Italics omitted.*) Further, the court ruled that because the County's approval of lot line adjustments was constrained under the Map Act and the Ordinance, such approvals were ministerial and not subject to CEQA. The court further found that the County's adoption of the Ordinance came within the "common sense" CEQA exemption. In this regard, it noted that there was substantial evidence that the ministerial approval of sequential lot line adjustments was already legal and practiced by the County, and thus there was no possibility of affecting the physical environment.

II. DISCUSSION

A. *Sierra Club's Action Was Not Time-barred*

The County raises an issue of error concerning the trial court's nonappealable order overruling its demurrer, continuing to press that Sierra Club's action is time-barred. It is proper to raise this issue in the respondent's brief. (See *Selger v. Steven Brothers, Inc.* (1990) 222 Cal.App.3d 1585, 1593-1594.) Nevertheless, the ruling was correct.

In March 2010, pursuant to Public Resources Code section 21167.6, subdivision (c), the County stipulated to entry of an order by the trial court extending the time for preparing, certifying and lodging the administrative record. That statute provides for an extension "only upon the stipulation of all parties who have been properly served in the action or proceeding or upon order of the court." (*Ibid.*)

The County's action of agreeing in writing that the court had authority to enter an order extending the record preparation deadline constituted a general appearance. A general appearance waives any irregularities and is equivalent to personal service of the summons on a party. (Code Civ. Proc., § 410.50.) The list of acts constituting an appearance set forth in Code of Civil Procedure section 1014 (e.g., answering, demurring, moving to strike or transfer) is not exclusive. Instead, the determining factor is "whether defendant takes a part in the particular action which in some manner recognizes the authority of the court to proceed." [Citation.]" (*Hamilton v. Asbestos Corp.* (2000) 22 Cal.4th 1127, 1147.)

Here, the County took part in the action by stipulating in writing to an order granting Sierra Club a 60-day extension to prepare the administrative record. That action acknowledged the authority of the court to grant the extension and foreshadowed certification of the record by the County so that a certified record could be lodged with the court, a necessary precondition for a hearing. As such, the action constituted a general appearance and waived all irregularities.

B. *No Map Act Conflict*

Sierra Club is adamant that the Ordinance violates the Map Act by negating its limited exemption for lot line adjustments. This essentially is a claim that section

66412(d) preempts the local lot line adjustment Ordinance because the Ordinance facially conflicts with the statutory exclusion. Not so.

Section 66412(d) states that the Map Act shall be inapplicable to “[a] lot line adjustment between four or fewer existing adjoining parcels, where the land taken from one parcel is added to an adjoining parcel, and where a greater number of parcels than originally existed is not thereby created, if the lot line adjustment is approved by the local agency, or advisory agency. A local agency or advisory agency shall limit its review and approval to a determination of whether or not the parcels resulting from the lot line adjustment will conform to the local general plan, any applicable specific plan, any applicable coastal plan, and zoning and building ordinances. An advisory agency or local agency shall not impose conditions or exactions on its approval of a lot line adjustment except to conform to the local general plan, any applicable specific plan, any applicable coastal plan, and zoning and building ordinances, to require the prepayment of real property taxes prior to the approval of the lot line adjustment, or to facilitate the relocation of existing utilities, infrastructure, or easements. No tentative map, parcel map, or final map shall be required as a condition of approval of a lot line adjustment. . . . The lot line adjustment shall be reflected in a deed, which shall be recorded.”

A municipality such as the County “may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws.” (Cal. Const., art. XI, § 7.) It is this constitutional police power which confers on municipalities the authority to enact land use regulations and control their own land use decisions. (*Associated Home Builders etc., Inc. v. City of Livermore* (1976) 18 Cal.3d 582, 604.) Under the police power, municipalities “have plenary authority to govern, subject only to the limitation that they exercise this power within their territorial limits and subordinate to state law. [Citation.] . . . [¶] If otherwise valid local legislation conflicts with state law, it is preempted by such law and is void.” (*Candid Enterprises, Inc. v. Grossmont Union High School Dist.* (1985) 39 Cal.3d 878, 885.) Facial challenges to legislation are the most difficult to successfully pursue because the challenger must demonstrate that “ ‘ ‘ no set of circumstances exists under which the

[law] would be valid.” ’ [Citation.]” (*T.H. v. San Diego Unified School Dist.* (2004) 122 Cal.App.4th 1267, 1281.) Thus, the moving party must establish that the challenged legislation inevitably is in total, fatal conflict with applicable prohibitions. (*Ibid.*)

When local municipalities regulate in areas over which they traditionally have exercised control, our courts presume, absent a clear preemptive intent from the Legislature, that such regulation is not preempted by state law. (*Big Creek Lumber Co. v. County of Santa Cruz* (2006) 38 Cal.4th 1139, 1149.) Local land use regulations conflict with general laws and are void if the local legislation duplicates, contradicts, or enters an area occupied fully by the general law. Local legislation is contradictory to general law when it is inimical to it. (*Id.* at p. 1150.)

The Ordinance does not conflict with section 66412(d). First, according to the plain, clear and unambiguous language of the statute, the Legislature has excluded from the Map Act lot line adjustments meeting the following criteria: (1) the adjustment is between four or fewer parcels; (2) the parcels must be adjoining; (3) the adjustment does not result in more parcels than originally existed; and (4) the lot line adjustment is approved by the local agency. The Ordinance’s inclusion of sequential lot line adjustments within the definition of a “lot line adjustment” does not run afoul of any of these criteria and hence should likewise be exempt from the Map Act. Sequential lot line adjustments are only allowed in cases where a prior adjustment involving four or fewer adjoining parcels has been completed and approved; no new parcels have been created; and deeds reflecting the adjustment have been recorded prior to any sequential lot line application being filed.

Second, Sierra Club’s insistence that the County distorts the plain language of the statute by inserting the word “application” into it is not persuasive. The County is not “inserting” the term “application” into the statute. Rather, the term “sequential lot line adjustment” is defined in part with reference to the timing of a sequential lot line application. Timing is important because there will be no sequential lot line adjustment or application for the same unless the prior adjustment has been completed and deeds have been recorded reflecting the initial adjustment. This issue of timing comports with

section 64412(d), notably the requirement that qualifying adjustments pertain to existing adjoining parcels and the directive that the adjustment be reflected in a recorded deed.

To make its point, Sierra Club declares: “To adjust the boundaries of 16 parcels by submitting four applications affecting four parcels each is gamesmanship. A straightforward reading of the statute requires the County to disregard such artifice, and look instead at the aggregate number of parcels whose boundaries are to be adjusted.” (Fn. omitted.) There are several problems with this statement. First, four applications affecting four parcels each would not be submitted at the same time. Rather, each application would have to result in recorded deeds and the approval standards for the adjustment would have to be met, including that the adjustment will not result in a nonbuildable parcel becoming buildable,⁸ parcels will not be reduced below certain minimum standards, and the like. (Napa County Code, § 17.46.040.) More to the point, Sierra Club illustrates its argument with an as applied example, but its attack on the Ordinance is facial.⁹ The challenger mounting a facial attack must show that the defective regulation presently poses a total and fatal conflict. (*T.H. v. San Diego Unified School Dist.*, *supra*, 122 Cal.App.4th at p. 1281; see *Association of California Ins. Cos. v. Poizner* (2009) 180 Cal.App.4th 1029, 1054.) Sierra Club cannot meet this burden. In any event, we are not reviewing the approval of the proffered illustration, and surmise that a variety of attacks on purported gamesmanship might be available.

Next, Sierra Club prods us to review the legislative history, which it maintains evinces an unmistakable intent to curtail the scope of the exemption. In essence appellant suggests section 66412(d) is ambiguous in light of the Ordinance, because the statute is silent on the matter of sequential lot line adjustments. As the trial court did, in an abundance of caution we will take a look at that history.

⁸ To be considered buildable, a parcel must meet the following criteria: (1) it must contain a minimum of 2,400 square feet of net lot; (2) it must have existing access rights to a public street; and (3) the parcel must contain a building site, by definition a minimum of 25 feet wide and 25 feet deep. (Napa County Code, § 17.46.040, subd. C.3.a.-c.)

⁹ The same can be said for the case law cited, which likewise involve as applied challenges.

We begin with case law, namely *San Dieguito Partnership v. City of San Diego* (1992) 7 Cal.App.4th 748, involving a prior iteration of the statute which exempted lot line adjustments “ ‘between two or more existing adjacent parcels’ ” with the proviso that the adjustment not result in a greater number of parcels than originally existed. (*Id.* at p. 751.) There, the owners sought reconfiguration of their nine parcels, five of which had no frontage to a street, so all would have street frontage. The trial court found that the exemption was intended only to apply to minor changes in parcel lines and there was a limit to the number of lots that could be adjusted under the exemption. (*Id.* at p. 754.) Reversing, the reviewing court held that the only numerical limitation on parcels that could be included in a lot line adjustment is that the adjustment not result in the creation of more parcels than originally existed, commenting that had the Legislature been interested in limiting the number of parcels which could be subject to an adjustment, “[i]t surely would have been an easy task to attach such a limit” (*Id.* at p. 757.)

Such a limit came with the 2001 amendments to section 66412(d), limiting the exemption to adjustments between four or fewer parcels. The enrolled bill memorandum summarizes arguments in support of the amendments: “This bill closes a loophole in the [Map Act] that allows major subdivisions of land to occur without adequate local review. This practice has resulted in inappropriate new development that does not comply with local general planning, does not provide adequate infrastructure such as sewers and roads, and does not meet affordable housing requirements of approved general plans.”

(Enrolled Bill Mem. to Governor on Sen. Bill No. 497, Sept. 24, 2001.) Another report further explained that developers and land speculators recently have “ ‘changed the landscape’ by exploiting loopholes in the . . . Map Act. Although many antiquated parcels are inconsistent with minimum lot size and development requirements, lot line adjustments are now used as an exception to the usual requirements for subdivision approval in order to effectively ‘resubdivide’ the property without providing infrastructure or conforming to community land use plans. By this method, antiquated subdivision owners reconfigure their parcels and make them buildable merely by obtaining certificates of compliance and processing a lot line adjustment. . . . This allows

speculators to avoid not only the Map Act but also infrastructure, general plan, specific plan, local coastal plan, and [CEQA] requirements that would otherwise apply.”

(Governor’s Office of Planning & Research, Enrolled Bill Rep. on Sen. Bill No. 497, Oct. 3, 2001, p. 2, underscore omitted.) The report went on to state that the same “end run around state law and local regulations” occurred in new subdivisions, in which developers would apply for lot line adjustments at some point that resulted in dramatic impacts with significant environmental effect, with no CEQA review and the like. (*Id.* at p. 3.)

Sierra Club intones that the Ordinance has “reopened” the loophole that the section 66412(d) amendments were intended to close, by folding sequential lot line adjustments into the permissible lot line adjustments that are exempt from the Map Act. The legislative history sampled above reveals that there were a number of concerns with unchecked land reconfiguration through inappropriate lot line adjustments that circumvented state and local review. However, we do not divine an intent to bring all sequential lot line adjustments within the Map Act’s ambit. **The Ordinance does not allow an endless stream of lots to be adjusted at one time, nor does it allow a nonbuildable parcel to become buildable through the adjustment process.** The requirements that a landowner must obtain approval of adjustments of no more than four adjoining lots at one time, then record the deeds reflecting those adjusted lots before filing and processing another application, serve the purpose of deterring simultaneous adjustment of unlimited parcels, while still fostering the benefits served by a simple lot line adjustment process. The sequential lot line adjustment process set forth in the Ordinance injects meaningful temporal constraints on larger scale lot line adjustments. We concur with the trial court’s conclusion that it was plausible the Legislature “was seeking to strike a balance for an appropriate pace of land reconfiguration through the use of lot line adjustments, whether for potential development or otherwise. . . . [T]he language of the 2001 amendment does dictate a slower rate of reconfigurations through adjustments than could occur under the former language of the statute. Curtailing, without prohibiting such lot line adjustments may well have been precisely the

legislature’s intent in implementing the language it chose for the amendment. Certainly, if the legislature had intended to bring all sequential lot line adjustments within the purview of the Map Act, it easily could have used alternative language to make that intention clear.” (Italics omitted.)

C. The Approval of Sequential Lot Line Adjustments under the Ordinance Is Not Subject to CEQA

Sierra Club insists that the approval of a sequential lot line adjustment is a discretionary act within the meaning of CEQA, and thus subject to the act’s requirements. We disagree.

1. *Legal Framework*

As a general matter, CEQA applies to all discretionary projects¹⁰ proposed or approved by a public agency that do not fall within a statutory exemption. (Pub. Resources Code, § 21080, subd. (a).) A “[d]iscretionary project” is a project the approval or disapproval of which requires exercise of judgment or deliberation, as contrasted with situations in which the public agency merely determines whether the project conforms with applicable statutes, ordinances or regulations. (Regs., § 15357.) CEQA will apply where the public agency uses its judgment in deciding not only whether to approve, but also how to carry out, a proposed project. (*Id.*, § 15002, subd. (i).)

On the other hand, ministerial projects are exempt from CEQA requirements. (Pub. Resources Code, § 21080, subd. (b)(1); Regs., § 15268, subd. (a).) Determining what is “ministerial” for CEQA purposes is most appropriately made by the public agency involved in a particular decision, based on the agency’s analysis of its own laws, and each agency preferably should make this determination as part of its implementing regulations or ordinances. (Regs., § 15268, subds. (a), (c).) Whether a particular agency

¹⁰ Under CEQA, a “project” is “an activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment” that is undertaken or supported by a public agency or involves issuance of an entitlement for use by a public agency. (Pub. Resources Code, § 21065.)

exercises discretionary or ministerial controls over a project “depends on the authority granted by the law providing the controls over the activity.” (*Id.*, § 15002, subd. (i)(2).)

The term “ministerial” refers to a public agency’s decisions “involving little or no personal judgment by the public official as to the wisdom or manner of carrying out the project. The public official merely applies the law to the facts as presented but uses no special discretion or judgment in reaching a decision. A ministerial decision involves only the use of fixed standards or objective measurements, and the public official cannot use personal, subjective judgment in deciding whether or how the project should be carried out.” (Regs., § 15369.)

2. *Analysis*

In keeping with the CEQA Guidelines, the Ordinance classifies lot line adjustments as ministerial acts, as follows: “The tentative approval of lot line adjustments and subsequent review and approval of deeds are ministerial acts and not subject to CEQA; except that the tentative approval of lot line adjustments are discretionary and subject to CEQA when, (a) the lot line adjustment requires a variance . . . ; or (b) is processed concurrent with a related application for a use permit or other discretionary approval.” (Napa County Code, § 17.46.020.) Additionally, the County’s local procedures for implementing CEQA lists lot line adjustments among the approvals “conclusively presumed to be ministerially exempt from the requirements of CEQA”

Applications that comply with 12 specified standards are deemed to conform to the general plan, any specific plan, and county zoning and building ordinances, and *must be approved*.¹¹ (Napa County Code, § 17.46.040, subd. C.) The only condition of

¹¹ These standards include the following: (1) the lot line adjustment will result in the transfer of not more than four existing, adjoining legal parcels; (2) the adjustment will not result in a greater number of parcels than originally existed; (3) a nonbuildable parcel will not be made buildable by the adjustment; (4) the lot line adjustment will not reduce parcels that equal or exceed a minimum parcel size established by the applicable zoning district or designated by the Ordinance below the pertinent minimum or set size, unless a corresponding number of parcels that are (a) smaller than such minimum, (b) included within the lot line adjustment and (c) located in the same zoning district will be increased to exceed such minimum size; (5) subject to exception, the resultant parcel will not be

approval that the director of public works can impose is a deed condition to ensure that standard (12) above is satisfied prior to recording the deed/s consummating the adjustment. (*Ibid.*)

Sierra Club argues we should not pay any deference to the County's classification of sequential lot line adjustments, but surely that is not the law. Otherwise, why would the governing regulations acknowledge that the local public agency is the most appropriate entity to determine what is ministerial, based on analysis of its own laws and regulations, and urge that the agency make that determination in *its* implementing regulations? (Regs., §§ 15022, subd. (a)(1)(B), 15268, subds. (a), (c).)

Sierra Club also maintains that CEQA requires individualized decisions concerning lot line adjustments, decisions that are inherently discretionary. Appellant misunderstands the distinction between discretionary and ministerial decisions. "The statutory distinction between discretionary and purely ministerial projects implicitly recognizes that unless a public agency can shape the project in a way that would respond to concerns raised in an [environmental impact report], or its functional equivalent, environmental review would be a meaningless exercise." (*Mountain Lion Foundation v. Fish & Game Com.* (1997) 16 Cal.4th 105, 117; *Health First v. March Joint Powers Authority* (2009) 174 Cal.App.4th 1135, 1143 (*Health First*).) *Health First* involved a

bisected or internally severed by a road previously dedicated for public use; (6) unless waived by a granted variance, the resultant parcels will comply with all parcel design provisions in the Zoning Ordinance; (7) the resultant parcels will have legal access to a publicly maintained road, as shown on the application map; (8) no public utility easement shown on a final or parcel map will be adversely affected by the adjustment; (9) the size of an adjusted parcel that will use an individual sewage system must equal or exceed the minimum parcel size established by the applicable code; (10) if the adjustment reduces a parcel greater than 10 acres to less than 10 acres, the resulting parcel must be connected to a public sewer or be suitable for an on-site sewage disposal system or qualify for such system on an abutting parcel; (11) subject to exception, after recordation of the deed consummating the adjustment, no recorded security interest will encumber only a portion of any resulting parcel; and (12) the transfer of property from one parcel to the adjoining parcel will not enable more parcels to be created through future subdivision than could have been created through merger and resubdivision of the original parcels. (Napa County Code, § 17.46.040, subd. C.)

challenge to the review of a grocer's design plan application for a large warehouse distribution facility. Review of the plan entailed deciding whether the application was in keeping with the requirements, fixed standards and proposed mitigation measures set forth in the specific plan, the environmental impact report and the design guidelines. The review team accomplished its mission by completing a checklist of 125 yes or no questions. As such it exercised no discretion and instead acted ministerially. (*Health First, supra*, at p. 1144.)

The ministerial/discretionary distinction has also been framed this way: "As applied to private projects, the purpose of CEQA is to minimize the adverse effects of new construction on the environment. To serve this goal the act requires assessment of environmental consequences where government has the power through its regulatory powers to eliminate or mitigate one or more adverse environmental consequences a study could reveal. Thus the touchstone is whether the approval process involved allows the government to shape the project in any way which could respond to any of the concerns which might be identified in an environmental impact report. And when is government foreclosed from influencing the shape of the project? Only when a private party can legally compel approval without any changes in the design of its project which might alleviate adverse environmental consequences." (*Friends of Westwood, Inc. v. City of Los Angeles* (1987) 191 Cal.App.3d 259, 266-267, italics omitted (*Friends of Westwood*).

Following *Friends of Westwood*, the court in *Leach v. City of San Diego* (1990) 220 Cal.App.3d 389, 394-395 held that a municipality was not required to prepare an environmental impact report before being permitted to draft water from a reservoir; despite environmental consequences, the municipality had little or no ability to minimize in any significant way the environmental damages that might be identified in the report. As one reviewing court recently put it, quoting from a major treatise: "CEQA does not apply to an agency decision simply because the agency may exercise some discretion in approving the project or undertaking. Instead to trigger CEQA compliance, the discretion must be of a certain kind; it must provide the agency with the ability and authority to

“mitigate . . . environmental damage” to some degree.’ [Citations.]” (*San Diego Navy Broadway Complex Coalition v. City of San Diego* (2010) 185 Cal.App.4th 924, 934 (*San Diego Navy*)).

Here, the Map Act exempts from discretionary reviews, exactions and conditions those lot line adjustments that fit the specifications of section 66412(d). Local agency review is expressly limited to determining whether the resulting lots will conform to the local general plan, any applicable specific or coastal plan, and building and zoning ordinances. (*Ibid.*) Section 66412 describes a prototypical ministerial approval process, and indeed approval of a lot line adjustment application has been characterized as involving “only a ministerial decision,” as contrasted with a subdivision proposal. (*Loewenstein v. City of Lafayette* (2002) 103 Cal.App.4th 718, 721.) In other words, “the regulatory function of the approving agency is strictly circumscribed by the Legislature in a lot line adjustment, with very little authority as compared to the agency’s function and authority in connection with a subdivision.” (*San Dieguito Partnership v. City of San Diego, supra*, 7 Cal.App.4th at p. 760.)

In keeping with section 66412(d), the procedure for approving lot line adjustments under the Ordinance involves only ministerial acts unless a variance or use permit is involved. The fixed approval standards delineate objective criteria or measures which merely require the agency official to apply the local law—e.g, building and zoning code provisions—to the facts as presented in a given lot line adjustment application. (Regs., § 15369.) The approval process is one of determining conformity with applicable ordinances and regulations, and the official has no ability to exercise discretion to mitigate environmental impacts. (*Id.*, § 15357; *San Diego Navy, supra*, 185 Cal.App.4th at p. 934.)

Sierra Club cites *La Fe, Inc. v. County of Los Angeles* (1999) 73 Cal.App.4th 231 for the notion that lot line adjustments can affect development potential, and thus their approval constitutes a project subject to CEQA. However, CEQA only applies to *discretionary* projects, and we have determined that lot line adjustments under the Ordinance entail only ministerial acts. The *La Fe* court found that lot line adjustments

constituted development under the Coastal Act that fell within the permit jurisdiction of the California Coastal Commission, and as such the commission had jurisdiction to deny the owner’s application for a coastal development permit or waiver. (*Id.* at pp. 239-242.) *La Fe* involved primarily the authority of a *state agency*—the Coastal Commission—over “development” as defined distinctly in the *Coastal Act* to include “any other division of land, including lot splits” (Pub. Resources Code, § 30106.) The issue of statutory interpretation posed by *La Fe* is thus inapposite to the case at hand. Further, the lot line adjustment in question would have made all the lots accessible to a public street, but the street could not facilitate adequate access to the lots by firefighting equipment. On the other hand, the Ordinance would not allow such an outcome, because it prohibits lot line adjustments that render a nonbuildable parcel buildable, and defines buildable as including access rights to a public street. (Napa County Code, § 17.46.040, subd. C.)

Finally, it bears pointing out that the Ordinance did nothing to change existing land use policies and regulations in the County’s general plan and building and zoning ordinances, and it in fact codified the County’s existing, legal practice of allowing Map Act, exempt sequential lot line adjustments that conform to other laws to be approved ministerially. Thus the Ordinance does not enable any development beyond what already is possible through existing land use policies and zoning laws.

III. DISPOSITION

In light of our conclusion that the approval of a lot line adjustment under the Ordinance is a ministerial act and thus not subject to CEQA, we need not consider Sierra Club’s remaining CEQA arguments.

The judgment is affirmed. Parties to bear their own costs on appeal.

Reardon, J.

We concur:

Ruvolo, P.J.

Sepulveda, J.*

Sierra Club v. Napa County Board of Supervisors, A130980

* Retired Associate Justice of the Court of Appeal, First Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Trial Court: Napa County Superior Court

Trial Judge: Hon. Francisca P. Tisher

Counsel for Appellant: Block, DeVincenzi & Zelazny
Kevin P. Block

Counsel for Respondents: Robert Westmeyer
County Counsel
Laura J. Anderson
Deputy County Counsel

Miller Starr Regalia
Arthur F. Coon

Counsel for Amicus Curiae on
Behalf of Respondents: Allen Matkins Leck Gamble Mallory & Natsis
Michael Patrick Durkee
David H. Blackwell
Thomas P. Tunny

Sierra Club v. Napa County Board of Supervisors, A130980

RECORDING REQUESTED BY:

JAVED ELLAHIE
The Ellahie Law Firm
12 S. First St., Suite 600
San Jose, Ca 95113

DOCUMENT: 18382343

Pages: 3



Fees ... 13 00
Taxes ...
Copies
AMT PAID 13 00

WHEN RECORDED MAIL TO:

James & Nancy Thompson
17200 Los Robles Way
Los Gatos, CA 95030

BRENDA DAVIS
SANTA CLARA COUNTY RECORDER
Recorded at the request of
Grantee

RDE # 010
5/20/2005
1:58 PM

Parcel Number(s): 532-36-075, -076 & -077

TRUST TRANSFER DEED

Documentary transfer tax is none. No Consideration.

James McNair Thompson and Nancy A. Thompson

hereby CONVEY to

James McNair Thompson and Nancy A. Thompson, Trustees JNT Trust

the following described real property in the City of Los Gatos, in the
County of Santa Clara, State of California:

See Exhibit A

Dated: ^{MAY} April 6, 2005
NAT

James McNair Thompson

STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Nancy A. Thompson

On ^{May 6} April 6, 2005, before me, GIRISH H PATEL, a Notary Public in and for said
State, personally appeared James McNair Thompson and Nancy A. Thompson, ~~personally known~~
~~to me for~~ proved to me on the basis of satisfactory evidence) to be the persons whose
names are subscribed to the within instrument and acknowledged to me that they executed
the same in their authorized capacities, and that by their signatures on the instrument
the persons, or the entity upon behalf of which the persons acted, executed the
instrument.

Witness my hand and official seal.

Notary Signature



MAIL TAX STATEMENTS TO: James & Nancy Thompson
17200 Los Robles Way
Los Gatos, CA 95030

the following described real property in the State of California, County of Santa Clara, Town of Los Gatos:

PARCEL ONE.

PORTION OF LOTS 15 AND 16, AS SHOWN UPON THAT CERTAIN MAP ENTITLED, "MAP OF LOS ROBLES SUBDIVISION", WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, ON AUGUST 12, 1929 IN BOOK "X" OF MAPS, AT PAGES 48 AND 49, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE DIVIDING LINE BETWEEN LOTS 15 AND 16 WHERE THE SAME IS INTERSECTED BY THE TERMINUS OF THE CENTER LINE OF LOS ROBLES WAY, AS SAID LOTS AND WAY ARE SHOWN UPON THE MAP HEREINABOVE REFERRED TO; THENCE RUNNING ALONG THE DIVIDING LINE BETWEEN SAID LOTS 15 AND 16, SOUTH 62° 05' EAST, 276.3 FEET TO THE EASTERLY COMMON CORNER OF SAID LOTS 15 AND 16; THENCE RUNNING ALONG THE SOUTHEASTERLY LINE OF SAID LOT 15, SOUTH 34° 30' WEST, 194 FEET TO THE MOST SOUTHERLY CORNER THEREOF. THENCE RUNNING NORTH 62° 05' WEST, AND ALONG THE SOUTHWESTERLY LINE OF SAID LOT 15 210 FEET; THENCE LEAVING SAID LINE AND RUNNING NORTH 34° 30' EAST AND PARALLEL WITH THE SOUTHEASTERLY LINE OF SAID LOT 15, 129 FEET; THENCE NORTH 62° 05' WEST AND PARALLEL WITH THE SOUTHWESTERLY LINE OF SAID LOT 15, 148.30 FEET, MORE OR LESS, TO A POINT ON THE DIVIDING LINE BETWEEN LOTS 14 AND 16 OF SAID LOS ROBLES SUBDIVISION THENCE RUNNING NORTH 34° 30' EAST AND ALONG SAID DIVIDING LINE 65 FEET TO A POINT FROM WHICH THE POINT OF BEGINNING OF THIS DESCRIPTION BEARS SOUTH 62° 05' EAST THENCE LEAVING SAID DIVIDING LINE AND RUNNING SOUTH 62° 05' EAST 82 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

PARCEL TWO:

PORTION OF LOT 16, AS SHOWN UPON THAT CERTAIN MAP ENTITLED, "MAP OF LOS ROBLES SUBDIVISION", WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, ON AUGUST 12, 1929 IN BOOK "X" OF MAPS, AT PAGES 48 AND 49, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE DIVIDING LINE BETWEEN LOTS 15 AND 18 WHERE THE SAME IS INTERSECTED BY THE TERMINUS OF THE CENTER LINE OF LOS ROBLES WAY, AS SAID LOTS AND WAY ARE SHOWN UPON THE MAP HEREINABOVE REFERRED TO; THENCE RUNNING ALONG THE DIVIDING LINE BETWEEN SAID LOTS 15 AND 16, SOUTH 62° 05' EAST, 276.3 FEET TO THE EASTERLY COMMON CORNER OF SAID LOTS 15 AND 16; THENCE RUNNING ALONG THE SOUTHEASTERLY LINE OF SAID LOT 16, NORTH 34° 30' EAST, 207.4 FEET TO THE MOST EASTERLY CORNER OF SAID LOT 16; THENCE ALONG THE NORTHEASTERLY LINE OF SAID LOT 16, NORTH 61° 29' WEST; 360.60 FEET TO THE MOST EASTERLY CORNER OF LOT 12; THENCE RUNNING SOUTH 34° 30' WEST, AND ALONG THE NORTHWESTERLY LINE OF SAID LOT 16, 207.4 FEET, MORE OR LESS, TO A POINT FROM WHICH 62° 05' EAST, THENCE RUNNING SOUTH 62° 05' EAST, 84.03 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

PARCEL THREE:

BEGINNING AT A ONE INCH BAR IN THE SOUTHWESTERLY BOUNDARY OF THAT CERTAIN 24.98 ACRE TRACT OF LAND CONVEYED BY SCOTT INVESTMENT COMPANY, A CORPORATION, TO L BALL AND GRACE BALL, HIS WIFE, BY DEED DATED FEBRUARY 27, 1945 AND RECORDED MARCH 21, 1945 IN BOOK 1250 OF OFFICIAL RECORDS, AT PAGE 168, SANTA CLARA COUNTY RECORDS, AND DISTANT THEREON SOUTH 62° EAST, 174.60 FEET FROM THE WESTERLY CORNER OF SAID 24.98 ACRE TRACT OF LAND, SAID POINT OF BEGINNING ALSO BEING THE MOST WESTERLY CORNER OF THAT CERTAIN PARCEL OF LAND CONVEYED BY TOM C. HAIRE, ET UX, TO JOSEPH W. OSTLE, ET UX, BY DEED DATED NOVEMBER 4, 1947, AND RECORDED NOVEMBER 5, 1947 IN BOOK 1524 OF OFFICIAL RECORDS, AT PAGE 548; THENCE RUNNING ALONG SAID SOUTHWESTERLY BOUNDARY LINE OF THE 24.98 ACRE PARCEL OF LAND SOUTH 62° EAST 265.30 FEET TO THE POINT OF INTERSECTION THEREOF WITH THE CENTER LINE OF A TWENTY FOOT RIGHT OF WAY; THENCE ALONG SAID CENTER LINE NORTH 0° 33' EAST 56.34 FEET TO THE MOST SOUTHERLY CORNER OF SAID PARCEL OF LAND SO CONVEYED TO OSTLE, NORTH 62° WEST, 184 FEET THENCE ALONG A SOUTHEASTERLY LINE OF SAID PARCEL SO CONVEYED TO OSTLE SOUTH 75° 51' WEST, 74.51 FEET TO THE POINT OF BEGINNING, AND BEING A PART OF THE SAID 24.98 ACRE TRACT IN THE RANCHO RINCONADA DE LOS GATOS, AND ALSO BEING A PORTION OF THAT CERTAIN PARCEL OF LAND DESIGNATED AS PARCEL NO. 3 ON THAT CERTAIN MAP ENTITLED, "RECORD OF SURVEY OF A PORTION OF LAND OF L.N. AND GRACE BALL, BEING A PORTION OF THE KENNEDY TRACT IN THE RANCHO RINCONADA DE LOS GATOS, SANTA CLARA COUNTY, CALIFORNIA", AND WHICH SAID MAP WAS RECORDED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, ON AUGUST 8, 1946 IN BOOK 9 OF MAPS, AT PAGE 28.

PARCEL FOUR:

TOGETHER WITH A NON-EXCLUSIVE RIGHT OF WAY FOR INGRESS AND EGRESS OVER A STRIP OF LAND 20 FEET IN WIDTH, THE CENTER LINE OF WHICH IS THE EASTERLY LINE OF PARCEL NO. 3 HEREINABOVE DESCRIBED AND THE EASTERLY LINE OF THE CERTAIN PARCEL OF LAND CONVEYED BY TOM C. HAIRE, ET UX, TO JOSEPH W. OSTLE, ET UX, BY DEED DATED NOVEMBER 4, 1947 AND RECORDED NOVEMBER 5, 1947 IN BOOK 1524 OF OFFICIAL RECORDS, AT PAGE 548 AND SAID CENTER LINE BEING MORE FULLY DESCRIBED AS BEGINNING AT THE MOST SOUTHERLY CORNER OF PARCEL NO. 3 HEREINABOVE DESCRIBED, AND RUNNING THENCE NORTH 0°

EXHIBIT A

33° EAST, 124.61 FEET, NORTH 2° 14' WEST, 50.04 FEET AND NORTH 11° 52' WEST, 100.52 FEET TO THE SOUTHERLY
LINE OF THE PROPOSED EASTERLY EXTENSION OF HARDING AVENUE, SAID POINT ALSO BEING THE
NORTHEASTERLY CORNER OF SAID PARCEL OF LAND SO CONVEYED TO OSTLE.

EXCEPTING FROM PARCEL 4 THAT PORTION THEREOF LYING WITHIN THE DEED RECORDED JUNE 5, 1978 IN
BOOK D71 7, OFFICIAL RECORDS, PAGE 171, SANTA CLARA COUNTY RECORDS,

This is to certify that this is a
true copy of the document
on file in this office.

ATTEST:

Regina Alconradi

CLERK-RECORDER
Santa Clara, CA
07/27/2021

6035362

D 717 PAGE 171
FILED FOR RECORD
AT REQUEST OF
Bradley Clifford
JUN 5 10 22 AM '78

OFFICIAL RECORDS
SANTA CLARA COUNTY
GEORGE A. MANN
REGISTRAR RECORDER

Order No.
Escrow No.
Loan No.

WHEN RECORDED MAIL TO:
Bradley Clifford
246 Harding Ave
Los Gatos, CA 95030

D 717 PAGE 171

SPACE ABOVE THIS LINE FOR RECORDER'S USE

MAIL TAX STATEMENTS TO:
Bradley & Polly Clifford
246 Harding Ave
Los Gatos, CA 95030

DOCUMENTARY TRANSFER TAX \$ NONE
___ COMPUTED ON FULL VALUE OF PROPERTY CONVEYED
___ COMPUTED ON FULL VALUE LESS LIENS AND
ENCUMBRANCES REMAINING AT TIME OF SALE
CONSIDERATION LESS THAN \$100-
Bradley Clifford
Signature of Declarant or Agent determining tax - Firm Name

QUITCLAIM DEED

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

R. BLAINE THOMPSON and WINIFRED M. THOMPSON, his wife

do hereby REMISE, RELEASE AND FOREVER QUITCLAIM to

BRADLEY CLIFFORD and POLLY CLIFFORD,
his wife, as joint tenants

the real property in the City of
County of Santa Clara

, State of California, described as

FOR DESCRIPTION OF PREMISES SEE EXHIBIT "A" ATTACHED HERETO AND
MADE A PART HEREOF

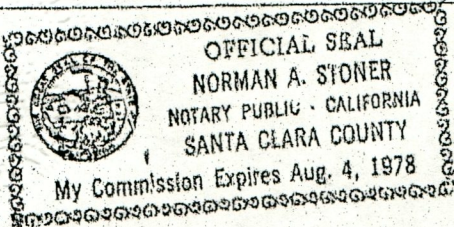
Dated 4/28/78
STATE OF CALIFORNIA
COUNTY OF Santa Clara } ss.

R. Blaine Thompson
Winifred M. Thompson

On 4/28/78
before me, the undersigned a Notary Public in and for said
State, personally appeared R. Blaine Thompson
and Winifred M. Thompson

known to me to be the person S whose name S are
subscribed to the within instrument and acknowledged that
they executed the same.

WITNESS my hand and official seal.
Signature Norman A. Stoner



(This area for official notarial seal)

EXHIBIT "A" ATTACHED TO DEED FROM THOMPSON TO CLIFFORD

That parcel of land in the County of Santa Clara, State of California, described as follows:

D 717 PAGE 172

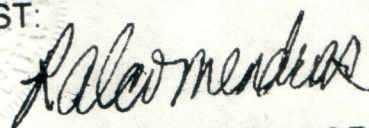
BEGINNING at a one inch bar in the Southwesterly boundary of that 24.98 acre tract of land conveyed to L. N. Ball, et ux, by Deed recorded March 21, 1945 in Book 1250 Official Records, page 168, and distant thereon S. 62° E. 174.60 feet from the Westerly corner of said 24.98 acre tract of land; thence parallel with the Northwesterly boundary of said 24.98 acre tract of land N. 34° E. 232.45 feet to a 3/4 inch iron pipe set in the Southwesterly line of the proposed extension of Harding Avenue; thence along the Southwesterly line of proposed extension of Harding Avenue S. 62° E., 93.65 feet to a point in the center line of a right of way 20 feet wide, hereinafter referred to; thence along the center line of said 20 foot right of way S. 11° 52' E. 100.82 feet, S. 2° 14' E., 50.04 feet and S. 0° 33' W., 68.27 feet to the point of intersection of said center line with a line running parallel with and distant Northeasterly at right angles 50 feet from the Southwesterly line of said 24.98 acre tract, said point of intersection being distant N. 0° 33' E., 56.34 feet from a point in the Southwesterly line of said 24.98 acre tract, said last mentioned point being distant along said Southwesterly line S. 62° E., 265.30 feet from the point of beginning of this description; thence leaving the center line of said 20 foot right of way and along said line that is parallel with and distant Northeasterly 50 feet at right angles from the Southwesterly line of said 24.98 acre tract N. 62° W., 184.00 feet to a point in said parallel line that is distant thereon S. 62° E., 50 feet from the intersection of said parallel line with the first course of this description; thence S. 75° 51' W., 74.51 feet to the point of beginning and being a portion of said 24.98 acre tract in the Rancho Rinconada de Los Gatos and being a portion of that parcel of land designated as Parcel No. 3 on that Map of Record of Survey of a portion of land of L. N. and Grace Ball, recorded on August 8, 1946, in Book 9 of Maps, page 28, Santa Clara County Records.

RECORDER'S MEMO
FAINT WRITING OR TYPING
OR CARBON COPIES MAKES
POOR PHOTOGRAPHIC RECORD

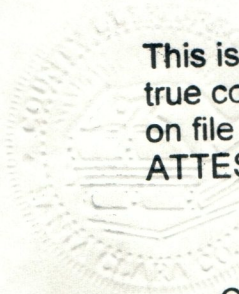
This is to certify that this is a
true copy of the document
on file in this office.

ATTEST:

AUG 20 2021



COUNTY CLERK-RECORDER
SANTA CLARA COUNTY, CALIFORNIA



6619884

6619884 F 72 PAGE 400

Order No.
Escrow No.
Loan No.

F 72 PAGE 400

FILED FOR RECORD
AT REQUEST OF

Daniel E. Williams
JAN 9 4 51 PM '80

OFFICIAL RECORDS
SANTA CLARA COUNTY
GEO. S. VAHLE
REGISTERED RECORDER

WHEN RECORDED MAIL TO:
DANIEL E. WILLIAMS
304 HARDING AVENUE
LOS GATOS, CA 95030

SPACE ABOVE THIS LINE FOR RECORDER'S USE

MAIL TAX STATEMENTS TO:

DOCUMENTARY TRANSFER TAX \$

SAME AS ABOVE

CONSIDERATION UNDER 100.00
COMPUTED ON FULL VALUE OF PROPERTY CONVEYED
COMPUTED ON FULL VALUE LESS LIENS AND
ENCUMBRANCES REMAINING AT TIME OF SALE

Signature of Declarant or Agent determining tax -- Firm Name

QUITCLAIM DEED

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged
BRADLEY CLIFFORD AND POLLY CLIFFORD, his wife

do hereby REMISE, RELEASE AND FOREVER QUITCLAIM to

DANIEL ENOCH WILLIAMS AND RAYBORNA S. WILLIAMS, his wife as joint tenants

the real property in the City of LOS GATOS
County of SANTA CLARA

, State of California, described as

LOT 67, AS SHOWN ON THE MAP OF TRACT NO. 1817 LOS GATOS TERRACE UNIT
NO. 2, WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF
THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, ON JULY 2, 1958
IN BOOK 95 OF MAPS, AT PAGE 2.

Dated DECEMBER 17, 1979

STATE OF CALIFORNIA
COUNTY OF SANTA CLARA } ss.

Bradley Clifford
Polly Clifford

On DECEMBER 17, 1979

before me, the undersigned, a Notary Public in and for said
State, personally appeared

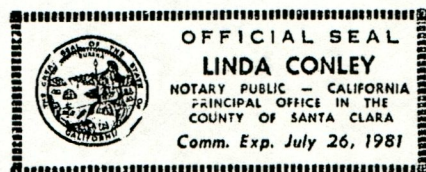
BRADLEY CLIFFORD AND POLLY
CLIFFORD

known to me to be the persons whose name S ARE
subscribed to the within instrument and acknowledged that
THEY executed the same.

WITNESS my hand and official seal.

Signature

Linda Conley



(This area for official notarial seal)

MAIL TAX STATEMENTS AS DIRECTED ABOVE

1085 (10/69)

This is to certify that this is a
true copy of the document
on file in this office.

AUG 20 2021

ATTEST



COUNTY CLERK-RECORDER
SANTA CLARA COUNTY, CALIFORNIA

D 817 PAGE 504
6079048

Order No.
Escrow No.
Loan No.

FILED FOR RECORD
AT REQUEST OF

Daniel E. Williams
JUL 17 4 20 PM '78

WHEN RECORDED MAIL TO:

Daniel E. Williams
304 Harding Ave
Los Gatos, CA 95030

3
D 817 PAGE 504

OFFICIAL RECORDS
SANTA CLARA COUNTY
GEORGE A MANN
REGISTRAR RECORDER

SPACE ABOVE THIS LINE FOR RECORDER'S USE

MAIL TAX STATEMENTS TO:
Daniel & Rayborna Williams
304 Harding Ave
Los Gatos, CA 95030

DOCUMENTARY TRANSFER TAX \$ _____
____ COMPUTED ON FULL VALUE OF PROPERTY CONV YED
____ COMPUTED ON FULL VALUE LESS LIENS AND
ENCUMBRANCES REMAINING AT TIME OF SALE

[Signature]
Signature of Declarant or Agent Determining tax - Firm Name

QUITCLAIM DEED

*Consideration
under \$100.00*

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

R. BLAINE THOMPSON and WINIFRED M. THOMPSON, his wife

do hereby REMISE, RELEASE AND FOREVER QUITCLAIM to

DANIEL ENOCH WILLIAMS and RAYBORNA S. WILLIAMS,
his wife, as joint tenants

the real property in the City of Los Gatos
County of Santa Clara

, State of California, described as

Lot 67 as shown on the Map of Tract No. 1817 Los Gatos Terrace
Unit No. 2, which Map was filed for record in the office of
the Recorder of the County of Santa Clara, State of California,
on July 2, 1958 in Book 95 of Maps, at page 2.

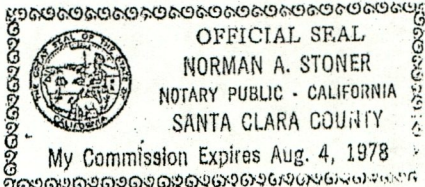
Dated 4/28/78
STATE OF CALIFORNIA
COUNTY OF Santa Clara } ss.

R. Blaine Thompson
Winifred M. Thompson

On 4/28/78
before me, the undersigned, a Notary Public in and for said
State, personally appeared R. Blaine Thompson
and Winifred M. Thompson

known to me to be the person S whose name s are
subscribed to the within instrument and acknowledged that
they executed the same.

WITNESS my hand and official seal.
Signature Norman A. Stoner



(This area for official notarial seal)

MAIL TAX STATEMENTS AS DIRECTED ABOVE

This is to certify that this is a true copy of the document on file in this office.

ATTEST:

AUG 20 2021



COUNTY CLERK-RECORDER
SANTA CLARA COUNTY, CALIFORNIA

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Town of Los Gatos
110 E Main St,
Los Gatos CA 95030
Attn: Town Council

October 8th, 2021

**17200 Los Robles Way, Los Gatos
Appeal Rebuttal re: LLA M 21-001**

Councilmembers:

As this is the second appeal for this project, I am limiting my comments here to points that I did not previously address in my original DRC submission and in the Appeal Rebuttal provided to the Planning Commission. I would respectfully request that you review these documents as they contain more detailed arguments.

I would like you to further consider these 4 points, which are worthy of consideration

1. The Appellant has no Grounds for Appeal:

The Appeal Packet requires that interested parties may appeal Residential projects if they are:

*“A person or persons or entity or entities who own property or reside within 1,000 feet of a property for which a decision has been rendered, **and can demonstrate that their property will be injured by the decision.**”*

So I really have to question the grounds for an Appeal at all. This is a second Appeal and ‘Loss of Privacy’ is not an Injury.

2. The Appellant Questions why this LLA is Categorically Exempt from CEQA:

The project is Categorically Exempt pursuant to the adopted Guidelines for the Implementation of the California Environmental Quality Act, Section 15061(b)(3): *A project is exempt from CEQA when the activity is covered by the common sense exemption that CEQA only applies to Projects, which have the potential for causing a significant effect on the environment.* Where it can be seen with certainty that there is no possibility that the activity in question will have a significant effect on the environment, the activity is not subject to CEQA. The project simply proposes to modify lot lines between three legal, adjacent parcels.

No development is proposed at this time. So there can be no Environmental Impact with the LLA.

3. The Appellant also uses Sections of the SMA that are inapplicable to this LLA:

The Subdivision Map Act Section 66412 explicitly singles out LLAs of this nature by excluding other provisions of the Act, which the Appellant is attempting to use to disqualify it:

This division [SMA] shall be inapplicable to any of the following:

(d) A lot line adjustment between four or fewer existing adjoining parcels, where the land taken from one parcel is added to an adjoining parcel, and where a greater number of parcels than originally existed is not thereby created, if the lot line adjustment is approved by the local agency, or advisory agency. *A local agency or advisory agency shall limit its review and approval to a determination of whether or not the parcels resulting from the lot line adjustment will conform to the local general plan, any applicable specific plan, any applicable coastal plan, and zoning and building ordinances.*

4. The Appellant further Suggests that 2 of the 3 Parcels should be Merged:

The Appellant has gone to great lengths to attempt to hijack this appeal hearing and turn it into a Request for Merger hearing. As a pre-cursor to the LLA application, the Town required the Owner to address the legality of the Parcels in question. Town has essentially made a “**Determination of Non-Merger**” by providing, after exhaustive research and consultant reviews, a recorded Certificate of Compliance – Doc# 25076094 for the Parcel 536-32-077 [attached] in which it explicitly states:

This certificate relates only to issues of compliance or noncompliance with the Subdivision Map Act of the State of California and the Town of Los Gatos Subdivision Ordinance enacted pursuant hereto. The parcels described herein may be sold, leased, or financed without further compliance with the Subdivision Map Act or any local ordinance enacted pursuant thereto. Development of the parcels may require issuance of a permit or permits, or other grant or grants of approval.

In conclusion - It should be pointed out that the owner of the 3 parcels waited until the Certificates of Compliance were Approved before selling 2 of them [536-32-076 and 077] to a second party who is now a co-applicant in this LLA. The new owner purchased these 2 parcels with the explicit understanding that they were in fact 2 parcels [per the CoC]. It would be complex and expensive to ‘undo’ this sale.

I would ask the Town Council to consider the ‘before’ and ‘after’ lot configurations proposed by the LLA and determine which best fits the Town Zoning Ordinance for R1:20 residential lots; ratify the decisions of the DRC and the Planning Commission to approve the LLA; and finally to deny the appeal.

Thank you

Tony Jeans

25076094

Regina Alcomendras

Santa Clara County - Clerk-Recorder

08/24/2021 12:39 PM

Titles: 1 Pages: 7

Fees: \$0.00

Tax: \$0

Total: \$0.00

Recording Requested by:

TOWN OF LOS GATOS

WHEN RECORDED MAIL TO:

CLERK

TOWN OF LOS GATOS

110 E. MAIN STREET

LOS GATOS, CA 95030

(SPACE ABOVE BAR FOR RECORDER'S USE)

(RECORD WITHOUT FEE UNDER GOVERNMENT CODE SECTIONS 27383 and 6103)

CERTIFICATE OF COMPLIANCE

17200 LOS ROBLES WAY

LOS GATOS, CA 95030

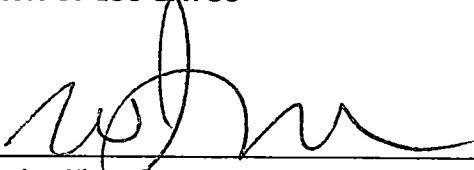
APN 532-36-075, 532-36-077

CERTIFICATE OF COMPLIANCE
17200 Los Robles Way, Los Gatos, CA 95030

NOTICE IS HEREBY GIVEN under the provisions of Section 66499.35 of the Government Code of the State of California, that the application of **Daran Goodsell, Successor Trustee of the JNT Trust (The Revocable Thompson Family Trust) dated January 19, 2005**, subject to Item No. 11 for parcels then owned by them and located at **17200 Los Robles Way, Los Gatos California; APNs 532-36-075 and 532-36-077**, was approved by the Development Review Committee of the Town of Los Gatos on May 25th, 2021; Subdivision Application M-21-001, are confirmed as two separate parcels as described on the attached Exhibits "A" and "C", and generally shown on Exhibits "B" and "D".

This certificate relates only to issues of compliance or noncompliance with the Subdivision Map Act of the State of California and the Town of Los Gatos Subdivision Ordinance enacted pursuant hereto. The parcels described herein may be sold, leased, or financed without further compliance with the Subdivision Map Act or any local ordinance enacted pursuant thereto. Development of the parcels may require issuance of a permit or permits, or other grant or grants of approval.

TOWN OF LOS GATOS



Woojae Kim - Town Engineer
R.C.E. No.: 59532; Lic. Exp.: 12/31/2021

8/18/2021
DATE

Acknowledgement Required

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

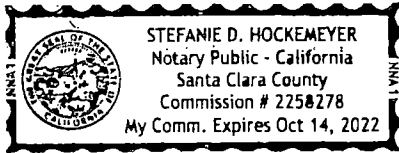
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of Santa Clara)
On 9/18/2021 before me, Stefanie D. Hockemeyer, Notary Public
Date Here Insert Name and Title of the Officer
personally appeared Woojin Kim
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature Stefanie D. Hockemeyer
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document:
Document Date: Number of Pages:
Signer(s) Other Than Named Above:

Capacity(ies) Claimed by Signer(s)

Signer's Name:
Corporate Officer - Title(s):
Partner - Limited General
Individual Attorney in Fact
Trustee Guardian or Conservator
Other:
Signer Is Representing:

Signer's Name:
Corporate Officer - Title(s):
Partner - Limited General
Individual Attorney in Fact
Trustee Guardian or Conservator
Other:
Signer Is Representing:

EXHIBIT "A"

APN 532-36-075

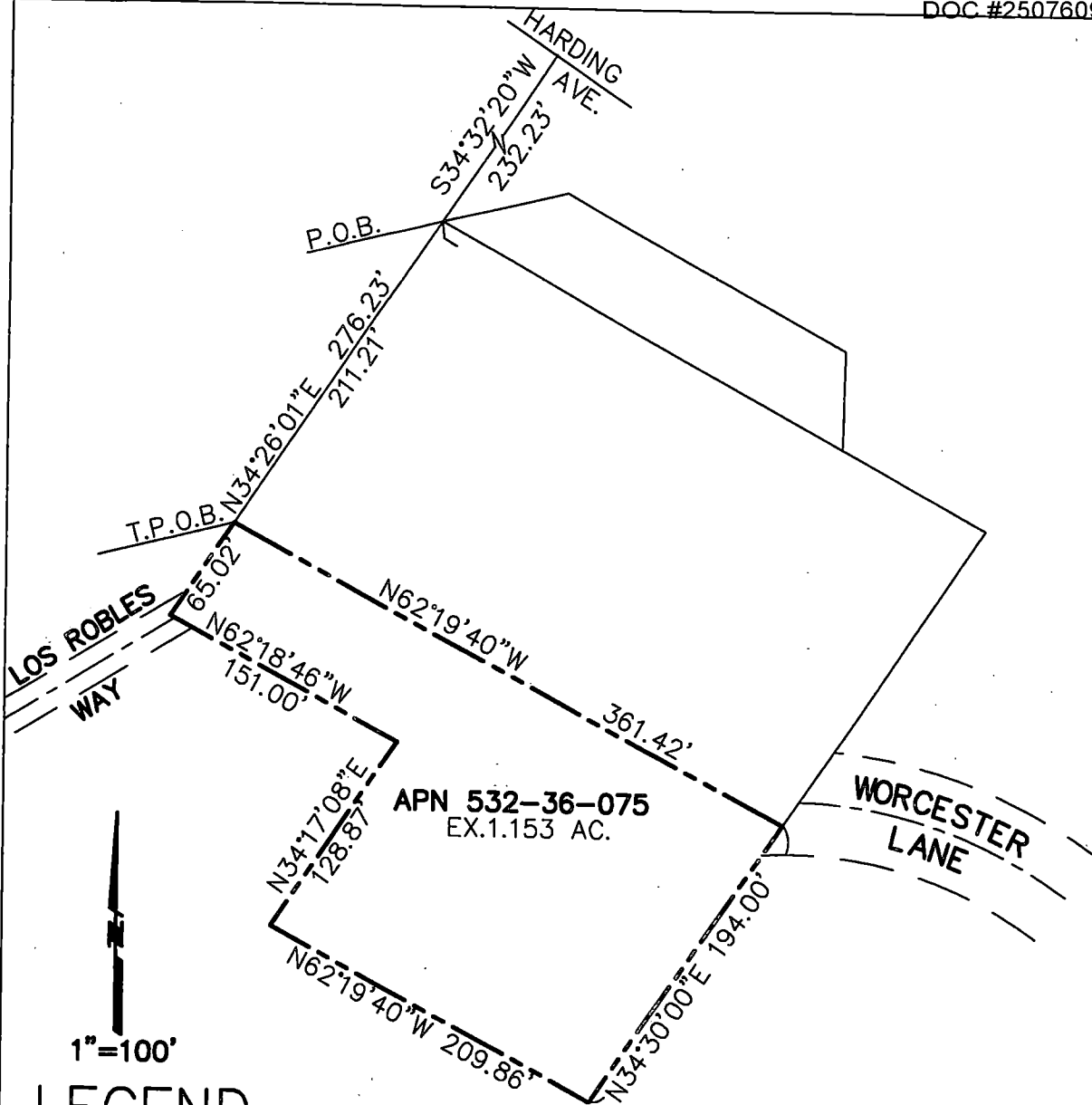
Being a portion of Lots 15 and 16 of the "Map of Los Robles Subdivision" filed August 12, 1929 for record in Volume X of Maps at pages 48 and 49, Santa Clara County Record, situated in the Town of Los Gatos, County of Santa Clara, State of California, more particularly described as follows:

Beginning at a property corner described as found 1 inch diameter axle with no tag, and shown on the Record of Survey Map filed February 23, 1999 for record in Book 712 of Maps at Page 43, Santa Clara County Records, said point being South 34 Degrees 32 Minutes 20 Seconds West a length of 232.23 feet from the southerly right of way line of Harding Avenue; thence South 34 Degrees 26 Minutes 01 Seconds West a length of 276.23 feet to the True Point of Beginning; Thence North 34 Degrees 26 Minutes 01 Seconds East a length of 65.02 feet; thence South 62 Degrees 19 Minutes 40 Seconds East a length of 361.42 feet; thence South 34 Degrees 30 Minutes 00 Seconds West a length of 194.00 feet; thence North 62 Degrees 19 Minutes 40 Seconds West a length of 209.86 feet; thence North 34 Degrees 17 Minutes 08 Seconds East a length of 128.87 feet; thence North 62 Degrees 18 Minutes 46 Seconds West a length of 151.00 feet to the True Point of Beginning.

Containing 1.153 acres more or less



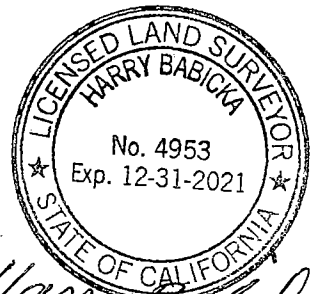
Harry Babicka



1"=100'

LEGEND

EXISTING BOUNDARY	—————
LIMIT OF EASEMENT	- - - - -
POINT OF BEGINNING	P.O.B.
CENTERLINE	—————
TRUE POINT OF BEGINNING	T.P.O.B.
EXISTING R.O.W.	—————
ACRES	AC.



Harry Babicka

EXHIBIT "B"

A PLAT TO ACCOMPANY A DESCRIPTION FOR CERTIFICATE OF COMPLIANCE

WESTFALL ENGINEERS, INC.

EXHIBIT "C"

Parcel name: remainder (APN 532-36-077)

All that certain property situated in the Town of Los Gatos, County of Santa Clara, State of California, more particularly described as follows:

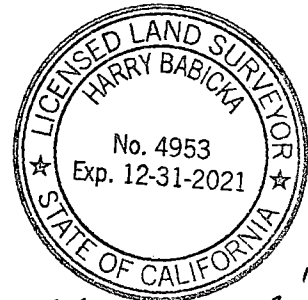
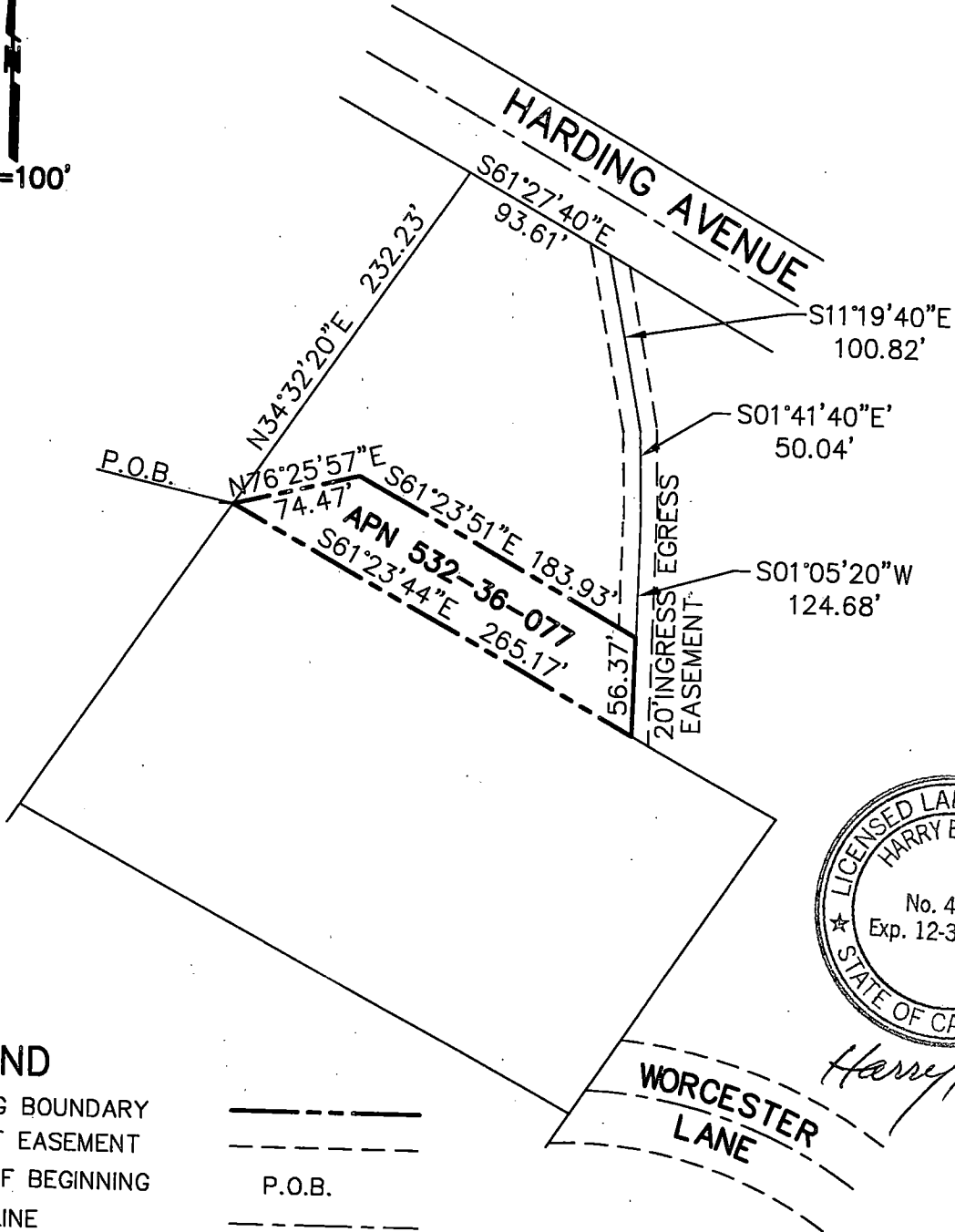
Beginning at a property corner described as found 1 inch diameter axle with no tag, and shown on the Record of Survey Map filed for record in Book 712 of Maps at Page 43, Santa Clara County Records, said point being South 34 Degrees 32 Minutes 20 Seconds West a length of 232.23 feet from the southerly right of way line of Harding Avenue;
Thence North 76 Degrees 25 Minutes 57 Seconds East a length of 74.47 feet; thence South 61 Degrees 23 Minutes 51 Seconds East a length of 183.93 feet to the center of existing 20 feet wide ingress and egress easement recorded in Book 1524, Page 546 Official Records of Santa Clara County; thence along said centerline South 01 Degree 05 Minutes 20 Seconds West a length of 56.37 feet ; thence leaving said centerline along original Southerly boundary of parcel of land described in a deed from L. N. Ball to Tom C Haire North 61 Degrees 23 Minutes 44 Seconds West a length of 265.17 feet to the point of beginning.

Containing 0.258 acres more or less.



Harry Babicka

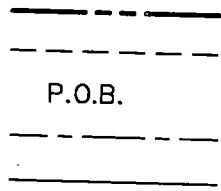
EXHIBIT "D"



Harry Babicka

LEGEND

- EXISTING BOUNDARY
- LIMIT OF EASEMENT
- POINT OF BEGINNING
- CENTERLINE
- ADJOINING BOUNDARY



**A PLAT TO ACCOMPANY A DESCRIPTION
 FOR CETIFICATE OF COMPLIANCE**

WESTFALL ENGINEERS, INC.

25076095

Regina Alcomendras

Santa Clara County - Clerk-Recorder

08/24/2021 12:39 PM

Titles: 1 Pages: 7

Fees: \$0.00

Tax: \$0

Total: \$0.00

Recording Requested by:

TOWN OF LOS GATOS

WHEN RECORDED MAIL TO:

CLERK

TOWN OF LOS GATOS

110 E. MAIN STREET

LOS GATOS, CA 95030

(SPACE ABOVE BAR FOR RECORDER'S USE)

(RECORD WITHOUT FEE UNDER GOVERNMENT CODE SECTIONS 27383 and 6103)

CERTIFICATE OF COMPLIANCE

17200 LOS ROBLES WAY

LOS GATOS, CA 95030

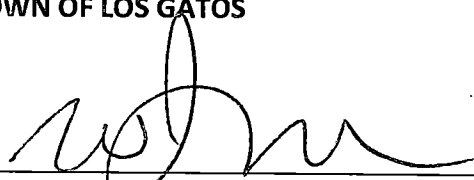
APN 532-36-075, 532-36-077

CERTIFICATE OF COMPLIANCE
17200 Los Robles Way, Los Gatos, CA 95030

NOTICE IS HEREBY GIVEN under the provisions of Section 66499.35 of the Government Code of the State of California, that the application of **Daran Goodsell, Successor Trustee of the JNT Trust (The Revocable Thompson Family Trust) dated January 19, 2005**, subject to Item No. 11 for parcels then owned by them and located at **17200 Los Robles Way, Los Gatos California; APNs 532-36-075 and 532-36-077**, was approved by the Development Review Committee of the Town of Los Gatos on May 25th, 2021; Subdivision Application M-21-001, are confirmed as two separate parcels as described on the attached Exhibits "A" and "C", and generally shown on Exhibits "B" and "D".

This certificate relates only to issues of compliance or noncompliance with the Subdivision Map Act of the State of California and the Town of Los Gatos Subdivision Ordinance enacted pursuant hereto. The parcels described herein may be sold, leased, or financed without further compliance with the Subdivision Map Act or any local ordinance enacted pursuant thereto. Development of the parcels may require issuance of a permit or permits, or other grant or grants of approval.

TOWN OF LOS GATOS



Woojae Kim - Town Engineer
R.C.E. No.: 59532; Lic. Exp.: 12/31/2021.

8/18/2021
DATE

Acknowledgement Required

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

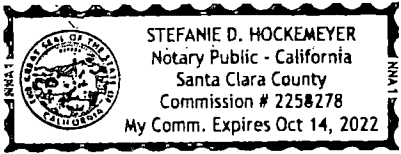
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of Santa Clara)
On 9/18/2021 before me, Stefanie D. Hockemeyer, Notary Public
Date Here Insert Name and Title of the Officer
personally appeared Wojae Kim
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature Stefanie D. Hockemeyer
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____
Document Date: _____ Number of Pages: _____
Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____
 Corporate Officer — Title(s): _____
 Partner — Limited General
 Individual Attorney in Fact
 Trustee Guardian or Conservator
 Other: _____
Signer Is Representing: _____

Signer's Name: _____
 Corporate Officer — Title(s): _____
 Partner — Limited General
 Individual Attorney in Fact
 Trustee Guardian or Conservator
 Other: _____
Signer Is Representing: _____

EXHIBIT "A"

APN 532-36-075

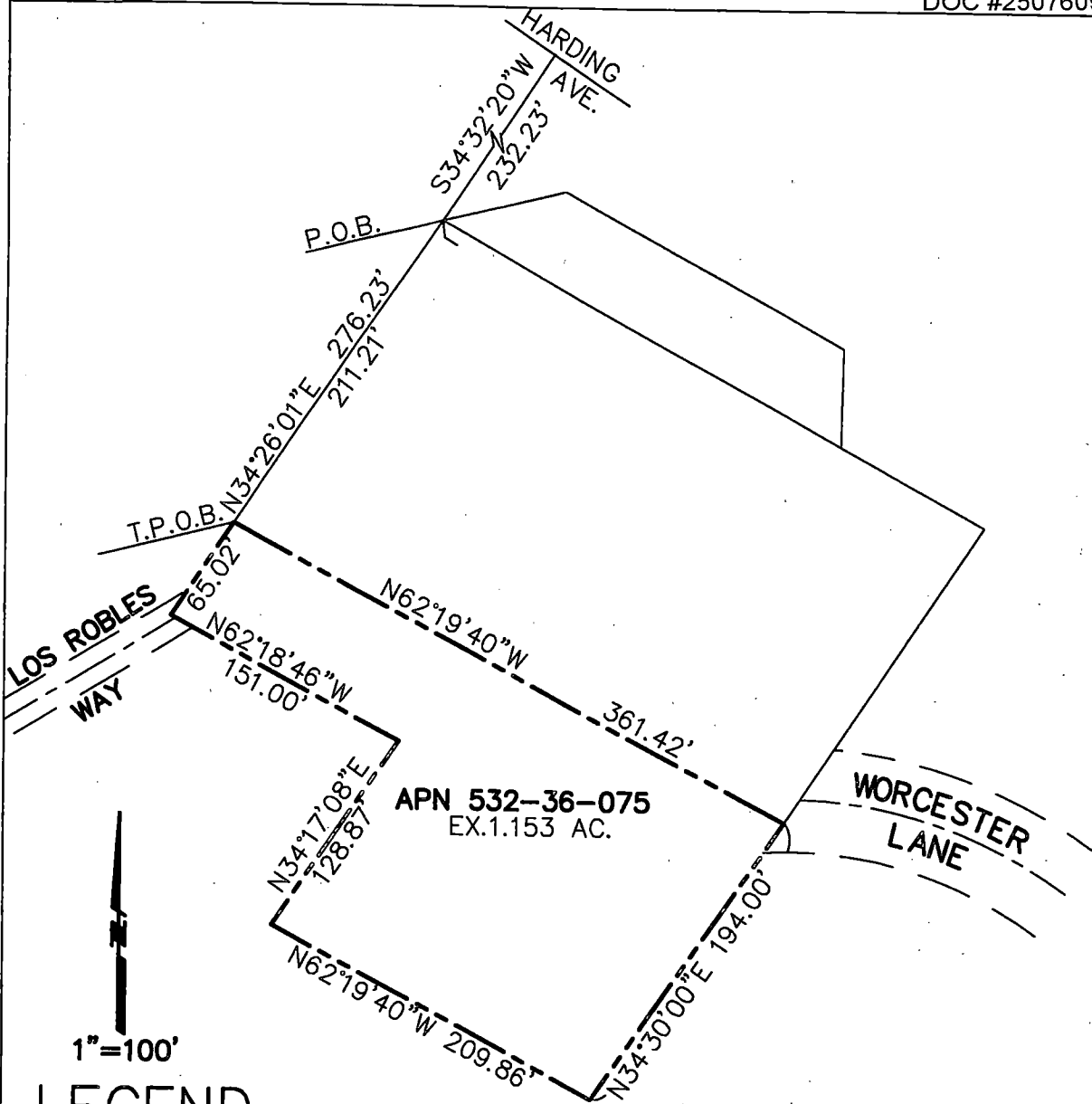
Being a portion of Lots 15 and 16 of the "Map of Los Robles Subdivision" filed August 12, 1929 for record in Volume X of Maps at pages 48 and 49, Santa Clara County Record, situated in the Town of Los Gatos, County of Santa Clara, State of California, more particularly described as follows:

Beginning at a property corner described as found 1 inch diameter axle with no tag, and shown on the Record of Survey Map filed February 23, 1999 for record in Book 712 of Maps at Page 43, Santa Clara County Records, said point being South 34 Degrees 32 Minutes 20 Seconds West a length of 232.23 feet from the southerly right of way line of Harding Avenue; thence South 34 Degrees 26 Minutes 01 Seconds West a length of 276.23 feet to the True Point of Beginning; Thence North 34 Degrees 26 Minutes 01 Seconds East a length of 65.02 feet; thence South 62 Degrees 19 Minutes 40 Seconds East a length of 361.42 feet; thence South 34 Degrees 30 Minutes 00 Seconds West a length of 194.00 feet; thence North 62 Degrees 19 Minutes 40 Seconds West a length of 209.86 feet; thence North 34 Degrees 17 Minutes 08 Seconds East a length of 128.87 feet; thence North 62 Degrees 18 Minutes 46 Seconds West a length of 151.00 feet to the True Point of Beginning.

Containing 1.153 acres more or less



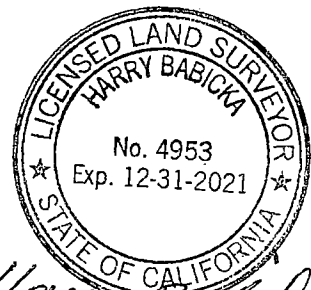
Harry Babicka



1"=100'

LEGEND

EXISTING BOUNDARY	—————
LIMIT OF EASEMENT	- - - - -
POINT OF BEGINNING	P.O.B.
CENTERLINE	—————
TRUE POINT OF BEGINNING	T.P.O.B.
EXISTING R.O.W.	—————
ACRES	AC.



Harry Babicka

EXHIBIT "B"
A PLAT TO ACCOMPANY A DESCRIPTION
FOR CERTIFICATE OF COMPLIANCE

WESTFALL ENGINEERS, INC.

EXHIBIT "C"

Parcel name: remainder (APN 532-36-077)

All that certain property situated in the Town of Los Gatos, County of Santa Clara, State of California, more particularly described as follows:

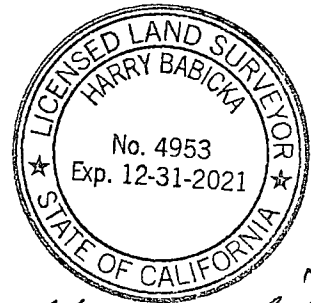
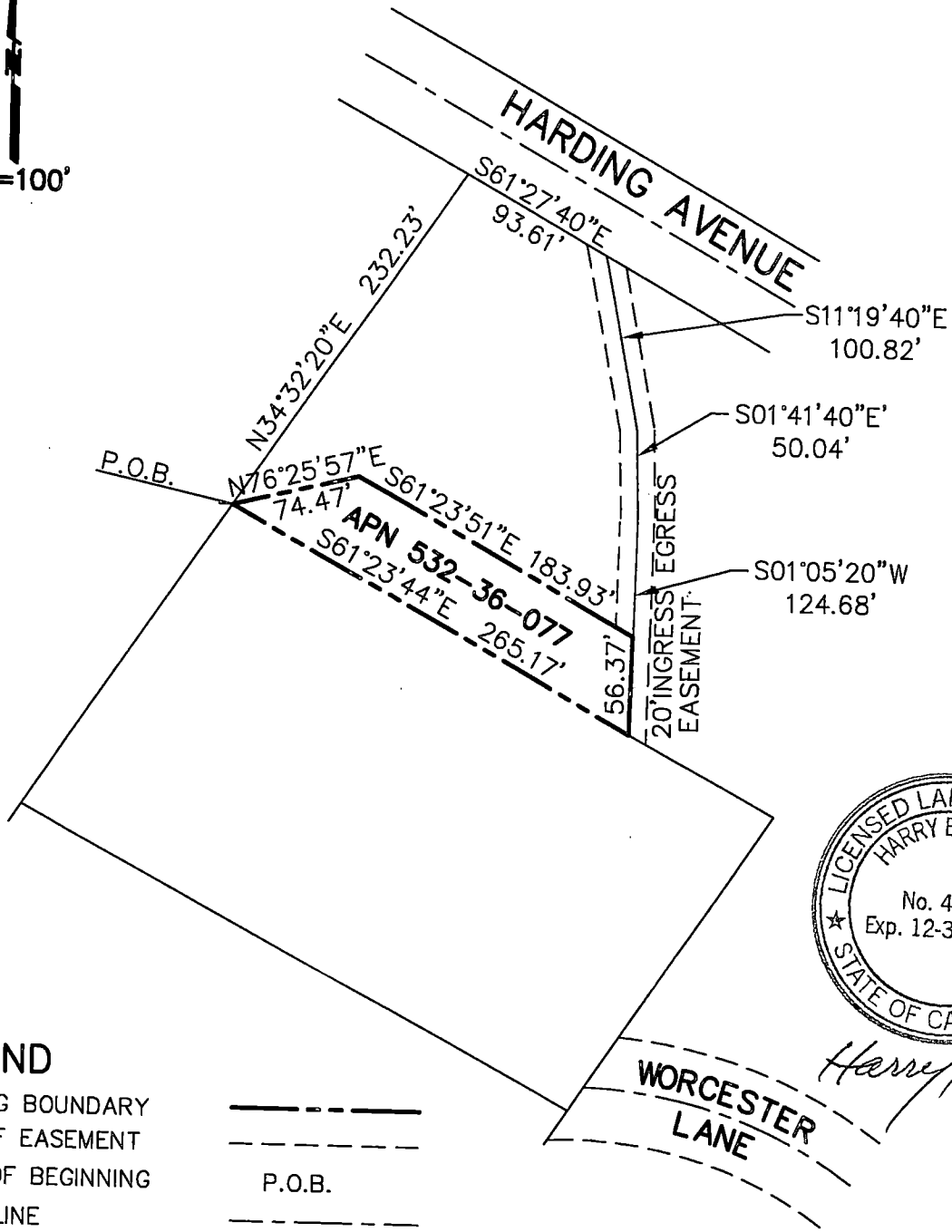
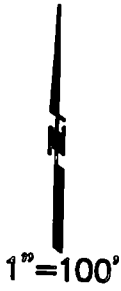
Beginning at a property corner described as found 1 inch diameter axle with no tag, and shown on the Record of Survey Map filed for record in Book 712 of Maps at Page 43, Santa Clara County Records, said point being South 34 Degrees 32 Minutes 20 Seconds West a length of 232.23 feet from the southerly right of way line of Harding Avenue;
Thence North 76 Degrees 25 Minutes 57 Seconds East a length of 74.47 feet; thence South 61 Degrees 23 Minutes 51 Seconds East a length of 183.93 feet to the center of existing 20 feet wide ingress and egress easement recorded in Book 1524, Page 546 Official Records of Santa Clara County; thence along said centerline South 01 Degree 05 Minutes 20 Seconds West a length of 56.37 feet ; thence leaving said centerline along original Southerly boundary of parcel of land described in a deed from L. N. Ball to Tom C Haire North 61 Degrees 23 Minutes 44 Seconds West a length of 265.17 feet to the point of beginning.

Containing 0.258 acres more or less.



Harry Babicka

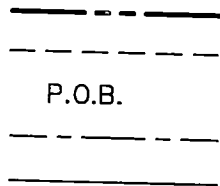
EXHIBIT "D"



Harry Babicka

LEGEND

- EXISTING BOUNDARY
- LIMIT OF EASEMENT
- POINT OF BEGINNING
- CENTERLINE
- ADJOINING BOUNDARY



A PLAT TO ACCOMPANY A DESCRIPTION FOR CETIFICATE OF COMPLIANCE

WESTFALL ENGINEERS, INC.

CEQA Requirements

17200 Los Robles Way Lot Line Adjustment Application

Alison Steer- 304 Harding Ave, Los Gatos

List of Supporting Exhibits

- Exhibit 19: CEQA Basics 08-31-2010
- Exhibit 20: Exemptions Topics Paper 03-23-161

State CEQA Guidelines Section 15604(d)

Determining the Significance of the Environmental Effects Caused by a Project

- In evaluating the significance of the environmental effect of a project, the lead agency shall consider direct physical changes in the environment which may be caused by the project and reasonably foreseeable indirect physical changes in the environment which may be caused by the project.
- (1) A direct physical change in the environment is a physical change in the environment which is caused by and immediately related to the project. Examples of direct physical changes in the environment are the dust, noise, and traffic of heavy equipment that would result from construction of a sewage treatment plant and possible odors from operation of the plant.
- (2) An indirect physical change in the environment is a physical change in the environment which is not immediately related to the project, but which is caused indirectly by the project. If a direct physical change in the environment in turn causes another change in the environment, then the other change is an indirect physical change in the environment. For example, the construction of a new sewage treatment plant may facilitate population growth in the service area due to the increase in sewage treatment capacity and may lead to an increase in air pollution.
- (3) An indirect physical change is to be considered only if that change is a reasonably foreseeable impact which may be caused by the project. A change which is speculative or unlikely to occur is not reasonably foreseeable.

Summary of State CEQA Guidelines Section 15604(f) and (g)

- Section [15064\(f\)\(1\)](#) indicates that if a lead agency is presented with a fair argument that a project may have a significant effect on the environment, the lead agency shall prepare an EIR even though it may also be presented with other substantial evidence that the project will not have a significant effect. Section 15064(g) states that after application of the principles set forth above in section 15064(f), and in marginal cases where it is not clear whether there is substantial evidence that a project may have a significant effect on the environment, the lead agency shall be guided by the following principle: “If there is disagreement among expert opinion supported by facts over the significance of an effect on the environment, the Lead Agency shall treat the effect as significant and shall prepare an EIR.”

Santa Clara
County Online
Property
Profile
APN
532-36-075

Planning and Development Information

APN:53236075 is incorporated (LOS GATOS).

General Plan: **USA**

USA: **Los Gatos (100%)**

SOI: **Los Gatos**

Zoning: **INCORPORATED**

Supervisor District: **1**

Approved Building Site: **Research needed to evaluate parcel as a Building Site**

Special Area Policies and Information

- Los Gatos Hillside Specific Plan Area: **IN**
 - Fire Responsibility Area: LRA (100%)
 - Fire Protection District: Santa Clara County Central Fire Protection District
 - Geohazard: County fault rupture hazard zone
 - Geohazard: **County landslide hazard zone**
 - Geohazard: **State seismic hazard zone (earthquake induced landslides)**
 - Historic Parcel: NO
 - FEMA Flood Zone: D (100%)
 - Sanitary District: West Valley Sanitation District
 - Watershed: San Francisco Bay
 - Rain isohyet: 27 inches
- Nearest named creek: ROSS CREEK (1318 feet)
Nearest named lake: Vasona Reservoir (5674 feet)

Santa Clara County Online Property Profile APN 532-36-076

Planning and Development Information

APN:53236076 is incorporated (LOS GATOS).

General Plan: USA

USA: Los Gatos (100%)

SOI: Los Gatos

Zoning: INCORPORATED

Supervisor District: 1

Approved Building Site: **Research needed to evaluate parcel as a Building Site**

Special Area Policies and Information

- Los Gatos Hillside Specific Plan Area: IN
 - Fire Responsibility Area: LRA (100%)
 - Fire Protection District: Santa Clara County Central Fire Protection District
 - Geohazard: County fault rupture hazard zone
 - Geohazard: County landslide hazard zone
 - Geohazard: State seismic hazard zone (earthquake induced landslides)
 - Historic Parcel: NO
 - FEMA Flood Zone: D (96.6%), X (3.4%)
 - Sanitary District: West Valley Sanitation District
 - Watershed: San Francisco Bay
 - Rain isohyet: 27 inches
- Nearest named creek: ROSS CREEK (1111 feet)
Nearest named lake: Vasona Reservoir (5551 feet)

Required Findings from DRC and Planning Commission

PLANNING COMMISSION – September 8, 2021

REQUIRED FINDINGS FOR:

17200 Los Robles Way

Subdivision Application M-20-012

Consider an Appeal of a Development Review Committee Decision Approving a Lot Line Adjustment Between Three Adjacent Lots on Properties Zoned R-1:20. APNs 532-36-075, -076, and -077. PROPERTY OWNERS: Daren Goodsell, Trustee and Mark Von Kaenel. APPLICANT: Tony Jean. APPELLANTS: Alison and David Steer, Terry and Bob Rinehart, Nancy and Jim Neipp, Gary and Michelle Gysin, and Gianfranco and Eileen De Feo. PROJECT PLANNER: Ryan Safty.

FINDINGS

Required findings for CEQA:

- The project is not subject to the California Environmental Quality Act pursuant to the adopted Guidelines for the Implementation of CEQA, Section 15061(b)(3): A project is exempt from CEQA when the activity is covered by the common sense exemption that CEQA only applies to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question will have a significant effect on the environment, the activity is not subject to CEQA. The project proposes to modify lot lines between three legal, adjacent parcels. **No development is proposed at this time.**

Required Findings by DRC and Planning Commission

Required findings to deny a Subdivision application:

- As required by Section 66474 of the State Subdivision Map Act the map shall be denied if any of the following findings are made: **None of the findings could be made to deny the application.**

Instead, the Planning Commission makes the following affirmative findings:

- a. That the proposed map is consistent with all elements of the General Plan.
- b. That the design and improvement of the proposed subdivision is consistent with all elements of the General Plan.
- c. That the site is physically suitable for the type of development.
- d. That the site is physically suitable for the proposed density of development.
- e. That the design of the subdivision and the proposed improvements are not likely to cause substantial environmental damage nor substantially and avoidably injure fish or wildlife or their habitat.
- f. That the design of the subdivision and type of improvements is not likely to cause serious public health problems.

EXHIBIT 2

17200 Los Robles Way LLA application is not Categoricaly Exempt from CEQA

- 17200 Los Robles Way lot line adjustment application M-20-012 is not categorically exempt from CEQA. CEQA Class 5, "Minor Alterations in Land Use Limitations," exemption per [Section 15305](#) of the CEQA Guidelines excludes slopes >20% and lot line adjustments that result in changes to land use density.
- 17200 Los Robles Way has 26% average slope.

AVERAGE SLOPE CALCULATIONS:
(ENTIRE PROPERTY)

CONTOUR INTERVAL (I) 5 FEET
CONTOUR LENGTH (L) 7102 FEET
AREA (A) 3.13 ACRES 136343 SQUARE FEET

AVERAGE SLOPE (S)

$$S=IL/A = 5' \times 7102' / 136343 \text{ S.F.} = 26\%$$

Per Exhibit 21:
Exemptions
Topics Paper
03-23-161

Common Sense Exemption

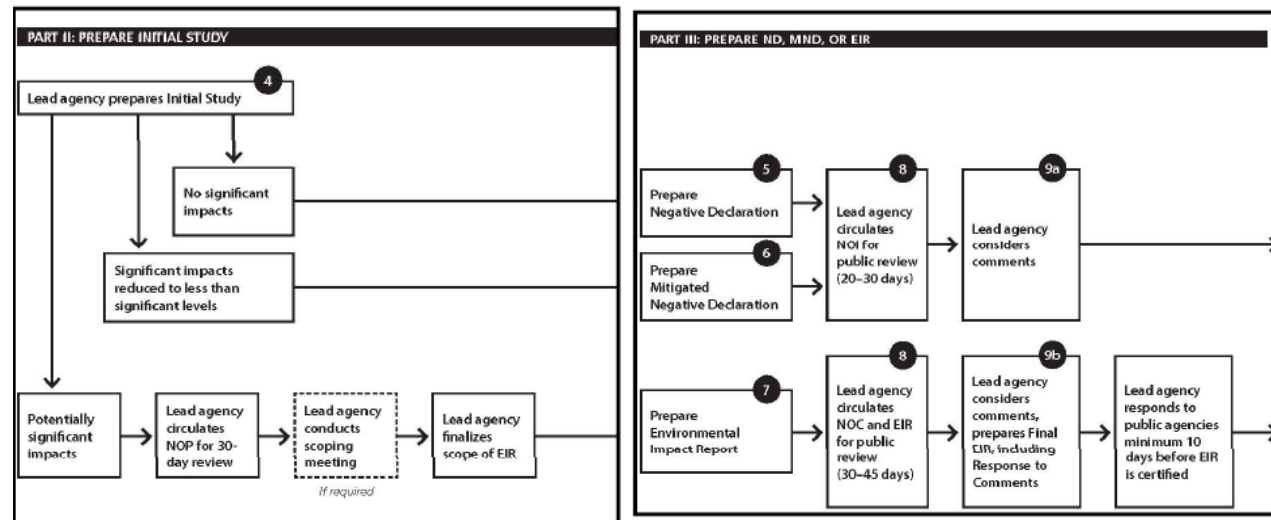
When an action or project does not fall within any statutory or categorical exemption, yet it can still be seen with certainty that there is no possibility that the activity may have a significant impact on the environment, the general rule exemption or common sense exemption applies.

According to the State CEQA Guidelines, “Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA” [State CEQA Guidelines Section 15061(b)(3)]. When determining whether this project applies to a project, please note the use of the words “**with certainty**” and “**no possibility.**” A Lead Agency’s determination that the general rule exemption applies must be supported with **factual evidence.**

-

Per Exhibit 22: CEQA Basics 08-31-2010

- Lead Agency determines if this is a Project. If the Project is not statutory or categorically exempt-> Lead agency to prepare **Initial Study**. Determines whether there is no significant impact, significant impacts reduced to less than significant levels, or potentially significant impacts. If all impacts are not significant or mitigated to a less than significant level, a Negative Declaration or Mitigated Negative Declaration will be prepared. If any significant impact is identified and cannot be mitigated, an EIR must be prepared.



Orange County Department of Education | The Planning Center

Orange County Department of Education | The Planning Center

17200 Los Robles Way Project should not be exempted from CEQA

17200 Los Robles Way Project should not be exempt from CEQA because there is reasonable possibility that the project will have a significant adverse effect on the environment due to unusual circumstances.

Based on the Santa Clara County Property Profile for 17200 Los Robles Way and previously submitted JCP reports, we believe this **Project** is located on a geologic unit or soil that is unstable, or that would become unstable as a result of the Project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction or collapse. In addition, there is potential that this project would expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving landslides

There is a reasonably foreseeable future development which will result in indirect physical changes in the environment.

Per CEQA Section 15604 (g) "After application of the principles set forth above in Section 15064(f), and in marginal cases where it is not clear whether there is substantial evidence that a project may have a significant effect on the environment, the lead agency shall be guided by the following principle: If there is disagreement among expert opinion supported by facts over the significance of an effect on the environment, the Lead Agency shall treat the effect as significant and shall prepare an EIR."

Note: No Initial Study was performed on 17200 Los Robles Way, or Negative Declaration Prepared



The California Environmental Quality Act

CEQA BASICS

Prepared for:
Orange County Department of Education

Prepared by:



Contact: DWAYNE MEARS, AICP – Principal
714.966.9220 | dmears@planningcenter.com



CEQA / Environmental Process

The Beginning

- 1969: President Nixon signs National Environmental Policy Act (NEPA)
- 1970: Governor Reagan signs California Environmental Quality Act (CEQA)



CEQA / Environmental Process

Applicability

CEQA applies to ‘all’ projects subject to public agency discretionary action



CEQA / Environmental Process

Objectives of CEQA

Protect the Environment

- Seek ways to avoid or minimize environmental damage
- Generally, through mitigation measures and alternatives

Public Disclosure

- Inform decision makers about the environmental consequences
- Disclose to the public why decisions were made



CEQA / Environmental Process

The Rules

The Statute

- Public Resources Code §§ 21000-21178

The Guidelines

- California Code of Regulations Title 14, §15000 et seq.

The Courts

- Ongoing case law

CEQA Statute and Guidelines available online for free: <http://ceres.ca.gov/ceqa/>



CEQA / Environmental Process

Agency Roles

Lead Agency

- has primary approval authority over the project

Responsible Agency

- has approval authority over some aspect of project

Trustee Agency

- has authority over some resources (e.g., CA Department of Fish & Game)



CEQA / Environmental Process

Four Phases of CEQA

1. Preliminary Review

2. Initial Study (IS)

3. Negative Declaration (ND) / Mitigated Negative Declaration (MND) / Environmental Impact Report (EIR)

4. Project Consideration/Approval

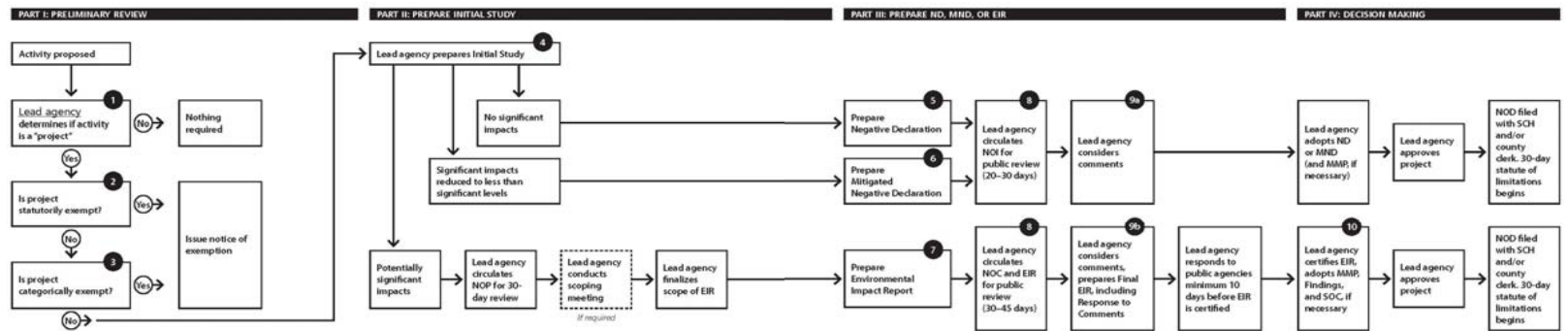


CEQA / Environmental Process

The CEQA Process

the process in a nutshell

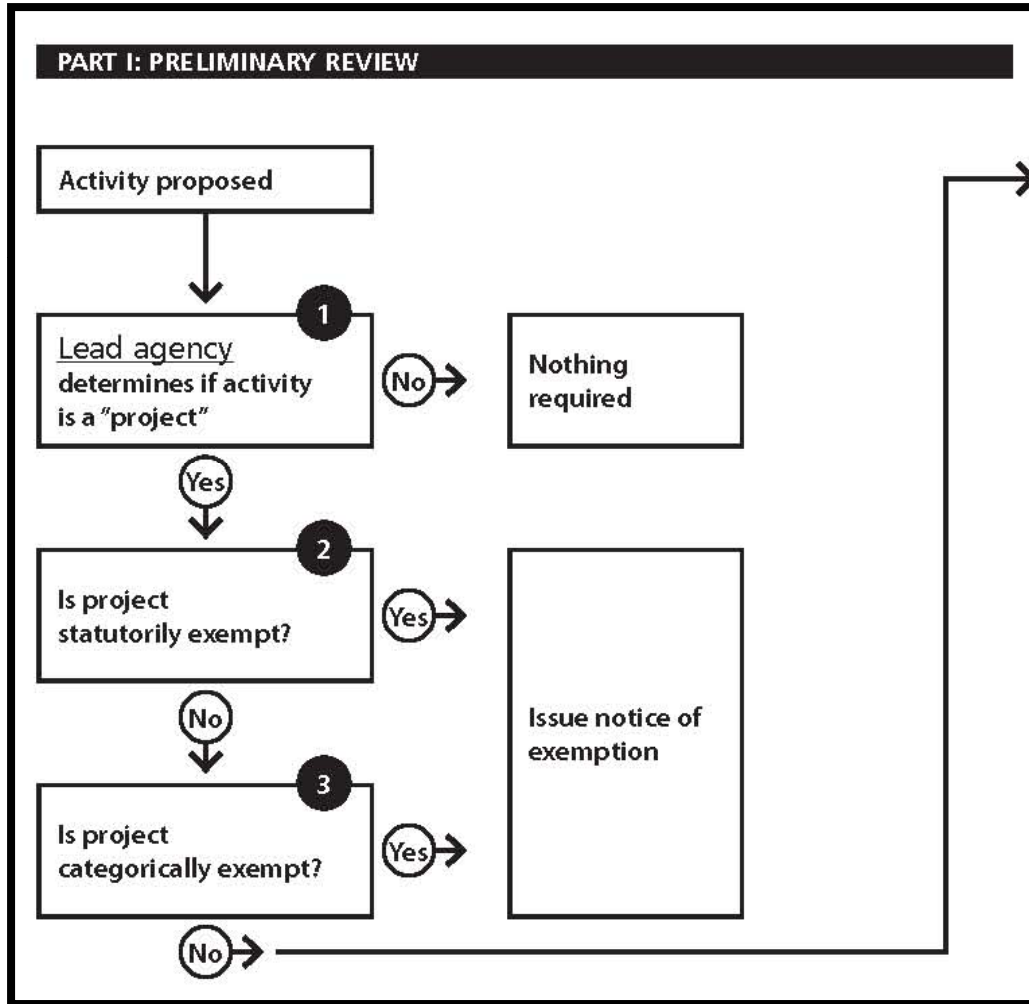
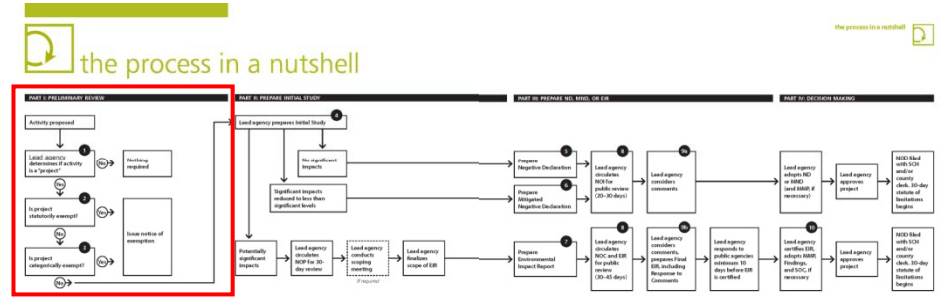
the process in a nutshell





CEQA / Environmental Process

Part I: Preliminary Review





CEQA / Environmental Process

Exempt from CEQA?

Three Types of Exemptions:

1. Statutorial

- blanket exemptions given by Legislature

2. Categorical

- types or classes of projects determined by Secretary of Resources Agency not to have significant impact

3. “Common Sense” Rule

- CEQA applies only to projects with potential for significant impact on environment



CEQA / Environmental Process

Exempt from CEQA? Statutorial Exemptions

- Ongoing projects
- Emergency Repairs
- Feasibility and Planning Studies
- Ministerial Approvals (absence of discretion)
- School closures (where actions at receiving schools are exempt)
- Others



CEQA / Environmental Process

Exempt from CEQA? Categorical Exemptions

- Class 1: Existing Facilities
- Class 2: Replacement or Reconstruction
- Class 3: New construction/minor conversion of small structures
- Class 4: Minor alterations to land
- Class 14: Minor additions to schools, but limited to:
 - 10 classrooms, or
 - 25% net capacity increase, whichever is less
- A total of 30+ categories



CEQA / Environmental Process

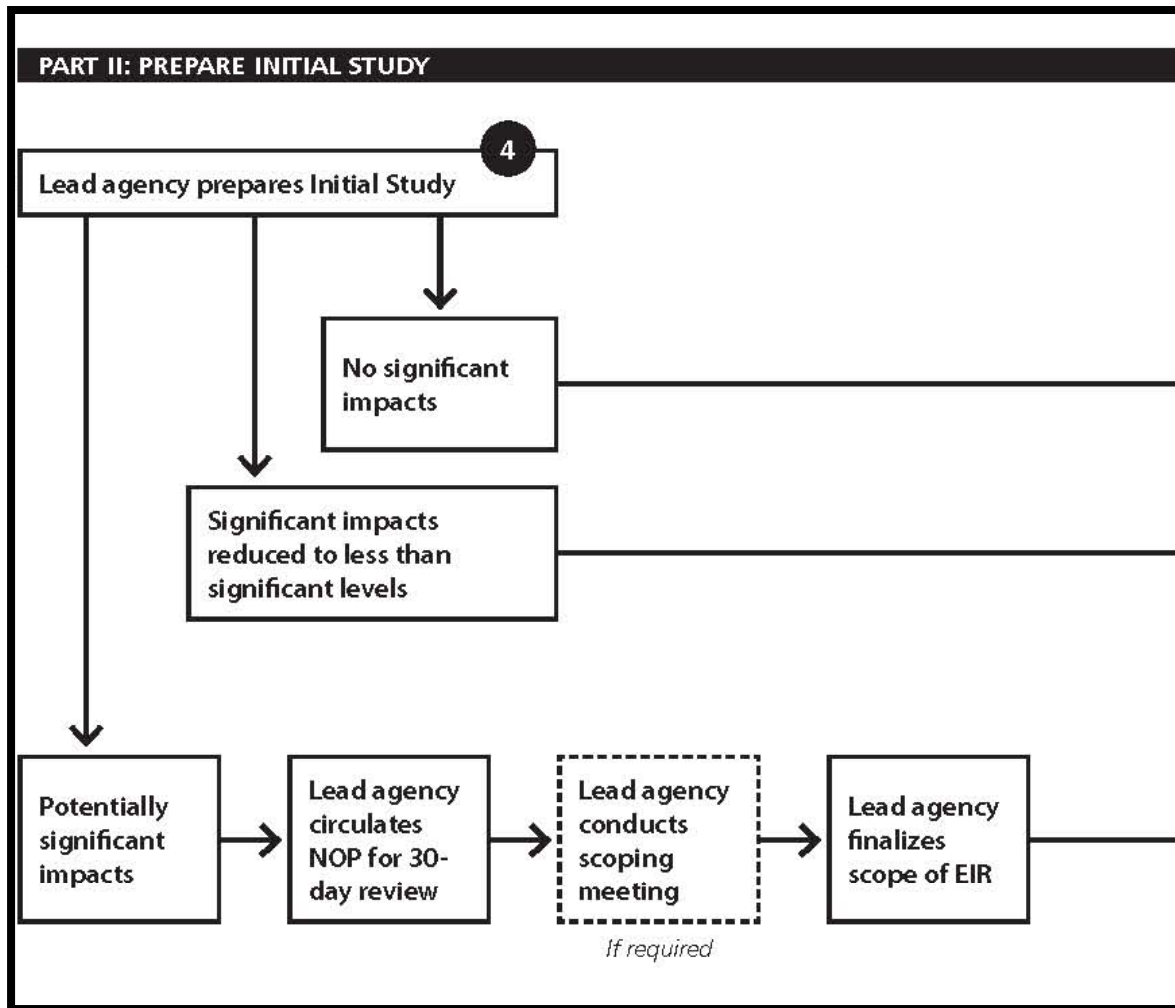
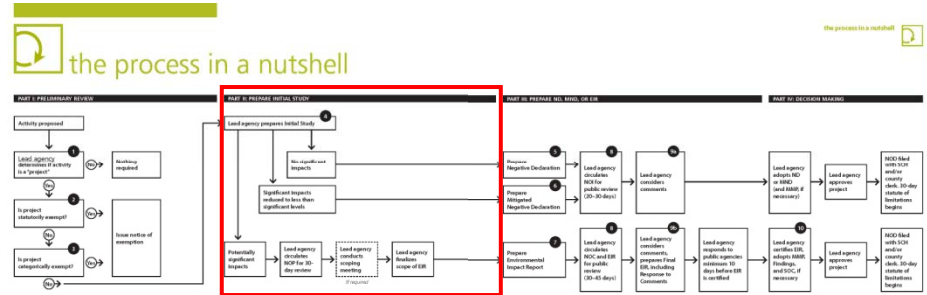
Exempt from CEQA? Categorical Exemptions

- Even where project falls within one of the exemption classes, the exemption is not permitted if one of these exceptions is triggered:
 - Sensitive location
 - Cumulative impact
 - Significant impact
 - Scenic highways
 - Hazardous waste sites
 - Historic resources



CEQA / Environmental Process

Part II: Prepare Initial Study





CEQA / Environmental Process

CEQA Checklist Topics

- Aesthetics
- Agriculture and Forestry Resources
- Air Quality
- Biological Resources
- Cultural Resources
- Geology and Soils
- Greenhouse Gas Emissions
- Hazards and Hazardous Materials
- Hydrology and Water Quality



CEQA / Environmental Process

CEQA Checklist Topics

- Land Use and Planning
- Mineral Resources
- Noise
- Population
- Public Services
- Recreation
- Transportation/Traffic
- Utilities and Service Systems
- Mandatory Findings of Significance



CEQA / Environmental Process

CEQA Checklist Topics

SAMPLE QUESTION	Potentially Significant Impact	Less Than Significant With Mitigation Incorporation	Less Than Significant Impact	No Impact
Issues:				
<u>I. AESTHETICS</u> -- Would the project:				
a) Have a substantial adverse effect on a scenic vista?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) Substantially degrade the existing visual character or quality of the site and its surroundings?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d) Create a new source of substantial light or glare which would adversely affect day or nighttime views in the area?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<u>II. AGRICULTURE RESOURCES:</u> In determining whether impacts to agricultural resources are significant environmental effects, lead agencies may refer to the California Agricultural Land Evaluation and Site Assessment Model (1997) prepared by the California Dept. of Conservation as an optional model to use in assessing impacts on agriculture and farmland. Would the project:				
a) Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Conflict with existing zoning for agricultural use, or a Williamson Act contract?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) Involve other changes in the existing environment which, due to their location or nature, could result in conversion of Farmland, to non-agricultural use?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<u>III. AIR QUALITY</u> -- Where available, the significance criteria established by the applicable air quality management or air pollution control district may be relied upon to make the following determinations. Would the project:				

This is the first page of the CEQA Checklist. The appropriate box must be checked and supporting documentation justifying the determination must be provided.

If any significant impact is identified and cannot be mitigated, an EIR must be prepared.

If all impacts are not significant or mitigated to a less than significant level, a Negative Declaration or Mitigated Negative Declaration will be prepared.



CEQA / Environmental Process

Determining Significant Impacts

“Significant Impact”

- a substantial or potentially substantial adverse change in physical conditions

“Less than Significant Impact”

- a change in physical conditions that is not substantial



CEQA / Environmental Process

Determining Significant Impacts

No Significant Impacts:

- Negative Declaration (ND)

Significant Impacts Can be Mitigated to Less than Significant:

- Mitigated Negative Declaration (MND)

Some impacts cannot be avoided or mitigated:

- Environmental Impact Report (EIR)



CEQA / Environmental Process

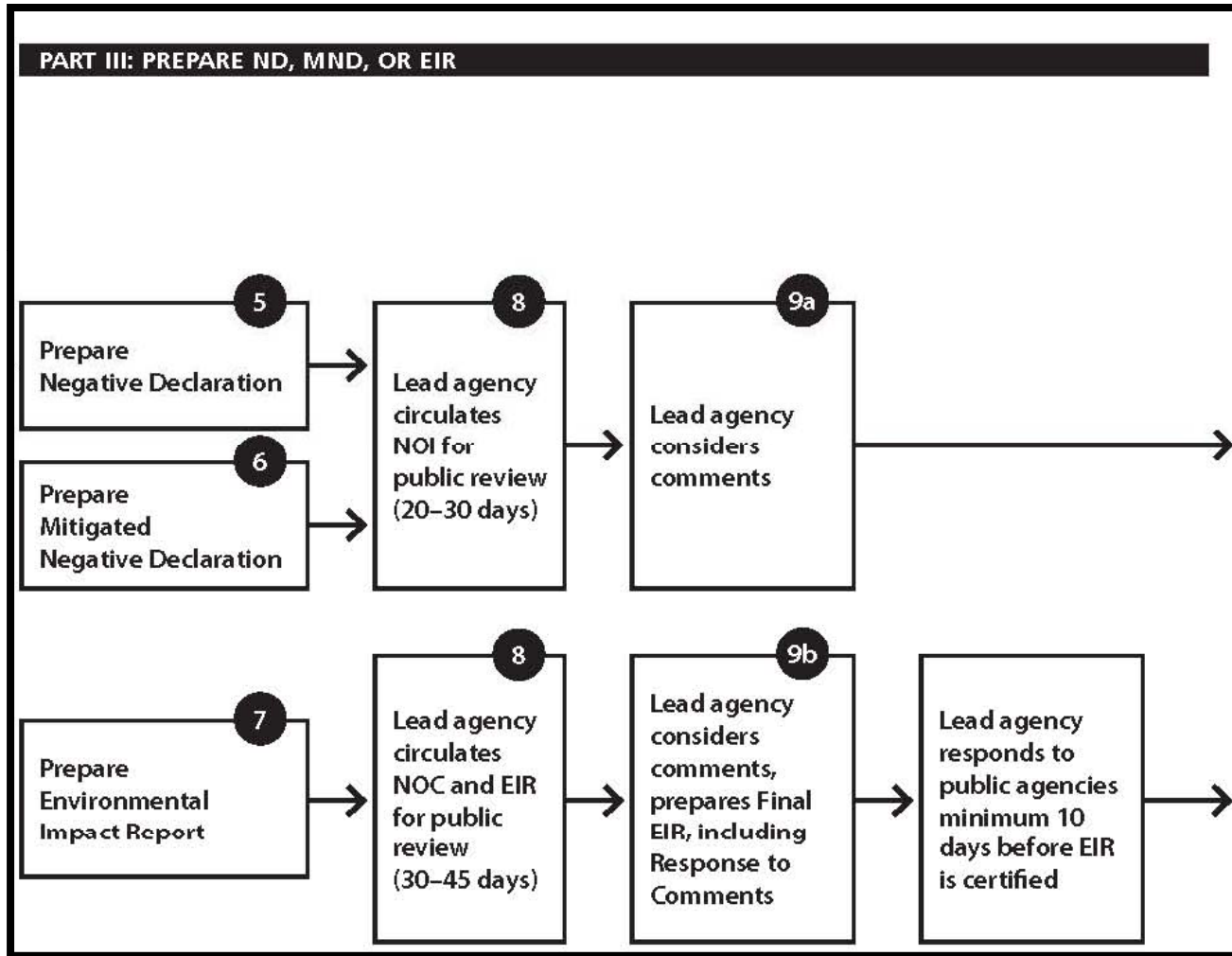
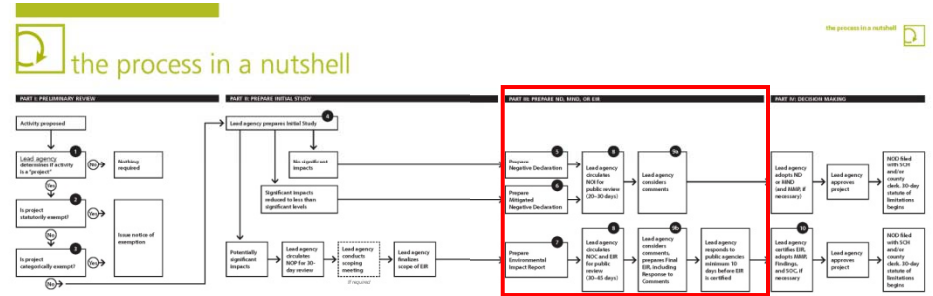
Determining Significance of Cumulative Impacts

- “Considerable” Contribution to Cumulative Impact
- Not Cumulatively Considerable if:
 - Project’s contribution substantially reduced
 - Project would comply with mitigation program



CEQA / Environmental Process

Part III: Prepare ND or EIR





CEQA / Environmental Process

Contents of Negative Declaration or MND

- Brief Description of project, location, proponent's name
- Proposed finding that the project will have No Significant Impact
- Initial Study (IS) documenting basis for finding
- Mitigation Measures (MND only)
- Mitigation Monitoring & Reporting Plan (MND only)



CEQA / Environmental Process

Major Steps for an ND/MND

Where no significant impacts will occur:

- Negative Declaration
 - Circulate ND and IS
 - Short review (20-30 days)
 - No significant impacts
- Mitigated Negative Declaration
 - Circulate MND and IS
 - Short review (20-30 days)
 - Impacts mitigated to Less than Significant impact



CEQA / Environmental Process

Contents of an Environmental Impact Report

Where significant impacts are possible:

- Table of Contents
- Summary
- Project Description
- Environmental Setting
- Consideration and discussion of Impacts
- Significance Thresholds
- Significant Effects
- Mitigation Measures
- Alternatives
- Cumulative Impacts
- Significant Irreversible Changes
- Growth-Inducing Impacts
- Effects Found Not to be Significant
- Organizations/Persons Consulted



CEQA / Environmental Process

Major Steps with an Environmental Impact Report

- Notice of Preparation for 30 days (typically circulated with IS)
- Scoping meeting required under certain circumstances
- Draft EIR circulated for 45 days with Notice of Completion and Notice of Availability
- Public Hearings on Draft EIR are discretionary



CEQA / Environmental Process

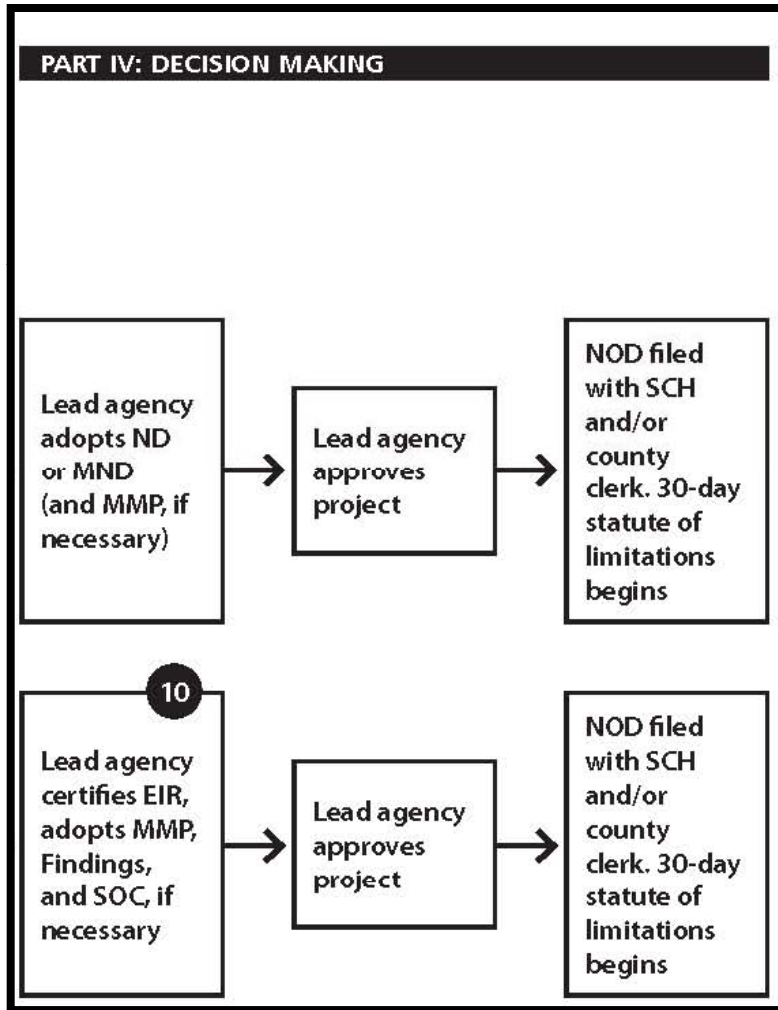
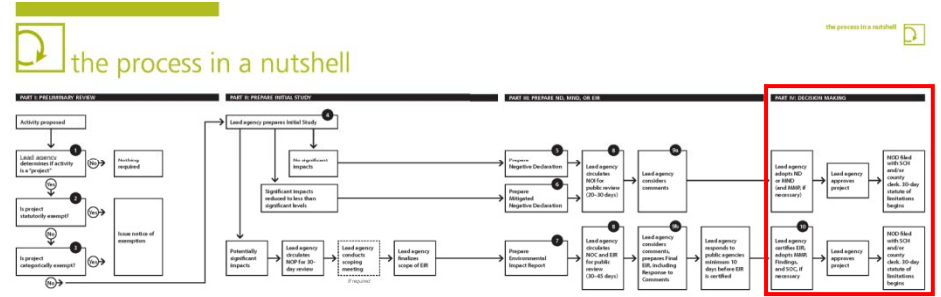
Major Steps with an Environmental Impact Report (continued)

- Proposed responses to comments sent to responding public agencies 10 days prior to certification
- Public hearing generally held for discretionary approval
- EIR certification, project approval, CEQA findings, statement of overriding considerations
- Notice of Determination is filed, which starts 30-day statute of limitations



CEQA / Environmental Process

Part IV: Decision Making





CEQA / Environmental Process

Final Steps for an ND/MND

- Public hearing generally held for discretionary approval
- ND or MND is approved
- Mitigation monitoring and reporting plan is approved (for MND only)
- Notice of Determination is filed, which begins the 30-day statute of limitations



CEQA / Environmental Process

Final Steps for an EIR

- Findings
- Mitigation Monitoring Plan
- Statement of Overriding Considerations
- Project Approval
- File Notice of Determination
- 30-Day Statute of Limitations

CEQA Portal Topic Paper

Exemptions

What Is An Exemption?

While CEQA requires compliance for all discretionary actions taken by government agencies, it also carves out specific individual projects and classes of projects for which compliance with CEQA is not required. These are called exemptions. If a project fits within one of the specified exemptions, the Lead Agency need not prepare an Initial Study or any other CEQA document. Exemptions are intended to save time and cost related to CEQA compliance for certain activities and projects, including those that the California Legislature or the California Secretary of Natural Resources determined would not have a significant impact on the environment.

There are three types of exemptions available under CEQA: statutory, categorical, and the “general rule” or “common sense” exemption. Statutory exemptions are granted by the California Legislature for individual or classes of projects, and apply regardless of the environmental impacts of the project for state policy reasons. In contrast, categorical exemptions are classes of projects exempted from CEQA because the California Secretary of Natural Resources has determined that they typically do not have substantial impacts on the environment. The “general rule” or “common sense” exemption applies to projects that don’t fit within a statutory or categorical exemption, but where it can be clearly demonstrated that the project has no potential to have significant environmental effects.

In addition, there is a fourth type of exemption available only to certain state agencies, a Certified State Regulatory Program exemption. The Certified Regulatory Program exemption is not a complete exemption from CEQA requirements, but rather the substitution of a “CEQA-equivalent document” for what CEQA would otherwise require.

Although not an exemption in the same sense as otherwise discussed in this Topic Paper, CEQA has the potential to be preempted under federal law, for example, for private rail projects authorized by the Federal Surface Transportation Board under the Interstate Commerce Commission Termination Act. (See, *Town of Atherton v. California High-Speed Rail Authority* (2014) 228 Cal.App.4th 314 and cases cited therein.)

Why Are Exemptions Important?

Exemptions are important for lead agencies, as the proper use of exemptions can save time and money in processing qualifying projects, including both public projects undertaken by the agency itself and private development projects. However, the improper application of an exemption to a project deprives decision makers and the public of information about project impacts. It also opens the Lead Agency to delays in project implementation if, as a result of a

successful legal challenge, the agency is ordered to rescind its approvals and complete CEQA review for the project.

What are the Different Types of Exemptions?

Statutory and categorical exemptions include individual projects and defined classes of projects that are exempt from CEQA. These two types of exemptions differ in purpose and intent. However, the most notable difference between them is that statutory exemptions are absolute – when a project qualifies for a statutory exemption, CEQA absolutely does not apply. In contrast, categorical exemptions are subject to a variety of “exceptions.” If an exception applies to an otherwise categorically exempt project, the project must go through CEQA review even if it otherwise qualifies for a categorical exemption.

Statutory Exemptions

The State Legislature can adopt laws that totally exempt certain projects from CEQA. Many of the individual projects and project types that have been granted statutory exemptions are listed in Public Resources Code Sections 21080 et seq., and State CEQA Guidelines Sections 15261 through 15285. Still more statutory exemptions can be found in other sections of the Public Resources Code, or in other California Codes including the California Education Code, Fish and Game Code, Government Code, Health and Safety Code, and Water Code.

Projects covered by statutory exemptions may include those that could result in significant environmental effects, but for which the Legislature has determined that the benefits of these projects to the state or a particular community outweigh the benefits of complying with CEQA. For example, the Legislature created an exemption for hosting the Olympic Games in 1984 in Los Angeles, which brought the City over \$200 million in revenue.

Statutory exemptions range from the broad to the specific. Statutory exemptions that apply to broad categories of actions include:

- **Ministerial Projects**, where the Lead Agency uses objective standards and little or no judgment in its decision-making. For example, approval of most building permits consists of reviewing objective standards as outlined in the City Zoning Code and California Building Code [CEQA Statute Sections 21080(b)(1) and State CEQA Guidelines Sections 15268 and 15369].¹
- **Emergency Projects**, where urgency is required to implement projects that reduce threats to health and property [CEQA Statute Sections 21080(b)(2)-(4) and State CEQA Guidelines Section 15269].

¹ See also the CEQA Triggers Topic Paper.

- **Disapproved Projects**, where an agency declines to approve a project or commence an action [Public Resource Code Section 21080(b)(5) and State CEQA Guidelines Section 15270(a)].

In addition, the following more specific types of actions or projects are also exempt by statute:

- An ongoing project (that was in place before CEQA was passed);
- Feasibility and planning studies (where there are no physical facilities or improvements proposed to be constructed at the time the plan is approved, assumes future CEQA compliance of actual facilities proposed to be constructed);
- Discharge requirements;
- Timberland preserves;
- Adoption of Local Coastal Plans and Programs;
- Granting a General Plan time extension (although approval of a General Plan itself usually requires preparation of a programmatic EIR);
- Financial assistance to low or moderate income housing;
- Early activities related to thermal power plants (does not apply to actual construction of the power plant);
- Olympic games (originally meant for Los Angeles in 1984 but could apply to other locations and other times, if necessary);
- Setting rates, tolls, fares, and charges (as long as they are not tied to constructing new physical facilities);
- Family day care homes (applies to residential structures in residential areas);
- Specified mass transit projects;
- State and regional transportation improvement programs (RTIP);
- Projects located outside California (or portions of projects that lie outside; the portions that are inside the state must comply);
- Application of coatings (may still be subject to local air district permitting);
- Certain types of pipeline work;
- Air quality permits; and
- Other miscellaneous actions per State CEQA Guidelines Section 15282 (a list of 22 specific actions or projects is provided in sub-sections a through v).

Important Note: A Lead Agency contemplating using one of these exemptions should carefully review both the Public Resources Code and the State CEQA Guidelines to determine whether specific criteria apply that may or may not be applicable to their proposed project. For example, some statutory exemptions have special noticing requirements that do not apply to others. Additionally, some statutory exemptions are partial exemptions and, therefore, a Lead Agency should be aware of the scope of any applicable statutory exemption.

Categorical Exemptions

Unlike statutory exemptions, which are adopted by the California Legislature and placed in the California statutes, categorical exemptions are adopted by the California Secretary for Natural Resources and incorporated into the State CEQA Guidelines.

Through Public Resources Code Section 21084, the California Legislature directed the Secretary of Natural Resources to include within the State CEQA Guidelines a list of project “classes” which the Secretary determines do not have a significant effect on the environment and therefore shall be exempt from CEQA review.

State CEQA Guidelines Sections 15301 through 15333 describe the following 33 “classes” of Categorical Exemptions (referred to as Class 1, Class 2, etc.):

1. Existing facilities;
2. Replacement or reconstruction of existing structures and facilities;
3. New construction or conversion of small structures;
4. Minor alterations to land;
5. Minor alterations in land use limitations;
6. Information collection;
7. Actions by regulatory agencies for protection of natural resources;
8. Actions by regulatory agencies for protection of the environment;
9. Inspections;
10. Loans;
11. Accessory structures;
12. Surplus government property sales;
13. Acquisition of lands for wildlife conservation purposes;
14. Minor additions to schools;
15. Minor land divisions;

16. Transfer of ownership of land in order to create parks;
17. Open space contracts or easements;
18. Designation of wilderness areas;
19. Annexations of existing facilities and lots for exempt facilities;
20. Changes in organization of local agencies;
21. Enforcement actions by regulatory agencies;
22. Educational or training programs involving no physical changes;
23. Normal operations of facilities for public gatherings;
24. Regulations of working conditions;
25. Transfers of ownership of interest in land to preserve existing natural conditions and historical resources;
26. Acquisition of housing for housing assistance programs;
27. Leasing new facilities;
27. Small hydroelectric projects at existing facilities;
28. Cogeneration projects at existing facilities;
30. Minor actions to prevent, minimize, stabilize, mitigate, or eliminate the release or threat of release of hazardous waste or hazardous substances;
31. Historical resource restoration or rehabilitation;
32. In-fill development projects; and
33. Small habitat restoration projects.

Important Note: The Public Resources Code and especially the State CEQA Guidelines provide additional detail as to when these exemptions may apply. For many of the exemptions, the State CEQA Guidelines also provide non-exhaustive examples of the general types of projects that would fall within the exemption class. For all categorical exemptions, it is the responsibility of the Lead Agency to demonstrate and determine that the proposed action falls within an exempt category, and support this determination with factual evidence.

General Rule or Common Sense Exemption

When an action or project does not fall within any statutory or categorical exemption, yet it can still be seen with certainty that there is no possibility that the activity may have a significant

impact on the environment, the general rule exemption or common sense exemption applies. According to the State CEQA Guidelines, “Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA” [State CEQA Guidelines Section 15061(b)(3)]. When determining whether this project applies to a project, please note the use of the words “with certainty” and “no possibility.” A Lead Agency’s determination that the general rule exemption applies must be supported with factual evidence.

Does My Project Qualify for an Exemption?

After it is determined that an activity or action is a “project” under CEQA (see CEQA Triggers Topic Paper), the Lead Agency should next consider whether a specific CEQA exemption applies. In order to determine whether a project qualifies for an exemption, the lead agency evaluates whether the project fits into any of the statutory or categorical exemptions listed in Articles 18 and 19 in the State CEQA Guidelines, respectively. If it is plainly clear that the activity has no potential to result in any significant environmental impacts, a “general rule” exemption may apply [State CEQA Guidelines Section 15061(b)(3)].

Statutory Exemptions

If a project matches the description of any of the statutory exemptions, no further action is required to determine its exempt status.

Categorical Exemptions

If a project falls within any of the categorical exemption classes, the Lead Agency must next evaluate whether any exception to the exemptions apply. These exceptions to the exemptions define circumstances that override or negate the agency’s ability to use a categorical exemption. In other words, if an exception applies, then the project no longer qualifies for a categorical exemption and the Lead Agency must proceed to complete CEQA review. The exceptions are described in Public Resources Code Section 21084(c), (d), and (e) and State CEQA Guidelines Section 15300.2. These exceptions apply (and therefore a categorical exemption does not apply) where:

- The project is located in a sensitive environment such that the project may impact an officially mapped and designated environmental resource of hazardous or critical concern²;
- The cumulative effect of successive projects of the same type in the same place, over time, is significant;
- The project may have a significant environmental impact due to unusual circumstances;

² Note: This exception only applies where the Lead Agency is looking to use the Class 3 (existing facilities), Class 4 (minor alterations to land), Class 5 (minor alterations in land use limitations), Class 6 (information collection), or Class 11 (accessory structures) exemptions. This exception does not apply to any other categorical exemption.

- The project may damage scenic resources (i.e. trees, historic buildings, or rock outcroppings) within an official state scenic highway;
- The project is located on a hazardous waste site; or
- The project may a cause substantial adverse change to a historical resource.

If any of these exceptions pertain to the project or the project site, the agency or governmental unit cannot use a categorical exemption and must instead proceed with environmental review under CEQA.

Important Notes

Where a project cannot be fairly said to fall within one of the categorical exemption classes, or where a Lead Agency cannot support its determination that a categorical exemption applies with facts and evidence, the use of the exemption may be challenged in court. If a court determines that the exemption was used in error, the Lead Agency will usually be required to rescind its project approvals unless and until it completes an Initial Study, and re-approves the project based on either a negative declaration, a mitigated negative declaration, or an environmental impact report.

In addition, a project cannot be “mitigated into an exemption” by adding measures or controls during the project’s approval process to avoid identified potential environmental impacts. However, sometimes it can be unclear whether an element is a mitigation measure added to the project to reduce a potential impact, or whether it is a project feature or a part of the project’s design. Project design features, in contrast to mitigation measures, may be considered in determining whether a project qualifies for a categorical exemption. Typically, if a measure or feature was not originally contemplated in the project’s design, but was added in response to an identified potential impact, best practice is to consider it to be a mitigation measure, and not attempt to apply a CEQA exemption.

Can a Lead Agency Use More Than One Categorical Exemption?

Yes, a Lead Agency may apply multiple categorical exemptions to a single project, as long as each cited exemption applies to the project in full. This is sometimes referred to as “layering.”

Generally, the entire project must qualify for each exemption – a Lead Agency cannot “piecemeal” a project by separating it out into smaller pieces, and then use different exemptions to exempt each “piece.”

What are the Process Requirements for an Exemption?

There are no specific procedures for a Lead Agency to follow prior to approving a project that is exempt from CEQA. Under CEQA, use of an exemption does not require prior public notice, does not require a public comment period, and does not require special findings.³

After approval of a project, the lead agency may, but is not required to prepare and file a Notice of Exemption (NOE) with the County Clerk's office. The NOE must include a brief description of the project, a finding that the project is exempt, citations to the exemptions that are being relied upon, and an explanation of why the project qualifies for the exemption(s). Unlike other CEQA notices and documents, NOEs are not subject to public review or circulation.

The principal benefit of filing an NOE, is that it reduces the statute of limitations for filing a legal challenge to the project from 180 days after project approval to 35 days after filing of the NOE. Thus, filing an NOE reduces the timeframe within which a project is susceptible to legal challenge. Therefore, even if it is not required by CEQA, filing an NOE as soon after approval of an exempted project is good practice.

If a lead agency chooses to file a NOE, it must do so **after** the project is approved. The NOE is filed with the County Clerk⁴, who posts it within 24 hours of receiving it, and who must keep it posted for 30 days. The 35-day statute of limitations does not begin until the NOE has been filed. If no NOE is filed, the 180-day statute of limitations applies from the date the project is approved.

Appendix E of the State CEQA Guidelines contains a recommended NOE form. The form can also be found online at http://www.opr.ca.gov/s_ceqadocumentsubmission.php.

If My Project is Exempt, Do I Need to Prepare an IS/MND or EIR?

Once a Lead Agency determines that an exemption applies to a project, no further CEQA compliance or environmental review is required.

³ However, a Local Agency's own local CEQA Guidelines or municipal code may have more requirements. In addition, for strategic reasons, a Lead Agency may wish to provide public notice and allow for public comment prior to relying on an exemption. Doing so may limit who can later file a lawsuit against the use of the exemption, and upon which grounds a lawsuit can be based.

⁴ Some statutory exemptions (the statutory agricultural housing exemption, affordable housing exemption, and residential infill exemption) also require filing with the State Clearinghouse.

Categorical Exclusions Under NEPA

NEPA provides for “categorical exclusions” rather than exemptions for projects or actions that can be demonstrated to have no potential for significant environmental impacts. However, unlike CEQA, NEPA allows each federal agency or governmental unit to define its own unique list of exclusions. This means that each federal agency may have some exclusions that are similar and some that are different, sometimes very different, from those of other agencies. This allows each agency or governmental unit to establish exclusions that are specifically tailored to the needs of the agency and the resources for which it is responsible.

As with categorical exemptions under CEQA, the NEPA categorical exclusion allows federal agencies and governmental units to concentrate their NEPA compliance efforts on actions that could have a significant impact on the environment, while minimizing time, effort, and budget expended on administrative or minor actions that would not have a significant impact on the environment. It allows the agencies and governmental units to conduct their daily business in an efficient manner while still protecting important natural resources.

Exemptions in a Joint CEQA/NEPA Document

In cases where both a Categorical Exclusion under NEPA and a Categorical Exemption under CEQA may apply, the agencies should coordinate to ensure that the consideration of potential effects is consistent with the review of extraordinary circumstances or exceptions. (Council on Environmental Quality and Governor’s Office of Planning and Research 2014).

Both NEPA and CEQA also provide for certain statutory exemptions. As acts of Congress and of the California Legislature, NEPA and CEQA are subject to exceptions also enacted by Congress or the Legislature. The exemptions can be complete, limited, or conditional depending on the statutory language in the exemption. Many CEQA statutory exemptions are contained within CEQA while others are found in other laws. The NEPA statutory exemptions are contained in other laws.

Areas of Controversy Regarding Exemptions?

The Unusual Circumstances Exception

Before the recent California Supreme Court case *Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal. 4th 1086, California courts had applied the unusual circumstances exception to the use of categorical exemptions in different ways. Some courts viewed the exception as rather narrow – applying only when there is evidence there were unusual circumstances surrounding the project **and** evidence that these unusual circumstances may result in a significant impact to the environment. Other courts viewed the exception as being broader – applying anytime there is a fair argument that the project may result in a significant

impact. In *Berkeley Hillside Preservation*, the Supreme Court held that the exception was narrow, and applied only when it can be shown that **both** unusual circumstances are present, **and** those unusual circumstances lead to a reasonable possibility the project could result in a significant impact. However, the court also adopted a rather complicated test for determining when either of these requirements are present. The agency's determination that an unusual circumstance does not apply need only be supported by substantial evidence. However, once the agency has found that an unusual circumstance does apply, if there is substantial evidence to support a fair argument that a significant impact might occur as a result of that unusual circumstance, the categorical exemption cannot be used. Because the case is so recent, it remains to be seen how easily the lower courts will apply this test, and how this case will impact application of exemptions and exceptions to the exemptions in the future.

Use of More Than One Exemption

At least one court has determined that 2 exemptions can be combined to exempt a project, and each exemption is not required to cover the whole project, so long as the whole project is covered by the combined exemptions. *Surfrider v. California Coastal Commission* (1994) 26 Cal.App.4th 151.

Important Cases

The following published cases involve issues related to CEQA exemptions:

- *Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal. 4th 1086. California Supreme Court holds that the mere possibility of a significant impact is not, in itself, an unusual circumstance, and therefore is not enough to negate the application of a categorical exemption. Court also explains the history and applicability of categorical exemptions and the unusual circumstances exception.
- *Tomlinson v. County of Alameda* (2012) 54 Cal. 4th 281. California Supreme Court holds that even if not required by CEQA, where an agency gives notice of its grounds for an exemption determination, and the determination is preceded by public hearings giving the public the opportunity to raise objections, CEQA's exhaustion of administrative remedies requirement applies. Under that requirement, only individuals and entities who raised objections to the exemption before the agency may file a lawsuit challenging the agency's use of the exemption.
- *Muzzy Ranch Co. v. Solano County Airport Land Use Commission* (2007) 41 Cal. 4th 372. California Supreme Court holds that county adoption of a plan that embraced existing development restrictions qualified for the "common sense exemption" because the plan was consistent with existing general plan and zoning designations and development controls.
- *Main San Gabriel Basin Watermaster v. State Water Resources Control Board* (1993) 12 Cal. App. 4th 1371. Disapproved projects are not subject to the CEQA environmental review process.

Related CEQA Portal Topics

- Overview of the CEQA Process (To come)
- CEQA Triggers (In process)
- Lead Agency, Trustee Agencies, and Responsible Agencies

Exemptions in the CEQA Guidelines

The following sections of the CEQA Guidelines address important concepts regarding exemptions. This is not a comprehensive list:

- **Section 15061** - provides general guidance regarding exemptions from CEQA compliance
- **Section 15061(b)(3)** – Describes the general rule that CEQA only applies to projects which have the potential for causing a significant effect on the environment.
- **Section 15062** – Describes the procedures for and advantages of filing a Notice of Exemption
- **Sections 15261 through 15285** – Define activities statutorily exempt from CEQA compliance
- **Section 15300.2** – Defines exceptions to categorical exemptions
- **Sections 15301 through 15333** – Define activities categorically exempt from CEQA compliance

Authors

Kent Norton, AICP, REA, LSA Associates, Inc., Kent.Norton@lsa-assoc.com

Urszula (Ula) Chrobak, LSA Associates, Inc., Urszula.Chrobak@lsa-assoc.com

Lynn Calvert-Hayes, AICP, LSA Associates, Inc., lynn.hayes@lsa-assoc.com

Craig Stevens, Stevens Consulting, craig@cdstevens.com

Reviewers

Jennifer Lynch, AICP, Best Best & Krieger LLP - Jennifer.Lynch@bbklaw.com

Kristen Castaños, Stoel Rives LLC, kristen.castanos@stoel.com

Stuart Flashman, Law Offices of Stuart Flashman - stu@stufash.com



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Legal Disclaimer:

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RESOLUTION 2021-

**RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF LOS GATOS
DENYING AN APPEAL OF THE DECISION OF THE PLANNING COMMISSION
APPROVING A LOT LINE ADJUSTMENT BETWEEN THREE ADJACENT LOTS ON
PROPERTIES ZONED R-1:20.**

**APNS 532-36-075, -076, -077
SUBDIVISION APPLICATION: M-20-012
PROPERTY LOCATION: 17200 LOS ROBLES WAY
APPELLANT: ALISON AND DAVID STEER
APPLICANT: TONY JEANS
PROPERTY OWNERS: DARAN GOODSSELL, TRUSTEE AND MARK VON KAENEL**

WHEREAS, on May 25, 2021, the Development Review Committee held a public hearing and considered a request for Certificate of Compliance of two vacant parcels at 17200 Los Robles Way (APNs 532-36-075 and 532-36-077), zoned R-1:20. Based on the review by the Town’s Consultant Surveyor, the Development Review Committee found that the parcels were legally created in accordance with the Subdivision Map Act and approved the Certificate of Compliance applications subject to the conditions of approval.

WHEREAS, on July 13, 2021, the Development Review Committee held a public hearing and considered a request for a lot line adjustment between three adjacent lots on properties zoned R-1:20. The Development Review Committee found that the Lot Line Adjustment application was complete and in compliance with Town Code and the Subdivision Map Act and approved the application subject to conditions of approval.

WHEREAS, on July 22, 2021, the appellant filed an appeal of the decision of the Development Review Committee approving the Lot Line Adjustment application between three adjacent lots on properties zoned R-1:20.

WHEREAS, on September 8, 2021, the Planning Commission held a public hearing and considered an appeal of the Development Review Committee decision to approve a lot line adjustment on properties zoned R-1:20. The Planning Commission denied the appeal and approved the Lot Line Adjustment application subject to modified conditions of approval.

WHEREAS, on September 20, 2021, the appellant filed an appeal of the decision of the Planning Commission denying the appeal and approving the request for a lot line adjustment between three adjacent lots on properties zoned R-1:20.

WHEREAS, this matter came before the Town Council for public hearing on November 2, 2021, and was regularly noticed in conformance with State and Town law.

WHEREAS, the Town Council received testimony and documentary evidence from the appellant and all interested persons who wished to testify or submit documents. Town Council considered all testimony and materials submitted, including the record of the Planning Commission proceedings and the packet of material contained in the Council Agenda Report for their meeting on November 2, 2021, along with any and all subsequent reports and materials prepared concerning this application.

NOW, THEREFORE, BE IT RESOLVED:

1. The appeal of the decision of the Planning Commission approving a lot line adjustment between three adjacent lots on properties zoned R-1:20 is denied and the application is approved.

2. The Town Council hereby adopts all findings and conditions of approval set forth in the documents attached as Exhibits A and B and approves the development plans (Attachment 1, Exhibit 13).

3. The decision constitutes a final administrative decision pursuant to Code of Civil Procedure section 1094.6 as adopted by section 1.10.085 of the Town Code of the Town of Los Gatos. Any application for judicial relief from this decision must be sought within the time limits and pursuant to the procedures established by Code of Civil Procedure section 1094.6, or such shorter time as required by state and federal Law.

PASSED AND ADOPTED at a regular meeting of the Town Council of the Town of Los Gatos, California, held on the 2nd day of November 2021, by the following vote:

COUNCIL MEMBERS:

AYES:

NAYS:

ABSENT:

ABSTAIN:

SIGNED:

MAYOR OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

DATE: _____

ATTEST:

TOWN CLERK OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

DATE: _____

TOWN COUNCIL – November 2, 2021
REQUIRED FINDINGS FOR:

17200 Los Robles Way
Subdivision Application M-20-012

Requesting Approval of a Lot Line Adjustment Between Three Adjacent Lots on Properties Zoned R-1:20. APNs 532-36-075, -076, and -077. PROPERTY OWNERS: Daren Goodsell, Trustee and Mark Von Kaenel. APPLICANT: Tony Jean. APPELLANTS: Alison and David Steer.

FINDINGS

Required findings for CEQA:

- The project is not subject to the California Environmental Quality Act pursuant to the adopted Guidelines for the Implementation of CEQA, Section 15061(b)(3): A project is exempt from CEQA when the activity is covered by the common sense exemption that CEQA only applies to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question will have a significant effect on the environment, the activity is not subject to CEQA. The project proposes to modify lot lines between three legal, adjacent parcels. No development is proposed at this time.

Required findings to deny a Subdivision application:

- As required by Section 66474 of the State Subdivision Map Act the map shall be denied if any of the following findings are made: **None of the findings could be made to deny the application.**

Instead, the Planning Commission makes the following affirmative findings:

- a. That the proposed map is consistent with all elements of the General Plan.
- b. That the design and improvement of the proposed subdivision is consistent with all elements of the General Plan.
- c. That the site is physically suitable for the type of development.
- d. That the site is physically suitable for the proposed density of development.
- e. That the design of the subdivision and the proposed improvements are not likely to cause substantial environmental damage nor substantially and avoidably injure fish or wildlife or their habitat.
- f. That the design of the subdivision and type of improvements is not likely to cause serious public health problems.

- g. That the design of the subdivision and the type of improvements will not conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision.

TOWN COUNCIL – November 2, 2021
CONDITIONS OF APPROVAL:

17200 Los Robles Way
Subdivision Application M-20-012

Requesting Approval of a Lot Line Adjustment Between Three Adjacent Lots on Properties Zoned R-1:20. APNs 532-36-075, -076, and -077. PROPERTY OWNERS: Daren Goodsell, Trustee and Mark Von Kaenel. APPLICANT: Tony Jean. APPELLANTS: Alison and David Steer.

TO THE SATISFACTION OF THE DIRECTOR OF COMMUNITY DEVELOPMENT:

Planning Division

1. APPROVAL: This application shall be completed in accordance with all of the conditions of approval listed below. Any changes or modifications to the approved plans shall be approved by the Community Development Director, the Development Review Committee, the Planning Commission, or Town Council, depending on the scope of the changes.
2. EXPIRATION: The Subdivision Application will expire two years from the date of approval, unless the approval is used before expiration. Section 29.20.335 defines what constitutes the use of an approval granted under the Zoning Ordinance.
3. ARCHITECTURE & SITE APPROVAL: Approval of an Architecture & Site Application is required for construction of the cul-de-sac, driveways, residences, and related grading.
4. TOWN INDEMNITY: Applicants are notified that Town Code Section 1.10.115 requires that any applicant who receives a permit or entitlement from the Town shall defend, indemnify, and hold harmless the Town and its officials in any action brought by a third party to overturn, set aside, or void the permit or entitlement. This requirement is a condition of approval of all such permits and entitlements whether or not expressly set forth in the approval.

TO THE SATISFACTION OF THE DIRECTOR OF PARKS AND PUBLIC WORKS:

Engineering Division

5. APPROVAL: This application shall be completed in accordance with all the conditions of approval listed below and in substantial compliance with the latest reviewed and approved development plans. Any changes or modifications to the approved plans or conditions of approvals shall be approved by the Town Engineer.
6. ENGINEERING FEES: Engineering fees associated with the Lot Line Adjustment (see item 270 in the Town's [Comprehensive Fee Schedule](#)) shall be deposited with the Engineering Division of the Parks and Public Works Department prior to recordation.
7. GENERAL: The Owner and/or Applicant shall comply with all Town, County, State and Federal laws and regulations applicable to this land division. No other proposed development is included in this particular application of the Lot Line Adjustment. Issuance of a Lot Line Adjustment will acknowledge the Town's acceptance of the parcel as legally

- created in accordance with the Subdivision Map Act. Any subsequent development will be required to demonstrate compliance with the Town Development Standards and Codes.
8. CERTIFICATE OF LOT LINE ADJUSTMENT: A Certificate of Lot Line Adjustment shall be recorded. An electronic copy (PDF) of the legal description for each new lot configuration, a plat map (8-½ in. X 11 in.) and of the legal description of the land to be exchanged shall be submitted to the Engineering Division of the Parks and Public Works Department for review and approval. The submittal shall include closure calculations, title reports less than ninety (90) days old and the appropriate fee. The certificate shall be recorded prior to the issuance of any permits.
 9. CERTIFICATE OF COMPLIANCE: A Certificate of compliance shall be recorded. Two (2) copies of the legal description for each lot configuration, a plat map (8-½ in. X 11 in.) shall be submitted to the Engineering Division of the Parks and Public Works Department for review and approval. The submittal shall include closure calculations, title reports less than ninety (90) days old and the appropriate fee. The certificate shall be recorded prior to the issuance of any permits.
 10. PRIVATE EASEMENTS: Agreements detailing rights, limitations, and responsibilities of involved parties shall accompany each private easement. An electronic copy (PDF) of the recorded agreement(s) shall be submitted to the Engineering Division of the Parks and Public Works Department prior to the issuance of any permit.
 11. LENDER CONSENT: Prior to recording the map, evidence of consent from all holders of Deeds of Trust associated with the parcels shall be provided to the Town.

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RESOLUTION 2021-

**RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF LOS GATOS
GRANTING AN APPEAL OF THE DECISION OF THE PLANNING COMMISSION
APPROVING A LOT LINE ADJUSTMENT BETWEEN THREE ADJACENT LOTS ON
PROPERTIES ZONED R-1:20 AND REMANDING THE MATTER TO THE PLANNING
COMMISSION FOR FURTHER CONSIDERATION.**

**APNS 532-36-075, -076, -077
SUBDIVISION APPLICATION: M-20-012
PROPERTY LOCATION: 17200 LOS ROBLES WAY
APPELLANT: ALISON AND DAVID STEER
APPLICANT: TONY JEANS
PROPERTY OWNERS: DARAN GOODSSELL, TRUSTEE AND MARK VON KAENEL**

WHEREAS, on May 25, 2021, the Development Review Committee held a public hearing and considered a request for Certificate of Compliance of two vacant parcels at 17200 Los Robles Way (APNs 532-36-075 and 532-36-077), zoned R-1:20. Based on the review by the Town’s Consultant Surveyor, the Development Review Committee found that the parcels were legally created in accordance with the Subdivision Map Act and approved the Certificate of Compliance applications subject to the conditions of approval.

WHEREAS, on July 13, 2021, the Development Review Committee held a public hearing and considered a request for a lot line adjustment between three adjacent lots on properties zoned R-1:20. The Development Review Committee found that the Lot Line Adjustment application was complete and in compliance with Town Code and the Subdivision Map Act and approved the application subject to conditions of approval.

WHEREAS, on July 22, 2021, the appellant filed an appeal of the decision of the Development Review Committee approving the Lot Line Adjustment application between three adjacent lots on properties zoned R-1:20.

WHEREAS, on September 8, 2021, the Planning Commission held a public hearing and considered an appeal of the Development Review Committee decision to approve a lot line adjustment on properties zoned R-1:20. The Planning Commission denied the appeal and approved the Lot Line Adjustment application subject to modified conditions of approval.

WHEREAS, on September 20, 2021, the appellant filed an appeal of the decision of the Planning Commission denying the appeal and approving the request for a lot line adjustment between three adjacent lots on properties zoned R-1:20.

WHEREAS, this matter came before the Town Council for public hearing on November 2, 2021, and was regularly noticed in conformance with State and Town law.

WHEREAS, the Town Council received testimony and documentary evidence from the appellant and all interested persons who wished to testify or submit documents. The Town Council considered all testimony and materials submitted, including the record of the Planning Commission proceedings and the packet of material contained in the Council Agenda Report for their meeting on November 2, 2021, along with any and all subsequent reports and materials prepared concerning this application.

NOW, THEREFORE, BE IT RESOLVED:

1. The appeal of the decision of the Planning Commission approving a lot line adjustment between three adjacent lots on properties zoned R-1:20 is granted and the application is remanded to the Planning Commission for further consideration.
2. The decision does not constitute a final administrative decision and the applications will be returned to Planning Commission for further consideration.

PASSED AND ADOPTED at a regular meeting of the Town Council of the Town of Los Gatos, California, held on the 2nd day of November 2021, by the following vote:

COUNCIL MEMBERS:

AYES:

NAYS:

ABSENT:

ABSTAIN:

SIGNED:

MAYOR OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

DATE: _____

ATTEST:

TOWN CLERK OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

DATE: _____

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Draft Resolution to be modified by Town Council deliberations and direction.

RESOLUTION 2021-

**RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF LOS GATOS
GRANTING AN APPEAL OF THE DECISION OF THE PLANNING COMMISSION AND
DENYING THE REQUEST FOR A LOT LINE ADJUSTMENT BETWEEN THREE ADJACENT
LOTS ON PROPERTIES ZONED R-1:20.**

**APNS 532-36-075, -076, -077
SUBDIVISION APPLICATION: M-20-012
PROPERTY LOCATION: 17200 LOS ROBLES WAY
APPELLANT: ALISON AND DAVID STEER
APPLICANT: TONY JEANS
PROPERTY OWNERS: DARAN GOODSSELL, TRUSTEE AND MARK VON KAENEL**

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WHEREAS, on September 8, 2021, the Planning Commission held a public hearing and considered an appeal of the Development Review Committee decision to approve a lot line adjustment on properties zoned R-1:20. The Planning Commission denied the appeal and approved the Lot Line Adjustment application subject to modified conditions of approval.

WHEREAS, on September 20, 2021, the appellant filed an appeal of the decision of the Planning Commission denying the appeal and approving the request for a lot line adjustment between three adjacent lots on properties zoned R-1:20.

WHEREAS, this matter came before the Town Council for public hearing on November 2, 2021, and was regularly noticed in conformance with State and Town law.

WHEREAS, the Town Council received testimony and documentary evidence from the appellant and all interested persons who wished to testify or submit documents. The Town Council considered all testimony and materials submitted, including the record of the Planning Commission proceedings and the packet of material contained in the Council Agenda Report for their meeting on November 2, 2021, along with any and all subsequent reports and materials prepared concerning this application.

NOW, THEREFORE, BE IT RESOLVED:

1. The appeal of the decision of the Planning Commission approving a lot line adjustment between three adjacent lots on properties zoned R-1:20 is granted and the application is denied.
2. The decision constitutes a final administrative decision pursuant to Code of Civil Procedure section 1094.6 as adopted by section 1.10.085 of the Town Code of the Town of Los Gatos. Any application for judicial relief from this decision must be sought within the time limits and pursuant to the procedures established by Code of Civil Procedure section 1094.6, or such shorter time as required by state and federal Law.

PASSED AND ADOPTED at a regular meeting of the Town Council of the Town of Los Gatos, California, held on the 2nd day of November 2021, by the following vote:

COUNCIL MEMBERS:

AYES:

NAYS:

ABSENT:

ABSTAIN:

SIGNED:

MAYOR OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

DATE: _____

ATTEST:

TOWN CLERK OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

DATE: _____

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Community Development Director
Town of Los Gatos
110 E. Main St., Los Gatos CA 95030

Date: Sept 23rd, 2021

Dear Mr Paulson,

We are writing to request that the Town of Los Gatos comply with their Town Ordinance §29.10.070 and initiate the Lot Merger procedure of the two parcels with APNs 532-36-076 and 532-36-077 per the Subdivision maps Act §66541.10 and §66541.11 a and pursuant to California Civil Code Section 1093.

The Town of Los Gatos is a General Law City operating under the provisions of the State Government Code.

“For general law cities, state law requires that the city attorney draft all ordinances. Further, state law requires that the mayor of a general law city sign the ordinances and that the city clerk attest the ordinances. Ordinances are approved by a majority vote of the entire city council. The California Constitution provides that a city may make and enforce within its limits all local, police, sanitary and other ordinances and regulations not in conflict with general laws.”

Subdivision Maps Act § 66451.11 specifies that “a local agency **MAY**, by ordinance which conforms to and implements the procedures prescribed by this article, provide for the merger of a parcel or unit with a contiguous parcel or unit held by the same owner if any one of the contiguous parcels or units held by the same owner does not conform to standards for minimum parcel size, under the zoning ordinance of the local agency applicable to the parcels or units of land and if all of the following requirements are satisfied:

- (a) At least one of the affected parcels is undeveloped by any structure for which a building permit was issued or for which a building permit was not required at the time of construction, or is developed only with an accessory structure or accessory structures, or is developed with a single structure, other than an accessory structure, that is also partially sited on a contiguous parcel or unit.
- (b) With respect to any affected parcel, one or more of the following conditions exists:

- (1) Comprises less than 5,000 square feet in area at the time of the

determination or merger.

(2) Was not created in compliance with applicable laws and ordinances in effect at the time of its creation.

(3) Does not meet current standards for sewage disposal and domestic water supply.

(4) Does not meet slope stability standards.

(5) Has no legal access which is adequate for vehicular and safety equipment access and maneuverability.

(6) Its development would create health or safety hazards

and

(c) The owner of the affected parcels has been notified of the merger proposal pursuant to Section 66451.13, and is afforded the opportunity for a hearing pursuant to Section 66451.14.

For purposes of this section, when determining whether contiguous parcels are held by the same owner, ownership shall be determined as of the date that notice of intention to determine status is recorded.

Los Gatos Town Ordinance §29.10.70 states that "Any parcels under the same or substantially the same ownership that do not meet the criteria listed above **SHALL** be considered merged. In addition, no parcel **SHALL** be modified through a lot line adjustment procedure in order to meet the criteria listed above."

Per the Standard Evidence Code for the State of California , SHALL is a mandatory term, and MAY is permissive. The Development Review Committee and representatives of the Town of Los Gatos are legally required to follow the direction of their own town ordinance.

As you are certainly familiar:

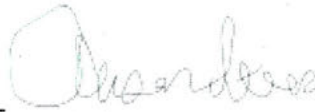
"California Civil Code Section 1093 requires an, "express written statement of the grantor," of their intent to alter or affect the separate and distinct nature of the parcels described therein. Therefore, the legal merger of two parcels occurs only through the express written statement of the grantor (ibid.) or through a local agency's **compliance with the merger procedures** contained in Sections 66451.10 and 66451.11 of the SMA, including the due process requirements contained therein"

We have clearly established that APN 532-36-077 has no legal access which is adequate for vehicular and safety equipment access and maneuverability per the 1978 quit claim deeds for the Harding Ave ROW, and two parcels (APN 532-36-076 and APN 532-36-077) have been under same ownership since that time. It would have been very clear to the developer, landowner and the town that this parcel was already landlocked when reviewing the ROW access to Harding Ave. We are requesting the town initiate the merger procedure of APN 532-36-076 and APN 532-26-077 in compliance with SMA Section 66451 without further delay.

We are requesting an acknowledgement and your response to this letter.

PRINT NAME: Alison and David Steer

SIGNATURE: _____



DATE: Sept 23rd 2021.

ADDRESS: 304 Harding Ave, Los Gatos, CA 95030

PRINT NAME: Nancy and Jim Neipp

SIGNATURE: _____



DATE: Sept 23rd 2021.

ADDRESS: 308 Harding Ave, Los Gatos, CA 95030

PRINT NAME: Gary and Michelle Gysin

SIGNATURE: _____

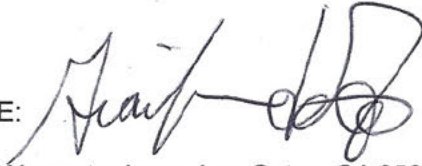


DATE: Sept 23rd 2021.

ADDRESS: 111 Worcester Lane, Los Gatos, CA 95030

PRINT NAME: Gianfranco and Eileen De Feo

SIGNATURE:



DATE: Sept 23rd 2021. .

ADDRESS: 112 Worcester Lane, Los Gatos, CA 95030

[REDACTED]

[REDACTED]

PRINT NAME: Terry and Bob Rinehart

SIGNATURE:



DATE: Sept 23rd 2021.

ADDRESS: 110 Worcester Loop, Los Gatos, CA 95030

[REDACTED]

[REDACTED]

Town of Los Gatos
110 E Main St,
Los Gatos CA 95030
Attn: Town Council

October 25th, 2021

**17200 Los Robles Way, Los Gatos
Supplemental Rebuttal re: LLA M 21-001**

Councilmembers:

I am adding this response to further rebut the appeal for this project after receiving the most recent documents from the Appellant. It is intended to address this only, and does not replace my rebuttal dated October 8th, 2021, which I would encourage you to read.

This most recent set of comments mentions the potential instability of the land, which I have previously addressed. The JCP report on the property indicates that a region of "potential landslide susceptibility" exists in the Los Robles/Hollywood street areas and intersects a very small corner of the parcel nowhere near the Appellants Property. This would typically be addressed at the Architecture and Site application when the scope of any development would be better known. At that time peer reviews of geologic and geotechnical reports would occur.

The LLA satisfies the "Common Sense Exemption" from CEQA, which determines that "If you are not doing anything" there cannot be any Environmental Impact. And with an LLA, nothing physical is occurring.

Additionally - Per the Appellant's own documentation - there are Categorical Exemptions for classes of "Projects" such as this:

4. Minor Alterations to Land
15. Minor Land Divisions

The act of improving zoning compatibility of 3 existing parcels of land by means of an LLA does not therefore require an environmental study.

The desire for privacy is, and always has been, at the center of this appeal and this should be addressed in the usual manner adopted by the Town for such projects, rather than in a haphazard manner dictated by continued neighbor appeals.

Thank you

Tony Jeans

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**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 11/02/2021

ITEM NO: 12

ADDENDUM

DATE: November 1, 2021
TO: Mayor and Town Council
FROM: Laurel Prevetti, Town Manager
SUBJECT: Consider an Appeal of a Planning Commission Decision Approving a Lot Line Adjustment Between Three Adjacent Lots on Properties Zoned R-1:20. Located at 17200 Los Robles Way. Subdivision Application M-20-012. APNS 532-36-075, -076, -077. Property Owners: Daran Goodsell, Trustree and Mark Von Kaenel. Applicant: Tony Jeans. Appellant: Alison and David Steer. Project Planner: Ryan Safty.

REMARKS:

Attachment 11 includes additional information from the appellant received on November 1, 2021.

ATTACHMENTS:

Previously received with the Staff Report:

1. September 8, 2021 Planning Commission Staff Report, with Exhibits 1-14
2. September 8, 2021 Planning Commission Verbatim Minutes
3. Appeal of the Planning Commission Decision, received September 20, 2021
4. Applicant's Response to Appeal, received October 8, 2021
5. Additional Information from the Appellant, received October 21, 2021
6. Draft Resolution to Deny Appeal and Approve Project, with Exhibits A and B
7. Draft Resolution to Grant Appeal and Remand Project to Planning Commission
8. Draft Resolution to Grant Appeal and Deny Project
9. Public Comments received between 11:01 a.m., September 8, 2021 and 11:00 a.m., October 28, 2021
10. Applicant's Response to Public Comments received between 11:01 a.m., September 8, 2021 and 11:00 a.m., October 28, 2021

PREPARED BY: Ryan Safty
Associate Planner

Reviewed by: Town Manager, Assistant Town Manager, Town Attorney, and Finance Director

PAGE 2 OF 2

SUBJECT: 17200 Los Robles Way/M-20-012

DATE: November 1, 2021

Received with this Addendum:

11. Additional Information from the Appellant, received November 1, 2021

On Mon, Nov 1, 2021 at 2:27 AM Alison Steer [REDACTED] wrote:

Dear Mr Prevetti,

Please see below excerpt from the Planning Commission appeal meeting on Sept 9th and supporting evidence of Town initiated lot mergers are enforceable:

3 ROBERT SCHULTZ: The Appellant's argument is that
4 our ordinance overrules the Subdivision Map Act and the
5 case law that has determined how mergers occur—but I don't
6 hear much on mergers so I think maybe they've dropped that
7 argument and now we're concentrating on the lot line
8 adjustment—and the Subdivision Map Act is very clear in
9 what your scope is and it's limited to the effect of after
10 the lot line is completed.

11
12 I've been doing this 32 years and the argument
13 has never been that if there are unbuildable lots you
14 cannot do a lot line adjustment, and I'm trying to look up
15 Napa County's to see where they have, but I do know that's
16 a county, there might be different rules with counties, but
17 I have not found any city that has the same language that
18 we have that requires you to apply the lot line beforehand,
19 and all I can assume is the ordinance is very old, around
20 the time the Subdivision Map Act was applied, and we do
21 need to go back and change the merger language and the lot
22 line language so it confirms the Subdivision Map Act. The
23 Subdivision Map Act language is very clear that you apply
24 what the lots will be afterwards and not before.
25

LOS GATOS PLANNING COMMISSION 9/8/2021
Item #2, 17200 Los Robles Way

15

1) City of Saratoga Lot Merger Ordinance (and other Town Ordinances that were highlighted in Exhibit 11 of supporting exhibits attached)

https://library.municode.com/ca/saratoga/codes/code_of_ordinances?nodeld=CH14SU_ART14-65MEPA_14-65.020NOINME

2) Woodside Lot Merger Ordinance

https://library.municode.com/ca/woodside/codes/municipal_code?nodeld=CD_ORD_TITXVLAUS_CH152SU_ARTIVTOINLOME_S152.040TOINLOME

And the Town Council meeting where it was discussed in January 2021.

https://www.woodsidetown.org/sites/default/files/fileattachments/town_council/meeting/32358/item_b_-_mcam2018-0001_amend_subdivision_ordinance.pdf

From the above link:

Although Town-initiated Lot Mergers are very rare, the local ordinance must include these regulations for consistency with, and the ability to carry out, the Map Act. The Town-Initiated Lot Merger regulations are still very close to those outlined in the current Map Act. *The Ordinance needs to be updated with make minor modifications to these regulations to ensure consistency with the Map Act requirements for local jurisdiction-initiated Lot Mergers.*

Note that the comment about consistency with the Map Act.

Please also note that Mr Jeans, Mr Paulson, and the Town Attorney were aware of the lot merger ordinance back in 2019 as is documented here, and no effect has been made to remove this ordinance from our Town Code.

<http://weblink.losgatosca.gov/weblink/0/edoc/1230776/Item%204%20-%20Addendum.pdf>

In this case the structure was sitting on both lots and per the SMA and Town's lot merger ordinance this would not have applied in this case.

I believe someone may have confused what a Certificate of Compliance signifies. It doesn't confer building rights, zoning variances or other privileges. In fact, Compliance Certificates are often issued for "interior" parcels that lack legal means of access.

<https://info.courthousedirect.com/blog/bid/263554/what-is-a-compliance-certificate>

Please let me know if you have any further questions.

Best Regards,
Alison

On Sat, Oct 30, 2021 at 1:03 PM Alison Steer [REDACTED] wrote:

attaching the City of Berkeley appeal of merger which I inadvertently left off this email, but was included in the exhibits that were submitted to the Town Council packet for the Nov 2nd 17200 Los Robles Way LLA meeting.

Given the appeal packet material was large, I also want to point out the job description of the DRC committee, which refers to the lot merger ordinance. This was included as exhibit 3.

https://library.municode.com/ca/los_gatos/codes/code_of_ordinances?nodid=CO_CH29ZORE_ARTIIADEN_DIV7ASDU_S29.20.745DERECO

(11) Under the provisions of section 29.10.070 of this chapter and section 66424.2 of the Subdivision Map Act, determine whether lots have merged.

Thank you,
Alison

On Sat, Oct 30, 2021 at 12:30 PM Matthew Hudes <MHudes@losgatosca.gov> wrote:

Thank you.

Regards, Matthew

In compliance with the Ralph M. Brown Act, please do not forward my email.

Councilmember Matthew Hudes

Town of Los Gatos

[REDACTED]
[REDACTED]

On Oct 30, 2021, at 9:40 AM, Alison Steer [REDACTED] wrote:

EXTERNAL SENDER

Hi Matthew,

I have read the Town Attorney's findings that involuntary lot mergers are unenforceable but would like to direct you to this link that discusses the Morehart vs Santa Barbara ruling, and the attached involuntarily lot merger in the City of Berkeley. I find the Town Attorney's behavior incredulous, and very concerning that he will not defend our Town ordinances, that are clearly supported by the Subdivision maps act, and wonder what his personal motivation is in this case. Allowing developers to skirt formal subdivision review is asking for disaster.

<https://law.justia.com/cases/california/supreme-court/4th/7/725.html>

best regards,

Alison

B. Merger Provisions' Procedural Safeguards

Section 66451.11 provides that "[a] local agency may, by ordinance which conforms to and implements the procedures prescribed by this article [§§ 66451.10-66451.21], provide for the merger of a parcel or unit with a contiguous parcel or unit held by the same owner" if at least one of the parcels meets certain requirements. The prescribed procedures, found in sections 66451.12 through 66451.18 and described more fully in the margin, are somewhat elaborate. fn. 21 The local agency must initiate a merger by a "notice of intention to determine status" that may be recorded as

well as mailed to the record owner. (§ 66451.13.) fn. 22 The owner may request a hearing and present evidence on whether the parcels meet the standards for merger specified in the ordinance. (§§ 66451.14-66451.16.) After deciding whether to merge the parcels, the local agency must record either a notice of merger or a release of the notice of intention to determine status. (§§ 66451.16-66451.18.)

Petitioners contend that the county ordinances improperly transgress a legislative intent that a required merger of parcels be accompanied by these procedural safeguards. But as the record in this case illustrates, a property owner receives just as much due process under the ordinances as would be **[7 Cal. 4th 757]** afforded under the Act's merger provisions. Under the Act, a merger of parcels is initiated by recorded notice to the owner of an intention to determine status. Such a notice would be superfluous under the ordinances because application of the merger requirement is initiated by the owner's own application for a development permit.

Under both the Act and the ordinances, an owner desirous of resisting the merger is entitled to a hearing. Here, plaintiffs were heard before the county's planning commission and board of supervisors. The only issue on which the Act provides a hearing is whether the property meets the standards for merger that are specified in the merger ordinance as authorized by the Act. (§§ 66451.13, 66451.16.) Here, plaintiffs were fully heard before the county's bodies on their contention that the ordinances' merger requirements did not apply because the parcels adjacent to plaintiffs' block 132 were under separate, rather than common, ownership.

Finally, the county ordinances provide that any merger they require be put into effect by the owner's own "recordation of a reversion to acreage, voluntary merger, final parcel map or final tract map." (Ord. No. 3718, § 2, amending § 35-102.3.) Thus, there is no need under the ordinances for the requirement, imposed by sections 66451.12 and 66451.16 through 66451.18 of the Act, that the county itself record a decision to merge or not to merge.

Since the county ordinances provide as much procedural protection to parcel owners as the Act's merger provisions (§§ 66451.12-66451.18), the ordinances are not impliedly preempted by the state concern underlying those provisions for the owners' procedural rights.

From: [Alison Steer](#)
To: [Robert Schultz](#)
Cc: [Joel Paulson](#); [Ryan Safty](#); [Jennifer Armer](#); [Planning](#)
Subject: 17200 Los Robles Way LLA Application M-20-12 - Town Initiated Lot Mergers
Date: Monday, November 1, 2021 9:19:28 AM
Attachments: [image.png](#)
[image.png](#)
[image.png](#)
[image.png](#)
[Supporting Exhibits for Appeal of 17200 Los Robles Way LLA Application.pdf](#)

EXTERNAL SENDER

Dear Mr Schultz,

I have read your findings regarding the details on Lot Merger. I'm including the excerpt below from the Planning Commission appeal meeting on Sept 8th and am including supporting evidence of Town initiated lot mergers. I believe your argument is around semantics that our Ordinance does not specifically describe the procedure required for involuntary lot merger per SMA 66451, even though we know we operate under the provisions of the Subdivision Maps Act? It should be noted that we also do not have a lot line adjustment ordinance that specifically calls out Section 66412 either. If this was a concern, I am wondering why this ordinance wasn't addressed two years ago when the 11/15 Peralta Ave lot merger request was submitted by neighbors to the Town? In this case, the request for merger did not apply since there was a building on both properties, but it did afford an opportunity for review of the Town's ordinance with regard to enforceability.

<http://weblink.losgatosca.gov/weblink/0/edoc/1230776/Item%204%20-%20Addendum.pdf>

You had mentioned in the Planning Commission appeal meeting (transcribed excerpt below) that you would check for other cities that may have ordinances that prevent unbuildable parcels from becoming buildable. I submitted numerous examples of them in the supporting exhibits (exhibit 11), including our neighboring city of Saratoga. Have you found a ruling that supports that a non-buildable parcel cannot be made buildable through lot line adjustment is in fact not enforceable in the State of California? The City of Berkeley successfully processed an involuntary lot merger by following SMA 66451.

3 ROBERT SCHULTE: The Appellant's argument is that
4 our ordinance overrules the Subdivision Map Act and the
5 case law that has determined how mergers occur—but I don't
6 hear much on mergers so I think maybe they've dropped that
7 argument and now we're concentrating on the lot line
8 adjustment—and the Subdivision Map Act is very clear in
9 what your scope is and it's limited to the effect of after
10 the lot line is completed.

11 I've been doing this 32 years and the argument
12 has never been that if there are unbuildable lots you
13 cannot do a lot line adjustment, and I'm trying to look up
14 Napa County's to see where they have, but I do know that's
15 a county, there might be different rules with counties, but
16 I have not found any city that has the same language that
17 we have that requires you to apply the lot line beforehand,
18 and all I can assume is the ordinance is very old, around
19 the time the Subdivision Map Act was applied, and we do
20 need to go back and change the merger language and the lot
21 line language so it confirms the Subdivision Map Act. The
22 Subdivision Map Act language is very clear that you apply
23 what the lots will be afterwards and not before.
24
25

LOS GATOS PLANNING COMMISSION 9/8/2021
Item #2, 17200 Los Robles Way

15

In addition, here is the Woodside Lot Merger Ordinance

https://library.municode.com/ca/woodside/codes/municipal_code?nodeId=CD_ORD_TITXVLAUS_CH152SU_ARTIVTOINLOME_S152.040TOINLOME

And the Town Council meeting where it was discussed in January 2021.

https://www.woodsidetown.org/sites/default/files/fileattachments/town_council/meeting/32358/item_b_-_mcam2018-0001_amend_subdivision_ordinance.pdf

From the above link:

Although Town-initiated Lot Mergers are very rare, the local ordinance must include these regulations for consistency with, and the ability to carry out, the Map Act. The Town-Initiated Lot Merger regulations are still very close to those outlined in the current Map Act. ***The Ordinance needs to be updated with make minor modifications to these regulations to ensure consistency with the Map Act requirements for local jurisdiction-initiated Lot Mergers.***

As they mention, Town-initiated lot mergers are very rare, and given the situation with how this parcel of land (APN 532-36-077) exists in the first place, you would not expect them to be common. You had mentioned previously that staff share my frustration with regard to providing certificate of compliance on these non-conforming lots. This is why Town Ordinance Sec 29.10.070 is required to ensure new buildable sites cannot be created without proper due diligence. The creation of a new buildable parcel should go through the formal subdivision process, because of the serious concern of property damage to the neighbors at the bottom of the hillside, and because this may lead to another Bellavista situation when this comes back to planning, which could harm the future owner of APN 532-36-075 when it is sold.

At the Woodside link above please also see the section regarding CEQA, bullet 2 which says that a Lot Line adjustment including steeper average slopes than 20% cannot be exempt from CEQA. I have raised this in my appeal packet as well.

https://library.municode.com/ca/woodside/codes/municipal_code?nodeId=CD_ORD_TITXVLAUS_CH152SU_ARTVLOLIAD

California Environmental Quality Act (CEQA)

CEQA Guidelines provide three main exemptions for Lot Mergers, Lot Line Adjustments, and divisions of land. Below is a summary of the three exemptions:

1. **CEQA Guidelines Section 15300.1 – Ministerial Action:** All ministerial permits that do not require any discretionary action are exempt from CEQA. For example, a Lot Merger application reviewed by Town staff shall be approved if it meets all Municipal Code development standards. Since Town staff must approve a Lot Merger that meets minimum standards, it would be considered a ministerial action and therefore be exempt from CEQA under Section 15300.1.
2. **CEQA Guidelines Section 15305(a) – Minor Alterations to Land Use Limitation for an Lot Line Adjustment:** A Lot Line Adjustment may be exempt from CEQA under Section 15305 if the gross average slope of all properties combined is less than 20%. A Lot Line Adjustment including steeper average slopes cannot be exempt from CEQA.
3. **CEQA Guidelines Section 15315 – Minor Land Divisions:** This Section exempts Land Divisions of properties into four or fewer parcels, in urbanized areas (defined by CEQA guidelines), zoned for residential or commercial use, consistent with the General Plan and zoning, with no exceptions required, having all services and access to the proposed parcel, having not been involved in a division of land in the previous two years, and not having an average slope greater than 20%, and not creating significant adverse environmental impacts.

It should be noted that CEQA Guidelines Section 15300.2 indicates that even if a CEQA exemption exists for a project, there could be certain circumstances in which a project could result in significant impacts, which would not allow the listed exemption to be used by the Town.

A detailed summary of the Morehart case finds the following:

<https://law.justia.com/cases/california/supreme-court/4th/7/725.html>

"the act does impliedly preempt any local zoning ordinance provision that purports to require, as a condition to issuance of a development permit, a merger of parcels that the county **could not compel** under section 66451.11"

Given the appeal packet material was large, and perhaps items were overlooked, I also want to point out the job description of the DRC committee, which refers to the lot merger ordinance. This was included as exhibit 3.

https://library.municode.com/ca/los_gatos/codes/code_of_ordinances?nodeId=CO_CH29ZORE_ARTIIADEN_DIV7ASDU_S29.20.745DERECO

(11) Under the provisions of section 29.10.070 of this chapter and section 66424.2 of the Subdivision Map Act, determine whether lots have merged.

Please let me know if this is not sufficient evidence for the Town to deny lot line adjustment of APN 532-36-077.

Thank you,
Alison Steer

[REDACTED]

EXHIBITS

Exh.#	Item
1	Town of Los Gatos Lot Merger Ordinance (Sec 29.10.070)
2	Sub Division Maps Act Gov Code 66451.11
3	Requirements of the Development Review Committee (Sec. 29.20.745)
4	Sierra Club vs Napa County Superior Court Ruling on Lot Line Adjustment for Sequential Lots.
5	Town Lot Line Adjustment Procedure Handout.
6	CEQA Categorical Exemption Class 5, Guidelines Section 15305 (minor alterations in land use limitations).
7	List of CEQA Exemption Types
8	City of Santa Barbara criteria for Environmental Review
9	17200 Los Robles Way Average Slope Calculations
10	Required Findings For 17200 Los Robles Way
11	Links to other CA Town and County Lot Line Adjustment Ordinances: <ul style="list-style-type: none">a. Santa Cruz Countyb. Napa Countyc. Saratogad. Laguna Beache. Sonoma Countyf. City of Fillmoreg. Marin County
12	Burke Lot Line Adjustment- Big Sur
13	Subdivision Maps Act Gov Code 66412(d)
14	Santa Clara County Fire Department Requirements for driveways >150ft.
15	Non-Buildable Area of APN 532-36-077 outside the LRDA
16	Berkeley Merger of Two Parcels
17	Attached Sierra Club vs Napa County Highlighted PDF
18	Thompson Title Deed for 17200 Los Robles Way showing acknowledgement of the Thompson/Clifford Quit Claim to Harding Ave ROW (Parcel 4 description)

Exhibit 1: Town of Los Gatos Lot Merger Ordinance

Sec. 29.10.070. - Lot merger.

(a) A parcel of land does lawfully exist separately from other land and is a lot when the parcel meets each of the following criteria:

(1) Comprises at least five thousand (5,000) square feet in area.

(2) Was created in compliance with applicable laws and ordinances in effect at the time of its creation.

(3) Meets current standards for sewage disposal and domestic water supply.

(4) Meets slope stability standards.

(5) Has legal access which is adequate for vehicular and safety equipment access and maneuverability.

(6) Development of the parcel would create no health or safety hazards.

(7) The parcel would be consistent with the applicable general plan and any applicable specific plan, other than minimum lot size or density standards.

(8) No structures are built over a common property line which is shared with another parcel under the same or substantially the same ownership.

(b) Any parcels under the same or substantially the same ownership that do not meet the criteria listed above shall be considered merged. In addition, no parcel shall be modified through a lot line adjustment procedure in order to meet the criteria listed above.

(Ord. No. 1316, § 3.10.010, 6-7-76; Ord. No. 1337, 11-1-76; Ord. No. 1432, 6-4-79; Ord. No. 1438, 8-6-79; Ord. No. 1756, § I, 8-1-88)

Exhibit 2: Subdivision Maps Act Gov Code 66451.11

https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=GOV§ionNum=66451.11

GOVERNMENT CODE - GOV

TITLE 7. PLANNING AND LAND USE [65000 - 66499.58] (*Heading of Title 7 amended by Stats. 1974, Ch. 1536.*)

DIVISION 2. SUBDIVISIONS [66410 - 66499.38] (*Division 2 added by Stats. 1974, Ch. 1536.*)

CHAPTER 3. Procedure [66451 - 66472.1] (*Chapter 3 added by Stats. 1974, Ch. 1536.*)

ARTICLE 1.5. Merger of Parcels [66451.10 - 66451.24] (*Article 1.5 added by Stats. 1983, Ch. 845, Sec. 2.*)

66451.11.

A local agency may, by ordinance which conforms to and implements the procedures prescribed by this article, provide for the merger of a parcel or unit with a contiguous parcel or unit held by the same owner if any one of the contiguous parcels or units held by the same owner does not conform to standards for minimum parcel size, under the zoning ordinance of the local agency applicable to the parcels or units of land and if all of the following requirements are satisfied:

(a) At least one of the affected parcels is undeveloped by any structure for which a building permit was issued or for which a building permit was not required at the time of construction, or is developed only with an accessory structure or accessory structures, or is developed with a single structure, other than an accessory structure, that is also partially sited on a contiguous parcel or unit.

(b) With respect to any affected parcel, one or more of the following conditions exists:

- (1) Comprises less than 5,000 square feet in area at the time of the determination of merger.
- (2) Was not created in compliance with applicable laws and ordinances in effect at the time of its creation.
- (3) Does not meet current standards for sewage disposal and domestic water supply.
- (4) Does not meet slope stability standards.
- (5) Has no legal access which is adequate for vehicular and safety equipment access and maneuverability.
- (6) Its development would create health or safety hazards.

(7) Is inconsistent with the applicable general plan and any applicable specific plan, other than minimum lot size or density standards.

The ordinance may establish the standards specified in paragraphs (3) to (7), inclusive, which shall be applicable to parcels to be merged.

This subdivision shall not apply if one of the following conditions exist:

(A) On or before July 1, 1981, one or more of the contiguous parcels or units of land is enforceably restricted open-space land pursuant to a contract, agreement, scenic restriction, or open-space easement, as defined and set forth in Section 421 of the Revenue and Taxation Code.

(B) On July 1, 1981, one or more of the contiguous parcels or units of land is timberland as defined in subdivision (f) of Section 51104, or is land devoted to an agricultural use as defined in subdivision (b) of Section 51201.

(C) On July 1, 1981, one or more of the contiguous parcels or units of land is located within 2,000 feet of the site on which an existing commercial mineral resource extraction use is being made, whether or not the extraction is being made pursuant to a use permit issued by the local agency.

(D) On July 1, 1981, one or more of the contiguous parcels or units of land is located within 2,000 feet of a future commercial mineral extraction site as shown on a plan for which a use permit or other permit authorizing commercial mineral resource extraction has been issued by the local agency.

(E) Within the coastal zone, as defined in Section 30103 of the Public Resources Code, one or more of the contiguous parcels or units of land has, prior to July 1, 1981, been identified or designated as being of insufficient size to support residential development and where the identification or designation has either (i) been included in the land use plan portion of a local coastal program prepared and adopted pursuant to the California Coastal Act of 1976 (Division 20 of the Public Resources Code), or (ii) prior to the adoption of a land use plan, been made by formal action of the California Coastal Commission pursuant to the provisions of the California Coastal Act of 1976 in a coastal development permit decision or in an approved land use plan work program or an approved issue identification on which the preparation of a land use plan pursuant to the provisions of the California Coastal Act is based.

For purposes of paragraphs (C) and (D) of this subdivision, "mineral resource extraction" means gas, oil, hydrocarbon, gravel, or sand extraction, geothermal wells, or other similar commercial mining activity.

(c) The owner of the affected parcels has been notified of the merger proposal pursuant to Section 66451.13, and is afforded the opportunity for a hearing pursuant to Section 66451.14.

For purposes of this section, when determining whether contiguous parcels are held by the same owner, ownership shall be determined as of the date that notice of intention to determine status is recorded.

(Amended by Stats. 1995, Ch. 162, Sec. 1. Effective January 1, 1996.)

Exhibit 3: Requirements of the Development Review Committee

Sec. 29.20.745. - Development Review Committee.

The Development Review Committee shall:

- (1) Regularly review and make recommendations to the Planning Commission concerning the determination of all matters which come before the Planning Commission except zoning ordinance amendments, zone changes (not including rezoning to PD), general plan adoptions and amendments, specific plan adoptions and amendments, and capital improvement plans.
- (2) Review and make recommendations to the Council concerning community-oriented bulletin boards and kiosks proposed to be erected on public property.
- (3) May on its own motion review and make recommendations concerning matters not assigned to it.
- (4) Reserved.
- (5) Determine and issue zoning approval for the storage of hazardous materials as provided in division 1 of article VII of this chapter.
- (6) Determine appropriate screening (fencing, landscaping or a combination) for hazardous materials storage sites as provided in division 1 of article VII of this chapter.
- (7) Determine and issue zoning approval for grading permits as provided in [section 29.10.09045](#)(b) and (c) of this chapter.
- (8) Reserved.
- (9) Determine and issue zoning approval for lot line adjustments and lot mergers.
- (10) Reserved.
- (11) Under the provisions of [section 29.10.070](#) of this chapter and section 66424.2 of the Subdivision Map Act, determine whether lots have merged.

Exhibit 4: Sierra Club vs Napa County Superior Court Ruling on Lot Line Adjustment for Sequential Lots. (See highlighted sections in attached pdf)

[Sierra-Club-v.-Napa-County-Board-of-Supervisors.pdf](#)

Exhibit 5: Town Lot Line Adjustment Procedure Handout.

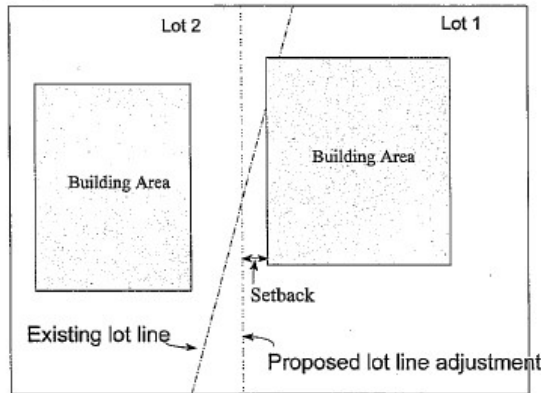
This procedure cannot be used because of State Law SMA 66451.11 stating lots meet merger criteria. Building on APN 532-36-076 is derelict. APN 532-36-077 is land-locked due to quit claim deeds signed in 1978 and has no frontage. Is non-conforming.

<https://www.losgatosca.gov/DocumentCenter/View/348>

What is a lot line adjustment?

Lot line adjustment is the relocation of an interior lot line between two or more neighboring parcels. Lot line adjustments are reviewed according to Section 66412(d) of the Government Code of the State of California. The applicant has the option of using this procedure or completing the lot line adjustment by filing a Parcel Map.

Example illustration:



How to apply for a lot line adjustment?

Application for lot line adjustments (boundary changes) shall be made to the Community Development Department on the prescribed form. Application forms and pertinent information can be obtained at the Community Development Department.

What items shall be submitted with the application?

- All owners of record must sign the application.
- Evidence that any holders of Deeds of Trust have no objections to the proposed boundary changes.
- Title reports covering all parcel involved

dated *within 30 days*.

- The required Community Development Department processing fee.
- Seven (7) copies of a drawing no larger than 24" x 36" showing existing and proposed boundaries, all improvements (houses, driveways, trees, etc.) and required building setbacks that may be affected by the proposed boundary change.

What is the lot line adjustment process?

Once an application is accepted at the Community Development Department, all Lot Line Adjustment application will be reviewed by the Development Review Committee (DRC) and sent to pertinent departments and organizations for review and recommendation.

1. The DRC will limit its review to the following items:

- Lot size remains conforming to the existing zoning ordinance. If the lots are currently nonconforming as to size, they cannot become more nonconforming (smaller).
- Setbacks remain conforming or do not become more nonconforming.
- Lot frontage and lot depth requirements remain conforming.
- The existing houses do not become nonconforming as for Floor Area Ratio (FAR) requirements of the zone.
- The existing buildings meet the requirement of the Uniform Building Code for fire separation or fire wall construction.

2. After final action by the DRC, the applicant will be notified by the Community Development Department that the

Exhibit 6: CEQA Categorical Exemption Class 5, Guidelines Section 15305 (minor alterations in land use limitations).

[Cal. Code Regs. tit. 14 § 15305](#)

Section 15305 - Minor Alterations in Land Use Limitations

Class 5 consists of minor alterations in land use limitations in areas with an average slope of less than 20%, which do not result in any changes in land use or density, including but not limited to:

(a) Minor lot line adjustments, side yard, and set back variances not resulting in the creation of any new parcel;(b) Issuance of minor encroachment permits;(c) Reversion to acreage in accordance with the Subdivision Map Act.

Exhibit 7: List of CEQA Exemption Types

<https://sfplanning.org/list-ceqa-exemption-types>

Categorical Exemptions from the California Environmental Quality Act (CEQA)

The California Environmental Quality Act (CEQA) and the Guidelines for implementation of CEQA adopted by the Secretary of the California Resources Agency require that local agencies adopt a list of categorical exemptions from CEQA. Such list must show those specific activities at the local level that fall within each of the classes of exemptions set forth in Article 19 of the CEQA Guidelines, and must be consistent with both the letter and the intent expressed in such classes.

In the list that follows, the classes set forth in CEQA Guidelines Sections 15301 - 15332 are shown *in bold italics*, with further elaboration or explanation for applying these exemptions in San Francisco shown in normal upper- and lower-case type. The Secretary of the California Resources Agency has determined that the projects in these classes do not have significant effect on the environment, and therefore are categorically exempt from CEQA. The following exceptions, however, are noted in the State Guidelines.

*** CLASS 5: MINOR ALTERATIONS IN LAND USE LIMITATIONS**

Class 5 consists of minor alterations in land use limitations in areas with an average slope of less than 20%, which do not result in any changes in land use or density, including but not limited to:

(a) Minor lot line adjustments, side yard and setback variances not resulting in the creation of any new parcel.

This item covers only the granting of lot line adjustments and variances, not construction that could occur as a result of such approvals. Setback variances include both front and rear yard variances and modification or abolition of legislated setback lines. Class 15 may also apply for minor land divisions into four or fewer parcels when no variance is required.

CLASS 15: MINOR LAND DIVISIONS

*Class 15 consists of the division of property in urbanized areas zoned for residential, commercial, or industrial use into four or fewer parcels when the division is in conformance with the General Plan and zoning, no variances or exceptions are required, all services and access to the proposed parcels to local standards are available, the parcel was not involved in a division of a larger parcel within the previous two years, and the **parcel does not have an average slope greater than 20 percent.***

Only land divisions into four or fewer parcels requiring no variances from the City Planning Code and no exceptions from the San Francisco Subdivision Ordinance are covered by this Class.

Exhibit 8: City of Santa Barbara criteria for Environmental Review

https://www.santabarbaraca.gov/SBdocuments/Advisory_Groups/Staff_Hearing_Officer/Archive/2018_Archives/03_Staff_Reports/2018_06_20_June_20_2018_Item_IV.D_125-127_Eucalyptus_Hill_Circle_Staff_Report.pdf



City of Santa Barbara California

STAFF HEARING OFFICER STAFF REPORT

REPORT DATE: June 13, 2018
AGENDA DATE: June 20, 2018
PROJECT ADDRESS: 125-127 Eucalyptus Hill Circle (MST2017-00756)
Lot Line Adjustment in Eucalyptus Hill Planned Unit Development
TO: Susan Reardon, Senior Planner, Staff Hearing Officer
FROM: Planning Division, (805) 564-5470
Beatriz Gularte, Senior Planner *BGG*
Megan Arciniega, Associate Planner *MAA*

VIII. ENVIRONMENTAL REVIEW

The project is a minor land transfer between two lots developed under a PUD for 28 residential units. The City's list of projects qualifying as categorically exempt from the provisions of CEQA includes an exemption for projects involving minor lot line adjustments where no new building site has an average slope greater than 20%, and there would be no changes in land use or density. Because there is no change to land use or increase in density associated with the Lot Line Adjustment since it would not create a new building site, as the building site was already approved, the Environmental Analyst has determined that the project is exempt from further environmental review pursuant to the California Environmental Quality guidelines Section §15305 (Minor Alteration in Land Use Limitations).

Exhibit 9 Los Robles Way Average Slope Calculations:

AVERAGE SLOPE CALCULATIONS:
(ENTIRE PROPERTY)

CONTOUR INTERVAL (I) 5 FEET
CONTOUR LENGTH (L) 7102 FEET
AREA (A) 3.13 ACRES 136343 SQUARE FEET

AVERAGE SLOPE (S)

$$S=IL/A = 5 \cdot 7102' / 136343 \text{ S.F.} = 26\%$$

Exhibit 10 Required Findings For 17200 Los Robles Way:
(No development proposed yet Town is able to make these affirmative findings without review of proposed development?)

PLANNING COMMISSION – *September 8, 2021*

REQUIRED FINDINGS FOR:

17200 Los Robles Way

Subdivision Application M-20-012

Consider an Appeal of a Development Review Committee Decision Approving a Lot Line Adjustment Between Three Adjacent Lots on Properties Zoned R-1:20. APNs 532-36-075, -076, and -077. PROPERTY OWNERS: Daren Goodsell, Trustee and Mark Von Kaenel.

APPLICANT: Tony Jean. APPELLANTS: Alison and David Steer, Terry and Bob Rinehart, Nancy and Jim Neipp, Gary and Michelle Gysin, and Gianfranco and Eileen De Feo.

PROJECT PLANNER: Ryan Safty.

FINDINGS

Required findings for CEQA:

■ The project is not subject to the California Environmental Quality Act pursuant to the adopted Guidelines for the Implementation of CEQA, Section 15061(b)(3): A project is exempt from CEQA when the activity is covered by the common sense exemption that CEQA only applies to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question will have a significant effect on the environment, the activity is not subject to CEQA. The project proposes to modify lot lines between three legal, adjacent parcels. **No development is proposed at this time.**

Required findings to deny a Subdivision application:

■ As required by Section 66474 of the State Subdivision Map Act the map shall be denied if any of the following findings are made: **None of the findings could be made to deny the application.**

Instead, the Planning Commission makes the following **affirmative findings:**

- a. That the proposed map is consistent with all elements of the General Plan.
- b. That the design and improvement of the proposed subdivision is consistent with all elements of the General Plan.
- c. That the site is physically **suitable for the type of development.**
- d. That the site is physically suitable for the **proposed density of development.**
- e. That the design of the subdivision and the proposed improvements are not likely to cause **substantial environmental damage nor substantially and avoidably injure fish or wildlife or their habitat.**
- f. That the design of the subdivision and type of improvements is not likely to cause serious public health problems.
- g. That the design of the subdivision and the type of improvements will not conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision.

EXHIBIT 11 Links to other CA Town and County Lot Line Adjustment Ordinances:

A) Santa Cruz County

<https://www.sccoplanning.com/LinkClick.aspx?fileticket=qoSS8epYHGU%3D&tabid=1097>

SANTA CRUZ COUNTY PLANNING DEPARTMENT POLICY/ORDINANCE INTERPRETATION

Interpretation No.: LD-02 (Lot Line Adjustments)
Effective Date: 06/30/06
Originally Issued: 06/30/06 (LD-02 replaces a portion of LD-01)

Question:

What standards are applied when processing Lot Line Adjustments?

**Applicable Ordinance Section(s)
and/or General Plan/LUP Policy(ies)**
§13.10.673; §14.01.105-L; §14.01.107.4

Interpretation:

In addition to the regulations found in the County Code Sections listed above, the following standards will be applied to Lot Line Adjustment applications:

1. Maximum number of parcels. Lot line adjustments shall involve four or fewer parcels, in conformance with Senate Bill 497. Adjustments of five or greater parcels require Tentative and Final Maps;
2. Proximity of parcels. The parcels must be adjoining, i.e. touching, and not merely adjacent or nearby, in conformance with Senate Bill 497;
3. Additional Building Sites. No additional building sites may be created by a lot line adjustment. A lot must be buildable before a lot line adjustment can be approved, except where the entirety of the unbuildable lot will become part of one or more buildable, legally created parcels. A lot that is not buildable for whatever reason (lack of access, unstable slopes, inadequate sewage disposal, etc.) cannot be made buildable by means of a lot line adjustment.

B) Napa County Lot Line Adjustment Ordinance

https://library.municode.com/ca/napa_county/codes/code_of_ordinances?nodeId=TIT17SU_CH17.46LOLIAD_17.46.030LOLIADPPDECO

C. The county surveyor shall tentatively approve the lot line adjustment if it meets the following standards at the time the filed application is deemed complete, provided however that the county surveyor may impose conditions as part of such tentative approval to ensure that the standard established by subsection (E) of [Section 17.46.060](#) will be satisfied prior to recordation of the deed(s) consummating the lot line adjustment. Applications complying with the following standards are deemed to conform to the county general plan, any applicable specific plan, and county zoning and building ordinances:

1. The lot line adjustment will result in the transfer of property between at least two, but no more than four, existing adjoining legal parcels. Parcels are adjoining only if each of the parcels proposed for adjustment abuts at least one of the other parcels involved;

2. A greater number of parcels than originally existed will not result from the lot line adjustment;

3. A nonbuildable parcel will not be made buildable by the lot line adjustment. For purposes of this standard, a lot is considered buildable if it meets all three of the following criteria:

a. The parcel contains a minimum two thousand four hundred square feet of net lot area as defined in [Section 17.02.350](#);

b. The parcel **has existing access rights to a public street** as defined in [Section 17.02.020](#); and

c. The parcel contains a building site, as defined in [Section 17.02.080](#), which is a minimum of twenty-five feet wide and twenty-five feet deep;

- **17.02.080 - Building site.**

"Building site" means a site on a lot which is suitable for construction of a main building and is reasonably free from geotechnical hazards such as settlement, landsliding, mudsliding and flood hazards, and to which there is reasonable access.

(Ord. 854 § 2 (part), 1987: prior code § 11602.2 (b))

C) Town of Saratoga

https://library.municode.com/ca/saratoga/codes/code_of_ordinances?nodeId=CH14SU_ART14-50LOLIAD

Category 1—No increase in number of Developable Lots.

- (1) No substandard lot is reduced or further reduced in area; and
- (2) Each adjusted lot retains at least ninety percent of the real property included in the lot prior to the proposed lot line adjustment; and
- (3) The lot line adjustment would not result in any additional developable lots or a greater allowable density than prior to the lot line adjustment. In determining if a lot is developable, the lot must meet at least one of the following criteria.
 - (i) Contain a legal dwelling constructed pursuant to and in compliance with a validly issued design review and subsequent building permit; or
 - (ii) Be subject to an unexpired design review approval and or building permit; or
 - (iii) Be a whole lot on a numbered tract map or parcel map issued pursuant to a legal subdivision.

[14-65.010 - Requirements for parcel merger. | Code of Ordinances | Saratoga, CA | Municode Library](#)

14-65.010 - Requirements for parcel merger.



A parcel or unit of land may be merged with a contiguous parcel or unit of land held by the same owner if any one of such parcels or units does not conform to the applicable standard for minimum site area as prescribed in the Zoning Ordinance, and all of the following requirements are satisfied:

- (a) At least one of the affected parcels is undeveloped by any structure for which a building permit was issued or for which a building permit was not required at the time of construction, or is developed only with an accessory structure or accessory structures, or is developed with a single structure other than an accessory structure that is also partially sited on a contiguous parcel or unit.
- (b) With respect to any affected parcel, one or more of the following conditions exist:
 - (1) The parcel comprises less than five thousand square feet in gross site area at the time of the determination of merger.
 - (2) The parcel was not created in compliance with applicable laws and ordinances in effect at the time of its creation.
 - (3) The parcel does not meet current standards for sewage disposal and domestic water supply.
 - (4) The parcel does not meet slope stability standards.
 - (5) The parcel has no legal access which is adequate for vehicular and safety equipment access and maneuverability.
 - (6) Development of the parcel would create health or safety hazards.
 - (7) The parcel is inconsistent with the General Plan and any applicable specific plan, other than minimum lot size or density standards.
- (c) For purposes of determining whether contiguous parcels are held by the same owner, ownership shall be determined as of the date that notice of intention to determine status is recorded pursuant to [Section 14-65.020](#) of this Article.

14-65.020 - Notice of intended merger.



Whenever the Community Development Director believes that a parcel or unit of land may satisfy the requirements set forth in [Section 14-65.010](#) and ought to be merged, or whenever the Planning Commission or the City Council makes such determination and instructs the Community Development Director to initiate proceedings under this Article, the Director shall cause to be mailed by certified mail to the then current owner of the property a notice of intention to determine status, notifying the owner that the affected parcels may be merged pursuant to the standards of this Article, and advising the owner of the opportunity to request a hearing on determination of status and to present evidence at the hearing that the property does not meet the criteria for merger. The notice of intention to determine status shall be filed for record in the office of the County Recorder on the date such notice is mailed to the property owner.

(Amended by Ord. 221 § 2 (part), 2003)

D) Laguna Beach

http://qcode.us/codes/lagunabeach/view.php?topic=21-21_08-21_08_030

21.08.030 Lot line adjustments exempted.

In accordance with Section 66412(d) of the California Government Code, a lot line adjustment between two or more existing building sites, or between parcels of land contained within an existing building site, where the land taken from one building site is added to an adjacent building site, or where interior parcel lines are eliminated for the purpose of consolidation, and where a greater number of parcels than originally existed is not thereby created, is exempt from this chapter, provided the lot line adjustment is approved by the city council of the city of Laguna Beach and observes the following requirements:

- (a) The project site described in the proposal consists of legal building sites as defined in Title 25 (Zoning) of this code;
- (b) **The proposal does not create one or more building site(s);**
- (c) Any land taken from one site will be added to an adjacent site and no additional sites will result from the lot line adjustment;
- (d) The project **complies** with the requirements of the **California Environmental Quality Act**;
- (e) The proposal is consistent with the general plan;
- (f) The parcels proposed to be adjusted by the lot line adjustment comply with all applicable zoning regulations or, in the case of existing, legal nonconforming lots, do not significantly or adversely increase the extent of such nonconformity;
- (g) The lot line adjustment, in and of itself, will not result in the need for additional improvements and/or facilities;
- (h) The proposal does not include any lots or parcels created illegally;
- (i) The project does not impair any existing access, create a need for new access, impair any existing easements or create a need for any new easements serving any adjacent lots or parcels.

Lot line adjustment applications shall be filed by the legal owner(s) on a form prescribed by the director of community development and submitted with a fee as established by resolution of the city council. Since the forms, if approved, must be filed for record with the Orange County recorder they shall be drawn in a clear, legible and professional manner using conventional surveying or civil engineering techniques. An acceptable current title report, except or lot book report that verifies the legal ownership of the parcels under consideration shall be submitted.

Any failure to file for the record an approved lot line adjustment form within ninety days from the date of approval by the city council shall result in a termination of approval unless prior to expiration an application for extension not to exceed an additional ninety days is submitted in writing for approval by the director of community development. (Ord. 1216 § 2, 1991).

E) Sonoma County

<https://sonomacounty.ca.gov/PRMD/Instructions-and-Forms/PJR-030-Lot-Line-Adjustment/>

Minor Lot Line Adjustment:

A request for a LLA shall be deemed minor only if all of the following statements are true:

1. No parcel is completely relocated;
2. No parcel is reduced in size by more than 30% or enlarged by more than 100%;
3. **No existing parcel is subject to merger or otherwise undevelopable; and**
4. The adjustment is not subject to the California Environmental Quality Act, (CEQA) pursuant to Section 25-70.2 of the Subdivision Ordinance.

Major Lot Line Adjustment:

A request for a LLA shall be deemed major, unless exempted by the Director of Permit Sonoma, if any of the following statements are true:

1. A parcel is completely relocated;
2. A parcel is reduced in size by more than 30% or enlarged by more than 100%;
3. An existing parcel is subject to merger or otherwise undevelopable;
4. The adjustment is subject to the California Environmental Quality Act (CEQA), pursuant to Section 25-70.2 of the Subdivision Ordinance.

F) CITY OF FILLMORE Lot Line Adjustment Criteria

<https://www.fillmoreca.com/home/showpublisheddocument/6559/637245227149470000>

CRITERIA:

- LLAs and LMs are not valid until such time as the forms and exhibits are approved and signed by the Community Development Director and recorded in the Ventura County Recorder's Office in conformance with the requirements of the Fillmore Municipal Code. In addition, all deeds granting the merged/adjusted lots to the respective owners must also be recorded with the Ventura County Recorder's Office.
- For LLAs and LMs to be processed ministerially, they must involve only legal lots (per the Subdivision Map Act) provided that the adjustment or merger is consistent with the Fillmore Municipal Code, and that either: (1) all of the resulting lot(s) will conform to all applicable zoning and subdivision requirements (e.g., area, width, frontage and yard requirements), (2) will not change land use or density, or (3) no conforming lot will be made nonconforming with applicable zoning requirements and the adjustment or merger will not reduce the aggregate area of all affected lots which do not meet the minimum area requirements of their zoning designations.

G) Marin County Lot Merger Ordinance

https://library.municode.com/ca/marin_county/codes/municipal_code?nodetid=TIT22DECO_ARTVISU_CH22.92MEPA_22.92.02OREME

22.92.020 - Requirements for Merger.

On or after January 1, 1984, when any one of two or more contiguous parcels or units of land, which are held by the same owner or owners, does not conform to the minimum lot area requirements of the applicable zoning district or the minimum lot area requirements based on lot slope (Section [22.82.050](#) - Hillside Subdivision Design), the contiguous parcels shall merge if required by Subsection A of this Section (Merger Required), except where otherwise provided by Subsection B of this Section (Exemptions from Merger Requirements). Such mergers may be initiated either by the County or by the property owner.

A. Merger required. Contiguous, nonconforming parcels held by the same owner or owners shall merge if both of the following requirements are satisfied:

1. At least one of the affected parcels is undeveloped by any structure for which a Building Permit was issued or for which a Building Permit was not required at the time of construction, or is developed only with an accessory structure or accessory structures, or is developed with a single structure, other than an accessory structure, that is also partially sited on a contiguous parcel or unit of land; and

2. With respect to any affected parcel, one or more of the following conditions exist:

a. Comprises less than 5,000 square feet in area at the time of the determination of merger;

b. Was not created in compliance with applicable laws and ordinances in effect at the time of its creation;

c. Does not meet current standards for sewage disposal in [Title 18](#) (Sewers) of the County Code;

d. Does not meet current standards for domestic water supply in [Title 7](#) (Health and Sanitation) of the County Code;

e. Does not meet slope stability standards. A parcel will be deemed to not meet slope stability standards if more than 50 percent of its gross area is located within slope stability zone 3 or 4 as shown on the latest slope stability maps on file with the Agency;

f. Has no legal access which is adequate for vehicular and safety equipment access and maneuverability. The standards of access shall be those contained in [Title 24](#) (Improvement and Construction Standards) of the County Code;

g. Its development would create health or safety hazards; or

h. Is inconsistent with the Marin Countywide Plan, the Local Coastal Plan or any applicable Community Plan or Specific Plan, other than minimum lot size or density standards.

For purposes of determining whether contiguous parcels are held by the same owner, ownership shall be determined as of the date that the Notice of Intent to Determine Status is recorded in compliance with [Section 22.92.040](#) (Notice of Intent to Determine Status).

Exhibit 12: Burke Lot Line Adjustment- Big Sur

<https://documents.coastal.ca.gov/reports/2009/9/W19a-9-2009.pdf>

"The LUP contains a policy that encourages lot line adjustments when no **new developable lots are created** and when plan policies are better met through the adjustment. In other words, a lot line adjustment must not take unbuildable parcels and make them buildable, and the new lot configuration must improve the potential development's consistency with the LUP. This emphasis on only encouraging lot line adjustments when they would facilitate less and more sensitive development is consistent with the LCP's strong policy to minimize development in Big Sur. The three existing Burke parcels contain numerous constraints that would preclude them from being deemed buildable under the LCP's guidelines, including 30% or greater average slopes, sensitive riparian corridor habitat, and substandard sizes relative to minimum parcel size requirement"

A. Relevant LCP Provisions

The LCP contains numerous references to and provisions for residential compatibility with sensitive coastal resources in Big Sur. The LCP also includes provisions that identify when a parcel is considered buildable in the context of parcel creation and adjustment.

LUP Policy 5.4.2.1. All development and use of the land whether public or private shall conform to all applicable policies of this plan and shall meet the same resource protection standards.

LUP Policy 5.4.2.5. Existing parcels of record are considered buildable parcels and are suitable for development of uses consistent with the plan map provided all resource protection policies can be fully satisfied, there is adequate building areas of less than 30% cross slope, and they are not merged by provisions elsewhere in this plan.

LUP Policy 5.4.3.H.4. Resubdivisions and lot line adjustments are encouraged when no new developable lots are created and when plan policies are better met by this action.

LUP Policy 5.4.2.8. It is the policy of Monterey County that lands in excess of thirty percent cross slope, located east of Highway 1, shall not be developed. Those portions of a parcel in this area that have a cross slope of thirty percent or more shall receive a density of one dwelling unit (d.u.) for 320 acres.

The calculation of residential development potential on property east of Highway 1 will be based on the following slope density formula:

Exhibit 13: SMA Gov Code 66412(d).

(Irrelevant due to APN 532-36-077 meeting criteria for merger.)

GOVERNMENT CODE – GOV

TITLE 7. PLANNING AND LAND USE [65000 - 66499.58] (*Heading of Title 7 amended by Stats. 1974, Ch. 1536.*)

DIVISION 2. SUBDIVISIONS [66410 - 66499.38] (*Division 2 added by Stats. 1974, Ch. 1536.*)

CHAPTER 1. General Provisions and Definitions [66410 - 66424.6] (*Chapter 1 added by Stats. 1974, Ch. 1536.*)

ARTICLE 1. General Provisions [66410 - 66413.5] (*Article 1 added by Stats. 1974, Ch. 1536.*)

66412.

This division shall be inapplicable to any of the following:

(a) The financing or leasing of apartments, offices, stores, or similar space within apartment buildings, industrial buildings, commercial buildings, mobilehome parks, or trailer parks.

(b) Mineral, oil, or gas leases.

(c) Land dedicated for cemetery purposes under the Health and Safety Code.

(d) A lot line adjustment between four or fewer existing adjoining parcels, where the land taken from one parcel is added to an adjoining parcel, and where a greater number of parcels than originally existed is not thereby created, if the lot line adjustment is approved by the local agency, or advisory agency. A local agency or advisory agency shall limit its review and approval to a determination of whether or not the parcels resulting from the lot line adjustment will conform to the local general plan, any applicable specific plan, any applicable coastal plan, and zoning and building ordinances. An advisory agency or local agency shall not impose conditions or exactions on its approval of a lot line adjustment except to conform to the local general plan, any applicable specific plan, any applicable coastal plan, and zoning and building ordinances, to require the prepayment of real property taxes prior to the approval of the lot line adjustment, or to facilitate the relocation of existing utilities, infrastructure, or easements. No tentative map, parcel map, or final map shall be required as a condition to the approval of a lot line adjustment. The lot line adjustment shall be reflected in a deed, which shall be recorded. No record of survey shall be required for a lot line adjustment unless required by Section 8762 of the Business and Professions Code. A local agency shall approve or disapprove a lot line adjustment pursuant to the Permit Streamlining Act (Chapter 4.5 (commencing with Section 65920) of Division 1).

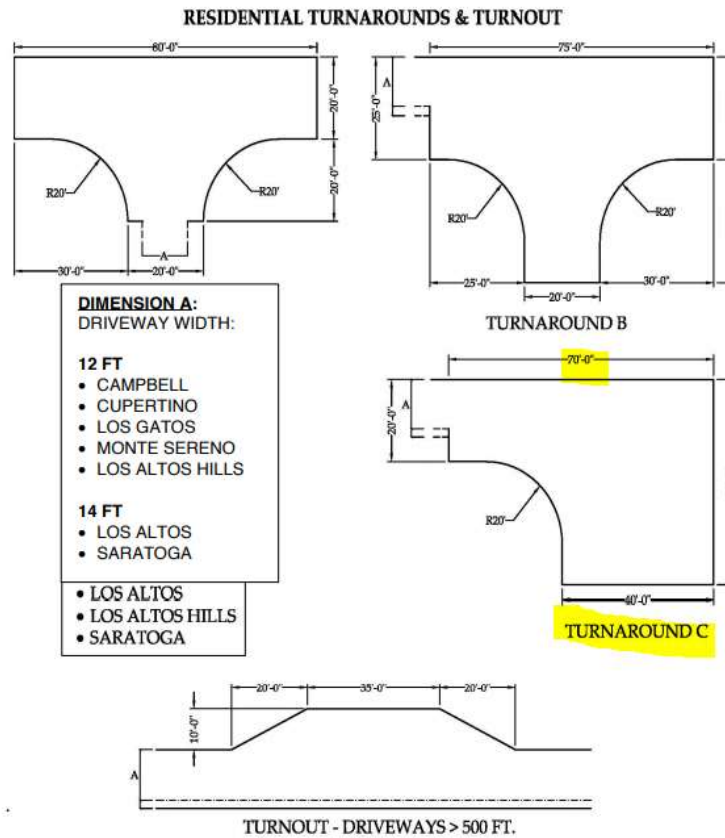
Exhibit 14: Santa Clara County Fire Department Requirements for driveways >150ft.

17200 Los Robles Way does not have an adequate turnaround for emergency vehicle access.

https://www.sccfd.org/images/documents/fire_prevention/standards/DS_D-1_DrivewaysTurnaroundsTurnOuts_04272021_1.pdf

X. TURNAROUNDS:

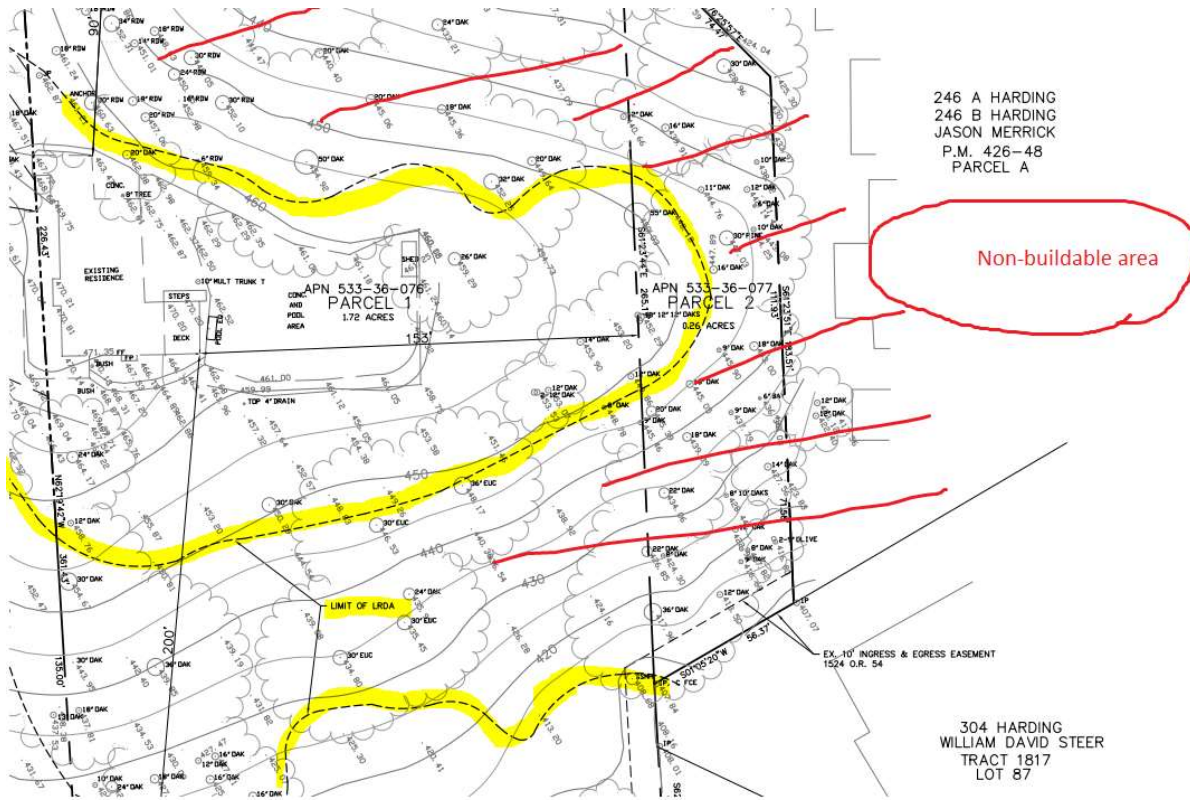
Turnarounds are required for all driveways with a length in excess of 150 feet.



NOTE: Turnarounds cannot exceed 5% in any one direction.

Exhibit 15: Non Buildable Area of APN 532-36-077 outside the LRDA

(note APN error on the surveyor drawings)



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**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 11/02/2021

ITEM NO: 12

DESK ITEM

DATE: November 2, 2021
TO: Mayor and Town Council
FROM: Laurel Prevetti, Town Manager
SUBJECT: Consider an Appeal of a Planning Commission Decision Approving a Lot Line Adjustment Between Three Adjacent Lots on Properties Zoned R-1:20. Located at 17200 Los Robles Way. Subdivision Application M-20-012. APNS 532-36-075, -076, -077. Property Owners: Daran Goodsell, Trustree and Mark Von Kaenel. Applicant: Tony Jeans. Appellant: Alison and David Steer. Project Planner: Ryan Safty.

REMARKS:

Attachment 12 includes the applicant's presentation from the September 8, 2021 Planning Commission hearing. Attachment 13 includes additional information from the appellant received on November 2, 2021. Attachment 14 includes the appellant's presentation for the November 2, 2021 Town Council hearing.

ATTACHMENTS:

Previously received with the Staff Report:

1. September 8, 2021 Planning Commission Staff Report, with Exhibits 1-14
2. September 8, 2021 Planning Commission Verbatim Minutes
3. Appeal of the Planning Commission Decision, received September 20, 2021
4. Applicant's Response to Appeal, received October 8, 2021
5. Additional Information from the Appellant, received October 21, 2021
6. Draft Resolution to Deny Appeal and Approve Project, with Exhibits A and B
7. Draft Resolution to Grant Appeal and Remand Project to Planning Commission
8. Draft Resolution to Grant Appeal and Deny Project
9. Public Comments received between 11:01 a.m., September 8, 2021 and 11:00 a.m., October 28, 2021
10. Applicant's Response to Public Comments received between 11:01 a.m., September 8, 2021 and 11:00 a.m., October 28, 2021

PREPARED BY: Ryan Safty
Associate Planner

Reviewed by: Town Manager, Assistant Town Manager, Town Attorney, and Finance Director

PAGE 2 OF 2

SUBJECT: 17200 Los Robles Way/M-20-012

DATE: November 2, 2021

Previously received with the Addendum:

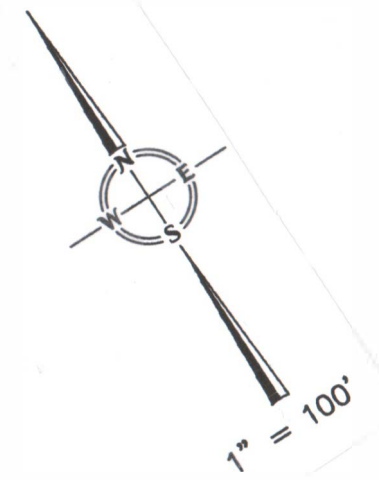
11. Additional Information from the Appellant, received November 1, 2021

Received with this Desk Item:

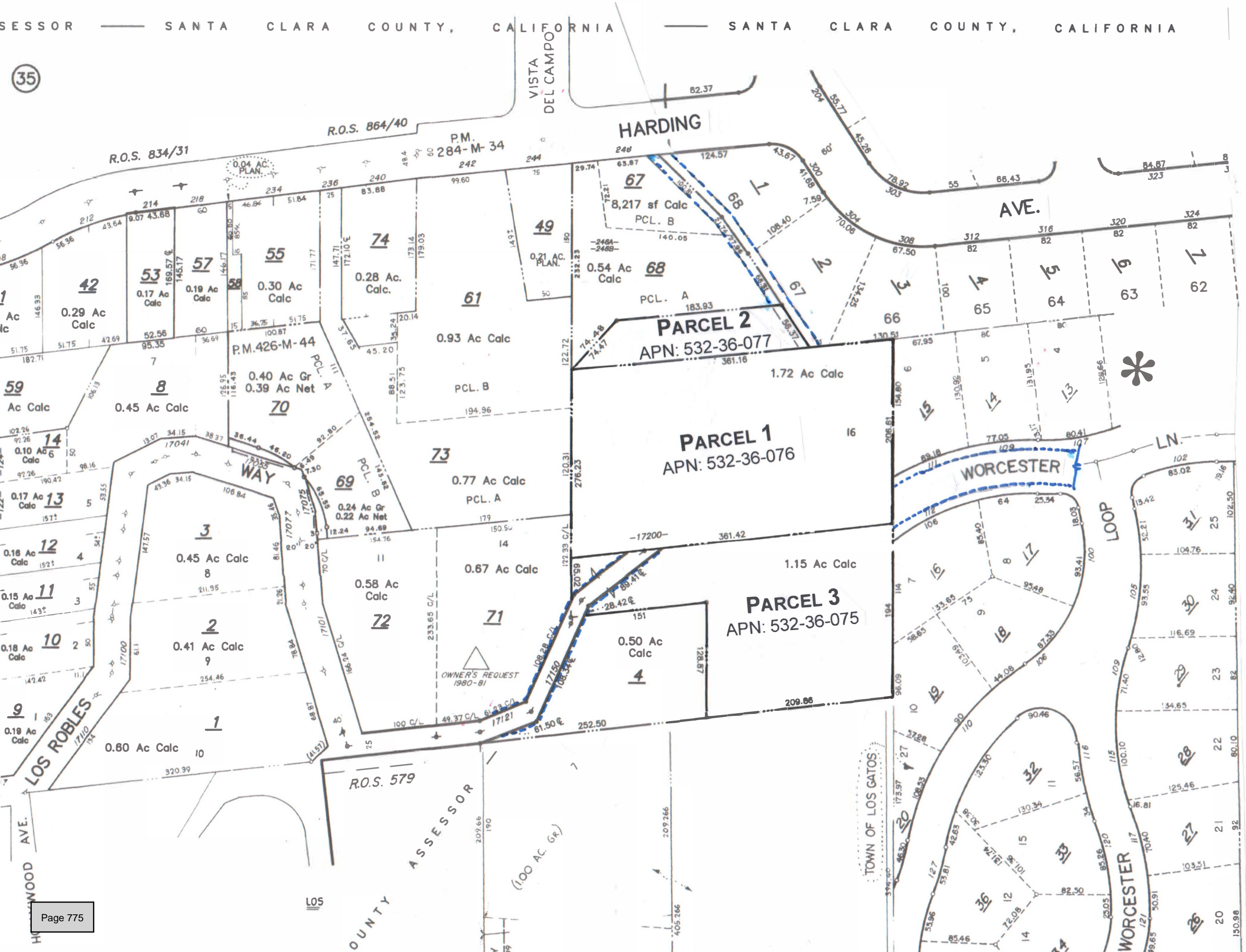
12. Applicant's Presentation from the September 8, 2021 Planning Commission hearing

13. Additional Information from the Appellant, received November 2, 2021

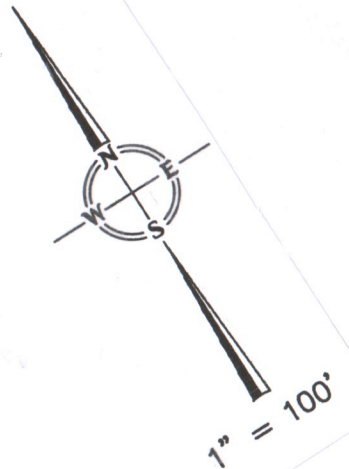
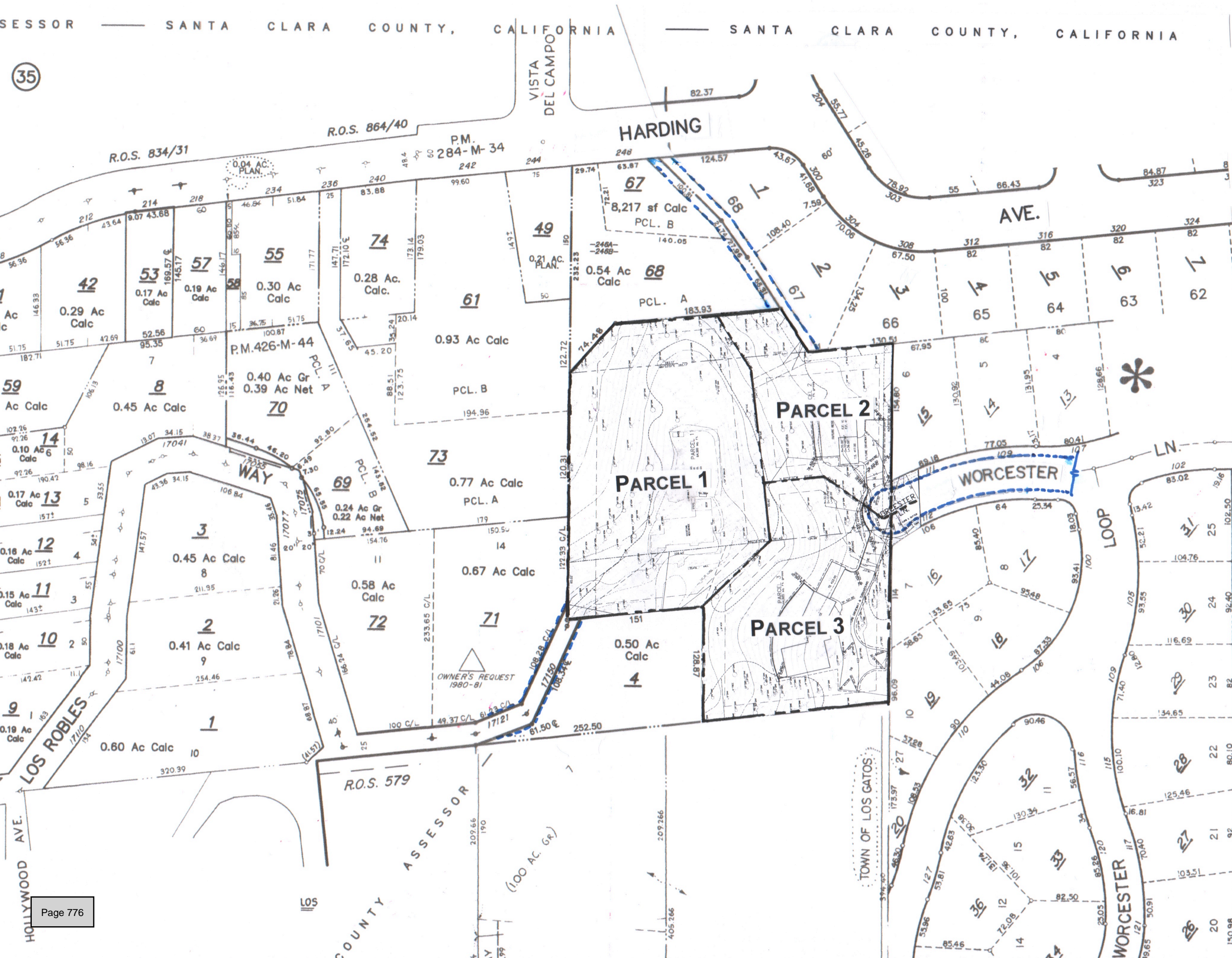
14. Appellant's Presentation for the November 2, 2021 Town Council hearing



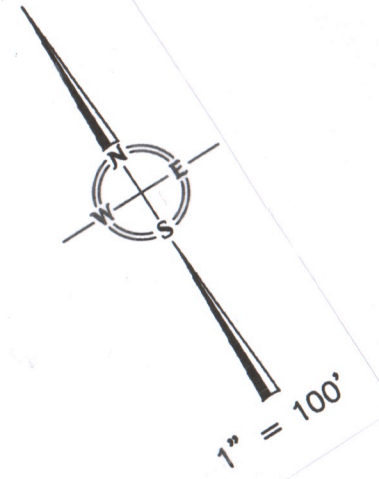
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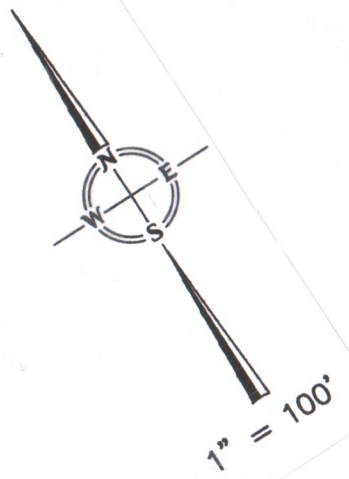
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From: [Alison Steer](#)
To: [Ryan Safty](#); [Jennifer Armer](#)
Subject: Fwd: 17200 Los Robles Way LLA Application M-20-12 - Town Initiated Lot Mergers
Date: Monday, November 1, 2021 5:24:43 PM
Attachments: [image.png](#)
[image.png](#)
[image.png](#)
[image.png](#)
[image.png](#)
[Supporting Exhibits for Appeal of 17200 Los Robles Way LLA Application.pdf](#)
[17200 Los Robles Way - CEQA.pdf](#)

EXTERNAL SENDER

Hi Ryan,

Here is another submission for the public record.

----- Forwarded message -----

From: Alison Steer <[REDACTED]>
Date: Mon, Nov 1, 2021 at 4:49 PM
Subject: Fwd: 17200 Los Robles Way LLA Application M-20-12 - Town Initiated Lot Mergers
To: Marico Sayoc <[REDACTED]>, Matthew Hudes <[REDACTED]>, Rob Rennie <[REDACTED]>, Maria Ristow <[REDACTED]>, Mary Badame <[REDACTED]>

Dear Councilmembers,

I want to share below correspondence with you which has been submitted to public comment before the hearing tomorrow.

As we understand, this appears to be coming down to semantics with our Town Ordinance which the Town Attorney is unwilling to stand behind. It should not be up to residents of the Town of Los Gatos to ask or be made to sue the Town to enforce their ordinances, and as my land use consultant mentioned to me after the Sept 8th planning commission meeting " the town attorney is arguing against the Town's own ordinance? I've never seen that happen".

Note that we actually do not have a lot line adjustment ordinance, just a dinky flyer that references back to the subdivision maps act for more details. Nowhere on our site is the language of SMA 66412(d) written into an ordinance. Here it is:

<https://www.losgatosca.gov/DocumentCenter/View/348/Lot-Line-Adjustment-Handout?bidId=>

Why is that not the case for our lot merger ordinance? It seems very clear that we can follow the State's subdivision maps act directive section 66451.10 for involuntary mergers. Here again is the description of the Morehart vs Santa Barbara ruling and the concerns:

<https://law.justia.com/cases/california/supreme-court/4th/7/725.html>

"the act does impliedly preempt any local zoning ordinance provision that purports to require, as a condition to issuance of a development permit, a merger of parcels that the county **could not compel** under section 66451.11"

And here is an example of an involuntary lot merger ordinance, like other counties, cities and towns have implemented in California.

<https://www.codepublishing.com/CA/Palmdale/html/Palmdale16/Palmdale16130.html#16.130.020>

We feel that Town staff have failed the residents of the Town of Los Gatos by not protecting our property rights from developers who are using loopholes to get around formal subdivision of this land and CEQA review. Is our lot merger ordinance unenforceable because it's not written correctly? There has been ample opportunity by staff to address this, especially since neighbors of 11/15 Peralta Ave raised this to the Town Attorney and Community Development Director in 2019. Do the DRC staff know that one of their job responsibilities is to enforce lot mergers?

As a reminder, we are a general law city that operates under the general law of the state.

https://www.calcities.org/docs/default-source/new-mayors-and-council-members-academy---session-material/06.-your-legal-powers-and-obligations.pdf?sfvrsn=469dcdf9_3

Finally please see the Woodside Town Council meeting from Jan 2021 mentioned in my email to Mr Schultz below, and the requirements for complying with CEQA for minor lot line adjustments on land with >20% slope. This makes absolute sense given the landslide risk of the 17200 Los Robles Way property as submitted in the CEQA documentation, and using the common sense exemption to bypass CEQA is cheating the environment and wildlife out of their representation, especially given this land abuts Worcester Park, and is in a Wildland Urban Interface zone. Can it be said "with certainty" and "no probability" that there will be no impact by this Project which is not categorically exempt from CEQA? Is it reasonably foreseeable that there will be a development on this property? I hope you all had a chance to review the guidelines for complying with CEQA. Not all Lot Line adjustments are exempt.

Finally, let's take a look at the issues being raised by neighbors on the Bonnie Lane subdivision application that are being given ample consideration by CDAC. All arguments neighbors of 17200 Los Robles way are concerned with.

<https://www.losgatosca.gov/DocumentCenter/View/27478/03-10-21-Minutes---CDAC-Draft?bidId=>

Committee members discussed the matter and provided the following comments:

- Concerned about fire danger and safety as the property is within a Wildfire Urban Interface zone.
- Questioned whether the site is physically suitable for the development.
- Although there is enough room to meet the subdivision requirements, the proposal needs more work as evident by the neighborhood outcry and public comments. There are potential concerns related to fire safety and the riparian corridor. The applicant needs to meet with the neighbors. There may be another way to divide the property to retain one existing structure on each lot.
- The lot is a unique shape. Questioned whether this was the best way to divide the land. Ingress and egress were a concern until removed from the plan.
- This plan is at a very conceptual level with few details, so it is hard to give specific feedback. The plans need to address potential flood plains and identify the footprint and driveway locations. The lot appears to be quite large and the proposal appears to comply with zoning requirements. There is the potential for issues with neighbor privacy and neighborhood compatibility. Lot two is quite large, but the actual building site is small. The fact that there was nothing in this area before doesn't mean that the owner can't construct something in the future as is their right.

The Town of Los Gatos would be foolish to allow this lot line adjustment application to proceed based on the land not meeting the criteria listed in our lot merger ordinance and SMA 66451.11, which is intended to safeguard our Town from the creation of new buildable parcels from non-buildable lots. It will open up the Town to legal challenges, and result in illegal use of the LLA procedure to make non-conforming parcels into conforming parcels. Given we are all currently talking about General Plan 2040, this blatant disregard for the guidelines laid out in our Town Ordinance significantly reduces the credibility of the Town in the eyes of the residents.

Sincerely,
Alison and David Steer

Appeal of Lot Line Adjustment Application M-20-012 for 17200 Los Robles Way

Alison & David Steer



Town of Los Gatos Lot Merger Procedures

Sec. 29.20.745. - Development Review Committee.



The Development Review Committee shall:

- (11) Under the provisions of [section 29.10.070](#) of this chapter and section 66424.2 of the Subdivision Map Act, determine whether lots have merged.



TOWN OF LOS GATOS LOT MERGER PROCEDURES

Lot mergers are reviewed according to Section **66451.11** of the Government Code of the State of California.

SMA 66451.11

DIVISION 2. SUBDIVISIONS [66410 - 66499.38] (*Division 2 added by Stats. 1974, Ch. 1536.*)

CHAPTER 3. Procedure [66451 - 66472.1] (*Chapter 3 added by Stats. 1974, Ch. 1536.*)

ARTICLE 1.5. Merger of Parcels [66451.10 - 66451.24] (*Article 1.5 added by Stats. 1983, Ch. 845, Sec. 2.*)

66451.11.

A local agency **may**, by ordinance which conforms to and implements the procedures prescribed by this article, provide for the merger of a parcel or unit with a contiguous parcel or unit held by the same owner if any one of the contiguous parcels or units held by the same owner does not conform to standards for minimum parcel size, under the zoning ordinance of the local agency applicable to the parcels or units of land and if all of the following requirements are satisfied:

(b) With respect to any affected parcel, one or more of the following conditions exists:

- (1) Comprises less than 5,000 square feet in area at the time of the determination of merger.
- (2) Was not created in compliance with applicable laws and ordinances in effect at the time of its creation.
- (3) Does not meet current standards for sewage disposal and domestic water supply.
- (4) Does not meet slope stability standards.**
- (5) Has no legal access which is adequate for vehicular and safety equipment access and maneuverability.**
- (6) Its development would create health or safety hazards.
- (7) Is inconsistent with the applicable general plan and any applicable specific plan, other than minimum lot size or density standards.

The ordinance may establish the standards specified in paragraphs (3) to (7), inclusive, which shall be applicable to **parcels to be merged.**

SMA 66451.11 continued

(c) The owner of the affected parcels has been notified of the merger proposal pursuant to Section 66451.13, and is afforded the opportunity for a hearing pursuant to Section 66451.14.

For purposes of this section, when determining whether contiguous parcels are held by the same owner, ownership shall be determined as of the date that notice of intention to determine status is recorded.

(Amended by Stats. 1995, Ch. 162, Sec. 1. Effective January 1, 1996.)

Town of Los Gatos Code of Ordinances

Zoning Regulations

Sec. 29.10.070. - Lot merger.

- (a) A parcel of land does lawfully exist separately from other land and is a lot when the parcel meets each of the following criteria:
 - (1) Comprises at least five thousand (5,000) square feet in area.
 - (2) Was created in compliance with applicable laws and ordinances in effect at the time of its creation.
 - (3) Meets current standards for sewage disposal and domestic water supply.
 - (4) Meets slope stability standards.
 - (5) Has legal access which is adequate for vehicular and safety equipment access and maneuverability.
 - (6) Development of the parcel would create no health or safety hazards.
 - (7) The parcel would be consistent with the applicable general plan and any applicable specific plan, other than minimum lot size or density standards.
 - (8) No structures are built over a common property line which is shared with another parcel under the same or substantially the same ownership.
- (b) Any parcels under the same or substantially the same ownership that do not meet the criteria listed above shall be considered merged. In addition, no parcel shall be modified through a lot line adjustment procedure in order to meet the criteria listed above.
- (Ord. No. 1316, § 3.10.010, 6-7-76; Ord. No. 1337, 11-1-76; Ord. No. 1432, 6-4-79; Ord. No. 1438, 8-6-79; Ord. No. 1756, § 1, 8-1-88)

Required Findings from DRC and Planning Commission

PLANNING COMMISSION - September 8, 2021

REQUIRED FINDINGS FOR:

17200 Los Robles Way

Subdivision Application M-20-012

Consider an Appeal of a Development Review Committee Decision Approving a Lot Line Adjustment Between Three Adjacent Lots on Properties Zoned R-1:20. APNs 532-36-075, -076, and -077. PROPERTY OWNERS: Daren Goodsell, Trustee and Mark Von Kaenel. APPLICANT: Tony Jean. APPELLANTS: Alison and David Steer, Terry and Bob Rinehart, Nancy and Jim Neipp, Gary and Michelle Gysin, and Gianfranco and Eileen De Feo. PROJECT PLANNER: Ryan Safty.

Required findings for CEQA:

- The project is not subject to the California Environmental Quality Act pursuant to the adopted Guidelines for the Implementation of CEQA, Section 15061(b)(3): A project is exempt from CEQA when the activity is covered by the common sense exemption that CEQA only applies to projects which have the potential for causing a significant effect on the environment. Where it can be seen **with certainty** that there is **no possibility** that the activity in question will have a significant effect on the environment, the activity is not subject to CEQA. The project proposes to modify lot lines between three legal, adjacent parcels. **No development is proposed at this time.**

Required Findings by DRC and Planning Commission

Required findings to deny a Subdivision application:

- As required by Section 66474 of the State Subdivision Map Act the map shall be denied if any of the following findings are made: **None of the findings could be made to deny the application.**

Instead, the Planning Commission makes the following affirmative findings:

- a. That the proposed map is consistent with all elements of the General Plan.
- b. That the design and improvement of the proposed subdivision is consistent with all elements of the General Plan.
- c. That the site is physically suitable for the type of development.
- d. That the site is physically suitable for the proposed density of development.
- e. That the design of the subdivision and the proposed improvements are not likely to cause substantial environmental damage nor substantially and avoidably injure fish or wildlife or their habitat.
- f. That the design of the subdivision and type of improvements is not likely to cause serious public health problems.

Town of Woodside specifies that LLA's for average slopes >20% are not exempt from CEQA

California Environmental Quality Act (CEQA)

CEQA Guidelines provide three main exemptions for Lot Mergers, Lot Line Adjustments, and divisions of land. Below is a summary of the three exemptions:

1. CEQA Guidelines Section 15300.1 – Ministerial Action: All ministerial permits that do not require any discretionary action are exempt from CEQA. For example, a Lot Merger application reviewed by Town staff shall be approved if it meets all Municipal Code development standards. Since Town staff must approve a Lot Merger that meets minimum standards, it would be considered a ministerial action and therefore be exempt from CEQA under Section 15300.1.
2. CEQA Guidelines Section 15305(a) – Minor Alterations to Land Use Limitation for an Lot Line Adjustment: A Lot Line Adjustment may be exempt from CEQA under Section 15305 if the gross average slope of all properties combined is less than 20%. A Lot Line Adjustment including steeper average slopes cannot be exempt from CEQA.
3. CEQA Guidelines Section 15315 – Minor Land Divisions: This Section exempts Land Divisions of properties into four or fewer parcels, in urbanized areas (defined by CEQA guidelines), zoned for residential or commercial use, consistent with the General Plan and zoning, with no exceptions required, having all services and access to the proposed parcel, having not been involved in a division of land in the previous two years, and not having an average slope greater than 20%, and not creating significant adverse environmental impacts.

It should be noted that CEQA Guidelines Section 15300.2 indicates that even if a CEQA exemption exists for a project, there could be certain circumstances in which a project could result in significant impacts, which would not allow the listed exemption to be used by the Town.

Santa Clara County Online Property Profile APN 532-36-076

Planning and Development Information

APN:53236076 is incorporated (LOS GATOS).

General Plan: USA

USA: Los Gatos (100%)

SOI: Los Gatos

Zoning: INCORPORATED

Supervisor District: 1

Approved Building Site: **Research needed to evaluate parcel as a Building Site**

Special Area Policies and Information

- Los Gatos Hillside Specific Plan Area: IN
- Fire Responsibility Area: LRA (100%)
- Fire Protection District: Santa Clara County Central Fire Protection District
- Geohazard: County fault rupture hazard zone
- Geohazard: County landslide hazard zone
- Geohazard: State seismic hazard zone (earthquake induced landslides)
- Historic Parcel: NO
- FEMA Flood Zone: D (96.6%), X (3.4%)
- Sanitary District: West Valley Sanitation District
- Watershed: San Francisco Bay
- Rain isohyet: 27 inches
- Nearest named creek: ROSS CREEK (1111 feet)
- Nearest named lake: Vasona Reservoir (5551 feet)

State CEQA Guidelines Section 15604(d)

Determining the Significance of the Environmental Effects Caused by a Project

- In evaluating the significance of the environmental effect of a project, the lead agency shall consider direct physical changes in the environment which may be caused by the project and reasonably foreseeable indirect physical changes in the environment which may be caused by the project.
- (1) A direct physical change in the environment is a physical change in the environment which is caused by and immediately related to the project. Examples of direct physical changes in the environment are the dust, noise, and traffic of heavy equipment that would result from construction of a sewage treatment plant and possible odors from operation of the plant.
- (2) An indirect physical change in the environment is a physical change in the environment which is not immediately related to the project, but which is caused indirectly by the project. If a direct physical change in the environment in turn causes another change in the environment, then the other change is an indirect physical change in the environment. For example, the construction of a new sewage treatment plant may facilitate population growth in the service area due to the increase in sewage treatment capacity and may lead to an increase in air pollution.
- (3) An indirect physical change is to be considered only if that change is a reasonably foreseeable impact which may be caused by the project. A change which is speculative or unlikely to occur is not reasonably foreseeable.

Summary

- We are a General Law City that operates under the General Law of the State of California
- We **DO NOT** have a Lot Line Adjustment Ordinance, only a procedure handout referencing the Subdivision maps act 66412(d).
- We **DO** have a Lot Merger Ordinance and procedure which references Subdivision maps act 66451.11
- No evidence has been provided by the Town Attorney that supports his claim that Involuntary Lot Merger per 66451.11 is not enforceable, evidence to the counter says it **IS** enforceable!
- Evidence supporting that a non-buildable parcel can not be made buildable through lot line adjustment has also been submitted to the Town (see Burke Lot Line Adjustment)
- **The Town is blatantly breaking our Town's Laws if it approves this LLA application**
- The DRC and Town of Los Gatos **SHALL** follow merger procedures in accordance with our Town Ordinance and SMA 66451.11
- The Project is not exempt from CEQA due to average slopes >20% and reasonably foreseeable impact that would be caused by the project



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 11/02/2021

ITEM NO: 13

DATE: October 27, 2021
TO: Mayor and Town Council
FROM: Laurel Prevetti, Town Manager
SUBJECT: Introduction and First Reading of an Ordinance Amending the Los Gatos Town Code Chapter 11 Regarding Garbage, Refuse, and Weeds to Include Organic Waste Disposal Reduction and Amending Sections Conflicting with Ordinance Definitions and Requirements.

RECOMMENDATION:

Accept public comment then move for the introduction and first reading of an Ordinance (Attachment 1), by title only, amending the Los Gatos Town Code Chapter 11 regarding Garbage, Refuse, and Weeds to include Organic Waste Disposal Reduction and amending sections of the existing Code (Exhibit A) conflicting with Ordinance definitions and requirements.

BACKGROUND:

In September 2016, Governor Jerry Brown signed into law [Senate Bill 1383](#) (SB 1383), with regulations finalized in November 2020. The purpose of this bill is to establish methane emissions reduction targets in a statewide effort to reduce emissions of short-lived climate pollutants (SLCP). SB 1383 is the most significant waste reduction mandate to be adopted in California in the last 30 years.

SB 1383 established targets to achieve a 50 percent reduction in the level of statewide disposal of organic waste from 2014 levels by 2020 and a 75 percent reduction by 2025. Additionally, a food recovery target was established, including a target that no less than 20 percent of current disposed of edible food is recovered for human consumption by 2025. SB 1383 grants the California Department of Resources Recycling and Recovery (CalRecycle) the regulatory authority required to achieve the organic waste disposal reduction targets. To reach this goal, CalRecycle implemented initiatives to reduce the amount of solid waste sent to

PREPARED BY: Marina Chislett
Environmental Program Specialist

Reviewed by: Town Manager, Assistant Town Manager, Town Attorney, Finance Director, and Director of Parks and Public Works

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SUBJECT: Introduces Amendments to the Town Code to Include Organic Waste Disposal Reduction and Modifying Sections Conflicting with Ordinance Definitions and Requirements

DATE: October 27, 2021

BACKGROUND (continued):

landfills and promote recycling in California, including organic waste recycling. The law focuses on residential and commercial trash generators, with both performance targets and penalties levied against the jurisdiction for non-compliance.

For the Town of Los Gatos, solid waste collections are managed by the West Valley Solid Waste Management Authority (WVSWMA) where Councilmember Mary Badame has represented the Town since January 2020. SB 1383 has been discussed with the WVSWMA in the course of that agency's regular business. On May 4, 2021, the WVSWMA Executive Director, Marva Sheehan, provided an SB 1383 implementation update to the Town Council. On October 5, 2021, Senate Bill 619 (SB 619) was signed into law granting jurisdictions an extension for compliance of SB 1383, with written intent to comply no later than May 1, 2022. SB 619 does not change the required implementation date of January 1, 2022.

DISCUSSION:

Enactment of SB 1383 requires extensive collaboration between the Town of Los Gatos and the WVSWMA to achieve compliance. Town staff are working diligently with the WVSWMA on SB 1383 progress and program implementation. The Town's current implementation compliance requirements include the adoption of new organic waste disposal reduction requirements as presented in the draft Organic Waste Disposal Reduction Ordinance in Attachment 1. The new ordinance includes single-family, commercial, and multi-family requirements; waiver requirements; edible food generator and edible food recovery requirements; hauler requirements; and inspections and enforcement. Below are summaries of the Ordinance sections with the incorporated SB 1383 regulations.

Single-family, commercial, and multi-family requirements proposed in Sections 11.50.15 and 11.50.20:

- Generators of discarded materials shall participate in the franchised haulers collection services;
- Containers for discarded waste must adequately provide collection for separation of discarded materials through size, service rate, and designated container colors (e.g., solid waste containers must have a black body or lid, recycling containers must have a blue body or lid, and organic containers must have a green body or lid);
- Generators shall not place prohibited container contaminants in collection containers (e.g., generators shall not place materials designated for the solid waste container into either the recyclable or organic materials container);

SUBJECT: Introduces Amendments to the Town Code to Include Organic Waste Disposal Reduction and Modifying Sections Conflicting with Ordinance Definitions and Requirements

DATE: October 27, 2021

DISCUSSION (continued):

- Commercial businesses and multi-family residential dwellings shall provide education information to occupants regarding the new regulations; and
- Commercial business shall provide containers for the collection of recyclable and organic materials in all indoor and outdoor areas that solid waste is collected.

Waiver requirements proposed in Section 11.50.25:

- The Town or WWSWMA may waive a commercial business or multi-family residential dwellings obligation to the Ordinance if the generator generates below a certain amount of discarded materials, or the premises lacks adequate space for the collection containers required for compliance.

Edible food generator and food recovery requirements proposed in Sections 11.50.030 and 11.50.035:

All Santa Clara County jurisdictions have worked together to create uniform edible food generator sections in the draft Ordinance. It is beneficial to maintain these County-wide uniform sections as food generators and food recovery services tend to operate throughout the County and benefit from that scale.

- Recover edible food that would otherwise be disposed;
- Arrange agreement with a food recovery organization or food recovery services to collect and accept edible food;
- Keep records of the recovery organization and services that are used and the quantity of edible food saved from the landfill; and
- Submit food recovery reports to the designated enforcement entity.

Hauler requirements proposed in Section 11.50.040:

SB 1383 hauler requirements have been incorporated in the current franchise agreement between West Valley Collection & Recycling and the WWSWMA.

- Hauler shall transport recyclable, organic, and solid waste materials to facilities approved by the WWSWMA through the franchise agreement; and
- Hauler shall comply with education, equipment, signage, container labeling, container color, contamination monitoring, reporting, and other requirements contained within its franchise agreement.

Inspection and enforcement requirements proposed in Sections 11.50.060 and 11.50.065:

Due to the nature of franchise agreements and countywide programs, the act of inspections and enforcement within the Ordinance vary by enforcement entity (Town, WWSWMA, exclusive haulers, and the administrators of the countywide edible food generator and recovery program).

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SUBJECT: Introduces Amendments to the Town Code to Include Organic Waste Disposal Reduction and Modifying Sections Conflicting with Ordinance Definitions and Requirements

DATE: October 27, 2021

DISCUSSION (continued):

- To confirm compliance and enforcement of the regulations, the enforcement entity is authorized to conduct inspection and investigations of any collection of discarded materials collected from entities regulated by the applicable laws;
- Regulated entities shall provide or arrange for access during inspections and route reviews. This section does not allow the enforcement entity to enter the interior of a private residential property for inspection;
- Violation of the Ordinance shall constitute grounds for issuance of a notice of violation and assessment of a fine; and
- Penalty amounts and appeals process carried out by the Town will follow Los Gatos Municipal Code chapter 1.30.

Miscellaneous: SB 1383 Organic Waste Procurement Requirements (Administrative Policy):

Although not a part of the recommended ordinance, SB 1383 requires each jurisdiction to procure recovered organic waste products including compost, renewable gas, and/or electricity from biomass conversion at a formulaic quantity set by the State. Jurisdictions are also responsible for procurement of recycled-content paper consistent with Public Contract Code (§18993.3). All procurement requirements require ongoing tracking of quantity, materials purchased, and an explanation if no feasible options were available, to be reported to CalRecycle annually.

The procurement target for the Town of Los Gatos is 2,479 tons of organic waste. Town staff has explored the possibility of reaching procurement targets with the purchase, use, and giveaway of certified compost and mulch. This could achieve an estimated 3% of the procurement target at a significant cost to the Town, an approach that appears ineffective and therefore infeasible. Staff is working closely with WVSWMA, Silicon Valley Clean Energy, as well as other municipalities and organizations in identifying organic waste procurement compliance options, with the potentiality of achieving compliance through a regional effort. Future approaches to compliance will be incorporated into Town procedures and policies.

CONCLUSION:

Staff recommends that the Town Council introduce the first reading of an ordinance amending the Los Gatos Town Code Chapter 11 regarding Garbage, Refuse, and Weeds to include Organic Waste Disposal Reduction and amending sections that conflict with Ordinance definitions and requirements.

PAGE 5 OF 5

SUBJECT: Introduces Amendments to the Town Code to Include Organic Waste Disposal Reduction and Modifying Sections Conflicting with Ordinance Definitions and Requirements

DATE: October 27, 2021

COORDINATION:

This report was coordinated with the WVSWMA.

FISCAL IMPACT:

The overall implementation of SB 1383 will include increased costs for the waste hauler and administrative services as well as increased Town staff time. These costs will be recovered through increased solid waste collection rates. Rates in the current fiscal year increased to \$40.11 from \$35.16 for the most common, 35-gallon residential cart rate, largely due to SB 1383 impacts. This is a 14% rate increase as opposed to the typical annual increase range of 4% - 8%. Organic waste procurement requirement costs are still to be determined as staffs continues to explore options for compliance.

ENVIRONMENTAL ASSESSMENT:

This is not a project defined under CEQA, and no further action is required.

Attachments:

1. Draft Ordinance with Exhibit A - Amendment to Chapter 11 – Garbage, Refuse and Weeds.

**DRAFT
ORDINANCE NO. ____**

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF LOS GATOS TO AMEND
CHAPTER 11 RELATING TO REFUSE, AND WEEDS TO INCLUDE ORGANIC WASTE
DISPOSAL REDUCTON AND AMENDING SECTIONS CONFLICTING WITH ORDINANCE
DEFINITIONS AND REQUIREMENTS.**

WHEREAS, in September 2016, Governor Jerry Brown signed into law Senate Bill 1383 (SB 1383), establishing methane emissions reduction targets in a statewide effort to reduce emissions of short-lived climate pollutants (SLCP); and

WHEREAS, SB 1383 established targets to achieve 50 percent reduction in the level of statewide disposal of organic waste from 2014 levels by 2020 and a 75 percent reduction by 2025; and

WHEREAS, an additional food recovery target was established of no less than 20 percent of current disposed of edible food is to be recovered for human consumption by 2025; and

WHEREAS, SB 1383 grants California Department of Resources and Recovery (CalRecycle) regulatory authority required to achieve the organic waste disposal reduction targets; and

WHEREAS, the law focuses on residential and commercial trash generators, with both performance targets and penalties levied against the jurisdiction for non-compliance; and

WHEREAS, CalRecycle has implemented initiatives to reduce the amount of solid waste sent to landfills and promote recycling in California, including Organic Waste; and

WHEREAS, existing language within Chapter 11 of the Town Code requires updating to correspond with current best practices.

NOW, THEREFORE, THE PEOPLE OF THE TOWN OF LOS GATOS AND THE TOWN COUNCIL DO HEREBY ORDAIN AS FOLLOWS:

Chapter 11 of the Town Code shall be modified to reflect the changes identified in attachment 1; and

The following code sections shall be added to Chapter 11 of the Town Code:

ATTACHMENT 1

SECTION I

The Council finds and declares that statewide targets have been established to reduce Short-Lived Climate Pollutants (SLCP). The Council further finds that there will be performance targets focused on residential and commercial trash generators, and penalties will be levied against the jurisdiction for non-compliance. The Council further finds that California Department of Resources & Recovery (CalRecycle) has been granted the regulatory authority to achieve the organic waste disposal reduction targets. Accordingly, the Council finds that an Organic Waste Disposal Reduction ordinance is warranted to comply with SB 1383 requirements.

SECTION II

Chapter 11 of the Los Gatos Town Code is hereby amended to add Article V related to Organic Waste Disposal Reduction. Article V of Chapter 11 is as follows:

ARTICLE V. – ORGANIC WASTE DISPOSAL REDUCTION

Sec. 11.50.010. – Definitions.

For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

“California Code of Regulations” or “CCR” means the State of California Code of Regulations. CCR references in this chapter are preceded with a number that refers to the relevant Title of the CCR (e.g., “14 CCR” refers to Title 14 of CCR).

“CalRecycle” means the California's Department of Resources Recycling and Recovery, which is the Department designated with responsibility for developing, implementing, and enforcing SB 1383 Regulations on cities, counties, special districts, and other regulated entities.

“Commercial business” or “commercial” means a firm, partnership, proprietorship, joint-stock company, corporation, or association, whether for-profit or nonprofit, strip mall, industrial facility, or a multi-family residential dwelling with five or more units, or as otherwise defined in 14 CCR Section 18982(a)(6); with the exception that multi-family is excluded from this definition. A multi-family residential dwelling that consists of fewer than five (5) units is not a commercial business for purposes of implementing this chapter.

“Commercial edible food generator” includes a Tier one or a tier two commercial edible food generator as defined in of this chapter or as otherwise defined in 14 CCR Section 18982(a)(73) and (a)(74). For the purposes of this definition, food recovery organizations and food recovery services are not commercial edible food generators pursuant to 14 CCR Section 18982(a)(7).

“Community composting” means any activity that composts green material, agricultural material, food material, and vegetative food material, alone or in combination, and the total amount of feedstock and compost on-site at any one time does not exceed 100 cubic yards and 750 square feet, as specified in 14 CCR Section 17855(a)(4); or, as otherwise defined by 14 CCR Section 18982(a)(8).

“Compliance review” means a review of records by the Town to determine compliance with this article.

“Compost” has the same meaning as in 14 CCR Section 17896.2(a)(4), which stated, as of the effective date of this chapter, that “compost” means the product resulting from the controlled biological decomposition of organic solid wastes that are source separated from the municipal solid waste stream, or which are separated at a centralized facility.

“Compostable plastic” or “compostable plastic means plastic materials that meet the ASTM D6400 standard for compostability, or as otherwise described in 14 CCR Section 18984.1(a)(1)(A) or 18984.2(a)(1)(C).

“Container contamination” or “contaminated container” means a container, regardless of color, that contains prohibited container contaminants, or as otherwise defined in 14 CCR Section 18982(a)(55).

“County” means the County of Santa Clara, California.

“County agency enforcement official” means an authorized designee of the County of Santa Clara in the Public Health Department or other departments who is/are partially or whole responsible for enforcing the chapter.

“Customer” means the person who receives the exclusive hauler’s services and to whom the exclusive hauler submits its billing invoice to and collects payment from for collection services provided to a premises. The customer may be either the occupant, owner, or property manager of the premises, as allowed under the Town code.

“C&D” means construction and demolition debris.

“Designee” means an entity that the Town contracts with or otherwise arranges to carry out any of the Town’s responsibilities of this chapter as authorized in 14 CCR Section 18981.2. A designee may be a government entity, a hauler, a private entity, or a combination of those entities.

“Disposal” or “dispose” (or any variation thereof) means the final disposition of solid waste, or processing residue at a disposal facility.

“Edible food” means food intended for human consumption, or as otherwise defined in 14 CCR Section 18982(a)(18). For the purposes of this chapter or as otherwise defined in 14 CCR Section 18982(a)(18), “edible food” is not solid waste if it is recovered and not discarded. Nothing in this chapter or in 14 CCR, Division 7, Chapter 12 requires or authorizes the recovery of edible food that does not meet the food safety requirements of the California Retail Food Code.

“Enforcement action” means an action of the Town or regional agency to address non-compliance with this chapter including, but not limited to, issuing administrative citations, fines, penalties, or using other remedies.

“Enforcement entity” means an appointed designee for the enforcement of this chapter. A designee may be the Town enforcement official, regional agency’s enforcement official, county enforcement official, or other designee.

“Exclusive hauler” means the collection contractor that has been granted the exclusive rights to collect recyclable materials, organic materials, solid waste, and C&D in the Town through the agreement entered into by the collection contractor and the regional agency.

“Food distributor” means a company that distributes food to entities including, but not limited to, supermarkets and grocery stores, or as otherwise defined in 14 CCR Section 18982(a)(22).

“Food facility” has the same meaning as in Section 113789 of the Health and Safety Code.

“Food recovery” means actions to collect and distribute food for human consumption that otherwise would be disposed, or as otherwise defined in 14 CCR Section 18982(a)(24).

“Food recovery organization” means an entity that engages in the collection or receipt of edible food from commercial edible food generators and distributes that edible food to the public for food recovery either directly or through other entities. “Food recovery organization” includes, but is not limited to:

- (1) A food bank as defined in Section 113783 of the Health and Safety Code;
- (2) A nonprofit charitable organization as defined in Section 113841 of the Health and Safety code; and,
- (3) A nonprofit charitable temporary food facility as defined in Section 113842 of the Health and Safety Code.

A food recovery organization is not a commercial edible food generator for the purposes of this chapter and implementation of 14 CCR, Division 7, Chapter 12 pursuant to 14 CCR Section 18982(a)(7). If the definition in 14 CCR Section 18982(a)(25) for food recovery organization differs from this definition, the definition in 14 CCR Section 18982(a)(25) shall

apply to this chapter.

“Food recovery service” means a person or entity that collects and transports edible food from a commercial edible food generator to a food recovery organization or other entities for food recovery, or as otherwise defined in 14 CCR Section 18982(a)(26). A food recovery service is not a commercial edible food generator.

“Food scraps” means those discarded materials that will decompose and/or putrefy including: (i) all kitchen and table food waste; (ii) animal or vegetable waste that is generated during or results from the storage, preparation, cooking or handling of food stuffs; (iii) discarded paper (including paper containers and cartons) that is contaminated with food scraps and compostables; (iv) fruit waste, grain waste, dairy waste, meat, and fish waste; and, (v) vegetable trimmings, houseplant trimmings and other compostable organic waste common to the occupancy of Residential dwellings. Food scraps are a subset of organic waste. Food scraps excludes fats, oils, and grease when such materials are source separated from other food scraps.

“Food service provider” means an entity primarily engaged in providing food services to institutional, governmental, commercial, or industrial locations of others based on contractual arrangements with these types of organizations, or as otherwise defined in 14 CCR Section 18982(a)(27).

“Food-soiled paper” is compostable paper material that has come in contact with food or liquid, such as, but not limited to, compostable paper plates, paper coffee cups, napkins, pizza boxes, and milk cartons.

“Food waste” includes food scraps and food-soiled paper, and includes compostable plastics, unless Town, its designee, regional agency, or exclusive hauler excludes compostable plastics in the organic materials containers.

“Generator” means any person whose act first causes discarded materials to become subject to regulation under this chapter of the Town code or under federal, State, or local laws or regulations.

"Green waste" means tree trimmings, grass cuttings, dead plants, leaves, branches and dead trees (not more than three (3) inches in diameter), garden and tree fruits and vegetables, and similar materials generated and Source Separated from other materials at the Premises.

“Grocery store” means a store primarily engaged in the retail sale of canned food; dry goods; fresh fruits and vegetables; fresh meats, fish, and poultry; and any area that is not separately owned within the store where the food is prepared and served, including a bakery, deli, and meat and seafood departments, or as otherwise defined in 14 CCR Section 18982(a)(30).

“Hauler route” means the designated itinerary or sequence of stops for each segment of the Town’s collection service area, or as otherwise defined in 14 CCR Section 18982(a)(31.5).

“Health Facility” has the same meaning as in Section 1250 of the Health and Safety Code.

“High diversion organic waste processing facility” means a facility that is in compliance with the reporting requirements of 14 CCR Section 18815.5(d) and meets or exceeds an annual average mixed waste organic content Recovery rate of 50 percent between January 1, 2022 and December 31, 2024, and 75 percent after January 1, 2025, as calculated pursuant to 14 CCR Section 18815.5(e) for organic waste received from the “mixed waste organic collection stream” as defined in 14 CCR Section 17402(a)(11.5); or, as otherwise defined in 14 CCR Section 18982(a)(33).

“Hotel” has the same meaning as in Section 17210 of the Business and Professions Code.

“Inspection” means a site visit where a Town, its designee, or regional agency reviews records, containers, and an entity’s collection, handling, recycling, or landfill disposal of organic waste or edible food handling to determine if the entity is complying with requirements set forth in this chapter, or as otherwise defined in 14 CCR Section 18982(a)(35).

“Large event” means an event, including, but not limited to, a sporting event or a flea market, that charges an admission price, or is operated by a local agency, and serves an average of more than 2,000 individuals per day of operation of the event, at a location that includes, but is not limited to, a public, nonprofit, or privately owned park, parking lot, golf course, street system, or other open space when being used for an event. If the definition in 14 CCR Section 18982(a)(38) differs from this definition, the definition in 14 CCR Section 18982(a)(38) shall apply to this chapter.

“Large venue” means a permanent venue facility that annually seats or serves an average of more than 2,000 individuals within the grounds of the facility per day of operation of the venue facility. A venue facility includes, but is not limited to, a public, nonprofit, or privately owned or operated stadium, amphitheater, arena, hall, amusement park, conference or civic center, zoo, aquarium, airport, racetrack, horse track, performing arts center, fairground, museum, theater, or other public attraction facility. A site under common ownership or control that includes more than one Large Venue that is contiguous with other large venues in the site, is a single large venue. If the definition in 14 CCR Section 18982(a)(39) differs from this definition, the definition in 14 CCR Section 18982(a)(39) shall apply to this chapter.

“Local education agency” means a school district, charter school, or county office of education that is not subject to the control of Town or county regulations related to solid waste, or as otherwise defined in 14 CCR Section 18982(a)(40).

“Multi-family residential dwelling” or “multi-family” means of, from, or pertaining to residential premises with five (5) or more dwelling units. Multi-family premises do not include hotels, motels, or other transient occupancy facilities, which are considered commercial businesses. Residential premises with fewer than five (5) dwelling units shall be considered single-family.

“MWELo” refers to the Model Water Efficient Landscape Ordinance (MWELo), 23 CCR, Division

2, Chapter 2.7.

“Non-compostable paper” includes, but is not limited to, paper that is coated in a plastic material that will not breakdown in the composting process, or as otherwise defined in 14 CCR Section 18982(a)(41).

“Non-local entity” means an entity that is an organic waste generator but is not subject to the control of a jurisdiction’s regulations related to solid waste. These entities may include, but are not limited to, special districts, federal facilities, prisons, facilities operated by the state parks system, public universities, including community colleges, county fairgrounds, and state agencies.

“Notice of violation (NOV)” means a notice that a violation has occurred that includes a compliance date to avoid an action to seek penalties, or as otherwise defined in 14 CCR Section 18982(a)(45) or further explained in 14 CCR Section 18995.4.

“Organic materials” means green waste, food waste, lumber, and wood waste.

“Organic materials container” has the same meaning as in 14 CCR Section 18982.2(a)(29) and shall be used for the purpose of storage and collection of source separated organic materials.

“Organic waste” means solid wastes containing material originated from living organisms and their metabolic waste products, including but not limited to food, green material, landscape and pruning waste, green waste, organic textiles and carpets, lumber, wood, paper products, printing and writing paper, manure, biosolids, digestate, and sludges or as otherwise defined in 14 CCR Section 18982(a)(46). Biosolids and digestate are as defined by 14 CCR Section 18982(a).

“Organic waste generator” means a person or entity that is responsible for the initial creation of Organic Waste, or as otherwise defined in 14 CCR Section 18982(a)(48).

“Paper products” include, but are not limited to, paper janitorial supplies, cartons, wrapping, packaging, file folders, hanging files, corrugated boxes, tissue, and toweling, or as otherwise defined in 14 CCR Section 18982(a)(51).

“Printing and writing papers” include, but are not limited to, copy, xerographic, watermark, cotton fiber, offset, forms, computer printout paper, white wove envelopes, manila envelopes, book paper, note pads, writing tablets, newsprint, and other uncoated writing papers, posters, index cards, calendars, brochures, reports, magazines, and publications, or as otherwise defined in 14 CCR Section 18982(a)(54).

“Process” or “processing” (or any variation thereof) means the controlled separation, recovery, volume reduction, conversion, or recycling of source separated recyclable materials or source separated organic materials including, but not limited to, organized, manual, automated, or mechanical sorting, the use of vehicles for spreading of waste for the purpose of recovery, and/or includes the use of conveyor belts, sorting lines, or volume reduction equipment, or as otherwise defined in 14 CCR Section 17402(a)(20).

“Prohibited container contaminants” means the following: (i) discarded materials placed in the recyclable materials container that are not identified as acceptable source separated recyclable materials for the Town’s recyclable materials container; (ii) discarded materials placed in the organic materials container that are not identified as acceptable source separated organic materials for the Town’s organic materials container; (iii) discarded materials placed in the solid waste container that are acceptable source separated recyclable materials and/or source separated organic materials to be placed in Town’s organic materials container and/or recyclable materials container; and, (iv) excluded waste placed in any container.

“Recovered organic waste products” means products made from California, landfill-diverted recovered organic waste processed in a permitted or otherwise authorized facility, or as otherwise defined in 14 CCR Section 18982(a)(60).

“Recovery” means any activity or process described in 14 CCR Section 18983.1(b), or as otherwise defined in 14 CCR Section 18982(a)(49).

“Recyclable materials” means materials authorized by exclusive hauler.

“Recyclable materials container” has the same meaning as in 14 CCR Section 18982.2(a)(5) and shall be used for the purpose of storage and collection of source separated recyclable materials.

“Recycled-content paper” means paper products and printing and writing paper that consists of at least 30 percent, by fiber weight, postconsumer fiber, or as otherwise defined in 14 CCR Section 18982(a)(61).

“Regional agency” means the West Valley Solid Waste Management Authority.

“Regional agency enforcement official” means a designated enforcement official from the regional agency or other regional or county agency, designated by the Town with responsibility for enforcing the chapter in conjunction or consultation with Town enforcement official.

“Remote monitoring” means the use of the internet of things (IoT) and/or wireless electronic devices to visualize the contents of recyclable materials containers, organic materials containers, and solid waste materials containers for purposes of identifying the quantity of materials in containers (level of fill) and/or presence of prohibited container contaminants.

“Renewable gas” means gas derived from organic waste that has been diverted from a California landfill and processed at an in-vessel digestion facility that is permitted or otherwise authorized by 14 CCR to recycle organic waste, or as otherwise defined in 14 CCR Section 18982(a)(62).

“Restaurant” means an establishment primarily engaged in the retail sale of food and drinks for on-premises or immediate consumption, or as otherwise defined in 14 CCR Section 18982(a)(64).

“Route review” means a visual inspection of containers along a hauler route for the purpose of

determining container contamination, and may include mechanical Inspection methods such as the use of cameras, or as otherwise defined in 14 CCR Section 18982(a)(65).

“SB 1383” means Senate Bill 1383 of 2016 approved by the Governor on September 19, 2016, which added Sections 39730.5, 39730.6, 39730.7, and 39730.8 to the Health and Safety Code, and added Chapter 13.1 (commencing with Section 42652) to Part 3 of Division 30 of the Public Resources Code, establishing methane emissions reduction targets in a Statewide effort to reduce emissions of short-lived climate pollutants as amended, supplemented, superseded, and replaced from time to time.

“SB 1383 regulations” or “SB 1383 regulatory” means or refers to, for the purposes of this chapter, the short-lived climate pollutants: organic waste reduction regulations developed by CalRecycle that created 14 CCR, Division 7, Chapter 12 and amended portions of regulations of 14 CCR and 27 CCR.

“Self-hauler” means a person, who hauls solid waste, organic waste or recyclable material they have generated to another person. Self-hauler also includes a person who back-hauls waste, or as otherwise defined in 14 CCR Section 18982(a)(66). Back-haul means generating and transporting organic waste to a destination owned and operated by the generator using the generator’s own employees and equipment, or as otherwise defined in 14 CCR Section 18982(a)(66)(A). Self-hauler also includes a landscaper.

“Share table” has the same meaning as in Section 114079 of the Health and Safety Code.

“Single-family” means of, from, or pertaining to any residential premises with fewer than five (5) units.

“Solid waste materials container” has the same meaning as in 14 CCR Section 18982.2(a)(28) and shall be used for the purpose of storage and collection of solid waste.

“Source separated” means materials, including commingled recyclable materials, that have been separated or kept separate from the solid waste stream, at the point of generation, for the purpose of additional sorting or processing those materials for recycling or reuse in order to return them to the economic mainstream in the form of raw material for new, reused, or reconstituted products, which meet the quality standards necessary to be used in the marketplace, or as otherwise defined in 14 CCR Section 17402.5(b)(4). For the purposes of the chapter, source separated shall include separation of materials by the generator, property owner, property owner’s employee, property manager, or property manager’s employee into different containers for the purpose of collection such that source separated materials are separated from solid waste for the purposes of collection and processing.

“Source separated organic materials” means source separated organic materials that can be placed in an organic materials container that is specifically intended for the separate collection of organic waste.

“Source separated recyclable materials” means source separated recyclables materials that can be placed in a recyclable materials containers that is specifically intended for the separate collection of recyclable materials. Source separated recyclable materials.

“State” means the State of California.

“Supermarket” means a full-line, self-service retail store with gross annual sales of two million dollars (\$2,000,000), or more, and which sells a line of dry grocery, canned goods, or nonfood items and some perishable items, or as otherwise defined in 14 CCR Section 18982(a)(71).

“Tier one commercial edible food” means a commercial edible food generator that is one of the following, as defined in this chapter:

- (1) Supermarket.
- (2) Grocery store with a total facility size equal to or greater than 10,000 sq. ft..
- (3) Food service provider.
- (4) Food distributor.
- (5) Wholesale food vendor.

If the definition in 14 CCR Section 18982(a)(73) of tier one commercial edible food generator differs from this definition, the definition in 14 CCR Section 18982(a)(73) shall apply to this chapter.

“Tier two commercial edible food generator” means the following:

- (1) Restaurant with 250 or more seats, or a total facility size equal to or greater than 5,000 square feet.
- (2) Hotel with an on-site food facility and 200 or more rooms.
- (3) Health facility with an on-site food facility and 100 or more beds.
- (4) Large venue.
- (5) Large event.
- (6) State agency with a cafeteria with 250 or more seats or total cafeteria facility size equal to or greater than 5,000 square feet.
- (7) A local education agency facility with an on-site food facility.

If the definition in 14 CCR Section 18982(a)(74) of tier two commercial edible food generator differs from this definition, the definition in 14 CCR Section 18982(a)(74) shall apply

to this chapter.

“Town” means the Town of Los Gatos, California, a political subdivision of the State of California, and its duly authorized representatives.

“Town Enforcement Official” means the Town manager, or other executive in charge or their authorized Designee(s) who is/are partially or whole responsible for enforcing the ordinance.

“West Valley Clean Water Authority” means the stormwater pollution prevention authority for the cities of Campbell, Monte Sereno, Saratoga, and the Town of Los Gatos.

“Wholesale food vendor” means a business or establishment engaged in the merchant wholesale distribution of food, where food (including fruits and vegetables) is received, shipped, stored, prepared for distribution to a retailer, warehouse, distributor, or other

Sec. 11.50.015. - Single-family requirements.

(a) Owner, occupant, or property manager of single-family premises, except those that that meet the self-hauler requirements in this chapter shall subscribe to the regional agency’s discarded materials collection services for all recyclable materials, organic materials, and solid waste generated as described below in Section (b). Town, its designee, or regional agency shall have the right to review the number and size of a recyclable materials containers, organic materials containers, and solid waste containers to evaluate adequacy of capacity provided for each type of collection service for proper separation of discarded materials and containment of materials; and, owner, occupant, or property manager of single-family premises shall adjust its service level for its collection services as requested by the Town, its designee, or regional agency. Owner, occupant, or property manager may additionally manage their discarded materials by preventing or reducing their discarded materials, by managing organic waste on site, and/or using a community composting site pursuant to 14 CCR Section 18984.9(c).

(b) Generators shall participate in the regional agency’s discarded materials collection service(s) by placing designated materials in designated containers as described below, and shall not place prohibited container contaminants in collection containers.

(c) Generators shall place source separated organic materials, including food waste, in the organic materials container; source separated recyclable materials in the recyclable materials container; and solid waste in the solid waste container. Generators shall not place materials designated for the solid waste container into the recyclable materials container or organic materials container.

Sec. 11.50.020. – Commercial and multi-family requirements.

(a) Commercial businesses and multi-family residential dwellings shall comply with the following requirements:

- (1) Subscribe to regional agency's discarded materials collection services and comply with requirements of those services as described in this chapter, except commercial businesses and multi-family residential dwellings that meet the self-hauler requirements in this chapter. Town, its designee, or regional agency shall have the right to review the number and size of a commercial business's or multi-family residential dwellings' discarded materials containers and frequency of collection to evaluate adequacy of capacity provided for each type of collection service for proper separation of discarded materials and containment of materials; and, owner, occupant, or property manager of commercial businesses and multi-family residential dwellings shall adjust their service level for their collection services as requested by the Town, its designee, or regional agency.
- (2) Except commercial businesses and multi-family residential dwellings that meet the self-hauler requirements in this chapter, participate in the regional agency's discarded materials collection service(s) by placing designated materials in designated containers. Commercial and multi-family generators shall place source separated organic materials, including food waste, in the organic materials container; source separated recyclable materials in the recyclable materials container; and solid waste in the solid waste containers generator shall not place materials designated for the solid waste container into the organic materials container or recyclable materials container.
- (3) Supply and allow access to adequate number, size, and location of collection containers with sufficient labels or colors (conforming with Sections b(1)(i) and b(1)(ii) for employees, exclusive haulers, tenants, and customers, consistent with regional agency's discarded materials collection service or, if self-hauling, in a manner to support its compliance with its self-haul program, in accordance with this chapter.
- (4) Annually provide information to employees, exclusive haulers, tenants, and customers about organic waste recovery requirements and proper sorting of source separated materials.
- (5) Provide education information before or within fourteen (14) days of occupation of the premises to new tenants that describes requirements to keep source separated materials and separate from solid waste and the location of containers and the rules governing their use at each property.
- (6) Provide or arrange access for Town, its designee, or regional agency to their properties during all Inspections conducted in accordance with this chapter to confirm compliance with the requirements of this chapter.
- (7) Accommodate and cooperate with Town's, its designee's, or regional agency's remote monitoring program for Inspection of the contents of containers for prohibited container contaminants, which may be implemented at a later date, to evaluate generator's compliance with this chapter. The remote monitoring program shall involve installation of remote monitoring equipment on or in the discarded materials containers.
- (8) At commercial business's or multi-family residential dwelling's option and subject to any approval required from the Town, its designee, or regional agency, implement a

remote monitoring program for inspection of the contents of its discarded materials containers for the purpose of monitoring the contents of containers to determine appropriate levels of service and to identify prohibited container contaminants. Generators may install remote monitoring devices on or in the discarded materials containers subject to written notification to or approval by the Town, its designee, or regional agency.

- (9) If a commercial business or multi-family residential dwelling wants to self-haul, meet the self-hauler requirements in this chapter.

(b) Commercial businesses shall also comply with the following requirements:

(1) Provide containers for the collection of source separated materials in all indoor and outdoor areas where containers for solid waste are provided for customers, for materials generated by that commercial business. Such containers do not need to be provided in restrooms. If a commercial business does not generate any of the materials that would be collected in one type of container, then the commercial business does not have to provide that particular container in all areas where solid waste containers are provided for customers. Pursuant to 14 CCR Section 18984.9(b), the containers provided by the commercial business shall have either:

(i) A body or lid that conforms with the container colors provided through the collection service provided by regional agency, with either lids conforming to the color requirements or bodies conforming to the color requirements or both lids and bodies conforming to color requirements. A commercial business is not required to replace functional containers, including containers purchased prior to January 1, 2022, that do not comply with the requirements of the subsection prior to the end of the useful life of those containers, or prior to January 1, 2036, whichever comes first.

(ii) Existing containers shall be clearly marked with educational signage indicating the appropriate discarded material types to be placed in each container in accordance with requirements of the regional agency's collection program. Commencing January 1, 2022, new containers shall have container labels that include language or graphic images, or both, indicating the primary material accepted and the primary materials prohibited in that container, or containers with imprinted text or graphic images that indicate the primary materials accepted and primary materials prohibited in the container pursuant 14 CCR Sections 18984.8 and 18984.9.

(2) To the extent practical through education, training, inspection, and/or other measures, shall prohibit employees from placing discarded materials in a container not designated for those materials per the regional agency's separated source and solid waste collection service or, if self-hauling, in a manner to support its compliance with its self-haul program, in accordance with this chapter.

(3) Periodically inspect separated source and solid waste containers for contamination and inform employees if containers are contaminated and of the requirements to keep contaminants out of those containers pursuant to 14 CCR Section 18984.9(b)(3).

(4) For commercial businesses that are tier one or tier two commercial edible food generators, comply with food recovery requirements in this chapter.

(c) Nothing in this Section prohibits a generator from preventing or reducing waste generation, managing organic waste on site, or using a community composting site pursuant to 14 CCR Section 18984.9(c).

Sec. 11.50.025. – Waivers for residential and commercial generators.

(a) *De minimis waivers.* The Town or regional agency may waive a commercial business' or multi-family residential dwellings' obligation to comply with some or all of the source separated material requirements of this chapter if the commercial business or multi-family residential dwellings provides documentation that it generates below a certain amount of recyclable materials and organic materials as described below. Commercial Businesses or multi-family residential dwellings requesting a de minimis waiver shall:

(1) Submit an application to the Town, regional agency, or exclusive hauler specifying the services that they are requesting a waiver from and provide documentation as noted below.

(2) Provide documentation that either:

(A) The commercial business' or multi-family residential dwellings' total solid waste collection service is two cubic yards or more per week and organic waste subject to collection in a recyclable materials container and/or organic materials container comprises less than 20 gallons per week per applicable container of the Commercial business's or multi-family residential dwellings' total waste; or,

(B) The commercial business' or multi-family residential dwellings' total solid waste collection service is less than two cubic yards per week and organic waste subject to collection in a recyclable materials container and/or organic materials comprises less than 10 gallons per week per applicable container of the commercial business's or multi-family residential dwellings' total waste.

(3) Notify Town or regional agency if circumstances change such that commercial business's or multi-family residential dwelling's organic waste exceeds threshold required for waiver, in which case waiver will be rescinded.

(4) Provide written verification of eligibility for de minimis waiver every 5 years, if Town or regional agency has approved de minimis waiver.

(b) *Physical space waivers.* Town or regional agency may waive a commercial business's or

multi-family residential dwelling's or property owner's obligations to comply with some or all of the Recyclable materials and/or organic waste collection service requirements if the Town has evidence from its own staff, the regional agency's exclusive hauler, licensed architect, or licensed engineer demonstrating that the premises lacks adequate space for the collection containers required for compliance with the organic waste collection requirements of this article.

A commercial business or multi-family residential dwelling owner or property owner may request a physical space waiver through the following process:

- (1) Submit an application form specifying the type(s) of collection services for which they are requesting a compliance waiver.
- (2) Provide documentation that the premises lacks adequate space for recyclable materials containers and/or organic materials containers including documentation from its exclusive hauler, licensed architect, or licensed engineer.
- (3) Provide written verification to Town or regional agency that it is still eligible for physical space waiver every five years, if Town has approved application for a physical space waiver.

- (a) The Department of Public Works will review and approve of waivers by Town or regional agency.

Sec. 11.50.030. – Commercial edible food generators requirements.

(a) Tier one commercial edible food generators must comply with the requirements of this Section 7 commencing January 1, 2022, and tier two commercial edible food generators must comply commencing January 1, 2024 pursuant to 14 CCR Section 18991.3.

(b) Large venue or large event operators not providing food services, but allowing for food to be provided by others, shall require food facilities operating at the large venue or large event to comply with the requirements of this Section, commencing January 1, 2024.

(c) Commercial edible food generators shall comply with the following requirements:

- (1) Arrange to recover the maximum amount of edible food that would otherwise be disposed.
- (2) Contract with, or enter into a written agreement with food recovery organizations or food recovery services for: (i) the collection of edible food for food recovery; or, (ii) acceptance of the edible food that the commercial edible food generator self-hauls to the food recovery organization for food recovery.
- (3) Shall not intentionally spoil edible food that is capable of being recovered by a food recovery organization or a food recovery service.

(4) Allow the enforcement entity to access the premises and review records pursuant to 14 CCR Section 18991.4.

(5) Keep records that include the following information, or as otherwise specified in 14 CCR Section 18991.4:

(A) A list of each food recovery service or organization that collects or receives its edible food pursuant to a contract or written agreement established under 14 CCR Section 18991.3(b).

(B) A copy of all contracts or written agreements established under 14 CCR Section 18991.3(b).

(C) A record of the following information for each of those food recovery services or food recovery organizations:

(i) The name, address and contact information of the food recovery service or food recovery organization.

(ii) The types of food that will be collected by or self-hauled to the food recovery service or food recovery organization.

(iii) The established frequency that food will be collected or self-hauled.

(iv) The quantity of food, measured in pounds recovered per month, collected or self-hauled to a food recovery service or food recovery organization for food recovery.

(d) Tier one commercial edible food generators shall submit food recovery reports, as defined below, to the enforcement entity according to the following schedule:

(1) On or before August 1, 2022, tier one commercial edible food generators shall submit a food recovery report for the period of January 1, 2022 through June 30, 2022.

(2) On or before May 1, 2023, and on or before May 1st each year thereafter, tier one commercial edible food generators shall submit a food recovery report for the period covering the entire previous calendar year.

(e) Tier two commercial edible food generators shall submit food recovery reports, as defined below, to the enforcement entity according to the following schedule:

(1) On or before May 1, 2025, and on or before May 1st each year thereafter, tier two commercial edible food generators shall submit a food recovery report for the period covering the entire previous calendar year.

(f) Food recovery reports submitted by tier one and tier two commercial edible food generators

shall include the following information:

- (1) The name and address of the commercial edible food generator;
- (2) The name of the person responsible for the commercial edible food generator's edible food recovery program;
- (3) A list of all contracted food recovery services or food recovery organizations that collect edible food from the commercial edible food generator;
- (4) The total number of pounds of edible food, per year, donated through a contracted food recovery organization or food recovery service.

(g) Nothing in this chapter shall be construed to limit or conflict with the protections provided by the California Good Samaritan Food Donation Act of 2017, the Federal Good Samaritan Act, or share table and school food donation guidance pursuant to Senate Bill 557 of 2017 (approved by the Governor of the State of California on September 25, 2017, which added Article 13 [commencing with Section 49580] to Chapter 9 of Part 27 of Division 4 of Title 2 of the Education Code, and to amend Section 114079 of the Health and Safety Code, relating to food safety, as amended, supplemented, superseded and replaced from time to time).

Sec. 11.50.035. – Requirements for food recovery organizations and services.

(a) Food recovery services and food recovery organizations collecting or receiving edible food directly from commercial edible food generators, via a contract or written agreement established under 14 CCR Section 18991.3(b), shall maintain the following records, or as otherwise specified by 14 CCR Section 18991.5(a)(1):

- (1) The name, address, and contact information for each commercial edible food generator from which the service collects edible food.
- (2) The quantity in pounds of edible food collected from each commercial edible food generator per month.
- (3) The quantity in pounds of edible food transported to each food recovery organization per month.
- (4) The name, address, and contact information for each food recovery organization that the food recovery service transports edible food to for food recovery.

(b) Food recovery organizations and food recovery services shall inform Generators about California and Federal Good Samaritan Food Donation Act protection in written communications, such as in their contract or agreement established under 14 CCR Section 18991.3(b).

(c) Food recovery organizations and food recovery services that have their primary address

physically located in the Town and contract with or have written agreements with one or more tier one or tier two commercial edible food generators pursuant to 14 CCR Section 18991.3(b) shall submit food recovery reports, as defined below, to the enforcement entity according to the following schedule:

(1) On or before August 1, 2022, food recovery organizations and food recovery services shall submit a food recovery report for the period of January 1, 2022 through June 30, 2022;

(2) On or before May 1, 2023, and on or before May 1st each year thereafter, food recovery organizations and food recovery services shall submit a food recovery report for the period covering the entire previous calendar year.

(d) Food recovery reports submitted by food recovery services or organizations shall include the following information:

(1) Total pounds of edible food recovered in the previous calendar year from tier one and tier two edible food generators they have established a contract or written agreement with pursuant to 14 CCR Section 18991.3(b).

(2) Total pounds of edible food recovered in the previous calendar year from the tier one and tier two commercial edible food generators they have established a contract or written agreement with within Santa Clara County.

(e) In order to support edible food recovery capacity planning assessments or other studies conducted by the county, Town, its designee, or regional agency, food recovery services and food recovery organizations operating in the Town shall provide information and consultation to the Town or regional agency, upon request, regarding existing, or proposed new or expanded, food recovery capacity that could be accessed by the Town and its commercial edible food generators. A food recovery service or food recovery organization contacted by the enforcement entity shall respond to such request for information within 60 days, unless another timeframe is otherwise specified by the Town or regional agency.

Sec. 11.50.040. – Hauler and facility operator requirements.

(a) Requirements for haulers:

(1) The exclusive hauler providing single-family, multi-family residential dwellings, and commercial recyclable materials, organic waste, C&D, and solid waste collection services to generators within the Town’s boundaries shall meet the following requirements and standards:

(A) Transport:

(i) source separated recyclable materials to a facility that recovers

recyclable materials;

(ii) transport source separated organic materials to a facility, operation, activity, or property that recovers organic waste as defined in 14 CCR, Division 7, Chapter 12, Article 2; and

(iii) solid waste to a disposal facility; and all facilities shall be approved by the regional agency through the exclusive hauler's collection agreement with the regional agency.

(2) The exclusive hauler authorized to collect source separated materials and solid waste shall comply with education, equipment, signage, container labeling, container color, contamination monitoring, reporting, and other requirements contained within its franchise agreement entered into by the exclusive hauler and the regional agency.

(b) Requirements for facility operators and community composting operations.

(1) Owners of facilities, operations, and activities that recover organic waste, including, but not limited to, compost facilities, in-vessel digestion facilities, and publicly-owned treatment works shall, upon Town or regional agency request, provide information regarding available and potential new or expanded capacity at their facilities, operations, and activities, including information about throughput and permitted capacity necessary for planning purposes. Entities contacted by the Town or regional agency shall respond within 60 days.

Sec. 11.50.045. – Self-hauler requirements.

(a) Self-haulers shall source separate all materials in a manner consistent with 14 CCR Sections 18984.1 and 18984.2, or shall haul organic waste that is mixed with Solid Waste to a high diversion organic waste processing facility as specified in 14 CCR Section 18984.3.

(b) Self-haulers shall haul their source separated materials to facilities that recover those materials. Alternatively, self-haulers may haul organic waste that is mixed with solid waste to a high diversion organic waste processing facility.

(c) Self-haulers that are owners or property managers of commercial businesses and multi-family residential dwellings shall keep a record of the amount of recyclable materials and organic waste delivered to each solid waste facility, operation, activity, or property that processes or recovers recyclable materials and/or organic waste.; this record shall be subject to Inspection by the Town, its designee, or regional agency. The records shall include the following information:

(1) Delivery receipts and weight tickets from the entity accepting the recyclable materials, organic waste, or solid waste.

(2) The amount of discarded material in cubic yards or tons transported by the

generator to each entity.

(3) If the discarded material is transported to an entity that does not have scales on-site, or employs scales incapable of weighing the self-hauler's vehicle in a manner that allows it to determine the weight of materials received, the self-hauler is not required to record the weight of material but shall keep a record of the entities that received the recyclable materials, organic waste, or solid waste.

(d) Self-haulers that are owners or property managers of commercial businesses and multi-family self-haulers shall provide information collected in 11.50.45(c) to Town, its designee, or regional agency, if requested.

(e) A single-family generator that self-hauls recyclable materials, organic waste, or solid waste is not required to record or report information in 11.50.45(c) and (d).

Sec 11.50.050. – Model Water Efficient Landscaping Ordinance Requirements

(a) Property owners or their building or landscape designers, including anyone requiring a building or planning permit, plan check, or landscape design review from the Town, who are constructing a new (Single-Family, Multi-Family, public, institutional, or Commercial) project with a landscape area greater than 500 square feet, or rehabilitating an existing landscape with a total landscape area greater than 2,500 square feet, shall comply with Sections 492.6(a)(3)(B) (C), (D), and (G) of the MWELo

(b) If, after the adoption of this ordinance, the California Department of Water Resources, or its successor agency, amends 23 CCR, Division 2, Chapter 2.7, Sections 492.6(a)(3)(B) (C), (D), and (G) of the MWELo September 15, 2015 requirements in a manner that requires Cities to incorporate the requirements of an updated MWELo in a local ordinance, and the amended requirements include provisions more stringent than those required in this Section, the revised requirements of 23 CCR, Division 2, Chapter 2.7 shall be enforced.

Sec. 11.50.055. – Non-local entities and local education agency requirements.

(a) Non-local entities and local education agencies shall comply with requirements 14 CCR Chapter 12, Article 5 to prevent and reduce the generation of organic waste.

(b) Local education agencies with on-site food facility shall comply with food recovery requirements of this chapter.

Sec. 11.50.060. – Inspections and investigations by Town.

(a) The enforcement entity is authorized to conduct Inspections and investigations, at random or otherwise, of any collection container, collection vehicle loads, or transfer, processing, or disposal facility for discarded materials collected from generators, or source separated materials to confirm compliance with this chapter by single-family generators, commercial

businesses, multi-family residential dwellings, property owners, commercial edible food generators, haulers, self-haulers, food recovery services, and food recovery organizations, and other entities regulated hereunder subject to applicable laws. This section does not allow the enforcement entity to enter the interior of a private residential property for inspection. For the purposes of inspecting Commercial Business and multi-family residential dwellings containers for compliance of this chapter, Town may conduct container inspections for prohibited container contaminants using remote monitoring, and commercial businesses and multi-family residential dwellings shall accommodate and cooperate, if applicable, with the remote monitoring pursuant to this chapter.

(b) Regulated entity shall provide or arrange for access during all Inspections (with the exception of residential property interiors) and shall cooperate with the enforcement entity's employee during such Inspections and investigations. Such inspections and investigations may include confirmation of proper placement of materials in containers, edible food recovery activities, records, or any other requirement of this chapter described herein. Failure to provide or arrange for: (i) access to an entity's premises; (ii) installation and operation of remote monitoring equipment; or (iii) access to records for any Inspection or investigation is a violation of this chapter and may result in penalties described.

(c) Any records obtained during Inspections, remote monitoring, and other reviews shall be subject to the requirements and applicable disclosure exemptions of the Public Records Act as set forth in Government Code Section 6250 et seq.

(d) The enforcement entity shall receive written complaints from persons regarding an entity that may be potentially non-compliant with this chapter, including receipt of anonymous complaints.

Sec. 11.50.065. – Enforcement.

(a) Violation of any provision of this chapter shall constitute grounds for issuance of a notice of violation and assessment of a fine. Other remedies allowed by law may be used, including civil action or prosecution as misdemeanor or infraction. The responsible entity for enforcement may pursue civil actions in the California courts to seek recovery of unpaid administrative citations. The enforcement entity may choose to delay court action until such time as a sufficiently large number of violations, or cumulative size of violations exist such that court action is a reasonable use of entity's resources.

(b) Responsible entity for enforcement:

(1) Enforcement entity's pursuant to this chapter may be undertaken by the Town enforcement official, regional agency enforcement official, county agency enforcement official, exclusive hauler, or combination thereof, as defined in this chapter.

(A) The enforcement entity will interpret this chapter; determine the

applicability of waivers, if violation(s) have occurred; implement enforcement actions; and, determine if compliance standards are met.

(B) The enforcement entity's procedures on imposition of administrative fines are hereby incorporated in their entirety, as modified from time to time, and shall govern the administrative citations issued to enforce this chapter and any rule or regulation adopted pursuant to this chapter, except as otherwise indicated in this chapter.

(c) Process for enforcement:

(1) The enforcement entity will monitor compliance with the chapter randomly and through compliance reviews, route reviews, investigation of complaints, and an inspection program (that may include remote monitoring). This chapter establishes Town's right to conduct inspections and investigations.

(2) The enforcement entity may issue an official notification to notify regulated entities of its obligations under this chapter.

(3) For incidences of prohibited container contaminants found in containers, the enforcement entity will issue a notice of violation to any generator found to have prohibited container contaminants in a container. Such notice will be provided via a cart tag or other communication immediately upon identification of the prohibited container. If the enforcement entity observes prohibited container contaminants in a generator's containers on more than three (3) consecutive occasion(s), the enforcement entity or exclusive hauler may assess contamination processing fees or contamination penalties on the generator.

(4) With the exception of violations of generator contamination of container contents addressed under 6.04.290(c)(3), the enforcement entity shall issue a notice of violation requiring compliance within 60 days of issuance of the notice.

(5) Absent compliance by the respondent within the deadline set forth in the notice of violation, the enforcement entity shall commence an action to impose penalties, via an administrative citation and fine, pursuant to the Town's municipal code, chapter 1.30 administrative citations.

Notices shall be sent to "owner" at the official address of the owner maintained by the tax collector for the Town or if no such address is available, to the owner at the address of the dwelling or commercial property or to the party responsible for paying for the collection services, depending upon available information.

(d) *Penalty amounts for types of violation.* The penalty levels follow Town municipal code, chapter 1.30.025 amount of penalties.

(e) *Factors considered in determining penalty amount.* The following factors shall be used to

determine the amount of the penalty for each violation within the appropriate penalty amount range:

- (1) The nature, circumstances, and severity of the violation(s).
- (2) The violator's ability to pay.
- (3) The willfulness of the violator's misconduct.
- (4) Whether the violator took measures to avoid or mitigate violations of this chapter.
- (5) Evidence of any economic benefit resulting from the violation(s).
- (6) The deterrent effect of the penalty on the violator.
- (7) Whether the violation(s) were due to conditions outside the control of the violator.

(f) *Compliance deadline extension considerations.* The enforcement entity may extend the compliance deadlines set forth in a notice of violation if it finds that there are extenuating circumstances beyond the control of the respondent that make compliance within the deadlines impracticable, including the following:

- (1) Acts of God such as earthquakes, wildfires, flooding, and other emergencies or natural disasters;
- (2) Delays in obtaining discretionary permits or other government agency approvals; or,
- (3) Deficiencies in organic waste recycling infrastructure or edible food recovery capacity and the Town is under a corrective action plan with CalRecycle pursuant to 14 CCR Section 18996.2 due to those deficiencies.

(g) *Appeals process.* Persons receiving an administrative citation containing a penalty for an uncorrected violation may request a hearing to appeal the citation. A hearing will be held only if it is consistent with Town's procedures in the Town municipal code, chapter 1.30.

(h) *Education period for non-compliance.* Beginning January 1, 2022 and through December 31, 2023, the enforcement entity will conduct inspections, remote monitoring, route reviews or waste evaluations, and compliance reviews, depending upon the type of regulated entity, to determine compliance, and if the enforcement entity determines that organic waste generator, self-hauler, hauler, tier one commercial edible food generator, food recovery organization, food recovery service, or other entity is not in compliance, it shall provide educational materials to the entity describing its obligations under this chapter and a notice that compliance is required by January 1, 2022 and that violations may be subject to administrative civil penalties starting on January 1, 2024.

(j) *Civil penalties for non-compliance.* Beginning January 1, 2024, if the enforcement entity determines that an organic waste generator, self-hauler, hauler, tier one or tier two commercial edible food generator, food recovery organization, food recovery service, or other entity is not in compliance with this chapter, it shall document the noncompliance or violation, issue a notice of violation, and take enforcement action pursuant to this chapter, as needed.

11.50.070. – Effective date.

This chapter shall be effective commencing on January 1, 2022.

SECTION III

If any section, subsection, sentence, clause, phrase, or portion of this ordinance is for any reason held to be unconstitutional or otherwise invalid by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The Town Council of the Town of Los Gatos hereby declares that it would have adopted the remainder of this ordinance, including each section, subsection, sentence, clause, phrase, or portion irrespective of the invalidity of any other article, section, subsection, sentence, clause, phrase, or portion.

SECTION IV

This Ordinance was introduced at a regular meeting of the Town Council of the Town of Los Gatos on the 2nd day of November 2021 and adopted by the following vote as an ordinance of the Town of Los Gatos at a regular meeting of the Town Council of the Town of Los Gatos on the 16th day of 2021. This ordinance takes effect 30 days after it is adopted. In lieu of publication of the full text of the ordinance within fifteen (15) days after its passage a summary of the ordinance may be published at least five (5) days prior to and fifteen (15) days after adoption by the Town Council and a certified copy shall be posted in the office of the Town Clerk, pursuant to GC 36933(c)(1).

Attachment.

COUNCIL MEMBERS:

AYES:

NAYS:

ABSENT:

ABSTAIN:

SIGNED:

MAYOR OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

DATE: _____

ATTEST:

TOWN CLERK OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

DATE: _____

AMENDMENT TO CHAPTER 11 – GARBAGE, REFUSE AND WEEDS

Chapter 11 –DISCARDED MATERIALS, EXCLUDED WASTEAND WEEDS^[1]

Footnotes:

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Cross reference— Animals and fowl, Ch. 4; buildings and building regulations, Ch. 6; fire protection, Ch. 9; food and food establishments, Ch. 10; health and sanitation, Ch. 13; licenses and miscellaneous business regulations, Ch. 14; nuisances, Ch. 17; planning, Ch. 20; sewers and sewage disposal, Ch. 22; streets and sidewalks, Ch. 23; removal of discarded waste upon completion of construction of sidewalks, driveways, curbs and gutters, § 23.40.035; subdivision regulations, Ch. 24; utilities, Ch. 27; zoning regulations, Ch. 29.

ARTICLE I. - IN GENERAL

Sec. 11.10.010. - Definitions.

For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this chapter:

“Dead animals” means those animals that die naturally, from disease, or are accidentally killed, but shall not mean condemned animals or parts of animals from slaughterhouses or similar places.

“Discarded materials” means recyclable materials, organic materials, and solid waste discarded by a generator for the purpose of collection and/or Self-Hauling, excluding excluded waste.

“Excluded waste” means hazardous substance, hazardous waste, infectious waste, designated waste, volatile, corrosive, medical waste, infectious, regulated radioactive waste, and toxic substances or material that facility operator(s), which receive materials from the Town and its generators, reasonably believe(s) would, as a result of or upon acceptance, transfer, processing, or disposal, be a violation of local, State, or Federal law, regulation, or ordinance, including: land use restrictions or conditions, waste that cannot be disposed of in Class III landfills or accepted at the facility by permit conditions, waste that in Town’s, its designee’s, or regional agency’s reasonable opinion would present a significant risk to human health or the environment, cause a nuisance or otherwise create or expose the Town, its designee, or regional agency’s to potential liability; but not including de minimis volumes or concentrations of waste of a type and amount normally found in single-family or multi-family solid waste after implementation of programs for the safe collection, processing, recycling, treatment, and disposal of batteries and paint in compliance with Sections 41500 and 41802 of the California Public Resources Code. Excluded waste does not include used motor oil and filters, and household batteries when such materials are defined as allowable materials for collection through the Town’s collection programs and the generator or customer has properly placed the

materials for collection pursuant to instructions provided by Town, regional agency, or exclusive hauler for collection services.

(Ord. No. 1812, § I(14-30), 2-20-90)

Cross reference— Definitions and rules of construction generally, § 1.10.015.

Sec. 11.10.015. - Determinations.

Pursuant to Government Code section 66757, the Town hereby makes the following determinations:

- (1) The following aspects of solid waste handling are of local concern: frequency of collection, means of collection and transportation, level of services, charges and fees, and nature, location, and extent of providing solid waste handling services.(2)The public health, safety and well-being require that solid waste handling services be provided by a wholly exclusive franchise. The terms of franchise shall be set forth in a franchise agreement approved by resolution of the Town Council.
- (2) The public health, safety and well-being require that solid waste handling services be provided by a wholly exclusive franchise. The terms of franchise shall be set forth in a franchise agreement approved by resolution of the Town Council.

(Code 1968, § 14-2)

Sec. 11.10.020. - Collection and disposal of discarded materials by private persons.

- (a) No person, except as provided in section 11.10.015, shall collect or gather or cause to be collected or gathered, discarded materials within the Town, or carry, convey or transport, or cause to be carried, conveyed or transported, discarded materials through any of the streets, alleys or public places of the Town.
- (b) This section shall not apply to the following:
 - (1) Persons carrying, conveying or transporting discarded materials owned by them to an authorized disposal site.
 - (2) Persons collecting or gathering, or carrying, conveying or transporting, discarded materials to be salvaged.
 - (3) Persons collecting or gathering, or carrying, conveying or transporting, discarded materials to an authorized disposal site upon an irregular or occasional basis.
 - (4) Gardeners or tree surgeons collecting or gathering, or carrying, conveying or transporting, tree branches, yard trimmings, grass clippings, weeds and leaves from premises where such gardeners or tree surgeons have performed services resulting in such discarded materials, to an authorized disposal site.

(Code 1968, § 14-3)

Sec. 11.10.025. - Disposal by Town, compliance with solid waste management plan required.

- (a) Except as otherwise expressly provided in this chapter, it shall be unlawful for any person to dispose of discarded materials, except through the service provided by the Town, its agents, servants, or employees, or by persons who shall contract with the Town to gather and collect and to dispose of such discarded materials.
- (b) Any person who collects and disposes of discarded materials in the Town shall do so in compliance with the solid waste management plan approved by resolution of the Town Council.

(Code 1968, § 14-4)

Sec. 11.10.030. - Contracting for collection services by Town; authority to levy charge for collection services.

The Town may agree to pay and may pay to its agents, servants or employees, or to other persons who shall contract to gather and collect and dispose of discarded materials such compensation as may be determined by the Town Council. The Town may authorize and permit its agent, servants or employees or such other persons to charge and collect for such service from the owners of such discarded materials, such sum as may be determined by the Town Council, and it shall be unlawful for any greater charge to be made for such service.

(Code 1968, § 14-5)

Sec. 11.10.035. - Discarded Materials receptacles—Required.

No person shall deposit, keep or accumulate, or cause to be deposited, kept or accumulated, any discarded materials in or about any lot or parcel of land, or any public or private drive, alley or street, or any house, store, restaurant or other place in the Town, unless the same is enclosed in a receptacle of the type described in this article.

(Code 1968, § 14-6)

(Code 1968, § 14-7)

Sec. 11.10.045. - Accumulations of combustible materials prohibited in certain areas; exception.

No person shall keep any combustible materials in any office, commercial, industrial or large multiple housing area (eight (8) units or more) of the Town for a period longer than twenty-four (24) hours, without placing such materials in a metal container satisfactory to the Fire Chief.

(Code 1968, § 14-9)

Sec. 11.10.050. - Burying, burning prohibited.

No person shall bury in or burn upon any lot, piece or parcel of land, or in or upon any street, way or alley within the Town any materials. No person shall burn upon any lot, piece or parcel of land within the Town any materials.

(Code 1968, § 14-10)

Sec. 11.10.055. - Dumping of discarded materials restricted to authorized disposal site.

No person shall dump any discarded materials upon any lot, piece or parcel of land not owned by such person or upon any public street, way, alley or place within the Town.

(Code 1968, § 14-11)

Sec. 11.10.060. - Leaving of dead animals, etc., on streets, public places, private lands, etc.

No person shall put the carcass of any dead animal or the offal from any dead animal, whether slaughtered or not, or the offal from any slaughterhouse, pen, corral or butchershop in any creek, pond, street, alley, highway or public grounds; or shall leave the same to decompose or decay upon the person's private land upon the surface of the ground; or shall allow any animal owned by the person which shall have died from any cause to remain upon any street, alley or highway, or upon any public or private grounds, to decay and create an offensive smell; or shall attempt to destroy such animal or offal by fire within the Town.

(Code 1968, § 14-12)

ARTICLE III. - RECYCLABLE MATERIALS

Sec. 11.30.010. - Definition.

Recyclable materials means materials authorized by exclusive hauler.
(Ord. No. 1812, § I(14-30), 2-20-90)



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 11/2/2021

ITEM NO: 14

DATE: October 28, 2021
TO: Mayor and Town Council
FROM: Laurel Prevetti, Town Manager
SUBJECT: Discuss and Provide Direction Regarding Shared Mobility Devices

RECOMMENDATION:

Discuss and provide direction regarding shared mobility devices.

BACKGROUND:

Shared mobility devices (SMD), such as electric scooters and bikes, experienced a period of broad interest and deployment that has since consolidated back to more controlled implementation in cities throughout the State. These mobility devices can be rented by the public via a smartphone application that unlocks the motorized devices and lets the user park it when the rider arrives at their chosen destination. The positive element of increased accessibility to mobility devices that can encourage the use of alternative transportation is juxtaposed with the challenges in managing the safe public use of the street and sidewalks.

On September 18, 2020, the Governor signed Assembly Bill (AB) 1286, which limits shared mobility device providers to deploying only where the local jurisdiction is in support. The local jurisdiction can manage the deployments through ordinance, permit, or agreement.

DISCUSSION:

The free-for all type deployments that surrounded SMDs in their original introduction have changed drastically. Current deployments allow for greater structure around how the devices are used. The main tool that has been developed is the use of geofencing, allowing for detailed limits on such elements as:

- Speed – device speed can be limited in specific geographic areas.
- Parking – the devices can require users to drop them off in designated SMD parking areas only.

PREPARED BY: Matt Morley
Parks and Public Works Director

Reviewed by: Town Manager, Assistant Town Manager, and Town Attorney

DISCUSSION (continued):

- Restricted Areas – locations can be identified where the devices will not function.

In addition to the potential for local controls, the California Vehicle Code also governs usage, restricting use on sidewalks, for example. Company policies may also restrict usage further, for example to users 18 and older.

Recently one company, Bird, approached Town staff with an interest to discuss a deployment in Los Gatos. This issue is not currently on the Strategic Priorities workplan, but is on the Town Attorney list of ordinances to address. Because of AB 1286 the need for an ordinance (or other permitting mechanism) is no longer necessary, unless the Town wishes to allow SMDs. Staff opted to bring this item to Council to determine the Council's and the public's level of interest in pursuing this deployments and developing the necessary tools for implementation in the Town.

A number of unanswered questions remain, including the number of SMDs that might be allowed in Town, how management or enforcement of the devices would occur, what revenue could be attained, what limits on use might be put in place, etc. If the Council is interested in pursuing this item, staff would work with the Complete Streets and Transportation Commission to develop a structure around potential implementation recommendations which could then be considered in an ordinance or other mechanism.

CONCLUSION:

Staff recommends the Council provide direction on its interest in the deployment of SMDs in Los Gatos.

FISCAL IMPACT:

There may be an opportunity for monetization of deployments through permitting or agreements.

ENVIRONMENTAL ASSESSMENT:

This is not a project defined under CEQA, and no further action is required.