
[PDF] 427 Riverview Avenue - Capitola Design Review & CDP Application No. 23-0400 (amended)

From Derric G. Oliver <doliver@fentonkeller.com>

Date Tue 9/30/2025 10:08 AM

To PLANNING COMMISSION <planningcommission@ci.capitola.ca.us>

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 1 attachment (1 MB)

20250930 Letter to Capitola Planning Commission - CDP App. 23-0400 - EXCLUDING EXHIBITIS.pdf;

Dear Capitola Planning Commissioners-

Attached please find my letter of today's date (excluding exhibits, due to file size) and this [Dropbox link](#) to the complete letter with exhibits, submitted on behalf of the project applicant and Capitola resident, Mr. McLean, for inclusion in the administrative record for the above-referenced matter, set for public hearing on October 2, 2025, as Planning Commission meeting agenda item 6A. Please let me know if you have any trouble opening the attachment or accessing the [Dropbox link](#).

As explained in the letter, Mr. McLean objects to proposed conditions of approval 33 and 35, including because they are, individually and/or collectively:

1. Beyond the City's police power to impose, as they undermine, not promote, public health and safety;
2. Beyond the City's jurisdiction, by regulating, adjudicating, and enforcing a third-party easement;
3. Unconstitutionally disproportionate and extortionate land use exactions and regulations that go "too far" by requiring a Capitola resident to forever forfeit protections from an unmaintained public utility in exchange for a building permit;
4. Contrary to "black letter" California easement law;
5. Arbitrary and capricious, in violation of constitutional principles of due process and equal protection;
6. Violative of the Permit Streamlining Act;
7. Unconstitutional impairments of contract (the Drainage Easement);
8. Unconstitutionally vague and ambiguous, rendering compliance and enforcement uncertain;
9. Contrary to, and not supported by, substantial evidence in the administrative record;
10. Unnecessary, as the Project will improve site conditions and better protect the drainage facility;
11. Unnecessary, as the indemnity agreement signed by Mr. McLean sufficiently protects the City; and
12. Unnecessary, as the County can independently assert drainage facility/easement rights.

If the City's final decision includes proposed conditions 33 and 35, thereby unlawfully, unconstitutionally, and unwisely placing public burdens on private shoulders, Mr. McLean will

pursue his rights and remedies against the City and County/District in court to the full extent of federal and state law, including to recover attorneys' fees incurred to enforce important rights affecting the public interest in the face of unjustified governmental action. Mr. McLean sincerely hopes such action—especially against the City he grew to love and calls “home”—will not be necessary.

Similar to the City's recent rejection of County RTC's proposed detour of the over-budget Rail Trail into the Village (which detour would have violated City Measure L), the City should reject the County's Drainage Facility-related demands (i.e., proposed conditions 33 and 35) calculated to reduce the County/District's budget shortfalls at the expense of the City and its taxpayers. The County can take steps—own its own, separate from the City's permitting process—to protect any drainage facility/easement rights it chooses to assert. The City need not, should not, and legally cannot, do so for the County.

Thank you for your consideration of this important matter.

Best,

Derric

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September 30, 2025

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VIA EMAIL ONLY (PLANNINGCOMMISSION@CI.CAPITOLA.CA.US)

City of Capitola Planning Commission
420 Capitola Avenue
Capitola, CA 95010

Re: 427 Riverview Avenue, Capitola (APN 035-132-01)
City of Capitola Design Review/CDP Application No. 23-0400 (amended)
Our File: 60257.70409

Dear Planning Commissioners:

Your action is necessary to stop pervasive coercion and unfair treatment of two Capitola residents in the discretionary permitting process—now, a two-year endeavor with which they have cooperated in good faith and, until recently, with great patience. Failure to promptly curb these confounding and embarrassing administrative abuses will result in actionable violations of California law and the California and United States constitutions. Thus, corrective action is vital.

This firm represents Joseph McLean, Jr., who owns and, with his wife, Terri Robbins (aka Terri Thatcher), resides at the above referenced property (“Property”) in the City of Capitola (“City”), Santa Cruz County (“County”). The Property abuts Soquel Creek and sits atop a portion of the Noble Creek Gulch public drainage facility running under the Property (“Drainage Facility”) through the adjacent drainage outfall (“Outfall”) into Soquel Creek. By the above referenced project (“Project”) application (“Application”), as recently amended, Mr. McLean proposes to remodel the existing residence on the Property. City and County staff insist, as a condition of approval, that Mr. McLean, a private citizen, forever assume all responsibility for the Drainage Facility and waive any damages claims against the City and County that may result from those public agencies’ admitted ongoing failures to maintain the Drainage Facility. Rightly, Mr. McLean refuses to do so, as the demanded condition contradicts numerous prior decisions by the City and County, violates long-established California easement law, and is unconstitutionally disproportionate and extortionate.

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EXHIBITS LIST

To facilitate effective and efficient review, the exhibits list includes links to each exhibit:

Exhibit 1: Email from McLean to City staff, 10-25-24, “We never understood why we would have to indemnify the County for a public easement for which it claims no responsibility...”

Exhibit 2: Email from McLean legal counsel to City staff/legal counsel, 12-12-24, explaining “black letter easement law” and sufficiency of City indemnity agreement signed by McLean.

Exhibit 3: Email from City legal counsel to McLean legal counsel, 12-19-24, confirming “at a minimum” required indemnity and waiver agreement for damage caused to the Property and Project by the County’s Drainage Facility.

Exhibit 4: 1922 Subdivision Map, approving parcels (including the Property) for residential or commercial use.

Exhibit 5: 1922 Easement Deed, conveying Drainage Easement to County.

Exhibit 6: Public Records Act requests (multiple) to City and County.

Exhibit 7: City Planning Commission meeting minutes, 5-17-71, approving addition of garage and rumpus room to existing residence on the Property; permit documents.

Exhibit 8: County District Resolution No. 719-69, establishing District Zone 5.

Exhibit 9: County Flood Control Zones map (May 2019), confirming the Property is in Zone 5.

Exhibit 10: County GIS map image and information (2025), confirming Property is in Zone 5.

Exhibit 11: County District Zone 5 Master Drainage Plan (excerpts), 10-20-98, confirming the Property and Drainage Facility are in Zone 5.

Exhibit 12: County District Zone 5 Draft Storm Drain Master Plan Update excerpts (December 2023), confirming the Property and Drainage Facility are in Zone 5, and identifying Drainage Facility repair as a “high priority” project.

Exhibit 13: “Flood Control & Stormwater” page on Public Works section of County website, explaining importance of managing stormwater drainage.

Exhibit 14: “Drainage Zones” page of the County’s website, confirming the Property and Drainage Facility are in Zone 5, and explaining the District collects fees to maintain and improve “our storm drainage system.”

Exhibit 15: Letter from County District Engineer, D.A. Porath, to the County District board (i.e., the County Board of Supervisors), 3-24-70, recommending an increase to drainage fee rates and

projecting fee income collected to 1990 will fund “about half of the total improvement costs” with the “remainder of the improvement costs” funded by “assessment districts.”

Exhibit 16: County District Ordinance No. 1503, 4-14-70, per Mr. Porath’s recommendations.

Exhibit 17: Letter from Mr. Porath to the Sutter Hill Development Company, 7-22-70, explaining that Ordinance No. 1503 will enable the District to collect drainage fees “to finance and eventually build and adequate drainage system for this area.”

Exhibit 18: County District Resolution Nos. 179-77 (3-22-77) and 403-77 (7-12-77), increasing Zone 5 drainage fees.

Exhibit 19: Letter from City Council member, Dennis Beltram, to City Council, 6-11-84, “for 62 years there has been not a squeak of objection or comment from the County regarding the building of permanent structures over the easement, and now this. . .”

Exhibit 20: City Council meeting minutes, 6-14-84, for agenda item #13(D), directing City staff to contact County District “to see if something can be worked out” regarding “County Counsel’s position relative to the properties located on the Noble Gulch Drainage Easement.”

Exhibit 21: (1) Letter from County District Engineer, D.A. Porath, to County District, 6-12-84, recommending fee increases due to “insufficient revenues being generated to fund the current list of drainage projects... construction costs are escalating at between five and ten percent a year.” (2) County District Resolution 333-84, 6-19-84, further increasing Zone 5 flood control and drainage facilities fees.

Exhibit 22: County Board of Supervisor’s order, 6-19-84, unanimously adopted “in concept” an “ordinance establishing in-lieu fees for on-site storm water detention facilities within Zone 5” and directing County Public Works Director to prepare recommendations for “solving the drainage problems” by collecting equitable/appropriate contributions from properties in Zone 5.

Exhibit 23: County Ordinance No. 3566, 6-26-84, “establishing in-lieu fees for on-site storm water detention facilities within Zone No. 5” of \$25 per square foot of new impervious areas.

Exhibit 24: Letter from City Manager to County Public Works Director, 7-9-84, questioning Zone 5’s position “regarding the reconstruction of homes over the easement in the event they were demolished. It would seem that as long as access to the drainage facilities is maintained that construction of structures on the easement would not represent a significant problem.”

Exhibit 25: Letter from County Public Works Director to City Manager, 8-6-84, confirming allowed replacement of structures over County drainage facilities “with the stipulation that a deed restriction be placed on the property encumbering the present and all future owners of the parcel with the responsibility for paying any future maintenance, repair or replacement costs of the drainage facility which are necessitated as a direct result of the structure being over the drainage easement.”

Exhibit 26: County Board of Supervisor's order, 8-21-84, accepting County Public Works Director's report on financing mechanisms for drainage/flood control operations and facilities.

Exhibit 27: County Board Resolution Nos. 3-90Z (6-22-90), 1-Z (1-8-91), and 2-91Z (7-30-91), increasing Zone 5 fees and establishing fee collection procedures.

Exhibit 28: City Council meeting minutes, 9-13-84, indicating County response to Noble Gulch Drainage easement issue is sufficient to resolve the issue.

Exhibit 29: V&A Consulting Engineers, Inc.'s Noble Gulch Culvert Condition Assessment (draft), 1-22-24, confirming assessment revealed no defects to drainage facility caused by redevelopment project at 419 Capitola Avenue.

Exhibit 30: Email from City Public Works Project Manager, Kailash Mozumder, to engineering and construction consultants, 1-24-24, attaching V&A's draft report and explaining, "If we could keep this within our team right now that would be best."

Exhibit 31: (1) Email correspondence between City Public Works Director, Jessica Kahn, and V&A engineer, Noy Phannavong, 1-22-24 through 1-30-24, discussing Ms. Kahn's requested revisions to V&A's draft Noble Gulch Culvert Condition Assessment, and confirming "there was no issue underneath 419 Capitola Avenue and the culvert crosses underneath multiple properties." (2) Revised V&A Noble Gulch Culvert Condition Assessment, 1-30-24, finding "no significant defects" where the culvert crosses underneath private properties from Capitola Avenue to Soquel Creek, deleting references to 419 Capitola Avenue, and revising stated scope of project from "assessing the box culvert section for possible damage underneath 419 Capitola Avenue where construction had occurred" to "assessing the box culvert section for major defects or signs of distress where the box culvert crosses private properties between Capitola Avenue and Soquel Creek." (Emphases added.)

Exhibit 32: Email from City Public Works Director, Jessica Kahn, to County Senior Engineer, Rachel Fatoohi, and County Planning Director, Matt Machado, 1-24-24, requesting removal of a photograph showing the damaged Outfall area (at Soquel Creek, adjacent to the Property) from forthcoming Zone 5 Master Plan Update presentations to the County District Board and to the City Council: "I suggest avoiding the highlighting of this particular visual in the presentation."

Exhibit 33: Email correspondence between City staff, April 9-10, 2024, confirming no drainage facility-related conditions imposed on City approval of redevelopment of 419 Capitola Avenue in 2017; includes project-related documents.

Exhibit 34: Infrastructure Study of the Noble Gulch (Ifland Engineers, Inc.), October 1997, excerpts, prepared for County, identifying repairable rusting of portions of County drainage pipeline under Pacific Cove Mobile Home Park.

Exhibit 35: Capitola City Council Action Minutes, 6-22-06, reporting City Council Member Nicol, "commented on the condition of the [Pacific Cove Mobile Home Park portion of the]

Noble Gulch storm drain and said [County District] Zone 5 is seeking bids for replacement of that storm drain due to its deterioration.”

Exhibit 36: Letter from County Director of Public Works, Thomas Bolich, to City Director of Public Works, Steve Jesberg, 5-16-07, citing County District budget shortfall and requesting City financial contribution toward costs to repair drainpipe under Pacific Cove Mobile Home Park.

Exhibit 37: Letter from City Director of Public Works, Steve Jesberg, to County Director of Public Works, Thomas Bolich, 5-31-07, reporting City Council’s decision not to help fund the drainpipe repair project under Pacific Cove Mobile Home Park to ensure capacity for a “100-year” storm because City Council “did not want to set a precedent of funding other agency projects.”

Exhibit 38: Proclamation of Existence of a Local Emergency, 3-24-11, signed by Jamie Goldstein (then, the Director of Emergency Services for the City and County; now, City Manager), proclaiming “extreme peril” and major damages caused by failure of Noble Gulch drainage system located near/under the Pacific Cove Mobile Home Park.

Exhibit 39: City Council Resolution No. 3863, 3-26-11, declaring emergency due to Noble Gulch creek pipeline failure and subsequent flooding of Pacific Cove Mobile Home Park, City Hall and Capitola Village” including “properties along Soquel Creek.”

Exhibit 40: (1) Mercury News article, 3-26-11, quoting City Public Works Director, Steve Jesberg, “The pipe was not able to keep up with the water flow.” (2) News article, 5-31-11, reporting, “The question of who’s going to pay for the replacement remains. The county has written the city a letter saying that the county isn’t responsible. However, [the then County assistant public works director, Dan] Hill acknowledges that talks are presently ongoing to determine who will pay what.”

Exhibit 41: Email from City Manager, Jamie Goldstein, to City Council, 3-30-11, explaining, “Given the unknown responsibility for the pipe (Zone 5 or City), it is not known who will ultimately pay for the costs to repair the pipe.”

Exhibit 42: Email from City Manager, Jamie Goldstein, to entire City staff, 4-7-11, explaining, “In the upcoming weeks and months, the City is anticipating a variety of inquiries about the cause of the pipe failure, who is responsible, and other questions. Many answers are not known and some may never be known.”

Exhibit 43: Letter from City Manager, Jamie Goldstein, to California Emergency Management Agency, 6-10-11, explaining, City’s damages sustained in March 2011 were “a direct result of the 25-year storm.”

Exhibit 44: “Cooperative Agreement and Reservation of Rights” between the City, County, and District, 1-14-20, citing parties’ “disincentive” to make drainage repairs due to ongoing dispute over drainage responsibilities.

Exhibit 45: Capitola City Council Agenda Report, 6-27-19, prepared by City Public Works, discussing Cooperative Agreement and Reservation of Rights and explaining, “Prior to this agreement both parties have been hampered in their ability to” maintain drainage facilities.

Exhibit 46: Granite Rock proposal (1-16-23) and invoice (3-31-23) to City to “temporarily repair the damaged pathway near the Noble Gulch Culvert.”

Exhibit 47: Photographs of “before” and “after” temporary repairs to damaged pathway near Drainage Facility and Outfall at/near the Property.

Exhibit 48: Right of Entry Agreement for the Property, 1-24-23, confirming scope of work was to “repair the pedestrian pathway and eroded areas over the Noble Gulch outfall pipe,” and did not include any repairs to the Drainage Facility itself.

Exhibit 49: Pacific Crest Engineering proposal to City, 4-21-23, “to prepare a design level geotechnical investigation for the storm damaged culvert and headwall at 427 Riverview Avenue.”

Exhibit 50: Emails between City attorney and County CAO, Matt Machado, 9-6-23 and 9-7-23, discussing status of funding for and repairs to Noble Gulch drainage, which “is not clearly owned or maintained by any jurisdiction.”

Exhibit 51: Email from City attorney to County Counsel attorney, 9-22-23, discussing and attaching “Cooperative Agreement and Reservation of Rights” (Exhibit 41), and requesting cost-split for Drainage Facility inspection.

Exhibit 52: Emails between City staff and FEMA discussing potential use of FEMA funds to perform repairs to “busted and undercut” Drainage Facility and Outfall.

Exhibit 53: (1) Email from City Public Works Director, Jessica Kahn, to Terri Robbins (Mr. McLean’s wife), 11-9-23, “We understand the importance of addressing the damage promptly, and we are committed to ensuring that the outfall is restored to its proper condition.” (2) Email from Terri Robbins to Jessica Kahn, 11-10-23, discussing Project Application and explaining, “The draft plan would be to begin with the building closest to the creek, in the Spring. It would likely give you access to the top of the box.”

Exhibit 54: Email correspondence between City Public Works Director, Pacific Crest Engineering, and Sunstone Construction, between 11-30-23 and 1-22-24, discussing various reports and conclusions about status of damage to Drainage Facility.

Exhibit 55: County District Zone 5 board meeting agenda item ZN5-2023-7, 12-12-23, including staff report on City/County cost-sharing, and including Schaaf & Wheeler contract amendment to complete Zone 5 Storm Drain Master Plan Update.

Exhibit 56: Emails between McLean/Robbins and City staff, 3-23-23 to 1-24-24, regarding Project Application and Drainage Facility/Outfall.

Exhibit 57: Email from Assistant County Counsel, Justin Graham, to City staff and attorneys, 2-15-24, relaying County “drainage staff” comments, including, “the [County’s] Zone 5 master plan consultant has already evaluated the condition of the culvert. It is in bad condition and does not have sufficient capacity to convey the flows it receives.” “2. The County and Zone 5 would not permit a project like this with a culvert in this condition and with insufficient capacity.” “7. Applicant should be required to perform or contribute toward maintenance on the culvert [i.e., the County’s Drainage Facility].”

Exhibit 58: Email from City Public Works Director, Jessica Kahn, to City Public Works staff, 2-20-24, attaching spreadsheet (“DPW Council Goals.xlsx.”) identifying “Noble Gulch Repairs” as a “low effort” project for “this fiscal year.”

Exhibit 59: Pacific Crest Engineering, Inc.’s Geotechnical Investigation report, 4-2-24, “for the repair of the damaged culvert and headwall located on Soquel Creek at 427 Riverview,” concluding nothing “indicates the existing residence on the Property was a cause of any damage to the Drainage Facility” and “the proposed improvements are feasible from a geotechnical engineering standpoint...” notwithstanding “site constraints.”

Exhibit 60: Email from City Public Works Director, Jessica Kahn, to McLean/Robbins, 6-17-24, “earliest possible start date for this [Drainage Facility/Outfall repair] project would be in spring 2025.”

Exhibit 61: Project Application submitted to City, 9-5-23, proposing demo/rebuild on Property.

Exhibit 62: Memo from City Public Works to City Associate Planner, Sean Sesanto, 9-26-23, commenting on Project Application, none of which relate to the Drainage Facility.

Exhibit 63: Letter from City Associate Planner, Sean Sesanto, to Project architect, 12-5-23, indicating (two months after the City’s 30-day deadline under the Permit Streamlining Act) the Project Application is “incomplete.”

Exhibit 64: Email correspondence between City planning staff (Katie Herlihy and Sean Sesanto) and Project architect, 1-9-24 and 1-10-24, regarding City staff putting the Project Application “on hold to ensure the easement [issue] is resolved,” as “the City needs to receive assurances from the County of Santa Cruz in terms of allowing development over the easement.”

Exhibit 65: Email from City attorney to Assistant County Counsel, Jason Heath, 1-11-24, regarding the Drainage Facility and disputed ownership, and the Project’s “raised design to... improve access to the drainage easement.”

Exhibit 66: Indemnity Agreement, 4-25-24, prepared by McLean’s legal counsel, providing for indemnity to City and County for damage caused to the Drainage Facility by the Project.

Exhibit 67: City-revised/redline Indemnity Agreement and transmittal email to County, 5-17-24, expanding indemnity to include damages to the Property caused by the Drainage Facility; includes 1922 Easement Deed.

Exhibit 68: County further revised/redline Indemnity Agreement and transmittal email to City, 5-17-24, further expanding scope of demanded indemnity, citing “basic principles of fairness.”

Exhibit 69: Email from City attorney to McLean counsel, 6-12-24, attaching revised Indemnity Agreement and explaining, “Given the novel nature of the project and the complexities associated with the culvert, we had to expand fairly significantly upon your original draft, but the outcome is an agreement that will ultimately allow the City to process [the Project Application].”

Exhibit 70: Email correspondence between McLean/Robbins and City staff, 6-21-24 to 7-18-24, regarding McLean’s objections to the Indemnity Agreement “that places 100% responsibility for the City’s flume and drainage system that underlies our property on us, in perpetuity.”

Exhibit 71: Letter from City attorney to McLean/Robbins (Thatcher), 7-31-24, explaining the Project Application is “incomplete” because McLean had not signed the Indemnity Agreement.

Exhibit 72: Letter from City Associate Planner, Sean Sesanto, to McLean, 8-1-24, again indicating the Project Application is “incomplete” and will not be further processed until McLean signs the Indemnity Agreement covering “the operation and maintenance of the easement and drainage facility and possible impacts to the project.”

Exhibit 73: McLean’s revised draft Indemnity Agreement and transmittal email from McLean counsel to City and County staff and counsel, 8-8-24, deleting the unconstitutional terms.

Exhibit 74: City attorney’s further redline revisions to Indemnity Agreement and transmittal email to County Counsel, 8-21-24, rejecting McLean’s deletions as “required by the City in order to continue processing the [Project] Application.”

Exhibit 75: County Counsel office’s further redline revisions and comments to Indemnity Agreement and transmittal email to City attorneys, 8-23-24.

Exhibit 76: City attorneys’ further redline revisions to proposed Indemnity Agreement and transmittal email to County Counsel, 9-3-24.

Exhibit 77: City- and County-proposed/demanded Indemnity Agreement and transmittal email to McLean’s counsel, 9-3-24, admitting City/County dispute over Drainage Facility responsibility, admitting “no permanent repairs have been made” to the Drainage Facility, and citing “basic principles of fairness” requiring McLean to sign the Indemnity Agreement to assume responsibility for the County’s and/or City’s unmaintained Drainage Facility.

Exhibit 78: Email from McLean to City staff, 10-25-24, indicating refusal to sign the Indemnity Agreement as demanded by City and County staff, explaining, “We also never understood why

we would have to indemnify the County for a public easement for which it claims no responsibility and has nothing to do with approval of our project being built within the City of Capitola.”

Exhibit 79: Email from City Planning Director, Katie Herlihy, to McLean, 11-4-24, indicating Project Application is “complete” and advising that City staff will recommend the Project “be subject to conditions of approval requiring you to obtain consent from the easement holder(s) to construct your project, and that you enter into an indemnification agreement with the City.”

Exhibit 80: Email correspondence between McLean and City staff, 11-4-24 to 11-12-24, regarding potential amendment to Project Application.

Exhibit 81: Email from City attorney to McLean counsel, 12-19-24, confirming required Indemnity Agreement to, “at a minimum that [McLean] agree to indemnify/hold the City harmless and waive the ability to sue for damages to the project” because the unmaintained Drainage Facility is a “potential hazard.”

Exhibit 82: Meeting Minutes, 1-23-25, prepared by amended Project architect’s senior designer (and City Planning Commissioner), Courtney Christiansen, summarizing discussions between City staff (Katie Herlihy; Jamie Goldstein), McLean, Robbins, and Project representatives.

Exhibit 83: Email from Mrs. Robbins to Jamie Goldstein and Katie Herlihy, 2-7-25, requesting Mr. Goldstein “share the document you referenced from the 1980’s that references the exceptions and limitations on development associated with our property.” Request ignored.

Exhibit 84: Email from City Planning Director, Katie Herlihy, to McLean/Robbins, 3-10-25, discussing proposed terms of Indemnity Agreement and requesting McLean pay City \$3,000 for City attorney and staff additional time in revising the Indemnity Agreement.

Exhibit 85: City’s Master Application form, listing application submittal requirements, none of which include easement-related items.

Exhibit 86: Email from City Planning Director, Katie Herlihy, to Mr. McLean, 8-8-24, discussing proposed terms of Indemnity Agreement and requesting McLean pay City a \$5,000 deposit for City attorney and staff additional time in revising the Indemnity Agreement.

Exhibit 87: Email from City attorney, Leila Moshref-Danesh, 9-29-25, responding to letter from Mr. McLean’s legal counsel dated 9-24-25, explaining, “For the answers to your questions I would refer you to the published staff report.”

I. EXECUTIVE SUMMARY

City and County staff insist on imposing two unlawful and unconstitutional conditions of approval on the Project—proposed conditions of approval 33 and 35, as set forth in the Staff Report—citing “health and safety” concerns relating to the Project on the Property situated atop the Drainage Facility, which has existed underground since 1934 or earlier. In support of those proposed conditions, the City and County have pointed to a drainage easement burdening the Property (“Drainage Easement”) conveyed to the County by recorded deed, dated May 10, 1922 (“1922 Easement Deed”). Pursuant to the 1922 Easement Deed, the Drainage Easement consists of an 8’ wide, “permanent easement and right of way to construct, maintain, operate, repair and renew a drainage ditch, canal or flume, for the purpose of conveying storm and drainage water” from the Noble Gulch across the Property to Soquel Creek (“Drainage Easement Area”), “together with all necessary and convenient means of ingress and egress to and from” the Drainage Easement for the above-stated uses.

The 1922 Easement Deed contains no express limitations on the use or development of the Property. Therefore, as a matter of settled California easement law, the Property may be developed and used in any lawful manner that does not unreasonably interfere with use of the Drainage Easement Area, as has been done on the Property since the original residence was constructed more than 90 years ago and remodeled in 1971 without City or County objection.

Incongruously, County staff apparently convinced City staff to subjugate the City’s lawful permitting jurisdiction to the County based on the County’s asserted Drainage Easement rights in and to the very same Drainage Facility for which the County disputes having any legal responsibility.¹ Further, City and County staffs’ attempts to leave Mr. McLean “holding the bag” for the unmaintained Drainage Easement (a public facility for which, since 1969, the County Flood Control and Water Conservation District has been responsible) may provide a convenient avenue to moot and resolve the ongoing dispute as to which public agency (the City or County/District) is responsible for the Drainage Easement. However, such attempts violate the law, ignore the City’s and County’s relevant decisions made in 1969 and 1984, and conflict with development approvals for the Property and similarly situated residential properties in the City.

The reasons for Mr. McLean’s objections are summarized in his email to City staff, dated October 25, 2024, attached and incorporated here as Exhibit 1²: “After spending considerable time and money on back-and-forth negotiations regarding the Indemnity Agreement, we have decided that we are not comfortable (nor legally obligated) to give the City any more indemnity than what it already has pursuant to the language in the Application... We cannot sign something that releases the City and County from its liability for a public culvert that has clearly not been repaired or maintained for some time. We also never understood why we would have to indemnify the County for a public easement for which it claims no responsibility...”

¹ In response to Public Records Act requests, neither the City nor the County produced any documents evidencing any conveyance of the County’s Drainage Easement rights under the 1922 Easement Deed.

² Mr. McLean requests the City add all documents cited in this letter to the administrative record for the Project.

Similarly, the legal bases for Mr. McLean's refusal to sign the demanded Indemnity Agreement were repeatedly explained to City and County staff, including in an email to City staff, dated December 12, 2024, a copy of which is attached and incorporated here as Exhibit 2:

"1. County consent is not required. Consent from the County, i.e., the easement holder, should not be required. It's black letter easement law that the County possesses only those rights established by the creation of the subsurface drainage easement and that all other rights and uses of this private property remain with the owner of the servient tenement, i.e., Joseph McLean. ... The applicant's current desire to remodel an older existing permitted home is certainly not an unreasonable use of this residential property nor is the desire/need to improve the existing residential structures an unreasonable interference with the County's subsurface drainage facility or limited rights as an easement holder. ... [The Drainage Facility] was obviously constructed underground before the existing home was built... and presumably before all other developments/improvements under which the culvert runs were built, i.e., other homes, buildings, Riverside Drive, Capitola Avenue, Capitola City Hall, etc. ... Undoubtedly, if the Applicant were to request records pertaining to development of all other parcels in the City under which the drainage facility runs, we'd likely find that none of these developers over the years were required to obtain the County's consent before building over the County's drainage facility."

"2. The City and Applicant already have an indemnity agreement in place protecting the City. The subject application, attached, already provides that the Applicant agrees *to defend, indemnify, and hold harmless the City of Capitola, its officers, employees, and agents, from and against any claim, including attorney's fees and litigation costs, arising out of or in any way related to the City of Capitola's processing, consideration, or approval of this Application.* Thus, the Applicant has already entered into an indemnification agreement with the City. In addition, as discussed above with respect to the requirement that the County consent to the remodel, undoubtedly, the City has not required that any other developer offer any more indemnity than the City already has per the above language that is part of every development permit application." (Emphasis in original.)

Despite this and numerous other explanations, and despite City and County staff and counsel offering no supporting legal authority, City and County staff continue to require, "at a minimum," that Mr. McLean agree to indemnify and hold the City and County harmless, and waive any claims against them for damages caused to the Property or Project by the unmaintained Drainage Facility and Drainage Easement Area. A copy of the City's legal counsel's email, dated December 19, 2024, is attached and incorporated here as Exhibit 3.

J.P. Morgan said, "A man always has two reasons for what he does—a good one, and a real one." The City's "good reason" for the demanded Indemnity Agreement (and conditions 33 and 35) is "health and safety." If health and safety were the "real reason," the City and/or County would have long ago repaired the Drainage Facility, as repeatedly requested by Mr. McLean and Mrs. Robbins. In reality, the "real reason" is to enable the City and County to avoid responsibility for the Drainage Facility. As such, Mr. McLean requests the City approve the Project without conditions 33 and 35, as the City's form indemnity agreement signed by Mr. McLean to assume responsibility only for damage *caused by the Project* is sufficient and proper. The County has no Drainage Easement rights to compel anything in this City permitting process.

II. CHRONOLOGICAL HIGHLIGHTS

- May 10, 1922: Drainage Easement (per 1922 Easement Deed) for “drainage ditch, canal, or flume... over and across” the Property to Soquel Creek conveyed to County by subdivider. (Exhibit 5.)
- May 11, 1922: County approves real property subdivision (including the Property) for residential or commercial use. (Exhibit 4.)
- May 13, 1922: Subdivision map recorded in official County records. (Exhibit 4.)
- May 17, 1922: County formally accepts the Drainage Easement. (Exhibit 5.)
- July 11, 1922: 1922 Easement Deed recorded in official County records. (Exhibit 5.)
- 1922-1934 (est.): Overground “flume” on Property replaced with existing underground Drainage Facility.
- 1934 (est.): Original residence on Property constructed atop Drainage Facility.
- 1969: Santa Cruz County Flood Control and Water Conservation District established Zone 5 service area (which includes Property and Drainage Facility), taking responsibility for all existing and future drainage facilities within Zone 5. (Exhibit 8.)
- 1970: County District established and began collecting drainage fees from Zone 5 property owners to fund County District’s construction, maintenance, and operation of drainage facilities within Zone 5. Thereafter, District increased and expanded drainage fees collected from Zone 5 property owners. (Exhibits 15-16, 18, 21-23, 27.)
- 1971: Construction of additions to existing residence on Property, including three-car garage and rumpus room, approved with no Drainage Facility- or Drainage Easement-related objections or conditions from City, County, or District. (Exhibit 7.)
- 1984: County initially raises concerns over proposed development of 402 Blue Gum Avenue located atop portion of County/District’s Noble Gulch drainage facility, then confirms property owners’ rights to replace/redevelop existing structures sitting atop County/District’s Noble Gulch drainage facility, conditioned upon property owners’ agreement to indemnify County for damages caused to drainage facility by projects. (Exhibits 19-26, 28.)

- 1997: Engineering firm's report (prepared for the County) confirmed damage and needed repairs to portion of Noble Gulch drainage pipeline running under Pacific Cove Mobile Home Park. Recommended repairs not made. (Exhibit 34.)
- May 16, 2007: County requests City's financial contribution to share costs to replace damaged portion of Noble Gulch drainage pipeline under Pacific Cove Mobile Home Park as "necessary" to protect residents and City park. (Exhibit 36.)
- May 31, 2007: City notifies County of City's refusal to financially contribute to Noble Gulch drainage improvement project for fear of setting "precedent" and questioning needed scope of repairs and damage risks. (Exhibit 37.)
- March 2011: Noble Gulch drainage system under/near Pacific Cove Mobile Home Park failed, causing significant damage in the City. (Exhibit 38-43.)
- 2017: City approved major redevelopment of 419 Capitola Avenue, which sits atop the County's existing Noble Gulch drainage system, with no objections from County or required indemnity condition of approval as proposed for the Project. (Exhibit 33.)
- January 2020: City, County, and District enter "Cooperative Agreement" regarding storm drainage facilities in City, including to ostensibly eliminate the parties' "disincentives" to make needed repairs. (Exhibit 44.)
- January 2023: Drainage Facility and adjacent public drainage outfall pipeline ("Outfall") under public pedestrian pathway southwest of Property into Soquel Creek damaged in winter storms. (Exhibit 47.)
- March 2023: Mr. McLean notifies City of drainage facility concerns and Project plans. (Exhibit 56.)
- April 2023: Engineering firm notifies City of damage to Drainage Facility/Outfall. (Exhibit 49.)
- September 2023: Project Application submitted to City. (Exhibit 61.)
- January 11, 2024: City notified by engineering firm and contractor of damage and needed repairs to the Drainage Facility and Outfall. (Exhibit 54.)

- January 22-February 22, 2024: City and County work in concert to conceal the extent of damage to Drainage Facility and Outfall. (Exhibits 30-33.)
- January 30, 2024: County District accepts draft Zone 5 Drainage Master Plan Update, identifying “high priority” Drainage Facility repair project. (Exhibit 12.)
- April 2024: Geotechnical engineering report, prepared for City, confirmed damage to Drainage Facility and Outfall, confirmed no evidence shows residence on Property caused the damage, and confirmed feasibility of recommended repairs. (Exhibit 59.)
- June 2024: More than nine months after Project Application submittal, City and County first notify Mr. McLean of 1922 Drainage Easement as basis for demanded Indemnity Agreement the City says it “had” to require. (Exhibit 69.)
- September 23, 2025: McLean counsel meet with City attorney and staff to discuss City’s (lack of) authority/legal/factual bases to require the Indemnity Agreement; City’s answers to McLean counsels’ questions were unpersuasive.
- September 24, 2025: Mr. McLean’s legal counsel sent a letter to City attorney and staff requesting legal authority supporting City’s purported power to require the demanded Indemnity Agreement and proposed conditions of approval 33 and 35. (See City Planning Commission staff report (“Staff Report”), Attachment 4.)
- September 26, 2025: City publishes Staff Report, in which City staff acknowledges the demanded Indemnity Agreement “address[es] potential hazards to and from construction on top of the culvert” (i.e., “health and safety” concerns), “*as well as* liability and indemnity provisions” (i.e., legal/financial objectives unrelated to “health and safety.”) (Emphasis added; Staff Report, page 1.)
- September 29, 2025: City attorney responds via email to letter dated September 24, 2025, explaining: “For the answers to your questions I would refer you to the published staff report.” (Exhibit 87.) Again, those answers are unpersuasive.

* * * * *

III. BACKGROUND FACTS AND HISTORY

A. In 1922, the County approved a subdivision for residential and commercial use

On May 13, 1922, a map of Capitola Subdivision No. 6 (“1922 Subdivision Map”), was recorded in Official County Records (Bk. 18, Pg. 36), a copy of which is attached and incorporated here as Exhibit 4.

The Property is identified on the 1922 Subdivision Map (sheet 3 of 4) as lots 47 and 48 in block 7. Sheet 4 of the 1922 Subdivision Map includes signatures by the Chairman and Clerk of the County Board of Supervisors, certifying: “This is to certify that the map hereto attached was this day presented to the Board of Supervisors of Santa Cruz County, and that they approve said map.” Sheet 4 of the 1922 Subdivision Map also includes signatures by the County Assessor and the County Surveyor, certifying: “We hereby certify that we have examined a subdivision of land, show on the map hereto attached, for *residence or commercial use*, and hereby approve said subdivision.” (Emphasis added.) The County Surveyor also signed the following: “I hereby certify that the subdivision shown on this map was made from my survey of the ground, and that the monuments are of the nature and in the locations shown on the map.”

Three days prior to recording the 1922 Subdivision Map, by the 1922 Easement Deed, the Drainage Easement was conveyed to the County by subdivider-landowner, Bay Head Land Co., including to construct, maintain, repair, and renew the “drainage ditch, canal or flume,” which overground “flume” is shown on the 1922 Subdivision Map as running over/across the Property. A copy of the 1922 Easement Deed is attached and incorporated here as Exhibit 5. In sum, in 1922, the Drainage Easement was conveyed to the County, then the County contemplated and consented to the developability of the Property.

B. Post-1922 residential development of Property and surrounding neighborhood

The evidence confirms the pre-existing overground “flume” was abandoned, the Drainage Easement Area was relocated underground, and the Drainage Facility was constructed under the Property, followed by construction of the original single-family residence on the Property circa 1934.³

³ Numerous Public Records Act requests to the City and County, in February and June 2025, sought documents relating to the Property and Drainage Easement. A copy of each of the Public Records Act requests to the City and County, respectively, is attached and incorporated here as Exhibit 6. In response to those requests, neither the City nor the County produced any documents establishing when the existing underground drainage facilities or the original portion of the existing residence on the Property were constructed. However, as the Staff Report (p. 1) for this Project Application indicates, “Per the County Assessor, the existing single-family dwelling [on the Property] was constructed circa 1934.” And, a 1948 photograph shows the neighborhood developed with houses, including five properties under which the Noble Gulch drainage runs: the Property, 402 Blue Gum Ave., 404 Blue Gum Ave., 419 Capitola Ave., and 421 Capitola Ave. That 1948 photograph is found on page 76 of the draft document, “Historic Context Statement for the City of Capitola,” dated June 24, 2004, incorporated here by this reference and available on the County’s website:

In 1971, in connection with City-approved Application #412, a three-car garage and a rumpus room addition to the existing residence on the Property were constructed. (See City Planning Commission Regular Meeting Minutes, dated May 17, 1971; Building Permit #6098; Plumbing and Gas Permit #6213; Electric Permit #6218.) A copy of the above referenced documents is attached and incorporated here as Exhibit 7. Mr. McLean is aware of no evidence the County objected to the construction of the original/existing residence on the Property circa 1934, or the additions to the residence in 1971.

C. In 1969, the County Flood Control and Water Conservation District established District Zone 5 to construct, maintain, and finance a storm drainage system and to maintain and improve existing pipes, ditches, and natural waterways within the Zone 5 area, which area includes the Property and Drainage Facility

On November 18, 1969, the Santa Cruz County Flood Control and Water Conservation District (“District”) adopted Resolution No. 650-69, declaring the District’s intent to form District Zone 5, the service area of which includes the Property and Drainage Facility. On December 1, 1969, the Soquel Creek County Water District adopted Resolution No. 69-22, consenting to the creation of District Zone 5 within the relevant area, “solely for the purposes outlined in [District Resolution No. 650-69].” On December 8, 1969, the City Council adopted Resolution No. 1089, consenting to the creation of District Zone 5 within the relevant area, “solely for the purposes outlined in [District Resolution No. 650-69].”

On December 16, 1969, the District adopted Resolution No. 719-69, formally establishing District Zone 5, including for (a) “Construction, maintenance and financing of a storm drain system in accordance with the approved Master Plan”, (b) Maintenance and Improvement of the existing pipes, ditches, and natural waterways pending reconstruction into the aforementioned Master Plan.” A copy of each of these resolutions, and the supporting “Report of the Chief Engineer [D.A. Porath] of the District on the Formation of Zone 5” dated November 10, 1969, is attached and incorporated here as Exhibit 8.

D. The County District is responsible for the drainage systems located in the City, including the Drainage Facility, located in District Zone 5

The County Flood Control Zones map (May 2019) confirms the Property is within Zone 5. A copy of the Zones map (downloaded from the County’s website), and a screenshot of the Zone 5 area of the map with notations, is attached and incorporated here as Exhibit 9. The County GIS information also confirms the Property is within Zone 5. A copy of a screenshot of a County GIS map image of the Property showing it within Zone 5 is attached and incorporated here as Exhibit 10.

Numerous other documents prepared by or for the County/District confirm the County/District is responsible for the drainage facilities within Zone 5, including the Drainage Facility, consistent with the County's pre-existing legal responsibilities as the Drainage Easement holder/owner pursuant to the 1922 Easement Deed.

For example, the County District Zone 5 Master Drainage Plan, dated October 20, 1998, states, in the Introduction (page 1-1): "Background – The County of Santa Cruz Public Works Department is responsible for operating and maintaining the storm drainage facilities in the areas between the cities of Santa Cruz and Watsonville. The area includes the communities of Live Oak, *Capitola*, Soquel and Aptos, referred to as Zone 5." (Emphasis added.) Figure 1-1 ("Study Area" map) of the Plan (page 1-2), confirms the Property is within Zone 5. Page 5-5 of the Plan includes a list of planned and unplanned capital improvement program (CIP) projects provided by County staff. That list, included as Table 5-3 of the Plan, identifies "Noble Gulch; Bay Avenue to Soquel Creek," which area includes the Drainage Facility. A copy of selected pages of the County District Zone 5 Master Drainage Plan is attached and incorporated here as Exhibit 11. The complete Plan is available on the County's website and is incorporated here by reference.⁴

Similarly, the County District Zone 5 Draft Storm Drain Master Plan Update (December 2023; Schaaf & Wheeler) ("Update") also confirms the Drainage Facility is within County District Zone 5's responsibility. For example, the Update's Executive Summary (page 1-1) states, "The study area and existing stormwater conveyance system are shown in Figure 1-1," a map showing, among other things, culverts and storm pipes, including in the area of the Property and Drainage Facility. The Update also explains:

Protecting Local Beaches and Water Resources from Pollution: During a storm, rainwater is "runoff," meaning that it runs off roofs, roads, driveways, parking lots, and many surfaces, washing with it trash and pollutants, including fertilizers, vehicle fluids, pesticides, pet waste and other bacteria sources as it makes its way through storm drains and ditches – untreated – into our streams, rivers, and ocean, impacting the Monterey Bay National Marine Sanctuary. Keeping our beaches open and clean and maintaining shoreline water quality in the Sanctuary is critical for the health of Santa Cruz County residents, visitors, aquatic life, and the local economy. (Update, page 1-2.)

Minimizing the Damaging Effects of Floods: Natural geography puts lower elevation areas of Santa Cruz County at high flood risk. The severe atmospheric rivers that occurred during the 2023 winter storm season resulted in devastating flooding and underscored the need to prepare for emergencies and to protect local, natural water resources. Maintaining aging storm drainage systems is essential to helping prevent significant property damage in neighborhoods and loss of life during major floods. (*Id.*)

Protecting Public Health and Long-Term Water Supplies: Public agencies in Santa Cruz County recognize the importance of effective storm drainage and watershed management to minimize flooding and protect local waterways, which are vital to the

⁴ <https://cdi.santacruzcountycalifornia.gov/PublicWorks/FloodControlStormwater/DrainageZones.aspx>

overall health of our ecosystem. Our region's system of storm drains, pumps, channels, pipes, culverts, outlets, and lagoons are essential to collect and manage storm runoff to protect our beaches and local waterways from pollution. Keeping these water resources safe and clean is critical to protecting both public health and local wildlife. (*Id.*)

Upgrading and Maintaining Aging, Deteriorating Stormwater System: Much of the storm drain infrastructure in Santa Cruz County is more than 50 years old, and many channels, pipes and pumps located on both public and private properties are deteriorating. Without repairs or improvements, local communities face an elevated risk of flooding in our low-lying communities and pollution of our beaches, rivers, and other local water resources. (Update, page 1-3.)

Update section 2.4, "Existing System," explains (on page 2-5), in relevant part, "Drainage systems within Zone 5 encompass a network of open channel conveyance (e.g., ditches and creeks), inlet structures, and storm drain pipes. The area drains to 20 distinctive, contiguous regional subsystems. These areas can be grouped into eight larger regions by receiving body. These regions drain to three creeks (Arana Gulch, Rodeo Gulch, and *Soquel Creek*), four Lagoons (Schwan, Corcoran, Moran, and Bonita) and directly to the Monterey Bay, as shown in Figure 2-4." (Emphasis added.) The referenced Figure 2-4 (Update page 2-6) consists of a map detailing, among other things, the area draining into Soquel Creek (in purple), which area includes the Property and Drainage Facility.

In specifically discussing the Drainage Facility and identifying it as a "high priority" project (see Figure 5-11 on page 5-16), the "Noble" (Creek) section of the Update explains, "Noble Downstream includes a large box culvert that runs through easements across properties on the west side of Capitola Avenue." The Update (page 5-19) then discusses potential alternatives to upsizing these box sections of the culvert (including the Drainage Facility) all the way to Soquel Creek, such as by rerouting drainage pipes to a new outfall at Stockton Avenue Bridge, as shown in Figure 5-13 (Update, page 5-20). Further details regarding the potential alternatives are included in the Update at pages C-11 through C-16 of Appendix C, significantly, entitled, "*High Priority* CIP [capital improvement program] Project Sheet Details." (Emphasis added.) The Update (Table 1-1; page 1-5) describes a "High Priority" project as, "High magnitude, high impact flooding where heavy erosion and property damage pose major risk; Urgent repairs or replacement of existing system in very poor condition." A copy of the selected portions of the Update is attached and incorporated here as Exhibit 12, and the complete Update is available on the County's website and is incorporated here.⁵

Further, the Public Works section of the County's website includes a "Flood Control & Stormwater" page. On that page, the County defines "Stormwater" as "rain that runs off streets, parking lots, roofs, other impervious surfaces, and also rain that naturally flows over the ground surface. Stormwater runoff received no treatment and enters directly into *our* storm drain system and out to our creeks, rivers, and ocean." In answering, "Why Manage Stormwater?" the County explains: "Stormwater runoff is one of the leading causes of pollution in our surface waters.

⁵ <https://cdi.santacruzcountycalifornia.gov/PublicWorks/FloodControlStormwater/DrainageZones.aspx>

Pollutants (such as oils, chemicals, fertilizers, litter) can be transported by stormwater into our creeks, rivers, and ocean. Increases in impervious surfaces can cause water quantity issues (such as flooding and erosion) and quality problems (pollution) if not managed properly.” A copy of the “Flood Control & Stormwater” page of the County’s website is attached and incorporated here as Exhibit 13.

Finally, on the “Drainage Zones” page of the County’s website, the County includes a small map of the County Flood Control Zones, noting (as explained above) that Zone 5 was established in 1969. On that same page, the County also explains: “Drainage Zones / Flood Control Districts (blue shaded areas on map above) have been established based upon defined watersheds within urban areas. Permit applications for projects located within a drainage zone are assessed an impervious area fee based upon the increase in impervious and/or semi-pervious surfaces for the project. ... The fees are used to maintain drainage infrastructure, identify problem areas, and improve *our* storm drainage system.” (Emphasis added.) A copy of the “Drainage Zones” page of the County’s website is attached and incorporated here as Exhibit 14.

E. In 1970, the County District established drainage fees applicable to properties within Zone 5, which fees were thereafter steadily increased and expanded

In a letter dated March 24, 1970, from the County District Engineer, D.A. Porath, to the County District board (i.e., the County Board of Supervisors), Mr. Porath submitted a schedule of drainage fee rates and corresponding revenue estimates for Zone 5 and recommended “a 10 cents per square foot rate on all new construction and pavement.” Mr. Porath then explained, “From this rate we can expect about half of the total improvement costs to be paid for by drainage fees collected from now until 1990. The remainder of the improvement costs would be paid by funds resulting from assessment districts.” A copy of Mr. Porath’s letter is attached and incorporated here as Exhibit 15.

On April 14, 1970, consistent with Mr. Porath’s recommendations, the County District adopted Ordinance No. 1503. In that Ordinance, the County expressed that the District was “given the power to prescribe, revise, and collect fees and charges for services and facilities furnished or to be furnished to any new building, structure, improvement or construction by the use of any flood control or storm drainage system constructed or to be constructed in the District or any zone thereof,” including Zone 5. As such, by the Ordinance, the County District set a fee of 10 cents per square foot (1) “of foundation area of all roofed structures, including but not limited to, garages of residences,” and (2) “of paved areas without roof, excepting such paved areas appurtenant to single family dwellings.” The Ordinance also provided, “Such fees shall be collected by the Building Inspector of the City or County prior to issuance of a building permit... and forward such records and fees to the administrative office of the District.” A copy of Ordinance No. 1503 is attached and incorporated here as Exhibit 16.

In a letter, dated July 22, 1970, from Mr. Porath to the Sutter Hill Development Company (which company, in 1974, began developing the Capitola Mall), Mr. Porath explained that the District adopted Ordinance No. 1503 for Zone 5, and that the District’s collection of drainage

fees pursuant to the Ordinance “started the County’s program to finance and eventually build and adequate drainage system for this area. Our calculations show that the collection and accumulation of drainage fees within this zone over 20 years will pay approximately 1/2 the total cost of the drainage facilities required. The successful formation of the assessment districts will finance the remaining costs.” A copy of Mr. Porath’s letter is attached and incorporated here as Exhibit 17.

On March 22, 1977, by Resolution No. 179-77, the District increased the Zone 5 fees to 15 cents per square foot. On July 12, 1977, by Resolution No. 403-77, the District added a one cent inflation factor per year, resulting in a maximum fee of 20 cents per square foot as of July 1, 1982. A copy of Resolution Nos. 179-77 and 403-77 is attached and incorporated here as Exhibit 18.

F. In 1984, the City and County discussed and confirmed the terms upon which properties lying atop the Drainage Easement could be redeveloped

On June 11, 1984, in a letter to the City Council (erroneously dated June 11, 1983), City Councilmember and lawyer, Dennis F. Beltram, objected to the County’s proposed prohibition against rebuilding any structures that lie atop the County’s Noble Gulch drainage easements, including the property at 402 Blue Gum Ave⁶ (corner of Blue Gum and Riverview Avenues, across the street from the Property). Mr. Beltram explained:

“[T]he natural water course known as Noble Gulch has, since 1922, been designated as a drainage easement owned by the County. ... [T]he easement runs through many parcels of private property, most if not all, occupied by buildings. ... All structures over the culvert/easement have been constructed after dedication to the County in 1922, and (presumably) after placement of the culvert in 1922. To the best knowledge of all concerned, there have been no difficulties with maintenance of the culvert in the last 62 years occasioned by the presence of homes, buildings, and other structures (i.e., mobile homes, parks, roadways) on top of said easement.”

Mr. Beltram opined that the County’s legal position is “incorrect” and “untenable” and “in a legal action the County will not prevail,” including because it would result in properties and homes “being, effectively, condemned by the County.” Mr. Beltram noted, “[t]here may be, fortunately, positive alternatives to litigating.” Toward that end, Mr. Beltram urged, “This matter should be easily solved between the governmental agencies involved, and to this end, I ask that this matter be placed on our June 28, 1984, agenda, and that at this, our June 14, 1984, meeting, we direct Staff to explore with the County, all alternatives to resolve this problem.”

In closing, Mr. Beltram explained: “for 62 years there has been not a squeak of objection or comment from the County regarding the building of permanent structures over the easement, and now this. . .” A copy of Mr. Beltram’s letter is attached and incorporated here as Exhibit 19.

⁶ In his letter, Mr. Beltram refers to 422 Riverview Avenue. However, as confirmed by the map attached to the letter (which notes the “sale” property”), the property in question is 402 Blue Gum Avenue (APN 035-131-20).

In a letter to the District, dated June 12, 1984, the County Director of Public Works, D.A. Porath, submitted a proposed resolution to, among other things, increase the Zone 5 drainage fee “from the current \$0.20/square feet to a maximum of \$0.25/square foot by 1988 via one cent increments over a five year period.” Mr. Porath explained, “The Zone 5... drainage fees were last revised by Resolution No. 403-77 which established a maximum rate of \$0.20 per square foot on July 1, 1982. Presently, there are insufficient revenues being generated to fund the current list of drainage projects... In addition construction costs are escalating at between five and ten percent a year.”

On June 14, 1984, as indicated in the meeting minutes, and per Mr. Beltram’s written request, the City Council met and “discussed the impact of the County Counsel’s position relative to the properties located on the Noble Gulch Drainage Easement. Council expressed it’s [sic] concern indicating that the County is condemning properties on the easement with it’s [sic] stand. ACTION: Staff was directed to contact Donald Porath at the [County] District to see if something can be worked out and to report back to Council Member Beltram, as well as other Council Members as soon as possible.” A copy of the City Council meeting minutes for this agenda item #13(D), dated June 14, 1984, is attached and incorporated here as Exhibit 20.

On June 19, 1984, the County Board of Supervisors (i.e., the District Board) unanimously adopted Resolution 333-84, by increasing the Zone 5 flood control and drainage facilities fee to 25 cents per square foot (exceeding Mr. Porath’s recommended increase) with additional increases of one cent per year to a maximum fee of 30 cents per square foot as of July 1, 1989. A copy of Mr. Porath’s June 12th letter and Resolution No. 333-84 is attached and incorporated here as Exhibit 21.

Also, on June 19, 1984, the County Board of Supervisors (acting as the District board) unanimously adopted “in concept” an “ordinance establishing in-lieu fees for on-site storm water detention facilities within Zone 5, to return June 26, 1984 for final adoption.” At that time, the County also issued a “directive to Public Works Director, working with County Counsel and Planning Director, to return to the Board on August 21, 1984 with an initial report and recommendations on procedures that the Board might consider to establish an appropriate assessment district in the flood control and water conservation district drainage zones to allow for an equitable contribution to solving the drainage problems by existing properties, as well as an appropriate contribution by new properties.” A copy of the County Board of Supervisor’s order, dated June 19, 1984, is attached and incorporated here as Exhibit 22.

On June 26, 1984, the County passed and adopted Ordinance No. 3566, “establishing in-lieu fees for on-site storm water detention facilities within Zone No. 5 of the District.” In that Ordinance, the Board expressly found, “it has been deemed to be more beneficial to the District and cost effective to collect an in-lieu fee from certain developments rather than have on-site storm water detention facilities installed by the developer as determined by the District Engineer.” As such, the Ordinance established an in-lieu fee of “\$25.00 per 100 sq. ft. or fraction thereof of net new on-site and off-site impervious areas.” A copy of Ordinance No. 3566 is attached and incorporated here as Exhibit 23.

On July 9, 1984, in a letter from the City Manager, Stephen Burrell, to the County Director of Public Works, D.A. (Don) Porath, Mr. Burrell cited to and attached Councilmember Beltran's letter (see above), and explained, "As you are aware, several homes are constructed over the easement between Bay Avenue and Soquel Creek. The concern expressed in the letter has to do with a home that was constructed over the easement several years ago, as well as other homes that have been built in recent times. I would appreciate it if you would review the position of [District] Zone 5 regarding the reconstruction of homes over the easement in the event they were demolished. It would seem that as long as access to the drainage facilities is maintained that construction of structures on the easement would not represent a significant problem." A copy of Mr. Burrell's letter is attached and incorporated here as Exhibit 24.

On August 6, 1984, by letter response to Mr. Burrell, Mr. Porath confirmed that, pursuant to his discussion of the matter with County Counsel, replacement of existing structures could be allowed, "with the stipulation that a deed restriction be placed on the property encumbering the present and all future owners of the parcel with the responsibility for paying any future maintenance, repair or replacement costs of the drainage facility which are necessitated as a direct result of the structure being over the drainage easement. This restriction would have to be secured by an insurance policy, bond or ability to place a lien against the property." In other words, property owners seeking to maintain, repair, or replace structures on properties sitting atop drainage facilities would be required, as a condition of project approval, to indemnify the County for any damages to the drainage facilities caused by such project. A copy of Mr. Porath's letter is attached and incorporated here as Exhibit 25.

On August 21, 1984, consistent with the County Board order dated June 19, 1984, the County accepted and filed the Public Works Director's report on financing mechanisms for drainage and flood control operations and facilities. At that hearing, the Board also directed the County Administrative Officer, in connection with the Public Works Director and Planning Director, "to outline a proposed program (if funding would allow) to carry out the needed work in the urban areas of the County" and report back to the County Board on November 20, 1984. A copy of the County Board of Supervisor's order, dated August 21, 1984, is attached and incorporated here as Exhibit 26.⁷

⁷ In responding to Public Records Act requests (See Exhibit 6), neither the County nor the City produced all documents responsive to those requests, including documents relating to the Board-ordered report and meeting on November 20, 1984. However, the County produced numerous relevant post-1984 documents, including (1) Board Resolution No. 3-90Z, adopted June 22, 1990, which increased the Zone 5 fees to 40 cents per square foot with annual escalations of 5 cents to a maximum fee of 60 cents per square foot as of July 1, 1994; (2) Board Ordinance No. 1-Z, adopted January 8, 1991, establishing a Zone 5 "plan checking and permit processing fee" to be collected by the County building official for remodels or additions to single family dwellings (\$50), remodels or additions to commercial structures (\$50), new single family dwellings, condos, and townhouses (\$150 per unit), and for new commercial development (\$500); and (3) Board Resolution No. 2-91Z, adopted July 30, 1991, establishing additional Zone 5 fees as follows: "Subdivisions, minor land divisions and single family dwellings shall pay a drainage fee at the prevailing unit rate, with a not-to-exceed amount of \$3,000 per parcel or condominium unit, for paved or other improved impervious areas without a roof." A copy of the above-referenced three resolutions and ordinance is attached and incorporated here as Exhibit 27.

On September 13, 1984, as indicated in the meeting minutes, the City Council met and discussed the “unfinished business” regarding the “memo from City Manager regarding Noble Gulch Drainage easement and Zone 5 in-lieu fees.” The minutes further reflect, “Action: Council Member Beltram stated that he feels the response from the County resolves his concerns regarding this matter.” A copy of page 7 of the City Council meeting minutes, dated September 13, 1984, is attached and incorporated here as Exhibit 28.⁸

G. Precedential, post-1984 redevelopment of parcels atop Noble Gulch drainage

1. 419 Capitola Avenue was redeveloped without objection from the City or County, and the project caused no damage to the Noble Gulch drainage facility under it

The residential property located at 419 Capitola Avenue (APN 035-131-26) sits atop the County’s existing Noble Gulch drainage system. In 2017, the City approved permits to demolish the existing residential structure and construct a new residential duplex (1,614 sq. ft.) and two garages (960 sq. ft.). Neither the City nor County/District objected, nor was the property owner required to sign an indemnity agreement of the scope the City and County now demand Mr. McLean sign in connection with the Project.

Significantly, the draft “Noble Gulch Culvert Condition Assessment” report, dated January 22, 2024, prepared for the City by V&A Consulting Engineers, Inc., states, in relevant part, on page 1: “V&A was tasked with assessing the box culvert section for possible damage underneath 419 Capitola Avenue where construction had occurred at that property.” On page 4, the V&A report concludes, “No defects were observed where the [Noble Gulch Culvert] presumably crosses underneath the property at 419 Capitola Avenue.” A copy of the V&A report, dated January 22, 2024, is attached and incorporated here as Exhibit 29.^{9 10}

⁸ As detailed in the Project amendment section of this letter, during a meeting with Mr. McLean and Mrs. Robbins, City Manager, Jamie Goldstein, indicated he had sitting on his desk document from the 1980s referencing development limitations on properties sitting atop the Noble Gulch drainage. Despite Mrs. Robbins’ multiple requests to Mr. Goldstein and other City staff for a copy of the document, those requests went unanswered.

⁹ On January 24, 2024, City Public Works Project Manager, Kailash Mozumder, sent the draft V&A report (which, in contradiction to other technical reports, found the Outfall adjacent to the Drainage Facility in “good condition”) via email to consultants at Pacific Crest Engineering and Sunstone Construction. Earlier in the same email chain, Pacific Crest Engineer’s principal civil engineer, Chris Johnson, PE, explained: “The culvert in question (shown in blue) runs under 427 Riverview Avenue in Capitola and discharges into Soquel Creek, with the headwall shown in red. We are looking for some direction as to what would be the most cost-effective type of wall for this environment. The home [on the Property] is already seeing some signs of distress so the installation method needs to be minimally evasive, which is why we are looking at helical anchors.” In a response email, Rennon Fuller, of Sunstone Construction, concurred with Mr. Johnson’s damage assessment. Nonetheless, in Mr. Mozumder’s email to Mr. Johnson and Mr. Fuller on January 24, 2024, he stated: “The attached inspection report will aid [influence?] your review. The inspection of the section of box culvert closest to the outfall received a good evaluation. *If we could keep this within our team right now that would be best.* Once we have your report and some decisions are made we can then share this information with the [Rock Solid Engineering] team working on the private property immediately adjacent [i.e., the Property].” (Emphasis added.) The City never shared any V&A report with anyone on the Project team. A copy of this email chain correspondence is attached and incorporated as Exhibit 30.

In response to V&A's draft report, City Public Works Director, Jessica Kahn, sent an email to V&A engineer, Noy Phannavong, dated January 25, 2024, stating: "I believe the address that the culvert is under is 427 Riverview. Please confirm, and if this is accurate, please refer to the property by its parcel number 035-13-201."

On January 30, 2024, Ms. Phannavong responded via email to Ms. Kahn, stating: "I got the 419 Capitola Avenue address from [the City's former Director of Public Works] Steve Jesberg in 2017. See attached e-mail. Looking back at the Google Earth image from 2017 below, there was construction at the 419 Capitola property, which may have been Steve's concern back then. However, the culvert does appear to cross underneath both properties (along with other properties) based on the potential alignment line I've drawn below. That being said we can reference either property in the report or not mention any property at all since *there was no issue underneath 419 Capitola Avenue* and the culvert crosses underneath multiple properties. Please advise." (Emphasis added.)

That same day, in yet another attempt to minimize or conceal facts inconvenient to the City, Ms. Kahn responded, "Currently, there is a proposed construction project at 427 Riverview. Can the report affirm that there are no observed damages or concerns regarding the culvert beneath the residential properties? I would like to include a reference acknowledging that the culvert is situated on private property." Complying with Ms. Kahn's directive, Ms. Phannavong revised the V&A report (dated January 30, 2024) by deleting all references to 419 Capitola Avenue and instead stating, "No significant defects... were observed where the NGC [Noble Gulch Culvert] crosses underneath the private properties between station 1+20 (west edge of Capitola Avenue) and station 3+70 (discharge point at Soquel Creek)." A copy of the updated V&A report, dated January 30, 2024, and the above-referenced email correspondence is attached and incorporated here as Exhibit 31.

On April 9, 2024, Mr. McLean's former counsel, Anna DiBenedetto, asked the City attorney about the recent redevelopment project at 419 Capitola Avenue, stating in her email: "As I mentioned when we spoke, I'm wondering whether the City and owner of 419 Capitola Avenue went down a similar indemnity/hold harmless route when that property was recently

¹⁰ Also on January 24, 2024, the City Public Works Director, Jessica Kahn, sent an email to the County's Senior Civil Engineer, Rachel Fatoohi, and the County's Planning Director, Matt Machado, requesting that a photograph showing the damaged Outfall area (at Soquel Creek, adjacent to the Property) be removed from a forthcoming Zone 5 Master Plan Update slideshow presentation to the County District. Ms. Kahn explained, "Regarding the presentation, I noticed that the image on slide 5 labeled "Methods" appears to depict the Noble Gulch outfall, which sustained damage in last January's storms and has undergone only temporary repairs (current image attached). Additionally, this drainage way has other issues with adjacent property owners and easements. *I suggest avoiding the highlighting of this particular visual in the presentation.*" (Emphasis added.) The County complied with the City's concealment request, removing the photograph from the presentation given to the County District on January 30, 2024 (see District Zone 5 meeting agenda and minutes from January 30, 2024) and to the City Council on February 22, 2024 (see City Council meeting agenda and minutes from February 22, 2024). A copy of the relevant email chains (including the emails on January 24, 2024, and February 21, 2024), along with the two versions of the presentations (with and without the photograph of the damaged Outfall at Soquel Creek adjacent to the Property) is attached and incorporated here as Exhibit 32.

redeveloped? It was a pretty hefty project and I understand that this drainage system also runs under that parcel. Can you check with Planning to see how that was handled before I confirm my Clients' consent for me to put together a proposed indemnity agreement?"

In response, as detailed below, City staff reviewed the 419 Capitola Avenue project—then, with knowledge V&A concluded the project had no adverse impact on the drainage facility—and found no required special condition relating to the Noble Gulch drainage system.

On April 9, 2024, in an email from the City Manager, Jamie Goldstein, to the City Community Development Director, Katie Herlihy, Mr. Goldstein asked, "I recall we did require some kind of inspection or indemnity for 419 cap ave? Is that wrong? Maybe it's in the PW files if not CDD?" In response, that same day, Ms. Herlihy emailed City staff: "Hoping you can help me out with this. Are either of you aware of any agreements for 419 Capitola Avenue related to the drainage under the property from when they redeveloped the site about 6 years ago? I know I processed the application through PC but [do] not recall any agreements being in place or drainage coming up. Not sure if something was put in place during the building permit review or separate from the PC process." In his response email on April 10, 2024, City staff planner, Sean Sesanto, explained: "It comes up in some of the building permit documents which I have attached. I didn't find other related correspondence. No special condition in the FLAN." Unsurprisingly, the City did not respond to Ms. DiBenedetto's email inquiry. A copy of the above-referenced email correspondence and documents relating to the approved redevelopment of 419 Capitola Avenue is attached and incorporated here as Exhibit 33.

On December 12, 2024, in further objecting to the City and County's demanded Indemnity Agreement, Ms. DiBenedetto again brought the 419 Capitola Avenue project to the attention of City staff and counsel: "no County consent was required for development of the property located at 419 Capitola Avenue, under which the same drainage facility runs. Undoubtedly, if the Applicant were to request records pertaining to development of all other parcels in the City under which the drainage facility runs, we'd likely find that none of these developers over the years were required to obtain the County's consent before building over the County's drainage facility." (See Exhibit 2.) Ms. DiBenedetto was correct.

2. Other similarly situated parcels were developed without City/County objection

Mr. McLean's Public Records Act requests to the City and County (see Exhibit 6) sought documents relating to development of 419 Capitola Avenue (discussed above) and other residentially-developed parcels sitting atop the Noble Gulch drainage facilities, including 402 Blue Gum Avenue, 404 Blue Gum Avenue, and 421 Capitola Avenue. To date, neither the City nor County (or District) produced any documents evidencing any drainage facility- or drainage easement-related City or County/District objections or demanded conditions of development approvals for any such parcels. As such, these other developed properties serve as precedent; the City's and County's demands in connection with the Project Application are arbitrary and capricious, in violation of constitutional principles of due process and equal protection.

H. The City and County have long failed to properly maintain and repair the public Drainage Facility, which “is in bad condition and does not have sufficient capacity to convey the flow it receives”; instead, the City and County continue efforts to avoid responsibility

1. By October 1997, the County/District knew its Noble Gulch drainage facilities in other areas were deteriorating but failed to make necessary repairs

In October 1997, an Infrastructure Study of the Noble Gulch (Ifland Engineers, Inc.) was prepared for and presented to the County, explaining, in part, the Noble Gulch drainage system, maintained by the District (Zone 5), showed signs of rusting. A copy of relevant excerpts of the Study is attached and incorporated here by Exhibit 34. More specifically, the Study explained:

Prior to the construction of the [Pacific Cove Mobile Home] park, Noble Gulch was a natural drainage channel. The gulch was filled in and a 72” diameter corrugated metal pipe was installed to carry the storm waters from the upper portion of Noble Gulch northeast of Bay Avenue to Soquel Creek. ^[1] ... The pipe invert (interior bottom) *shows signs of rusting* at the section joints. This is common in metal pipe that has been in place for many years. However, *it appears to be repairable... This pipeline is maintained by Santa Cruz County Drainage District Zone 5 and therefore should not be a cost to the [mobile home] park owner for repairs or replacement.*” (Emphases added.)

Nearly nine years later, apparently, the recommended repairs had still not been made. On June 22, 2006, City Council Member Nicol, “commented on the condition of the Noble Gulch storm drain and said [County District] Zone 5 is seeking bids for replacement of that storm drain due to its deterioration.” A copy of the relevant page of the Capitola City Council Action Minutes—June 22, 2006, is attached and incorporated here as Exhibit 35.

2. In 2007, the County requested a financial contribution from the City for Noble Gulch storm drain work; the City refused

In a letter, dated May 16, 2007, the County’s Director of Public Works, Thomas Bolich, wrote to the City’s Director of Public Works, Steve Jesberg, regarding the potential replacement of a portion of the Noble Gulch storm drain. A copy of the letter is attached and incorporated here as Exhibit 36. In his letter, Mr. Bolich explained that the County recently received four bids for the project, and based upon the lowest bid and “the available funding in the Zone 5 budget for this project,” “a funding shortfall of \$367,000” exists. Mr. Bolich then explained:

In order to award the contract, we are requesting that the City of Capitola contribute as much of the shortfall as possible, preferably at least half of the additional cost or approximately \$180,000. We feel that this contribution is justified in as much as the project is within the city limits of Capitola *and is necessary to protect the residence*

¹¹ Similar to the long-ago (i.e., pre-1934) downstream relocation underground of the Drainage Easement Area and construction of the underground Drainage Facility to replace to overground flume.

[sic] and the City park which are adjacent to the pipe. The park would not exist except for the fact that the pipe exists. The pipe was placed in what was once a continuation of the upstream gulch and backfilled to create what is now the park land. The requested contribution from the City is consistent with many other projects that are cost shared with Zone 5, the Redevelopment Agency, and private developers. ... A commitment of funding from the City of Capitola will be necessary to proceed with the project now or in the future.” (Emphases added.)

In response, the City’s Public Works Director, Steve Jesberg, wrote a letter to the County’s Public Works Director, dated May 31, 2007. A copy of the letter is attached and incorporated here as Exhibit 37. In his letter, Mr. Jesberg explained, in relevant part:

At their meeting last night the City Council for the City of Capitola chose not to participate in funding the Noble Gulch Storm Drain Replacement Project. The Council did not want to set a precedent of funding other agency projects and also believes that Zone 5 should seek other repair alternatives for this portion of pipeline. While we realize that the existing pipeline does not have the theoretical 100-year event capacity that your agency typically designs for, the long term history of this pipeline has no history of flooding and given the high price to replace it, a lower cost repair project may be worthwhile. (Emphases added.)

Thereafter, neither the County/District nor City undertook the recommended storm drainage project to protect persons and property in Capitola. Then came March 2011.

3. In March 2011, a portion of the Noble Creek drainage system failed, resulting in significant damage to public and private properties within the City

On March 24, 2011, a section of the Noble Gulch drainage system located near/under the Pacific Cove Mobile Home Park failed, resulting in the City proclaiming a public emergency on grounds of “extreme peril” due to “the overflowing of Noble Creek... causing major damage to Pacific Cove Mobile Home Park and threatening and damaging public and private properties to many areas within the City of Capitola.” A copy of the Proclamation of Existence of a Local Emergency, dated March 24, 2011, and signed by Jamie Goldstein (then, the Director of Emergency Services for the City and County), is attached and incorporated here as Exhibit 38.

On March 26, 2011, the City Council adopted Resolution No. 3863, “declaring that an emergency condition continues to exist... pertaining to Noble Gulch creek pipeline failure and subsequent flooding of Pacific Cove Mobile Home Park, City Hall and Capitola Village” including “properties along Soquel Creek.” A copy of the Resolution is attached and incorporated here as Exhibit 39.

In a Mercury News article, entitled, “Capitola Village flooded for second time in three days,” dated March 26, 2011, the City’s Public Works Director, Steve Jesberg, was quoted as saying, “The pipe was not able to keep up with the water flow.” In another news article, “Capitola Releases Findings on What Caused Village Flood,” dated May 31, 2011, City and

County officials are quoted in reporting on a dispute between the City and County as to who owns and is responsible for the drainage facility.¹² For example, the article reports that City and County officials “agree” that the Noble Gulch drainage “pipe under the mobile home park is not part of an easement...” The article also explains, “The question of who’s going to pay for the replacement remains. The county has written the city a letter saying that the county isn’t responsible. However, [County Assistant Public Works Director, Dan] Hill acknowledges that talks are presently ongoing to determine who will pay what.” A copy of these news articles is attached and incorporated here as Exhibit 40.

Consistent with those news reports, in an email, on March 30, 2011, to the City Council, the City Manager, Jamie Goldstein, explained, “Given the unknown responsibility for the pipe (Zone 5 or City), it is not known who will ultimately pay for the costs to repair the pipe.” A copy of Mr. Goldstein’s email is attached and incorporated here as Exhibit 41.

A week later, on April 7, 2011, Mr. Goldstein sent an email to the entire City staff, stating, “In the upcoming weeks and months, the City is anticipating a variety of inquiries about the cause of the pipe failure, *who is responsible*, and other questions. *Many answers are not known and some may never be known.*” (Emphases added.) A copy of Mr. Goldstein’s email is attached and incorporated here as Exhibit 42.

Recall, in May 2007, the City refused the County’s request to contribute funds to repair the Noble Creek drainage facility, despite the City “realiz[ing] that the existing pipeline does not have the theoretical 100-year event capacity. Fast forward, then, to a letter to the California Emergency Management Agency from Mr. Goldstein, dated June 10, 2011, explaining that the damages sustained in the City in March 2011 were “a direct result of the 25-year storm.” A copy of Mr. Goldstein’s letter is attached and incorporated here as Exhibit 43. (Emphasis added.)

4. In 2020, the City, County, and County District entered into a “cooperative agreement” regarding drainage system repairs and maintenance

On January 14, 2020, the County Board of Supervisors (whose members also serve as the District board) approved a “Cooperative Agreement and Reservation of Rights” between the City, County, and District, to, among other things, “work cooperatively toward identifying and pursuing sources of funding for any necessary repairs/replacements/maintenance of storm drain infrastructure within the City.” (Agreement, sec. 2.) A copy of the Agreement is attached and incorporated here as Exhibit 44.¹³ Significantly, the Agreement includes the following factual Recitals, which constitute admissions by the City and County/District:

WHEREAS, in 1949, the City was incorporated in Santa Cruz County.

¹² See Santa Cruz Public Libraries:

<https://history.santacruzpl.org/omeka/items/show/121235#c=0&m=0&s=0&cv=0>

¹³ For more background, see the Capitola City Council Agenda Report, prepared by the City’s Public Works Department, for the meeting on June 27, 2019, attached and incorporated here as Exhibit 45.

WHEREAS, in 1955, the State of California created the District for purposes of controlling, diverting, and disposing of flood waters in Santa Cruz County. The District has the statutory power to create “zones” wherein property owners in a set locality are taxed to create a local fund to construct and maintain specific drainage facilities.

WHEREAS, the District is a legal entity that is separate and distinct from the County.

WHEREAS, in 1969, the District created Zone 5 to cover 8.75 square miles within the County, including in Live Oak, *Capitola*, and Soquel. Zone 5 facilities include certain ditches, culverts, pipes, and water storage basins.

WHEREAS, *the District and the City have a dispute as to whether and to what extent the District or the City have legal control over or responsibility for certain drainage facilities that exist in the City. Moreover, the County contends that it has no responsibility for flood control within the City.*

WHEREAS, Noble Creek is a natural watercourse that runs through the County until it reaches the City; it thereafter continues through the City, draining into Soquel Creek and flowing on to the Pacific Ocean. The creek consists of both natural channel and piped sections. The creek runs through a portion of natural channel before it gets to Noble Gulch Park, a city park adjacent to Bay Avenue. *There, the creek is diverted underground through a series of corrugated metal pipes and concrete box culverts.*

WHEREAS, *the Parties recognize that critical system improvements may be required to maintain adequate storm drainage systems throughout the District, including within the geographical boundaries of the City.*

WHEREAS, *the Parties recognize and acknowledge that concerns about potential liability for the failure of storm drainage systems throughout the City and District and uncertainty as to whether the City or District is legally responsible for the maintenance thereof could operate as a **disincentive** to the City or District to undertake maintenance or repair of certain facilities, and that this is particularly a concern if maintenance or repair could later be used as evidence of “ownership and control” for purposes of establishing liability for the future failure of said facilities.*

WHEREAS, *the Parties now wish to work cooperatively toward an approach that facilitates projects in the City, while preserving their respective rights as to whether the City or the District bears ultimate legal responsibility or liability for damages or loss caused by potential failure of such facilities. (Emphases added.)*

Consistent with these public agencies’ (City, County, and District) unwillingness (and “disincentive”) to take responsibility for these vital public drainage facilities, the Agreement also provides, in section 3, “The Parties agree that neither the terms of this Agreement, may be utilized by any Party against another as evidence of ownership, control or responsibility [of the drainage infrastructure] for purposes of establishing liability. ... Moreover, the Parties agree that they are prohibited from using this Agreement or any actions completed to implement it as proof

or evidence that any Party has a duty or responsibility to maintain or replace any drainage infrastructure in the City.”

5. Despite eliminating their “disincentive” to do so, the County and City continue to fail to adequately address the Drainage Facility portion of the Noble Gulch drainage system, despite the drainage failure and catastrophe in 2011, and despite the damage to the Drainage Facility and Drainage Easement Area caused by storms in January 2023

By the City and County/District Agreement in 2020, the “disincentive to the City and County to undertake maintenance and repair” of drainage facilities in the City was ostensibly eliminated. Nonetheless, rather than adequately addressing the problems, the City and County/District continue to avoid taking responsibility for public drainage facilities in the City.

During the 2022-23 winter storms, the Drainage Facility and surrounding areas/facilities sustained additional damage. Following the storm damage, the City contracted Granite Rock Construction to “temporarily repair the damaged pathway near the Noble Gulch Culvert.” A copy of the Granite Rock proposal (dated January 16, 2023) and invoice (dated March 31, 2023) is attached and incorporated here as Exhibit 46. Photographs of the area (before and after “repairs”) are attached and incorporated here as Exhibit 47. As confirmed in the City’s Right of Entry Agreement signed by Mr. McLean, the scope of work was to “repair the pedestrian pathway and eroded areas over the Noble Gulch outfall pipe,” and did not include any repairs to the Drainage Facility itself. A copy of the Right of Entry Agreement for the Property is attached and incorporated here as Exhibit 48.

On March 23, 2023, more than six months prior to submitting the Project Application to the City, Mrs. Robbins sent an email to City staff requesting details regarding the City’s plans to permanently repair the drainage facilities damaged by the recent storms: “Joe Mclean and I are the new owners of 427 Riverview, over the [Drainage Facility]. We have been communicating with [City Public Works Project Manager] Kailash [Mozumder] on the damage that was done to the [Drainage Facility] after the storms this year. We are preparing to work on the house so we need to understand what the plans are to address the damage. I know that you had Granite Rock put a temporary fix in place so that the public walkway could reopen but there is still significant damage that needs to be addressed. We hired a soil engineer [Rock Solid Engineering] to assess the property and she went into the [Drainage Facility] and took photos and video that show further issues that need to be addressed. The summary is that about 10’ in there is a crack and spalling of the cement. There looks to be a previously repaired section that is also cracking now. About 38’ in there is a crack that goes all the way around; the bottom, sides, and top. The crack is allowing the water to penetrate underneath the floor of the [Drainage Facility]. We would love to get with you to discuss next steps. I’ve attached photos...” (See Exhibit 56, referenced below.)

On March 30, 2023, having received no response from City staff, Mrs. Robbins sent a follow-up email, again requesting to discuss the City’s plans to repair the damage to the Drainage Facility and surrounding area, and including links to four photographs.

On April 4, 2023, City staff responded via email to Mrs. Robbins and Mr. McLean: “Last week City staff met with FEMA regarding this location along with several others in the City. We are currently awaiting funding information that will allow us to move forward with the permanent repair. This repair will likely require permits from several regulatory agencies and selecting a contractor through the public bidding process. Assuming that there is not any additional damage this outfall requiring emergency repair, *I would expect permanent repair work to commence sometime within the next 3 months.*” (Emphasis added.) (See Exhibit 56, below.)

On April 21, 2023, at the City’s request, Pacific Crest Engineering submitted a proposal to the City “to prepare a design level geotechnical investigation for the storm damaged culvert and headwall at 427 Riverview Avenue.” The proposal was based, in part, on the engineering firm’s site visit conducted on April 20, 2023, during which the firm concluded that the Drainage Facility “sustained damage during the storm events of January 2023” and that the “headwall and culvert appear are [sic] severely cracked and weathered.” A copy of the Pacific Crest Engineering proposal is attached and incorporated here as Exhibit 49. The City did not disclose this information to Mr. McLean or Mrs. Robbins.

On August 29, 2023, having still received no further communications from City staff, Mrs. Robbins again emailed City staff: “I’m following up on this last email from you. It’s been five months now and we’ve not heard any updates. We’re very concerned about the upcoming wet winter and the integrity of the [Drainage Facility]. As you know it’s impacted both of our properties, 425 and 427 Riverview Avenue. We’ve hired an architect, Faulkner Architects, to remodel 427. They have been working with the city to ensure we are compliant with regulations. They will be submitting detailed plans within the week with an expected break-ground timeframe of this next Spring. We hope that the plan is to address the flume repairs before the winter and our break ground timing. We’re happy to come into the office to meet if this helps. Please let us know!” (See Exhibit 56, referenced below.)

On September 5, 2023, the Project Application was filed with the City. By this time, more than nine months had passed since the winter storms and resulting damage to the Outfall and public pathway adjacent to the Drainage Facility, and more than five months had passed since Mr. McLean and/or his wife, Mrs. Robbins, raised their Drainage Facility-related concerns and informed the City of their Project plans.

On September 6, 2023, a City attorney emailed County Deputy Chief Administrative Officer and Director of Community Development & Infrastructure, Matt Machado, stating, “Some time has passed since we last touched base on Noble Gulch. Our most recent understanding is the County/Flood District was developing a plan for the repair and maintenance of the facility as part of the Zone 5 Master Plan and funding effort. Could you provide an update?” On September 7, 2023, Mr. Machado responded, in part, “Zone 5 Master Plan effort is wrapping up now. The Master Plan includes system needs / deficiencies and cost to repair / maintain. Much of the system identified in the Master Plan is not clearly owned or maintained by any jurisdiction. Our plan going forward is to use this cost / scope of improvements to increase the Zone 5 assessment. With adequate funding in place the ownership and maintenance

responsibilities becomes more easily resolved. ... Regarding permanent repair of Noble Gulch storm damage, it is my understanding that the City is leading the effort for FEMA funding. The County is in agreement to share the local cost for this effort. Please share status on this FEMA effort.” A copy of this email correspondence is attached and incorporated here as Exhibit 50.

On September 8, 2023, City staff responded via email to Ms. Robbins: “Unfortunately, the City will not proceed with any further repairs on the flume before this winter. During the process of obtaining permits for the work in [sic] this past spring and summer, *it became apparent that the permanent repair will require engineered plans to be submitted to the permitting agencies for review. It is likely that the permanent repair work will not take place until next May*, as the permitting agencies have indicated that we must wait for the lowest creek level to complete work in or near the water. *This also applies to the City-owned bulkheads adjacent to the creek, which has not yet been repaired.*” (Emphases added.) (See Exhibit 56.)

On September 22, 2023, the City attorney sent an email to County counsel attorney, Jason Heath, stating, in relevant part, “I’m attaching the agreement between the City and the County from 2019 [i.e., the “Cooperative Agreement and Reservation of Rights” approved January 14, 2020, by the County Board of Supervisors/District Board]. Section 1 says that, within six months of execution, the City and County would jointly fund an inspection of Noble Gulch, so they could suss out repair needs. We don’t think this inspection was ever performed, so we’d like to do it now. Will the County still split the cost with us? The quote we’ve received is \$30K.” A copy of this email is attached and incorporated here as Exhibit 51.

It is unclear what substantive response, if any, the County gave to the City, as no such substantive email response was produced by the City or County in response to Mr. McLean’s Public Records Act requests, though any such email response would have been responsive to one or more of those and required to be produced. Nonetheless, on October 6, 2023, the City signed a contract with Pacific Crest Engineering, thereby accepting the proposal (dated April 21, 2023) to conduct a geotechnical investigation of the Drainage Facility.

On November 5, 2023, Mrs. Robbins followed up with City staff via email: “Joe and I wanted to check-in to ensure we’re still on track for this repair to occur in May. I know you know that this winter is forecasted to be a wet one. We’re very concerned for both of our properties due to the large crack in the flume that compromised the integrity of the walkway and the front yard of 427 and would feel better knowing that there was a repair plan in place.”

On November 7, 2023, in emails between City staff and FEMA discussing potential use of FEMA funds to perform repairs, the “damage description” of the Drainage Facility, Outfall, and related drainage facilities in the vicinity of the Property was described as follows:

“NOBLE GULCH / RIVERVIEW PARK: Site 1 thru 1d.

Excessive surface water runoff damaged:

Site 1: 36.974294, -121.954261: Walking trail, 50 FT long x 11.5 FT wide x 5 FT deep = 106.5 CY of unclassified fill eroded.

Site 1a: 36.974294, -121.954261: Crushed granite walking trail: 50 FT long x 11.5 FT wide x 1 FT deep = 21.3 CY of decomposed granite eroded.

Site 1b : 36.974294, -121.954261: Walking trail: 20 FT long x 10 FT wide x 3 FT deep = 22 CY of unclassified fill eroded.

Site 1c: 36.974294, -121.954261: Crushed granite walking trail: 20 FT long x 10 FT wide x 1 FT deep = 7.4 CY of decomposed granite eroded.

Site 1d: 36.974389, -121.954480: Concrete box culvert /damaged storm outlet, 10 FT long x 6 FT wide x 5 FT high concrete was ‘;busted’ and undercut”

A copy of this email correspondence is attached and incorporated here as Exhibit 52.

On November 9, 2023, City staff responded via email to Mrs. Robbins: “Thank you for your email, we appreciate your patience and concern regarding the upcoming wet winter and the impact on your properties. The City is actively engaged in the planning and permitting process for the permanent repair of the outfall. *Our current timeline anticipates that construction will take place in the spring*, coinciding with the period of lowest water levels. This approach ensures a safe and effective repair process. *We understand the importance of addressing the damage promptly, and we are committed to ensuring that the outfall is restored to its proper condition.* We will keep you informed of any further developments or updates as we progress with the repair work.” (Emphases added.)

On November 10, 2023, Mrs. Robbins emailed City staff: “We are also in the permit process to remodel this property. We are currently working with Sean on this. *The draft plan would be to begin with the building closest to the creek, in the Spring. It would likely give you access to the top of the box.* When the Granite Rock guys put the temporary fix to the walkway in place, they indicated there was a crack about ten feet into the flume. We look forward to working with you on this!” (Emphasis added.) City staff did not respond to Mrs. Robbins’ email. A copy of this email correspondence is attached and incorporated here as Exhibit 53.

Meanwhile, as footnoted above, “behind the scenes” and unbeknownst to Mr. McLean and Mrs. Robbins:

- On November 30, 2023, a principal civil engineer for Pacific Crest Engineering sent an email to Rennon Fuller (Sunstone Construction) regarding the culvert portion of the Drainage Facility, explaining, “The culvert in question (shown in blue) runs under [the Property] and discharges into the Soquel Creek, with the head wall shown in red. We are looking for some direction as to what would be the most cost-effective type of wall for this environment. *The home [on the Property] is already seeing some signs of distress* so the installation method needs to be minimally invasive, which is why we are looking at helical anchors.” (Emphasis added.)

- On December 20, 2023, Mr. Fuller (Sunstone Construction) responded to the email inquiry from Pacific Crest Engineering. In his email, Mr. Fuller explained that he visited the site and concluded, in concurrence with Pacific Crest Engineering’s assessment, “I think you’d have to reach over the top and install a tieback(s) on the existing side that hasn’t failed, faceplate it, and lock it off. *For the side that has failed, it’s hard to tell without opening it up to see if there is any viable structure left to save/repair.*” (Emphasis added.)
- On January 11, 2024, the above referenced email correspondence was forwarded to City Public Works Manager, Kailash Mozumder, asking, “Please let us know what you think.”
- On January 22, 2024, V&A Engineering emailed its draft “Noble Gulch Culvert Condition Assessment” to the City’s Public Works Director, Jessica Kahn. As explained in that report, V&A consulting engineers was retained by the City to, among other things, “determine if the condition of the [Noble Gulch Culvert] has degraded or changed since V&A’s initial assessments in 2011 and 2012,” and, to assess the “box culvert section for possible damage underneath 419 Capitola Ave. where construction had occurred at that property.” Seemingly at odds with the damage assessment conclusions reached by Pacific Crest Engineering and Sunstone Construction, the V&A draft report indicated that the section of the box culvert (Drainage Facility) under the Property to Soquel Creek was “in good condition” and should be reassessed in 10 years. As for the portion of the Noble Gulch drainage facility running under the recently-redeveloped property at 419 Capitola Avenue, V&A concluded, “no defects were observed” in that area. A copy of the above-referenced email correspondence is attached and incorporated here as Exhibit 54.

Despite the City’s knowledge of its consultants’ conclusions as described above, and despite numerous requests for updated information, City staff did not disclose any of this important information to Mr. McLean or Mrs. Robbins.

Also, during the above referenced time period, on December 12, 2023, the County District Board unanimously approved an amendment to the District’s contract with its consulting civil engineer, Schaaf & Wheeler—originally approved by the District Board on June 16, 2020, six months after entering into the “Cooperative Agreement” with the City—to revise, expand, and complete the Zone 5 Storm Drain Master Plan Update. The staff letter report to the District Board explained, in part:

“The contract as approved in 2020 would have provided the District and the City of Capitola with a Capital Improvement Program (CIP) and Maintenance Plan, identifying the needed improvements and the cost to implement the improvements. ... The original project also included an Impact Fee Analysis task. Considering that the District already collects fees for new impervious areas associated with land development projects in the zone; that most of land development projects in the zone is redevelopment of existing land uses; and that new impervious area fees cannot be collected for redeveloped portion of sites; it was decided that conducting additional analysis is not beneficial and therefore the Impact Fee analysis Task is proposed to be eliminated directing the funding available for the task to the proposed Stormwater Fee task.”

The staff letter report to the District Board also includes a “financial impact” section, which includes, among other things, County and City cost-sharing and cost-distribution details. A copy of the Zone 5 agenda item ZN5-2023-7, which includes the staff letter report to the Board and the District Board’s approval of the Schaaf & Wheeler contract amendment on December 12, 2023, is attached and incorporated here as Exhibit 55.

On January 23, 2024, Mrs. Robbins again emailed City staff asking about the status of the City’s planned repairs of the Drainage Facility:

“We’re following up on the latest we’ve heard from our architect on the status of our building permit.

“It appears that the date for the [Drainage Facility] repair continues to slip and with it progress on getting a permit to remodel the home above it at 427 Riverview. What is frustrating to us is that there has been zero communication from the City of Capitola to us personally. We hear updates second-hand or after reaching out.

“We also heard that there is a dispute between the County of Santa Cruz and the City of Capitola on who is responsible for the [Drainage Facility] repair. We assumed this was sorted out last year after we were told of two different timeframes for the [Drainage Facility] repair, Spring of 2023 and Fall of 2023.

“The initial plans for our remodel were reviewed by Capitola last Spring. After approval to proceed with the drawings, the plans for the remodel were submitted to Capitola on September 8th, 2023. We were told the review would take 30 business days which would have been October 20th. We’re just now hearing about this new delay that is now on indefinite hold. This means we cannot schedule a contractor or anything else for the project. I feel we’ve been more than accommodating in this year-long process.

“We heard from our architect last week that there is a ‘five-year plan’ where the [Drainage Facility] will potentially be diverted to another location. We’ve never heard this from the city which doesn’t make sense as it runs under our home.

“My question to you is how do we resolve these pretty massive communication issues? We’ve followed all of the rules, reset expectations on timelines, and have been extremely cooperative.

“We’d like to have a face-to-face meeting with you all to agree on a path forward. We will make ourselves available at a time that works for you all. The sooner the better, please.”

On January 24, 2024, City staff responded to Mrs. Robbins via email but provided none of the requested information about the status of repairs of the Drainage Facility or Outfall, despite the City’s recently-obtained knowledge of the relevant conclusions reached by several consultants. Rather, the City’s update related only to the City’s communication with the Project Application architect (Nick Batie), stating, in part: “At this point, we want to ensure that when your application goes through the review process, *the County will not prevent the development*

*from happening through unrealistic conditions.”*¹⁴ (Emphasis added.) That same day, Mrs. Robbins responded via email: “We’re aware of the communication stream with Nick. My issue is regarding communication around the [Drainage Facility] repair that is now impacting our permit. We are free any time you can make yourself available. Sooner the better.” Thereafter, the subject of the subsequent email chain correspondence turned to which conditions the City and/or County would require in connection with the Project Application. A copy of the above-referenced email chain correspondence between Mrs. Robbins/Mr. McLean and City staff, between March 23, 2023, and January 24, 2024, is attached and incorporated here as Exhibit 56.

On January 30, 2024, at the District Zone 5 regular meeting, the County District Board approved and accepted the Schaaf & Wheeler 2023 Draft Zone 5 Drainage Master Plan.¹⁵

On February 15, 2024, in an email from Assistant County Counsel, Justin Graham, to City staff and attorneys, Mr. Graham relayed County “drainage staff” comments, including, “the [County’s] Zone 5 master plan consultant has already evaluated the condition of the culvert. *It is in bad condition and does not have sufficient capacity to convey the flows it receives.*”¹⁶ (Emphasis added.) A copy of Mr. Graham’s email to City and County staff and counsel is attached and incorporated here as Exhibit 57. Again, none of this information was timely relayed by the City or County to Mr. McLean or Mrs. Robbins.

On February 20, 2024, City Public Works Director, Jessica Kahn, sent an email to City Public Works staff regarding “PW Staff Meeting and Project List” and attaching a spreadsheet entitled, “DPW Council Goals.xlsx.” In her email, Ms. Kahn stated, “Regular meeting a review list for Council goal setting meeting. Attached is a draft list of projects.” The attached spreadsheet identifies the “Noble Gulch Repairs” project, indicates the project is “identified in assessment” and “in progress,” and the “level of effort this fiscal year” for that project is “low.” A copy of that email and the relevant page of the spreadsheet is attached and incorporated here as Exhibit 58.

On March 8, 2024, in an email to City staff, Mr. McLean’s land use consultant, Charlie Eadie, wrote, in relevant part, “We are awaiting the results of your site visit and next steps regarding the walkway failure and related safety concerns.” City staff did not respond.

On March 26, 2024, Mr. Eadie sent a follow-up email to City staff, who did not respond.

On April 2, 2024, a geotechnical investigation report “for the repair of the damaged culvert and headwall located on Soquel Creek at 427 Riverview” was submitted by Pacific Crest Engineering, Inc.” As explained in the report, “the culvert outlet and associated headwall... sustained damage during the storm events of January 2023. ... The headwall and culvert appear

¹⁴ Despite this representation, some six months later, the City and County began demanding Mr. McLean sign the unreasonable and unconstitutional (i.e., “unrealistic”) Indemnity Agreement.

¹⁵ https://santacruzcountyca.igm2.com/Citizens/Detail_Meeting.aspx?ID=2046, incorporated here by this reference.

¹⁶ This admission by the County is consistent with the reported statement, in 2011, by the City’s Public Works Director: “The pipe was not able to keep up with the water flow.”

to be severely cracked and weathered, and were damaged from surface runoff and wave action...” Nothing in the report indicates the existing residence on the Property was a cause of any damage to the Drainage Facility. The report indicates that “the proposed improvements are feasible from a geotechnical engineering standpoint...” and given the “site constraints.” A copy of the geotechnical investigation report is attached and incorporated here as Exhibit 59.

On June 10, 2024, having still received no response or additional information from City staff, Mrs. Robbins emailed City staff: “It’s been nearly 3 months without the courtesy of a reply from anyone. Are there any updates on the status of the [Drainage Facility and Outfall] repair? I feel like the city of Capitola has completely blown us off at this point. We’ve all but lost faith in the town we chose to spend the rest of our lives in. All we’ve asked for is to be kept up to date.”

On June 17, 2024, City staff responded via email to Mrs. Robbins, ultimately explaining: “Until FEMA approves the expenditure of funds, establishing a reliable schedule would be challenging. This work would likely be constrained by conditions set forth by regulatory agencies, typically during the spring and/or summer when the outfall experiences the lowest flows. The earliest possible start date for this project would be in spring 2025.” A copy of the above referenced email chain correspondence is attached and incorporated here as Exhibit 60.

Spring 2025 has come and gone, and still no permanent repairs to the Drainage Facility or Outfall have been performed, despite the passage of more than two years since City staff indicated (via email on April 4, 2023) that “permanent repair work” was expected “to commence sometime within the next 3 months.” Instead, only temporary “repairs”—such as placing cement bags into the holes—have been made.¹⁷

IV. CITY REFUSES TO PROCESS AND/OR APPROVE THE PROJECT APPLICATION UNLESS MR. MCLEAN SIGNS AN UNCONSTITUTIONALLY EXTORTIONATE INDEMNITY AND WAIVER AGREEMENT

A. Project Application placed “on hold” by the City, four months after it was filed

The “Building Permit and Applications” page of the City’s website advises, “When considering any kind of construction on your property it is a good idea to discuss your plans with local building staff first. This will assist you to become aware of other permits or approvals you might need, such as demolition permits, minor variances and electrical permits.”

On March 8, 2023, following the City’s advice, the architects of the originally-proposed Project, Greg Faulkner and Nick Batie of Faulkner Architects, met via Zoom with City Associate Planner, Sean Sesanto, to review the proposed Project design before preparing drawings for the Project Application. Mr. Sesanto expressed no concerns or objections about the Project.

¹⁷ Failure to maintain the Drainage Easement Area in safe condition gives rise to Mr. McLean’s claims against the County/District and/or City, including for damages and injunctive relief for breach and surcharge of the 1922 Easement Deed.

On July 7, 2023, Mr. Faulker and Mr. Batie again reviewed the Project with City planning and building staff, including Mr. Sesanto. During that meeting, City staff expressed support for the Project, with Mr. Sesanto explaining, “Overall, this project represents the kind of improvement in development along the creek that we want to see.” In reliance upon City staff’s comments, the Project architects proceeded with preparing the necessary Project plans and documents for Application submission.

On September 5, 2023, Mr. McLean¹⁸ filed the original Project Application with the City, proposing to replace the existing residence on the Property with a new residence within the current footprint and elevated above the FEMA base flood elevation.¹⁹ In sum, the originally designed proposed Project would improve access to and operation of the Drainage Easement Area and Drainage Facility.²⁰ A copy of the “Master Application” for the Project is attached and incorporated here as Exhibit 61.

On September 26, 2023, City Public Works sent a memo to Mr. Sesanto containing comments on the Project Application, none of which relate to the Drainage Facility. A copy of the memo attached and incorporated here as Exhibit 62.

On October 18, 2023, the Project architect called and left a message for Mr. Sesanto inquiring about the status of the Project Application. Mr. Sesanto did not respond.

On October 24, 2023, the Project architect again called and left a message for Mr. Sesanto asking about the status of the Project Application. Again, Mr. Sesanto did not respond. Over the course of the next two weeks, the Project architect made no less than six phone calls and left multiple voicemails to City planning staff. City staff returned none of those messages.

On November 1 and 6, 2023, having still received no response from City staff, Mr. McLean went to the City offices and spoke to Mr. Sesanto. During Mr. McLean’s discussion with Mr. Sesanto on November 6, 2023, Mr. Sesanto indicated he had a few questions for the Project architect but didn’t see any “significant issues.”

On December 5, 2023, two months after the Permit Streamlining Act deadline to do so, City planning staff issued a Project Application “incomplete” letter, a copy of which is attached and incorporated here as Exhibit 63. The only comments in the “incomplete” letter potentially relating to the Drainage Facility are item #1 (“General: Clarify on the plans if there are any proposed structures or alterations between the existing pathway and the creek”) and item #4

¹⁸ As Trustee of The Joseph McLean Jr. Trust, established March 2, 2022.

¹⁹ The Master Application includes Mr. McLean’s signed agreement to the following: “In submitting this Application, I agree to defend, indemnify, and hold harmless the City of Capitola, its officers, employees, and agents, from and against any claim, including attorneys’ fees and litigation costs, arising out of or in any way related to the City of Capitola’s processing, consideration, or approval of this Application.”

²⁰ In 2025, due to the objections and demands of City and County staff, Mr. McLean amended the Project Application to propose a residential remodel instead of the originally-proposed demolition and rebuild.

(“Flume: Please submit a current title report of the property”). The letter identifies no issues with the Project due to the existing Drainage Facility.

On January 9, 2024, more than four months after the Project Application was submitted, City staff, in further violation of the Permit Streamlining Act, notified the Project architect that the City’s review of the Project Application was “on hold to ensure the easement [issue] is resolved,” as “the City needs to receive assurances from the County of Santa Cruz in terms of allowing development over the easement.” In relaying this news to Mr. McLean, the architect empathized, “I don’t understand why the city did not start this conversation with the county months ago when we submitted our planning application.”²¹ Good point.

On January 9, 2024, in response to the City’s surprise announcement, the Project architect sent an email to City staff, requesting a meeting to discuss the Project, and summarizing a “few key aspects of” the Project as follows:

- “There is already development in the easement and on top of the culvert—the existing garage and residence on the property.
- Our redevelopment proposal is driven by requirements set forth by FEMA and the State of California for building in a flood plain, and to make to make both the property and creek more resilient against extreme weather events.
- *Our redevelopment proposal reduces the structural loading on the culvert and makes it more accessible for current and future repairs.*” (Emphasis added.)

Later, on January 10, 2024, City staff responded via email, explaining that a further update would be forthcoming after the City and County attorneys meet to discuss the Project, as “we are trying to figure out the best path forward for the application review since there are multiple agencies involved.” A copy of the above cited email chain correspondence is attached and incorporated here as Exhibit 64.

On January 11, 2024, Leila Moshref-Danesh, a lawyer in the City attorney’s office, sent an email to Assistant County Counsel, Jason Heath, a copy of which is attached and incorporated here as Exhibit 65. In that email, the City’s attorney states:

As you know, our office serves as City Attorney for the City of Capitola. The City is in receipt of an application for the demolition and reconstruction of an existing residence and garage located at 427 Riverview Ave in the City of Capitola, abutting Soquel Creek. Importantly, the Noble Gulch culvert and drainage easement runs directly through the

²¹ In the Staff Report (p. 1), City staff erroneously contends, “In late 2023, staff informed the applicant team that, as shown on the title for the project site, any new construction would potentially impact the culvert.” The City did not raise any drainage easement issues with Mr. McLean until January 9, 2024 (more than four months after the Project Application was filed) and did not notify Mr. McLean of the 1922 Easement Deed until June 12, 2024 (more than nine months after the Project Application was filed), in violation of the Permit Streamlining Act. Further, City staff’s contention—“any new construction would potentially impact the culvert” is “shown on title for the project site”—makes no sense. Nothing in the 1922 Easement Deed says anything of the sort.

property, under the existing residence (see attached title report). *The property owners have indicated that their demo/rebuild has a raised design to achieve compliance with FEMA flood plain construction requirements and improve access to the drainage easement.* The required permits include a discretionary design review and coastal development permit.

Given the City and the County's shared interest in pursuing a long-term solution for the culvert and *the impact any construction/reconstruction could have on the culvert/drainage easement*, we wanted to set up a meeting with you and staff as soon as possible to discuss the application and the best way forward. Ultimately, we think the solution might be an agreement between the City, County and property owner wherein the City agrees to process the permit application, the County provides its consent to the demo/reconstruction, and the property owner agrees and affirms that their structure could be subject to removal if necessary to complete the future culvert repair/replacement. *The agreement would necessarily also include language wherein the City and County agree that, given the disputed nature of the drainage easement, the City does not claim or accept ownership of the drainage easement by virtue of processing of the permit application.*

Please let us know if you have initial thoughts on this approach and your availability over the next week or so for a zoom meeting to discuss. (Emphases added.)

On February 15, 2024, Assistant County Counsel, Justin Graham, sent a response email to the City attorney (see Exhibit 57), stating:

In anticipation of our meeting this afternoon, staff provided these comments:

"This is not a project that the County or Zone 5 would typically allow, because the entire property and footprint of the structure is bisected by an underground culvert. If the City is interested in entertaining this application, County drainage staff have the following preliminary comments:

1. The Applicant should be required to evaluate the condition of the culvert underlying the property; however, the Zone 5 master plan consultant has already evaluated the condition of the culvert. It is in bad condition and does not have sufficient capacity to convey the flows it receives.
2. The County and Zone 5 would not permit a project like this with a culvert in this condition and with insufficient capacity.
3. Per the Master Plan the required culvert size is 96" by 120". Potentially it might make sense to reroute the culvert under the adjacent walkway rather than having it bisect the entire footprint of the house.²²

²² In the Staff Report (p. 1), City staff contend Mr. McLean rejected and "deemed not practical" the potential option to relocate the Drainage Facility to under the public pathway adjacent to and north of the Property. That contention is false, as the Staff Report author, City Associate Planner, Sean Sesanto, and a City attorney, Leila Moshref-Danesh, well know. On September 26, 2024, Ms. Moshref-Danesh sent an email to Mr. McLean's legal counsel

4. Applicant should be required to take steps to protect culvert during construction. Potentially the house foundation should be designed such that a culvert failure would not result in damage to the house.²³

5. The Applicants need to enter and record an agreement that runs with title that acknowledges the existence of and hazard of building on top of the culvert and contains restrictions on future use of the property that will protect the culvert (e.g. trees, drilling/excavation), and agrees to defend and indemnify the County, Zone 5 and the City. Should also include a right of access to the culvert if necessary for maintenance/repair by a public entity and notice when they're going to do work that might impact the culvert.

6. Indemnity agreement should extend to construction of the project.

7. Applicant should be required to perform or contribute toward maintenance on the culvert."

On February 23, 2024, City staff met with Mr. McLean, Mrs. Robbins, and their land use consultant, Charlie Eadie, to further discuss the Project. During that meeting, City staff planner, Sean Sesanto, referenced an easement "clearly defined" in the Property deed that took "top priority over any structure over the easement." In her response email on February 27, 2024, Mrs. Robbins asked Mr. Sesanto to provide support for his easement claims, as the Property deed to Mr. McLean identified no such easement. Mr. Sesanto did not respond.

On March 8, 2024, Charlie Eadie sent an email to City staff: "Just checking on the status of the follow-up from our meeting on February 23. We are awaiting the results of your site visit and next steps regarding the walkway failure and related safety concerns. Also, we would appreciate a response regarding the title information provided by Terri Thacher [Robbins] confirming that per the easement the property owners are to be indemnified as to any damages due to work on the flume, which as written, is the opposite of what the City had been assuming." Once again, City staff did not respond.

stating, in relevant part: "I will share your desire to discuss the feasibility of relocating the flume with staff and will follow up with next steps." Two weeks later, in an email from Mr. Sesanto to Mr. McLean and Mrs. Robbins, dated October 9, 2024, Mr. Sesanto wrote: "I am writing to inform you that your initial deposit of \$5,000 for attorney fees (BWS) now had a balance of \$312.50 at the end of September. *It is my understanding that you would like [the City attorneys] to continue discussions with the county regarding the possibility of moving the culvert.* Please let us know if you would like us to proceed and have a meeting setup with the County. If so, please bring an additional deposit of \$3,000 to cover costs for continued negotiations. We will continue to monitor the deposit on a monthly basis." (Emphasis added.) Ultimately, discussions regarding the potential relocation of the Drainage Facility were dropped not because the relocation was "deemed not practicable" by Mr. McLean, but because the County and City wanted Mr. McLean to pay to relocate the County's Drainage Facility.

²³ The Project plans and proposed condition of approval 32 comply with this requested requirement.

B. The City and County demand that Mr. McLean sign an unconstitutionally extortionate Indemnity Agreement

1. Mr. McLean's proposed Indemnity Agreement (Indemnity Draft 1)

Having received no responses from City staff to numerous emails, Mr. McLean retained attorney Anna DiBenedetto to assist with the Project Application process. On April 25, 2024, via email, Ms. DiBenedetto submitted a two-page draft Indemnity Agreement ("Indemnity Draft 1") to City and County staff. Indemnity Draft 1 provides that Mr. McLean agrees to indemnify the City and County from and against damage "*caused to the flume*" (i.e., the Drainage Facility) *by the Project*. (Emphases added.) A copy of Ms. DiBenedetto's email and Indemnity Draft 1 is attached and incorporated here as Exhibit 66.²⁴

2. The City's and County's expanded Indemnity Agreement (Indemnity Draft 2)

On May 17, 2024, via email, the City's counsel sent the County's counsel the City's proposed redline revisions to Indemnity Draft 1 ("City Redline 1"), which, among other things, adds references to the 1922 Easement Deed and Drainage Easement, and cites several facts, including, "ownership of the Drainage Facility is currently in dispute... between the City, County...", and "no permanent repairs have been made" to the Drainage Facility. City Redline 1 also significantly expands Mr. McLean's "indemnity" obligations to include damages "*caused to the McLean Property... as a result of the ongoing operation, maintenance, repair, and replacement of the Drainage Facility in perpetuity*." (Emphases added.) Finally, City Redline 1 provides, "any construction or work conducted on or above the Easement may be subject to removal *at the sole discretion of the City, County, or District, and Property Owner shall not be entitled to any compensation as a result*." (Emphasis added.) A copy of City Redline 1, along with the transmittal email, is attached and incorporated here as Exhibit 67.

Later, on May 17, 2024, via email, the County's counsel sent the City's counsel the County's proposed further redline revisions to Indemnity Draft 1 ("County Redline 1"). Among other things, County Redline 1:

- Expands upon the nature of the Easement Facility "dispute" between the City and County, explaining, the dispute relates to "which of them owns and is responsible for the maintenance of the [Drainage] Facility."
- Adds, "the [Drainage] Facility is not actively maintained by any Party."

²⁴ Indemnity Draft 1 is consistent with the indemnity agreement contained in the Master Application for the Project, signed by Mr. McLean more than two years ago: "In submitting this Application, I agree to defend, indemnify, and hold harmless the City of Capitola, its officers, employees, and agents, from and against any claim, including attorneys' fees and litigation costs, arising out of or in any way related to the City of Capitola's processing, consideration, or approval of this Application."

- Adds, “one or several of the Public Entities [i.e., City, County, Zone 5] have the right to access the [Drainage] Facility pursuant to the terms of the Drainage Easement” to perform “Maintenance Activities.”
- Expands the proposed terms of Mr. McLean’s indemnity (i.e., waiver), stating, “McLean shall not be entitled to any compensation from any of the Public Entities for any such Maintenance Activities *regardless of the impacts such Maintenance Activities might have on the Property.*”

Ironically, County Redline 1 cites to “basic principles of fairness” in an attempt to justify the City’s and County’s legally unsupported and unconstitutional indemnity and waiver demands. A copy of County Redline 1, along with the transmittal email, is attached and incorporated here as Exhibit 68.

Nearly one month later, on June 12, 2024—nearly 15 months after Mr. McLean and Mrs. Robbins first informed the City of their Drainage Facility/Outfall concerns and of their proposed Project—the City emailed Mr. McLean’s then-counsel the City- and County-revised Indemnity Agreement (“Indemnity Draft 2”), which, for the very first time, identified the 1922 Easement Deed as a basis for the City’s and County’s Project-based objections and demands. In that email, the City’s attorney explained: “Given the novel nature of the project and the complexities associated with the culvert, we *had* to expand fairly significantly upon your original draft, but the outcome is an agreement that will ultimately *allow* the City to process [the Project Application].” (Emphases added.)²⁵ A copy of Indemnity Draft 2 and the two transmittal emails is attached and incorporated here as Exhibit 69.

On June 21, 2024, in an email to City staff, Mrs. Robbins asked: “We received the city’s proposed indemnification for the remodel/demo project we’ve been trying to get through the permitting process. We are left to assume that the design, where we raise the living space above the easement on pylons, is at the root of why you want us to be caretaker of the ‘facility’. Can you please confirm this?”

On June 24, 2024, via email, City staff responded, in relevant part: “I will reach out to legal (City and County) and get back to you.”

On June 27, 2024, via email, City staff responded, demanding, as a condition of the City’s further processing of the Project Application, that Mr. McLean pay \$9,906.50 to the City to cover the City’s attorney’s fees, including those incurred to review the Project and draft Indemnity Draft 2.

²⁵ From Mr. McLean’s perspective, the only “complexities associated with the culvert” are those arising from the County’s and/or City’s ongoing failures to properly maintain it and from the City’s and County’s inability (due to lack of any legal basis) to successfully bully Mr. McLean into assuming what is squarely a public obligation. Indeed, the contention, “we had to expand fairly significantly” the Indemnity Agreement is self-serving and contrary to the relevant history, evidence, and law.

In response, on July 10, 2024, Mr. McLean and Mrs. Robbins sent an email to City staff, explaining, in part:

“We do not feel that we are legally obligated to sign the City’s proposed indemnity agreement [i.e., Indemnity Draft 2] prepared after our attorney sent to the City a very reasonable agreement [i.e., Indemnity Draft 1] that indemnified the City for any harm caused to the City’s flume as a result of our proposed project. Nor are we obligated to reimburse the City for thousands of dollars in attorney’s fees supposedly incurred by the City for its attorneys to prepare a completely new indemnity agreement that places 100% responsibility for the City’s flume and drainage system that underlies our property on us, in perpetuity, (even after we no longer own the property) as well as future owners of our property.”

Once again, City staff did not respond.²⁶

On July 18, 2024, having received no response to her June 1st email, Mrs. Robbins sent another email to City staff, summarizing the Permit Application history and explaining, in part, “If we don’t hear from you by 5pm tomorrow, we’ll consider the application denied and start the appeal process with the planning commission. ... To date, we have spent nearly \$200K on an architect to design a home that takes the [Drainage Facility] *well into consideration*, soil reports, structural engineers, etc. to include in the application based on the communications [from the City] to go ahead and move forward. We love Capitola and we’re so disappointed.” A copy of the above referenced email chain correspondence, between June 21 and July 18, 2024, is attached and incorporated here as Exhibit 70.

3. The City confirms its refusal to process or approve the Project Application unless Mr. McLean signs the City/County-demanded Indemnity Agreement

On July 31, 2024, in a letter to Mr. McLean, the City’s legal counsel explained, construction of the Project (as proposed in the Application), “requires permission from the City, County and Zone 5” because, “given the [Drainage] Easement and [Drainage] Facility’s location (transversing the Property), the City would not typically approve any construction on the Property.”²⁷ The City’s legal counsel further explained, the Application is “incomplete,” including due to “the lack of an executed Indemnification Agreement” signed by Mr. McLean to indemnify the City, County and Zone 5 not only for (as is standard), “damage to the Facility, Property, or surrounding properties caused by your Project,” but also (unconstitutionally) for, “damage *to* your Property *caused by* the [Drainage] Facility.” (Emphases added.) A copy of the above referenced letter is attached and incorporated here as Exhibit 71.

²⁶ Correctly, the City later withdrew its request for payment of \$9,906.50 for attorneys’ fees. To date, Mr. McLean has paid \$5,000 to the City for City attorneys’ fees, as demanded by City staff via email on August 8, 2024.

²⁷ By this email, it appears City staff adopted and parroted the County’s position stated five months earlier in an email from the County Counsel’s office to City staff and attorneys on February 15, 2024. (See Exhibit 57.)

On August 1, 2024, in a letter to Mr. McLean, City staff confirmed the Application (filed nearly 11 months prior) was “incomplete” and would not be further processed unless and until Mr. McLean complied with the City’s additional demands. As relevant here, the City explained and demanded: “Flume/Culvert. The property is subject to an existing easement with an active *public agency-owned drainage facility* (Grant Deed recorded in Volume 315 [sic, 314], page 192 [sic, 191] of the Santa Cruz County records.). To the satisfaction of City and County of Santa Cruz, the applicant must indemnify and hold harmless the City, County of Santa Cruz, and Santa Cruz County Flood Control and Water Conservation District – Zone 5 with respect to *the operation and maintenance of the easement and drainage facility* and possible impacts *to the project*.” (Emphases added.) A copy of the above-referenced letter is attached and incorporated here as Exhibit 72.

4. Mr. McLean again reasonably revises the proposed Indemnity Agreement, again deleting its unreasonable and unconstitutional terms (Indemnity Draft 3)

On August 8, 2024, via email, Mr. McLean’s former counsel sent an email to City’s and County’s respective legal counsel, attaching a further revised draft of the proposed Indemnity Agreement (“Indemnity Draft 3”). Indemnity Draft 3 deletes the City’s and County’s proposed terms that conflict with California easement law and the California and United States constitutions, including terms that would make Mr. McLean responsible for the public Drainage Facility and waive Mr. McLean’s rights to claims against the City or County for “any damage caused to the Property by the present or future condition of the [Drainage] Facility.” A copy of Indemnity Draft 3, and the transmittal emails, is attached and incorporated here as Exhibit 73.

5. The City and County renew their demand that Mr. McLean sign a disproportionate and extortionate Indemnity Agreement (Indemnity Draft 4)

On August 21, 2024, via email, the City’s counsel sent the County’s counsel the City’s proposed redline revisions to Indemnity Draft 3 (“City Redline 2”), rejecting Mr. McLean’s reasonable revisions and deletions, and adding that the agreement “is required by the City in order to continue processing the [Project] Application.” A copy of City Redline 2, and the transmittal email, is attached and incorporated here as Exhibit 74.

On August 23, 2024, via email, the County’s counsel sent the City’s counsel the County’s proposed further redline revisions and margin comments to Indemnity Draft 3 (“County Redline 2”). A copy of County Redline 2, and the transmittal email, is attached and incorporated here as Exhibit 75. Among other things, County Redline 2:

- Rejects the City’s revised description of the Drainage Facility and contends, in a margin comment, the existing underground Drainage Facility is not within the Drainage Easement Area described in the 1922 Easement Deed: “We disagree with this modification. As you recall, a key issue for the County/Zone 5 is that *the easement creates a right to convey water in an open channel (like a flume or ditch)*. An underground culvert is not within the scope of those [1922 Easement Deed] rights.” (Emphasis added.) This, despite that the County’s stated

basis for demanding Mr. McLean sign the County-proposed Indemnity Agreement is pursuant to the County's asserted rights under the 1922 Easement Deed.

- Adds, "the [Drainage] Facility is not maintained by any Party due to the ambiguity in its ownership." Again, this, despite the County's expressly-claimed rights under the 1922 Easement Deed and voluntarily-assumed obligations pursuant to the Zone 5 resolutions.

- Confirms agreement with the City's insistence that Mr. McLean waive any claims against the City or County for "any damage caused *to the Property* by the present or future condition of the [Drainage] Facility."

- Re-adds section 7.2: "In making the promises in this Agreement, Owner specifically acknowledges and agrees that but for the presence of the Culvert resulting in a covered rather than an open water channel on the Property, and given the Culvert's position on the Property, the existing single-family residence on the Property could not have been constructed." In other words, but for the relocation underground of the Drainage Easement Area more than 90 years ago, the long-existing residence on the Property could not have been constructed. True, as with several other properties similarly situated atop Noble Gulch drainage facilities (e.g., 419 Capitola Avenue, 421 Capitola Avenue, 402 Blue Gum Avenue, and 404 Blue Gum Avenue) developed and redeveloped without "a squeak of objection or comment from the County regarding the building of permanent structures over the easement."

- Re-adds section 7.4: "In making the promises in this Agreement, Owner acknowledges and agrees that the presence of a single-family residence on the Property substantially increases the difficulty of the Public Entities accessing the Facility and the cost of performing Maintenance Activities, including potential future upgrade and replacement of the Culvert." This proposed term contradicts the conclusions in Pacific Crest Engineering's geotechnical investigation report (April 2024), "the proposed improvements are feasible from a geotechnical standpoint" despite the "site constraints." (See Exhibit 59.) This proposed term also ignores that, as explained to City staff by Mr. McLean and Mrs. Robbins, the Project Application would have demolished the existing residence, thereby providing improved access to repair or replace the Drainage Facility prior to construction of the new home proposed by the Project Application, which new house would have been elevated off the ground, resulting in greatly improved access to the Drainage Facility and Drainage Easement Area.

On September 3, 2024, via email the City's counsel sent the County's counsel the City's further revisions to Indemnity Draft 3 ("City Redline 3"). A copy of City Redline 3, and the transmittal email, is attached and incorporated here as Exhibit 76. Among other things, City Redline 3:

- Accepts the County's rejection of the City's revised proposed description of the Drainage Facility, the basis for the County's rejection, as explained in a margin comment, being the existing underground Drainage Facility is not within the Drainage Easement Area originally described in the 1922 Easement Deed. (See Exhibit 75.)

- Complies with the County’s requested characterization of the Drainage Facility and Drainage Easement Area by, as explained by the City’s counsel in a margin comment, “Remov[ing] reference to underground facility,” in attempt to ignore that the Drainage Facility is not within the Drainage Easement Area described in the 1922 Easement Deed.
- Confirms “the [Drainage] Facility is not maintained by any Party.”
- Confirms, “as both a completeness item for processing the Application, and condition to approval of the Application, the City is requiring McLean to obtain permission from the Public Entities to erect a structure on top of the Drainage Easement,” and that “the Public Entities are requiring McLean and future Owners of the Property to agree to indemnify, defend and hold harmless the Public Agencies from... (2) *any damage caused to the Property by the present or future condition of the Facility, or due to the Property being located over the underground [Drainage] Facility.*” (Emphasis added.)

Later, on September 3, 2024, nearly one month after the City and County received Mr. McLean’s Indemnity Draft 3, the City’s legal counsel emailed Mr. McLean’s then-counsel another revised proposed draft of the demanded Indemnity Agreement (“Indemnity Draft 4”) containing redline revisions and margin comments from the City’s and County’s respective legal counsel. A copy of the Indemnity Draft 4 is attached and incorporated here as Exhibit 77.

Indemnity Draft 4 includes the following relevant recitals, each of which constitute intended admissions by the City and County that, among other things, (1) the City and County dispute which entity/entities is/are responsible for the “Facility”/“Drainage Easement”; (2) the Drainage Facility is “not maintained” by the City or County; (3) “no permanent repairs have been made” to the Drainage Facility by the City or County; and (4) under the ruse of “basic principles of fairness,” the City will agree to process, but not necessarily approve, Mr. McLean’s Application, but only if Mr. McLean (on his behalf, and on behalf of successor owners of the Property) first assumes the City’s and/or County’s responsibility for the unmaintained public Drainage Facility:

WHEREAS, the Flume is believed to be located within the bounds of an easement created by a Grant Deed dated May 10, 1922 and recorded in the Official Records of Santa Cruz County on July 11, 1922 in Volume 314 at Page 193 of the Deeds of Santa Cruz County Records (“Grant Deed”), *granting to the County of Santa Cruz* (“County”) a permanent eight foot wide easement and right of way to “construct, maintain, operate, repair and renew a drainage ditch, canal or flume, for the purpose of conveying storm and drainage water (from the most easterly boundary of the property hereinafter described to the Soquel Creek),” and including all necessary and convenient means of ingress and egress thereto (“Drainage Easement”). A copy of the Grant Deed is attached hereto as Exhibit C;

WHEREAS, for purposes of this Indemnity Agreement, “Flume” refers to the portion of the [now non-existent overground] flume traversing the McLean Property and “Drainage Easement” refers to the portion of said drainage easement traversing [under] the Property;

WHEREAS, at an indeterminate point in time the Flume was converted into a culvert (“Culvert”), which Culvert underlies the Property within the bounds of the Drainage Easement;

WHEREAS, the Culvert, Flume, and Drainage Easement are sometimes collectively referred to herein as the “Facility” and any reference to “Facility” refers to that portion of the Facility traversing the McLean Property;

WHEREAS, City, County, and the Santa Cruz County Flood Control and Water Conservation District- Zone 5 (“Zone 5”) are sometimes collectively referred to herein as “Public Entities”;

WHEREAS, City, County, Zone 5 and McLean are sometimes collectively referred to herein as the “Parties” and individually as “Party”;

WHEREAS, one or more of the Public Entities *may* have an interest in any part or all of the Facility, and *there is a dispute between them as to what the nature of their respective interests may be*, but it is the Parties’ intent to leave the determination of those interests unresolved by the execution of this Agreement;

WHEREAS, *the Facility is not maintained by any Party*;

WHEREAS, the Public Entities have previously made temporary emergency repairs... *but no permanent repairs have been made*;

WHEREAS, on or about August 31, 2023, McLean submitted Application No. 23-0400 (“Application”) for a coastal development permit and design review (the “Required Approvals”) to demolish the existing two story single family residence at the Property and construct a new residence within the same footprint, with the first-floor of the new residence to be elevated above the Federal Emergency Management Agency (“FEMA”) base flood elevation;

WHEREAS, on ____, [sic] 2024, McLean submitted a modified project application consisting of an interior and exterior remodel, including the existing detached garage and construction of a new second floor living space, reinforcement of existing foundation with potential new footings, and a new second story enclosed bridge to connect the primary residence to the proposed living space above the garage, resulting in an approximate 2,625 sf, 3 bedroom, 2 and ½ bath two story single family residence (the “Project”);

WHEREAS, *as both a completeness item for processing the Application, and condition to approval of the Application, the City is requiring McLean to obtain permission from the Public Entities to erect a structure on top of the Drainage Easement* (the “Clearances”);

WHEREAS, in order to provide the Clearances, the Public Entities are *requiring* McLean and future Owners of the Property to agree to indemnify, defend and hold harmless the Public Agencies from (1) any damage caused to the Facility by the Project, and (2) *any*

damage caused to the Property by the present or future condition of the Facility, or due to the Property being located over the underground Facility;

WHEREAS, all Parties acknowledge that *the residential construction in the Application would not normally be considered as presented given the presence of the Facility lying below and transversing the Property*, but given that McLean purchased an existing single-family home on the Property overlying the Facility, has been living on the Property for a number of years, and the Project proposes merely to demolish and reconstruct within the same footprint the existing single-family home located on the Property, *basic principles of fairness allow the City to consider the Application in exchange for the promises McLean has made in this Agreement;*

WHEREAS, it is the intent of the Parties that *this Agreement will allow the City to process the Application for the benefit of McLean, but that execution of this Agreement will not guarantee the approval of the Project or the Application* or otherwise bind the City in any way to any future approval of the Application]; and

WHEREAS, the Parties agree that execution of this Agreement does not resolve the ownership of the Facility, or prejudice any rights or affirmative defenses that the Public Entities may have relating to determination of the ownership of the Facility or the Public Entities' respective rights and responsibilities in the Property or Facility. (Emphases added.)

6. Mr. McLean refuses to sign the City/County-demanded Indemnity Agreement

On October 25, 2024, Mr. McLean notified the City, via email, that he would not sign the City/County-demanded Indemnity Agreement (i.e., Indemnity Draft 4). A copy of Mr. McLean's email is attached and incorporated here as Exhibit 78. In his email, Mr. McLean explained:

"After spending considerable time and money on back-and-forth negotiations regarding the Indemnity Agreement, we have decided that we are not comfortable (nor legally obligated) to give the City any more indemnity than what it already has pursuant to the language in the Application... We cannot sign something that releases the City and County from its liability for a public culvert that has clearly not been repaired or maintained for some time. We also never understood why we would have to indemnify the County for a public easement for which it claims no responsibility and has nothing to do with approval of our project being built within the City of Capitola. We understand that refusing to sign the agreement means the City will not further process our application, therefore deeming it incomplete again. We take that to mean our application is denied. Assuming that to be the case, please let us know immediately so that we can start the administrative appeal process."

On October 30, 2024, having received no response, Mr. McLean's wife, Terri Robbins, again emailed City staff: "Can you provide an update when we can expect the denial letter?"

On November 4, 2024, more than 14 months after the Project Application was filed, the City's planning director emailed Mr. McLean to announce a change of course, explaining: "We have reviewed the information provided and have determined that your application for a Design Review and Conditional Use Permit is complete. Please be advised that staff will be recommending that your project be subject to conditions of approval requiring you to obtain consent from the easement holder(s) to construct your project, and that you enter into an indemnification agreement with the City, both prior to obtaining a building permit to construct within the easement." A copy of the above referenced email correspondence is attached and incorporated here as Exhibit 79.

On November 7, 2024, City planner, Sean Sesanto, sent a follow-up email to Mr. McLean, asking whether he intended on revising the Project (stating, "you had previously indicated that you may be revising the plans and/or changing architects") and offered a design review meeting. On November 12, 2024, in his email response to Mr. Sesanto, Mr. McLean explained, in part, "Unfortunately, we are not prepared to get in front of the city on either of those dates. We did not feel comfortable investing any more money into an updated design given the friction we've experienced thus far. In June we asked if an updated design, that would be more of a remodel, would be considered. We never got a response." That same day, Mr. Sesanto responded via email, in relevant part, "In my call last week with Dan Gomez, he indicated FUSE would like to draft plans and resubmit under the existing application, as Katie said. If the resubmittal revises the scope of work as well, that is fine. A less intensive scope of work would be preferred by staff but to [sic] still expect conditions of approval referenced in Katie's 11/4 e-mail." A copy of this email correspondence is attached and incorporated here as Exhibit 80.

Thereafter, more discussions occurred between Mr. McLean (directly and via counsel) and City and County staff regarding the demanded Indemnity Agreement and City's insistence that Mr. McLean pay additional fees to the City for the City attorney's time in drafting the agreement. Following up on those discussions, on December 12, 2024, Mr. McLean's then-counsel (Anna DiBenedetto) emailed City staff, as detailed above in the Executive Summary, explaining that "County consent is not required" for the City to process and approve the Project Application, and that "The City and Applicant already have an indemnification agreement in place protecting the City." (See Exhibits 2 and 61.)

A week later, on December 19, 2024, the City's counsel's response email to Ms. DiBenedetto cited "public health" and "safety" (i.e., the "good reason") and confirmed the City is "requiring at minimum that [Mr. McLean] agree to indemnify/hold the City harmless and waive the ability to sue for damages *to the project*," and, "we will continue to recommend the City require the conditions of approval requiring County permission and indemnification/waiver of damages for the City," consistent with the "real reason" unrelated to "health and safety."²⁸ A copy of the City attorney's email is attached and incorporated here as Exhibit 81.

²⁸ See J.P. Morgan "good reason/real reason" quote in Executive Summary above. See also City staff's attempted justification in the Staff Report (p. 1), "The purpose of the [Indemnity Agreement] was to *streamline* the approval process for the applicant." (Emphasis added.)

7. Despite revising the scope of the Project (from demolition/rebuild to a remodel), the City and County continue to demand the Indemnity Agreement

On January 22, 2025, Mr. McLean, Mrs. Robbins, and their new architect, Dan Gomez (Fuse Architects), met with the City Manager and Community Development Director to discuss potentially reducing the scope of the Project from a demolition/rebuild to a residential remodel. City Planning Commissioner and Fuse Architects' Senior Project Designer, Courtney Christiansen, also attended the meeting and took notes. A copy of Ms. Christiansen's "meeting minutes," dated January 23, 2024 [sic, 2025], is attached and incorporated here as Exhibit 82.

During that meeting, Mr. Goldstein noted the existence of a document from the 1980s that "has been on my desk for quite some time" and references exceptions and limitations to development on properties that sit atop the Noble Gulch drainage facilities. Mr. Goldstein also noted the ongoing dispute between City and County as to which of them is responsible for the Drainage Facility. Mrs. Robbins expressed concern about someone getting hurt, and getting sued, due to the hazardous conditions created by the City/County failures to maintain the Drainage Easement Area. Astonishingly, Mr. Goldstein responded, "getting sued is likely the only way the City and County will resolve who owns the easement." Following Mr. Goldstein's premonition (which, unfortunately, may soon come to pass), Ms. Christiansen left the meeting.

On February 7, 2025, Mrs. Robbins emailed Mr. Goldstein and Ms. Herlihy: "We're following up on our meeting from a couple of weeks ago. Jamie, can you share the document you referenced from the 1980's that references the exceptions and limitations on development associated with our property?" A copy of that email is attached and incorporated here as Exhibit 83. City staff did not respond to Mrs. Robbins' request. Mr. McLean reasonably believes Mr. Goldstein was referring to the documents from 1984 discussed above (including, particularly, Mr. Porath's letter, dated August 6, 1984) (see Exhibits 19-26, and 28), and that City and County staff ignore or misinterpret those documents, as nothing in the 1984 correspondence or decisions supports the waivers and scope of indemnity the City and County demand of Mr. McLean.

Nonetheless, the City continues to demand Mr. McLean sign an unreasonable and unconstitutional indemnity and waiver agreement, including, as explained in City Planning Director Katie Herlihy's email to Mr. McLean and Mr. Robbins on March 10, 2025: "The changes [to the demanded Indemnity Agreement] would stipulate that the City/County are not liable for the additional value of improvements as we had discussed during the meeting at Fuse [on January 22, 2025]." Worse, as explained in Ms. Herlihy's email, "In order to proceed we will need an additions [sic] \$3,000 deposit to cover the cost of attorney/staff time." A copy of Ms. Herlihy's email is attached and incorporated here as Exhibit 84.

On September 23, 2025, as noted in the Staff Report (p. 2, Attachment 4), "Staff met with the property owner and their attorneys to discuss proposed conditions of approval related to the culvert." City staff failed to disclose that, during the meeting, the City's staff and attorney were repeatedly asked to provide legal authority establishing the City's power to impose conditions 33 and 35, and that their explanations were nonresponsive, inadequate, and unpersuasive.

V. LEGAL ANALYSIS

A. The City's and County's conduct is coercive and extortive, in violation of California law and the California and U.S. constitutions

As consistently evidenced in documents obtained through Public Records Act requests (see Exhibit 6), the City's and County's conduct with respect to the Project and Application—including effectively holding the Project and Application hostage unless and until Mr. McLean inadvisedly agrees, by signing an adhesive/one-sided Indemnity Agreement, to assume full responsibility for the admittedly unmaintained Drainage Easement Area (including the Drainage Facility) and pay the City's attorneys' fees for the "privilege"—is nothing short of an unconscionable and coercive attempt to disproportionately shift what are undisputedly public burdens onto a private property owner/citizen. Extortion is another legally apt description, as is prejudicial abuse of discretion, and breach of the Drainage Easement.

More specifically, the City and County's demands are, among other things, wholly at odds with California easement law, and repugnant to the California Constitution (Art. I, Sec. 19) and the Fifth and Fourteenth Amendments of the U.S. Constitution, including under the well-established "unconstitutional demands doctrine," and constitutional principles of "essential nexus" and "rough proportionality," applicable to land use permits. In addition, the City's and County's conduct and demands in connection with the Project Application (in light of previously approved development of the Property and other properties in Capitola lying atop the County's drainage facilities) are arbitrary and capricious, in violation of constitutional principles of equal protection and due process. (See, e.g., *G & D Holland Constr. Co. v. City of Marysville* (1970) 12 Cal.App.3d 989, 944.) It appears the City and County are unaware of, misunderstand, or disregard these legal protections afforded Mr. McLean. None bode well, to say the least.

B. The City's and County's claimed easement rights and demanded Indemnity Agreement are contrary to California easement law

1. California easement law: a primer

As repeatedly explained to the City and County during this Project Application process, the rights of an easement owner are restrictive and the rights of the owner of the real property burdened by the easement (i.e., the servient tenement) are residual. Thus, the easement owner possesses only those rights established by its creation (e.g., the easement deed); all other property rights and uses remain with the property owner. Said another way, the rights and duties of the easement owner and the servient tenement owner are correlative. (See, e.g., Miller & Starr, Cal. Real Estate, 4th ed. (June 2024), Vol. 6, Ch. 16, Easements, § 15:63; Civil Code § 806: "The extent of a servitude is determined by... the nature of the enjoyment by which it was acquired.")

The rules applicable to the use of easements also apply to owners of subsurface easements for pipelines and similar uses, meaning such uses must not be inconsistent with the enjoyment of the surface use by the servient tenement owner. (*Id.* § 15:61.) As such, when

exercising easement rights, the easement owner must give due regard to the rights of the servient tenement owner, must use the easement in the manner that imposes the least burden on the servient tenement owner, and cannot do anything that causes unreasonable injury to the servient tenement or interferes with the servient tenement owner's use of the property. (*Id.* § 15:66.)

Relatedly, an easement owner has not only the *right* to maintain and repair the easement area, but the legal *duty* to keep it in a safe condition to prevent injury to the servient tenement, the servient tenement owner, and third persons. Conversely, absent an agreement to the contrary (and none exists here), the servient tenement owner has *no legal obligation* to maintain or repair the easement area. (*Id.* § 15:67.) The easement owner's duty to maintain the easement area also extends to a city or other public agency that has accepted the easement. (*Id.*)

Finally, importantly, an instrument creating an easement, such as the 1922 Easement Deed, is subject to the same rules of interpretation applicable to written contracts, beginning by looking to the plain meaning of the words in the deed. (Civil Code §§ 1066, 1067.)

2. The County, as title owner of the Drainage Easement, has limited rights to use the Property, and is legally responsible for maintaining the Drainage Easement Area in safe condition to avoid injury to persons and the Property

On May 17, 1922, the County, formally and in writing, accepted the 1922 Easement Deed, establishing the County is the Drainage Easement owner.²⁹ City staff acknowledge these facts. (Staff Report, pgs. 1, 5.) The County's Drainage Easement rights are limited to conveying storm and drainage water from the Noble Gulch through the Property into Soquel Creek. All other rights, including the right to develop, use, and enjoy the Property, remain with Mr. McLean, as the 1922 Easement Deed contains no terms to the contrary.

In addition, as the Drainage Easement owner, the County is legally obligated to maintain the Drainage Easement Area and Drainage Facility in a safe condition to avoid injury to the Property, its occupants, and third persons. Nothing in the 1922 Easement Deed provides otherwise. However, the County has admittedly failed to do so, in breach of the County's legal obligations as the Drainage Easement owner. That breach is actionable by Mr. McLean.³⁰

3. The Drainage Easement Area was relocated underground by agreement; if not, then the Drainage Facility is a physical "taking" without "just compensation"

In California, parties to an easement (i.e., the dominant and servient tenement owners) may agree, expressly or implicitly, to change the easement location. If the location is changed without an express agreement and without objection, an agreement can be implied by acquiescence. (*Red Mountain, LLC v. Fallbrook Public Utility Dist.* (2006) 143 Cal.App.4th 333,

²⁹ Motivations aside, the legal bases of the City's and County's ongoing dispute as to which public entity owns the Drainage Easement and/or Drainage Facility is unknown to Mr. McLean, as neither the City nor County produced any documents indicating the County is not the Drainage Easement owner pursuant to the 1922 Easement Deed.

³⁰ Such breach also constitutes a dangerous condition of property, giving rise to inverse condemnation claims.

352; *McCarty v. Walton* (1963) 212 Cal.App.2d 39, 46; *Johnstone v. Bettencourt* (1961) 195 Cal.App.2d 538, 542.) Between 1922 and 1934 (approximately), the existing underground Drainage Facility was constructed, followed by construction of the original residence on the Property. City staff confirms this in the Staff Report (p. 5): “Following the original subdivision, the Noble Gulch facility was covered and now comprises an underground pipe and culvert that crosses several private lots between Soquel Creek and Capitola Avenue.” Those facts alone evidence an agreement or acquiescence to relocate underground the over-ground easement for a “ditch, canal or flume” described in the 1922 Easement Deed.

Nonetheless, the County contends the Drainage Facility does not exist and is not operated pursuant to the 1922 Easement Deed. For example, in County Redline 2 of Indemnity Draft 3 (see Exhibit 75), the County explained, in a margin comment, “the [1922 Easement Deed] creates a right to convey water in an open channel (like a flume or ditch). An underground culvert is not within the scope of those [1922 Easement Deed] rights.” The County’s contention—the Drainage Facility is not within the agreed-upon Drainage Easement Area—is highly problematic for the County and City in at least two additional respects.

First, the County’s contention is wholly inconsistent and incompatible with the County’s position (which position the City has thus far accepted) that the County has rights under the 1922 Easement Deed to compel Mr. McLean to sign the County-demanded Indemnity Agreement. Moreover, if, as the County contends, the Drainage Facility is not within the agreed-upon Drainage Easement Area, then the County has no right under the 1922 Easement Deed to make any Drainage Easement-related demands of Mr. McLean.³¹

Second, if the County’s contention is correct, then the Drainage Facility is not existing or operated pursuant to the 1922 Easement Deed as amended by subsequent agreement, and therefore, absent evidence of another recorded easement in favor of the County/District or City—and no such evidence has been produced by the City or County—the Drainage Facility constitutes a physical occupation (i.e., a physical or *per se* “taking”) of Mr. McLean’s Property for public use without “just compensation” in violation of the Fifth Amendment of the United States Constitution. (See, e.g., *Loretto v. Teleprompter Manhattan CATV Corp.* (1982) 458 U.S. 419; *Lingle v. Chevron U.S.A., Inc.* (2005) 544 U.S. 528, 548 [“where government requires an owner to suffer a permanent physical invasion of her property—however minor—it must provide just compensation.”].) If so, then Mr. McLean has an inverse condemnation claim against the County and/or City, and neither the City nor the County (by its own admission) has any easement rights upon which to impose any drainage easement-related conditions on the Project.

³¹ The County’s contention also supports the County’s abandonment of its rights under the 1922 Easement Deed.

4. The City- and County-demanded Indemnity Agreement constitutes an unlawful attempt to impair the obligation of contracts and unilaterally amend the terms of the 1922 Easement Deed

A “law impairing the obligation of contracts may not be passed.” (California Constitution, Art. I, § 9.) Presumably, no such relevant “law” exists in the City Municipal Code. Yet, by their concerted demands that Mr. McLean sign an overbroad and disproportionate Indemnity Agreement as a condition of Project Application completeness or approval, the City and County are impermissibly attempting to force Mr. McLean to assume the County’s Drainage Easement legal obligations and amend the terms of the 1922 Easement Deed in the name of land use regulation. Such attempts and demands exceed the City’s and County’s police power (discussed below) and are contrary to the California Constitution’s prohibition against impairing, as relevant here, the County’s and Mr. McLean’s respective property rights and obligations under the 1922 Easement Deed. Wisely, Mr. McLean has resisted those attempts and demands.

C. The City lacks jurisdiction to impose Drainage Easement-related conditions on the Project

1. The City’s “police powers” do not include the power to adjudicate or enforce third-party easements

The authority of local municipalities (e.g., cities, counties) to regulate land use decisions derives from the general police powers, as set forth in the California Constitution, to “make and enforce... ordinances and regulations...” (Cal. Const. Art. XI, Sec. 7; emphases added.) California’s Planning and Zoning Law (Gov. Code §§ 65000-66499.58) supply the framework for local land use regulation including, as relevant here, zoning (Gov. Code § 65800, et seq.) and the permitting process (Gov. Code § 65920, et seq.), all of which must be reasonably related to promoting and protecting public health, safety, morals, and general welfare of the community. (See, e.g., *Carlin v. City of Palm Springs* (1971) 14 Cal.App.3d 706, 711.) Although generally broad, local municipalities’ police powers do not include the legal authority to adjudicate the private rights and disputes of third parties, such as those arising from easements. Indeed, nothing in the City Municipal Code relating to land use planning and development or health and safety—Title 8 (health and safety), Title 15 (buildings and construction), Title 16 (subdivisions), or Title 17 (zoning)—provides for the City’s review or consideration, let alone adjudication and enforcement, of third-party easements such as the County’s Drainage Easement.

As established by the documents and confirmed by City staff, the County is the Drainage Easement owner. Therefore, the City has no Drainage Easement rights and lacks jurisdiction to consider or enforce the County’s Drainage Easement, whether in connection with the Project Application or otherwise. Rather, the County’s and Mr. McLean’s respective rights and obligations under the Drainage Easement are a private, civil matter, akin to parties to a private contract. As such, here, the City’s jurisdiction is limited to accepting, processing, and reviewing the Project Application in accordance with applicable law, including the California Planning and Zoning Law, the City Municipal Code, and the California Permit Streamlining Act.

Again, by the express terms of the City- and County-demanded Indemnity Agreement and proposed conditions of approval 33 and 35, the primary purpose is not to protect the public; rather, it aims to shift the City's and/or County's legal and financial responsibilities for the public Drainage Facility to a private citizen, Mr. McLean. City staff admits as much in the Staff Report (p. 1), explaining that the demanded Indemnity Agreement "address[es] potential hazards to and from construction on top of the culvert" (i.e., "health and safety" concerns), "*as well as* liability and indemnity provisions" (i.e., legal/financial objectives unrelated to "health and safety.") (Emphasis added.)

If Mr. McLean were to accede to the City and County demands in this respect, the result would threaten—not promote or protect—public health and safety. As such, the demanded Indemnity Agreement is contrary to law and beyond the City's lawful "police powers." City staff and attorneys have provided no relevant and binding legal support for any other conclusion.

For example, in the Staff Report (p. 5), City staff contend, "County clearance is required for construction occurring within the County's easement. Toward that end, City staff proposes condition of approval 35, which states: "Prior to issuance of the building permit for the project, the Owner/Applicant shall obtain written authorization from the culvert easement holder(s), including the County of Santa Cruz, to construct or modify improvements within the easement area as shown in the public records."³²

In the Staff Report (p. 5), City staff continues, "In addition, measures are necessary to protect the existing culvert as a public stormwater facility, consistent with the City's stormwater pollution prevention and protection ordinance (CMC Chapter 13.16) and enforcement of laws, ordinances, and regulations relating to work done in public streets, easements and right of way (§2.04.390). Conditions 32 through 35 have been added related to mitigating load on the culvert, indemnification/hold harmless of the City, and review by Santa Cruz County/Zone 5."³³

City staff's stated findings and conclusions relating to recommended conditions 33 (requiring an unconstitutionally overbroad indemnity and waiver agreement) and 35 (requiring written consent from the Drainage Easement "holder(s)") are not supported by the evidence, the City staff-cited City Municipal Code ("CMC") sections, or any other law, regulation, or ordinance. As such, Mr. McLean continues to object to those two proposed conditions of approval as beyond the City's "police power" to impose on the Project and Mr. McLean.

³² Curiously, despite City staff's conclusion the County is the easement holder/owner, proposed condition of approval 35 contemplates Mr. McLean obtaining written consent from potentially multiple "easement holder(s), including the County of Santa Cruz." Again, this condition is not supported by the evidence or the City's own finding that the County is the sole holder/owner of the Drainage Easement. As a result, this proposed condition is also vague and ambiguous, such that it makes compliance uncertain and/or impossible. Further, this proposed condition is also potentially inapplicable, as the Project does not propose "to construct or modify improvements within the "Drainage Facility" area or the relocated underground Drainage Easement Area. Finally, this proposed condition is further flawed, as the phrase, "within the easement area as shown in the public records" is vague and ambiguous, rendering compliance uncertain.

³³ Mr. McLean does not object to proposed conditions of approval 32 and 34.

First, City staff's reliance on CMC Chapter 13.16 (cited in Staff Report, p. 5) is unpersuasive, as that chapter contains no reference to easements. Further, to the extent it applies, compliance with CMC section 13.16.050 ("Watercourse protection") subdivision A—requiring "every person owning property through which a watercourse passes" to "maintain existing privately owned structures within or adjacent to a watercourse, so that such structures will not become a hazard to the use, function, or integrity of the watercourse"—is ensured by proposed condition of compliance 32. That proposed condition relates to "health and safety" and provides:

32. Prior to issuance of the building permit, the applicant shall demonstrate, to the satisfaction of the Building Official, that the bridgeway will not place load on the existing underground storm drain facilities (culvert) structure, nor will any alterations to the existing residential structures create load on the facilities. Additionally, the applicant shall demonstrate, to the satisfaction of the Building Official, that the structure shall be reconfigured such that there will be no bearing on the culvert, consistent with the recommendation in the letter from Redwood Engineering dated February 6, 2025, a copy of which letter is included in the public record for the project approval actions. [See Staff Report, Attachment 3.]

Proposed condition 32, separate and apart from proposed conditions 33 and 35 objected to by Mr. McLean, also properly and adequately ensures compliance with CMC section 13.16.090(A)(1), requiring "new development and redevelopment projects" to "comply with the post-construction requirements (PCRs) and the city design standards." As such, Mr. McLean does not object to condition 32, as it is rationally related to "health and safety."

Second, City staff's reliance on CMC section 2.04.390 ("Director – Powers and duties") is equally unpersuasive. That section, cited in the Staff Report (p. 5), obligates the City Public Works Director "to act to secure and preserve the physical properties of the city" (emphases added), including by enforcing laws, ordinances, and regulations relating to work done in the City's easements. Again, as confirmed by City staff in the Staff Report and by numerous other documents in the administrative record (including exhibits attached to this letter), the Drainage Easement is a County easement (not a City easement), and the County/District (not the City) is responsible for the Drainage Facility under the Property. As such, section 2.04.390 is inapplicable here. Implicitly recognizing this, City staff's proposed condition of approval 15 relates only to work in the City's right of way.

Despite numerous requests, including, most recently, during a meeting with a City attorney and City staff on September 23, 2025, and the follow-up letter to them on September 24, 2025 (see Staff Report, Attachment 4), City staff and counsel provide zero legal or evidentiary support for City staff's contentions, including, "County clearance is required for construction occurring within the County's easement." (Emphasis added.) See email from City attorney, Leila Moshref-Danesh, September 29, 2025, a copy of which is attached and incorporated here as Exhibit 87. For argument's sake, to the extent such "clearance is required," it would be required by the County, not the City, and the City has no legal authority to impose any such requirement as a condition of approval of the Project.

In sum, proposed condition 32, in and of itself, sufficiently addresses any “health and safety” concerns relating to the Project. By contrast, proposed conditions 33 and 35 do nothing to advance “health and safety” because those conditions relate only to legal and financial interests. To date, City staff and attorneys have offered no legal authority or substantial evidence as required to support City staff’s findings and conclusions that proposed conditions of approval 33 and 35 relate to “health and safety” and are within the City’s legal authority to impose.

2. The City’s Permit Application handling and demands violate the Permit Streamlining Act

In the Staff Report (p. 2), City staff self-servingly contends, “*in keeping with its obligations under the Permit Streamlining Act*, the city notified the applicant that the application could proceed, but any approval would be subject to conditions of approval requiring they obtain consent from the easement holders and indemnification of the city prior to obtaining a building permit to construct within the easement area.” (Empasis added.)

To the contrary, a review of the facts and law confirms City staff’s repeated violations of the Permit Streamlining Act (Gov. Code § 65920, et seq.) (“PSA”) in the Permit Application process. For example, the City’s tardy “completeness” determinations and prior refusal to deem the Project Application “complete” unless and until Mr. McLean signs the demanded Indemnity Agreement violated the PSA.

As explained in PSA section 65921, “The Legislature finds and declares that there is a statewide need to ensure clear understanding of the specific requirements which must be met in connection with the approval of development projects and to expedite decisions on such projects. Consequently, the provisions of [the PSA] shall be applicable to all public agencies...” Toward that end, the PSA requires each public agency to “compile one or more lists that shall specify in detail the information that will be required from any applicant for a development project. ... Copies of the information... shall be made available to all applicants for development projects...” (PSA § 65940(a)(1).) Also, the required information “shall also indicate the criteria which the agency will apply in order to determine the completeness of any application submitted to it for a development project.” (PSA § 65941(a).)

Here, the City’s list of required development permit application information, applicable to the Project Application, is contained on the City’s Master Application form, a copy of which is attached and incorporated here as Exhibit 85. Tellingly, and consistent with the City’s lack of lawful “police power” with respect to third party easements, the Master Application contains no mention of easements or any easement-related application requirements.

Nonetheless, in the City’s “incomplete” letter, dated August 1, 2024, the City confirmed that the Project Application was “incomplete” and, due to the Drainage Easement, would not be further processed unless and until Mr. McLean signed the City- and County-demanded Indemnity Agreement. By that “incomplete” determination and demand, the City violated the PSA, including section 65943(a), which provides, in relevant part: “If the application is

determined to be incomplete, the lead agency shall provide the applicant with an exhaustive list of items that were not complete. That list shall be limited to those items actually required on the lead agency's submittal requirement checklist. In any subsequent review of the application determined to be incomplete, the local agency shall not request the applicant to provide any new information that was not stated in the initial list of items that were not complete."

Making matters worse, the City also demanded that Mr. McLean pay the City's attorney's fees incurred in drafting the unauthorized demanded Indemnity Agreement. For example, in the City's "incomplete" letter, dated August 1, 2024, the City indicated, "Any additional legal costs by City review are at the expense of the applicant, made in advance as a deposit." And, a week later, on August 8, 2024, via email to Mr. McLean, the City's Community Development Director, Katie Herlihy, stated: "the City Attorney's office will review the indemnity agreement upon receipt of revisions from your attorney, which we expect to be soon. Please also keep in mind that, after the City Attorney reviews, the County must also review. The City obviously cannot account for the County's timing but, as we have done thus far, we will forward our revisions timely, and follow up with them to obtain their revisions. Please provide a \$5,000 deposit to cover attorney costs moving forward." A copy of Ms. Herlihy's email is attached and incorporated here as Exhibit 86.

Those demands constitute violations of PSA section 65943(e), which provides, in relevant part: "A public agency may charge applicants a fee not to exceed the amount reasonably necessary to provide the service required by this section." Of course, as the City had no legal authority under the PSA to compel the demanded Indemnity Agreement as a condition of Permit Application completeness or otherwise, the City similarly lacked legal authority to demand Mr. McLean pay additional fees related to the City's other unauthorized, unconstitutional demands.

D. The City's and County's conduct, including their demanded Indemnity Agreement, violate the "takings" clauses of the U.S. and California constitutions

The City's and County's lawful "police power" to regulate the use of land is further limited by the Fifth Amendment of the U.S. Constitution, and by the California Constitution (Art. I, § 19). Thus, if a land use regulation becomes so unduly restrictive that it causes a "taking" of a landowner's property for public use, just compensation must be paid to the property owner. As relevant here, federal courts recognize three types of land use regulations that can result in regulatory takings: (1) permanent physical invasions, (2) regulations that go "too far," and (3) land use exactions. These types of regulatory takings "share a common touchstone;" namely, "regulatory actions that are functionally equivalent to the classic taking in which government directly appropriates private property or ousts the owner from his domain." (*Lingle v. Chevron U.S.A., Inc.* (2005) 544 U.S. 528, 539.) That "common touchstone" exists here.

1. The Drainage Facility may constitute a "physical taking" without "just compensation"

As explained above, if, as the County contends, the Drainage Facility is not within the Drainage Easement Area (i.e., if the Drainage Easement Area as described in the 1922 Easement

Deed) and/or was not (by agreement or acquiescence) relocated underground to its current location prior to 1934, then the Drainage Facility constitutes a physical occupation (i.e., a *per se* “taking”) of Mr. McLean’s Property for public use (i.e., a public drainage facility) without “just compensation.” And, accordingly, the County has no Drainage Easement rights upon which to insist on any Drainage Easement-related conditions imposed on the Project or Mr. McLean.

2. By the demanded Indemnity Agreement, the City’s and County’s land use “regulation” of the Project Application goes “too far”

The United States Supreme Court and the California Supreme Court recognize government regulation of land use may go “too far” in placing what should be a public burden on private shoulders. (*Penn Central Transportation Co. v. City of New York* (1978) 438 U.S. 104; *Kavanau v. Santa Monica Rent Control Bd.* (1997) 16 Cal.4th 761, 775.) That is precisely what the City and County are attempting here in requiring Mr. McLean, as a condition of approval of the Project, to sign the demanded Indemnity Agreement and/or accept proposed condition of approval 33, which would place the public burden of maintaining the public Drainage Facility on the private shoulders of Mr. McLean. Such demands constitute land use regulation that goes “too far,” in violation of the “takings” clause.

3. The demanded Indemnity Agreement is a land use exaction violating long-standing constitutional principles of “essential nexus” and “rough proportionality”

A proposed development project, such as that proposed by the Project Application, might result in costs and burdens on the public that the government may offset by certain “exactions,” such as by a project developer’s payment of money or dedication of land. The U.S. Supreme Court and the California Supreme Court have long held that regulation of land use must be rationally related to the societal costs of an applicant’s proposed development project. For example, where a proposed development project would increase traffic congestion, a city or county may condition the project permit approval on the project developer paying traffic fees or dedicating land to widen a public road to offset the burdens caused by the project.

The third relevant, recognized regulatory “taking” claim arises where the government requires an exaction, as a condition to issuing a discretionary permit, that does not meet the requirements established by the U.S. Supreme Court and the California Supreme Court, including in *Nollan v. California Coastal Commission* (1987) 483 U.S. 825, 834; *Dolan v. City of Tigard* (1994) 512 U.S. 374, 385; *Ehrlich v. City of Culver City* (1996) 12 Cal.4th 854, 865; *Landgate, Inc. v. Cal. Coastal Comm.* (1998) 17 Cal.4th 1006, 1017; *Koontz v. St. Johns River Water Mgmt. Dist.* (2013) 570 U.S. 595, 612 [expanded the applicability of those requirements to land use permit denials and to monetary/financially-related exactions]; *Sheetz v. County of El Dorado, California* (2024) 601 U.S. 267. (See also, Fifth Amendment to the U.S. Constitution, and California Constitution, Art. X, § 7.)

Under *Nollan* and *Dolan*, such exactions, to be valid, must have an “essential nexus” and “rough proportionality” to the adverse public impacts caused by (not to) the Project. Using the example above to illustrate, where a proposed development project would increase traffic congestion, an exaction requiring a project developer to dedicate land for a public amusement park would not satisfy *Nollan*’s “essential nexus” test because an amusement park is generally unrelated to, and would not serve to offset, the project-caused increase in traffic congestion. Next, an exaction requiring the project developer to dedicate land sufficient to expand an existing two-lane road into a six-lane highway to offset a 5% increase in traffic congestion caused by the project would not satisfy the *Dolan*-required “rough proportionality” test because the exaction goes far beyond, and is not proportionate to, merely offsetting the 5% increase in traffic congestion caused by the project.

Here, the standard form indemnity agreement contained in the Project Application (i.e., the Master Application), which Mr. McLean long ago signed, is consistent with the principles set forth in *Nollan* and *Dolan* because that agreement is limited to imposing obligations on Mr. McLean relating to any potential “health and safety” impacts caused by the Project. In stark contrast, the demanded Indemnity Agreement and proposed condition of approval 35 fail the two-part *Nollan-Dolan* test because they would require Mr. McLean to also, among other things, forever assume responsibility for damage to the Project and other property caused by the public Drainage Facility.

Importantly, where, as here, the proposed exaction is administrative or “ad hoc” (i.e., not imposed pursuant to a particular legislatively established requirement), the local agency (e.g., the City and County) has the burden of proving the sufficient “nexus” and “rough proportionality” of the exaction. Here, for the reasons explained above, the City and County cannot meet their burden as to the Indemnity Agreement. Indeed, the demanded Indemnity Agreement is squarely coercive, extortionate, and is repugnant to the well-established constitutional principles set forth above and the “unconstitutional conditions doctrine.” As the U.S. Supreme Court explained:

“[T]he unconstitutional conditions doctrine... vindicates the Constitution’s enumerated rights by preventing the government from coercing people into giving them up, and *Nollan* and *Dolan* represent a special application of this doctrine that protects the Fifth Amendment right to just compensation for property the government takes when owners apply for land-use permits. The standard set out in *Nollan* and *Dolan* reflects the danger of governmental coercion in this context while accommodating the government’s legitimate need to offset the public costs of development through land use exactions. [Citations.]

“Our decisions in those cases reflect two realities of the permitting process. The first is that land-use permit applicants are especially vulnerable to the type of coercion that the unconstitutional conditions doctrine prohibits because the government often has broad discretion to deny a permit that is worth far more than property it would like to take. By conditioning a building permit on the owner’s deeding over a public right-of-way, for example, the government can pressure an owner into voluntarily giving up property for which the Fifth Amendment would otherwise require just compensation. [Citations.] So long as the building permit is more valuable than any just compensation the owner could hope to receive

for the right-of-way, the owner is likely to accede to the government's demand, no matter how unreasonable. Extortionate demands of this sort frustrate the Fifth Amendment right to just compensation, and the unconstitutional conditions doctrine prohibits them. ...

"A predicate for any unconstitutional conditions claim is that the government could not have constitutionally ordered the person asserting the claim to do what it attempted to pressure that person into doing." (*Koontz v. St. Johns River Water Mgmt. Dist.* (2013) 570 U.S. 595, 604.)

VI. CONCLUSION

As noted in former City Councilman Beltran's 1984 letter, "for 62 years [i.e., 1922-1984] there has been not a squeak of objection or comment from the County regarding the building of permanent structures over the easement, and now this. . ." The precedent of allowing development and use of residential parcels lying atop the drainage facility, was affirmed by the City and County in 1984, consistent with California easement law. Fast forward: For more than a century, other than briefly in 1984, "there has been not a squeak of objection or comment from the County regarding the building of permanent structures over the easement, and now this. . ."

To summarize, the City's and County's unreasonable, overbroad, coercive, and extortionate Indemnity Agreement demand—designed to place public burdens on the private shoulders of Mr. McLean—jeopardizes public health and safety, is arbitrary, capricious, and wholly untethered from the facts and applicable laws. Neither budgetary constraints nor "disincentives" to fulfilling public responsibilities with respect to public drainage facilities within the City and/or County justify or compel any other conclusion.

Based on the foregoing, Mr. McLean respectfully requests and urges the Planning Commission to approve the amended Project and reject proposed conditions of approval 33 and 35. Conversely, if the City—perhaps in reliance upon bad legal advice—insists on conditioning Project approval upon Mr. McLean signing an agreement to assume responsibility for the Drainage Facility—which responsibility, as a matter of settled law, lies with the County—Mr. McLean will pursue his rights and claims against the City, County, and/or District to the full extent of the law, including his right to recover attorneys' fees incurred in pursuit of important rights affecting the public interest in the face of unjustified government actions, in accordance with California and federal laws. Mr. McLean sincerely hopes such action—especially against the City he grew to love and calls "home"—will not be necessary.

Very truly yours,

FENTON & KELLER
A Professional Corporation



Derric G. Oliver

Enclosures

City of Capitola Planning Commission
September 30, 2025
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Cc: City of Capitola

City Council, citycouncil@ci.capitola.ca.us

Jamie Goldstein, City Manager, jgoldstein@ci.capitola.ca.us

Katie Herlihy, Community Development Director, kherlihy@ci.capitola.ca.us

Samantha W. Zutler, Esq., City Attorney, szutler@bwslaw.com

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County of Santa Cruz

Board of Supervisors (and District board), boardofsupervisors@santacruzcountyca.gov

Matt Machado, Chief Administrative Officer, Community Development and

Infrastructure Director, matt.machado@santacruzcountyca.gov

Jason Heath, County Counsel, countycounsel@santacruzcountyca.gov

Justin Graham, Asst. County Counsel, justin.graham@santacruzcountyca.gov

EXHIBIT 1

From: Herlihy, Katie (kherlihy@ci.capitola.ca.us) <kherlihy@ci.capitola.ca.us>
Sent: Monday, November 04, 2024 3:03 PM PST
To: Justin.Graham@santacruzcountyca.gov <Justin.Graham@santacruzcountyca.gov>; Matt Machado <Matt.Machado@santacruzcountyca.gov>
CC: Samantha Zutler <SZutler@bwsllaw.com>; Moshref-Danesh, Leila J. <LMoshref@bwsllaw.com>
Subject: FW: Application No. 23-0400 (427 Riverview)

Hi Matt and Justin,

I wanted to bring you up to date on 427 Riverview. The applicant requested a denial letter related to being incomplete. As stated in my email below, we are going to proceed with the application and include a condition of approval that they obtain consent from the easement holder(s) to construct the project and that they enter into an indemnification agreement with the City, prior to obtaining a building permit to construct within the easement. We appreciate your willingness to work with us through the initial efforts. I will continue to keep you in the loop as this application moves forward. Feel free to reach out with any questions.

Regards,
Katie

From: Herlihy, Katie (kherlihy@ci.capitola.ca.us)
Sent: Monday, November 4, 2024 2:55 PM
To: Joe McLean [REDACTED]; Sesanto, Sean <ssesanto@ci.capitola.ca.us>
Cc: Rae Spencer <rspencer@dibenedetto.law>; Anna DiBenedetto <anna@dibenedetto.law>; T Thatcher <[REDACTED]>
Subject: RE: Application No. 23-0400 (427 Riverview)

Dear Mr. and Mrs. McLean,

We have reviewed the information provided and have determined that your application for a Design Review and Conditional Use Permit is complete. Please be advised that staff will be recommending that your project be subject to conditions of approval requiring you to obtain consent from the easement holder(s) to construct your project, and that you enter into an indemnification agreement with the City, both prior to obtaining a building permit to construct within the easement.

Regards,

Katie Herlihy, AICP
Community Development Director - City of Capitola
420 Capitola Avenue, Capitola, CA 95010
831.475.7300 ext. 216



From: Joe McLean [REDACTED]
Sent: Friday, October 25, 2024 12:48 PM
To: Herlihy, Katie (kherlihy@ci.capitola.ca.us) <kherlihy@ci.capitola.ca.us>; Sesanto, Sean <ssesanto@ci.capitola.ca.us>
Cc: Rae Spencer <rspencer@dibenedetto.law>; Anna DiBenedetto <anna@dibenedetto.law>; T Thatcher <[REDACTED]>
Subject: Application No. 23-0400 (427 Riverview)

Dear Katie and Sean,

After spending considerable time and money on back-and-forth negotiations regarding the Indemnity Agreement, we have decided that we are not comfortable (nor legally obligated) to give the City any more indemnity than what it already has pursuant to the language in the Application – see below.

“In submitting this Application, I agree to defend, indemnify, and hold harmless the City of Capitola, its officers, employees, and agents, from and against any claim, including attorney’s fees and Litigation costs, arising out of or in any way related to the City of Capitola’s processing, consideration, or approval of this application.”

We cannot sign something that releases the City and County from its liability for a public culvert that has clearly not been repaired or maintained for some time. We also never understood why we would have to indemnify the County for a public easement for which it claims no responsibility and has nothing to do with approval of our project being built within the City of Capitola. We understand that refusing to sign the agreement means the City will not further process our application, therefore deeming it incomplete again. We take that to mean our application is denied. Assuming that to be the case, please let us know immediately so that we can start the

administrative appeal process.

Thank you.

Joe McLean

EXHIBIT 2

From: Anna DiBenedetto <anna@dibenedetto.law>
Sent: Thursday, December 12, 2024 4:39 PM PST
To: Samantha W. Zutler (Work) <SZutler@bwslaw.com>
CC: Rae Spencer <rspencer@dibenedetto.law>; Herlihy, Katie(kherlihy@ci.capitola.ca.us) <kherlihy@ci.capitola.ca.us>
Subject: [PDF] 427 Riverview, Capitola - Conditions of Approval
Attachment(s): "Exh B - Subdivision Map.pdf", "419 Box Culvert.pdf", "427 Riverview MAster Application.pdf"

Dear Sam,

Following up on our recent discussions, while the City has eliminated the easement indemnification requirement from an application completeness determination, it remains a condition of approval per Katie Herlihy's following comments made in a recent email to the Applicant:

We have reviewed the information provided and have determined that your application for a Design Review and Conditional Use Permit is complete. Please be advised that staff will be recommending that your project be subject to conditions of approval requiring you to obtain consent from the easement holder(s) to construct your project, and that you enter into an indemnification agreement with the City, both prior to obtaining a building permit to construct within the easement.

Here's why both conditions seem unnecessary/inappropriate:

1. County consent is not required. Consent from the County, i.e., the easement holder, should not be required. It's black letter easement law that the County possesses only those rights established by creation of the subsurface drainage easement and that all other rights and uses of this private property remain with the owner of the servient tenement, i.e., Joseph McLean. While the parties seemingly contemplated in 1922 when the easement was created that it would be an open engineered channel (based on its identification as a "ditch, canal or flume"), not subsurface, it was obviously never built as such. Nor does it seem that it was really contemplated to be built as a surface culvert, given how many parcels it ran through per the April 1922 subdivision map (attached). Instead, it was obviously constructed underground before the existing home was built in 1936 and presumably before all other developments/improvements under which the culvert runs were built, i.e, other homes, buildings, Riverside Drive, Capitola Avenue, Capitola City Hall, etc. The general rules that apply to the use of easements in general apply to subsurface easements and the subsurface easement holder can only use the subsurface easement for purposes consistent with the enjoyment of the surface use by the owner of the servient tenement. The subject subsurface drainage facility has presumably existed for almost 100 years under this residential parcel and to require the County's consent to remodel the existing home is not reasonable because we both know that the County will not consent unless the Applicant waives all of his rights of recourse should the drainage facility cause damage to his property. Lastly, per the attached July 11, 2017 Fuse Architects letter and my conversations with Dan Gomez from Fuse, no County consent was required for development of the property located at 419 Capitola Avenue, under which the same drainage facility runs. Undoubtedly, if the Applicant were to request records pertaining to development of all other parcels in the City under which the drainage facility runs, we'd likely find that none of these developers over the years were required to obtain the County's consent before building over the County's drainage facility.

While the rights and duties between the owner of an easement and owner of the servient tenement are correlative, each is required to respect the right of the other and neither party can conduct activities or place obstructions on the property that unreasonably interfere with the other party's use of the property. The applicant's current desire to remodel an older existing permitted home is certainly not an unreasonable use of this residential property nor is the desire/need to improve the existing residential structures an unreasonable interference with the County's subsurface drainage facility or limited rights as an easement holder. Thus, the City should not require the consent of the County as a condition of approval of the subject application. [See *Miller & Starr*, 6 Cal. Real Est, Chapter 15 for the legal authority governing the parties' respective rights with respects to easements in general and subsurface easements.]

2. The City and Applicant already have an indemnification agreement in place protecting the City. The subject application, attached, already provides that the Applicant agrees **to defend, indemnify, and hold harmless the City of Capitola, its officers, employees, and agents, from and against any claim, including attorney's fees and litigation costs, arising out of or in any way related to**

the City of Capitola's processing, consideration, or approval of this Application. Thus, the Applicant has already entered into an indemnification agreement with the City. In addition, as discussed above with respect to the requirement that the County consent to the remodel, undoubtedly, the City has not required that any other developer offer any more indemnity than the City already has per the above language that is part of every development permit application.

Please let us know as soon as possible how the City intends to proceed, as I don't believe that the Applicant will accept the above conditions to approval of his application. Thank you.

Best,

Anna DiBenedetto, Esq.
DiBENEDETTO LAW GROUP, PC
1101 Pacific Avenue, Suite 200
Santa Cruz, CA 95060
Office Tel. (831) 253-0499, Ext. 101
Direct Tel. (831) 253-0503
Fax (831) 253-0502
anna@dibenedetto.law

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DATE: July 11, 2017

PROJECT: 419 Capitola Avenue

RE: Drainage Box Culvert

To Whom It May Concern:

This letter is in regards to the existing concrete box culvert that runs under a portion of the back corner of the property at 419 Capitola Ave. We were asked by the City of Capitola Building Department and Public Works to locate the depth of the box culvert. The depth of the top of the box culvert was determined to be at approx.. 4'-6" below the top of grade. The soils engineer determined that the building pad be over-excavated and re-compacted to a depth of 3' below grade. The location of the box culvert was deemed acceptable for the new structure by the structural engineer, Redwood Engineering.

During the process of re-compaction we discussed and advised our grading contractor to take the box culvert into consideration along with oversight by Rocksolid Engineering (Geotechnical engineer). The grading contractor static rolled the areas above and adjacent to the concrete box culvert. After completion of the compaction we were notified that we would need to fix repairs caused by the compaction, if any. We will pay for repairs that were caused during the duration of compaction associated with our site, if any. We are aware that we will not be responsible to pay for or cover the expenses related to damage that was pre-existing.

Sincerely,



Daniel Gomez



Daniel Townsend

EXHIBIT 3

From: Moshref-Danesh, Leila J. <LMoshref@bwsllaw.com>
Sent: Thursday, December 19, 2024 1:17 PM PST
To: Anna DiBenedetto <anna@dibenedetto.law>
CC: Zutler, Samantha W. <SZutler@bwsllaw.com>; Goldstein, Jamie(jgoldstein@ci.capitola.ca.us) <jgoldstein@ci.capitola.ca.us>; Herlihy, Katie (kherlihy@ci.capitola.ca.us) <kherlihy@ci.capitola.ca.us>; Rae Spencer <rspencer@dibenedetto.law>
Subject: RE: 427 Riverview, Capitola - Conditions of Approval

Hi Anna,

Thank you for meeting with us yesterday to go over your concerns with the 427 Riverview proposed Design Review conditions of approval. We understand your points and concerns to be as follows:

1. You do not believe the City needs to require a condition of approval for your clients to obtain permission from the County of Santa Cruz to construct improvements on top of the County's easement/existing culvert.
2. You believe that the indemnification language in the application is sufficient to address the City's exposure in case your client's project damages the culvert, or is damaged by the culvert's collapse.

During our meeting, we addressed your points as follows:

1. The Design Review permit requires the City to make certain findings, including related to public health, safety and existing improvements.
2. Construction/improvements on top of the culvert is a potential hazard not just to the culvert, but to the project -- requiring at minimum that your client agree to indemnify/hold the City harmless and waive the ability to sue for damages to the project.
3. The current indemnification language in the application covers challenges to the City's issuance of the permits but additional indemnification/hold harmless language is needed to address the issues in No. 2.
4. At this time, we will continue to recommend the City require the conditions of approval requiring County permission and indemnification/waiver of damages for the City.

Please let us know if we have missed any points and we hope that this will help your clients in determining their next steps.

Leila J. Moshref-Danesh | Senior Associate
she, her, hers

Burke, Williams & Sorensen, LLP
1770 Iowa Avenue, Suite 240, Riverside, CA 92507
D 951.801.6626 | O 951.788.0100 | F 951.788.5785
lmoshref@bwsllaw.com | [vCard](#) | [Bio](#) | [LinkedIn](#) | bwsllaw.com

photo

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From: Anna DiBenedetto <anna@dibenedetto.law>
Sent: Wednesday, December 18, 2024 2:32 PM
To: Zutler, Samantha W. <SZutler@bwsllaw.com>; Moshref-Danesh, Leila J. <LMoshref@bwsllaw.com>
Subject: RE: 427 Riverview, Capitola - Conditions of Approval

EXTERNAL

Please call me on (831) 253-0503

Anna DiBenedetto, Esq.
DiBENEDETTO LAW GROUP, PC
1101 Pacific Avenue, Suite 200
Santa Cruz, CA 95060
Office Tel. (831) 253-0499, Ext. 101
Direct Tel. (831) 253-0503
Fax (831) 253-0502
anna@dibenedetto.law

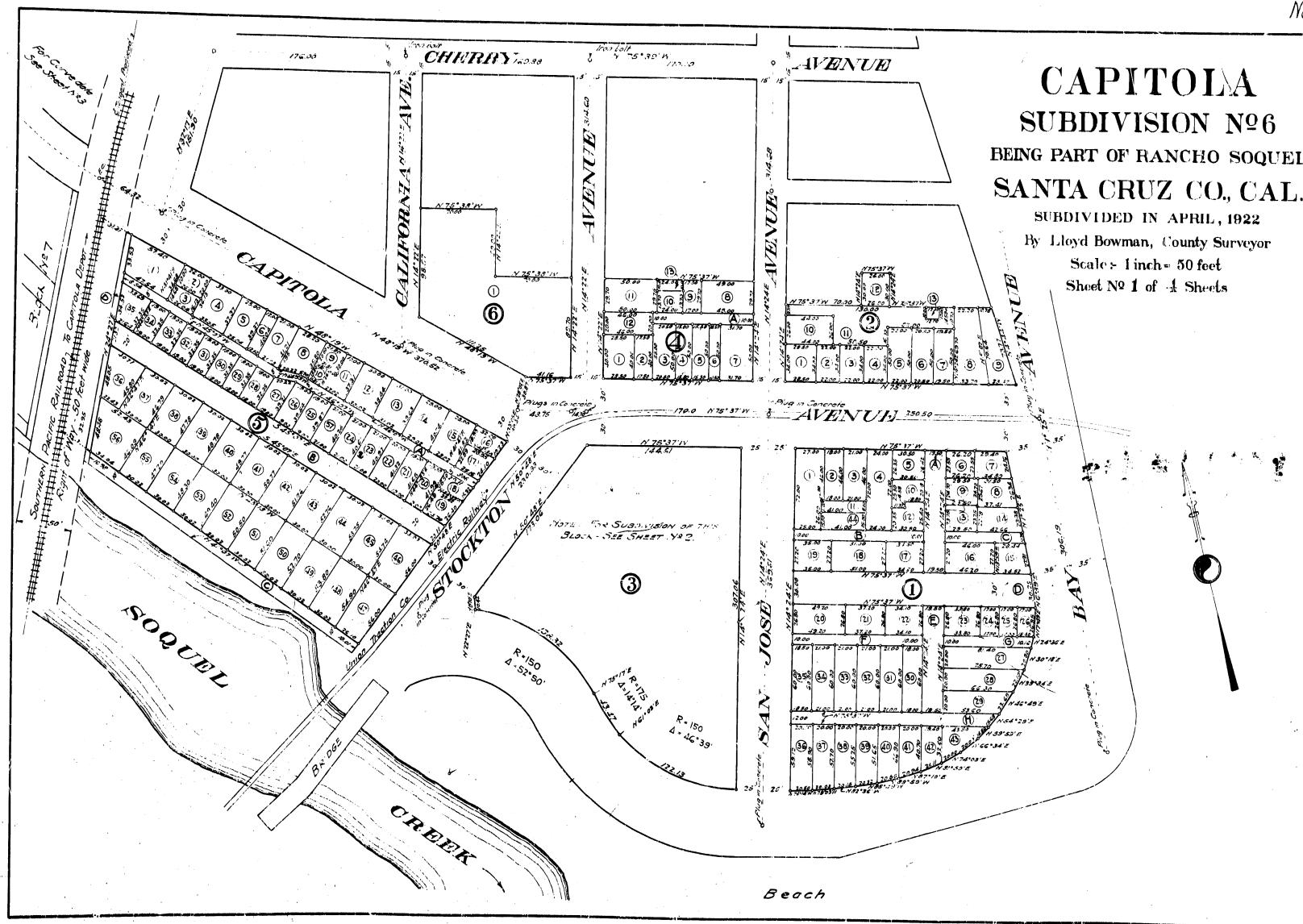
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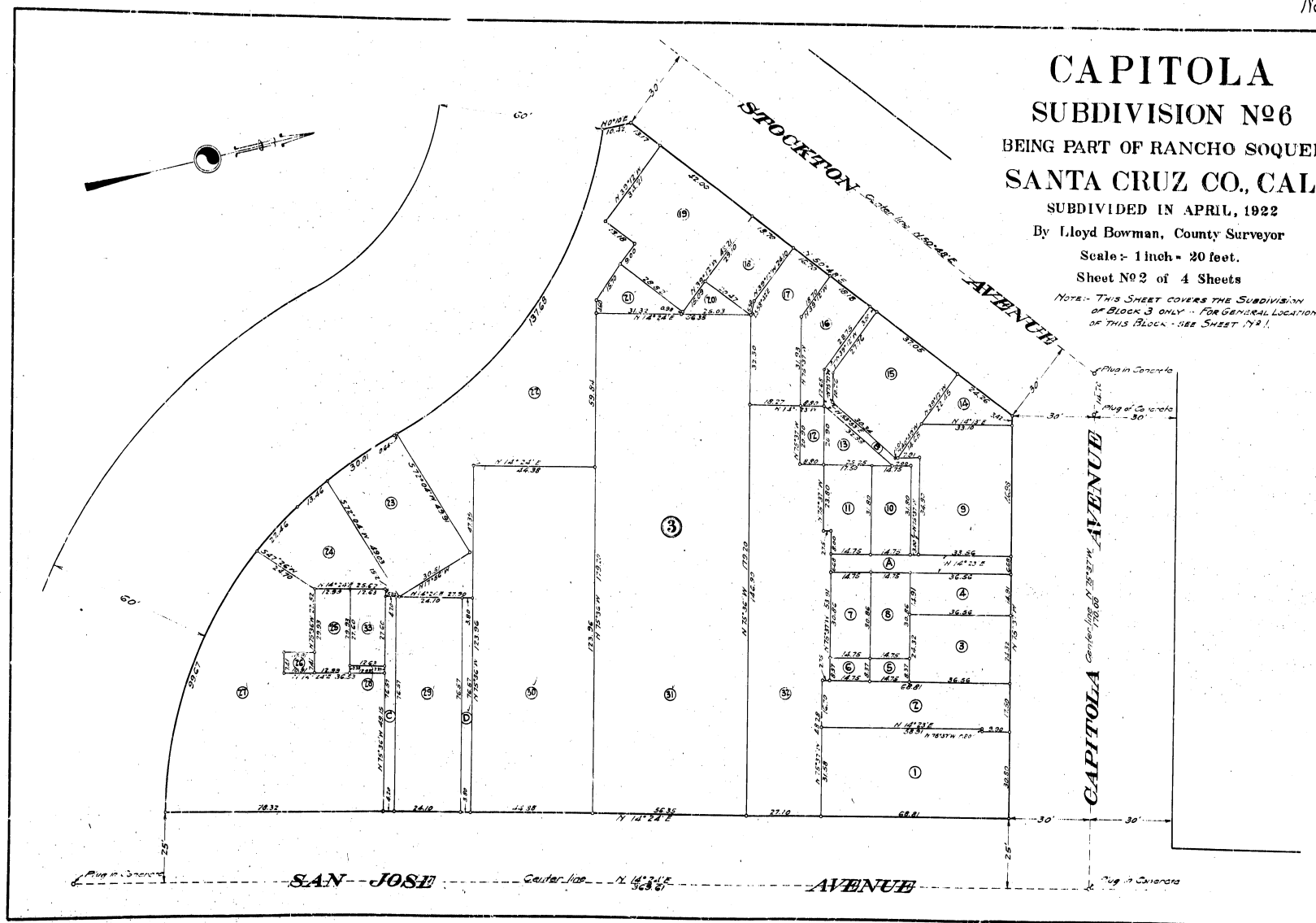
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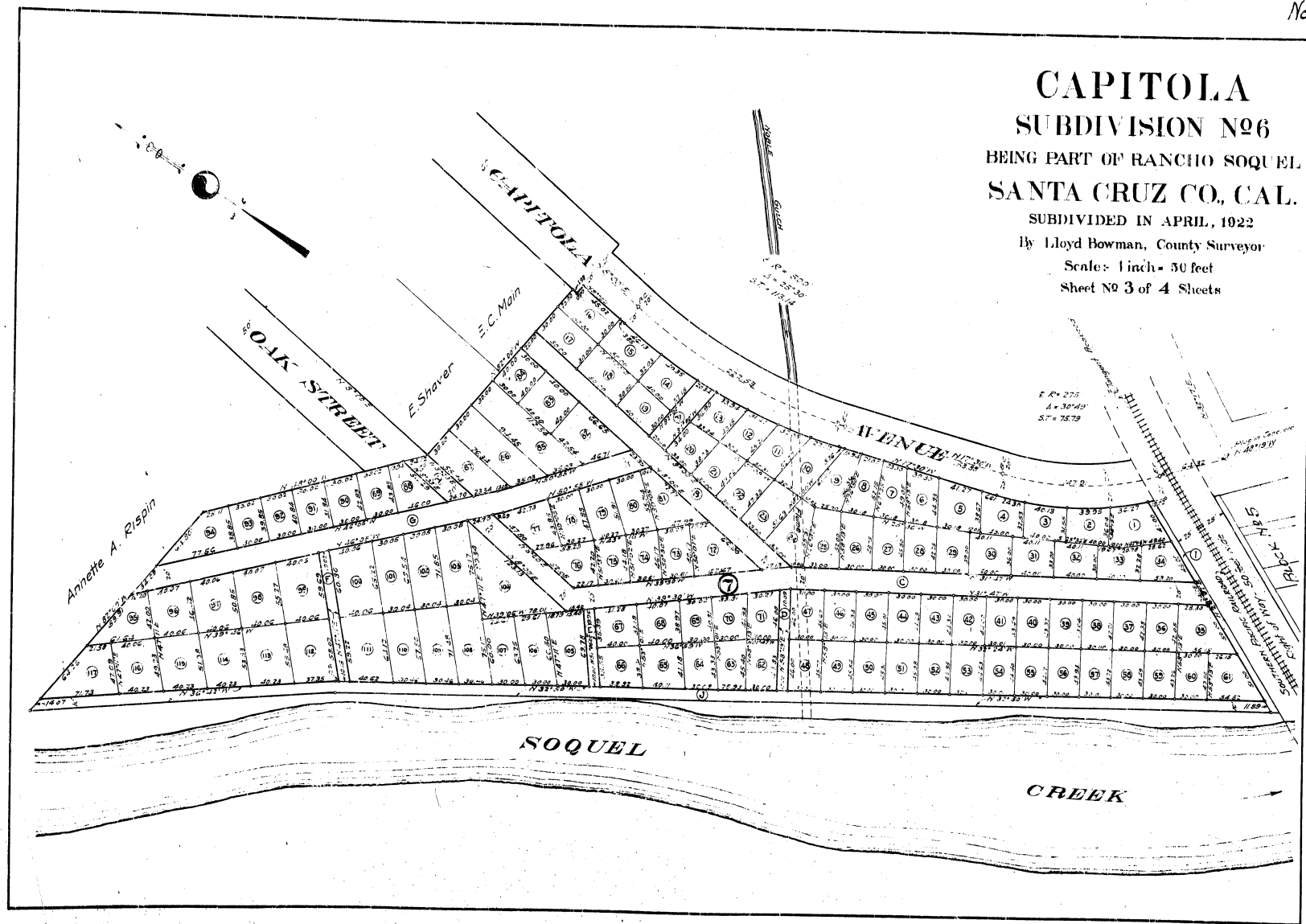
From: Zutler, Samantha W. <SZutler@bwsllaw.com>
Sent: Wednesday, December 18, 2024 2:30 PM
To: Anna DiBenedetto <anna@dibenedetto.law>; Moshref-Danesh, Leila J. <LMoshref@bwsllaw.com>

CAP-CAMPBELL_001728

EXHIBIT 4







The undersigned, Boy Hood Land Co., a corporation, owner of the land embraced within the map entitled, "CAPITOLA SUBDIVISION No. 6", and numbered respectively, Sheets Nos. 1 to 4, both inclusive, this certificate being on Sheet No. 4, hereby consents to the making of this map and the filing thereof, and does not dedicate any of the streets thereon except that part of Capitola Avenue, lying Northwest of the Northernly line of the Right of Way of the Southern Pacific Company, said above described portion of Capitola Avenue being deeded and accepted as a County Road.

IN WITNESS WHEREOF, said corporation has caused its corporation name and seal to be hereunto affixed by the hand of its President and Secretary, hereunto duly authorized.

Boy Hood Land Co.
By H. Allen Duggin
President.
ATTEST: J. H. Miller
Secretary.

I, WALTER H. LINFORTH, sole surviving trustee of that certain trust of which KATHERINE O. HENDERSON is beneficiary, executed the 31st day of July, 1919, recorded in Volume 10, Page 360 and Volume 12, Page 7, of Trust Deeds in the office of the County Recorder of Santa Cruz County, do hereby consent to the making of this map and the filing thereof.

IN WITNESS WHEREOF, I have hereunto set my hand this 24th day of May, A. D. 1922.

State of California,
County of San Mateo.

On this 29th day of April in the year one thousand nine hundred and twenty-two, before me, a Notary Public, in and for said County of San Mateo, personally appeared WALTER H. LINFORTH, known to me to be the person whose name subscribed to the within instrument, and he acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official Seal at my office in the City of San Mateo, California, the day and year in this certificate first above written.

J. H. Miller
Notary Public in and for said County of San Mateo, State of California.

This is to certify that the map hereto attached was this day presented to the Board of Supervisors of Santa Cruz County and that they approve said map; that they do not accept any streets or alleys as shown on said map as Public Highways, except that part of Capitola Avenue lying Northwest of the Northernly line of the Right of Way of the Southern Pacific Company, which said portion of Capitola Avenue has been deeded and accepted as a County road.

The 11th day of May, A. D. 1922.

THE BOARD OF SUPERVISORS OF SANTA CRUZ COUNTY, CALIFORNIA.

By H. Allen Duggin Chairman.
ATTEST: J. H. Miller Clerk.
by J. H. Miller Deputy Clerk

State of California,
County of Santa Cruz

On this 29th day of April in the year of our Lord One Thousand Nine Hundred and Twenty-two, before me, a Notary Public in and for the County of Santa Cruz, State of California, personally appeared J. H. Miller and J. H. Miller, known to me to be the President and Secretary, respectively, of the corporation that executed the within instrument, and known to me to be the persons who executed the within instrument on behalf of the corporation therein named, and they duly acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal, at my office in the City of Santa Cruz, County of Santa Cruz, State of California, the day and year in this certificate first above written.

J. H. Miller
Notary Public in and for the County of Santa Cruz, State of California.

I, H. E. MILLER, County Clerk of the County of Santa Cruz, and ex-officio Clerk of the Board of Supervisors, do hereby certify that the owner of the tract or other subdivision of land shown on the within map has filed with the Board of Supervisors of the County of Santa Cruz, a good and sufficient bond, in the sum of one thousand dollars, which has been duly approved by and in the amount fixed by said Board of Supervisors, which bond by its terms is made to inure to benefit of the County of Santa Cruz wherein such tract or subdivision is situated, and conditions for the payment of all taxes which are at the time of the filing of said map a lien against such tract or subdivision, and against all parts thereof which are not yet payable.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the Board of Supervisors, this 11th day of May, A. D. 1922.

J. H. Miller
County Clerk of the County of Santa Cruz, and ex-officio Clerk of the Board of Supervisors of Santa Cruz County, California.
by J. H. Miller Deputy Clerk.

This is to certify that the map heret attached was this day presented to the City Board of the City of Santa Cruz, and that they approve said map.

Santa Cruz, California, — 9th — day of May, A. D. 1922.

CITY OF SANTA CRUZ.

By Carl C. Cunningham
ATTEST: J. H. Miller
City Clerk.

I, WILLETT WARE, County Auditor of the County of Santa Cruz, State of California, do hereby certify that I have examined all the tax rolls in my office and to which I have access and relating to the within described tract of land, for the purpose of ascertaining whether there exists any liens on said tract of land for unpaid State or County taxes, except taxes not yet payable, and I do hereby certify that after a careful examination of the tax roll of Santa Cruz County, State of California, in my office and in my possession, I have been unable to find any liens on said tract or any part thereof for unpaid State or County taxes.

IN WITNESS WHEREOF, I have hereunto set my hand this 8th day of May, A. D. 1922.

Willet Ware
County Auditor.

The undersigned, THE CAPITOLA COMPANY, a corporation, owner of a portion of the land embraced within the map entitled, "CAPITOLA SUBDIVISION No. 6", and numbered respectively, Sheets Nos. 1 to 4, both inclusive, this certificate being on Sheet No. 4, hereby consents to the making of this map and the filing thereof, and does not dedicate any of the streets thereon except that part of Capitola Avenue, lying Northwest of the Northernly line of the Right of Way of the Southern Pacific Co., said above described portion of Capitola Ave. being deeded and accepted as a County Road.

IN WITNESS WHEREOF, said corporation has caused its corporation name and seal, to be hereunto affixed by the hand of its President and Secretary, hereunto duly authorized.

THE CAPITOLA COMPANY.
By H. Allen Duggin President.
ATTEST: J. H. Miller Secretary.

CAPITOLA SUBDIVISION No 6 BEING PART OF RANCHO SOQUEL SANTA CRUZ CO., CAL.

SUBDIVIDED IN APRIL, 1922

By Lloyd Bowman, County Surveyor

Scale: 1 inch = 50 feet.

Sheet No 4 of 4 Sheets

We hereby certify that we have examined a subdivision of land, shown on the map hereto attached, for residence or commercial uses, and hereby approve said subdivision.

J. H. Miller
County Auditor.
Lloyd Bowman
County Surveyor.

I hereby certify that the subdivision shown on this map was made from my survey of the ground, and that the monuments are of the nature and in the locations shown on the map.

Lloyd Bowman
Licensed Surveyor.

Filed at the request of
this 11th day of May, A. D. 1922

County Recorder.

State of California,
County of Santa Cruz

On this 2nd day of May in the year of our Lord One Thousand Nine Hundred and Twenty-two, before me, a Notary Public in and for the County of Santa Cruz, State of California, personally appeared J. H. Miller and J. H. Miller, known to me to be the President and Secretary, respectively, of the corporation that executed the within instrument on behalf of the corporation therein named, and they duly acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal, at my office in the City of Santa Cruz, County of Santa Cruz, State of California, the day and year in this certificate first above written.

J. H. Miller
Notary Public in and for the County of Santa Cruz, State of California.

Filed for record May
13th A.D. 1922
Belle Lindsay
County Recorder
By May Riggard Deputy

EXHIBIT 5

3755

That whereas a deed dated the 10th day of May, 1922, between Bay Head Land Co., a corporation organized under the laws of the State of California, to the County of Santa Cruz, conveying an easement or right of way to construct, maintain and operate, repair and re-new a drainage ditch, canal or flume over property therein described, for the purpose of conveying storm and drainage water, has been issued by the said grantor therein, and delivered to the said County of Santa Cruz.

NOW THEREFORE, Be it Resolved, that the said deed be and the same is hereby accepted, and the Clerk of this Board is directed to place the same of record with the County Recorder of the County of Santa Cruz, State of California.

Passed by the Board of Supervisors of the County of Santa Cruz, State of California, on the 17th day of May, 1922, by the following vote:

Ayes, Supervisors Lewis, Moore, Sinnott, Wyman and Rostron

Noes, Supervisors, None

Absent, Supervisors, None.

I hereby certify that the foregoing is a true and correct copy of an order passed by said Board on the 17th day of May 1922.

Attest my hand and seal of said Board this 11th day of July 1922.

(SEAL)

H. E. Miller, Clerk of said Board

By H. G. Poole Deputy Clerk.

The undersigned, BAY HEAD LAND CO., a corporation formed and existing under the laws of the State of California, for and in consideration of the sum of Five Dollars (\$5.00) United States gold coin, to it in hand paid by the County of Santa Cruz, the receipt whereof is hereby acknowledged, does by these presents grant, bargain, sell and convey unto the County of Santa Cruz, the permanent easement and right of way to construct, maintain, operate, repair and renew a drainage ditch, canal or flume, for the purpose of conveying storm and drainage water (from the most easterly boundary of the property hereinafter described to the Soquel Creek) over and across all that certain lot, piece or parcel of land situate in the County of Santa Cruz, State of California and bounded and described as follows, to-wit:

BEING a strip of land, eight (8) feet in width, four (4) feet at right angles on each side of the following described center line:

BEGINNING at a station on the Easterly boundary of Lot No. 11 in Block 7, Capitola Subdivision, No. 6 and from which the most Easterly corner of said Lot No. 11, measured Southerly along the Easterly boundary of said lot is 16.0 feet distant; thence South 53° 30' West 237.0 feet, a little more or less to the Westerly boundary of Lot No. 48; and from which the most Southerly corner of said lot bears South 32° 50' East 16.5 feet distant; thence continuing South 53° 30' West 25.0 feet, a little more or less to Soquel Creek.

TOGETHER with all necessary and convenient means of ingress and egress to and from said right of way or strip or parcel of land for the purpose of constructing, maintaining, operating, repairing and renewing the said drainage ditch, canal or flume, together with any and all fittings appurtenant thereto, or for any or all purposes hereinbefore mentioned.

TO HAVE AND TO HOLD the above granted and described premises unto the County of Santa Cruz, its successors and assigns forever.

IN WITNESS WHEREOF, BAY HEAD LAND CO., a corporation has hereunto subscribed its name and affixed its official seal by its officers thereunto duly authorized, this 10th day of May, 1922.

BAY HEAD LAND CO.

(CORPORATE SEAL)

BY H. Allen Rispin
President

BY J. E. Lannan
Secretary

STATE OF CALIFORNIA,)
(SS.
COUNTY OF SANTA CRUZ.)

On this 11th day of May, 1922, before me Arlette Hughes, a Notary Public in and for the said County and State, residing therein, duly commissioned and sworn, personally appeared H. ALLEN RISPIN, known to me to be the President of BAY HEAD LAND CO., the corporation that

executed the within instrument, known to me to be the person who executed the within instrument on behalf of the corporation therein named, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Arlette Hughes.

(SEAL)

Notary Public in and for said County
of Santa Cruz, State of California.

STATE OF CALIFORNIA,)
(SS.
COUNTY OF LOS ANGELES.)

On this 10 day of May, 1922, before me Myrtle G. Bayles, a Notary Public in and for the said County and State, residing therein, duly commissioned and sworn, personally appeared J. E. LANNAN, known to me to be the Secretary of BAY HEAD LAND CO., the corporation that executed the within instrument, known to me to be the person who executed the within instrument on behalf of the corporation therein named, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Myrtle G. Bayles

(SEAL)

Notary Public in and for said County
of Los Angeles, State of California.

Recorded at the Request of H. B. Miller July 11th A. D. 1922 at 59 min. past 9 o'clock A. M.

Belle Lindsay

COUNTY RECORDER

3757

THIS INDENTURE, Made the 15th day of June, A. D. one thousand nine hundred and twenty-two,

Between

J. B. GLANVILLE,

Of the City of Santa Cruz, County of Santa Cruz, State

of California, the party of the first part,

And

SARAH ELLEN GLANVILLE,

Wife of the said party of the first part, of the same

place, the party of the second part,

WITNESSETH:-That the said party of the first part, for and in consideration of the love and affection which the said party of the first part has and bears unto the said party of the second part, as also for the better maintenance, support, protection and livelihood of the said party of the second part, does by these presents give, grant, alien and confirm unto the said party of the second part, and to her heirs and assigns forever, all that certain lot, piece or parcel of land situate, lying and being in the City of Santa Cruz, County of Santa Cruz, State of California, and more particularly described as follows, to-wit:-

BRING a part of the tract designated "G. W. White 15.774 Acres", on Official Map "B" of the former Town, now City, of Santa Cruz, and which said part of said tract is bounded and particularly described as follows, to-wit:-

Beginning on the Northwesterly side of King Street at the most Southerly corner of the lands conveyed by T. H. Wolfe to J. S. McPheters by deed dated April 15th, 1892 and recorded in the office of the County Recorder of said County of Santa Cruz in Volume 125 of Deeds at page 24, et seq., and now or formerly belonging to the Estate of William B. Miller,

EXHIBIT 6

PUBLIC RECORDS ACT REQUESTS SUBMITTED TO CITY OF CAPITOLA

REQUEST #1



Public Records Act Request Form

This form is to be submitted to the City Clerk's office. Please email questions to jgautho@ci.capitola.ca.us.

Please Read Before Completing Form:

The City Clerk's office responds to public records requests from the public and makes every effort to accommodate the requester. You will be notified in writing within ten (10) calendar days whether your request seeks copies of disclosable public records prepared, owned, used or retained by the City, no records exist, or a 14-day extension is necessary.

Requester Information

Date of Request

2025-02-14

Name:

Kristie Campbell / Fenton & Keller

E-mail (if no email, please provide address):

kcampbell@fentonkeller.com

Phone Number:

8313731241

Address (if requested records should be mailed):

Records Requested

To enable staff to respond to your request as efficiently as possible, please include the date range for the records, the department that holds the records (if known), and/or the types of records, including any important keywords.

Please provide a description of the records requested below:

Good afternoon. This Public Records Act request seeks all public records (as defined in Gov. Code § 7920.530(a)) and writings (as defined in Gov. Code § 7920.545 and Evid. Code § 250) in the possession of the City of Capitola Community Development Department and Public Works Department relating to the portion of the flume/drainage easement located on/under the real property located at 427 Riverview Avenue in Capitola (APN 035-132-01) ("Property"), including but not limited to: (1) ownership, maintenance, and/or repair of the flume/drainage facilities/equipment on, under, and/or adjacent to the Property, and (2) flume/drainage easement-related limits on development of the Property. Please let us know if you have any questions about this request. Thank you

File Upload

If applicable, please upload any files relating to your request.

PUBLIC RECORDS ACT REQUESTS SUBMITTED TO CITY OF CAPITOLA

REQUEST #2



Public Records Act Request Form

This form is to be submitted to the City Clerk's office. Please email questions to jgautho@ci.capitola.ca.us.

Please Read Before Completing Form:

The City Clerk's office responds to public records requests from the public and makes every effort to accommodate the requester. You will be notified in writing within ten (10) calendar days whether your request seeks copies of disclosable public records prepared, owned, used or retained by the City, no records exist, or a 14-day extension is necessary.

Requester Information

Date of Request

2025-02-14

Name:

Kristie Campbell / Fenton & Keller

E-mail (if no email, please provide address):

kcampbell@fentonkeller.com

Phone Number:

8313731241

Address (if requested records should be mailed):

Records Requested

To enable staff to respond to your request as efficiently as possible, please include the date range for the records, the department that holds the records (if known), and/or the types of records, including any important keywords.

Please provide a description of the records requested below:


Good afternoon! This Public Records Act request seeks all public records (as defined in Gov. Code § 7920.530(a)) and writings (as defined in Gov. Code § 7920.545 and Evid. Code § 250) in the possession of the City of Capitola Community Development Department and Public Works Department related to development project Application 23-0400 (427 Riverview Avenue, Capitola) ("Project"), including but not limited to the current (revised) and previously proposed Project plans. Please let us know if you have any questions about this request. Thank you.

File Upload

If applicable, please upload any files relating to your request.

PUBLIC RECORDS ACT REQUESTS SUBMITTED TO CITY OF CAPITOLA

REQUEST #3

 Public Records Act Request Form This form is to be submitted to the City Clerk's office. Please email questions to jgautho@ci.capitola.ca.us .	
Please Read Before Completing Form: The City Clerk's office responds to public records requests from the public and makes every effort to accommodate the requester. You will be notified in writing within ten (10) calendar days whether your request seeks copies of disclosable public records prepared, owned, used or retained by the City, no records exist, or a 14-day extension is necessary.	
Requester Information	
Date of Request	2025-02-14
Name:	Kristie Campbell / Fenton & Keller
E-mail (if no email, please provide address):	kcampbell@fentonkeller.com
Phone Number:	8313731241
Address (if requested records should be mailed):	
Records Requested To enable staff to respond to your request as efficiently as possible, please include the date range for the records, the department that holds the records (if known), and/or the types of records, including any important keywords.	
Please provide a description of the records requested below: Good afternoon. This Public Records Act request seeks all public records (as defined in Gov. Code § 7920.530(a)) and writings (as defined in Gov. Code § 7920.545 and Evid. Code § 250) in the possession of the City of Capitola Community Development Department and Public Works Department, from January 1, 2020 to current, for all permits (whether open, closed, voided, approved, denied, etc.), including, but not limited to, conditions of approval (proposed or accepted) regarding indemnity relating to the flume/drainage easement located on/under each of the following four properties: (1) 402 Blue Gum Avenue #A (APN 035-131-20); (2) 404 Blue Gum Avenue #4 (APN 035-131-21); (3) 419 Capitola Avenue (APN 035-131-26); and (4) 421 Capitola Avenue (APN 035-131-27). Please let us know if you have any questions about this request. Thank you.	
File Upload	If applicable, please upload any files relating to your request.

**PUBLIC RECORDS ACT REQUESTS
SUBMITTED TO CITY OF CAPITOLA**

REQUEST #4 (PRR #25-108)



Public Records Act Request Form

This form is to be submitted to the City Clerk's office. Please email questions to cityclerk@ci.capitola.ca.us.

Please Read Before Completing Form:

The City Clerk's office responds to public records requests from the public and makes every effort to accommodate the requester. You will be notified in writing within ten (10) calendar days whether your request seeks copies of disclosable public records prepared, owned, used or retained by the City, no records exist, or a 14-day extension is necessary.

Requester Information

Date of Request

2025-06-26

Name:

Kristie Campbell / Fenton & Keller

E-mail (if no email, please provide address):

kcampbell@fentonkeller.com

Phone Number:

8313731241

Address (if requested records should be mailed):

Records Requested

To enable staff to respond to your request as efficiently as possible, please include the date range for the records, the department that holds the records (if known), and/or the types of records, including any important keywords.

Please provide a description of the records requested below:

This Public Records Act request seeks all public records (as defined in Gov. Code § 7920.530(a)) and writings (as defined in Gov. Code § 7920.545 and Evid. Code § 250) in the possession of the City of Capitola relating to the development, between 1922 and 2022, of the real property located at 427 Riverview Avenue in Capitola, which property is currently identified as APN 035-132-01. (Documents produced are not to be combined with other public records requests by the same Requester. Thank you.)

File Upload

If applicable, please upload any files relating to your request.

Public Records Requests may be submitted online via the Public Records Request form, by email, or by hard copy form available at City Hall located at 420 Capitola Avenue, Capitola, CA 95010.

Please note: Public Record Act Requests submitted via email, fax, USPS, or dropoff after 5:00 p.m. on a business day, Saturdays, Sundays, or holidays will be processed as received on the next open business day. The 10-day response period begins when the request is received.

PUBLIC RECORDS ACT REQUESTS SUBMITTED TO CITY OF CAPITOLA

REQUEST #5 (PRR #25-109)



Public Records Act Request Form

This form is to be submitted to the City Clerk's office. Please email questions to cityclerk@ci.capitola.ca.us.

Please Read Before Completing Form:

The City Clerk's office responds to public records requests from the public and makes every effort to accommodate the requester. You will be notified in writing within ten (10) calendar days whether your request seeks copies of disclosable public records prepared, owned, used or retained by the City, no records exist, or a 14-day extension is necessary.

Requester Information

Date of Request

2025-06-26

Name:

Kristie Campbell / Fenton & Keller

E-mail (if no email, please provide address):

kcampbell@fentonkeller.com

Phone Number:

8313731241

Address (if requested records should be mailed):

Records Requested

To enable staff to respond to your request as efficiently as possible, please include the date range for the records, the department that holds the records (if known), and/or the types of records, including any important keywords.

Please provide a description of the records requested below:

This Public Records Act request seeks all public records (as defined in Gov. Code § 7920.530(a)) and writings (as defined in Gov. Code § 7920.545 and Evid. Code § 250) in the possession of the City of Capitola relating to the construction of the portion of the existing Noble Gulch drainage facility located under the real property located at 427 Riverview Avenue in Capitola, which property is currently identified as APN 035-132-01. (Documents produced are not to be combined with other public records requests by the same Requester. Thank you.)

File Upload

If applicable, please upload any files relating to your request.

Public Records Requests may be submitted online via the Public Records Request form, by email, or by hard copy form available at City Hall located at 420 Capitola Avenue, Capitola, CA 95010.

Please note: Public Record Act Requests submitted via email, fax, USPS, or dropoff after 5:00 p.m. on a business day, Saturdays, Sundays, or holidays will be processed as received on the next open business day. The 10-day response period begins when the request is received.

**PUBLIC RECORDS ACT REQUESTS
SUBMITTED TO CITY OF CAPITOLA**

REQUEST #6 (PRR #25-110)



Public Records Act Request Form

This form is to be submitted to the City Clerk's office. Please email questions to cityclerk@ci.capitola.ca.us.

Please Read Before Completing Form:

The City Clerk's office responds to public records requests from the public and makes every effort to accommodate the requester. You will be notified in writing within ten (10) calendar days whether your request seeks copies of disclosable public records prepared, owned, used or retained by the City, no records exist, or a 14-day extension is necessary.

Requester Information

Date of Request

2025-06-26

Name:

Kristie Campbell / Fenton & Keller

E-mail (if no email, please provide address):

kcampbell@fentonkeller.com

Phone Number:

8313731241

Address (if requested records should be mailed):

Records Requested

To enable staff to respond to your request as efficiently as possible, please include the date range for the records, the department that holds the records (if known), and/or the types of records, including any important keywords.

Please provide a description of the records requested below:

This Public Records Act request seeks all public records (as defined in Gov. Code § 7920.530(a)) and writings (as defined in Gov. Code § 7920.545 and Evid. Code § 250) in the possession of the City of Capitola (1) produced by the City of Capitola to the County of Santa Cruz in response to the attached Public Records Act request, dated July 7, 2011, and/or (2) responsive to each of the eight requests identified in the attached Public Records Act request, dated July 7, 2011. (Documents produced are not to be combined with other public records requests by the same Requester. Thank you.)

File Upload

If applicable, please upload any files relating to your request.

20110707 - Letter - County Counsel to Capitola City Clerk re Public Records Act Request.pdf

130.46KB

Public Records Requests may be submitted online via the Public Records Request form, by email, or by hard copy form available at City Hall located at 420 Capitola Avenue, Capitola, CA 95010.

Please note: Public Record Act Requests submitted via email, fax, USPS, or dropoff after 5:00 p.m. on a business day, Saturdays, Sundays, or holidays will be processed as received on the next open business day. The 10-day response period begins when the request is received.

**PUBLIC RECORDS ACT REQUESTS
SUBMITTED TO CITY OF CAPITOLA**

REQUEST #7 (PRR #25-111)



Public Records Act Request Form

This form is to be submitted to the City Clerk's office. Please email questions to cityclerk@ci.capitola.ca.us.

Please Read Before Completing Form:

The City Clerk's office responds to public records requests from the public and makes every effort to accommodate the requester. You will be notified in writing within ten (10) calendar days whether your request seeks copies of disclosable public records prepared, owned, used or retained by the City, no records exist, or a 14-day extension is necessary.

Requester Information

Date of Request

2025-06-26

Name:

Kristie Campbell / Fenton & Keller

E-mail (if no email, please provide address):

kcampbell@fentonkeller.com

Phone Number:

8313731241

Address (if requested records should be mailed):

Records Requested

To enable staff to respond to your request as efficiently as possible, please include the date range for the records, the department that holds the records (if known), and/or the types of records, including any important keywords.

Please provide a description of the records requested below:

This Public Records Act request seeks all public records (as defined in Gov. Code § 7920.530(a)) and writings (as defined in Gov. Code § 7920.545 and Evid. Code § 250) in the possession of the City of Capitola relating to the provision of Noble Gulch flood control and drainage services, including but not limited to written agreements with the County of Santa Cruz. (Documents produced are not to be combined with other public records requests by the same Requester. Thank you.)

File Upload

If applicable, please upload any files relating to your request.

Public Records Requests may be submitted online via the Public Records Request form, by email, or by hard copy form available at City Hall located at 420 Capitola Avenue, Capitola, CA 95010.

Please note: Public Record Act Requests submitted via email, fax, USPS, or dropoff after 5:00 p.m. on a business day, Saturdays, Sundays, or holidays will be processed as received on the next open business day. The 10-day response period begins when the request is received.

**PUBLIC RECORDS ACT REQUESTS
SUBMITTED TO CITY OF CAPITOLA**

REQUEST #8 (PRR #25-113)



Public Records Act Request Form

This form is to be submitted to the City Clerk's office. Please email questions to cityclerk@ci.capitola.ca.us.

Please Read Before Completing Form:

The City Clerk's office responds to public records requests from the public and makes every effort to accommodate the requester. You will be notified in writing within ten (10) calendar days whether your request seeks copies of disclosable public records prepared, owned, used or retained by the City, no records exist, or a 14-day extension is necessary.

Requester Information

Date of Request

2025-06-30

Name:

Kristie Campbell / Fenton & Keller

E-mail (if no email, please provide address):

kcampbell@fentonkeller.com

Phone Number:

8313731241

Address (if requested records should be mailed):

Records Requested

To enable staff to respond to your request as efficiently as possible, please include the date range for the records, the department that holds the records (if known), and/or the types of records, including any important keywords.

Please provide a description of the records requested below:

Good morning. We would like to receive the following two items mentioned in the attached article dated May 31, 2011, regarding the ruptured storm drain that flooded the Village in 2011: 1) a report prepared for the City's Public Works Director regarding findings on the cause of the flooding; and 2) the letter to the City of Capitola from the County of Santa Cruz regarding who is responsible for the storm drain.

File Upload

If applicable, please upload any files relating to your request.

20110531 News Article - Capitola Releases Findings on What Caused Village Flood (The Post.US.com).pdf

372.89KB

Public Records Requests may be submitted online via the Public Records Request form, by email, or by hard copy form available at City Hall located at 420 Capitola Avenue, Capitola, CA 95010.

Please note: Public Record Act Requests submitted via email, fax, USPS, or dropoff after 5:00 p.m. on a business day, Saturdays, Sundays, or holidays will be processed as received on the next open business day. The 10-day response period begins when the request is received.

**PUBLIC RECORDS ACT REQUESTS
SUBMITTED TO COUNTY OF SANTA CRUZ**

Request 25-91

Dates

Due

June 27, 2025

Received

February 13, 2025 via web

Requester



Kristie Campbell / Fenton & Keller



kcampbell@fentonkeller.com



Post Office Box 791, Monterey, CA, 93940



831-373-1241



FENTON & KELLER

Staff assigned

Departments

County Counsel

Planning

Public Works

County Real Property

Point of contact

PRA Requests Clerk of the Board

Request

Good morning. This Public Records Act request seeks all public records (as defined in Gov. Code § 7920.530(a)), writings (as defined in Gov. Code § 7920.545 and Evid. Code § 250) in the possession of the County Planning Department, Public Works Department, and/or Santa Cruz County Flood Control and Storm Water Division relating to the portion of the flume/drainage easement located on/under the real property located at 427 Riverview Avenue in Capitola (APN 035-132-01) ("Property"), including but not limited to: (1) ownership, maintenance, and repair of the flume/drainage facilities/equipment on, under, and adjacent to the Property, and (2) flume/drainage easement-related limits on development of the Property. Please let us know if you have any questions about this request. Thank you.

**PUBLIC RECORDS ACT REQUESTS
SUBMITTED TO COUNTY OF SANTA CRUZ**

Request 25-386

Dates

Due

July 21, 2025

Received

June 26, 2025 via web

Requester



Kristie Campbell / Fenton & Keller



kcampbell@fentonkeller.com



Post Office Box 791, Monterey, CA, 93940



831-373-1241



FENTON & KELLER

Staff assigned

Departments

County Counsel

Planning

Public Works

Santa Cruz County Sanitation District

Point of contact

PRA Requests Clerk of the Board

Request

This Public Records Act request seeks all public records (as defined in Gov. Code § 7920.530(a)) and writings (as defined in Gov. Code § 7920.545 and Evid. Code § 250) in the possession of the County of Santa Cruz relating to the development, between 1922 and 2022, of the real property located at 427 Riverview Avenue in the City of Capitola, County of Santa Cruz, which property is currently identified as APN 035-132-01. (Documents produced are not to be combined with other public records requests by the same Requester. Thank you.)

✓ Message from requester ^

Requester + Staff

Good afternoon! Thank you for your response to our public records request. The original request was limited to the Planning Department and I'd like to amend the request to include all public records (as defined in the original request) in the possession of the County of Santa Cruz to include, but not be limited to, COUNTY COUNSEL, PUBLIC WORKS, and/or the SANITATION DISTRICT. Thank you!

June 26, 2025, 2:16pm by the requester

**PUBLIC RECORDS ACT REQUESTS
SUBMITTED TO COUNTY OF SANTA CRUZ**

Request 25-387

Dates

Due

July 21, 2025

Received

June 26, 2025 via web

Requester



Kristie Campbell / Fenton & Keller



kcampbell@fentonkeller.com



Post Office Box 791, Monterey, CA, 93940



831-373-1241



FENTON & KELLER

Staff assigned

Departments

County Counsel

Planning

Public Works

Santa Cruz County Sanitation District

Point of contact

PRA Requests Clerk of the Board

Request

This Public Records Act request seeks all public records (as defined in Gov. Code § 7920.530(a)) and writings (as defined in Gov. Code § 7920.545 and Evid. Code § 250) in the possession of the County of Santa Cruz relating to the development of the real property located at 402 Blue Gum Avenue in the City of Capitola, County of Santa Cruz, which property is currently identified as APN 035-131-20. (Documents produced are not to be combined with other public records requests by the same Requester. Thank you.)

✉ Message from requester ^

Requester + Staff

Good afternoon! Thank you for your response to our public records request. The original request was limited to the Planning Department and I'd like to amend the request to include all public records (as defined in the original request) in the possession of the County of Santa Cruz to include, but not be limited to, COUNTY COUNSEL, PUBLIC WORKS, and/or the SANITATION DISTRICT. Thank you!

June 26, 2025, 2:18pm by the requester

**PUBLIC RECORDS ACT REQUESTS
SUBMITTED TO COUNTY OF SANTA CRUZ**

Request 25-388

Dates

Due

July 21, 2025

Received

June 26, 2025 via web

Requester



Kristie Campbell / Fenton & Keller



kcampbell@fentonkeller.com



Post Office Box 791, Monterey, CA, 93940



831-373-1241



FENTON & KELLER

Staff assigned

Departments

County Counsel

Planning

Public Works

Santa Cruz County Sanitation District

Point of contact

PRA Requests Clerk of the Board

Request

This Public Records Act request seeks all public records (as defined in Gov. Code § 7920.530(a)) and writings (as defined in Gov. Code § 7920.545 and Evid. Code § 250) in the possession of the County of Santa Cruz relating to the development of the real property located at 404 Blue Gum Avenue in the City of Capitola, County of Santa Cruz, which property is currently identified as APN 035-131-21. (Documents produced are not to be combined with other public records requests by the same Requester. Thank you.)

✓ Message from requester ^

Requester + Staff

Good afternoon! Thank you for your response to our public records request. The original request was limited to the Planning Department and I'd like to amend the request to include all public records (as defined in the original request) in the possession of the County of Santa Cruz to include, but not be limited to, COUNTY COUNSEL, PUBLIC WORKS, and/or the SANITATION DISTRICT. Thank you!

June 26, 2025, 2:19pm by the requester

**PUBLIC RECORDS ACT REQUESTS
SUBMITTED TO COUNTY OF SANTA CRUZ**

Request 25-389

Dates

Due

July 21, 2025

Received

June 26, 2025 via web

Requester



Kristie Campbell / Fenton & Keller



kcampbell@fentonkeller.com



Post Office Box 791, Monterey, CA, 93940



831-373-1241



FENTON & KELLER

Staff assigned

Departments

County Counsel

Planning

Public Works

Santa Cruz County Sanitation District

Point of contact

PRA Requests Clerk of the Board

Request

This Public Records Act request seeks all public records (as defined in Gov. Code § 7920.530(a)) and writings (as defined in Gov. Code § 7920.545 and Evid. Code § 250) in the possession of the County of Santa Cruz relating to the development of the real property located at 419 Capitola Avenue in the City of Capitola, County of Santa Cruz, which property is currently identified as APN 035-131-26. (Documents produced are not to be combined with other public records requests by the same Requester. Thank you.)

✉ Message from requester ^

Requester + Staff

Good afternoon! Thank you for your response to our public records request. The original request was limited to the Planning Department and I'd like to amend the request to include all public records (as defined in the original request) in the possession of the County of Santa Cruz to include, but not be limited to, COUNTY COUNSEL, PUBLIC WORKS, and/or the SANITATION DISTRICT. Thank you!

June 26, 2025, 2:20pm by the requester

**PUBLIC RECORDS ACT REQUESTS
SUBMITTED TO COUNTY OF SANTA CRUZ**

Request 25-390

Dates

Due

July 21, 2025

Received

June 26, 2025 via web

Requester



Kristie Campbell / Fenton & Keller



kcampbell@fentonkeller.com



Post Office Box 791, Monterey, CA, 93940



831-373-1241



FENTON & KELLER

Staff assigned

Departments

County Counsel

Planning

Public Works

Santa Cruz County Sanitation District

Point of contact

PRA Requests Clerk of the Board

Request

This Public Records Act request seeks all public records (as defined in Gov. Code § 7920.530(a)) and writings (as defined in Gov. Code § 7920.545 and Evid. Code § 250) in the possession of the County of Santa Cruz relating to the development of the real property located at 421 Capitola Avenue in the City of Capitola, County of Santa Cruz, which property is currently identified as APN 035-131-27. (Documents produced are not to be combined with other public records requests by the same Requester. Thank you.)

✓ Message from requester ^

Requester + Staff

Good afternoon! Thank you for your response to our public records request. The original request was limited to the Planning Department and I'd like to amend the request to include all public records (as defined in the original request) in the possession of the County of Santa Cruz to include, but not be limited to, COUNTY COUNSEL, PUBLIC WORKS, and/or the SANITATION DISTRICT. Thank you!

June 26, 2025, 2:20pm by the requester

**PUBLIC RECORDS ACT REQUESTS
SUBMITTED TO COUNTY OF SANTA CRUZ**

Request 25-391

Dates

Due

July 21, 2025

Received

June 26, 2025 via web

Requester



Kristie Campbell / Fenton & Keller



kcampbell@fentonkeller.com



Post Office Box 791, Monterey, CA, 93940



831-373-1241



FENTON & KELLER

Staff assigned

Departments

County Counsel

Planning

Public Works

Santa Cruz County Sanitation District

Point of contact

PRA Requests Clerk of the Board

Request

This Public Records Act request seeks all public records (as defined in Gov. Code § 7920.530(a)) and writings (as defined in Gov. Code § 7920.545 and Evid. Code § 250) in the possession of the County of Santa Cruz, including but not limited to, COUNTY COUNSEL, PLANNING, PUBLIC WORKS, and/or the SANITATION DISTRICT, relating to the construction of the portion of the existing Noble Gulch drainage facility located under the real property located at 427 Riverview Avenue in the City of Capitola, County of Santa Cruz, which property is currently identified as APN 035-132-01. (Documents produced are not to be combined with other public records requests by the same Requester. Thank you.)

**PUBLIC RECORDS ACT REQUESTS
SUBMITTED TO COUNTY OF SANTA CRUZ**

Request 25-392

Dates

Due

July 21, 2025

Received

June 26, 2025 via web

Requester



Kristie Campbell / Fenton & Keller



kcampbell@fentonkeller.com



Post Office Box 791, Monterey, CA, 93940



831-373-1241



FENTON & KELLER

Staff assigned

Departments

Clerk of the Board of Supervisors

BOS

County Counsel

Planning

Public Works

Santa Cruz County Sanitation District

Point of contact

PRA Requests Clerk of the Board

Request

This Public Records Act request seeks all public records (as defined in Gov. Code § 7920.530(a)) and writings (as defined in Gov. Code § 7920.545 and Evid. Code § 250) in the possession of the County of Santa Cruz, including but not limited to, COUNTY COUNSEL, BOARD OF SUPERVISORS (including the CLERK OF THE BOS), PLANNING, PUBLIC WORKS, and/or the SANITATION DISTRICT relating to the provision of Noble Gulch flood control and drainage services, including but not limited to written agreements with the City of Capitola. (Documents produced are not to be combined with other public records requests by the same Requester. Thank you.)

**PUBLIC RECORDS ACT REQUESTS
SUBMITTED TO COUNTY OF SANTA CRUZ**

Request 25-393

Dates

Due

July 21, 2025

Received

June 26, 2025 via web

Requester



Kristie Campbell / Fenton & Keller



kcampbell@fentonkeller.com



Post Office Box 791, Monterey, CA, 93940



831-373-1241



FENTON & KELLER

Staff assigned

Departments

County Counsel

Planning

Public Works

Santa Cruz County Sanitation District

Point of contact

PRA Requests Clerk of the Board

Request

This Public Records Act request seeks all public records (as defined in Gov. Code § 7920.530(a)) and writings (as defined in Gov. Code § 7920.545 and Evid. Code § 250) in the possession of the County of Santa Cruz, including but not limited to, COUNTY COUNSEL, PLANNING, PUBLIC WORKS, and/or the SANITATION DISTRICT (1) produced by the City of Capitola to the County of Santa Cruz in response to the attached Public Records Act request, dated July 7, 2011, and/or (2) responsive to each of the eight requests identified in the attached Public Records Act request, dated July 7, 2011. (Documents produced are not to be combined with other public records requests by the same Requester. Thank you.)

[Show less](#)

**PUBLIC RECORDS ACT REQUESTS
SUBMITTED TO COUNTY OF SANTA CRUZ**

Request 25-394

Dates

Due

July 21, 2025

Received

June 26, 2025 via web

Requester



Kristie Campbell / Fenton & Keller



kcampbell@fentonkeller.com



Post Office Box 791, Monterey, CA, 93940



831-373-1241



FENTON & KELLER

Staff assigned

Departments

Clerk of the Board of Supervisors

BOS

County Counsel

Planning

Public Works

Santa Cruz County Sanitation District

Point of contact

PRA Requests Clerk of the Board

Request

This Public Records Act request seeks all public records (as defined in Gov. Code § 7920.530(a)) and writings (as defined in Gov. Code § 7920.545 and Evid. Code § 250) in the possession of the County of Santa Cruz, including but not limited to, COUNTY COUNSEL, BOARD OF SUPERVISORS (including the CLERK OF THE BOS), PLANNING, PUBLIC WORKS, and/or the SANITATION DISTRICT, relating to the County Board of Supervisors meeting on August 21, 1984, relating to the issues identified in the attached Board Order, dated June 19, 1984. (Documents produced are not to be combined with other public records requests by the same Requester. Thank you.)

**PUBLIC RECORDS ACT REQUESTS
SUBMITTED TO COUNTY OF SANTA CRUZ**

Request 25-395

Dates

Due

July 21, 2025

Received

June 26, 2025 via web

Requester



Kristie Campbell / Fenton & Keller



kcampbell@fentonkeller.com



Post Office Box 791, Monterey, CA, 93940



831-373-1241



FENTON & KELLER

Staff assigned

Departments

Clerk of the Board of Supervisors

BOS

County Counsel

Planning

Public Works

Santa Cruz County Sanitation District

Point of contact

PRA Requests Clerk of the Board

Request

This Public Records Act request seeks all public records (as defined in Gov. Code § 7920.530(a)) and writings (as defined in Gov. Code § 7920.545 and Evid. Code § 250) in the possession of the County of Santa Cruz, including but not limited to, COUNTY COUNSEL, BOARD OF SUPERVISORS (including the CLERK OF THE BOARD), PLANNING, PUBLIC WORKS, and/or the SANITATION DISTRICT, relating to the attached Santa Cruz County Flood Control and Water Conservation District Ordinance No. 3566, adopted June 26, 1984. (Documents produced are not to be combined with other public records requests by the same Requester. Thank you.)

EXHIBIT 7

MINUTES, Planning Commission, Regular Meeting
May 17, 1971, CAPITOLA CITY HALL, 7:30 P.M.

I. The meeting was called to order at 7:30 P.M. by Chairman Waymire.

II. ROLL CALL

PRESENT: Commissioners Arthur, Battistini, Mason and Chairman Waymire.

ABSENT: Commissioner Deasy.

III. PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Chairman Waymire.

IV. APPROVAL OF MINUTES

A Motion was made by Commissioner Mason, seconded by Commissioner Battistini to approve the minutes of May 3, 1971.

Motion passed by voice vote and so ordered.

V. PUBLIC HEARINGS

A. Application #412, Variance for addition of garage & rumpus room without adequate front and side yard setbacks or lot coverage at 427 Riverview Avenue, Anita L. Arthur, Applicant.

Secretary Clarke explained the proposal was to construct a three car garage with a rumpus room over to the property line without side yard setbacks. Secretary Clarke said the street in front of this property was only twenty twenty (20) feet wide and if the variance was granted there should be at least a ten (10) foot setback. Mr. Arthur said he would have too small a lot if he had to set back ten (10) feet. Councilman Graves said his property across the street from the applicant was within five (5) feet of the line and other properties were out closer than ten (10) feet.

Secretary Clarke said that the buildings that were closer to the street were old but if you allowed a new structure at five (5) feet you would establish a precedent which would be a hazard on a twenty (20) foot street. Councilman Graves said if you require the ten (10) feet you will create a damp dark patio between the house and the garage.

MOTION WAS MADE BY COMMISSIONER MASON, SECONDED BY COMMISSIONER BATTISTINI TO CLOSE THE PUBLIC PORTION OF THE HEARING.

Motion passed by voice vote and so ordered, with Commissioner Arthur abstaining. The Commissioners felt the ten (10) feet should be required, however, they would compromise on five (5) feet.

A MOTION WAS MADE BY COMMISSIONER BATTISTINI, SECONDED BY COMMISSIONER MASON TO APPROVE APPLICATION #412 WITH A FIVE (5) FOOT SET BACK ON RIVERVIEW AND A PEDESTRIAN EASEMENT ALONG THE WATER FRONT, BY THE FOLLOWING VOTE:

AYES: Commissioner Battistini, Mason & Chairman Waymire. NOES: None.

ABSENT: Commissioner Deasy. ABSTAINING: Commissioner Arthur.

B. Application #414, Use Permit to use a trailer for temporary office space while permanent building is being constructed for Santa Cruz Savings and Loan at 1800 - 41st Avenue, Parcel #34-131-11, Lowell H. Wilcox, applicant.

There was no public comment.

A MOTION WAS MADE BY COMMISSIONER MASON, SECONDED BY COMMISSIONER BATTISTINI TO CLOSE PUBLIC PORTION OF THE HEARING.

Motion passed by voice vote and so ordered.

Commissioner Battistini said the Commission would like to welcome Santa Cruz Savings and Loan.

A MOTION WAS MADE BY COMMISSIONER ARTHUR TO APPROVE APPLICATION #414 FOR A MAXIMUM OF ONE YEAR, SECONDED BY COMMISSIONER BATTISTINI, BY THE FOLLOWING VOTE:
 AYES: Commissioner Arthur, Battistini, Mason & Chairman Waymire.
 NOES: None. ABSENT: Commissioner Deasy.

- C. Application #415, Use Permit to use the Modular Display House at 1450 - 41st Avenue, for temporary office while constructing building for Guarantee Land Title Co., D. J. Morger, applicant.

Mr. Morger asked if the temporary power connection could be continued for the year.

A MOTION WAS MADE BY COMMISSIONER ARTHUR, SECONDED BY COMMISSIONER BATTISTINI TO CLOSE THE PUBLIC PORTION OF THE HEARING.

Motion was passed by voice vote and so ordered.

No comment from the Commission.

A MOTION WAS MADE BY COMMISSIONER MASON, SECONDED BY COMMISSIONER BATTISTINI TO APPROVE APPLICATION #415 FOR A MAXIMUM OF ONE YEAR AND WAIVE THE UNDERGROUND SERVICE REQUIREMENT FOR THAT PERIOD, BY THE FOLLOWING VOTE:

AYES: Commissioner Arthur, Battistini, Mason & Chairman Waymire.
 NOES: None. ABSENT: Commissioner Deasy.

V. REGULAR MEETING

A. Communications

None.

B. Reports of Committees

None.

C. Unfinished Business

None.

D. New Business

None.

E. Oral Communications.

Chairman Waymire said there should be a floating safety line outside the lagoon to protect and aid swimmers. Commissioner Battistini said there used to be one, but it was discontinued when the State had the beach.

Secretary Clarke said the Commission could recommend this to the City Council, and they could consider this and budget the item if they felt it was necessary.

A MOTION WAS MADE BY CHAIRMAN WAYMIRE, SECONDED BY COMMISSIONER BATTISTINI TO RECOMMEND A FLOATING SAFETY LINE BE INSTALLED ON THE OCEAN SIDE OF THE LAGOON.

Motion passed by voice vote and so ordered.

VII. ADJOURNMENT

There being no further business Commissioner Arthur mad a motion to adjourn the meeting, seconded by Commissioner Battistini at 8:15 P.M., May 17, 1971.

Motion passed by voice vote and so ordered.

Respectfully submitted,


 H. W. Clarke
 Acting Planning Commission
 Secretary

OWNER

ARTHUR, Anita L. (475-1531)

PARCEL NUMBER

35-132-01

LOCATION

427 Riverview

TYPE

Garage & Rumpus Room

VALUATION

\$11,200.00

CONTRACTORS						SEWER CONNECTION	
BUILDING		PLUMBING AND GAS		ELECTRIC		PERMIT NUMBER	
NAME		NAME		NAME		DATE PAID	
Jack Nelson		P. G. Plumbing		McCroskey			
PERMIT NUMBER	DATE	PERMIT NUMBER	DATE	PERMIT NUMBER	DATE	DISTRICT	
6098	6-2-71	6213	7-19-71	6218	7-29-71		

INSPECTIONS			INSP.
BUILDING	PLUMBING AND GAS	ELECTRIC	
FOUNDATION	ROUGH	ROUGH	STREET OPENINGS
RAME & CHIMNEY	FINISH	FINISH	
TUCCO WIRE	WATER PIPE	FIXTURES, ETC.	PERMIT NUMBER
TU. SCR. COAT	GAS P.T.	FINAL	DATE
ATH OR WALLBOARD	GAS FINISH	Sewer 4' out from Bldg 12" Below 5' Level Right Side	INSP.
LUES	SEWER		CURB, GUTTER & SIDEWALK
INISH COMPLETE			PERMIT NUMBER
ERT. OF OCCUPANCY			DATE
SERVICE CLEARED			INSP.

OWNER

ARTHUR, Anita L.

427 Riverview

PARCEL NUMBER

35-132-01

CITY OF CAPITOLA PERMIT

6098

Owner: Arthur		Applicant: JACK Nelson		Location of Job: 427 Riverview	
				Assessor's Parcel No. 35-132-01	
BUILDING				F.Z.	
Contractor Jack Nelson		Lic. No.		Zone	
Permit to Garage + Pump Room				Valuation \$ 11200⁰⁰	
				Bldg. Fee \$ 75⁰⁰	
SEWER CONNECTION		PLUMBING & GAS		ELECTRIC	
Ref. B.P. # _____ Date _____		Ref. B.P. # _____ Date _____		Ref. B.P. # _____ Date _____	
Contractor _____		Contractor _____		Contractor _____	
District _____		Permit \$ _____		Permit \$ _____	
Annexation required? _____		Fixtures _____		Lights _____	
If "Yes", date petition filed _____		Water Heater _____		Fixtures _____	
Type of service, units, etc.: _____		Water Piping _____		Switches _____	
		Gas -- Min. 5 _____		Plugs _____	
		Gas --- Over 5 _____		Range _____	
		Sewer _____		Oven _____	
		Appliance tags: _____		Dryer _____	
		Over 50M BTU _____		Water Heater _____	
		Under 50M BTU _____		Space Heater _____	
Annexation \$ _____		Mech. Permit _____		Motors _____	
Connection _____				Power Pole _____	
Inspection _____					
Other _____					
Total \$ _____		Total \$ _____		Total \$ _____	

DRIVEWAY OR STREET OPENING - Road No. _____
Ref. B.P. # _____ Date _____
Contractor _____

Insurance _____

Driveway	Length	Width	Depth	\$ _____
Street opening	_____	_____	_____	_____
Other	_____	_____	_____	_____
Total				\$ _____

"THIS PERMIT IS SUBJECT TO ALL OF THE RULES AND REGULATIONS GOVERNING SAID WORK SET FORTH IN THE ORDINANCES AND BUILDING CODE OF THE CITY OF CAPITOLA, AND THE LAWS OF THE STATE OF CALIFORNIA, AND ALL AMENDMENTS THERETO."

Arthur J. Arthur
Signature of Applicant

6/2/71
Date

75⁰⁰

**DO NOT
WRITE
IN THIS
AREA**

EXHIBIT 8

BEFORE THE BOARD OF DIRECTORS

OF THE SANTA CRUZ COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT

RESOLUTION NO. 650-69

On the motion of Director Forbus
Duly seconded by Director McCallie
The following resolution is adopted:

RESOLUTION OF INTENTION TO ESTABLISH
ZONE NO. 5 OF THE SANTA CRUZ COUNTY FLOOD
CONTROL AND WATER CONSERVATION DISTRICT

WHEREAS, Section 302 of Act 7390 of the California Water Code (uncodified) provides that the Board of Directors of the Santa Cruz County Flood Control and Water Conservation District may initiate proceedings for the formation of zones within said District to undertake any project or works of improvement; and

WHEREAS, in accordance with Section 306 of said Act, the Chief Engineer of said District has submitted to, and filed with, this Board of Directors the Report of the Chief Engineer of the District on the proposed formation of Zone No. 5 of said District.

NOW, THEREFORE, IT IS HEREBY RESOLVED AND ORDERED that:

1. This Board hereby declares its intention to form a zone under the terms of the Santa Cruz County Flood Control and Water Conservation District Act, to include all of the territory lying within the area bounded by Rodeo Gulch on the West, Monterey Bay on the South, Soquel Creek on the East, and Soquel Drive on the North; more particularly described on Exhibit "A" attached hereto, and by this reference made a part of this Resolution.
2. The name of the proposed zone is: "SANTA CRUZ COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, ZONE No. 5."
3. The works of improvement for which the zone is to be created are as follows:
 - a. Construction, maintenance and financing of a storm drain system in accordance with an approved Master Plan of drainage for the area.
 - b. Maintenance and improvement of the existing pipes, ditches, and natural waterways pending reconstruction into the

aforementioned Master Plan.

4. The Engineer's Report on formation of the proposed zone, the master plan of drainage facilities to be constructed, estimates of cost, and proposed methods of financing, are on file with the Clerk of this Board and with the Chief Engineer of this District, and said documents are available for examination by all interested parties at the respective offices in the County Governmental Center, Santa Cruz, California.
5. NOTICE IS HEREBY GIVEN that on the 16th day of December, 1969, at the hour of 11:30 A.M., in the Supervisors Chambers, County Governmental Center, Santa Cruz, California, is set as the date, time, and place of public hearing before this Board upon the proposed formation of said Zone No. 5 at which all interested persons for or against the establishment of the proposed zone may appear and present testimony.

BE IT FURTHER RESOLVED AND ORDERED that the Clerk of this Board is hereby directed to publish a copy of this resolution pursuant to Section 6066 of the Government Code in a newspaper of general circulation published in the County and circulated in the proposed zone, with the first publication being made at least twenty (20) days prior to the hearing date. Copies of this resolution should also be posted in three (3) public places in the proposed zone at least ten (10) days before the hearing date.

PASSED AND ADOPTED by the Board of Directors of the Santa Cruz County Flood Control and Water Conservation District, this 18th day of November, 1969, by the following vote:

AYES: DIRECTORS Forbus, McCallie, Cress and Chairman Mello
NOES: DIRECTORS None
ABSENT: DIRECTORS Sanson

HENRY J. MELLO

Chairman of said Board

ATTEST: TOM M. KELLEY
Clerk of said Board

DISTRIBUTION: Co. Counsel
Director Public Works

Water Projects Coordinator
Auditor-Controller

Approved as to form:

James L. Rardin
SANTA CRUZ COUNTY COUNSEL

EXHIBIT "A" - ZONE NO. 5 OF THE SANTA CRUZ COUNTY FLOOD CONTROL
AND WATER CONSERVATION DISTRICT.

LEGAL DESCRIPTION

All of those lands situated, lying, and being within the County of Santa Cruz that constitute that portion of the Rancho Arroyo del Rodeo, as patented, lying southerly of Soquel Drive and lying between Soquel Creek on the East and Rodeo Gulch on the West, and more particularly the portion thereof described as follows, to-wit:

Beginning at the mouth of Rodeo Gulch where it meets Monterey Bay at a point on the common boundary of Rancho Rodeo and Branciforte Rancho as recorded in the Assessor's Map Book 28 Page 22, County of Santa Cruz; thence, from said point along the aforementioned common boundary proceed along the following courses and distances, to the point where the centerline of Rodeo Gulch intersects the centerline of Soquel Drive.

<u>COURSE</u>	<u>DISTANCE (ft)</u>
N 60° 45' E	402.6 feet
N 37° 30' E	510. "
N 73° 30' E	1015. "
N 37° 15' E	733. "
N 29° 45' E	195. "
S 84° 00' E	96. "
N 46° 25' E	444. "
N 28° 04' E	246. "
N 11° 38' E	169.6 "
N 27° 22' E	232.5 "
N 15° 30' E	642.0 "
N 15° 30' W	752.0 "
N 10° 30' E	257.4 "
N 3° 30' E	202.0 "
N 20° 00' E	185.66 "
N 12° 15' E	132. "
N 00° 00' E	162.77 "
N 16° 00' W	142.56 "
N 17° 00' E	262. "
N 23° 15' E	132. "
S 51° 45' E	45. "
N 39° 45' E	100. "

<u>COURSE</u>	<u>DISTANCE (ft)</u>
N 52° 45' W	88. feet
N 10° 20' W	20. "
N 24° 45' W	115.6 "
N 15° 00' E	132.66 "
N 3° 45' W	165. "
N 29° 15' E	203.25 "
N 14° 45' W	103.62 "
N 48° 00' E	112. "
N 24° 26' E	395.87 "
N 25° 00' E	26. "
N 10° 00' E	236.2 "
N 5° 30' E	177. "
N 10° 00' W	164. "
N 1° 00' E	160. "
N 20° 15' E	204. "
N 32° 30' E	300. "
N 56° 00' E	430. "
N 19° 15' E	163. "
N 10° 00' E	210. "
N 76° 00' E	184. "
N 45° 15' E	89.2 "
N 10° 15' E	188. "
N 12° 15' W	307. "
N 2° 15' W	200. "
N 18° 00' W	112. "
N 44° 30' E	175.96 "
N 5° 15' W	200. "
N 46° 15' W	180. "
N 7° 45' W	178. "
N 8° 45' E	65. "
N 80° 45' E	70. "
N 44° 00' E	72. "
N 64° 00' W	59. "
N 8° 00' E	191.4 "
N 85° 30' E	135. "
N 22° 00' E	85.8 "
N 9° 15' W	104.0 "

Thence, along the centerline of Soquel Drive South 76° 33' E 355.0' to the beginning of a curve to the right with a radius of 4,000. feet through a central angle of 02° 14' 08" for an arc length of 156.07'; thence, South 74° 18' 59" East 208.6' to the beginning of a curve to the left, with a radius

of 900.' through a central angel of $26^{\circ} 45' 08''$ for an arc length of 420.22'; thence, North $78^{\circ} 55' 53''$ E 320.64' to the beginning of a curve to the left with a radius of 4,000.00' through a central angle of $03^{\circ} 09' 40''$ for an arc length of 220.69'; thence, North $77^{\circ} 46' 13''$ East to the centerline of 41st Avenue; thence, continuing easterly along the centerline of Soquel Avenue to the easterly line of Rancho Arroyo Del Rodeo; thence, along the common boundary between Rancho Arroyo Del Rodeo and Soquel Rancho for the following courses and distances:

<u>COURSE</u>	<u>DISTANCE (ft)</u>
S $00^{\circ} 45'$ E	70. feet
S $13^{\circ} 30'$ W	558. "
S $52^{\circ} 45'$ E	296. "
S $20^{\circ} 30'$ E	270. "
S $33^{\circ} 10'$ W	67. "
S $59^{\circ} 45'$ E	1127. "
S $45^{\circ} 37'$ W	368. "
S $00^{\circ} 00'$	190. "
S $40^{\circ} 00'$ E	254. "
S $18^{\circ} 00'$ E	248.5 "
S $5^{\circ} 50'$ E	24.91 "
S $28^{\circ} 15'$ E	200. "
S $35^{\circ} 10'$ E	281.18 "
S $41^{\circ} 55'$ E	135. "
S $13^{\circ} 10'$ E	126.74 "
S $3^{\circ} 13'$ W	81.61 "
S $31^{\circ} 32'$ E	558.43 "
S $5^{\circ} 15'$ W	409.69 "
S $17^{\circ} 57'$ E	572. "
S $39^{\circ} 30'$ E	72.25 "
S $50^{\circ} 30'$ W	42.06 "
S $34^{\circ} 15'$ E	422. "
S $20^{\circ} 00'$ E	358.55 "
S $34^{\circ} 15'$ E	430.00 "
S $54^{\circ} 15'$ E	80. "
S $43^{\circ} 10'$ E	43. "
S $38^{\circ} 10'$ E	89. "
S $41^{\circ} 10'$ E	30. "
S $34^{\circ} 10'$ E	to the Bay of Monterey;

thence, Westerly along the southerly line of the Rancho Arroyo Del Rodeo to the most southwesterly corner of said Rancho and the point of beginning.

The foregoing description was compiled from records of the Santa Cruz County Assessor, in the Office of the Santa Cruz County Department of Public Works in November, 1969.

RESOLUTION 69-22
RESOLUTION OF CONSENT

WHEREAS, Section 320 of the Santa Cruz County Flood Control and Water Conservation District Act (uncodified Act 7390 of the California Water Code) specifies that no city or district empowered to produce, store, or distribute water shall be included within a Zone without its written consent by resolution adopted by its legislative body; and

WHEREAS, the Board of Directors of the Santa Cruz County Flood Control and Water Conservation District has, by the adoption of a Resolution of Intention, declared its intention to form Zone No. 5 of said District within the area bounded by Soquel Creek, Rodeo Creek, Soquel Drive, and Monterey Bay for the purposes of constructing, maintaining and financing a storm drainage system, and interim maintenance of existing pipes, ditches, and waterways;

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Soquel Creek County Water District that the Soquel Creek County Water District does hereby give its consent that so much of its territory as lies within the hereinafter described Zone No. 5 be included within Zone No. 5 of the Santa Cruz County Flood Control and Water Conservation District if said Zone No. 5 is formed solely for the purposes outlined in said Resolution of Intention.

PASSED AND ADOPTED this 1st of December, 1969,
by the following vote:

AYES: Izant, Bargetto, Peretto, McLachlan and Jones

NOES: None

ABSENT: None

ATTEST: *[Signature]*

[Signature]

RESOLUTION NO. 1989

RESOLUTION OF CONSENT

WHEREAS, Section 320 of the Santa Cruz County Flood Control and Water Conservation District Act (uncodified Act 7390 of the California Water Code) specifies that no city or district empowered to produce, store, or distribute water shall be included within a Zone without its written consent by resolution adopted by its legislative body; and

WHEREAS, the Board of Directors of the Santa Cruz County Flood Control and Water Conservation District has, by the adoption of a Resolution of Intention, declared its intention to form Zone No. 5 of said District within the area bounded by Soquel Creek, Rodeo Creek, Soquel Drive, and Monterey Bay for the purposes of constructing, maintaining and financing a storm drainage system, and interim maintenance of existing pipes, ditches, and waterways;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Capitola that the City of Capitola does hereby give its consent to inclusion of its territory within Zone No. 5 of the Santa Cruz County Flood Control and Water Conservation District if said Zone No. 5 is formed solely for the purposes outlined in said Resolution of Intention.

PASSED AND ADOPTED this 8th day of December, 1969,
by the following vote:

AYES: Councilmen Beccaria, Graves, Fontes, Walker and Mayor Lannin.

NOES: None

ABSENT: None

John C. Rappin

ATTEST:

Norma L. Nelson
City Clerk

*Feb 1970
Proj. 7-11*

BEFORE THE BOARD OF DIRECTORS
OF THE SANTA CRUZ COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT

RESOLUTION NO. 719-69

On the motion of Director Forbus
Duly seconded by Director Sanson
The following resolution is adopted:

RESOLUTION ESTABLISHING ZONE NO. 5 OF THE SANTA CRUZ
COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT
IN ACCORDANCE WITH PROVISIONS OF ACT 7390 OF THE
CALIFORNIA WATER CODE (uncodified)

WHEREAS, this Board of Directors of the Santa Cruz County Flood control and Water Conservation District by its Resolution No. 650-69, adopted November 18, 1969, declared its intention to establish Zone No. 5 of said District within the County of Santa Cruz, and with proper notice set Tuesday, December 16, 1969 at 11:30 A.M. as the date for public hearing upon the formation of said Zone; and

WHEREAS, the hearing was held at the time and place fixed in said Resolution of Intention, the Report of the Chief Engineer was considered and adopted, and a majority protest was not received; and

WHEREAS, the City of Capitola and the Soquel Creek County Water District have given their consent in writing to the formation of said Zone No. 5.

NOW, THEREFORE, BE IT RESOLVED AND ORDERED:

1. The Board of Directors of the Santa Cruz County Flood Control and Water Conservation District does hereby declare and determine that Zone No. 5 of said District be, and it hereby is, established.
2. That the boundaries of Zone No. 5 so formed shall be all of the lands bounded on the South by Monterey Bay, on the East by Soquel Creek, on the North by Soquel Drive, and on the West by Rodeo Gulch, being more particularly described and set forth in Exhibit "A", attached hereto and by this reference made a part hereof.
3. The name of the Zone is: "SANTA CRUZ COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, ZONE NO. 5."
4. The works of Improvement for which Zone No. 5 is created are as follows:
 - a. Construction, maintenance and financing of a storm drain system in accordance with the approved Master Plan.

- b. Maintenance and improvement of the existing pipes, ditches, and natural waterways pending reconstruction into the aforementioned Master Plan.

BE IT FURTHER RESOLVED AND ORDERED that the Clerk of this Board shall and hereby is directed to:

1. File a statement setting forth the legal description of Zone No. 5 with a plat or map showing said boundaries with the Assessor of the County of Santa Cruz and with the State Board of Equalization in Sacramento.

PASSED AND ADOPTED by the Board of Directors of the Santa Cruz County Flood Control and Water Conservation District this 16th day of December, 1969, by the following vote:

AYES: DIRECTORS Sanson, Forbus, McCallie, Cress and Chairman Mello
NOES: DIRECTORS None
ABSENT: DIRECTORS None

HENRY J. MELLO

Chairman of said Board

ATTEST: TOM M. KELLEY
Clerk of said Board

DISTRIBUTION: Co. Counsel
Director Public Works
Water Projects Coordinator
Auditor-Controller

Approved as to form:

James L. Pantin
ASST. COUNTY COUNSEL

STATE OF CALIFORNIA COUNTY OF SANTA CRUZ	SS
I, TOM M. KELLEY, County Clerk and ex-officio Clerk of the Board of Supervisors of the County of Santa Cruz, State of California, do hereby certify that the foregoing is a true and correct copy of a resolution passed and adopted by and entered in the minutes of the said Board.	
In Witness whereof I have hereunto set my hand and affixed the seal of the said Board, on <u>12-19</u> , 19 <u>69</u>	
TOM M. KELLEY, County Clerk	
By <u>James L. Pantin</u> Deputy	

November 10, 1969

BOARD OF SUPERVISORS
County of Santa Cruz
701 Ocean Street
Santa Cruz, California

SUBJECT: FORMATION OF ZONE 5 OF THE SANTA CRUZ COUNTY
FLOOD CONTROL AND WATER CONSERVATION DISTRICT

Gentlemen:

Pursuant to the provisions of the Santa Cruz County Flood Control and Water Conservation District Act - Act 7390 of the California Water Code, Uncodified, Part 2 - herewith is submitted the report of the Chief Engineer of the District in accordance with Section 306 of said Act.

Section 306 reads as follows:

"Prior to the hearing on the proposal to establish any zone, the Board shall direct the chief engineer of the District to make and file a report with the Board which shall show:

- a. A general description of the project or works of improvement for which the zone is to be created;
- b. A general description of any lands, rights of way, easements and property to be taken, acquired or injured in carrying out such work;
- c. An estimate of the cost of the project or works, including an estimate of the cost of any lands, rights of way, easements and property proposed to be taken, acquired, or injured in carrying out said work, and also of all incidental expenses and of all operating, maintenance and other costs which may be incurred in connection therewith."

Board of Supervisors
November 10, 1969

Page 2

The formation of the zone in accordance with this report and recommendations has been requested by the Capitola City Council. The accompanying Master Plan and cost estimates were prepared by the City of Capitola at City expense and reviewed by this office.

This report contains all of the required information that is pertinent to the proposed Zone. It may be accepted by the Board or referred back to the Chief Engineer for such modifications and changes as the Board deems necessary in the best interests of the District.

In conformance with the provisions of Section 320 of the Act, Resolutions of Consent to form this zone will be required from the City of Capitola, and the Soquel Creek County Water District.

It is recommended that this matter be set for public hearing before the Board of Directors of the District at the earliest possible date.

Respectfully submitted,



D. A. PORATH
District Engineer

ERH:la

Attachments

SANTA CRUZ COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT
REPORT OF THE CHIEF ENGINEER OF THE DISTRICT ON THE FORMATION
OF ZONE 5 OF THE DISTRICT

Issued pursuant to the provisions of Section 306 of Act 7390,
Uncodified Acts of the California Water Code

November, 1969

D. A. PORATH, District Engineer
of the Santa Cruz County Flood
Control & Water Conservation
District

EXHIBIT 5 Page 3 of 4

PROPOSED ZONE

The official designation of the proposed Zone of Benefit of the Santa Cruz County Flood Control and Water Conservation District shall be: "Zone No. 5 of the Santa Cruz County Flood Control and Water Conservation District."

TERRITORY OF ZONE

The territory of the zone shall be all the lands within the area bounded by Soquel Creek on the East, Monterey Bay on the South, Rodeo Gulch on the West, and Soquel Drive on the North, as shown on the attached map, Figure 1, entitled "Zone Boundaries."

DESCRIPTION OF PROJECT

The project shall consist of construction and maintenance of a storm drainage system as shown on Figure II entitled "Proposed Improvement." Until construction of proposed improvements, existing run-off channels will be maintained by the zone.

PURPOSES AND OPERATIONS

The primary purpose of the zone is to establish the authority under the California Water Code (Act 7390, Sect. 306) to finance and construct a storm drain system within the zone. Financing of these facilities will be accomplished by a combination of building permit drainage fees, assessment district proceedings, contributions from developers, and ad valorem tax levy. Since the master plan is included in this report, the zone can, at a later date, bring before the Board an ordinance establishing the basis for collecting these drainage fees. Funds collected from these fees will be applied toward the construction costs with the remainder of the construction being paid for by normal assessment district proceedings, augmented by tax levy as urgency might demand in the future.

An immediate function of Zone 5 is to be able to acquire rights of entry onto these now private channels to maintain them and to improve flow characteristics. Maintenance would consist of a weed abatement program as well as removing weeds, brush, snags and logs from the channels proper. Channel scouring and excessive erosion would be corrected. No major channel widening or realignment would take place.

At present the District does not have any easements or right of way in these

channels except where they cross or flow within public road rights of way. It is anticipated that some of these easements necessary to maintain these channels would be acquired by the District. No channel maintenance could take place until easements, rights of way, or rights of entry were available. All funds available after maintenance expenditures would be used for acquisition of the necessary rights of way and construction of the proposed drainage system.

Maintenance operations of Zone 5 can be accomplished by District personnel functioning as an operating division of the County Public Works Department, using equipment from the Public Works Department equipment pool, and under the direction of the County Public Works Director and his staff.

It is proposed that the maintenance operation be financed by the Zone operating fund and that the fund will be charged for services, equipment, and management in the same manner in which the Department conducts the financial management of other special districts.

It is proposed that district personnel and County Public Works personnel, when employed on Zone activities, will cooperate and aid in the pertinent operations of other County departments, and with appropriate Federal, State, and local agencies, both within and without the County, having responsibilities in the area of water quality, water resources management, flood control, and related environmental factors.

ESTIMATED MAINTENANCE COSTS

Initial maintenance costs are expected to be high during the first years of zone operation, because many of these channels have never been maintained. During the first years of maintenance, the costs have been based upon a minimum working unit which consists of a foreman and two equipment operators. It is recognized that these initial maintenance costs will drop drastically after the proposed system is built. Maintenance costs for the above men and equipment are as follows:

Foreman	500 hrs. @ \$6.50	=	\$3250
Equipment Operator	1000 hrs. @ 5.35	=	5350

Equipment

Pickup truck	500 hrs. @ \$1.00	=	\$ 500
Weed Sprayer	100 hrs. @ 1.50	=	150
Back hoe	350 hrs. @ 3.50	=	1225
Grader	100 hrs. @ 6.00	=	600
Dump	250 hrs. @ 4.00	=	1000
Overhead	1500 hrs. @ 1.20	=	1800

Sub total \$ 13,875

+ 3% 416

Total operating unit \$ 14,291

Contingencies 15% 2,144

*Probable annual maintenance budget \$ 16,435

*This is the estimated maximum first year cost and this cost will be reduced rapidly to near zero each year as open ditches are replaced with permanent pipes.

ESTIMATED CONSTRUCTION COSTS

Construction of the Storm Drain System is divided into three parts:

System A - To drain the area easterly of 41st Avenue lying between Opal Cliff Drive and Grace Street.

System B - To drain the area generally north of Portola Drive and west of, and including, 41st Avenue.

Miscellaneous Piping - A number of small isolated drainage problems generally south of Portola Drive and the railroad.

Item	Quantity Unit	Unit Price	Cost
12 inch R.C.P.	2000 L.F.	10.00	\$20,000.00
18 inch R.C.P.	2750 L.F.	12.00	33,000.00
24 inch R.C.P.	1200 L.F.	15.00	18,000.00
30 inch R.C.P.	450 L.F.	17.00	7,650.00
36 inch R.C.P.	2900 L.F.	18.00	52,200.00
Catch Basins	56 Ea.	300.00	16,800.00
Manholes	42 Ea.	350.00	14,700.00
Outfall Structure	1 Ea.	1000.00	1,000.00
R.R. Crossings	2 Ea.	3000.00	6,000.00
Connect Pipes	4 Ea.	150.00	600.00

Total System A \$ 170,000.00

System B

Item	Quantity	Unit	Unit Price	Cost
Chain Link Fence	4,020	L.F.	\$ 4.00	\$ 16,080
Right of Way	80,000	L.F.	0.50	40,000
12 inch R.C.P.	580	L.F.	6.00	3,480
18 inch R.C.P.	3,950	L.F.	8.00	31,600
36 inch R.C.P.	620	L.F.	12.00	7,440
42 inch R.C.P.	805	L.F.	15.00	12,075
48 inch R.C.P.	440	L.F.	22.00	9,680
54 inch R.C.P.	635	L.F.	26.00	16,510
72 inch R.C.P.	1,810	L.F.	60.00	108,600
4X8 Box (covered)	1,320	L.F.	80.00	105,600
4X9 Box (open)	2,010	L.F.	65.00	130,650
Catch Basins	30	Ea.	300.00	9,000
Manholes	28	Ea.	350.00	9,800
Box Structures (M.H.)	2	Ea.	1,500.00	3,000
R.R. Crossing (share)	1	Ea.	15,000.00	15,000
Connect Pipes	10	Ea.	150.00	1,500

Total System B	\$520,000
----------------	-----------

Subtotal systems A & B	\$690,000
------------------------	-----------

Add 10% for small misc. piping	69,000
--------------------------------	--------

Total construction costs systems A & B	\$759,000
--	-----------

10% contingency	76,000
-----------------	--------

Engineering Fees	42,000
------------------	--------

Legal, Printing, Advertising	25,000
------------------------------	--------

TOTAL COSTS SYSTEMS A AND B	\$902,000
-----------------------------	-----------

FINANCING MAINTENANCE OF THE ZONE

The maximum tax that may be levied by a Zone of Benefit is 25 cents per \$100 of assessed valuation of all taxable property within the Zone. The approved budget for the Zone, as adopted by the Board of Directors of the District, will determine the exact amount of annual tax necessary to finance the activity of the Zone for each fiscal year.

As of October, 1969, the approximate assessed evaluation of the entire zone as shown on Fig. 1 is \$14,090,000. With an estimated annual maintenance budget of \$16,435, the tax would be \$.12 per \$100 of assessed evaluation.

EXHIBIT 9

Flood Control Zones Santa Cruz County

Legend

Flood Control District

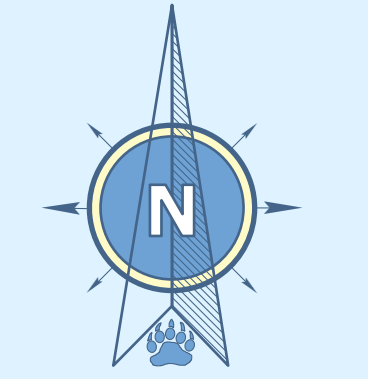
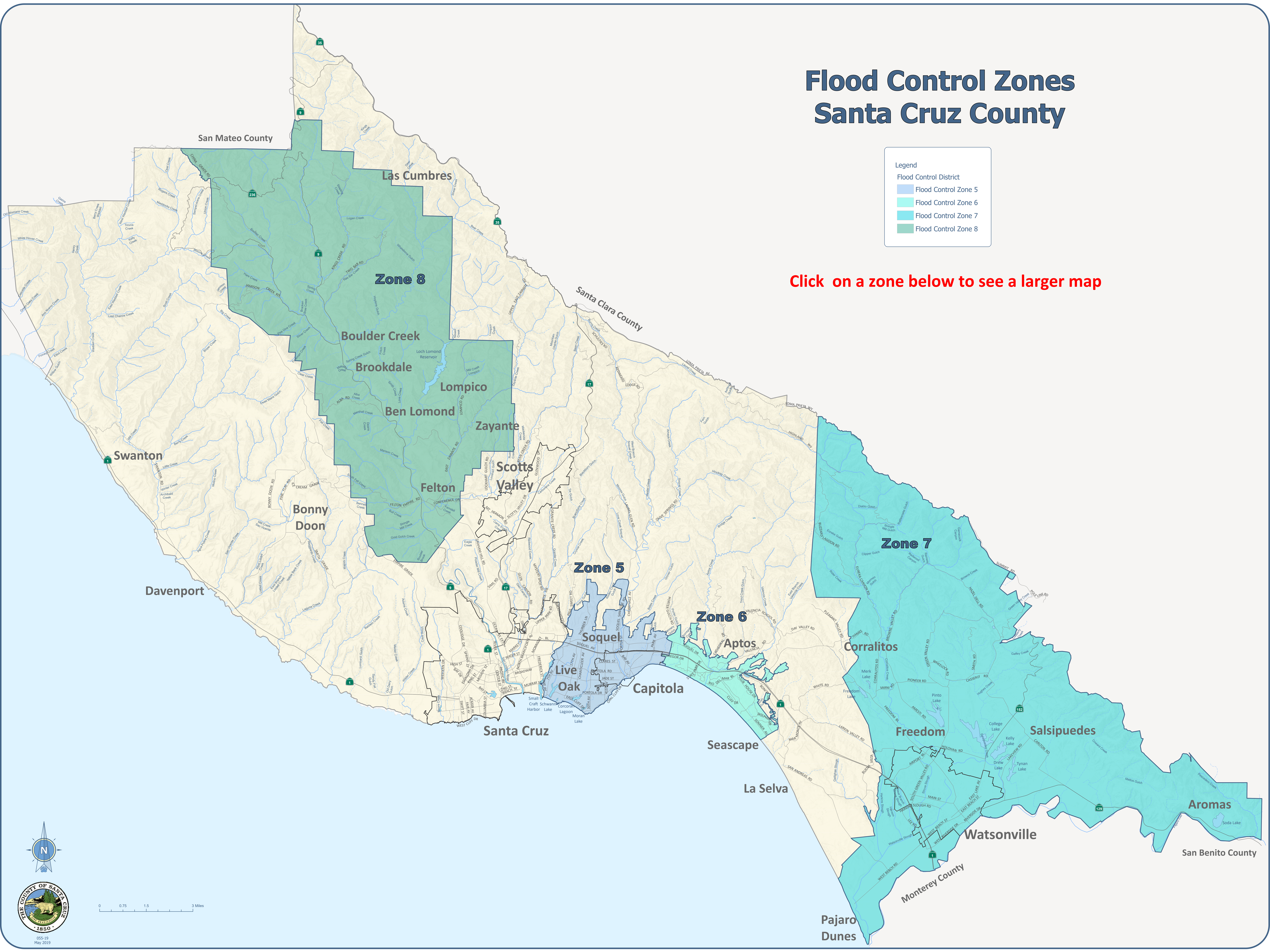
Flood Control Zone 5

Flood Control Zone 6

Flood Control Zone 7

Flood Control Zone 8

Click on a zone below to see a larger map



055-19
May 2019

Screenshot of Zone 5 (blue) from County Flood Control Zones map (May 2019)

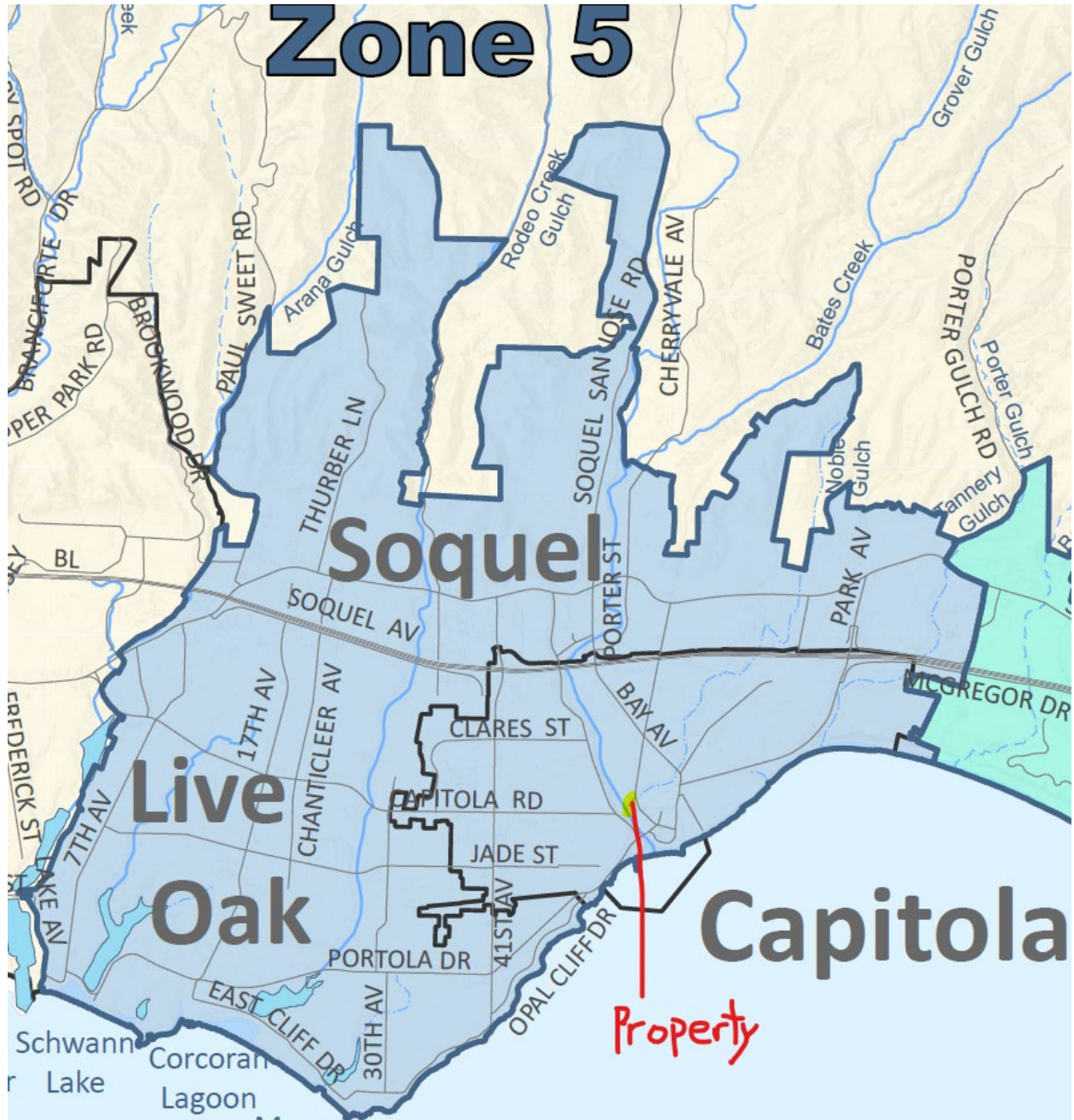


EXHIBIT 10

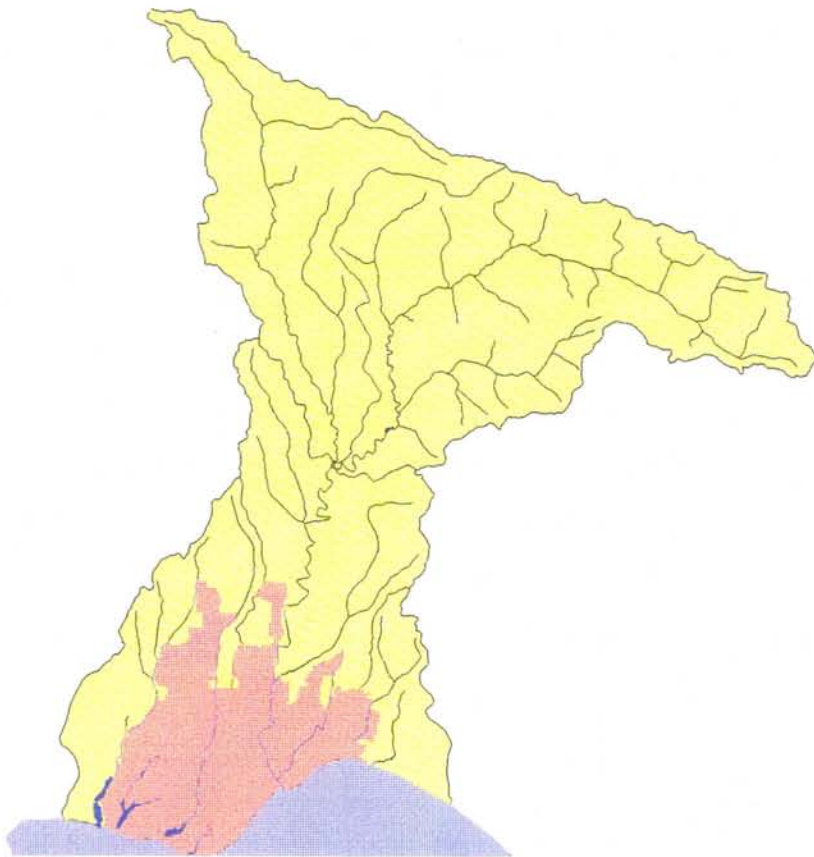
EXHIBIT 11

County of Santa Cruz

Storm Water Master Plan
and Management Program

Volume 1

Zone 5 Master Drainage Plan



KVL Consultants, Inc.

County of Santa Cruz

Storm Water Master Plan and Management Program

Volume 1 Zone 5 Master Drainage Plan

KVL Consultants, Inc.



Kenneth V. Lewis
10/20/58

1. Introduction

Background

The County of Santa Cruz Public Works Department is responsible for operating and maintaining the storm drainage facilities in the areas between the cities of Santa Cruz and Watsonville. The area includes the communities of Live Oak, Capitola, Soquel and Aptos, referred to as Zone 5. There are a number of locations within these areas that require system improvements to mitigate drainage problems and the County is committed to upgrade the drainage system on an ongoing basis within budget limitations.

To assist the County in developing a capital improvement plan for drainage improvements, KVL Consultants, Inc. was hired in September 1997 to develop a Storm Drain Master Plan for Zone 5. The Master Plan includes the hydrologic and hydraulic analysis of modeled facilities, proposed improvements and cost estimates to upgrade system deficiencies and a capital improvement plan to carry out the improvements over a period of time.

Study Area

The study area (Figure 1-1) is the Zone 5 watershed. The study includes the hydrologic analysis of all areas contributing runoff to Zone 5 and the hydraulic evaluation of conveyance systems within Zone 5 equivalent to pipe sizes of 30" diameter and larger. Capacities of existing storm drains smaller than 30", that have been mapped and for which there is data, have been analyzed to establish their capacity and how they can be incorporated into the overall master drainage plan.

Study Approach

To facilitate the management of future changes, a computerized Storm Water Facilities Management System has been developed on a Personal Computer to integrate system modeling, cost estimates and capital improvement plans of proposed improvements. The system includes a PC based Geographic Information System for graphic viewing of system facilities, model results, proposed improvements and facility maps.

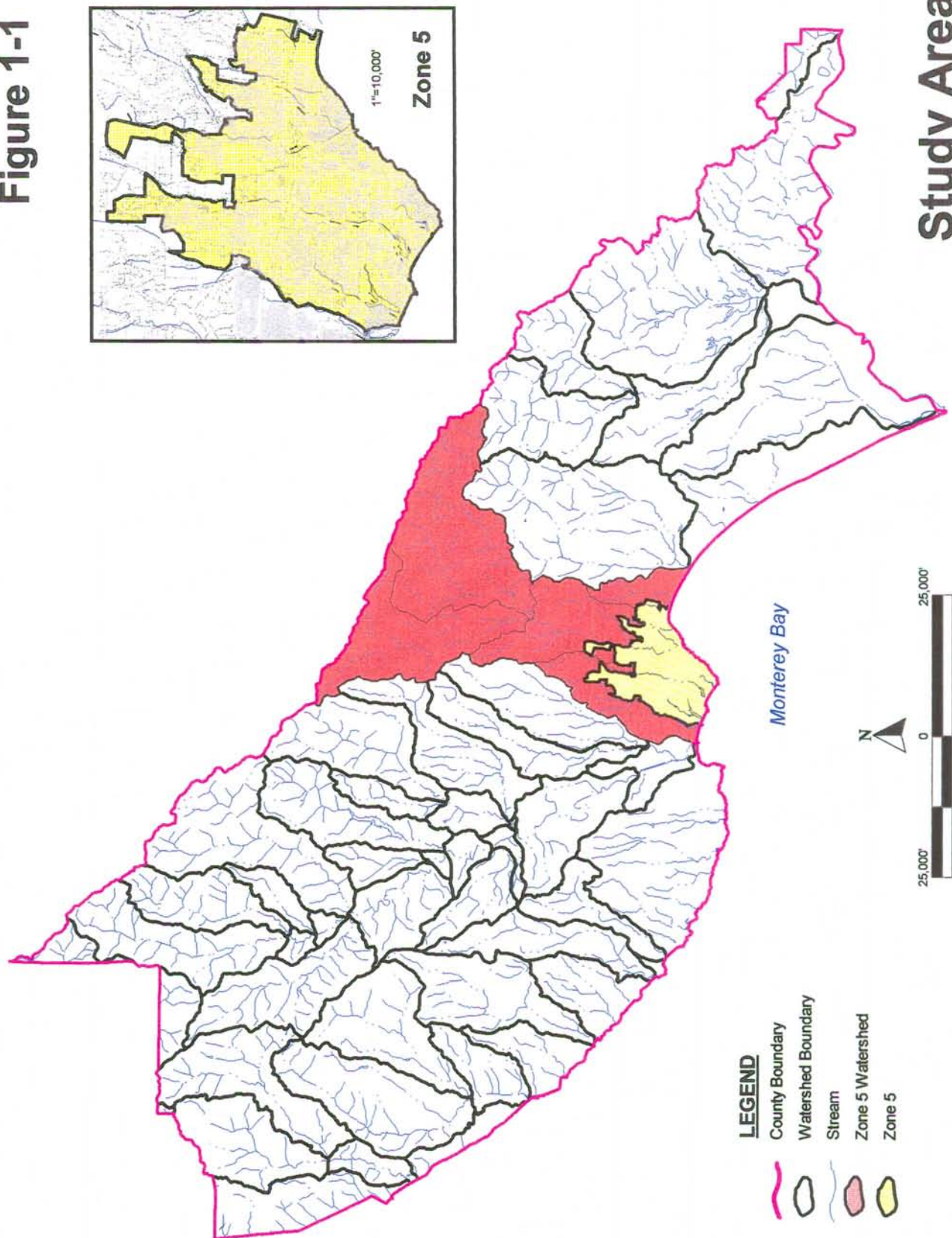
With the County's move toward managing their infrastructure in digital format, the data developed for the master plan is compatible with the existing infrastructure mapping program and can also be transferred to the County's IBM 3090 mainframe system.

The results of the study are presented in the following documents and computer programs:

Volume 1	Zone 5 Storm Drain Master Plan
Volume 2	Stormwater Facilities Management System User's Manual
Program	Stormwater Facilities Management System

This document is Volume 1 – Zone 5 Storm Drain Master Plan.

Figure 1-1



Study Area

County's Current CIP

A list of planned and unplanned CIP projects was provided by County staff. The list is shown in Table 5-3 with their locations shown in Figure 5-2. This list should be reviewed by County staff in conjunction with the sub-standard sections detailed in Table 5-2 and Figure 5-1.

Table 5-3 County's Current CIP

CIP No	Program	Description	Estimate (\$)
D3001	U	41st Ave, SPRR crossing to Monterey Bay	315,000
D3002	U	Gross Rd/ Coffee Ln to Rodeo Gulch	85,000
D3003	U	Corcoran Ave, north end to Portola Dr	85,000
D3004	U	Soquel Ave, Mattison Ln to Rodeo Gulch	170,000
D3005	U	Mission Dr/Soquel Dr./Commercial Way Area	80,000
D3006	U	Capitola Rd/ Clares St/ Deanes Ln to Rodeo Gulch.	45,000
D3007	U	Soquel Ave, @ Arana Gulch	110,000
D3012	U	Gross Rd to Rodeo Gulch	70,000
D3013	U	Kinsley St Chanticleer Ave to 17th Ave	260,000
D3014	U	Portola Dr @ 32nd Ave	110,000
D3015	U	Volz Ln, end of road to channel	65,000
D3016	U	Bostwick Ln, roadway to Areal Gulch	182,000
D3021	U	33rd Ave, Hawes Dr to East Cliff Dr	325,000
D3022	U	Dee St near Thompson Ave	25,000
D3023	U	Roland Dr @ 32nd Ave	45,000
D6501	U	Monterey Ave downstream improvements.	70,000
D6502	U	Mulberry Ln erosion control.	25,000
D6503	U	Cory St to Highway 1	135,000
D6504	U	Rosedale Ave./Orchard St./Hihn ROW	195,000
D6520	P	Monterey Ave., City of Capitola (Design done by Bowman & Williams)	55,000
D9001	U	Noble Gulch; Bay Ave to Soquel Creek.	535,000
D9002	U	Capitola Esplanade pump system.	160,000
Total			3,147,000

EXHIBIT 12



Santa Cruz County Flood Control and Water Conservation District – Zone 5 Draft Storm Drain Master Plan Update 2023



PREPARED FOR:
Santa Cruz County
FCWCD Zone 5
701 Ocean Street
Santa Cruz, CA 95060



PREPARED BY:
Schaaf & Wheeler
870 Market Street, Suite 1278
San Francisco, CA 94102



1 Executive Summary

1.1 Background and Context

A significant planning effort has been undertaken to help guide the Santa Cruz County Flood Control and Water Conservation District (FCWCD), County of Santa Cruz, and City of Capitola in establishing a prioritized Master Plan Improvement Program for regional systems in the Zone 5 service area, including the City of Capitola.

Three prior drainage studies have been completed for the Zone 5 area. Most recently, the Zone 5 and Zone 6 Storm Drain Master Plan (SDMP) was completed in 2013. That study sought to develop a capital improvement plan with the goal of meeting a 10-year level of service standard throughout the storm drain network. This study did not include the City of Capitola. Models developed for the prior study remain a valid tool for evaluating impacts on local systems and should also be maintained.

The study area and existing stormwater conveyance system are shown in Figure 1-1.

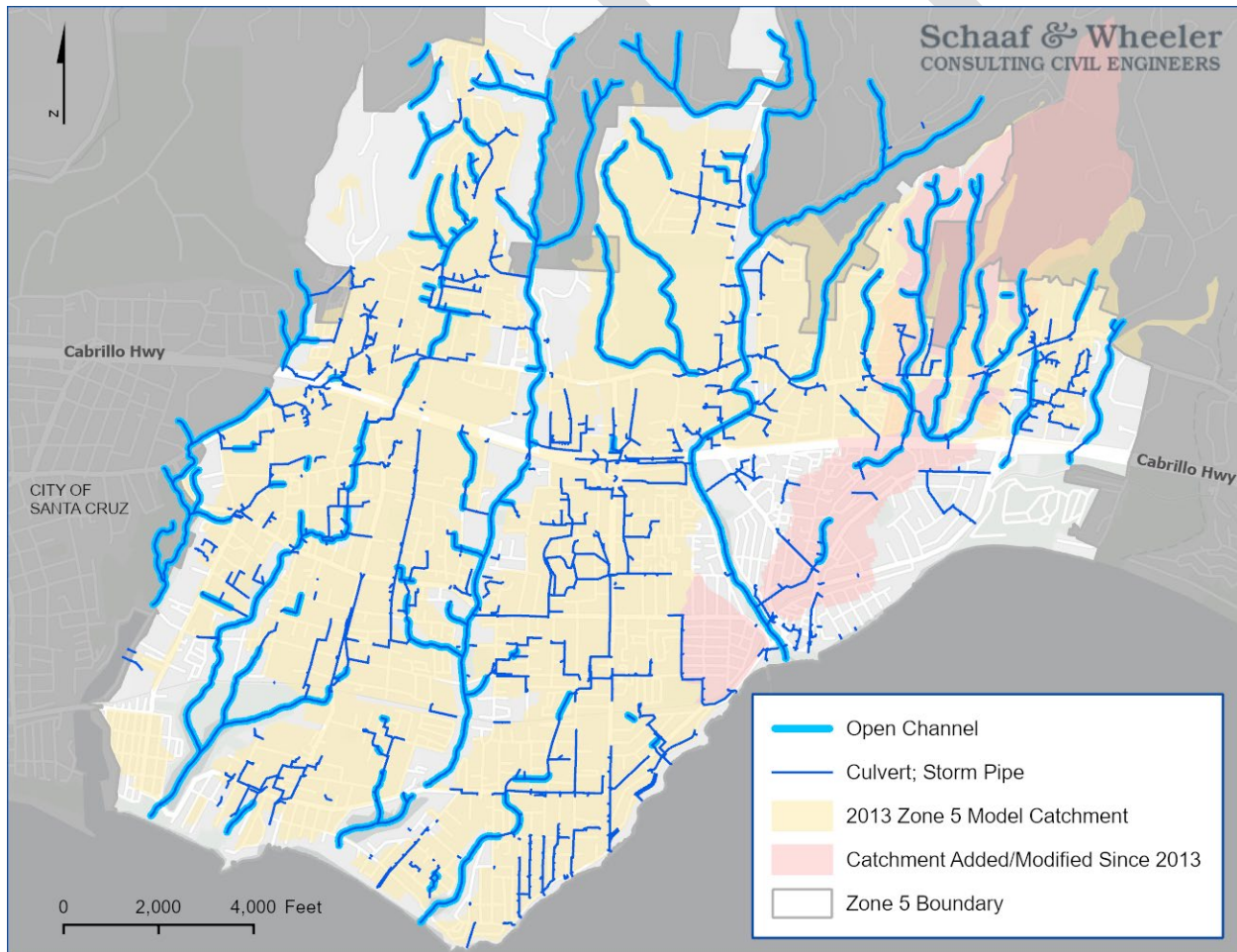


Figure 1-1: Study Area and Existing Storm Drainage System

This master plan is intended to be a planning guide for Zone 5 and is based on best readily available data and information. The recommended projects and activities should be addressed and prioritized based on life safety, potential for property impacts, funding, and public concerns. The engineering analyses performed for this study are intended to segue into design of projects which are funded. The construction design process should use more detailed improved data including surveys, utility mapping, and property/easement acquisition.

Known ownership of the drainage infrastructure has uncertainty in several reaches. Engineering and operations analyses were completed on a watershed basis to create a comprehensive document. The proposed improvement projects and maintenance activities are not intended to imply Zone 5 ownership nor responsibility. Communication and coordination will be key elements of completing projects where system conveyance overlaps with private property.

1.1.1 Local Agency Responsibilities

Santa Cruz County, the City of Capitola and the Zone 5 Flood Control and Water Conservation District (Zone 5) work to protect local water resources by managing creeks and streams, cleaning up trash and pollution, and managing storm drains to minimize flooding. Despite these efforts, our community faces significant challenges from climate change and natural disasters, and an aging storm drainage infrastructure.

Protecting Local Beaches and Water Resources from Pollution

During a storm, rainwater is "runoff," meaning that it runs off roofs, roads, driveways, parking lots, and many surfaces, washing with it trash and pollutants, including fertilizers, vehicle fluids, pesticides, pet waste and other bacteria sources as it makes its way through storm drains and ditches – untreated – into our streams, rivers, and ocean, impacting the Monterey Bay National Marine Sanctuary. Keeping our beaches open and clean and maintaining shoreline water quality in the Sanctuary is critical for the health of Santa Cruz County residents, visitors, aquatic life, and the local economy.

Minimizing the Damaging Effects of Floods

Natural geography puts lower elevation areas of Santa Cruz County at high flood risk. The severe atmospheric rivers that occurred during the 2023 winter storm season resulted in devastating flooding and underscored the need to prepare for emergencies and to protect local, natural water resources.

Maintaining aging storm drainage systems is essential to helping prevent significant property damage in neighborhoods and loss of life during major floods.

Protecting Public Health and Long-Term Water Supplies

Public agencies in Santa Cruz County recognize the importance of effective storm drainage and watershed management to minimize flooding and protect local waterways, which are vital to the overall health of our ecosystem.

Our region's system of storm drains, pumps, channels, pipes, culverts, outlets, and lagoons are essential to collect and manage storm runoff to protect our beaches and local waterways from pollution. Keeping these water resources safe and clean is critical to protecting both public health and local wildlife.

Upgrading and Maintaining Aging, Deteriorating Stormwater System

Much of the storm drain infrastructure in Santa Cruz County is more than 50 years old, and many channels, pipes and pumps located on both public and private properties are deteriorating. Without repairs or improvements, local communities face an elevated risk of flooding in our low-lying communities and pollution of our beaches, rivers, and other local water resources.

1.1.2 Climate Change

Climate change impacts on sea-levels and precipitation are addressed to gauge future system needs. Capital projects cost presented in this report are based on existing deficiencies and construction costs. Climate adaptation and resiliency should be incorporated into each project as they are funded and designed.

This document does not consider coastal protection needs (e.g., erosion protection, armoring, flood walls, or levees). With a focus on interior drainage systems, the implications of sea level rise (SLR) are contemplated. However, a regional scale solution may be required for coastal protection as well to develop greater resilience against a broader array of climate hazards. This is beyond the scope of this analysis.

1.2 Study Objective

This storm drainage study builds on prior analysis in the Zone 5 service area with a narrower focus on meeting a 25-year level of service standard for regional systems consisting of closed conduits and open drainage ditches. The study looks at the 100-year conveyance of the major creek systems, including Rodeo Creek Gulch, Arana Gulch, Soquel Creek, and Noble Creek. This study includes the City of Capitola, which was not studied in the 2013 report. Regional facilities include “backbone” closed-conduit systems and open channels where stormwater concentrates from local systems.

The basic objective of this study is to identify capacity issues and project alternatives to mitigate flooding on the regional system.

The tasks completed as part of this study include:

- A condition assessment of various system elements, including pipe systems, open conveyances, and culverts;
- Collection of field data to supplement GIS data for building an existing conditions model of the storm drainage network;
- Examination and refinement of existing drainage area delineations;
- Assessment of the performance of existing regional storm drainage systems;
- Identification of capital improvement alternatives to reduce flood risk;
- Estimation of project costs for the Capital Improvement Program (CIP);
- Development of an Operations and Maintenance (O&M) Program; and
- An evaluation of funding strategies to implement the CIP.

This study applies the same methodologies as the 2013 study to develop hydrologic and hydraulic models of the regional pipe and open conveyance systems. The 2013 study models remain valid tools for evaluating system capacity as needed, in conjunction with other Zone 5 infrastructure projects for development and redevelopment. The two models should be used

hand-in-hand when possible, with the wider system model used to evaluate localized capacity and impacts, and the updated regional system model developed for this SDMP to be used for those projects and changes expected to impart wider system impacts.

1.2.1 Regional Stormwater Coordination

Prior master planning efforts including Zone 5 did not include areas within the City of Capitola's boundaries. Runoff from portions of Zone 5 outside of Capitola drain into the Noble and Soquel Creeks, which impacts regional drainage systems within Capitola. The City of Capitola has provided funding to support this effort and includes these previously excluded areas in this analysis. Historical drainage issues are well known and recorded in Noble Gulch in particular. These capacity issues, as well as an evaluation of the condition of these systems, are addressed in this report.

This SDMP primarily forms a guide for addressing regional system capacity issues. However, municipal stormwater management is a multi-faceted endeavor requiring both inter- and intra-jurisdictional coordination. Consideration must be given to the impact of new capital assets (CIP), finances, O&M, and regulatory compliance (the Central Coast Regional Water Quality Control Board [RWQCB] National Pollutant Discharge Elimination System [NPDES] Permit).

1.3 Evaluation

This study utilized and further developed InfoSWMM models for Zone 5 built for prior studies. These models include subcatchment hydrology (rainfall-runoff) and conveyance system hydraulics (dynamic wave routing).

Detailed review, field investigations, analysis, and modeling of the area's storm drainage system led to several conclusions. We used these conclusions to recommend improvements to the system intended to reduce flood risk for Zone 5's regional systems.

The recommended improvements are considered planning level and based on currently available information. Detailed project designs will ultimately require more data, including utility locations and any necessary geotechnical information.

We evaluated the current physical condition of the drainage system using pole-mounted camera topside observations. Based on the observed condition during topside investigation, specific reaches were identified for a more detailed CCTV inspection. Most of the observed system is in good condition. However, there are reaches with heavy debris and sediment accumulation.

1.4 Capital Improvement Recommendations

This study includes a CIP based on model results and suggested improvements. Capital projects recommended in this document to address capacity and condition deficiencies are estimated to cost between approximately \$37 million and \$63 million in 2023 dollars. A range of costs is provided, as for certain projects, multiple alternatives are identified. The actual value of the improvements will ultimately depend upon the final design of each project, which could vary based on several factors, including whether systems are replaced or augmented with new, parallel systems.

It is important to remember that in addition to design and construction, California Environmental Quality Act (CEQA) must be satisfied for any capital improvement project described in this

report that may be implemented in the future through the preparation of an appropriate Environmental Impact Report (EIR), Mitigated Negative Declaration (MND), or determined to be categorically excluded.

While projects within public right of way are often preferred, capital improvements identified in this document do pass through privately owned properties in some locations, which may limit feasibility. A summary of estimated costs by priority are summarized in Table 1-1.

Table 1-1: Approximate Cost Ranges of Capital Improvements by Priority

Priority	Description	Approximate Cost
High	High magnitude, high impact flooding where heavy erosion and property damage pose major risk; Urgent repairs or replacement of existing system in very poor condition	\$22,760,000 - \$47,760,000
Medium	Moderate magnitude flooding with relatively extensive impact on regional and local systems, posing some risk of property damage or erosion; Repair or replacement of existing system in poor condition	\$7,320,000 - \$7,730,000
Low	Low magnitude flooding with relatively low impact on regional and local systems and little risk of property damage or erosion; Low priority repairs	\$7,560,000

1.5 Operation and Maintenance Program

Schaaf & Wheeler's subconsultant, NCE, reviewed the County and City of Capitola existing O&M programs and evaluated the storm drain system maintenance needs. A maintenance plan was developed for the County and City to provide recommendations for asset inventory, analysis and forecasting, work program actions, and tracking and reporting. Associated costs for implementing these recommendations were also developed as part of the funding and financial plan.

1.6 Funding and Financial Plan

Schaaf & Wheeler's subconsultants, NCE and NBS, worked together with information contained in this SDMP to develop a funding and finance plan that includes funding the recommended O&M and CIP projects within this report, as well as remaining compliant with NPDES Permit Requirements handed down by the State. Costs of implementation are subdivided into four categories: Capital Improvements, Operations and Maintenance, NPDES Permit Compliance, and Program Management. The breakdown of these costs across Zone 5, County of Santa Cruz, and the City of Capitola is shown in Figure 1-2.

Combined Future Program Costs

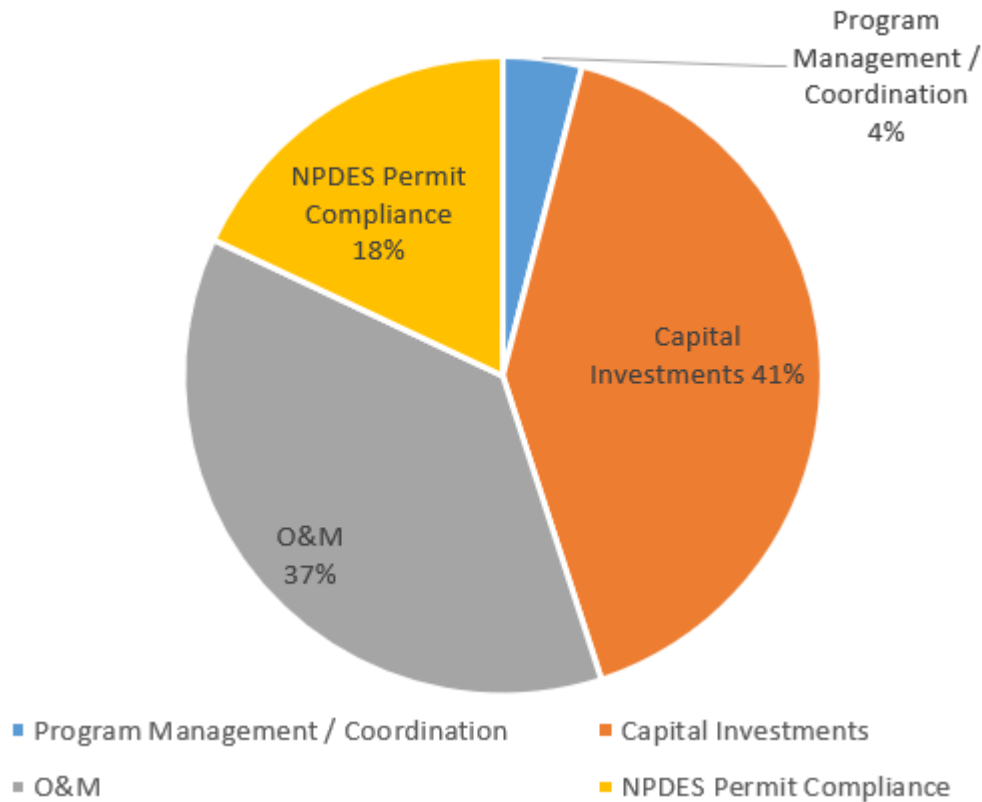


Figure 1-2: Funding Requirements for Stormwater System O&M, Capital Improvements, and Management Across Zone 5 and the City of Capitola

1.7 Conclusion

This storm drain system analysis provides a tool for agency staff to use in their efforts to reduce both nuisance flooding and the likelihood of more serious stormwater-related hazards to private and/or public property in Zone 5 and City of Capitola communities. This study and capital improvement alternatives are merely the conceptual starting point since funding sources for design and construction have yet to be determined.

Once funding sources have been secured, we anticipate that the County, the City, the Zone 5 Flood Control District, and/or their consultants will perform more detailed studies and alternatives analyses to identify the most affordable and effective capacity and condition improvement projects. It is expected that this will require information gathered as part of the design process, including more detailed topography, utility conflicts, available easements and rights-of-way, construction impacts, permitting needs, and long-term O&M. This report ventures to consider these factors in developing an alternatives analysis for various improvement strategies. However, more detailed information will always provide the best tool in making informed decisions.

2 Introduction

2.1 Overview

This document provides a capacity analysis and condition assessment of existing storm drain collection systems, a discussion of drainage design standards, and recommended improvement projects to reduce the risk of flooding for regional facilities with estimated costs within Zone 5.

This analysis should be used to guide local agency staff in planning, financing, engineering, and maintaining the regional storm drain infrastructure. Each chapter of this report is intended to identify problems, manage resources, and provide cost-effective and comprehensive solutions.

This chapter provides a general discussion of drainage and flood management systems and issues currently affecting the community. It also describes the objectives of this analysis, explains the criteria used to evaluate storm drain system performance, and presents a summary of the data collected to support this effort.

2.2 Setting

The study area encompasses portions of multiple jurisdictions within Santa Cruz County, including incorporated Capitola, and unincorporated areas to the west and north. The drainage area is situated adjacent to Monterey Bay to the south and the City of Santa Cruz immediately to the west. A vicinity map showing the boundary of Zone 5 overlain with jurisdictional boundaries and regional drainage systems is provided in Figure 2-1.

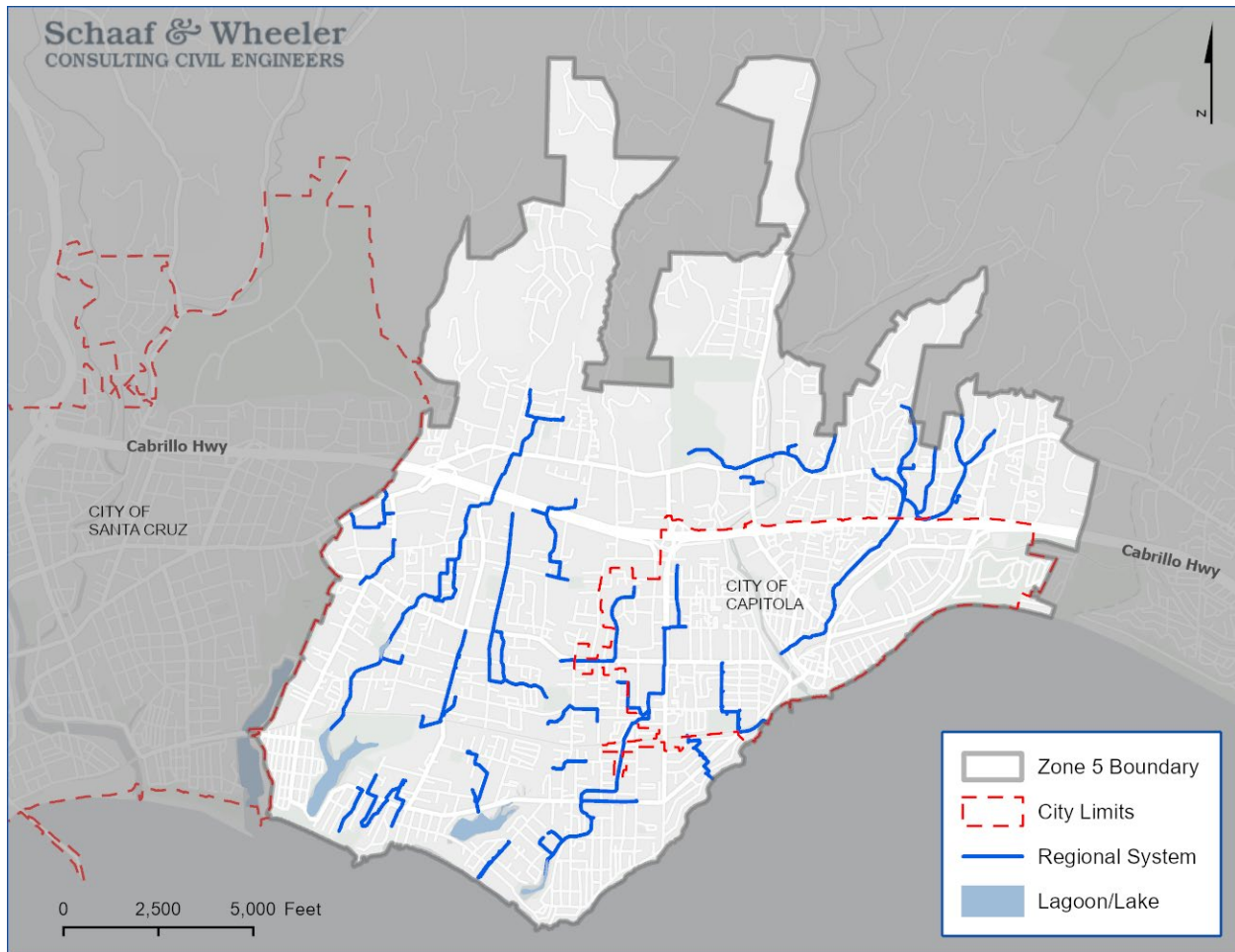


Figure 2-1: Santa Cruz County Zone 5 Vicinity Map

The study area rests at the base of the Santa Cruz Mountains. Urban systems consisting of a mix of closed-conduit and drainage ditches generally drain higher ground into creeks and lagoons that attenuate and convey runoff to Monterey Bay.

Land use within Zone 5 is predominantly urban, with a mix of commercial and residential land cover and ranges in elevation from 0 to approximately 700-feet on the North American Vertical Datum of 1988 (NAVD 88). The study area, defined by the drainage area to the existing regional stormwater conveyance systems, covers an area of approximately 4.5 square miles (Figure 2-4 shows the area served by the regional conveyance systems).

Three creeks receive drainage from these systems. Their drainage areas cover a larger area, including drainage from upstream of the study area and from local pipe systems that were previously studied but not included in this modeling effort. Arana Gulch, Rodeo Creek, and Soquel Creek convey drainage through Zone 5 from a total area of 3.5 square miles, 3.0 square miles, and 42.5 square miles, respectively. These larger drainage areas are shown in Figure 2-2.

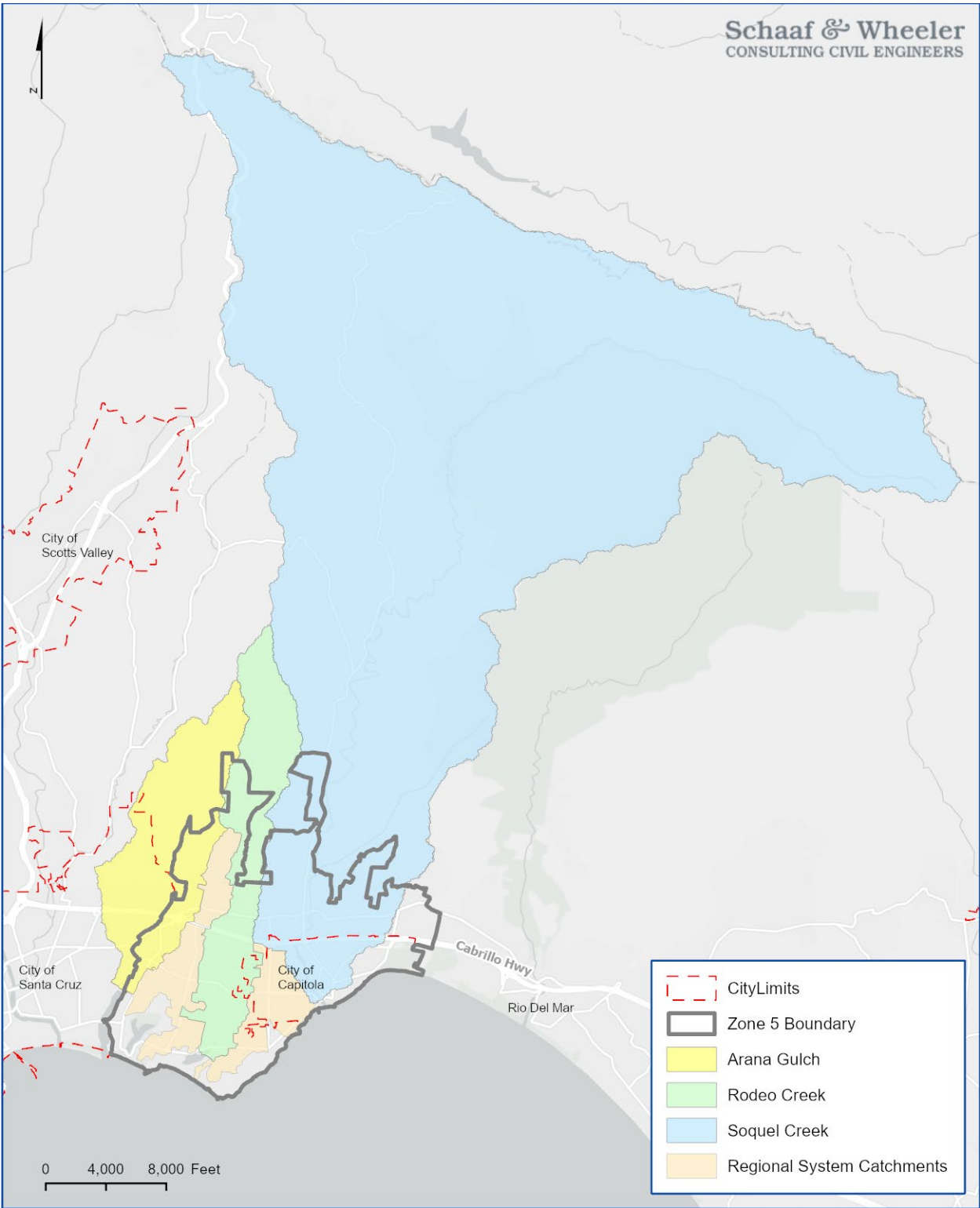


Figure 2-2: Major Creek Drainage Areas

The low-lying portions of the area to the south rest in, or adjacent to, the FEMA-defined coastal Zone VE Special Flood Hazard Area (SFHA). Other SFHAs defined within Zone 5 include Zone A, Zone AE (with and without Floodways) and Zone X, primarily centered around creeks and lagoons. Flood hazard areas in the vicinity of the Zone 5 area are shown in Figure 2-3.

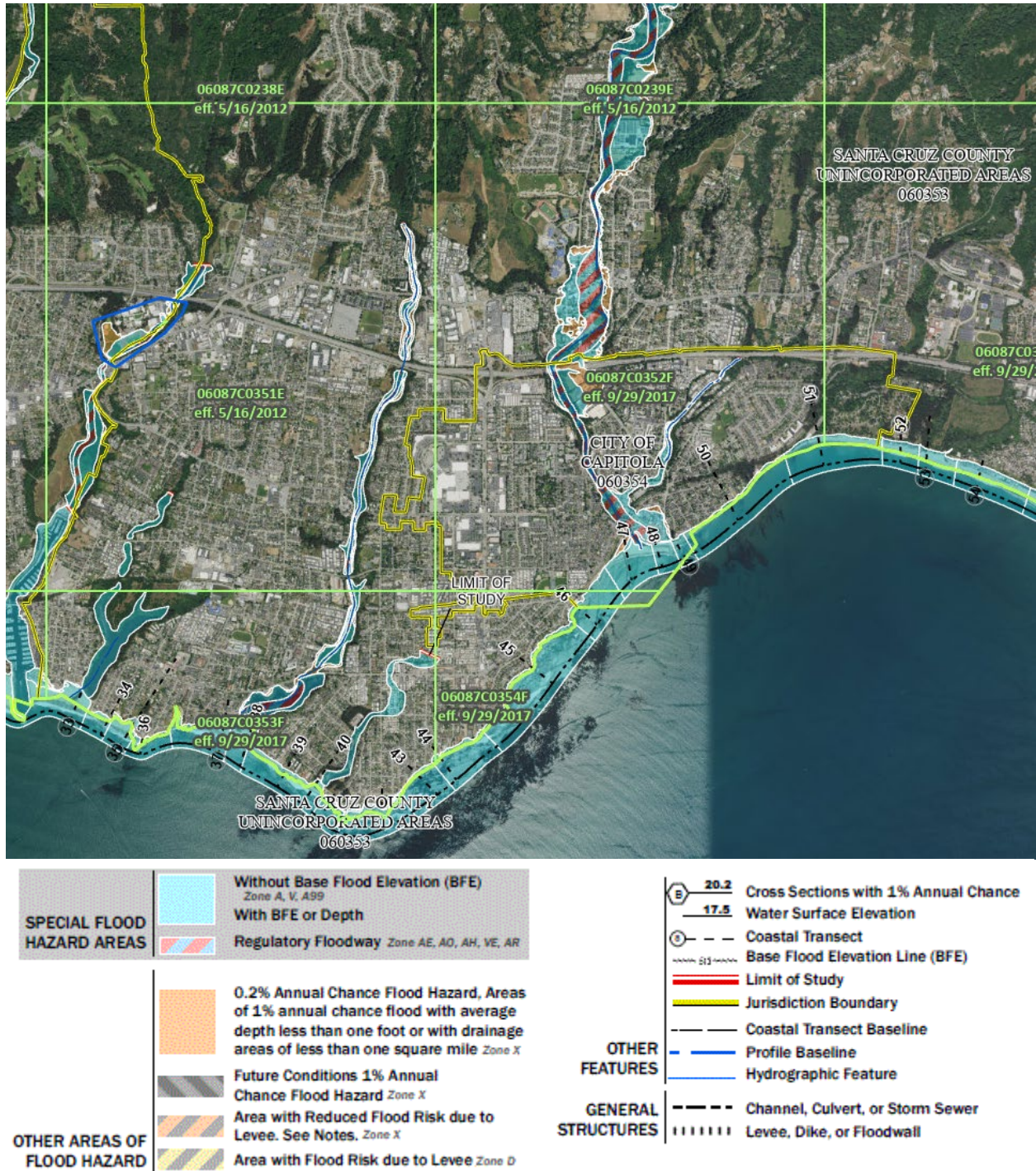


Figure 2-3: FEMA Special Flood Hazard Areas in the Vicinity of Zone 5

2.3 Climate

The Zone 5 study area generally experiences a mild year-round climate, with warm, dry summers and wet winters. Proximity to the Pacific Ocean results in small daily and seasonal temperature ranges with high relative humidity. The coastal region at the base of the Santa Cruz Mountains also experiences frequent fog and low overcast conditions.

The average annual high temperature is approximately 70°F, and the average annual low temperature is approximately 48°F. Most of the rainfall occurs during fall and winter months of October through April (NOAA¹). Mean annual precipitation (MAP) depth varies across the County, with higher elevations in the mountains experiencing generally greater depths due to orographic uplift effects.

Within Zone 5, MAP varies from approximately 30 to 36 inches per year. Countywide, MAP varies from 20 inches per year at low elevations near the southern boundary with Monterey County up to 56 inches per year at higher elevations in the mountains (California-Nevada River Forecast Center²). The average for the nearby Santa Cruz climate station is about 31.4 inches per year (representative of the low-lying urban areas).

The topography of the Santa Cruz Mountains to the north and exposure to Pacific weather systems to the south and west has a defining influence on precipitation patterns in Santa Cruz County. Precipitation events are dominantly orographic, since moist air is lifted over the mountains and then cools and condenses, or cyclonic, where rain is caused by air mass movement from higher barometric pressure regions to lower pressure. Cyclonic events can also be caused by frontal activity. Warm fronts are generally associated with broad bands of low-intensity rainfall, while higher rainfall intensities are typical of cold fronts (Western Regional Climate Center³).

This study also considers the potential impacts of climate change on the stormwater systems. Anticipated regional and local changes in seasonal precipitation and storm characteristics are available in published research and climate prediction tools provided by the EPA and Cal-Adapt. This study evaluates the impacts of climate change by increasing the overall depth of the 25-year design storm event to reflect those published predictions.

2.4 Existing System

Runoff generated by precipitation within the Zone 5 area is conveyed through a system of pipes, open ditches, and creeks. All runoff captured by the drainage system ultimately discharges to Monterey Bay, though some is stored in lagoons near the coastline. The study area and existing stormwater conveyance system are shown in Figure 1-1.

Drainage systems within Zone 5 encompass a network of open channel conveyance (e.g., ditches and creeks), inlet structures, and storm drain pipes. The area drains to 20 distinctive, contiguous regional subsystems. These areas can be grouped into eight larger regions by receiving body. These regions drain to three creeks (Arana Gulch, Rodeo Gulch, and Soquel Creek), four Lagoons (Schwan, Corcoran, Moran, and Bonita) and directly to the Monterey Bay, as shown in Figure 2-4.

¹ <https://www.weather.gov/wrh/climate?wfo=mtr>

² <https://www.cnrfc.noaa.gov/?product=QPEWYNORMAL&zoom=11&lat=37.107&lng=-122.081&PNGtypeID=QPEWYNORMAL>

³ https://wrcc.dri.edu/Climate/narrative_ca.php

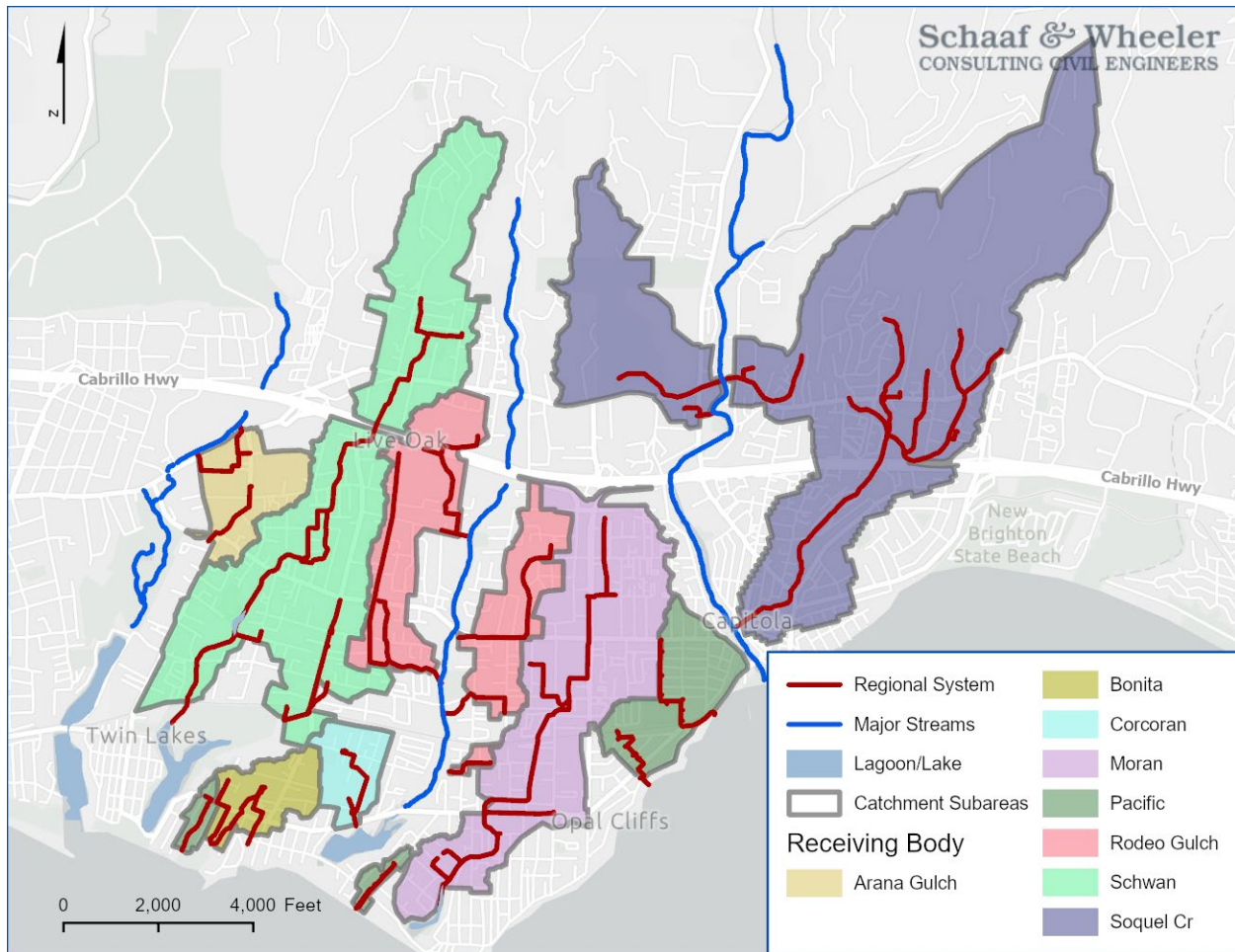


Figure 2-4: Catchments Grouped into Drainage Regions by Receiving Body

As further development and redevelopment occurs in Zone 5, Santa Cruz County, and the City of Capitola, runoff patterns will be impacted. Some developments will be subject to the requirements of the NPDES permit, while smaller-scale projects may not be. It is difficult to anticipate the exact impact of land use change on storm drainage systems and floodplains. Emphasis and incentivization of higher density development and increased housing availability and affordability further complicates this effort, but available data can be used to estimate the impacts on some level.

Existing storm drainage facilities must evolve with population and land use change, and this SDMP provides some tools to prepare for and respond to those changes as they occur. This may include case-by-case impact analysis on pipe systems, drainage channels, and floodplains, or feasibility analysis for regional detention or recharge facilities.

2.5 History of Drainage Issues and Flooding

A history of natural disasters, including flooding, is well documented within Santa Cruz County and its incorporated cities. Flooding is documented as far back as 1871 – 1872, when the Santa Cruz Mission, in the San Lorenzo River's floodplain, was destroyed in its first year of existence.

The December 1955 Christmas Floods are documented as the highest historic flooding in the area, though 90% of the damage caused by the event occurred within the City of Santa Cruz and its downtown area. Although, on Soquel Creek, a peak flow rate of over 15,000 cfs destroyed the Soquel Bridge.

In 1982, flooding due to a roughly 30-year event in Santa Cruz County killed 22 people, injured 50 others, and destroyed several homes and businesses, with damages reaching over \$100 million in total⁴. During the 1982 event, a log jam formed at the reconstructed Soquel Drive bridge and the creek overflowed its banks. According to eyewitness accounts, the event flooded the Old Mill Mobile Home Park, followed within hours by Downtown Soquel, with floodwaters reaching up to 5 feet in depth.

Most recently, the storms of 2022 – 2023 caused a wide range of damage throughout the County and incorporated areas within. In the northern areas of the County, in the Santa Cruz Mountains, landslides and downed trees caused blockage and damage on highways (including Highways 1, 9, and 17) and other roads, requiring closure during cleanup and repairs.

Widespread high flows in streams tributary to the major creeks and rivers washed out culverts, and bridges including: the Bates Creek culvert crossing at North Main Street (within Zone 5), as well as large crossings on Redwood Loge Road and China Grade Road. In many locations, these failures washed out all lanes of the crossing roadway and stranded a number of residents for an extended period of time.

Soquel Creek also overflowed its banks near the Soquel Drive bridge, causing flooding of the Old Mill Mobile Home Park, Porter Street, and surrounding businesses. During that storm, Soquel Creek registered a flow rate of 9,310 cfs, exceeding an estimated 25-year return period based on stream gage statistics. That event also produced a peak flow of very nearly the same magnitude as the 1982 flood (9,700 cfs).

In Capitola, Pacific Ocean waves destroyed a large section of the Capitola Wharf, while high stage and wave propagation along Soquel Creek caused extensive damage to restaurants and other infrastructure along the Creek's banks.

Historically, both Soquel and the City of Capitola have primarily been affected by flooding from Soquel Creek, which impacts low-lying areas within its floodplain. However, Noble Creek and Tannery Creek floods occurring in March 2011 caused extensive flooding and damage in the City of Capitola. During the 2011 flood event, a large storm drain pipe failed in Noble Gulch, destroying portions of Pacific Cove Mobile Home Park and releasing impounded flood waters downstream. Subsequently, the Mobile Home Park was closed, its tenants were nearly entirely relocated, and the property was converted to a parking lot (Santa Cruz Sentinel).

Photos of various flood events and damages are shown in Figure 2-5.

⁴ Santa Cruz Public Libraries. *The Nature and History of Flooding in Soquel Village*. Accessed October 2023. <https://history.santacruzpl.org/omeka/files/original/f127e52f2fc2073f773c61a6336186fd.pdf>



Figure 2-5: Photos of Historical Flooding in Santa Cruz County and City of Capitola

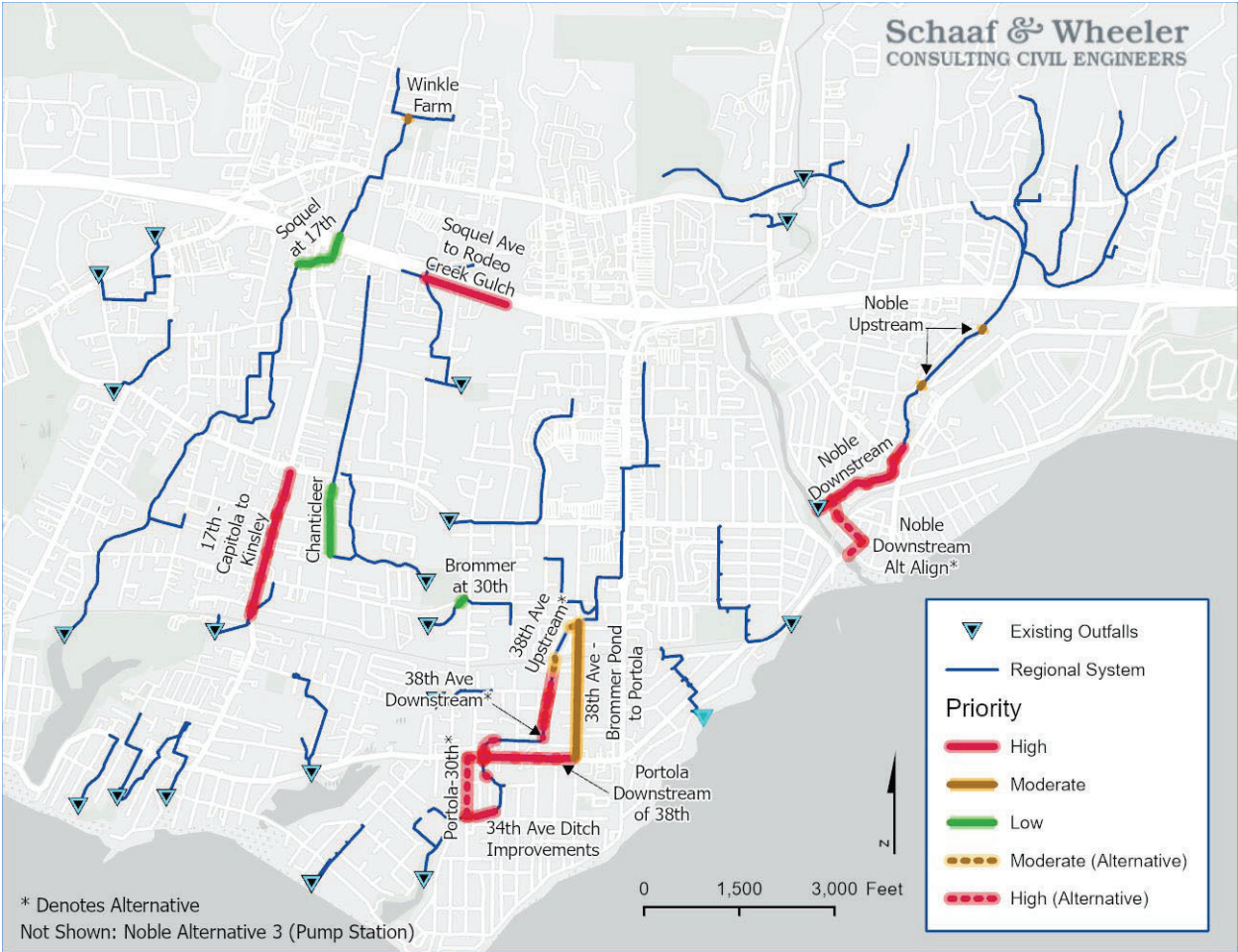


Figure 5-11: Map of Prioritized System Capacity Projects

Table 5-4: Capital Improvement Projects Summary (Capacity-Driven)

ID	Project	Length (ft)	Pipe Diameters (in)
1	17th - Capitola to Kinsley	2,340	30-42
2	34th Ave Ditch Improvements	400	84-144**
2A*	Portola-30th (34th Avenue Ditch Alternative)	1,250	36
3	Portola Downstream of 38th	1,495	48
3A*	38 th Ave Downstream	1,515	48**-84**
4	Noble Downstream	1,515	120**-144**
4A*	Noble Downstream (Alt. Gravity Alignment)	2,750	84-144**
4B*	Noble Downstream (600 cfs Pump Station)	1,550	72-144**
5	Soquel Avenue to Rodeo Creek Gulch	1,340	42
6	38th Avenue - Brommer Pond to Portola	2,115	36
6A*	38 th Ave Upstream	395	48**-72**
7	Noble Upstream	660	120**-144**
8	Winkle Farm	65	42
9	Brommer at 30th	160	30
10	Chanticleer	1,100	42
11	Soquel at 17th	960	84-144**
Total:		10,430-14,255	

*Project alternatives identified

**Represents a nearest equivalent circular pipe diameter for a proposed box culvert

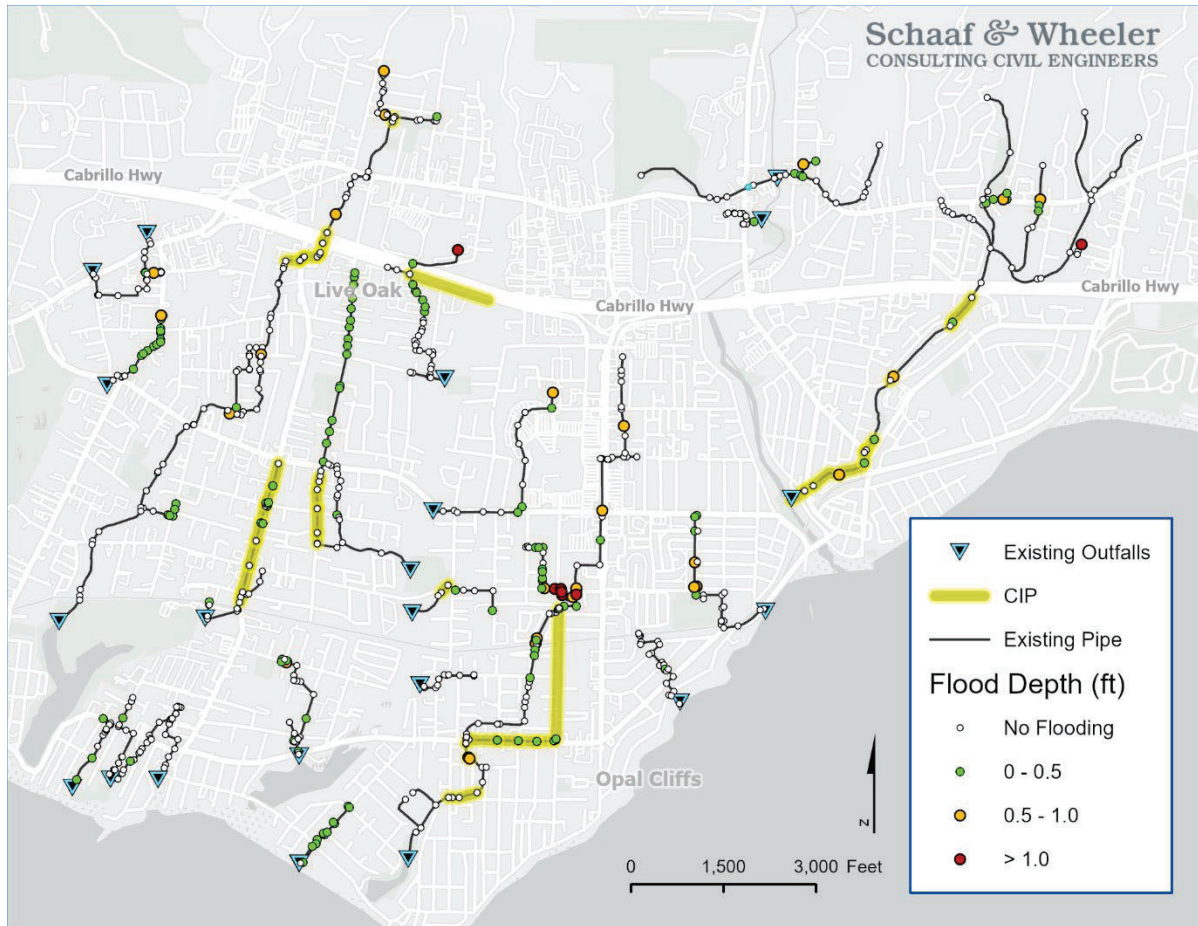


Figure 5-12: Modeled Flood Depth for Baseline Capital Improvement Projects

In some cases, it may not be feasible to meet the desired 25-year standard at every node within Zone 5. Reasons may include constraints on how large system elements can be, utilities or such extensive private property impacts that the construction of new drainage infrastructure along existing alignments is infeasible. Residual flooding beyond 6 inches in depth may also remain at single, isolated nodes in the system. At many of these locations, flooding is not likely to reach the modeled depths since the surrounding topography may provide relief and surface conveyance to portions of the system where capacity is available immediately downslope.

5.3.2.1 Capacity Project Alternatives

For most identified projects, the existing system has been upsized to mitigate capacity deficiencies without changing its alignment. Alternatives for any project that should be explored at a design level include:

1. Installation of parallel pipe in lieu of removal and replacement with larger pipe;
2. Daylighting systems into open channel conveyances where opportunities arise (e.g., development/redevelopment proposals); and
3. Alternative alignments that may address unexpected conflicts with private properties or utilities.

Parallel pipe alternatives take advantage of existing system capacity and may reduce the cost of increasing capacity, allowing for the installation of smaller pipes and circumventing the need for removal and disposal of existing systems that may be in serviceable condition. This may not be the best solution for systems where existing pipe is both capacity deficient and has limited remaining service life.

Daylighting systems into open channel conveyances generally requires a similar level of capital investment as pipe replacement projects, but the approach has numerous benefits. Stormwater conveyance can be integrated into landscaping as a beautification measure, open channels are more accessible for maintenance purposes, and there may be significantly lower replacement cost. This may not be possible for pipe systems along highly trafficked roadways. However, if transportation projects or redevelopment of private properties occurs where stormwater conveyance is in need of capital investment, that may be leveraged to explore these alternatives.

In some cases, alternatives have been identified to address obvious challenges to projects on existing pipe alignments.

Alternatives for two projects are shown in Figure 5-11 that warrant some additional discussion: 34th Avenue Ditch and Noble Downstream. Because much of the existing alignment would be challenging to upsize due to property ownership, these projects have been examined more closely for less costly or disruptive alternatives.

The CIP cost estimates for these projects do include assumptions of property acquisition cost based on approximate property values in the vicinity of the projects. It is likely that for both of these projects, an easement on its own will not be sufficient to construct them. For the purposes of this analysis, it is assumed that property acquisition will be required. This is because some existing systems pass underneath structures or proposed conveyances would need to be installed within the footprint of existing structures.

34th Avenue Ditch Project

The 34th Avenue Ditch project includes an existing 72-inch pipe that runs beneath a mobile home park between 34th Avenue and 30th Avenue. Even if this project is constructible, it is likely that the cost would be much higher than a standard open trenching approach, and it would remain disruptive to residents. Instead, an alternative alignment of new pipe is proposed along Portola Drive and 30th Avenue, intersecting the new system again at the existing outfall location into the channel upstream of Moran Lake. While this would increase the length of pipe required for the project, it would place conveyance within the right-of-way.

Noble

In a similar fashion, Noble Downstream includes a large box culvert that runs through easements across properties on the west side of Capitola Ave. It may not be feasible to protect existing structures if these box sections are to be upsized all the way to Soquel Creek. Instead, a reach of approximately 1,200 feet of new 84-inch pipe would stretch from near Riverview Drive, along Capitola Avenue and Stockton Avenue to a new outfall at Stockton Avenue Bridge.

A second alternative exists at this location. Rather than constructing a long reach of new pipe and a new outfall, a pump station could be constructed in or adjacent to the parking lot near the City Hall building, with a forcemain running through or adjacent to the existing box and outfall to

Soquel Creek. However, it is likely that this option would be far more costly and would eliminate parking spaces in the existing lot (a portion of the lot would be replaced with a wetwell, access points, and a control building). This analysis assumes that the existing undersized gravity outfall continues to function in some capacity.

The flood depth result with the Portola-30th and Noble Downstream Alternative 1 projects is shown in Figure 5-13. Flood depth results are shown with the Noble Pump Station Alternative in Figure 5-14.

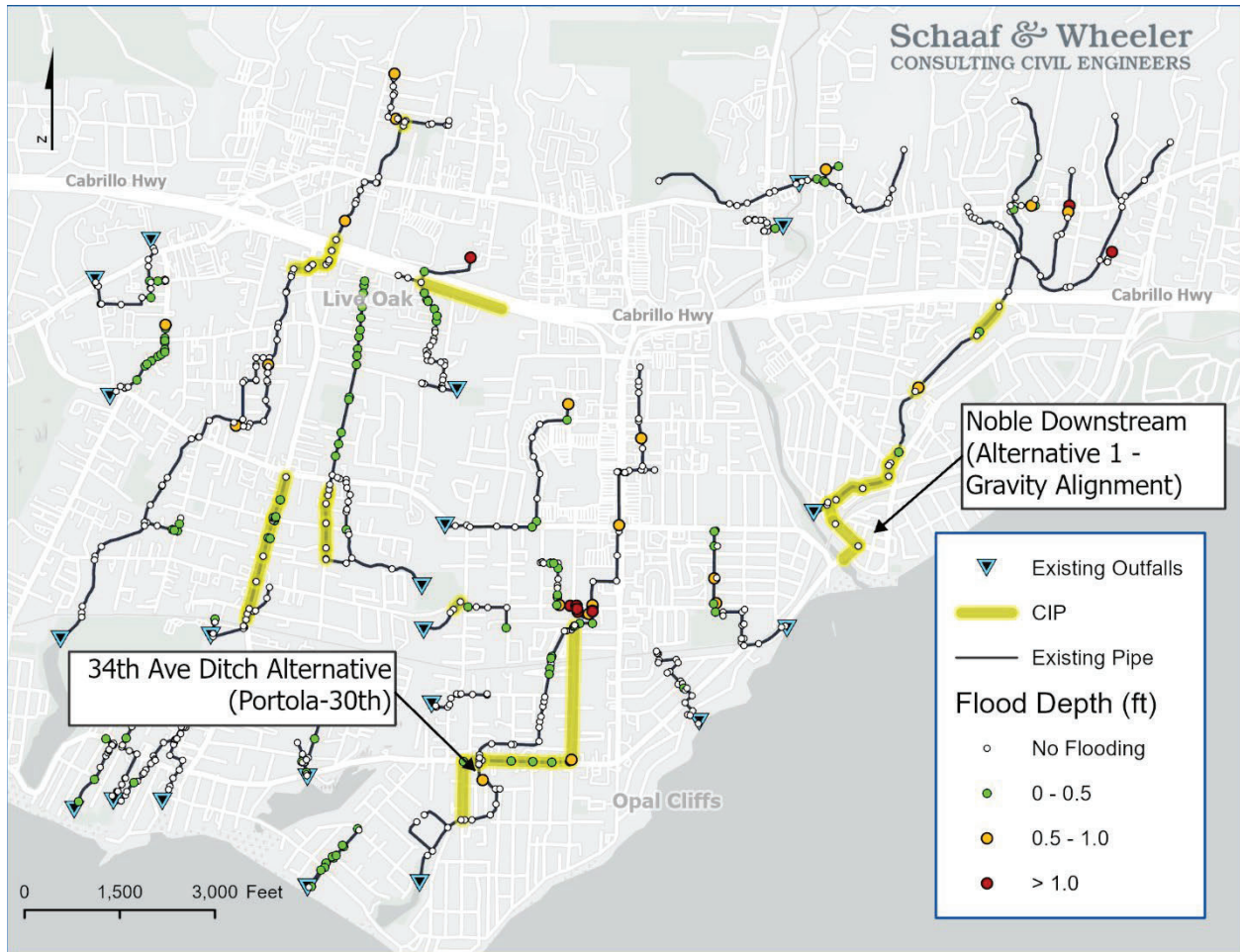


Figure 5-13: Modeled Flood Depth for Alternative Projects Avoiding Private Property Impact

A. Project ID: 4 **B. Project Name:** Noble Downstream (Alt 1)

C. Project Location: Capacity Improvement at downstream end of Noble Creek Culvert

D. Priority: High

E. Type: Capacity

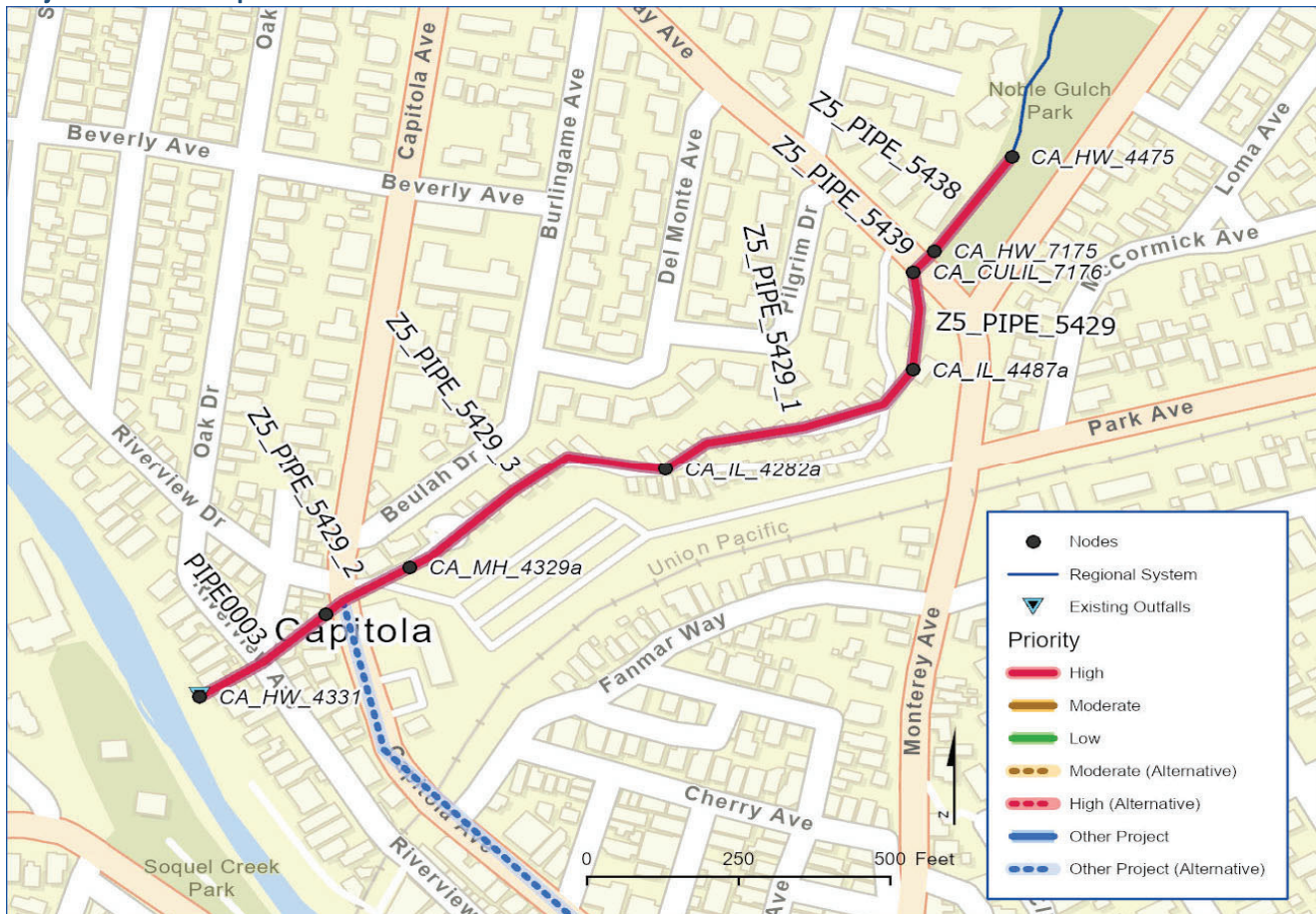
G. Description: Upsize Noble Creek culvert downstream end to provide adequate capacity for a 10-year storm event. Remain on existing alignment

Ex. Size (in)	Replacement Pipe Size (in)	Parallel Pipe Diam (in)	Length (ft)
70	72 x 96	N/A	427
45 x 72	72 x 96	N/A	103
72	96 x 120	N/A	564
48 x 72	72 x 96	N/A	259
72	96 x 96	N/A	163

H. Project-Specific Considerations: Existing alignment beneath homes and through narrow easement

I. Alternatives: See Project IDs 4A and 4B for identified alternatives

J. Project Location Map:

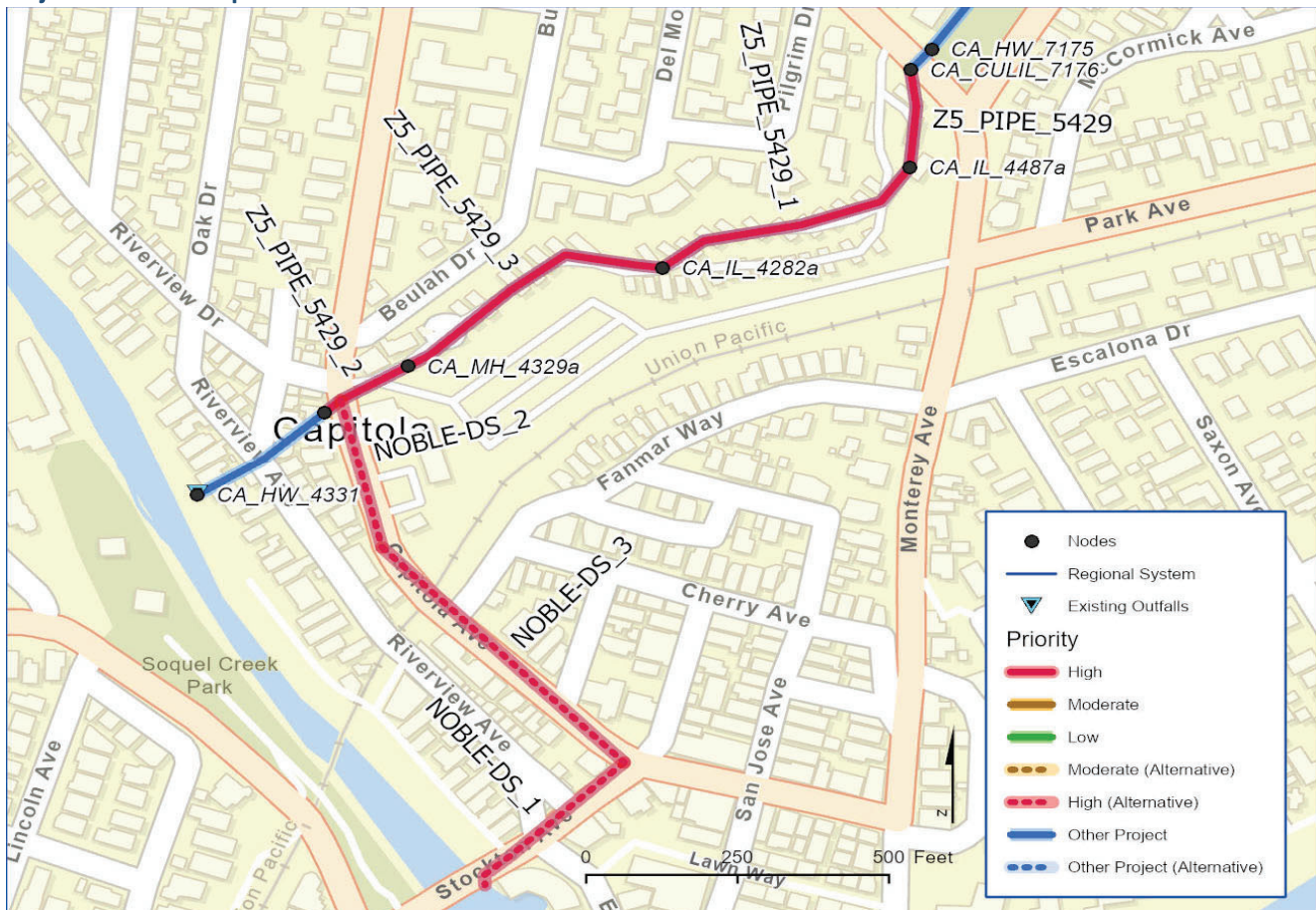


A. Project ID: 4		B. Project Name: Noble Downstream (Alt 1)					
C. Project Location: Capacity Improvement at downstream end of Noble Creek Culvert							
D. Priority:		High					
E. Project Cost							
MAJOR ITEMS		DIAM (in)	AVE DEPTH (ft)	QTY.	UNIT	UNIT COST	COST
BASELINE CONSTRUCTION COST							
Pipe Demo/Disposal							
Z5_PIPE_5438, Z5_PIPE_5438		70	9	427	LF	\$100	\$43,000
Z5_PIPE_5439, Z5_PIPE_5439		45 x 72	9	103	LF	\$120	\$12,000
Z5_PIPE_5429_1, Z5_PIPE_5429_2		72	11	727	LF	\$120	\$87,000
PIPE0003		48 x 72	9	259	LF	\$120	\$31,000
Pipe Construction							
Z5_PIPE_5438, Z5_PIPE_5439, PIPE0003, Z5_PIPE_5438, Z5_PIPE_5439		72 x 96	9	788	LF	\$2,510	\$1,980,000
Z5_PIPE_5429_1		96 x 120	11	564	LF	\$3,010	\$1,700,000
Z5_PIPE_5429_2		96 x 96	11	163	LF	\$2,760	\$450,000
Structures							
Manhole/Catch Basin Connection							\$285,000
Outfalls							\$100,000
SUBTOTAL							\$4,680,000
Mobilization/Demobilization						10%	\$470,000
Traffic Control						5%	\$230,000
Contingency						40%	\$1,870,000
CONSTRUCTION COST TOTAL							\$7,250,000
Engineering/Inspection						20%	\$1,450,000
Site-Specific Costs							
ROW Acquisition/Easements							\$2,900,000
Environmental/Jurisdictional Permitting							\$100,000
CIP TOTAL							\$11,700,000
*Totals rounded to nearest \$10,000							

A. Project ID: 4A	B. Project Name: Noble Downstream (Alt 2)
C. Project Location: Capacity Improvement at downstream end of Noble Creek Culvert	
D. Priority: High	
E. Type: Capacity	
G. Description: Replace existing culvert downstream of Monterey Ave, but install a new parallel pipe on Capitola Ave and Stockton to re-route drainage to a point along Soquel Creek with lower HGL	

Ex. Size (in)	Replacement Pipe Size (in)	Parallel Pipe Diam (in)	Length (ft)
72	96 x 120	#N/A	958
48 x 72	72 x 96	#N/A	259
72	96 x 96	#N/A	163
72	72 x 96	#N/A	179
N/A	84	N/A	1,190

H. Project-Specific Considerations:	N/A
I. Alternatives:	See Project IDs 4 and 4B for identified alternatives
J. Project Location Map:	



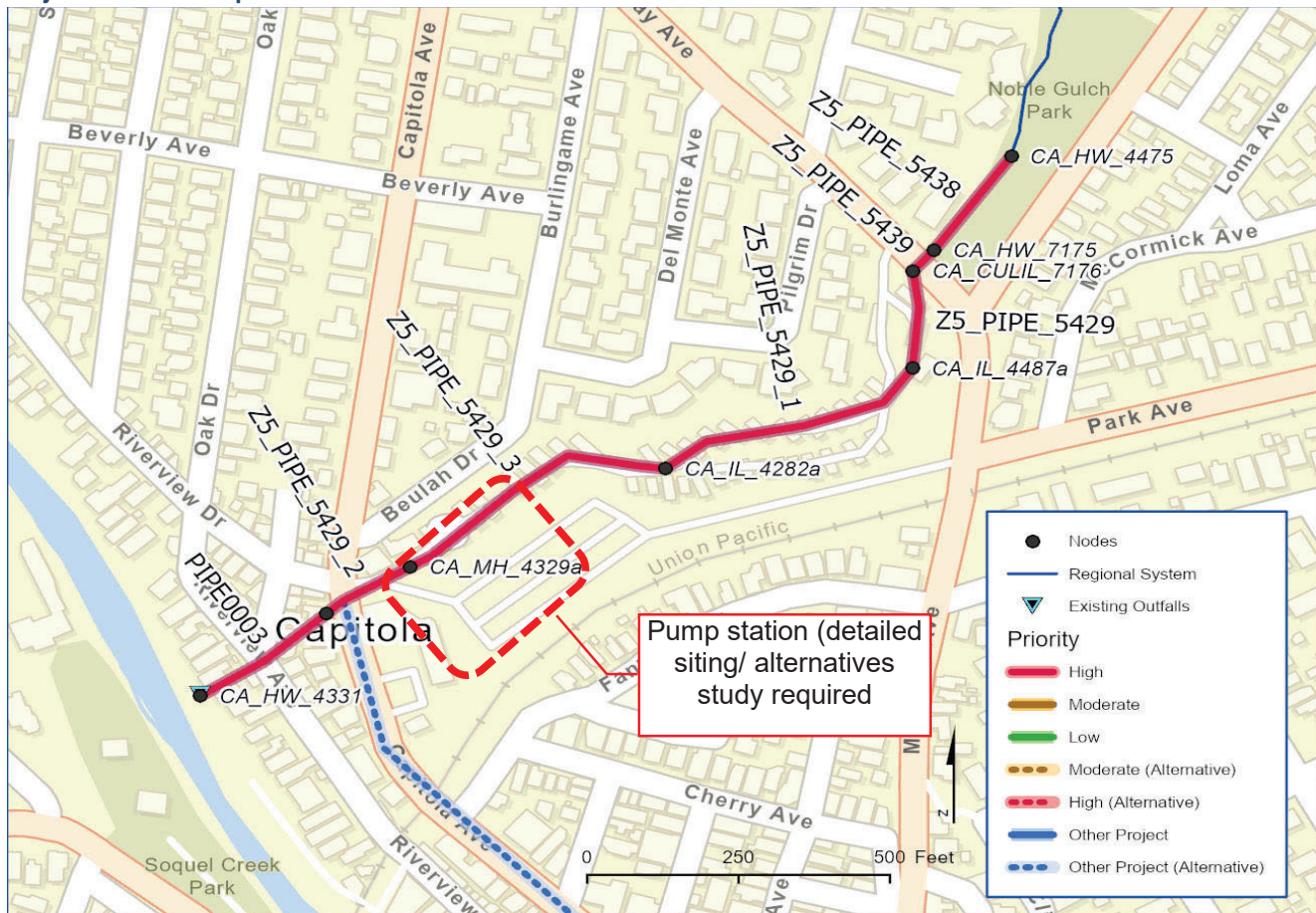
A. Project ID: 4A		B. Project Name: Noble Downstream (Alt 2)					
C. Project Location: Capacity Improvement at downstream end of Noble Creek Culvert							
D. Priority:		High					
E. Project Cost							
MAJOR ITEMS		DIAM (in)	AVE DEPTH (ft)	QTY.	UNIT	UNIT COST	COST
BASELINE CONSTRUCTION COST							
Pipe Demo/Disposal							
Z5_PIPE_5429_1, Z5_PIPE_5429_2, Z5_PIPE_5429_3, Z5_PIPE_		72	11	1,299	LF	\$120	\$156,000
PIPE0003		48 x 72	9	259	LF	\$120	\$31,000
Pipe Construction							
Z5_PIPE_5429_1, Z5_PIPE_5429_3		96 x 120	11	958	LF	\$3,010	\$2,880,000
PIPE0003, Z5_PIPE_5429		72 x 96	9	438	LF	\$2,510	\$1,100,000
Z5_PIPE_5429_2		96 x 96	11	163	LF	\$2,760	\$450,000
NOBLE-DS_1, NOBLE-DS_2, NOBLE-DS_3		84	10	1,190	LF	\$1,670	\$1,987,000
Structures							
Manhole/Catch Basin Connection							\$286,700
Outfalls							\$100,000
Site-Specific Costs							
Utility Relocation							\$0
ROW Acquisition							\$0
Environmental/Jurisdictional Permitting							\$0
SUBTOTAL							\$6,990,000
Mobilization/Demobilization						10%	\$700,000
Traffic Control						5%	\$350,000
Contingency						40%	\$2,800,000
CONSTRUCTION COST TOTAL							\$10,840,000
Engineering/Inspection						20%	\$2,170,000
CIP TOTAL							\$13,010,000
*Totals rounded to nearest \$10,000							

A. Project ID:	4B	B. Project Name:	Noble Downstream (Alt 3)																													
C. Project Location: Capacity Improvement at downstream end of Noble Creek Culvert																																
D. Priority:	High																															
E. Type:	Capacity																															
G. Description:	Gravity improvements to downstream Noble Creek culverts; Construct new pump station and forcemain (~72") for greater resilience to sea level rise. Requires detailed siting, capacity, and alternatives analysis study																															
<table><tr><th>Ex. Diameter (in)</th><th>Replacement Pipe Diameter (in)</th><th>Parallel Pipe Diam (in)</th><th>Length (ft)</th></tr><tr><td>N/A</td><td>72</td><td>N/A</td><td>300</td></tr><tr><td>70</td><td>72 x 96</td><td>N/A</td><td>213</td></tr><tr><td>45 x 72</td><td>72 x 96</td><td>N/A</td><td>51</td></tr><tr><td>72</td><td>96 x 120</td><td>N/A</td><td>564</td></tr><tr><td>48 x 72</td><td>72 x 96</td><td>N/A</td><td>259</td></tr><tr><td>72</td><td>96 x 96</td><td>N/A</td><td>163</td></tr></table>					Ex. Diameter (in)	Replacement Pipe Diameter (in)	Parallel Pipe Diam (in)	Length (ft)	N/A	72	N/A	300	70	72 x 96	N/A	213	45 x 72	72 x 96	N/A	51	72	96 x 120	N/A	564	48 x 72	72 x 96	N/A	259	72	96 x 96	N/A	163
Ex. Diameter (in)	Replacement Pipe Diameter (in)	Parallel Pipe Diam (in)	Length (ft)																													
N/A	72	N/A	300																													
70	72 x 96	N/A	213																													
45 x 72	72 x 96	N/A	51																													
72	96 x 120	N/A	564																													
48 x 72	72 x 96	N/A	259																													
72	96 x 96	N/A	163																													

H. Project-Specific Considerations: New pump station requires detailed design study

I. Alternatives: See Project IDs 4 and 4A for identified alternatives

J. Project Location Map:



A. Project ID: 4B		B. Project Name: Noble Downstream (Alt 3)					
C. Project Location: Capacity Improvement at downstream end of Noble Creek Culvert							
D. Priority:		High					
E. Project Cost							
MAJOR ITEMS		DIAM (in)	AVE DEPTH (ft)	QTY.	UNIT	UNIT COST	COST
BASELINE CONSTRUCTION COST							
Pipe Demo/Disposal							
Z5_PIPE_5429_1, Z5_PIPE_5429_2		72	11	727	LF	\$120	\$87,000
Z5_PIPE_5438		70	9	213	LF	\$100	\$21,000
Z5_PIPE_5439		45 x 72	9	51	LF	\$120	\$6,000
PIPE0003		48 x 72	9	259	LF	\$120	\$31,000
Pipe Construction							
NOBLEPS_Forcemain		72	9	300	LF	\$1,300	\$390,000
Z5_PIPE_5438, Z5_PIPE_5439, PIPE0003		72 x 96	9	523	LF	\$2,510	\$1,310,000
Z5_PIPE_5429_1		96 x 120	11	564	LF	\$3,010	\$1,700,000
Z5_PIPE_5429_2		96 x 96	11	163	LF	\$2,510	\$409,000
Structures							
Manhole/Catch Basin Connection							#VALUE!
Outfalls							#VALUE!
SUBTOTAL							#VALUE!
Mobilization/Demobilization						10%	#VALUE!
Traffic Control						5%	#VALUE!
Contingency						40%	#VALUE!
CONSTRUCTION COST TOTAL							#VALUE!
Engineering/Inspection						20%	#VALUE!
Site-Specific Costs							
Pump Station							#VALUE!
ROW Acquisition							#VALUE!
Environmental/Jurisdictional Permitting							#VALUE!
CIP TOTAL							#VALUE!
*Totals rounded to nearest \$10,000							

EXHIBIT 13

What is Flood Control?

The Flood Control Division uses science-based information and technology to reduce flood risk and to inform emergency managers and the public of real-time flooding potential during storms. Flood control engineering work is strongly focused on the Pajaro River and its tributaries. We coordinate with the County Planning Division on flood insurance needs in the County, and we work closely with Environmental Health on woody debris management in the watersheds of the Santa Cruz Mountains.

What is Stormwater?

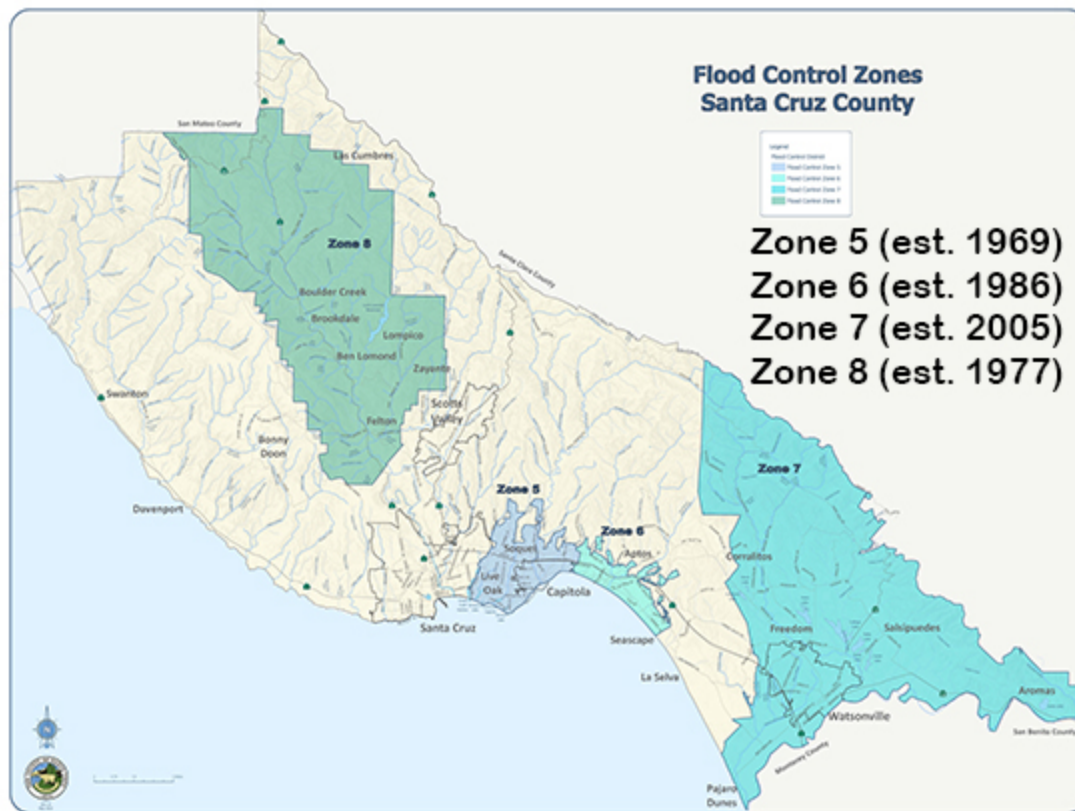
Stormwater is rain that runs off streets, parking lots, roofs, other [impervious](#) surfaces, and also rain that naturally flows over the ground surface. Stormwater runoff receives no treatment and enters directly into our storm drain system and out to our creeks, rivers, and ocean.

Why Manage Stormwater?

Stormwater runoff is one of the leading causes of pollution in our surface waters. Pollutants (such as oils, chemicals, fertilizers, litter) can be transported by stormwater into our creeks, rivers, and ocean. Increases in impervious surfaces can cause water quantity issues (such as flooding and erosion) and quality problems (pollution) if not managed properly.

ONLY RAIN DOWN THE DRAIN

EXHIBIT 14



Click on the Map above for a larger file and links to individual zone maps

Drainage Zones / Flood Control Districts (blue shaded areas on map above) have been established based upon defined watersheds within urban areas. Permit applications for projects located within a drainage zone are assessed an impervious area fee based upon the increase in [impervious](#) and/or [semi-pervious](#) surfaces for the project. The project may be eligible for fee credits for existing impervious areas previously permitted or built prior to the establishment of the flood control zone (see County Design Criteria for further information). The fees are used to maintain drainage infrastructure, identify problem areas, and improve our storm drainage system.

Master Plan Studies

- [Zone 5 Master Drainage Plan - completed in 1998](#)
- [Zone 5 & 6 Master Drainage Plan Report - \(2013\)](#)
- [Zone 5 & 6 Master Drainage Plan Appendices - \(2013\)](#)
- [Zone 5 \(Draft\) Storm Drain Maste Plan Update \(2023\)](#)

Board Meetings

For more information on Board meetings related to a respective Flood Control District, please use the link provided below:

<https://santacruzcountyca.ig2.com/citizens/default.aspx?>

Quick Links

Design Criteria

Drainage Zones

Permit Requirements

Pollution Prevention

Pajaro River System Flood Risk
Map

Weather Forecast

Rain & Stream Gauge

Storm Preparedness

National Flood Insurance
Program

County GIS

EXHIBIT 15

FLOOD CONTROL AND
WATER CONS. DISTRICT



COUNTY OF SANTA CRUZ

AGENDA 3/24/70

C. file
CCG.F.C. W.C.D.
Zone 5

GOVERNMENTAL CENTER

701 OCEAN STREET

SANTA CRUZ, CALIFORNIA 90560

D. A. PORATH (408) 425-2032
DISTRICT ENGINEER

E. R. HANNA (408) 425-2133
WATER PROJECTS COORDINATOR

March 24, 1970

BOARD OF DIRECTORS
Santa Cruz County Flood Control And
Water Conservation District
701 Ocean Street
Santa Cruz, California

SUBJECT: ORDINANCE ESTABLISHING DRAINAGE FEE FOR ZONE 5 OF THE
SANTA CRUZ COUNTY FLOOD CONTROL AND WATER CONSERVATION
DISTRICT

Gentlemen:

Pursuant to the provisions of the Santa Cruz County Flood Control
and Water Conservation District Act - Act 7390, Section 171 of the
California Code, Uncodified, Part 2, which reads as follows:

"The Board may prescribe, revise and collect rates
or other charges for the services, facilities and
water furnished by it,"

and pursuant to Resolution 719-69, which established Zone No. 5,
an Ordinance to establish Drainage Fees to be collected within Zone
5 of the Santa Cruz County Flood Control and Water Conservation
District has been developed.

Attached please find a drainage fee rate versus estimated revenue
schedule from which we recommend a 10 cents per square foot rate on
all new construction and pavement. From this rate we can expect
about half of the total improvement costs to be paid for by drain-
age fees collected from now until 1990. The remainder of the
improvement costs would be paid for by funds resulting from assess-
ment districts. If the assessment districts are formed to build
the drainage system before the estimated 1990 fee revenues are
realized, subsequent fees collected would be used to pay off the
bonds of the assessment districts.

BOARD OF DIRECTORS
March 24, 1970

Page 2

Fees collected prior to the improvements being built will be applied toward the cost of the system. They will also be used to pay for small miscellaneous drainage improvements for localized problems within the district, and design engineering for prematurely installed segments of the system.

It is recommended that the Board of Directors adopt this ordinance and set the drainage fee rate at 10 cents per square foot.

Yours truly,



D. A. PORATH
District Engineer

PWS:la

Attachment

RECOMMENDED

CARLYLE D. MILLAR
County Administrative Officer

Procedure used to estimate revenues - Zone #5 drainage fees.

1. First we compiled the area of undeveloped residential and commercial land within Zone #5.
2. Using a representative 1965 state traffic zone, we estimated the growth in Zone #5 for 1970, 1980 and 1990 by "number of dwelling units."
3. From this, saturation development was estimated to occur by 1990. By 1980, 50% of undeveloped residential and 30% of undeveloped commercial land would be built upon.
4. Using the estimated development rates in No. 3 above, the revenues were calculated for 1980 and 1990 as shown below for various drainage fee rates:

Drainage Fee Rate (cents/sq. ft. of paved or covered area)	1980 Estimated Revenue (\$)	1990 Estimated Revenue (\$)
.03	51,370	141,340
.04	68,160	188,100
.05	82,250	235,900
.06	102,250	282,700
.07	119,230	329,500
.08	136,100	376,200
.09	153,500	423,000
.10	170,500	470,800

Total construction costs, Systems A & B	\$759,000
10% contingency	76,000
Engineering fees	42,000
Legal, Printing, Advertising	25,000
TOTAL COST - SYSTEMS A & B	<hr/> \$902,000

EXHIBIT 16

7-11
File
3-15

SANTA CRUZ COUNTY FLOOD CONTROL AND
WATER CONSERVATION DISTRICT

ORDINANCE NO. 1503

AN ORDINANCE OF THE SANTA CRUZ COUNTY FLOOD CONTROL AND
WATER CONSERVATION DISTRICT ESTABLISHING FEES FOR FLOOD
CONTROL AND DRAINAGE FACILITIES TO BE SUPPLIED WITHIN
ZONE NO. 5 OF THE DISTRICT

WHEREAS, pursuant to Section 171 of the Santa Cruz County Flood Control and Water Conservation District Act, said District is given the power to prescribe, revise and collect fees and charges for services and facilities furnished or to be furnished to any new building, structure, improvement or construction by the use of any flood control or storm drainage system constructed or to be constructed in the District or any zone thereof;

NOW, THEREFORE, IT IS HEREBY ORDAINED by the Board of Directors of the Santa Cruz County Flood Control and Water Conservation District as follows:

Section I - Effective Date

This ordinance shall be effective from and after thirty (30) days following the date of its adoption.

Section II - Applicability

This ordinance shall apply to all the territory in Zone 5 of the District.

Section III - Fees

There is hereby established the following schedule of fees:

1. A fee of 10¢ per square foot of foundation area of all roofed structures, including but not limited to, garages of residences.
2. A fee of 10¢ per square foot of paved areas without roof, excepting such paved areas appurtenant to single family dwellings.

Section IV - Collection of Fees

Such fees shall be collected by the Building Inspector of the City or County prior to issuance of a building permit. Upon application for a building permit, the applicant shall certify as to the total number of square feet of foundation area of all roofed structures, and also the total number of square feet for all paved areas, without roof, used for commercial purposes. The Building Inspector shall keep accurate records concerning the collection of such fees relative to what fees were paid and to which buildings, improvements, or structures, or property such payments apply, and forward such records and fees to the administrative office of the District.

Section V - Failure to Pay Fees

Failure to pay the fees set forth in this Ordinance shall constitute a lien on land to the amount of the unpaid fee. Should any of the above fees remain unpaid on the first day of the month, before the month in which the Board of Supervisors of Santa Cruz County is required by law to levy the amount of taxes required for county purposes, the amount of the unpaid fee shall be added to and become a part of the annual tax levied upon the land containing the building, improvement or structure for which no fee has been paid, and shall be added to and become a part of the first installment of said tax.

In such case, and at least twenty (20) days before the first day of the month in which said Board of Supervisors is required by law to levy the amount of taxes required for county purposes, the Santa Cruz County Flood Control and Water Conservation District shall furnish in writing to the Board of Supervisors of the County and to the County Auditor, respectively, a description of each and every parcel of land within Zone No. 5 of the District upon which any such fees remains unpaid together with the amount of such unpaid fee.

Section VI - Validity

Should any section or provision of this Ordinance be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the Ordinance as a whole or any part thereof, other than the part decided to be unconstitutional or invalid.

PASSED AND ADOPTED by the Board of Directors of the Santa Cruz County Flood Control and Water Conservation District, State of California, this 14th day of April, 1970; by the following vote:

AYES: DIRECTORS Cress, Sanson, Mello, McCallie, Jones, Chairman
NOES: DIRECTORS None Forbus
ABSENT: DIRECTORS Lappin

D. DAN FORBUS

Chairman, Board of Directors of
the Santa Cruz County Flood
Control and Water Conservation
District

ATTEST: TOM M. KELLEY

Approved as to form:

James L. Rindin
Assistant County Counsel

Distribution: Co Counsel Dir., Pub Wks Auditor
Water Proj Coord.

EXHIBIT 17

July 22, 1970

Jack Taylor
Sutter Hill Development Company
2600 El Camino Real
Palo Alto, California 94306

SUBJECT: ZONE 5 OF THE SANTA CRUZ COUNTY FLOOD CONTROL
AND WATER CONSERVATION DISTRICT

Dear Mr. Taylor:

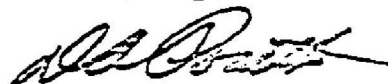
The Board of Directors, on April 14, 1970, approved Ordinance No. 1503 which provides for the collection of drainage fees in Zone 5 of the Flood Control District. This started the County's program to finance and eventually build an adequate drainage system for this area. Our calculations show that the collection and accumulation of drainage fees within this zone over 20 years will pay approximately one half the total cost of the drainage facilities required. The successful formation of the assessment districts will finance the remaining costs.

Any development within this zone could possibly face three expenditures: drainage fees, levied assessments, and the cost of the drainage facilities needed for that particular development.

Under our current policy, credit will be allowed against the drainage fees for the cost of drainage facilities constructed which are part of our master drainage plan. Credits will be based on the actual cost of master plan improvements installed. Any part of improvement costs that exceed drainage fees on a specific development would not be subject to reimbursement by the District. Payment of drainage fees or construction of master plan facilities would not exempt a property from assessments for completion of the total system.

Enclosed is a copy of the ordinance for your information. We hope this will satisfy your requirements.

Yours truly,



D. A. PORATH
District Engineer

RTH:jc
Enclosure

Jones
S.C.C. FC. & W.C.D.

EXHIBIT 24 Page 1 of 1

EXHIBIT 18

CONSERVATION DISTRICT

RESOLUTION NO. 179-77

Upon motion of Director Patton
duly seconded by Director Liddicoat
the following Resolution is adopted:

RESOLUTION OF THE SANTA CRUZ COUNTY FLOOD CONTROL AND WATER
CONSERVATION DISTRICT ESTABLISHING FEES FOR FLOOD CONTROL AND
DRAINAGE FACILITIES TO BE SUPPLIED WITHIN ZONE NO. 5 OF THE
DISTRICT

WHEREAS, the Board of Directors of the Santa Cruz County Flood Control and Water Conservation District has by ordinance adopted this date provided for fees to be established by Resolution for services and facilities furnished or to be furnished to any new building, structure, improvement or construction by any flood control or storm drainage system constructed or to be constructed within Zone No. 5 of the District; and

WHEREAS, said ordinance provides that such fees shall be established by resolution of the Board of Directors of the District;

NOW, THEREFORE, BE IT RESOLVED AND ORDERED by the Board of Directors of the District that the following fees are established for such services and facilities within Zone No. 5 of the District;

1. A fee of 15 cents per square foot of foundation area of all roofed structures, including but not limited to, garages of residences, and coach roof areas in mobile home developments whether or not coaches are set on permanent foundations. In the event that development plans do not clearly indicate precise coach roof areas, the maximum said area per space shall be 1440 square feet.
2. A fee of 15 cents per square foot of paved or other improved impervious areas without roof, excepting such areas appurtenant to single family dwellings.

PASSED AND ADOPTED by the Board of Directors of the Santa Cruz County Flood Control and Water Conservation District, State of California, this 22 day of March, 1977, by the following vote:

AYES: DIRECTORS Liddicoat, Smith, Baldwin, Patton, Borovatz
NOES: DIRECTORS None
ABSENT: DIRECTORS None

EDWARD F. BOROVATZ

ATTEST: Richard C. Neal
Clerk of said Board

EDWARD F. BOROVATZ, Chairperson of
the Santa Cruz County Flood Control
and Water Conservation District

Approved as to form:

Dwight L. Herr
Chief Deputy County Counsel

DISTRIBUTION: Director of Public Works
Auditor
Planning
County Counsel

cj

EXHIBIT

9 page 1 of 1

52

SANTA CRUZ COUNTY FLOOD CONTROL AND WATER
CONSERVATION DISTRICT

RESOLUTION NO. 403-77

Upon Motion of Director Patton
duly seconded by Director Smith
the following Resolution is adopted:

RESOLUTION OF THE SANTA CRUZ COUNTY FLOOD CONTROL AND WATER CONSER-
VATION DISTRICT REVISING RESOLUTION NO. 179-77 ESTABLISHING FEES
FOR FLOOD CONTROL AND DRAINAGE FACILITIES TO BE SUPPLIED WITHIN
ZONE NO. 5 AND ZONE NO. 8 OF THE DISTRICT

WHEREAS, the Board of Directors of the Santa Cruz County Flood Control and Water Conservation District has by ordinance, adopted July 12, 1977, provided for fees to be established by Resolution for services and facilities furnished or to be furnished to any new building, structure, improvement or construction by any flood control or storm drainage system constructed or to be constructed within Zone No. 5 of Zone No. 8 of the District; and

WHEREAS, said ordinance provides that such fees shall be established by resolution of the Board of Directors of the District;

NOW, THEREFORE, BE IT RESOLVED AND ORDERED by the Board of Directors of the District that the following fees are established for such services and facilities within Zone No. 5 and Zone No. 8 of the District;

1. A fee of 15 cents per square foot of foundation area of all roofed structures, including but not limited to, garages of residences, and coach roof areas in mobile home developments whether or not coaches are set on permanent foundation. In the event that development plans do not clearly indicate precise coach roof areas, the maximum said area per space shall be 1440 square feet.
2. A fee of 15 cents per square foot of paved or other improved impervious areas without roof, excepting such areas appurtenant to a single family dwelling located on an individual lot and not within a condominium development.
3. Said fee shall be increased annually by \$0.01 per square foot commencing July 1, 1978, and continuing every July 1 thereafter through and including July 1, 1982, at which time the maximum fee shall be \$0.20 per square foot.

PASSED AND ADOPTED by the Board of Directors of the Santa Cruz County Flood Control and Water Conservation District, State of California, this 12th day of July, 1977, by the following vote:

AYES: DIRECTORS SMITH, BALDWIN, PATTON, BORO VATZ
NOES: DIRECTORS NONE
ABSENT: DIRECTORS LIDDICOAT

Edward F. Borovatz

EDWARD F. BORO VATZ, Chairperson
of Santa Cruz County Flood Control
and Water Conservation District

ATTEST: Richard C. Neal
Clerk of said Board

Approved as to Form:

Dwight T. Hew
County Counsel

DISTRIBUTION: ✓ Director of Public Works
Auditor
Planning
County Counsel
City of Capitola

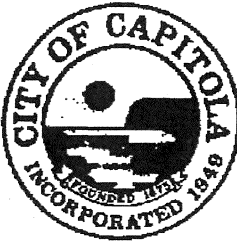
STATE OF CALIFORNIA }
COUNTY OF SANTA CRUZ } SS

I, Richard C. Neal, County Clerk and ex-officio Clerk of the Board of Supervisors of the County of Santa Cruz, do hereby certify that the foregoing is a true and correct copy of a resolution passed on _____ and entered in the minutes of the said Board. Witness my hand and I have hereunto set my hand and the seal of the said Board, on July 26, 1977.

Richard C. Neal, County Clerk

By Cheryl L. Jefferson Deputy

EXHIBIT 19



Ronald E. Graves, Mayor

Council Members:

Dennis F. Beltram

Robert W. Bucher

Jerry E. Clarke

Michael R. Routh

420 CAPITOLA AVENUE
CAPITOLA, CALIFORNIA 95010
TELEPHONE (408) 475-7300

June 11, 1983

TO: CITY COUNCIL

FROM: Council Member BELTRAM

SUBJECT: NOBLE GULCH DRAINAGE EASEMENT

Dear Colleagues:

As you may know, the natural water course known as Noble Gulch has, since 1922, been designated as a drainage easement owned by the County. Said easement is 8 feet in width, and enters the City near Hwy. 1, runs through (or very near) a portion of the City's Corporation Yard; through portions of Brookvale Terrace Mobile Home Park; across Bay Avenue, then through Pacific Cove Mobile Home Park; underneath (we believe) a corner of City Hall; across Capitola Avenue, Riverview Avenue, and empties into Soquel Creek just south of the end of the river path. A parcel map showing the easement from the Creek to Capitola Avenue is attached hereto.

As you will note, the easement runs through many parcels of private property, most if not all, occupied by buildings. The easement accommodates a culvert, approximately 5 to 6 feet in diameter, below the ground surface an unknown depth (perhaps as little as 3 feet down in the Riverview Avenue area, perhaps deeper in other portions of the easement). The culvert is made of concrete at least from the Creek to Capitola Avenue, and of corrugated metal above that point. All structures over the culvert/easement have been constructed after dedication to the County in 1922, and (presumably) after placement of the culvert in 1922. To the best knowledge of all concerned, there have been no difficulties with maintenance of the culvert in the last 62 years occasioned by the presence of homes, buildings, and other structures (i.e., mobile homes, parks, roadways) on top of said easement.

A problem/controversy has recently arisen in relation to a pending sale of 422 Riverview Avenue (corner of Blue Gum) in regard to this easement owned by the County. Upon review of the Preliminary Title Report, the Buyers expressed concern about the drainage easement, and made inquiries of the County Counsel's Office as to whether, in the event of destruction of the duplex which now occupies the parcel in question, there would be any difficulty in rebuilding same. Dwight Herr, the newly appointed County Counsel, has responded with the opinion that re-build of any of those structures which lie atop the County's easement would not be allowed. Upon meeting with Mr. Herr, myself, and City's attorney Manning, County Counsel would not modify his opinion. Needless to say, the Buyers for 422 Riverview Avenue are about to withdraw their offer of purchase (understandably), nor could Buyers be found for any of the other affected parcels should County Counsel's position prevail. I represent the Seller of the Riverview Avenue property, as part of a

June 11, 1984
Noble Gulch Drainage Easement
Page 2 of 3

Probate action commenced several years ago.

Through conference with Steve Burrell, I have learned that much of the routine maintenance of the culvert is (and has been for some time) performed by the City's crew.

The situation raises several obvious problems, including but not limited to the following:

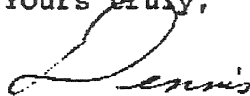
- 1) The homes and businesses of Capitola residents are being, effectively, condemned by the County: while the present use can continue, these properties cannot be sold, for either no Buyer would purchase knowing that rebuilding is impossible; or banks and other lending institutions would not loan, there being no security for such loans.
- 2) The City will be, through purchase of Pacific Cove, the largest landowner affected by the drainage easement, and while no structures may be contemplated at this time for the lower portion of Pacific Cove, it will be the County, and not the Capitola Council, deciding what, if anything, may be placed in the lower level.
 - a) City Hall expansion, or improvements in the area in question would also be subject to County "veto."
 - b) Corporation Yard modifications could likewise be the County's decision, and not our own.
- 3) It appears that building permits have been issued by the City, and if such were not within the City's jurisdiction to grant, because same impedes the County's easement, the City may be liable for an action by property owners for loss of value to their property.
- 4) If the County has the power to deny a rebuild on any parcel under which their culvert lies, then they would likewise have the power to remove the existing buildings should they deem such necessary to service their easement. The potential for hardship and catastrophic loss to citizens of Capitola, not only in the future, but now, is obvious.

Speaking as an attorney, and as an advocate for my client, and as a council-man, my feeling is that the County's position is incorrect, and that in a legal action the County will not prevail. At this time I will refrain from stating the legal bases which, in my opinion, make the County's posture in this matter untenable. There may be, fortunately, positive alternatives to litigating this matter, one of which is that our City take-over the easement from Zone 5, and thus control our own "destiny", as it were. This matter should be one easily solved between the governmental entities involved, and to this end, I ask that this matter be placed on our June 28, 1984, agenda, and that at this, our June 14, 1984, meeting, we direct Staff to explore with the County, all alternatives to resolve this problem.

June 11, 1984
Noble Gulch Drainage Easement
Page 3 of 3

I would appreciate, very much, your thoughts and in-put regarding this matter, which has some bizarre aspects: for 62 years there has been not a squeak of objection or comment from the County regarding the building of permanent structures over the easement, and now this. . .

Yours truly,



DENNIS F. BELTRAM

encls.

cc: S. Burrell
R. Manning

1000

EXHIBIT 20

13. A. MEMO FROM CITY MANAGER REGARDING MUSEUM BOARD APPOINTMENTS.

ACTION: Mayor South advised that the press be informed that we have openings on the Museum Board so they can publish information to that effect, as well as directing staff to include the openings in the upcoming Newsletter along with the other board vacancies. Applications should be brought back to Council for appointments to be made in July.

B. APPLICATION FOR CITY TREASURER FROM MICHAEL P. VASQUEZ.

ACTION: Council received the application from Mr. Vasquez and directed staff to set this item on the June 28, 1984 agenda for appointment.

C. PUBLIC FACILITIES CORPORATION - No Business.

D. (Added Item) MEMO FROM COUNCIL MEMBER BELTRAM REGARDING THE NOBEL GULCH DRAINAGE EASEMENT.

The City Council discussed the impact of the County Counsel's position relative to properties located on the Nobel Gulch Drainage Easement. Council expressed it's concern indicating that the County is condemning properties on the easement with it's stand.

ACTION: Staff was directed to contact Donald Porath at the Sanitation District to see if something can be worked out and to report back to Council Member Beltram, as well as the other Council Members as soon as possible.

14. ORAL COMMUNICATIONS

A. Council Member Clarke reported on the Special Meeting of the JPA Board for Community Activities. The meeting was called to make a decision regarding the Junior Lifeguard Program. Registration for the program has doubled from last year and the board had to determine how to deal with the number of children registered in the program. On a 4-1 vote, the Board expanded the program to accommodate all the children registered in the program for the 1984 Summer Season. Next year, however, registration would be limited to those children residing in the Capitola/Soquel School District only. Council Member Clarke also stated that he would be discussing this matter with Supervisor Levy tomorrow and hopes the County will initiate a program of their own.

B. Council Member Beltram discussed the code enforcement program for 2-hour parking in the Village. He stated that clients visiting his office have been ticketed even if they have moved their car to another location prior to the 2-hour limit. He stated that he feels that if the car has been moved within the time limit to another parking space, that a ticket should not be issued. The time should only be accounted for at each location. Staff was directed to check into this matter and report back.

C. City Manager S. Surrall reported on the status of the Community Center building, advising Council that he and Doug Messina, the architect for the project, went to Hollister to view their community center. They will be going to the Monterey Conference Center to look at the interiors in order to obtain ideas for our center.

EXHIBIT 21

DEPARTMENT OF
PUBLIC WORKS



AGENDA: JUNE 10, 1984

COUNTY OF SANTA CRUZ

GOVERNMENTAL CENTER

701 OCEAN STREET SANTA CRUZ, CALIFORNIA 95060

D.A. PORATH
DIRECTOR OF PUBLIC WORKS

PHIL W. SANFILIPPO (408) 425-2133
ASST. DIRECTOR ENGINEERING

June 12, 1984

JOHN A. FANTHAM (408) 425-2481
ASST. DIRECTOR OPERATIONS

BOARD OF DIRECTORS
Santa Cruz County Flood Control
and Water Conservation District
701 Ocean Street
Santa Cruz, California 95060

SUBJECT: ZONE 5/8 DRAINAGE FEES AND IN-LIEU DETENTION FEE

Members of the Board:

Submitted herewith for your consideration are two
items:

1. A resolution to increase the Zone 5 and Zone 8 drainage fee from the current \$0.20/square feet to a maximum of \$0.25/square feet by 1988 via one cent increments over a five year period.
2. An ordinance to provide for collecting an in-lieu storm water detention fee within Zone 5 from small developments where detention is found to be marginally effective.

The Zone 5 and Zone 8 drainage fees were last revised by Resolution No. 403-77 which established a maximum rate of \$0.20 per square foot on July 1, 1982. Presently, there are insufficient revenues being generated to fund the current list of drainage projects in both zones. In addition construction costs are escalating at between five and ten per cent a year.

Attached is a summary of the current projects for each zone with the 1984 estimated construction cost, the estimated revenue based on the present fee, and projected additional revenue with a \$.05 increase in the fee.

The second item before you, an ordinance to establish an in-lieu detention fee for small developments within Zone 5, is being proposed because it is believed it would be more

beneficial to the District to collect a fee rather than have a developer construct detention facilities for small developments where the value of reducing runoff from the project site is marginal. The proposed fee would be collected from some minor land divisions and small commercial and apartment developments. The monies generated from the in-lieu detention fee would be used to help fund major Zone 5 projects, which would be more effective in preventing flooding than a series of smaller projects built by developers. Thus, a developer would either build a detention facility or would pay the equivalent detention fee as the case may be. The option of simply waiving the detention requirement as presently exists in the storm drainage criteria would no longer be available.

It is therefore recommended that the Board of Directors take the following action:

1. Approve increasing the Zone 5 and Zone 8 drainage fees to \$0.21 per square foot commencing on July 1, 1984 and increasing the fee by \$0.01 per square foot each successive July 1 thereafter, through and including July 1, 1988 at which time the maximum fee shall be \$0.25 per square foot.
2. Adopt the attached ordinance establishing an in-lieu storm water detention fee of \$25.00 per 100 square feet of new on-site and off-site impervious area for certain developments within Zone 5 as determined by the Director of Public Works.

Yours truly,



D. A. PORATH
Director of Public Works

CIV:kas

Attachments

CC: Michael Routh, Mayor, City of Capitola
Daniel Kriege, President, Board of Directors, Soquel Creek
County Water District
Dwight Herr, County Counsel
Kris Schenk, Director, County Planning Department
Lou Bacigalupi, Building Inspection

RECOMMENDED FOR APPROVAL:

County Administrative Officer

SANTA CRUZ COUNTY FLOOD CONTROL
AND WATER CONSERVATION DISTRICT

ZONE 5

1984 STORM DRAIN PROJECT LIST

	<u>Proposed Project</u>	<u>Cost Estimate</u>
1	26th Avenue	\$ 105,000
2	Prather Lane Detention	730,000
3	Daubenbiss - Porter St.	60,000
4	Capitola Rd. Bypass	250,000
5	Nova Drive	112,000
6	Chanticleer - Capitola Rd.	310,000
7	Unidentified Minor Projects	50,000
	Total	\$1,367,000

Estimated Annual Revenue
From Drainage Fees

Current Rate
(\$.20/Sq.Ft.)

With Fee Increased
to \$.25/square foot

\$200,000/yr.

\$250,000/yr.

"Exhibit A"

COST ANALYSIS FOR FEE INCREASE

DEPARTMENT: PUBLIC WORKS BUDGET UNIT: 88840

1. BRIEF DESCRIPTION OF SERVICE: Construction of storm drainage improvements within Zone 5 of the Santa Cruz County Flood Control and Water Conservation District
2. FORMER FEE (if any): None
3. PROPOSED NEW FEE: \$25.00/100 square feet
4. DATE OF LAST REVISION OF THIS FEE: N/A
5. COMPONENT COST BREAKDOWN (answer either (a) or (b), using additional sheets if necessary):
 - (a) Estimated annual cost of service; or varies with amount of revenue generated and cost of improvement projects constructed.
 - (b) (Cost per service) X (number of estimated services) = total annual cost
6. ANTICIPATED REVENUE SOURCES TO PROVIDE THIS SERVICE:
 - (a) Annual Estimated Revenue from Proposed Fee (number of estimated services x per unit fee)
\$10,000 . 10 developments @ \$1,000.00/per unit
 - (b) Other Revenue Sources (if any)
Zone 5 drainage fees \$250,000/year
7. OTHER COMMENTS:

"Exhibit A"

COST ANALYSIS FOR FEE INCREASE

DEPARTMENT: PUBLIC WORKS

BUDGET UNIT: 88839 & 88840

1. BRIEF DESCRIPTION OF SERVICE: Construction of storm drainage improvements within Zone 5 and Zone 8 of the Santa Cruz County Flood Control & Water Conservation District.
2. FORMER FEE (if any): \$0.20/square foot
3. PROPOSED NEW FEE: \$0.21/square foot
4. DATE OF LAST REVISION OF THIS FEE: July 1, 1982
5. COMPONENT COST BREAKDOWN (answer either (a) or (b), using additional sheets if necessary):
 - (a) Estimated annual cost of service; or varies with amount of revenue generated and cost of improvement projects constructed.
 - (b) (Cost per service) X (number of estimated services) = total annual cost
6. ANTICIPATED REVENUE SOURCES TO PROVIDE THIS SERVICE:
 - (a) Annual Estimated Revenue from Proposed Fee (number of estimated services x per unit fee)
\$300,000 from total fees (both zones)
 - (b) Other Revenue Sources (if any)
in-lieu storm drainage detention fee
\$10,000/year (Zones only)
7. OTHER COMMENTS:

PUBLIC WORKS

BUDGET UNIT 32000

ITEMS

AMOUNT OF FEE

ASSESSMENT DISTRICTS (Processing Formation)

Actual Cost -
number of hours x
\$31.00; \$1,000.00
deposit

COUNTY DESIGN CRITERIA

\$ 5.00 per copy
plus tax

DISPOSAL Site Fees (effective July 1983 - June 30, 1989)
(Res. 514-82)

Car Trunk Load

\$ 1.75

Garbage in Cans

\$ 1.00 per can

Garbage in 55 gallon drums

\$ 1.50 per drum

Per Cubic Yard

\$ 4.00

Pickup - Partial

\$ 4.00

-Full Bed

\$ 8.00

No fee if identi-
fied as
recyclable by
gate attendant
and deposited at
designated loca-
tion by customer

Tires

\$ 1.00

\$.25 discount shall be applied to each dump fee for all material dumped by
Seniors

DRAINAGE (Res. _____) (within Flood Control and Water
and Conservation District, Zones 5 and 8)

\$ 0.21 per
square foot

Drainage detention in-lieu fee (Ord. _____)
(within Flood Control and Water Conservation
District, Zone 5).

ENCROACHMENT Permits (Res. 69-82)

(Work without a permit: Whenever any work for
which an encroachment permit is required by the
Encroachment Ordinance has been commenced without
first obtaining said permit, a special investiga-
tion shall be made before a permit may be issued
for such work. An investigation fee, in addition
to the permit fee, shall be collected whether or not
a permit is then, or subsequently, issued. The

6/21/83

13-1

EXHIBIT

17 Page 6 of 6

110
SANTA CRUZ COUNTY FLOOD CONTROL AND WATER
CONSERVATION DISTRICT

RESOLUTION NO. 333-84

RESOLUTION OF THE SANTA CRUZ COUNTY FLOOD CONTROL AND WATER
CONSERVATION DISTRICT REVISING RESOLUTION NO. 403-77
ESTABLISHING FEES FOR FLOOD CONTROL AND DRAINAGE
FACILITIES TO BE SUPPLIED WITHIN ZONE NO. 5 AND
ZONE NO. 8 OF THE DISTRICT

WHEREAS, the Board of Directors of the Santa Cruz County Flood Control and Water Conservation District has by ordinance, adopted July 12, 1977, provided for fees to be established by Resolution for services and facilities furnished or to be furnished to any new building, structure, improvement or construction by any flood control or storm drainage system constructed or to be constructed within Zone No. 5 or Zone No. 8 of the District; and

WHEREAS, said ordinance provides that such fees shall be established by resolution of the Board of Directors of the District;

NOW THEREFORE, BE IT RESOLVED AND ORDERED by the Board of Directors of the District that the following fees are established for such services and facilities within Zone No. 5 and Zone No. 8 of the District;

1. A fee of 25 cents per square foot of foundation area of all roofed structures, including but not limited to, garages of residences, and coach roof areas in mobile home developments whether or not coaches are set on permanent foundation. In the event that development plans do not clearly indicate precise coach roof areas, the maximum said area per space shall be 1440 square feet.
2. A fee of 25 cents per square foot of paved or other improved impervious areas without a roof; except that no drainage fees are payable on paved or other improved impervious areas without a roof which are appurtenant to a single family dwelling on an individual lot and not within a condominium development.
3. Said fee shall be increased annually by \$0.01 per square foot commencing July 1, 1985, and continuing every July 1 thereafter through and including July 1, 1989, at which time the maximum fee shall be \$0.30 per square foot.

AYES: DIRECTORS Forbus, Patton, Moore, Cucchiara, Levy
NOES: DIRECTORS None
ABSENT: DIRECTORS None

Chairperson of said Board

Approved as to form:

Distribution: County Counsel
Auditor-Controller
Public Works
Planning
City of Capitola

DATE
COUNTY
1 COL. 270-1000
CHARGE
SUB. NO.
STATE
this is a copy of
a personal letter
written by [redacted]
to [redacted]
on [redacted] at
[redacted]
[redacted]

9/21 · 84

Suzanne Rappin

EXHIBIT 22

COUNTY OF SANTA CRUZ
STATE OF CALIFORNIA

IN THE BOARD OF SUPERVISORS

CERTIFIED COPY
SUPERVISOR'S ORDER

On the date of June 19, 1984

REGULAR AGENDA

ITEM NO. 60

(Adopted Resolution 333-84, as amended,
(increasing the Zone 5 and Zone 8 fee
(for flood control and drainage facilities;
(adopted ordinance establishing in-lieu
(fees for on-site storm water detention
(facilities within Zone 5, "in concept",
(to return June 26, 1984 for final adoption;
(directive to Public Works...

RECEIVED JUL 13 1984
RECEIVED JUL 13 1984

Upon motion of Supervisor Cucchiara, duly seconded by Supervisor Patton, the Board, by unanimous vote, adopted Resolution 333-84, as amended (see below), increasing the Zone 5 and Zone 8 fee for flood control and drainage facilities.

Upon motion of Supervisor Patton, duly seconded by Supervisor Forbus, the Board, by unanimous vote, adopted ordinance establishing in-lieu fees for on-site storm water detention facilities within Zone 5, "in concept", to return June 26, 1984 for final adoption; directive to Public Works Director, working with County Counsel and Planning Director, to return to the Board on August 21, 1984 with an initial report and recommendations on procedures that the Board might consider to establish an appropriate assessment district in the flood control and water conservation district drainage zones to allow for an equitable contribution to solving the drainage problems by existing properties, as well as an appropriate contribution by new properties.

Amendment to Resolution

Change 21 cents to 25 cents, with \$0.01 per square foot for each successive July 1st thereafter through and including July 1, 1988, at which time the maximum fee shall be \$0.30 per square foot.

Public Works

CAO

City of Capitola (Michael Routh)

Sequel Creek County Water District

Planning

State of California County of Santa Cruz--ss.

I, George T. Newell, Ex-officio Clerk of the Board of Supervisors of the County of Santa Cruz, State of California, do hereby certify that the foregoing is a true and correct copy of the order made and entered in the minutes of the said Board of Supervisors. In witness thereof I have hereunto set my hand and affixed the seal of the Board of Supervisors.

July 10, 1984

VOLUME 84

Lee Alexander

Deputy Clerk

EXHIBIT 23

SANTA CRUZ COUNTY FLOOD CONTROL AND
WATER CONSERVATION DISTRICT

ORDINANCE NO. 3566

AN ORDINANCE OF THE SANTA CRUZ COUNTY FLOOD CONTROL AND
WATER CONSERVATION DISTRICT ESTABLISHING IN-LIEU FEES
FOR ON-SITE STORM WATER DETENTION FACILITIES WITHIN
ZONE NO. 5 OF THE DISTRICT

WHEREAS, pursuant to Section 171 of the Santa Cruz County Flood Control and Water Conservation District Act, said District is given the power to prescribe, revise and collect fees and charges for services and facilities furnished or to be furnished to any new building, structure, improvement or construction by the use of any flood control or storm drainage system constructed or to be constructed in the District or any zone thereof;

AND WHEREAS, it has been deemed to be more beneficial to the District and cost effective to collect an in-lieu fee from certain developments rather than have on-site storm water detention facilities installed by the developer as determined by the District Engineer.

NOW, THEREFORE, IT IS HEREBY ORDAINED by the Board of Directors of the Santa Cruz County Flood Control and Water Conservation District as follows:

Section I - Effective Date

This ordinance shall be effective from and after thirty(30) days following the date of its adoption.

Section II - Applicability

This ordinance shall apply to all the territory in Zone 5 of the District.

Section III - Fee

There is hereby established the following in-lieu fee when it has been determined by the Director of Public Works that it is more appropriate to collect a fee rather than require on-site storm water detention facilities be constructed.

1. A fee of \$25.00 per 100 sq. ft. or fraction thereof of net new on-site and off-site impervious areas.

Section IV - Collection of Fees

Such fees shall be collected by the Building Inspector of the City of Capitola or County prior to issuance of a building or use permit or prior to approval of a final subdivision map or parcel map.

The applicant shall certify as to the total number of square feet of foundation and impervious areas upon which the in-lieu fee is to be levied.

The building inspector shall keep accurate records concerning the collection of such fees relative to what fees were paid and to which buildings, improvements, or structures, or property such payments apply, and forward such records and fees to the administrative office of the District.

Section V - Failure to Pay Fees

Failure to pay the fees set forth in this Ordinance shall constitute a lien on land to the amount of the unpaid fee. Should any of the above fees remain unpaid on the first day of the month, before the month in which the Board of Supervisors of Santa Cruz County is required by law to levy the amount of taxes required for County purposes, the amount of the unpaid fee shall be added to and become a part of the annual tax levied upon the land containing the building, improvement, or structure for which no fee has been paid, and shall be added to and become a part of the first installment of said tax.

In such case, and at least twenty (20) days before the first day of the month in which said Board of Supervisors is required by law to levy the amount of taxes required for County purposes, the Santa Cruz County Flood Control and Water Conservation District shall furnish in writing to the Board of Supervisors of the County and to the County Auditor, respectively, a description of each and every parcel of land within Zone No. 5 of the District upon which any such fees remain unpaid together with the amount of such unpaid fee.

Section VI - Validity

Should any section or provision of this Ordinance be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the Ordinance as a whole or any part thereof, other than the part decided to be unconstitutional or invalid.

PASSED AND ADOPTED by the Board of Directors of the Santa Cruz County Flood Control and Water Conservation District, State of California, this 26th day of June, 1984, by the following vote:

AYES: DIRECTORS Forbus, Patton, Moore, Cucchiara, Levy
NOES: DIRECTORS None
ABSENT: DIRECTORS None

ROBLEY LEVY

Board of Directors of the Santa Cruz
County Flood Control and Water Con-
servation District

ATTEST: STEPHEN M. QUONG
Clerk of the Board

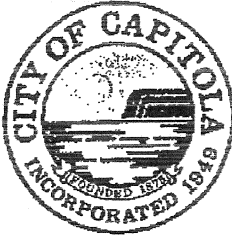
APPROVED AS TO FORM:

Quigley J. Hew
County Counsel

DISTRIBUTION: County Counsel
Public Works
Auditor
Planning
~~City of Capitola~~

I HEREBY CERTIFY THAT THE FOREGOING INSTRUMENT
IS A CORRECT COPY OF THE ORIGINAL ON FILE IN THIS
OFFICE ATTEST MY HAND AND SEAL THIS 17th DAY
OF July 19 84
GEORGE T. NEWELL, COUNTY ADMINISTRATIVE OFFICER
AND EX-OFFICIO CLERK OF THE BOARD OF SUPERVISORS
OF THE COUNTY OF SANTA CRUZ, CALIFORNIA
BY Lee Alexandra DEPUTY

EXHIBIT 24



420 CAPITOLA AVENUE
CAPITOLA, CALIFORNIA 95010
TELEPHONE (408) 475-7300

CITY MANAGER

July 9, 1984

Mr. Donald Porath
Director of Public Works
County of Santa Cruz
701 Ocean Street
Santa Cruz, CA 95060

JP
FOR INFORMATION ONLY

RE: NOBLE GULCH DRAINAGE EASEMENT

Dear Don:

I have enclosed a copy of the letter that Council Member Beltram presented to the City Council regarding the Noble Gulch Drainage Easement.

As you are aware, several homes are constructed over the easement between Bay Avenue and Soquel Creek. The concern expressed in the letter has to do with a home that was constructed over the easement several years ago, as well as other homes that have been built in recent times. I would appreciate it if you would review the position of Zone 5 regarding the reconstruction of homes over the easement in the event they were demolished. It would seem that as long as access to the drainage facilities is maintained that construction of structures on the easement would not represent a significant problem.

I look forward to hearing from you regarding this matter. If you should have any questions, please feel free to contact me.

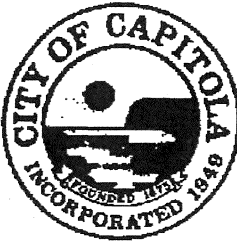
Sincerely,

CITY OF CAPITOLA

Stephen R. Burrell
City Manager

SRB/pam

Enclosure



Ronald E. Graves, Mayor

Council Members:

Dennis F. Beltram

Robert W. Bucher

Jerry E. Clarke

Michael R. Routh

420 CAPITOLA AVENUE
CAPITOLA, CALIFORNIA 95010
TELEPHONE (408) 475-7300

June 11, 1983

TO: CITY COUNCIL

FROM: Council Member BELTRAM

SUBJECT: NOBLE GULCH DRAINAGE EASEMENT

Dear Colleagues:

As you may know, the natural water course known as Noble Gulch has, since 1922, been designated as a drainage easement owned by the County. Said easement is 8 feet in width, and enters the City near Hwy. 1, runs through (or very near) a portion of the City's Corporation Yard; through portions of Brookvale Terrace Mobile Home Park; across Bay Avenue, then through Pacific Cove Mobile Home Park; underneath (we believe) a corner of City Hall; across Capitola Avenue, Riverview Avenue, and empties into Soquel Creek just south of the end of the river path. A parcel map showing the easement from the Creek to Capitola Avenue is attached hereto.

As you will note, the easement runs through many parcels of private property, most if not all, occupied by buildings. The easement accommodates a culvert, approximately 5 to 6 feet in diameter, below the ground surface an unknown depth (perhaps as little as 3 feet down in the Riverview Avenue area, perhaps deeper in other portions of the easement). The culvert is made of concrete at least from the Creek to Capitola Avenue, and of corrugated metal above that point. All structures over the culvert/easement have been constructed after dedication to the County in 1922, and (presumably) after placement of the culvert in 1922. To the best knowledge of all concerned, there have been no difficulties with maintenance of the culvert in the last 62 years occasioned by the presence of homes, buildings, and other structures (i.e., mobile homes, parks, roadways) on top of said easement.

A problem/controversy has recently arisen in relation to a pending sale of 422 Riverview Avenue (corner of Blue Gum) in regard to this easement owned by the County. Upon review of the Preliminary Title Report, the Buyers expressed concern about the drainage easement, and made inquiries of the County Counsel's Office as to whether, in the event of destruction of the duplex which now occupies the parcel in question, there would be any difficulty in rebuilding same. Dwight Herr, the newly appointed County Counsel, has responded with the opinion that re-build of any of those structures which lie atop the County's easement would not be allowed. Upon meeting with Mr. Herr, myself, and City's attorney Manning, County Counsel would not modify his opinion. Needless to say, the Buyers for 422 Riverview Avenue are about to withdraw their offer of purchase (understandably), nor could Buyers be found for any of the other affected parcels should County Counsel's position prevail. I represent the Seller of the Riverview Avenue property, as part of a

June 11, 1984
Noble Gulch Drainage Easement
Page 2 of 3

Probate action commenced several years ago.

Through conference with Steve Burrell, I have learned that much of the routine maintenance of the culvert is (and has been for some time) performed by the City's crew.

The situation raises several obvious problems, including but not limited to the following:

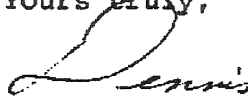
- 1) The homes and businesses of Capitola residents are being, effectively, condemned by the County: while the present use can continue, these properties cannot be sold, for either no Buyer would purchase knowing that rebuilding is impossible; or banks and other lending institutions would not loan, there being no security for such loans.
- 2) The City will be, through purchase of Pacific Cove, the largest land-owner affected by the drainage easement, and while no structures may be contemplated at this time for the lower portion of Pacific Cove, it will be the County, and not the Capitola Council, deciding what, if anything, may be placed in the lower level.
 - a) City Hall expansion, or improvements in the area in question would also be subject to County "veto."
 - b) Corporation Yard modifications could likewise be the County's decision, and not our own.
- 3) It appears that building permits have been issued by the City, and if such were not within the City's jurisdiction to grant, because same impedes the County's easement, the City may be liable for an action by property owners for loss of value to their property.
- 4) If the County has the power to deny a rebuild on any parcel under which their culvert lies, then they would likewise have the power to remove the existing buildings should they deem such necessary to service their easement. The potential for hardship and catastrophic loss to citizens of Capitola, not only in the future, but now, is obvious.

Speaking as an attorney, and as an advocate for my client, and as a council-man, my feeling is that the County's position is incorrect, and that in a legal action the County will not prevail. At this time I will refrain from stating the legal bases which, in my opinion, make the County's posture in this matter untenable. There may be, fortunately, positive alternatives to litigating this matter, one of which is that our City take-over the easement from Zone 5, and thus control our own "destiny", as it were. This matter should be one easily solved between the governmental entities involved, and to this end, I ask that this matter be placed on our June 28, 1984, agenda, and that at this, our June 14, 1984, meeting, we direct Staff to explore with the County, all alternatives to resolve this problem.

June 11, 1984
Noble Gulch Drainage Easement
Page 3 of 3

I would appreciate, very much, your thoughts and in-put regarding this matter, which has some bizarre aspects: for 62 years there has been not a squeak of objection or comment from the County regarding the building of permanent structures over the easement, and now this. . .

Yours truly,



DENNIS F. BELTRAM

encls.

cc: S. Burrell
R. Manning

AREA CODE
3-000

WEST END
AVE.

AVE.

AVE.

RIVERVIEW

7 C

CAPITOLA SUR. NO. 6
M.B. 15-361 5/13/72

CAPITOLA

SUBJECT

"safe" property

Drainage

Drainage

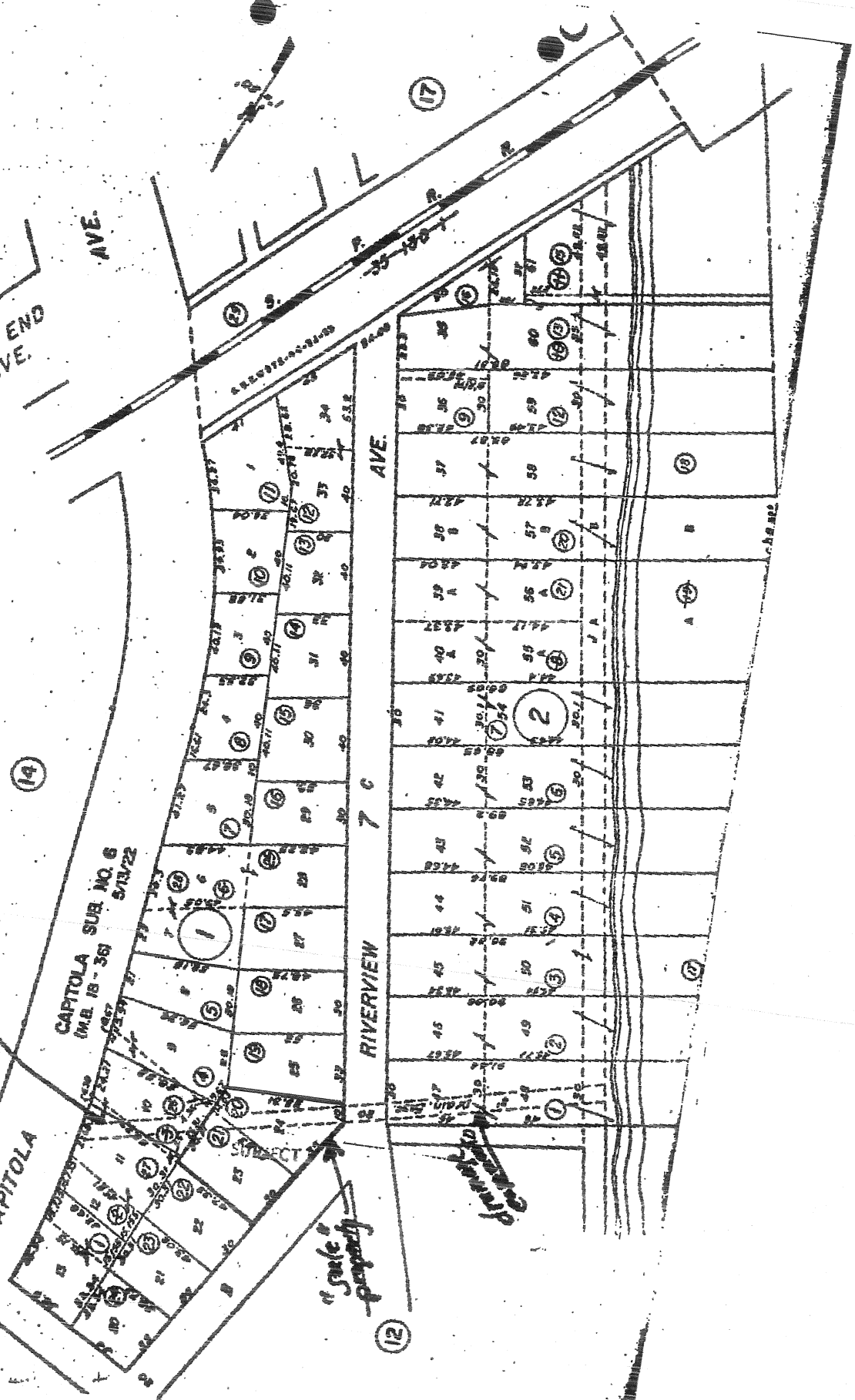


EXHIBIT 25

DEPARTMENT OF
PUBLIC WORKS



COUNTY OF SANTA CRUZ

GOVERNMENTAL CENTER

701 OCEAN STREET SANTA CRUZ, CALIFORNIA 95060

D.A. PORATH
DIRECTOR OF PUBLIC WORKS

PHIL W. SANFILIPPO (408) 425-2133
ASST. DIRECTOR ENGINEERING

JOHN A. FANTHAM (408) 425-2481
ASST. DIRECTOR OPERATIONS

August 6, 1984

MR. STEPHEN R. BURRELL
City Manager
City of Capitola
420 Capitola Avenue
Capitola, CA 95010

SUBJECT: NOBLE GULCH DRAINAGE EASEMENT

Dear Steve:

This is in response to your letter of July 9, 1984 inquiring about the possibility of reconstructing structures over the Noble Gulch drainage easement in Capitola. After further discussion of the matter with County Counsel it has been decided that the Flood Control District could allow replacement of existing structures on vacant parcels, only, not construction of new structures on vacant parcels, with the stipulation that a deed restriction be placed on the property encumbering the present and all future owners of the parcel with the responsibility for paying any future maintenance, repair or replacement costs of the drainage facility which are necessitated as a direct result of the structure being over the drainage easement. This restriction would have to be secured by an insurance policy, bond or ability to place a lien against the property.

Yours truly,

Don
D. A. PORATH
Director of Public Works

→ CIV:bj

EXHIBIT 26

COUNTY OF SANTA CRUZ
STATE OF CALIFORNIA

IN THE BOARD OF SUPERVISORS

On the date of August 21, 1984

CERTIFIED
SUPERVISOR'S ORDER

COPY

REGULAR AGENDA

ITEM NO. 48.1

(Accepted and filed report on financing mechanisms for drainage and flood control operations and facilities, with a report back on November 20, 1984, with an additional directive to the County Administrative Officer, Public Works Director, and Planning Director...

Upon the motion of Supervisor Patton, duly seconded by Supervisor Cucchiara, the Board, accepted and filed report on financing mechanisms for drainage and flood control operations and facilities, with a report back on November 20, 1984, with an additional directive that the County Administrative Officer in connection with the Public Works Director and Planning Director to outline a proposed program (if funding would allow) to carry out the needed work in the urban areas of the County

with Supervisor Moore "Absent"



CAO
PLANNING
PUBLIC WORKS

1	DP
2	9.5
3	

State of California, County of Santa Cruz—ss.

I, George T. Newell, Ex-officio Clerk of the Board of Supervisors of the County of Santa Cruz, State of California, do hereby certify that the foregoing is a true and correct copy of the order made and entered in the Minutes of the said Board of Supervisors. In witness thereof I have hereunto set my hand and affixed the seal of said Board of Supervisors.

August 24, 1984

By [Signature] Deputy Clerk

VOLUME 84

EXHIBIT 69 Page 1 of 1

EXHIBIT 27

BEFORE THE BOARD OF DIRECTORS OF ZONE 5
OF THE SANTA CRUZ COUNTY FLOOD CONTROL AND WATER
CONSERVATION DISTRICT, STATE OF CALIFORNIA

RESOLUTION NO. 3-90Z

RESOLUTION OF THE SANTA CRUZ COUNTY FLOOD CONTROL AND WATER
CONSERVATION DISTRICT REVISING RESOLUTION NO. 333-84
ESTABLISHING FEES FOR FLOOD CONTROL AND DRAINAGE
FACILITIES TO BE SUPPLIED WITHIN ZONE NO. 5 OF THE DISTRICT

WHEREAS, the Board of Directors of the Santa Cruz County Flood Control and Water Conservation District has by ordinance, adopted July 12, 1977, provided for fees to be established by Resolution for services and facilities furnished or to be furnished to any new building, structure, improvement or construction by any flood control or storm drainage system constructed or to be constructed within Zone No. 5 of the District; and

WHEREAS, said ordinance provides that such fees shall be established by resolution of the Board of Directors of the District;

NOW THEREFORE, BE IT RESOLVED AND ORDERED by the Board of Directors of the District that the following fees are established for such services and facilities within Zone No. 5 of the District;

1. A fee of 40 cents per square foot of foundation area of all roofed structures, including but not limited to, garages of residences, and coach roof area in mobile home developments whether or not coaches are set on permanent foundation. In the event that development plans do not clearly indicate precise coach roof areas.
2. A fee of 40 cents per square foot of paved or other improved impervious areas without a roof.
3. Said fee shall be increased annually by \$0.05 per square foot commencing July 1, 1991, and continuing every July 1 thereafter through and including July 1, 1994, at which time the maximum fee shall be \$0.60 per square foot.

PASSED AND ADOPTED by the Board of Directors of the Santa Cruz County Flood Control and Water Conservation District, State of California, this 22nd day of June _____, 1990, by the following vote:

AYES: DIRECTORS Beautz, Patton, Mehl, Keeley, Graves, Pierce, and Levy

NOES: DIRECTORS None

ABSENT: DIRECTORS None

Bill Mayley
Chairman of said Board

ATTEST: Marianne R. [Signature]
Clerk of said Board

Approved as to form:

Dwight L. Hew
Assistant County Counsel

Distribution: County Counsel
Auditor-Controller
Public Works
Planning
City of Capitola
Zone 5 Board of Directors

1.2



PD 391

BOARD OF DIRECTORS - ZONE 5
SANTA CRUZ COUNTY FLOOD CONTROL
AND WATER CONSERVATION DISTRICT

Ordinance No. 1-2

AN ORDINANCE OF THE SANTA CRUZ COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, ZONE 5, ESTABLISHING PLAN CHECKING AND PERMIT PROCESSING FEES.

WHEREAS, pursuant to Section 171 of the Santa Cruz County Flood Control and Water Conservation District Act, said District is given the power to prescribe, revise and collect fees and charges for services and facilities furnished or to be furnished to any new building, structure, improvement or construction by use of any flood control or storm drainage system constructed or to be constructed in the District or any zone thereof;

NOW, THEREFORE, IT IS HEREBY ORDAINED, by the Board of Directors of the Santa Cruz County Flood Control and Water Conservation District, Zone 5, as follows:

Section I - Effective Date

This ordinance shall be effective from and after thirty-one (31) days following the date of its adoption.

Section II - Applicability

This ordinance shall apply to all the territory in Zone 5 of the District.

Section III - Fee

There is hereby established the following plan checking and permit processing fee schedule:

<u>Permit Type</u>	<u>Fee</u>
SFD remodel or addition	\$ 50.00
Commercial remodel or addition	\$ 50.00
New SFD, condo, or townhouse	\$ 150.00 per unit
New Commercial	\$ 500.00

Section IV - Collection of Fees

Such fees shall be collection by the building official of the County at the time that a building permit is applied for.

In the case of new commercial permits, the applicant shall certify as to the total gross area of the parcel to the nearest tenth of an acre.

~~588~~
392

Section V - Failure to Pay Fees

Failure to pay the fees set forth in this ordinance shall constitute an incomplete application. Such incomplete applications shall be returned to the County building official for collection of fees. No application will be approved prior to payment of the established fee.

Section VI - Validity

Should any section or provision of this ordinance be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the ordinance as a whole or any part thereof, other than the part decided to be unconstitutional or invalid.

PASSED AND ADOPTED by the Board of Directors of the Santa Cruz County Flood Control and Water Conservation District, Zone 5, State of California, this 8th day of January, 1991, by the following vote:

AYES: DIRECTORS Beautz, Levy, Patton, Belgard, Pierce, Keeley

NOES: DIRECTORS None

ABSENT: DIRECTORS Graves

FRED KEELEY

SUSAN M. ROZARIO

Chairman of said Board

ATTEST: _____
Clerk of said Board

Approved as to form:

[Signature] 10/9/90
Assistant County Counsel

Distribution: County Counsel
Auditor-Controller
Public Works
Planning
Richard Manning
CAO

I HEREBY CERTIFY THAT THE FOREGOING INSTRUMENT IS A CORRECT COPY OF THE ORIGINAL ON FILE IN THE OFFICE ATTESTED BY MY SEAL THIS 8th DAY OF JANUARY 1991.
SUSAN A. MAURIELLO, COUNTY ADMINISTRATIVE OFFICER AND EX-OFFICIO CLERK OF THE BOARD OF SUPERVISORS OF THE COUNTY OF SANTA CRUZ, CALIFORNIA.
BY *[Signature]* DEPUTY

BEFORE THE BOARD OF SUPERVISORS
OF THE COUNTY OF SANTA CRUZ, STATE OF CALIFORNIA

RESOLUTION NO. 2-912

484

On the motion of Supervisor
duly seconded by Supervisor
the following resolution is adopted:

RESOLUTION OF THE SANTA CRUZ COUNTY FLOOD CONTROL AND
WATER CONSERVATION DISTRICT REVISING RESOLUTION NO. 308-83
ESTABLISHING A NOT TO EXCEED LIMIT FOR DRAINAGE FEES
ASSOCIATED WITH UNROOFED IMPERVIOUS AREA WITHIN ZONE 5

WHEREAS, the Board of Directors of the Santa Cruz County Flood Control and Water Conservation District has by ordinance, adopted July 12, 1977, provided for fees to be established by resolution for services and facilities furnished or to be furnished to any new building, structure, improvement or construction by any flood control or storm drainage system constructed or to be constructed within Zone No. 5 of the District; and

WHEREAS, said ordinance provides that such fees shall be established by resolution of the Board of Directors of the District;

WHEREAS, on July 30, 1991, the Board of Directors of the Santa Cruz County Flood Control and Water Conservation District heard all public comment on this resolution and that all objections and protests are hereby overruled.

NOW, THEREFORE, BE IT RESOLVED AND ORDERED by the Board of Directors of the District that the following fees are established for such services and facilities within Zone No. 5 of the District:

1. Subdivisions, minor land divisions and single family dwellings shall pay a drainage fee at the prevailing unit rate, with a not-to-exceed amount of \$3,000.00 per parcel or condominium unit, for paved or other improved impervious areas without a roof.

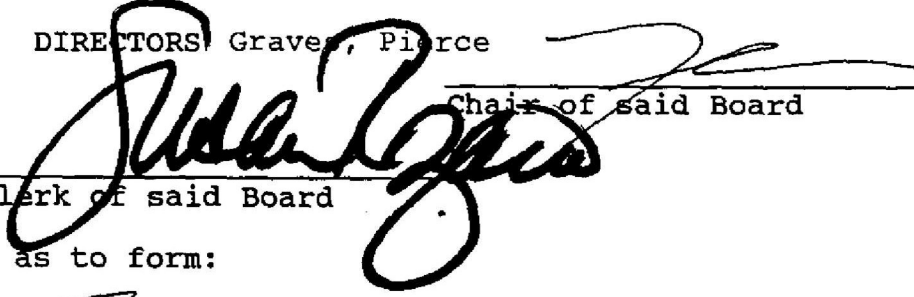
PASSED AND ADOPTED by the Board of Directors of the Santa Cruz County Flood Control and Water Conservation District, Zone 5, County of Santa Cruz, State of California, this 30th day of July, 1991, by the following vote:

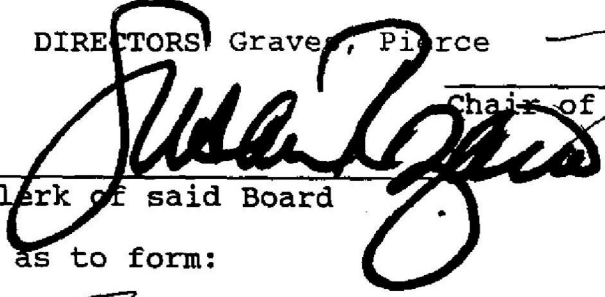
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AYES: DIRECTORS Beautz, Levy, Patton, Belgard, Keeley

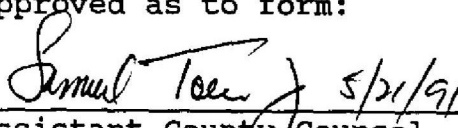
NOES: DIRECTORS None

ABSENT: DIRECTORS Graves, Pierce


Chair of said Board

ATTEST: 
Clerk of said Board

Approved as to form:

 5/21/91
Assistant County Counsel

Distribution: County Counsel
Auditor-Controller
Public Works

EXHIBIT 28

CAPITOLA CITY COUNCIL MINUTES

Page 7

September 13, 1984

10. E. ORDINANCE ESTABLISHING PENALTY FOR PARKING IN RESIDENTIAL PERMIT PARKING ZONES. (FIRST READING)

ACTION: Council Member Bucher moved, seconded by Council Member Harlan and passed unanimously, to read the Ordinance by title only. City Attorney R. Manning read the Ordinance by title only. Council Member Bucher moved, seconded by Council Member Clarke, to pass the Ordinance Adding Section 10.36.195 (Penalizing Non-Permitted Residential Area Parking) and Amending Subsection 10.36.010 B of the Municipal Code to a second reading on 9/27/84. The motion carried on the following vote: AYES: Council Members Beltram, Bucher, Clarke, Harlan and Mayor Routh. NOES: None. ABSENT: None.

11. UNFINISHED BUSINESS

A. MEMO FROM CITY MANAGER REGARDING NOBEL GULCH DRAINAGE EASEMENT AND ZONE 5 IN-LIEU FEES.

ACTION: Council Member Beltram stated that he feels the response from the County resolves his concerns regarding this matter. Receive and file.

B. MEMO FROM CITY MANAGER REGARDING PURCHASE OF PACIFIC COVE MOBILE HOME PARK.

City Manager S. Burrell gave staff report stating that the City is prepared to exercise it's option and intends to put the down payment into escrow next week with Council's approval. He stated that he hopes the City will assume ownership of the park as of October 1, 1984. He also advised the Council that they were able to negotiate the purchase price of the park from \$2,500,000 to \$1,500,000. He also stated that the City plans to overlay the roads in the park along with the Depot Hill overlay program which should take place the first part of October.

Council Member Harlan questioned when the next meeting with the park residents would be. City Manager S. Burrell stated that it would probably be scheduled for the first week of October.

ACTION: Council Member Clarke moved, seconded by Council Member Bucher, to approve recommendations as outlined in the City Manager's memo for purchase of the Pacific Cove Mobile Home Park as follows:

1. Approval of the purchase of the Pacific Cove Mobile Home Park, authorizing the City Manager to issue a warrant in the amount of the negotiated down payment and place it in escrow to be released at the close of the purchase transaction.
2. Authorized the City Manager to execute all required documents on behalf of the City: i.e. record the deed, loan documents as appropriate, secure title insurance, and secure property liability insurance through our broker of record.
3. Approved the operating plan as proposed and directed staff to begin required repair work.
4. Directed staff to set up separate budget and expenditure accounts for the operation of the park, debt service and capital improvements.

The motion carried on the following vote: AYES: Council Members Beltram, Bucher, Clarke, Harlan and Mayor Routh. NOES: None. ABSENT: None.

12. NEW BUSINESS

A. MEMO FROM PLANNING DEPARTMENT REGARDING REQUEST FOR PROPOSAL FOR ARCHITECTURAL SERVICES FOR SEVEN LOW INCOME HOUSING UNITS.

ACTION: Council Member Bucher moved, seconded by Council Member Harlan to approve the Request for Proposal as submitted and directed staff to proceed with the printing and distribution. The motion carried unanimously.

B. MEMO FROM CITY MANAGER REGARDING MASTER PLAN FOR CITY ACTIVITIES.

ACTION: The City Council concurred on scheduling a Special Meeting to discuss the Master Plan for City Activities on Thursday, October 18, 1984 in the City Hall Conference Room at 7:00 P.M.

EXHIBIT 29

V&A Project No. 23-0331

January 22, 2024

Jessica Kahn, P.E.
Public Works Director
City of Capitola
420 Capitola Avenue
Capitola, CA 95010

Subject: Noble Gulch Culvert Condition Assessment
Draft Letter Report

Dear Ms. Kahn:

V&A Consulting Engineers (V&A) was retained by the City of Capitola (City) to provide condition assessment services to assess the City's Noble Gulch Culvert (NGC). The NGC is an approximate 1,500-foot long storm drainage pipeline consisting of 72-inch diameter corrugated metal pipe (CMP), cure-in-place lined pipe (CIPP), reinforced concrete box culvert, reinforced concrete pipe (RCP), and reinforced concrete arch pipe. The purpose of this assessment is to determine if the condition of the NGC has degraded or changed since V&A's initial assessments of the NGC in 2011 and 2012. In addition, V&A was tasked with assessing the box culvert section for possible damage underneath 419 Capitola Avenue where construction had occurred at that property. V&A conducted a confined space entry assessment of the NGC on December 12, 2023.

V&A assessed the condition of the NGC using the following methods:

- Visually evaluate and document the existing condition of the NGC and its inlet. Document cracks, exposed reinforcing steel, concrete defects, existing lining condition, corrosion, and infiltration.
- Rate the condition of the concrete or metal pipe using the VANDA Condition Indices and objective criteria. Refer to Attachment A for the rating criteria.
- Assess the pipe condition by "sounding" to listen for discontinuities and soil voids.
- Measure sediment depth at 100-foot intervals.
- Measure pipe ovality at 100-foot intervals.
- Ultrasonic testing to determine the nominal metal thickness.

Figure 1 shows an aerial view of the NGC. The upstream portion of the pipe is a 72-inch CMP that was rehabilitated with a CIPP liner. The CIPP liner starts at the bar screen and terminates at the cast-in-place concrete arch pipe under Bay Avenue. The concrete arch pipe transitions to the RCP segment that replaced the failed section in 2012. The RCP section terminates at manhole 7 where the original CMP section starts. The CMP continues to the southwest to manhole 1 where the pipe transitions to a cast-in-place concrete box culvert near Capitola Avenue. The concrete box culvert continues in the southwest direction and discharges into Soquel Creek.

Photo 1, Photo 2, Photo 3, and Photo 4, show the surface views of the entry points at manhole 1, manhole 4, manhole 7, and the bar screen, respectively.

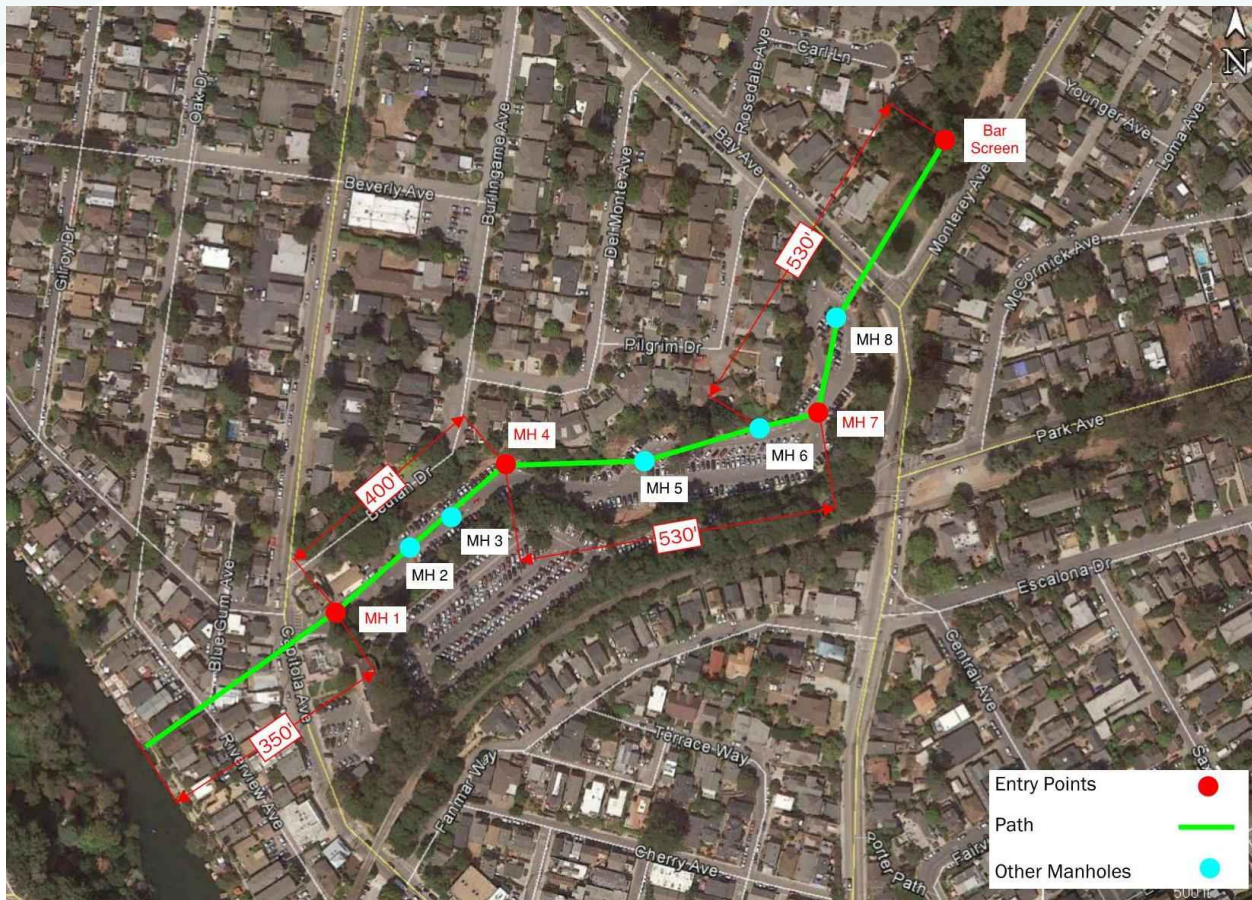


Figure 1. Aerial view of assessment location



Photo 1. Manhole 1 street view

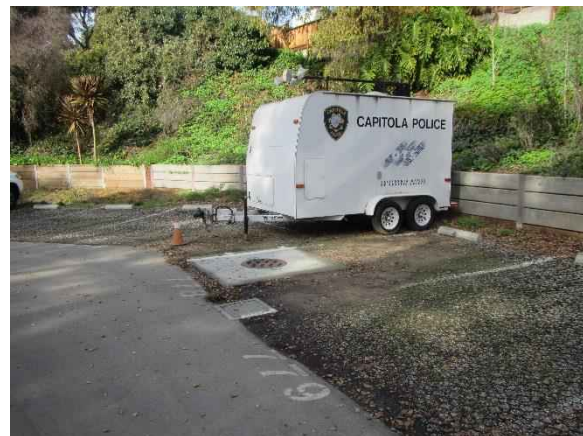


Photo 2. Manhole 4 street view



Photo 3. Manhole 7 street view



Photo 4. Bar Screen street view

Visual Assessment Results

The following subsections describe the findings for the five assessed segments. Segment 1 is the downstream reach starting at Soquel Creek and Segment 5 is the most upstream reach at the bar screen at the Noble Gulch.

The findings are generally described heading towards the upstream direction, except for Segment 1, which proceeded in the downstream direction.

Segment 1: Manhole 1 to Soquel Creek

Segment 1 consisted of a concrete box culvert that extends from manhole 1 to Soquel creek. Stationing for this segment is referenced in the downstream direction from manhole 1 with manhole 1 being station 0+00.

In general, the concrete in the segment was in VANDA Level 2 condition. The concrete walls and ceiling were in good condition with minimal defects. The floor throughout the box culvert had exposed aggregate. This is a typical defect when water and debris constantly flow over concrete (Photo 5). Photo 6 and Photo 7 show the walls and ceiling in good condition. At station 0+54, the ceiling had a section of exposed reinforcement at a joint. The reinforcement appeared to be in good condition with minor surface corrosion (Photo 8). A lateral with exposed reinforcement surrounding the opening was found at station 0+85. The reinforcement was likely exposed during the lateral insertion into the box culvert. The reinforcement showed minor surface corrosion but was overall in good condition (Photo 9 to Photo 10). No defects were observed where the NGC presumably crosses underneath the property at 419 Capitola Avenue, which occurs at approximately station 1+50 to 1+90.



Photo 5. Station 0+54; outfall box culvert in good condition.



Photo 6. Station 1+00; box culvert ceiling in good condition.



Photo 7. Station 1+00; box culvert wall in good condition.



Photo 8. Station 0+54; exposed reinforcement on ceiling at concrete joint.



Photo 9. Station 0+85; lateral in box culvert ceiling.



Photo 10. Station 0+85; exposed reinforcement at lateral.

Segment 2: MH 1 to MH 4

Segment 2 consisted of CMP that traveled from manhole 1 to manhole 4. The stationing is referenced in the upstream direction from manhole 1 to manhole 4 with manhole 1 being station 0+00.

In general, the CMP within this section was in VANDA Level 3 condition. The coal tar coating had multiple sites of coating failure. Coating cracking was a typical defect observed throughout the pipe, resulting in areas of coating failure. The exposed metal from the coating failures was in good condition with no visible signs of corrosion (Photo 11 to Photo 13). The invert of the pipe has been rehabilitated with a cementitious grout since the 2012 assessment. This rehabilitation addressed the erosion and corrosion that caused perforations at the invert of the CMP throughout most of the CMP sections. The grout exhibited no signs of deterioration (Photo 14) and remains in good condition. The coating at station 2+00 had a yellow discoloration from the 8:00 to 4:00 positions. The discoloration did not appear to affect the coating's protective properties (Photo 15). At station 2+80, minor corrosion of a lateral was observed at a lateral break-in site (Photo 16). The pipe crown at station 3+54 was deformed and bulging inward. The coating around the bulge had failed, exposing the underlying metal to the environment. Minor surface corrosion was observed on the bulged area (Photo 17 and Photo 18). See Table 1 for ovality measurements at the bulge location.



Photo 11. Station 0+07; coal tar coating failure along pipe.



Photo 12. Station 0+07; craze pattern cracking of coating.

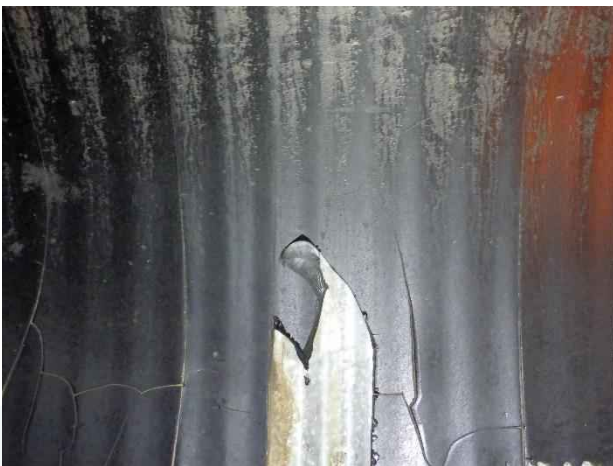


Photo 13. Station 0+07; corrugated metal in good condition.



Photo 14. Station 2+00; grout along bottom of pipe.



Photo 15. Station 2+00; coating discoloration from 8:00 to 4:00 of pipe.



Photo 16. Station 2+80; lateral with minor corrosion at pipe intersection.



Photo 17. Station 3+54; deformed bulge defect on the crown of the pipe.



Photo 18. Station 3+54; signs of minor corrosion on deformed bulge.

Segment 3: MH 4 to MH 6

Segment 3 consisted of CMP that traveled from manhole 4 to manhole 6. The stationing is referenced in the upstream direction from manhole 4 to manhole 6 with manhole 4 being station 0+00.

In general, the piping within this section was in VANDA Level 3 condition. The coal tar coating had deteriorated throughout the years, resulting in craze pattern cracking of the coating along the pipe (Photo 19 and Photo 20). The grout rehabilitation at the invert of the pipe exhibited no signs of deterioration (Photo 21). The coating at station 0+80 had a yellow discoloration from the 9:00 to 3:00 positions. The discoloration did not appear to affect the coating's protective properties (Photo 22). The pipe crown at stations 1+80 and 2+05 had large, deformed bulges. The coating around the bulges had failed, exposing the underlying metal to the environment (Photo 23 and Photo 24). See Table 1 for ovality measurements at the bulge locations. At station 2+96, there was a section of coating failure. This defect was typical within the pipe segment. The exposed metal at the failure sites were in good condition with no corrosion (Photo 25). At station 3+84, minor surface corrosion was observed at a lateral break-in site (Photo 26). Station 4+25 had a strip of coating failure along the pipe joint. The exposed metal showed no corrosion (Photo 27).



Photo 19. Station 0+00; signs of coal tar deterioration along pipe.



Photo 20. Station 0+00; typical craze pattern cracking of coal tar coating.



Photo 21. Station 0+80; concrete grout along the bottom of the pipe; typical for segment 1.



Photo 22. Station 0+80; coating discoloration from 9:00 to 3:00.



Photo 23. Station 1+80; bulge deformation defect on the crown of the pipe.



Photo 24. Station 2+05; bulge deformation defect on the crown of the pipe.



Photo 25. Station 2+96; typical section of coating failure, corrugated metal in good condition.



Photo 26. Station 3+84; minor corrosion of metal at lateral break in site.



Photo 27. Station 4+25; coating failure along pipe joint.

Segment 4: MH 6 to MH 8

Segment 4 consisted of CMP and RCP that extends from manhole 6 to manhole 8. The stationing is referenced in the upstream direction from manhole 6 to manhole 8 with manhole 6 being station 0+00.

In general, the CMP within this section was in VANDA Level 3 condition. The coal tar coating had deteriorated throughout the years. The coating at station 0+80 had a yellow discoloration from the 9:00 to 3:00 positions. The discoloration did not appear to affect the coating's protective properties (Photo 28). At station 0+84, the crown had a section of coating failure. The failure resulted in the loss of the first layer while leaving the 2nd layer intact. This defect was observed at multiple sites within the pipe segment. The grout rehabilitation exhibited no signs of deterioration (Photo 30). The coating at station 0+46 was uneven along a pipe joint (Photo 31).

A repair patch was found at station 0+46. The patch is located at the 3:00 position and had previously been repaired (prior to 2011) with a cementitious grout (Photo 32). The repair patch appeared to be in good condition. At station 0+95, there was a section of coating failure. The exposed metal at the failure sites were in good condition with no significant signs of corrosion (Photo 34 and Photo 35).

The CMP transitioned into a concrete manhole structure (manhole 7) and RCP at station 1+25. The manhole structure and RCP were presumably constructed due to the 2011 failure and after the 2012 assessment. The concrete and RCP were in like new condition (Photo 34 and Photo 35).



Photo 28. Station 0+00; signs of coal tar deterioration and discoloration along pipe.



Photo 29. Station 0+84; deteriorated coating on the crown of the pipe.



Photo 30. Station 0+46; concrete grout along the bottom of the pipe in good condition.



Photo 31. Station 0+46; coating uneven at joint.



Photo 32. Station 0+46; repair patch at the 3:00 position.



Photo 33. Station 0+95; coating failure along pipe, corrugated metal was in good condition.



Photo 34. Station 1+25; concrete manhole was in good condition.



Photo 35. Station 1+25; RCP section of segment was in good condition.

Segment 5: MH 8 to Bar Screen

Segment 5 consisted of a concrete arch pipe and CIPP lined CMP that traveled from manhole 8 to the bar screen structure. The stationing is referenced in the upstream direction from manhole 8 to the bar screen with manhole 8 being station 0+00.

The arch pipe, which exhibited a few moderate defects, is located where the NGC crosses underneath Bay Avenue. At station 0+14, a small void was observed on the bottom of the arch pipe wall. The void did not penetrate the wall. The ceiling had a few areas of concrete spalling and cracking. At stations 0+14 and 0+70, the ceiling had large cracks along the surface. The area around the defects was previously repaired; however, additional repairs are required (see recommendations section). The concrete in the segment was hard and returned a sharp ping when struck with a hammer. This is a strong indicator of high alkalinity concrete. Since the environment is negligibly corrosive, the concrete deterioration was likely due to external forces from the soil and vehicle loading above the arch pipe (Photo 37 and Photo 38).

The CIPP section at station 0+70 was significantly out-of-round (squished). The ovality of the pipe at

this location appeared unchanged since 2012. Excluding the sag, the CIPP was in relatively good condition (Photo 39 and Photo 40). The bar screen concrete was in good condition with minimal signs of deterioration (Photo 41).



Photo 36. Station 0+14; minor concrete void along the bottom of the arch pipe.



Photo 37. Station 0+14; concrete spalling on arch pipe.



Photo 38. Station 0+70; large cracks and exposed aggregate on arch pipe.



Photo 39. Station 0+70; sag defect on the crown of the pipe.



Photo 40. Station 0+70; CIPP liner deformed (squished) but in good condition.



Photo 41. Noble Gulch; bar screen entrance in good condition.

Ovality Measurements

Ovality measurements were collected at an average spacing of 100 feet and at locations of bulges along the CMP and CIPP segments. Table 1 presents the ovality measurements taken throughout the NGC. Based on the National Association of Sewer Service Companies (NASSCO) Pipeline Assessment Certification Program (PACP) defect coding standards, the four locations of deformation/bulging shown red text in the table are considered Grade 5 defects, which require repair or monitoring.

Table 1. Ovality Measurements

Segment	Station (ft)	Station Reference	Width (in)	Height (in)	Ovality (%)	NASSCO Grade ⁽¹⁾	Material/note
2	1+54	Upstream of manhole 1	70	67	4	DFE/3	CMP
2	2+00	Upstream of manhole 1	70.5	65	8	DFE/3	CMP
2	3+54	Upstream of manhole 1	70	59	19	DFBR/5	CPM, sag on the crown
3	0+80	Upstream of manhole 4	68	67	1	DFE/3	CMP
3	1+80	Upstream of manhole 4	70	58	21	DFBR/5	CMP, sag on the crown
3	2+05	Upstream of manhole 4	70	59	19	DFBR/5	CMP, sag on the crown
3	3+85	Upstream of manhole 4	73	67	9	DFE/3	CMP
4	0+95	Upstream of manhole 6	73	63	16	DFE/3	CMP
5	0+70	Upstream of manhole 8	71	59	20	DFBR/5	CIPP, sag on the crown
5	1+60	Upstream of manhole 8	71	68	4	DFBR/3	CIPP

⁽¹⁾ National Association of Sewer Service Companies (NASSCO) Pipeline Assessment Certification Program (PACP) defect coding. DFE = deformed flexible elliptical; DFBR = deformed flexible bulging round. Grades are 1 to 5 with 5 being severe.

Ultrasonic Thickness Measurements

Ultrasonic Thickness (UT) measurements were performed on the CMP to record its nominal thickness. The nominal thickness of the CMP is 0.135-inch (10-gauge steel). Table 2 provides a summary of the UT testing results.

Table 2. Ultrasonic Thickness Data Summary

Location	Size / Material	Min. Thickness (in)	Ave. Thickness (in)	Max. Thickness (in)	Assumed Nominal Thickness* (in)
Segment 2	72" / CMP	0.132	0.135	0.136	0.135

Lateral locations

The location and quantity of laterals within CMP segments were recorded throughout the NGC. Table 3 presents the lateral locations.

Table 3 Lateral Location Summary

Segment	Quantity	Station (ft)	Station Reference	Clock Position	Diameter (in)
2	2	1+54	Manhole 1 to upstream	2:00, 10:00	8
2	2	2+41	Manhole 1 to upstream	2:00	8
2	1	2+80	Manhole 1 to upstream	10:00	7
3	3	0+00	Manhole 4 to upstream	10:00, 1:00	12, 7, 7
3	1	0+80	Manhole 4 to upstream	10:00	8
3	2	2+27	Manhole 4 to upstream	10:00, 2:00	8
3	1	3+84	Manhole 4 to upstream	12:00	6
3	1	3+88	Manhole 4 to upstream	12:00	6
4	1	0+00	Manhole 6 to upstream	11:00	7
4	1	0+05	Manhole 6 to upstream	1:00	7

Conclusions

Based on the findings of the assessment, V&A presents the following conclusions on the condition of the NGC.

- Segment 1 – The box culvert between manhole 1 and Soquel Creek was in good condition and is assigned a VANDA Level 2 condition with only minor defects. No defects were observed where the NGC presumably crosses underneath the property at 419 Capitola Avenue, which occurs at approximately station 1+50 to station 1+90.
- Segment 2, Segment 3, and Segment 4 (CMP sections) – The CMP between manhole 1 and manhole 7 was in fair condition and is assigned a VANDA Level 3 condition. The nominal thickness of the CMP is 0.135-inch (10-gauge steel). The coat tar lining has reached the end of its useful life; however, corrosion of the CMP was relatively minor on the upper 270-degree (approximate) cross-section of the pipe. The lower 90-degree (approximate) section was rehabilitated with a cementitious grout, which remains in good condition. Minor to severe defects such as minor to moderate corrosion around various lateral connections and severe deformations (bulges) exist

within the CMP segments. The deformed bulges at the following locations are considered severe (Grade 5) defects per NASSCO PACP:

- 354 feet upstream of manhole 1,
- 180 feet upstream of manhole 4,
- and 204 feet upstream of manhole 4.
- Segment 4 (RCP section) – The RCP between manhole 7 and the concrete arch pipe in segment 5 was in like new condition and is assigned a VANDA Level 1 condition.
- Segment 5 – The concrete arch pipe section was in fair condition and is assigned a VANDA Level 3 condition with moderate defects. There are cracks and voids in the concrete that require repair. The CIPP lined section was deformed, especially near the interface with the arch pipe. The deformation appeared to be unchanged since the 2012 assessment.

Recommendations

Based on the results of the condition assessment, V&A presents the following recommendations to extend the remaining useful life of the NGC for the City to consider:

- Segment 1 – Reassess the box culvert pipe in 10 years.
- Segment 2, Segment 3, and Segment 4 (CMP sections)
 - In 2 to 5 years, repair corrosion around laterals on the CMP at 280 feet upstream of manhole 1 and at 384 feet upstream of manhole 1.
 - Within 1 year, perform localized structural repairs at the severe deformed bulges.
 - Assess the CMP section using multi-sensor inspection (MSI with laser scans to measure ovality) annually to document the ovality of the CMP for further deformation. The interval can be extended if conditions do not change over time. The MSI should be performed after the wet weather season to allow time for rehabilitation/repairs prior to the next wet weather season. Structural CIPP lining, structural repairs, or pipe replacement may be necessary should significant changes occur to the ovality or if creases develop on the sides of the CMP.
- Segment 4 (RCP section) - Reassess the RCP in 10 years.
- Segment 5 (RCP section) – Within 1 year, perform localized concrete patch repair and crack injection in the concrete arch pipe near the interface with the CIPP lined section.
- Segment 5 (CIPP section) – similar to the CMP section, perform MSI annually to document the ovality for potential changes. The interval can be extended if conditions do not change over time.

On behalf of our staff and myself, I would like to thank you for the opportunity to be of service to you, and the City of Capitola.

Sincerely,
V&A Consulting Engineers, Inc.








Noy Phannavong, P.E.
Condition Assessment Practice Lead

Attachment A – VANDA Condition Indices

VANDA Concrete Condition Index

V&A created the VANDA Concrete Condition Index to provide consistent reporting of corrosion damage based on objective criteria. Concrete condition is rated from Level 1 to Level 5 based upon field observations and measurements, with Level 1 indicating the best case and Level 5 indicating severe damage. The individual criteria are applied based on engineering judgment to arrive at the overall rating.

VANDA® Concrete Condition Index






Condition Rating	Description	Representative Photograph
Level 1	Little or no damage to concrete <ul style="list-style-type: none"> Hardness..... hard surface Surface profile smooth, apparently intact Cracks hairline width, minimal frequency Spalling none Reinforcement not exposed or damaged 	
Level 2	Minor surface damage <ul style="list-style-type: none"> Hardness..... soft surface layer to 1/8-inch depth Surface profile fine aggregate exposed Cracks hairline width, moderate frequency Spalling shallow spalling, minimal frequency Reinforcement not exposed or damaged 	
Level 3	Moderate surface damage <ul style="list-style-type: none"> Hardness..... soft surface layer to 1/4-inch depth Surface profile large aggregate exposed or protruding Cracks up to 1/32-inch width, moderate frequency Spalling shallow spalling, minimal frequency Reinforcement exposed; minor damage, minimal frequency 	
Level 4	Loss of concrete mortar and damage to reinforcement <ul style="list-style-type: none"> Hardness..... soft paste beyond 1/4-inch depth Surface profile large aggregate exposed, loose, or missing Cracks 1/8- to 1/4-inch width, moderate frequency Spalling deep spalling, moderate frequency Reinforcement exposed with damage, moderate frequency 	
Level 5	Bulk loss of concrete and reinforcement <ul style="list-style-type: none"> Hardness..... soft paste beyond 1-inch depth Surface profile large aggregate exposed, loose, or missing Cracks over 1/2-inch width, or narrower and frequent Spalling deep spalling, high frequency Reinforcement consumed; loss of structural integrity 	

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VANDA Metal Condition Index

V&A created the VANDA Metal Condition Index to provide consistent reporting of corrosion damage based on objective criteria. Metal condition is rated from Level 1 to Level 5 based upon field observations and measurements, with Level 1 indicating the best case and Level 5 indicating severe damage. The individual criteria are applied based on engineering judgment to arrive at the overall rating.

VANDA® Metal Condition Index

Condition Rating	Description	Representative Photograph
Level 1	Little or no corrosion <ul style="list-style-type: none"> Wall thickness loss, generalnone Wall thickness loss, pitting.....none to minimal Extent (area) of corrosion.....may be widespread but superficial 	
Level 2	Minor corrosion <ul style="list-style-type: none"> Wall thickness loss, generalup to 20% Wall thickness loss, pitting.....up to 20% Extent (area) of corrosion.....localized 	
Level 3	Moderate corrosion <ul style="list-style-type: none"> Wall thickness loss, general20% to 40% Wall thickness loss, pitting.....20% to 60% Extent (area) of corrosion.....up to half of surface 	
Level 4	Severe corrosion <ul style="list-style-type: none"> Wall thickness loss, general40% to 60% Wall thickness loss, pitting.....60% to 100% (pinholes) Extent (area) of corrosion.....most of surface 	
Level 5	Failure or imminent failure <ul style="list-style-type: none"> Wall thickness loss, generalgreater than 60% Wall thickness loss, pitting.....100% (holes) Extent (area) of corrosion.....most or all of surface 	

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EXHIBIT 30

From: Mozumder, Kailash <kmozumder@ci.capitola.ca.us>
Sent: Wednesday, January 24, 2024 10:38 AM PST
To: Matt Maciel <matt@pacengineering.net>; Andy Sterbenz <ASterbenz@swsv.com>
CC: Chris Johnson <cjohnson@pacengineering.net>
Subject: RE: Culvert Headwall - Capitola
Attachment(s): "23-0331 C of Capitola Letter Report.pdf"

Hello Matt and Andy,

The attached inspection report will aid your review. The inspection of the section of box culvert closest to the outfall received a good evaluation. If we could keep this within our team right now that would be best. Once we have your report and some decisions are made we can then share this information with the rock solid team working on the private property immediately adjacent.

Thank you,
Kailash



Kailash Mozumder | City of Capitola
Public Works Project Manager
420 Capitola Avenue, Capitola, CA 95010
P: 831.475.7300 | kmozumder@ci.capitola.ca.us

From: Matt Maciel <matt@pacengineering.net>
Sent: Wednesday, January 17, 2024 1:36 PM
To: Mozumder, Kailash <kmozumder@ci.capitola.ca.us>; Andy Sterbenz <ASterbenz@swsv.com>
Cc: Chris Johnson <cjohnson@pacengineering.net>
Subject: RE: Culvert Headwall - Capitola

Hey Kailash,

Andy and I discussed a couple different repair options for the project last week. It is my understanding that he is currently assessing the viability of those options from a structural perspective and will let us know which option is the most viable. Once a selection is made, we will finalize our report.

Thanks,

Matt Maciel, PE, GE
Principal Geotechnical Engineer



444 Airport Boulevard, Suite 106
Watsonville, California
Office: 831-722-9446 ext. 3628
Cell: 831-254-2986

From: Mozumder, Kailash <kmozumder@ci.capitola.ca.us>
Sent: Wednesday, January 17, 2024 10:12 AM
To: Matt Maciel <matt@pacengineering.net>; Andy Sterbenz <ASterbenz@swsv.com>
Cc: Chris Johnson <cjohnson@pacengineering.net>
Subject: RE: Culvert Headwall - Capitola

Hello Matt and Andy,

I was out last week and am catching up. Let me know if you need anything from the City to keep things moving forward.

Thank you,
Kailash



Kailash Mozumder | City of Capitola
Public Works Project Manager
420 Capitola Avenue, Capitola, CA 95010
P: 831.475.7300 | kmozumder@ci.capitola.ca.us

From: Matt Maciel <matt@pacengineering.net>
Sent: Thursday, January 11, 2024 1:58 PM
To: Andy Sterbenz <ASterbenz@swsv.com>
Cc: Mozumder, Kailash <kmozumder@ci.capitola.ca.us>; Chris Johnson <cjohnson@pacengineering.net>
Subject: FW: Culvert Headwall - Capitola

As discussed, below please find our discussion with Sunstone Construction. Please let us know what you think.

Thanks,

Matt Maciel, PE, GE
Principal Geotechnical Engineer



444 Airport Boulevard, Suite 106
Watsonville, California
Office: 831-722-9446 ext. 3628
Cell: 831-254-2986

From: Rennon Fuller <rl2@sunstoneconstructioninc.com>
Sent: Wednesday, December 20, 2023 10:11 AM
To: Chris Johnson <cjohnson@pacengineering.net>
Cc: Matt Maciel <matt@pacengineering.net>; Rick W. Fuller <rw@sunstoneconstructioninc.com>
Subject: Re: Culvert Headwall - Capitola

Some people who received this message don't often get email from rl2@sunstoneconstructioninc.com. [Learn why this is important](#)

Chris/Matt,

I looked at the site last Friday. I think you'd have to reach over the top and install a tieback(s) on the existing side that hasn't failed face plate it, and lock it off. For the side that has failed, it's hard to tell without opening it up to see if there is any viable structure left to save/repair. Assuming there isn't. I would excavate behind the existing failure install tiebacks and piles (maybe pipe for more lateral) and cast a new headwall wing, tying it into the existing viable structure. Both operations would require taking down the last nine foot section of fence at the end of the easement and getting into the neighbor's raised planter area. There's a small concrete wall running parallel to the fence that's retaining the raised planter soil that would also need to be cut and removed as well as the front wooden facade that faces the creek.

We've put helical anchors down on that side of the creek in the past so they should go in. That's what I see. Let me know if you have any questions/ thoughts etc.

Regards,
Rennon Fuller

Rennon L. Fuller
Sunstone Construction Inc.
176 Gilman Ave.
Campbell, CA 95008
O:(408)379-0592
F: (408)379-2808
C:(408) 591-0292









On Dec 12, 2023, at 2:10 PM, Chris Johnson <cjohnson@pacengineering.net> wrote:

OK sounds good.

Please let me know your thoughts, and we can work on designing a solution that is constructable/cost effective.

Chris Johnson, PE
Principal Civil Engineer

<image001.jpg>

444 Airport Boulevard, Suite 106
Watsonville, California
Office: 831-722-9446 ext. 3630
Cell: 831-246-0971
www.4Pacific-Crest.com

From: Rennon Fuller <rl2@sunstoneconstructioninc.com>
Sent: Tuesday, December 12, 2023 2:06 PM
To: Chris Johnson <cjohnson@pacengineering.net>
Cc: Matt Maciel <matt@pacengineering.net>
Subject: Re: Culvert Headwall - Capitola

You don't often get email from rl2@sunstoneconstructioninc.com. [Learn why this is important](#)

Haven't seen it yet. I will be over that way later in the week. Will stop by and have a look.

Rennon L. Fuller
Sunstone Construction Inc.
176 Gilman Ave.
Campbell, CA 95008
O:(408)379-0592
F: (408)379-2808
C:(408) 591-0292

On Dec 12, 2023, at 1:15 PM, Chris Johnson <cjohnson@pacengineering.net> wrote:

Rennon,
Did you ever get a chance to take a look at this?

Chris Johnson, PE
Principal Civil Engineer

<image001.jpg>

444 Airport Boulevard, Suite 106
Watsonville, California
Office: 831-722-9446 ext. 3630
Cell: 831-246-0971
www.4Pacific-Crest.com

From: Chris Johnson
Sent: Thursday, November 30, 2023 3:12 PM
To: rl2@sunstoneconstructioninc.com
Cc: Matt Maciel <matt@pacengineering.net>
Subject: Culvert Headwall - Capitola

Rennon,
Thanks for talking with Matt Maciel and I on the phone a moment ago.

The culvert in question (shown in blue) runs under 427 Riverview Ave in Capitola and discharges into the Soquel Creek, with the headwall shown in red.

We are looking for some direction as to what would be the most cost-effective type of wall for this environment.

The home is already seeing some signs of distress so the installation method needs to be minimally invasive, which is why we were looking at helical anchors.

The footpath to the north of the house is approximately 8' wide, but necks down to 3.5' feet as it turns the corner and goes between the house and the river.

Let us know your thoughts.

<image002.png>

Chris Johnson, PE
Principal Civil Engineer

<image001.jpg>

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EXHIBIT 31

From: Noy Phannavong <nphannavong@vaengineering.com>
Sent: Tuesday, January 30, 2024 1:46 PM PST
To: Kahn, Jessica <jkahn@ci.capitola.ca.us>
CC: Connor Thomas <cthomas@vaengineering.com>; Leighton James <ljames@vaengineering.com>
Subject: [PDF] RE: City of Capitola - Noble Gulch (VA23-0331)
Attachment(s): "23-0331 C of Capitola Letter Report Rev1 20240130.pdf"

I revised the intro paragraph on the first page and last paragraph of the Segment 1 section below. Let me know if this works, and if so, the revised report is attached.

Dear Ms. Kahn:

V&A Consulting Engineers (V&A) was retained by the City of Capitola (City) to provide condition assessment services to assess the City's Noble Gulch Culvert (NGC). The NGC is an approximate 1,500-foot long storm drainage pipeline consisting of 72-inch diameter corrugated metal pipe (CMP), cure-in-place lined pipe (CIPP), reinforced concrete box culvert, reinforced concrete pipe (RCP), and reinforced concrete arch pipe. The purpose of this assessment is to determine if the condition of the NGC has degraded or changed since V&A's initial assessments of the NGC in 2011 and 2012. In addition, V&A was tasked with assessing the box culvert section for major defects or signs of distress where the box culvert crosses under private properties between Capitola Avenue and Soquel Creek. V&A conducted a confined space entry assessment of the NGC on December 12, 2023.

Segment 1: Manhole 1 to Soquel Creek

Segment 1 consisted of a concrete box culvert that extends from manhole 1 to Soquel creek. Stationing for this segment is referenced in the downstream direction from manhole 1 with manhole 1 being station 0+00.

In general, the concrete in the segment was in VANDA Level 2 condition. The concrete walls and ceiling were in good condition with minimal defects. The floor throughout the box culvert had exposed aggregate. This is a typical defect when water and debris constantly flow over concrete (Photo 5). Photo 6 and Photo 7 show the typical walls and ceiling in good condition. At station 0+54, the ceiling had a section of exposed reinforcement at a joint. The reinforcement appeared to be in good condition with minor surface corrosion (Photo 8).

A lateral with exposed reinforcement surrounding the opening was found at station 0+85. The reinforcement was likely exposed during the lateral insertion into the box culvert. The reinforcement showed minor surface corrosion but was overall in good condition (Photo 9 to Photo 10). There is another lateral connection at station 2+67 that was in good condition (Photo 11). Photo 12 shows a mortared joint and the ceiling of the box culvert in good condition at station 3+53.

No significant defects (structural cracks, spalls, or signs of distress) were observed where the NGC crosses underneath the private properties between station 1+20 (west edge of Capitola Avenue) and station 3+70 (discharge point at Soquel Creek).

Noy Phannavong, PE • V&A
Direct 510.987.8115 • Cell 510.935.3188
www.vaengineering.com

From: Kahn, Jessica <jkahn@ci.capitola.ca.us>
Sent: Tuesday, January 30, 2024 11:34 AM
To: Noy Phannavong <nphannavong@vaengineering.com>
Cc: Connor Thomas <cthomas@vaengineering.com>; Leighton James <ljames@vaengineering.com>
Subject: RE: City of Capitola - Noble Gulch (VA23-0331)

Thank you for providing background information and clarification. Currently, there is a proposed construction project at 427 Riverview. Can the report affirm that there are no observed damages or concerns regarding the culvert beneath the residential properties? I would like to include a reference acknowledging that the culvert is situated on private property.

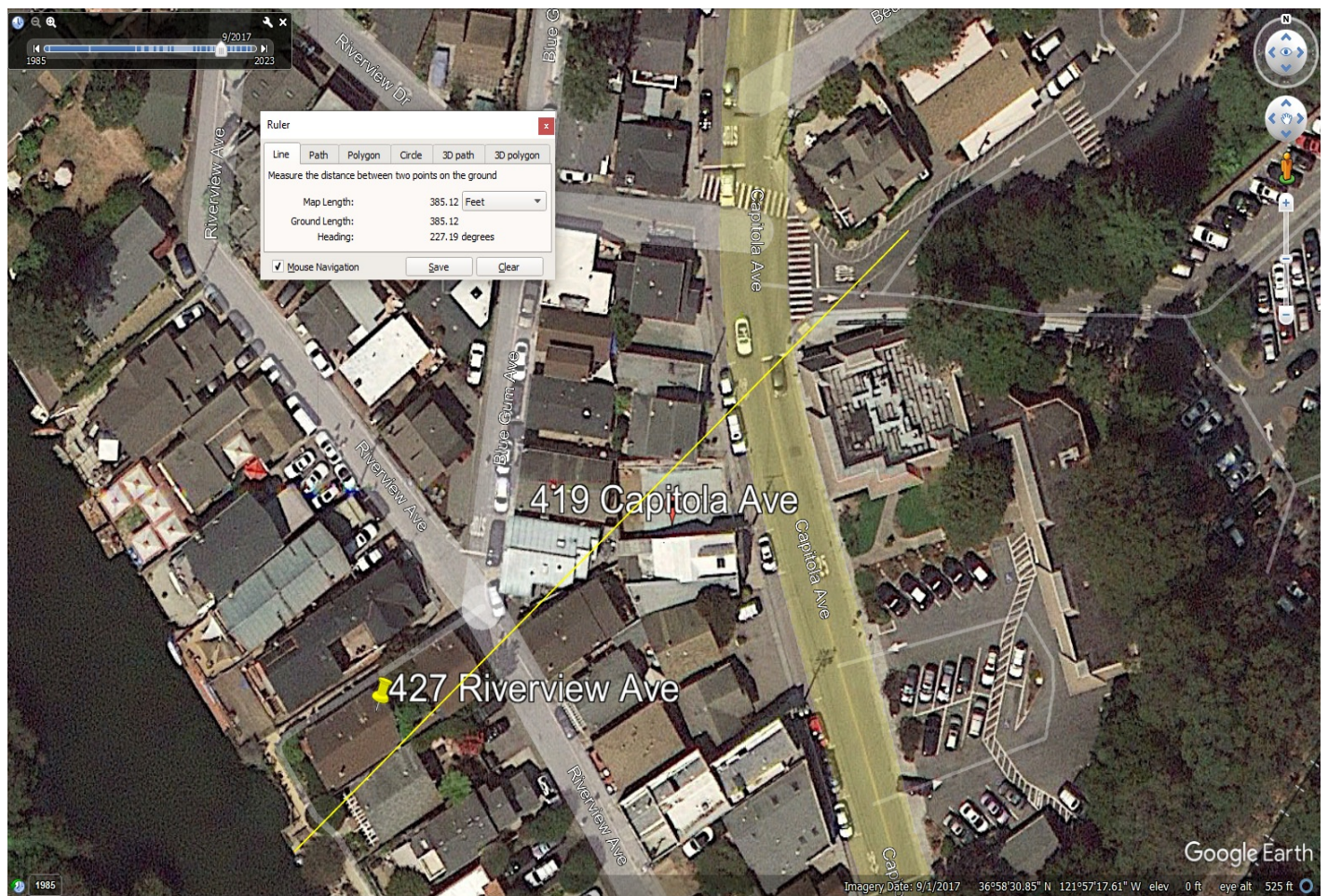
Thanks, Jessica

Jessica Kahn, P.E.
Public Works Director
City of Capitola
(831) 475-7300 x 217
jkahn@ci.capitola.ca.us

From: Noy Phannavong <nphannavong@vaengineering.com>
Sent: Tuesday, January 30, 2024 11:05 AM
To: Kahn, Jessica <jkahn@ci.capitola.ca.us>
Cc: Connor Thomas <cthomas@vaengineering.com>; Leighton James <ljames@vaengineering.com>
Subject: RE: City of Capitola - Noble Gulch (VA23-0331)

Hi Jessica,

Thanks for the comment. I got the 419 Capitola Avenue address from Steve Jesberg in 2017. See attached email. Looking back at the Google Earth Image from 2017 below, there was construction at the 419 Capitola property, which may have been Steve's concern back then. However, the culvert does appear to cross underneath both properties (along with other properties) based on the potential alignment line I've drawn below. That being said we can reference either property in the report or not mention any property at all since there was no issue underneath 419 Capitola Avenue and the culvert crosses underneath multiple properties. Please advise.



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From: Kahn, Jessica <jkahn@ci.capitola.ca.us>
Sent: Thursday, January 25, 2024 5:40 PM
To: Noy Phannavong <nphannavong@vaengineering.com>
Cc: Connor Thomas <cthomas@vaengineering.com>; Leighton James <ljames@vaengineering.com>
Subject: RE: City of Capitola - Noble Gulch (VA23-0331)

Hi Noy,

This looks good, one minor comment. I believe the address that the culvert is under is 427 Riverview. Please confirm, and if this is accurate, please refer to the property by its parcel number 035-13-201.

Thanks, Jessica

Jessica Kahn, P.E.
Public Works Director
City of Capitola
(831) 475-7300 x 217
jkahn@ci.capitola.ca.us

From: Noy Phannavong <nphannavong@vaengineering.com>
Sent: Monday, January 22, 2024 7:32 AM
To: Kahn, Jessica <jkahn@ci.capitola.ca.us>
Cc: Connor Thomas <cthomas@vaengineering.com>; Leighton James <ljames@vaengineering.com>
Subject: [PDF] RE: City of Capitola - Noble Gulch (VA23-0331)

Hi Jessica,

Please see attached draft report for the Noble Gulch Culvert assessment. Let us know if you have any questions.

Thanks,

Noy Phannavong, PE • V&A
Direct 510.987.8115 • Cell 510.935.3188
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From: Noy Phannavong
Sent: Wednesday, January 17, 2024 12:53 PM
To: Kahn, Jessica <jkahn@ci.capitola.ca.us>
Cc: Connor Thomas <cthomas@vaengineering.com>
Subject: RE: City of Capitola - Noble Gulch (VA23-0331)

V&A performed a follow-up assessment of the culvert on September 12, 2012 (see attached report). Since then, rehabilitation work has been completed. See attached photos from December 13, 2023. The invert of the CMP was grouted and reinforced concrete pipe was used to replaced the failed section.

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From: Kahn, Jessica <jkahn@ci.capitola.ca.us>
Sent: Wednesday, January 17, 2024 12:39 PM
To: Noy Phannavong <nphannavong@vaengineering.com>
Cc: Connor Thomas <cthomas@vaengineering.com>
Subject: RE: City of Capitola - Noble Gulch (VA23-0331)

Are you referring to the work from 2012, the temporary outfall repair, or is it something else?

Jessica Kahn, P.E.
Public Works Director
City of Capitola
(831) 475-7300 x 217
jkahn@ci.capitola.ca.us

From: Noy Phannavong <nphannavong@vaengineering.com>
Sent: Wednesday, January 17, 2024 12:28 PM
To: Kahn, Jessica <jkahn@ci.capitola.ca.us>
Cc: Connor Thomas <cthomas@vaengineering.com>
Subject: RE: City of Capitola - Noble Gulch (VA23-0331)

Hi Jessica,

Quick question. Do you happen to know when and what repairs/rehabilitation were completed on the NGC? The record drawings would help if they are available. We would like to provide a brief description in the report.

Thanks,

Noy Phannavong, PE • V&A
Direct 510.987.8115 • Cell 510.935.3188
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From: Kahn, Jessica <jkahn@ci.capitola.ca.us>
Sent: Wednesday, January 17, 2024 11:57 AM
To: Noy Phannavong <nphannavong@vaengineering.com>
Cc: Connor Thomas <cthomas@vaengineering.com>
Subject: RE: City of Capitola - Noble Gulch (VA23-0331)

Good morning,

Checking in on the status of this report. We recently received the invoice for this work.

Thanks, Jessica

Jessica Kahn, P.E.
Public Works Director
City of Capitola
(831) 475-7300 x 217
jkahn@ci.capitola.ca.us

From: Kahn, Jessica
Sent: Wednesday, December 13, 2023 8:58 AM
To: Noy Phannavong <nphannavong@vaengineering.com>
Cc: Connor Thomas <cthomas@vaengineering.com>
Subject: RE: City of Capitola - Noble Gulch (VA23-0331)

That's great news, thank you. No additional information needed prior to the report.

Thanks, Jessica

Jessica Kahn, P.E.
Public Works Director
City of Capitola
(831) 475-7300 x 217
jkahn@ci.capitola.ca.us

From: Noy Phannavong <nphannavong@vaengineering.com>
Sent: Tuesday, December 12, 2023 5:04 PM
To: Kahn, Jessica <jkahn@ci.capitola.ca.us>
Cc: Connor Thomas <cthomas@vaengineering.com>
Subject: RE: City of Capitola - Noble Gulch (VA23-0331)

Hi Jessica,

We successfully completed the Noble Gulch Culvert assessment today. The repairs performed since our last assessment in 2012 are generally in good condition. The repairs include, but are not limited to, grouting of the CMP invert and crack/spall repairs of the concrete segments. There were a few other minor/moderate defects that we observed but the culvert is generally in good condition. Let us know if you have any questions or need more information prior to receiving the assessment report.

Thanks,

Noy Phannavong, PE • V&A
Direct 510.987.8115 • Cell 510.935.3188
www.vaengineering.com

From: Kahn, Jessica <jkahn@ci.capitola.ca.us>
Sent: Wednesday, December 6, 2023 8:47 AM
To: Noy Phannavong <nphannavong@vaengineering.com>
Cc: Connor Thomas <cthomas@vaengineering.com>
Subject: RE: City of Capitola - Noble Gulch (VA23-0331)

December 12th sounds good. I will have my staff place a no parking sign at MH4.

Thanks, Jessica

Jessica Kahn, P.E.
Public Works Director
City of Capitola
(831) 475-7300 x 217
jkahn@ci.capitola.ca.us

From: Noy Phannavong <nphannavong@vaengineering.com>
Sent: Tuesday, December 5, 2023 4:35 PM
To: Kahn, Jessica <jkahn@ci.capitola.ca.us>
Cc: Connor Thomas <cthomas@vaengineering.com>
Subject: [PDF] RE: City of Capitola - Noble Gulch (VA23-0331)

Hi Jessica,

The 10-day forecast looks dry. How does Tuesday, December 12th sound for the assessment?

We will send our updated work plan by Thursday, 12/7. See attached map. Would it be possible for the City to place a no parking sign on the parking stall for access to Manhole 4?

Thanks,

Noy Phannavong, PE • V&A
Direct 510.987.8115 • Cell 510.935.3188
www.vaengineering.com

From: Kahn, Jessica <jkahn@ci.capitola.ca.us>
Sent: Monday, November 27, 2023 8:19 AM
To: Noy Phannavong <nphannavong@vaengineering.com>
Subject: RE: City of Capitola - Noble Gulch (VA23-0331)

Who would be the correct contact for signature?

Thanks, Jessica

Jessica Kahn, P.E.

Public Works Director
City of Capitola
(831) 475-7300 x 217
jkahn@ci.capitola.ca.us

From: Kahn, Jessica
Sent: Monday, November 27, 2023 8:13 AM
To: Noy Phannavong <nphannavong@vaengineering.com>
Subject: RE: City of Capitola - Noble Gulch (VA23-0331)

Apologies, I thought it had already been sent. I'll have our City Clerk route it via Docusign today.

Jessica Kahn, P.E.
Public Works Director
City of Capitola
(831) 475-7300 x 217
jkahn@ci.capitola.ca.us

From: Noy Phannavong <nphannavong@vaengineering.com>
Sent: Monday, November 27, 2023 7:30 AM
To: Kahn, Jessica <jkahn@ci.capitola.ca.us>
Subject: RE: City of Capitola - Noble Gulch (VA23-0331)

Hi Jessica,

The end of next week and/or the following week (week of 12/11) are possible depending on the day. We should be able to schedule around some of the other work that we have coming up. Can you send us a contract this week?

Thanks,

Noy Phannavong, PE • V&A
Direct 510.987.8115 • Cell 510.935.3188
www.vaengineering.com

From: Kahn, Jessica <jkahn@ci.capitola.ca.us>
Sent: Monday, November 20, 2023 12:29 PM
To: Noy Phannavong <nphannavong@vaengineering.com>
Subject: RE: City of Capitola - Noble Gulch (VA23-0331)

Hi Noy,

The City would like to schedule this inspection. Our lagoon breached over the weekend, and the forecast looks dry, so the water level should be low for a couple of weeks. Please let me know the best way to move forward.

Thanks, Jessica

Jessica Kahn, P.E.
Public Works Director
City of Capitola
(831) 475-7300 x 217
jkahn@ci.capitola.ca.us

From: Kahn, Jessica
Sent: Friday, September 22, 2023 10:26 AM
To: Noy Phannavong <nphannavong@vaengineering.com>
Subject: RE: City of Capitola - Noble Gulch (VA23-0331)

Thank you! This is perfect. The contract should be approved by Council next Thursday and then we can discuss schedule. We will be in touch.

Thanks, Jessica

Jessica Kahn, P.E.
Public Works Director
City of Capitola
(831) 475-7300 x 217
jkahn@ci.capitola.ca.us

From: Noy Phannavong <nphannavong@vaengineering.com>
Sent: Thursday, September 21, 2023 5:20 PM
To: Kahn, Jessica <jkahn@ci.capitola.ca.us>
Subject: [PDF] RE: City of Capitola - Noble Gulch (VA23-0331)

Hi Jessica,

Please see attached proposal for condition assessment of the culvert. Let me know if you have any questions.

Thanks,

Noy Phannavong, PE • V&A
Direct 510.987.8115 • Cell 510.935.3188
www.vaengineering.com

From: Kahn, Jessica <jkahn@ci.capitola.ca.us>
Sent: Friday, September 15, 2023 11:40 AM
To: Noy Phannavong <nphannavong@vaengineering.com>
Subject: City of Capitola - Noble Gulch

You don't often get email from jkahn@ci.capitola.ca.us. [Learn why this is important](#)

Hi Noy,

I just left you a voicemail. I believe you previously worked with Steve Jesberg, he retired last year. I located a "Proposal for Condition Assessment Services" for the Noble Gulch culvert dated 10/4/17 (attached), it appears that this work was never completed. The City would like to pursue this same scope of work this fall. Is V&A is available, and if so would it be possible to receive a proposal for these same services sometime next week?

Thanks, Jessica

Jessica Kahn, P.E.
Public Works Director
City of Capitola
(831) 475-7300 x 217
jkahn@ci.capitola.ca.us

V&A Project No. 23-0331

January 30, 2024

Jessica Kahn, P.E.
Public Works Director
City of Capitola
420 Capitola Avenue
Capitola, CA 95010

Subject: Noble Gulch Culvert Condition Assessment
Draft Letter Report

Dear Ms. Kahn:

V&A Consulting Engineers (V&A) was retained by the City of Capitola (City) to provide condition assessment services to assess the City's Noble Gulch Culvert (NGC). The NGC is an approximate 1,500-foot long storm drainage pipeline consisting of 72-inch diameter corrugated metal pipe (CMP), cure-in-place lined pipe (CIPP), reinforced concrete box culvert, reinforced concrete pipe (RCP), and reinforced concrete arch pipe. The purpose of this assessment is to determine if the condition of the NGC has degraded or changed since V&A's initial assessments of the NGC in 2011 and 2012. In addition, V&A was tasked with assessing the box culvert section for major defects or signs of distress where the box culvert crosses under private properties between Capitola Avenue and Soquel Creek. V&A conducted a confined space entry assessment of the NGC on December 12, 2023.

V&A assessed the condition of the NGC using the following methods:

- Visually evaluate and document the existing condition of the NGC and its inlet. Document cracks, exposed reinforcing steel, concrete defects, existing lining condition, corrosion, and infiltration.
- Rate the condition of the concrete or metal pipe using the VANDA Condition Indices and objective criteria. Refer to Attachment A for the rating criteria.
- Assess the pipe condition by "sounding" to listen for discontinuities and soil voids.
- Measure sediment depth at 100-foot intervals.
- Measure pipe ovality at 100-foot intervals.
- Ultrasonic testing to determine the nominal metal thickness.

Figure 1 shows an aerial view of the NGC. The upstream portion of the pipe is a 72-inch CMP that was rehabilitated with a CIPP liner. The CIPP liner starts at the bar screen and terminates at the cast-in-place concrete arch pipe under Bay Avenue. The concrete arch pipe transitions to the RCP segment that replaced the failed section in 2012. The RCP section terminates at manhole 7 where the original CMP section starts. The CMP continues to the southwest to manhole 1 where the pipe transitions to a cast-in-place concrete box culvert near Capitola Avenue. The concrete box culvert continues in the southwest direction and discharges into Soquel Creek.

Photo 1, Photo 2, Photo 3, and Photo 4, show the surface views of the entry points at manhole 1, manhole 4, manhole 7, and the bar screen, respectively.

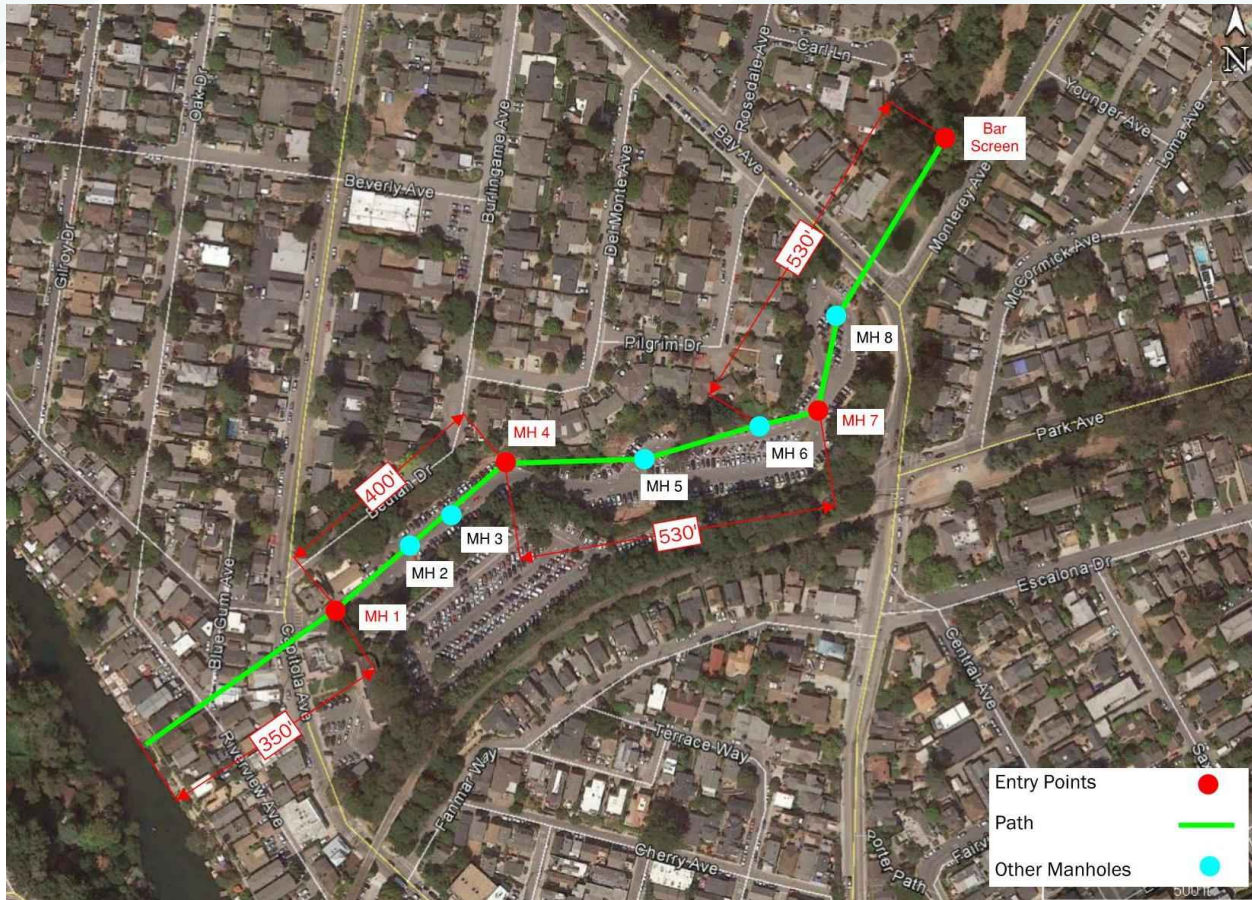


Figure 1. Aerial view of assessment location



Photo 1. Manhole 1 street view



Photo 2. Manhole 4 street view



Photo 3. Manhole 7 street view



Photo 4. Bar Screen street view

Visual Assessment Results

The following subsections describe the findings for the five assessed segments. Segment 1 is the downstream reach starting at Soquel Creek and Segment 5 is the most upstream reach at the bar screen at the Noble Gulch.

The findings are generally described heading towards the upstream direction, except for Segment 1, which proceeded in the downstream direction.

Segment 1: Manhole 1 to Soquel Creek

Segment 1 consisted of a concrete box culvert that extends from manhole 1 to Soquel creek. Stationing for this segment is referenced in the downstream direction from manhole 1 with manhole 1 being station 0+00.

In general, the concrete in the segment was in VANDA Level 2 condition. The concrete walls and ceiling were in good condition with minimal defects. The floor throughout the box culvert had exposed aggregate. This is a typical defect when water and debris constantly flow over concrete (Photo 5). Photo 6 and Photo 7 show the typical walls and ceiling in good condition. At station 0+54, the ceiling had a section of exposed reinforcement at a joint. The reinforcement appeared to be in good condition with minor surface corrosion (Photo 8).

A lateral with exposed reinforcement surrounding the opening was found at station 0+85. The reinforcement was likely exposed during the lateral insertion into the box culvert. The reinforcement showed minor surface corrosion but was overall in good condition (Photo 9 to Photo 10). There is another lateral connection at station 2+67 that was in good condition (Photo 11). Photo 12 shows a mortared joint and the ceiling of the box culvert in good condition at station 3+53.

No significant defects (structural cracks, spalls, or signs of distress) were observed where the NGC crosses underneath the private properties between station 1+20 (west edge of Capitola Avenue) and station 3+70 (discharge point at Soquel Creek).



Photo 5. Station 0+54; outfall box culvert in good condition.



Photo 6. Station 1+00; box culvert ceiling in good condition.



Photo 7. Station 1+00; box culvert wall in good condition.



Photo 8. Station 0+54; exposed reinforcement on ceiling at concrete joint.



Photo 9. Station 0+85; lateral in box culvert ceiling.



Photo 10. Station 0+85; exposed reinforcement at lateral.



Photo 11. Station 2+67; storm drain inlet in good condition.



Photo 12. Station 3+53; mortared joint in good condition.

Segment 2: MH 1 to MH 4

Segment 2 consisted of CMP that traveled from manhole 1 to manhole 4. The stationing is referenced in the upstream direction from manhole 1 to manhole 4 with manhole 1 being station 0+00.

In general, the CMP within this section was in VANDA Level 3 condition. The coal tar coating had multiple sites of coating failure. Coating cracking was a typical defect observed throughout the pipe, resulting in areas of coating failure. The exposed metal from the coating failures was in good condition with no visible signs of corrosion (Photo 13 to Photo 15).

The invert of the pipe has been rehabilitated with a cementitious grout since the 2012 assessment. This rehabilitation addressed the erosion and corrosion that caused perforations at the invert of the CMP throughout most of the CMP sections. The grout exhibited no signs of deterioration (Photo 16) and remains in good condition.

The coating at station 2+00 had a yellow discoloration from the 8:00 to 4:00 positions. The discoloration did not appear to affect the coating's protective properties (Photo 17). At station 2+80, minor corrosion of a lateral was observed at a lateral break-in site (Photo 18).

The pipe crown at station 3+54 was deformed and bulging inward. The coating around the bulge had failed, exposing the underlying metal to the environment. Minor surface corrosion was observed on the bulged area (Photo 19 and Photo 20). See Table 1 for ovality measurements at the bulge location.



Photo 13. Station 0+07; coal tar coating failure along pipe.



Photo 14. Station 0+07; craze pattern cracking of coating.



Photo 15. Station 0+07; corrugated metal in good condition.



Photo 16. Station 2+00; grout along bottom of pipe.



Photo 17. Station 2+00; coating discoloration from 8:00 to 4:00 of pipe.



Photo 18. Station 2+80; lateral with minor corrosion at pipe intersection.



Photo 19. Station 3+54; deformed bulge defect on the crown of the pipe.



Photo 20. Station 3+54; signs of minor corrosion on deformed bulge.

Segment 3: MH 4 to MH 6

Segment 3 consisted of CMP that traveled from manhole 4 to manhole 6. The stationing is referenced in the upstream direction from manhole 4 to manhole 6 with manhole 4 being station 0+00.

In general, the piping within this section was in VANDA Level 3 condition. The coal tar coating had deteriorated throughout the years, resulting in craze pattern cracking of the coating along the pipe (Photo 21 and Photo 22). The grout rehabilitation at the invert of the pipe exhibited no signs of deterioration (Photo 23). The coating at station 0+80 had a yellow discoloration from the 9:00 to 3:00 positions. The discoloration did not appear to affect the coating's protective properties (Photo 24).

The pipe crown at stations 1+80 and 2+05 had large, deformed bulges. The coating around the bulges had failed, exposing the underlying metal to the environment (Photo 25 and Photo 26). See Table 1 for ovality measurements at the bulge locations. At station 2+96, there was a section of coating failure. This defect was typical within the pipe segment. The exposed metal at the failure sites were in good condition with no corrosion (Photo 27). At station 3+84, minor surface corrosion was observed at a lateral break-in site (Photo 28). Station 4+25 had a strip of coating failure along the pipe joint. The exposed metal showed no corrosion (Photo 29).



Photo 21. Station 0+00; signs of coal tar deterioration along pipe.



Photo 22. Station 0+00; typical craze pattern cracking of coal tar coating.



Photo 23. Station 0+80; concrete grout along the bottom of the pipe; typical for segment 1.



Photo 24. Station 0+80; coating discoloration from 9:00 to 3:00.

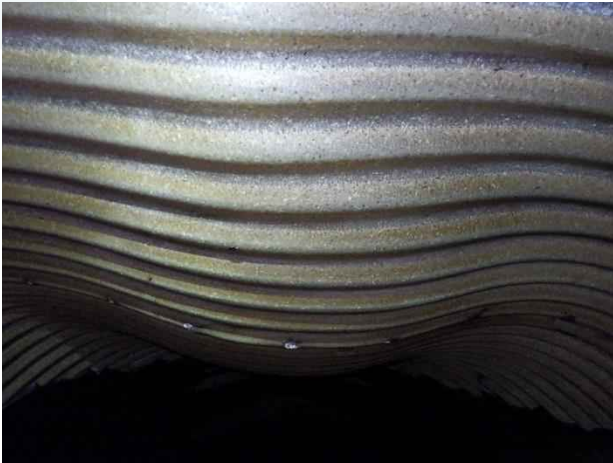


Photo 25. Station 1+80; bulge deformation defect on the crown of the pipe.



Photo 26. Station 2+05; bulge deformation defect on the crown of the pipe.



Photo 27. Station 2+96; typical section of coating failure, corrugated metal in good condition.



Photo 28. Station 3+84; minor corrosion of metal at lateral break in site.

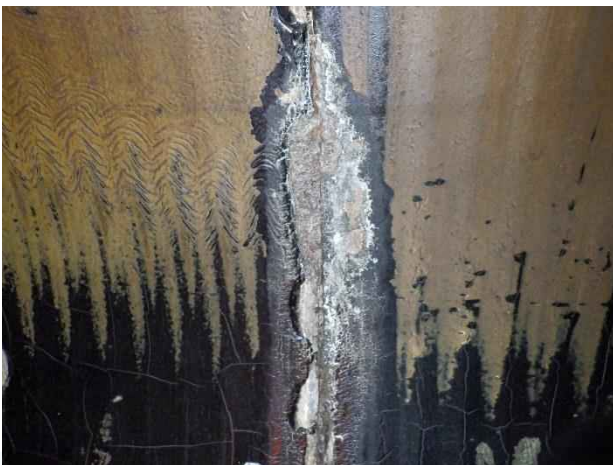


Photo 29. Station 4+25; coating failure along pipe joint.

Segment 4: MH 6 to MH 8

Segment 4 consisted of CMP and RCP that extends from manhole 6 to manhole 8. The stationing is referenced in the upstream direction from manhole 6 to manhole 8 with manhole 6 being station 0+00.

In general, the CMP within this section was in VANDA Level 3 condition. The coal tar coating had deteriorated throughout the years. The coating at station 0+80 had a yellow discoloration from the 9:00 to 3:00 positions. The discoloration did not appear to affect the coating's protective properties (Photo 30). At station 0+84, the crown had a section of coating failure. The failure resulted in the loss of the first layer while leaving the 2nd layer intact. This defect was observed at multiple sites within the pipe segment. The grout rehabilitation exhibited no signs of deterioration (Photo 32). The coating at station 0+46 was uneven along a pipe joint (Photo 33).

A repair patch was found at station 0+46. The patch is located at the 3:00 position and had previously been repaired (prior to 2011) with a cementitious grout (Photo 34). The repair patch appeared to be in good condition. At station 0+95, there was a section of coating failure. The exposed metal at the failure sites were in good condition with no significant signs of corrosion (Photo 36 and Photo 37).

The CMP transitioned into a concrete manhole structure (manhole 7) and RCP at station 1+25. The manhole structure and RCP were presumably constructed due to the 2011 failure and after the 2012 assessment. The concrete and RCP were in like new condition (Photo 36 and Photo 37).



Photo 30. Station 0+00; signs of coal tar deterioration and discoloration along pipe.



Photo 31. Station 0+84; deteriorated coating on the crown of the pipe.



Photo 32. Station 0+46; concrete grout along the bottom of the pipe in good condition.



Photo 33. Station 0+46; coating uneven at joint.



Photo 34. Station 0+46; repair patch at the 3:00 position.



Photo 35. Station 0+95; coating failure along pipe, corrugated metal was in good condition.



Photo 36. Station 1+25; concrete manhole was in good condition.



Photo 37. Station 1+25; RCP section of segment was in good condition.

Segment 5: MH 8 to Bar Screen

Segment 5 consisted of a concrete arch pipe and CIPP lined CMP that traveled from manhole 8 to the bar screen structure. The stationing is referenced in the upstream direction from manhole 8 to the bar screen with manhole 8 being station 0+00.

The arch pipe, which exhibited a few moderate defects, is located where the NGC crosses underneath Bay Avenue. At station 0+14, a small void was observed on the bottom of the arch pipe wall. The void did not penetrate the wall. The ceiling had a few areas of concrete spalling and cracking. At stations 0+14 and 0+70, the ceiling had large cracks along the surface. The area around the defects was previously repaired; however, additional repairs are required (see recommendations section). The concrete in the segment was hard and returned a sharp ping when struck with a hammer. This is a strong indicator of high alkalinity concrete. Since the environment is negligibly corrosive, the concrete deterioration was likely due to external forces from the soil and vehicle loading above the arch pipe (Photo 39 and Photo 40).

The CIPP section at station 0+70 was significantly out-of-round (squished). The ovality of the pipe at this location appeared unchanged since 2012. Excluding the sag, the CIPP was in relatively good condition (Photo 41 and Photo 42). The bar screen concrete was in good condition with minimal signs of deterioration (Photo 43).



Photo 38. Station 0+14; minor concrete void along the bottom of the arch pipe.



Photo 39. Station 0+14; concrete spalling on arch pipe.



Photo 40. Station 0+70; large cracks and exposed aggregate on arch pipe.



Photo 41. Station 0+70; sag defect on the crown of the pipe.



Photo 42. Station 0+70; CIPP liner deformed (squished) but in good condition.



Photo 43. Noble Gulch; bar screen entrance in good condition.

Ovality Measurements

Ovality measurements were collected at an average spacing of 100 feet and at locations of bulges along the CMP and CIPP segments. Table 1 presents the ovality measurements taken throughout the NGC. Based on the National Association of Sewer Service Companies (NASSCO) Pipeline Assessment Certification Program (PACP) defect coding standards, the four locations of deformation/bulging shown in red text in the table are considered Grade 5 defects, which require repair or monitoring.

Table 1. Ovality Measurements

Segment	Station (ft)	Station Reference	Width (in)	Height (in)	Ovality (%)	NASSCO Grade ⁽¹⁾	Material/note
2	1+54	Upstream of manhole 1	70	67	4	DFE/3	CMP
2	2+00	Upstream of manhole 1	70.5	65	8	DFE/3	CMP
2	3+54	Upstream of manhole 1	70	59	19	DFBR/5	CPM, sag on the crown
3	0+80	Upstream of manhole 4	68	67	1	DFE/3	CMP
3	1+80	Upstream of manhole 4	70	58	21	DFBR/5	CMP, sag on the crown
3	2+05	Upstream of manhole 4	70	59	19	DFBR/5	CMP, sag on the crown
3	3+85	Upstream of manhole 4	73	67	9	DFE/3	CMP
4	0+95	Upstream of manhole 6	73	63	16	DFE/3	CMP
5	0+70	Upstream of manhole 8	71	59	20	DFBR/5	CIPP, sag on the crown
5	1+60	Upstream of manhole 8	71	68	4	DFBR/3	CIPP

⁽¹⁾ National Association of Sewer Service Companies (NASSCO) Pipeline Assessment Certification Program (PACP) defect coding. DFE = deformed flexible elliptical; DFBR = deformed flexible bulging round. Grades are 1 to 5 with 5 being severe.

Ultrasonic Thickness Measurements

Ultrasonic Thickness (UT) measurements were performed on the CMP to record its nominal thickness. The nominal thickness of the CMP is 0.135-inch (10-gauge steel). Table 2 provides a summary of the UT testing results.

Table 2. Ultrasonic Thickness Data Summary

Location	Size / Material	Min. Thickness (in)	Ave. Thickness (in)	Max. Thickness (in)	Assumed Nominal Thickness* (in)
Segment 2	72" / CMP	0.132	0.135	0.136	0.135

Lateral locations

The location and quantity of laterals within CMP segments were recorded throughout the NGC. Table 3 presents the lateral locations.

Table 3 Lateral Location Summary

Segment	Quantity	Station (ft)	Station Reference	Clock Position	Diameter (in)
2	2	1+54	Manhole 1 to upstream	2:00, 10:00	8
2	2	2+41	Manhole 1 to upstream	2:00	8
2	1	2+80	Manhole 1 to upstream	10:00	7
3	3	0+00	Manhole 4 to upstream	10:00, 1:00	12, 7, 7
3	1	0+80	Manhole 4 to upstream	10:00	8
3	2	2+27	Manhole 4 to upstream	10:00, 2:00	8
3	1	3+84	Manhole 4 to upstream	12:00	6
3	1	3+88	Manhole 4 to upstream	12:00	6
4	1	0+00	Manhole 6 to upstream	11:00	7
4	1	0+05	Manhole 6 to upstream	1:00	7

Conclusions

Based on the findings of the assessment, V&A presents the following conclusions on the condition of the NGC.

- Segment 1 – The box culvert between manhole 1 and Soquel Creek was in good condition and is assigned a VANDA Level 2 condition with only minor defects. No defects were observed where the NGC presumably crosses underneath the property at 419 Capitola Avenue, which occurs at approximately station 1+50 to station 1+90.
- Segment 2, Segment 3, and Segment 4 (CMP sections) – The CMP between manhole 1 and manhole 7 was in fair condition and is assigned a VANDA Level 3 condition. The nominal thickness of the CMP is 0.135-inch (10-gauge steel). The coat tar lining has reached the end of its useful life; however, corrosion of the CMP was relatively minor on the upper 270-degree (approximate) cross-section of the pipe. The lower 90-degree (approximate) section was rehabilitated with a cementitious grout, which remains in good condition. Minor to severe defects such as minor to moderate corrosion around various lateral connections and severe deformations (bulges) exist within the CMP segments. The deformed bulges at the following locations are considered severe (Grade 5) defects per NASSCO PACP:
 - 354 feet upstream of manhole 1,
 - 180 feet upstream of manhole 4,
 - and 204 feet upstream of manhole 4.
- Segment 4 (RCP section) – The RCP between manhole 7 and the concrete arch pipe in segment 5 was in like new condition and is assigned a VANDA Level 1 condition.
- Segment 5 – The concrete arch pipe section was in fair condition and is assigned a VANDA Level 3 condition with moderate defects. There are cracks and voids in the concrete that require repair. The CIPP lined section was deformed, especially near the interface with the arch pipe. The deformation appeared to be unchanged since the 2012 assessment.

Recommendations

Based on the results of the condition assessment, V&A presents the following recommendations to extend the remaining useful life of the NGC for the City to consider:

- Segment 1 – Reassess the box culvert pipe in 10 years.
- Segment 2, Segment 3, and Segment 4 (CMP sections)
 - In 2 to 5 years, repair corrosion around laterals on the CMP at 280 feet upstream of manhole 1 and at 384 feet upstream of manhole 1.
 - Within 1 year, perform localized structural repairs at the severe deformed bulges.
 - Assess the CMP section using multi-sensor inspection (MSI with laser scans to measure ovality) annually to document the ovality of the CMP for further deformation. The interval can be extended if conditions do not change over time. The MSI should be performed after the wet weather season to allow time for rehabilitation/repairs prior to the next wet weather season. Structural CIPP lining, structural repairs, or pipe replacement may be necessary should significant changes occur to the ovality or if creases develop on the sides of the CMP.
- Segment 4 (RCP section) - Reassess the RCP in 10 years.
- Segment 5 (RCP section) – Within 1 year, perform localized concrete patch repair and crack injection in the concrete arch pipe near the interface with the CIPP lined section.
- Segment 5 (CIPP section) – similar to the CMP section, perform MSI annually to document the ovality for potential changes. The interval can be extended if conditions do not change over time.

On behalf of our staff and myself, I would like to thank you for the opportunity to be of service to you, and the City of Capitola.

Sincerely,
V&A Consulting Engineers, Inc.








Noy Phannavong, P.E.
Condition Assessment Practice Lead

Attachment A – VANDA Condition Indices

VANDA Concrete Condition Index

V&A created the VANDA Concrete Condition Index to provide consistent reporting of corrosion damage based on objective criteria. Concrete condition is rated from Level 1 to Level 5 based upon field observations and measurements, with Level 1 indicating the best case and Level 5 indicating severe damage. The individual criteria are applied based on engineering judgment to arrive at the overall rating.

VANDA® Concrete Condition Index






Condition Rating	Description	Representative Photograph
Level 1	Little or no damage to concrete <ul style="list-style-type: none"> Hardness..... hard surface Surface profile smooth, apparently intact Cracks hairline width, minimal frequency Spalling none Reinforcement not exposed or damaged 	
Level 2	Minor surface damage <ul style="list-style-type: none"> Hardness..... soft surface layer to 1/8-inch depth Surface profile fine aggregate exposed Cracks hairline width, moderate frequency Spalling shallow spalling, minimal frequency Reinforcement not exposed or damaged 	
Level 3	Moderate surface damage <ul style="list-style-type: none"> Hardness..... soft surface layer to 1/4-inch depth Surface profile large aggregate exposed or protruding Cracks up to 1/32-inch width, moderate frequency Spalling shallow spalling, minimal frequency Reinforcement exposed; minor damage, minimal frequency 	
Level 4	Loss of concrete mortar and damage to reinforcement <ul style="list-style-type: none"> Hardness..... soft paste beyond 1/4-inch depth Surface profile large aggregate exposed, loose, or missing Cracks 1/8- to 1/4-inch width, moderate frequency Spalling deep spalling, moderate frequency Reinforcement exposed with damage, moderate frequency 	
Level 5	Bulk loss of concrete and reinforcement <ul style="list-style-type: none"> Hardness..... soft paste beyond 1-inch depth Surface profile large aggregate exposed, loose, or missing Cracks over 1/2-inch width, or narrower and frequent Spalling deep spalling, high frequency Reinforcement consumed; loss of structural integrity 	

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VANDA Metal Condition Index

V&A created the VANDA Metal Condition Index to provide consistent reporting of corrosion damage based on objective criteria. Metal condition is rated from Level 1 to Level 5 based upon field observations and measurements, with Level 1 indicating the best case and Level 5 indicating severe damage. The individual criteria are applied based on engineering judgment to arrive at the overall rating.

VANDA® Metal Condition Index

Condition Rating	Description	Representative Photograph
Level 1	Little or no corrosion <ul style="list-style-type: none"> Wall thickness loss, generalnone Wall thickness loss, pitting.....none to minimal Extent (area) of corrosion.....may be widespread but superficial 	
Level 2	Minor corrosion <ul style="list-style-type: none"> Wall thickness loss, generalup to 20% Wall thickness loss, pitting.....up to 20% Extent (area) of corrosion.....localized 	
Level 3	Moderate corrosion <ul style="list-style-type: none"> Wall thickness loss, general20% to 40% Wall thickness loss, pitting.....20% to 60% Extent (area) of corrosion.....up to half of surface 	
Level 4	Severe corrosion <ul style="list-style-type: none"> Wall thickness loss, general40% to 60% Wall thickness loss, pitting.....60% to 100% (pinholes) Extent (area) of corrosion.....most of surface 	
Level 5	Failure or imminent failure <ul style="list-style-type: none"> Wall thickness loss, generalgreater than 60% Wall thickness loss, pitting.....100% (holes) Extent (area) of corrosion.....most or all of surface 	

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EXHIBIT 32

From: Kahn, Jessica <jkahn@ci.capitola.ca.us>
Sent: Wednesday, February 21, 2024 8:50 PM PST
To: Dan Schaaf <DSchaaf@swsv.com>; Rachel Fatoohi <Rachel.Fatoohi@santacruzcountyca.gov>
CC: Matt Machado <Matt.Machado@santacruzcountyca.gov>
Subject: Re: Zone 5 Master Plan Update.

Received and downloaded, thank you. My personal favorite in the Village is Paradise Beach Grill. See you tomorrow!

Sent from my T-Mobile 5G Device
Get [Outlook for Android](#)

From: Dan Schaaf <DSchaaf@swsv.com>
Sent: Wednesday, February 21, 2024 12:04:12 PM
To: Rachel Fatoohi <Rachel.Fatoohi@santacruzcountyca.gov>; Kahn, Jessica <jkahn@ci.capitola.ca.us>
Cc: Matt Machado <Matt.Machado@santacruzcountyca.gov>
Subject: Re: Zone 5 Master Plan Update.

Hi Jessica

My presentation is attached. Looking forward to the meeting.

The presentation is the same that was given to Zone 5. Let me know if you have any questions.

dan.

ps. any dinner recommendations?

 [Board Presentation January 2024_formatted 1.pptx](#)

Daniel J. Schaaf | Vice President

Schaaf & Wheeler Consulting Civil Engineers
870 Market Street, Suite 1278, San Francisco, CA 94102
C: 415.297.4118
dschaaf@swsv.com
Santa Clara • San Francisco • Santa Rosa • Salinas

From: Rachel Fatoohi <Rachel.Fatoohi@santacruzcountyca.gov>
Sent: Wednesday, February 21, 2024 11:57 AM
To: Kahn, Jessica <jkahn@ci.capitola.ca.us>; Dan Schaaf <DSchaaf@swsv.com>
Cc: Matt Machado <Matt.Machado@santacruzcountyca.gov>
Subject: RE: Zone 5 Master Plan Update.

Hi Jessica, Dan was planning on attending in person but I will let him confirm.
I am copying [@DSchaaf](#) so he gets you the presentation. I will attend remotely myself since I injured my shoulder and I am not able to drive in the near future.
Best,
Rachel

From: Kahn, Jessica <jkahn@ci.capitola.ca.us>
Sent: Wednesday, February 21, 2024 11:52 AM
To: Rachel Fatoohi <Rachel.Fatoohi@santacruzcountyca.gov>
Cc: Matt Machado <Matt.Machado@santacruzcountyca.gov>
Subject: RE: Zone 5 Master Plan Update.

******CAUTION:**This is an EXTERNAL email. Exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email.****

Hi Rachel,

Confirming Dan's virtual attendance tomorrow at the Capitola City Council meeting. Meeting and link information in the attached email. The Zone 5 discussion is slated as the third item under general topics. Considering the potential duration of the first two items, I anticipate the Zone 5 discussion to commence no earlier than 7 PM.

Is it possible to get a copy of Dan's slides in advance. For the meeting he can share his screen, but we have experienced some technical issues with other presenters where it would be helpful to have them as a back up.

Thanks, Jessica

Jessica Kahn, P.E.

Public Works Director
City of Capitola
(831) 475-7300 x 217
jkahn@ci.capitola.ca.us

From: Matt Machado <Matt.Machado@santacruzcountyca.gov>
Sent: Thursday, January 25, 2024 8:06 AM
To: Kahn, Jessica <jkahn@ci.capitola.ca.us>; Rachel Fatoohi <Rachel.Fatoohi@santacruzcountyca.gov>
Subject: RE: Zone 5 Master Plan Update.

Great! Thank you. On my calendar



Matt Machado, PE, LS

Deputy County Administrative Officer
Director of Community Development
& Infrastructure
831.454.2368
701 Ocean Street, Room 410
Santa Cruz, CA 95060



From: Kahn, Jessica <jkahn@ci.capitola.ca.us>
Sent: Wednesday, January 24, 2024 2:09 PM
To: Rachel Fatoohi <Rachel.Fatoohi@santacruzcountyca.gov>
Cc: Matt Machado <Matt.Machado@santacruzcountyca.gov>
Subject: RE: Zone 5 Master Plan Update.

******CAUTION:**This is an EXTERNAL email. Exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email. ****

Hi Rachel,

having the presentation on February 22nd would be ideal, especially if it allows Matt to attend. If Dan prefers to present remotely, that works for us. Let's plan for the February 22nd meeting.

Thanks, Jessica

Jessica Kahn, P.E.
Public Works Director
City of Capitola
(831) 475-7300 x 217
jkahn@ci.capitola.ca.us

From: Kahn, Jessica <jkahn@ci.capitola.ca.us>
Sent: Wednesday, January 24, 2024 12:36 PM
To: Rachel Fatoohi <Rachel.Fatoohi@santacruzcountyca.gov>
Subject: Re: Zone 5 Master Plan Update.

Hi Rachel ,

I'll get back to you on the meeting date later today. I did look at the master plan last month and don't recall any significant issues. No need to incorporate anything from the City.

Thanks, Jessica

Sent from my T-Mobile 5G Device
Get [Outlook for Android](#)

From: Rachel Fatoohi <Rachel.Fatoohi@santacruzcountyca.gov>
Sent: Wednesday, January 24, 2024 11:41:52 AM
To: Kahn, Jessica <jkahn@ci.capitola.ca.us>
Cc: Matt Machado <Matt.Machado@santacruzcountyca.gov>
Subject: RE: Zone 5 Master Plan Update.

Hi Jessica, we'll remove that figure from the Slide. The Zone 5 meeting will be a regular item and you can join remotely. While I discuss with Dan Schaaf whether he can join and whether that will be in person for the city of Capitola. I am guessing he prefers to present remotely but please let me know if it makes a difference for you. Either way I plan to join the Council meeting but Matt will not be in town on the 8th. Would you like to have the presentation

on the 22nd of February so Matt can join?

I wanted to let you know that the COB publishes the agenda Friday morning so if you have comments on the Master Plan, we need them ASAP, today, if the comments are to be addressed in the Draft Master Plan.

Please let me know if you will be able to produce the comments today so I give Dan the heads up about that.

Thanks,
Rachel

From: Kahn, Jessica <jkahn@ci.capitola.ca.us>
Sent: Wednesday, January 24, 2024 11:01 AM
To: Rachel Fatoohi <Rachel.Fatoohi@santacruzcountyca.gov>
Cc: Matt Machado <Matt.Machado@santacruzcountyca.gov>
Subject: RE: Zone 5 Master Plan Update.

******CAUTION:**This is an EXTERNAL email. Exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email.****

Hi Rachel,

I'll provide my comments on the Master Plan documents by the end of this week.

Regarding the presentation, I noticed that the image on slide 5 labeled "Methods" appears to depict the Noble Gulch outfall, which sustained damage in last January's storms and has undergone only temporary repairs (current image attached). Additionally, this drainage way has other issues with adjacent property owners and easements. I suggest avoiding the highlighting of this particular visual in the presentation. Overall, the presentation looks good to me.

Do we know if Dan will be the one giving the presentation? And is he planning to be physically present at the City Council Chambers?

Could you also please confirm if the County's meeting on January 30 is the regular Zone 5 meeting at 10:45 am? I plan to attend virtually via Zoom.

Thanks,
Jessica

Jessica Kahn, P.E.
Public Works Director
City of Capitola
(831) 475-7300 x 217
jkahn@ci.capitola.ca.us

From: Rachel Fatoohi <Rachel.Fatoohi@santacruzcountyca.gov>
Sent: Thursday, January 18, 2024 5:35 PM
To: Kahn, Jessica <jkahn@ci.capitola.ca.us>
Cc: Matt Machado <Matt.Machado@santacruzcountyca.gov>
Subject: RE: Zone 5 Master Plan Update.

Hi Jessica. Happy New year to you too

Yes it is the plan.

I am attaching the Power Point presentation Dan Schaaf is assembling. He said it is 95% complete.

Please let me know if you have comments/need changes for the Master Plan document, I sent you last month, as well as for the presentation. The Master Plan will stay "Draft" until we know the result of 218 voting.

Thanks,
Rachel

From: Kahn, Jessica <jkahn@ci.capitola.ca.us>
Sent: Thursday, January 18, 2024 4:29 PM
To: Rachel Fatoohi <Rachel.Fatoohi@santacruzcountyca.gov>
Subject: RE: Zone 5 Master Plan Update.

******CAUTION:**This is an EXTERNAL email. Exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email.****

Hi Rachel,

Happy New Year!

Checking in to see if the plan is still to take this to the January 30th Board meeting (and the February 8th Capitola City Council meeting).

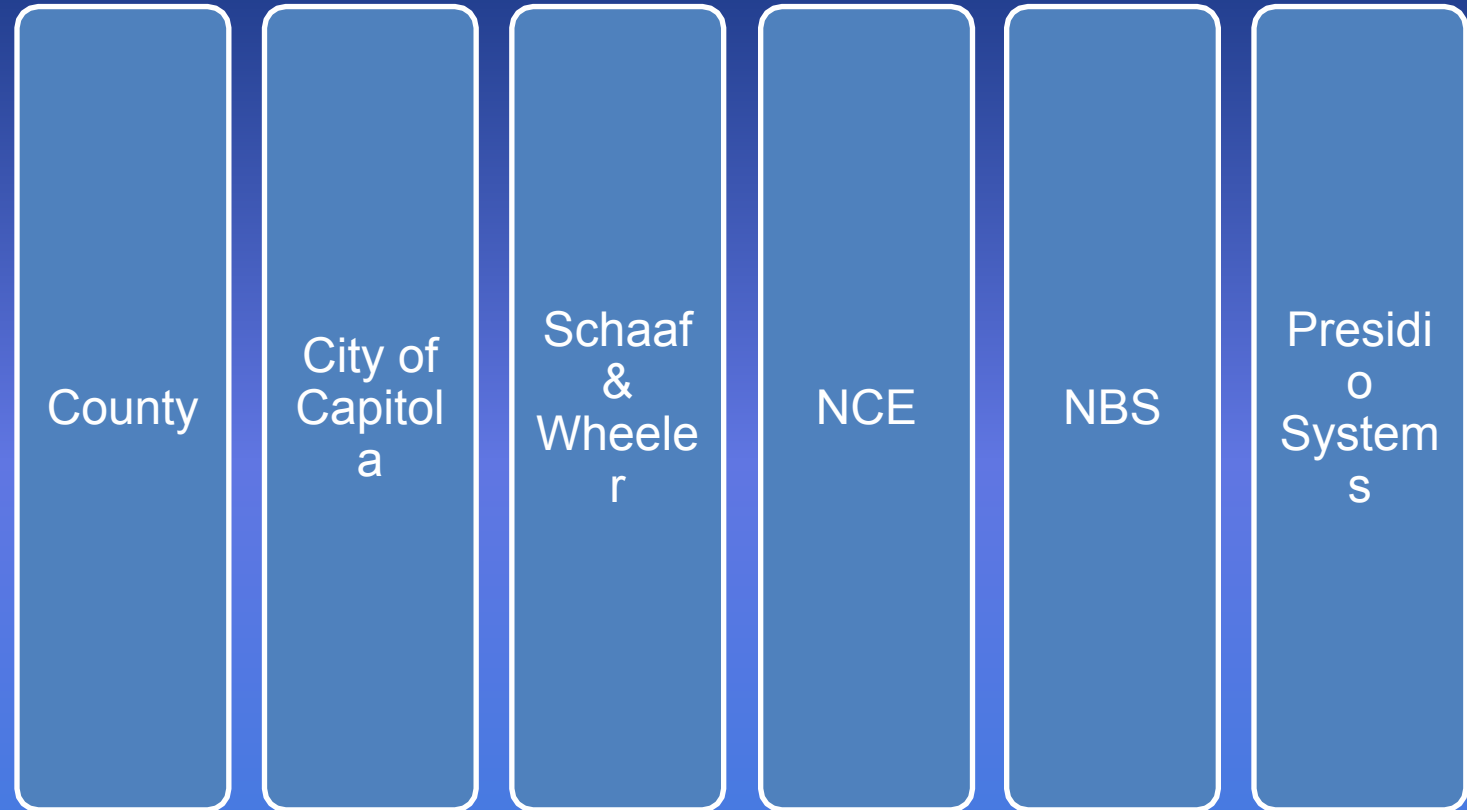
Zone 5 Master Plan

Overview

- Team
- Project Goals
- Methods
- Results
- Recommendations
- Next Steps

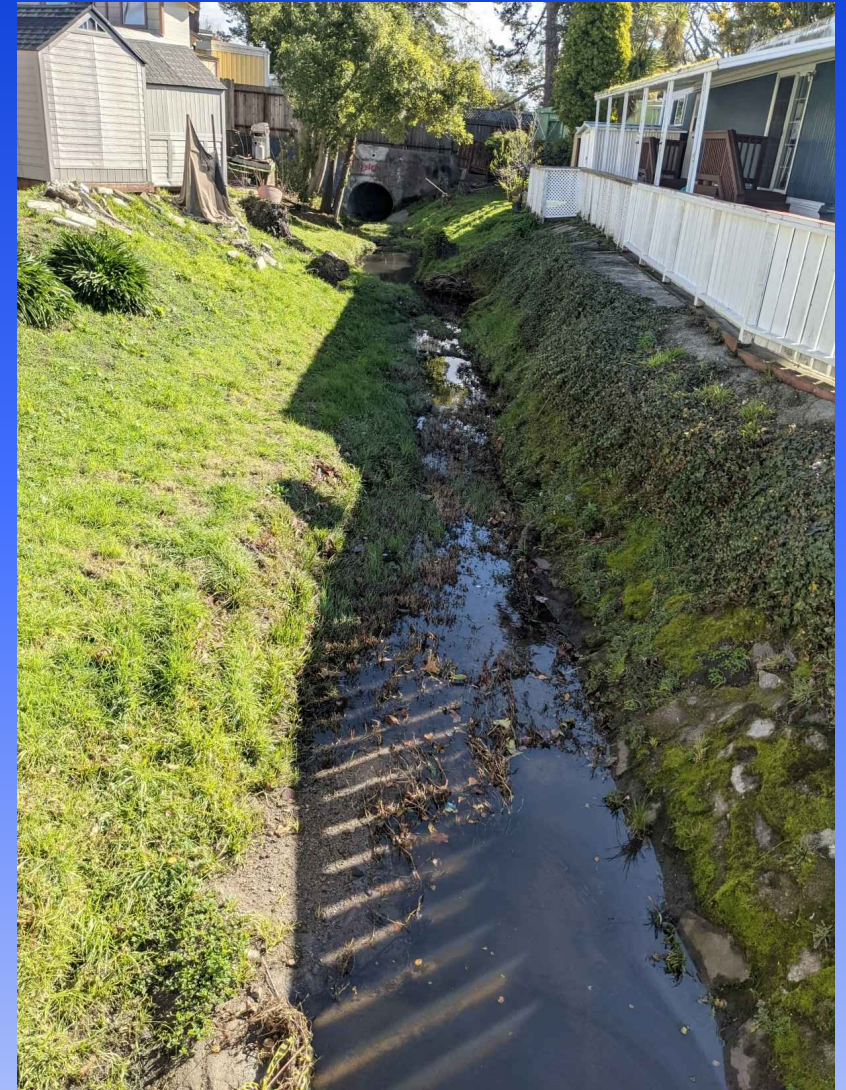
Team

- County Staff
- Capitola Staff
- Schaaf & Wheeler
 - Project Management
 - Hydrology/Hydraulics
 - Capital Projects
- NCE
 - O&M Plan
 - Funding Strategy
- NBS
 - Financial Plan
- Presidio Systems
 - Condition Assessment



Goals

- Create Holistic Study of Zone 5
- Provide Recommendations for:
 - Improving Capacity of Regional System
 - Channel and Culverts Projects
 - Address Condition Concerns
- Improve Operations & Maintenance Program
 - Develop a Better Procedure
 - Improve Reporting
 - Optimize Equipment and Labor
- Funding Strategy
 - Develop Plan
 - Implementation



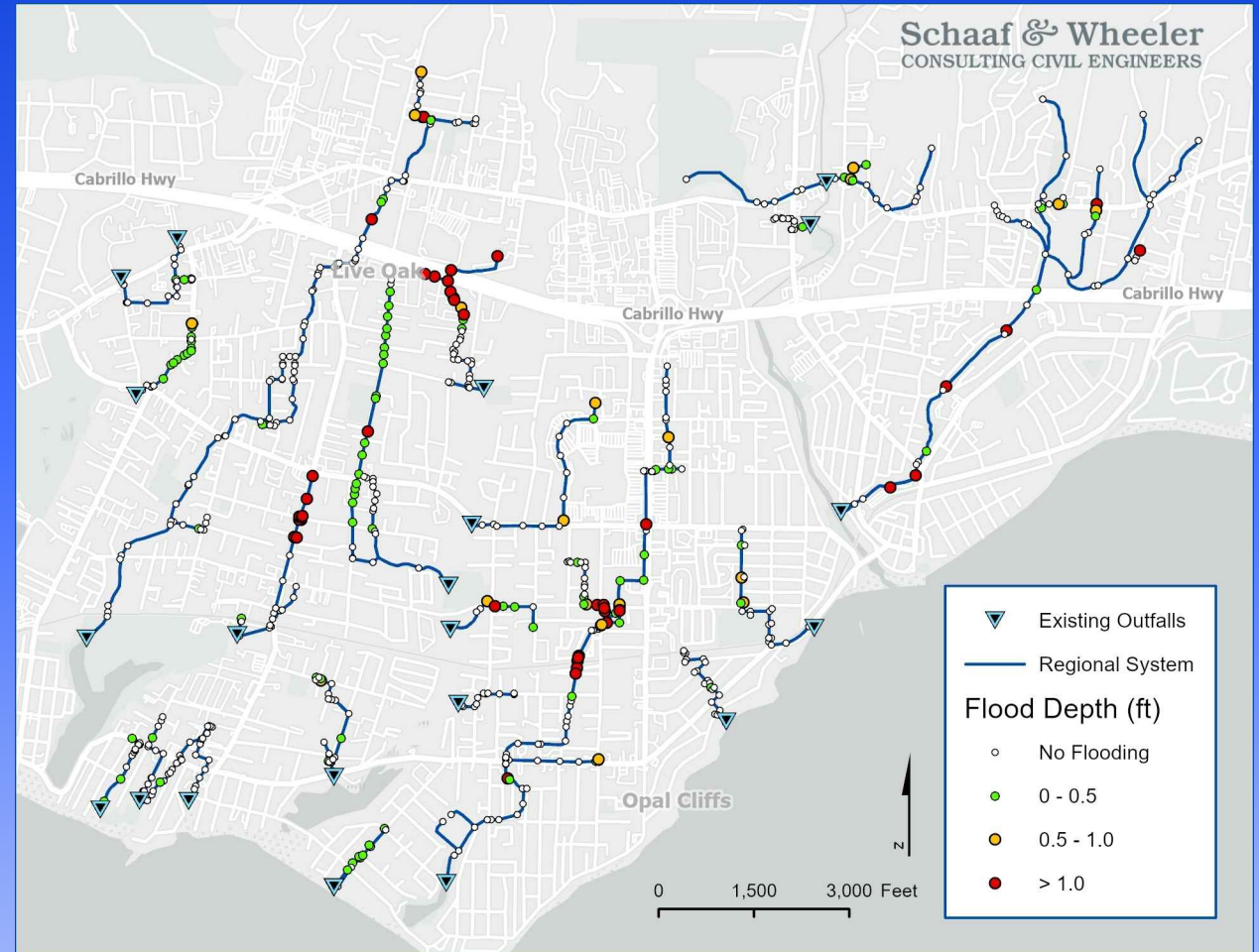
Methods

- Capacity
 - County and City GIS
 - 25-year & 100-year Rainfall
- Condition
 - Field Observations
 - CCTV
 - NASCO Ranks
- Operations & Maintenance
 - Work with County/City Staff
 - Evaluate Existing Procedures
 - Evaluate Equipment
- Funding
 - Evaluate Existing Program
 - Determine Necessary Changes
 - Polling and Outreach
 - Fee Modeling



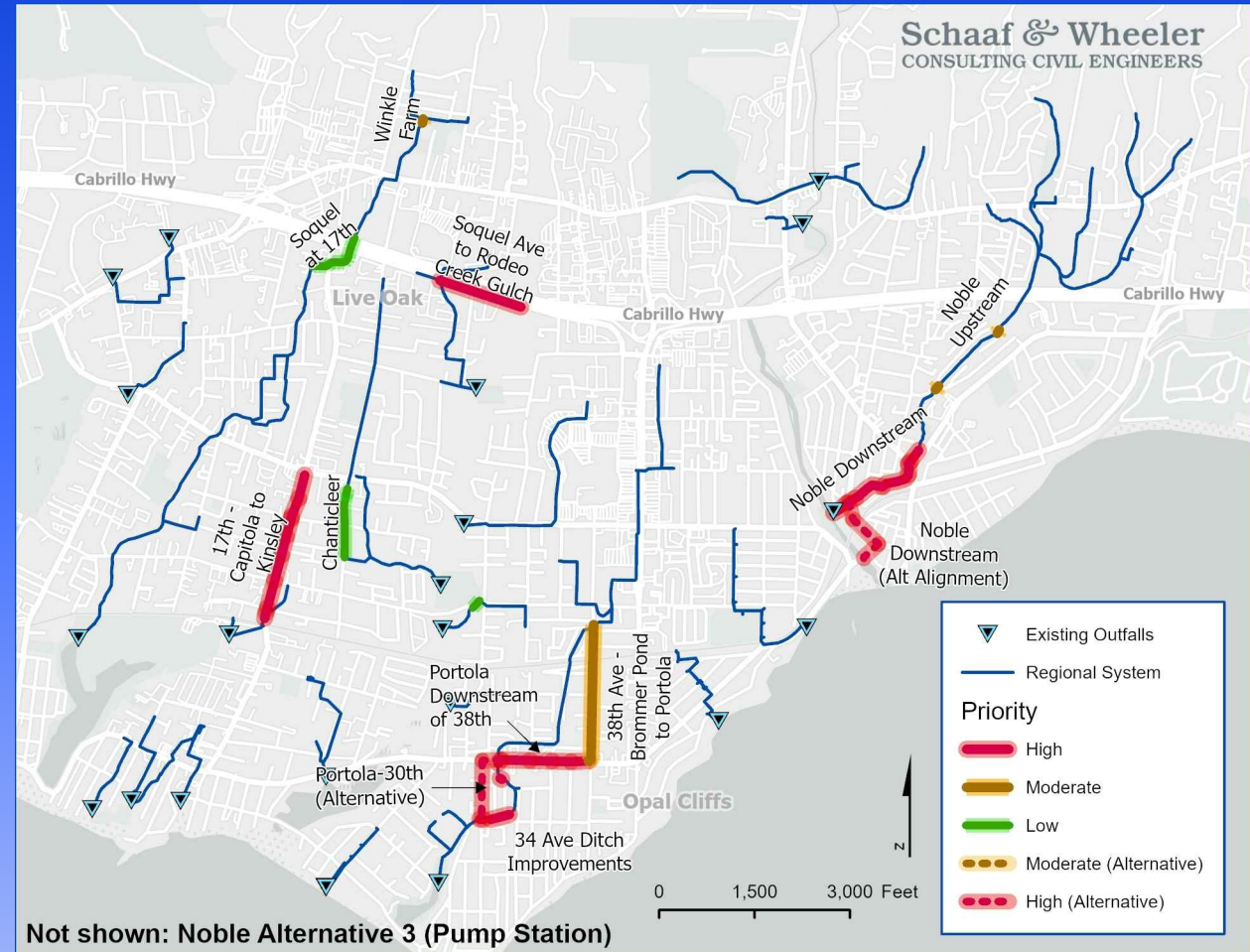
Capacity Results

- Capacity Maps
 - 25-year for Pipes
 - 100-year for Channels
 - Works with 2013 Study
- Costs
- Priorities
- Climate Impacts



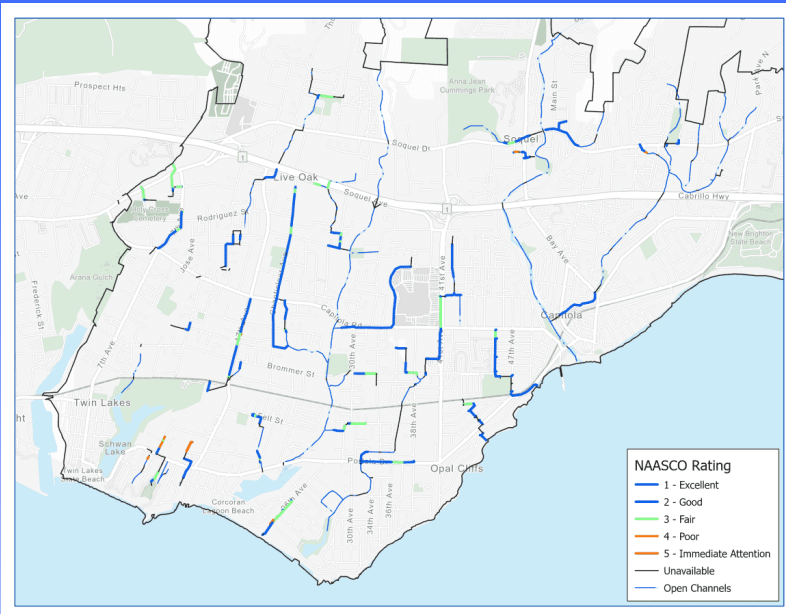
Capacity Results

- Capacity Maps
- Costs
 - \$19M County
 - \$13.5M Capitola
- Priorities
 - High
 - Moderate
 - Low
- Climate Impacts
 - Sea-Level Rise
 - Precipitation Changes



Condition Assessment Results

- CCTV and Toppide
- NASCCO Ratings
- Costs
 - \$4.5M
- Priority



Schaaf & Wheeler
CONSULTING CIVIL ENGINEERS

Operations & Maintenance Results

- O&M Procedure Changes
- O&M Cost \$2.1M Annually
- NPDES \$1M Annually
- Equipment Needs
- Personnel Needs



Figure 2. Vactor Truck at Brommer Yard

Asset
Inventory

Analysis &
Forecasting

Work
Program
Actions

Tracking &
Reporting

O&M Plan
Linkage to
Lucity

Financial Analysis Results

- Current Spending and Income
 - ??????
 - ??????
- Possible Funding Mechanisms
 - General Fund
 - General Obligation Property Tax
 - Uniform Parcel Tax
 - Special Tax
 - Property Related Fee
 - Special Assessment
- Other Sources
 - Grants
 - Partnerships
 - Development Fees

Capacity Recommendations

- Capacity CIPs
 - Phase the High Priority Projects
 - Study Alternatives
 - Coordinate w/Other Agencies
- Condition CIPs
 - Address Critical Issues First
 - Study Alternatives
 - Couple with Capacity Projects

Operations Recommendations

- O&M Program
 - Implement Study Findings
 - Phased Approach
 - Get Training
 - Procedural Changes Take Time
 - Purchase and Implement Lucidity
 - Reporting
 - Continue to Improve Program

Funding Recommendations

- Financial Program
 - Involve County and City Staff
 - Find Best Mechanism
 - Public Outreach
 - Identify Key Stakeholder
 - Identify Champions
 - Polling

Next Steps

- Alternative Analyses
- Monitor System Performance
- Start Implementing O&M Program
- Develop a Funding Strategy
- Construction

Schaaf & Wheeler
CONSULTING CIVIL ENGINEERS

Zone 5 Drainage Master Plan

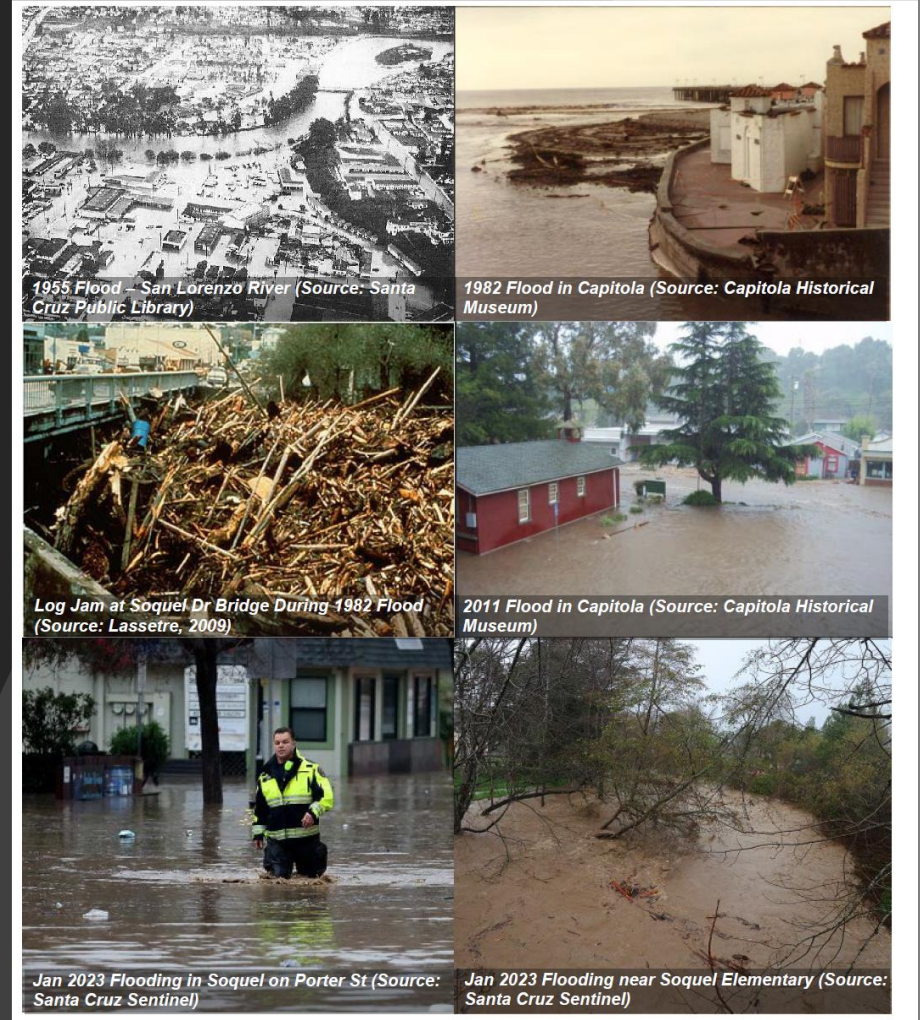
Dan Schaaf, PE

Item 8 C.



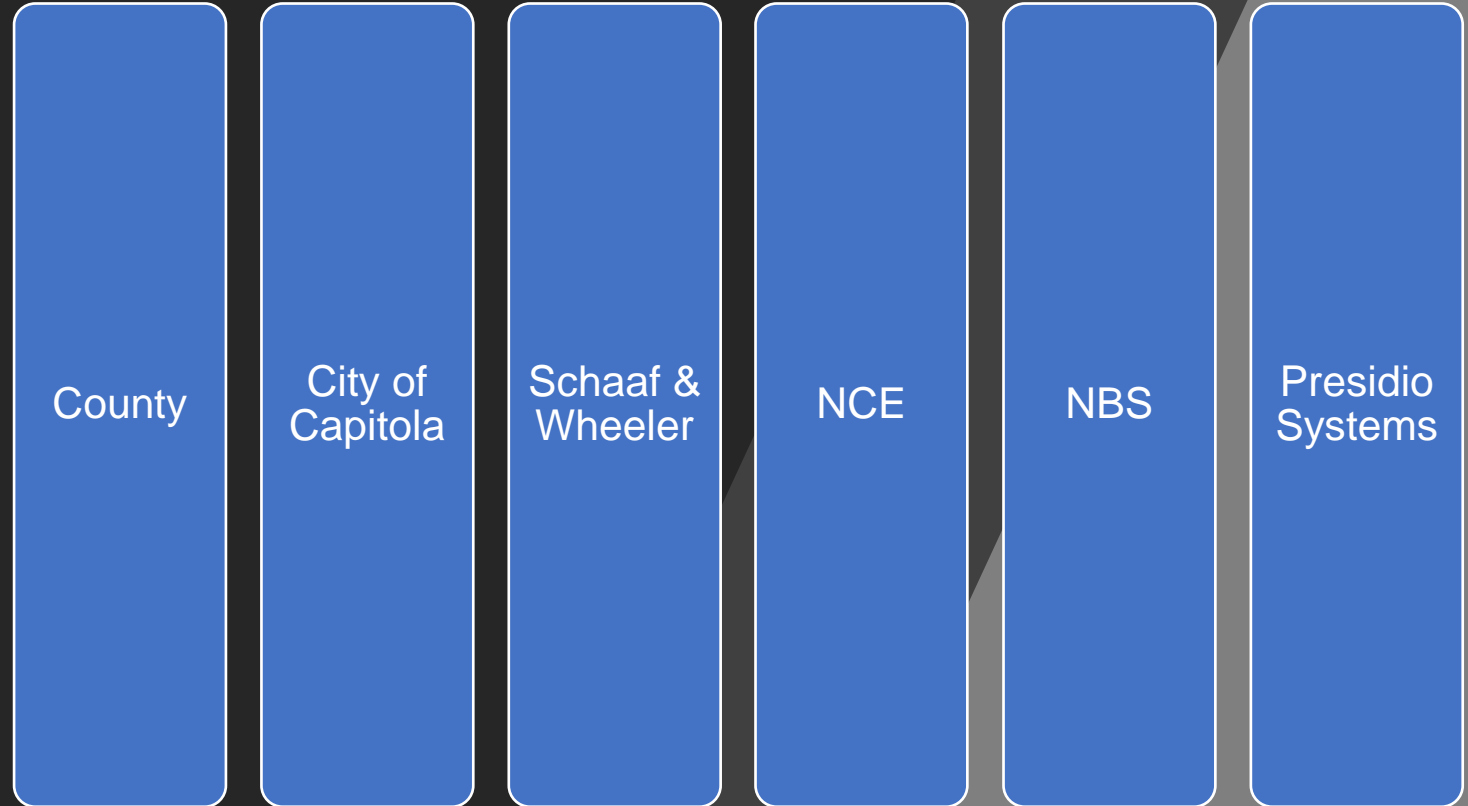
Overview

- Team
- Project Goals
- Methods
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- Recommendations
- Next Steps



Team

- County Staff
- Capitola Staff
- Schaaf & Wheeler
 - ✓ Project Management
 - ✓ Hydrology/Hydraulics
 - ✓ Capital Projects
- NCE
 - ✓ O&M Plan
 - ✓ Funding Strategy
- NBS
 - ✓ Financial Plan
- Presidio Systems
 - ✓ Condition Assessment



Goals

- Create Holistic Study of Zone 5
- Provide Recommendations for:
 - ✓ Improving Capacity of Regional System
 - ✓ Channel and Culverts Projects
 - ✓ Address Condition Concerns
- Improve Operations & Maintenance Program
 - ✓ Develop a Better Procedure
 - ✓ Improve Reporting
 - ✓ Optimize Equipment and Labor
- Funding Strategy
 - ✓ Develop Plan
 - ✓ Implementation



Methods

■ Capacity

- ✓ County and City GIS
- ✓ 25-year & 100-year Rainfall

■ Condition

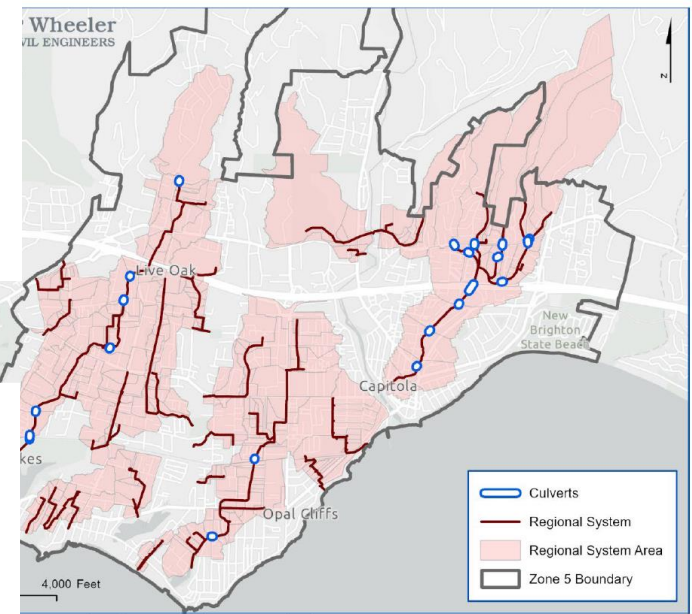
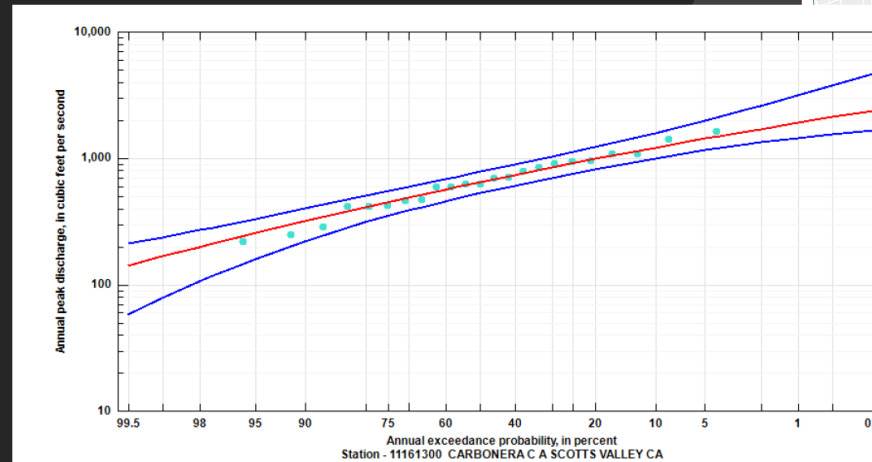
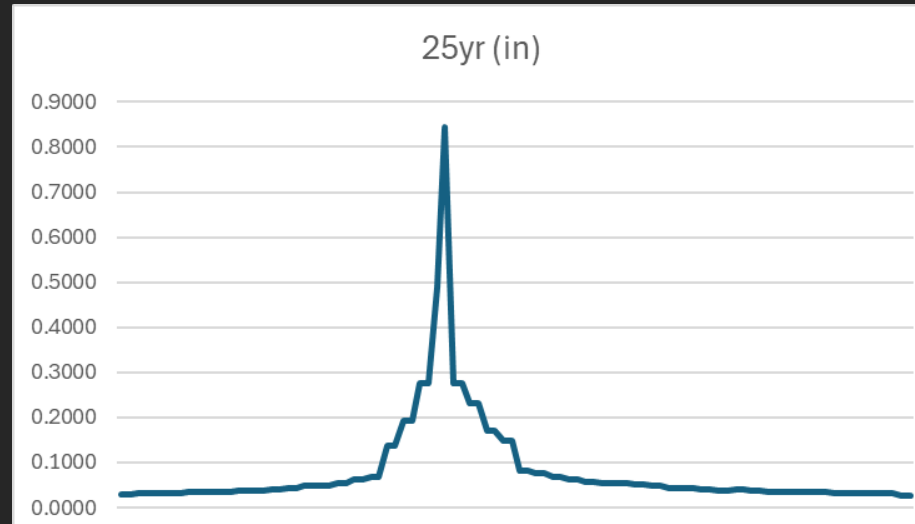
- ✓ Field Observations
- ✓ CCTV
- ✓ NASCO Ranks

■ Operations & Maintenance

- ✓ Work with County/City Staff
- ✓ Evaluate Existing Procedures
- ✓ Evaluate Equipment

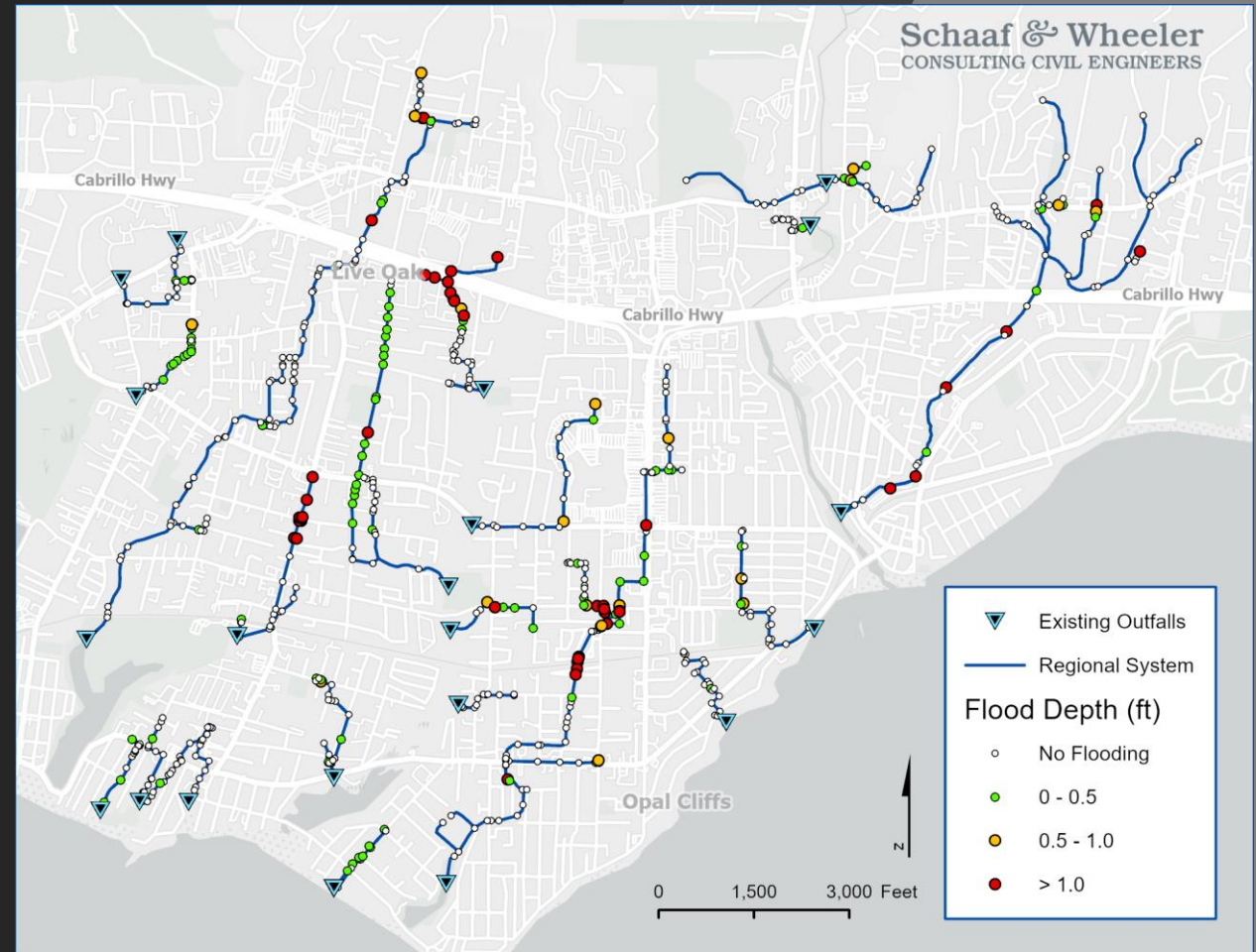
■ Funding

- ✓ Evaluate Existing Program
- ✓ Determine Necessary Changes
- ✓ Polling and Outreach
- ✓ Fee Modeling



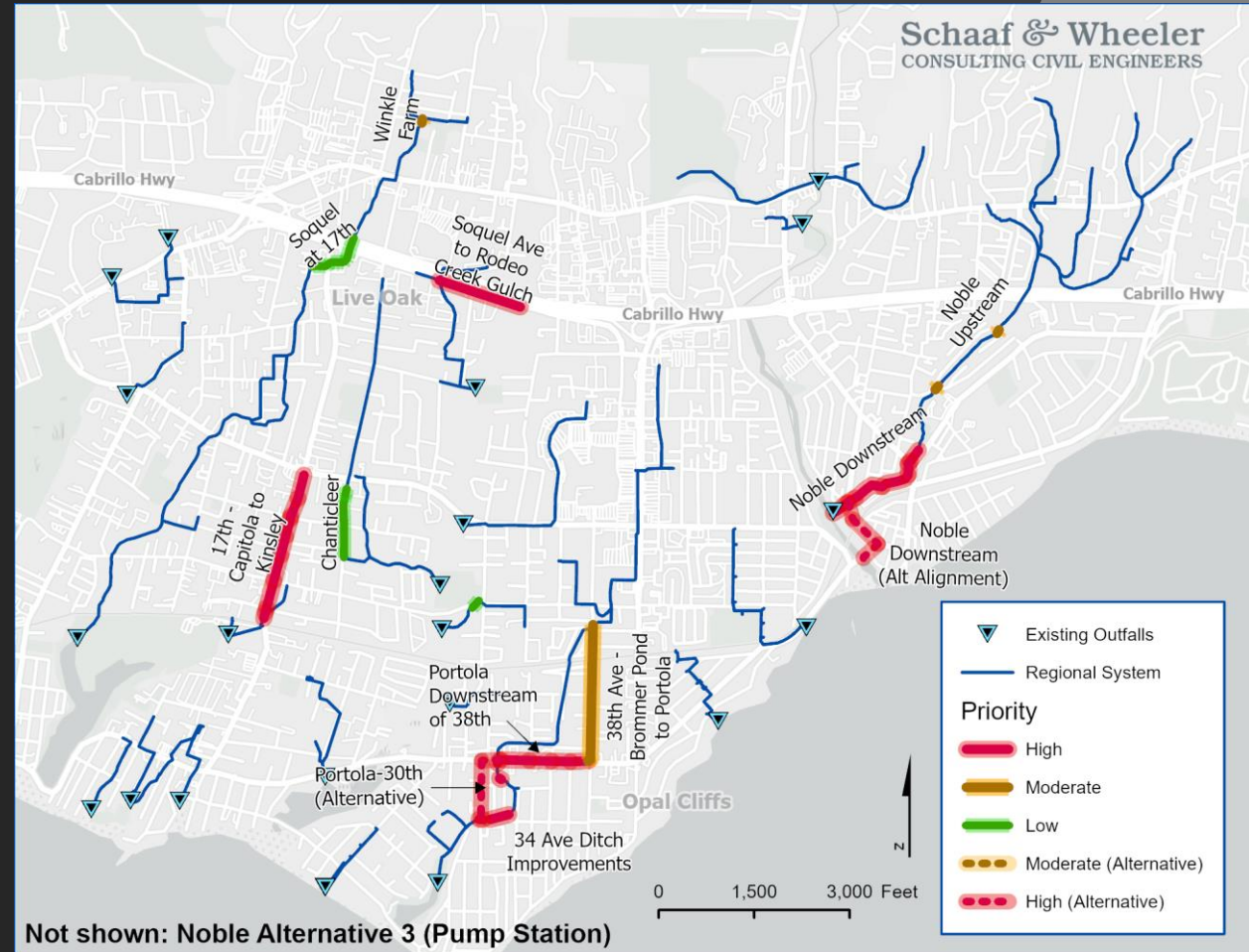
Capacity Results

- Capacity Maps
 - ✓ 25-year for Pipes
 - ✓ 100-year for Channels
 - ✓ Works with 2013 Study
- Costs
- Priorities
- Climate Impacts
 - ✓ Sea-Level Rise
 - ✓ Precipitation Changes



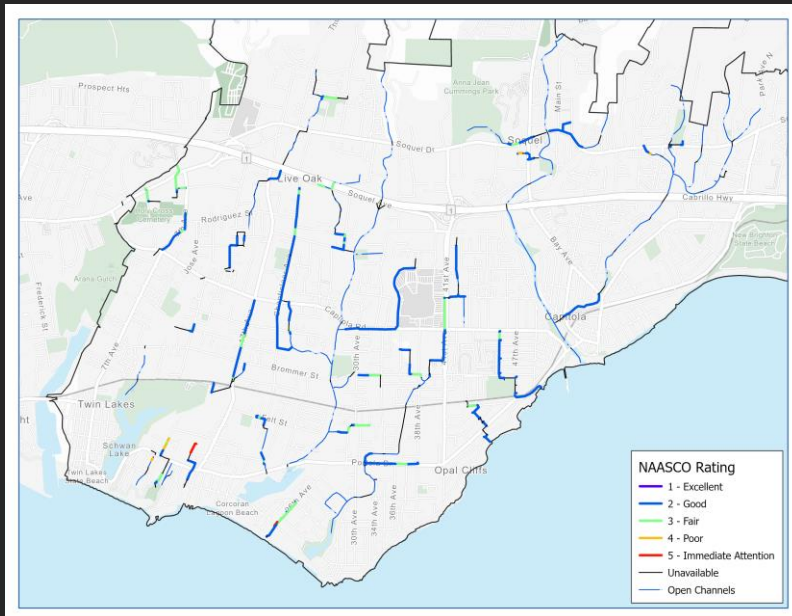
Capacity Results

- Capacity Maps
- Costs
 - ✓ \$19M County
 - ✓ \$13.5M Capitola
- Priorities
 - ✓ High
 - ✓ Moderate
 - ✓ Low
- Climate Impacts



Condition Assessment Results

- CCTV and Topside
- NASCCO Ratings
- Costs
 - ✓ \$4.5M
- Priority



Operations & Maintenance Results

- O&M Procedure Changes
- O&M Cost \$2.1M Annually
- NPDES \$1M Annually
- Equipment Needs
- Personnel Needs

Focus on Proactive
Data Driven O&M

Resources Focused
on Areas and Assets
w/ Greatest Needs
and ROI

Resource Needs Do
Increase

New Program
Efficient
Repeatable
Predictive



Figure 2. Vactor Truck at Brommer Yard

Financial Analysis Results

■ Current Spending and Income

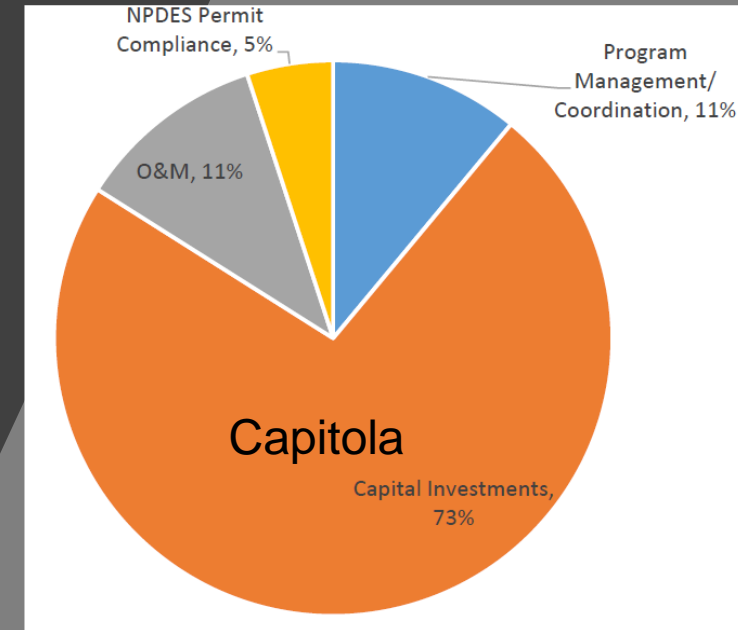
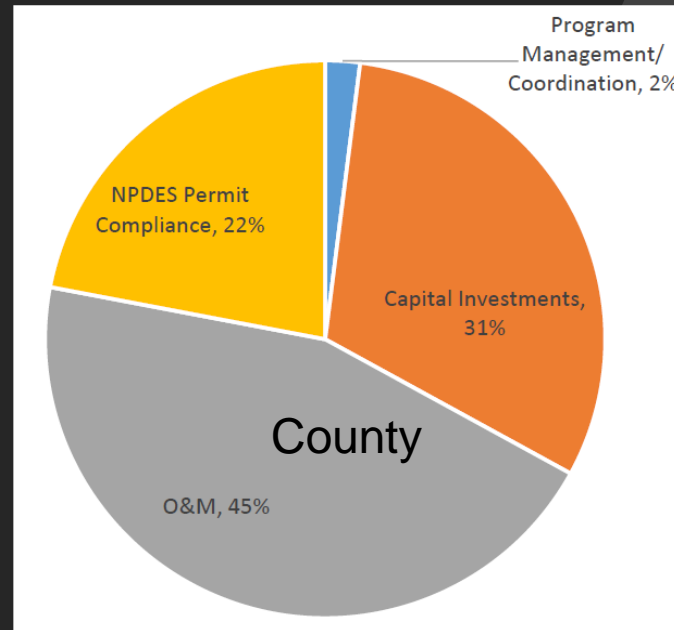
- ✓ ~\$1M O&M, ~\$100K Impacts, Roads Fund

■ Possible Funding Mechanisms

- ✓ Impact Fees
- ✓ General Fund
- ✓ General Obligation Property Tax
- ✓ Uniform Parcel Tax
- ✓ Special Tax
- ✓ Property Related Fee
- ✓ Special Assessment

■ Other Sources

- ✓ Grants
- ✓ Partnerships
- ✓ Development Fees



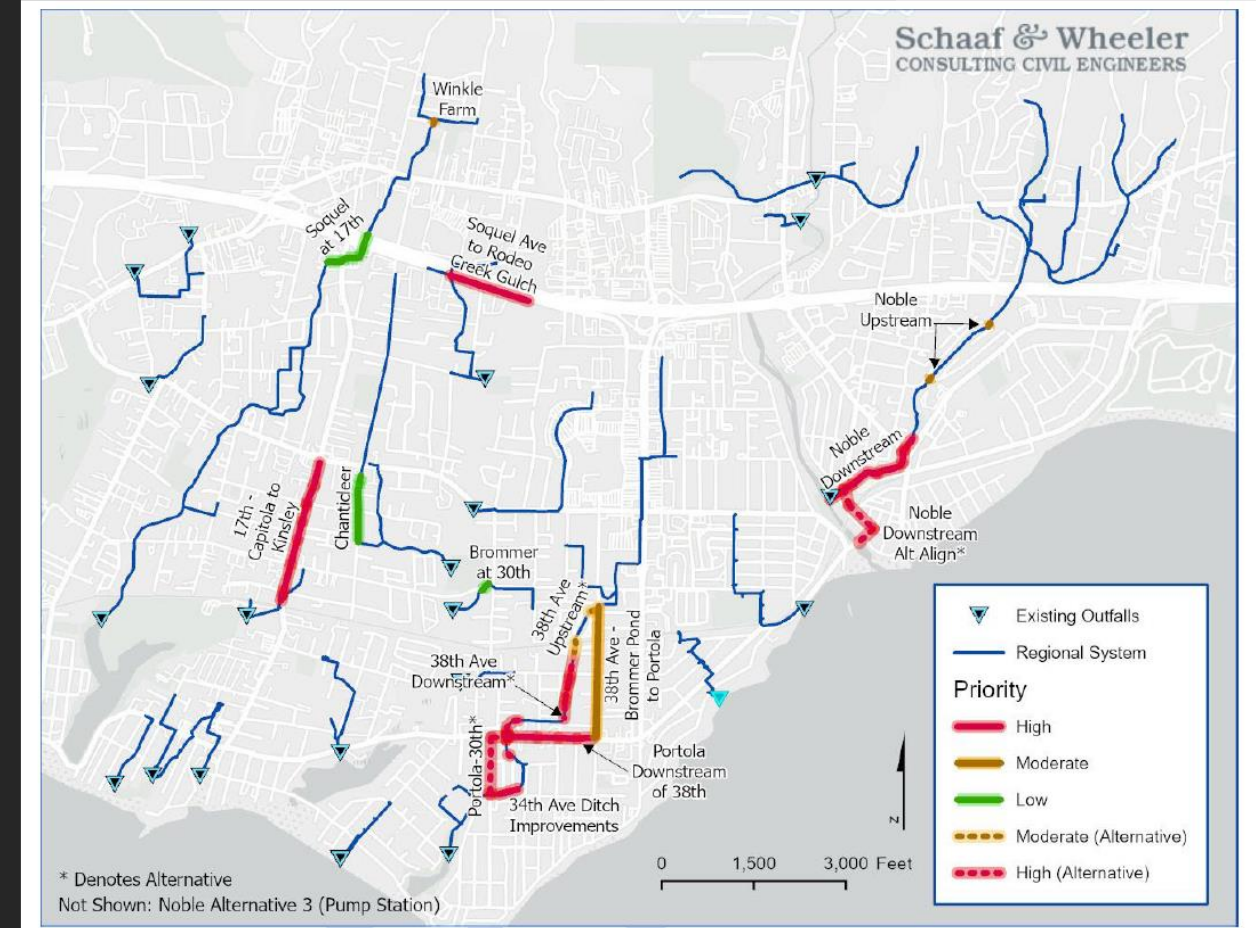
Capacity Recommendations

■ Capacity CIPs

- ✓ Phase the High Priority Projects
- ✓ Study Alternatives
- ✓ Coordinate w/ Other Agencies

■ Condition CIPs

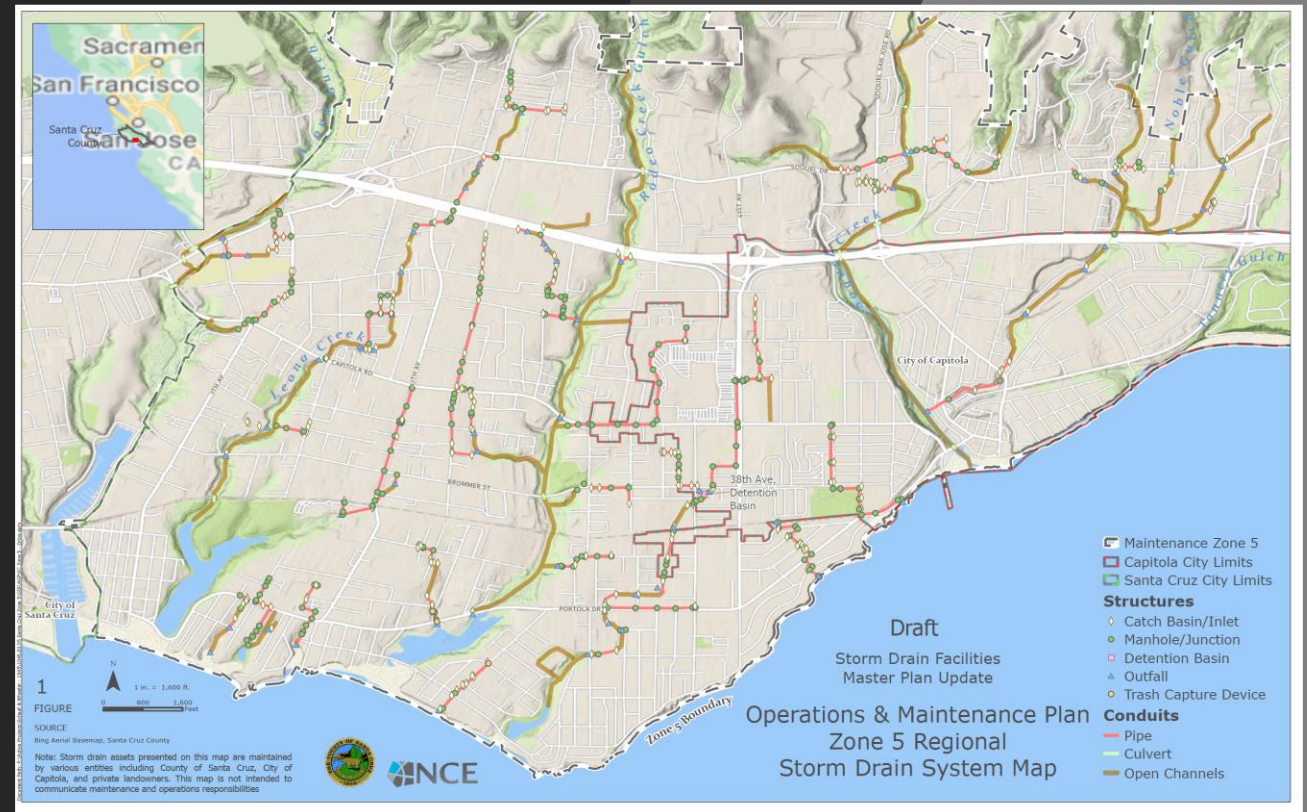
- ✓ Address Critical Issues First
- ✓ Study Alternatives
- ✓ Couple with Capacity Projects



Operations Recommendations

■ O&M Program

- ✓ Implement Study Findings
 - Phased Approach
 - Get Training
 - Procedural Changes Take Time
 - Purchase and Implement Lucidity
- ✓ Reporting
- ✓ Continue to Improve Program



Funding Recommendations

- Involve County and City Staff
- Find Best Mechanism(s)
- Public Outreach
- Identify Key Stakeholder
- Identify Champions
- Polling

Prop 218 Process for Stormwater Fee

Identify the Need

Assessing the revenue required to fund maintenance needs and environmental regulations.



Provide Written Notice

Informing property owners with details about the proposed fee and public hearing schedule.



Property Owner Election

If a majority of property owners casting ballots approve the fee, the fee may be implemented.



Calculate the Fee

Determining the fee based on proportional cost of service.



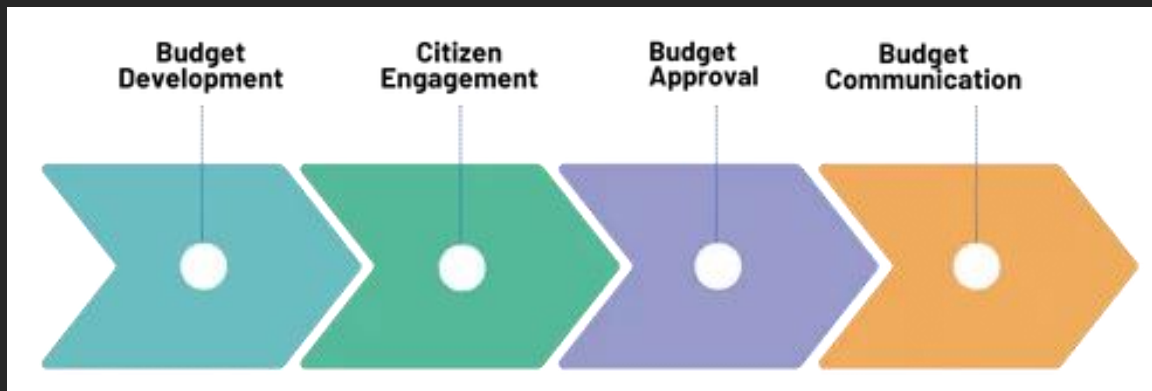
Hold a Public Hearing

Forum for property owners to express their opinions regarding the proposed fee, submit written protests.



Adopt the Fee

If election successful, City Council may adopt the stormwater fee.



Next Steps

- Alternatives Analyses
- Monitor System Performance
- Start Implementing O&M Program
- Develop a Funding Strategy
- Design
- Construction



EXHIBIT 33

From: Sesanto, Sean <ssesanto@ci.capitola.ca.us>
Sent: Wednesday, April 10, 2024 11:09 AM PDT
To: Herlihy, Katie (kherlihy@ci.capitola.ca.us) <kherlihy@ci.capitola.ca.us>; Mozumder, Kailash <kmozumder@ci.capitola.ca.us>
CC: Goldstein, Jamie (jgoldstein@ci.capitola.ca.us) <jgoldstein@ci.capitola.ca.us>
Subject: RE: 419 Capitola Avenue
Attachment(s): "419 Capitola Ave 20160444 Engineer Flume Letter.pdf", "419 Capitola Ave 20160444 Drainage Flume Location.pdf", "419 Capitola Ave 20160444 Culvert Letter 07-11-17.pdf", "419 Capitola Ave 20160444 Addendum to detail S1- 7 & Specialinspection report for the foundation.pdf"

Hi Katie,

It comes up in some of the building permit documents which I have attached. I didn't find other related correspondence. No special condition in the FLAN.

Sean Sesanto | Associate Planner
City of Capitola
831.475.7300
Planning Counter Hours: 1 p.m. - 4 p.m., Monday - Friday

From: Herlihy, Katie (kherlihy@ci.capitola.ca.us) <kherlihy@ci.capitola.ca.us>
Sent: Wednesday, April 10, 2024 10:33 AM
To: Sesanto, Sean <ssesanto@ci.capitola.ca.us>; Mozumder, Kailash <kmozumder@ci.capitola.ca.us>
Cc: Goldstein, Jamie (jgoldstein@ci.capitola.ca.us) <jgoldstein@ci.capitola.ca.us>
Subject: RE: 419 Capitola Avenue

Hi Sean and Kailash,

Hoping you can help me out with this. Are either of you aware of any agreements for 419 Capitola Avenue related to the drainage under the property from when they redeveloped the site about 6 years ago? I know I processed the application through PC but so not recall any agreements being in place or drainage coming up. Not sure if something was put in place during the building permit review or separate from the PC process.

Thanks,
Katie

From: Goldstein, Jamie (jgoldstein@ci.capitola.ca.us) <jgoldstein@ci.capitola.ca.us>
Sent: Tuesday, April 9, 2024 10:08 PM
To: Herlihy, Katie (kherlihy@ci.capitola.ca.us) <kherlihy@ci.capitola.ca.us>
Subject: Re: 419 Capitola Avenue

I recall we did require some kind of inspection or indemnity for 419 cap ave? Is that wrong? Maybe it's in the PW files if not CDD?

Get [Outlook for Android](#)

From: Herlihy, Katie (kherlihy@ci.capitola.ca.us) <kherlihy@ci.capitola.ca.us>
Sent: Tuesday, April 9, 2024 1:32:22 PM
To: Samantha Zutler <SZutler@bwslaw.com>; Goldstein, Jamie (jgoldstein@ci.capitola.ca.us) <jgoldstein@ci.capitola.ca.us>
Cc: Moshref-Danesh, Leila J. <LMoshref@bwslaw.com>; Kahn, Jessica <jkahn@ci.capitola.ca.us>
Subject: RE: 419 Capitola Avenue

Hi Sam,

Katie

From: Zutler, Samantha W. <SZutler@bwslaw.com>
Sent: Tuesday, April 9, 2024 12:26 PM
To: Herlihy, Katie (kherlihy@ci.capitola.ca.us) <kherlihy@ci.capitola.ca.us>; Goldstein, Jamie (jgoldstein@ci.capitola.ca.us) <jgoldstein@ci.capitola.ca.us>
Cc: Moshref-Danesh, Leila J. <LMoshref@bwslaw.com>
Subject: FW: 419 Capitola Avenue

From: Anna DiBenedetto <anna@dibenedetto.law>
Sent: Tuesday, April 9, 2024 11:44 AM
To: Zutler, Samantha W. <SZutler@bwslaw.com>
Cc: Rae Spencer <rspencer@dibenedetto.law>
Subject: 419 Capitola Avenue

EXTERNAL

Thanks for your time on the phone Sam. As I mentioned when we spoke, I'm wondering whether the City and owner of 419 Capitola Avenue went down a similar indemnity/hold harmless route when that property was recently developed? It was a pretty hefty project and I understand that this drainage system also runs under that parcel. Can you check with Planning to see how that was handled before I confirm my Clients' consent for me to put together a proposed indemnity agreement?

Best,

Anna DiBenedetto, Esq.
DiBENEDETTO LAW GROUP, PC
1101 Pacific Avenue, Suite 200
Santa Cruz, CA 95060
Office Tel. (831) 253-0499, Ext. 101
Direct Tel. (831) 253-0503
Fax (831) 253-0502
anna@dibenedetto.law

Go Green! Please consider the environment before printing this e-mail.

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REDWOOD
ENGINEERING

1535 SEABRIGHT AVENUE SUITE 200
SANTA CRUZ, CA 95062
[831] 426-8444

July 28, 2017

Mr. Dan Gomez
Fuse Architects

Reference: Foundation Clarification
419 Capitola Avenue
Capitola, CA 95010

Mr. Gomez,

In response to questions raised by field or inspection personnel regarding the above-mentioned project, Redwood Engineering provides the following information:

- Contractor may omit continuous interior thickened slab beneath partition wall. Bearing accommodated by 12" thick reinforced concrete mat slab.
- At contractor's option, minimum 6" wide interior curb may be provided beneath interior partition walls. #4 continuous rebar shall be provided in curb.

If you have any further questions or comments, please do not hesitate to contact me.

Leonard Willis, PE
Redwood Engineering
CA PE #62076, exp. 9-30-2017



APPROVED
OFFICE COPY

Reviewed for
Code Compliance

Signed Nelson

Date 8-3-17

Permit No. 20160444

Reviewed for
Code Compliance
Signed Nuffel
Date 8-3-17
Permit No. 20160444



**APPROVED
OFFICE COPY**

Addendum to detail S1-7.

NOTE: AT "MDU" SHEARWALL
HOLDOWN ANCHORS PROVIDE $\frac{3}{4}$ " A307
THREADED ROD WITH DBL. NUT AND 3"
SQUARE WASHER EMBEDDED MIN 14"
BELOW TOP OF SLAB ELEVATION

PER PLAN,
WHERE OCCURS

3X MUDSILL AND ANCHOR
BOLT PER DETAIL 4/5D1

EDGE NAIL

8" MIN.
24" MAX.

#4 DOWEL
AT 16" O.C.

#4 STIRRUPS
AT 16" O.C.

18" WIDE

8" WIDE CURB

#4 CONT. AT CURB

#4 DOWEL WITH STD. HOOK,
LAP 24" TO SLAB STEEL

MAT SLAB PER PLAN

VARIES

18" MIN.

(3)-#5 BARS CONTINUOUS
AT TOP AND BOTTOM

NOTE: PROVIDE 12" THICK
LAYER OF 95% COMPACTED
NATIVE SOIL BENEATH SLAB,
18" BELOW FOOTINGS.
PROVIDE "HP570"
STABILIZATION FABRIC
BENEATH ENGINEERED FILL

7

TYPICAL PERIMETER FOOTING

FOR FUSE ARCHITECTS

419 CAPITOLA AVE

PERIMETER FOOTING REVISION



7-14-17



REDWOOD
ENGINEERING

1535 SEABRIGHT AVENUE SUITE 200
SANTA CRUZ, CA 95062
[831] 426-8444

Mr. Dan Gomez
Fuse Architects

Reference: Foundation Clarification
419 Capitola Avenue
Capitola, CA 95010

Mr. Gomez,

August 2, 2017



**APPROVED
OFFICE COPY**

At your request, Redwood Engineering performed a site visit on August 2, 2017 to the above-mentioned jobsite. The purpose of this visit was to observe foundation excavations, reinforcing steel, and embedded anchors at new foundation areas, prior to concrete placement. At the time of the visit, work had progressed to cleaning out the bottom of the excavations and final positioning the anchor bolts in formwork.

After review of the site conditions, discussion with site personnel, and examination of the approved structural drawings, Redwood Engineering finds that construction has progressed according to the intent of the structural plans. Prior to placement of concrete, the following items should be verified:

- Contractor to verify that all embedded anchors are hot-dip galvanized
- Where drainage pipes are embedded in slab, engineer has reviewed and approved installation including foam wrap around pipe, depth of concrete below pipe and added rebar beneath pipe.

Please note that on-site structural observation by Redwood Engineering is intended to assist construction personnel with compliance to the structural drawings; this service does not replace or supercede any inspections required by the local Building Official.

If you have any further questions or comments, please do not hesitate to contact me.

Leonard Willis, PE
Redwood Engineering
CA PE #62076, exp. 9-30-2017



Reviewed for
Code Compliance

Signed

Date

Permit No.

Leonard Willis
8-3-17
20160444

DATE: July 11, 2017

PROJECT: 419 Capitola Avenue

RE: Drainage Box Culvert

To Whom It May Concern:

This letter is in regards to the existing concrete box culvert that runs under a portion of the back corner of the property at 419 Capitola Ave. We were asked by the City of Capitola Building Department and Public Works to locate the depth of the box culvert. The depth of the top of the box culvert was determined to be at approx.. 4'-6" below the top of grade. The soils engineer determined that the building pad be over-excavated and re-compacted to a depth of 3' below grade. The location of the box culvert was deemed acceptable for the new structure by the structural engineer, Redwood Engineering.

During the process of re-compaction we discussed and advised our grading contractor to take the box culvert into consideration along with oversight by Rocksolid Engineering (Geotechnical engineer). The grading contractor static rolled the areas above and adjacent to the concrete box culvert. After completion of the compaction we were notified that we would need to fix repairs caused by the compaction, if any. We will pay for repairs that were caused during the duration of compaction associated with our site, if any. We are aware that we will not be responsible to pay for or cover the expenses related to damage that was pre-existing.

Sincerely,



Daniel Gomez



Daniel Townsend

Search	Select	Draw	Tools	Print	<input type="checkbox"/> Base Map <input checked="" type="radio"/> 2007 Image <input type="radio"/> Terrain <input type="radio"/> 2003 Image <input type="radio"/> USGS QUADS <input type="radio"/> None
Format	Choose Page Layout	Legend	Scalebar	Enter Map Title	<input type="button" value="Create Map"/> 
PDF	Letter (11x8.5) Landscape	No	Feet	Map Title	



Reports

Results	Parcel Info	Land Use	Biotic and Water Resources	Special Districts	Jurisdictional, Elections, and Census	Hazards and GeoPhysical	S
Attribute		Value		Attribute		Value	
Click APN for Assessor Info:		03513126		Sect Town Range		T11S-R1W,SEC15	
Click Map# for APN Map:		03513		Tax Code Areas		3-108	
Click for Permit Data:		Permit Data		Map Book		035	
Estimated/Approximate Acreage		0.036		Multiple Site Address			
Estimated/Approximate sq Feet		1585		Home Owner Exemption (Yes/No)			
Situs Address		419 CAPITOLA AVE		Assessor's Use Code		023	
Situs City State Zip		CAPITOLA, CA 95010-3356		Assessor's Use Code Description		023-NON-CONFORMING RES	

OLD REPUBLIC TITLE COMPANY
ORDER NO. 0715020596-JS
 SECOND AMENDED REPORT

3. Any supplemental taxes due to Change of Ownership.

The affirmative coverage set forth in the Covered Risks is not being provided by the policy.

4. Any special tax which is now a lien and that may be levied within the CFD No. 2016-1 Library Facilities, a notice(s) for which having been recorded.

NOTE: Among other things, there are provisions in said Notice for a special tax to be levied annually, the amounts of which are to be added to and collected with the property taxes.

NOTE: The current annual amount levied against this land is \$49.50.

5. Any easements or lesser rights which may be claimed as to a portion of said land by the owners or users, including any rights incidental thereto which may be ascertained by making inquiry of such owners or users,

Of : a Utility Pole
 Affects : The Easterly portion
 As Disclosed By : Off-Record Information

RECEIVED

MAY 10 2017

CITY OF CAPITOLA

6. An easement affecting that portion of said land and for the purposes stated herein and incidental purposes as shown on the filed map.

For : 8 Foot Drainage
 Affects : As shown on the filed Map and APN Map Book 35 Page 13

7. Deed of Trust to secure an indebtedness of the amount stated below and any other amounts payable under the terms thereof,

Amount : \$403,750.00
 Trustor/Borrower : Daniel J. Gomez, a married man as his sole and separate property, as to an undivided 50% interest and Daniel R. Townsend, a married man as his sole and separate property, as to an undivided 50% interest
 Trustee : CJ Investment Services, Inc. a California corporation
 Beneficiary/Lender : Merrill J. Malvini, as Surviving Trustee of the Malvini Family Trust dated May 3, 1989
 Dated : October 21, 2013
 Recorded : October 28, 2013 in Official Records under Recorder's Series Number 2013-0050981
 Loan No. : BM49301



REDWOOD
ENGINEERING

1535 SEABRIGHT AVENUE SUITE 200
SANTA CRUZ, CA 95062
[831] 426-8444

June 19, 2017

Mr. Daniel Gomez
Mr. Daniel Townsend
fuse architects, Inc.

Reference: Existing Drainage Easement
419 Capitola Avenue
Capitola, CA 95010

To Whom it may Concern,

Redwood Engineering has reviewed the updated Site Plan (Sheet A1.1, as prepared by fuse architects, Inc. dated May 10, 2017), which shows newly discovered drainage easement running beneath proposed building structure. Upon field verification of actual culvert location (approximately 4'-6" feet below existing grade), it is the opinion of Redwood Engineering that the existing concrete culvert does not pose a risk to the new building structure, nor does the building pose a threat to the culvert. Where excavation has occurred above or adjacent to culvert, soils shall be replaced as engineered fill compacted to minimum 90% as outlined on page 8 of the Geotechnical Investigation Report prepared by Rock Solid Engineering, Inc. dated September 29, 2016.

If you have any further questions or comments, please do not hesitate to contact me.

Leonard Willis, PE
Redwood Engineering
CA PE #62076, exp. 9-30-2017



From: Moshref-Danesh, Leila J. <LMoshref@bwsllaw.com>
Sent: Wednesday, June 12, 2024 11:42 AM PDT
To: Anna DiBenedetto <anna@dibenedetto.law>
CC: Rae Spencer <rspencer@dibenedetto.law>; Zutler, Samantha W. <SZutler@bwsllaw.com>; Jason Heath <Jason.Heath@santacruzcountyca.gov>; Justin Graham <Justin.Graham@santacruzcountyca.gov>; Herlihy, Katie(kherlihy@ci.capitola.ca.us) <kherlihy@ci.capitola.ca.us>; Kahn, Jessica <jkahn@ci.capitola.ca.us>
Subject: 427 Riverview Indemnity Agreement
Attachment(s): "427 Riverview Indemnity Agreement.docx"

Good Morning Anna,

Thank you for your patience as the City and County worked to draft the attached indemnity agreement. Given the novel nature of the project and the complexities associated with the culvert, we had to expand fairly significantly upon your original draft, but the outcome is an agreement that will ultimately allow the City to process your client's application.

We would be happy to set up a time to meet with you and your client if you have any questions on the agreement, once you have had a chance to review.

Thank you.

Leila Moshref-Danesh | Senior Associate

Pronouns: she, her, hers

1770 Iowa Avenue, Suite 240 | Riverside, CA 92507-2479

d - 951.801.6626 | t - 951.788.0100 | f - 951.788.5785

lmoshref@bwsllaw.com | bwsllaw.com



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EXHIBIT 34

INFRASTRUCTURE STUDY

FOR

• *PACIFIC COVE MOBILE HOME PARK* •

WITHIN THE CITY OF CAPITOLA, CALIFORNIA

Prepared for:

HOUSING AUTHORITY OF THE
COUNTY OF SANTA CRUZ

Ifland Engineers, Inc.

1100 Water Street
Santa Cruz, CA 95062

October 1997



Civil Engineering ■
Structural Design ■
Land Surveying ■
Development Planning ■

October 20, 1997

#97147

Sue Hoge, Development Director
Housing Authority of the County of Santa Cruz
2160 41st Avenue
Capitola, CA 95010-2060

RE: Infrastructure Study
Pacific Cove Mobile Home Park
Capitola, CA

Dear Sue:

We have completed the study authorized by you on July 11, 1997 and hereby present it for distribution to those parties or agencies requesting the information. The study was performed by gathering recorded information in public records such as the County Surveyor's Office, the Department of Public Works and utility companies. The site plan mapping was taken from aerial photographs and recorded survey maps. It shows the basic street and mobile home space layout, but it was not intended that the plan represent an accurate dimensioned layout such as would be available if a field survey were mapped.

The infrastructure data not available from recorded information was determined by field observations that could be made without excavation of underground utilities.

The cost estimates for infrastructure improvements are based upon our experience over many years in the design of mobile home parks, and in more recent years, the reconstruction of infrastructure since many parks in Santa Cruz County are showing their age. The actual cost could vary from the estimate due to many variables associated with reconstruction of underground utilities.

We trust this study serves its intended use. If you have questions regarding any of the information, please allow us the opportunity to clarify it for you.

Sincerely,

IFLAND ENGINEERS, INC.

A handwritten signature in dark ink, appearing to read "Glen H. Ifland".

Glen H. Ifland
GHI/ae

\\Al\\at\\IDOC\\S1997\\97147\\CORRESP\\HogeS101397.doc



ifland
ENGINEERS, INC.

CIVIL ENGINEERING ■ LAND SURVEYING ■ STRUCTURAL DESIGN

1100 WATER STREET
SANTA CRUZ, CA 95062
TEL (408) 426-5313
FAX (408) 426-1763

JOB NO. Housing Authority - 97147

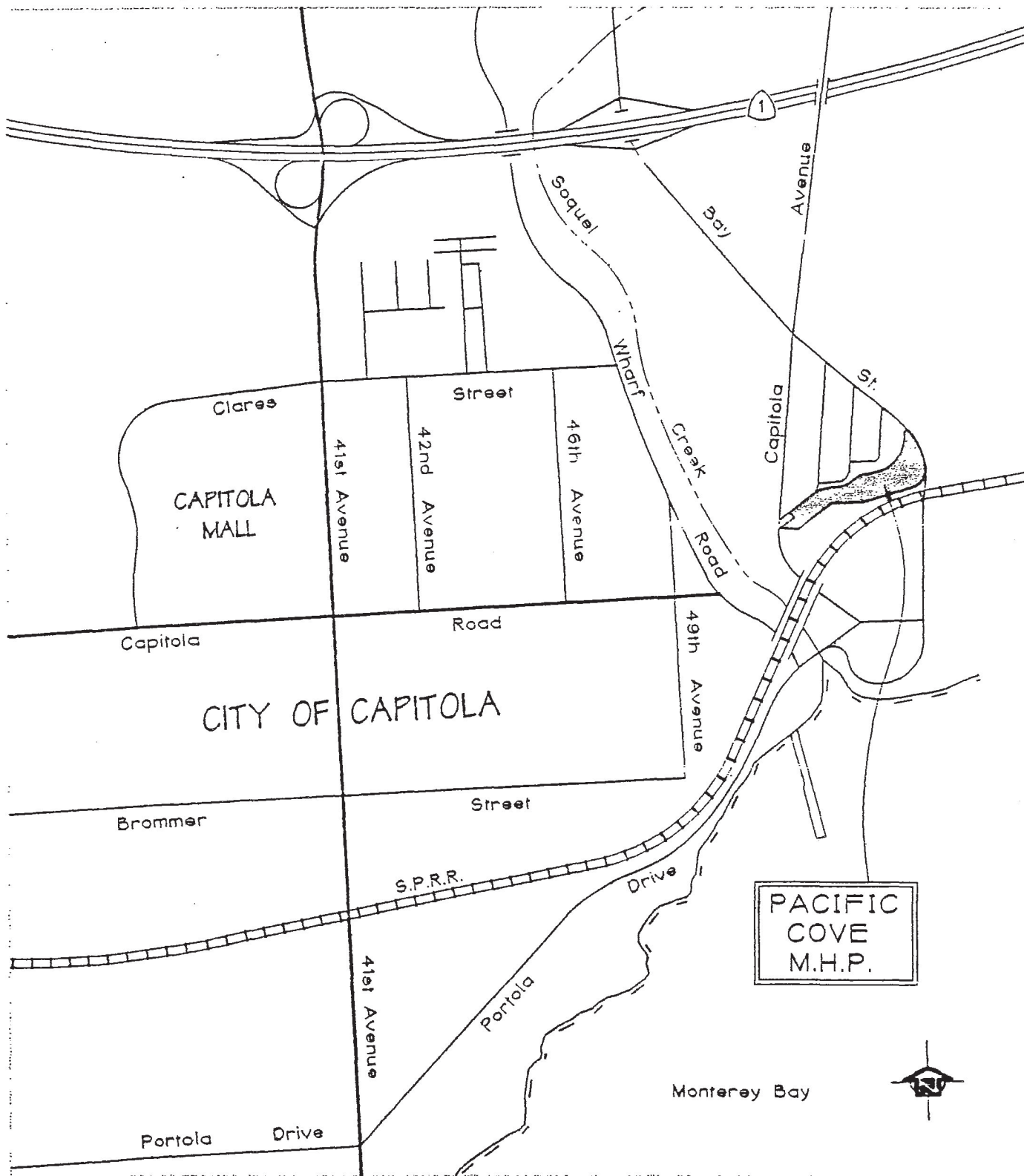
SHEET NO. _____ OF _____

DRAWN BY Greg DATE 9-3-97

SCALE: _____ NOT TO SCALE

Vicinity Map

NOT TO SCALE



PACIFIC COVE MOBILE HOME PARK

The park is located between Capitola Avenue and Bay Avenue along what is known as Noble Gulch. (The gulch has been filled in). The City of Capitola owns the park in conjunction with a public parking lot. There are 41 mobile home spaces within the 4.27 acre site. This is an older park with most mobile homes small, old, and sub-standard, and there is no community room or clubhouse. The laundry/restroom building is in poor condition. The space separations (side yards) are not well defined, but it appears throughout the park that there are a number of setback violations whereby additions to the mobile homes are built on the space line with no setbacks.

Its location is convenient for shopping and other services. A significant amount of natural vegetation surrounds the park, which presents a pleasing living environment.

• • • • •

The existing infrastructure of the park is as follows:

SANITARY SEWERS

The park is served by the Santa Cruz County Sanitation District by means of a 12" main running through the site. This pipeline is a collection line serving a large area upslope from the park and is located within a 10 foot wide easement. It is unusual that this easement is not left open and clear of all structures for the maintenance of the sewer pipeline. (Some of the homes are no longer mobile.) If the pipe needed repair and replacement, many of the homes would need to be moved. Individual laterals from the main are extended to each space. Some spaces have vent pipes and some spaces do not have cleanouts at the utility islands, indicating an old outdated lateral system.

Since there are no available plans which indicate the pipeline layout, the pipe size, the pipe material, or the slope of the pipe, it cannot be determine if the lateral system is in need of replacement. However, those spaces without cleanouts at the utility island should have cleanouts installed and all vent pipes removed provided that the mobile home has a vented system.

WATER SUPPLY

Water service to the park is provided by Soquel Creek Water District. The water district could not identify the service location due to the fact that the park service is tied into other services to City owned property. With no plans available, the pipe size, location, and materials could not be determined. The static pressure in the system is 50 pounds per square inch, which is more than adequate. If the park were to change ownership, the water service would have to be separated from the existing service meter and a new service installed.

STORM DRAINAGE

Prior to the construction of the park, Noble Gulch was a natural drainage channel. The gulch was filled in and a 72" diameter corrugated metal pipe was installed to carry the storm waters from the upper portion of Noble Gulch northeast of Bay Avenue to Soquel Creek. There are several grate-covered manholes along this pipeline which allow the surface run-off to enter the pipeline. Several small catch basins are located throughout the park to pick up drainage and transfer it to the underground system. The roadway appears to be adequately drained, but there is evidence that some of the parking areas alongside the homes do not drain well. A concrete swale is needed along the northerly side of the road to better control the run-off.

A "walk-through" inspection was made of the 72" drain pipe. It is constructed in 20 foot sections with manholes located at all horizontal angle points except one. The pipe invert (interior bottom) shows signs of rusting at the section joints. This is common in metal pipe that has been in place for many years. However, it appears to be repairable and the sides and top of the pipe are in good condition.

This pipeline is maintained by Santa Cruz County Drainage District Zone 5 and therefore should not be a cost to the park owner for repairs or replacement.

There are areas around some of the individual parking spaces and raised decks that appear to lack adequate drainage. These areas should be observed during heavy rainstorms to determine the extent of regrading and/or repaving to establish proper slopes.

STREETS

The park is served by a single, central, private street 20 feet in width which is asphalt paved and in fair condition. The street provides access to both Capitola Avenue and Bay Avenue. Under current code requirements, a 20 foot wide roadway is not allowed; however, prior to 1961, the required width was 15 feet. To the best of our knowledge, this park existed prior to 1961.

The parking spaces alongside the mobile home, in most cases, are in poor condition. The pavement is cracked and there is evidence of poor drainage. A concrete drainage swale is needed along the north side of the street from space 74 to 84.

GAS SYSTEM

The natural gas system was installed several years ago and is owned by Pacific Gas & Electric Company. The pipeline is along the central street with the meter at the front right corner of each mobile home. The system is in good condition and meets code requirements.

ELECTRICAL SYSTEM

The electrical service to the main panel of the park is an overhead service and is located at the rear of the laundry building. The original service has recently been improved by installing additional power. Each space is individually metered with a 130 amp service. The route of the underground system is unknown.

TELEPHONE SERVICE

Telephone service is provided by Pacific Bell to each mobile home space. The route of the underground cable is unknown.

CABLE TELEVISION

Sonic Cable is provided at each mobile home space. The route of the underground cable is unknown.

STREET LIGHTING

There are existing light standards 6 feet in height with 60 watt incandescent lamps along the central roadway. Several additional lights need to be installed along the west end of the road to complete a consistent spacing.

Since this park is old and substandard with limited size spaces, it would be impractical to reconstruct the park to present day codes. The roadway would need widening and some spaces would need to be eliminated to allow for wider units. However, the life of the park could be extended for possibly another 20 years by making the following improvements.

INFRASTRUCTURE IMPROVEMENT COST ESTIMATE

1.	Concrete Swale	1000 L.F. @ \$15.00 ea.	\$15,000
2.	Parking Space Repair	40 @ \$700.00 ea.	20,000
3.	Slurry Seal	30,000 S.F. @ \$0.50	15,000
4.	Trash Enclosure	Lump Sum	3,500
5.	Laundry Building	Lump Sum	25,000
6.	Visitor Parking	Lump Sum	5,000
7.	Reconstruct utility islands	41 @ \$500.00 ea.	20,500
8.	New water service (1-1/2")	Lump Sum	14,950
9.	Additional street lights	3 @ \$300.00 ea.	<u>900</u>
		ESTIMATED TOTAL	\$119,850

NOTE:

Since Ifland Engineers, Inc. has no control over the cost of labor, materials, or equipment, or over the contractors' methods of determining prices, or over competitive bidding or market conditions, our opinions of probable project cost or construction cost provided for herein are made on the basis of our experience and qualifications and represent our best judgment as design professionals familiar with the construction industry; but Ifland Engineers, Inc. cannot, and does not guarantee that proposals, bids, or the construction cost will not vary from opinions of probable cost prepared by our firm.

EXHIBIT 35

2. D. ORAL COMMUNICATIONS (Continued)

2) Council Member Nicol commented on the condition of the Nobel Gulch storm drain and said Zone 5 is seeking bids for replacement of that storm drain due to its deterioration.

3) Council Member Nicol said he forwarded a letter from the Transit district regarding the bus stop located at 702 Rosedale. He said the property owner petitioned the Board to move the bench. The district is looking at the possibility of moving the bus stop toward Monterey Avenue. He asked if council members had any comments about placement of the bus stop. Public Works Director Jesberg commented on his review of the location and determined the bench was, in fact, on private property. He believes a bus stop could be located at Monterey Park.

3) Council Member Harlan commented on a photo where a utility pole is located in the middle of the sidewalk and expressed her desire for staff to look at relocating such poles.

4) Council Member Harlan attended the county mobile home committee and announced there is a vacancy on the committee. She informed the council she plans to include a pamphlet regarding mobile home rent control on the next agenda for council consideration.

5) Council Member Arthur said he was at the beach all day Sunday, and he noticed that all the recycling cans were filled with garbage. He recommended labeling the cans that are for recyclable products. He suggested putting this on the Commission on the Environment agenda for consideration and recommendation to the council. He feels we need to take a look at this.

6) Council Member Termini said last night was the first “Twilight Concert” of the summer, and he invited everyone to enjoy the music every Wednesday evening at Esplanade Park. He also said there is a new “Art at the Beach” program on the third Sunday on the month at Esplanade Park.

7) Council Member Harlan asked if the council would be interested in having the Community Service Officers (CSO) remove real estate signs from public property on the weekend. She expressed concerns about signs blocking public sidewalks.

E. Committee Reports/Appointments1) **Appointment/Reappointment of Capitola Historical Museum Board of Trustee Members. [240-40]**

ACTION: Council Member Termini moved, seconded by Council Member Arthur, to accept recommendation of the Capitola Historical Museum Board to reappoint Topsy Smalley and to appoint Cheryl Devlin to fill the expired terms on the Capitola Historical Museum Board for three (3) years, to expire the second Thursday in June 2009, and direct staff to continue recruitment for the remaining vacancy on the Museum Board. The motion carried on the following vote: AYES: Council Members Termini, Arthur, Harlan, Nicol, and Mayor Norton. NOES: None. ABSENT: None. ABSTAIN: None.

EXHIBIT 36



THOMAS L. BOLICH
DISTRICT ENGINEER

County of Santa Cruz

FLOOD CONTROL AND WATER CONSERVATION DISTRICT - ZONE 5

701 OCEAN STREET, ROOM 410, SANTA CRUZ, CA 95060-4070
(831) 454-2160 FAX (831) 454-2385 TDD (831) 454-2123

L.V. 1

May 16, 2007

STEVE JESBERG
DIRECTOR OF PUBLIC WORKS
City of Capitola
420 Capitola Avenue
Capitola, CA 95010

SUBJECT: STORM DRAIN REPLACEMENT, NOBLE GULCH TO BAY AVENUE
IN CAPITOLA

Dear Mr. Jesberg:

As you may recall, the subject project was put out to bid last summer and received no bids. We advertised the project again in April 2007 and received four bids. The low bid was \$669,166, and the other bids were in the amounts of \$863,346, \$933,125 and \$940,940. Including contingencies, inspection, engineering, and overhead, the total cost using the low bid will be over \$890,000. Available funding in the Zone 5 budget for this project is \$523,000. This leaves a funding shortfall of \$367,000.

In order to award the contract, we are requesting that the City of Capitola contribute as much of the shortfall as possible, preferably at least half of the additional cost or approximately \$180,000. We feel that this contribution is justified in as much as the project is within the city limits of Capitola and is necessary to protect the residence and the City park which are adjacent to the pipe. The park would not exist except for the fact that the pipe exists. The pipe was placed in what was once a continuation of the upstream gulch and backfilled to create what is now the park land. The requested contribution from the City is consistent with many other projects that are cost shared with Zone 5, the Redevelopment Agency, and private developers. It is rare in this day and age that Zone 5 completely funds a drainage improvement project without contributions from other benefitting parties.

We are reporting back to the Zone 5 Board on June 19, 2007, with recommendations on whether to award the contract. A commitment of funding from the City of Capitola will be necessary to proceed with the project now or in the future. In order to know what our recommendation to the Zone 5 Board will be, we would need a determination and commitment from the City of Capitola as soon as possible and preferably before June 7, 2007.

If you have any questions, please don't hesitate to call me at (831) 454-2160

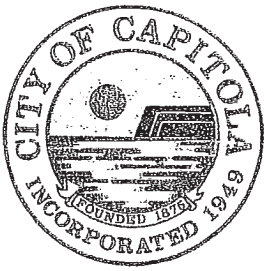
Yours truly,

THOMAS L. BOLICH
Director of Public Works

RJF:mh
noblecostsharemh.wpd

EXHIBIT 37

400-10



420 CAPITOLA AVENUE
CAPITOLA, CALIFORNIA 95010
TELEPHONE (831) 475-7300
FAX (831) 479-8879

May 31, 2007

Mr. Thomas Bolich
Director of Public Works
County of Santa Cruz
701 Ocean Street, Rm 410
Santa Cruz, CA 95060

Subject: City of Capitola Contribution to the
Noble Gulch Storm Drain Replacement Project

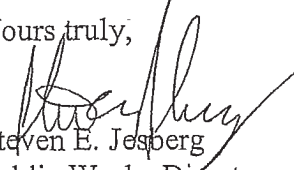
Dear Tom,

At their meeting last night the City Council for the City of Capitola chose not to participate in funding the Noble Gulch Storm Drain Replacement Project. The Council did not want to set a precedent of funding other agency projects and also believes that Zone 5 should seek other repair alternatives for this portion of pipeline. The Council also raised concern about the spread in the bids received and expressed concern over the likelihood of additional expenses once the project began. The City of Capitola and the County have a strong history of working together on projects of mutual benefit, and the Council is certainly interested in continuing this partnership where each agency pays for its share of the improvements, such as the Burlingame Avenue Sewer and Street Improvement Project and the 38th Avenue Sidewalk and Drainage Project.

Regarding the Noble Gulch Pipeline, a lining project that adds structural strength to the pipeline, improves flow characteristics and repairs the leaks in the existing pipeline may be worth investigating. While we realize that the existing pipeline does not have the theoretical 100-year event capacity that your agency typically designs for, the long term history of this pipeline has no history of flooding and given the high price to replace it, a lower cost repair project may be worthwhile.

As always, I look forward to continuing our mutual cooperation on projects and services to the residents of the County and City.

Yours truly,


Steven E. Jesberg
Public Works Director

C: City Council

EXHIBIT 38

BY THE DIRECTOR OF EMERGENCY SERVICES OF THE
CITY OF CAPITOLA

Proclamation of Existence of a Local Emergency

WHEREAS, Municipal Code Section 8.08.050 empowers the Director of Emergency Services for the City of Capitola to proclaim the existence of a local emergency when said City is affected or likely to be affected by the existence of disaster or extreme peril which is, or is likely to be, beyond the control of the services, personnel, equipment and facilities of this City, requiring the combined forces of other political subdivisions to control; and

WHEREAS, the Director of Emergency Services does hereby find:

That conditions of extreme peril to the safety of persons and property have arisen on March 24, 2011, at approximately 4:00 p.m., within said City of Capitola as a result of the overflowing of Nobel Creek, thereby causing major damage to the Pacific Cove Mobile Home Park and threatening and damaging public and private properties to many areas within the City of Capitola.

That the aforesaid conditions of extreme peril warrant and necessitate the proclamation of the existence of a local emergency;

That the City Council of the City of Capitola is not in session.

NOW, THEREFORE, BE IT HEREBY PROCLAIMED that during the existence of said local emergency the powers, functions, and duties of the Director of Emergency Services and the emergency organization of the City of Capitola, Santa Cruz County, California, shall be those prescribed by State law, by ordinances and resolutions of the City; and

IT IS FURTHER PROCLAIMED AND ORDERED that said local emergency shall be deemed to continue to exist for a period of seven days and shall thereupon terminate unless this proclamation is ratified and continued in effect by the City Council of the City of Capitola.

Date:

3/24/11

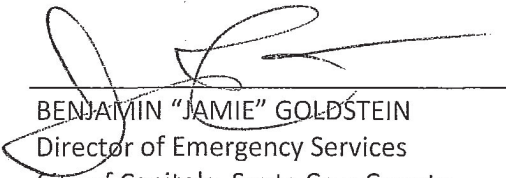

BENJAMIN "JAMIE" GOLDSTEIN
Director of Emergency Services
City of Capitola, Santa Cruz County

EXHIBIT 39

COPY

RESOLUTION NO. 3863

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CAPITOLA
DECLARING THAT AN EMERGENCY CONDITION CONTINUES TO EXIST
AS A RESULT OF THE PROCLAMATION OF EXISTENCE OF A LOCAL EMERGENCY
ISSUED BY THE DIRECTOR OF EMERGENCY SERVICES ON MARCH 24, 2011
PERTAINING TO NOBLE GULCH CREEK PIPELINE FAILURE AND SUBSEQUENT
FLOODING OF PACIFIC COVE MOBILE HOME PARK, CITY HALL AND CAPITOLA VILLAGE**

WHEREAS, on March 24, 2011, the Director of Emergency Services of the City of Capitola issued a Proclamation of Existence of a Local Emergency, attached hereto as Exhibit A, finding that conditions of extreme peril to the safety of persons and property arose within the City of Capitola as a result of a break in a storm drain pipe located in the Pacific Cove Mobile Home Park, thereby causing major damage to Pacific Cove Mobile Home Park and threatening and damaging public and private properties to many areas in the City Capitola; and

WHEREAS, said Proclamation was sent to the County of Santa Cruz Office of Emergency Services and the City requests that the County issue Proclamation of Existence of a Local Emergency and transmit said Proclamations to the State of California; and

WHEREAS, significant precipitation on the morning of March 26, 2011, resulted in a subsequent collapse of the Noble Gulch Creek culvert which caused additional significant flooding damage to Pacific Cove Mobile Home Park, Capitola City Hall, Police Department and Museum, and to private properties within the Capitola Village and properties along Soquel Creek; and

WHEREAS, pursuant to Public Contract Code Section 22050, the governing body shall initially review the emergency action not later than seven days after the action to determine, by a four-fifths vote, that there is a need to continue the action; and

WHEREAS, the local emergency continues to exist and action continues to be necessary to abate all dangerous conditions relating to the safety of persons and property, based on the Proclamation of Existence of Local Emergency, as defined at California Public Contracts Code Section 1102; and

WHEREAS, pursuant to Public Contracts Code Section 22050 a governing body may in the case of an emergency, pursuant to a four-fifths vote, repair or replace a public facility, take any directly related and immediate action required by the emergency, and procure the necessary equipment, services, and supplies for those purposes, without giving notice for bids to let contracts.

NOW, THEREFORE, BE IT HEREBY RESOLVED that the City Council of the City of Capitola hereby finds and declares that a local emergency continues to exist in the City of Capitola pursuant to the Proclamation of Existence of Local Emergency issued by the Director of Emergency Services on March 24, 2011, and as defined at Public Contracts Code Section 1102, and that pursuant to Public Contracts Code Section 22050 (2), the emergency must be addressed expeditiously so as not to permit a delay which would result from a competitive solicitation for bids, and that this action is therefore necessary to timely respond to the local emergency.

BE IT FURTHER RESOLVED that the City Manager is hereby authorized to order any action pursuant to this local emergency pursuant to Public Contracts Code Section 22050 (2)(b)(1).

BE IT FURTHER RESOLVED that the City Manager shall report to the City Council at each subsequent regularly-scheduled City Council meeting the progress made in addressing this local emergency and the City Council must affirm the continuing work on this emergency with a four-fifths approval until such time as the emergency situation has been abated as determined by the Director of Emergency Services pursuant to Public Contracts Code Section 22050 (3)(c)(1).

BE IT FURTHER RESOLVED that the City of Capitola requests that the County of Santa Cruz issue a Proclamation of Existence of a Local Emergency and transmit said Proclamations to the State of California, Office of Emergency Services and the Governor of the State of California.

I HEREBY CERTIFY that the above and foregoing resolution was passed and adopted by the City Council of the City of Capitola at an Emergency Meeting held on the 27th day of March, 2011, by the following vote:

AYES: Council Members Harlan, Termini, Nicol, Storey, and Mayor Norton

NOES: None

ABSENT: None

ABSTAIN: None

DISQUALIFIED: None



Dennis R. Norton, Mayor

ATTEST:



Pamela Greeninger, City Clerk, MMC

EXHIBIT A**BY THE DIRECTOR OF EMERGENCY SERVICES OF THE****CITY OF CAPITOLA****Proclamation of Existence of a Local Emergency**

WHEREAS, Municipal Code Section 8.08.050 empowers the Director of Emergency Services for the City of Capitola to proclaim the existence of a local emergency when said City is affected or likely to be affected by the existence of disaster or extreme peril which is, or is likely to be, beyond the control of the services, personnel, equipment and facilities of this City, requiring the combined forces of other political subdivisions to control; and

WHEREAS, the Director of Emergency Services does hereby find:

That conditions of extreme peril to the safety of persons and property have arisen on March 24, 2011, at approximately 4:00 p.m., within said City of Capitola as a result of the overflowing of Nobel Creek, thereby causing major damage to the Pacific Cove Mobile Home Park and threatening and damaging public and private properties to many areas within the City of Capitola.

That the aforesaid conditions of extreme peril warrant and necessitate the proclamation of the existence of a local emergency;

That the City Council of the City of Capitola is not in session.

NOW, THEREFORE, BE IT HEREBY PROCLAIMED that during the existence of said local emergency the powers, functions, and duties of the Director of Emergency Services and the emergency organization of the City of Capitola, Santa Cruz County, California, shall be those prescribed by State law, by ordinances and resolutions of the City; and

IT IS FURTHER PROCLAIMED AND ORDERED that said local emergency shall be deemed to continue to exist for a period of seven days and shall thereupon terminate unless this proclamation is ratified and continued in effect by the City Council of the City of Capitola.

Date: March 24, 2011

Original signed by Benjamin "Jamie" Goldstein
BENJAMIN "JAMIE" GOLDSTEIN
Director of Emergency Services
City of Capitola, Santa Cruz County

This is to certify that the above and foregoing is a true and correct copy of Resolution No. 3863 passed and adopted by the Capitola City Council at an Emergency Meeting held on the 27th day of March, 2011.


Pamela Greeninger, City Clerk MMC

EXHIBIT 40

NEWS

Capitola Village flooded for second time in three days



By **SHANNA MCCORD** | Santa Cruz Sentinel

PUBLISHED: March 26, 2011 at 2:34 PM PDT

CAPITOLA –Torrential rain early Saturday brought flash flooding to this quaint Mediterranean-style village, with water 2 to 3 feet high rushing over streets and sidewalks, pouring into shops and damaging homes along Soquel Creek.

The flood was caused by an overwhelmed drainpipe in Noble Gulch Creek that runs under Pacific Cove Mobile Home Park to the ocean — a pipe that had collapsed during Thursday's storms.

Although the pipe had been cleared by Friday, Saturday's downpour quickly returned the creek to flood stage. Gushing water covered the village by 8:30 a.m.

"This is a repeat of Thursday," said Steve Jesberg, the public works director. "The pipe was not able to keep up with the water flow."

Capitola police and fire officials evacuated the village and closed roads to cars and pedestrians while business owners assessed damages and tried to mop up what they could.

Atilla Ozberk, who owns Nazar Turkish Imports, stood in his shop in the Mercantile Building on San Jose Avenue with muddy water up to his ankles

Capitola Releases Findings on What Caused Village Flood

Old Corrugated Steel Pipe Blamed for Rupture

by Mary Bryant

Floods

The rupture of a nearly 50-year-old corrugated steel pipe carrying storm water under Capitola's Pacific Cove Mobile Home Park was most likely the cause of two days of flooding in the Village that has left some businesses closed, park owners worried about the future, and others facing major renovations. These include more than \$1 mil-

lion in expenses to the city – or eventually Capitola's insurance fund if the state and federal governments don't help.

The stretch of storm drain, about 72 inches in diameter, has cost the city about \$750,000 to repair, again likely covered by the city's insurance fund that is shared with other municipalities.

These conclusions are part of a recently released report prepared for the city's public works director.

Exactly why did the pipe fail? That

requires a bit longer explanation.

On Mar. 24, after a month of rain, storm clouds dumped what was equivalent to a 25-year flood on the county – meaning a lot more water ran off from mountains than in a typical storm.

That massive volume of water collected in the Noble Creek Gulch culvert nearby to the mobile home park.

Capitola resident Richard Tessen

continued on page 9

pipe from page 1

watched the water collect at the culvert from his property next door.

As usual in a big storm, debris collected at the culvert grate, which Tessen attempted to clear until the water – which he estimated to be some 22 feet deep – caused him to seek dry ground.

While he was concerned about the culvert backing up, he wasn't aware of any problems looming in the Village. He was more alarmed about what might happen closer to home.

"When it rains heavily, the water runs over the curb and comes into my garage," he said.

Engineers from URS Corporation, under contract with Capitola, inspected the broken pipe after the flood, the Noble Gulch culvert and the entire line that empties finally to Soquel Creek.

They believe that the juncture between the 72-inch concrete pipe and the corrugated metal pipe installed under the Pacific Cove Mobile Home Park in 1963 is where the break occurred.

The concrete pipe had been repaired by workers installing a sleeve inside the pipe, shoring up any areas that had eroded over time

and allowing soil to seep into the drain pipe.

This is done to prevent the pipe from collapsing and rupturing. It is also necessary to avoid sink holes from occurring above ground.

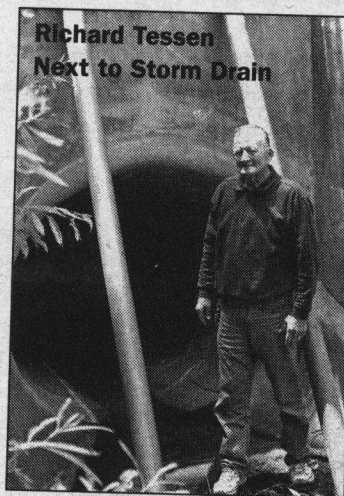
Many people involved in the flood inquiry knew where the pipe broke before the report; however, why was the more pressing question.

The engineers think that debris travelling along the pipe at rushing speeds caught the edge of the corrugated metal at the junction with the concrete, pulled and bent the edge of the pipe inward, causing the water to escape at the juncture seam.

At that point, the entire corrugated pipe separated from the concrete pipe carrying the storm runoff from upstream.

It wasn't long before the soil that buried the pipe washed away. A mobile home and pavement above the pipe then fell into the sink hole created when the soil was washed downstream, and the water began gushing through the city's parking area and onto Capitola Avenue.

Two days later the same flood repeated, except with much more disastrous results. Instead of the break occurring as the storm was clearing, the water rushed from the



Richard Tessen
Next to Storm Drain

exposed pipe immediately and lasted six hours before that storm was exhausted.

Who Was Responsible?

Capitola owns the Pacific Cove Mobile Home Park. However, the city didn't develop the park.

Dan Hill is Santa Cruz County's assistant public works director. He said, and Capitola's Public Works Director Steve Jesberg agrees, that the pipe under the mobile home park is not part of an easement, and general thinking would suggest that it belongs to the property owner. In this case, the city.

A similar concern is playing out at the Snug Harbor Mobile Home Park in Live Oak, where the property owner is responsible for replacing a similarly aged

storm pipe.

Are there circumstances in which the rupture could have been avoided?

Tessen believes if the grate had been kept clear of debris that the pipe downstream might not have ruptured.

The day of the first storm Tessen called Hill's department for a maintenance crew as well as the city's public works agency.

Eventually, as the water kept getting higher and he couldn't clear a rubbish container from the grate, he dialed 9-1-1.

Only the police showed up. He said he appreciated the attention, but that officers weren't able to clear the obstruction.

Who should have helped? The county's Hill said that his crew should have responded if called, and available, but he didn't know the circumstances of the incident and couldn't answer if the call was received or his crew dispatched.

"He's right to call us. ... We want to know about it," Hill added.

Tessen said that he left the area for a while and when he returned the rubbish bin was gone. Could someone have come by and removed the bin? He isn't completely sure. He's just certain he doesn't want to experience the results of a 100-year storm, since the culvert is only designed for a

10-year event.

What's Next?

For Capitola's part, Jesberg says that the pipe is completely repaired and now even features a manhole to allow future inspections.

Should the pipe be made bigger for bigger storms?

Because the final section of the storm pipe runs under the Riverview Avenue development and into Soquel Creek, installing a bigger pipe would be very expensive. This leg of the pipe is also concrete, and is likely to last longer than the corrugated metal pipe that was under the Pacific Cove Mobile Home Park.

Hill said chasing the rare storm events can be nearly impossible.

"Theoretically, there's always going to be some storm out there that's going to be bigger," he said.

The question of who's going to pay for the replacement remains. The county has written the city a letter saying that the county isn't responsible. However, Hill acknowledges that talks are presently ongoing to determine who will pay what.

"We've been exchanging documents," Hill said. "At this time, we feel it's the city's responsibility. [But] we're talking."

EXHIBIT 41

Greeninger, Pam

From: Goldstein, Jamie
Sent: Wednesday, March 30, 2011 3:59 PM
To: City Council
Cc: Barisone, John
Subject: FW: Disaster Response Summary

Council Members –

First, I want to apologize for not getting this out the last couple days. Things have been so fluid, every time I worked up a status report, things changed. I am working closely with the Mayor, and plan to continue to do so as we respond to the pipe failure and ensuing flood.

Second, here is where we stand financially. Please note the Emergency Reserve Fund starts with a \$627,100 balance.

Given the unknown responsibility for the pipe (Zone 5 or City), it is not known who will ultimately pay for the costs to repair the pipe. Also, given the County's disaster declaration, it is possible some of the emergency reserve expenses could be repaid.

Project	Current Estimate	Source*
Pipe rupture repair	\$ 500,000	Unknown
PD repair/relocation	\$ 350,000	Insurance
Overtime	\$ 18,000	Emergency Reserves
Debris removal	\$ 32,000	Emergency Reserves
Emergency mutual aid	\$ 25,000	Emergency Reserves
Other	\$ 10,000	Emergency Reserves

Public Works

- URS onsite conducting engineering studies.
- A new pipe is on order with delivery soon, today or tomorrow.
- Sink holes are being addressed
- The drain pipe from failure to creek has been inspected today.
- Mud is being stored at Grimes property
- Mud stored at Jade Street park will be removed soon
- Conservation Corp crews cleaned up Pac Cove, looking into other tasks for them in the Village as necessary.
- PG&E working to reestablish electrical and gas to Pac Cove MHP. No ETA yet.
- Sanitation-Sewer installed Pac Cove bypass to facilitate drain pipe repairs.
- Soquel Creek Water District has confirmed drinking water quality in Pac Cove.
- Fence for Pac Cove entry delivered yesterday, private security dismissed.
- Infrastructure expert/engineer is being hired to give costs to fix Pac Cove, both short and long term

Police Department

- New parking permit process has been implemented. PD will monitor and suggest refinements as businesses open.
- Modular building installation progressing, power up today.
- Sewer will be hooked up to modular buildings

- Repairs to Police Station beginning, asbestos found in sheet rock of the building, will require abatement.
- More parking signs going up

Assistant to the City Manager

- Established volunteer list to help with cleanup – assigned to Michele to coordinate
- Pac Cove residents all currently housed.
- Kim Hogen, Toni Castor and Gayle Ortiz are coordinating meals for the displaced residents – lunch and dinner every day.
- The American Red Cross has a case file on every displaced person and is evaluating their individual needs every 3 days. Such needs include counseling, doctors appointments, transportation, storage, clothing – just about anything you can think of the Red Cross is there working individually.

Community Development

- Environmental Health will be contacted concerning issues.
- Building has completed visual inspection of all coaches in park, 9 red tagged. Results of his inspection being sent to residents today.
- Letter to residents today advising them of infrastructure study, and Council consideration of options at a meeting in April.
- PIO work is ramping down
- Coordinating work of the City's Village liaisons: Toni, Lonnie and Kelly,
- Will continue to work press releases addressing the pipeline failure.

Finance

- Tracking all related costs – will prepare email updates for CM
- Contacting Insurance Adjuster's International references.

City Manager

- Inspected Castle coaches with Building owned by Keh for possible temporary housing.
- County disaster declaration complete

Jamie Goldstein

City of Capitola

City Manager

(831) 475-7300 office

(831) 475-8879 fax

EXHIBIT 42

Greeninger, Pam

From: Goldstein, Jamie
Sent: Thursday, April 07, 2011 4:51 PM
To: All Employees
Subject: Flood Inquiries

City Staff -

In the upcoming weeks and months, the City is anticipating a variety of inquiries about the cause of the pipe failure, who is responsible, and other questions. Many answers are not known today and some may never be known.

As you have probably heard, there are a variety of personal opinions being shared in the community. I have asked Lisa Murphy to be the point of contact for these type of questions. Please direct any phone or other related inquiries to her and she will provide answers as information becomes available.

I again want to express a deep appreciation for all of the work done and will be done in the upcoming weeks to put things back together.

Thank you,

JG

Jamie Goldstein
City of Capitola
City Manager
(831) 475-7300 office
(831) 475-8879 fax

EXHIBIT 43



420 CAPITOLA AVENUE
CAPITOLA, CALIFORNIA 95010
TELEPHONE (831) 475-7300
FAX (831) 479-8879

June 10, 2011

Mike Dayton, Acting Secretary
California Emergency Management Agency
3650 Schriever Ave.
Mather, CA 95655

Subject: March 2011 Storms
Disaster Assistance

Dear Mr. Dayton:

The City of Capitola, located in Santa Cruz County, suffered significant damage during the two storms that swept through the region on March 24, 2011 and March 26, 2011. On March 24, 2011 as a direct result of the 25-year storm, a 72-inch storm drain failed resulting in flows daylighting and flooding the Pacific Cove Mobile Home Park, Capitola Village, and the Capitola Police Department. The mobile home park and police department were evacuated and businesses and residences in the Village impacted. Emergency crews immediately began cleanup and repairs to the failed pipeline, removing failed pipe and debris from the open channel in preparation for the small storm forecast for March 26th. Despite these efforts, the storm runoff on March 26th quickly overwhelmed the open channel and the same areas flooded again.

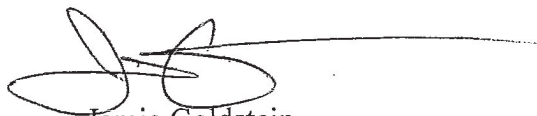
The City of Capitola responded without hesitation in both instances to protect life and property and engaged in a coordinated disaster response. Construction crews were hired to work around the clock to repair the failed pipeline, other contractors were hired to provide refuse disposal of flood damaged material from buildings, repeatedly clean the streets of mud, dust and debris, and other required responses. Residents of the evacuated mobile home park were housed in a joint effort funded by the Red Cross and the City of Capitola. The Capitola Police Department was relocated to temporary trailers to allow repairs to the Police Station. All told, the City has incurred approximately \$1 million in costs and has projected costs that may add another \$1 million to the total response and repair.

The City of Capitola is a small city with an annual operating budget of \$12.5 million. The city has exhausted its entire Emergency Relief Fund and Contingency Fund to cover the costs of the March storms. The City is considering a new fiscal 2011-12 budget that must choose between cutting services or replenishing our reserves. The City has been working with our insurance agents to determine what coverage is available, but it is apparent that much of response costs will not be covered.

The City of Capitola depends on the disaster relief typically provided by CalEMA and FEMA to assist us in being able to respond during events beyond our control. We strongly encourage both agencies to act in accordance with State and Federal guidelines and make the findings necessary to assist local agencies impacted this disaster.

We are enclosing a few photos of the floods that occurred in March. Should you have any questions regarding the City's damages or disaster response please do not hesitate to contact myself or our Public Works Director, Steven Jesberg at 831-475-7300.

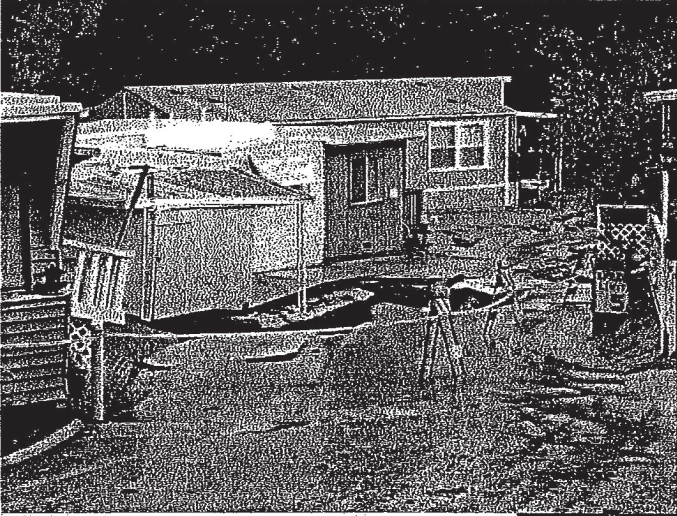
Sincerely yours,

A handwritten signature in black ink, consisting of a large, stylized 'J' and 'G' followed by a horizontal line extending to the right.

Jamie Goldstein
City Manager

Attachments

cc: Congressman Sam Farr
Assemblymember Bill Monning
Susan Mauriello, Santa Cruz County CAO
Capitola City Council



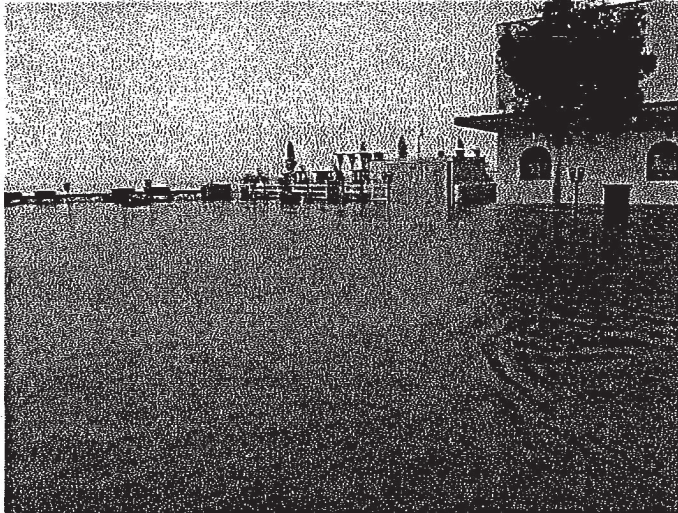


EXHIBIT 44

**COOPERATIVE AGREEMENT AND RESERVATION OF RIGHTS BETWEEN THE
CITY OF CAPITOLA, THE SANTA CRUZ COUNTY FLOOD CONTROL AND
WATER CONSERVATION DISTRICT, AND THE COUNTY OF SANTA CRUZ**

THIS COOPERATIVE AGREEMENT AND RESERVATION OF RIGHTS is made and entered into on the date by which it has been executed by and between the City of Capitola, a municipal corporation ("City"), the Santa Cruz County Flood Control and Water Conservation District ("District"), and the County of Santa Cruz ("County"), with reference to the Recitals set forth below. City, District, and County may be referred to herein individually as a "Party" and collectively as the "Parties."

RECITALS

WHEREAS, in 1949, the City was incorporated in Santa Cruz County.

WHEREAS, in 1955, the State of California created the District for purposes of controlling, diverting, and disposing of flood waters in Santa Cruz County. The District has the statutory power to create "zones" wherein property owners in a set locality are taxed to create a local fund to construct and maintain specific drainage facilities.

WHEREAS, the District is a legal entity that is separate and distinct from the County.

WHEREAS, in 1969, the District created Zone 5 to cover 8.75 square miles within the County, including in Live Oak, Capitola, and Soquel. Zone 5 facilities include certain ditches, culverts, pipes, and water storage basins.

WHEREAS, the District and the City have a dispute as to whether and to what extent the District or the City have legal control over or responsibility for certain drainage facilities that exist in the City. Moreover, the County contends that it has no responsibility for flood control within the City.

WHEREAS, Noble Creek is a natural watercourse that runs through the County until it reaches the City; it thereafter continues through the City, draining into Soquel Creek and flowing on to the Pacific Ocean. The creek consists of both natural channel and piped sections. The creek runs through a portion of natural channel before it gets to Noble Gulch Park, a city park adjacent to Bay Avenue. There, the creek is diverted underground through a series of corrugated metal pipes and concrete box culverts.

WHEREAS, the Parties recognize that critical system improvements may be required to maintain adequate storm drainage systems throughout the District, including within the geographical boundaries of the City.

WHEREAS, the Parties recognize and acknowledge that concerns about potential liability for the failure of storm drainage systems throughout the City and District and uncertainty as to whether the City or District is legally responsible for the maintenance thereof could operate as a disincentive to the City or District to undertake maintenance or repair of certain facilities, and that

this is particularly a concern if maintenance or repair could later be used as evidence of "ownership and control" for purposes of establishing liability for the future failure of said facilities.

WHEREAS, the Parties now wish to work cooperatively toward an approach that facilitates completion of necessary storm drain and flood control system improvements and maintenance projects in the City, while preserving their respective rights as to whether the City or the District bears ultimate legal responsibility or liability for damages or loss caused by potential failure of such facilities.

TERMS OF AGREEMENT

NOW, THEREFORE, in light of the foregoing Recitals, and in consideration of the mutual promises, covenants, and stipulations hereinafter contained, the Parties agree as follows:

SECTION 1 CITY/DISTRICT FUNDING FOR INSPECTION

Within six months of the effective date of this agreement, the City and the District will jointly fund an inspection of the corrugated metal pipe carrying Noble Creek under the former Pacific Cove Mobile Home Park to identify any necessary maintenance issues. The consultant engaged to perform such inspection shall be jointly selected by the City and the District. The consultant shall be engaged by the City Attorney's office and all information obtained from said inspection shall be treated by the Parties as confidential attorney work product. Upon completion of the inspection, a copy of any concluding report shall be delivered to and maintained by the respective legal counsel for the Parties.

SECTION 2 FUNDING COOPERATION

On or after the effective date of this Agreement, the City and the District will work cooperatively toward identifying and pursuing sources of funding for any necessary repairs/replacements/maintenance of storm drain infrastructure within the City, including but not limited to that identified in the inspection referenced in Section 1. Future actions could include, for example, jointly or individually applying for grants or loans, or cooperating in the establishment of an assessment district or some other financing mechanism. Nothing herein shall obligate any Party to complete any future actions or work whatsoever.

SECTION 3 RESERVATION OF RIGHTS

The Parties agree that neither the terms of this Agreement, nor any activity undertaken by the City or the District to implement this Agreement, may be utilized by any Party against another as evidence of ownership, control or responsibility for purposes of establishing liability. "Activity undertaken by the City or the District to implement this Agreement" includes, but is not limited to, emergency responses during rain events and any activities to maintain drainage infrastructure of disputed ownership within the boundaries of the City, performed by City or District personnel,

provided that notice of maintenance work shall be given before the activity begins and notice of emergency responses shall be given within a reasonable time after the work occurs, and provided the Party engaging in the activity shall indemnify the other Parties from any claims or liability to the extent arising from the performance of the activity. Moreover, the Parties agree that they are prohibited from using this Agreement or any actions completed to implement it as proof or evidence that any Party has a duty or responsibility to maintain or replace any drainage infrastructure in the City. Each of the Parties expressly reserves its rights to introduce any other evidence, including evidence of its or any other Parties' actions or activities, prior or subsequent to the term of this Agreement, in order to establish another Party's liability, or its non-liability.

SECTION 4 MISCELLANEOUS PROVISIONS

A. Complete Agreement. This Agreement, along with any attachments, is the full and complete integration of the Parties' agreement with respect to the matters addressed herein and supersedes any previous written or oral agreements between the Parties with respect to the matters addressed herein.

B. Severability. The unenforceability, invalidity, or illegality of any provision(s) of this Agreement shall not render the other provisions unenforceable, invalid, or illegal.

C. Waiver. Waiver by any Party of any portion of this Agreement shall not constitute a waiver of the entire Agreement.

D. Venue, Governing Law, and Jurisdiction. The law of the State of California shall govern this Agreement. In the event that a Party to this Agreement brings any action against another under this Agreement, the Parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Santa Cruz or in the United States District Court for the Northern District of California.

E. Amendments. This Agreement may be amended only by mutual written agreement executed by duly authorized representatives of all Parties.

F. Term. The Parties agree that the term of this Agreement is 7 years. However, in no case shall the expiration of this Agreement's term allow any Party to introduce any activity undertaken by the City or the District during the effective term of this Agreement to effectuate its purpose as evidence of ownership, control or responsibility for purposes of establishing liability.

G. Notices. Notices required under this Agreement shall be deemed fully given if they are sent via regular U.S. mail, and addressed to the respective Party as follows:

CITY:
City of Capitola
Jamie Goldstein, City Manager
420 Capitola Avenue
Capitola, California 95010

COUNTY:
Santa Cruz County
Attention: County Administrative Officer
701 Ocean Street, Suite 520
Santa Cruz, California 95060

DISTRICT:
Santa Cruz County Flood Control
& Water Conservation District, Zone 5
Attention: District Engineer
701 Ocean Street, Room
Santa Cruz, California 95060

H. Contract Construction. Each Party acknowledges that it has reviewed this Agreement and that the normal rules of construction to the effect that any ambiguities are to be resolved against the drafting party shall not apply to the interpretation of this Agreement.

I. Counterparts. The Parties may execute this Agreement in two or more counterparts, which shall, in the aggregate, be deemed an original but all of which, together, shall constitute one and the same instrument.

This AGREEMENT is effective as of the date last written below.


Dated: 6/28/18

CITY OF CAPITOLA

By 
Jamie Goldstein
City Manager

Dated: 12/11/19

COUNTY OF SANTA CRUZ

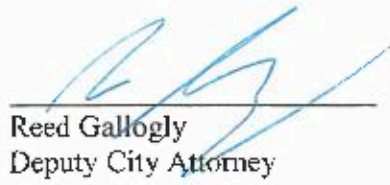
By 
Carlos Palacios
County Administrative Officer

Dated: _____

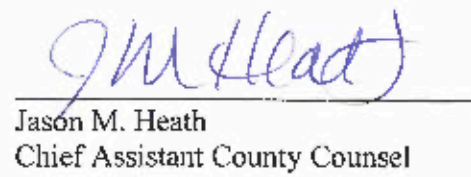
SANTA CRUZ COUNTY FLOOD CONTROL &
WATER CONSERVATION DISTRICT

By 
Ryan Coonerty
Chairperson, Zone 5

Approved As To Form:



Reed Gallogly
Deputy City Attorney



Jason M. Heath
Chief Assistant County Counsel



Justin A. Ghann
District Legal Counsel

EXHIBIT 45



CAPITOLA CITY COUNCIL AGENDA REPORT

MEETING OF JUNE 27, 2019

FROM: Public Works Department

SUBJECT: Consider an Agreement between the City of Capitola, the County of Santa Cruz and Zone 5 of the Santa Cruz County Flood Control and Water Conservation District Regarding Repairs and Maintenance of Various Storm Drain Systems

RECOMMENDED ACTION: Approve the proposed agreement between the City of Capitola, County of Santa Cruz, and Zone 5 of the Santa Cruz County Flood Control and Water Conservation District regarding drainage facilities.

BACKGROUND: The operation and maintenance of various storm drain systems throughout the City of Capitola has been a point of contention with the County of Santa Cruz for many years. The attached cooperative agreement between the parties has been prepared to allow each agency the opportunity to study, maintain, and respond during emergencies to the various drainage systems without such actions being used by the other party as evidence of ownership.

DISCUSSION: This agreement has the following terms that will improve the operation and maintenance of key drainage infrastructure:

1. Requires the joint funding for the inspection of the Noble Gulch storm drain pipe that flows from Noble Gulch Park to Soquel Creek, running under the lower Beach and Village Parking Lot, Capitola Avenue, and several houses prior to reaching the creek.
2. Facilitates opportunities to identify and pursue funding for improvement and repairs of storm drainage systems.
3. Allows either party to maintain or provide emergency work on any drainage system.

Prior to this agreement both parties have been hampered in their ability to take the actions specified above. While final and complete resolution of the control of the drainage systems in the city will take significantly longer to resolve, this agreement may lead to opportunities to provide long term funding for improvements and maintenance of the drainage infrastructure.

FISCAL IMPACT: The only direct cost of approving this agreement would be the cost share for the inspection of the Noble Gulch storm drain pipe. This inspection is estimated to cost \$30,000. The City's share would be paid from the Public Works budget.

ATTACHMENTS:

Zone 5 Maintenance Agreement
June 27, 2019

1. Cooperative Agreement with County

Report Prepared By: Steve Jesberg
Public Works Director

Reviewed and Forwarded by:



Jamie Goldstein, City Manager

6/21/2019

**COOPERATIVE AGREEMENT AND RESERVATION OF RIGHTS BETWEEN THE
CITY OF CAPITOLA, THE SANTA CRUZ COUNTY FLOOD CONTROL AND
WATER CONSERVATION DISTRICT, AND THE COUNTY OF SANTA CRUZ**

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WHEREAS, the District is a legal entity that is separate and distinct from the County.

WHEREAS, in 1969, the District created Zone 5 to cover 8.75 square miles within the County, including in Live Oak, Capitola, and Soquel. Zone 5 facilities include certain ditches, culverts, pipes, and water storage basins.

WHEREAS, the District and the City have a dispute as to whether and to what extent the District or the City have legal control over or responsibility for certain drainage facilities that exist in the City. Moreover, the County contends that it has no responsibility for flood control within the City.

WHEREAS, Noble Creek is a natural watercourse that runs through the County until it reaches the City; it thereafter continues through the City, draining into Soquel Creek and flowing on to the Pacific Ocean. The creek consists of both natural channel and piped sections. The creek runs through a portion of natural channel before it gets to Noble Gulch Park, a city park adjacent to Bay Avenue. There, the creek is diverted underground through a series of corrugated metal pipes and concrete box culverts.

WHEREAS, the Parties recognize that critical system improvements may be required to maintain adequate storm drainage systems throughout the District, including within the geographical boundaries of the City.

WHEREAS, the Parties recognize and acknowledge that concerns about potential liability for the failure of storm drainage systems throughout the City and District and uncertainty as to whether the City or District is legally responsible for the maintenance thereof could operate as a disincentive to the City or District to undertake maintenance or repair of certain facilities, and that

this is particularly a concern if maintenance or repair could later be used as evidence of “ownership and control” for purposes of establishing liability for the future failure of said facilities.

WHEREAS, the Parties now wish to work cooperatively toward an approach that facilitates completion of necessary storm drain and flood control system improvements and maintenance projects in the City, while preserving their respective rights as to whether the City or the District bears ultimate legal responsibility or liability for damages or loss caused by potential failure of such facilities.

TERMS OF AGREEMENT

NOW, THEREFORE, in light of the foregoing Recitals, and in consideration of the mutual promises, covenants, and stipulations hereinafter contained, the Parties agree as follows:

SECTION 1 CITY/DISTRICT FUNDING FOR INSPECTION

Within six months of the effective date of this agreement, the City and the District will jointly fund an inspection of the corrugated metal pipe carrying Noble Creek under the former Pacific Cove Mobile Home Park to identify any necessary maintenance issues. The consultant engaged to perform such inspection shall be jointly selected by the City and the District. The consultant shall be engaged by the City Attorney’s office and all information obtained from said inspection shall be treated by the Parties as confidential attorney work product. Upon completion of the inspection, a copy of any concluding report shall be delivered to and maintained by the respective legal counsel for the Parties.

SECTION 2 FUNDING COOPERATION

On or after the effective date of this Agreement, the City and the District will work cooperatively toward identifying and pursuing sources of funding for any necessary repairs/replacements/maintenance of storm drain infrastructure within the City, including but not limited to that identified in the inspection referenced in Section 1. Future actions could include, for example, jointly or individually applying for grants or loans, or cooperating in the establishment of an assessment district or some other financing mechanism. Nothing herein shall obligate any Party to complete any future actions or work whatsoever.

SECTION 3 RESERVATION OF RIGHTS

The Parties agree that neither the terms of this Agreement, nor any activity undertaken by the City or the District to implement this Agreement, may be utilized by any Party against another as evidence of ownership, control or responsibility for purposes of establishing liability. “Activity undertaken by the City or the District to implement this Agreement” includes, but is not limited to, emergency responses during rain events and any activities to maintain drainage infrastructure of disputed ownership within the boundaries of the City, performed by City or District personnel,

provided that notice of maintenance work shall be given before the activity begins and notice of emergency responses shall be given within a reasonable time after the work occurs, and provided the Party engaging in the activity shall indemnify the other Parties from any claims or liability to the extent arising from the performance of the activity. Moreover, the Parties agree that they are prohibited from using this Agreement or any actions completed to implement it as proof or evidence that any Party has a duty or responsibility to maintain or replace any drainage infrastructure in the City. Each of the Parties expressly reserves its rights to introduce any other evidence, including evidence of its or any other Parties' actions or activities, prior or subsequent to the term of this Agreement, in order to establish another Party's liability, or its non-liability.

SECTION 4 MISCELLANEOUS PROVISIONS

A. Complete Agreement. This Agreement, along with any attachments, is the full and complete integration of the Parties' agreement with respect to the matters addressed herein and supersedes any previous written or oral agreements between the Parties with respect to the matters addressed herein.

B. Severability. The unenforceability, invalidity, or illegality of any provision(s) of this Agreement shall not render the other provisions unenforceable, invalid, or illegal.

C. Waiver. Waiver by any Party of any portion of this Agreement shall not constitute a waiver of the entire Agreement.

D. Venue, Governing Law, and Jurisdiction. The law of the State of California shall govern this Agreement. In the event that a Party to this Agreement brings any action against another under this Agreement, the Parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Santa Cruz or in the United States District Court for the Northern District of California.

E. Amendments. This Agreement may be amended only by mutual written agreement executed by duly authorized representatives of all Parties.

F. Term. The Parties agree that the term of this Agreement is 7 years. However, in no case shall the expiration of this Agreement's term allow any Party to introduce any activity undertaken by the City or the District during the effective term of this Agreement to effectuate its purpose as evidence of ownership, control or responsibility for purposes of establishing liability.

G. Notices. Notices required under this Agreement shall be deemed fully given if they are sent via regular U.S. mail, and addressed to the respective Party as follows:

CITY:
City of Capitola
Jamie Goldstein, City Manager
420 Capitola Avenue
Capitola, California 95010

COUNTY:
Santa Cruz County
Attention: County Administrative Officer
701 Ocean Street, Suite 520
Santa Cruz, California 95060

DISTRICT:
 Santa Cruz County Flood Control
 & Water Conservation District, Zone 5
 Attention: District Engineer
 701 Ocean Street, Room
 Santa Cruz, California 95060

H. Contract Construction. Each Party acknowledges that it has reviewed this Agreement and that the normal rules of construction to the effect that any ambiguities are to be resolved against the drafting party shall not apply to the interpretation of this Agreement.

I. Counterparts. The Parties may execute this Agreement in two or more counterparts, which shall, in the aggregate, be deemed an original but all of which, together, shall constitute one and the same instrument.

This AGREEMENT is effective as of the date last written below.

Dated: _____

CITY OF CAPITOLA

By _____
 Jamie Goldstein
 City Manager

Dated: _____

COUNTY OF SANTA CRUZ

By _____
 Carlos Palacios
 County Administrative Officer

Dated: _____

SANTA CRUZ COUNTY FLOOD CONTROL &
 WATER CONSERVATION DISTRICT

By _____
 Ryan Coonerty
 Chairperson, Zone 5

Attachment: Cooperative Agreement with County (Zone 5 Maintenance Agreement)

Approved As To Form:

Anthony Condotti
City Attorney

Jason M. Heath
Chief Assistant County Counsel

District Legal Counsel

Attachment: Cooperative Agreement with County (Zone 5 Maintenance Agreement)

EXHIBIT 46



January 16th, 2023

Kailash Mozumder
City of Capitola
420 Capitola Avenue
Capitola, CA 95010

Per our field walk, please see estimate proposal to temporarily repair the damaged pathway near the Noble Gulch Culvert. Shall this portion of work be approved contractor proposes to perform work on a T&M basis not to exceed a fixed amount.

Item 1	Walkway at 427 Riverview Ave. Portion	NTE \$25,000.00
Item 2	Alleyway Between 427 & 429 Riverview Portion	NTE \$21,000.00
<hr/> Grand Total		NTE \$46,000.00

Inclusions:

- Setting Formwork
- Backfilling Existing Hole with Sand Slurry
- 4" Decomposed Granite

Exclusions:

- Dewatering
- Removal and replacement of bollard at walkway entrance
- Off Haul of Any Material

The Graniterock staff looks forward to working with you on this project.

Thank you,

Kevin McDermott
Project Engineer
Graniterock



March 31st, 2023

Kailash Mozumder
City of Capitola
420 Capitola Avenue
Capitola, CA 95010

Please see invoice and applicable backup to complete the emergency repairs at the Noble Gulch Culvert. This portion of work was performed on a Time and Material basis per the attached breakdown at each location:

Item 1	Walkway at 427 Riverview Ave. Portion	\$18,805.53
Item 2	Alleyway Between 427 & 429 Riverview Portion	\$13,754.54
Grand Total		\$32,560.07

Thank you,

Kevin McDermott
Project Engineer
Graniterock

Billing Status Report

Granite Rock Company

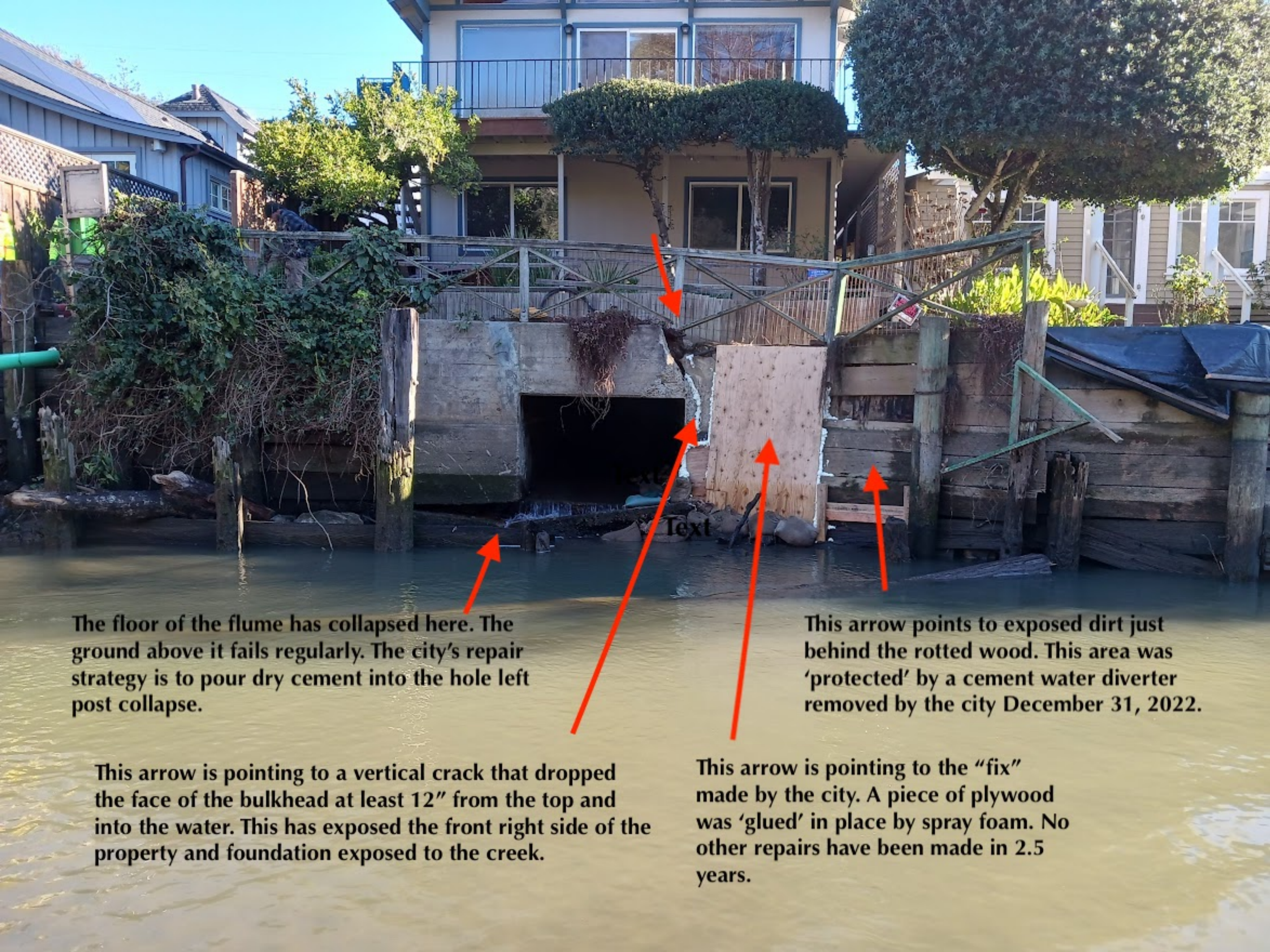
Change Order Detail - Job 7912

All Billings - Contract: 2023-00000032

DATES				LAST PAYMENT		DISPOSITION VARIANCE							
Billing	Perform	Report	Submit	Number	Period	Billed	Paid	Balance	Pending	Disputed	Writeoff	AltBillNo	Company
001 • 940002													
1.0	F	1/25/23	1/27/23		P	7,618.92		-7,618.92	-7,618.92				GRC
2.0	F	1/26/23	2/03/23		P	6,315.60		-6,315.60	-6,315.60				GRC
3.0	F	1/27/23	2/03/23		P	7,263.64		-7,263.64	-7,263.64				GRC
4.0	F	1/30/23	2/03/23		P	3,311.91		-3,311.91	-3,311.91				GRC
5.0	F	1/31/23	3/29/23		P	8,050.00		-8,050.00	-8,050.00				GRC
001						32,560.07		-32,560.07	-32,560.07				
Grand Totals						32,560.07		-32,560.07	-32,560.07				

Billing	Date	Amount	Alley Way %	Alley Way \$	427 Riverview %	427 Riverview \$
1.0	1/25/2023	\$ 7,618.92	50%	\$ 3,809.46	50%	\$ 3,809.46
2.0	1/26/2023	\$ 6,315.60	20%	\$ 1,263.12	80%	\$ 5,052.48
3.0	1/27/2023	\$ 7,263.64	60%	\$ 4,358.18	40%	\$ 2,905.46
4.0	1/30/2023	\$ 3,311.91	40%	\$ 1,324.76	60%	\$ 1,987.15
5.0	1/31/2023	\$ 8,050.00	100%	\$ 8,050.00	0%	\$ -
Total		\$32,560.07		\$18,805.53		\$13,754.54

EXHIBIT 47



The floor of the flume has collapsed here. The ground above it fails regularly. The city's repair strategy is to pour dry cement into the hole left post collapse.

This arrow is pointing to a vertical crack that dropped the face of the bulkhead at least 12" from the top and into the water. This has exposed the front right side of the property and foundation exposed to the creek.

This arrow points to exposed dirt just behind the rotted wood. This area was 'protected' by a cement water diverter removed by the city December 31, 2022.

This arrow is pointing to the "fix" made by the city. A piece of plywood was 'glued' in place by spray foam. No other repairs have been made in 2.5 years.





















EXHIBIT 48



420 Capitola Avenue
Capitola, California 95010
Telephone: (831) 475-7300
FAX: (831) 479-8879
Website: www.cityofcapitola.org

Right of Entry Agreement

Joe McLean (the "Owner") is the owner of that certain real property located in the City of Capitola, identified as 427 Riverview Ave (APN 03513201), Capitola, CA (hereinafter the "Property".)

Owner hereby grants to the City of Capitola ("City") and its employees and agents a right to enter and for ingress and egress through the Property to allow for access for the City to repair the Riverview pedestrian path and headwall (hereinafter the "Work").

In consideration of the rights granted herein, it is understood and agreed as follows:

1. The Work. Subject to the requirements of this Agreement, City, its employees, assigns, consultants, and contractors shall have the right to access and repair the pedestrian pathway and eroded areas over the Noble Gulch outfall pipe. In addition, the Agreement, City, its employees, assigns, consultants, and contractors shall have the right for ingress and egress over the Property as shown in Exhibit A of this Agreement. Exhibit A is attached to this Agreement and incorporated into this Agreement by this reference.

Upon conclusion of the Work, the City will leave the Property in a similar condition as to that when the City commenced the Work, less any changes necessitated by the Work.

2. Mutual Indemnification. To the greatest extent permitted by law, each party hereby covenants, on behalf of itself and its permitted successors and assigns, to indemnify, defend and hold the other party and its elected and appointed officers, officials, employees, consultants, contractors, agents and representatives (collectively, the "Indemnitees") harmless from and against all liability, loss, cost, claim, demand, action, suit, judicial or administrative proceeding, penalty, deficiency, fine, order, damage and expense (including without limitation attorneys' fees and costs of litigation) (all of the foregoing, collectively "Claims") arising out of or in connection with the Work, including without limitation, Claims arising in connection with entry onto the Property or otherwise arising out of the exercise of the right of access provided pursuant to this Agreement. Each party's defense and indemnity obligations under this section shall not apply to the extent any Claim results from the active negligence or willful misconduct of the other party. Each party's defense and indemnity obligations pursuant to this section shall survive the expiration or earlier termination of this Agreement. This mutual indemnification shall be limited by all rights and immunities of each party established by State law, including but not limited to those immunities set forth in Government Code section 810 et seq.

3. Effective Date. This Agreement shall be effective on the date it is executed by the parties. However, the temporary right of the City to use the Property as described in paragraph 1 shall commence on the date the City sends written notice to Owner that the Work shall start on the Owner's Property.

Mr. Joe McLean
January 23, 2023

4. Termination Date. This temporary right to use the Property for the Work shall last at total of 120 days from the date of the letter from the City stating Work shall commence at Property, after which City will retain no rights or interests to use or access the Property whatsoever as a result of this Agreement. The City shall have the option to extend its use of the Property for 30 days by sending written notice to the Owner.
5. Authority. Owner represents and warrants that it has the legal authority to enter into this Agreement and to grant City the right to enter the Property as described herein. The person signing this Agreement on behalf of Owner is duly and validly authorized to do so.
6. No Duty Created. Nothing in this Agreement creates a duty or obligation on the part of City to conduct or perform the Work on the Property. City shall determine, in its own judgment, the most appropriate means of accomplishing the Work, and Owner agrees that it shall facilitate and not interfere with the Work.
7. Warranty. The City shall not be responsible for any failure of the Work, including any damages to real or personal property for said failure of the Work. The City makes no warranty or guarantee, express or implied as to the quality or effectiveness of the Work. If materials are added as part of the Work, the materials shall be installed "as is," in the condition received from the manufacturer or other sources, if any, and the City makes no warranty or guarantee, express or implied, as to the suitability of the materials used as part of the Work.
8. Voluntary Execution. The Parties hereby warrant and certify that they are authorized to execute this Agreement and have entered into this Agreement freely, voluntarily, and of their own volition without fraud, duress, or undue influence. The Parties have read the Agreement in its entirety, know and understand the contents thereof, and sign the Agreement as their own free act.
9. Entire Agreement. This Agreement contains the entire understanding of the Parties with respect to the subject matter hereof and supersedes all prior or contemporaneous agreements and understandings, oral or written with respect to such subject matter.
10. Amendments; Waiver. This Agreement may be amended only by a written instrument executed by the Parties or their permitted successors in interest. No waiver by a Party of any provision of this Agreement shall be considered a waiver of any other provision or any subsequent breach of the same or any other provision, including the time for performance of any such provision.
11. Counterparts. This Agreement may be executed in any number of identical counterparts and each counterpart shall be deemed to be an original document. All executed counterparts together shall constitute one and the same document, and any counterpart signature pages may be detached and assembled to form a single original document.

Mr. Joe McLean
January 23, 2023

IN WITNESS WHEREOF, the Parties have executed this Agreement as of January 23, 2023.

OWNER


Signature and Date

JWMJR116 @ GMAIL.COM
Email and Telephone Number
626.523.3159

1/24/2023

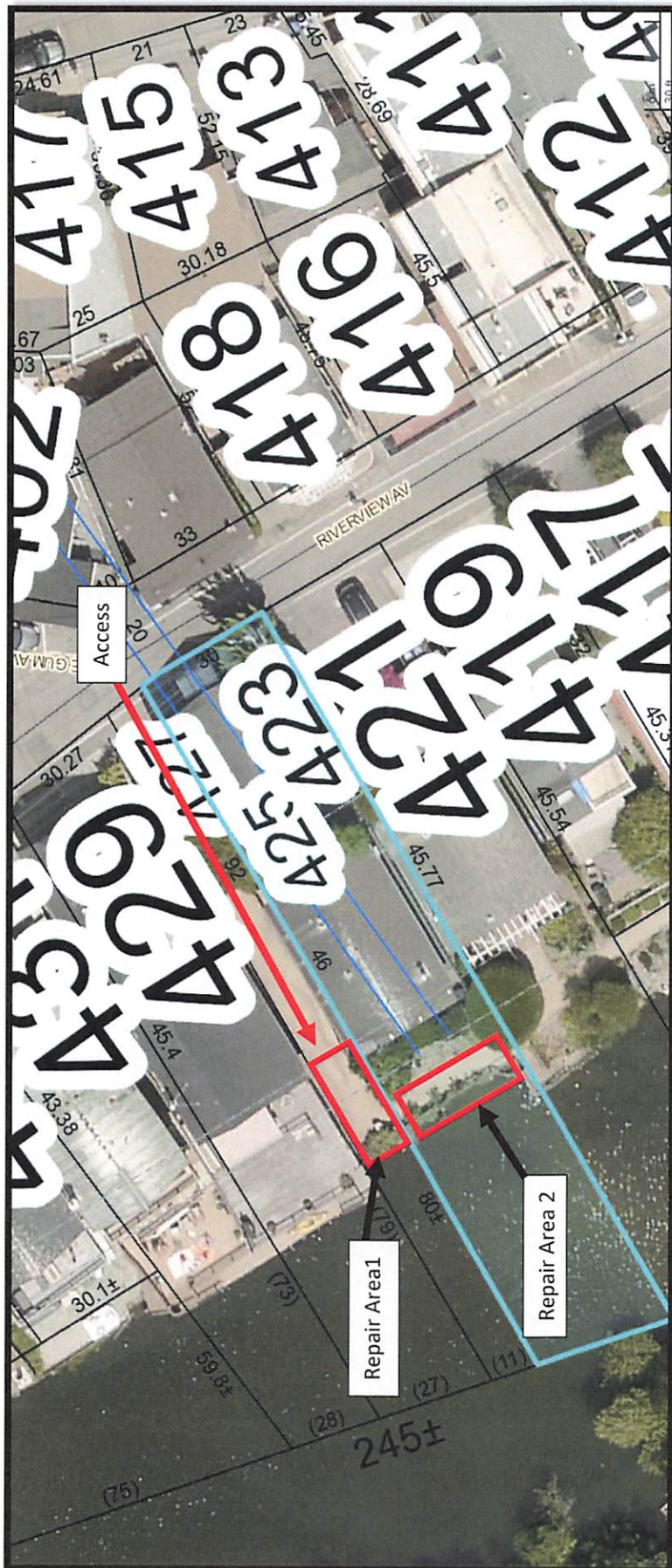
Property Manager [Owner]

CITY OF CAPITOLA

Signature and Date

Telephone Number

Name and Title



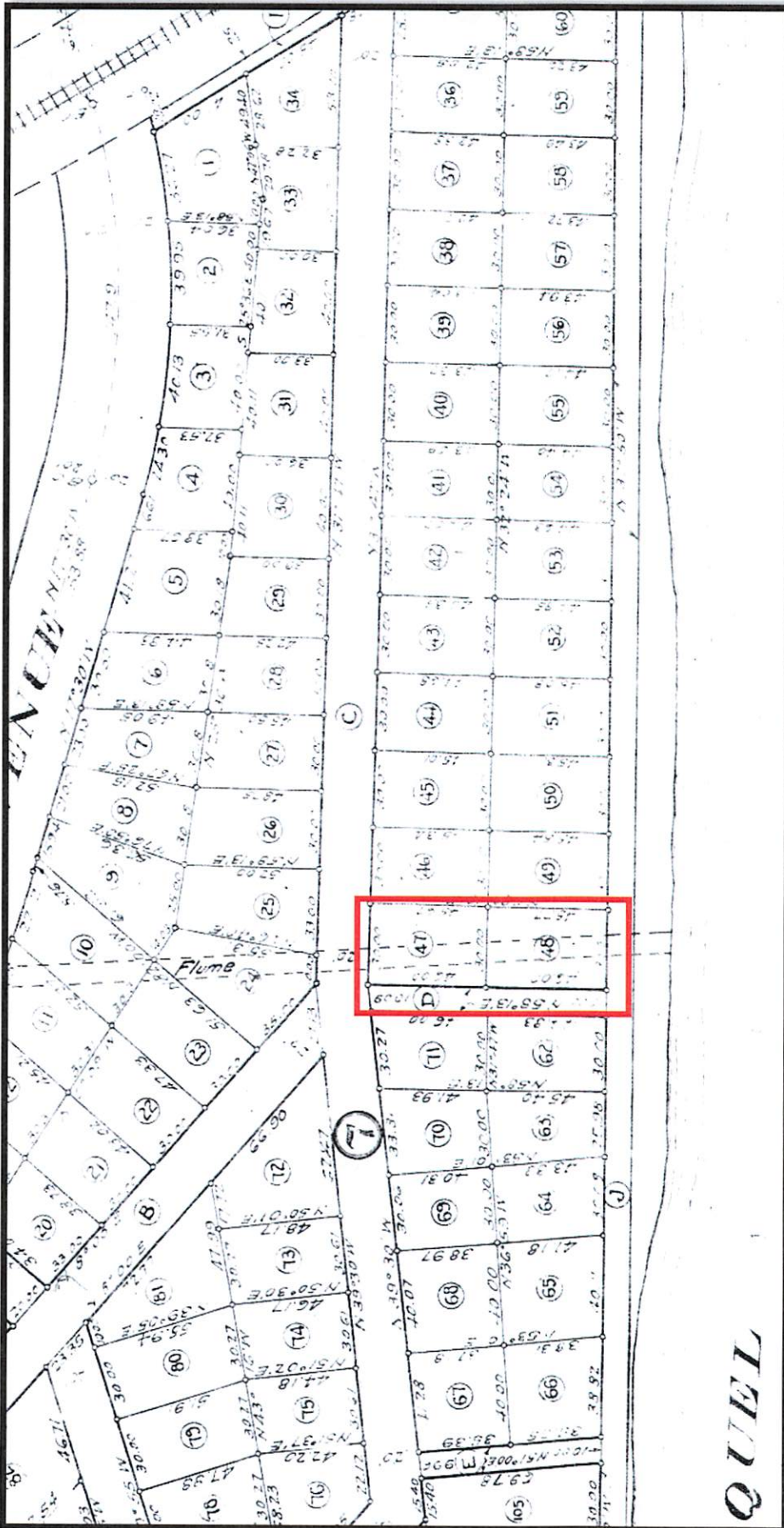


EXHIBIT 49



GEOTECHNICAL | ENVIRONMENTAL | CHEMICAL | MATERIAL TESTING | SPECIAL INSPECTIONS

April 21, 2023

Proposal No. 23-072

Andy Sterbenz, PE
Schaaf and Wheeler Consulting Civil Engineers
3 Quail Run Circle, Ste 101
Salinas, CA 93907

Subject: Proposal for Geotechnical Investigation – Design Phase
Storm Damaged Culvert & Headwall
427 Riverview Avenue
Capitola, California

Dear Andy,

Pacific Crest Engineering Inc. (PCEI) is pleased to present our proposed scope of work and fee to prepare a design level geotechnical investigation for the storm damaged culvert and headwall at 427 Riverview Avenue in Capitola, California. This proposal is based upon our discussions with you and Kailash Mozumder with the City of Capitola, a site visit conducted on April 20th, 2023, and our experience with similar projects in the Monterey Bay area.

INTRODUCTION

The subject culvert and associated headwall sustained damage during the storm events of January 2023. The reinforced concrete headwall parallels Soquel Creek and is approximately 40-feet-long by 8-feet-tall. The culvert lies in the center of the headwall and is approximately 6-feet-wide by 4-feet-tall. The headwall and culvert appear are severely cracked and weathered. During the winter storms, the flanks of the headwall eroded due to a combination of surface runoff and wave action, partially undermining the pathway above. The City has since restored the pathway. Access to the site is via an alley that is perpendicular to the headwall between 427 and 429 Riverview Ave. A storm drain runs down the center of the alley.

It is our understanding that Rock Solid Geotechnical Engineering (RSGE) is concurrently conducting a geotechnical investigation for the remodel of the single-family residence at 427 Riverview Ave. While the two investigations are unrelated, we have been in communication with all relevant parties including RSGE, the homeowners, and the City. Based on these conversations, RSGE and PCEI will be sharing subsurface data.

The purpose of our investigation will be to explore the subsurface conditions as close as practical to the damaged area and develop geotechnical design recommendations to be used in the design of a new headwall. Our geotechnical investigation will not include an assessment of the scour potential along the base of the subject headwall.

SCOPE OF WORK

Our scope of work for the geotechnical investigation will be limited to the following:

1. Project coordination and management.
2. Review of published geologic maps, geologic and geotechnical information pertaining to the development area and information available in our files or on the Santa Cruz County GIS service.
3. We will mark the proposed test boring location with white paint and contact Underground Service Alert (USA) at least 72 hours prior to drilling our test borings.
4. Exploration, sampling, and classification of surface and subsurface soils by drilling one boring in the alley near the northern end of the headwall. We anticipate that the test boring will be about 50 feet deep. The actual boring depth may vary and will depend on the soil and geologic conditions encountered during the subsurface investigation. We will off haul all cuttings associated with our drilling program. This subsurface scope assumes that additional boring/CPT data will be provided by RSGE.
5. Laboratory testing of selected soil samples to determine their relevant engineering properties.
6. Development of a geologic map and sections of the distressed area as necessary.
7. Engineering analysis and evaluation of the field and laboratory data. Based on our findings we will develop geotechnical design criteria to be used in the design of the new headwall.
8. We will prepare a written report which documents our field and laboratory investigations. Included in this report will be an analysis of our findings and design level recommendations for the project.

EXCLUDED SERVICES

Services that are not part of this proposal include, but are not limited to, the following:

1. Vehicular and pedestrian traffic control. We have assumed that the City will provide the necessary signage and personnel to close the pathway and alley during our field investigation. We can provide this service at your request for an additional fee.
2. A wave run-up analysis and determination of wave impact forces. We can provide this service at your request for an additional fee.
3. An assessment of other existing or proposed structures at the site.



4. An environmental assessment or investigation for the presence of hazardous or toxic materials.
5. An assessment of the corrosivity potential of the soil on the site. We can provide this service at your request for an additional fee.
6. Infiltration testing to support the design of storm water runoff infiltration pits or groundwater recharge facilities.
7. Our scope of work and fee does not include time spent on follow-up project meetings, review of contract plans and specifications, phone conferences, construction observation and testing services, etc., after the report is complete. We are available to provide those services of course, however the fees for these services cannot be realistically estimated this early in the project and are therefore typically billed on a "time and materials" fee basis in accordance with our latest fee schedule. We can provide a cost proposal for these post-report services once project design and construction plans are underway.

CLIENT/CITY FURNISHED SERVICES

It is understood that the Client/City would furnish the following:

1. The City is responsible for providing access to the site for our drilling investigation. This include the removal of the bollard that is currently blocking access through the alley way.
2. The City must review our proposed boring location and approve their location for clearance from underground utilities or other subsurface obstructions or facilities. As discussed with Kailash Mozumder with the City of Capitola during our site visit on April 21st, we will do our best to avoid damage to the existing storm drain and other buried infrastructure situated in close proximity to our proposed boring location; however, damage to these elements may be unavoidable given the limited space in the area. We assume that any damage to the storm drain, and other buried infrastructure will be repaired by the City.
3. Client is responsible for all permits.
4. All available data, maps, drawings, and reports of any kind pertinent to the referenced site.
5. Topographic survey of the property and proposed building area, at a suitable scale of 1 inch = 20 feet or larger.

FEE ESTIMATE

We propose to perform the scope of work outlined herein on a fixed price basis, unless additional work is authorized, in which case the fee will be increased in accordance with our customary rates for such additional services. We have assumed the work is to be performed as part of a public works project. This requires compliance with public works laws requiring payment of prevailing wages and maintenance of certified payrolls, among others. The following spreadsheet provides a breakdown



of our estimated hours and associated fees to perform the services outlined in Tasks 1 through 7 above.

Task	Description	Personnel/Item	Hours	\$/Hour	Cost/ Item
1	Project Coordination & Opening	Principal Engineer	2	210	420
		Staff Engineer/Geologist	4	165	660
2	Literature Review	Associate Engineer	2	200	400
3	Site Marking & Utility Locating	Associate Engineer	2	200	400
4	Drilling & Sampling	Drill Rig Mob. & Drilling	8	569	4554
		Associate Engineer	8	200	1600
		Disposal of Drilling Fluid			1100
5	Laboratory Analysis	Lump Sum			2000
6	Geologic Mapping	Principal Geologist	4	210	840
7	Engineering Analysis	Principal Engineer	4	210	840
		Associate Engineer	12	200	2400
8	Report Preparation	Principal Engineer/Geologist	4	210	840
		Associate Engineer	8	200	1600
		Staff Engineer/Geologist	8	165	1320
Total Cost of Professional Services					\$18,974.00

Our fee to perform the geotechnical services described above will be Eighteen Thousand, Nine Hundred and Seventy-Four Dollars (\$18,974.00), unless additional work is authorized, in which case the fee will be increased in accordance with our customary rates for such additional services. This offer is valid for a period of thirty (30) days.

ASSUMPTIONS

Our scope of work and fee assume the following:

1. Preparation of encroachment permits, or payment of encroachment permit fees, to any public agency or utility company having jurisdiction over the work area have not been included in our scope of work.
2. We have assumed that the City will provide the necessary signage and personnel to close the pathway and ally during our field investigation. We can provide this service at your request for an additional fee.
3. We have assumed that the City will remove and replace the bollard that is currently blocking access through the alley.
4. The City must review our proposed boring location and approve its location for clearance



from underground utilities or other subsurface obstructions or facilities. As discussed with Kailash Mozumder with the City of Capitola during our site visit on April 21st, we will do our best to avoid damage to the existing storm drain and other buried infrastructure situated in close proximity to our proposed boring location; however, damage to these elements may be unavoidable given the limited space in the area. We assume that any damage to the storm drain, and other buried infrastructure will be repaired by the City.

5. Our scope of work does not include a wave run-up analysis and determination of wave impact forces. We can provide this service at your request for an additional fee.
6. Our scope of work does not include the assessment of other existing or proposed structures at the site.
7. Our scope of work does not include a scour analysis at the base of the headwall.
8. Our scope of work and fee does not include a site-specific ground motion analysis as described in section 11.4.8 of ASCE 7-16. We assume that the structural engineer will utilize the exceptions noted in the reference section of ASCE 7-16 to perform the seismic design of the structures. We can provide an additional scope of work and fee to perform a site-specific ground motion analysis if desired by the client and/or structural designer.
9. It is possible that the initial findings of our investigation will identify potential hazards that can only be evaluated through additional subsurface exploration. We have developed a scope of work that we anticipate will be adequate, but unexpected conditions could be encountered. If additional subsurface exploration is required based on preliminary findings, we will meet with you to obtain authorization prior to continuing. We will prepare a separate proposal and cost estimate at the time any additional work is planned.
10. An environmental assessment or investigation for the presence of hazardous or toxic materials in the soil, groundwater or air, on, below or proximal to the site have not been included in our scope of work. This scope of work and budget also assumes that contaminated soil and/or groundwater will not be encountered. If any unusual vapors, odors or visual contamination are noticed during drilling of any test boring, the boring will be stopped, backfilled with grout and the suspected drill cuttings will be bagged, labeled for future source reference and provided to the Client for their disposal.
11. Flooding, hydrologic or quantitative storm water runoff analyses have not been included in our scope of work.
12. Infiltration testing and the design of storm water runoff percolation pits, groundwater recharge facilities and/or pervious pavements have not been included in our scope of work. We can provide this service at your request for an additional fee.
13. Testing of the onsite soils for corrosion potential has not been included in our scope of work.



We can provide this service at your request for an additional fee.

14. Time spent on follow-up project meetings, review of contract plans and specifications, phone conferences, construction observation and testing services, etc., *after* the report is complete is not included in our scope and fee. We are available to provide those services of course, however the fees for these services cannot be realistically estimated this early in the project and are therefore typically billed on a "time and materials" fee basis in accordance with our latest fee schedule. We can provide a cost proposal for these post-report services once project design and construction plans are underway.

We request the following to be furnished prior to inception of our field investigation:

- A. Right of entry. We assume that we will be granted access to the property and you have notified relevant parties of our intent to do work there.
- B. Location of any known underground utilities. *Pacific Crest Engineering Inc. will not assume responsibility for damage to underground utilities that are not properly located by the City or private underground utility locators prior to drilling.*
- C. An accurate topographic map depicting the entire project area, at a suitable scale of 1 inch=20 feet or larger ratio.
- D. Any available data, maps, drawings, and reports pertinent to the referenced site.

SITE DISTURBANCE

In performing this work, a certain level of site disturbance may be unavoidable. We will take care to limit any site disturbance associated with field operations; however, a reasonable level of disturbance should be expected. We will backfill our boreholes to the ground surface with grout, but some settling may occur. It must be understood that some amount of post-investigation maintenance or repair on your part may be required. Any improvements or items of importance that should be avoided during our field investigation should be brought to our attention prior to the scheduled drill date.

SCHEDULE

Upon receiving your written authorization, we will schedule the drill rig for the first available date. Once our field work is completed, we estimate that it will be about 3 to 4 weeks to complete our engineering analysis. We can provide preliminary design criteria to your design team at that time. Our final geotechnical report should be available about 2 to 3 weeks later.



Storm Damaged Culvert & Headwall - Capitola
April 21, 2023

Proposal No. 23-072

AUTHORIZATION

To authorize our firm to provide these services, please sign and return the enclosed Professional Services Agreement as soon as possible.

Pacific Crest Engineering Inc. appreciates the opportunity to provide our services and would be pleased to answer any questions you may have about our proposed scope of work and fee.

Sincerely,

PACIFIC CREST ENGINEERING INC.



Matt Maciel, PE, GE
Principal Geotechnical Engineer
GE 3189, Expires 9/30/24



**EXHIBIT B
FEE SCHEDULE**

SEE ATTACHED PROPOSAL/SCOPE OF WORK

EXHIBIT C

INSURANCE FORMS

CONSULTANT shall provide, in addition to the Certificates of Insurance, original Endorsement affecting the coverages specified in herein on the attached form. No substitute form will be accepted.

This is an Exhibit to, and made a part of and incorporated by reference to the Agreement dated 10/6/2023, by and between Pacific Crest Engineering Inc, hereinafter referred to as "**Consultant**", and the City of Capitola, hereinafter referred to as "**City**", providing for professional services.

1. **Consultant's Duty to Show Proof of Insurance.** Consultant, in order to protect City and its Council members, officials, , officers, and employees against all claims and liability for death, injury, loss and damage as a result of Consultant's negligent acts, errors, or omissions in connection with the performance of Consultant's obligations, as required in this Agreement, shall secure and maintain insurance as described below. Consultant shall not perform any work under this Agreement until Consultant has obtained all insurance required under this section and the required certificates of insurance and all required endorsements have been filed with the City's authorized insurance representative, insurance Tracking Services Inc. (ITS). Receipt of evidence of insurance that does not comply with all applicable insurance requirements shall not constitute a waiver of the insurance requirements set forth herein. The required documents must be signed by the authorized representative of the insurance company shown on the certificate. Upon request, Consultant shall supply proof that such person is an authorized representative thereof, and is authorized to bind the named underwriter(s) and their company to the coverage, limits and termination provisions shown thereon, Consultant shall promptly deliver to ITS a certificate of insurance, and all required endorsements, with respect to each renewal policy, as necessary to demonstrate the maintenance of the required insurance coverage for the term specified herein. Such certificates and endorsements shall be delivered to ITS prior to the expiration date of any policy and bear a notation evidencing payment of the premium thereof if so requested. Consultant shall immediately pay any deductibles and self-insured retentions under all required insurance policies upon the submission of any claim by Consultant or City as an additional insured.

1.1 Insurance Requirements

Commercial General Liability Insurance

Commercial General Liability Insurance including, but not limited to, Contractual Liability Insurance (specifically concerning the indemnity provisions of this Agreement with the City), Products-Completed Operations Hazard, liability for slander, false arrest and invasion of privacy arising out of professional services rendered hereunder, Personal Injury (including bodily injury and death), and Property Damage for liability arising out of Consultant's performance of services under this Agreement. The Commercial General Liability insurance shall contain no exclusions or limitation for independent contractors working on the behalf of the named insured. Consultant shall maintain the Products-Completed Operations Hazard coverage for the longest period allowed by law following termination of this Agreement. The amount of said insurance coverage required by this Agreement shall be the policy limits, which shall be at least two million dollars (\$2,000,000) each occurrence and five million dollars (\$5,000,000) aggregate.

*Please note, the City will require a separate additional insured endorsement for the Commercial General Liability policy, listing the "City of Capitola, its Council members, officials, agents, officers, and employees".

☒ Business Automobile Liability Insurance

Automobile Liability Insurance against claims of Personal Injury (including bodily injury and death) and Property Damage covering any vehicle and/or all owned, leased, hired and non-owned vehicles used in the performance of Services pursuant to this Agreement with coverage equal to the policy limits, which shall be at least two million dollars (\$2,000,000) each occurrence.

☒ Workers' Compensation Insurance

Consultant shall submit written proof that Consultant is insured against liability for workers' compensation in accordance with the provisions of section 3700 of the California Labor Code. Consultant shall require any Subconsultants to provide workers' compensation for all of the Subconsultants' employees, unless the Subconsultants' employees are covered by the insurance afforded by Consultant. If any class of employees engaged in work or services performed under this Agreement is not covered by California Labor Code section 3700, Consultant shall provide and/or require each Subconsultant to provide adequate insurance for the coverage of employees not otherwise covered. Consultant shall also maintain employer's liability insurance with limits of one million dollars (\$1,000,000) for bodily injury or disease.

☒ Professional Liability Insurance

Professional Liability (Errors and Omissions) Insurance, for liability arising out of, or in connection with, all negligent acts, errors or omissions in connection with services to be provided under this Agreement, with no exclusion for claims of one insured against another insured, with coverage equal to the policy limits, which shall not be less than one million dollars (\$1,000,000) per occurrence and one million dollars (\$1,000,000) aggregate.

☒ Installation Floater

Installation Floater, covering the work performed under this Contract, against all risks of direct physical loss. The policy shall cover the Contractor's labor, materials and equipment, including materials and equipment in transit or away from the project site, to be installed in the existing structure(s). The coverage shall be written for an amount equal to the initial contract amount plus the value of any subsequent change orders, subject to a deductible of not more than [\$10,000] payable by Contractor.

☒ Cyber Liability Insurance

Cyber Liability Insurance, covering network risk and cyber liability (including coverage for unauthorized access, failure of security, breach of privacy perils, as well as notification costs and regulatory defense) in an amount of not less than \$1,000,000. Such insurance shall be maintained in force at all times during the term of the Contract and for a period of two years thereafter for services completed during the term of the Contract.

1.2 Self-Insured Retention

Any self-insured retentions in excess of \$100,000 must be declared on the Certificate of insurance or other documentation provided to City and must be approved by the City Risk Manager.

1.3 Claims-Made Basis Coverage

If any of the insurance coverages required under this Agreement is written on a claims-made basis, Consultant, at Consultant's option, shall either (i) maintain said coverage for at least five (5) years following the termination of this Agreement with coverage extending back to the effective date of this Agreement, to the extent available at commercially reasonable rates; (ii) purchase an extended reporting period of not less than five (5) years following the termination of this Agreement; or (iii) acquire a full prior acts provision on any renewal or replacement policy.

2. City as Additional Insured

On Consultant's Commercial General Liability and Automobile policies, the City, its Council members, officers, directors, agents, employees, and volunteers, shall be named as additional insured's, but only with respect to liability arising out of the activities of the named insured. Any endorsement shall be provided using one of the following three options: (i) on ISO form CG 20 10 1 1 85; or (ii) on ISO form CG 20 37 10 01 plus either ISO form CG 20 10 10 01 or CG 20 33 10 01; or (iii) on such other forms which provide coverage at least equal to or better than form CG 20 10 1 1 85.

3. Insurance terms and conditions:

3.1 Cancellation of Insurance

The above stated insurance coverages required to be maintained by Consultant shall be maintained until the completion of all of Consultant's obligations under this Agreement except as otherwise indicated herein. Each insurance policy supplied by Consultant shall not be, cancelled except after ten (10) days written notice by Consultant in the case of non-payment of premiums, or thirty (30) days written notice in all other cases. This notice requirement does not waive the insurance requirements stated herein. Consultant shall endeavor to obtain replacement coverage for any insurance policy that is terminated, canceled, non-renewed, or whose policy limits have been exhausted or upon insolvency of the insurer that issued the policy.

3.2 All insurance shall be issued by a company or companies admitted or authorized to do business in California and listed in the current "Best's Key Rating Guide" publication with a minimum rating of A-; VAny exception to these requirements must be approved by the City Risk Manager.

3.3 If Consultant is, or becomes during the term of this Agreement, self-insured or a member of a self-insurance pool, Consultant shall provide coverage equivalent to the insurance coverages and endorsements required above. The City will not accept such coverage unless the City determines, in its sole discretion and by written acceptance, that the coverage proposed to be provided by Consultant is equivalent to the above-required coverages.

3.4 For any claims related to the Agreement, the Consultant's insurance coverage, except professional liability, shall be primary insurance coverage at least as broad as ISO CG 20 01 04 13 as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.

3.5 Insurance coverages in the minimum amounts set forth herein shall not be construed to relieve Consultant for any liability, whether within, outside, or in excess of such coverage, and regardless of solvency or insolvency of the insurer that issues the coverage; nor shall it preclude the City from taking such other actions as are available to it under any other provision of this Agreement or otherwise in law.

3.6 Failure by Consultant to maintain all such insurance in effect at all times required by this Agreement shall be a material breach of this Agreement by Consultant. City, at its sole option, may terminate this Agreement and obtain damages from Consultant resulting from said breach. Alternatively, City may purchase such required insurance coverage, and without further notice to Consultant, City shall deduct from sums due to Consultant any premiums and associated costs advanced or paid by City for such insurance. If the balance of monies obligated to Consultant pursuant to this Agreement are insufficient to reimburse City for the premiums and any associated costs, Consultant agrees to reimburse City for the premiums and pay for all costs associated with the purchase of said insurance. Any failure by City to take this alternative action shall not relieve Consultant of its obligation to obtain and maintain the insurance coverages required by this Agreement.

3.7 Should any of the required insurance (other than errors and omissions insurance) be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defenses costs be included in such general aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limit specified above.

3.8 City may (but is under no obligation to) secure project-specific insurance, wrap-up insurance, or administer an owner controlled insurance program ("OCIP"), in which case Consultant and its subconsultants shall

communicate this fact to their insurance carriers and request that the risk of this project be excluded from their practice policies. Consultant's fees under this Agreement (and the fee of its subconsultants under subconsultant agreements) shall be reduced by the amount of insurance premiums that may be avoided by Consultant and its subconsultants by virtue of the City's obtaining the project-specific insurance, wrap-up insurance or administering an OCIP, and the exclusion of this project from coverage of Consultant's and subconsultants policies. Construction Manager and its subconsultants shall afford City access to their books and records and cooperate with City in verifying the amount of savings realized.

ATTACHED

1. Insurance Coverage Form

EXHIBIT C

This **INSURANCE COVERAGE FORM** modifies or documents insurance provided under the following:

Named Insured: _____ Effective Work Date(s): _____

Description of Work/Locations/Vehicles: _____

ADDITIONAL INSURED: **City of Capitola (CITY)**
420 Capitola Avenue, Capitola, CA 95010
Attention: _____

Contract Administrator

Endorsement and Certificates of Insurance Required		Insurer	Policy No.
The Additional Insured, its elected or appointed officers, officials, employees and volunteers are included as insureds with regard to damages and defense of claims arising from: (Check all that apply)			
<input type="checkbox"/>	General Liability: (a) activities performed by or on behalf of the Named Insured, (b) products and completed operations of the Named Insured, (c) premises owned, leased occupied or used by the Named Insured, and/or (d) permits issued for operations performed by the Named Insured. {Note: MEETS OR EXCEEDS ISO Form # CG 20 10 11 85}		
<input type="checkbox"/>	Auto Liability: the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the Named Insured, regardless of whether liability is attributable to the Named Insured or a combination of the Named Insured and the Additional Insured, its elected or appointed officers, officials, employees or volunteers.		
<input type="checkbox"/>	Other: [Cyber Liability, Installation Floater, etc.]		
Certificates of Insurance Required (no endorsement needed) (Check all that apply)		Insurer	Policy No.
<input type="checkbox"/>	Workers Compensation: work performed by employees of the Named Insured while those employees are engaged in work under the simultaneous directions and control of the Named Insured and the Additional Insured.		
<input type="checkbox"/>	Professional Liability:		

PRIMARY/NON-CONTRIBUTORY: This insurance, other than professional liability, is primary and is not additional to or contributing with any other insurance carried by or for the benefit of Additional Insureds.

SEVERABILITY OF INTEREST: The insurance afforded by this policy (except professional liability) applies separately to each insured who is seeking coverage or against whom a claim is made or a suit is brought, except with respect to the insurer's limit of liability.

PROVISIONS REGARDING THE INSURED'S DUTIES AFTER ACCIDENT OR LOSS: Any failure to comply with reporting provisions of the policy shall not affect coverage provided to the Additional Insured, its elected or appointed officers, officials, employees, or volunteers.

CANCELLATION NOTICE. The insurance afforded by this policy shall not be, canceled, except after thirty (30) days' prior written notice (ten (10) days if canceled due to non-payment) by regular mail return receipt requested has been given to the Additional Insured or cert holder. Such notice shall be addressed as shown above.

WAIVER OF SUBROGATION: The insurer(s) named above, except the professional liability carrier, agree to waive all rights of subrogation against the CITY, its elected or appointed officers, officials, agents, volunteers and employees for losses paid under the terms of this policy which arise from work performed by the Named Insured for the CITY.

Nothing herein contained shall vary, alter or extend any provision or condition of the Policy other than as above stated.

SIGNATURE OF INSURER OR AUTHORIZED REPRESENTATIVE OF THE INSURER

I, _____ (print/type name), warrant that I have authority to bind the above-named insurance company and by my signature hereon do so bind this company.

SIGNATURE OF AUTHORIZED REPRESENTATIVE (original signature required)

ORGANIZATION: _____ **TITLE:** _____

ADDRESS: _____

TELEPHONE: () _____ **DATE ISSUED:** _____

From: Chloe Woodmansee via DocuSign <dse_NA4@docusign.net> on behalf of DocuSign NA4 System <dse_NA4@docusign.net>
Sent: Friday, October 06, 2023 1:37 PM PDT
To: Julia Gautho <jgautho@ci.capitola.ca.us>
Subject: [PDF] Completed: Complete with DocuSign: PSA Pac Crest.pdf
Attachment(s): "PSA Pac Crest.pdf"

DocuSign



Your document has been completed

[VIEW COMPLETED DOCUMENT](#)

Chloe Woodmansee

cwoodmansee@ci.capitola.ca.us

All parties have completed Complete with DocuSign: PSA Pac Crest.pdf.

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
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PROFESSIONAL SERVICES AGREEMENT
FOR
NOBLE GULCH GEOTECHNICAL INVESTIGATION

This Agreement is made and entered into as of the sixth day of October, 2023 by and between the City of Capitola hereinafter called "CITY" and Pacific Crest Engineering Inc. hereinafter called "CONSULTANT".

RECITALS

This Agreement is entered into with reference to the following facts and circumstances:

WHEREAS, CITY desires to engage CONSULTANT to provide professional services in the CITY;

WHEREAS, CONSULTANT is qualified to provide such services to the CITY and;

NOW, THEREFORE, in consideration of the mutual promises, covenants, terms and conditions hereinafter contained, the parties hereby agree as follows:

TERMS AND CONDITIONS

1. Services. The services to be performed by CONSULTANT under this Agreement shall include those services set forth in Exhibit A, which is, by this reference, incorporated herein and made a part hereof as though it were fully set forth herein.

Performance of the work specified in said Exhibit A is hereby made an obligation of CONSULTANT under this Agreement, subject to any changes that may be made subsequently hereto upon the mutual written agreement of the said parties.

Where in conflict, the terms of this Agreement supersede and prevail over any terms set forth in Exhibit A.

2. Term; Termination. (a) The term of this Agreement shall commence upon the date hereinabove written and shall expire upon completion of performance of services hereunder by CONSULTANT. (b) Notwithstanding the provisions of (a) above, CITY may with or without cause, direct CONSULTANT to suspend, delay or interrupt Services, in whole or in part, for such periods of time as CITY may determine in its sole discretion. (c) CITY may terminate performance of the Services under this Agreement in whole, or from time to time in part, for default, should CONSULTANT commit a material breach of this Agreement, or part thereof, and not cure such breach within ten (10) calendar days of the date of CITY's written notice to CONSULTANT demanding such cure, in

which case CONSULTANT shall be liable to CITY for all loss, cost, expense, damage and liability resulting from such breach and termination. (d) CITY may terminate performance of the Services under this Agreement in whole, or from time to time in part, for convenience, whenever CITY determines that such termination is in CITY's best interests, in which case CONSULTANT shall be entitled to recover its costs expended up to the termination date plus reasonable profit thereon to the termination date as this Agreement would otherwise provide, but may recover no other cost, damage or expense. CONSULTANT shall continue its work throughout the course of any dispute, and CONSULTANT's failure to continue work during a dispute shall be a material breach of this Agreement.

3. Compensation; Expenses; Payment. CITY shall compensate CONSULTANT for all services performed by CONSULTANT hereunder in an amount based upon CONSULTANT's hourly rates during the time of the performance of said services. A copy of CONSULTANT's hourly rates for which services hereunder shall be performed are set forth in CONSULTANT's fee schedule marked Exhibit "B" hereof, attached hereto and by this reference incorporated herein.

Notwithstanding the foregoing, the combined total of compensation and reimbursement of costs payable hereunder shall not exceed the sum eighteen thousand nine hundred and seventy-four dollars (\$18,974). Invoices for amounts in excess of eighteen thousand nine hundred and seventy-four dollars (\$18,974) shall not be paid unless the performance of services and/or reimbursement of costs and expenses in excess of said amounts have been approved in advance of performing such services or incurring such costs and expenses by the City Manager (for contracts less than \$50,000) or City Council (for contracts \$50,000 or more) evidenced by motion duly made and carried and a written contract amendment having been executed.

Compensation and reimbursement of costs and expenses hereunder shall be payable upon monthly billing therefor by CONSULTANT to CITY, which billing shall include an itemized statement, briefly describing by task and labor category or cost/expense items billed. Final payment will be made when all Services required under this Agreement have been completed to the reasonable satisfaction of CITY including, without limitation, CONSULTANT's transmittal of all deliverables to CITY required by EXHIBIT A.

CITY shall not incur any charges under this Agreement, nor shall any payments become due to CONSULTANT for any payment period on the Project, until CITY receives all deliverables required under Exhibit A, SCOPE OF WORK AND SCHEDULE, for the payment period (if any) and

reasonably accepts such deliverables as meeting the requirements of this Agreement. In cases where CONSULTANT has partially completed one or more deliverables due during a payment period, and if CONSULTANT demonstrates diligent progress thereon, then CITY may make a partial progress payment based upon percentage completion of the partially completed deliverables and diligent progress but taking into account any adverse impacts upon CITY. CITY shall not be liable for, and CONSULTANT shall not be entitled to, any payment for Services performed before this Agreement's execution.

4. Additional Services. In the event CITY desires the performance of additional services not otherwise included within the services described in Exhibit A, such services shall be authorized in advance of the performance thereof by the City Manager. Such amendment to this Agreement shall include a description of the services to be performed thereunder, the maximum compensation and reimbursement of costs and expenses payable therefor, the time of performance thereof, and such other matters as the parties deem appropriate for the accomplishment of such services. Except to the extent modified by written amendment, all other terms and conditions of this Agreement shall be deemed incorporated in each such amendment.
5. Records. CONSULTANT shall keep and maintain accurate records of all time expended and costs and expenses incurred relating to services to be performed by CONSULTANT hereunder. Said records shall be available to CITY for review and copying during regular business hours at CONSULTANT's place of business or as otherwise agreed upon by the parties.
6. Authorization. This Agreement becomes effective when endorsed by both parties in the space provided below.
7. Reliance on Professional Skill of CONSULTANT. CONSULTANT represents that it has the necessary professional skills to perform the services required and the CITY shall rely on such skills of the CONSULTANT to do and perform the work. In performing services hereunder CONSULTANT shall adhere to the standards generally prevailing for the performance of expert consulting services similar to those to be performed by CONSULTANT hereunder at the same time and location ("Standard of Care").

CONSULTANT represents that it has reviewed Exhibit A and that in its professional judgment the Services to be performed under this Agreement can be performed for a fee within the maximum amount set forth in the Compensation Schedule established in Exhibit A and within the times specified for each individual Project.

CONSULTANT represents that it possesses all necessary training, licenses and permits to perform the Services and that its performance of the Services will conform to the Standard of Care.

The granting of any progress payment by CITY, or the receipt thereof by CONSULTANT, or any inspection, review, approval or oral statement by any representative of CITY or any other governmental entity, shall in no way waive or limit the obligations in this Paragraph 7 or lessen the liability of CONSULTANT for unsatisfactory Services, including but not limited to cases where the defective or below standard Services may not have been apparent or detected at the time of such payment, inspection, review or approval.

8. Documents. All documents, plans, drawings, renderings, and other papers, or copies thereof, as finally rendered, prepared by CONSULTANT pursuant to the terms of this Agreement, shall, upon preparation and delivery to CITY, become the property of CITY.
9. Relationship of Parties. CONSULTANT is an independent Contractor and does not act as City's agent in any capacity, whatsoever. CONSULTANT is not entitled to any benefits that CITY provides to CITY employees, including, without limitation, worker's compensation benefits or payments, pension benefits, health benefits or insurance benefits. Terms within this Agreement regarding direction apply to and concern the result of the CONSULTANT's provision of Services, not the means, methods, or scheduling of the CONSULTANT's work. CONSULTANT shall be solely responsible for the means, methods, techniques, sequences and procedures with respect to its provision of Services under this Agreement. CONSULTANT shall pay all payroll taxes imposed by any governmental entity and shall pay all other taxes not specifically identified in this Agreement as CITY's responsibility.
10. Schedule. CONSULTANT shall adhere to the schedule set forth in Exhibit A; provided, that CITY shall grant reasonable extensions of time for the performance of such services occasioned by governmental reviews of CONSULTANT's work product or other unavoidable delays; provided, further, that such unavoidable delay shall not include strikes, lockouts, work stoppages, or other labor disturbances conducted by, or on behalf of, CONSULTANT's officers or employees.

CONSULTANT acknowledges the importance to CITY of CITY's Project schedule and agrees to put forth its best professional efforts to perform its services under this Agreement in a manner consistent with that schedule.

11. Indemnity. CONSULTANT hereby agrees to indemnify, and save harmless CITY, its Council, boards, commissions, officers, employees, directors, volunteers, from and against any and all claims, suits, actions liability, loss, damage, expense, injury (including, without limitation, economic harm, injury to or death of any person, including an employee of CONSULTANT or its Subconsultants), cost (including, reimbursement of reasonable costs and fees of litigation) sustained by, City of Capitola, its Council, boards, commissions, officers, employees, directors, volunteers to the extent caused by the negligence, recklessness, or willful misconduct of CONSULTANT, any Subconsultant, anyone directly or indirectly employed or retained by them, or anyone that they control.

Consultant's defense obligation under this indemnity paragraph means only the reimbursement of reasonable defense costs to the proportionate extent caused by Consultant's negligence.

CONSULTANT's responsibility for such defense and indemnity obligations shall survive the termination or completion of this Agreement for the full period of time allowed by law.

The defense and indemnification obligations of this agreement are undertaken in addition to, and shall not in any way be limited by, the insurance obligations contained within this Agreement.

12. Insurance. Prior to execution of this Agreement, CONSULTANT shall furnish to CITY Certificates of Insurance showing satisfactory proof that it maintains the insurance required by this Contract as set forth in EXHIBIT C, Insurance, which are attached and made a part of this Agreement. CONSULTANT shall maintain all required insurance throughout the term of this Agreement and as otherwise provided in EXHIBIT C. In the event CONSULTANT fails to maintain any required insurance, and notwithstanding Paragraph 3 above, CITY may (but is not obligated to) purchase such insurance and deduct or retain premium amounts from any sums due CONSULTANT under this Agreement (or CONSULTANT shall promptly reimburse CITY for such expense).

CONSULTANT shall maintain insurance as required by this Agreement to the fullest amount allowed by law and shall maintain insurance for a minimum of five (5) years following completion of this project or service. In the event CONSULTANT fails to obtain or maintain completed operations coverage as required by this Agreement, the CITY at its sole discretion may purchase the coverage required and the cost will be paid by CONSULTANT.

13. WORKERS' COMPENSATION. CONSULTANT certifies that he is aware of the provisions of the Labor Code of the State of California which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and CONSULTANT certifies that he will comply with such provisions before commencing the performance of the work of this agreement.
14. NON-DISCRIMINATION. The CONSULTANT will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The CONSULTANT will take affirmative action to ensure that applicants are employed and the employees are treated during employment without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, advancement, demotion, transfer, recruitment, or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The CONSULTANT shall at all times be in compliance with the requirements of the Federal Americans With Disabilities Act (Public Law 101-336) which prohibits discrimination on the basis of disability by public entities. The CONSULTANT agrees to post in conspicuous places available to employees and applicants for employment any notices provided by the CITY setting forth the provisions of this non-discrimination clause.
15. Notice. All notices required by this Agreement shall be given to the CITY and CONSULTANT in writing, by first class mail, postage prepaid, addressed as follows:
- CITY: City of Capitola
420 Capitola Avenue
Capitola, CA 95010
Attention: Kailash Mozumder
- CONSULTANT: Matt Maciel
Principal
matt@pacengineering.net
444 Airport Boulevard, Suite 106
Watsonville, California
Office 831-722-9446
16. Non-Assignment. This Agreement is not assignable either in whole or in part.
17. Amendments. This Agreement may be amended or modified only by written agreement signed by both parties.

18. Validity. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
19. Governing Law. This Agreement shall be deemed to have been executed in the County of Santa Cruz, California. The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California, excluding its conflict of laws rules. Any suit or action initiated by either party shall be brought in the County of San Mateo, California unless the parties agree otherwise in a written amendment to this Agreement. In the event of litigation between the parties hereto to enforce any provision of the Agreement, the unsuccessful party will pay the reasonable attorney's fees and expenses of litigation of the successful party.
20. Mediation. Should any dispute arise out of this Agreement, the parties shall meet in mediation and attempt to reach a resolution with the assistance of a mutually acceptable mediator. Neither party shall be permitted to file legal action without first meeting in mediation and making a good faith attempt to reach a mediated resolution. The costs of the mediator, if any, shall be paid equally by the parties. If a mediated settlement is reached neither party shall be deemed the prevailing party for purposes of the settlement and each party shall bear its own legal costs.
21. Conflict of Interest. CONSULTANT represents and warrants that it presently has no interest, and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of work and services required under this Agreement. Without limitation, CONSULTANT represents to and agrees with CITY that CONSULTANT has disclosed any potential conflict of interest, and will have no future conflict of interest, in providing CITY services hereunder, including but not limited to, any interest (financial, share ownership, shared management, shared directors, or reporting responsibilities) CONSULTANT may presently have, or will have in the future, with respect to any other person or entity (including but not limited to potential suppliers, vendors, consultants, contractors, or regulatory agency) which may have an interest in the subject matter of the Services.
22. Liability. Notwithstanding any other provision of this Agreement, in no event shall CITY or Consultant be liable, regardless of whether any claim is based on contract, tort or otherwise, for any special, consequential, indirect or incidental damages, lost profits or revenue, arising out of or in connection with this Agreement, the Services, or the Project.

CITY shall not be responsible for any damage to persons or property as a result of the use, misuse or failure of any equipment used by CONSULTANT, or by any of its employees, even though such equipment be furnished, rented or loaned to CONSULTANT by CITY. The acceptance or use of such equipment by CONSULTANT or any of its employees shall be construed to mean that CONSULTANT accepts full responsibility for and shall exonerate, indemnify, defend and save harmless CITY from and against any and all claims for any damage or injury of any type, including attorneys' fees, arising from the use, misuse or failure of such equipment, whether such damage be to the CONSULTANT, its employees, CITY employees or third parties, or to property belonging to any of the above.

Nothing in this Agreement shall constitute a waiver or limitation of any right or remedy, whether in equity or at law, which CITY or CONSULTANT may have under this Agreement or any applicable law. All rights and remedies of CITY or CONSULTANT, whether under this Agreement or other applicable law, shall be cumulative.

23. Waiver of Default. Waiver of any default by either party to this Agreement shall not be deemed to be waiver of any subsequent default. Waiver or breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach, and shall not be construed to be a modification of the terms of this Agreement unless this Agreement is modified as provided below.

24. Force Majeure. Except for defaults of subconsultants at any tier, CONSULTANT shall not be liable for any excess costs if the failure to perform the Agreement arises from causes beyond the control and without the fault or negligence of CONSULTANT, including without limitation failure to reasonably mitigate any adverse impacts (Force Majeure). Force Majeure events include the following:

Acts of God, fires, floods, earthquake, other natural disasters, epidemics and pandemics (other than COVID-19 or variants), abnormal weather conditions beyond the parameters otherwise set forth in this Article, nuclear accidents, strikes, lockouts, freight embargos, interruptions in service by a regulated utility, or governmental statutes or regulations enacted or imposed after the fact (together, "force majeure events").

25. Entire Agreement. This Agreement, including Exhibits A, B, C, and D comprises the entire Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the date first above written by their respective officers duly authorized in that behalf.

Dated: 10/6/2023

CITY OF CAPITOLA

DocuSigned by:

Jamie Goldstein

000A9A753900483...

Benjamin Goldstein, City Manager

Dated: 10/6/2023

ATTEST:

DocuSigned by:

Julia Gautho

4DE9B5A4452E43B

Julia Gautho, City Clerk

Dated: 10/6/2023

APPROVED AS TO FORM

DocuSigned by:

Samantha W. Zutler

0A6C12B54AFB4B4...

Samantha Zutler, City Attorney

Dated: 10/6/2023

CONSULTANT

DocuSigned by:

Matt Maciel

D62C22F10B804C7...

Matt Maciel, Principal

EXHIBIT A

**SERVICES TO BE PROVIDED, PAYMENTS, PROJECTS AND SCHEDULE, AND
DELIVERABLES FOR
NOBLE GULCH GEOTECHNICAL INVESTIGATION**

SEE ATTACHED PROPOSAL/SCOPE OF WORK

END OF EXHIBIT A

EXHIBIT 50

From: Matt Machado <Matt.Machado@santacruzcountyca.gov>

Sent: Thursday, September 07, 2023 9:28 AM PDT

To: Moshref-Danesh, Leila J. <LMoshref@bwslaw.com>; Jamie Goldstein, City Manager <jgoldstein@ci.capitola.ca.us>

CC: Zutler, Samantha W. <SZutler@bwslaw.com>; jkahn@ci.capitola.ca.us <jkahn@ci.capitola.ca.us>; Kent Edler <Kent.Edler@santacruzcountyca.gov>; Justin Graham <Justin.Graham@santacruzcountyca.gov>; Rachel Fatoohi <Rachel.Fatoohi@santacruzcountyca.gov>

Subject: RE: Noble Gulch

Good Morning,

Zone 5 Master Plan effort is wrapping up now. The Master Plan includes system needs / deficiencies and cost to repair / maintain. Much of the system identified in the Master Plan is not clearly owned or maintained by any jurisdiction. Our plan going forward is to use this cost / scope of improvements to increase the Zone 5 assessment. With adequate funding in place the ownership and maintenance responsibilities becomes more easily resolved.

We are working with our consultant to develop the schedule for the needed assessment increase. We are discussing the use of SB231 provisions for this assessment increase.

I will share more details as I receive them. Thank you for your patience.

Regarding permanent repair of Noble Gulch storm damage, it is my understanding that the City is leading the effort for FEMA funding. The County is in agreement to share the local cost for this effort. Please share status on this FEMA effort.

Thank you



Matt Machado, PE, LS

Deputy County Administrative Officer
Director of Community Development
& Infrastructure
831.454.2368
701 Ocean Street, Room 410
Santa Cruz, CA 95060



From: Moshref-Danesh, Leila J. <LMoshref@bwslaw.com>

Sent: Wednesday, September 6, 2023 10:47 AM

To: Matt Machado <Matt.Machado@santacruzcountyca.gov>

Cc: Zutler, Samantha W. <SZutler@bwslaw.com>

Subject: Noble Gulch

******CAUTION:** This is an EXTERNAL email. Exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email.****

Good Morning Matt,

Some time has passed since we last touched base on Noble Gulch. Our most recent understanding is the County/Flood District was developing a plan for the repair and maintenance of the facility as part of the Zone 5 Master Plan and funding effort. Could you provide an update? Thanks.

Leila Moshref-Danesh | Senior Associate

Pronouns: she, her, hers

1770 Iowa Avenue, Suite 240 | Riverside, CA 92507-2479

d - 951.801.6626 | t - 951.788.0100 | f - 951.788.5785

lmoshref@bwslaw.com | bwslaw.com



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EXHIBIT 51

From: Zutler, Samantha W. <SZutler@bwsllaw.com>
Sent: Friday, September 22, 2023 11:25 AM PDT
To: Jason Heath <Jason.Heath@santacruzcounty.us>
CC: jgoldstein@ci.capitola.ca.us <jgoldstein@ci.capitola.ca.us>; Justin Graham <Justin.Graham@santacruzcountyca.gov>
Subject: [PDF] Noble Gulch
Attachment(s): "2019 Agreement re Noble Gulch.pdf"

Hi Jason,

I'm attaching the agreement between the City and the County from 2019. Section 1 says that, within six months of execution, the City and County would jointly fund an inspection of Noble Gulch, so they could suss out repair needs. We don't think this inspection was ever performed, so we'd like to do it now. Will the County still split the cost with us? The quote we've received is \$30k. Also, the agreement says that the report will be considered attorney work product and confidential. This seems questionable to me, and I'm not sure the report needs to be confidential, so we are not planning to designate it as confidential, or have my office retain the consultant. If you disagree, please let me know. We'd like to get the contract with the consultant on the agenda that goes out today, so would appreciate your speedy help. (As you know, it is always a rush to get an agenda out!)

Thanks, and hope you're doing well,
Sam

EXHIBIT 52

From: Robinson, Catherine (CTR) <catherine.robinson@associates.fema.dhs.gov>
Sent: Tuesday, November 07, 2023 2:18 PM PST
To: Malberg, Jim <jmalberg@ci.capitola.ca.us>; Kahn, Jessica <jkahn@ci.capitola.ca.us>; Mozumder, Kailash <kmozumder@ci.capitola.ca.us>
CC: Williams, Stacy <stacy.williams@fema.dhs.gov>; Bellard, Edward <edward.bellard@fema.dhs.gov>
Subject: [PDF] DR4683_CA_CAPITOLA_714249_SOQUEL PARK
Attachment(s): "DR4683_CA_CAPITOLA_714249_SOQUEL PARK_406 Hazard Mitigation.pdf"

Jim, Jessica and Kailash....WHEN IT RAINS IT POURS!!! (not funnybad humor)

This project is on hold pending your input on possible mitigation for this project. At this point, nothing has been suggested. Is there anything about Noble Gulch or the wood retaining wall bulkhead at Soquel Park that deserves some mitigation consideration????????????

Because these structures are located in the Coastal High Hazard Zone classification and because FEMA has to be good stewards of federal dollars.....can you think of any addition to the construction of either of these structures that would make the structure more resilient. FEMA cost specialist will generate the Cost Estimate and include the cost as mitigation component \$\$\$'s..

I would be happy to arrange a phone call with Stacy Williams, FEMA Mitigation, to discuss possible mitigation measure, if needed.

This is the Damage Description from the Project for reference.

The yellow highlighted text is for the structures.

NOBLE GULCH / RIVERVIEW PARK: Site 1 thru 1d.

Excessive surface water runoff damaged:

Site 1: 36.974294, -121.954261:

Walking trail, , 50 FT long x 11.5 FT wide x 5 FT deep = 106.5 CY of unclassified fill eroded.

Site 1a: 36.974294, -121.954261:

Crushed granite walking trail: 50 FT long x 11.5 FT wide x 1 FT deep = 21.3 CY of decomposed granite eroded.

Site 1b : 36.974294, -121.954261:

Walking trail: 20 FT long x 10 FT wide x 3 FT deep = 22 CY of unclassified fill eroded.

Site 1c: 36.974294, -121.954261:

Crushed granite walking trail: 20 FT long x 10 FT wide x 1 FT deep = 7.4 CY of decomposed granite eroded.

Site 1d: 36.974389, -121.954480:

Concrete box culvert /damaged storm outlet, 10 FT long x 6 FT wide x 5 FT high concrete was 'busted' and undercut

SOQUEL PARK:

Excessive surface water runoff damaged:

Site 2: 36.974353, -121.954506

Wood retaining wall bulkhead, 320 SF: 64-ft Long x 5-ft High x .334-ft Deep.....WHAT IF This was replaced with concrete?

Site 2a: 36.974294, -121.954261:

Walking trail damage: 110 FT long x 10 FT wide x 1 FT deep = 1,100 / 27 = 41 CY of native soil loss

CATHERINE ROBINSON

DR-4683-CA

FEMA_Public Assistance

202-701-3949

Catherine.robinson@associates.fema.dhs.gov

EXHIBIT 53

From: T Thatcher <terrirthatcher@gmail.com>
Sent: Friday, November 10, 2023 10:40 AM PST
To: Kahn, Jessica <jkahn@ci.capitola.ca.us>
CC: Mozumder, Kailash <kmozumder@ci.capitola.ca.us>; Joe McLean <jwmjr116@gmail.com>
Subject: Re: Riverview Flume

Thank you, Jessica.

We are also in the permit process to remodel this property. We are currently working with Sean on this. The draft plan would be to begin with the building closest to the creek, in the Spring. It would likely give you access to the top of the box. When the Granite Rock guys put the temporary fix to the walkway in place, they indicated there was a crack about ten feet into the flume.

We look forward to working with you on this!

Terri & Joe

On Thu, Nov 9, 2023 at 1:15 PM Kahn, Jessica <jkahn@ci.capitola.ca.us> wrote:

Good afternoon,

Thank you for your email, we appreciate your patience and concern regarding the upcoming wet winter and the impact on your properties.

The City is actively engaged in the planning and permitting process for the permanent repair of the outfall. Our current timeline anticipates that construction will take place in the spring, coinciding with the period of lowest water levels. This approach ensures a safe and effective repair process.

We understand the importance of addressing the damage promptly, and we are committed to ensuring that the outfall is restored to its proper condition. We will keep you informed of any further developments or updates as we progress with the repair work.

If you have any additional questions or concerns, please do not hesitate to reach out.

Jessica

Jessica Kahn, P.E.

Public Works Director

City of Capitola

(831) 475-7300 x 217

jkahn@ci.capitola.ca.us

From: T Thatcher <terrirthatcher@gmail.com>
Sent: Sunday, November 5, 2023 11:14 AM
To: Kahn, Jessica <jkahn@ci.capitola.ca.us>
Cc: Mozumder, Kailash <kmozumder@ci.capitola.ca.us>; Joe McLean <jwmjr116@gmail.com>
Subject: Re: Riverview Flume

Hello Jessica,

EXHIBIT 54

From: Noy Phannavong <nphannavong@vaengineering.com>
Sent: Monday, January 22, 2024 7:32 AM PST
To: Kahn, Jessica <jkahn@ci.capitola.ca.us>
CC: Connor Thomas <cthomas@vaengineering.com>; Leighton James <ljames@vaengineering.com>
Subject: [PDF] RE: City of Capitola - Noble Gulch (VA23-0331)
Attachment(s): "23-0331 C of Capitola Letter Report.pdf"

Hi Jessica,

Please see attached draft report for the Noble Gulch Culvert assessment. Let us know if you have any questions.

Thanks,

Noy Phannavong, PE • V&A
Direct 510.987.8115 • Cell 510.935.3188
www.vaengineering.com

From: Noy Phannavong
Sent: Wednesday, January 17, 2024 12:53 PM
To: Kahn, Jessica <jkahn@ci.capitola.ca.us>
Cc: Connor Thomas <cthomas@vaengineering.com>
Subject: RE: City of Capitola - Noble Gulch (VA23-0331)

V&A performed a follow-up assessment of the culvert on September 12, 2012 (see attached report). Since then, rehabilitation work has been completed. See attached photos from December 13, 2023. The invert of the CMP was grouted and reinforced concrete pipe was used to replaced the failed section.

Noy Phannavong, PE • V&A
Direct 510.987.8115 • Cell 510.935.3188
www.vaengineering.com

From: Kahn, Jessica <jkahn@ci.capitola.ca.us>
Sent: Wednesday, January 17, 2024 12:39 PM
To: Noy Phannavong <nphannavong@vaengineering.com>
Cc: Connor Thomas <cthomas@vaengineering.com>
Subject: RE: City of Capitola - Noble Gulch (VA23-0331)

Are you referring to the work from 2012, the temporary outfall repair, or is it something else?

Jessica Kahn, P.E.
Public Works Director
City of Capitola
(831) 475-7300 x 217
jkahn@ci.capitola.ca.us

From: Noy Phannavong <nphannavong@vaengineering.com>
Sent: Wednesday, January 17, 2024 12:28 PM
To: Kahn, Jessica <jkahn@ci.capitola.ca.us>
Cc: Connor Thomas <cthomas@vaengineering.com>
Subject: RE: City of Capitola - Noble Gulch (VA23-0331)

Hi Jessica,

Quick question. Do you happen to know when and what repairs/rehabilitation were completed on the NGC? The record drawings would help if they are available. We would like to provide a brief description in the report.

Thanks,

Noy Phannavong, PE • V&A
Direct 510.987.8115 • Cell 510.935.3188
www.vaengineering.com

From: Kahn, Jessica <jkahn@ci.capitola.ca.us>
Sent: Wednesday, January 17, 2024 11:57 AM
To: Noy Phannavong <nphannavong@vaengineering.com>
Cc: Connor Thomas <cthomas@vaengineering.com>
Subject: RE: City of Capitola - Noble Gulch (VA23-0331)

Good morning,

Checking in on the status of this report. We recently received the invoice for this work.

Thanks, Jessica

Jessica Kahn, P.E.

Public Works Director
City of Capitola
(831) 475-7300 x 217
jkahn@ci.capitola.ca.us

From: Kahn, Jessica
Sent: Wednesday, December 13, 2023 8:58 AM
To: Noy Phannavong <nphannavong@vaengineering.com>
Cc: Connor Thomas <cthomas@vaengineering.com>
Subject: RE: City of Capitola - Noble Gulch (VA23-0331)

That's great news, thank you. No additional information needed prior to the report.

Thanks, Jessica

Jessica Kahn, P.E.
Public Works Director
City of Capitola
(831) 475-7300 x 217
jkahn@ci.capitola.ca.us

From: Noy Phannavong <nphannavong@vaengineering.com>
Sent: Tuesday, December 12, 2023 5:04 PM
To: Kahn, Jessica <jkahn@ci.capitola.ca.us>
Cc: Connor Thomas <cthomas@vaengineering.com>
Subject: RE: City of Capitola - Noble Gulch (VA23-0331)

Hi Jessica,

We successfully completed the Noble Gulch Culvert assessment today. The repairs performed since our last assessment in 2012 are generally in good condition. The repairs include, but are not limited to, grouting of the CMP invert and crack/spall repairs of the concrete segments. There were a few other minor/moderate defects that we observed but the culvert is generally in good condition. Let us know if you have any questions or need more information prior to receiving the assessment report.

Thanks,

Noy Phannavong, PE • V&A
Direct 510.987.8115 • Cell 510.935.3188
www.vaengineering.com

From: Kahn, Jessica <jkahn@ci.capitola.ca.us>
Sent: Wednesday, December 6, 2023 8:47 AM
To: Noy Phannavong <nphannavong@vaengineering.com>
Cc: Connor Thomas <cthomas@vaengineering.com>
Subject: RE: City of Capitola - Noble Gulch (VA23-0331)

December 12th sounds good. I will have my staff place a no parking sign at MH4.

Thanks, Jessica

Jessica Kahn, P.E.
Public Works Director
City of Capitola
(831) 475-7300 x 217
jkahn@ci.capitola.ca.us

From: Noy Phannavong <nphannavong@vaengineering.com>
Sent: Tuesday, December 5, 2023 4:35 PM
To: Kahn, Jessica <jkahn@ci.capitola.ca.us>
Cc: Connor Thomas <cthomas@vaengineering.com>
Subject: [PDF] RE: City of Capitola - Noble Gulch (VA23-0331)

Hi Jessica,

The 10-day forecast looks dry. How does Tuesday, December 12th sound for the assessment?

We will send our updated work plan by Thursday, 12/7. See attached map. Would it be possible for the City to place a no parking sign on the parking stall for access to Manhole 4?

Thanks,

Noy Phannavong, PE • V&A
Direct 510.987.8115 • Cell 510.935.3188
www.vaengineering.com

From: Kahn, Jessica <jkahn@ci.capitola.ca.us>
Sent: Monday, November 27, 2023 8:19 AM
To: Noy Phannavong <nphannavong@vaengineering.com>
Subject: RE: City of Capitola - Noble Gulch (VA23-0331)

Who would be the correct contact for signature?

Thanks, Jessica

Jessica Kahn, P.E.
Public Works Director
City of Capitola
(831) 475-7300 x 217
jkahn@ci.capitola.ca.us

From: Kahn, Jessica
Sent: Monday, November 27, 2023 8:13 AM
To: Noy Phannavong <nphannavong@vaengineering.com>
Subject: RE: City of Capitola - Noble Gulch (VA23-0331)

Apologies, I thought it had already been sent. I'll have our City Clerk route it via Docusign today.

Jessica Kahn, P.E.
Public Works Director
City of Capitola
(831) 475-7300 x 217
jkahn@ci.capitola.ca.us

From: Noy Phannavong <nphannavong@vaengineering.com>
Sent: Monday, November 27, 2023 7:30 AM
To: Kahn, Jessica <jkahn@ci.capitola.ca.us>
Subject: RE: City of Capitola - Noble Gulch (VA23-0331)

Hi Jessica,

The end of next week and/or the following week (week of 12/11) are possible depending on the day. We should be able to schedule around some of the other work that we have coming up. Can you send us a contract this week?

Thanks,

Noy Phannavong, PE • V&A
Direct 510.987.8115 • Cell 510.935.3188
www.vaengineering.com

From: Kahn, Jessica <jkahn@ci.capitola.ca.us>
Sent: Monday, November 20, 2023 12:29 PM
To: Noy Phannavong <nphannavong@vaengineering.com>
Subject: RE: City of Capitola - Noble Gulch (VA23-0331)

Hi Noy,

The City would like to schedule this inspection. Our lagoon breached over the weekend, and the forecast looks dry, so the water level should be low for a couple of weeks. Please let me know the best way to move forward.

Thanks, Jessica

Jessica Kahn, P.E.
Public Works Director
City of Capitola
(831) 475-7300 x 217
jkahn@ci.capitola.ca.us

From: Kahn, Jessica
Sent: Friday, September 22, 2023 10:26 AM
To: Noy Phannavong <nphannavong@vaengineering.com>
Subject: RE: City of Capitola - Noble Gulch (VA23-0331)

Thank you! This is perfect. The contract should be approved by Council next Thursday and then we can discuss schedule. We will be in touch.

Thanks, Jessica

Jessica Kahn, P.E.
Public Works Director
City of Capitola
(831) 475-7300 x 217
jkahn@ci.capitola.ca.us

From: Noy Phannavong <nphannavong@vaengineering.com>
Sent: Thursday, September 21, 2023 5:20 PM
To: Kahn, Jessica <jkahn@ci.capitola.ca.us>
Subject: [PDF] RE: City of Capitola - Noble Gulch (VA23-0331)

Hi Jessica,

Please see attached proposal for condition assessment of the culvert. Let me know if you have any questions.

Thanks,

Noy Phannavong, PE • V&A
Direct 510.987.8115 • Cell 510.935.3188
www.vaengineering.com

From: Kahn, Jessica <jkahn@ci.capitola.ca.us>
Sent: Friday, September 15, 2023 11:40 AM
To: Noy Phannavong <nphannavong@vaengineering.com>
Subject: City of Capitola - Noble Gulch

You don't often get email from jkahn@ci.capitola.ca.us. [Learn why this is important](#)

Hi Noy,

I just left you a voicemail. I believe you previously worked with Steve Jesberg, he retired last year. I located a "Proposal for Condition Assessment Services" for the Noble Gulch culvert dated 10/4/17 (attached), it appears that this work was never completed. The City would like to pursue this same scope of work this fall. Is V&A is available, and if so would it be possible to receive a proposal for these same services sometime next week?

Thanks, Jessica

Jessica Kahn, P.E.
Public Works Director
City of Capitola
(831) 475-7300 x 217
jkahn@ci.capitola.ca.us

From: Matt Maciel <matt@pacengineering.net>
Sent: Thursday, January 11, 2024 1:58 PM PST
To: Andy Sterbenz <ASterbenz@swws.com>
CC: Mozumder, Kailash <kmozumder@ci.capitola.ca.us>; Chris Johnson <cjohnson@pacengineering.net>
Subject: FW: Culvert Headwall - Capitola

As discussed, below please find our discussion with Sunstone Construction. Please let us know what you think.

Thanks,

Matt Maciel, PE, GE
Principal Geotechnical Engineer



444 Airport Boulevard, Suite 106
Watsonville, California
Office: 831-722-9446 ext. 3628
Cell: 831-254-2986

From: Rennon Fuller <rl2@sunstoneconstructioninc.com>
Sent: Wednesday, December 20, 2023 10:11 AM
To: Chris Johnson <cjohnson@pacengineering.net>
Cc: Matt Maciel <matt@pacengineering.net>; Rick W. Fuller <rw@sunstoneconstructioninc.com>
Subject: Re: Culvert Headwall - Capitola

Some people who received this message don't often get email from rl2@sunstoneconstructioninc.com. [Learn why this is important](#)

Chris/Matt,

I looked at the site last Friday. I think you'd have to reach over the top and install a tieback(s) on the existing side that hasn't failed face plate it, and lock it off. For the side that has failed, it's hard to tell without opening it up to see if there is any viable structure left to save/repair. Assuming there isn't. I would excavate behind the existing failure install tiebacks and piles (maybe pipe for more lateral) and cast a new headwall wing, tying it into the existing viable structure. Both operations would require taking down the last nine foot section of fence at the end of the easement and getting into the neighbor's raised planter area. There's a small concrete wall running parallel to the fence that's retaining the raised planter soil that would also need to be cut and removed as well as the front wooden facade that faces the creek.

We've put helical anchors down on that side of the creek in the past so they should go in. That's what I see. Let me know if you have any questions/ thoughts etc.

Regards,
Rennon Fuller

Rennon L. Fuller
Sunstone Construction Inc.
176 Gilman Ave.
Campbell, CA 95008
O: (408) 379-0592
F: (408) 379-2808
C: (408) 591-0292









On Dec 12, 2023, at 2:10 PM, Chris Johnson <cjohnson@pacengineering.net> wrote:

OK sounds good.

Please let me know your thoughts, and we can work on designing a solution that is constructable/cost effective.

Chris Johnson, PE
Principal Civil Engineer

<image001.jpg>

444 Airport Boulevard, Suite 106
Watsonville, California
Office: 831-722-9446 ext. 3630
Cell: 831-246-0971
www.4Pacific-Crest.com

From: Rennon Fuller <rl2@sunstoneconstructioninc.com>
Sent: Tuesday, December 12, 2023 2:06 PM
To: Chris Johnson <cjohnson@pacengineering.net>
Cc: Matt Maciel <matt@pacengineering.net>
Subject: Re: Culvert Headwall - Capitola

You don't often get email from rl2@sunstoneconstructioninc.com. [Learn why this is important](#)

Haven't seen it yet. I will be over that way later in the week. Will stop by and have a look.

Rennon L. Fuller
Sunstone Construction Inc.
176 Gilman Ave.
Campbell, CA 95008
O:(408)379-0592
F: (408)379-2808
C:(408) 591-0292

On Dec 12, 2023, at 1:15 PM, Chris Johnson <cjohnson@pacengineering.net> wrote:

Rennon,
Did you ever get a chance to take a look at this?

Chris Johnson, PE
Principal Civil Engineer

<image001.jpg>

444 Airport Boulevard, Suite 106
Watsonville, California
Office: 831-722-9446 ext. 3630
Cell: 831-246-0971
www.4Pacific-Crest.com

From: Chris Johnson
Sent: Thursday, November 30, 2023 3:12 PM
To: rl2@sunstoneconstructioninc.com
Cc: Matt Maciel <matt@pacengineering.net>
Subject: Culvert Headwall - Capitola

Rennon,
Thanks for talking with Matt Maciel and I on the phone a moment ago.

The culvert in question (shown in blue) runs under 427 Riverview Ave in Capitola and discharges into the Soquel Creek, with the headwall shown in red.

We are looking for some direction as to what would be the most cost-effective type of wall for this

environment.

The home is already seeing some signs of distress so the installation method needs to be minimally invasive, which is why we were looking at helical anchors.

The footpath to the north of the house is approximately 8' wide, but necks down to 3.5' feet as it turns the corner and goes between the house and the river.

Let us know your thoughts.

<image002.png>

Chris Johnson, PE
Principal Civil Engineer

<image001.jpg>

444 Airport Boulevard, Suite 106
Watsonville, California
Office: 831-722-9446 ext. 3630
Cell: 831-246-0971
www.4Pacific-Crest.com

EXHIBIT 55



Santa Cruz County CA

Approved
Dec 12, 2023 10:45 AM

Zone 5 Agenda Item ZN5-2023-7

Approve amendment to agreement with Schaaf and Wheeler, Consulting Civil Engineers, revising the scope of work, extending the contract term and increasing the compensation, approve the transfer of \$68,098 from the Capital Reserve funds into the Master Plan Update funds, and take related actions, as outlined in the memorandum of the District Engineer

Information

Department:	DPW: Stormwater	Sponsors:	District Engineer Matt Machado
Category:	Z5 - Board Letter	Functions:	Land Use & Community Services

Links

[➡ **Reference** ZN5-2024-1 : Approve and accept the Draft Zone 5 Drainage Master Plan, which updates and expands upon previous Master Plans for this zone, and direct District staff to work with County Public Works, the City of Capitola, Schaaf and Wheeler Consulting Engineers, and their subconsultants to complete Stormwater Fee Study, including completing an election following the Proposition 218 proceedings to support and finalize the Draft Zone 5 Drainage Master Plan, as outlined in the memorandum of the District Engineer](#)

[➡ **Replace** 16617 : Approve and accept the addition of a new portable Road Bump Design in the Santa Cruz Design Criteria as an option for the stakeholders to select as outlined and shown n file No . and direct District staff to work with County Public Works, Traffic Engineer. In addition the](#)

Attachments

[Board Memo](#)
[Amendment to Agreement 24D0471 - Schaaf and Wheeler, Consulting Civil Engineers \(eSign\)](#)
[AUD-74 - Zone 5 Master Plan Update \(eSign\)](#)

Board Letter

Recommended Actions

- 1) Approve amendment to agreement No. 24D0471 with Schaaf and Wheeler, Consulting Civil Engineers, revising the scope of work, extending the contract term and increasing the compensation;
- 2) Approve the transfer of \$68,098 from the Capital Reserve funds, Job # P25915 into the Master Plan Update funds, Job # P25903, to cover the cost of the contract amendment; and
- 3) Authorize the District Engineer to sign the Amendment to Agreement on behalf of the District.

Executive Summary

Board of Directors approval is requested to amend the agreement between the District and Schaaf and Wheeler, Consulting Civil Engineers to allow continued work to implement the proposed changes

for the project.

Background

On June 16, 2020, the Board approved a contract with Schaaf and Wheeler, Consulting Civil Engineers, to complete the District's Drainage Master Plan Update for a not-to-exceed amount of \$630,588.50 and authorized the District Engineer to sign the contract. Proposed changes to the approved contract include the contract term and increasing the compensation by \$60,802 to fund the increased work for a total contract cost of \$691,390.50.

Analysis

The contract as approved in 2020 would have provided the District and the City of Capitola with a Capital Improvement Program (CIP) and Maintenance Plan, identifying the needed improvements and the cost to implement the improvements. The contract included a Funding and Finance task developing summary for mechanisms to fund the developed CIP and Maintenance Plan providing District and City of Capitola staff with the needed information to utilize if it is decided by District and City of Capitola staff to pursue a sustainable funding source following your direction to do so.

Upon further evaluation of the tasks and discussions between District and City of Capitola staff, it was decided that the time is appropriate to seek such sustainable funding source utilizing the expertise of the Master Plan consultants; therefore, the scope of work is proposed to be changed to add a Stormwater Fee Study Task including completing an election following the Proposition 218 proceedings.

The original project also included an Impact Fee Analysis task. Considering that the District already collects fees for new impervious areas associated with land development projects in the zone; that most of land development projects in the zone is redevelopment of existing land uses; and that new impervious area fees cannot be collected for redeveloped portion of sites; it was decided that conducting additional analysis is not beneficial and therefore the Impact Fee analysis Task is proposed to be eliminated directing the funding available for the task to the proposed Stormwater Fee task.

Financial Impact.

The original contract cost of \$630,588.50 plus an additional \$250,000 cost being incurred by District staff is funded by the District, the City of Capitola and the County of Santa Cruz Public Works Road Operations.

The cost distribution by these entities is \$583,830.50 (66%) for the District, \$77,870 (9%) for the City of Capitola and \$218,888 (25%) for the County of Santa Cruz Department of Public works Roads Section (Roads).

The increased cost of \$60,802 plus the \$7,296 (12% overhead) for a total of \$68,098 will also be funded using the same percentage contribution noted above.

Because of the limited available funding for both the City of Capitola and Roads, it was agreed to spread the payments over five years (\$15,574 yearly for Capitola and \$43,777.60 yearly for Roads).

The City of Capitola and Roads have already made three payments. The additional cost will also be expected to be spread over the next two years. The yearly payments over the 2024-25 and the 2025-26 fiscal years will be \$18,638.40 for the City of Capitola and \$52,289.88 for Roads.

As was done with the original contract, the increased cost will be funded upfront by the District by transferring \$68,098 from the Capital Reserve funds, Job # P25915 into the Zone 5 Master Plan Update funds, Job # P25903

Body

Strategic Plan Element(s)

Meeting History

Dec 12, 2023 10:45 AM	Flood Control and Water Conservation District - Zone 5	Zone 5 Regular Meeting
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Public Comment:

One person addressed the Board in Chambers

One person addressed the Board via Zoom

RESULT: **APPROVED [UNANIMOUS]**

MOVER: Bruce McPherson, Director (Chair)

SECONDER: Felipe Hernandez, Director

AYES: Felipe Hernandez, Justin Cummings, Jennifer Balboni, Manu Koenig, Zach Friend, Bruce McPherson, Kristen Brown

Discussion

 [Add Comment](#)

AMENDMENT NO. 1 TO INDEPENDENT CONTRACTOR AGREEMENT
NO. 24D0471

This Amendment No. 1 (“**Amendment**”) shall serve to modify the existing Contract No. 24D0471 (“**Contract**”) between the County of Santa Cruz (“**County**”) and Schaaf and Wheeler, Consulting Civil Engineers (“**Contractor**”). County and Contractor may sometimes be referred to in this Amendment collectively as “**Parties**” or individually as “**Party**.”

I. Background.

- a. The Parties entered into the Contract effective June 16, 2020.
- b. The Contract has not been previously amended.
- c. The contract amendment enables the contractor to perform additional services not part of the original contract.

II. Effective Date of Amendment.

- a. This Amendment shall be effective as of the date fully executed by all Parties hereto (“**Effective Date**”).

III. Changes to Contract.

- a. By executing this Amendment, the Parties agree that the Contract shall be changed in the following manner.

1. Replace Section 1 - DUTIES with the following:

Contractor agrees to exercise special skill, in accordance with customary and ordinary professional practices and principals accepted in the industry, to accomplish the following results: Complete storm drainage facilities master plan update for the larger, regional facilities located within Zone 5 for Santa Cruz County Flood Control and Water Conservation District-Zone 5 (hereinafter “the project”) per the attached updated Detailed Scope of Work-Updated November 2023.

2. Replace the Compensation amount in Section 2 - COMPENSATION increasing the contract amount by \$60,802 for a total not-to exceed amount of \$691,390.50.

3. Replace Section 3 - TERM with the following:

The term of this Contract shall be: from Zone 5 Board approval date through December 30, 2024, or completion of the project, whichever is later.

- b. All other existing provisions of the Contract not specifically addressed by this Amendment shall remain unchanged and in full force and effect. In the event of a

conflict between the language of this Amendment and the Contract or any previous amendment of the Contract, the language of this Amendment shall control.

IV. Exhibits / Attachments.

The following Exhibits and/or Attachments are attached to this Amendment and hereby incorporated into its terms by this reference as though set forth in full:

- a. Detailed Scope of Work-Update November 2023
- b. Updated Cost and Fee Schedule

In Witness Whereof, the Parties have executed this Agreement by their duly authorized officers or representatives.

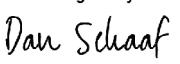

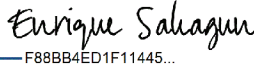
SCHAAF AND WHEELER, CONSULTING CIVIL ENGINEERS (“Contractor”)	COUNTY OF SANTA CRUZ (“County”)
<p>[Signature of person signing for Contractor]</p> <p>DocuSigned by:  9EF2E19A6F124CB... 12/6/2023</p> <p>_____ Dan Schaaf Date</p>	<p>Matt Machado</p> <p>Deputy CAO, Director of Community Development and Infrastructure</p> <p>_____ Date</p> <p>4</p>
<p>Address: 1171 Homestead Road, Suite 255 Santa Clara, CA 95050</p> <p>Telephone: (408) 246-4848</p> <p>Fax: (408) 246-5624</p> <p>Email: dschaaf@swwsv.com</p>	<p>Approved as to Form:</p> <p>DocuSigned by:  40E85ACDEEDAB42D... 12/6/2023</p> <p>_____ Office of County Counsel 12/6/23 (AMS 15283) Date</p> <p>1</p>
<p>DISTRIBUTION: Community Development and Infrastructure Contractor</p>	<p>Approved as to Insurance:</p> <p>DocuSigned by:  F88BB4ED1F11445... 12/6/2023</p> <p>_____ Risk Management Date</p> <p>3</p>

EXHIBIT A

SCOPE OF WORK-UPDATED NOVEMBER 2023

Exhibit A

Detailed Scope of Work – Updated November 2023

Task 0 – Project Management and Communication

Schaaf & Wheeler will serve as the main contact for the County and manage the tasks of the sub consultants. Schaaf & Wheeler will ensure deliverables are on time and within budget. In order to make sure the project remains within the allocated budget; we will prepare monthly summaries and highlight any variances early so they can be mitigated without impacting the overall schedule and budget.

Specific subtasks include:

0.1 Kick Off Meeting

Key members of the project team will meet at County to discuss project scope, goals, schedule, and expectations. At this meeting we will collect data and discuss task deliverables. It would be beneficial to have a representative from the County's legal staff at this meeting to understand the implications of the Master Plan and how any pipe or ditch that is assessed or modeled can become an "implied easement" and the responsibility of the County.

0.2 Project Coordination

Project team will send County monthly project updates via memo or email to the County to document progress.

0.3 Monthly Coordination

Schaaf & Wheeler will conduct internal project meetings with project team, including subconsultants.

Deliverables: Monthly summaries, meeting agendas and minutes

Task 1 – Condition Assessment

Schaaf & Wheeler will spend a total of twenty-three (23) days in the field to assess the condition of the regional facilities shown in the figure above. Approximately two of the weeks will focus on the piped system, two weeks will focus on the open conveyance system, and three days on the culvert crossings on the open conveyances. The results of the fieldwork investigation will be added into the County's GIS data. Field work will be conducted using County's tablets. Relevant modeling attributes such as open channel dimensions, pipe depth from street, pipe size, and material will be collected for the capacity analysis (Task 3). We will develop a conditions assessment geodatabase, using NASSCO rankings, to assess regional facilities.

The subtasks include:

1.1 Data Review and Field Prep

We will review previous studies, available GIS data, topographic information, as-built drawings, analyses, and aerial imagery. From this review, we will identify potential missing information vital to the condition assessment, capacity analysis and maintenance plan to be assessed and highlighted for field verification. Schaaf & Wheeler will review the 2013 Study to see if there are any pipes that were recommended to be 36-inches or larger and if they should be included into this study. Finally, our GIS Analyst will prepare field data collection tools.

1.2 Develop Fieldwork Plan and Ranking System

Develop field collection mobile applications, field collection database, and maps to conduct site visits. The proposed ranking system and prioritization criteria will be presented to the County prior to fieldwork. The pipes

and the open conveyances will be ranked on separate scales. NASCCO rating system is suggested for the pipes and two ratings on the open conveyance – one for environmental (scour, erosion, trash, illegal dumping, vegetation, etc) and one for hydraulic capacity (obstructions, sedimentation, debris).

1.3 Meeting with County

One Tasks 1.3 and 1.4 are complete, Schaaf & Wheeler will meet with the County to discuss fieldwork plan, ranking system, and easements. After the meeting Schaaf & Wheeler staff will spend half a day with County staff and tablets to ensure proper data collection method is achieved.

1.4 Condition Assessment Fieldwork - PIPES

Schaaf & Wheeler will conduct up to 10 days of field work documenting conditions and properties of identified storm drain piped facilities (pipes, manholes, catch basins) as indicated by the County as regional facilities. At this time, we estimate approximately 500 locations (manholes, catch basins, inlets, etc) to be visited with a crew that can visit up to 50 sites per day.

Two staff members will use a pole mounted camera for the pipe system to get clear images into the pipe. Any pipes that are hard to access or appear to require more detailed inspection will potentially be inspected with CCTV. Conditions assessed will include, but are not limited to:

- i. Signs of high water
- ii. Infrastructure damage (inlets, manholes, culverts, etc.)
- iii. Debris or sediment in storm drainage infrastructure
- iv. Document inverts and pipe sizes
- v. Document pipe material (CMP, RCP, etc.)

1.5 Condition Assessment Fieldwork – OPEN CONVEYANCES

Schaaf & Wheeler will conduct up to 10 days of field work documenting conditions and properties of open conveyances as indicated by the County. There are approximately 13 miles of open conveyance channels identified for this study. It is estimated that our crew can visit approximately 1.5 miles per day and document findings, however, this might be limited due to site access. In order to ensure that the highest priority areas are documents, County Staff will provide prioritized list of the open conveyance. Two staff members will use cameras to document the open conveyance systems. County staff may be required to assist with access of some of the open conveyances that are located on private property. Geocoded photos will be taken for documentation and compared to those from the 2013 Study. Conditions assessed may include:

- i. Channel erosion, debris or sediment deposition, and vegetation
- ii. Channel shape (bottom width, height, top width)
- iii. Signs of damage or high water
- iv. Hydraulic obstructions (dams, weirs, structures in channel)

1.6 Fieldwork - CULVERTS

Culverts will be assessed using a hydraulic field sheet. The goal of the culvert inspection is to get field measurements that will be used in the capacity analysis. This data will be used in conjunction with topographic data rather than conduct a detailed survey. Up to 45 culvert locations will be required for this field inspection and 15 culverts can be visited each day for a total of three (3) days of fieldwork.

1.7 Quality Control of Fieldwork

It is estimated that about 10% of the condition assessment rating and prioritization will require a detailed review by senior staff to ensure proper ratings and prioritizations. Schaaf & Wheeler will spend up to 40 hours of senior staff review.

1.8 CCTV and Review

During the meeting to review the fieldwork (Task 1.5), Schaaf & Wheeler will request information from the County of any high priority areas for CCTV. In addition, Schaaf & Wheeler staff will document any areas for CCTV in the field. Our sub consultant, Presidio Systems Inc., will CCTV identified locations. It is assumed the County will clean and remove debris in storm drains prior to CCTV. Schaaf & Wheeler will review and prioritize CCTV results and include in the condition assessment geodatabase.

1.9 Condition Assessment Geodatabase

Schaaf & Wheeler will develop a condition assessment geodatabase documenting results of fieldwork. The geodatabase will be created to include existing County attributes and be integrated into the County's current system. Our GIS Analyst will create a map package with data. The updated GIS data will be used in the capacity analysis models as well as preparing figures for the Master Plan Report.

1.10 Review Meeting

After fieldwork and data compilation have been completed, Schaaf & Wheeler will conduct one (1) review meeting with the County to discuss condition assessment results and point out any critical areas noticed. This meeting will also serve as a kick-off meeting for Task 2, Capacity Analysis.

Deliverables: Geodatabase/ArcGIS Shapefiles, CCTV (POSM), Images and Map Package

Task 2 – Capacity Analysis

Schaaf & Wheeler will use the same methodologies as the 2013 study to develop a hydrologic and hydraulic model of the regional pipe and open conveyances for the Zone 5 Regional System. However, since the focus is on the larger, regional system, the 25-year and 100-year will be included.

Open channels will be included in the model as well as culvert crossings. The open channels will be entered based on the topography (LiDAR, DEM) cross sections. The culverts will be entered based on field measurements. Culvert analyses will be conducted with HY-8.

Subtasks include:

2.1 Review Previous Study and Criteria

Schaaf & Wheeler will review the 1998 and 2013 Storm Drain Master Plans, County and City drainage criteria, and note any inconsistencies in the criteria. Because the focus is the regional, larger system, the 25-year storm event will be used for the piped network. The smaller open channels will be analyzed for the 25-year storm event and the larger open conveyances (e.g. FEMA mapped) will be analyzed for the 100-year storm event. It should be noted that each storm event requires a separate model run to analyze.

2.2 Existing Conditions Analysis – 25-year PIPES

Schaaf & Wheeler will develop the existing conditions hydrologic and hydraulic analysis using InfoSWMM, or other approved, software to identify pipes that are deficient to the identified criteria selected in Task 2.1 While the County standards state “pipes are to be sized for full buildout,” we will perform an existing conditions analysis first to provide a baseline necessary for the impact analysis in Task 6. This task will include identifying existing undersized infrastructure and documenting them in a map to be used for CIP creation.

This model will be developed to focus on the pipes only. The open conveyances will be studied under Task 2.3. The model will include ditches where it is necessary to convey flows from one piped section to another, but the ditches will not be analyzed for capacity in the InfoSWMM model.

Hydrologic Modeling develops the flow hydrographs for the hydraulic models. Schaaf & Wheeler will finalize hydrologic criteria based on Task 2.1. The 1998 and 2013 Stormwater Master Plans will be utilized, particularly in establishing storm drain catchment areas, which will be field and/or topographically verified. Tidal and rainfall boundary conditions will be taken from the 2013 study. We will create storm drain facility model of existing conditions with the 25-year event. The model will include all sub-basins within Zone 5 and will be used to calculate runoff hydrographs. We will develop basin characteristics such as land use, lag, soil data, slope, and rainfall intensity utilizing the available GIS.

Hydraulic Modeling will build upon the hydraulic models developed in 2013 in InfoSWMM with a focus on the County's Regional System which is pipes 36-inches and larger. All regional pipes, channels, lagoons and pump stations will be included in the model. The model will be validated based known issues data collected in Task 1. Areas with known flooding problems on the Regional System that do not show up in the modeling efforts will also be assessed and infrastructure such as more inlets, better curbs, regrading street.

Modeling Results will be compiled into GIS data to prepare figures to documenting areas where facility capacity is exceeded during the 25-year design storm event.

2.3 Existing Conditions Analysis – 100-year, OPEN CONVEYANCES

Schaaf & Wheeler will request FEMA models of the channels that are mapped and update the HEC-RAS models with culvert data collected in the field. Models will not extend beyond what FEMA has studied. This effort will not include updating cross section data. This will include Rodeo Creek Gulch, Arana Gulch, Soquel Creek, and Noble Creek. FEMA flows will be used. Up to two (2) smaller channels that are not mapped by FEMA will be studied in HEC-RAS using the County LiDAR data. Flows will be proportionate to FEMA flows.

2.4 Culvert Analysis

Using the hydrologic flows from the FEMA, Schaaf & Wheeler will develop an HY-8 file that analyzes the hydraulic capacities for up to 45 culverts that are not included in the models developed under Task 2.3. This analysis will assist in the development of necessary culvert improvements.

2.5 Existing Conditions Capital Improvement Projects – 25-year storm event PIPES

Schaaf & Wheeler will create conceptual pipe improvements and alternatives to reduce flood risk based on system that is to be designed to the 25-year storm event. Where appropriate, pipeline alternatives, such as channel daylighting, will be analyzed. This model will consist of the larger, regional piped system. Conceptual improvements may include, but are not limited to:

- i. increasing system conveyance
- ii. reducing peak runoff
- iii. channel daylighting

Preliminary figures will be created to convey conceptual improvement alternatives. Schaaf & Wheeler will meet with the County to narrow alternatives and obtain comments or concerns. Schaaf & Wheeler will finalize models per County direction.

2.6 Existing Conditions Capital Improvement Projects – 100-year storm event OPEN CONVEYANCES

Schaaf & Wheeler will create conceptual improvement alternatives to reduce flood risk based on system that is to be designed to the 100-year storm event. These improvements will primarily focus on culvert improvements as it is unlikely that the County will be able to increase channel capacity significantly. This model will consist of open conveyance systems studied under Task 2.3. Conceptual alternatives will include, but are not limited to:

- i. increasing system culvert/bridge conveyance

- ii. reducing peak runoff

Preliminary figures will be created to convey conceptual improvement alternatives. Schaaf & Wheeler will meet with the County to narrow alternatives and obtain comments or concerns. Schaaf & Wheeler will finalize models per County direction.

2.7 Future Improvements due to Development Impacts – 25-year

Schaaf & Wheeler will develop a “25-year future conditions” model to aid in the impact fee analysis. Future conditions shall be as defined during a meeting with the County. Results will be presented in a summary map and geodatabase.

Schaaf & Wheeler will revise CIPs as needed to account for future conditions discharges and present results in summary map and geodatabase.

2.8 Climate Change Model – 1 iteration

One iteration of climate change impacts will be modeled on the CIP pipe and creek models. The climate change iteration will include tidal boundary change due to sea level rise and increased runoff due to precipitation change.

2.9 Review Meeting

Schaaf & Wheeler will meet with County to discuss draft CIPs, obtain any comments, assist in the prioritization, and discuss next steps in the project.

Deliverables: InfoSWMM models, Results Maps, CIP Maps

Task 3 – Maintenance Program

This task involves reviewing current maintenance procedures, evaluating storm drain system maintenance needs, and working in conjunction with the County to develop a Maintenance Plan. This task will be led by NCE.

Subtasks include:

3.1 Review Current Maintenance Program

NCE will review the existing storm drain geodatabase(s), provided by the County, to identify the type, amount, location, condition, etc. of storm drain assets within Zone 5. Our focus will be on maintenance condition to get a sense of the overall condition of the system and types of maintenance that have been performed or are needed. NCE will also review how storm drain assets are captured and managed within the County’s asset management software Lucity.

3.2 Maintenance Program Meeting with County and Field Meeting

NCE will then facilitate a Maintenance Program Kickoff meeting with key engineering, road operations, and other maintenance staff to discuss our findings and to document ongoing activities and challenges. We will specifically talk about what type of inspection and maintenance activities are currently being done, who is performing the work and with what type of equipment, how and when the work is being performed, where the work is being performed, and if or how it is tracked and reported. A focus will be placed on what is working and what is not working with current activities, procedures, and reporting. We will also discuss how the County conduct visual inspections versus CCTV inspections along with how maintenance activities are the same or different from repair. The goal of the meeting is to define what the County wants from the Program and determine what established or ongoing activities can form the foundation of a maintenance program moving forward. We anticipate needing to facilitate one field meeting shortly after the Maintenance Program Kickoff

meeting with Road Operations staff to discuss procedures, equipment, and problem areas. Input received and decisions made during these two meetings will be documented in meeting summaries.

3.3 Operations and Maintenance Criteria & Document Standard Operating Procedures (SOPs)

Working with County staff, NCE will confirm existing or develop new inspection and maintenance criteria that will guide future prioritization of these activities. The focus will be to create a rapid and repeatable process, based on sound criteria, that ensure the County identifies what assets need to be inspected and maintained and when those activities need to happen. The criteria will be documented in a table following a “decision tree” structure.

NCE will then work closely with Road Operations staff to document standard operating procedures (SOP) that will guide future inspections and maintenance. The SOPs will provide clear and easy to follow guidance for how inspections and maintenance are to be performed, who is responsible for conducting them, and what tools or equipment are necessary. The SOP guidance will be in table format and include guidance for catch basins, headwalls, manholes, storm drainpipe, culverts, open ditches, channels and outfalls.

3.4 Draft Maintenance Plan

NCE will prepare a Draft Maintenance Plan for the County that will summarize the results of the conditions assessment completed in Task 1, document Maintenance Program goals, present inspection and maintenance selection criteria, describe work program actions (SOPs), provide recommendations for tracking and reporting, and presents estimates for maintenance costs including obtaining easements and regulatory approvals. The Draft will be submitted to the County for review and comment.

3.5 Meeting with County

The County will provide one consolidated set of comments for review prior to a Draft Maintenance Plan meeting. Our team will meet with County to discuss comments on the draft Maintenance Plan.

3.6 Finalize Maintenance Plan

Following the meeting NCE will prepare the Final Maintenance Plan for submittal to the County and City. The intention of the Maintenance Plan is to be a standalone document so that maintenance folks can have a specific plan. It will serve as an appendix to the Master Plan developed under Task 4 and one chapter of the report will be dedicated to summarizing the program.

Deliverables: Maintenance Program Kickoff Meeting and Field Meeting Summary, Draft Maintenance Plan, Final Maintenance Plan

Task 4 – Capital Improvement Plan and Master Plan

This task includes using the results from the Tasks 1-3 to create a Capital Improvement Plan (CIP) including prioritized projects to reduce risks in the community. The CIP will be summarized into a Master Plan document that will be used as a nexus for storm water project funding which will be further developed under Task 5.

Subtasks include:

4.1 Prepare Project Cost Estimates – Condition and Capacity

Schaaf & Wheeler will create a project list that includes all proposed improvements from Tasks 1 and 2 for inclusion into the CIP and provide a unique identifier to each project. Schaaf & Wheeler will develop project contingencies that will estimate the soft costs that cannot be detailed at this level of conceptual design. Soft

costs will include design, permitting, easement or right-of-way acquisition, and any other associated costs to complete the project. It should be noted that the recommended improvements are at a conceptual level of design which typically does not provide enough information to accurately estimate these costs. Permitting, legal, and land acquisitions costs can also change quickly and don't necessarily follow inflation which make it infeasible to update annually using cost indices. These estimates will therefore be separate line items that will be included into the total project cost.

Cost estimates will be prepared using a combination of regional data, published data, and recent projects that have gone to bid. For projects that require upsizing pipes a replacement pipe will be assumed. Condition related project costs will be based on recent construction bids for similar work. The cost for every project will be compiled and summarized in tabular and spatial format. This data will be shared with the County and discussed during the review process.

4.2 Prioritize Meeting and Project Prioritization

Prioritization requires close involvement with County staff to ensure priorities align with community concerns. Prioritization will be based on criteria agreed upon by the County and discussed at a face-to-face meeting. At the meeting we will discuss project ranking criteria such as costs, impact to flood risks or water quality, permit feasibility, ability to meet performance criteria and duration of existing flooding.

Once the criteria have been developed and agreed upon. Schaaf & Wheeler will develop final improvement project list that places each project into priority levels (urgent, high, medium, low) based on the selected criteria.

4.3 Project Sheets

Schaaf & Wheeler will develop individual project sheets for the ten (10) highest priority CIP projects. Project sheets will include the unique identifier, the project name, location, description, background/justification, and project costs (including permitting, design, right-of-way or easement, and construction costs). Photos and location maps will also be included. Project Sheets and a ranked list of projects will be submitted to the County for review.

4.4 Draft SDMP

The Master Plan documents will summarize the entire existing storm system, outline the system's current performance, detail areas currently subject to flooding, list and prioritize improvement projects, include a cost estimate for all improvements, and summarize all technical methodologies and model results. The report will include operation and maintenance needs and proposed plan. The SDMP will not include detailed Financial Plan that is to be developed under Task 5, but will have a brief section on preliminary funding options. A draft will be submitted to the County for review.

4.5 Draft SDMP Meeting with County

Schaaf & Wheeler will send the Draft SDMP to the County for their review prior to hosting a meeting with the County to review comments and get feedback on the SDMP.

4.6 Final SDMP Meeting with County

The County will provide one consolidated list of comments to Schaaf & Wheeler to address and finalize the SDMP. Schaaf & Wheeler will sign off on the final CIP projects and will sign the final engineer's report for use in financial programs.

4.7 Develop Materials to Present SDMP Presentation to Board

Schaaf & Wheeler will develop materials to present to the SDMP to the Board of Supervisors.

Deliverables: Project Sheets, CIP Ranking Documentation, Prioritization Meeting minutes and notes, Draft SDMP, Final SDMP, presentation materials and Board presentation

Task 5 – Funding and Finance Plan

This task includes developing summary for mechanisms to fund the developed CIP and Maintenance programs. This task will be conducted by NCE and NBS with support and management from Schaaf & Wheeler.

Subtasks include:

5.1 Define the Program

Following the completion of Task 4, NCE and NBS will facilitate a meeting with County staff to specifically define the Zone 5 program including the specific services and activities to be funded by the selected revenue initiative. The team will also document what is specifically not included in the Program, so the financial analysis (next task) does not inadvertently consider costs for services and activities that will not be funded by any selected revenue initiative. Defining the program is critical for both the financial analysis and the development of key messaging discussed later. The discussion will also determine an appropriate planning horizon (5 year permit term, 10 or 15 year CIP, etc.) for the Program. Based on the input received during the meeting, we will create a bulleted outline or program table that specifically denotes the services, activities, and reporting that constitute the Zone 5 program. Although basic, this step is critical because most members of the public, and in some cases elected officials, don't know what the Zone 5 Program is nor are they familiar with the goods and services the Program provides. A Draft will be prepared and submitted to the County for review and comment. NCE will obtain comments and prepare a Final.

5.2 Financial Analysis

The County will provide existing budget or expenditure information associated with the Zone 5 Program for NCE and NBS to review. Based on this data and the cost estimates from Task 4, NCE and NBS will create a financial analysis tool (spreadsheet) in order to document future annual average program needs. The tool will be organized following the Program elements or activities defined above and will be populated with the data, information, and CIP programming provided by the County or resulting from Task 4. After the financial tool is initially populated, it will be provided to the County for review. We will then facilitate a meeting to formally present the results of the financial analysis to the County. This will be a working meeting where any additions or revisions to the financial projections will be made and a final Annual Average Financial Projection will be documented. Following the meeting a final financial analysis tool will be prepared.

5.3 Revenue Options & Rate Scenarios

Feasible options to achieve revenue needs will be identified and evaluated. To achieve this objective, a database will be developed which includes all parcels of land within Zone 5 boundaries. This database will be developed based upon the records of the County Assessor, current GIS data and other relevant and applicable data sources. Information contained within the database will include ownership, development status, land use assignment, and other property characteristics which will be necessary for the development of potential funding options. NBS will analyze the facilities and services to be financed, consider the potential special and general benefits conferred for assessment-based funding options, and calculate a range of potential special assessment and/or special tax amounts to achieve the revenue needs. A draft memo presenting these options will be developed and include brief descriptions of legal considerations, benefits, and drawbacks. Two rate scenario models, based on one or more of the funding options, will be developed to provide context for potential revenue generation. We will then facilitate a meeting to discuss the revenue options and rate scenarios. Following the meeting a final memo will be developed.

5.4 Strategic Plan

NCE and NBS will work with the County Team to develop and implement a strategic plan to evaluate the potential for implementing a dedicated revenue mechanism or mechanisms to support the Zone 5 program. The first step is to identify and prioritize key internal and external stakeholders or influencers (those who are likely to have significant influence over the success or failure of any revenue initiative) who the County needs to engage early in the process to introduce the Program and its needs. This will be documented using a Key Stakeholder Template. Next, utilizing NCE's community values tool and key talking points questionnaire a argument for why the Zone 5 Program is important will be developed along with initial branding and messaging. The development of the argument, initial branding, and initial messaging will include a preliminary meeting with a broad County Team, follow by brief interviews with key staff.

Following the development of the items above, NCE will assist the County in planning for targeted outreach. This initial engagement will be targeted at key internal and external stakeholders or influencers who can provide early insight about questions and concerns related to the initiative and provide critical feedback on the initial branding and messaging. NCE will prepare a key talking points slide deck to guide the stakeholder meetings. It is important to complete the initial engagement early in the process prior to community polling or the County making a decision about a specific revenue mechanism. NCE will synthesize the result and identify key takeaways or themes to be used in refining or updating the Initiative's branding and messaging and to inform the content of future engagement activities. NCE will then work with the County to review and update, as needed, the target audience section of the Strategic Engagement Plan and identify the necessary one on one, group or organization, and community meetings/events to support the Initiative.

5.5 Polling

Depending on the types of mechanisms being considered some type of polling is recommended. The goal of the polling is to determine the level of support within the Zone 5 community for different rate levels. In addition, the polling will test how different elements or key messaging influence respondent's willingness to support the initiative. A polling firm will be used to conduct between 300 to 400 interviews lasting approximately 20 minutes each. Interviews would be conducted via phone and on-line.

5.6 Recommendations and Go/No Go

Following the completion of the initial stakeholder engagement, public education and outreach, and the Polling, NCE and NBS will prepare a recommendations memo summarizing the feedback obtained during the stakeholder meetings and response from the polling. Based on these data points, the memo will identify if there is support for dedicated local revenue source, and if there is the memo will provide a recommendation for the County to consider in making a Go/No Go decision.

5.7 Public Education and Research

NBS will develop draft media products for distribution, including, but not limited to, website updates, emails, social media posts (Facebook, Instagram, Nextdoor, and Twitter), and mailers, etc. In addition, the CivicMic team will create a dedicated webpage on civicmic.com.

NBS will develop flyers that educate the community about the stormwater project and create surveys with specific questions that allow for focused outcomes while measuring the performance of the survey to supply useful and detailed results.

NBS will facilitate meetings with the public to convey the messages from the above educational materials. The CivicMic team will:

- Host up to four in-person meetings to allow the community to discuss items of importance as well as build a sense of community.
- Create and post-meeting notices on various outlets such as social media, public locations, and in the newspaper and newsletters.
- Lead meetings with goals created before the meeting.
- Develop action items based on feedback received at public meetings.

Finally, NBS will assemble a group of individuals to provide input on the stormwater project process and formation options. Through surveys and meetings, the CivicMic team will work with the community to determine a group of individuals that represents various communities and demographics within Zone 5, allowing for diverse participation. We will then work with this group throughout the formation process to gather input and to provide tools so that the working group can share updates with various sectors of the community.

Deliverables: Draft and Final Program Table, Draft and Final Financial Tool, Draft and Final Revenue Options & Rate Scenario Memo, Draft and Final Key Talking Points Slide Deck, Draft & Final Recommendations Memo, Polling Results, Educational Materials, public meeting materials and meeting summaries

Task 6 – Stormwater Fee Study

NBS will complete a Stormwater Fee Study as subconsultant to Schaaf & Wheeler, as outlined below.

Subtasks include:

6.1 Kickoff Meeting and Data Collection

NBS will hold a kick-off meeting with Schaaf & Wheeler and the City of Capitola and County staff at the beginning of the study. The kick-off meeting will be used to data requirements in general and review study objectives, tasks, and schedule. A preliminary plan for public presentations will be discussed with the Schaaf & Wheeler, the County and City, and NBS' CivicMic team during this meeting. The consulting team and County/City will be asked to provide data, such as:

- Financial data typically reported in financial statements.
- Capital Improvement and/or Master Plans (CIP projects by name, cost, and timing).

6.2 Financial Plan

NBS will prepare a detailed financial plan for the stormwater utility that includes revenue, expenditures, reserves, debt coverage ratios, capital improvement costs, repair and replacement costs and net revenue requirements. Task deliverables will include:

- Financial projection model that will serve as a financial “roadmap” for the stormwater utility.
- Summary of current and projected net revenue requirements.
- Reserve fund policies and targets potentially including reserves for operations, rate stabilization, repair and replacement, debt service and capital projects.
- Projected year-end reserve fund levels.
- Calculated debt service coverage ratios.
- Three alternatives (i.e., annual rate increases) that meet projected net revenue requirements.

- Funding sources (cash vs. debt) for capital improvements.

This financial plan will lay the groundwork for the cost-of-service and rate design analyses addressed in Tasks 3 and 4. The following are subtasks to the Financial Plan:

6.2.1 Projected Revenues and Expenditures

Using a cash-basis reflecting the County's system of accounts, NBS will prepare a projection of revenues, expenses, and increases in rate revenue needed to meet all obligations. This will provide Schaaf & Wheeler and the County with a financial planning tool to plan for rate adjustments to address operating and maintenance costs, infrastructure improvements, asset replacement and maintaining appropriate reserve fund levels. The County's projected customer growth rates from master plan documents and planned cost inflation factors will be incorporated in this analysis.

6.2.2 Evaluate Reserve Fund Sufficiency

NBS will evaluate the sufficiency of existing reserve funds, target reserves, reserve fund policies, and related issues such as meeting debt service coverage ratios and other rate covenants. We will provide recommendations for reserve fund targets that are tailored to the County's specific needs such as operating, capital rehabilitation/replacement, rate stabilization and catastrophes, etc. We will develop a phased-in approach to funding reserves to minimize the impact to ratepayers.

6.2.3 Review Capital Improvement Program Funding

NBS will incorporate County plans for new facilities, infrastructure improvements, and asset replacement plans into the financial plan. We will evaluate the timing, costs, and available reserves used to fund various projects. We will work with County staff to develop a well-conceived approach to funding these capital needs, which may include an appropriate balance between debt-funded and cash-funded projects. The recommended solution will provide an appropriate balance between funding from rates, system development fees and, if necessary, the use of outside financing. Up to three levels of capital improvement program funding will be developed in the study for comparison purposes.

6.3 Cost of Service Analysis

Using the net revenue requirements developed in Task 3, NBS will equitably allocate costs to individual customer classes based on cost-of-service principles that comply with Prop 218.

NBS will evaluate cost allocations of various cost components to each customer class. The main components of the stormwater cost-of-service analysis are as follows:

6.3.1 Parcel Identification

NBS will develop a boundary and associated parcel database for property subject to the proposed Fee. Parcel data relevant to the formation as currently shown on the County Assessor's secured roll will be incorporated. The database will include land divisions, ownership and mailing information, and parcel information relevant to the allocation of the Fee.

6.3.2 Impervious Surface Coefficient

NBS will estimate the amount of impervious area on a given parcel using an impervious surface coefficient, or ISC. The ISC represents the percentage of a parcel that is composed of an impervious surface in relation to the total parcel area. Land uses can vary greatly in the percentages of impervious surface area. Land uses such as an agricultural use will be very different from an industrial use in terms of percentages of total impervious area. Individual ISCs have been developed to recognize these differences among various land uses. NBS will identify appropriate ISC data, for example the State of California, Office of Environmental Health Hazard Assessment,¹ California Environmental Protection Agency's Impervious Surface Coefficients as presented in the User's Guide for the California Impervious Surface Coefficients (December 2010).

6.3.3 Allocation of Costs to Customer Classes

Costs are then allocated to individual customer classes based on allocation factors specific to each cost classification. For example, commodity/variable costs are allocated based on land use and corresponding ISCs.

6.4 Rate Design Analysis

NBS will work with City/County staff to review the current rate structure and evaluate whether there are alternatives that better meet the County's broader rate design goals and objectives. NBS will provide up to three stormwater rate structure alternatives for the City/County's consideration, which will include the County's existing rate structures and two alternatives. An evaluation of the pros and cons of each rate structure alternative will be included in this analysis. The following are subtasks to the Rate Design Analysis:

6.4.1 Develop Rate Design Recommendations

Stormwater rates will be developed based on the cost of service analyses, and we will include a discussion of the relative merits (pros and cons) of the current rate structure and the new alternatives. Evaluating the County's desired rate complexity and resulting customer bills will be essential components of this process.

6.4.2 Criteria for Improving the Rate Design

When evaluating rate design, revenue sufficiency and financial resiliency are critical considerations. NBS' general approach is to avoid significant **under-collection** of rate revenue, which is the worst-case scenario from a financial perspective. Other criteria for evaluating rate structures include:

- Ease of understanding the rate structure by customers.
- Impacts on customer bills.
- Differences, if any, in collection system and general overhead and administrative costs and how they are allocated to various customers.
- Changes due to weather events, flooding and system condition that may affect rates on a going-forward basis.

The rate structure alternatives selected will ultimately provide the basis for comparing customer bills under both the current and new rate structures. However, all rate structures will be "revenue neutral" because they will all collect the same amount of revenue, both in total and within each customer class.

6.5 Regional Bill Comparison

NBS will compare current and proposed stormwater rates to ten neighboring communities to see how the County's rates compare to other nearby communities. The results of this comparison will be presented in the rate study report and in public presentations. The comparisons will provide City/County staff and County Council with a basis to compare the cost of stormwater service to customers in the region.

6.6 Prepare Electronic Rate Model

NBS will develop the Excel-based rate model for use by County staff (users not limited) once the study is complete. The model will be custom-built to the County's specific needs and will have the functionality to update revenue and expenses, prepare what-if scenarios, and determine annually if the proposed rate increase is needed, or if it can be modified or delayed. The model will have a dashboard where assumptions can be modified and will flow through to the rate alternative results, and a documentation tab that explains each tab and the interrelationships of each tab.

In addition, the model will include adjustable inflation factors and other variables and will graphically display charts and figures to communicate outcomes and recommendations. We will review the model with staff

during the development of the rate study to make sure it meets the City/County's requirements and preferences.

A training session can be provided with the County's Project Manager at the conclusion of the study. The goal of this session will be to review all tabs in the model and to provide sufficient information for the County to accept the model and have the ability to use it going forward.

6.7 Prepare Study Report

NBS will prepare a draft study report that include proposed rates for the next five to ten years, depending on the County's preference for the timeframe. An executive summary and introduction will present the purpose of the report and results of the study. Tables, graphs, and charts will be used as appropriate, but the emphasis will be on providing a clear, concise and understandable report that will provide the County with a thorough administrative record. Key assumptions, methodologies, and factors affecting the development of proposed rates will be highlighted with charts and graphs when helpful. However, more technical aspects of the study, particularly the tables documenting the calculations and sources of data, will be separately provided in technical appendices.

NBS will provide an electronic file in Microsoft Word format of the draft report for the County's review and comment. Once we have received the County's comments², we will incorporate those comments into a final report.

6.8 Meetings and Presentations

NBS plans to provide support to the County in public meetings to support the new rate adoption process. We will also plan to meet with County staff to review study results and recommendations throughout the project. The following meetings and presentations are anticipated for this study:

6.8.1 Meetings with County Staff

NBS proposes to hold progress meetings with County staff via conference call or web meeting format. These meetings will be used to review initial work products and gain input from Staff on the direction of the study. Prior to the public meetings, we also expect to have regular phone conversations with County staff to discuss how the study is proceeding, solicit input from Staff, and to review and discuss the study's initial results and work products. In addition, NBS will work with County Staff to discuss and understand talking points while continuously providing guidance on how to manage questions for community members to ensure a clear and transparent message.

6.8.2 Other Public Workshops/Presentations

NBS rate study staff, in conjunction with NBS' CivicMic team, will provide up to three (3) public workshops³ including with a County Committee and County Council. The rate team will prepare a PowerPoint presentation for these meetings, which will include visual aids, graphics, charts and additional worksheets or handouts. In these presentations, NBS will present study results, recommendations, receive input and guidance on the direction of the study and answer questions. The CivicMic team will structure the meetings to encourage the highest level of engagement. Our team will work with County Staff to create an agenda and develop presentations that allow for clear and insightful presentations.

6.9 Notice of Public Hearing Mailing

NBS will create a mailing list using the most recent County Assessor secured roll data available, combining that with the County's customer database. Duplicates will be removed to create a comprehensive mailing list. NBS will also draft the Notice to property owners subject to the proposed Fee. Final form of the Notice will be reviewed and approved by legal counsel and County staff.

NBS will work with County staff to answer any questions that come up and guide you through the adoption process. The key technical tasks will be to prepare a draft and final Prop 218 Notice and provide the proposed rate tables included in the notices. NBS will work with County staff to review the draft and final notice prior to public release. The County should have legal counsel review all notices for legal compliance with the provisions of Prop 218, such as wording related to pass-throughs.

NBS will also develop and design a detailed fact sheet to be mailed to community members. The fact sheet will include historical information that will help educate the community on the current project needs. The fact sheet will be translated into up to two languages based on community census data.

6.10 Election

NBS will develop a process for the proceeding to ensure that all parties understand the parameters and procedures. We will prepare the Notice and Ballot Package materials, as required, in compliance with Proposition 218. Final form of the Notice and Ballot Package will be reviewed and approved by legal counsel and County staff. NBS will also develop and design a detailed fact sheet to be mailed to community members. The fact sheet will include historical information that will help educate the community on the current project needs. The fact sheet will be translated into up to two languages based on community census data.

6.10.1 Ballot Package

NBS will draft, print and mail the Ballot Package materials to be mailed to property owners subject to the Stormwater Fee. Final form of the Ballot Package will be reviewed and approved by the County and County's legal counsel.

6.10.2 Ballot Tabulation

Ballot tabulation consists of the following processes:

6.10.2.1 Ballot Authentication

Ballots are reviewed to ensure authenticity of the ballot and completeness of execution (i.e. are all appropriate fields properly marked)

6.10.2.2 Ballot Scanning and Preliminary Reporting

Ballots are scanned using a barcode/QR code scanner. Preliminary reports can be shown during the scanning process or can be withheld until after all ballots are scanned.

6.10.2.3 Auditing and Certification

Auditing protocols are followed to demonstrate that the software and equipment have functioned properly and provided accurate tallies. This can be done in the presence of appropriate parties such as County staff and/or the public. The detail and extent of the audit will be determined by the accuracy of the initial count and closeness of election results.

6.10.3 Property Owner Support Services

NBS' call center services will consist of the following:

6.10.3.1 Call Center Set Up and Coordination

A dedicated phone number and email address will be established to handle incoming inquiries.

6.10.3.2 Staff Preparation

Staff will be briefed on the Stormwater Fee, Hearing Notice and Ballot Package and will be provided with pertinent materials for the purpose of answering incoming questions and providing requested documents as requested.

6.10.3.3 Receive and Respond to Inquiries

Staff will receive calls, retrieve and respond to voicemail messages, and respond to email messages in a timely manner. The expectation is to respond within two business days for all inquiries.

6.10.3.4 Log Calls and Provide Summary Report

Inquiries will be logged to contain summary information so that call volume reporting can be provided to the County.

EXHIBIT B
UPDATED COST AND FEE SCHEDULE

Santa Cruz County Storm Drainage Facilities Master Plan Update - Zone 5
Schaaf Wheeler Team Fee Estimate

Task	Hourly Rates	Schaaf & Wheeler Hours				NCE Hours					NBS					Other Consultants	SUBTOTAL
		Principal/Project Manager	Project Engineer	Assistant Engineer	GIS Analyst	Principal/Project Manager	Senior	Project	Staff	Clerical	Director	Colgan	Associate Director	Consultant	Analyst		
0 Project Coordination																	
0.1 Kickoff Meeting		4	4														\$ 24,090.00
0.2 Monthly Summaries		36	4														\$ 1,860.00
0.3 Monthly Coordination Calls/Emails		36	18														\$ 9,540.00
1 Condition Assessment																	
1.1 Desktop Analysis and Field Prep		2	4		12												\$ 3,180.00
1.2 Develop Fieldwork Plan & Ranking System		2	4	4	4												\$ 2,680.00
1.3 Meeting with County		4	8		8												\$ 3,960.00
1.4 Condition Assessment Fieldwork Pipes		8	16	80	80												\$ 31,520.00
1.5 Condition Assessment Fieldwork Channels		4	16	80	80												\$ 30,560.00
1.6 Field Inspection Culverts		2	4	24	24												\$ 9,180.00
1.7 Quality Control		28															\$ 6,720.00
1.8 CCTV - 1 week		4	8	4												\$18,000	\$ 23,260.00
1.9 Condition Assessment Database		2	8	16													\$ 4,250.00
1.10 Meeting with County		4	4														\$ 1,860.00
2 Capacity Analysis																	
2.1 Review Previous Study			2	8													\$ 63,310.00
2.2 Existing Condition Modeling - 25yr		4	20	80													\$ 1,850.00
2.3 Existing Condition Modeling - 100yr		4	14	40													\$ 19,460.00
2.4 Culvert Analysis		4	12	40													\$ 11,110.00
2.5 Existing Condition CIPs - 25yr		2	6	20													\$ 10,660.00
2.6 Existing Condition CIPs - 100yr		2	6	10													\$ 5,330.00
2.7 Future CIPs - 25yr		2	8	12													\$ 3,580.00
2.8 Climate Change Model - 1 iteration		2	8	16													\$ 4,380.00
2.9 Meeting with County		4	4														\$ 5,080.00
3 Maintenance Program																	
3.1 Review Current Maintenance Program						6	8		8								\$ 1,860.00
3.2 Maintenance Program Meeting w County/City		2				8	16		16								\$ 4,488.00
3.3 O&M Criteria & SOPs		2				6	24		32								\$ 8,312.00
3.4 Develop Draft Maintenance Program		2				10	24		60	4							\$ 11,700.00
3.5 Meeting with County/City		2				10	8		8								\$ 17,354.00
3.6 Final Maintenance Program		2				4	8		24	2							\$ 6,112.00
4 Capital Improvement Plan & Master Plan																	
4.1 Develop Costs from Task 1 and 2 Projects		2	10	20													\$ 6,948.00
4.2 Prioritize Meeting & Project Prioritization		2	6	10													\$ 61,452.00
4.3 Develop Project Sheets		2	4	20	16												\$ 6,230.00
4.4 Draft SDMP Report		8	16	72	24												\$ 3,580.00
4.5 Meeting with County		4	4														\$ 7,280.00
4.6 Final SDMP Report		4	14	24	10												\$ 21,720.00
4.7 SDMP Presentation to Board		4	8	4													\$ 1,860.00
5 Financial Strategy																	
5.1 Define Program		4	12			16		20	2								\$ 17,422.00
5.2 Financial Analysis		4	6			20		40	20	2							\$ 11,822.00
5.3 Revenue Options & Rate Scenarios		4	6			14		24		2	10		20	30			\$ 21,670.00
5.4 Strategic Plan		4	20			100		80	4					5			\$ 22,451.00
5.5 Polling		4	6			8		4		2				4		\$ 31,000	\$ 48,904.50
5.7 Recommendations		4	12			12		24		1	2		2	4			\$ 40,524.00
5.6 Public Education		4	4								2		2	4		\$ 82,500	\$ 12,878.00
6 Balloting											\$250	\$225	\$175	\$150	\$130		\$ 94,216.00
6.1 Kickoff Meeting & Data Collection		2									2	8	2	16			\$ 108,239.00
6.2 Financial Plan		2									6	14	6	22			\$ 6,035.00
6.3 Cost-of-Service Analysis		2									4	8	4	28			\$ 10,380.00
6.4 Rate Design Analysis		2									6	8	8	12			\$ 8,950.00
6.5 Regional Bill Comparison		2									2	8	4	8			\$ 7,630.00
6.6 Prepare Election Rate Model		2									2	8	4	12			\$ 5,100.00
6.7 Prepare Study Report		4									6	10	4	16	8		\$ 5,760.00
6.8 Meetings and Presentations		4															\$ 9,639.00
6.9 Notice of Public Hearing Mailing		4										6	2	6	4		\$ 960.00
6.10 Election		4										6	4	8	6	\$ 40,000	\$ 4,392.00
																	\$ 49,393.00
LABOR SUBTOTAL																	\$ 681,640.50
DIRECT COSTS																	\$ 9,750.00
TOTAL		250	300	572	278	214	88	192	168	15	296	301	245	333	148	\$ 171,500	\$ 691,390.50

EXHIBIT 56

From: T Thatcher <terrirthatcher@gmail.com>
Sent: Wednesday, January 24, 2024 5:43 PM PST
To: Herlihy, Katie (kherlihy@ci.capitola.ca.us) <kherlihy@ci.capitola.ca.us>
CC: Kahn, Jessica <jkahn@ci.capitola.ca.us>; Mozumder, Kailash <kmozumder@ci.capitola.ca.us>; Joe McLean <jwmjr116@gmail.com>; Sesanto, Sean <ssesanto@ci.capitola.ca.us>
Subject: Re: Riverview Flume
Attachment(s): "~WRD0001.jpg", "~WRD0001.jpg"

Katie,

We're aware of the communication stream with Nick. My issue is regarding communication around the flume repair that is now impacting our permit.

We are free any time you can make yourself available.

Sooner the better.

Thank you, Katie.

On Wed, Jan 24, 2024, 5:18 PM Herlihy, Katie (kherlihy@ci.capitola.ca.us) <kherlihy@ci.capitola.ca.us> wrote:

Dear Terri and Joe,

I apologize for the communication issues you raised regarding your application. On the front page of your application, the box next to Architect Designer Nicholas Batie of Faulkner Architects was checked as the name of the person listed whom staff should contact regarding the application. The incomplete letter and updates have been going to Nicholas. Sean Sesanto can include you on all future communications.

I spoke with Nicholas Batie last week after Sean informed him of the latest update regarding the encroachment. I am happy to sit down with you to discuss the review process and timing. At this point, we want to ensure that when your application goes through the review process, the County will not prevent the development from happening through unrealistic conditions. Our legal team requested a meeting with County Council which we are currently trying to identify a date. We will provide updates after we meet on the process.

Please let me know when you would like to meet. This is a very unique circumstance.

Regards,

Katie Herlihy

Community Development Director

From: T Thatcher <terrirthatcher@gmail.com>
Sent: Tuesday, January 23, 2024 12:29 PM
To: Kahn, Jessica <jkahn@ci.capitola.ca.us>; Herlihy, Katie (kherlihy@ci.capitola.ca.us) <kherlihy@ci.capitola.ca.us>
Cc: Mozumder, Kailash <kmozumder@ci.capitola.ca.us>; Joe McLean <jwmjr116@gmail.com>
Subject: Re: Riverview Flume

Greetings Katie and Jessica,

We're following up on the latest we've heard from our architect on the status of our building permit.

It appears that the date for the flume repair continues to slip and with it progress on getting a permit to remodel the home above it at 427 Riverview. What is frustrating to us is that there has been zero communication from the City of Capitola to us personally. We hear updates second-hand or after reaching out.

We also heard that there is a dispute between the County of Santa Cruz and the City of Capitola on who is responsible for the flume repair. We assumed this was sorted out last year after we were told of two different timeframes for the flume repair, Spring of 2023 and Fall of 2023.

The initial plans for our remodel were reviewed by Capitola last Spring. After approval to proceed with the drawings, the plans for the remodel were submitted to Capitola on September 8th, 2023. We were told the review would take 30 business days which would have been October 20th. We're just now hearing about this new delay that is now on indefinite hold. This means we cannot schedule a contractor or anything else for the project. I feel we've been more than accommodating in this year-long process.

We heard from our architect last week that there is a 'five-year plan' where the flume will potentially be diverted to another location. We've never heard this from the city which doesn't make sense as it runs under our home.

My question to you is how do we resolve these pretty massive communication issues? We've followed all of the rules, reset expectations on timelines, and have been extremely cooperative.

We'd like to have a face-to-face meeting with you all to agree on a path forward. We will make ourselves available at a time that works for you all. The sooner the better, please.

Terri Thatcher

Joe McLean

On Fri, Nov 10, 2023 at 10:40AM T Thatcher <terrirthatcher@gmail.com> wrote:

Thank you, Jessica.

We are also in the permit process to remodel this property. We are currently working with Sean on this. The draft plan would be to begin with the building closest to the creek, in the Spring. It would likely give you access to the top of the box. When the Granite Rock guys put the temporary fix to the walkway in place, they indicated there was a crack about ten feet into the flume.

We look forward to working with you on this!

Terri & Joe

On Thu, Nov 9, 2023 at 1:15PM Kahn, Jessica <jkahn@ci.capitola.ca.us> wrote:

Good afternoon,

Thank you for your email, we appreciate your patience and concern regarding the upcoming wet winter and the

impact on your properties.

The City is actively engaged in the planning and permitting process for the permanent repair of the outfall. Our current timeline anticipates that construction will take place in the spring, coinciding with the period of lowest water levels. This approach ensures a safe and effective repair process.

We understand the importance of addressing the damage promptly, and we are committed to ensuring that the outfall is restored to its proper condition. We will keep you informed of any further developments or updates as we progress with the repair work.

If you have any additional questions or concerns, please do not hesitate to reach out.

Jessica

Jessica Kahn, P.E.

Public Works Director

City of Capitola

(831) 475-7300 x 217

jkahn@ci.capitola.ca.us

From: T Thatcher <terrirthatcher@gmail.com>

Sent: Sunday, November 5, 2023 11:14 AM

To: Kahn, Jessica <jkahn@ci.capitola.ca.us>

Cc: Mozumder, Kailash <kmozumder@ci.capitola.ca.us>; Joe McLean <jwmjr116@gmail.com>

Subject: Re: Riverview Flume

Hello Jessica,

Joe and I wanted to check-in to ensure we're still on track for this repair to occur in May. I know you know that this winter is forecasted to be a wet one. We're very concerned for both of our properties due to the large crack in the flume that compromised the integrity of the walkway and the front yard of 427 and would feel better knowing that there was a repair plan in place.

Thank you in advance, Jessica, for providing us with an update on the plans.

Best,

Terri Thatcher

Jose McLean

On Fri, Sep 8, 2023 at 9:41AM Kahn, Jessica <jkahn@ci.capitola.ca.us> wrote:

Hi Terri,

I apologize for the delay in responding.

Unfortunately, the City will not proceed with any further repairs on the flume before this winter. During the process of obtaining permits for the work in this past spring and summer, it became apparent that the permanent repair will require engineered plans to be submitted to the permitting agencies for review. It is likely that the permanent repair work will not take place until next May, as the permitting agencies have indicated that we must wait for the lowest creek level to complete work in or near the water. This also applies to the City-owned bulkheads adjacent to the creek, which has not yet been repaired.

If you have any additional questions, please let me know.

Jessica

Jessica Kahn, P.E.

Public Works Director

City of Capitola

(831) 475-7300 x 217

jkahn@ci.capitola.ca.us

From: T Thatcher <terrirthatcher@gmail.com>

Sent: Tuesday, August 29, 2023 4:45 PM

To: Kahn, Jessica <jkahn@ci.capitola.ca.us>

Cc: Mozumder, Kailash <kmozumder@ci.capitola.ca.us>; Joe McLean <jwmjr116@gmail.com>

Subject: Re: Riverview Flume

Hello Jessica,

Hope all is well with you all. I know you're crazy busy with repairs.

I'm following up on this last email from you. It's been five months now and we've not heard any updates. We're very concerned about the upcoming wet winter and the integrity of the flume. As you know it's impacted both of our properties, 425 and 427 Riverview Avenue.

We've hired an architect, Faulkener Architects, to remodel 427. They have been working with the city to ensure we are compliant with regulations. They will be submitting detailed plans within the week with an expected break-ground time frame of this next Spring.

We hope that the plan is to address the flume repairs before the winter and our break ground timing. We're happy to come into the office to meet if this helps. Please let us know!

Best,

Terri Thatcher

Jos McLean

On Tue, Apr 4, 2023 at 9:57AM Kahn, Jessica <jkahn@ci.capitola.ca.us> wrote:

Hi Terri,

Thank you for your follow up email, I did not receive the March 23 email.

Last week City staff met with FEMA regarding this location along with several others in the City. We are currently awaiting funding information that will allow us to move forward with the permanent repair. This repair will likely require permits from several regulatory agencies and selecting a contractor through the public bidding process. Assuming that there is not any additional damage this outfall requiring emergency repair, I would expect permanent repair work to commence sometime within the next 3 months.

Please let me know if you have any additional questions.

Thanks, Jessica

Jessica Kahn, P.E.

Public Works Director

City of Capitola

(831) 475-7300 x 217

jkahn@ci.capitola.ca.us

From: T Thatcher <terrirthatcher@gmail.com>

Sent: Thursday, March 30, 2023 10:59 AM

To: Kahn, Jessica <jkahn@ci.capitola.ca.us>; Mozumder, Kailash <kmozumder@ci.capitola.ca.us>

Cc: Joe McLean <jwmjr116@gmail.com>

Subject: Re: Riverview Flume

Hello Jessica and Kailash,

Attached you'll find 4 more photos. The fence has slipped down about 10 inches now as the floor of the flume at the mouth has collapsed further. Looking down from the path, the floor of the flume on the left has lifted up notably and the right side appears to have collapsed further down.

We would love to connect with you all on what the plan is. If you are not the right people to work with, can you please share the names of the contacts at the county?

Thank you,

Terri Thatcher

On Thu, Mar 23, 2023 at 5:50PM T Thatcher <terrirthatcher@gmail.com> wrote:

Hello Jessica and Kailash,

We hope this email finds you well.

Joe Mclean and I are the new owners of 427 Riverview, over the flume. We have been communicating with Kailash on the damage that was done to the flume after the storms this year. We are preparing to work on the house so we need to understand what the plans are to address the damage. I know that you had Granite Rock put a temporary fix in place so that the public walkway could reopen but there is still significant damage that needs to be addressed.

We hired a soil engineer to assess the property and she went into the flume and took photos and video that show further issues that need to be addressed.

The summary is that about 10' in there is a crack and spalling of the cement. There looks to be a previously repaired section that is also cracking now. About 38' in there is a crack that goes all the way around; the bottom, sides, and top. The crack is allowing the water to penetrate underneath the floor of the flume.

We would love to get with you to discuss



next steps. I've attached photos of the findings. I'll send the video in a separate email. It's a large file.

We look forward to hearing back from you!

Terri Thatcher

Joseph McLean

EXHIBIT 57

From: Justin Graham <Justin.Graham@santacruzcountyca.gov>
Sent: Thursday, February 15, 2024 1:39 PM PST
To: Sesanto, Sean <ssesanto@ci.capitola.ca.us>; Matt Machado <Matt.Machado@santacruzcountyca.gov>; Jason Heath <Jason.Heath@santacruzcountyca.gov>
CC: Herlihy, Katie (kherlihy@ci.capitola.ca.us) <kherlihy@ci.capitola.ca.us>; Rachel Fatoohi <Rachel.Fatoohi@santacruzcountyca.gov>; Samantha Zutler <SZutler@bwslaw.com>; Moshref-Danesh, Leila J. <LMoshref@bwslaw.com>
Subject: RE: City of Capitola 427 Riverview Avenue Application

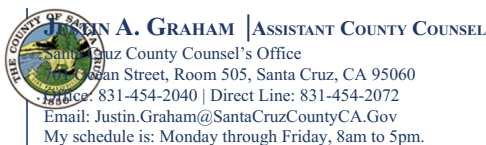
In anticipation of our meeting this afternoon, staff provided these comments:

"This is not a project that the County or Zone 5 would typically allow, because the entire property and footprint of the structure is bisected by an underground culvert.

If the City is interested in entertaining this application, County drainage staff have the following preliminary comments:

1. The Applicant should be required to evaluate the condition of the culvert underlying the property; however, the Zone 5 master plan consultant has already evaluated the condition of the culvert. It is in bad condition and does not have sufficient capacity to convey the flows it receives.
2. The County and Zone 5 would not permit a project like this with a culvert in this condition and with insufficient capacity.
3. Per the Master Plan the required culvert size is 96" by 120". Potentially it might make sense to reroute the culvert under the adjacent walkway rather than having it bisect the entire footprint of the house.
4. Applicant should be required to take steps to protect culvert during construction. Potentially the house foundation should be designed such that a culvert failure would not result in damage to the house.
5. The Applicants need to enter and record an agreement that runs with title that acknowledges the existence of and hazard of building on top of the culvert and contains restrictions on future use of the property that will protect the culvert (e.g. trees, drilling/excavation), and agrees to defend and indemnify the County, Zone 5 and the City. Should also include a right of access to the culvert if necessary for maintenance/repair by a public entity and notice when they're going to do work that might impact the culvert
6. Indemnity agreement should extend to construction of the project.
7. Applicant should be required to perform or contribute toward maintenance on the culvert. "

//Justin



SANTA CRUZ COUNTY COUNSEL CONFIDENTIAL COMMUNICATION

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From: Sesanto, Sean <ssesanto@ci.capitola.ca.us>
Sent: Thursday, February 1, 2024 3:28 PM
To: Justin Graham <Justin.Graham@santacruzcountyca.gov>; Matt Machado <Matt.Machado@santacruzcountyca.gov>; Jason Heath <Jason.Heath@santacruzcountyca.gov>
Cc: Herlihy, Katie (kherlihy@ci.capitola.ca.us) <kherlihy@ci.capitola.ca.us>
Subject: City of Capitola 427 Riverview Avenue Application

******CAUTION:**This is an EXTERNAL email. Exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email.****

Matt, Justin, and Jason,

Please see the attached plans.

Thank you,



Sean Sesanto | Associate Planner
City of Capitola
831.475.7300
Planning Counter Hours: 1 p.m. - 4 p.m., Monday - Friday

EXHIBIT 58

From: Kahn, Jessica <jkahn@ci.capitola.ca.us>
Sent: Tuesday, February 20, 2024 4:37 PM PST
To: Senyk, Erika <esenyk@ci.capitola.ca.us>; Bennett, Shelon <sbennett@ci.capitola.ca.us>; Kotila, Matt (mkotila@ci.capitola.ca.us) <mkotila@ci.capitola.ca.us>
CC: Morrison, Ed (emorrison@ci.capitola.ca.us) <emorrison@ci.capitola.ca.us>
Subject: PW Staff Meeting and Project List
Attachment(s): "attachment.ics", "DPW Council Goals.xlsx"

Regular meeting a review list for Council goal setting meeting. Attached is a draft list of projects.

	A	B	C	D
1	Project Name	Level of Effort this Fiscal Year	Current Status	Notes
2	Finish Wharf	Very High	In Construction	Multiple small contracts; elaborate
3	Advance Community Center	Potential High - VH	In Design	If funding comes through, will be a heavy lift
4	Advance Jade Street Playground	Potential High - VH	In Design	If funding comes through, will be a heavy lift
5	Cliff Drive Resilience Project	High	In Progress	On a tight timeline; funded by FHWA
6	Stockton Bridge Debris Mitigation	High	In Progress	
7	Esplanade Park Improvements	Medium	Not Started	Council Goal
8	Advance Bay Hill Corridor Study	Medium	In Progress	
9	Complete/Additional Peery Bridge Repairs	Medium	In Progress	Currently evaluating
10	Finish Rispin	Medium	Finalizing Contract	
11	Pump Track	Low	Not Started	
12	Noble Gulch Repairs	Low	In Progress	Identified in assessment
13	Annual Pavement Project	Low	In Design	
14	Depot Hill Encroachments	Very High	Not Started	Pending direction from Council
15	Climate Action Plan	High	Not Started	Heavy on public meetings
16	Complete Streets Safety Assessments	Medium	Not Started	
17	Storage Solutions for Rec – Lifeguard and Baseball	Medium	Not Started	Significant need; current infrastructure failure; collaboration with County
18	41st Median Improvements	Medium	Not Started	Need visioning
19	PD Lockers and Motor Shed	Low	Not Started	
20				
21				
22				
23	Very High:			
24		Involves all Public Works staff, staff from other departments, multiple agencies, numerous stakeholders, extensive permit requirements, and coordination of several consultants/contractors.		
25	High:			
26		Engages all Public Works staff, external agencies, various stakeholders, entails permitting processes, and requires management of consultants.		
27	Medium:			
28		Involves several Public Works staff members, includes scoping, consultant/contractor management, and moderate stakeholder engagement.		
29	Low:			

	A	B	C	D
30		Requires the involvement of 1-2 Public Works staff members, pertains to small projects involving scope definition, bidding, and execution.		

	A	B	C	D
1	Project Name	Level of Effort	Current Status	Notes
2	ADA Transition Plan	High	In Progress	Public meetings, etc
3	Creek Lagging and Outfall FEMA	High	Obtaining Permits	Lots of permits
4	Bridge FEMA	Medium	Construction Contract Awarded	Waiting for good weather
5	Bay/Hill Quick Build	Medium	Going to Bid	---
6	Park Avenue Improvements	Low	Finalizing Design	---
7	Parking Lot Path	Low	In Design	Redesign for costs
8	Hoopers Ramp FEMA	Low	On Hold	Waiting for end of wharf project
9	Battery Back Up	Low	Under Contract	---
10	Jade Street Swings	Low	Not Started	Not sure where to put this
11	Jetty FEMA	---	Completed	---
12	Outfalls, Others? FEMA	---	Completed	---
13	Water Fountains	---	Completed	Council goal
14	Capitola Road	---	Completed	---

Completed-In Progress 23-24

EXHIBIT 59



GEOTECHNICAL INVESTIGATION



STORM DAMAGED CULVERT AND HEADWALL
427 RIVERVIEW AVENUE
CAPITOLA, CALIFORNIA

FOR
**SCHAAF AND WHEELER CONSULTING CIVIL
ENGINEERS**
SALINAS, CALIFORNIA



CONSULTING GEOTECHNICAL ENGINEERS

23137-SZ69-B24
APRIL 2024
www.4pacific-crest.com



April 2, 2024

Project No. 23137-SZ69-B24

Mr. Andy Sterbenz, PE
Schaaf and Wheeler Consulting Civil Engineers
3 Quail Run Circle, Ste 101
Salinas, CA 93907

Subject: Geotechnical Investigation – Design Phase
Storm damaged culvert and headwall
427 Riverview Ave
Capitola, California

Dear Mr. Sterbenz,

In accordance with your authorization, we have performed a design-level geotechnical investigation for the proposed culvert and headwall repair located at 427 Riverview Ave in Capitola, California.

The accompanying report presents our conclusions and recommendations as well as the results of the geotechnical investigation on which they are based. The conclusions and recommendations presented in this report are contingent upon our review of the plans during the design phase of the project, and our observation and testing during the construction phase of the project.

We appreciate the opportunity to be of service; should you have any questions regarding this report please contact our office.

Very truly yours,

PACIFIC CREST ENGINEERING INC.

Prepared by:



Chris Johnson, PE
Principal Civil Engineer
C 82630
Expires 9/30/2024

Reviewed by:



Elizabeth Mitchell, GE
Associate Geotechnical Engineer
GE 2718
Expires 12/31/2024

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GEOTECHNICAL INVESTIGATION REPORT
427 Riverview Road
Capitola, California

I. INTRODUCTION

PURPOSE AND SCOPE

This report describes the geotechnical investigation and presents our conclusions and recommendations for the repair of the damaged culvert and headwall located on Soquel Creek at 427 Riverview Road in Capitola, California. For purposes of this report, "site" refers to the headwall located on the eastern side of 427 Riverview Road in Capitola, California.

Our scope of services for this project has consisted of:

1. Site reconnaissance to observe the existing conditions.
2. Review of the following published maps and documents:
 - Geologic Map of Santa Cruz County, California, Brabb, 1997.
 - Preliminary Map of Landslide Deposits in Santa Cruz County, California, Cooper-Clark and Associates, 1975.
 - Map Showing Geology and Liquefaction Potential of Quaternary Deposits in Santa Cruz County, California, Dupré, 1975.
 - Map Showing Faults and Their Potential Hazards in Santa Cruz County, California, Hall, Sarna-Wojcicki, Dupré, 1974.
 - Geographic Information System – Santa Cruz County, "GISWEB Interactive Mapping Application" <http://gis.co.santa-cruz.ca.us/internet/wwwgisweb/viewer.htm>.
3. Field exploration including the drilling and logging of one (1) geotechnical test boring.
4. Laboratory analysis of retrieved soil samples.
5. Engineering analysis of the field and laboratory test results.
6. Preparation of this report documenting our investigation and presenting geotechnical recommendations for the design and construction of the project.

PROJECT LOCATION

The subject site is located on the western side of a developed parcel located at 427 Riverview Road in Capitola, California adjacent to Soquel Creek. Please refer to the Regional Site Map, Figure No. 1, in Appendix A for the general vicinity of the project site, which is approximately located by the following coordinates:

Latitude = 36.974361 degrees
Longitude = -121.954479 degrees



PROPOSED IMPROVEMENTS

Based on our discussions with the design team, it is our understanding that the project will include the repair/replacement of the culvert outlet and associated headwall that sustained damage during the storm events of January 2023. The culvert lies in the center of the headwall that is approximately 6-feet wide by 4-feet tall. The headwall and culvert appear to be severely cracked and weathered, and were damaged from surface runoff and wave action, partially undermining the pathway above. The City of Capitola has since restored the pathway.

Our investigation was limited to the location of the culvert outlet and associated headwall. Evaluation of the culvert pipe which extends back to Riverview Avenue was beyond the scope of services of geotechnical investigation and was not performed.

II. INVESTIGATION METHODS

TEST BORINGS

One, 4-inch diameter test boring was drilled at the site on October 10th, 2023. The approximate locations of the test boring is shown on Figure No. 2, in Appendix A. The drilling method used was hydraulically operated continuous flight solid stem augers and mud rotary on a track mounted drill rig. An engineer from Pacific Crest Engineering Inc. was present during the drilling operations to log the soil encountered and to choose sampler type and locations.

The soils encountered in the borings were continuously logged in the field and visually described in accordance with the Unified Soil Classification System (ASTM D2488) as described in the Boring Log Explanation, Figures No. 3 and 4, in Appendix A. The soil classification was verified upon completion of laboratory testing in accordance with ASTM D2487.

Samples retrieved with the track mounted drill rig were obtained by driving a split spoon sampler 18 inches into the ground. This was achieved by dropping a 140-pound hammer a vertical height of 30 inches with an automatic trip hammer. The field blow counts in 6-inch increments were obtained and are reported on the Boring Logs adjacent to each sample as well as the Standard Penetration Test data (SPT). The outside diameter of the samplers used was 3-inch or 2-inch and is designated on the Boring Logs as "L" or "T", respectively. All SPT data has been normalized to a 2-inch O.D. sampler and is reported on the Boring Logs as SPT "N" values. The normalization method used was derived from the second edition of the Foundation Engineering Handbook (H.Y. Fang, 1991). The method utilizes a Sampler Hammer Ratio which is dependent on the weight of the hammer, height of hammer drop, outside diameter of sampler, and inside diameter of sample.

Appendix A contains the site plan showing the locations of the test borings, our boring logs and an explanation of the soil classification system used. Stratification lines on the boring logs are approximate as the actual transition between soil types may be gradual.

LABORATORY TESTING

The laboratory testing program was developed to aid in evaluating the engineering properties of the materials encountered at the site. Laboratory tests performed include:



- Moisture Density relationships in accordance with ASTM D2937.
- Gradation testing in accordance with ASTM D1140.
- Atterberg Limit testing in accordance with ASTM D4318
- Direct Shear testing in accordance with ASTM 3080

The results of the laboratory testing are presented on the boring logs opposite the sample tested and/or presented graphically in Appendix A.

III. FINDINGS AND ANALYSIS

GEOLOGIC SETTING

The surficial geology in the project site is mapped as Alluvial Deposits (Brabb, 1997). These deposits are described by Brabb as "Unconsolidated, heterogeneous, moderately sorted silt and sand containing discontinuous lenses of clay and silty clay". The native soils encountered within our test borings are generally consistent with this description.

SURFACE CONDITIONS

The subject site is situated on the western side of 427 Riverview Ave in Capitola, California. The site is flat but drops down approximately 5 feet to Soquel Creek on the western side, where the culvert discharges. Above the culvert, the site is currently developed with a single-family residence, in a residential neighborhood of the City of Capitola. The immediate area of above the culvert headwall is currently being used as an unpaved pedestrian walking path separated by wooden retaining walls on either side of the headwall. Overhead powerline poles are located along the eastern side of the property on Riverview Ave, and access to the concrete headwall is limited to the narrow pedestrian walking path or via boat on Soquel Creek.

SUBSURFACE CONDITIONS

Our subsurface exploration program included the advancement of one (1) test boring. The test boring was drilled as close to proposed improvements as possible, given the existing culvert pipe and limited site access. The exploratory boring extended to 51½ feet below existing grade. The soil profiles and classifications, laboratory test results and groundwater conditions encountered for each test boring are presented in the Log of Test Borings, in Appendix A. The general subsurface conditions are described below.

Our boring initially encountered 2½' of artificial fill soil that was generally classified as clayey sand. These fill soils were generally poorly graded and fine to medium grained, and very loose in density.

Underlying the surficial fill soils our borings encountered a two-foot-thick layer of sandy lean clay. These clays were generally very soft, low in plasticity and rich with organic materials.

Underlying the clay soils, we encountered a layer of silty sand which extended to a depth of approximately 13 feet. These sands were poorly graded, and very loose to loose in density.



At a depth of 13 feet, we encountered an approximately 4½ foot thick layer of silty gravel or silty sand with gravel containing gravels up to 2 inches in diameter. There may be larger gravels or cobbles in this layer, however we were unable to recover them with our sampler.

Underlying the gravel layer, we encountered weathered Purisima Sandstone. This weathered Purisima bedrock is generally described as silty sand. The sands were generally poorly graded and fine grained. Densities ranged from loose to medium dense, until we encountered more competent Purisima bedrock at 45 feet in depth. Purisima sandstone bedrock was generally described as a very dense silty sand.

Groundwater was encountered at approximately 5-feet in depth, consistent with the adjacent river water level of Soquel Creek.

Please refer the Log of Test Borings in Appendix A, for a more detailed description of the subsurface conditions encountered in each of our test borings at the subject site.

FAULTING AND SEISMICITY

Faulting

Mapped faults which have the potential to generate earthquakes that could significantly affect the subject site are listed in Table No. 1. The fault distances are approximate distances based on the U.S. Geological Survey and California Geological Survey, Quaternary fault and fold database, accessed in November 2023 from the USGS website (<https://www.usgs.gov/natural-hazards/earthquake-hazards/hazards>) and overlaid onto Google Earth.

Table No. 1 - Distance to Significant Faults

Fault Name	Distance (miles)	Direction
Monterey Bay-Tularcitos	1½	South
Zayante-Vergeles	6½	Northeast
San Andreas	8½	Northeast
San Gregorio	14	Southwest

Seismic Shaking and CBC Design Parameters

Due to the proximity of the site to active and potentially active faults, it is reasonable to assume the site will experience high intensity ground shaking during the lifetime of the project. Structures founded on thick, soft soil deposits are more likely to experience more destructive shaking, with higher amplitude and lower frequency, than structures founded on bedrock. Generally, shaking will be more intense closer to earthquake epicenters. Thick, soft soil deposits large distances from earthquake epicenters, however, may result in seismic accelerations significantly greater than expected in bedrock.

Selection of seismic design parameters should be determined by the project structural designer. The site coefficients and seismic ground motion values shown in the table below were developed based on CBC 2022 incorporating the ASCE 7-16 standard, and the project site location.



Table No. 2 - 2022 CBC Seismic Design Parameters^{1,2}

Seismic Design Parameter	ASCE 7-16 Value
Site Class ^{Notes 2, 3}	E
Spectral Acceleration for Short Periods	$S_s = 1.81g$
Spectral Acceleration for 1-second Period	$S_1 = 0.694g$
Short Period Site Coefficient	$F_a = N/A$
1-Second Period Site Coefficient	$F_v = N/A^2$
MCE Spectral Response Acceleration for Short Period	$S_{MS} = N/A^2$
MCE Spectral Response Acceleration for 1-Second Period	$S_{M1} = N/A^2$
Design Spectral Response Acceleration for Short Period	$S_{DS} = N/A^2$
Design Spectral Response Acceleration for 1-Second Period	$S_{D1} = N/A^2$

Note 1: Design values have been obtained by using the ASCE Hazard Tool at <https://asce7hazardtool.online>

Note 2: Per Section 11.4.8 of ASCE 7-16, a ground motion hazard analysis may be required for Site Class D sites with S_1 greater than or equal to 0.2. The values provided in this table assume that the value of the seismic response coefficient C_s can be determined by the structural engineer based on the Exceptions as detailed in Section 11.4.8. This should be verified by the structural designer and Pacific Crest Engineering, Inc. should be contacted for revised parameters if these Exceptions are not applicable to the project.

Note 3: Sites that are underlain by potentially liquefiable soils would normally be assigned to Site Class F, requiring a site-specific Site Response Analysis. If the fundamental period of vibration of the structure is less than 0.5 seconds, the site class can be determined by assuming there is no liquefaction (ASCE 7-16 Section 20.3.1). Therefore, Site Class E was selected for the project site. **The project structural engineer should verify that the building period does not exceed 0.5 seconds, and Pacific Crest Engineering should be contacted for a Site Response Analysis if the building period exceeds 0.5 seconds.**

The recommendations of this report are intended to reduce the potential for structural damage to an acceptable risk level, however strong seismic shaking could result in damage to improvements and the need for post-earthquake repairs.

GEOTECHNICAL HAZARDS

In general, the geotechnical hazards associated with projects in the Capitola area include seismic shaking (discussed above), ground surface fault rupture, liquefaction, lateral spreading and landsliding. A qualitative discussion of these hazards is presented below. A quantitative evaluation of liquefaction potential was performed for the purposes of estimating seismically-induced settlement during a seismic event as discussed below.



Ground Surface Fault Rupture

Pacific Crest Engineering Inc. has not performed a specific investigation for the presence of active faults at the project site. Based upon our review of the U.S. Geological Survey, Quaternary fault and fold database 2022, the project site is not underlain by any active or potentially active faults.

Ground surface fault rupture typically occurs along the surficial traces of active faults during significant seismic events. Since the nearest known active, or potentially active fault trace is mapped approximately 1½ miles from the site, it is our opinion that the potential for ground surface fault rupture to occur at the site should be considered low.

Liquefaction and Lateral Spreading

Based upon our review of the regional liquefaction maps (Dupré, 1975) the subject site and surrounding area lie within an area mapped as having a high potential for liquefaction.

Liquefaction tends to occur in loose, saturated fine-grained sands, coarse silts or clays with a low plasticity. In order for liquefaction to occur there must be the proper soil type, soil saturation, and cyclic accelerations of sufficient magnitude to densify the soils and progressively increase the pore water pressures within the soil mass. Non-cohesive soil shear strength is developed by the point-to-point contact of the soil grains. With sufficient shaking loose cohesionless soils tend to densify, increasing the water pressures in the void spaces surrounding the soil grains until the soil particles become supported more by the water than the point-to-point contact. When the water pressures increase sufficiently, the soil grains begin to lose contact with each other, resulting in the loss of shear strength and continuous deformation of the soil where the soil appears to liquefy.

The potential for seismically-induced settlement was evaluated quantitatively for this project, based upon the data obtained from our exploratory test borings. Our analysis utilized the software program LiqSVs Version 1.2.1.6, which is based upon the most recent recommendations of the NCEER Workshop and the work of Pradel 1998.

The following criteria were used in our analysis:

- Peak Ground Acceleration (PGAM) value of 0.82g determined in accordance ASCE 7-16.
- Earthquake magnitude 7.1 occurring on the San Andreas Fault, as derived from a deaggregation tool available from the USGS website.
- Groundwater elevation 5 feet below ground surface.

Using the above parameters and subsurface data obtained during the course of our investigation, we have estimated seismically-induced settlement on the order of 6 to 8 inches. Please refer to Appendix B for full model parameters and results.

Liquefaction-induced lateral spreading occurs when a liquefied soil mass fails toward an open slope face or fails on an inclined topographic slope. The site has a high potential for liquefaction; we therefore conclude that there is also a high potential for lateral spreading to occur along the banks of Soquel Creek.



Landsliding

The subject site and immediate vicinity are relatively flat to gently sloping. Provided our recommendations are followed, it is our opinion that the potential for shallow landsliding to occur and adversely affect the proposed improvement may be considered low.

Slope failures can also occur where surface drainage is allowed to concentrate onto unprotected slopes. Appropriate landscaping and good control of surface drainage around the project area becomes very important to reduce potential for shallow slumping of slopes. Erosion control measures should be implemented and maintained. Under no circumstances should surface runoff be directed toward, or discharged upon, any topographic slopes.

IV. DISCUSSION AND CONCLUSIONS

GENERAL

1. The results of our investigation indicate that the proposed improvements are feasible from a geotechnical engineering standpoint, provided our recommendations are included in the design and construction of the project.
2. Grading and foundation plans should be reviewed by Pacific Crest Engineering Inc. during their preparation and prior to contract bidding.
3. Pacific Crest Engineering Inc. should be notified at least four (4) working days prior to any site clearing and grading operations on the property in order to observe the stripping and disposal of unsuitable materials, and to coordinate this work with the grading contractor. During this period, a pre-construction conference should be held on the site, with at least the client or their representative, the grading contractor, and one of our engineers present. At this meeting, the project specifications and the testing and inspection responsibilities will be outlined and discussed.
4. The findings, conclusions and recommendations provided in this report are based on the understanding that Pacific Crest Engineering will remain as Geotechnical Engineer of Record throughout the design and construction phase of the project. The validity of the findings, conclusions and recommendations contained in this report are dependent upon our review of project plans as well as an adequate testing and observation program during the construction phase. Field observation and testing must therefore be provided by a representative of Pacific Crest Engineering Inc., to enable us to form an opinion as to whether the extent of work related to earthwork or foundation excavation complies with the project plans, specifications and our geotechnical recommendations. Pacific Crest Engineering assumes no responsibility for any site earthwork that is performed without the full knowledge and direct observation of Pacific Crest Engineering Inc.

PRIMARY GEOTECHNICAL CONSIDERATIONS

5. Based upon the results of our investigation, it is our opinion that the primary geotechnical issues associated with the design and construction of the proposed project are the following:
 - a. Liquefaction Induced Settlement: The soils underlying the site have the potential for settlement during a strong seismic event. Seismically induced settlements are on the order of 6 to 8 inches have been



calculated for the site. This hazard may be reduced by supporting the headwall on deep foundations extending past the loose liquefiable surficial soils. Detailed recommendations for foundations are presented in the following sections of this report.

- b. Variable Drilling Conditions: The soils underlying the site vary from very loose flowing sands to gravel and potentially cobbles at depth. These variable strata could make the installation of deep foundations difficult. The contractor should review the boring logs in detail and select the appropriate pile/anchor type to construct the project. Additionally casing and/or other specialty installation equipment may be required given the subsurface conditions.
- c. Shallow Ground Water Conditions: The project site is immediately adjacent to Soquel Creek, and as such shallow ground water conditions should be anticipated year-round. Cofferdams or other dewatering techniques may be required to install the proposed improvements. Site dewatering is the sole responsibility of the contractor, and the contractor should evaluate the groundwater conditions prior to mobilizing equipment to the site.
- d. Limited Site Access: The project site located on a walking trail behind residential properties and bound by Soquel Creek. The walking trail is approximately 4 to 5 feet in width. The access corridor from Riverview Ave to the walking path is approximately 7 to 8 feet in width. Conventional construction equipment will likely be too large to operate within the tight site constraints. Given the limited site access we recommend the wall be supported on micropiles or helical piles that can be installed with limited access equipment.
- e. River Scour: The project site located adjacent to Soquel Creek and will be subject to flowing water and scour at the face of the wall. To prevent scour from negatively affecting the project, the proposed wall should extend a minimum of two feet below the anticipated depth of scour.
- f. Strong Seismic Shaking: The project site is located within a seismically active area and strong seismic shaking is expected to occur within the design lifetime of the project. Improvements should be designed and constructed in accordance with the most current CBC and the recommendations of this report to minimize reaction to seismic shaking. Structures built in accordance with the latest edition of the California Building Code have an increased potential for experiencing relatively minor damage which should be repairable, however strong seismic shaking could result in damage to improvements and the need for post-earthquake repairs.

V. RECOMMENDATIONS

EARTHWORK

Clearing and Stripping

1. The initial preparation of the site may consist of demolition of portions of any existing structures and their foundations and removal of debris. All foundation elements from existing structures must be completely removed from the building areas. The extent of this soil removal will be designated by a representative of Pacific Crest Engineering Inc. in the field. This material must be removed from the site.



2. Any voids created by the removal of old structures and their foundations, septic tanks, and leach lines must be backfilled with properly compacted engineered fill which meets the requirements of this report.
3. Surface vegetation and organically contaminated topsoil should then be removed ("stripped") from the area to be graded. In addition, any remaining debris or large rocks must also be removed (this includes asphalt or rocks greater than 2 inches in greatest dimension). This material may be stockpiled for future landscaping.
4. It is anticipated that the depth of stripping may be 2 to 6 inches. Final required depth of stripping must be based upon visual observations by a representative of Pacific Crest Engineering Inc., in the field. The required depth of stripping will vary based upon the type and density of vegetation across the project site and with the time of year.

Subgrade Preparation

5. Areas of man-made fill, if encountered in areas that will underlie proposed improvements, will need to be completely excavated to undisturbed native material. The excavation process should be observed, and the extent designated by a representative of Pacific Crest Engineering Inc., in the field. Any voids created by fill removal must be backfilled with properly compacted engineered fill.
6. After clearing and stripping are completed the exposed subgrade soil should then be scarified 8 inches, moisture conditioned and compacted as outlined below.

Material for Engineered Fill

7. Native or imported soil proposed for use as engineered fill should meet the following requirements:
 - a. free of organics, debris, and other deleterious materials,
 - b. free of "recycled" materials such as asphaltic concrete, concrete, brick, etc.,
 - c. granular in nature, well graded, and contain sufficient binder to allow utility trenches to stand open,
 - d. free of rocks in excess of 2 inches in size.
8. In addition to the above requirements, import fill should have a Plasticity Index between 4 and 12, and a minimum Resistance "R" Value of 30, and be non-expansive.
9. Samples of any proposed imported fill planned for use on this project should be submitted to Pacific Crest Engineering Inc. for appropriate testing and approval not less than ten (10) working days before the anticipated jobsite delivery. This includes proposed import trench sand, drain rock and for aggregate base materials. Imported fill material delivered to the project site without prior submittal of samples for appropriate testing and approval must be removed from the project site.

Engineered Fill Placement and Compaction

10. Following any necessary subexcavations and/or subgrade preparation, areas should be brought up to design grades with engineered fill that is moisture conditioned and compacted according to the recommendations of this report.



11. Engineered fill should be placed in maximum 8-inch lifts, before compaction, at a water content which is within 1 to 3 percent of the laboratory optimum value.
12. The soil on the project site should be compacted as follows:
 - a. All soil on the project site should be compacted to a minimum of 90% of its maximum dry density.
13. The maximum dry density will be obtained from a laboratory compaction curve run in accordance with ASTM Procedure #D1557. This test will also establish the optimum moisture content of the material. Field density testing will be performed in accordance with ASTM Test #D6938 (nuclear method).
14. We recommend field density testing be performed in maximum 1-foot elevation differences. In general terms, we recommend at least one compaction test per lift for the head wall backfill. This is a subjective value and may be changed by the geotechnical engineer based on a review of the final project layout and exposed field conditions.

Cut and Fill Slopes

15. No permanent cut or fill slopes are currently proposed for this project. Should permanent cut or fill slopes be proposed, our office should be contacted for additional recommendations.

Soil Moisture and Weather Conditions

16. Earthwork activities are to be performed adjacent to the Soquel Creek and as such the on-site soils and other materials may be too wet in their existing condition to be used as engineered fill. These materials may require a diligent and active drying and/or mixing operation to reduce the moisture content to the levels required to obtain adequate compaction as an engineered fill. If the on-site soils or other materials are too dry, water may need to be added. In some cases the time and effort to dry the on-site soil may be considered excessive, and the import of fill material may be required.

Utility Trench Backfill

17. Utility trenches that are parallel to the sides of the building should be placed so that they do not extend below a line sloping down and away at a 2:1 (horizontal to vertical) slope from the bottom outside edge of all footings.
18. Utility pipes should be designed and constructed so that the top of pipe is a minimum of 24 inches below the finish subgrade elevation of any road or pavement areas. Any pipes within the top 24 inches of finish subgrade should be concrete encased, per design by the project civil engineer.
19. For the purpose of this section of the report, backfill is defined as material placed in a trench starting one foot above the pipe, and bedding is all material placed in a trench below the backfill.
20. Unless concrete bedding is required around utility pipes, free-draining clean sand should be used as bedding. Sand bedding should be compacted to at least 95 percent relative compaction. Clean sand is defined as 100 percent passing the #4 sieve, and less than 5 percent passing the #200 sieve.



21. Approved imported clean sand or native soil should be used as utility trench backfill. Backfill in trenches located under and adjacent to structural fill, foundations, concrete slabs and pavements should be placed in horizontal layers no more than 8 inches thick. This includes areas such as pathways, sidewalks, patios, and/or other hardscape areas. Each layer of trench backfill should be water conditioned and compacted to at least 95 percent relative compaction
22. Utility trenches which carry "nested" conduits (stacked vertically) should be backfilled with a control density fill (such as 2-sack sand\cement slurry) to an elevation one foot above the nested conduit stack. The use of pea gravel or clean sand as backfill within a zone of nested conduits is not recommended.
23. A representative from our firm should be present to observe the bottom of all trench excavations, prior to placement of utility pipes and conduits. In addition, we should observe the condition of the trench prior to placement of sand bedding, and to observe compaction of the sand bedding, in addition to any backfill planned above the bedding zone.
24. Jetting of the trench backfill is not recommended as it may result in an unsatisfactory degree of compaction.
25. Trenches must be shored as required by the local agency and the State of California Division of Industrial Safety construction safety orders.

Excavations and Shoring

26. The "top" of any temporary cut slope and excavations should be set-back at least ten feet (measured horizontally) from any nearby structure or property line. Any excavations which cannot meet this requirement will need to have a shoring system designed to support steeper sidewall gradients.
27. It should be understood that on-site safety is the *sole responsibility* of the Contractor, and that the Contractor shall designate a *competent person* (as defined by CAL-OSHA) to monitor the slope excavation prior to the start of each work day, and throughout the work day as conditions change. The competent person designated by the Contractor shall determine if flatter slope gradients are more appropriate, or if shoring should be installed to protect workers in the vicinity of the slope excavation. Refer to Title 8, California Code of Regulations, Sections 1539-1543.
28. All excavations must meet the requirements of 29 CFR 1926.651 and 1926.652 or comparable OSHA approved state plan requirements.

FOUNDATIONS

29. Given the limited access to the site, the proposed culvert headwall should be founded on micropiles or helical anchors that can be installed with limited access equipment. Both helical anchors and micropiles have their advantages/disadvantages so the final selection of the anchor type should be determined by the contractor who will be installing these foundation elements. The anchor type should be consistent throughout and a general sketch of the wall is shown in Figure 10 of Appendix A.



30. Helical anchors can be installed without the need to remove the overlying soil or the use of a casing. However, helical anchors may have difficulty advancing past the approximately 5-foot-thick gravel layer that is immediately above the weathered Purisima bearing layer.

31. Micropiles can advance through the gravel layer with minimal effort but will require the use of casing for the loose surficial sands. The high groundwater table and loose surficial sands could create a flowing sand condition. Drilling fluid or other specialty drilling techniques may be required if micropiles are selected as the preferred anchor type.

32. At the time we prepared this report, the project plans had not been completed and the exact locations of the structures and foundation details had not been finalized. We request the opportunity to review these items during the final design stages to determine if supplemental recommendations will be required.

33. We recommend the proposed culvert headwall be supported by micropiles or helical piles embedded into the underlying weathered Purisima bedrock. All new foundations should also derive support from the underlying weathered Purisima through a system of micropiles/helical piles interconnected with grade beams. Geotechnical recommendations of both alternatives are presented below.

Micropiles

34. Micropiles should be structurally attached to the proposed grade beams as determined by the project structural designer. The new grade beams should be embedded a minimum of 2 feet below lowest adjacent grade.

35. Minimum micropile embedment should be 15 feet into weathered Purisima bedrock. This will result in the minimum length of micropiles on the order of 30 to 35 feet. Actual depths may be greater and should be determined by the structural designer.

36. Micropiles shall have a minimum diameter of eight inches (8").

37. Micropiles shall be fabricated with double corrosion protection or greater given the semi-marine environment of the site.

38. The micropiles should be designed to resist compressive and tensile loads through friction only between the shaft walls and the surrounding native soil.

39. For preliminary design, the ultimate bond stress for a micropile embedded into the weathered Purisima is estimated to be in the range of 25 to 100 psi. The ultimate bond stress is a function of the Contractor's installation methods. The value for final design should therefore be selected by the Contractor and verified by performance tests.

40. To resist lateral loading on the new headwall, additional battered piles may be installed at approximately 30° from vertical. Actual installation angle should be determined by the structural engineer during their structural design.



41. Load tests constructed in accordance with the applicable test standard should be conducted on a minimum of two (2) micropiles to determine the actual micropile capacity. A load test program involving performance- and proof-testing should also be developed. The micropile capacity data from the load tests, especially data relating to load transfer along the length of micropile, will allow less conservative decisions to be made in the field as to whether or not the design bond lengths of some of the micropiles should be increased.
42. Extended lengths and the small size of micropiles may make micropiles vulnerable to buckling. The annular gap results when the annular space between the casing and the surrounding soil is not grouted. We therefore recommend that the buckling/structural capacity of the micropile should be checked using procedures for the design of steel columns. The design capacity of the micropile is the lower of the geotechnical and buckling/structural capacities.
43. The load carrying capacity of the micropiles will depend largely on the installation methods and workmanship during construction. The Contractor is responsible for choosing the drilling, grouting, and other installation procedures. Because of the influence of the installation procedures on the capacity of the micropiles, the Contractor is also responsible for the as-built capacities of the micropile and must therefore select the bond lengths at each micropile location. The Contractor can also choose to make provisions for post-grouting of the micropile, if necessary. Each micropile will need to be tested by the Contractor in the presence of the Geotechnical Engineer to 150% of design capacity.
44. The micropile installation process should be observed by the Geotechnical Engineer to verify the subsurface conditions assumed in developing the micropile design recommendations. Couplers should be available in the field to allow for adjustments to be made to the length of the center bar in the field.
45. The drilling and grouting of all micropiles should be observed by a representative of Pacific Crest Engineering Inc. so that an opinion can be made as to the degree of conformance of the soil encountered with the soil assumed in design.

Helical Piers

46. Alternatively, it is our opinion that helical anchors are also an appropriate foundation system for supporting the proposed replacement headwall, provided the contractor can advance them below the gravel layer and sufficient distance into the weathered Purisima bedrock bearing strata.
47. Minimum embedment depth for helical piles is 5 feet into weathered Purisima bedrock, or until the design capacity is reached, whichever results in the greatest depth. The top-most helical plate shall be embedded a minimum of five times the diameter (5D) of the largest plate below grade
48. Anchor capacity is dependent on the geometry of the screws selected, the strength of the steel plates and hubs, subsurface conditions and the torque applied during construction. The helical anchors should be designed and constructed to meet the compression, uplift and lateral loads specified by the project structural designer. The following recommendations should be incorporated into the design and construction of the helical anchors.



49. The helical anchors shall be connected by continuous, reinforced grade beams. It is recommended that the grade beams extend a minimum of 2 feet below lowest adjacent grade. All foundation loads should be connected to the underlying grade beam and then the loads transferred to the helical anchors below. No axial support capacity of the soil under the grade beam may be used. Based on this the structural designer should determine final anchor spacing, however helical anchors should be spaced no closer to each other than 3 helix diameters on center. Use the largest helix diameter when determining spacing.

50. Individual helix plates attached to a multi-plate anchor should be spaced a minimum of 3 helix diameters along the shaft.

51. Tie back, or lateral (battered) anchors should be connected to the grade beam and designed to resist lateral loads.

52. The structural capacity of the helical anchors will need to be determined by the project structural designer. For *preliminary* design purposes the ultimate bearing capacity of an individual helix may be estimated using the following equation:

$$Q_h = A_h \cdot \gamma_t \cdot D \cdot N_q \leq Q_s$$

Where:

Q_h = individual helix bearing capacity

A_h = projected helix area

γ_t = unit weight of the soil; we propose using:

$\gamma_{\text{moist}} = 125 \text{ pcf}$

$\gamma_{\text{saturated}} = 133 \text{ pcf}$

$\gamma_{\text{buoyant}} = 70 \text{ pcf}$

D = vertical depth to the helix plate

N_q = bearing capacity factor (we recommend using $N_q = 20$)

Q_s = upper limit determined by helix strength

53. The actual capacity of individual helical piers during construction should be based upon the installation torque achieved. The manufacturer's recommendations should be followed regarding the torque and capacity relationship for the particular helical pier type selected.

54. We recommend a minimum factor of safety of 2 be used to determine the allowable bearing capacity.

55. The number of helical plates and pier configuration should be selected by the contractor, based on the soil types/conditions described in the geotechnical report and the design loads developed by the project structural engineer.

56. Helix anchors should be advanced until the torque associated with the required bearing capacity is achieved, or the minimum depth is attained, whichever results in the greater depth. Installation torque must not exceed the torsional strength rating of the central steel shaft. Torque monitoring must be performed for all anchors and the contractor shall provide installation records.



57. All helix anchors must have adequate corrosion protection, as per the manufacturer's specifications. We recommend all helix anchors be hot dipped galvanized for corrosion protection.

58. The helical screw anchor system must be designed and installed in strict accordance with the manufacturer's recommendations. The helical screw anchors should be installed by a contractor with an expertise in this field of construction.

59. A representative of Pacific Crest Engineering Inc. must continuously observe the helical anchor construction and torque measurements during installation. Anchors constructed without the full knowledge and continuous observation of Pacific Crest Engineering will nullify the recommendations contained in this report. The contractor and drilling subcontractor should be notified regarding this requirement.

RETAINING WALLS

60. Retaining walls with full drainage should be designed using the following criteria:

- a. The following lateral earth pressure values should be used for design:

Table No. 5 – Drained and Undrained At-Rest Earth Pressure Values

Maximum Backfill Slope (H:V)	Drained At-Rest Earth Pressure (psf/ft of depth)	Undrained At-Rest Earth Pressure (psf/ft of depth)
Level	70	100

- b. Should the slope behind the retaining walls be other than shown above, supplemental design criteria will be provided for the active earth or at rest pressures for the particular slope angle.
- c. For surcharge pressures due to live or dead loads which transmit a force to the wall, please refer to the attached Figure No. 11 included in Appendix A of this report.
- d. If the structural designer wishes to include seismic forces in their design, the wall may be designed using the above active soil pressures plus a horizontal seismic force of $21H^2$ pounds per lineal foot (where H is the height of retained material). The resultant seismic force should be applied at a point $1/3^{rd}$ above the base of the wall. This force has been estimated using the Mononobe-Okabe method of analysis as modified by Whitman (1990) and Lew and Sitar (2010). A reduced factor of safety for overturning and sliding may be used in seismic design as determined by the structural designer.
- e. The above seismic forces should not be used in combination with at rest lateral soil pressures.

RETAINING WALL DRAINAGE

61. We recommend that permeable material meeting the State of California Standard Specification Section 68-2.02F, Class 2, be placed behind the wall, with a minimum width of 12 inches and extending for the full



height of the wall to within 1 foot of the ground surface. The top of the permeable material should be covered with Mirafi 140N filter fabric or equivalent and then compacted native soil placed to the ground surface.

62. Weep holes may be installed along the base of the wall, allowing water to discharge directly through the face of the wall. The weep holes should have a minimum diameter of 2-inches and be spaced a maximum of 5-feet apart. The face of the weep holes should be protected with flap gates or back flow devices to prevent the intrusion of river water into the wall drainage system. Multiple levels of weepholes may be required depending on the fluctuation in the river water elevation.

SURFACE DRAINAGE

63. Surface water drainage is the responsibility of the project civil engineer. The following should be considered by the civil engineer in design of the project.

64. Surface water must not be allowed to pond or be trapped adjacent to retaining walls, or on walking pathway areas.

65. Slope failures can occur where surface drainage is allowed to concentrate on unprotected slopes. Appropriate landscaping and surface drainage control around the project area is imperative in order to minimize the potential for shallow slope failures and erosion. Stormwater discharge locations should not be located at the top or on the face of any slope.

66. Final grades should be provided with positive gradient away from all foundation elements. Soil grades should slope away from foundations at least 5 percent for the first 10 feet. Impervious surfaces should slope away from foundations at least 2 percent for the first 10 feet. Concentrations of surface runoff should be handled by providing structures, such as paved or lined ditches, catch basins, etc.

67. Irrigation activities at the site should be done in a controlled and reasonable manner.

68. Following completion of the project we recommend that storm drainage provisions and performance of permanent erosion control measures be closely observed through the first season of significant rainfall, to determine if these systems are performing adequately and, if necessary, resolve any unforeseen issues.

69. The building and surface drainage facilities must not be altered nor any filling or excavation work performed in the area without first consulting Pacific Crest Engineering Inc. Surface drainage improvements developed by the project civil engineer must be maintained by the property owner at all times, as improper drainage provisions can produce undesirable affects.

EROSION CONTROL

70. The surface soils are classified as having high potential for erosion. Therefore, the finished ground surface should be continually maintained to minimize surface erosion. For specific and detailed recommendations regarding erosion control on and surrounding the project site, the project civil engineer or an erosion control specialist should be consulted.

PLAN REVIEW



71. We respectfully request an opportunity to review the project plans and specifications during preparation and before bidding to verify that the recommendations of this report have been included and to provide additional recommendations, if needed. These plan review services are also typically required by the reviewing agency. Misinterpretation of our recommendations or omission of our requirements from the project plans and specifications may result in changes to the project design during the construction phase, with the potential for additional costs and delays in order to bring the project into conformance with the requirements outlined within this report. Services performed for review of the project plans and specifications are considered "post-report" services and billed on a "time and materials" fee basis in accordance with our latest Standard Fee Schedule.

VI. LIMITATIONS AND UNIFORMITY OF CONDITIONS

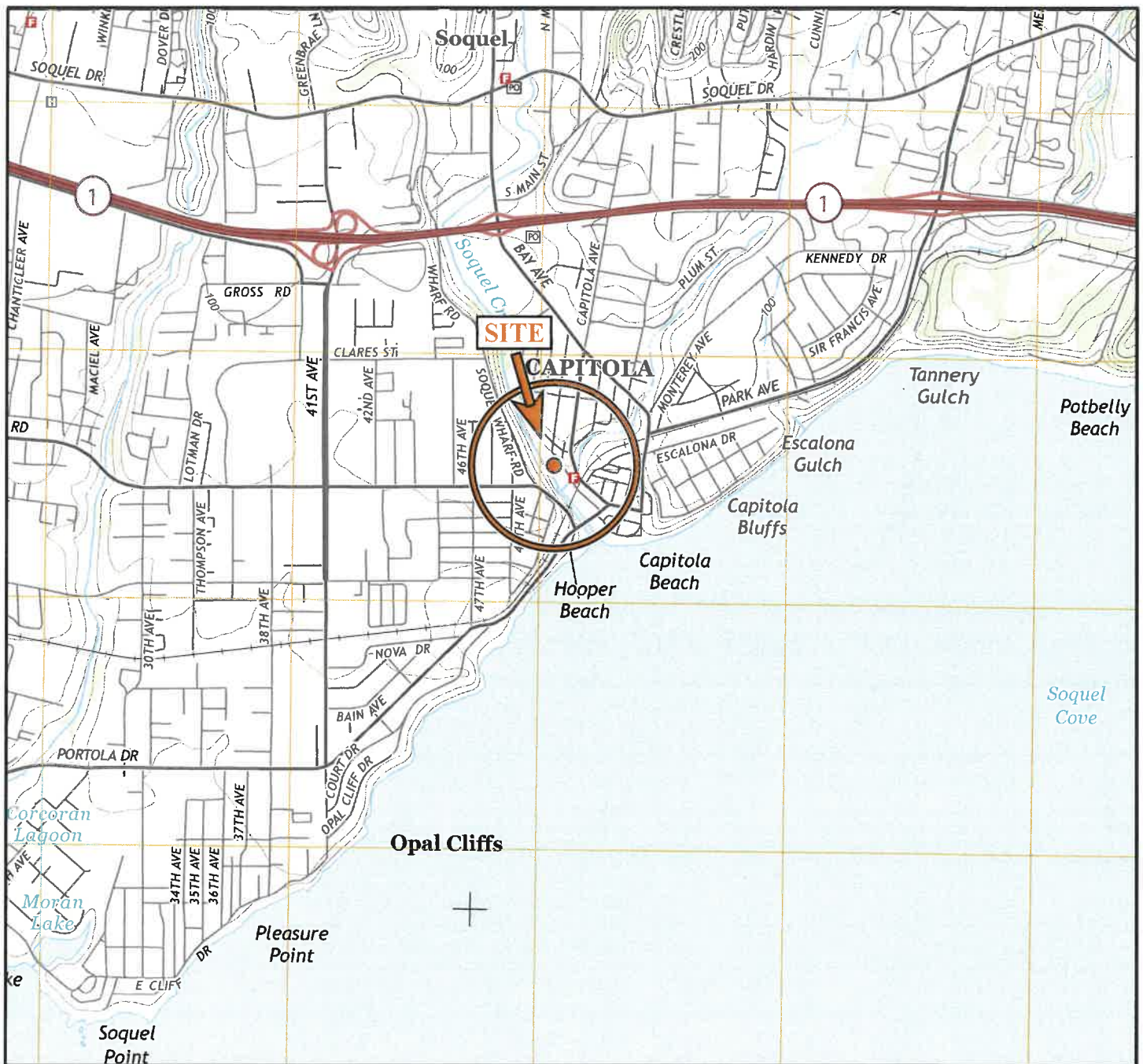
1. This Geotechnical Investigation was prepared specifically for Schaaf and Wheeler and for the specific project and location described in the body of this report. This report and the recommendations included herein should be utilized for this specific project and location exclusively. This Geotechnical Investigation should not be applied to nor utilized on any other project or project site.
2. The recommendations of this report are based upon the assumption that the soil conditions do not deviate from those disclosed in the borings. If any variations or undesirable conditions are encountered during construction, or if the proposed construction will differ from that planned at the time, our firm should be notified so that supplemental recommendations can be provided.
3. This report is issued with the understanding that it is the responsibility of the owner, or his representative, to ensure that the information and recommendations contained herein are called to the attention of the Architects and Engineers for the project and incorporated into the plans, and that the necessary steps are taken to ensure that the Contractors and Subcontractors carry out such recommendations in the field.
4. The findings of this report are valid as of the present date. However, changes in the conditions of a property can occur with the passage of time, whether they are due to natural process or the works of man, on this or adjacent properties. In addition, changes in applicable or appropriate standards occur, whether they result from legislation or the broadening of knowledge. Accordingly, the findings of this report may be invalidated, wholly or partially, by changes outside of our control. This report should therefore be reviewed in light of future planned construction and then current applicable codes. This report should not be considered valid after a period of two (2) years without our review.
5. This report was prepared upon your request for our services in accordance with currently accepted standards of professional geotechnical engineering practice. No warranty as to the contents of this report is intended, and none shall be inferred from the statements or opinions expressed.
6. The scope of our services mutually agreed upon for this project did not include any environmental assessment or study for the presence of hazardous or toxic materials in the soil, surface water, groundwater, or air, on or below or around this site.



APPENDIX A

Regional Site Map
Site Map Showing Test Borings
Key to Soil Classification
Log of Test Borings
Direct Shear Test Result
Retaining Wall Detail
Surcharge Pressure Diagram





0 2000 ft.



Base Map: United States Geological Survey
Soquel Quadrangle, California
Santa Cruz County, 7.5 Minute Series, 2015



Pacific Crest
ENGINEERING INC

Regional Site Map
427 Riverview Avenue
Capitola, California

Figure No. 1
Project No. 23137
Date: 4/2/23



0 40 80



Scale: 1 inch = 40 feet

Base Map: Google Earth Pro



Approximate Location of Test Boring



Pacific Crest
ENGINEERING INC

Site Map Showing Test Borings
427 Riverview Ave
Capitola, California

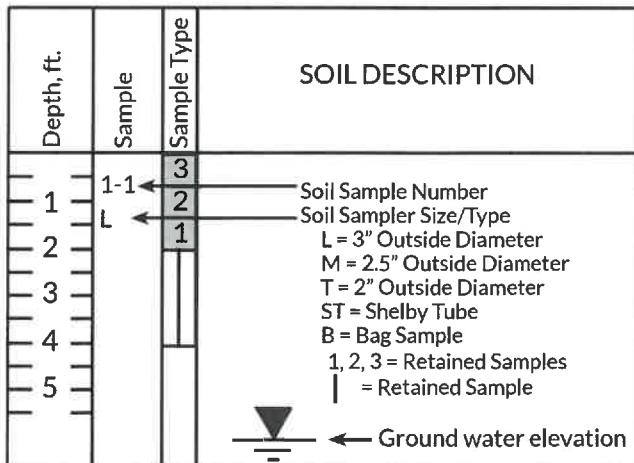
Figure No. 2
Project No. 23137
Date: 4/2/24

KEY TO SOIL CLASSIFICATION - FINE GRAINED SOILS (FGS)
UNIFIED SOIL CLASSIFICATION SYSTEM - ASTM D2487 (Modified)

MAJOR DIVISIONS	SYMBOL	FINES	COARSENESS	SAND/GRAVEL	GROUP NAME
SILT AND CLAY	CL Lean Clay PI > 7 Plots Above A Line -OR- ML Silt PI > 4 Plots Below A Line *LL < 35% Low Plasticity	<30% plus No. 200	<15% plus No. 200		Lean Clay / Silt
			15-30% plus No. 200	% sand ≥ % gravel	Lean Clay with Sand / Silt with Sand
				% sand < % gravel	Lean Clay with Gravel / Silt with Gravel
		≥30% plus No. 200	% sand ≥ % gravel	< 15% gravel	Sandy Lean Clay / Sandy Silt
				≥ 15% gravel	Sandy Lean Clay with Gravel / Sandy Silt with Gravel
			% sand < % gravel	< 15% sand	Gravelly Lean Clay / Gravelly Silt
				≥ 15% sand	Gravelly Lean Clay with Sand / Gravelly Silt with Sand
	CL - ML 4 < PI < 7	<30% plus No. 200	<15% plus No. 200		Silty Clay
			15-30% plus No. 200	% sand ≥ % gravel	Silty Clay with Sand
				% sand < % gravel	Silty Clay with Gravel
		≥30% plus No. 200	% sand ≥ % gravel	< 15% gravel	Sandy Silty Clay
				≥ 15% gravel	Sandy Silty Clay with Gravel
			% sand < % gravel	< 15% sand	Gravelly Silty Clay
				≥ 15% sand	Gravelly Silty Clay with Sand
	CI 35% ≤ *LL < 50% Intermediate Plasticity	<30% plus No. 200	<15% plus No. 200		Clay
			15-30% plus No. 200	% sand ≥ % gravel	Clay with Sand
				% sand < % gravel	Clay with Gravel
		≥30% plus No. 200	% sand ≥ % gravel	< 15% gravel	Sandy Clay
				≥ 15% gravel	Sandy Clay with Gravel
			% sand < % gravel	< 15% sand	Gravelly Clay
				≥ 15% sand	Gravelly Clay with Sand
	CH Fat Clay Plots Above A Line -OR- MH Elastic Silt Plots Below A Line *LL > 50% High Plasticity	<30% plus No. 200	<15% plus No. 200		Fat Clay or Elastic Silt
			15-30% plus No. 200	% sand ≥ % gravel	Fat Clay with Sand Elastic Silt with Sand
				% sand < % gravel	Fat Clay with Gravel / Elastic Silt with Gravel
		≥30% plus No. 200	% sand ≥ % gravel	< 15% gravel	Sandy Fat Clay / Sandy Elastic Silt
				≥ 15% gravel	Sandy Fat Clay with Gravel / Sandy Elastic Silt with Gravel
			% sand < % gravel	< 15% sand	Gravelly Fat Clay / Gravelly Elastic Silt
				≥ 15% sand	Gravelly Fat Clay with Sand / Gravelly Elastic Silt with Sand

* LL = Liquid Limit
 * PI = Plasticity Index

BORING LOG EXPLANATION



MOISTURE

DESCRIPTION	CRITERIA
DRY	Absence of moisture, dusty, dry to the touch
MOIST	Damp, but no visible water
WET	Visible free water, usually soil is below the water table

CONSISTENCY

DESCRIPTION	UNCONFINED SHEAR STRENGTH (KSF)	STANDARD PENETRATION (BLOWS/FOOT)
VERY SOFT	< 0.25	< 2
SOFT	0.25 - 0.5	2 - 4
FIRM	0.5 - 1.0	5 - 8
STIFF	1.0 - 2.0	9 - 15
VERY STIFF	2.0 - 4.0	16 - 30
HARD	> 4.0	> 30

KEY TO SOIL CLASSIFICATION - COARSE GRAINED SOILS
UNIFIED SOIL CLASSIFICATION SYSTEM - ASTM D2487 (Modified)

MAJOR DIVISIONS		FINES	GRADE/TYPE OF FINES	SYMBOL	GROUP NAME *
GRAVEL	More than 50% of coarse fraction is larger than No. 4 sieve size	<5%	$Cu \geq 4$ and $1 \leq Cc \leq 3$	GW	Well-Graded Gravel/ Well-Graded Gravel with Sand
			$Cu < 4$ and/or $1 > Cc > 3$	GP	Poorly Graded Gravel/Poorly Graded Gravel with Sand
		5-12%	ML or MH	GW - GM	Well-Graded Gravel with Silt / Well- Graded Gravel with Silt and Sand
				GP - GM	Poorly Graded Gravel with Silt / Poorly Graded Gravel with Silt and Sand
			CL, CI or CH	GW - GC	Well-Graded Gravel with Clay / Well-Graded Gravel with Clay and Sand
				GP - GC	Poorly Graded Gravel with Clay / Poorly Graded Gravel with Clay and Sand
		>12%	ML or MH	GM	Silty Gravel / Silty Gravel with Sand
			CL, CI or CH	GC	Clayey Gravel/ Clayey Gravel with Sand
			CL - ML	GC - GM	Silty, Clayey Gravel/Silty, Clayey Gravel with Sand
SAND	50% or more of coarse fraction is smaller than No. 4 sieve size	<5%	$Cu \geq 6$ and $1 \leq Cc \leq 3$	SW	Well-Graded Sand / Well-Graded Sand with Gravel
			$Cu < 6$ and/or $1 > Cc > 3$	SP	Poorly Graded Sand / Poorly Graded Sand with Gravel
		5-12%	ML or MH	SW - SM	Well-Graded Sand with Silt / Well- Graded Sand with Silt and Gravel
				SP - SM	Poorly Graded Sand with Silt / Poorly Graded Sand with Silt and Gravel
			CL, CI or CH	SW - SC	Well-Graded Sand with Clay / Well-Graded Sand with Clay and Gravel
				SP - SC	Poorly Graded Sand with Clay / Poorly Graded Sand with Clay and Gravel
		>12%	ML or MH	SM	Silty Sand / Silty Sand with Gravel
			CL, CI or CH	SC	Clayey Sand / Clayey Sand with Gravel
			CL - ML	SC - SM	Silty, Clayey Sand / Silty, Clayey Sand with Gravel

* The term "with sand" refers to materials containing 15% or greater sand particles within a gravel soil, while the term "with gravel" refers to materials containing 15% or greater gravel particles within a sand soil.

US STANDARD SIEVE SIZE:	3 inch	¾ inch	No. 4	No. 10	No. 40	No. 200	0.002 µm
	COARSE	FINE	COARSE	MEDIUM	FINE		
COBBLES AND BOULDERS	GRAVEL		SAND			SILT	CLAY


RELATIVE DENSITY

DESCRIPTION	STANDARD PENETRATION (BLOWS/FOOT)
VERY LOOSE	0 - 4
LOOSE	5 - 10
MEDIUM DENSE	11 - 30
DENSE	31 - 50
VERY DENSE	> 50

MOISTURE

DESCRIPTION	CRITERIA
DRY	Absence of moisture, dusty, dry to the touch
MOIST	Damp, but no visible water
WET	Visible free water, usually soil is below the water table

LOGGED BY <u>CLA</u>		DATE DRILLED <u>10/10/23</u>		BORING DIAMETER <u>6" SS & 4" MR</u> BORING NO. <u>1</u>								
DRILL RIG <u>Britton Track Mounted CME 55</u>				HAMMER TYPE <u>140lb Automatic</u>								
Depth (feet)	Sample	Sample Type	Soil Description	USCS	Field Blow Counts	SPT "N" Value	Pocket Pen. (tsf)	Moisture Content (%)	Dry Density (pcf)	% Passing #200	Plasticity Index	Additional Lab Results
1	1-1	L	FILL: CLAYEY SAND: Dark yellowish brown (10YR 4/4), fine to medium grained with trace coarse and few very coarse grains, sub-angular to sub-rounded shaped, poorly graded, trace sub-angular to sub-rounded shaped granitic gravels up to 1 inch in diameter, moist, very loose	SC	3							
2	2	1			4							
3	1-2	T			3	4		6.2	106.3	16.8	7	
4			NATIVE: SANDY LEAN CLAY: Very dark grayish brown (10YR 3/2), fine to medium grained quartz sand, sub-angular to sub-rounded shaped, poorly graded, organic rich, moist, very soft	CL	0							
5					0							
6	1-3	L	SILTY SAND: Mottled dark gray (10YR 4/1) and dark yellowish brown (10YR 3/4), fine grained, poorly graded, quartz rich, wet, very loose	SM	1	1		29.8		53.4	11	
7		2										
8		1							35.4	114.3	41.3	10
9					1	1						
10												
11	1-4	T	Color change to very dark gray (GLEY 1 3/N), reduction in fines, quartz rich, few mica flakes, wet, very loose		1							
12					1							
13					2	2		29.2		17.6		
14												
15												
16	1-5	L	SILTY GRAVEL WITH SAND / SILTY SAND WITH GRAVEL: Difficult drilling at 13' due to gravels.	GM-SM								
17		B										
18												
19												
20												
21	1-6	T	NO RECOVERY: Chased disturbed sample with a SPT. Gravel lense encountered in recovered sample, subangular to rounded shaped gravels up to 2 inches in diameter, wet, medium dense		18							
22					19							
23					23	27						
			Drilling smoothed out at 17½ feet									
18			WEATHERED PURISIMA: SILTY SAND: Very dark grey (GLEY 1 3/N), very fine to fine grained sand, quartz rich, poorly graded, scattered mica flakes, trace sub-rounded shaped gravels up to 1½ inches in diameter, wet, medium dense	SM								
19												
20												
21			Wet, medium dense		9							
22					11							
23					13	24		22.7		27.1		



Pacific Crest
ENGINEERING INC

Log of Test Borings
427 Riverview Avenue
Capitola, California

Figure No. 5
Project No. 23137
Date: 4/2/24

LOGGED BY CLA DATE DRILLED 10/10/23 BORING DIAMETER 6" SS & 4" MR BORING NO. 1

DRILL RIG Britton Track Mounted CME 55 HAMMER TYPE 140lb Automatic

Depth (feet)	Sample	Sample Type	Soil Description	USCS	Field Blow Counts	SPT "N" Value	Pocket Pen. (tsf)	Moisture Content (%)	Dry Density (pcf)	% Passing #200	Plasticity Index	Additional Lab Results
47			PURISIMA SANDSTONE BEDROCK: DESCRIBED AS SILTY SAND: Very dark gray (GLEY 1 3/N), fine grained, poorly-graded, quartz-rich, massive, friable, trace angular shaped siltstone clasts up to 1 inch in diameter, wet, very dense	SM								
48												
49												
50	1-13 T				26							
51					50/6"	50/6"		11.6				
52			Boring terminated at 51½ feet. Groundwater encountered at 5 feet.									
53												
54												
55												
56												
57												
58												
59												
60												
61												
62												
63												
64												
65												
66												
67												
68												
69												



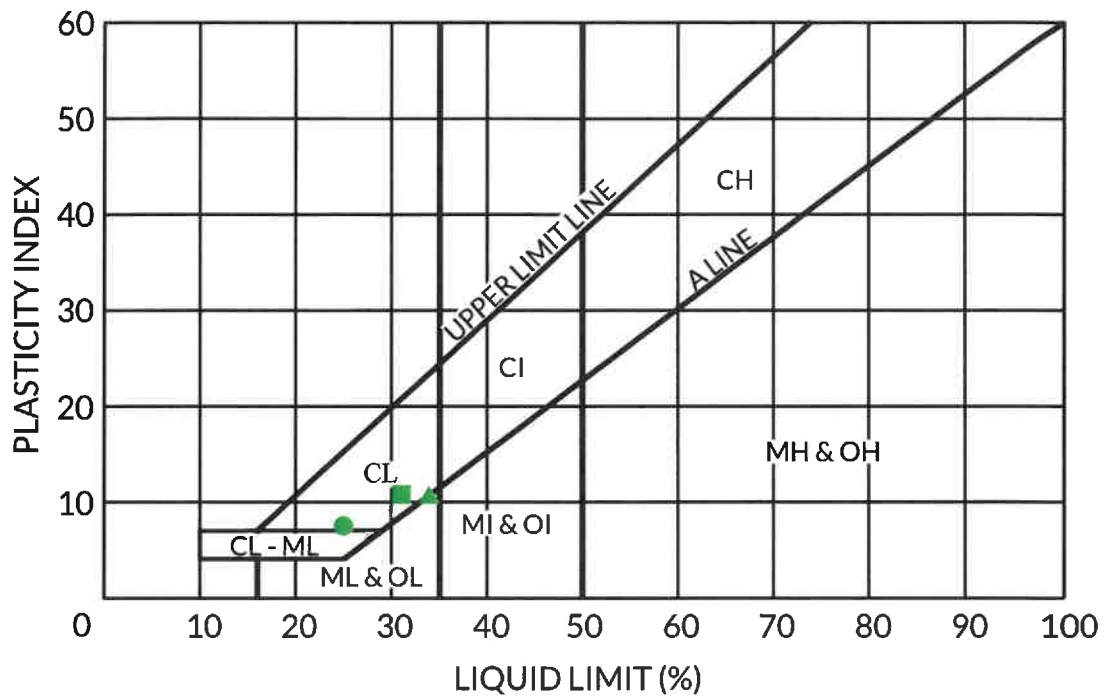
Pacific Crest
ENGINEERING INC

Log of Test Borings
427 Riverview Avenue
Capitola, California

Figure No. 7
Project No. 23137
Date: 4/2/24

ATTERBERG LIMITS - ASTM D4318

PLASTICITY CHART



*This chart has been modified to include the intermediate classifications CI, MI and OI for clays and silts with liquid limits between 35 and 50.

SYMBOL	SAMPLE #	LL (%)	PL (%)	PI
●	1-1-1	24	17	7
■	1-2	32	21	11
▲	1-3-2	34	24	10



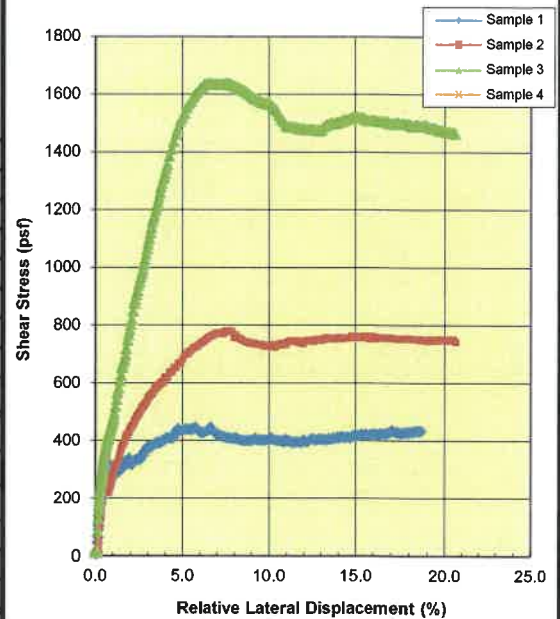
Consolidated Drained Direct Shear (ASTM D3080)

CTL Job #: 416-706 Project #: 23137 By: MD
Client: Pacific Crest Engineering, Inc. Date: 12/6/2023 Checked: PJ
Project Name: Riverview Remolding Info:

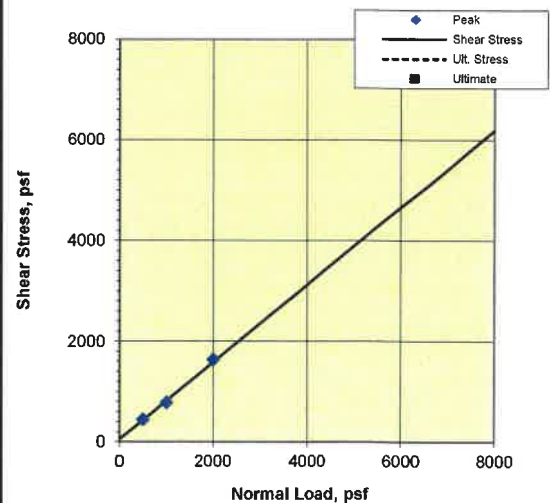
Specimen Data			
	1	2	4
Boring:			
Sample:	1-3-1	1-3-1	1-3-1
Depth (ft):			
Visual Description:	Dark Olive Brown Silty SAND	Dark Olive Brown Silty SAND	Dark Olive Brown Silty SAND
Normal Load (psf)	500	1000	2000
Dry Mass of Specimen (g)	96.8	106.3	115.2
Initial Height (in)	1.00	1.00	1.00
Initial Diameter (in)	2.42	2.42	2.42
Initial Void Ratio	1.102	0.915	0.767
Initial Moisture (%)	37.5	32.0	26.4
Initial Wet Density (pcf)	110.3	116.2	120.6
Initial Dry Density (pcf)	80.2	88.0	95.4
Initial Saturation (%)	91.9	94.5	93.0
ΔHeight Consol (in)	0.0256	0.0218	0.0257
At Test Void Ratio	1.048	0.873	0.721
At Test Moisture (%)	36.3	31.2	25.8
At Test Wet Density (pcf)	112.1	118.0	123.2
At Test Dry Density (pcf)	82.3	90.0	97.9
At Test Saturation (%)	93.5	96.4	96.6
Strain Rate (%/min)	0.02	0.02	0.02
Strengths Picked at	Peak	Peak	Peak
Shear Stress (psf)	446	779	1639
ΔHeight (in) at Peak	0.0011	-0.0004	-0.0022
Ultimate Stress (psf)			

Phi (deg)	37.6	Ult. Phi (deg)	
Cohesion (psf)	50	Ult. Cohesion (psf)	

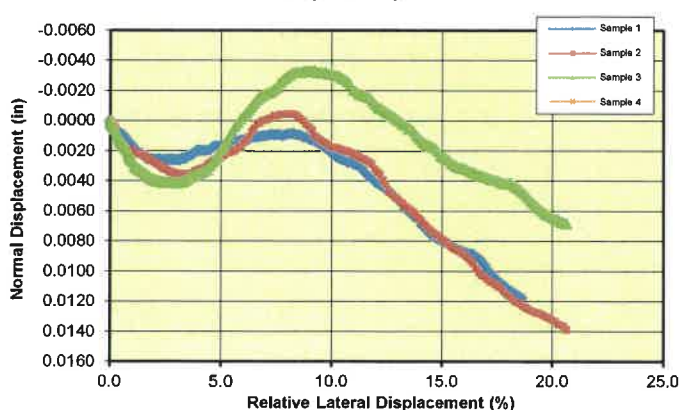
Shear Stress vs. Deformation



Shear Stress vs. Normal Load

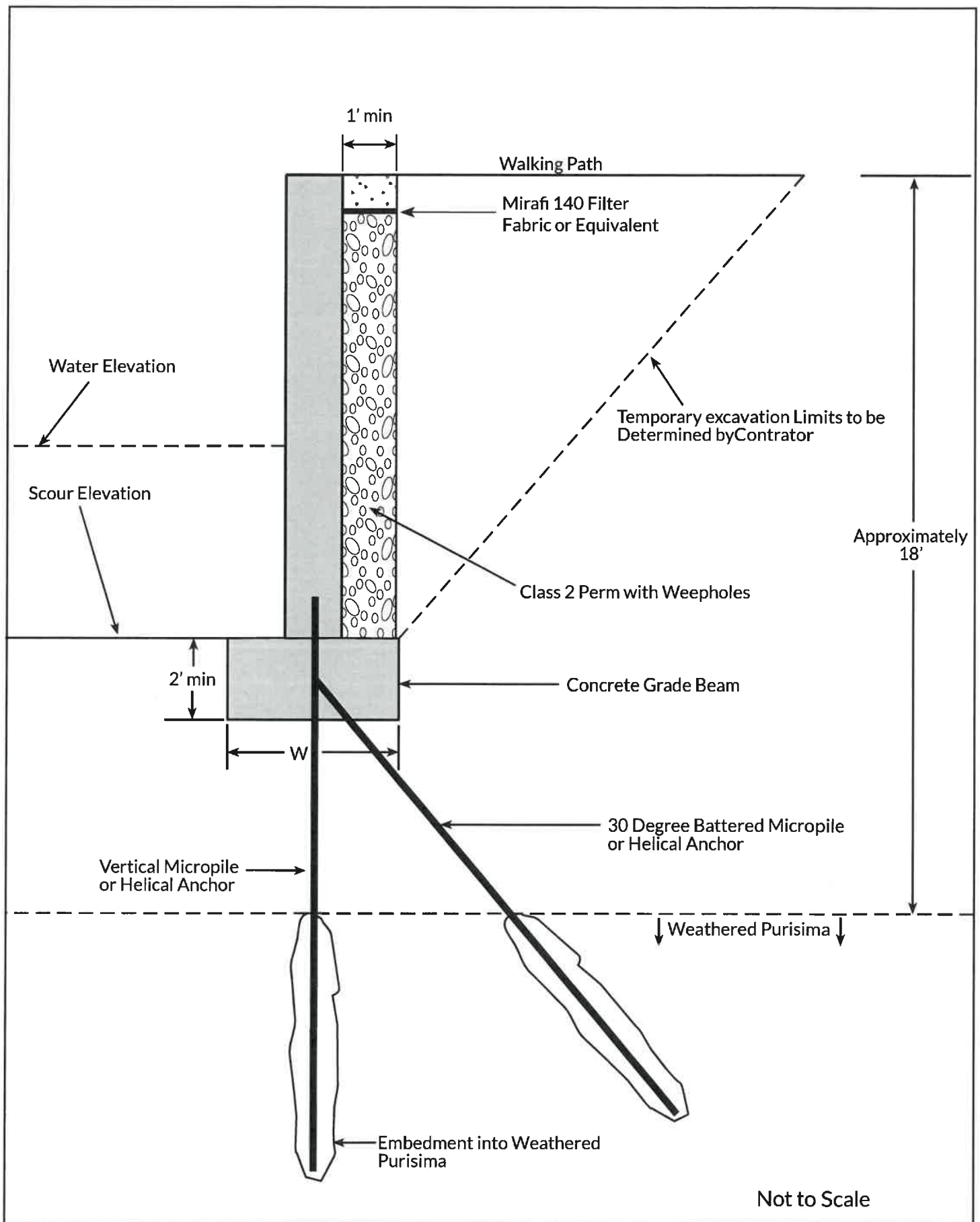


Change in Height

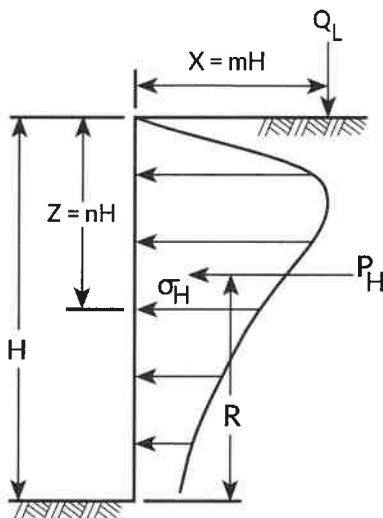
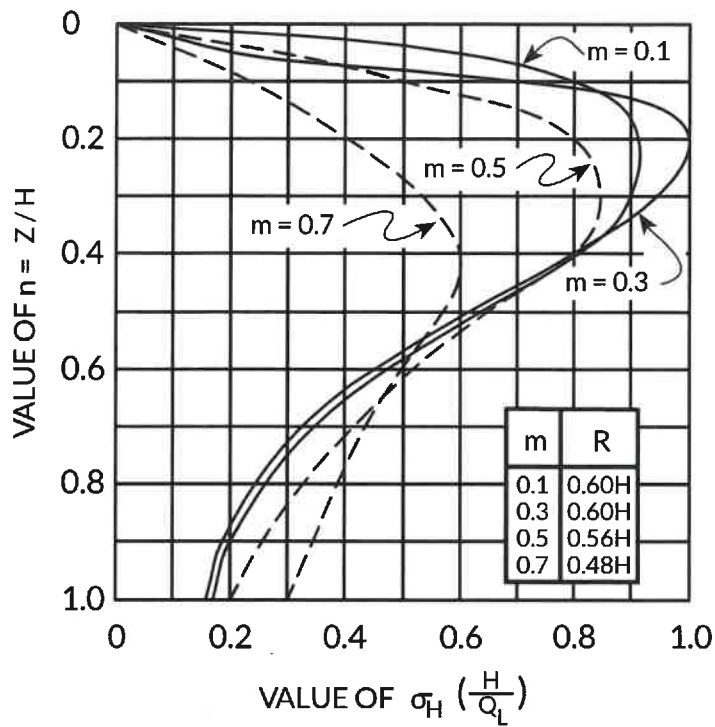


Remarks:

©



LINE LOAD



FOR $m \leq 0.4$:

$$\sigma_H \left(\frac{H}{Q_L} \right) = \frac{0.20n}{(0.16+n^2)^2}$$

$$P_H = 0.55Q_L$$

FOR $m > 0.4$:

$$\sigma_H \left(\frac{H}{Q_L} \right) = \frac{1.28m^2n}{(m^2+n^2)^2}$$

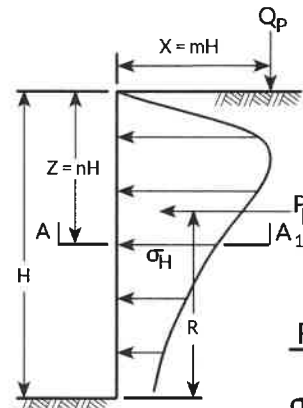
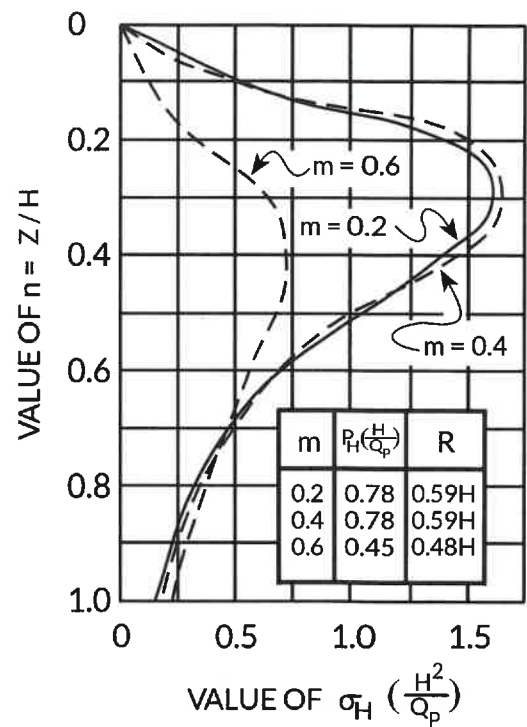
$$\text{RESULTANT } P_H = \frac{0.64Q_L}{(m^2+1)}$$

PRESSURES FROM LINE LOAD Q_L

(BOUSSINESQ EQUATION MODIFIED BY EXPERIMENT)

REFERENCE: Design Manual
NAVFAC DM-7.02
Figure 11
Page 7.2-74

POINT LOAD



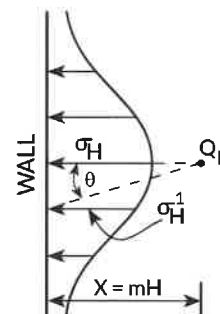
FOR $m \leq 0.4$:

$$\sigma_H \left(\frac{H^2}{Q_P} \right) = \frac{0.28n^2}{(0.16+n^2)^3}$$

FOR $m > 0.4$:

$$\sigma_H \left(\frac{H^2}{Q_P} \right) = \frac{1.77m^2n^2}{(m^2+n^2)^3}$$

$$\sigma_H^1 = \sigma_H \cos^2(1.1\theta)$$



SECTION A-A_1

PRESSURES FROM POINT LOAD Q_P

(BOUSSINESQ EQUATION
MODIFIED)

APPENDIX B

Seismically Induced Settlement Calculations



SPT BASED LIQUEFACTION ANALYSIS REPORT

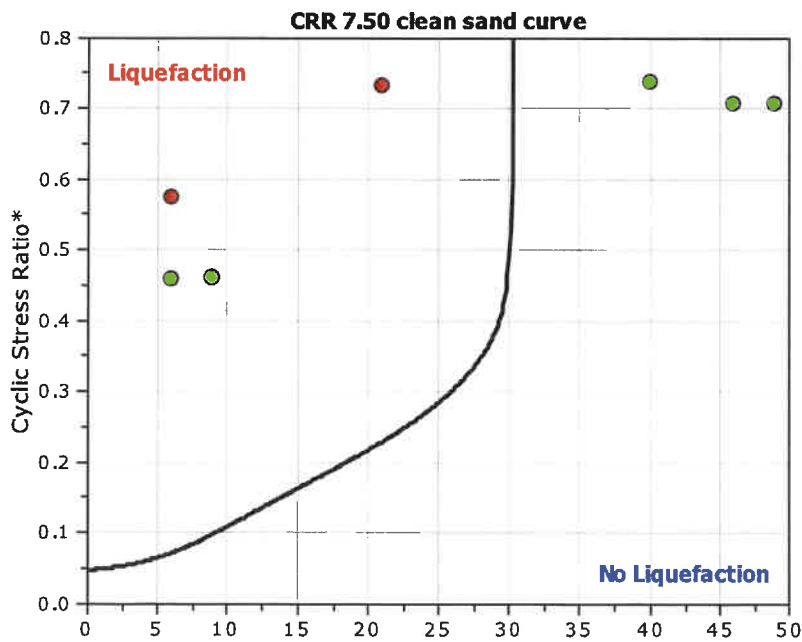
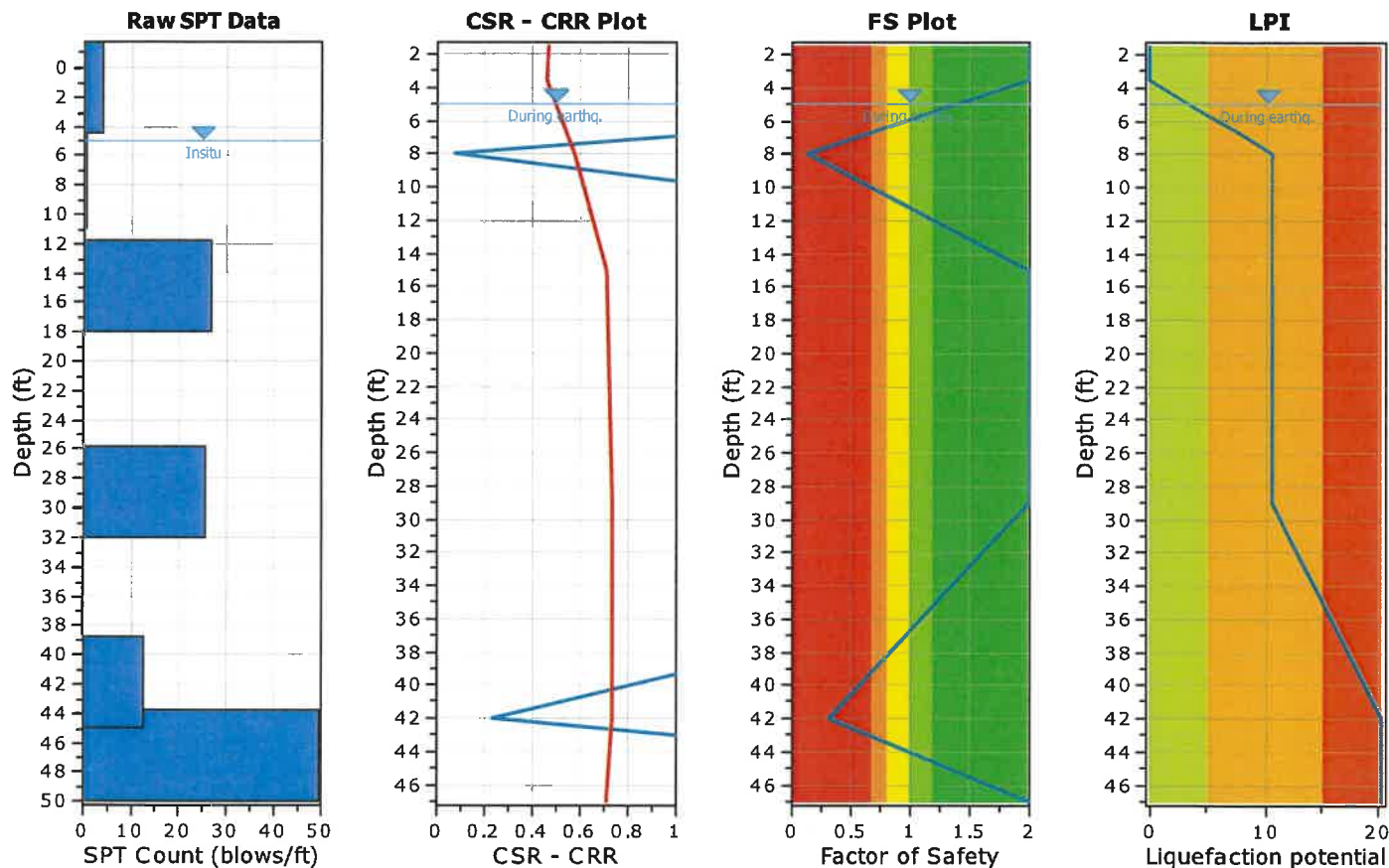
Project title : 427 Riverview Avenue

SPT Name: Site Model

Location : Capitola, California

:: Input parameters and analysis properties ::

Analysis method:	NCEER 1998	G.W.T. (in-situ):	5.00 ft
Fines correction method:	NCEER 1998	G.W.T. (earthq.):	5.00 ft
Sampling method:	Standard Sampler	Earthquake magnitude M_w :	7.10
Borehole diameter:	200mm	Peak ground acceleration:	0.82 g
Rod length:	3.00 ft	Eq. external load:	0.00 tsf
Hammer energy ratio:	1.00		



F.S. color scheme

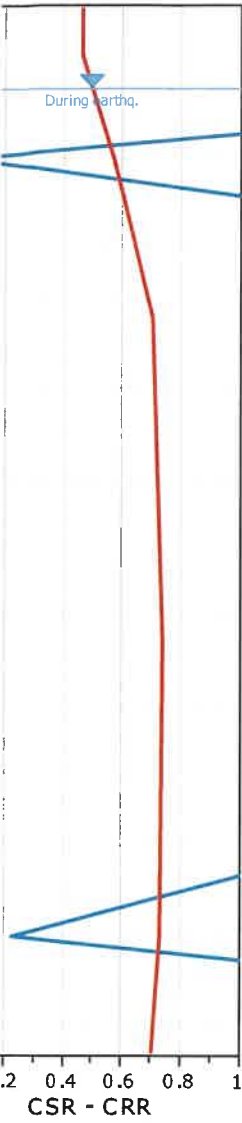
- Almost certain it will liquefy
- Very likely to liquefy
- Liquefaction and no liq. are equally likely
- Unlike to liquefy
- Almost certain it will not liquefy

LPI color scheme

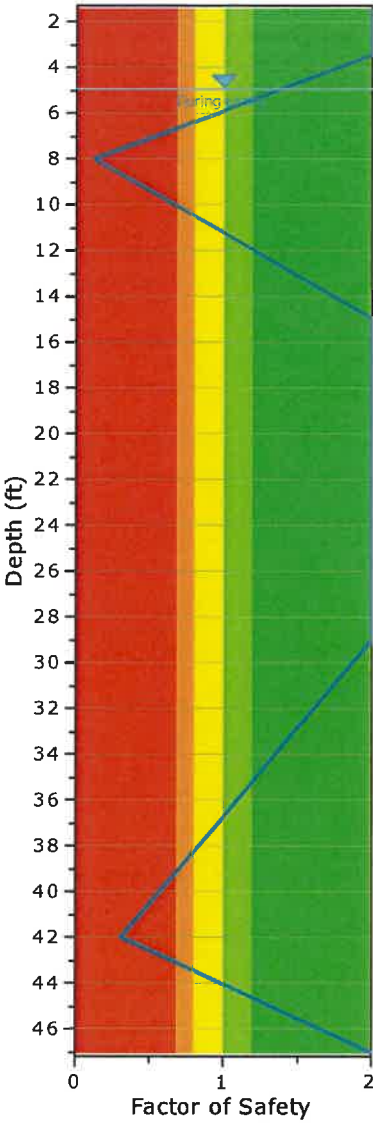
- Very high risk
- High risk
- Low risk

lots ::

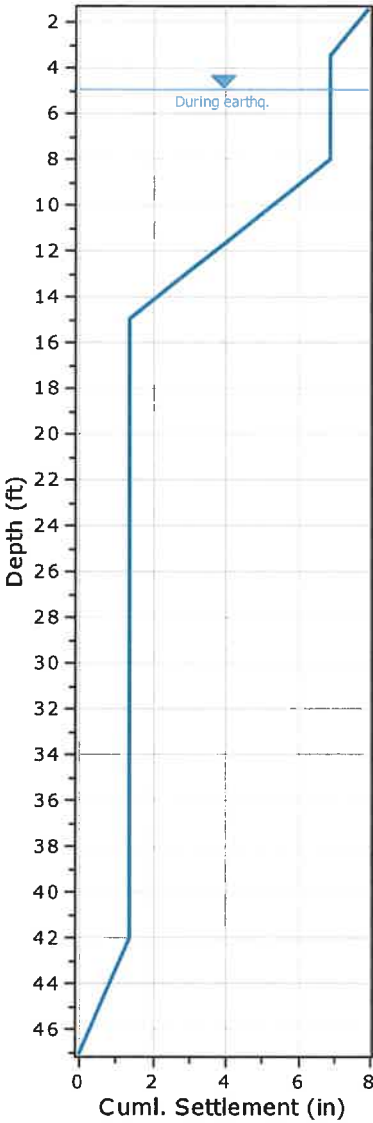
CSR - CRR Plot



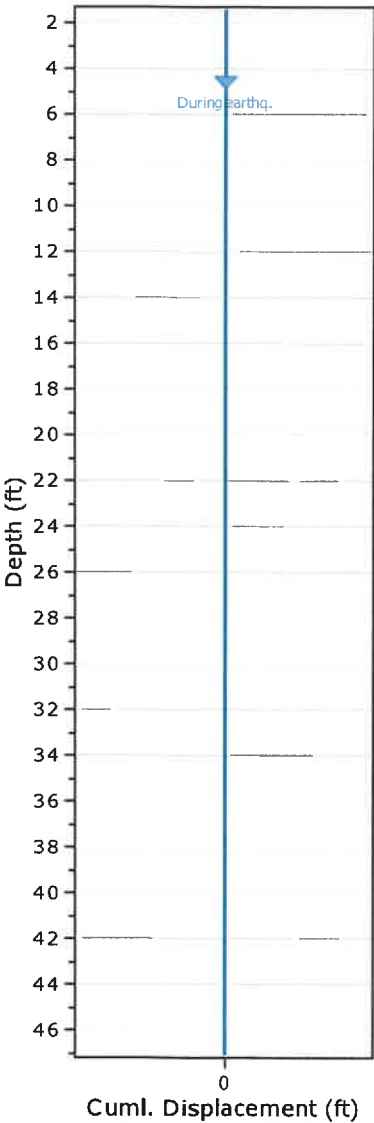
FS Plot



Vertical Liq. Settlements



Lateral Liq. Displacements



:: Field input data ::

Test Depth (ft)	SPT Field Value (blows)	Fines Content (%)	Unit Weight (pcf)	Infl. Thickness (ft)	Can Liquefy
1.50	4	16.80	112.90	2.50	Yes
3.50	1	53.40	113.70	2.00	No
8.00	1	41.30	114.30	8.00	Yes
15.00	27	41.30	114.30	5.00	Yes
29.00	26	41.30	133.60	22.50	Yes
42.00	13	50.00	133.60	5.00	Yes
47.00	50	8.70	142.50	7.00	Yes

Abbreviations

Depth: Depth at which test was performed (ft)
 SPT Field Value: Number of blows per foot
 Fines Content: Fines content at test depth (%)
 Unit Weight: Unit weight at test depth (pcf)
 Infl. Thickness: Thickness of the soil layer to be considered in settlements analysis (ft)
 Can Liquefy: User defined switch for excluding/including test depth from the analysis procedure

:: Cyclic Resistance Ratio (CRR) calculation data ::

Depth (ft)	SPT Field Value	Unit Weight (pcf)	σ_v (tsf)	u_o (tsf)	σ'_{vo} (tsf)	C_N	C_E	C_B	C_R	C_S	$(N_1)_{60}$	Fines Content (%)	α	β	$(N_1)_{60cs}$	CRR _{7.5}
1.50	4	112.90	0.08	0.00	0.08	1.70	1.00	1.15	0.75	1.00	6	16.80	2.96	1.06	9	4.000
3.50	1	113.70	0.20	0.00	0.20	1.70	1.00	1.15	0.75	1.00	1	53.40	5.00	1.20	6	4.000
8.00	1	114.30	0.46	0.09	0.36	1.70	1.00	1.15	0.75	1.00	1	41.30	5.00	1.20	6	0.073
15.00	27	114.30	0.86	0.31	0.54	1.40	1.00	1.15	0.85	1.00	37	41.30	5.00	1.20	49	4.000
29.00	26	133.60	1.79	0.75	1.04	1.01	1.00	1.15	0.95	1.00	29	41.30	5.00	1.20	40	4.000
42.00	13	133.60	2.66	1.15	1.50	0.84	1.00	1.15	1.00	1.00	13	50.00	5.00	1.20	21	0.229
47.00	50	142.50	3.02	1.31	1.71	0.79	1.00	1.15	1.00	1.00	45	8.70	0.47	1.02	46	4.000

Abbreviations

σ_v : Total stress during SPT test (tsf)
 u_o : Water pore pressure during SPT test (tsf)
 σ'_{vo} : Effective overburden pressure during SPT test (tsf)
 C_N : Overburden correction factor
 C_E : Energy correction factor
 C_B : Borehole diameter correction factor
 C_R : Rod length correction factor
 C_S : Liner correction factor
 $N_{1(60)}$: Corrected N_{SPT} to a 60% energy ratio
 α, β : Clean sand equivalent clean sand formula coefficients
 $N_{1(60)cs}$: Corrected $N_{1(60)}$ value for fines content
 CRR_{7.5}: Cyclic resistance ratio for M=7.5

:: Cyclic Stress Ratio calculation (CSR fully adjusted and normalized) ::

Depth (ft)	Unit Weight (pcf)	$\sigma_{v,eq}$ (tsf)	$u_{o,eq}$ (tsf)	$\sigma'_{vo,eq}$ (tsf)	r_d	α	CSR	MSF	CSR _{eq,M=7.5}	K_{σ}	CSR*	FS
1.50	112.90	0.08	0.00	0.08	1.00	1.00	0.532	1.15	0.463	1.00	0.463	2.000 ●
3.50	113.70	0.20	0.00	0.20	0.99	1.00	0.530	1.15	0.461	1.00	0.461	2.000 ●
8.00	114.30	0.46	0.09	0.36	0.98	1.00	0.660	1.15	0.574	1.00	0.574	0.127 ●
15.00	114.30	0.86	0.31	0.54	0.97	1.00	0.813	1.15	0.706	1.00	0.706	2.000 ●
29.00	133.60	1.79	0.75	1.04	0.93	1.00	0.848	1.15	0.737	1.00	0.737	2.000 ●
42.00	133.60	2.66	1.15	1.50	0.83	1.00	0.784	1.15	0.682	0.93	0.732	0.314 ●
47.00	142.50	3.02	1.31	1.71	0.78	1.00	0.738	1.15	0.642	0.91	0.706	2.000 ●

:: Cyclic Stress Ratio calculation (CSR fully adjusted and normalized) ::

Depth (ft)	Unit Weight (pcf)	$\sigma_{v,eq}$ (tsf)	$u_{o,eq}$ (tsf)	$\sigma'_{vo,eq}$ (tsf)	r_d	α	CSR	MSF	$CSR_{eq,M=7.5}$	K_{σ}	CSR*	FS
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Abbreviations

$\sigma_{v,eq}$: Total overburden pressure at test point, during earthquake (tsf)
 $u_{o,eq}$: Water pressure at test point, during earthquake (tsf)
 $\sigma'_{vo,eq}$: Effective overburden pressure, during earthquake (tsf)
 r_d : Nonlinear shear mass factor
 α : Improvement factor due to stone columns
 CSR: Cyclic Stress Ratio (adjusted for improvement)
 MSF: Magnitude Scaling Factor
 $CSR_{eq,M=7.5}$: CSR adjusted for M=7.5
 K_{σ} : Effective overburden stress factor
 CSR*: CSR fully adjusted (user FS applied)***
 FS: Calculated factor of safety against soil liquefaction

*** User FS: 1.00

:: Liquefaction potential according to Iwasaki ::

Depth (ft)	FS	F	wz	Thickness (ft)	I_L
1.50	2.000	0.00	9.77	2.00	0.00
3.50	2.000	0.00	9.47	2.00	0.00
8.00	0.127	0.87	8.78	4.50	10.51
15.00	2.000	0.00	7.71	7.00	0.00
29.00	2.000	0.00	5.58	14.00	0.00
42.00	0.314	0.69	3.60	13.00	9.79
47.00	2.000	0.00	2.84	5.00	0.00

Overall potential I_L : 20.30

$I_L = 0.00$ - No liquefaction

I_L between 0.00 and 5 - Liquefaction not probable

I_L between 5 and 15 - Liquefaction probable

$I_L > 15$ - Liquefaction certain

:: Vertical settlements estimation for dry sands ::

Depth (ft)	$(N_1)_{60}$	τ_{av}	p	G_{max} (tsf)	α	b	γ	ϵ_{15}	N_c	ϵ_{Nc} (%)	Δh (ft)	ΔS (in)
1.50	6	0.05	0.06	221.46	0.13	28153.14	0.01	0.02	11.65	1.69	2.50	1.012
3.50	1	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	2.00	0.000

Cumulative settlements: 1.012

Abbreviations

τ_{av} : Average cyclic shear stress
 p : Average stress
 G_{max} : Maximum shear modulus (tsf)
 α, b : Shear strain formula variables
 γ : Average shear strain
 ϵ_{15} : Volumetric strain after 15 cycles
 N_c : Number of cycles
 ϵ_{Nc} : Volumetric strain for number of cycles N_c (%)
 Δh : Thickness of soil layer (in)
 ΔS : Settlement of soil layer (in)

:: Vertical settlements estimation for saturated sands ::

Depth (ft)	D ₅₀ (in)	q _c /N	e _v (%)	Δh (ft)	s (in)
8.00	0.00	5.00	5.80	8.00	5.568
15.00	0.00	5.00	0.00	5.00	0.000
29.00	0.00	5.00	0.00	22.50	0.000
42.00	0.00	5.00	2.25	5.00	1.347
47.00	0.00	5.00	0.00	7.00	0.000

Cumulative settlements: 6.915

Abbreviations

D₅₀: Median grain size (in)
q_c/N: Ratio of cone resistance to SPT
e_v: Post liquefaction volumetric strain (%)
Δh: Thickness of soil layer to be considered (ft)
s: Estimated settlement (in)

:: Lateral displacements estimation for saturated sands ::

Depth (ft)	(N ₁) ₆₀	D _r (%)	γ _{max} (%)	d _z (ft)	LDI	LD (ft)
1.50	6	34.29	0.00	2.50	0.000	0.00
3.50	1	14.00	0.00	2.00	0.000	0.00
8.00	1	14.00	51.20	8.00	0.000	0.00
15.00	37	85.16	0.00	5.00	0.000	0.00
29.00	29	75.39	0.00	22.50	0.000	0.00
42.00	13	50.48	34.10	5.00	0.000	0.00
47.00	45	100.00	0.00	7.00	0.000	0.00

Cumulative lateral displacements: 0.00

Abbreviations

D_r: Relative density (%)
γ_{max}: Maximum amplitude of cyclic shear strain (%)
d_z: Soil layer thickness (ft)
LDI: Lateral displacement index (ft)
LD: Actual estimated displacement (ft)

References

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EXHIBIT 60



Terri <terrirobbins1221@gmail.com>

FW: 427 Riverview Follow-up

1 message

Joe McLean <jwmjr116@gmail.com>
To: "gomez@fusearchitecture.com" <gomez@fusearchitecture.com>
Cc: Terri <terrirobbins1221@gmail.com>

Thu, Jun 27, 2024 at 11:21 AM

From: Kahn, Jessica <jkahn@ci.capitola.ca.us>
Date: Monday, June 17, 2024 at 9:51 AM
To: T Thatcher <terrirthatcher@gmail.com>
Cc: Herlihy, Katie (kherlihy@ci.capitola.ca.us) <kherlihy@ci.capitola.ca.us>, Joe McLean <jwmjr116@gmail.com>
Subject: RE: 427 Riverview Follow-up

Hi Terri,

Until FEMA approves the expenditure of funds, establishing a reliable schedule would be challenging. This work would likely be constrained by conditions set forth by regulatory agencies, typically during the spring and/or summer when the outfall experiences the lowest flows. The earliest possible start date for this project would be in spring 2025. I apologize for not having more specific information at this time.

Jessica

Jessica Kahn, P.E.

Public Works Director

City of Capitola

(831) 475-7300 x 217

jkahn@ci.capitola.ca.us

From: T Thatcher <terrirthatcher@gmail.com>
Sent: Monday, June 17, 2024 9:43 AM
To: Kahn, Jessica <jkahn@ci.capitola.ca.us>
Cc: Herlihy, Katie (kherlihy@ci.capitola.ca.us) <kherlihy@ci.capitola.ca.us>; Joe McLean <jwmjr116@gmail.com>
Subject: Re: 427 Riverview Follow-up

Hi Jessica,

Circling back on this. Can you provide us with how the process will work? We're trying to time a lot around this so the information you can provide will greatly help. We understand it's out of your control, we just want to understand the general process so we can better time our project.

Terri

On Wed, Jun 12, 2024 at 10:21 AM T Thatcher <terrirthatcher@gmail.com> wrote:

Thank you for the update, Jessica. This is all we're looking for.

We're not worried about weeks, and it's been months, I think we're concerned about it taking years. Once the fix has been approved can you shed light on what comes next and an *estimated* timeline? I imagine it goes out to bid? We understand it's not in your control but we're hoping for a reality check on our expectations. If this will take years, we will possibly need to re-evaluate.

Any information you can share, understanding it's not in your control, would be greatly appreciated.

Terri and Joe

On Tue, Jun 11, 2024 at 8:40 AM Kahn, Jessica <jkahn@ci.capitola.ca.us> wrote:

Good morning,

The City has not yet been authorized by FEMA to proceed with the repair. Unfortunately, obtaining approval for this type of permanent work can take several months. According to FEMA, the project has been under environmental review for several weeks.

Regrettably, I do not have any additional information at this time.

Jessica

Jessica Kahn, P.E.

Public Works Director

City of Capitola

(831) 475-7300 x 217

jkahn@ci.capitola.ca.us

From: T Thatcher <terrirthatcher@gmail.com>

Sent: Monday, June 10, 2024 8:06 PM

To: Kahn, Jessica <jkahn@ci.capitola.ca.us>; Herlihy, Katie (kherlihy@ci.capitola.ca.us) <kherlihy@ci.capitola.ca.us>

Cc: Joe McLean <jwmjr116@gmail.com>; Charlie Eadie <charlie@eadieconsultants.com>

Subject: Re: 427 Riverview Follow-up

Jessica and Katie,

It's been nearly 3 months without the courtesy of a reply from anyone. Are there any updates on the status of the flume repair? I feel like the city of Capitola has completely blown us off at this point. We've all but lost faith in the town we chose to spend the rest of our lives in. All we've asked for is to be kept up to date.

Terri & Joe

On Tue, Mar 26, 2024 at 8:56 AM Charlie Eadie <charlie@eadieconsultants.com> wrote:

Hi Jessica:

Any progress on this?

Charles Eadie,

Principal



P.O. Box 1647, Santa Cruz, CA 95061-1647

831.431.3396 (cell)

charlie@eadieconsultants.com | eadieconsultants.com

On Fri, Mar 8, 2024 at 11:30 AM Charlie Eadie <charlie@eadieconsultants.com> wrote:

Hi Jessica:

Just checking on the status of the follow-up from our meeting on February 23. We are awaiting the results of your site visit and next steps regarding the walkway failure and related safety concerns.

Also, we would appreciate a response regarding the title information provided by Terri Thacher confirming that per the easement the property owners are to be indemnified as to any damages due to work on the flume, which as written, is the opposite of what the City had been assuming. (Documents attached for reference.)

Thanks again for your assistance and time on this matter.

Charles Eadie,

Principal



P.O. Box 1647, Santa Cruz, CA 95061-1647

831.431.3396 (cell)

charlie@eadieconsultants.com | eadieconsultants.com

EXHIBIT 61



City of Capitola

MASTER APPLICATION

Application # _____
Filing Date _____
Total Fee _____
Received by _____

Project Address: 427 Riverview Ave, Capitola, CA 95010

A.P.N.: 035-132-01-000

Zone District: R-1 + VRU

Existing Condition/Current Use: Single Family Residence

☒ New ☐ Addition ☒ Remodel ☐ Variance ☒ Demo ☐ CUP ☒ Coastal Permit ☐ Other _____
☒ Residential: # of Bldgs. 1 # of Stories 2 # of Units 1 ☐ Commercial: # of Bldgs. _____ # of Stories _____

Project Description:

The project proposes to elevate all living spaces of an existing SFR above FEMA flood elevation, using a similar footprint as the existing residence. This will be accomplished by demo and rebuild of a portion of the residence on elevated concrete pier foundations, and remodeling a portion of the residence above the existing garage. A portion of the existing garage will be converted to a carport.

Proposed Use/Occupancy: Single Family Residence

IMPORTANT: Please check the box ☒ next to the name of the person listed below whom we should contact regarding this application.

☐ **Property Owner:** Joseph McLean Phone: (626) 523-3159
Mailing Address: 4800 River Street, Soquel, CA 95703
Email: jwmjr116@gmail.com

☐ **Applicant:** Joseph McLean Phone: (626) 523-3159
Mailing Address: 4800 River Street, Soquel, CA 95703
Email: jwmjr116@gmail.com

☒ **Architect/Designer:** Faulkner Architects, ATTN: Nicholas Batie Phone: (530) 386-6070
Mailing Address: 12242 Business Park Dr # 18, Truckee, CA 96161
Email: nick@faulknerarchitects.net

☐ **Engineer:** Bowman & Williams Phone: (831) 426-3560 X124
Mailing Address: 3949 Research Park Court, Suite 100, Soquel, CA 95073
Email: Samantha@bowmanandwilliams.com



City of Capitola MASTER APPLICATION

Application # _____

Proposed

New Commercial Building: N/A sq. ft.
New Residential Building: 1,178 sq. ft.
Addition: N/A sq. ft.
Remodel/Tenant Improvement: 657 sq. ft.
Carport/Patio Cover: 359 sq. ft.
New Deck: 189 sq. ft.
New Fencing: 758 (126 linear feet) sq. ft.
New Paving: 0 sq. ft.
Parking Spaces: 2
Other (specify): 480 sq. ft. patio

Existing

Lot: 30 x 178.6 = 5358 sq. ft.
Main Building: 2,156 sq. ft.
Parking Spaces: 2
Other (specify): 490 sq. ft. garage sq. ft.

PLANNING STAFF USE ONLY

- ☐ ARCHITECTURAL AND SITE REVIEW
- ☐ COASTAL REVIEW: EXCLUSION, EXEMPTION OR REC. TO CCC
- ☐ ENVIRONMENTAL REVIEW
- ☐ ADMINISTRATIVE REVIEW
- ☐ PLANNING COMMISSION REVIEW (PC)
- ☐ ZONING ADMINISTRATOR
- ☐ OTHER _____

I, the undersigned, understand approval of this project does not waive any requirements, laws, or ordinances of the City of Capitola. All statements contained herein, including all documents and plans submitted in connection with this application, are true and accurate to the best of my knowledge.

In submitting this Application, I agree to defend, indemnify, and hold harmless the City of Capitola, its officers, employees, and agents, from and against any claim, including attorneys' fees and litigation costs, arising out of or in any way related to the City of Capitola's processing, consideration, or approval of this Application.

Signature: Joseph W McLean Jr
Joseph W McLean Jr (Aug 31, 2023 15:55 PDT)
Property Owner

Date: Aug 31, 2023

I hereby authorize the above named contact person to act as my agent in all matters pertaining to this application.

Signature: Joseph W McLean Jr
Joseph W McLean Jr (Aug 31, 2023 15:55 PDT)
Applicant

Date: Aug 31, 2023

[← Back](#)

Permit Information

Permit Number:	20230400	Project Description:	DP, CDP to remodel and connect an existing SFD and detached two-story ADU, raise habitable space above BFE.
Permit Date:	09/05/2023		
Permit :	Planning		
Type:	B-Residential	Filing Date:	09/05/2023
Sub Type:	P-Admin	Issued Date:	
Status:	Inprocess	Permit Expiration:	03/06/2024
		Occupancy:	
		Construction Type:	

Fees

Planning Fees - Coastal Development Permit:	\$943.00 - Paid
Planning Fees - Design Permit - Residential Single Family - PC Review:	\$3,143.00 - Paid
Planning Fees - IT fee:	\$210.50 - Paid
Planning Fees - Stormwater Plan Review Fee:	\$124.00 - Paid
Total Fees:	\$4,420.50
Amount Due:	\$0.00

Uploaded Files

2 files have been uploaded

Files

[Choose Files](#) No file chosen

[Accessibility](#)



City of Capitola

Storm Water Permit Project Application

All projects must comply with the City's Storm Water Post Construction Requirements (CMC 13.16.090). Complete the following information in order for the Public Works Department to determine the applicable requirements for a project. Once this has been submitted the applicant will be notified and provided guidance on achieving compliance.

PROJECT ADDRESS: 427 Riverview Ave. Capitola, CA

OWNER:	DESIGNER:
Contact Name: Mr. Joseph McLean	Contact Name: Samantha Vroomen
Address: 4800 River Street	Address: 3949 Research Park Court, Suite 100
City: Soquel Zip: 95073	City: Soquel Zip: 95073
Phone: (626) 523-3159	Phone: 831-426-3560X124
Fax:	Mobile:
Email: jwmjr116@gmail.com	Fax:
	Email: Samantha@bowmanandwilliams.com

Project Type: ☒ Residential ☐ Commercial ☐ Industrial

Project is a: ☐ New Development ☒ Redevelopment

Project Description: The project proposes to demolish most of an existing SFR and rebuild above the FEMA flood elevation, using a similar footprint as the existing residence.

Stormwater Project Information	
<p>▶ When completing this section, consider the entire project site, not separate parcels or development sites within the project area</p> <p>▶ Impervious Area = structures, pavement, hardscaping – any surface that will not allow water to infiltrate into the ground</p>	
Total Project Site Area	<u>5,358</u> sq. ft.
Amount of existing (pre-project) impervious surface area (e.g., existing buildings, paving, hardscape)	<u>2,386</u> sq. ft.
Amount of replaced impervious surface area (e.g., parking lot replaced by a building)	<u>1,627</u> sq. ft.
Amount of new impervious surface area created (e.g., new building addition and/or patio)	<u>113</u> sq. ft.
Total proposed (post-project) impervious surface area	<u>2,139</u> sq. ft.

I hereby affirm that this information is accurate and understand it will be used to determine compliance with the City's Storm Water Post Construction Requirements for this project.

Property Owner or Authorized Agent

Joseph W McLean Jr
Print Name

Joseph W McLean Jr
Joseph W McLean Jr (Aug 31, 2023 15:54 PDT)
Signature

Aug 31, 2023
Date

Staff to complete below

Net Impervious Area (New + Replaced – (Existing- Proposed))	_____ sq. ft.	
Tier Determination	<input type="checkbox"/> Basic	Tier _____

Check One	Tier*	Detached Single Family Homes	All Others (Commercial, Industrial, Two- & Multi-Family Homes)
<input type="checkbox"/>	Basic Tier**	New/Replaced impervious area < 2,500 sf	
<input type="checkbox"/>	Tier 1	New/Replaced impervious area \geq 2,500 sf	New/Replaced impervious area \geq 2,500 sf
<input type="checkbox"/>	Tier 2	N/A	Net impervious area \geq 5,000 sf
<input type="checkbox"/>	Tier 3	Net impervious area \geq 15,000 sf	New/Replaced impervious area \geq 15,000 sf
<input type="checkbox"/>	Tier 4	New/Replaced impervious area \geq 22,500 sf	

Notes:

* Tier numbers correspond to "Performance Requirements" identified in the State Water Resources Control Board resolution for PCRs.

** Basic Tier projects must incorporate runoff reduction measures into site plan, e.g. disperse runoff to vegetated area, pervious paving, rain barrel or cistern

Net impervious area = new impervious + replaced impervious – (pre-project minus post-project)

PAYMENT DATE
09/05/2023
COLLECTION STATION
Front Counter
RECEIVED FROM
McLean 20230400
DESCRIPTION

City of Capitola
420 Capitola Avenue
Capitola, CA 95010
Phone: 831-475-7300
Fax: 831-479-8879
www.cityofcapitola.org

BATCH NO.
2024-03000063
RECEIPT NO.
2024-00000506
CASHIER
Jorge Melgoza

PAYMENT CODE	RECEIPT DESCRIPTION	TRANSACTION AMOUNT
CDD 5% IT FEE	CDD 5% IT FEE	\$210.50
CDD COAST DEVPER	Coastal development permit+5% IT	\$943.00
CDD RES SF PC	Residential Single-FamPC+ 5%IT	\$3,143.00
PW Stormwater	Stormwater Development Fee	\$124.00
	Total Cash	\$0.00
	Total Check	\$4,420.50
	Total Charge	\$0.00
	Total Wire	\$0.00
	Total Other	\$0.00
	Total Remitted	\$4,420.50
	Change	\$0.00
	Total Received	\$4,420.50
Total Amount:		\$4,420.50

Customer Copy

Printed by: Jorge Melgoza

Page 1 of 1

09/05/2023 03:42:32 PM

EXHIBIT 62



PUBLIC WORKS DEPARTMENT

MEMO

To: Sean Sesanto, Community Development
From: Erika Senyk, Public Works
Date: 26 September 2023
RE: 427 Riverview Ave - Public Works Review 1 Comments
Comments based on applicant plans 8/31/23; Received from Planning 9/7/23

Prior to Staff Approval or Planning Commission Review

1. Project Info and Sheet Index: Proposed impervious surface area (2,319 SF) does not match total proposed impervious surface area on the Storm Water Permit Project Application (2,139 SF). Please edit either the application or plan sheet accordingly.
2. Sheet C3.0: On the sediment and erosion control plan, include access to construction site, equipment and material storage locations and duration of placement, containment method for trash and debris, and location of dumpster.
3. Sheet C2.1 and C3.0: Stockpile material and portable toilet and containment/protection shall not encroach into the public right of way.
4. Prior to any work in the City road right of way, an encroachment permit shall be acquired by the contractor performing the work. No material or equipment storage may be placed in the road right-of-way. Closure of the Riverview walking path will require prior approval from the Public Works Department.

Building Permit Plan Submittal/Conditions of Approval

1. Public Works Standard Detail BMP STRM (Stormwater Pollution Prevention and Protection for Construction Projects) shall be printed in full and incorporated as a sheet in the construction plans with the date and signature (attached). All construction shall be done in accordance with the Public Works Standard Detail BMP STRM.
2. Prior to project final, all cracked or broken driveway approaches, curb, gutter, or sidewalk shall be replaced per the Public Works Standard Details and to the satisfaction of the Public Works Department. All replaced driveway approaches, curb, gutter or sidewalk shall meet current Accessibility Standards.
3. Applicant shall notify the Public Works Department **24 hours in advance** of the commencement of work. A pre-construction inspection must be conducted by the grading official, or appointed staff to verify compliance with the approved erosion and sediment control plan. All BMPs, sediment and erosion control measures shall be installed prior to the start of construction and shall be maintained throughout project duration.

General Site Maintenance: Keep work site clear of debris and be aware of tracking mud, dirt, gravel into the street, and sweep daily, cover all stockpiles and excavation spoils. Practice good housekeeping and maintain temporary construction BMPs.

EXHIBIT 63



420 Capitola Avenue
Capitola, California 95010
Telephone: (831) 475-7300
FAX: (831) 479-8879
Website: www.cityofcapitola.org

December 5, 2023

Nicholas Batie Faulkner Architects
12242 Business Park Dr #18
Truckee, CA 96161

Subject: 427 Riverview Avenue + Design Permit

Dear Nick Batie:

The City of Capitola Community Development Department has completed its review of your application for a Design Permit and Coastal Development Permit for the substantial remodel and merging of a single-residence and accessory structure, located at 427 Riverview Avenue, and is providing you with the following information as a guide for further processing of your application.

PROJECT DESCRIPTION

Below is the project description that staff has developed based on the information submitted in your application package. Please review this project description carefully. If the description is inaccurate or incomplete, please contact your assigned planner immediately to correct the information.

Design Permit to convert an existing single-family residence and accessory structure into a single structure, with all remaining habitable space located above the base flood elevation. The proposal reduces the net floor area of the existing lot.

APPLICATION COMPLETENESS DETERMINATION

The Community Development Department has completed its review of your application and has found it **incomplete** pursuant to Section 65943 of the California Government Code. As detailed herein, additional information and/or corrections need to be submitted in order for staff to continue processing your application.

COMPLETENESS DETERMINATION - CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) The Community Development Department has determined your project is exempt from further environmental analysis pursuant to CEQA Section 15301. Staff will now complete the necessary documentation to complete the exemption process. No additional information is required at this time.

PROJECT ISSUES/CORRECTIONS

The following project issues and/or corrections to submitted plans and documents must be completed prior to scheduling your project for a public hearing.

Plan Corrections/Additional Information

The following corrections or additional information is necessary in order to continue processing your application.

General

1. Clarify on the plans if there are any proposed structures or alterations between the existing pathway and the creek.
2. All Outdoor lighting shall comply with all relevant standards pursuant to Capitola Municipal Code (CMC) Section 17.96.110, including that all outdoor lighting shall be shielded and directed downward such that the lighting is not directly visible from the public right-of-way or adjoining properties.
3. The proposed concrete wall is approximately six-foot, six-inches tall. Solid fences or walls behind the front setback may be up to six-feet tall, with an additional two feet of semi-open latticework or similar screening.

Flume

4. Please submit a current title report of the property

Landscaping

5. Development applications involving major remodels trigger canopy coverage review. CMC Section 12.12.190(C) establishes a canopy coverage goal of fifteen percent tree coverage per lot. The project also proposed to remove a tree behind the secondary structure. A minimum of one fifteen-gallon tree (non-fruiting) would be required to meet this standard.

Design Review Criteria

6. See the attached list of criteria. Staff has some concern about the proposed project compatibility with all design criteria. Specifically, criteria A and, B, H, regarding the overall size and massing of the proposal relative to the lot size and with respect to the neighboring properties.

Stormwater Review

7. Project Info and Sheet Index: Proposed impervious surface area (2,319 SF) does not match total proposed impervious surface area on the Storm Water Permit Project Application (2,139 SF). Please edit either the application or plan sheet accordingly.
8. Sheet C3.0: On the sediment and erosion control plan, include access to construction site, equipment and material storage locations and duration of placement, containment method for trash and debris, and location of dumpster.
9. Sheet C2.1 and C3.0: Stockpile material and portable toilet and containment/protection shall not encroach into the public right of way.
10. Prior to any work in the City road right of way, an encroachment permit shall be acquired by the contractor performing the work. No material or equipment storage may be placed in the road right-of-way. Closure of the Riverview walking path will require prior approval from the Public Works Department.

ESTIMATED PROCESSING COST

Based upon our preliminary review of your application, we estimate that your initial payment of \$4,420.50 is sufficient to complete the processing of your application. Please note that this cost estimate is only for your planning applications and does not include building permit costs, outside agency fees, or private engineering, architecture, or contractor costs.

ESTIMATED PROCESSING TIMELINE

Based upon your application status and remaining application processing steps, we estimate that your project will be scheduled for the **Development and Design Review Staff Meeting** on January 10, 2024. Please note this estimate assumes a timely and complete resubmittal of all information noted in this letter.

If you have any questions or require additional information, please contact me at 831.475.7300 or by email at ssesanto@ci.capitola.ca.us

OTHER REQUIRED PERMITS

Please be aware that in addition to your zoning permits, you will also be required to obtain other permits/approvals as listed below prior to initiating construction. These permits/approvals typically require additional fees which are not covered by your planning applications.

- Building Permit from the City of Capitola
- Will-serve letter from the Soquel Creek Water District (831-475-8500)
- Will-serve letter from the Soquel Union School District (831- 464-5639)
- Will-serve letter (or plan approval) from the Central Fire Protection District (831-479-6843)
- Approval from County of Santa Cruz Sanitation District (831-454-2160)

Respectfully,



Sean Sesanto
Associate Planner

EXHIBIT 64

Nick Batie

From: Nick Batie
Sent: Wednesday, January 10, 2024 2:27 PM
To: Herlihy, Katie (kherlihy@ci.capitola.ca.us)
Cc: Sesanto, Sean
Subject: RE: 427 Riverview Avenue

Katie,

Thank you for the clarification. Inferring from your response, it sounds like you don't have a timeline for when the rest of the application review can proceed?

This second question is more directed at Sean—should we still plan for our scheduled meeting with the Planning department on 1/24/24, or will that be rescheduled pending the discussion between the various agencies' legal counsel?

Best,
Nick

Nicholas Batie AIA, Project Architect

FAULKNER ARCHITECTS

12242 Business Park Drive #18, Truckee, California 96161
603 Battery Street, San Francisco, California 94111
o: 530.582.7400 / 415.233.6500 c: 530.386.6070
faulknerarchitects.com

From: Herlihy, Katie (kherlihy@ci.capitola.ca.us) <kherlihy@ci.capitola.ca.us>
Sent: Wednesday, January 10, 2024 10:44 AM
To: Nick Batie <nick@faulknerarchitects.net>
Cc: Sesanto, Sean <ssesanto@ci.capitola.ca.us>
Subject: RE: 427 Riverview Avenue

Hi Nick,

Yes, this is regarding the easement for the drainage culvert. I will make sure the key aspects you shared are provided when our attorney meets with County council. The initial meeting will just include our City attorney and the County's attorneys. We are trying to figure out the best path forward for the application review since there are multiple agencies involved. We will keep you updated.

Regards,
Katie

From: Nick Batie <nick@faulknerarchitects.net>
Sent: Tuesday, January 9, 2024 7:52 PM
To: Herlihy, Katie (kherlihy@ci.capitola.ca.us) <kherlihy@ci.capitola.ca.us>
Cc: Sesanto, Sean <ssesanto@ci.capitola.ca.us>
Subject: RE: 427 Riverview Avenue

Hi Katie,

Can you please clarify that you're referring to the easement for the underground drainage culvert that runs beneath the property? A few key aspects of our application that I would request are conveyed to the County of Santa Cruz are:

- There is already development in the easement and on top of the culvert—the existing garage and residence on the property.
- Our redevelopment proposal is driven by requirements set forth by FEMA and the State of California for building in a flood plain, and to make both the property and creek more resilient against extreme weather events.
- Our redevelopment proposal reduces the structural loading on the culvert and makes it more accessible for current and future repairs.

Do you have a timeline for your meeting with the county and would this be a meeting that we are allowed to participate in?

Many Thanks,
Nick

Nicholas Batie AIA, Project Architect

FAULKNER ARCHITECTS

12242 Business Park Drive #18, Truckee, California 96161
603 Battery Street, San Francisco, California 94111
o: 530.582.7400 / 415.233.6500 c: 530.386.6070
faulknerarchitects.com

From: Herlihy, Katie (kherlihy@ci.capitola.ca.us) <kherlihy@ci.capitola.ca.us>

Sent: Tuesday, January 9, 2024 4:05 PM

To: Nick Batie <nick@faulknerarchitects.net>

Cc: Sesanto, Sean <ssesanto@ci.capitola.ca.us>

Subject: FW: 427 Riverview Avenue

Dear Mr. Nick Batie,

I am reaching out to you today regarding your application for 427 Riverview Avenue. As you know, there is an easement which runs through the property. Before City staff takes this project any further in the review, the City needs to receive assurances from the County of Santa Cruz in terms of allowing development over the easement. Our City Attorney will be reaching out to the County to discuss. We will follow up with you after we meet with the County regarding the easement. At this time, I am advising Planner Sean Sesanto to place the review of your project on hold to ensure the easement is resolved prior to any additional work being done on the application.

Regards,

Katie Herlihy, AICP
Community Development Director - City of Capitola
420 Capitola Avenue, Capitola, CA 95010
831.475.7300 ext. 216



EXHIBIT 65

Sent: Thursday, January 11, 2024 4:22 PM

To: Justin Graham <Justin.Graham@santacruzcounty.us>

Cc: Jason Heath <Jason.Heath@santacruzcounty.us>; Zutler, Samantha W. <SZutler@bwslaw.com>

Subject: City of Capitola 427 Riverview Application (Noble Gulch)

Justin,

As you know, our office serves as City Attorney for the City of Capitola. The City is in receipt of an application for the demolition and reconstruction of an existing residence and garage located at 427 Riverview Ave in the City of Capitola, abutting Soquel Creek. Importantly, the Noble Gulch culvert and drainage easement runs directly through the property, under the existing residence (see attached title report). The property owners have indicated that their demo/rebuild has a raised design to achieve compliance with FEMA flood plain construction requirements and improve access to the drainage easement. The required permits include a discretionary design review and coastal development permit.

Given the City and the County's shared interest in pursuing a long-term solution for the culvert and the impact any construction/reconstruction could have on the culvert/drainage easement, we wanted to set up a meeting with you and staff as soon as possible to discuss the application and the best way forward. Ultimately, we think the solution might be an agreement between the City, County and property owner wherein the City agrees to process the permit application, the County provides its consent to the demo/reconstruction, and the property owner agrees and affirms that their structure could be subject to removal if necessary to complete the future culvert repair/replacement. The agreement would necessarily also include language wherein the City and County agree that, given the disputed nature of the drainage easement, the City does not claim or accept ownership of the drainage easement by virtue of processing of the permit application.

Please let us know if you have initial thoughts on this approach and your availability over the next week or so for a zoom meeting to discuss.

Thank you,

Leila Moshref-Danesh | Senior Associate

Pronouns: she, her, hers

1770 Iowa Avenue, Suite 240 | Riverside, CA 92507-2479

d - 951.801.6626 | t - 951.788.0100 | f - 951.788.5785

lmoshref@bwslaw.com | bwslaw.com



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EXHIBIT 66

From: Moshref-Danesh, Leila J. <LMoshref@bwslaw.com>

Sent: Thursday, April 25, 2024 2:12 PM PDT

To: Herlihy, Katie (kherlihy@ci.capitola.ca.us) <kherlihy@ci.capitola.ca.us>; Kahn, Jessica <jkahn@ci.capitola.ca.us>

CC: Zutler, Samantha W. <SZutler@bwslaw.com>

Subject: FW: 427 Riverview, Capitola

Attachment(s): "INDEMNITY AGREEMENT DRAFT.docx", "Honor Award 24_0222 SOQUEK CREEK_AIASF RED.pdf", "Plans.pdf"

Hi Katie, Jessica,

Thanks,

Leila

From: Anna DiBenedetto <anna@dibenedetto.law>

Sent: Thursday, April 25, 2024 11:46 AM

To: Zutler, Samantha W. <SZutler@bwslaw.com>; Justin Graham (Other) <Justin.Graham@santacruzcounty.us>

Cc: Rae Spencer <rspencer@dibenedetto.law>; Lostica, Elaine A. <ELostica@bwslaw.com>

Subject: RE: 427 Riverview, Capitola

EXTERNAL

Good Morning, following up on our last conversation, I've attached hereto a draft Indemnity Agreement. I've also attached hereto the Honor Award given for the project, which is apparently the highest award possible for AIASF design; provided mostly so that you can see how much effort has gone into designing a quality project from every perspective. I've also attached a copy of the plans just in case the two of you are not familiar with same.

I might suggest that before you review and/or make any decisions on the indemnity language, we schedule a Zoom videoconference with the project builder so that he can show you the protections already in place vis-à-vis the flume. If you agree to a videoconference, please let us know when you are available within the next two weeks for same; ideally next week so that we can move this application along. Please also confirm which City/County officials would be participating. Thanks very much.

Best,

Anna DiBenedetto, Esq.

DiBENEDETTO LAW GROUP, PC

1101 Pacific Avenue, Suite 200

Santa Cruz, CA 95060

Office Tel. (831) 253-0499, Ext. 101

Direct Tel. (831) 253-0503

Fax (831) 253-0502

anna@dibenedetto.law

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From: Zutler, Samantha W. <SZutler@bwslaw.com>

Sent: Thursday, April 4, 2024 12:46 PM

To: Anna DiBenedetto <anna@dibenedetto.law>; Justin Graham (Other) <Justin.Graham@santacruzcounty.us>

Cc: Rae Spencer <rspencer@dibenedetto.law>; Lostica, Elaine A. <ELostica@bwslaw.com>

Subject: RE: 427 Riverview, Capitola

Hi Anna,

Always nice to hear from you. I'm heading to Watsonville for a Council meeting soon and booked tomorrow – can we talk Monday or Tuesday? Copying Elaine, who can help with calendaring. Thanks, Sam

From: Anna DiBenedetto <anna@dibenedetto.law>

Sent: Thursday, April 4, 2024 11:48 AM

To: Justin Graham (Other) <Justin.Graham@santacruzcounty.us>; Zutler, Samantha W. <SZutler@bwslaw.com>

CAP-CAMPBELL_000445

Cc: Rae Spencer <rspencer@dibenedetto.law>

Subject: 427 Riverview, Capitola

EXTERNAL

Hi Justin and Sam, I hope that this email finds you both doing well.

I represent the owner of 427 Riverview, Joe McClean who submitted the attached application. He brought me in to advise on the City's request for an indemnity agreement vis-à-vis the drainage pipe/flume, with which per Jason Heath (with whom I just spoke), you are both familiar. Can we jump on the phone to discuss what the City and Flood Control are looking for as far as indemnity to see whether we can agree to something that would simply maintain the status quo, protect the City/County from claims for damage to the pipe associated with construction, and allow my Client's project to move forward?

In discussing the matter with Jason and now understanding the City and Flood Controls concerns/issues, and my Client's goal of simply remodeling their home, it would seem that we can reach an agreement on indemnity terms that have no impact on easement rights/responsibilities per the attached 1925 deed.

Please let me know when you are both available for a quick call. Look forward to speaking soon and thank you.

Best,

Anna DiBenedetto, Esq.
DiBENEDETTO LAW GROUP, PC
1101 Pacific Avenue, Suite 200
Santa Cruz, CA 95060
Office Tel. (831) 253-0499, Ext. 101
Direct Tel. (831) 253-0503
Fax (831) 253-0502
anna@dibenedetto.law

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**RECORDING REQUESTED BY AND
WHEN RECORDED, MAIL TO:**

City of Capitola
Community Development
420 Capitola Avenue
Capitola, CA 95010

APN NO. 035-132-01-000

The undersigned declare:

Documentary Transfer Tax is: \$0

No monetary consideration.

INDEMNITY AGREEMENT

RECITALS

WHEREAS, Joseph W. McLean, Jr., Trustee of The Joseph W. McLean Jr. Trust, established March 2, 2022 ("McLean") is the owner of that certain real property described in **Exhibit "A"** hereto ("McLean Property");

WHEREAS, pursuant to a Grant Deed dated July 16, 1925 and recorded in the Official Records of Santa Cruz County on July 27, 1925 in Book 47 at Page 186, the City of Capitola ("City") has an easement for the "operation, maintenance and repair of electrical wire lines, sewer, water and gas pipes and their connections and outlets" appurtenant to the McLean Property ("Easement");

WHEREAS, pursuant to the Easement, there is a public drainage flume running under the McLean Property that carries excess stormwater to the adjacent Soquel Creek. A portion of the drainage flume running into Soquel Creek is damaged and drainage issues during winter storms have caused further damage to the flume and damaged a section of the public pathway and the McLean Property;

WHEREAS, the County of Santa Cruz Flood Control and Water Conservation District and the County of Santa Cruz (collectively "County") are benefited by the Easement and drainage flume;

WHEREAS, while temporary remedial repairs have been made by the City to the area of the public pathway situated on the McLean Property and the flume and other public infrastructure related thereto, no permanent repairs have been made;

WHEREAS, on or about August 31, 2023 McLean submitted a coastal development permit

application to remodel the existing single family residence at the McLean Property (“Application”);

WHEREAS, as a condition to approval of the McLean Application, the City is requiring McLean to agree to indemnify, defend and hold harmless the City and County from any damage caused to the flume or other related public infrastructure by construction performed in accordance with the McLean Application;

WHEREAS, the City, County and McLean are referred to herein collectively as the “Parties”;

WHEREAS, the Parties’ aforementioned recitals are incorporated into all terms of this Indemnity Agreement.

AGREEMENT

NOW THEREFORE, without McLean, the City or County waiving any rights or responsibilities that any party has pursuant to the Easement or legally otherwise, McLean agrees to indemnify, defend and hold harmless the City and County from and against any claims, demands, losses, damages, defense costs, or liability that City or County may sustain as a result of damage caused to the flume, public property, infrastructure or other public assets arising specifically from the construction performed on the McLean Property pursuant to the Application.

The Parties’ agree that McLean’s indemnification obligations hereunder are limited to physical damage to the subject public infrastructure arising from the construction to be performed pursuant to the Application, which obligations may extend beyond completion of the construction project as legally applicable.

McLean agrees to ensure that he and/or his contractor performing the construction project will maintain the appropriate levels of liability insurance to comport with McLean’s indemnity obligations hereunder.

The Parties agree that the obligations contained herein are covenants that run with the land.

JOSEPH McLEAN JR. TRUST, DATED
NOVEMBER 9, 1983

Dated:

JOSEPH W. McLEAN, JR., Trustee

CITY OF CAPITOLA

Dated:

By: _____

Its:

COUNTY OF SANTA CRUZ

Dated:

By: _____

Its:

COUNTY OF SANTA CRUZ WATER
FLOOD CONTROL AND WATER
CONSERVATION DISTRICT

Dated:

By: _____

Its:

Notarial Acknowledgments to follow

EXHIBIT 67

From: Moshref-Danesh, Leila J. <LMoshref@bwsllaw.com>
Sent: Friday, May 17, 2024 11:41 AM PDT
To: Justin Graham <Justin.Graham@santacruzcountyca.gov>
CC: Zutler, Samantha W. <SZutler@bwsllaw.com>; Jason Heath <Jason.Heath@santacruzcountyca.gov>; Kahn, Jessica <jkahn@ci.capitola.ca.us>; Herlihy, Katie (kherlihy@ci.capitola.ca.us) <kherlihy@ci.capitola.ca.us>
Subject: RE: 427 Riverview, Capitola
Attachment(s): "Indemnity Agreement Re 427 Riverview (Noble Gulch) CAO.docx", "Preliminary Report Re 427 Riverview.pdf", "1922 Deed Re Noble Gulch (427 Riverview).pdf"

Hi Justin,

Here are our redlines that should hopefully assist you in your review --we are in agreement that the draft referenced the incorrect easement and have included the correct information; referenced documents are also attached.

Thank you!

Leila

From: Justin Graham <Justin.Graham@santacruzcountyca.gov>
Sent: Friday, May 17, 2024 9:28 AM
To: Zutler, Samantha W. <SZutler@bwsllaw.com>; Moshref-Danesh, Leila J. <LMoshref@bwsllaw.com>
Cc: Jason Heath <Jason.Heath@santacruzcountyca.gov>; Kahn, Jessica <jkahn@ci.capitola.ca.us>; Herlihy, Katie (kherlihy@ci.capitola.ca.us) <kherlihy@ci.capitola.ca.us>
Subject: Re: 427 Riverview, Capitola

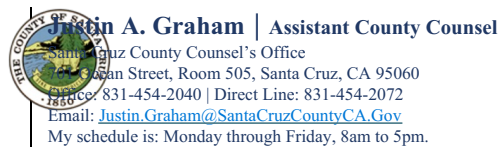
EXTERNAL

Sam:

The client is still working through a couple issues on the document. I've reviewed it and I think it references the wrong easement.

Perhaps to assist with expediting this you could share the redlines you've already made to Anna's draft?

//Justin



SANTA CRUZ COUNTY COUNSEL CONFIDENTIAL COMMUNICATION
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From: Zutler, Samantha W. <SZutler@bwsllaw.com>
Date: Friday, May 17, 2024 at 7:39AM
To: Moshref-Danesh, Leila J. <LMoshref@bwsllaw.com>; Justin Graham <Justin.Graham@santacruzcountyca.gov>
Cc: Jason Heath <Jason.Heath@santacruzcountyca.gov>; Kahn, Jessica <jkahn@ci.capitola.ca.us>; Herlihy, Katie (kherlihy@ci.capitola.ca.us) <kherlihy@ci.capitola.ca.us>
Subject: RE: 427 Riverview, Capitola

******CAUTION:** This is an EXTERNAL email. Exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email.****

Thanks Leila. Justin, we're getting correspondence from the applicant, who has retained counsel, and we'd like to move this along. Are you able to forward comments by Wednesday? If not, I'd appreciate if you and Jason could suggest some next steps. Have a great weekend, Sam

From: Moshref-Danesh, Leila J. <LMoshref@bwsllaw.com>
Sent: Thursday, May 16, 2024 8:31 PM
To: Justin Graham <Justin.Graham@santacruzcountyca.gov>
Cc: Jason Heath <Jason.Heath@santacruzcountyca.gov>; Zutler, Samantha W. <SZutler@bwsllaw.com>; Kahn, Jessica <jkahn@ci.capitola.ca.us>; Herlihy, Katie (kherlihy@ci.capitola.ca.us) <kherlihy@ci.capitola.ca.us>
Subject: RE: 427 Riverview, Capitola

CAP-CAMPBELL_000561

Good Evening Justin,

Following up on the below. Thank you for your attention to this matter.

Best,

Leila Moshref-Danesh | Senior Associate

Pronouns: she, her, hers

1770 Iowa Avenue, Suite 240 | Riverside, CA 92507-2479

d - 951.801.6626 | t - 951.788.0100 | f - 951.788.5785

lmoshref@bwsllaw.com | bwsllaw.com



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From: Moshref-Danesh, Leila J.

Sent: Friday, May 10, 2024 3:32 PM

To: Justin Graham <Justin.Graham@santacruzcountyca.gov>

Cc: Jason Heath <Jason.Heath@santacruzcountyca.gov>; Zutler, Samantha W. <SZutler@bwsllaw.com>; Kahn, Jessica <jkahn@ci.capitola.ca.us>; Herlihy, Katie (<kherlihy@ci.capitola.ca.us> <kherlihy@ci.capitola.ca.us>

Subject: Re: 427 Riverview, Capitola

Hi Justin,

Has your office completed its review of the draft indemnity agreement supplied by the applicant? If not, can you give us an indication of when your review will be complete? We would like to get our collective comments and/or redlines to the applicant by sometime next week if possible.

Thank you,

Leila

Leila Moshref-Danesh | Senior Associate

Pronouns: she, her, hers

1770 Iowa Avenue, Suite 240 | Riverside, CA 92507-2479

d - 951.801.6626 | t - 951.788.0100 | f - 951.788.5785

lmoshref@bwsllaw.com | bwsllaw.com



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From: Anna DiBenedetto <anna@dibenedetto.law>

Sent: Thursday, April 25, 2024 11:46 AM

To: Zutler, Samantha W. <SZutler@bwsllaw.com>; Justin Graham (Other) <Justin.Graham@santacruzcounty.us>

Cc: Rae Spencer <rspencer@dibenedetto.law>; Lostica, Elaine A. <ELostica@bwsllaw.com>

Subject: RE: 427 Riverview, Capitola

[EXTERNAL]

Good Morning, following up on our last conversation, I've attached hereto a draft Indemnity Agreement. I've also attached hereto the Honor Award given for the project, which is apparently the highest award possible for AIASF design; provided mostly so that you can see how much effort has gone into designing a quality project from every perspective. I've also attached a copy of the plans just in case the two of you are not familiar with same.

CAP-CAMPBELL_000562

I might suggest that before you review and/or make any decisions on the indemnity language, we schedule a Zoom videoconference with the project builder so that he can show you the protections already in place vis-à-vis the flume. If you agree to a videoconference, please let us know when you are available within the next two weeks for same; ideally next week so that we can move this application along. Please also confirm which City/County officials would be participating. Thanks very much.

Best,

Anna DiBenedetto, Esq.
DIBENEDETTO LAW GROUP, PC
1101 Pacific Avenue, Suite 200
Santa Cruz, CA 95060
Office Tel. (831) 253-0499, Ext. 101
Direct Tel. (831) 253-0503
Fax (831) 253-0502
anna@dibenedetto.law

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From: Zutler, Samantha W. <SZutler@bwsllaw.com>
Sent: Thursday, April 4, 2024 12:46 PM
To: Anna DiBenedetto <anna@dibenedetto.law>; Justin Graham (Other) <Justin.Graham@santacruzcounty.us>
Cc: Rae Spencer <rspencer@dibenedetto.law>; Lostica, Elaine A. <ELostica@bwsllaw.com>
Subject: RE: 427 Riverview, Capitola

Hi Anna,

Always nice to hear from you. I'm heading to Watsonville for a Council meeting soon and booked tomorrow – can we talk Monday or Tuesday? Copying Elaine, who can help with calendaring. Thanks, Sam

From: Anna DiBenedetto <anna@dibenedetto.law>
Sent: Thursday, April 4, 2024 11:48 AM
To: Justin Graham (Other) <Justin.Graham@santacruzcounty.us>; Zutler, Samantha W. <SZutler@bwsllaw.com>
Cc: Rae Spencer <rspencer@dibenedetto.law>
Subject: 427 Riverview, Capitola

EXTERNAL

Hi Justin and Sam, I hope that this email finds you both doing well.

I represent the owner of 427 Riverview, Joe McClean who submitted the attached application. He brought me in to advise on the City's request for an indemnity agreement vis-à-vis the drainage pipe/flume, with which per Jason Heath (with whom I just spoke), you are both familiar. Can we jump on the phone to discuss what the City and Flood Control are looking for as far as indemnity to see whether we can agree to something that would simply maintain the status quo, protect the City/County from claims for damage to the pipe associated with construction, and allow my Client's project to move forward?

In discussing the matter with Jason and now understanding the City and Flood Controls concerns/issues, and my Client's goal of simply remodeling their home, it would seem that we can reach an agreement on indemnity terms that have no impact on easement rights/responsibilities per the attached 1925 deed.

Please let me know when you are both available for a quick call. Look forward to speaking soon and thank you.

Best,

Anna DiBenedetto, Esq.

DiBENEDETTO LAW GROUP, PC

1101 Pacific Avenue, Suite 200

Santa Cruz, CA 95060

Office Tel. (831) 253-0499, Ext. 101

Direct Tel. (831) 253-0503

Fax (831) 253-0502

anna@dibenedetto.law

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TOGETHER with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof. And also all the estate, right, title, interest, property, possession, claim and demand whatsoever as well in law as in equity, of the said party of the first part, of, in, or to the above described premises, and every part and parcel thereof, with the appurtenances.

IN WITNESS WHEREOF, the said party of the first part ha_ hereunto set her hand and seal the day and year first above written.

Marion H. Belknap (SEAL)

On this 6th day of July in the year one thousand nine hundred and twenty two, before me, W. Z. TIFFANY, a Notary Public, in and for the County of Marin, personally appeared Marion H. Balknap known to me to be the person whose name is subscribed to the within instrument, and she duly acknowledged to me that she executed the same.

W. Z. Tiffany,

Notary Public in and for the County
of Marin, State of California.

Belle Lindsay

[illegible]

Wednesday, May 17, 1922.
Two o'clock P. M.

On motion of Supervisor Wyman, duly seconded by Supervisor Sinnott, it is ordered by the Board, by unanimous vote, that the following resolution be and is adopted:

The Board of Supervisors of the County of Santa Cruz, State of California, does
resolve as follows:

CAP-CAMPBELL 000565

NOW THEREFORE, Be it Resolved, that the said deed be and the same is hereby accepted, and the Clerk of this Board is directed to place the same of record with the County Recorder of the County of Santa Cruz, State of California.

Passed by the Board of Supervisors of the County of Santa Cruz, State of California, on the 17th day of May, 1922, by the following vote:

Ayes, Supervisors Lewis, Moore, Sinnott, Wyman and Rostron

Noes, Supervisors, None

Absent, Supervisors, None.

I hereby certify that the foregoing is a true and correct copy of an order passed by said Board on the 17th day of May 1922.

Attest my hand and seal of said Board this 11th day of July 1922.

(SEAL)

H. E. Miller, Clerk of said Board

By H. G. Poole Deputy Clerk.

The undersigned, BAY HEAD LAND CO., a corporation formed and existing under the laws of the State of California, for and in consideration of the sum of Five Dollars (\$5.00) United States gold coin, to it in hand paid by the County of Santa Cruz, the receipt whereof is hereby acknowledged, does by these presents grant, bargain, sell and convey unto the County of Santa Cruz, the permanent easement and right of way to construct, maintain, operate, repair and renew a drainage ditch, canal or flume, for the purpose of conveying storm and drainage water (from the most easterly boundary of the property hereinafter described to the Soquel Creek) over and across all that certain lot, piece or parcel of land situate in the County of Santa Cruz, State of California and bounded and described as follows, to-wit:

BEING a strip of land, eight (8) feet in width, four (4) feet at right angles on each side of the following described center line:

BEGINNING at a station on the Easterly boundary of Lot No. 11 in Block 7, Capitola Subdivision, No. 6 and from which the most Easterly corner of said Lot No. 11, measured Southerly along the Easterly boundary of said lot is 16.0 feet distant; thence South 53° 30' West 237.0 feet, a little more or less to the Westerly boundary of Lot No. 48, and from which the most Southerly corner of said lot bears South 32° 50' East 16.5 feet distant; thence continuing South 53° 30' West 25.0 feet, a little more or less to Soquel Creek.

TOGETHER with all necessary and convenient means of ingress and egress to and from said right of way or strip or parcel of land for the purpose of constructing, maintaining, operating, repairing and renewing the said drainage ditch, canal or flume, together with any and all fittings appurtenant thereto, or for any or all purposes hereinbefore mentioned.

TO HAVE AND TO HOLD the above granted and described premises unto the County of Santa Cruz, its successors and assigns forever.

IN WITNESS WHEREOF, BAY HEAD LAND CO., a corporation has hereunto subscribed its name and affixed its official seal by its officers thereunto duly authorized, this 10th day of May, 1922.

BAY HEAD LAND CO.

(CORPORATE SEAL)

BY H. Allen Rispin
President

BY J. E. Lannan
Secretary

STATE OF CALIFORNIA,)
(SS.
COUNTY OF SANTA CRUZ.)

On this 11th day of May, 1922, before me Arlette Hughes, a Notary Public in and for the said County and State, residing therein, duly commissioned and sworn, personally appeared H. ALLEN RISPIN, known to me to be the President of BAY HEAD LAND CO., the corporation that

**RECORDING REQUESTED BY AND
WHEN RECORDED, MAIL TO:**

City of Capitola
Community Development
420 Capitola Avenue
Capitola, CA 95010

Commented [Moshref-Danesh, Leila J.1]:
Please add County and Flood Control District

APN NO. 035-132-01-000

The undersigned declare:

Documentary Transfer Tax is: \$0

No monetary consideration.

INDEMNITY AGREEMENT

RECITALS

WHEREAS, Joseph W. McLean, Jr., Trustee of The Joseph W. McLean Jr. Trust, established March 2, 2022 ("~~McLean~~Property Owner") is the owner of that certain real property described in **Exhibit "A"** hereto ("McLean Property");

WHEREAS, pursuant to a Grant Deed dated ~~July 16, 1925~~May 10, 1922 and recorded in the Official Records of Santa Cruz County on July ~~27, 1925~~11, 1922 in ~~Book 47~~Volume 314 at Page ~~186, the City~~193 of Capitola ("~~City~~the Deeds of Santa Cruz County Records, the County of Santa Cruz" ("County") has ~~ana~~ a permanent eight foot wide easement to "construct, maintain, operate, repair and renew a drainage ditch, canal or flume, for the "operation, maintenance and repair of electrical wire lines, sewer, purpose of conveying storm and drainage water and gas pipes (from the most easterly boundary of the property hereinafter described to the Soquel Creek)," and ~~their connections~~including all necessary and outlets" convenient means of ingress and egress thereto ("Easement"). A portion of the Easement is appurtenant to the McLean Property ("Easement"); as depicted on page 7 of the Amended Preliminary Title Report by First American Title Company, prepared for the McLean Property on November 3, 2022, a copy of which is attached hereto as **Exhibit "B"**.

WHEREAS, pursuant to the Easement, there is a ~~public~~drainage pipe and culvert (the "Drainage Facility") flume running under the McLean Property that carries excess stormwater to the adjacent Soquel Creek. A portion of the ~~drainage flume~~Drainage Facility running into Soquel Creek is damaged and drainage issues during winter storms have caused further damage to the ~~flume~~Drainage Facility and damaged a section of the public pathway and the McLean Property;

WHEREAS, the City, County, and County of Santa Cruz Flood Control and Water Conservation District ~~and the County of Santa Cruz (collectively "County~~("District") are benefited

by the Easement and ~~drainage flume~~ Drainage Facility;

WHEREAS, ownership of the Drainage Facility is currently in dispute, with negotiations ongoing between the City, County and District;

WHEREAS, while temporary remedial repairs have been made by the City to the area of the public pathway situated on the McLean Property and ~~the by the City and District to the Drainage Facility flume~~ and other public infrastructure related thereto, no permanent repairs have been made;

WHEREAS, on or about August 31, 2023 ~~McLean~~Property Owner submitted a design review and coastal development permit application to the City to remodel and reconstruct the existing single family residence at the McLean Property (~~“(the “Application”);~~

WHEREAS, as a condition to approval of the ~~McLean~~ Application, the City is requiring ~~McLean~~the Property Owner to agree to indemnify, defend and hold harmless the City~~and~~, County ~~and District~~ from any damage caused to the ~~flume or Drainage Facility~~, other related public infrastructure, or the McLean Property by construction performed in accordance with the McLean Application and the ongoing operation, repair and potential replacement of the Drainage Facility;

WHEREAS, the City, County, ~~District~~ and ~~McLean~~Property Owner are referred to herein collectively as the “Parties”; and

WHEREAS, the Parties’ aforementioned recitals are incorporated into all terms of this Indemnity Agreement.

AGREEMENT

NOW THEREFORE, without ~~McLean~~Property Owner, the City~~or~~, County ~~or District~~ acknowledging or waiving any rights or responsibilities that any ~~party~~Party has pursuant to the Easement or the Drainage Facility, legally ~~or~~ otherwise, ~~McLean~~Property Owner agrees to indemnify, defend and hold harmless the City~~and~~, County ~~and District~~, including their respective employees, elected and appointed public officials and agents (the “Indemnitees”) from and against any and all claims, demands, losses, damages, defense costs, or liability that ~~City or County~~Indemnitees may sustain as a result of damage caused to the ~~flume~~Drainage Facility, public property, infrastructure or other public assets arising specifically from the construction performed on the McLean Property pursuant to the Application.

Property Owner further agrees to indemnify, defend and hold harmless the Indemnitees from and against any and all claims, demands, losses, damages, defense costs, or liability caused to the McLean Property, including any structure or physical items thereon, as a result of the ongoing operation, maintenance, repair, and replacement of the Drainage Facility in perpetuity.

The Parties agree that ~~McLean's~~ indemnification obligations ~~hereunder are limited to physical damage to the subject public infrastructure arising from the construction to be performed pursuant to the Application, which obligations may~~ herein shall extend beyond the completion of the construction project as legally applicable pursuant to the Application, and be binding upon all Parties' successors and assigns.

McLean Property Owner agrees to ensure that he and/or his contractor performing the construction project will maintain the appropriate levels of liability insurance to comport with McLean's Property Owner's indemnity obligations hereunder.

Property Owner further recognizes and acknowledges that any construction or work conducted on or above the Easement may be subject to removal at the sole discretion of the City, County, or District, and Property Owner shall not be entitled to any compensation as a result.

The Parties agree that the obligations contained herein are covenants that run with the land.

PROPERTY OWNER:

JOSEPH McLEAN JR. TRUST, DATED
NOVEMBER 9, 1983

Dated:

JOSEPH W. McLEAN, JR., Trustee

CITY:

CITY OF CAPITOLA

Formatted: Indent: Left: 8.89 cm, First Line: 1.27 cm

Dated:

By:
Its:

COUNTY:

COUNTY OF SANTA CRUZ

Dated:

By:
Its:

DISTRICT:

COUNTY OF SANTA CRUZ ~~WATER~~
FLOOD CONTROL AND WATER
CONSERVATION DISTRICT

Dated:


By:
Its:

Notarial Acknowledgments to follow

EXHIBIT 68

From: Justin Graham <Justin.Graham@santacruzcountyca.gov>
Sent: Friday, May 17, 2024 12:21 PM PDT
To: Zutler, Samantha W. <SZutler@bwsllaw.com>; Moshref-Danesh, Leila J. <LMoshref@bwsllaw.com>
CC: Jason Heath <Jason.Heath@santacruzcountyca.gov>; Kahn, Jessica <jkahn@ci.capitola.ca.us>; Herlihy, Katie (kherlihy@ci.capitola.ca.us) <kherlihy@ci.capitola.ca.us>
Subject: Re: 427 Riverview, Capitola
Attachment(s): "INDEMNITY AGREEMENT DRAFT--- SCC Edits 051724 v2.docx"

Thanks, Sam. This is our 90% draft. I've incorporated some of your language related to the drainage easement. There will likely be some minor changes Monday or Tuesday.

 **Justin A. Graham** | Assistant County Counsel
Santa Cruz County Counsel's Office
1000 San Street, Room 505, Santa Cruz, CA 95060
Phone: 831-454-2040 | Direct Line: 831-454-2072
Email: Justin.Graham@SantaCruzCountyCA.Gov
My schedule is: Monday through Friday, 8am to 5pm.

SANTA CRUZ COUNTY COUNSEL CONFIDENTIAL COMMUNICATION

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From: Zutler, Samantha W. <SZutler@bwsllaw.com>
Date: Friday, May 17, 2024 at 11:43AM
To: Moshref-Danesh, Leila J. <LMoshref@bwsllaw.com>, Justin Graham <Justin.Graham@santacruzcountyca.gov>
Cc: Jason Heath <Jason.Heath@santacruzcountyca.gov>; Kahn, Jessica <jkahn@ci.capitola.ca.us>, Herlihy, Katie (kherlihy@ci.capitola.ca.us) <kherlihy@ci.capitola.ca.us>
Subject: RE: 427 Riverview, Capitola

******CAUTION:** This is an EXTERNAL email. Exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email. ****

Thanks Leila. Justin, so that we keep this moving, please get back to us by Wednesday.

From: Moshref-Danesh, Leila J. <LMoshref@bwsllaw.com>
Sent: Friday, May 17, 2024 11:41 AM
To: Justin Graham <Justin.Graham@santacruzcountyca.gov>
Cc: Zutler, Samantha W. <SZutler@bwsllaw.com>; Jason Heath <Jason.Heath@santacruzcountyca.gov>; Kahn, Jessica <jkahn@ci.capitola.ca.us>; Herlihy, Katie (kherlihy@ci.capitola.ca.us) <kherlihy@ci.capitola.ca.us>
Subject: RE: 427 Riverview, Capitola

Hi Justin,

Here are our redlines that should hopefully assist you in your review --we are in agreement that the draft referenced the incorrect easement and have included the correct information; referenced documents are also attached.

Thank you!

Leila

From: Justin Graham <Justin.Graham@santacruzcountyca.gov>
Sent: Friday, May 17, 2024 9:28 AM
To: Zutler, Samantha W. <SZutler@bwsllaw.com>; Moshref-Danesh, Leila J. <LMoshref@bwsllaw.com>
Cc: Jason Heath <Jason.Heath@santacruzcountyca.gov>; Kahn, Jessica <jkahn@ci.capitola.ca.us>; Herlihy, Katie (kherlihy@ci.capitola.ca.us) <kherlihy@ci.capitola.ca.us>
Subject: Re: 427 Riverview, Capitola

EXTERNAL

Sam:

The client is still working through a couple issues on the document. I've reviewed it and I think it references the wrong easement.

Perhaps to assist with expediting this you could share the redlines you've already made to Anna's draft?

//Justin

**RECORDING REQUESTED BY AND
WHEN RECORDED, MAIL TO:**

City of Capitola
Community Development
420 Capitola Avenue
Capitola, CA 95010

APN NO. 035-132-01-000

The undersigned declare:

Documentary Transfer Tax is: \$0

No monetary consideration.

INDEMNITY AGREEMENT

RECITALS

WHEREAS, Joseph W. McLean, Jr., Trustee of The Joseph W. McLean Jr. Trust, established March 2, 2022 ("McLean") is the owner of that certain real property described in **Exhibit "A"** hereto ("~~McLean~~Property"); and

WHEREAS, the Property was created by Subdivision Map dated April 1922 (the "Map");
and

WHEREAS, Page 3 the Map depicts Noble Creek and a diversion of the natural course of Noble Creek through flume ("Flume") traversing the Property; and

WHEREAS, the Flume is believed to be located within the bounds of an easement created
~~the Flume is believed to be located within the bounds of an easement created pursuant to~~ a Grant Deed dated May 10, 1922 and recorded in the Official Records of Santa Cruz County on July 11, 1922 in Volume 314 at Page 193 of the Deeds of Santa Cruz County Records, granting to the County of Santa Cruz ("County") ~~has~~ a permanent eight foot wide easement to "construct, maintain, operate, repair and renew a drainage ditch, canal or flume, for the purpose of conveying storm and drainage water (from the most easterly boundary of the property hereinafter described to the Soquel Creek)," and including all necessary and convenient means of ingress and egress thereto ("Drainage Easement"); and

WHEREAS, a portion of the Drainage Easement ~~is appurtenant to~~ burdens the McLean Property, as depicted on page 7 of the Amended Preliminary Title Report by First American Title Company, prepared for the McLean Property on November 3, 2022, a copy of which is attached hereto as **Exhibit "B"**; and

Commented [Justin G1]: Need Official Records cite for this document.

~~WHEREAS, pursuant to a Grant Deed dated July 16, 1925 and recorded in the Official Records of Santa Cruz County on July 27, 1925 in Book 47 at Page 186, the City of Capitola ("City") has an easement for the "operation, maintenance and repair of electrical wire lines, sewer, water and gas pipes and their connections and outlets" appurtenant to the McLean Property ("Easement");~~

Commented [Justin G2]: I don't think this is the easement at issue but perhaps we can confirm

~~WHEREAS, at an indeterminate point in time the Flume was converted into a culvert ("Culvert"), which underlies the Property within the bounds of the Drainage Easement; and pursuant to the Easement, there is a public drainage flume running under the McLean Property that carries excess stormwater to the adjacent Soquel Creek. A portion of the drainage flume running into Soquel Creek is damaged and drainage issues during winter storms have caused further damage to the flume and damaged a section of the public pathway and the McLean Property;~~

~~WHEREAS, the Culvert, Flume, and Drainage Easement are sometimes collectively referred to herein as the "Facility"; and~~

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~~WHEREAS,~~

~~WHEREAS, there is a dispute between the City, the County of Santa Cruz Flood Control and Water Conservation District- Zone 5 ("Zone 5"), and the County of Santa Cruz (collectively "County") are benefited by the Easement and drainage flumes to which of them owns and is responsible for the maintenance of the Facility; and~~

~~WHEREAS, City, County, and Zone 5 are sometimes collectively referred to herein as "Public Entities"; and~~

~~WHEREAS, City, County, Zone 5 and McLean are sometimes referred to herein as "Parties" or "Parties"; and~~

~~WHEREAS, the Facility is not actively maintained by any Party; and~~

~~WHEREAS, the while City, County and Zone 5 have previously made temporary, emergency repairs remedial repairs have been made by the City to the area of the public pathway situated on adjacent to the McLean Property and the related to the outfall of the Culvert, but flume and other public infrastructure related thereto, no permanent repairs have been made; and~~

~~WHEREAS, on or about August 31, 2023, McLean submitted a coastal development permit application to remodel the existing single-family residence at the McLean Property ("Application"); and~~

~~WHEREAS, as a condition to approval of the McLean Application, the City is requiring McLean and future owners of the Property to agree to indemnify, defend and hold harmless the~~

City, ~~and County and Zone 5~~ from (1) any damage caused to the ~~Home~~-Facility from the project contemplated by the Application, and (2) any damage caused to the Property by the present or future condition of the Facility; and

WHEREAS, all Parties acknowledge that the residential construction in the Application would not normally be considered as presented given the presence of the Culvert underlying the Property, but given that that McLean purchased an existing single family home on the Property that straddled the Culvert, have been living on the Property for a number of years, and that the Application is for the remodel of the single family home located on the Property, basic principles of fairness allow the City to consider the Application in exchange for the promises McLean has made in this Agreement; and ~~or other related public infrastructure by construction performed in accordance with the McLean Application;~~

WHEREAS, it is the intent of the Parties that this Agreement will allow the City to process the Application for the benefit of McLean, but that this Agreement will not resolve the ownership of the Facility;

~~WHEREAS, the City, County and McLean are referred to herein collectively as the "Parties";~~

~~WHEREAS, the Parties' aforementioned recitals are incorporated into all terms of this Indemnity Agreement;~~

NOW THEREFORE, the Parties agree as follows:

AGREEMENT

1. INCORPORATION OF RECITALS.

1.1 The above recitals are hereby incorporated into this Agreement as though set forth in full. All Parties agree that the above recitals are true and correct representations of the Parties' respective understandings giving rise to the Agreement.

2. INDEMNIFICATION FOR CONSTRUCTION; PROTECTION OF FACILITY.

2.1 McLean agrees to indemnify and hold harmless the Public Entities, and each of their respective officials, officers, directors, commissioners, employees, agents, and volunteers (collectively, "Indemnitees"), and defend with counsel reasonably acceptable to Indemnitees, from any from and against any and all liabilities, claims, actions, losses, injuries, damages, judgments, or expenses, including attorneys' fees and costs, of any kind, to the Facility, Noble Creek, neighboring properties and public infrastructure, or any combination of the same, resulting from McLean's performance of the project contemplated by the Application (the "Project").

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2.1.1 The Public Entities may tender demands for McLean’s performance under this provision at any time after becoming aware of a claim, demand, or lawsuit covered by this provision.

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2.2 McLean agrees to include protective measures and practices for the Facility and Noble Creek, and any improvements thereon, that could foreseeably be impacted by the Project, in the Application for the Project and the Project plans. McLean agrees and promises to implement those protective measures and practices in the event that the Application is approved by the City and the Project is constructed.

2.2.1 McLean shall likewise be obligated to undertake measures to protect properties and public infrastructure bordering the Facility to the extent such properties and public infrastructure may be damaged or impacted by McLean performing the Project in, above and around the Facility.

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2.3 McLean agrees that, as a condition of approval of the Application, each Public Entity shall be named as an additional insured by each contractor and consultant employed by McLean to perform any portion of the Project which would otherwise be required to provide insurance to McLean or the City, or both of them, by including language substantially similar to the following in each of their respective contracts:

““Contractor agrees, to the fullest extent permitted by law, to indemnify, defend, and hold harmless the City of Capitola, County of Santa Cruz, the Santa Cruz County Flood Control and Water Conservation District – Zone 5, and each of their respective officials, officers, directors, commissioners, employees, agents, and volunteers (collectively, “Indemnitees”) from and against any and all liability, claim, action, loss, injury, damage, judgment, or expense, including attorneys’ fees and costs (“Losses”) caused by or resulting from the negligence, recklessness, or willful misconduct of Contractor, Contractor’s officers, employees, agents, or subcontractors in any way related to this (construction) Agreement. Contractor’s duty to indemnify and hold harmless Indemnitees shall not apply to the extent such Losses are caused by the sole or active negligence or willful misconduct of Indemnitees. Contractor’s obligation to defend shall arise regardless of any claim or assertion that Indemnitees caused or contributed to the Losses. This indemnification clause shall survive termination of this (construction) Agreement.”

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3. INDEMNIFICATION FOR POST-CONSTRUCTION DAMAGE TO PROPERTY.

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3.1. McLean agrees to indemnify, hold harmless the Indemnitees, and each of them, and defend with counsel reasonably acceptable to the Indemnitees, from any from and against any and all liabilities, claims, actions, losses, injuries, damages, judgments, or expenses, including attorneys’ fees and costs, of any kind, caused, alleged to be caused, or in any way related to the

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Facility being located under and abutting the Property.

3.2 The Public Entities may tender demands for McLean's performance under this provision at any time after becoming aware of a claim, demand, or lawsuit covered by this provision.

4. PUBLIC ENTITIES' RIGHT TO ACCESS FACILITIES AND PERFORM VARIOUS ACTIVITIES.

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4.1 McLean agrees and acknowledges that one or several of the Public Entities have the right to access the Facility pursuant to the terms of the Drainage Easement to construct, maintain, operate, repair and renew the Facility ("Maintenance Activities").

4.1.1 McLean acknowledges and agrees that McLean shall not be entitled to any compensation from any of the Public Entities for any such Maintenance Activities, regardless of the impacts such Maintenance Activities might have on the Property.

4.2 McLean agrees to indemnify, hold harmless the Indemnitees, and each of them, and defend with counsel reasonably acceptable to the Indemnitees, from any from and against any and all liabilities, claims, actions, losses, injuries, damages, judgments, or expenses, including attorneys' fees and costs, of any kind, caused, or alleged to be caused, to the Property related to the Maintenance Activities, except to the extent that such liabilities, claims, actions, losses, injuries, damages, judgments, or expenses are the sole result of the gross negligence of each of the Public Entities.

5. CONSIDERATION BY PUBLIC ENTITIES.

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5.1 In making the promises in this Agreement, McLean specifically acknowledges and agrees that none of the Public Entities concede that they own the Facility.

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5.2 In making the promises in this Agreement, McLean specifically acknowledges and agrees that but for the presence of the Culvert resulting in a covered rather the open water channel on the Property, and given the Culvert's position on the Property, McLean would not be able to construct a single- family home on the Property.

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5.3 In making the promises in this Agreement, McLean specifically acknowledges and agrees that, if the Property had been undeveloped at the time that the Application was submitted, and had an existing single-family home not been already present on the Property at the time the Application was submitted, the City would have been required to deny the Application based on the existence of the Culvert as both a potential safety hazard and as a barrier to the Public Entities' ability to access the Facility.

5.4 In making the promises in this Agreement, McLean acknowledges and agrees that the presence of a single-family home on the Property substantially increases the difficulty of the

Public Entities accessing the Facility and the cost of performing Maintenance Activities, including potential future upgrade and replacement of the Culvert.

6. RUNS WITH THE LAND; SUCCESSORS BOUND; RECORDATION.

~~NOW THEREFORE, without McLean, the City or County waiving any rights or responsibilities that any party has pursuant to the Easement or legally otherwise, McLean agrees to indemnify, defend and hold harmless the City and County from and against any claims, demands, losses, damages, defense costs, or liability that City or County may sustain as a result of damage caused to the flume, public property, infrastructure or other public assets arising specifically from the construction performed on the McLean Property pursuant to the Application.~~

6.1 It is the Parties' intent, and McLean specifically promises, that this Agreement shall be binding on McLean's successors and assigns, and McLean's successors in interest in the Property.

6.1.1 Therefore, should McLean sell or otherwise transfer the Property or any interest therein, including by sale, lease, gift, bequest, or otherwise, the party receiving any interest in the Property shall have all the same obligations under this Agreement as McLean.

6.1.2 McLean shall provide a copy of this Agreement, executed by all Parties, to the City. City shall thereafter record the executed copy of this Agreement in order to provide notice of its terms to McLean's successors-in-interest.

6.2 The provisions of this Agreement shall be construed and interpreted as covenants running with the land in regard to the Property. This Agreement's provisions shall be binding, to the fullest extent permitted by law and equity, for the benefit and in favor of, and be enforceable by, the Public Entities, their successors and assigns, against McLean, and McLean's successors and assigns, and every successor in interest to the Property, or any part of the Property, any interest in the Property, and any party in possession or occupancy of the Property.

7. TERM; TERMINATION.

7.1 This Agreement shall be effective upon execution by all Parties.

7.2 This Agreement shall remain in effect until the sooner of (1) the Facility is removed from underlying the Property; or (2) until terminated as provided herein.

7.3 The Parties may terminate this Agreement upon the occurrence of any of the following conditions:

7.3.1 Mutual written agreement of all Parties, with or without conditions, and authorization of each of the respective legislative bodies of the Public Entities.

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7.3.2 Withdrawal or denial of the Application; provided, however, that termination of this Agreement under the circumstances of withdrawal of the Application shall not prohibit City from re-imposing the requirement of executing and recording a future agreement containing substantively similar terms to this one if McLean or a successor-in-interest submits a future application for any type of permit contemplating development of the Property, including but not limited to a Coastal Development Permit, other development permit, or building permit.

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8. GENERAL PROVISIONS.

8.1 This Agreement shall be construed and interpreted both as to validity and to performance of the Parties in accordance with the laws of the State of California.

8.2 The sole venue for all legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be the Superior Court of the County of Santa Cruz, State of California.

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8.3 The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against any Party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply.

8.4 The persons executing this Agreement on behalf of the parties hereto warrant that (i) they are duly authorized to execute and deliver this Agreement on behalf of said Party, (ii) by so executing this Agreement, such Party is formally bound to the provisions of this Agreement, and (iii) the entering into this Agreement does not violate any provision of any other agreement to which said Party is bound.

8.5 Any modification to this Agreement must be in writing and executed by all Parties hereto.

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~~The Parties' agree that McLean's indemnification obligations hereunder are limited to physical damage to the subject public infrastructure arising from the construction to be performed pursuant to the Application, which obligations may extend beyond completion of the construction project as legally applicable.~~

~~McLean agrees to ensure that he and/or his contractor performing the construction project will maintain the appropriate levels of liability insurance to comport with McLean's indemnity obligations hereunder.~~

~~The Parties agree that the obligations contained herein are covenants that run with the land.~~

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the day and year written below.

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JOSEPH McLEAN JR. TRUST, DATED
NOVEMBER 9, 1983

Dated:

JOSEPH W. McLEAN, JR., Trustee
CITY OF CAPITOLA

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Dated:

By: XXXXX
Its:
COUNTY OF SANTA CRUZ

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Dated:

By: XXXX
Its:

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Dated:

Approved as to from:

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Jason M. Heath
County Counsel

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COUNTY OF SANTA CRUZ WATER
FLOOD CONTROL AND WATER
CONSERVATION DISTRICT

Dated:

By: XXXX
Its:

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EXHIBIT 69

From: Moshref-Danesh, Leila J. <LMoshref@bwsllaw.com>
Sent: Wednesday, June 12, 2024 11:42 AM PDT
To: Anna DiBenedetto <anna@dibenedetto.law>
CC: Rae Spencer <rspencer@dibenedetto.law>; Zutler, Samantha W. <SZutler@bwsllaw.com>; Jason Heath <Jason.Heath@santacruzcountyca.gov>; Justin Graham <Justin.Graham@santacruzcountyca.gov>; Herlihy, Katie(kherlihy@ci.capitola.ca.us) <kherlihy@ci.capitola.ca.us>; Kahn, Jessica <jkahn@ci.capitola.ca.us>
Subject: 427 Riverview Indemnity Agreement
Attachment(s): "427 Riverview Indemnity Agreement.docx"

Good Morning Anna,

Thank you for your patience as the City and County worked to draft the attached indemnity agreement. Given the novel nature of the project and the complexities associated with the culvert, we had to expand fairly significantly upon your original draft, but the outcome is an agreement that will ultimately allow the City to process your client's application.

We would be happy to set up a time to meet with you and your client if you have any questions on the agreement, once you have had a chance to review.

Thank you.

Leila Moshref-Danesh | Senior Associate

Pronouns: she, her, hers

1770 Iowa Avenue, Suite 240 | Riverside, CA 92507-2479

d - 951.801.6626 | t - 951.788.0100 | f - 951.788.5785

lmoshref@bwsllaw.com | bwsllaw.com



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**RECORDING REQUESTED BY AND
WHEN RECORDED, MAIL TO:**

City of Capitola
Community Development
420 Capitola Avenue
Capitola, CA 95010

EXEMPT FROM RECORDING FEES PER GOVERNMENT CODE §§6103, 27383

APN NO. 035-132-01

The undersigned declare:

Documentary Transfer Tax is: \$0

No monetary consideration.

**DECLARATION OF COVENANTS
AND INDEMNITY AGREEMENT**

RECITALS

WHEREAS, Joseph W. McLean, Jr., Trustee of The Joseph W. McLean Jr. Trust, established March 2, 2022 (“McLean” or “Owner”) is the owner of that certain real property described in **Exhibit “A”** hereto (“Property”); and

WHEREAS, the Property was created by subdivision map dated April 1922 recorded in the Official Records of Santa Cruz County on May 13, 1922 in Map Book 18, Page 36 of the Santa Cruz County Records (the “Map”) attached hereto as **Exhibit “B,”** and

WHEREAS, Sheet 3 of the Map depicts Noble Gulch and a diversion of the natural course of Noble Creek through a flume (“Flume”) traversing the Property; and

WHEREAS, the Flume is believed to be located within the bounds of an easement created by a Grant Deed dated May 10, 1922 and recorded in the Official Records of Santa Cruz County on July 11, 1922 in Volume 314 at Page 193 of the Deeds of Santa Cruz County Records (“Grant Deed”), granting to the County of Santa Cruz (“County”) a permanent eight foot wide easement to “construct, maintain, operate, repair and renew a drainage ditch, canal or flume, for the purpose of conveying storm and drainage water (from the most easterly boundary of the property hereinafter described to the Soquel Creek),” and including all necessary and convenient means of ingress and egress thereto (“Drainage Easement”); and

WHEREAS, a true and correct copy of the Grant Deed is attached hereto as **Exhibit “C”**; and

WHEREAS, a portion of the Drainage Easement burdens the Property, as depicted on page 7 of the Amended Preliminary Title Report by First American Title Company, prepared for the Property on November 3, 2022, a copy of which is attached hereto as **Exhibit “D;”** and

WHEREAS, at an indeterminate point in time the Flume was converted into a culvert (“Culvert”), which underlies the Property within the bounds of the Drainage Easement; and

WHEREAS, the Culvert, Flume, and Drainage Easement are sometimes collectively referred to herein as the “Facility”; and

WHEREAS, City, County, and the Santa Cruz County Flood Control and Water Conservation District- Zone 5 (“Zone 5”) are sometimes collectively referred to herein as “Public Entities”; and

WHEREAS, there is a dispute between the Public Entities as to which Public Entity, or Public Entities, owns and is responsible for the operation and maintenance of the Facility; and

WHEREAS, City, County, Zone 5 and McLean are sometimes collectively referred to herein as the “Parties” and individually as “Party”; and

WHEREAS, one or more of the Public Entities may have an interest in any or all of the Flume, Culvert and the Drainage Easement, but it is the Parties’ intent to leave the determination of that interest unresolved by the execution of this Agreement; and

WHEREAS, the Facility is not actively maintained by any Party; and

WHEREAS, the City, County and Zone 5 have previously made temporary, emergency repairs to the area of the public pathway situated adjacent to the Property and related to the Culvert’s outfall for the purposes of preserving public safety, but no permanent repairs have been made; and

WHEREAS, on or about August 31, 2023, McLean submitted an application (“Application”) for a coastal development permit and design review (the “Required Approvals”) to demolish the existing two-story single-family residence at the Property and construct a new residence within the same footprint (the “Project”), with the first-floor of the new residence to be elevated above the Federal Emergency Management Agency (“FEMA”) base flood elevation; and

WHEREAS, the Project also proposes to remodel the Property’s existing garage and its associated second story living space, and will relocate existing floor area to connect the new elevated residence to the remodeled living space above the existing garage; and

WHEREAS, as a condition to approval of the Application, the City is requiring McLean and future owners of the Property to agree to indemnify, defend and hold harmless the City, County

and Zone 5 from (1) any damage caused to the Facility by the Project, and (2) any damage caused to the Property by the present or future condition of the Facility; and

WHEREAS, all Parties acknowledge that the residential construction in the Application would not normally be considered as presented given the presence of the Facility lying below and transversing the Property, but given that McLean purchased an existing single-family home on the Property overlying the Facility, has been living on the Property for a number of years, and the Project proposes merely to demolish and reconstruct within the same footprint the existing single-family home located on the Property while elevating the residential portion of the structure above the FEMA base flood elevation and relocating existing floor area to connect the elevated residence to the remodeled living space above the existing garage, basic principles of fairness allow the City to consider the Application in exchange for the promises McLean has made in this Agreement; and

WHEREAS, it is the intent of the Parties that this Agreement will allow the City to process the Application for the benefit of McLean, but that execution of this Agreement will not guarantee the approval of the Project or the Application or otherwise bind the City in any way to any future approval of the Application; and

WHEREAS, the Parties agree that execution of this Agreement does not resolve the ownership of the Facility, or prejudice any rights or affirmative defenses that the Public Entities may have relating to determination of the ownership of the Facility or the Public Entities' respective rights and responsibilities in the Culvert, Flume or Drainage Easement.

NOW THEREFORE, the Parties agree as follows:

AGREEMENT

1. INCORPORATION OF RECITALS.

1.1 The above recitals are hereby incorporated into this Agreement as though set forth in full.

1.2 The Parties agree that the above recitals are true and correct representations of the Parties' respective understanding of the circumstances giving rise to the Agreement.

2. OWNERSHIP OF THE PROPERTY.

2.1 For the purposes of this Agreement, an "Owner" means the person or entity that is the owner, holder, or beneficiary, of any interest in the Property other than the Drainage Easement, including but not limited to a fee simple interest, an easement, a profit, a license, a life estate, a joint tenancy, a lien, a deed-of-trust or other security interest.

2.1.1 McLean is the Owner of the Property at the time of execution of this

Agreement.

2.1.2 Upon purchase, sale, or any other conveyance of an interest in the Property, the person or entity receiving that interest shall become an Owner and shall be bound by the terms of this Agreement and become a Party.

2.1.3 Upon alienation, sale, or transfer, of an interest in the Property that would make a person or entity an Owner, that person or entity's Ownership shall terminate, and they shall thereafter no longer be an Owner.

2.1.4 For the purposes of this Agreement, there may be more than one Owner of the Property at any given time. Each Owner shall be jointly and severally responsible for each promise and obligation applicable to an Owner under this Agreement.

2.2 For the purposes of this Agreement, "Ownership" shall mean the status of being an Owner.

3. INDEMNIFICATION FOR CONSTRUCTION; PROTECTION OF FACILITY.

3.1 Owner agrees to indemnify and hold harmless the Public Entities, and each of their respective officials, officers, directors, commissioners, employees, agents, and volunteers (collectively, "Indemnitees"), and defend with counsel reasonably acceptable to Indemnitees, from and against any and all liabilities, claims, actions, losses, injuries, damages, judgments, or expenses, including attorneys' fees and costs, of any kind (collectively, "Losses"), related to the Facility, Noble Creek, neighboring properties and public infrastructure, or any combination of the same, resulting from, or in any way related to Owner's performance of the Project.

3.1.1 The Public Entities, and each of them, may tender demands for Owner's performance under this provision at any time after becoming aware of a claim, demand, or lawsuit covered by this provision.

3.1.2 This indemnification shall survive the termination of both this Agreement and each Owner's Ownership.

3.2 Owner agrees to include protective measures and practices for the Facility and Noble Creek, including any improvements thereon that could foreseeably be impacted by the Project, in the Application and the Project plans, and, if the Application is approved by the City, to implement those protective measures and practices as part of construction of the Project.

3.2.1 The Public Entities shall confer regarding the adequacy of said protective measures and form a consensus regarding said measures. City shall impose said measures as conditions of approval on any permit issued pursuant to the Application.

3.2.2 Owner agrees and promises to implement said protective measures and practices if the Application is approved by the City and the Project is constructed.

3.2.3 Owner shall likewise be obligated to undertake measures to protect properties and public infrastructure bordering the Facility to the extent such properties and public infrastructure may be damaged or impacted by Owner performing the Project in, above and around the Facility.

3.3 McLean agrees that, as a condition of approval of any permit issued pursuant to the Application each Public Entity shall be named as an additional insured by each contractor and consultant employed by McLean to perform any portion of the Project which would otherwise be required to provide insurance to McLean or the City, or both of them, by including language substantially similar to the following in each of their respective contracts:

“Contractor agrees, to the fullest extent permitted by law, to indemnify, defend, and hold harmless the City of Capitola, County of Santa Cruz, the Santa Cruz County Flood Control and Water Conservation District – Zone 5, and each of their respective officials, officers, directors, commissioners, employees, agents, and volunteers (collectively, “Indemnitees”) from and against any and all liability, claim, action, loss, injury, damage, judgment, or expense, including attorneys’ fees and costs (“Losses”) caused by or resulting from negligence, recklessness, or willful misconduct of Contractor, Contractor’s officers, employees, agents, or subcontractors in any way related to this (construction) agreement. Contractor’s duty to indemnify and hold harmless Indemnitees shall not apply to the extent such Losses are caused by the sole or active negligence or willful misconduct of Indemnitees. Contractor’s obligation to defend shall arise regardless of any claim or assertion that Indemnitees caused or contributed to the Losses. This indemnification clause shall survive termination of this agreement.”

3.4 Owner further agrees to refrain from undertaking any action during or after construction of the Project or allowing any use of the Property that might reasonably be expected to damage the Facility or interfere with its operation for its intended purposes.

4. INDEMNIFICATION FOR POST-CONSTRUCTION DAMAGE TO PROPERTY.

4.1 Beginning with the commencement of construction of the Project, and continuing in perpetuity thereafter, Owner agrees to save, indemnify, and hold harmless the Indemnitees, and each of them, and defend with counsel reasonably acceptable to the Indemnitees, from any and all Losses, caused, alleged to be caused, or in any way related to the Facility being located under, transversing and/or abutting the Property wherein the operative facts that serve as the basis for such Losses are alleged to have occurred during that Owner’s Ownership of the Property.

4.2 The Public Entities, and each of them, may tender demands for Owner’s performance under this provision at any time after becoming aware of a claim, demand, or lawsuit

covered by this provision.

4.3 This indemnification shall survive the termination of both this Agreement and expiration of each Owners' Ownership.

5. RUNS WITH THE LAND; SUCCESSORS BOUND; RECORDATION.

5.1 It is the Parties' intent, and McLean specifically promises, that this Agreement shall be binding on McLean's successors and assigns, and McLean's successors in interest in the Property, to the same extent that it is binding on McLean.

5.1.1 Therefore, for avoidance of doubt, should Owner sell or otherwise transfer the Property or any interest therein, including by sale, lease, gift, bequest, or otherwise, the person or entity receiving any interest in the Property shall become an Owner and shall have all the same obligations under this Agreement as McLean had at the time this Agreement was executed.

5.1.2 Owner shall provide a copy of this Agreement, executed by all Parties, to the City for recordation prior to the City acting on the Application. City shall thereafter record the executed copy of this Agreement in order to provide notice of its terms to Owner's successors-in-interest.

5.1.3 Owner shall deliver to each subsequent owner, heir, or successor in Owner's interest in the Property, a copy of this Agreement and shall inform them of their obligation to be bound by its terms prior to or at the time of transferring such interest.

5.2 The provisions of this Agreement shall be construed and interpreted as covenants running with the land in regard to the Property.

5.2.1 This Agreement's provisions shall be binding, to the fullest extent permitted by law and equity, on all future Owners of an interest, of any nature, in the Property.

5.2.2 This Agreement's provisions shall be interpreted, to the fullest extent permitted by law and in equity, for the benefit and in favor of, and shall be enforceable by, the Public Entities, their successors and assigns, against Owner, and against Owner's successors and assigns, and every successor in interest to the Property, or any part of the Property, any interest in the Property, and any party in possession or occupancy of the Property.

6. PUBLIC ENTITIES' RIGHT TO ACCESS FACILITIES AND PERFORM VARIOUS ACTIVITIES.

6.1 Owner agrees and acknowledges that one or several of the Public Entities have the

right to access the Facility pursuant to the terms of the Drainage Easement to construct, maintain, operate, repair and renew the Facility (“Maintenance Activities”).

6.1.1 Owner agrees to provide reasonable access to the Facility for the purposes of any of the Public Entities performing Maintenance Activities.

6.1.2 Owner agrees to refrain from undertaking any action, or allowing any use of the Property, that would or could reasonably be expected to damage or harm the Facility or impair the Public Entities’ ability to perform Maintenance Activities.

6.1.3 Owner acknowledges and agrees that Owner is not entitled to any compensation from any of the Public Entities for any such Maintenance Activities, regardless of the impacts such Maintenance Activities might have on the Property.

6.2 Owner agrees to save, indemnify, and hold harmless the Indemnitees, and each of them, and defend with counsel reasonably acceptable to the Indemnitees, from any and against any and all Losses, caused, or alleged to be caused, to the Property related to the Maintenance Activities, except to the extent that such liabilities, claims, actions, losses, injuries, damages, judgments, or expenses are determined by a court of competent jurisdiction to be the sole result of the gross negligence of each of the Public Entities.

6.2.1 This indemnification shall become irrevocable upon the commencement of Project construction and shall survive the termination of this Agreement.

7. CONSIDERATION BY PUBLIC ENTITIES.

7.1 In making the promises in this Agreement, Owner specifically acknowledges and agrees that none of the Public Entities concede that they own the Facility. All Parties agree that execution of this Agreement shall not, and may not, be utilized as evidence of any particular Public Entity’s ownership interest in the Drainage Easement, the Culvert, or the Flume.

7.2 In making the promises in this Agreement, Owner specifically acknowledges and agrees that but for the presence of the Culvert resulting in a covered rather than an open water channel on the Property, and given the Culvert’s position on the Property, the existing single-family residence on the Property could not have been constructed.

7.3 In making the promises in this Agreement, Owner specifically acknowledges and agrees that, if the Property had been undeveloped at the time that the Application was submitted, and had an existing single-family residence not been already present on the Property at the time the Application was submitted, the City would not have processed the Application based on the existence of the Culvert as both a potential safety hazard and as a barrier to accessing the Facility.

7.4 In making the promises in this Agreement, Owner acknowledges and agrees that

the presence of a single-family residence on the Property substantially increases the difficulty of the Public Entities accessing the Facility and the cost of performing Maintenance Activities, including potential future upgrade and replacement of the Culvert.

7.5 By execution of this Agreement, the City is not committing itself to or agreeing to undertake any act or activity requiring the subsequent independent exercise of discretion by the City. Execution of this Agreement by the City is merely an agreement to process an application(s) for the Required Approvals in accordance with the terms hereof, reserving for subsequent City action the final discretion and approval regarding the Required Approvals and all proceedings and decisions in connection therewith. Any action on the Required Approvals shall become effective only if and after certification, adoption or approval of any analysis required under the California Environmental Quality Act ("CEQA"), and only if such Required Approvals have been duly considered and approved by the City following conduct of all legally required procedures. Failure of the City to approve the Required Approvals after a public hearing thereon shall not constitute a default or a breach of the terms of this Agreement by City.

7.6 This Agreement does not limit in any way the discretion of City in acting on any applications for the Required Approvals for the proposed Project or any portion thereof. Owner acknowledges that compliance with CEQA will be required in connection with consideration of such Required Approvals for the proposed Project or any portion thereof, and the City shall retain the discretion in accordance with CEQA and other applicable law before taking action on any such Required Approvals to (1) adopt or certify an environmental analysis of the Project or any portion thereof, prepared in accordance with CEQA, (2) identify and impose mitigation measures to mitigate significant environmental impacts, nor limit the anticipated scope of any required public improvements, (3) select other feasible alternatives to avoid significant environmental impacts, including the "no project" alternative, (4) adopt a statement of overriding considerations in accordance with Public Resources Code Section 21081(b) relative to any significant environmental impacts of the Project or any portion thereof, or implementation of any required public improvements, prior to taking final action if such significant impacts cannot otherwise be avoided, or (5) determine not to proceed with the Required Approvals or any portion thereof. Any action taken by the City in the exercise of its discretion relating to any analysis required by CEQA, or on any application for the Required Approvals required to develop and construct the Project or any portion thereof, shall not constitute a default or a breach of the terms of this Agreement by City.

8. TERM; TERMINATION.

8.1 This Agreement shall be effective upon execution by all Parties.

8.2 This Agreement shall remain in effect until the soonest date that (1) the Facility is removed from underlying the Property; or (2) until this Agreement is terminated as provided herein.

8.3 The Parties may terminate this Agreement upon the occurrence of any of the

following conditions:

8.3.1 Mutual written agreement of all Parties, with or without conditions.

8.3.2 Withdrawal or denial of the Application without the Project having commenced construction; provided, however, that termination of this Agreement under the circumstances of withdrawal of the Application shall not prohibit City, or any of the Public Entities with jurisdiction to do so, from re-imposing the requirement of executing and recording a future agreement containing substantively similar terms to this one if Owner or a successor-in-interest submits a future application for any type of permit contemplating development of the Property, including but not limited to a Coastal Development Permit, other development permit, or building permit.

8.4 Notwithstanding any other provision to the contrary, once construction of the Project has commenced, the indemnification provisions described herein shall survive termination of this Agreement.

9. GENERAL PROVISIONS.

9.1 This Agreement shall be construed and interpreted both as to validity and to performance of the Parties in accordance with the laws of the State of California.

9.2 The sole venue for all legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be the Superior Court of the County of Santa Cruz, State of California.

9.3 The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against any Party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply.

9.4 The persons executing this Agreement on behalf of the Parties hereto warrant that (i) they are duly authorized to execute and deliver this Agreement on behalf of said Party, (ii) by so executing this Agreement, such Party is formally bound to the provisions of this Agreement, and (iii) the entering into this Agreement does not violate any provision of any other agreement to which said Party is bound.

9.5 Any modification to this Agreement must be in writing and executed by all Parties hereto.

9.6 This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute the same agreement.

//

//

Signatures are included on the following pages

DRAFT

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the day and year written below.

JOSEPH McLEAN JR. TRUST, DATED
NOVEMBER 9, 1983

Dated:

JOSEPH W. McLEAN, JR., Trustee

CITY OF CAPITOLA

Dated:

By: Jamie Goldstein
City Manager

Dated:

Approved as to form:

Samantha W. Zutler
City Attorney

COUNTY OF SANTA CRUZ

Dated:

By: Matt Machado, Deputy CAO
Director of Community Development and
Infrastructure Department

Dated:

Approved as to form:

Jason M. Heath
County Counsel

SANTA CRUZ COUNTY FLOOD
CONTROL AND WATER
CONSERVATION DISTRICT – ZONE 5

Dated:

By: Matt Machado
District Engineer

Dated:

Approved as to from:

Justin A. Graham
Assistant County Counsel
District Counsel

Notarial Acknowledgments to follow

EXHIBIT A
Property Description

DRAFT

EXHIBIT B
Subdivision Map

DRAFT

EXHIBIT C
Grant of Drainage Easement

DRAFT

EXHIBIT D
Preliminary Title Report

DRAFT

From: Justin Graham <Justin.Graham@santacruzcountyca.gov>
Sent: Wednesday, June 12, 2024 12:01 PM PDT
To: Moshref-Danesh, Leila J. <LMoshref@bwsllaw.com>; Anna DiBenedetto <anna@dibenedetto.law>
CC: Rae Spencer <rspencer@dibenedetto.law>; Zutler, Samantha W. <SZutler@bwsllaw.com>; Jason Heath <Jason.Heath@santacruzcountyca.gov>; Herlihy, Katie (kherlihy@ci.capitola.ca.us) <kherlihy@ci.capitola.ca.us>; Kahn, Jessica <jkahn@ci.capitola.ca.us>
Subject: [PDF] RE: 427 Riverview Indemnity Agreement
Attachment(s): "018M36 - Capitola Subdivision No 6.pdf", "Preliminary Report Re 427 Riverview.pdf", "1922 Deed Re Noble Gulch (427 Riverview).pdf"

Anna:

For your review, attached are the proposed Exhibits B, C, and D to the agreement.

//Justin



A. GRAHAM | ASSISTANT COUNTY COUNSEL

Santa Cruz County Counsel's Office
1000 Alvarado Street, Room 505, Santa Cruz, CA 95060
Phone: 831-454-2040 | Direct Line: 831-454-2072
Email: Justin.Graham@SantaCruzCountyCA.Gov
My schedule is: Monday through Friday, 8am to 5pm.

SANTA CRUZ COUNTY COUNSEL CONFIDENTIAL COMMUNICATION

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From: Moshref-Danesh, Leila J. <LMoshref@bwsllaw.com>
Sent: Wednesday, June 12, 2024 11:42 AM
To: Anna DiBenedetto <anna@dibenedetto.law>
Cc: Rae Spencer <rspencer@dibenedetto.law>; Zutler, Samantha W. <SZutler@bwsllaw.com>; Jason Heath <Jason.Heath@santacruzcountyca.gov>; Justin Graham <Justin.Graham@santacruzcountyca.gov>; Herlihy, Katie (kherlihy@ci.capitola.ca.us) <kherlihy@ci.capitola.ca.us>; Kahn, Jessica <jkahn@ci.capitola.ca.us>
Subject: 427 Riverview Indemnity Agreement

******CAUTION:** This is an EXTERNAL email. Exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email. ****

Good Morning Anna,

Thank you for your patience as the City and County worked to draft the attached indemnity agreement. Given the novel nature of the project and the complexities associated with the culvert, we had to expand fairly significantly upon your original draft, but the outcome is an agreement that will ultimately allow the City to process your client's application.

We would be happy to set up a time to meet with you and your client if you have any questions on the agreement, once you have had a chance to review.

Thank you.

Leila Moshref-Danesh | Senior Associate

Pronouns: she, her, hers

1770 Iowa Avenue, Suite 240 | Riverside, CA 92507-2479

d - 951.801.6626 | t - 951.788.0100 | f - 951.788.5785

lmoshref@bwsllaw.com | bwsllaw.com



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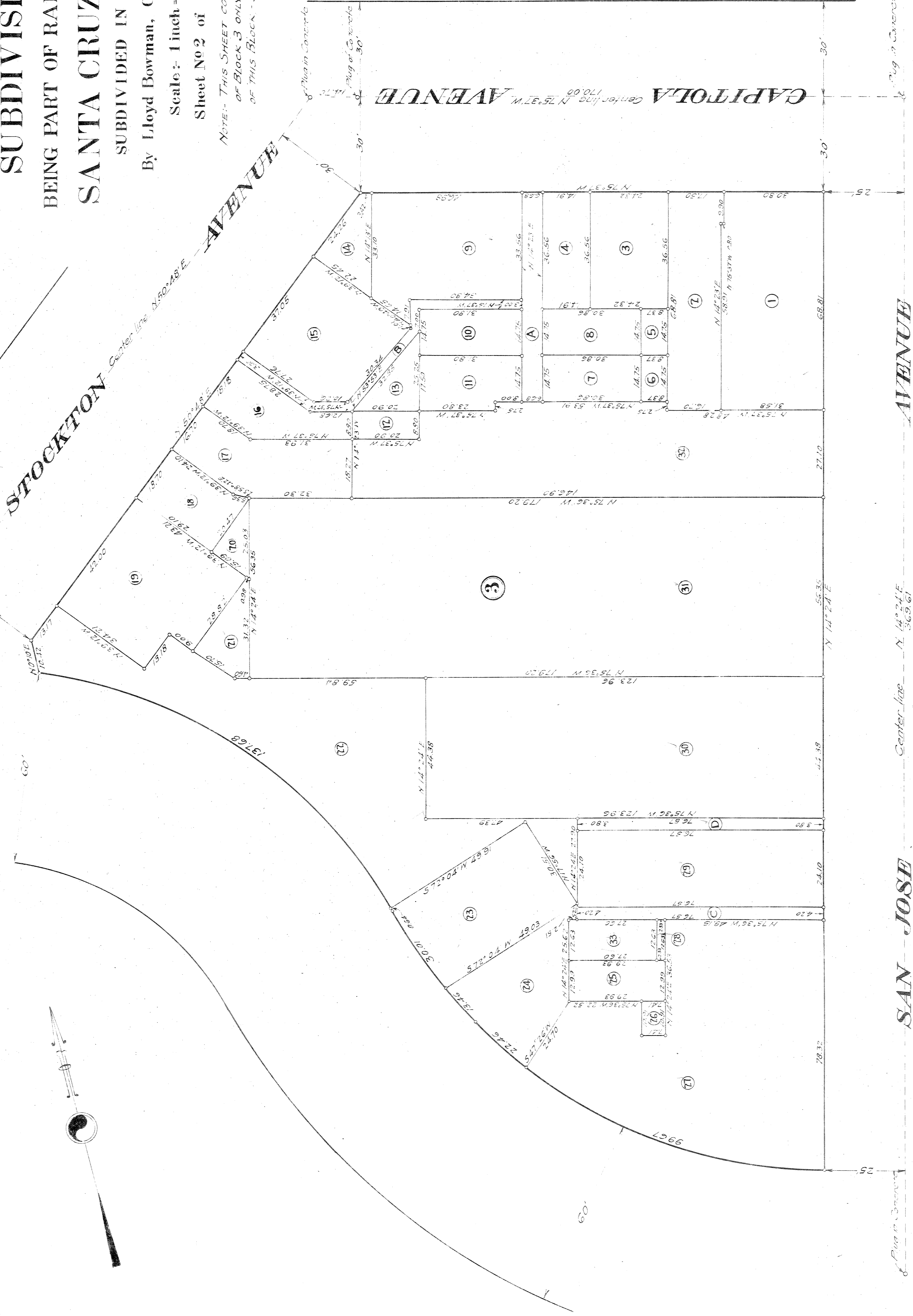
CAP-CAMPBELL_001325

SUBDIVIDED IN APRIL, 1922

Scale:- 1 inch = 20 feet.

Sheet No 2 of 4 Sheets

NOTE:- THIS SHEET COVERS THE SUBDIVISION
OF BLOCK 3 ONLY - FOR GENERAL LOCATION
OF THIS BLOCK - SEE SHEET N^o 1.

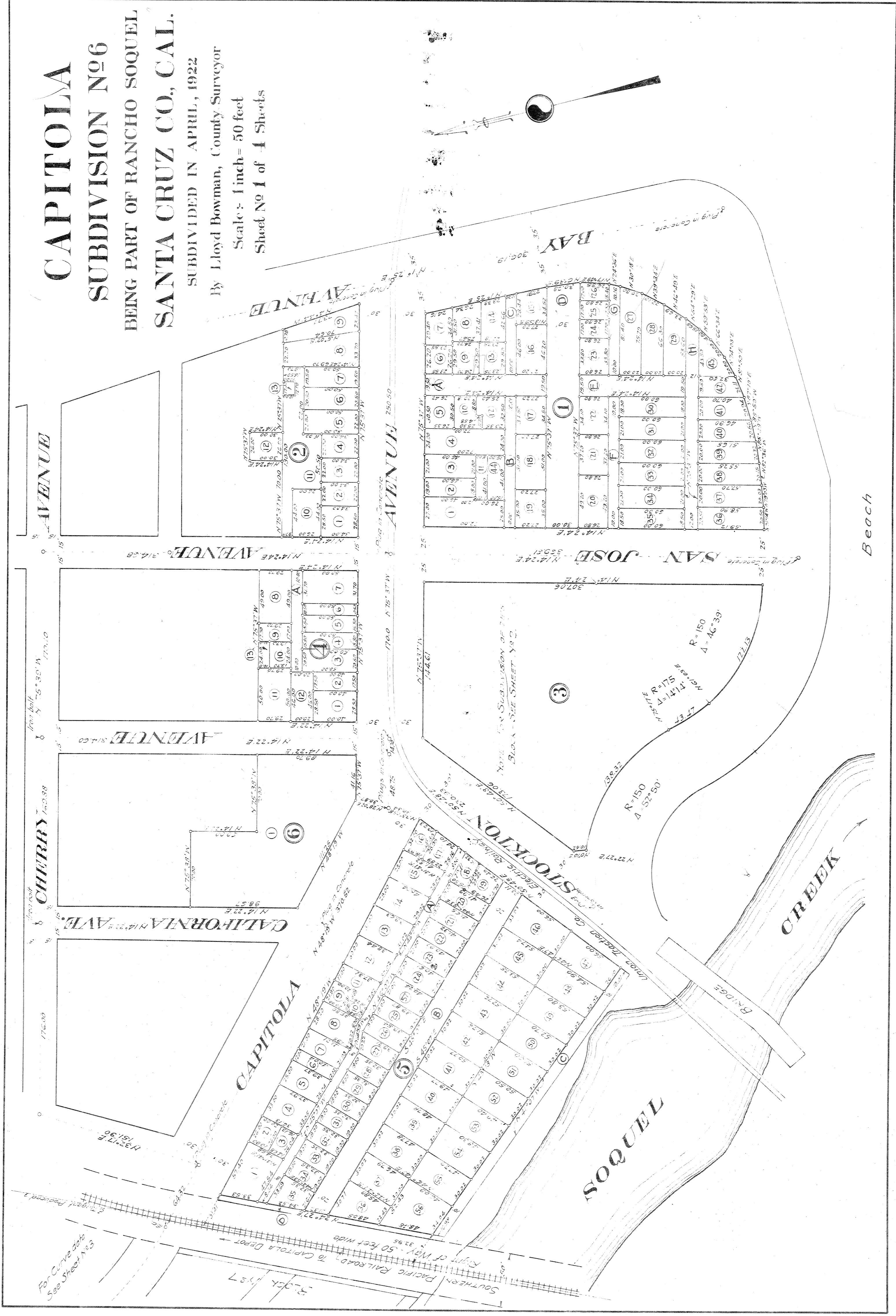


SUBDIVISION No. 6

SANTA CRUZ CO., CAL.

By Lloyd Bowman, County Surveyor.

Sheet No 1 of 1 Sheets



CAPITOLA

SUBDIVISION N^o 6

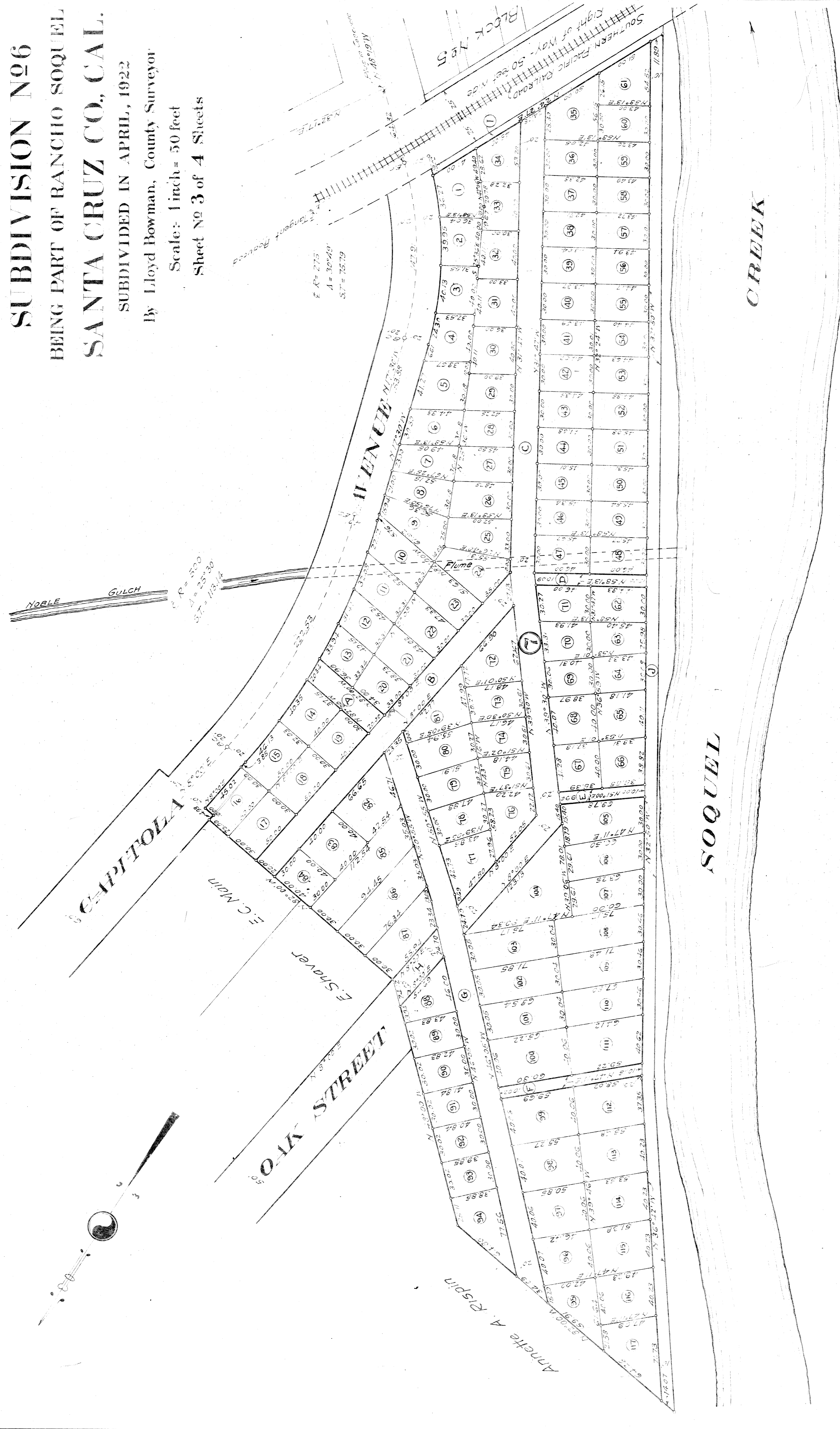
BEING PART OF RANCHO SOQUEL
SANTA CRUZ CO., CAL.

SUBDIVIDED IN APRIL, 1922

By Lloyd Bowman, County Surveyor

Scale: 1 inch = 50 feet

Sheet N^o 3 of 4 Sheets



CAPITOLA

SUBDIVISION NO 6

BEING PART OF RANCHO SOQUEL
SANTA CRUZ CO., CAL.

SUBDIVIDED IN APRIL, 1922

By Lloyd Bowman, County Surveyor

Scale: 1 inch = 50 feet.

Sheet No 4 of 4 Sheets

We hereby certify that we have examined a subdivision of land, shown on the map hereto attached, for residence or commercial uses, and hereby approve said subdivision.

W. A. Harten
County Assessor

Lloyd Bowman
County Surveyor

I hereby certify that the subdivision shown on this map was made from my survey of the ground, and that the monuments are of the nature and in the locations shown on the map.

Lloyd Bowman
Licensed Surveyor

Filed at the request of
this 29th day of May, A. D. 1922

State of California }
County of Santa Cruz }

On this 2nd day of May, in the year of our Lord One Thousand Nine Hundred and Twenty-two, before me Chas. E. Hughes, a Notary Public in and for the County of Santa Cruz, State of California, personally appeared H. Allen, W. A. Harten, and L. J. Day, known to me to be the President and Secretary, respectively, of the corporation that executed the within instrument on behalf of the corporation therein named, and they duly acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal, at my office in the City of Santa Cruz, County of Santa Cruz, State of California, the day and year in this certificate first above written.

Chas. E. Hughes
Notary Public in and for the
County of Santa Cruz, State of
California.

Filed for record May
13th A. D. 1922

Belle Lindsey
County Recorder
By May Baggard Deputy

State of California }
County of Santa Cruz }

On this 29th day of April, in the year of our Lord One Thousand Nine Hundred and Twenty-two, before me Chas. E. Hughes, a Notary Public in and for the County of Santa Cruz, State of California, personally appeared H. Allen, W. A. Harten, and L. J. Day, known to me to be the President and Secretary, respectively, of the corporation that executed the within instrument, and known to me to be the persons who executed the within instrument on behalf of the corporation therein named, and they duly acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal, at my office in the City of Santa Cruz, County of Santa Cruz, State of California, the day and year in this certificate first above written.

Chas. E. Hughes
Notary Public in and for the County of
Santa Cruz, State of California.

I, H. E. MILLER, County Clerk of the County of Santa Cruz, and ex-officio Clerk of the Board of Supervisors, do hereby certify that the owner of the tract or other subdivision of land shown on the within map has filed with the Board of Supervisors of the County of Santa Cruz, a good and sufficient bond, in the sum of Two Thousand Dollars, which has been duly approved by and in the amount fixed by said Board of Supervisors, which bond by its terms is made to inure to benefit of the County of Santa Cruz wherein such tract or subdivision is situate, and conditions for the payment of all taxes which are at the time of the filing of said map a lien against such tract or subdivision, and against all parts thereof which are not yet payable.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the Board of Supervisors, this 11th day of May, A. D. 1922.

H. E. Miller
County Clerk of the County of
Santa Cruz, and ex-officio Clerk
of the Board of Supervisors of
Santa Cruz County, California.

W. A. Harten
Deputy Clerk

This is to certify that the map hereto attached was this day presented to the City Council of the City of Santa Cruz, and that they approve said map.

Santa Cruz, California, -- 9th -- day of May, A. D. 1922.

CITY OF SANTA CRUZ.

By Carl C. Engstrom
Mayor

ATTEST: S. H. Evans
City Clerk.

I, WILLETT WARE, County Auditor of the County of Santa Cruz, State of California, do hereby certify that I have examined all the tax rolls in my office and to which I have access and relating to the within described tract of land, for the purpose of ascertaining whether there exists any liens on said tract of land for unpaid State or County taxes, except taxes not yet payable, and I do hereby certify that after a careful examination of the tax roll of Santa Cruz County, State of California, in my office and in my possession, I have been unable to find any liens on said tract or any part thereof for unpaid State or County taxes.

IN WITNESS WHEREOF, I have hereunto set my hand this 8th day of May, A. D. 1922.

Willet Ware
County Auditor.

The undersigned, THE CAPITOLA COMPANY, a corporation, owner of a portion of the land embraced within the map entitled, "CAPITOLA SUBDIVISION No. 6", and numbered respectively, Sheets Nos. 1 to 4, both inclusive, this certificate being on Sheet No. 4, hereby consents to the making of this Map and the filing thereof, and does not dedicate any of the streets thereon except that part of Capitola Ave., lying Northwesterly of the Northerly line of the Right of Way of the Southern Pacific Co., said above described portion of Capitola Ave. being deeded and accepted as a County Road.

IN WITNESS WHEREOF, said corporation has caused its corporation name and seal, to be hereunto affixed by the hand of its President and Secretary, hereunto duly authorized.

By H. Allen
President.

ATTEST: L. J. Day
Asst. Secretary.

The undersigned, Bay Head Land Co., a corporation, owner of the land embraced within the map entitled, "CAPITOLA SUBDIVISION No. 6", and numbered respectively, Sheets Nos. 1 to 4, both inclusive, this certificate being on Sheet No. 4, hereby consents to the making of this Map and the filing thereof, and does not dedicate any of the streets thereon except that part of Capitola Avenue, lying Northwesterly of the Northerly line of the Right of Way of the Southern Pacific Company, said above described portion of Capitola Avenue being deeded and accepted as a County road.

IN WITNESS WHEREOF, said corporation has caused its corporation name and seal to be hereunto affixed by the hand of its President and Secretary, hereunto duly authorized.

Bay Head Land Co.
By H. Allen
President.

ATTEST: L. J. Day
Secretary.

I, WALTER H. LINFORTH, sole surviving trustee of that certain trust of which KATHERINE C. HENDERSON is Beneficiary, executed the 31st day of July, 1919, recorded in Volume 10, Page 360 and Volume 12, Page 7, of Trust Deeds in the office of the County Recorder of Santa Cruz County, do hereby consent to the making of this map and the filing thereof.

IN WITNESS WHEREOF, I have hereunto set my hand this 29th day of May, A. D. 1922.

Walter H. Linforth

State of California, }
County of San Mateo }

On this 29th day of April, in the year one thousand Nine hundred and twenty-two, before me, a Notary Public, in and for said County of San Mateo, personally appeared WALTER H. LINFORTH, known to me to be the person whose name subscribed to the within instrument, and he acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official Seal, at my office in the City of San Mateo, the day and year in this certificate first above written.

Jan. J. O'Keefe
Notary Public in and for said County
of San Mateo, State of California.

This is to certify that the map hereto attached was this day presented to the Board of Supervisors of Santa Cruz County, and that they approve said map; that they do not accept any streets or alleys as shown on said map as Public Highways, except that part of Capitola Avenue lying Northwesterly of the Northerly line of the Right of Way of the Southern Pacific Company, which said portion of Capitola Avenue has been deeded and accepted as a County road.

The 11th day of May, A. D., 1922.

THE BOARD OF SUPERVISORS OF SANTA CRUZ
COUNTY, CALIFORNIA.

By Lloyd Bowman Chairman.

ATTEST: H. E. Miller
Clerk.

W. A. Harten
Deputy Clerk

NOW THEREFORE, Be it Resolved, that the said deed be and the same is hereby accepted, and the Clerk of this Board is directed to place the same of record with the County Recorder of the County of Santa Cruz, State of California.

Passed by the Board of Supervisors of the County of Santa Cruz, State of California, on the 17th day of May, 1922, by the following vote:

Ayes, Supervisors Lewis, Moore, Sinnott, Wyman and Rostron

Noes, Supervisors, None

Absent, Supervisors, None.

I hereby certify that the foregoing is a true and correct copy of an order passed by said Board on the 17th day of May 1922.

Attest my hand and seal of said Board this 11th day of July 1922.

(SEAL)

H. E. Miller, Clerk of said Board

By H. G. Poole Deputy Clerk.

The undersigned, BAY HEAD LAND CO., a corporation formed and existing under the laws of the State of California, for and in consideration of the sum of Five Dollars (\$5.00) United States gold coin, to it in hand paid by the County of Santa Cruz, the receipt whereof is hereby acknowledged, does by these presents grant, bargain, sell and convey unto the County of Santa Cruz, the permanent easement and right of way to construct, maintain, operate, repair and renew a drainage ditch, canal or flume, for the purpose of conveying storm and drainage water (from the most easterly boundary of the property hereinafter described to the Soquel Creek) over and across all that certain lot, piece or parcel of land situate in the County of Santa Cruz, State of California and bounded and described as follows, to-wit:

BEING a strip of land, eight (8) feet in width, four (4) feet at right angles on each side of the following described center line:

BEGINNING at a station on the Easterly boundary of Lot No. 11 in Block 7, Capitola Subdivision, No. 6 and from which the most Easterly corner of said Lot No. 11, measured South-erly along the Easterly boundary of said lot is 16.0 feet distant; thence South 53° 30' West 237.0 feet, a little more or less to the Westerly boundary of Lot No. 48, and from which the most Southerly corner of said lot bears South 32° 50' East 16.5 feet distant; thence continuing South 53° 30' West 25.0 feet, a little more or less to Soquel Creek.

TOGETHER with all necessary and convenient means of ingress and egress to and from said right of way or strip or parcel of land for the purpose of constructing, maintaining, operating, repairing and renewing the said drainage ditch, canal or flume, together with any and all fittings appurtenant thereto, or for any or all purposes hereinbefore mentioned.

TO HAVE AND TO HOLD the above granted and described premises unto the County of Santa Cruz, its successors and assigns forever.

IN WITNESS WHEREOF, BAY HEAD LAND CO., a corporation has hereunto subscribed its name and affixed its official seal by its officers thereunto duly authorized, this 10th day of May, 1922.

BAY HEAD LAND CO.

(CORPORATE SEAL)

BY H. Allen Rispin
President

BY J. E. Lannan
Secretary

STATE OF CALIFORNIA,)
(SS.
COUNTY OF SANTA CRUZ.)

On this 11th day of May, 1922, before me Arlette Hughes, a Notary Public in and for the said County and State, residing therein, duly commissioned and sworn, personally appeared H. ALLEN RISPIN, known to me to be the President of BAY HEAD LAND CO., the corporation that

executed the within instrument, known to me to be the person who executed the within instrument on behalf of the corporation therein named, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal
the day and year in this certificate first above written.

Arlette Hughes.

(SEAL)

Notary Public in and for said County
of Santa Cruz, State of California.

STATE OF CALIFORNIA,)
) (SS.
COUNTY OF LOS ANGELES.)

On this 10 day of May, 1922, before me Myrtle G. Bayles, a Notary Public in and for the said County and State, residing therein, duly commissioned and sworn, personally appeared J. E. LANNAN, known to me to be the Secretary of BAY HEAD LAND CO., the corporation that executed the within instrument, known to me to be the person who executed the within instrument on behalf of the corporation therein named, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Myrtle G. Bayles

(SEAL)

Notary Public in and for said County
of Los Angeles, State of California.

Recorded at the Request of H. E. Miller July 11th A. D. 1922 at 59 min. past 9 o'clock A. M.

Belle Lindsay

COUNTY RECORDER

3757

THIS INDENTURE, Made the 15th day of June, A. D. one thousand nine hundred and twenty-two,

Between

J. B. GLANVILLE,

Of the City of Santa Cruz, County of Santa Cruz, State
of California, the party of the first part,

And

SARAH ELLEN GLANVILLE,

Wife of the said party of the first part, of the same place, the party of the second part,

WITNESSETH:-That the said party of the first part, for and in consideration of the love and affection which the said party of the first part has and bears unto the said party of the second part, as also for the better maintenance, support, protection and livelihood of the said party of the second part, does by these presents give, grant, alien and confirm unto the said party of the second part, and to her heirs and assigns forever, all that certain lot, piece or parcel of land situate, lying and being in the City of Santa Cruz, County of Santa Cruz, State of California, and more particularly described as follows, to-wit:-

BEING a part of the tract designated "G. W. White 15.774 Acres", on Official Map "B" of the former Town, now City, of Santa Cruz, and which said part of said tract is bounded and particularly described as follows, to-wit:-

Beginning on the Northwesterly side of King Street at the most Southerly corner of the lands conveyed by T. H. Wolfe to J. S. McPheters by deed dated April 15th, 1892 and recorded in the office of the County Recorder of said County of Santa Cruz in Volume 125 of Deeds at page 24, et seq., and now or formerly belonging to the Estate of William B. Miller,

Amended 11/03/2022



First American Title

First American Title Company

330 Soquel Avenue
Santa Cruz, CA 95062
California Department of Insurance License No. 151

Escrow Officer: Jennifer Green
Phone: (831)426-6500
Fax No.: (866)488-0736
E-Mail: jgreen@firstam.com

E-Mail Loan Documents to: Lenders please contact the Escrow Officer for email address for sending loan documents.

Buyer: Joseph McLean and Terri Thatcher
Owner: Arthur Living Trust
Property: 427 Riverview Ave
Capitola, CA 95010

PRELIMINARY REPORT

In response to the above referenced application for a policy of title insurance, this company hereby reports that it is prepared to issue, or cause to be issued, as of the date hereof, a Policy or Policies of Title Insurance describing the land and the estate or interest therein hereinafter set forth, insuring against loss which may be sustained by reason of any defect, lien or encumbrance not shown or referred to as an Exception below or not excluded from coverage pursuant to the printed Schedules, Conditions and Stipulations of said Policy forms.

The printed Exceptions and Exclusions from the coverage and Limitations on Covered Risks of said policy or policies are set forth in Exhibit A attached. *The policy to be issued may contain an arbitration clause. When the Amount of Insurance is less than that set forth in the arbitration clause, all arbitrable matters shall be arbitrated at the option of either the Company or the Insured as the exclusive remedy of the parties.* Limitations on Covered Risks applicable to the CLTA and ALTA Homeowner's Policies of Title Insurance which establish a Deductible Amount and a Maximum Dollar Limit of Liability for certain coverages are also set forth in Exhibit A. Copies of the policy forms should be read. They are available from the office which issued this report.

Please read the exceptions shown or referred to below and the exceptions and exclusions set forth in Exhibit A of this report carefully. The exceptions and exclusions are meant to provide you with notice of matters which are not covered under the terms of the title insurance policy and should be carefully considered.

It is important to note that this preliminary report is not a written representation as to the condition of title and may not list all liens, defects, and encumbrances affecting title to the land.

Please be advised that any provision contained in this document, or in a document that is attached, linked or referenced in this document, that under applicable law illegally discriminates against a class of individuals based upon personal characteristics such as race, color, religion, sex, sexual orientation, gender identity, familial status, disability, national origin, or any other legally protected class, is illegal and unenforceable by law.

This report (and any supplements or amendments hereto) is issued solely for the purpose of facilitating the issuance of a policy of title insurance and no liability is assumed hereby. If it is desired that liability be assumed prior to the issuance of a policy of title insurance, a Binder or Commitment should be requested.

Dated as of October 27, 2022 at 7:30 A.M.

The form of Policy of title insurance contemplated by this report is:

ALTA/CLTA Homeowner's (EAGLE) Policy of Title Insurance (2013) and ALTA Ext Loan Policy 1056.06 (06-17-06) if the land described is an improved residential lot or condominium unit on which there is located a one-to-four family residence; or ALTA Standard Owner's Policy 2006 (WRE 06-17-06) and the ALTA Loan Policy 2006 (06-17-06) if the land described is an unimproved residential lot or condominium unit

A specific request should be made if another form or additional coverage is desired.

Title to said estate or interest at the date hereof is vested in:

BRUCE R. ARTHUR AND DONALD E. ARTHUR, AS SUCCESSOR CO-TRUSTEES (OR THE SUCCESSOR TRUSTEES) OF THE ARTHUR LIVING TRUST, DATED NOVEMBER 9, 1983, AS AMENDED

The estate or interest in the land hereinafter described or referred to covered by this Report is:

FEE

The Land referred to herein is described as follows:

(See attached Legal Description)

At the date hereof exceptions to coverage in addition to the printed Exceptions and Exclusions in said policy form would be as follows:

1. General and special taxes and assessments for the fiscal year 2022-2023.

First Installment:	\$1,222.13, OPEN
Penalty:	\$0.00
Second Installment:	\$1,222.13, OPEN
Penalty:	\$0.00
Tax Rate Area:	003-108
A. P. No.:	035-132-01

2. Assessment liens, if applicable, collected with the general and special taxes, including but not limited to those disclosed by the reflection of the following on the tax roll:

Community Facilities District CFD NO. 2016-1 LIBRARY FACILITIES.

3. The lien of supplemental taxes, if any, assessed pursuant to Chapter 3.5 commencing with Section 75 of the California Revenue and Taxation Code.

4. Any and all offers of dedications, conditions, restrictions, easements, notes and/or provisions shown or disclosed by the filed or recorded map referred to in the legal description.
5. Covenants, conditions, restrictions and easements in the document recorded JULY 27, 1925 as [BOOK 47, PAGE 186](#) of Official Records, which provide that a violation thereof shall not defeat or render invalid the lien of any first mortgage or deed of trust made in good faith and for value, but deleting any covenant, condition, or restriction, if any, indicating a preference, limitation, or discrimination based on race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, familial status, marital status, disability, handicap, veteran or military status, genetic information, national origin, source of income as defined in subdivision (p) of Section 12955, or ancestry, to the extent that such covenants, conditions or restrictions violate applicable state or federal laws. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status.

Affects: LOT 47

6. An easement for THE OPERATION, MAINTENANCE AND REPAIR OF ELECTRIC WIRE LINES, SEWER, WATER AND GAS PIPES AND THEIR CONNECTIONS AND OUTLETS and incidental purposes in the document recorded JULY 27, 1925 as [BOOK 47, PAGE 186](#) of Official Records.

The location of the easement cannot be determined from record information.

Affects: LOT 47

7. The Terms, Provisions and Easement(s) contained in the document entitled "AGREEMENT FOR SALE OF REAL ESTATE" recorded AUGUST 13, 1925 as [BOOK 53, PAGE 240](#) OF OFFICIAL RECORDS.

The location of the easement cannot be determined from record information.

Affects: LOT 48

8. Covenants, conditions, restrictions and easements in the document recorded SEPTEMBER 12, 1927 as [BOOK 114, PAGE 394](#) of Official Records, which provide that a violation thereof shall not defeat or render invalid the lien of any first mortgage or deed of trust made in good faith and for value, but deleting any covenant, condition, or restriction, if any, indicating a preference, limitation, or discrimination based on race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, familial status, marital status, disability, handicap, veteran or military status, genetic information, national origin, source of income as defined in subdivision (p) of Section 12955, or ancestry, to the extent that such covenants, conditions or restrictions violate applicable state or federal laws. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status.

Affects: LOT 48

9. An easement for THE OPERATION, MAINTENANCE AND REPAIR OF ELECTRIC WIRE LINES, SEWER, WATER AND GAS PIPES AND THEIR CONNECTIONS AND OUTLETS and incidental purposes in the document recorded SEPTEMBER 12, 1927 as [BOOK 114, PAGE 394](#) of Official Records.

The location of the easement cannot be determined from record information.

Affects: LOT 48

10. Water rights, claims or title to water, whether or not shown by the Public Records.
11. Any claim that any portion of the land is below the ordinary high water mark where it was located prior to any artificial or avulsive changes in the location of the shoreline or riverbank.
12. Any rights, interests, or easements in favor of the public, which exist or are claimed to exist over any portion of said land covered by water, including a public right of access to the water.
13. Any claim that any portion of the land is or was formerly tidelands or submerged lands.

INFORMATIONAL NOTES

Note: The policy to be issued may contain an arbitration clause. When the Amount of Insurance is less than the certain dollar amount set forth in any applicable arbitration clause, all arbitrable matters shall be arbitrated at the option of either the Company or the Insured as the exclusive remedy of the parties. If you desire to review the terms of the policy, including any arbitration clause that may be included, contact the office that issued this Commitment or Report to obtain a sample of the policy jacket for the policy that is to be issued in connection with your transaction.

1. This report is preparatory to the issuance of an ALTA Loan Policy. We have no knowledge of any fact which would preclude the issuance of the policy with CLTA endorsement forms 100 and 116 and if applicable, 115 and 116.2 attached.

When issued, the CLTA endorsement form 116 or 116.2, if applicable will reference a(n) Single Family Residence known as 427 RIVERVIEW AVE, CAPITOLA, CA.

2. According to the public records, there has been no conveyance of the land within a period of twenty-four months prior to the date of this report, except as follows:

None

3. We find no outstanding voluntary liens of record affecting subject property. Disclosure should be made concerning the existence of any unrecorded lien or other indebtedness which could give rise to any possible security interest in the subject property.

NOTE to proposed insured lender only: No Private transfer fee covenant, as defined in Federal Housing Finance Agency Final Rule 12 CFR Part 1228, that was created and first appears in the Public Records on or after February 8, 2011, encumbers the Title except as follows: None

The map attached, if any, may or may not be a survey of the land depicted hereon. First American expressly disclaims any liability for loss or damage which may result from reliance on this map except to the extent coverage for such loss or damage is expressly provided by the terms and provisions of the title insurance policy, if any, to which this map is attached.

LEGAL DESCRIPTION

Real property in the City of Capitola, County of Santa Cruz, State of California, described as follows:

BEING LOTS 47 AND 48, IN BLOCK 7, AS THE SAME ARE SHOWN AND DESIGNATED ON THAT CERTAIN MAP ENTITLED, "CAPITOLA SUBDIVISION NO. 6, BEING PART OF RANCHO SOQUEL, SANTA CRUZ CO., CAL, IN THE CITY OF CAPITOLA, SUBDIVIDED IN APRIL, 1922 BY LLOYD BOWMAN, COUNTY SURVEYOR", FILED IN THE OFFICE OF THE COUNTY RECORDER ON MAY 13TH, 1922 IN MAP [BOOK 18, PAGE 36](#), SANTA CRUZ COUNTY RECORDS.

APN: 035-132-01-000

NOTICE

Section 12413.1 of the California Insurance Code, effective January 1, 1990, requires that any title insurance company, underwritten title company, or controlled escrow company handling funds in an escrow or sub-escrow capacity, wait a specified number of days after depositing funds, before recording any documents in connection with the transaction or disbursing funds. This statute allows for funds deposited by wire transfer to be disbursed the same day as deposit. In the case of cashier's checks or certified checks, funds may be disbursed the next day after deposit. In order to avoid unnecessary delays of three to seven days, or more, please use wire transfer, cashier's checks, or certified checks whenever possible.

EXHIBIT A
LIST OF PRINTED EXCEPTIONS AND EXCLUSIONS (BY POLICY TYPE)

CLTA STANDARD COVERAGE POLICY – 1990
EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building or zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien, or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
- (b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims or other matters:
 - (a) whether or not recorded in the public records at Date of Policy, but created, suffered, assumed or agreed to by the insured claimant;
 - (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;
 - (c) resulting in no loss or damage to the insured claimant;
 - (d) attaching or created subsequent to Date of Policy; or
 - (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the insured mortgage or for the estate or interest insured by this policy.
4. Unenforceability of the lien of the insured mortgage because of the inability or failure of the insured at Date of Policy, or the inability or failure of any subsequent owner of the indebtedness, to comply with the applicable doing business laws of the state in which the land is situated.
5. Invalidity or unenforceability of the lien of the insured mortgage, or claim thereof, which arises out of the transaction evidenced by the insured mortgage and is based upon usury or any consumer credit protection or truth in lending law.
6. Any claim, which arises out of the transaction vesting in the insured the estate of interest insured by this policy or the transaction creating the interest of the insured lender, by reason of the operation of federal bankruptcy, state insolvency or similar creditors' rights laws.

EXCEPTIONS FROM COVERAGE - SCHEDULE B, PART I

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.
 Proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the public, records.
2. Any facts, rights, interests, or claims which are not shown by the public records but which could be ascertained by an inspection of the land or which may be asserted by persons in possession thereof.
3. Easements, liens or encumbrances, or claims thereof, not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by the public records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b) or (c) are shown by the public records.
6. Any lien or right to a lien for services, labor or material unless such lien is shown by the public records at Date of Policy.

CLTA/ALTA HOMEOWNER'S POLICY OF TITLE INSURANCE (12-02-13)
EXCLUSIONS

In addition to the Exceptions in Schedule B, You are not insured against loss, costs, attorneys' fees, and expenses resulting from:

1. Governmental police power, and the existence or violation of those portions of any law or government regulation concerning:
 - a. building;

- b. zoning;
 - c. land use;
 - d. improvements on the Land;
 - e. land division; and
 - f. environmental protection.
- This Exclusion does not limit the coverage described in Covered Risk 8.a., 14, 15, 16, 18, 19, 20, 23 or 27.
- 2. The failure of Your existing structures, or any part of them, to be constructed in accordance with applicable building codes. This Exclusion does not limit the coverage described in Covered Risk 14 or 15.
 - 3. The right to take the Land by condemning it. This Exclusion does not limit the coverage described in Covered Risk 17.
 - 4. Risks:
 - a. that are created, allowed, or agreed to by You, whether or not they are recorded in the Public Records;
 - b. that are Known to You at the Policy Date, but not to Us, unless they are recorded in the Public Records at the Policy Date;
 - c. that result in no loss to You; or
 - d. that first occur after the Policy Date - this does not limit the coverage described in Covered Risk 7, 8.e., 25, 26, 27 or 28.
 - 5. Failure to pay value for Your Title.
 - 6. Lack of a right:
 - a. to any land outside the area specifically described and referred to in paragraph 3 of Schedule A; and
 - b. in streets, alleys, or waterways that touch the Land.
- This Exclusion does not limit the coverage described in Covered Risk 11 or 21.
- 7. The transfer of the Title to You is invalid as a preferential transfer or as a fraudulent transfer or conveyance under federal bankruptcy, state insolvency, or similar creditors' rights laws.
 - 8. Contamination, explosion, fire, flooding, vibration, fracturing, earthquake, or subsidence.
 - 9. Negligence by a person or an Entity exercising a right to extract or develop minerals, water, or any other substances.

LIMITATIONS ON COVERED RISKS

Your insurance for the following Covered Risks is limited on the Owner's Coverage Statement as follows:
For Covered Risk 16, 18, 19, and 21 Your Deductible Amount and Our Maximum Dollar Limit of Liability shown in Schedule A.
The deductible amounts and maximum dollar limits shown on Schedule A are as follows:

	<u>Your Deductible Amount</u>	<u>Our Maximum Dollar Limit of Liability</u>
Covered Risk 16:	1% of Policy Amount Shown in Schedule A or \$2,500 (whichever is less)	\$10,000
Covered Risk 18:	1% of Policy Amount Shown in Schedule A or \$5,000 (whichever is less)	\$25,000
Covered Risk 19:	1% of Policy Amount Shown in Schedule A or \$5,000 (whichever is less)	\$25,000
Covered Risk 21:	1% of Policy Amount Shown in Schedule A or \$2,500 (whichever is less)	\$5,000

2006 ALTA LOAN POLICY (06-17-06)

EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

- 1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
 - (i) the occupancy, use, or enjoyment of the Land;
 - (ii) the character, dimensions, or location of any improvement erected on the Land;
 - (iii) the subdivision of land; or
 - (iv) environmental protection;
- or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.
- (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
 - 2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.

3. Defects, liens, encumbrances, adverse claims, or other matters
 - (a) created, suffered, assumed, or agreed to by the Insured Claimant;
 - (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
 - (c) resulting in no loss or damage to the Insured Claimant;
 - (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 11, 13, or 14); or
 - (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Insured Mortgage.
4. Unenforceability of the lien of the Insured Mortgage because of the inability or failure of an Insured to comply with applicable doing-business laws of the state where the Land is situated.
5. Invalidity or unenforceability in whole or in part of the lien of the Insured Mortgage that arises out of the transaction evidenced by the Insured Mortgage and is based upon usury or any consumer credit protection or truth-in-lending law.
6. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction creating the lien of the Insured Mortgage, is
 - (a) a fraudulent conveyance or fraudulent transfer, or
 - (b) a preferential transfer for any reason not stated in Covered Risk 13(b) of this policy.
7. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the Insured Mortgage in the Public Records. This Exclusion does not modify or limit the coverage provided under Covered Risk 11(b).

The above policy form may be issued to afford either Standard Coverage or Extended Coverage. In addition to the above Exclusions from Coverage, the Exceptions from Coverage in a Standard Coverage policy will also include the following Exceptions from Coverage:

EXCEPTIONS FROM COVERAGE

[Except as provided in Schedule B - Part II, [t[or T]his policy does not insure against loss or damage, and the Company will not pay costs, attorneys' fees or expenses, that arise by reason of:

[PART I

[The above policy form may be issued to afford either Standard Coverage or Extended Coverage. In addition to the above Exclusions from Coverage, the Exceptions from Coverage in a Standard Coverage policy will also include the following Exceptions from Coverage:

1. (a) Taxes or assessments that are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; (b) proceedings by a public agency that may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.
2. Any facts, rights, interests, or claims that are not shown by the Public Records but that could be ascertained by an inspection of the Land or that may be asserted by persons in possession of the Land.
3. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records.
4. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land and not shown by the Public Records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the Public Records.
6. Any lien or right to a lien for services, labor or material unless such lien is shown by the Public Records at Date of Policy.

PART II

In addition to the matters set forth in Part I of this Schedule, the Title is subject to the following matters, and the Company insures against loss or damage sustained in the event that they are not subordinate to the lien of the Insured Mortgage:]

2006 ALTA OWNER'S POLICY (06-17-06)

EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
 - (i) the occupancy, use, or enjoyment of the Land;
 - (ii) the character, dimensions, or location of any improvement erected on the Land;
 - (iii) the subdivision of land; or
 - (iv) environmental protection;

or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.

- (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
- 2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
- 3. Defects, liens, encumbrances, adverse claims, or other matters
 - (a) created, suffered, assumed, or agreed to by the Insured Claimant;
 - (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
 - (c) resulting in no loss or damage to the Insured Claimant;
 - (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 9 or 10); or
 - (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Title.
- 4. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction vesting the Title as shown in Schedule A, is
 - (a) a fraudulent conveyance or fraudulent transfer, or
 - (b) a preferential transfer for any reason not stated in Covered Risk 9 of this policy.
- 5. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.

The above policy form may be issued to afford either Standard Coverage or Extended Coverage. In addition to the above Exclusions from Coverage, the Exceptions from Coverage in a Standard Coverage policy will also include the following Exceptions from Coverage:

EXCEPTIONS FROM COVERAGE

This policy does not insure against loss or damage, and the Company will not pay costs, attorneys' fees or expenses, that arise by reason of: [The above policy form may be issued to afford either Standard Coverage or Extended Coverage. In addition to the above Exclusions from Coverage, the Exceptions from Coverage in a Standard Coverage policy will also include the following Exceptions from Coverage:

- 1. (a) Taxes or assessments that are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; (b) proceedings by a public agency that may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.
- 2. Any facts, rights, interests, or claims that are not shown by the Public Records but that could be ascertained by an inspection of the Land or that may be asserted by persons in possession of the Land.
- 3. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records.
- 4. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land and not shown by the Public Records.
- 5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the Public Records.
- 6. Any lien or right to a lien for services, labor or material unless such lien is shown by the Public Records at Date of Policy.
- 7. [Variable exceptions such as taxes, easements, CC&R's, etc. shown here.]

ALTA EXPANDED COVERAGE RESIDENTIAL LOAN POLICY (07-26-10)

EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

- 1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
 - (i) the occupancy, use, or enjoyment of the Land;
 - (ii) the character, dimensions, or location of any improvement erected on the Land;
 - (iii) the subdivision of land; or
 - (iv) environmental protection;

or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5, 6, 13(c), 13(d), 14 or 16.

- (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 5, 6, 13(c), 13(d), 14 or 16.
- 2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
- 3. Defects, liens, encumbrances, adverse claims, or other matters
 - (a) created, suffered, assumed, or agreed to by the Insured Claimant;
 - (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
 - (c) resulting in no loss or damage to the Insured Claimant;
 - (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 11,

- 16, 17, 18, 19, 20, 21, 22, 23, 24, 27 or 28); or
(e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Insured Mortgage.
4. Unenforceability of the lien of the Insured Mortgage because of the inability or failure of an Insured to comply with applicable doing-business laws of the state where the Land is situated.
 5. Invalidity or unenforceability in whole or in part of the lien of the Insured Mortgage that arises out of the transaction evidenced by the Insured Mortgage and is based upon usury or any consumer credit protection or truth-in-lending law. This Exclusion does not modify or limit the coverage provided in Covered Risk 26.
 6. Any claim of invalidity, unenforceability or lack of priority of the lien of the Insured Mortgage as to Advances or modifications made after the Insured has Knowledge that the vestee shown in Schedule A is no longer the owner of the estate or interest covered by this policy. This Exclusion does not modify or limit the coverage provided in Covered Risk 11.
 7. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching subsequent to Date of Policy. This Exclusion does not modify or limit the coverage provided in Covered Risk 11(b) or 25.
 8. The failure of the residential structure, or any portion of it, to have been constructed before, on or after Date of Policy in accordance with applicable building codes. This Exclusion does not modify or limit the coverage provided in Covered Risk 5 or 6.
 9. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction creating the lien of the Insured Mortgage, is
 - (a) a fraudulent conveyance or fraudulent transfer, or
 - (b) a preferential transfer for any reason not stated in Covered Risk 27(b) of this policy.
 10. Contamination, explosion, fire, flooding, vibration, fracturing, earthquake, or subsidence.
 11. Negligence by a person or an Entity exercising a right to extract or develop minerals, water, or any other substances.

EXHIBIT 70

From: T Thatcher [REDACTED]
Sent: Thursday, July 18, 2024 4:09 PM PDT
To: Sesanto, Sean <ssesanto@ci.capitola.ca.us>; Herlihy, Katie (kherlihy@ci.capitola.ca.us) <kherlihy@ci.capitola.ca.us>
CC: Froelich, Brian <bfroelich@ci.capitola.ca.us>; [REDACTED]
Subject: Re: [PDF] APN 035-132-01-000 Reduction in Scope
Attachment(s): "427 Timeline Of Communications.pdf"

Katie and Sean,

We're following up on the email sent last Wednesday, July 10th, 2024. If we don't hear from you by 5pm tomorrow, we'll consider the application denied and start the appeal process with the planning commission.

To add color to the situation and maybe help you understand our frustration, below is a snapshot of a detailed seven page document (attached) that includes all interactions with your department. To date, we have spent nearly \$200K on an architect to design a home that takes the flume *well into consideration*, soil reports, structural engineers, etc. to include in the application based on the communications to go ahead and move forward.

We love Capitola and we're so disappointed. You said you wanted to work with us. Please reply.

Thank you,

Terri and Joe

March 8, 2023 - Greg Faulkner and Nick Batie met with Sean Sesanto, associate planner, via ZOOM to review the proposed design and get the ok to proceed to drawings for the permit and planning approval. Granted by Sean.

July 7, 2023 - Nick Batie and Greg Faulkner spoke with the City of Capitola Planning Department—they reviewed our proposal with the building official and they are in support of the project and agree that it does not exceed the 80% cost of construction threshold that would trigger full zoning compliance.

Sean Sesanto with planning said, "Overall, this project represents the kind of improvement in development along the creek that we want to see."

Sept 5, '23 - Application and drawings submitted.

November 8, '23 - Comments made on the drawings with the application, minor issues raised, fence height mentioned.

January 15, '24 application placed on hold. **First time we've heard from Katie.**

June 21, '24 - Email sent to Katie, Sean, Brian asking that if we reduce the scope of the project to a simple remodel of the existing structure would we have to adhere to these terms.

June 24, '24 - Katie replies that she will have to ask legal and get back to us.

June 27th, '24 - Sean Sesanto replies to the thread and states that prior to any further **analysis (won't answer a question)**, we will have to bring our application balance to current and pay their attorney \$6,906.50 and also supply an additional retainer of \$3,000 before they answer our question about a remodel.

On Wed, Jul 10, 2024 at 12:36 PM T Thatcher <terrirthatcher@gmail.com> wrote:

Sean and Katie,

We do not feel that we are legally obligated to sign the City's proposed indemnity agreement prepared after our attorney sent to the City a very reasonable agreement that indemnified the City for any harm caused to the City's flume as a result of our proposed project. Nor are we obligated to reimburse the City for thousands of dollars in attorney's fees supposedly incurred by the City for its attorneys to prepare a completely new indemnity agreement that places 100% responsibility for the City's flume and drainage system that underlies our property on us, in perpetuity, (even after we no longer own the property) as well as future owners of our property. We will not be signing the City's Indemnity Agreement nor paying our attorney to engage further with the City's attorneys and we understand and are informed that the City will not further process our application if we refuse to sign the City's Indemnity Agreement and/or pay to the City approximately \$10,000 for it's attorneys fees incurred for its attorneys to prepare the Indemnity Agreement.

With respect to the attorneys fees issue, in a recent email from Sean, he references a February 23, 2023 during which we supposedly agreed to pay the City's attorney's fees. That is not what occurred during that meeting. Instead, we were told that we would have to provide a \$10K deposit for your legal team to draft an indemnity agreement. We informed you in that meeting that we would not be doing that and would secure our own attorney to draft an indemnity agreement that was fair to the City and us, which we did. We understand the need for attorneys in these matters. It's an iterative process. However, there was no communication with our attorney that her draft was insufficient. Instead, the City decided to pay its attorneys to prepare a completely new indemnity agreement that passes onto us, and future owners, the City's responsibilities that it's had for over 100 years for a drainage system that it has obviously neglected and failed to maintain and which has caused damage to the public pathway running over our property and no doubt to Soquel Creek itself. The bulk of the City's proposed agreement obviously has nothing to do with reasonably protecting the City's interests vis-à-vis our project, thus any charges to us for its preparation are not reasonable. Honestly, we feel that we should be suing the City for its failures to honor its obligations under the 1922 deed which explicitly states that *any damage ... caused to said granted premises ... shall be compensated for by the owner of said easements to the owner of said servient tenement*.

As the City Community Development Director and Planning Department Staff are now refusing to further process our application, **even with the recently proposed reduced scope**, please simply confirm in writing that you are denying our application so that we can promptly proceed with our appeal to the Planning Commission and City Council, if necessary.

We are also requesting that you immediately confirm the procedural next steps and deadlines with respect to appealing the Community Development Director's denial to the Planning Commission.

Thank you,

Joe McLean and Terri Thatcher

On Thu, Jun 27, 2024 at 11:27 AM Sesanto, Sean <ssesanto@ci.capitola.ca.us> wrote:

Dear Terri and Joe,

I am following-up from Katie's last. Prior to any further analysis, we will need to bring your application balance current. To date, our attorney's office has spent 37.6 hours related to your project between internal meetings, meetings with the county, and the preparing the draft agreement. Although applicant Nick Batie was initially informed in January of the need for legal review, we are billing for legal costs after the in-person meeting between you and city staff on 2/23/24, where you were notified of city attorney fees in order proceed. The amount to date is \$6,906.50; please see the attached billing from BWS. You will note that we are not billing for the initial 15.3 hours. To move forward with any additional analysis, we will need to receive a payment to cover the amount above and a \$3,000 deposit to cover further cost. Any portion of the deposit not utilized will be refunded.

Regards,

Sean Sesanto | Associate Planner

City of Capitola

831.475.7300

Planning Counter Hours: 1 p.m. - 4 p.m., Monday - Friday

From: T Thatcher <terrihthatcher@gmail.com>

Sent: Wednesday, June 26, 2024 7:28 PM

To: Herlihy, Katie (<kherlihy@ci.capitola.ca.us> <kherlihy@ci.capitola.ca.us>

Cc: Froelich, Brian (<bfroelich@ci.capitola.ca.us>); Sesanto, Sean (<ssesanto@ci.capitola.ca.us>); Joe McLean (<jwmjr116@gmail.com>)

Subject: Re: [PDF] APN 035-132-01-000 Reduction in Scope

Thank you, Katie. We're on pins and needles at this point! Appreciate the follow up. We hope to hear back soon.

On Mon, Jun 24, 2024, 3:34PM Herlihy, Katie (kherlihy@ci.capitola.ca.us) <kherlihy@ci.capitola.ca.us> wrote:

Hi Terri and Joe,

I am just returning from vacation. I will reach out to legal (City and County) and get back to you.

Regards,

Katie

From: T Thatcher <terrirthatcher@gmail.com>

Sent: Friday, June 21, 2024 1:17 PM

To: Herlihy, Katie (kherlihy@ci.capitola.ca.us) <kherlihy@ci.capitola.ca.us>; Froelich, Brian <bfroelich@ci.capitola.ca.us>; Sesanto, Sean <ssesanto@ci.capitola.ca.us>

Cc: Joe McLean <jwmjr116@gmail.com>

Subject: [PDF] APN 035-132-01-000 Reduction in Scope

Katie,

We received the city's proposed indemnification for the remodel/demo project we've been trying to get through the permitting process. We are left to assume that the design, where we raise the living space above the easement on pylons, is at the root of why you want us to be caretaker of the 'facility'. Can you please confirm this?

Before we move forward, we would like to understand if a reduction in scope to include a remodel of the existing structures **only**, with no building demo or pylons or raising the first floor to the second floor, would be considered. Our architect has proposed this as a solution to moving forward to next steps.

If you would please advise us ASAP, we would greatly appreciate it as this has taken many more months than originally scoped.

Thank you, Katie.

Terri and Joe

Key dates that indicate the cities responsibility in the situation we find ourselves in.

March 8, 2023 - Greg Faulkner and Nick Batie met with Sean Sesanto, associate planner, via ZOOM to review the design and get the ok to proceed to drawings for the permit and planning approval. Granted by Sean.

July 7, 2023 - Nick spoke with the City of Capitola Planning Department—they reviewed our proposal with the building official and they are in support of the project and agree that it does not exceed the 80% cost of construction threshold that would trigger full zoning compliance.

Sean Sesanto with planning said, “Overall, this project represents the kind of improvement in development along the creek that we want to see.”

Sept 5, '23 - Application and drawings submitted.

November 8, '23 - Comments made on the drawings with the application, minor issues raised, fence height mentioned.

January 15, '24 application placed on hold. First time we've heard from Katie.

June 21, '24 - Email sent to Katie, Sean, Brian asking that if we reduce the scope of the project to a simple remodel of the existing structure would we have to adhere to these terms.

June 24, '24 - Katie replies that she will have to ask legal and get back to us.

June 27th, '24 - Sean Sesanto replies to the thread and states that prior to any further analysis (answering any questions?), we will have to bring our application balance to current and pay their attorney \$6,906.50 and also supply an additional retainer of \$3,000 before they answer our question about a remodel.

Detail Dates:

November 11, 2022 - Multiple calls were made to the city of Capitola to inquire about the flume and if there are any issues, in anticipation of making an offer on the property. No calls returned.

November 23, 2022 - 427 Riverview Home purchased

December 31, 2022 - 'Wing' walls in the creek removed from the outflow of the flume, by the city (we were told they were not secure and the city was concerned they would cause damage during the storm that was forecasted and occurred that evening).

January 1, 2023 - Outflow/Bulkhead of the flume cracks on the upper right corner and drops approximately one foot which ultimately caused severe damage to the walkway and impacted the front of the property at 427 Riverview.

Since this date the path has experienced several failures in various places in front of 427 that the city has 'repaired' by pouring cement bags into the holes. In these exposed areas you can see where this has been the method for 'temporary' repair in the past.

March 8, 2023 - Greg Faulkner and Nick Batie met with Sean Sesanto, associate planner, via ZOOM to review the design and get the ok to proceed to drawings for the permit and planning approval. Granted by Sean.

March 27, 2023 - 'Temporary' repair (9 yards of concrete poured onto the collapse. Plywood bolted to the rotted pillars supporting the bulkhead and spray foam insulation sprayed into the crevices.

April 3, 2023 - Official concept package based on ZOOM call, sent to Sean Sesanto via email. **No reply.**

May 22, 2023 - Soil testing performed

May 26, 2023 - Faulkner Architects preparing drawings for building permit. We were told by Sean it would be a 3 - 6 month review process.

June 26, 2023 - Updated concept package sent to Sean Sesanto. **No reply.** Proceeded with planning application.

July 7, 2023 - Nick spoke with the City of Capitola Planning Department—they reviewed our proposal with the building official and they are in support of the project and agree that it does not exceed the 80% cost of construction threshold that would trigger full zoning compliance.

Sean Sesanto with planning said, “Overall, this project represents the kind of improvement in development along the creek that we want to see.”

September 5, 2023 - Package for permit and planning submitted to Sean Sesanto.

This was the first official submission to the city regarding this project and the first official step toward planning approval. All of the various pre-application discussions (including the attached presentations and emails) were an effort to solicit feedback from the city on our proposal and to hopefully be aware of and/or correct any significant issues prior to submitting our planning application. The reception of the project was positive in these discussions. Any concern regarding the drilled pier foundation was never raised or discussed.

October 18, 2023 - Follow up call made from Nick to Sean to check on status of application. **No response.**

October 24, 2023 - Another follow up call to Sean to check on the status of application. **No response.**

November 2023 - **Numerous follow up calls and emails to Sean** to find out about the status of the permit. We were told it would take 30 business days.

November 1, 2023 - Communication from our architecture team:

“I have called the planning department six times over the past two weeks. Each time, I’ve spoken to a woman named Rosie and she directs me to either the senior planner Brian Froelich or associate planner Sean Sesanto. Neither have been available to take my call on any of these occasions. I’ve left multiple voicemails with both Brian and Sean. If you’re inclined to visit the planning department in person that’s fine with us. Otherwise, I will keep calling until we get an update, or someone from our office can arrange a time to visit the planning department.”

November 1, 2023 - Joe McLean, property owner, went into the office and personally spoke to Sean Sesanto who guaranteed he would call Nick this week.

November 6, 2023 - Went into the offices again to speak to Sean. Sean said he had a few questions for Faulkner team before he can send it on to the next department. He said he didn't see any significant issues with the application. Sean says he didn't think that the repair of the flume outflow would impact our project. Sean said that the full permit process would take 6 - 8 months, which would put us at April for a start date.

November 6, 2023 - Sean calls Nick Batie back. Sean confirms that we can expect official planning department comments in the next day or two. Most of what Sean and Nick discussed revolved around minor clarifications. The civil engineer would have to revise their drawings as well.

November 8, 2023 - Discussed comments from the planning department. Very minor comments related to things like the fence height, etc.

January 15, 2024 - Capitola officially places our planning application on hold pending a meeting between legal counsel for The City of Capitola and Santa Cruz County regarding the easement for the drainage culvert. They would like assurance from Santa Cruz County regarding development over the culvert. This information came from Katie Herlihy, the Community Development Director.

This is the first we've heard from her during the planning application process.

In the meantime, we've spent close to two hundred thousand dollars on design, engineering, structural, soil analysis, etc. in preparation for the application and to be prepared to answer questions or concerns about the project.

WHY WAS THE ASSOCIATE PLANNER PUT IN CHARGE OF WHAT KATIE HERLIHY STATED WAS A 'COMPLICATED' SITUATION?

Nick Batie said, "I don't understand why the city did not start this conversation with the county months ago when we submitted our planning application. The planning department seems a bit dysfunctional."

January 24 - Meeting scheduled with the Planning Department canceled by the city.

Secure relationship with Charlie Eadie, Land use specialist.

February 23, 2024 - Meet with Katie Herlihy, Sean Sesanto, Jessica Kahn, Charlie Eadie, Joe McLean, Terri Thatcher. Jessica Kahn agrees to provide Charlie with an update on the proposed repair to the outflow of the flume.

The city/county requests us to indemnify them, in perpetuity, and hold them harmless for any damage that flume/water damage does to the property. We were told that the city attorney will write an indemnification and that we would be responsible for payment of the attorney's time. We told Katie that we will have our attorney write a proposed indemnification and will not be paying an additional \$10K.

Charlie Eadie confirms that paying for the city attorney's time is done, **but also confirms that this is a stretch given that this is not a problem of our making. City's version of an indemnity not drafted until OUR attorney sent a proposed indemnity in April.**

February 27, 2024 - Follow up email sent to the team at the city requesting clarification on a key point that Sean Sesanto brought up regarding the easement holding top priority over any structure over the easement. "Sean, you stated that it was clearly defined in our grant deed. I searched and had our title company search and they could not find what you're referring to.

If I understood you correctly -

'Our deed states, repeatedly, that there is an easement (references water) and if in maintaining that easement any damage is caused to the residence/garage on the property, responsibility for any damage caused in maintaining the easement lies with the owner of the easement. That would be the city/county.

If you could point me to where you cite your claim, (that the easement takes priority over any structure above it) that would be very helpful. This is important as your request is for us to hold harmless the city of Capitola and the county of Santa Cruz for any damage the easement/culvert/flume may cause to the property now and going forward.'

No reply.

March 25, 2023 - Still **no response** to two emails sent to Jessica Kahn regarding plans for the repair of the outflow of the flume.

March 26, 2024 - Retain attorney Anna DiBenedetto to draft Indemnity Agreement

March 30, 2024 - The city of Capitola is now not responding to any emails from us or Charlie Eadie.

April 4, 2024 - Anna reaches out to the county to discuss the issues.

April 19, 2024 - Design of the re-imagined home at 427 Riverview receives the highest award offered at the AIASF annual event, for best design that accounts for changes in environment and living in a coastal region (unbuilt category).

April 25, 2024 - Anna sends proposed indemnity agreement to Samantha Zutler, Justin Graham, Elaine Lostica. She recommends a ZOOM call with all concerned parties to include the architect and project builders to allay any concerns about the project.

We hear nothing for nearly two months. There was no communication on the fact that they, in response, would spend 37 hours outlining items in a document that would essentially supersede our existing Deed.

June 10, 2024 - Receive 'response' indemnity proposed by the city and county, 13+ pages total.

In this document, we must agree (highlights):

- That there is a dispute between the public entities as to which public entity or entities, owns and is responsible for the operation and maintenance of the facility.
- That this dispute will be unresolved.
- That the 'facility' (flume) is not actively maintained by any party.
- In order to get approval of the permit, we (and future owners of the property) will indemnify, hold harmless, the city, county, Zone 5, from any damage caused to the flume by the project/construction AND any damage caused to the property by the PRESENT or FUTURE condition of the flume.
- That residential construction would not normally be considered as presented but will be if we agree to sign the City's indemnity agreement.

- Execution of the 'agreement' does not resolve ownership of the flume.
- We agree to hold harmless public entities and their officials.
- We must agree that we are not entitled to any compensation from any public entity for any maintenance regardless of the impacts the maintenance might have on the property.

June 21, 2024 - Email sent to Katie, Sean, Brian asking that if we reduce the scope of the project to a simple remodel of the existing structure would we have to adhere to these crazy terms above.

June 24, 2024 - Katie replies that she will have to ask legal and get back to us.

June 27th, 2024 - Sean Sesanto replies to the thread and states that prior to any further **analysis**, we will have to bring our application balance to current and pay their attorney \$6,906.50 and also supply an additional retainer of \$3,000 before they answer our question about a remodel.

EXHIBIT 71

July 31, 2024

VIA E-MAIL

Joseph McLean and Terri Thatcher
4800 River Street
Soquel, CA 95703
terrirthatcher@gmail.com

Re: Application No. 23-0400 (427 Riverview)

Dear Mr. McLean and Ms. Thatcher:

My firm represents the City of Capitola (“**City**”). I serve as the City Attorney.

This letter is in response to your July 10 and July 18, 2024 communications to City staff regarding your application (No. 23-0400 for Design Review and a Coastal Development Permit, collectively, the “**Project**”) to demolish and rebuild the single-family residence at 427 Riverview (the “**Property**”).

Background

On September 5, 2023, you filed an application for the Project with City staff, and received preliminary comments. During staff’s review of the additional Project information provided, staff discussed with you the existence of an eight foot wide drainage easement (“**Easement**”) and associated underground drainage facility (“**Facility**”) that traverse the Property and convey storm and drainage flows from Noble Creek to Soquel Creek.¹ Because the Easement is noted on the Grant Deed for the Property, it is the City’s understanding that you were aware of the Easement prior to purchasing the Property. The Easement includes the right to “construct, maintain, operate, repair and renew” the Facility, together with “all necessary and convenient means of ingress and egress” to

¹ See “**Grant Deed**” dated May 11, 1922 from Bay Head Land Co., recorded in Volume 314, Page 192 of the Official Records of Santa Cruz County, enclosed for reference; see also Sheet 3 of the April 1922 subdivision map recorded in the Official Records of Santa Cruz County on May 13, 1922 in Map Book 18, Page 36 of the Santa Cruz County Records; see also on page 7 of the Amended Preliminary Title Report by First American Title Company, prepared for the Property on November 3, 2022.

Joseph McLean and Terri Thatcher

July 31, 2024

Page 2

access the Facility.² The City, the County of Santa Cruz (“**County**”) and the Santa Cruz County Flood Control and Water Conservation District- Zone 5 (“**Zone 5**”) are each potential owners of the Easement and the Facility.

Any construction over the Easement and Facility requires permission from the City, County and Zone 5. In addition, given the Easement and Facility’s location (transversing the Property), the City would not typically approve any construction on the Property. Recognizing, however, that your Project proposes to replace an existing residence (within the current footprint and elevated above the FEMA base flood elevation), City staff agreed to work with you, the County and Zone 5 to develop a path forward for your Project. Specifically, the City agreed to contact the County and Zone 5, on your behalf, to attempt to develop an agreement indemnifying the City, County and Zone 5 from any damage to the Facility, Property, or surrounding properties caused by your Project as well as damage to your Property caused by the Facility, and protecting the Facility to ensure its continued operation (“**Indemnification Agreement**”). The alternative to the City working with the County and Zone 5 was for the City to require you to receive approval from the County and Zone 5 as a precondition for the City processing your application.

On April 25, 2024, your attorney, Anna DiBenedetto sent a draft Indemnification Agreement to the City, County and Zone 5 for review and consideration. Over the next several weeks, the City, County and Zone 5 met and revised the draft Indemnification Agreement to ensure that it adequately protected all public agencies involved, and returned the revised Indemnification Agreement to Ms. DiBenedetto on June 12, 2024. During that time period, the City worked with the County to ensure that the draft agreement that the City returned to you on June 12 included revisions from all agencies, again so that you would not need to work with multiple agencies to move your project along. The City understands that you are no longer represented by Ms. DiBenedetto.

Next Steps

In your July 10 and July 18 emails, you indicated that you will not be executing the Indemnification Agreement and you request that the Community Development Department approve or deny your Project. To clarify, your Project requires a complete application, followed by a public hearing before the Planning Commission.³ As detailed in the attached Completeness Determination, your application continues to be incomplete due to a number of factors, including the lack of an executed Indemnification Agreement.

² See Grant Deed.

³ Capitola Municipal Code Chapter 17.120.

Joseph McLean and Terri Thatcher
July 31, 2024
Page 3

You may appeal the Community Development Department's Completeness Determination to the Planning Commission pursuant to Capitola Municipal Code Section 17.112.140 within 10 calendar days and according to the appeals process detailed in Capitola Municipal Code Chapter 17.152. This appeal would not constitute an appeal of a decision on the Project, as no decision has been made, and would constitute an appeal of the Department's Completeness Determination only.

Alternatively, if you would like the City to continue processing your Project application, please execute the Indemnification Agreement or provide the City with proposed revisions, which we will then share with the County and Zone 5. Finally, if you would prefer, you may also contact the County and Zone 5 directly, secure their permission to construct your Project on top of the Easement and Facility, and submit that approval to the City along with your application.

The City remains committed to working with you as you consider your next steps.

Sincerely,

BURKE, WILLIAMS & SORENSEN, LLP



Samantha W. Zutler
Leila Moshref-Danesh

SWZ

Encl.: Grant Deed, City of Capitola Completeness Determination
cc: Katie Herlihy, Community Development Director
Sean Sesanto, Associate Planner

EXHIBIT 72



420 Capitola Avenue
Capitola, California 95010
Telephone: (831) 475-7300
FAX: (831) 479-8879
Website: www.cityofcapitola.org

August 1, 2024

Joseph McLean
4800 River Street
Soquel, CA 95073

Subject: 427 Riverview Avenue + Design Permit

Dear Joseph McLean:

The City of Capitola Community Development Department has completed its review of your application for a Design Permit and Coastal Development Permit for the substantial remodel and merging of a single-residence and accessory structure, located at 427 Riverview Avenue, and is providing you with the Completeness Determination as a guide for further processing of your application.

PROJECT DESCRIPTION

Below is the project description that staff has developed based on the information submitted in your application package. Please review this project description carefully. If the description is inaccurate or incomplete, please contact your assigned planner immediately to correct the information.

Design Permit to convert an existing single-family residence and accessory structure into a single structure, with all remaining habitable space located above the base flood elevation. The proposal reduces the net floor area of the existing lot.

APPLICATION COMPLETENESS DETERMINATION

The Community Development Department has completed its review of your application and has found it **incomplete** pursuant to Section 65943 of the California Government Code. As detailed herein, additional information and/or corrections need to be submitted in order for staff to continue processing your application. The first incomplete letter was issued on December 5, 2023.

COMPLETENESS DETERMINATION - CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) The Community Development Department has determined your project is exempt from further environmental analysis pursuant to CEQA Section 15303. Staff will now complete the necessary documentation to complete the exemption process. No additional information is required at this time.

PROJECT ISSUES/CORRECTIONS

The following project issues and/or corrections to submitted plans and documents must be completed prior to scheduling your project for a public hearing.

Plan Corrections/Additional Information

The following corrections or additional information is necessary in order to continue processing your application.

General

1. Clarify on the plans if there are any proposed structures or alterations between the existing pathway and the creek.
2. All Outdoor lighting shall comply with all relevant standards pursuant to Capitola Municipal Code (CMC) Section 17.96.110, including that all outdoor lighting shall be shielded and directed downward such that the lighting is not directly visible from the public right-of-way or adjoining properties.
3. Clarify whether the wood shutters (sheet PA-10) are fixed or show their functionality.
4. The project should resolve the encroachment of the accessory structure over the south property line (425 Riverview). The design already proposes demolition of the affected ground level walls.

Flume/Culvert

5. The property is subject to an existing easement with an active public agency-owned drainage facility (Grant Deed recorded in Volume 315, page 192 of the Santa Cruz County records). To the satisfaction of City and County of Santa Cruz, the applicant must indemnify and hold harmless the City, County of Santa Cruz, and Santa Cruz County Flood Control and Water Conservation District – Zone 5 with respect to the operation and maintenance of the easement and drainage facility and possible impacts to the project. The applicant must also agree to be responsible for any damages to the facility and surrounding properties caused by the project. The promises contained in this Section 5 must be made in writing to the satisfaction of the public entities listed above.

Landscaping

6. Development applications involving major remodels trigger canopy coverage review. CMC Section 12.12.190(C) establishes a canopy coverage goal of fifteen percent tree coverage per lot. The project also proposed to remove a tree behind the secondary structure. A minimum of one fifteen-gallon tree (non-fruiting) is required on the landscape plan to meet this standard.
7. The proposed concrete wall along the northwest property line is approximately six-foot, six-inches tall. Solid fences or walls behind the front setback may be up to six-feet tall, with an additional two feet of semi-open latticework or similar screening. The proposed fencing along the southeast property line must comply with height standards. The application must be updated to comply with the fence height standard by either removing six inches from the height or by replacing the six inches with semi-open latticework or similar screening.

8. For informational purposes: Fences adjacent the Soquel Creek pathway must comply with the following adopted standards of §17.60.040:
 - a. All fences adjacent to the pedestrian paths along the east side of Soquel Creek north of Stockton Avenue and along the Grand Avenue Walkway shall comply with the following standards:
 - i. Maximum height: three and one-half feet.
 - ii. Required material: wood, ornamental steel or iron, or other similar material.
 - iii. Fences may not be constructed of solid material. Fences shall maintain public views through the use of widely spaced vertical posts or other techniques. In all cases, such fences shall not adversely impact significant public views of the coastline, as identified within the LCP land use plan.
9. For informational purposes: The [Soquel Creek] pathway shall be maintained at a minimum of either the existing pathway width shown in the March 2005 survey maintained by the city of Capitola, or four feet, whichever is greater, pursuant to §17.96.160.
 - a. Based on the submitted survey, the narrowest portion of the pathway adjacent to property is approximately 4'-1".
10. Staff recommends the plans be updated to provide increased access for emergency vehicles at the northwest corner of the property. Recommendation is to retreat the rear landscaping to slightly increase pathway width and reduce the length of the proposed metal perimeter fence towards the northwest corner to create a chamfered/beveled corner with the Riverview Avenue connection.
11. Update rendering on sheet PA-6 to reflect proposed landscaping along the pathway (Sheet PA-11).

Design Review Criteria

12. Pending review. See Estimated Processing Timeline below.

Stormwater Review

13. Project Info and Sheet Index: Proposed impervious surface area (2,319 SF) does not match total proposed impervious surface area on the Storm Water Permit Project Application (2,139 SF). Correct application or plan sheet accordingly.
14. Sheet C3.0: Update sediment and erosion control plan, to include access to construction site, equipment, and material storage locations, duration of placement, containment method for trash and debris, and location of dumpster.
15. Update Sheet C2.1 and C3.0: Stockpile material and portable toilet and containment/protection do not encroach into the public right of way.
16. For informational purposes: Prior to any work in the City road right of way, an encroachment permit shall be acquired by the contractor performing the work. No material or equipment storage may be placed in the road right-of-way. Closure of the Riverview walking path will require prior approval from the Public Works Department.

ESTIMATED PROCESSING COST

The application is current with the initial fee paid of \$4,420.50. Any additional legal costs by City review are at the expense of the applicant, made in advance as a deposit. Please note that this cost estimate is only for your planning applications and does not include building permit costs, outside agency fees, or private engineering, architecture, or contractor costs.

ESTIMATED PROCESSING TIMELINE

Contingent on completion of Comment #5, the next step is scheduling the project for a **Development and Design Review Meeting** on Project conformance with the Design Review Criteria. A full list of Design Review Criteria (§17.120.070) are attached.

If you have any questions or require additional information, please contact me at 831.475.7300 or by email at ssesanto@ci.capitola.ca.us

OTHER REQUIRED PERMITS

Please be aware that in addition to your zoning permits, you will also be required to obtain other permits/approvals as listed below prior to initiating construction. These permits/approvals typically require additional fees which are not covered by your planning applications.

- Building Permit from the City of Capitola
- Will-serve letter from the Soquel Creek Water District (831-475-8500)
- Will-serve letter from the Soquel Union School District (831- 464-5639)
- Will-serve letter (or plan approval) from the Central Fire Protection District (831-479-6843)
- Approval from County of Santa Cruz Sanitation District (831-454-2160)

Respectfully,



Sean Sesanto
Associate Planner

17.120.070 Design review criteria.

When considering design permit applications, the city shall evaluate applications to ensure that they satisfy the following criteria, comply with the development standards of the zoning district, conform to policies of the general plan, the local coastal program, and any applicable specific plan, and are consistent with any other policies or guidelines the city council may adopt for this purpose. To obtain design permit approval, projects must satisfy these criteria to the extent they apply.

A. Community Character. The overall project design including site plan, height, massing, architectural style, materials, and landscaping contributes to Capitola's unique coastal village character and distinctive sense of place.

Staff Comment:

B. Neighborhood Compatibility. The project is designed to respect and complement adjacent properties. The project height, massing, and intensity are compatible with the scale of nearby buildings. The project design incorporates measures to minimize traffic, parking, noise, and odor impacts on nearby residential properties.

Staff Comment:

C. Historic Character. Renovations and additions respect and preserve existing historic structures. New structures and additions to non-historic structures reflect and complement the historic character of nearby properties and the community at large.

Staff Comment:

D. Sustainability. The project supports natural resource protection and environmental sustainability through features such as on-site renewable energy generation, passive solar design, enhanced energy efficiency, water conservation measures, and other green building techniques.

Staff Comment:

E. Pedestrian Environment. The primary entrances are oriented towards and visible from the street to support an active public realm and an inviting pedestrian environment.

Staff Comment:

F. Privacy. The orientation and location of buildings, entrances, windows, doors, decks, and other building features minimize privacy impacts on adjacent properties and provide adequate privacy for project occupants.

Staff Comment:

G. Safety. The project promotes public safety and minimizes opportunities for crime through design features such as property access controls (e.g., placement of entrances, fences), increased visibility and features that promote a sense of ownership of outdoor space.

Staff Comment:

H. Massing and Scale. The massing and scale of buildings complement and respect neighboring structures and correspond to the scale of the human form. Large volumes are divided into small components through varying wall planes, heights, and setbacks. Building placement and massing avoids impacts to public views and solar access.

Staff Comment:

I. Architectural Style. Buildings feature an architectural style that is compatible with the surrounding built and natural environment, is an authentic implementation of appropriate established architectural styles, and reflects Capitola's unique coastal village character.

J. Articulation and Visual Interest. Building facades are well articulated to add visual interest, distinctiveness, and human scale. Building elements such as roofs, doors, windows, and porches are part of an integrated design and relate to the human scale. Architectural details such as trim, eaves, window boxes, and brackets contribute to the visual interest of the building.

K. Materials. Building facades include a mix of natural, high-quality, and durable materials that are appropriate to the architectural style, enhance building articulation, and are compatible with surrounding development.

L. Parking and Access. Parking areas are located and designed to minimize visual impacts and maintain Capitola's distinctive neighborhoods and pedestrian-friendly environment. Safe and convenient connections are provided for pedestrians and bicyclists.

M. Landscaping. Landscaping is an integral part of the overall project design, is appropriate to the site and structures, and enhances the surrounding area.

N. Drainage. The site plan is designed to maximize the efficiency of on-site drainage with runoff directed towards permeable surface areas and engineered retention.
See public works comments.

O. Open Space and Public Places. Single-family dwellings feature inviting front yards that enhance Capitola's distinctive neighborhoods.

P. Signs. The number, location, size, and design of signs complement the project design and are compatible with the surrounding context.

Q. Lighting. Exterior lighting is an integral part of the project design with light fixtures designed, located, and positioned to minimize illumination of the sky and adjacent properties.

R. Accessory Structures. The design of detached garages, sheds, fences, walls, and other accessory structures relates to the primary structure and is compatible with adjacent properties.

S. Mechanical Equipment, Trash Receptacles, and Utilities. Mechanical equipment, trash receptacles, and utilities are contained within architectural enclosures or fencing, sited in unobtrusive locations, and/or screened by landscaping.

EXHIBIT 73

From: Anna DiBenedetto <anna@dibenedetto.law>
Sent: Thursday, August 08, 2024 1:05 PM PDT
To: Moshref-Danesh, Leila J. <LMoshref@bwsllaw.com>
CC: Rae Spencer <rspencer@dibenedetto.law>; Zutler, Samantha W. <SZutler@bwsllaw.com>; Jason Heath <Jason.Heath@santacruzcountyca.gov>; Justin Graham <Justin.Graham@santacruzcountyca.gov>; Herlihy, Katie(kherlihy@ci.capitola.ca.us) <kherlihy@ci.capitola.ca.us>; Kahn, Jessica <jkahn@ci.capitola.ca.us>
Subject: [PDF] RE: 427 Riverview Indemnity Agreement
Attachment(s): "2024.08.08 INDEMNITY AGREEMENT draft.docx", "Exh A - McLean Property Descp.pdf", "Exh B - Subdivision Map.pdf", "Exh C - 1922 Grant Deed Noble Gulch.pdf"

Hi Leila, please find attached our version of the Indemnity Agreement that we believe provides the Public Entities with the indemnity and protections it seeks vis-à-vis the subject drainage facility. I've also attached the referenced exhibits. Please confirm receipt and anticipated turn around as this agreement is considered by the City as an application completeness item. Thanks very much.

Best,

Anna DiBenedetto, Esq.
DiBENEDETTO LAW GROUP, PC
1101 Pacific Avenue, Suite 200
Santa Cruz, CA 95060
Office Tel. (831) 253-0499, Ext. 101
Direct Tel. (831) 253-0503
Fax (831) 253-0502
anna@dibenedetto.law

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From: Moshref-Danesh, Leila J. <LMoshref@bwsllaw.com>
Sent: Wednesday, June 12, 2024 11:42 AM
To: Anna DiBenedetto <anna@dibenedetto.law>
Cc: Rae Spencer <rspencer@dibenedetto.law>; Zutler, Samantha W. <SZutler@bwsllaw.com>; Jason Heath <Jason.Heath@santacruzcountyca.gov>; Justin Graham <Justin.Graham@santacruzcountyca.gov>; Herlihy, Katie (kherlihy@ci.capitola.ca.us) <kherlihy@ci.capitola.ca.us>; Kahn, Jessica <jkahn@ci.capitola.ca.us>
Subject: 427 Riverview Indemnity Agreement

Good Morning Anna,

Thank you for your patience as the City and County worked to draft the attached indemnity agreement. Given the novel nature of the project and the complexities associated with the culvert, we had to expand fairly significantly upon your original draft, but the outcome is an agreement that will ultimately allow the City to process your client's application.

We would be happy to set up a time to meet with you and your client if you have any questions on the agreement, once you have had a chance to review.

Thank you.

Leila Moshref-Danesh | Senior Associate

Pronouns: she, her, hers

1770 Iowa Avenue, Suite 240 | Riverside, CA 92507-2479

d - 951.801.6626 | t - 951.788.0100 | f - 951.788.5785

lmoshref@bwsllaw.com | bwsllaw.com



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**RECORDING REQUESTED BY AND
WHEN RECORDED, MAIL TO:**

City of Capitola
Community Development
420 Capitola Avenue
Capitola, CA 95010

APN NO. 035-132-01-000

The undersigned declare:

Documentary Transfer Tax is: \$0

No monetary consideration.

INDEMNITY AGREEMENT

RECITALS

WHEREAS, Joseph W. McLean, Jr., Trustee of The Joseph W. McLean Jr. Trust, established March 2, 2022 (“McLean”) is the owner of that certain real property described in **Exhibit “A”** hereto (“McLean Property”);

WHEREAS, the McLean Property was created by a subdivision map dated April 1922 recorded in the Official Records of Santa Cruz County on May 13, 1922 in Map Book 18, Page 36 of the Santa Cruz County Records (the “Map”) and attached hereto as **Exhibit “B”**;

WHEREAS, Sheet 3 of the Map depicts drainage from Noble Gulch through a flume (“Flume”) traversing several properties, including the McLean Property, to Soquel Creek;

WHEREAS, the Flume is believed to be located within the bounds of an easement created by a Grant Deed dated May 10, 1922 and recorded in the Official Records of Santa Cruz County on July 11, 1922 in Volume 314 at Page 193 of the Deeds of Santa Cruz County Records (“Grant Deed”), granting to the County of Santa Cruz (“County”) a permanent eight foot wide easement and right of way to “construct, maintain, operate, repair and renew a drainage ditch, canal or flume, for the purpose of conveying storm and drainage water (from the most easterly boundary of the property hereinafter described to the Soquel Creek),” and including all necessary and convenient means of ingress and egress thereto (“Drainage Easement”). A true and correct copy of the Grant Deed is attached hereto as **Exhibit “C”**;

WHEREAS, for purposes of this Indemnity Agreement, “Flume” refers to the portion of the flume traversing the McLean Property and “Drainage Easement” refers to the portion of said drainage easement traversing the McLean Property;

WHEREAS, the City of Capitola (“City”), County, and the Santa Cruz County Flood Control and Water Conservation District- Zone 5 (“Zone 5”) are sometimes collectively referred to herein as “Public Entities”;

WHEREAS, at an indeterminate point in time the Public Entities assert that the Flume was converted into a culvert (“Culvert”), which Culvert underlies the McLean Property within the bounds of the Drainage Easement;

WHEREAS, the Culvert, Flume, and Drainage Easement are sometimes collectively referred to herein as the “Facility” and any reference to “Facility” refers to that portion of the Facility traversing the McLean Property;

WHEREAS, City, County, Zone 5 and McLean are sometimes collectively referred to herein as the “Parties”;

WHEREAS, one or more of the Public Entities may have an interest in any or all of the Facility, but it is the Parties’ intent to leave the determination of that interest unresolved by the execution of this Agreement;

WHEREAS, the Public Entities have previously made temporary emergency repairs to the area of the public pathway situated adjacent to the McLean Property and related to the Culvert’s outfall for the purposes of preserving public safety, but no permanent repairs have been made;

WHEREAS, on or about August 31, 2023, McLean submitted Application No. 23-0400 (“Application”) for a coastal development permit and design review (the “Required Approvals”) for a proposed interior and exterior remodel and addition to an existing two story single family residence with detached secondary garage with living space above. The remodel may entail the following: Removal and reconfiguration of interior bearing and non-bearing walls, removal of first floor exterior bearing and non-bearing walls, modification of existing window and door openings as well as additional new openings in exterior walls and a new stairwell entry way to existing second floor, while complying with the 80% valuation to stay within the previous municipal code requirements. The project may involve potential reinforcement of existing foundation to include reinforced footings and/or new footings to accommodate bearing locations. Interior and exterior aesthetic modifications to include new siding, roofing, windows and doors, floors and wall finishes. Addition to include a new second story enclosed bridge to connect the primary residence to the detached living unit above the garage. Resulting in an approximate 2,625 sf, 3 bedroom, 2 and ½ bath two story single family residence (the “Project”);

WHEREAS, as a condition to approval of the Application, the City is requiring McLean and future owners of the McLean Property to agree to indemnify, defend and hold harmless the City, County and Zone 5 from any damage caused to the Facility by the Project;

WHEREAS, this Agreement is required by the City in order to continue processing the Application; and

WHEREAS, the Parties agree that execution of this Agreement does not resolve the ownership of the Facility, or prejudice any rights or affirmative defenses that the Public Entities may have relating to determination of the ownership of the Facility or the Parties' respective rights and responsibilities in the McLean Property, the Culvert, Flume or Drainage Easement.

NOW THEREFORE, the Parties agree as follows:

AGREEMENT

1. INCORPORATION OF RECITALS.

1.1 The above recitals are hereby incorporated into this Agreement as though set forth in full.

1.2 The Parties agree that the above recitals are true and correct representations of the Parties' respective understanding of the circumstances giving rise to the Agreement.

2. OWNERSHIP OF THE PROPERTY.

2.1 For the purposes of this Agreement, an "Owner" means the person or entity that is the owner, holder, or beneficiary, of any interest in the McLean Property, including but not limited to a fee simple interest, an easement, a profit, a license, a life estate, a joint tenancy, a lien, a deed-of-trust or other security interest.

2.1.1 McLean is the Owner of the McLean Property at the time of execution of this Agreement.

2.1.2 Upon purchase, sale, or any other conveyance of an interest in the McLean Property, the person or entity receiving that interest shall become an Owner and shall be bound by the terms of this Agreement and become a Party.

2.1.3 Upon alienation, sale, or transfer, of an interest in the McLean Property that would make a person or entity an Owner, that person or entity's Ownership shall terminate, and they shall thereafter no longer be an Owner.

2.1.4 For the purposes of this Agreement, there may be more than one Owner of the Property at any given time. Each Owner shall be jointly and severally responsible for each promise and obligation applicable to an Owner under this Agreement.

2.2 For the purposes of this Agreement, "Ownership" shall mean the status of being an Owner.

3. INDEMNIFICATION FOR CONSTRUCTION; PROTECTION OF FACILITY.

3.1 Owner agrees to indemnify and hold harmless the Public Entities, and each of their respective officials, officers, directors, commissioners, employees, agents, and volunteers (collectively, “Indemnitees”), and defend with counsel reasonably acceptable to Indemnitees, from and against any and all liabilities, claims, actions, losses, injuries, damages, judgments, or expenses, including attorneys’ fees and costs, of any kind (collectively, “Losses”), related to the Facility, neighboring properties and public infrastructure bordering the Facility, or any combination of the same, resulting from, or in any way related to Owner’s performance of the Project.

3.1.1 The Public Entities, and each of them, may tender demands for Owner’s performance under this provision at any time after becoming aware of a claim, demand, or lawsuit covered by this provision.

3.2 Owner agrees to include in the Project plans reasonable protective measures and practices for the Facility and neighboring properties and public infrastructure bordering the Facility that could foreseeably be impacted by the Project and, if the Application is approved by the City, to implement those protective measures and practices as part of construction of the Project.

3.3 McLean agrees that, as a condition of approval of any permit issued pursuant to the Application, each Public Entity shall be named as an additional insured by each contractor and consultant employed by McLean to perform any portion of the Project which would otherwise be required to provide insurance to McLean or the City, or both of them, by including language substantially similar to the following in each of their respective contracts:

“Contractor agrees, to the fullest extent permitted by law, to indemnify, defend, and hold harmless the City of Capitola, County of Santa Cruz, the Santa Cruz County Flood Control and Water Conservation District – Zone 5, and each of their respective officials, officers, directors, commissioners, employees, agents, and volunteers (collectively, “Indemnitees”) from and against any and all liability, claim, action, loss, injury, damage, judgment, or expense, including attorneys’ fees and costs (“Losses”) caused by or resulting from negligence, recklessness, or willful misconduct of Contractor, Contractor’s officers, employees, agents, or subcontractors in any way related to this (construction) agreement. Contractor’s duty to indemnify and hold harmless Indemnitees shall not apply to the extent such Losses are caused by the sole or active negligence or willful misconduct of Indemnitees. Contractor’s obligation to defend shall arise regardless of any claim or assertion that Indemnitees caused or contributed to the Losses, without waiving any rights Contractor may have to demand reimbursement of such defense costs upon a finding that the Losses were caused by the sole or active negligence or willful misconduct of any of the Indemnitees.

3.4 Owner further agrees to refrain from undertaking any action during or after construction of the Project or allowing any use of the McLean Property that might reasonably be expected to damage the Facility or interfere with its operation for its intended purposes.

4. RUNS WITH THE LAND; SUCCESSORS BOUND; RECORDATION.

4.1 It is the Parties' intent that this Agreement shall be binding on any Owner of the McLean Property and that the provisions of this Agreement shall be construed and interpreted as covenants running with the land in regard to the McLean Property.

4.2 The Parties agree that upon approval of this Agreement by the City and execution by McLean, the City will not consider this Agreement as an Application completeness issue.

4.3 The Parties agree that this Agreement may not be recorded until the Application has been approved by the City.

5. CONSIDERATION BY PUBLIC ENTITIES.

5.1 All Parties agree that execution of this Agreement shall not, and may not, be utilized as evidence of any particular Public Entity's respective ownership interest in the Drainage Easement, the Culvert, or the Flume.

5.2 By execution of this Agreement, the City is not committing itself to or agreeing to undertake any act or activity legally requiring the separate independent exercise of discretion by the City. Execution of this Agreement by the City is merely an agreement to process an application(s) for the Required Approvals in accordance with the terms hereof, reserving for subsequent City action the final discretion and approval regarding the Required Approvals and all proceedings and decisions in connection therewith.

5.3 This Agreement does not limit in any way the discretion of City in acting on any applications for the Required Approvals for the proposed Project or any portion thereof.

6. TERM; TERMINATION.

6.1 This Agreement shall be effective upon execution by all Parties.

6.2 This Agreement shall remain in effect until the soonest date that (1) the Facility is removed from underlying the McLean Property; or (2) until this Agreement is terminated as provided herein.

6.3 The Parties may terminate this Agreement upon the occurrence of any of the following conditions:

6.3.1 Mutual written agreement of all Parties, with or without conditions.

6.3.2 Withdrawal or denial of the Application without the Project having commenced construction.

7. GENERAL PROVISIONS.

7.1 This Agreement shall be construed and interpreted both as to validity and to performance of the Parties in accordance with the laws of the State of California.

7.2 The sole venue for all legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be the Superior Court of the County of Santa Cruz, State of California.

7.3 The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against any Party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply.

7.4 The persons executing this Agreement on behalf of the Parties hereto warrant that (i) they are duly authorized to execute and deliver this Agreement on behalf of said Party, (ii) by so executing this Agreement, such Party is formally bound to the provisions of this Agreement, and (iii) the entering into this Agreement does not violate any provision of any other agreement to which said Party is bound.

7.5 Any modification to this Agreement must be in writing and executed by all Parties hereto.

7.6 This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute the same agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the day and year written below.

JOSEPH McLEAN JR. TRUST, DATED
NOVEMBER 9, 1983

Dated:

JOSEPH W. McLEAN, JR., Trustee

CITY OF CAPITOLA

Dated:

By: Jamie Goldstein
City Manager

Dated:

Approved as to form:

Samantha W. Zutler
City Attorney

COUNTY OF SANTA CRUZ

Dated:

By: Matt Machado, Deputy CAO
Director of Community Development and
Infrastructure Department

Dated:

Approved as to form:

Jason M. Heath
County Counsel

SANTA CRUZ COUNTY FLOOD
CONTROL AND WATER
CONSERVATION DISTRICT – ZONE 5

Dated:

By: Matt Machado
District Engineer

From: Anna DiBenedetto <anna@dibenedetto.law>
Sent: Thursday, August 08, 2024 3:01 PM PDT
To: Zutler, Samantha W. <SZutler@bwsllaw.com>; Moshref-Danesh, Leila J. <LMoshref@bwsllaw.com>
CC: Rae Spencer <rspencer@dibenedetto.law>; Jason Heath <Jason.Heath@santacruzcountyca.gov>; Justin Graham <Justin.Graham@santacruzcountyca.gov>; Herlihy, Katie(kherlihy@ci.capitola.ca.us) <kherlihy@ci.capitola.ca.us>; Kahn, Jessica <jkahn@ci.capitola.ca.us>
Subject: RE: 427 Riverview Indemnity Agreement
Attachment(s): "2024.08.08 Indemnity Agreement REDLINED.docx"

Please see attached.

Anna DiBenedetto, Esq.
DiBENEDETTO LAW GROUP, PC
1101 Pacific Avenue, Suite 200
Santa Cruz, CA 95060
Office Tel. (831) 253-0499, Ext. 101
Direct Tel. (831) 253-0503
Fax (831) 253-0502
anna@dibenedetto.law

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From: Zutler, Samantha W. <SZutler@bwsllaw.com>
Sent: Thursday, August 8, 2024 1:50 PM
To: Anna DiBenedetto <anna@dibenedetto.law>; Moshref-Danesh, Leila J. <LMoshref@bwsllaw.com>
Cc: Rae Spencer <rspencer@dibenedetto.law>; Jason Heath <Jason.Heath@santacruzcountyca.gov>; Justin Graham <Justin.Graham@santacruzcountyca.gov>; Herlihy, Katie (kherlihy@ci.capitola.ca.us) <kherlihy@ci.capitola.ca.us>; Kahn, Jessica <jkahn@ci.capitola.ca.us>
Subject: RE: 427 Riverview Indemnity Agreement

Thanks Anna. Could you please send a redline from the draft we sent over previously?

From: Anna DiBenedetto <anna@dibenedetto.law>
Sent: Thursday, August 8, 2024 1:05 PM
To: Moshref-Danesh, Leila J. <LMoshref@bwsllaw.com>
Cc: Rae Spencer <rspencer@dibenedetto.law>; Zutler, Samantha W. <SZutler@bwsllaw.com>; Jason Heath <Jason.Heath@santacruzcountyca.gov>; Justin Graham <Justin.Graham@santacruzcountyca.gov>; Herlihy, Katie (<kherlihy@ci.capitola.ca.us>) <kherlihy@ci.capitola.ca.us>; Kahn, Jessica <jkahn@ci.capitola.ca.us>
Subject: RE: 427 Riverview Indemnity Agreement

EXTERNAL

Hi Leila, please find attached our version of the Indemnity Agreement that we believe provides the Public Entities with the indemnity and protections it seeks vis-à-vis the subject drainage facility. I've also attached the referenced exhibits. Please confirm receipt and anticipated turn around as this agreement is considered by the City as an application completeness item. Thanks very much.

Best,

Anna DiBenedetto, Esq.
DiBENEDETTO LAW GROUP, PC
1101 Pacific Avenue, Suite 200
Santa Cruz, CA 95060
Office Tel. (831) 253-0499, Ext. 101
Direct Tel. (831) 253-0503
Fax (831) 253-0502
anna@dibenedetto.law

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From: Moshref-Danesh, Leila J. <LMoshref@bwsllaw.com>

**RECORDING REQUESTED BY AND
WHEN RECORDED, MAIL TO:**

City of Capitola
Community Development
420 Capitola Avenue
Capitola, CA 95010

Formatted: Table

APN NO. 035-132-01-000

The undersigned declare:

Documentary Transfer Tax is: \$0

No monetary consideration.

**DECLARATION OF COVENANTS
AND INDEMNITY AGREEMENT**

RECITALS

WHEREAS, Joseph W. McLean, Jr., Trustee of The Joseph W. McLean Jr. Trust, established March 2, 2022 (“McLean” ~~or “Owner”~~) is the owner of that certain real property described in **Exhibit “A”** hereto (“McLean Property”); ~~and~~

WHEREAS, the McLean Property was created by a subdivision map dated April 1922 recorded in the Official Records of Santa Cruz County on May 13, 1922 in Map Book 18, Page 36 of the Santa Cruz County Records (the “Map”) ~~and attached hereto as Exhibit “B,” and~~

WHEREAS, Sheet 3 of the Map depicts drainage from Noble Gulch ~~and a diversion of the natural course of Noble Creek~~ through a flume (“Flume”) traversing ~~these several properties, including the McLean Property; and, to Soquel Creek;~~

WHEREAS, the Flume is believed to be located within the bounds of an easement created by a Grant Deed dated May 10, 1922 and recorded in the Official Records of Santa Cruz County on July 11, 1922 in Volume 314 at Page 193 of the Deeds of Santa Cruz County Records (“Grant Deed”), granting to the County of Santa Cruz (“County”) a permanent eight foot wide easement and right of way to “construct, maintain, operate, repair and renew a drainage ditch, canal or flume, for the purpose of conveying storm and drainage water (from the most easterly boundary of the property hereinafter described to the Soquel Creek),” and including all necessary and convenient means of ingress and egress thereto (“Drainage Easement”); ~~and~~). A true and correct copy of the Grant Deed is attached hereto as Exhibit “C”;

WHEREAS, ~~a true and correct copy for purposes of the Grant Deed is attached hereto as Exhibit “C”; and~~

Formatted: Right

~~WHEREAS, a this Indemnity Agreement, "Flume" refers to the portion of the flume traversing the McLean Property and "Drainage Easement burdens the Property, as depicted on page 7"~~ refers to the portion of the Amended Preliminary Title Report by First American Title Company, prepared for said drainage easement traversing the McLean Property on November 3, 2022, a copy of which is attached hereto as **Exhibit "D;"** and;

~~WHEREAS, at an indeterminate point in time the Flume was converted into a culvert ("Culvert"), which underlies the Property within the bounds of the Drainage Easement; and~~

~~WHEREAS, the City of Capitola ("City"),~~

~~WHEREAS, the Culvert, Flume, and Drainage Easement are sometimes collectively referred to herein as the "Facility"; and~~

~~WHEREAS, City, County, and the Santa Cruz County Flood Control and Water Conservation District- Zone 5 ("Zone 5") are sometimes collectively referred to herein as "Public Entities"; and~~

~~WHEREAS, there is a dispute between at an indeterminate point in time the Public Entities as to assert that the Flume was converted into a culvert ("Culvert"), which Public Entity, or Public Entities, owns and is responsible for the operation and maintenance Culvert underlies the McLean Property within the bounds of the Drainage Easement;~~

~~WHEREAS, the Culvert, Flume, and Drainage Easement are sometimes collectively referred to herein as the "Facility; and" and any reference to "Facility" refers to that portion of the Facility traversing the McLean Property;~~

~~WHEREAS, City, County, Zone 5 and McLean are sometimes collectively referred to herein as the "Parties" and individually as "Party"; and;~~

~~WHEREAS, one or more of the Public Entities may have an interest in any or all of the Flume, Culvert and the Drainage Easement Facility, but it is the Parties' intent to leave the determination of that interest unresolved by the execution of this Agreement; and~~

~~WHEREAS, the Facility is not actively maintained by any Party; and~~

~~WHEREAS, the City, County and Zone 5 Public Entities have previously made temporary, emergency repairs to the area of the public pathway situated adjacent to the McLean Property and related to the Culvert's outfall for the purposes of preserving public safety, but no permanent repairs have been made; and~~

~~WHEREAS, on or about August 31, 2023, McLean submitted an application Application No. 23-0400 ("Application") for a coastal development permit and design review (the "Required Approvals") for a proposed interior and exterior remodel and addition to demolish the an existing~~

two-story single-family residence at the Property and construct a new residence within the same footprint (the "Project"), with the first floor of the new residence to be elevated above the Federal Emergency Management Agency ("FEMA") base flood elevation; and

WHEREAS, the Project also proposes to remodel the Property's existing detached secondary garage and its associated second story with living space, above. The remodel may entail the following: Removal and reconfiguration of interior bearing and will relocate non-bearing walls, removal of first floor exterior bearing and non-bearing walls, modification of existing window and door openings as well as additional new openings in exterior walls and a new stairwell entry way to existing second floor area, while complying with the 80% valuation to stay within the previous municipal code requirements. The project may involve potential reinforcement of existing foundation to include reinforced footings and/or new footings to accommodate bearing locations. Interior and exterior aesthetic modifications to include new siding, roofing, windows and doors, floors and wall finishes. Addition to include a new second story enclosed bridge to connect the new elevated primary residence to the remodeled detached living space unit above the existing garage; and, Resulting in an approximate 2,625 sf, 3 bedroom, 2 and ½ bath two story single family residence (the "Project");

WHEREAS, as a condition to approval of the Application, the City is requiring McLean and future owners of the McLean Property to agree to indemnify, defend and hold harmless the City, County and Zone 5 from (1) any damage caused to the Facility by the Project; and (2) any damage caused to the Property by the present or future condition of the Facility; and;

WHEREAS, all Parties acknowledge that the residential construction in the Application would not normally be considered as presented given the presence of the Facility lying below and transversing the Property, but given that McLean purchased an existing single-family home on the Property overlying the Facility, has been living on the Property for a number of years, and the Project proposes merely to demolish and reconstruct within the same footprint the existing single-family home located on the Property while elevating the residential portion of the structure above the FEMA base flood elevation and relocating existing floor area to connect the elevated residence to the remodeled living space above the existing garage, basic principles of fairness allow the City to consider the Application in exchange for the promises McLean has made in this Agreement; and —

WHEREAS, it is the intent of the Parties that this Agreement will allow the City to process the Application for the benefit of McLean, but that execution of this Agreement will not guarantee the approval of the Project or the Application or otherwise bind the City in any way to any future approval of the Application; and

WHEREAS, this Agreement is required by the City in order to continue processing the Application; and

WHEREAS, the Parties agree that execution of this Agreement does not resolve the

ownership of the Facility, or prejudice any rights or affirmative defenses that the Public Entities may have relating to determination of the ownership of the Facility or the ~~Public Entities' Parties'~~ respective rights and responsibilities in the McLean Property, the Culvert, Flume or Drainage Easement.

NOW THEREFORE, the Parties agree as follows:

AGREEMENT

1. INCORPORATION OF RECITALS.

1.1 The above recitals are hereby incorporated into this Agreement as though set forth in full.

1.2 The Parties agree that the above recitals are true and correct representations of the Parties' respective understanding of the circumstances giving rise to the Agreement.

2. OWNERSHIP OF THE PROPERTY.

2.1 For the purposes of this Agreement, an "Owner" means the person or entity that is the owner, holder, or beneficiary, of any interest in the McLean Property ~~other than the Drainage Easement~~, including but not limited to a fee simple interest, an easement, a profit, a license, a life estate, a joint tenancy, a lien, a deed-of-trust or other security interest.

2.1.1 McLean is the Owner of the McLean Property at the time of execution of this Agreement.

2.1.2 Upon purchase, sale, or any other conveyance of an interest in the McLean Property, the person or entity receiving that interest shall become an Owner and shall be bound by the terms of this Agreement and become a Party.

2.1.3 Upon alienation, sale, or transfer, of an interest in the McLean Property that would make a person or entity an Owner, that person or entity's Ownership shall terminate, and they shall thereafter no longer be an Owner.

2.1.4 For the purposes of this Agreement, there may be more than one Owner of the Property at any given time. Each Owner shall be jointly and severally responsible for each promise and obligation applicable to an Owner under this Agreement.

2.2 For the purposes of this Agreement, "Ownership" shall mean the status of being an Owner.

3. INDEMNIFICATION FOR CONSTRUCTION; PROTECTION OF FACILITY.

3.1 Owner agrees to indemnify and hold harmless the Public Entities, and each of their respective officials, officers, directors, commissioners, employees, agents, and volunteers (collectively, “Indemnitees”), and defend with counsel reasonably acceptable to Indemnitees, from and against any and all liabilities, claims, actions, losses, injuries, damages, judgments, or expenses, including attorneys’ fees and costs, of any kind (collectively, “Losses”), related to the Facility, ~~Noble Creek~~, neighboring properties and public infrastructure bordering the Facility, or any combination of the same, resulting from, or in any way related to Owner’s performance of the Project.-

3.1.1 The Public Entities, and each of them, may tender demands for Owner’s performance under this provision at any time after becoming aware of a claim, demand, or lawsuit covered by this provision.

~~3.1.2 This indemnification shall survive the termination of both this Agreement and each Owner’s Ownership.~~

3.2 Owner agrees to include in the Project plans reasonable protective measures and practices for the Facility and ~~Noble Creek, including any improvements thereon~~ neighboring properties and public infrastructure bordering the Facility that could foreseeably be impacted by the Project, ~~in the Application and the Project plans~~, and, if the Application is approved by the City, to implement those protective measures and practices as part of construction of the Project.

~~3.2.1 The Public Entities shall confer regarding the adequacy of said protective measures and form a consensus regarding said measures. City shall impose said measures as conditions of approval on any permit issued pursuant to the Application.~~

~~3.2.2 Owner agrees and promises to implement said protective measures and practices if the Application is approved by the City and the Project is constructed.~~

~~3.2.3 Owner shall likewise be obligated to undertake measures to protect properties and public infrastructure bordering the Facility to the extent such properties and public infrastructure may be damaged or impacted by Owner performing the Project in, above and around the Facility.~~

3.3 McLean agrees that, as a condition of approval of any permit issued pursuant to the Application, each Public Entity shall be named as an additional insured by each contractor and consultant employed by McLean to perform any portion of the Project which would otherwise be required to provide insurance to McLean or the City, or both of them, by including language substantially similar to the following in each of their respective contracts:

“Contractor agrees, to the fullest extent permitted by law, to indemnify, defend, and hold harmless the City of Capitola, County of Santa Cruz, the Santa Cruz County Flood Control and Water Conservation District – Zone 5, and each of their respective officials, officers,

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directors, commissioners, employees, agents, and volunteers (collectively, "Indemnitees") from and against any and all liability, claim, action, loss, injury, damage, judgment, or expense, including attorneys' fees and costs ("Losses") caused by or resulting from negligence, recklessness, or willful misconduct of Contractor, Contractor's officers, employees, agents, or subcontractors in any way related to this (construction) agreement. Contractor's duty to indemnify and hold harmless Indemnitees shall not apply to the extent such Losses are caused by the sole or active negligence or willful misconduct of Indemnitees. Contractor's obligation to defend shall arise regardless of any claim or assertion that Indemnitees caused or contributed to the Losses. ~~This indemnification clause shall survive termination of this agreement.~~, without waiving any rights Contractor may have to demand reimbursement of such defense costs upon a finding that the Losses were caused by the sole or active negligence or willful misconduct of any of the Indemnitees.

3.4 Owner further agrees to refrain from undertaking any action during or after construction of the Project or allowing any use of the McLean Property that might reasonably be expected to damage the Facility or interfere with its operation for its intended purposes.

4. INDEMNIFICATION FOR POST-CONSTRUCTION DAMAGE TO PROPERTY.

4.1 Beginning with the commencement of construction of the Project, and continuing in perpetuity thereafter, Owner agrees to save, indemnify, and hold harmless the Indemnitees, and each of them, and defend with counsel reasonably acceptable to the Indemnitees, from any and all Losses, caused, alleged to be caused, or in any way related to the Facility being located under, transversing and/or abutting the Property wherein the operative facts that serve as the basis for such Losses are alleged to have occurred during that Owner's Ownership of the Property.

4.2 The Public Entities, and each of them, may tender demands for Owner's performance under this provision at any time after becoming aware of a claim, demand, or lawsuit covered by this provision.

4.3 This indemnification shall survive the termination of both this Agreement and expiration of each Owners' Ownership.

54. RUNS WITH THE LAND; SUCCESSORS BOUND; RECORDATION.

54.1 It is the Parties' intent, and McLean specifically promises, that this Agreement shall be binding on McLean's successors and assigns, and McLean's successors in interest in the Property, to the same extent that it is binding on McLean.

5.1.1 Therefore, for avoidance of doubt, should Owner sell or otherwise transfer the Property or any interest therein, including by sale, lease, gift, bequest, or otherwise, the person or entity receiving any interest in the Property shall become an Owner and shall have all the same obligations under this Agreement as McLean had at the time this

~~Agreement was executed.~~

~~5.1.2—Owner shall provide a copy of this Agreement, executed by all Parties, to the City for recordation prior to the City acting on the Application. City shall thereafter record the executed copy of this Agreement in order to provide notice of its terms to Owner's successors in interest.~~

~~5.1.3 Owner shall deliver to each subsequent owner, heir, or successor in Owner's interest in the Property, a copy of this Agreement and shall inform them of their obligation to be bound by its terms prior to or at the time of transferring such interest.~~

~~5.2—The~~ any Owner of the McLean Property and that the provisions of this Agreement shall be construed and interpreted as covenants running with the land in regard to the McLean Property.

~~5.2.1 This Agreement's provisions shall be binding, to the fullest extent permitted by law and equity, on all future Owners of an interest, of any nature, in the Property.~~

~~5.2.2 This Agreement's provisions shall be interpreted, to the fullest extent permitted by law and in equity, for the benefit and in favor of, and shall be enforceable by, the Public Entities, their successors and assigns, against Owner, and against Owner's successors and assigns, and every successor in interest to the Property, or any part of the Property, any interest in the Property, and any party in possession or occupancy of the Property.~~

~~6. PUBLIC ENTITIES' RIGHT TO ACCESS FACILITIES AND PERFORM VARIOUS ACTIVITIES.~~

~~6.1—Owner agrees and acknowledges~~ The Parties agree that one or several of the Public Entities have the right to access the Facility pursuant to the terms of the Drainage Easement to construct, maintain, operate, repair and renew the Facility ("Maintenance Activities").

~~6.1.1—Owner agrees to provide reasonable access to the Facility for the purposes of any of the Public Entities performing Maintenance Activities.~~

~~6.1.2—Owner agrees to refrain from undertaking any action, or allowing any use of the Property, that would or could reasonably be expected to damage or harm the Facility or impair the Public Entities' ability to perform Maintenance Activities.~~

~~6.1.3—Owner acknowledges and agrees that Owner is not entitled to any compensation from any of the Public Entities for any such Maintenance Activities, regardless of the impacts such Maintenance Activities might have on the Property.~~

~~6.2 — Owner agrees to save, indemnify, and hold harmless the Indemnitees, and each of them, and defend with counsel reasonably acceptable to the Indemnitees, from any and against any and all Losses, caused, or alleged to be caused, to the Property related to the Maintenance Activities, except to the extent that such liabilities, claims, actions, losses, injuries, damages, judgments, or expenses are determined by a court of competent jurisdiction to be the sole result of the gross negligence of each of the Public Entities.~~

~~6.2.1 This indemnification shall become irrevocable upon the commencement of Project construction and shall survive the terminationapproval of this Agreement by the City and execution by McLean, the City will not consider this Agreement as an Application completeness issue.~~

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~~74.3 The Parties agree that this Agreement may not be recorded until the Application has been approved by the City.~~

5. CONSIDERATION BY PUBLIC ENTITIES.

~~7.1 — In making the promises in this Agreement, Owner specifically acknowledges and agrees that none of the Public Entities concede that they own the Facility. 5.1 All Parties agree that execution of this Agreement shall not, and may not, be utilized as evidence of any particular Public Entity's respective ownership interest in the Drainage Easement, the Culvert, or the Flume.~~

~~7.2 — In making the promises in this Agreement, Owner specifically acknowledges and agrees that but for the presence of the Culvert resulting in a covered rather than an open water channel on the Property, and given the Culvert's position on the Property, the existing single-family residence on the Property could not have been constructed.~~

~~7.3 — In making the promises in this Agreement, Owner specifically acknowledges and agrees that, if the Property had been undeveloped at the time that the Application was submitted, and had an existing single-family residence not been already present on the Property at the time the Application was submitted, the City would not have processed the Application based on the existence of the Culvert as both a potential safety hazard and as a barrier to accessing the Facility.~~

~~7.4 — In making the promises in this Agreement, Owner acknowledges and agrees that the presence of a single-family residence on the Property substantially increases the difficulty of the Public Entities accessing the Facility and the cost of performing Maintenance Activities, including potential future upgrade and replacement of the Culvert.~~

~~7.55.2~~ By execution of this Agreement, the City is not committing itself to or agreeing to undertake any act or activity legally requiring the subsequentseparate independent exercise of discretion by the City. Execution of this Agreement by the City is merely an agreement to process an application(s) for the Required Approvals in accordance with the terms hereof, reserving for

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subsequent City action the final discretion and approval regarding the Required Approvals and all proceedings and decisions in connection therewith. ~~Any action on the Required Approvals shall become effective only if and after certification, adoption or approval of any analysis required under the California Environmental Quality Act ("CEQA"), and only if such Required Approvals have been duly considered and approved by the City following conduct of all legally required procedures. Failure of the City to approve the Required Approvals after a public hearing thereon shall not constitute a default or a breach of the terms of this Agreement by City.~~

~~7.6 — This Agreement does not limit in any way the discretion of City in acting on any applications for the Required Approvals for the proposed Project or any portion thereof. Owner acknowledges that compliance with CEQA will be required in connection with consideration of such Required Approvals for the proposed Project or any portion thereof, and the City shall retain the discretion in accordance with CEQA and other applicable law before taking action on any such Required Approvals to (1) adopt or certify an environmental analysis of the Project or any portion thereof, prepared in accordance with CEQA, (2) identify and impose mitigation measures to mitigate significant environmental impacts, nor limit the anticipated scope of any required public improvements, (3) select other feasible alternatives to avoid significant environmental impacts, including the "no project" alternative, (4) adopt a statement of overriding considerations in accordance with Public Resources Code Section 21081(b) relative to any significant environmental impacts of the Project or any portion thereof, or implementation of any required public improvements, prior to taking final action if such significant impacts cannot otherwise be avoided, or (5) determine not to proceed with the Required Approvals or any portion thereof. Any action taken by the City in the exercise of its discretion relating to any analysis required by CEQA, or on any application for the Required Approvals required to develop and construct the Project or any portion thereof, shall not constitute a default or a breach of the terms of this Agreement by City.~~

~~85.3 This Agreement does not limit in any way the discretion of City in acting on any applications for the Required Approvals for the proposed Project or any portion thereof.~~

6. TERM; TERMINATION.

86.1 This Agreement shall be effective upon execution by all Parties.

86.2 This Agreement shall remain in effect until the soonest date that (1) the Facility is removed from underlying the McLean Property; or (2) until this Agreement is terminated as provided herein.

86.3 The Parties may terminate this Agreement upon the occurrence of any of the following conditions:

86.3.1 Mutual written agreement of all Parties, with or without conditions.

~~8.3.2 Withdrawal or denial of the Application without the Project having~~

~~commenced construction; provided, however, that termination of this Agreement under the circumstances of withdrawal of the Application shall not prohibit City, or any of the Public Entities with jurisdiction to do so, from re-imposing the requirement of executing and recording a future agreement containing substantively similar terms to this one if Owner or a successor in interest submits a future application for any type of permit contemplating development of the Property, including but not limited to a Coastal Development Permit, other development permit, or building permit.~~

~~8.4 Notwithstanding any other provision to the contrary, once construction of the Project has commenced, the indemnification provisions described herein shall survive termination of this Agreement.~~

~~9 6.3.2 Withdrawal or denial of the Application without the Project having commenced construction.~~

7. GENERAL PROVISIONS.

97.1 This Agreement shall be construed and interpreted both as to validity and to performance of the Parties in accordance with the laws of the State of California.

97.2 The sole venue for all legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be the Superior Court of the County of Santa Cruz, State of California.

97.3 The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against any Party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply.

97.4 The persons executing this Agreement on behalf of the Parties hereto warrant that (i) they are duly authorized to execute and deliver this Agreement on behalf of said Party, (ii) by so executing this Agreement, such Party is formally bound to the provisions of this Agreement, and (iii) the entering into this Agreement does not violate any provision of any other agreement to which said Party is bound.

97.5 Any modification to this Agreement must be in writing and executed by all Parties hereto.

97.6 This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute the same agreement.

//

//

Signatures are included on the following pages

DRAFT

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the day and year written below.

JOSEPH McLEAN JR. TRUST, DATED
NOVEMBER 9, 1983

Dated:

JOSEPH W. McLEAN, JR., Trustee

CITY OF CAPITOLA

Dated:

By: Jamie Goldstein
City Manager

Dated:

Approved as to form:

Samantha W. Zutler
City Attorney

COUNTY OF SANTA CRUZ

Dated:

By: Matt Machado, Deputy CAO
Director of Community Development and
Infrastructure Department

Dated:

Approved as to form:

Jason M. Heath

County Counsel

SANTA CRUZ COUNTY FLOOD
CONTROL AND WATER
CONSERVATION DISTRICT – ZONE 5

Dated:

By: Matt Machado
District Engineer

Dated:

Approved as to from:

Justin A. Graham
Assistant County Counsel
District Counsel

Notarial Acknowledgments to follow

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EXHIBIT 74

From: Moshref-Danesh, Leila J. <LMoshref@bwsllaw.com>
Sent: Wednesday, August 21, 2024 11:31 AM PDT
To: Justin Graham <Justin.Graham@santacruzcountyca.gov>
CC: Zutler, Samantha W. <SZutler@bwsllaw.com>; Jason Heath <Jason.Heath@santacruzcountyca.gov>; Herlihy, Katie(kherlihy@ci.capitola.ca.us) <kherlihy@ci.capitola.ca.us>; Kahn, Jessica <jkahn@ci.capitola.ca.us>
Subject: RE: 427 Riverview Indemnity Agreement
Attachment(s): "081424 Draft Indemnity Agreement Re 427 Riverview (ApplicantRedline) CAO.docx"

Hi Justin,

We had a productive call with the applicant's attorney, Anna DiBenedetto, last week to discuss her requested changes to the draft Indemnity Agreement. We were able to reach an understanding on most of the issues. I've updated the draft agreement that shows all of Anna's changes, with our comments added indicating which of her changes the City is inclined to reject -most of these rejections have already been explained to and accepted by Anna, as the comments indicate. If there is no comment it means the City is ok with the change. I also made additional edits in yellow highlight for ease of reference.

The applicant is of course eager to move forward as quickly as possible. Could you give us a sense of your timing to review and get back to us with your comments?

Thanks!

Leila J. Moshref-Danesh | Senior Associate
she, her, hers

Burke, Williams&Sorensen, LLP
1770 Iowa Avenue, Suite 240, Riverside, CA 92507
D 951.801.6626 | O 951.788.0100 | F 951.788.5785
lmoshref@bwsllaw.com | [vCard](#) | [Bio](#) | [LinkedIn](#) | [bwsllaw.com](#)



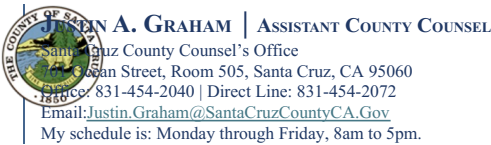
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From: Justin Graham <Justin.Graham@santacruzcountyca.gov>
Sent: Thursday, August 8, 2024 5:10 PM
To: Moshref-Danesh, Leila J. <LMoshref@bwsllaw.com>
Cc: Zutler, Samantha W. <SZutler@bwsllaw.com>; Jason Heath <Jason.Heath@santacruzcountyca.gov>
Subject: RE: 427 Riverview Indemnity Agreement

EXTERNAL

Makes sense to me. I'll look forward to your revisions and comments.

//Justin



SANTA CRUZ COUNTY COUNSEL CONFIDENTIAL COMMUNICATION
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From: Moshref-Danesh, Leila J. <LMoshref@bwsllaw.com>
Sent: Thursday, August 8, 2024 4:59 PM
To: Justin Graham <Justin.Graham@santacruzcountyca.gov>
Cc: Zutler, Samantha W. <SZutler@bwsllaw.com>; Jason Heath <Jason.Heath@santacruzcountyca.gov>
Subject: RE: 427 Riverview Indemnity Agreement

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Hi Justin,

For efficiency I suggest for our office to review the updated draft first, and then send to you for review and comment. Let us know if you have any concerns with this approach.

Thanks,
Leila

From: Anna DiBenedetto <anna@dibenedetto.law>
Sent: Thursday, August 8, 2024 3:01 PM
To: Zutler, Samantha W. <SZutler@bwslaw.com>; Moshref-Danesh, Leila J. <LMoshref@bwslaw.com>
Cc: Rae Spencer <rspencer@dibenedetto.law>; Jason Heath <Jason.Heath@santacruzcountyca.gov>; Justin Graham <Justin.Graham@santacruzcountyca.gov>; Herlihy, Katie (<kherlihy@ci.capitola.ca.us> <kherlihy@ci.capitola.ca.us>; Kahn, Jessica <jkahn@ci.capitola.ca.us>
Subject: RE: 427 Riverview Indemnity Agreement

EXTERNAL

Please see attached.

Anna DiBenedetto, Esq.
DiBENEDETTO LAW GROUP, PC
1101 Pacific Avenue, Suite 200
Santa Cruz, CA 95060
Office Tel. (831) 253-0499, Ext. 101
Direct Tel. (831) 253-0503
Fax (831) 253-0502
anna@dibenedetto.law

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From: Zutler, Samantha W. <SZutler@bwslaw.com>
Sent: Thursday, August 8, 2024 1:50 PM
To: Anna DiBenedetto <anna@dibenedetto.law>; Moshref-Danesh, Leila J. <LMoshref@bwslaw.com>
Cc: Rae Spencer <rspencer@dibenedetto.law>; Jason Heath <Jason.Heath@santacruzcountyca.gov>; Justin Graham <Justin.Graham@santacruzcountyca.gov>; Herlihy, Katie (<kherlihy@ci.capitola.ca.us> <kherlihy@ci.capitola.ca.us>; Kahn, Jessica <jkahn@ci.capitola.ca.us>
Subject: RE: 427 Riverview Indemnity Agreement

Thanks Anna. Could you please send a redline from the draft we sent over previously?

From: Anna DiBenedetto <anna@dibenedetto.law>
Sent: Thursday, August 8, 2024 1:05 PM
To: Moshref-Danesh, Leila J. <LMoshref@bwslaw.com>
Cc: Rae Spencer <rspencer@dibenedetto.law>; Zutler, Samantha W. <SZutler@bwslaw.com>; Jason Heath <Jason.Heath@santacruzcountyca.gov>; Justin Graham <Justin.Graham@santacruzcountyca.gov>; Herlihy, Katie (<kherlihy@ci.capitola.ca.us> <kherlihy@ci.capitola.ca.us>; Kahn, Jessica <jkahn@ci.capitola.ca.us>
Subject: RE: 427 Riverview Indemnity Agreement

EXTERNAL

Hi Leila, please find attached our version of the Indemnity Agreement that we believe provides the Public Entities with the indemnity and protections it seeks vis-à-vis the subject drainage facility. I've also attached the referenced exhibits. Please confirm receipt and anticipated turn around as this agreement is considered by the City as an application completeness item. Thanks very much.

Best,

Anna DiBenedetto, Esq.
DiBENEDETTO LAW GROUP, PC
1101 Pacific Avenue, Suite 200
Santa Cruz, CA 95060
Office Tel. (831) 253-0499, Ext. 101
Direct Tel. (831) 253-0503
Fax (831) 253-0502

anna@dibenedetto.law

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From: Moshref-Danesh, Leila J. <L.Moshref@bwsllaw.com>
Sent: Wednesday, June 12, 2024 11:42 AM
To: Anna DiBenedetto <anna@dibenedetto.law>
Cc: Rae Spencer <rspencer@dibenedetto.law>; Zutler, Samantha W. <SZutler@bwsllaw.com>; Jason Heath <Jason.Heath@santacruzcountyca.gov>; Justin Graham <Justin.Graham@santacruzcountyca.gov>; Herlihy, Katie (<kherlihy@ci.capitola.ca.us>) <kherlihy@ci.capitola.ca.us>; Kahn, Jessica <jkahn@ci.capitola.ca.us>
Subject: 427 Riverview Indemnity Agreement

Good Morning Anna,

Thank you for your patience as the City and County worked to draft the attached indemnity agreement. Given the novel nature of the project and the complexities associated with the culvert, we had to expand fairly significantly upon your original draft, but the outcome is an agreement that will ultimately allow the City to process your client's application.

We would be happy to set up a time to meet with you and your client if you have any questions on the agreement, once you have had a chance to review.

Thank you.

Leila Moshref-Danesh | Senior Associate

Pronouns: she, her, hers

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**RECORDING REQUESTED BY AND
WHEN RECORDED, MAIL TO:**

City of Capitola
Community Development
420 Capitola Avenue
Capitola, CA 95010

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APN NO. 035-132-01-000

The undersigned declare:
Documentary Transfer Tax is: \$0
No monetary consideration.

**DECLARATION OF COVENANTS
AND INDEMNITY AGREEMENT**

Commented [Moshref-Danesh, Leila J.1]:
The City intends to reject this deletion as the agreement contains covenants that run with the land. Have discussed with applicant's counsel and they understand the reason for the rejection.

RECITALS

WHEREAS, Joseph W. McLean, Jr., Trustee of The Joseph W. McLean Jr. Trust, established March 2, 2022 ("McLean" ~~or "Owner"~~) is the owner of that certain real property described in **Exhibit "A"** hereto ("McLean Property"); ~~and~~

WHEREAS, the McLean Property was created by a subdivision map dated April 1922 recorded in the Official Records of Santa Cruz County on May 13, 1922 in Map Book 18, Page 36 of the Santa Cruz County Records (the "Map") ~~and attached hereto as Exhibit "B," and~~

WHEREAS, Sheet 3 of the Map depicts drainage from Noble Gulch ~~and a diversion of the natural course of Noble Creek and its associated through a downstream underground~~ flume ("Flume") traversing ~~these several properties, including the McLean~~ Property; ~~and, to Soquel Creek;~~

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WHEREAS, the Flume serves to divert stormwater flows from Noble Creek underground before outletting to Soquel Creek;

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WHEREAS, the Flume is believed to be located within the bounds of an easement created by a Grant Deed dated May 10, 1922 and recorded in the Official Records of Santa Cruz County on July 11, 1922 in Volume 314 at Page 193 of the Deeds of Santa Cruz County Records ("Grant Deed"), granting to the County of Santa Cruz ("County") a permanent eight foot wide easement ~~and right of way~~ to "construct, maintain, operate, repair and renew a drainage ditch, canal or flume, for the purpose of conveying storm and drainage water (from the most easterly boundary of the property hereinafter described to the Soquel Creek)," and including all necessary and convenient means of ingress and egress thereto ("Drainage Easement"; ~~and~~). A true and correct copy of the Grant Deed is attached hereto as Exhibit "C";

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WHEREAS, ~~a true and correct copy for purposes of the Grant Deed is attached hereto as Exhibit "C"; and~~

~~WHEREAS, a this Indemnity Agreement, "Flume" refers to the portion of the flume traversing the McLean Property and "Drainage Easement burdens the Property, as depicted on page 7" refers to the portion of the Amended Preliminary Title Report by First American Title Company, prepared for said drainage easement traversing the McLean Property on November 3, 2022, a copy of which is attached hereto as Exhibit "D;" and;~~

~~WHEREAS, at an indeterminate point in time the Flume was converted into a culvert ("Culvert"), which underlies the Property within the bounds of the Drainage Easement; and~~

~~WHEREAS, the City of Capitola ("City"),~~

~~WHEREAS, the Culvert, Flume, and Drainage Easement are sometimes collectively referred to herein as the "Facility"; and~~

~~WHEREAS, City, County, and the Santa Cruz County Flood Control and Water Conservation District- Zone 5 ("Zone 5") are sometimes collectively referred to herein as "Public Entities"; and~~

WHEREAS, ~~there is a dispute between~~ at an indeterminate point in time the **Public Entities** ~~as to assert that the Flume was converted into a culvert ("Culvert"), which Public Entity, or Public Entities, owns and is responsible for the operation and maintenance~~ Culvert underlies the McLean Property within the bounds of the Drainage Easement;

~~WHEREAS, the Culvert, Flume, and Drainage Easement are sometimes collectively referred to herein as the "Facility; and" and any reference to "Facility" refers to that portion of the Facility traversing the McLean Property;~~

WHEREAS, City, County, Zone 5 and McLean are sometimes collectively referred to herein as the "Parties" ~~and individually as "Party"; and";~~

WHEREAS, one or more of the Public Entities may have an interest in any or all of the ~~Flume, Culvert and the Drainage Easement~~ Facility, but it is the Parties' intent to leave the determination of that interest unresolved by the execution of this Agreement; ~~and~~

~~WHEREAS, the Facility is not actively maintained by any Party; and~~

~~WHEREAS, the City, County and Zone 5~~ Public Entities have previously made temporary, emergency repairs to the area of the public pathway situated adjacent to the McLean Property and related to the Culvert's outfall for the purposes of preserving public safety, but no permanent repairs have been made; ~~and~~

Commented [Moshref-Danesh, Leila J.2]:
Reject deletion and keep the Title Report as an exhibit because it also serves as indirect evidence that the McLeans had notice of the easement.

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WHEREAS, on or about August 31, 2023, McLean submitted an ~~application~~ Application No. 23-0400 (“Application”) for a coastal development permit and design review (the “Required Approvals”) ~~for a proposed interior and exterior remodel and addition to demolish the an~~ existing two-story single-family residence at the Property and construct a new residence within the same footprint (the “Project”), with the first floor of the new residence to be elevated above the Federal Emergency Management Agency (“FEMA”) base flood elevation; and

Commented [Moshref-Danesh, Leila J.3]:
Reject deletion

Commented [Moshref-Danesh, Leila J.4]:
Reject deletion

~~WHEREAS, the Project also proposes to remodel the Property’s existing~~ WHEREAS, on 2024, McLean submitted a modified set of plans consisting of an interior and exterior remodel, including the existing detached garage and second floor living space, reinforcement of existing foundation with potential new footings, and detached secondary garage and its associated second story with living space, above. The remodel may entail the following: Removal and reconfiguration of interior bearing and will relocate non-bearing walls, removal of first floor exterior bearing and non-bearing walls, modification of existing window and door openings as well as additional new openings in exterior walls and a new stairwell entry way to existing second floor area, while complying with the 80% valuation to stay within the previous municipal code requirements. The project may involve potential reinforcement of existing foundation to include reinforced footings and/or new footings to accommodate bearing locations. Interior and exterior aesthetic modifications to include new siding, roofing, windows and doors, floors and wall finishes. Addition to include a new second story enclosed bridge to connect the new elevated primary residence to the remodeled detached living space unit above the existing garage; and. Resulting in an approximate 2,625 sf, 3 bedroom, 2 and ½ bath two story single family residence (the “Project”);

Commented [Moshref-Danesh, Leila J.5]:
Unclear why this project description uses the word “may” throughout. Rather than using uncertain language, have updated with a more general project description so that if inconsequential details, like siding, are modified, the Agreement does not need to be amended.

WHEREAS, as a condition to approval of the Application, the City is requiring McLean and future owners of the McLean Property to agree to indemnify, defend and hold harmless the City, County and Zone 5 from ~~(1) any damage caused to the Facility by the Project; and (2) any damage caused to the Property by the present or future condition of the Facility; and;~~

Commented [Moshref-Danesh, Leila J.6]:
This may be the updated project description, but does not reflect the application that was submitted by the applicant in August 2023. Once the applicant submits the updated plans this section will need to be updated to reflect the modified submittal and submittal date. Staff will also need to review the plans to confirm this PD matches the updated plans. ¶
Have reworded to reflect the resubmittal

WHEREAS, all Parties acknowledge that the residential construction in the Application would not normally be considered as presented given the presence of the Facility lying below and transversing the Property, but given that McLean purchased an existing single-family home on the Property overlying the Facility, has been living on the Property for a number of years, and the Project proposes merely to demolish and reconstruct within the same footprint the existing single-family home located on the Property while elevating the residential portion of the structure above the FEMA base flood elevation and relocating existing floor area to connect the elevated residence to the remodeled living space above the existing garage, basic principles of fairness allow the City to consider the Application in exchange for the promises McLean has made in this Agreement; and —

Commented [Moshref-Danesh, Leila J.7]:
Reject this deletion

WHEREAS, it is the intent of the Parties that this Agreement will allow the City to process the Application for the benefit of McLean, but that execution of this Agreement will not guarantee the approval of the Project or the Application or otherwise bind the City in any way to any future

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approval of the Application; and

WHEREAS, this Agreement is required by the City in order to continue processing the Application; and

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WHEREAS, the Parties agree that execution of this Agreement does not resolve the ownership of the Facility, or prejudice any rights or affirmative defenses that the Public Entities may have relating to determination of the ownership of the Facility or the ~~Public Entities' Parties'~~ respective rights and responsibilities in ~~the McLean Property, the Culvert, Flume or Drainage Easement~~ Facility.

Commented [Moshref-Danesh, Leila J.8]:
Reject change

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NOW THEREFORE, the Parties agree as follows:

AGREEMENT

1. INCORPORATION OF RECITALS.

1.1 The above recitals are hereby incorporated into this Agreement as though set forth in full.

1.2 The Parties agree that the above recitals are true and correct representations of the Parties' respective understanding of the circumstances giving rise to the Agreement.

2. OWNERSHIP OF THE PROPERTY.

2.1 For the purposes of this Agreement, an "Owner" means the person or entity that is the owner, holder, or beneficiary, of any interest in the ~~McLean Property~~ other than the ~~Drainage Easement~~, including but not limited to a fee simple interest, an easement, a profit, a license, a life estate, a joint tenancy, a lien, a deed-of-trust or other security interest.

2.1.1 McLean is the Owner of the ~~McLean~~ Property at the time of execution of this Agreement.

2.1.2 Upon purchase, sale, or any other conveyance of an interest in the ~~McLean~~ Property, the person or entity receiving that interest shall become an Owner and shall be bound by the terms of this Agreement and become a Party.

2.1.3 Upon alienation, sale, or transfer, of an interest in the ~~McLean~~ Property that would make a person or entity an Owner, that person or entity's Ownership shall terminate, and they shall thereafter no longer be an Owner.

2.1.4 For the purposes of this Agreement, there may be more than one Owner of the Property at any given time. Each Owner shall be jointly and severally responsible for each promise and obligation applicable to an Owner under this Agreement.

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2.2 For the purposes of this Agreement, "Ownership" shall mean the status of being an Owner.

3. INDEMNIFICATION FOR CONSTRUCTION; PROTECTION OF FACILITY.

3.1 Owner agrees to indemnify and hold harmless the Public Entities, and each of their respective officials, officers, directors, commissioners, employees, agents, and volunteers (collectively, "Indemnitees"), and defend with counsel reasonably acceptable to Indemnitees, from and against any and all liabilities, claims, actions, losses, injuries, damages, judgments, or expenses, including attorneys' fees and costs, of any kind (collectively, "Losses"), related to the Facility, ~~Noble Creek~~, neighboring properties and public infrastructure bordering the Facility, or any combination of the same, resulting from, or in any way related to Owner's performance of the Project.-

3.1.1 The Public Entities, and each of them, may tender demands for Owner's performance under this provision at any time after becoming aware of a claim, demand, or lawsuit covered by this provision.

~~3.1.2 This indemnification shall survive the termination of both this Agreement and each Owner's Ownership.~~

3.2 Owner agrees to include in the Project plans reasonable protective measures and practices for the Facility and ~~Noble Creek, including any improvements thereon~~ neighboring properties and public infrastructure bordering the Facility that could foreseeably be impacted by the Project, ~~in the Application and the Project plans~~, and, if the Application is approved by the City, to implement those protective measures and practices as part of construction of the Project.

~~3.2.1 The Public Entities shall confer regarding the adequacy of said protective measures and form a consensus regarding said measures. City shall impose said measures as conditions of approval on any permit issued pursuant to the Application.~~

~~3.2.2 Owner agrees and promises to implement said protective measures and practices if the Application is approved by the City and the Project is constructed.~~

~~3.2.3 Owner shall likewise be obligated to undertake measures to protect properties and public infrastructure bordering the Facility to the extent such properties and public infrastructure may be damaged or impacted by Owner performing the Project in, above and around the Facility.~~

3.3 McLean agrees that, as a condition of approval of any permit issued pursuant to the Application, each Public Entity shall be named as an additional insured by each contractor and consultant employed by McLean to perform any portion of the Project which would otherwise be

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Commented [Moshref-Danesh, Leila J.9]:
Reject deletion up to "and each Owner's Ownership."

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Commented [Moshref-Danesh, Leila J.10]:
Reject deletion – did discuss with applicant's attorney and explained that this is required for the Public Agencies to ensure protective measures are in place, she was ok with this approach.

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required to provide insurance to McLean or the City, or both of them, by including language substantially similar to the following in each of their respective contracts:

“Contractor agrees, to the fullest extent permitted by law, to indemnify, defend, and hold harmless the City of Capitola, County of Santa Cruz, the Santa Cruz County Flood Control and Water Conservation District – Zone 5, and each of their respective officials, officers, directors, commissioners, employees, agents, and volunteers (collectively, “Indemnitees”) from and against any and all liability, claim, action, loss, injury, damage, judgment, or expense, including attorneys’ fees and costs (“Losses”) caused by or resulting from negligence, recklessness, or willful misconduct of Contractor, Contractor’s officers, employees, agents, or subcontractors in any way related to this (construction) agreement. Contractor’s duty to indemnify and hold harmless Indemnitees shall not apply to the extent such Losses are caused by the sole or active negligence or willful misconduct of Indemnitees. Contractor’s obligation to defend shall arise regardless of any claim or assertion that Indemnitees caused or contributed to the Losses. This indemnification clause shall survive termination of this agreement.”, without waiving any rights Contractor may have to demand reimbursement of such defense costs upon a finding that the Losses were caused by the sole or active negligence or willful misconduct of any of the Indemnitees.

Commented [Moshref-Danesh, Leila J.11]:
The City has discussed with the applicant and is ok with this deletion

3.4 Owner further agrees to refrain from undertaking any action during or after construction of the Project or allowing any use of the McLean Property that might reasonably be expected to damage the Facility or interfere with its operation for its intended purposes.

4. INDEMNIFICATION FOR POST-CONSTRUCTION DAMAGE TO PROPERTY.

4.1 Beginning with the commencement of construction of the Project, and continuing in perpetuity thereafter, Owner agrees to save, indemnify, and hold harmless the Indemnitees, and each of them, and defend with counsel reasonably acceptable to the Indemnitees, from any and all Losses, caused, alleged to be caused, or in any way related to the Facility being located under, transversing and/or abutting the Property wherein the operative facts that serve as the basis for such Losses are alleged to have occurred during that Owner’s Ownership of the Property.

4.2 The Public Entities, and each of them, may tender demands for Owner’s performance under this provision at any time after becoming aware of a claim, demand, or lawsuit covered by this provision.

4.3 This indemnification shall survive the termination of both this Agreement and expiration of each Owners’ Ownership.

Commented [Moshref-Danesh, Leila J.12]:
Reject deletion. Applicant attorney ok with leaving this in provided we specify that the indemnification would apply to the Project, not the existing property. City is ok with this request.

5.4. RUNS WITH THE LAND; SUCCESSORS BOUND; RECORDATION.

5.4.1 It is the Parties’ intent, and McLean specifically promises, that this Agreement shall be binding on McLean’s successors and assigns, and McLean’s successors in interest in the

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Property, to the same extent that it is binding on McLean.

5.1.1—Therefore, for avoidance of doubt, should Owner sell or otherwise transfer the Property or any interest therein, including by sale, lease, gift, bequest, or otherwise, the person or entity receiving any interest in the Property shall become an Owner and shall have all the same obligations under this Agreement as McLean had at the time this Agreement was executed.

5.1.2—Owner shall provide a copy of this Agreement, executed by all Parties, to the City for recordation prior to the City acting on the Application. City shall thereafter record the executed copy of this Agreement in order to provide notice of its terms to Owner's successors in interest.

5.1.3—Owner shall deliver to each subsequent owner, heir, or successor in Owner's interest in the Property, a copy of this Agreement and shall inform them of their obligation to be bound by its terms prior to or at the time of transferring such interest.

5.2—The any Owner of the McLean Property and that the provisions of this Agreement shall be construed and interpreted as covenants running with the land in regard to the McLean Property.

5.2.1—This Agreement's provisions shall be binding, to the fullest extent permitted by law and equity, on all future Owners of an interest, of any nature, in the Property.

5.2.2—This Agreement's provisions shall be interpreted, to the fullest extent permitted by law and in equity, for the benefit and in favor of, and shall be enforceable by, the Public Entities, their successors and assigns, against Owner, and against Owner's successors and assigns, and every successor in interest to the Property, or any part of the Property, any interest in the Property, and any party in possession or occupancy of the Property.

6. PUBLIC ENTITIES' RIGHT TO ACCESS FACILITIES AND PERFORM VARIOUS ACTIVITIES.

6.1—Owner agrees and acknowledges The Parties agree that one or several of the Public Entities have the right to access the Facility pursuant to the terms of the Drainage Easement to construct, maintain, operate, repair and renew the Facility ("Maintenance Activities").

6.1.1—Owner agrees to provide reasonable access to the Facility for the purposes of any of the Public Entities performing Maintenance Activities.

6.1.2—Owner agrees to refrain from undertaking any action, or allowing any use of the Property, that would or could reasonably be expected to damage or harm the Facility

Commented [Moshref-Danesh, Leila J.13]:
At minimum, this provision of this section should remain in; the other provisions can be consolidated

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or impair the Public Entities' ability to perform Maintenance Activities.

6.1.3 Owner acknowledges and agrees that Owner is not entitled to any compensation from any of the Public Entities for any such Maintenance Activities, regardless of the impacts such Maintenance Activities might have on the Property.

6.2 Owner agrees to save, indemnify, and hold harmless the Indemnitees, and each of them, and defend with counsel reasonably acceptable to the Indemnitees, from any and against any and all Losses, caused, or alleged to be caused, to the Property related to the Maintenance Activities, except to the extent that such liabilities, claims, actions, losses, injuries, damages, judgments, or expenses are determined by a court of competent jurisdiction to be the sole result of the gross negligence of each of the Public Entities.

6.2.1 This indemnification shall become irrevocable upon the commencement of Project construction and shall survive the termination approval of this Agreement by the City and execution by McLean, the City will not consider this Agreement as an Application completeness issue.

74.3 The Parties agree that this Agreement may not be recorded until the Application has been approved by the City.

5. CONSIDERATION BY PUBLIC ENTITIES.

7.1 In making the promises in this Agreement, Owner specifically acknowledges and agrees that none of the Public Entities concede that they own the Facility. 5.1 All Parties agree that execution of this Agreement shall not, and may not, be utilized as evidence of any particular Public Entity's respective ownership interest in the Drainage Easement, the Culvert, or the Flume.

7.2 In making the promises in this Agreement, Owner specifically acknowledges and agrees that but for the presence of the Culvert resulting in a covered rather than an open water channel on the Property, and given the Culvert's position on the Property, the existing single-family residence on the Property could not have been constructed.

7.3 In making the promises in this Agreement, Owner specifically acknowledges and agrees that, if the Property had been undeveloped at the time that the Application was submitted, and had an existing single-family residence not been already present on the Property at the time the Application was submitted, the City would not have processed the Application based on the existence of the Culvert as both a potential safety hazard and as a barrier to accessing the Facility.

7.4 In making the promises in this Agreement, Owner acknowledges and agrees that the presence of a single-family residence on the Property substantially increases the difficulty of the Public Entities accessing the Facility and the cost of performing Maintenance Activities,

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Commented [Moshref-Danesh, Leila J.14]:
Reject deletion. Explained to applicant attorney the reason for this section, she is ok with it now. She would like the County or Zone 5 to provide her client with an update as to the status of the pipe under their property to help them evaluate the risk.

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~~including potential future upgrade and replacement of the Culvert.~~

~~7.5.2 By execution of this Agreement, the City is not committing itself to or agreeing to undertake any act or activity legally requiring the subsequent~~separate~~ independent exercise of discretion by the City. Execution of this Agreement by the City is merely an agreement to process an application(s) for the Required Approvals in accordance with the terms hereof, reserving for subsequent City action the final discretion and approval regarding the Required Approvals and all proceedings and decisions in connection therewith. Any action on the Required Approvals shall become effective only if and after certification, adoption or approval of any analysis required under the California Environmental Quality Act ("CEQA"), and only if such Required Approvals have been duly considered and approved by the City following conduct of all legally required procedures. Failure of the City to approve the Required Approvals after a public hearing thereon shall not constitute a default or a breach of the terms of this Agreement by City.~~

~~7.6 This Agreement does not limit in any way the discretion of City in acting on any applications for the Required Approvals for the proposed Project or any portion thereof. Owner acknowledges that compliance with CEQA will be required in connection with consideration of such Required Approvals for the proposed Project or any portion thereof, and the City shall retain the discretion in accordance with CEQA and other applicable law before taking action on any such Required Approvals to (1) adopt or certify an environmental analysis of the Project or any portion thereof, prepared in accordance with CEQA, (2) identify and impose mitigation measures to mitigate significant environmental impacts, nor limit the anticipated scope of any required public improvements, (3) select other feasible alternatives to avoid significant environmental impacts, including the "no project" alternative, (4) adopt a statement of overriding considerations in accordance with Public Resources Code Section 21081(b) relative to any significant environmental impacts of the Project or any portion thereof, or implementation of any required public improvements, prior to taking final action if such significant impacts cannot otherwise be avoided, or (5) determine not to proceed with the Required Approvals or any portion thereof. Any action taken by the City in the exercise of its discretion relating to any analysis required by CEQA, or on any application for the Required Approvals required to develop and construct the Project or any portion thereof, shall not constitute a default or a breach of the terms of this Agreement by City.~~

~~8.5.3 This Agreement does not limit in any way the discretion of City in acting on any applications for the Required Approvals for the proposed Project or any portion thereof.~~

6. TERM; TERMINATION.

~~8.6.1~~ This Agreement shall be effective upon execution by all Parties.

~~8.6.2~~ This Agreement shall remain in effect until the soonest date that (1) the Facility is removed from underlying the McLean Property; or (2) until this Agreement is terminated as provided herein.

Commented [Moshref-Danesh, Leila J.15]:

Applicant's attorney expressed that this language is not accurate because there is an existing SFR on the property. City is ok with deleting.

Commented [Moshref-Danesh, Leila J.16]:

Ok with CEQA discussion being removed in order to simplify the agreement, nothing in this agreement prevents the City from complying with CEQA when it considers the requested entitlements.

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~~86.3~~ The Parties may terminate this Agreement upon the occurrence of any of the following conditions:

~~86.3.1~~ Mutual written agreement of all Parties, with or without conditions.

~~8.3.2~~ Withdrawal or denial of the Application without the Project having commenced construction; provided, however, that termination of this Agreement under the circumstances of withdrawal of the Application shall not prohibit City, or any of the Public Entities with jurisdiction to do so, from re-imposing the requirement of executing and recording a future agreement containing substantively similar terms to this one if Owner or a successor in interest submits a future application for any type of permit contemplating development of the Property, including but not limited to a Coastal Development Permit, other development permit, or building permit.

~~8.4~~ Notwithstanding any other provision to the contrary, once construction of the Project has commenced, the indemnification provisions described herein shall survive termination of this Agreement.

~~9~~ ~~6.3.2~~ Withdrawal or denial of the Application without the Project having commenced construction.

7. GENERAL PROVISIONS.

~~97.1~~ This Agreement shall be construed and interpreted both as to validity and to performance of the Parties in accordance with the laws of the State of California.

~~97.2~~ The sole venue for all legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be the Superior Court of the County of Santa Cruz, State of California.

~~97.3~~ The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against any Party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply.

~~97.4~~ The persons executing this Agreement on behalf of the Parties hereto warrant that (i) they are duly authorized to execute and deliver this Agreement on behalf of said Party, (ii) by so executing this Agreement, such Party is formally bound to the provisions of this Agreement, and (iii) the entering into this Agreement does not violate any provision of any other agreement to which said Party is bound.

~~97.5~~ Any modification to this Agreement must be in writing and executed by all Parties hereto.

Commented [Moshref-Danesh, Leila J.17]:
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97.6 This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute the same agreement.

#

#

Signatures are included on the following pages

DRAFT


EXHIBIT 75

From: Justin Graham <Justin.Graham@santacruzcountyca.gov>
Sent: Friday, August 23, 2024 10:59 PM PDT
To: Moshref-Danesh, Leila J. <LMoshref@bwsllaw.com>
CC: Zutler, Samantha W. <SZutler@bwsllaw.com>; Jason Heath <Jason.Heath@santacruzcountyca.gov>; Herlihy, Katie(kherlihy@ci.capitola.ca.us) <kherlihy@ci.capitola.ca.us>; Kahn, Jessica <jkahn@ci.capitola.ca.us>
Subject: Re: 427 Riverview Indemnity Agreement
Attachment(s): "082324 Draft Indemnity Agreement Re 427 Riverview (ApplicantRedline) JAG edits.docx"

Leila:

Please see my comments and revisions. Let me know if you'd like to hop on a call next week—I have a pretty significant hearing on Thursday, but I can make time for you earlier in the week.

//Justin



Justin A. Graham | Assistant County Counsel
Santa Cruz County Counsel's Office
1000 San Street, Room 505, Santa Cruz, CA 95060
Phone: 831-454-2040 | Direct Line: 831-454-2072
Email: Justin.Graham@SantaCruzCountyCA.Gov
My schedule is: Monday through Friday, 8am to 5pm.

SANTA CRUZ COUNTY COUNSEL CONFIDENTIAL COMMUNICATION
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From:Moshref-Danesh, Leila J. <LMoshref@bwsllaw.com>
Date: Wednesday, August 21, 2024 at 11:32AM
To: Justin Graham <Justin.Graham@santacruzcountyca.gov>
Cc: Zutler, Samantha W. <SZutler@bwsllaw.com>, Jason Heath <Jason.Heath@santacruzcountyca.gov>, Herlihy, Katie (kherlihy@ci.capitola.ca.us) <kherlihy@ci.capitola.ca.us>, Kahn, Jessica <jkahn@ci.capitola.ca.us>
Subject: RE: 427 Riverview Indemnity Agreement

******CAUTION:**This is an EXTERNAL email. Exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email.****

Hi Justin,

We had a productive call with the applicant's attorney, Anna DiBenedetto, last week to discuss her requested changes to the draft Indemnity Agreement. We were able to reach an understanding on most of the issues. I've updated the draft agreement that shows all of Anna's changes, with our comments added indicating which of her changes the City is inclined to reject -most of these rejections have already been explained to and accepted by Anna, as the comments indicate. If there is no comment it means the City is ok with the change. I also made additional edits in yellow highlight for ease of reference.

The applicant is of course eager to move forward as quickly as possible. Could you give us a sense of your timing to review and get back to us with your comments?

Thanks!

Leila J. Moshref-Danesh | Senior Associate
she, her, hers

Burke, Williams & Sorensen, LLP
1770 Iowa Avenue, Suite 240, Riverside, CA 92507
D 951.801.6626 | O 951.788.0100 | F 951.788.5785
lmoshref@bwsllaw.com | [vCard](#) | [Bio](#) | [LinkedIn](#) | [bwsllaw.com](#)

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We would be happy to set up a time to meet with you and your client if you have any questions on the agreement, once you have had a chance to review.

Thank you.

Leila Moshref-Danesh | Senior Associate

Pronouns: she, her, hers

1770 Iowa Avenue, Suite 240 | Riverside, CA 92507-2479

d - 951.801.6626 | t - 951.788.0100 | f - 951.788.5785

lmoshref@bwsllaw.com | bwsllaw.com



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**RECORDING REQUESTED BY AND
WHEN RECORDED, MAIL TO:**

City of Capitola
Community Development
420 Capitola Avenue
Capitola, CA 95010

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APN NO. 035-132-01-000

The undersigned declare:

Documentary Transfer Tax is: \$0

No monetary consideration.

**DECLARATION OF COVENANTS
AND INDEMNITY AGREEMENT**

RECITALS

WHEREAS, Joseph W. McLean, Jr., Trustee of The Joseph W. McLean Jr. Trust, established March 2, 2022 ("McLean" or "Owner") is the owner of that certain real property described in Exhibit "A" hereto ("McLean Property"); and

Commented [Moshref-Danesh, Leila J.1]:
The City intends to reject this deletion as the agreement contains covenants that run with the land. Have discussed with applicant's counsel and they understand the reason for the rejection.

Commented [Justin G2R1]: Agreed

WHEREAS, the McLean Property was created by a subdivision map dated April 1922 recorded in the Official Records of Santa Cruz County on May 13, 1922 in Map Book 18, Page 36 of the Santa Cruz County Records (the "Map") and attached hereto as Exhibit "B;" and

Commented [Justin G3]: I suggest revising all references back to "Property" since this is intended to be binding on future owners

WHEREAS, Sheet 3 of the Map depicts drainage from Noblediverting Noble Guleh Creek and a diversion of the natural course of Noble Creek, and its associated through, through a downstream underground flume ("Flume") traversing theseveral properties, including the McLean Property; and, to Soquel Creek;

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Commented [Justin G4]: I would like to understand the reasoning behind this deletion. I am fairly certain that this diversion actually diverts the course of Noble Creek, to avoid having its outfall in downtown Capitola.

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WHEREAS, the Flume serves to divert stormwater flows from Noble Creek underground before outletting to Soquel Creek;

Commented [Justin G5]: We disagree with this modification. As you recall, a key issue for the County/Zone 5 is that the easement creates a right to convey water in an open channel (like a flume or ditch). An underground culvert is not within the scope of those easement rights. ¶ Also note that the Map depicts the property as it was in 1922, more than likely prior to under grounding the channel.¶ This was why we had the distinction between the "Flume" and the "Culvert" in the original document.

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WHEREAS, the Flume is believed to be located within the bounds of an easement created by a Grant Deed dated May 10, 1922 and recorded in the Official Records of Santa Cruz County on July 11, 1922 in Volume 314 at Page 193 of the Deeds of Santa Cruz County Records ("Grant Deed"), granting to the County of Santa Cruz ("County") a permanent eight foot wide easement and right of way to "construct, maintain, operate, repair and renew a drainage ditch, canal or flume, for the purpose of conveying storm and drainage water (from the most easterly boundary of the property hereinafter described to the Soquel Creek)," and including all necessary and convenient means of ingress and egress thereto ("Drainage Easement"); and"). A true and correct copy of the

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Commented [Justin G6]: See above comment re redirecting Noble Creek and re definition of "Flume"

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Grant Deed is attached hereto as **Exhibit “C”**;

WHEREAS, a true and correct copy for purposes of the Grant Deed is attached hereto as **Exhibit “C”**; and

WHEREAS, a this Indemnity Agreement, “Flume” refers to the portion of the flume traversing the McLean Property and “Drainage Easement burdens the Property, as depicted on page 7” refers to the portion of the Amended Preliminary Title Report by First American Title Company, prepared for said drainage easement traversing the McLean Property on November 3, 2022, a copy of which is attached hereto as **Exhibit “D”**; on November 3, 2022, a copy of which is attached hereto as **Exhibit “D”**; and;

WHEREAS, at an indeterminate point in time the Flume was converted into a culvert (“Culvert”), which underlies the Property within the bounds of the Drainage Easement; and

WHEREAS, the City of Capitola (“City”);

WHEREAS, the Culvert, Flume, and Drainage Easement are sometimes collectively referred to herein as the “Facility”; and

WHEREAS, City, County, and the Santa Cruz County Flood Control and Water Conservation District- Zone 5 (“Zone 5”) are sometimes collectively referred to herein as “Public Entities”; and

WHEREAS, there is a dispute between at an indeterminate point in time the Public Entities as to assert that the Flume was converted into a culvert (“Culvert”), which Public Entity, or Public Entities, owns and is responsible for the operation and maintenance Culvert underlies the McLean Property within the bounds of the Drainage Easement;

WHEREAS, the Culvert, Flume, and Drainage Easement are sometimes collectively referred to herein as the “Facility; and” and any reference to “Facility” refers to that portion of the Facility traversing the McLean Property;

WHEREAS, City, County, Zone 5 and McLean are sometimes collectively referred to herein as the “Parties” and individually as “Party”; and “and individually as “Party”;

WHEREAS, one or more of the Public Entities may have an interest in any part or all of the Flume, Culvert and the Drainage Easement Facility, and there is a dispute between them as to what the nature of their respective interests may be, but it is the Parties’ intent to leave the determination of that those interests unresolved by the execution of this Agreement; and

WHEREAS, the Facility is not maintained by any Party due to the ambiguity in its ownership; Facility is not actively maintained by any Party; and

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Commented [Moshref-Danesh, Leila J.7]:
Reject deletion and keep the Title Report as an exhibit because it also serves as indirect evidence that the McLeans had notice of the easement.

Commented [Justin G8R7]: Agreed

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Commented [Justin G9]: I’m not sure why this was deleted, but it’s useful to have a singular reference for the Parties

Commented [Justin G10]: I think this is important to leave in. I added “due to the ambiguity in its ownership” but am willing to have that deleted.

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~~WHEREAS, the City, County and Zone 5~~

~~WHEREAS, the Public Entities~~ have previously made temporary, emergency repairs to the area of the public pathway situated adjacent to the McLean Property and related to the Culvert's outfall for the purposes of preserving public safety, but no permanent repairs have been made; ~~and~~

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WHEREAS, on or about August 31, 2023, McLean submitted ~~an application~~ Application No. 23-0400 ("Application") for a coastal development permit and design review (the "Required Approvals") ~~for a proposed interior and exterior remodel and addition to demolish the~~ existing two-story single-family residence ~~at the Property and construct a new residence within the same footprint (the "Project"), with the first floor of the new residence to be elevated above the Federal Emergency Management Agency ("FEMA") base flood elevation; and~~

Commented [Moshref-Danesh, Leila J.11]:
Reject deletion

Commented [Moshref-Danesh, Leila J.12]:
Reject deletion

~~WHEREAS, the Project also proposes to remodel the Property's existing~~ WHEREAS, on ~~, 2024, McLean submitted a modified set of plans consisting of an interior and exterior remodel, including the existing detached garage and second floor living space, reinforcement of existing foundation with potential new footings, and detached secondary garage and its associated second-story with living space, above. The remodel may entail the following: Removal and reconfiguration of interior bearing and will relocate non-bearing walls, removal of first floor exterior bearing and non-bearing walls, modification of existing window and door openings as well as additional new openings in exterior walls and a new stairwell entry way to existing second floor area, while complying with the 80% valuation to stay within the previous municipal code requirements. The project may involve potential reinforcement of existing foundation to include reinforced footings and/or new footings to accommodate bearing locations. Interior and exterior aesthetic modifications to include new siding, roofing, windows and doors, floors and wall finishes. Addition to include a new second story enclosed bridge to connect the new elevated primary residence to the remodeled detached living space unit above the existing garage; and. Resulting in an approximate 2,625 sf, 3 bedroom, 2 and 1/2 bath two story single family residence (the "Project").~~

Commented [Moshref-Danesh, Leila J.13]:
Unclear why this project description uses the word "may" throughout. Rather than using uncertain language, have updated with a more general project description so that if inconsequential details, like siding, are modified, the Agreement does not need to be amended.

WHEREAS, as ~~both a completeness item for processing the Application, and~~ condition to approval of the Application, the City is requiring McLean and future owners of the McLean Property to agree to indemnify, defend and hold harmless the City, County and Zone 5 from ~~(1) any damage caused to the Facility by the Project, and (2) any damage caused to the Property by the present or future condition of the Facility, or due to the Property being located over the underground Facility; and (2) any damage caused to the Property by the present or future condition of the Facility; and;~~

Commented [Moshref-Danesh, Leila J.14]:
This may be the updated project description, but does not reflect the application that was submitted by the applicant in August 2023. Once the applicant submits the updated plans this section will need to be updated to reflect the modified submittal and submittal date. Staff will also need to review the plans to confirm this PD matches the updated plans. ¶
Have reworded to reflect the resubmittal

Commented [Moshref-Danesh, Leila J.15]:
Reject this deletion

Commented [Justin G16R15]: Agreed

~~WHEREAS, all Parties acknowledge that the residential construction in the Application would not normally be considered as presented given the presence of the Facility lying below and transversing the Property, but given that McLean purchased an existing single-family home on the Property overlying the Facility, has been living on the Property for a number of years, and the Project proposes merely to demolish and reconstruct within the same footprint the existing single-family home located on the Property while elevating the residential portion of the structure above~~

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the FEMA base flood elevation and relocating existing floor area to connect the elevated residence to the remodeled living space above the existing garage, basic principles of fairness allow the City to consider the Application in exchange for the promises McLean has made in this Agreement; and

Commented [Justin G17]: Reject this deletion.

WHEREAS, it is the intent of the Parties that this Agreement will allow the City to process the Application for the benefit of McLean, but that execution of this Agreement will not guarantee the approval of the Project or the Application or otherwise bind the City in any way to any future approval of the Application; and

WHEREAS, this Agreement is required by the City in order to continue processing the Application; and

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Commented [Justin G18]: Leila: do you want to specifically memorialize that this agreement is a completeness requirement for the Application?

WHEREAS, the Parties agree that execution of this Agreement does not resolve the ownership of the Facility, or prejudice any rights or affirmative defenses that the Public Entities may have relating to determination of the ownership of the Facility or the Public Entities' respective rights and responsibilities in the Property or McLean Property, the Culvert, Flume or Drainage Easement Facility.

Commented [Moshref-Danesh, Leila J.19]:
Reject change

Commented [Justin G20R19]: Agree

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NOW THEREFORE, the Parties agree as follows:

AGREEMENT

1. INCORPORATION OF RECITALS.

1.1 The above recitals are hereby incorporated into this Agreement as though set forth in full.

1.2 The Parties agree that the above recitals are true and correct representations of the Parties' respective understanding of the circumstances giving rise to the Agreement.

2. OWNERSHIP OF THE PROPERTY.

2.1 For the purposes of this Agreement, an "Owner" means the person or entity that is the owner, holder, or beneficiary, of any interest in the McLean Property other than the Drainage Easement, including but not limited to a fee simple interest, an easement, a profit, a license, a life estate, a joint tenancy, a lien, a deed-of-trust or other security interest.

Commented [Justin G21]: I would like to understand why this was deleted, since the Drainage Easement is (arguably) an interest in the Property

2.1.1 McLean is the Owner of the McLean Property at the time of execution of this Agreement.

2.1.2 Upon purchase, sale, or any other conveyance of an interest in the McLean

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Property, the person or entity receiving that interest shall become an Owner and shall be bound by the terms of this Agreement and become a Party.

2.1.3 Upon alienation, sale, or transfer, of an interest in the [McLean](#) Property that would make a person or entity an Owner, that person or entity's Ownership shall terminate, and they shall thereafter no longer be an Owner.

2.1.4 For the purposes of this Agreement, there may be more than one Owner of the Property at any given time. Each Owner shall be jointly and severally responsible for each promise and obligation applicable to an Owner under this Agreement.

2.2 For the purposes of this Agreement, "Ownership" shall mean the status of being an Owner.

3. **INDEMNIFICATION FOR CONSTRUCTION; PROTECTION OF FACILITY.**

3.1 Owner agrees to indemnify and hold harmless the Public Entities, and each of their respective officials, officers, directors, commissioners, employees, agents, and volunteers (collectively, "Indemnitees"), and defend with counsel reasonably acceptable to Indemnitees, from and against any and all liabilities, claims, actions, losses, injuries, damages, judgments, or expenses, including attorneys' fees and costs, of any kind (collectively, "Losses"), related to the Facility, ~~Noble Creek~~, neighboring properties and public infrastructure [bordering the Facility](#), or any combination of the same, resulting from, or in any way related to Owner's performance of the Project.-

3.1.1 The Public Entities, and each of them, may tender demands for Owner's performance under this provision at any time after becoming aware of a claim, demand, or lawsuit covered by this provision.

~~3.1.2 This indemnification shall survive the termination of both this Agreement and each Owner's Ownership.~~ [3.1.2 This indemnification shall survive the termination of both this Agreement and each Owner's Ownership.](#)

3.2 Owner agrees to include [in the Project plans reasonable](#) protective measures and practices for the Facility, ~~and as well as Noble Creek, including any improvements thereon~~ [neighboring properties and public infrastructure bordering the Facility](#) that could foreseeably be impacted by the Project, ~~in the Application and the Project plans~~, and, if the Application is approved by the City, to implement those protective measures and practices as part of construction of the Project.

~~3.2.1 The Public Entities shall confer regarding the adequacy of said protective~~

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Commented [Moshref-Danesh, Leila J.22]:
Reject deletion up to "and each Owner's Ownership."

Commented [Justin G23R22]: Agree

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~~measures and form a consensus regarding said measures. City shall impose said measures as conditions of approval on any permit issued pursuant to the Application.~~ 3.2.1 The Public Entities shall confer regarding the adequacy of said protective measures and form a consensus regarding said measures. City shall impose said measures as conditions of approval on any permit issued pursuant to the Application.

Commented [Moshref-Danesh, Leila J.24]:
Reject deletion – did discuss with applicant’s attorney and explained that this is required for the Public Agencies to ensure protective measures are in place, she was ok with this approach.

Commented [Justin G25R24]: Agree

~~3.2.2 Owner agrees and promises to implement said protective measures and practices if the Application is approved by the City and the Project is constructed.~~

~~3.2.3 Owner shall likewise be obligated to undertake measures to protect properties and public infrastructure bordering the Facility to the extent such properties and public infrastructure may be damaged or impacted by Owner performing the Project in, above and around the Facility.~~ 3.2.2 Owner agrees and promises to implement said protective measures and practices if the Application is approved by the City and the Project is constructed.

Commented [Justin G26]: Re-inserted for same reason as above

3.2.3 Owner shall likewise be obligated to undertake measures to protect properties and public infrastructure bordering the Facility to the extent such properties and public infrastructure may be damaged or impacted by Owner performing the Project in, above and around the Facility.

3.3 McLean agrees that, as a condition of approval of any permit issued pursuant to the Application, each Public Entity shall be named as an additional insured by each contractor and consultant employed by McLean to perform any portion of the Project which would otherwise be required to provide insurance to McLean or the City, or both of them, by including language substantially similar to the following in each of their respective contracts:

“Contractor agrees, to the fullest extent permitted by law, to indemnify, defend, and hold harmless the City of Capitola, County of Santa Cruz, the Santa Cruz County Flood Control and Water Conservation District – Zone 5, and each of their respective officials, officers, directors, commissioners, employees, agents, and volunteers (collectively, “Indemnitees”) from and against any and all liability, claim, action, loss, injury, damage, judgment, or expense, including attorneys’ fees and costs (“Losses”) caused by or resulting from negligence, recklessness, or willful misconduct of Contractor, Contractor’s officers, employees, agents, or subcontractors in any way related to this (construction) agreement. Contractor’s duty to indemnify and hold harmless Indemnitees shall not apply to the extent such Losses are caused by the sole ~~or active~~ gross negligence or willful misconduct of Indemnitees. Contractor’s obligation to defend shall arise regardless of any claim or assertion that Indemnitees caused or contributed to the Losses. ~~This indemnification clause~~

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~~shall survive termination of this agreement.”], without waiving any rights Contractor may have to demand reimbursement of such defense costs upon a finding that the Losses were caused by the sole or active gross negligence or willful misconduct of any of the Indemnites. This indemnification clause shall survive termination of the agreement.”~~

3.4 Owner further agrees to refrain from undertaking any action during or after construction of the Project or allowing any use of the McLean Property that might reasonably be expected to damage the Facility or interfere with its operation for its intended purposes.

~~4. INDEMNIFICATION FOR POST-CONSTRUCTION DAMAGE TO PROPERTY.~~

~~4.1 Beginning with the commencement of construction of the Project, and continuing in perpetuity thereafter, Owner agrees to save, indemnify, and hold harmless the Indemnites, and each of them, and defend with counsel reasonably acceptable to the Indemnites, from any and all Losses, caused, alleged to be caused, or in any way related to the Facility being located under, transversing and/or abutting the Property wherein the operative facts that serve as the basis for such Losses are alleged to have occurred during that Owner’s Ownership of the Property.~~

~~4.2 The Public Entities, and each of them, may tender demands for Owner’s performance under this provision at any time after becoming aware of a claim, demand, or lawsuit covered by this provision.~~

~~4.3 This indemnification shall survive the termination of both this Agreement and expiration of each Owners’ Ownership.~~

54. RUNS WITH THE LAND; SUCCESSORS BOUND; RECORDATION.

~~54.1 It is the Parties’ intent, and McLean specifically promises, that this Agreement shall be binding on McLean’s successors and assigns, and McLean’s successors in interest in the Property, to the same extent that it is binding on McLean.~~

~~5.1.1 Therefore, for avoidance of doubt, should Owner sell or otherwise transfer the Property or any interest therein, including by sale, lease, gift, bequest, or otherwise, the person or entity receiving any interest in the Property shall become an Owner and shall have all the same obligations under this Agreement as McLean had at the time this Agreement was executed.~~

~~5.1.2 Owner shall provide a copy of this Agreement, executed by all Parties, to the City for recordation prior to the City acting on the Application. City shall thereafter record the executed copy of this Agreement in order to provide notice of its terms to Owner’s successors in interest.~~

~~5.1.3 Owner shall deliver to each subsequent owner, heir, or successor in Owner’s~~

Commented [Moshref-Danesh, Leila J.27]:
The City has discussed with the applicant and is ok with this deletion

Commented [Justin G28R27]: I think the indemnification needs to survive termination otherwise you end up having to go after the homeowner for something the contractor did.

Commented [Moshref-Danesh, Leila J.29]:
Reject deletion. Applicant attorney ok with leaving this in provided we specify that the indemnification would apply to the Project, not the existing property. City is ok with this request.

Commented [Justin G30R29]: We would need to see City’s proposed language to weigh this approach.

Commented [Moshref-Danesh, Leila J.31]:
At minimum, this provision of this section should remain in; the other provisions can be consolidated

Commented [Justin G32R31]: I agree that this is a significant deletion. I would like to understand Anna’s specific concerns with including this language., since the point is to give actual notice to subsequent owners of the property.

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interest in the Property, a copy of this Agreement and shall inform them of their obligation to be bound by its terms prior to or at the time of transferring such interest.

5.2 — The any Owner of the McLean Property and that the provisions of this Agreement shall be construed and interpreted as covenants running with the land in regard to the McLean Property.

~~5.2.1 This Agreement's provisions shall be binding, to the fullest extent permitted by law and equity, on all future Owners of an interest, of any nature, in the Property.~~

~~5.2.2 This Agreement's provisions shall be interpreted, to the fullest extent permitted by law and in equity, for the benefit and in favor of, and shall be enforceable by, the Public Entities, their successors and assigns, against Owner, and against Owner's successors and assigns, and every successor in interest to the Property, or any part of the Property, any interest in the Property, and any party in possession or occupancy of the Property.~~

Commented [Justin G33]: We would like to understand the objection to including this language.

6. PUBLIC ENTITIES' RIGHT TO ACCESS FACILITIES AND PERFORM VARIOUS ACTIVITIES.

6.1 — Owner agrees and acknowledges ~~The Parties agree that one or several of the Public Entities have the right to access the Facility pursuant to the terms of the Drainage Easement to construct, maintain, operate, repair and renew the Facility ("Maintenance Activities").~~

~~6.1.1 Owner agrees to provide reasonable access to the Facility for the purposes of any of the Public Entities performing Maintenance Activities.~~

~~6.1.2 Owner agrees to refrain from undertaking any action, or allowing any use of the Property, that would or could reasonably be expected to damage or harm the Facility or impair the Public Entities' ability to perform Maintenance Activities.~~

~~6.1.3 Owner acknowledges and agrees that Owner is not entitled to any compensation from any of the Public Entities for any such Maintenance Activities, regardless of the impacts such Maintenance Activities might have on the Property.~~

6.2 — Owner agrees to save, indemnify, and hold harmless the Indemnitees, and each of them, and defend with counsel reasonably acceptable to the Indemnitees, from any and against any and all Losses, caused, or alleged to be caused, to the Property related to the Maintenance Activities, except to the extent that such liabilities, claims, actions, losses, injuries, damages, judgments, or expenses are determined by a court of competent jurisdiction to be the sole result of the gross negligence of each of the Public Entities.

6.2.1 This indemnification shall become irrevocable upon the commencement of Project

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~~construction and shall survive the termination~~approval of this Agreement by the City and execution by McLean, the City will not consider this Agreement as an Application completeness issue.

74.3 The Parties agree that this Agreement may not be recorded until the Application has been approved by the City.

5. CONSIDERATION BY PUBLIC ENTITIES.

7.1 In making the promises in this Agreement, Owner specifically acknowledges and agrees that none of the Public Entities concede that they own the Facility. 5.1 All Parties agree that execution of this Agreement shall not, and may not, be utilized as evidence of any particular Public Entity's respective ownership interest in the Drainage Easement, the Culvert, or the Flume.

7.2 In making the promises in this Agreement, Owner specifically acknowledges and agrees that but for the presence of the Culvert resulting in a covered rather than an open water channel on the Property, and given the Culvert's position on the Property, the existing single-family residence on the Property could not have been constructed. 7.2 In making the promises in this Agreement, Owner specifically acknowledges and agrees that but for the presence of the Culvert resulting in a covered rather than an open water channel on the Property, and given the Culvert's position on the Property, the existing single-family residence on the Property could not have been constructed.

7.3 In making the promises in this Agreement, Owner specifically acknowledges and agrees that, if the Property had been undeveloped at the time that the Application was submitted, and had an existing single-family residence not been already present on the Property at the time the Application was submitted, the City would not have processed the Application based on the existence of the Culvert as both a potential safety hazard and as a barrier to accessing the Facility.

7.4 In making the promises in this Agreement, Owner acknowledges and agrees that the presence of a single-family residence on the Property substantially increases the difficulty of the Public Entities accessing the Facility and the cost of performing Maintenance Activities, including potential future upgrade and replacement of the Culvert.

7.5.2 By execution of this Agreement, the City is not committing itself to or agreeing to undertake any act or activity legally requiring the ~~subsequent~~separate independent exercise of discretion by the City. Execution of this Agreement by the City is merely an agreement to process an application(s) for the Required Approvals in accordance with the terms hereof, reserving for subsequent City action the final discretion and approval regarding the Required Approvals and all proceedings and decisions in connection therewith. ~~Any action on the Required Approvals shall~~

Commented [Moshref-Danesh, Leila J.34]: Reject deletion. Explained to applicant attorney the reason for this section, she is ok with it now. She would like the County or Zone 5 to provide her client with an update as to the status of the pipe under their property to help them evaluate the risk.

Commented [Justin G35R34]: If we have a condition assessment of that culvert, I think we can provide it to her client; provided, however, the County/Zone 5 won't perform any analysis/interpretation of those reports for the applicant

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Commented [Justin G36]: This is fine so long as an executed copy is required to be provided to the City as a completeness condition for the permit

Commented [Justin G37]: This is acceptable.

Commented [Justin G38]: This language needs to stay. First, it's factually accurate. Second, it highlights the benefits of the existence of the culvert to the property

Commented [Justin G39]: What is City's position on this deletion?

Commented [Moshref-Danesh, Leila J.40]: Applicant's attorney expressed that this language is not accurate because there is an existing SFR on the property. City is ok with deleting.

Commented [Justin G41R40]: We disagree—first, this is true. Second, it highlights the benefit the property receives from the culvert, and what the public entities have given up from not asserting the easement rights

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~~become effective only if and after certification, adoption or approval of any analysis required under the California Environmental Quality Act ("CEQA"), and only if such Required Approvals have been duly considered and approved by the City following conduct of all legally required procedures. Failure of the City to approve the Required Approvals after a public hearing thereon shall not constitute a default or a breach of the terms of this Agreement by City.~~

~~7.6 This Agreement does not limit in any way the discretion of City in acting on any applications for the Required Approvals for the proposed Project or any portion thereof. Owner acknowledges that compliance with CEQA will be required in connection with consideration of such Required Approvals for the proposed Project or any portion thereof, and the City shall retain the discretion in accordance with CEQA and other applicable law before taking action on any such Required Approvals to (1) adopt or certify an environmental analysis of the Project or any portion thereof, prepared in accordance with CEQA, (2) identify and impose mitigation measures to mitigate significant environmental impacts, nor limit the anticipated scope of any required public improvements, (3) select other feasible alternatives to avoid significant environmental impacts, including the "no project" alternative, (4) adopt a statement of overriding considerations in accordance with Public Resources Code Section 21081(b) relative to any significant environmental impacts of the Project or any portion thereof, or implementation of any required public improvements, prior to taking final action if such significant impacts cannot otherwise be avoided, or (5) determine not to proceed with the Required Approvals or any portion thereof. Any action taken by the City in the exercise of its discretion relating to any analysis required by CEQA, or on any application for the Required Approvals required to develop and construct the Project or any portion thereof, shall not constitute a default or a breach of the terms of this Agreement by City.~~

~~8.5.3 This Agreement does not limit in any way the discretion of City in acting on any applications for the Required Approvals for the proposed Project or any portion thereof.~~

6. TERM; TERMINATION.

~~8.6.1~~ This Agreement shall be effective upon execution by all Parties.

~~8.6.2~~ This Agreement shall remain in effect until the soonest date that (1) the Facility is removed from underlying the MeLean Property; or (2) until this Agreement is terminated as provided herein.

~~8.6.3~~ The Parties may terminate this Agreement upon the occurrence of any of the following conditions:

~~8.6.3.1~~ Mutual written agreement of all Parties, with or without conditions.

~~8.6.3.2~~ Withdrawal or denial of the Application without the Project having commenced construction; provided, however, that termination of this Agreement under the circumstances of withdrawal of the Application shall not prohibit City, or any of the Public Entities

Commented [Moshref-Danesh, Leila J.42]:
Ok with CEQA discussion being removed in order to simplify the agreement, nothing in this agreement prevents the City from complying with CEQA when it considers the requested entitlements.

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with jurisdiction to do so, from re-imposing the requirement of executing and recording a future agreement containing substantively similar terms to this one if Owner or a successor in interest submits a future application for any type of permit contemplating development of the Property, including but not limited to a Coastal Development Permit, other development permit, or building permit.

~~8.4 Notwithstanding any other provision to the contrary, once construction of the Project has commenced, the indemnification provisions described herein shall survive termination of this Agreement.~~ 8.4 Notwithstanding any other provision to the contrary, once construction of the Project has commenced, the indemnification provisions described herein shall survive termination of this Agreement.

Commented [Moshref-Danesh, Leila J.43]:

Reject this deletion.

Commented [Justin G44R43]: Agree

9 6.3.2 Withdrawal or denial of the Application without the Project having commenced construction.

7. GENERAL PROVISIONS.

97.1 This Agreement shall be construed and interpreted both as to validity and to performance of the Parties in accordance with the laws of the State of California.

97.2 The sole venue for all legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be the Superior Court of the County of Santa Cruz, State of California.

97.3 The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against any Party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply.

97.4 The persons executing this Agreement on behalf of the Parties hereto warrant that (i) they are duly authorized to execute and deliver this Agreement on behalf of said Party, (ii) by so executing this Agreement, such Party is formally bound to the provisions of this Agreement, and (iii) the entering into this Agreement does not violate any provision of any other agreement to which said Party is bound.

97.5 Any modification to this Agreement must be in writing and executed by all Parties hereto.

97.6 This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute the same agreement.

//

#

Signatures are included on the following pages

DRAFT

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the day and year written below.

JOSEPH McLEAN JR. TRUST, DATED
NOVEMBER 9, 1983

Dated:

JOSEPH W. McLEAN, JR., Trustee

CITY OF CAPITOLA

Dated:

By: Jamie Goldstein
City Manager

Dated:

Approved as to form:

Samantha W. Zutler
City Attorney

COUNTY OF SANTA CRUZ

Dated:

By: Matt Machado, Deputy CAO
Director of Community Development and
Infrastructure Department

Dated:

Approved as to form:

Jason M. Heath

EXHIBIT 76

From: Moshref-Danesh, Leila J. <LMoshref@bwsllaw.com>
Sent: Tuesday, September 03, 2024 6:26 PM PDT
To: Justin Graham <Justin.Graham@santacruzcountyca.gov>
CC: Zutler, Samantha W. <SZutler@bwsllaw.com>; Jason Heath <Jason.Heath@santacruzcountyca.gov>; Herlihy, Katie(kherlihy@ci.capitola.ca.us) <kherlihy@ci.capitola.ca.us>; Kahn, Jessica <jkahn@ci.capitola.ca.us>
Subject: RE: 427 Riverview Indemnity Agreement
Attachment(s): "090324 Draft Indemnity Agreement Re 427 Riverview CAO CountyRedline.docx"

Hi Justin,

Thanks again for your comments and for meeting with the applicant's counsel and me last Thursday. I've updated the draft agreement based on your comments and our discussions with Anna, and will be sending a cleaned up version to her shortly, cc'ing you. I wanted to send you this version first because it includes my responses to your comments.

Let me know if you have any questions.

Leila J. Moshref-Danesh | Senior Associate
she, her, hers

Burke, Williams & Sorensen, LLP
1770 Iowa Avenue, Suite 240, Riverside, CA 92507
D 951.801.6626 | O 951.788.0100 | F 951.788.5785
lmoshref@bwsllaw.com | [vCard](#) | [Bio](#) | [LinkedIn](#) | [bwsllaw.com](#)



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From: Justin Graham <Justin.Graham@santacruzcountyca.gov>
Sent: Friday, August 23, 2024 10:59 PM
To: Moshref-Danesh, Leila J. <LMoshref@bwsllaw.com>
Cc: Zutler, Samantha W. <SZutler@bwsllaw.com>; Jason Heath <Jason.Heath@santacruzcountyca.gov>; Herlihy, Katie (kherlihy@ci.capitola.ca.us) <kherlihy@ci.capitola.ca.us>; Kahn, Jessica <jkahn@ci.capitola.ca.us>
Subject: Re: 427 Riverview Indemnity Agreement

EXTERNAL

Leila:

Please see my comments and revisions. Let me know if you'd like to hop on a call next week—I have a pretty significant hearing on Thursday, but I can make time for you earlier in the week.

//Justin

 **Justin A. Graham | Assistant County Counsel**
Santa Cruz County Counsel's Office
1000 Mission Street, Room 505, Santa Cruz, CA 95060
Phone: 831-454-2040 | Direct Line: 831-454-2072
Email: Justin.Graham@SantaCruzCountyCA.Gov
My schedule is: Monday through Friday, 8am to 5pm.

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From: Moshref-Danesh, Leila J. <LMoshref@bwsllaw.com>
Date: Wednesday, August 21, 2024 at 11:32AM
To: Justin Graham <Justin.Graham@santacruzcountyca.gov>
Cc: Zutler, Samantha W. <SZutler@bwsllaw.com>; Jason Heath <Jason.Heath@santacruzcountyca.gov>; Herlihy, Katie (kherlihy@ci.capitola.ca.us) <kherlihy@ci.capitola.ca.us>; Kahn, Jessica <jkahn@ci.capitola.ca.us>
Subject: RE: 427 Riverview Indemnity Agreement

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Hi Justin,

We had a productive call with the applicant's attorney, Anna DiBenedetto, last week to discuss her requested changes to the draft Indemnity Agreement. We were able to reach an understanding on most of the issues. I've updated the draft agreement that shows all of Anna's changes, with our comments added indicating which of her changes the City is inclined to reject -most of these rejections have already been explained to and accepted by Anna, as the comments indicate. If there is no comment it means the City is ok with the change. I also made additional edits in yellow highlight for ease of reference.

The applicant is of course eager to move forward as quickly as possible. Could you give us a sense of your timing to review and get back to us with your comments?

Thanks!

Leila J. Moshref-Danesh | Senior Associate
she, her, hers

Burke, Williams & Sorensen, LLP
1770 Iowa Avenue, Suite 240, Riverside, CA 92507
D 951.801.6626 | O 951.788.0100 | F 951.788.5785
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From: Justin Graham <Justin.Graham@santacruzcountyca.gov>
Sent: Thursday, August 8, 2024 5:10 PM
To: Moshref-Danesh, Leila J. <L.Moshref@bwsllaw.com>
Cc: Zutler, Samantha W. <S.Zutler@bwsllaw.com>; Jason Heath <Jason.Heath@santacruzcountyca.gov>
Subject: RE: 427 Riverview Indemnity Agreement

EXTERNAL

Makes sense to me. I'll look forward to your revisions and comments.

//Justin

 **Justin A. Graham** | Assistant County Counsel
Santa Cruz County Counsel's Office
1000 Ocean Street, Room 505, Santa Cruz, CA 95060
Phone: 831-454-2040 | Direct Line: 831-454-2072
Email: Justin.Graham@SantaCruzCountyCA.Gov
My schedule is: Monday through Friday, 8am to 5pm.

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From: Moshref-Danesh, Leila J. <L.Moshref@bwsllaw.com>
Sent: Thursday, August 8, 2024 4:59 PM
To: Justin Graham <Justin.Graham@santacruzcountyca.gov>
Cc: Zutler, Samantha W. <S.Zutler@bwsllaw.com>; Jason Heath <Jason.Heath@santacruzcountyca.gov>
Subject: RE: 427 Riverview Indemnity Agreement

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Hi Justin,

For efficiency I suggest for our office to review the updated draft first, and then send to you for review and comment. Let us know if you have any concerns with this approach.

Thanks,
Leila

From: Anna DiBenedetto <anna@dibenedetto.law>
Sent: Thursday, August 8, 2024 3:01 PM
To: Zutler, Samantha W. <SZutler@bwsllaw.com>; Moshref-Danesh, Leila J. <LMoshref@bwsllaw.com>
Cc: Rae Spencer <rspencer@dibenedetto.law>; Jason Heath <Jason.Heath@santacruzcountyca.gov>; Justin Graham <Justin.Graham@santacruzcountyca.gov>; Herlihy, Katie (<kherlihy@ci.capitola.ca.us> <kherlihy@ci.capitola.ca.us>; Kahn, Jessica <jkahn@ci.capitola.ca.us>
Subject: RE: 427 Riverview Indemnity Agreement

[EXTERNAL]

Please see attached.

Anna DiBenedetto, Esq.
DiBENEDETTO LAW GROUP, PC
1101 Pacific Avenue, Suite 200
Santa Cruz, CA 95060
Office Tel. (831) 253-0499, Ext. 101
Direct Tel. (831) 253-0503
Fax (831) 253-0502
anna@dibenedetto.law

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From: Zutler, Samantha W. <SZutler@bwsllaw.com>
Sent: Thursday, August 8, 2024 1:50 PM
To: Anna DiBenedetto <anna@dibenedetto.law>; Moshref-Danesh, Leila J. <LMoshref@bwsllaw.com>
Cc: Rae Spencer <rspencer@dibenedetto.law>; Jason Heath <Jason.Heath@santacruzcountyca.gov>; Justin Graham <Justin.Graham@santacruzcountyca.gov>; Herlihy, Katie (<kherlihy@ci.capitola.ca.us> <kherlihy@ci.capitola.ca.us>; Kahn, Jessica <jkahn@ci.capitola.ca.us>
Subject: RE: 427 Riverview Indemnity Agreement

Thanks Anna. Could you please send a redline from the draft we sent over previously?

From: Anna DiBenedetto <anna@dibenedetto.law>
Sent: Thursday, August 8, 2024 1:05 PM
To: Moshref-Danesh, Leila J. <LMoshref@bwsllaw.com>
Cc: Rae Spencer <rspencer@dibenedetto.law>; Zutler, Samantha W. <SZutler@bwsllaw.com>; Jason Heath <Jason.Heath@santacruzcountyca.gov>; Justin Graham <Justin.Graham@santacruzcountyca.gov>; Herlihy, Katie (<kherlihy@ci.capitola.ca.us> <kherlihy@ci.capitola.ca.us>; Kahn, Jessica <jkahn@ci.capitola.ca.us>
Subject: RE: 427 Riverview Indemnity Agreement

[EXTERNAL]

Hi Leila, please find attached our version of the Indemnity Agreement that we believe provides the Public Entities with the indemnity and protections it seeks vis-à-vis the subject drainage facility. I've also attached the referenced exhibits. Please confirm receipt and anticipated turn around as this agreement is considered by the City as an application completeness item. Thanks very much.

Best,

Anna DiBenedetto, Esq.
DiBENEDETTO LAW GROUP, PC
1101 Pacific Avenue, Suite 200
Santa Cruz, CA 95060
Office Tel. (831) 253-0499, Ext. 101
Direct Tel. (831) 253-0503
Fax (831) 253-0502
anna@dibenedetto.law

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From: Moshref-Danesh, Leila J. <L.Moshref@bwsllaw.com>
Sent: Wednesday, June 12, 2024 11:42 AM
To: Anna DiBenedetto <anna@dibenedetto.law>
Cc: Rae Spencer <rspencer@dibenedetto.law>; Zutler, Samantha W. <SZutler@bwsllaw.com>; Jason Heath <Jason.Heath@santacruzcountyca.gov>; Justin Graham <Justin.Graham@santacruzcountyca.gov>; Herlihy, Katie (<kherlihy@ci.capitola.ca.us>) <kherlihy@ci.capitola.ca.us>; Kahn, Jessica <jkahn@ci.capitola.ca.us>
Subject: 427 Riverview Indemnity Agreement

Good Morning Anna,

Thank you for your patience as the City and County worked to draft the attached indemnity agreement. Given the novel nature of the project and the complexities associated with the culvert, we had to expand fairly significantly upon your original draft, but the outcome is an agreement that will ultimately allow the City to process your client's application.

We would be happy to set up a time to meet with you and your client if you have any questions on the agreement, once you have had a chance to review.

Thank you.

Leila Moshref-Danesh | Senior Associate

Pronouns: she, her, hers

1770 Iowa Avenue, Suite 240 | Riverside, CA 92507-2479

d - 951.801.6626 | t - 951.788.0100 | f - 951.788.5785

lmoshref@bwsllaw.com | bwsllaw.com



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**RECORDING REQUESTED BY AND
WHEN RECORDED, MAIL TO:**

City of Capitola
Community Development
420 Capitola Avenue
Capitola, CA 95010
EXEMPT FROM RECORDING FEES

APN NO. 035-132-01-000

The undersigned declare:
Documentary Transfer Tax is: \$0
No monetary consideration.

INDEMNITY AGREEMENT

RECITALS

WHEREAS, Joseph W. McLean, Jr., Trustee of The Joseph W. McLean Jr. Trust, established March 2, 2022 (“McLean” or “Owner”) is the owner of that certain real property described in **Exhibit “A”** hereto (“Property”);

WHEREAS, the Property was created by a subdivision map dated April 1922 recorded in the Official Records of Santa Cruz County on May 13, 1922 in Map Book 18, Page 36 of the Santa Cruz County Records (the “Map”) and attached hereto as **Exhibit “B”**;

WHEREAS, Sheet 3 of the Map depicts drainage from Noble Creek **through a downstream flume (“Flume”)** traversing several properties, including the McLean Property, to Soquel Creek;

WHEREAS, the Flume is believed to be located within the bounds of an easement created by a Grant Deed dated May 10, 1922 and recorded in the Official Records of Santa Cruz County on July 11, 1922 in Volume 314 at Page 193 of the Deeds of Santa Cruz County Records (“Grant Deed”), granting to the County of Santa Cruz (“County”) a permanent eight foot wide easement and right of way to “construct, maintain, operate, repair and renew a drainage ditch, canal or flume, for the purpose of conveying storm and drainage water (from the most easterly boundary of the property hereinafter described to the Soquel Creek),” and including all necessary and convenient means of ingress and egress thereto (“Drainage Easement”). A true and correct copy of the Grant Deed is attached hereto as **Exhibit “C”**;

WHEREAS, for purposes of this Indemnity Agreement, “Flume” refers to the portion of the flume traversing the McLean Property and “Drainage Easement” refers to the portion of said drainage easement traversing the Property;

Commented [Justin G1]: I would like to understand the reasoning behind this deletion. I am fairly certain that this diversion actually diverts the course of Noble Creek, to avoid having its outfall in downtown Capitola.

Commented [Moshref-Danesh, Leila J.2R1]: Clarified and update. Since the map doesn’t show the actual diversion, just the facility, have left that out.

Commented [Justin G3]: We disagree with this modification. As you recall, a key issue for the County/Zone 5 is that the easement creates a right to convey water in an open channel (like a flume or ditch). An underground culvert is not within the scope of those easement rights. ¶ Also note that the Map depicts the property as it was in 1922, more than likely prior to under grounding the channel.¶ This was why we had the distinction between the “Flume” and the “Culvert” in the original document.

Commented [Moshref-Danesh, Leila J.4R3]: Removed reference to underground facility

WHEREAS, the Drainage Easement and Flume burden the Property, as depicted on page 7 of the Amended Preliminary Title Report by First American Title Company, prepared for the Property on November 3, 2022, a copy of which is attached hereto as **Exhibit “D;”**

WHEREAS, at an indeterminate point in time the Flume was converted into a culvert (“Culvert”), which Culvert underlies the Property within the bounds of the Drainage Easement;

WHEREAS, the Culvert, Flume, and Drainage Easement are sometimes collectively referred to herein as the “Facility” and any reference to “Facility” refers to that portion of the Facility traversing the McLean Property;

WHEREAS, City, County, and the Santa Cruz County Flood Control and Water Conservation District- Zone 5 (“Zone 5”) are sometimes collectively referred to herein as “Public Entities”;

WHEREAS, City, County, Zone 5 and McLean are sometimes collectively referred to herein as the “Parties” and individually as “Party”;

WHEREAS, one or more of the Public Entities may have an interest in any part or all of the Facility, and there is a dispute between them as to what the nature of their respective interests may be, but it is the Parties’ intent to leave the determination of those interests unresolved by the execution of this Agreement;

WHEREAS, the Facility is not maintained by any Party;

WHEREAS, the Public Entities have previously made temporary emergency repairs to the area of the public pathway situated adjacent to the Property and related to the Culvert’s outfall for the purposes of preserving public safety, but no permanent repairs have been made;

WHEREAS, on or about August 31, 2023, McLean submitted Application No. 23-0400 (“Application”) for a coastal development permit and design review (the “Required Approvals”) to demolish the existing two story single family residence at the Property and construct a new residence within the same footprint, with the first-floor of the new residence to be elevated above the Federal Emergency Management Agency (“FEMA”) base flood elevation;

WHEREAS, on [REDACTED], 2024, McLean submitted a modified project application consisting of an interior and exterior remodel, including the existing detached garage and construction of a new second floor living space, reinforcement of existing foundation with potential new footings, and a new second story enclosed bridge to connect the primary residence to the proposed living space above the garage, resulting in an approximate 2,625 sf, 3 bedroom, 2 and ½ bath two story single family residence (the “Project”);

Commented [Justin G5]: I’m not sure why this was deleted, but it’s useful to have a singular reference for the Parties

Commented [Moshref-Danesh, Leila J.6R5]: reverted

Commented [Justin G7]: I think this is important to leave in. I added “due to the ambiguity in its ownership” but am willing to have that deleted.

Commented [Moshref-Danesh, Leila J.8R7]: Reverted, aside from ambiguous ownership as that’s likely outside the scope of this agreement

Commented [Moshref-Danesh, Leila J.9]: This may be the updated project description, but does not reflect the application that was submitted by the applicant in August 2023. Once the applicant submits the updated plans this section will need to be updated to reflect the modified submittal and submittal date. Staff will also need to review the plans to confirm this PD matches the updated plans. ¶
¶
Have reworded to reflect the resubmittal

WHEREAS, as both a completeness item for processing the Application, and condition to approval of the Application, the City is requiring McLean to obtain permission from the Public Entities to erect a structure on top of the Drainage Easement (the "Clearances");

Whereas, in order to provide the Clearances, the Public Entities are requiring McLean and future Owners of the Property to agree to indemnify, defend and hold harmless the City, County and Zone 5 Public Agencies from (1) any damage caused to the Facility by the Project, and (2) any damage caused to the Property by the present or future condition of the Facility, or due to the Property being located over the underground Facility;

WHEREAS, all Parties acknowledge that the residential construction in the Application would not normally be considered as presented given the presence of the Facility lying below and transversing the Property, but given that McLean purchased an existing single-family home on the Property overlying the Facility, has been living on the Property for a number of years, and the Project proposes merely to demolish and reconstruct within the same footprint the existing single-family home located on the Property while elevating the residential portion of the structure above the FEMA base flood elevation, basic principles of fairness allow the City to consider the Application in exchange for the promises McLean has made in this Agreement;

WHEREAS, it is the intent of the Parties that this Agreement will allow the City to process the Application for the benefit of McLean, but that execution of this Agreement will not guarantee the approval of the Project or the Application or otherwise bind the City in any way to any future approval of the Application; and

WHEREAS, the Parties agree that execution of this Agreement does not resolve the ownership of the Facility, or prejudice any rights or affirmative defenses that the Public Entities may have relating to determination of the ownership of the Facility or the Public Entities' respective rights and responsibilities in the Property or Facility.

NOW THEREFORE, the Parties agree as follows:

AGREEMENT

1. INCORPORATION OF RECITALS.

1.1 The above recitals are hereby incorporated into this Agreement as though set forth in full.

1.2 The Parties agree that the above recitals are true and correct representations of the Parties' respective understanding of the circumstances giving rise to the Agreement.

2. OWNERSHIP OF THE PROPERTY.

2.1 For the purposes of this Agreement, an "Owner" means the person or entity that is

the owner, holder, or beneficiary, of any interest in the **Property other than the Drainage Easement**, including but not limited to a fee simple interest, an easement, a profit, a license, a life estate, a joint tenancy, a lien, a deed-of-trust or other security interest.

Commented [Justin G10]: I would like to understand why this was deleted, since the Drainage Easement is (arguably) an interest in the Property

Commented [Moshref-Danesh, Leila J.11R10]: Reverted

2.1.1 McLean is the Owner of the Property at the time of execution of this Agreement.

2.1.2 Upon purchase, sale, or any other conveyance of an interest in the Property, the person or entity receiving that interest shall become an Owner and shall be bound by the terms of this Agreement and become a Party.

2.1.3 Upon alienation, sale, or transfer, of an interest in the Property that would make a person or entity an Owner, that person or entity's Ownership shall terminate, and they shall thereafter no longer be an Owner.

2.1.4 For the purposes of this Agreement, there may be more than one Owner of the Property at any given time. Each Owner shall be jointly and severally responsible for each promise and obligation applicable to an Owner under this Agreement.

2.2 For the purposes of this Agreement, "Ownership" shall mean the status of being an Owner.

3. INDEMNIFICATION FOR CONSTRUCTION; PROTECTION OF FACILITY.

3.1 Owner agrees to indemnify and hold harmless the Public Entities, and each of their respective officials, officers, directors, commissioners, employees, agents, and volunteers (collectively, "Indemnitees"), and defend with counsel reasonably acceptable to Indemnitees, from and against any and all liabilities, claims, actions, losses, injuries, damages, judgments, or expenses, including attorneys' fees and costs, of any kind (collectively, "Losses"), related to the Facility, neighboring properties and public infrastructure bordering the Facility, or any combination of the same, resulting from, or in any way related to Owner's performance of the Project.

3.1.1 The Public Entities, and each of them, may tender demands for Owner's performance under this provision at any time after becoming aware of a claim, demand, or lawsuit covered by this provision.

3.1.2 This indemnification shall survive the termination of both this Agreement and each Owner's Ownership.

3.2 Owner agrees to include in the Project plans reasonable protective measures and practices for the Facility, as well as neighboring properties and public infrastructure bordering the Facility that could foreseeably be impacted by the Project and, if the Application is approved by

the City, to implement those protective measures and practices as part of construction of the Project.

3.2.1 The Public Entities shall confer regarding the adequacy of said protective measures and form a consensus regarding said measures. City shall impose said measures as conditions of approval on any permit issued pursuant to the Application.

3.2.2 Owner agrees and promises to implement said protective measures and practices if the Application is approved by the City and the Project is constructed.

3.2.3 Owner shall likewise be obligated to undertake measures to protect properties and public infrastructure bordering the Facility to the extent such properties and public infrastructure may be damaged or impacted by Owner performing the Project in, above and around the Facility.

Commented [Justin G12]: Re-inserted

3.3 McLean agrees that, as a condition of approval of any permit issued pursuant to the Application, each Public Entity shall be named as an additional insured by each contractor and consultant employed by McLean to perform any portion of the Project which would otherwise be required to provide insurance to McLean or the City, or both of them, by including language substantially similar to the following in each of their respective contracts:

“Contractor agrees, to the fullest extent permitted by law, to indemnify, defend, and hold harmless the City of Capitola, County of Santa Cruz, the Santa Cruz County Flood Control and Water Conservation District – Zone 5, and each of their respective officials, officers, directors, commissioners, employees, agents, and volunteers (collectively, “Indemnitees”) from and against any and all liability, claim, action, loss, injury, damage, judgment, or expense, including attorneys’ fees and costs (“Losses”) caused by or resulting from negligence, recklessness, or willful misconduct of Contractor, Contractor’s officers, employees, agents, or subcontractors in any way related to this (construction) agreement. Contractor’s duty to indemnify and hold harmless Indemnitees shall not apply to the extent such Losses are caused by the sole ~~or active~~ gross negligence or willful misconduct of Indemnitees. Contractor’s obligation to defend shall arise regardless of any claim or assertion that Indemnitees caused or contributed to the Losses, without waiving any rights Contractor may have to demand reimbursement of such defense costs upon a finding that the Losses were caused by the sole ~~or active~~ gross negligence or willful misconduct of any of the Indemnitees. This indemnification clause shall survive termination of the agreement.”

Commented [Moshref-Danesh, Leila J.13]:
The City has discussed with the applicant and is ok with this deletion

Commented [Justin G14R13]: I think the indemnification needs to survive termination otherwise you end up having to go after the homeowner for something the contractor did.

Commented [Moshref-Danesh, Leila J.15R13]: Reverted

Commented [Moshref-Danesh, Leila J.16]:
Deletion rejected by County

3.4 Owner further agrees to refrain from undertaking any action during or after construction of the Project or allowing any use of the Property that might reasonably be expected to damage the Facility or interfere with its operation for its intended purposes.

4. **INDEMNIFICATION FOR POST-CONSTRUCTION DAMAGE TO PROPERTY.**

4.1 Beginning with the commencement of construction of the Project, and continuing in perpetuity thereafter, Owner agrees to save, indemnify, and hold harmless the Indemnitees, and each of them, and defend with counsel reasonably acceptable to the Indemnitees, from any and all Losses, caused, alleged to be caused, or in any way related to the Facility being located under, transversing and/or abutting the ~~Property~~ Project wherein the operative facts that serve as the basis for such Losses are alleged to have occurred during that Owner's Ownership of the Property.

4.2 The Public Entities, and each of them, may tender demands for Owner's performance under this provision at any time after becoming aware of a claim, demand, or lawsuit covered by this provision.

4.3 This indemnification shall survive the termination of both this Agreement and expiration of each Owners' Ownership.

5. RUNS WITH THE LAND; SUCCESSORS BOUND; RECORDATION.

5.1 It is the Parties' intent, and McLean specifically promises, that this Agreement shall be binding on McLean's successors and assigns, and McLean's successors in interest in the Property, to the same extent that it is binding on McLean.

~~5.1.1 Therefore, for avoidance of doubt, should Owner sell or otherwise transfer the Property or any interest therein, including by sale, lease, gift, bequest, or otherwise, the person or entity receiving any interest in the Property shall become an Owner and shall have all the same obligations under this Agreement as McLean had at the time this Agreement was executed.~~

5.1.2 Owner shall provide a copy of this Agreement, executed by all Parties, to the City ~~for recordation~~ prior to the City ~~acting on~~ considering the Application ~~to be complete~~. ~~City shall thereafter record the executed copy of this Agreement in order to provide notice of its terms to Owner's successors in interest.~~

~~5.1.3 Owner shall deliver to each subsequent owner, heir, or successor in Owner's interest in the Property, a copy of this Agreement and shall inform them of their obligation to be bound by its terms prior to or at the time of transferring such interest.~~

5.2 The provisions of this Agreement shall be construed and interpreted as covenants running with the land in regard to the Property.

~~5.2.1 This Agreement's provisions shall be binding, to the fullest extent permitted by law and equity, on all future Owners of an interest, of any nature, in the Property.~~

~~5.2.2 This Agreement's provisions shall be interpreted, to the fullest extent~~

Commented [Moshref-Danesh, Leila J.17]:
Reject deletion. Applicant attorney ok with leaving this in provided we specify that the indemnification would apply to the Project, not the existing property. City is ok with this request.

Commented [Justin G18R17]: We would need to see City's proposed language to weigh this approach.

Commented [Moshref-Danesh, Leila J.19R17]: The existing language already provides for this, so just made one change from Property to Project

Commented [Moshref-Danesh, Leila J.20]:
Moved this to the General terms below

Commented [Moshref-Danesh, Leila J.21]:
County would like to understand your clients' specific concerns with the rest of this language

~~permitted by law and in equity, for the benefit and in favor of, and shall be enforceable by, the Public Entities, their successors and assigns, against Owner, and against Owner's successors and assigns, and every successor in interest to the Property, or any part of the Property, any interest in the Property, and any party in possession or occupancy of the Property.~~

Commented [Justin G22]: We would like to understand the objection to including this language.

6. PUBLIC ENTITIES' RIGHT TO ACCESS FACILITIES AND PERFORM VARIOUS ACTIVITIES.

6.1 Owner agrees and acknowledges that one or several of the Public Entities have the right to access the Facility pursuant to the terms of the Drainage Easement to construct, maintain, operate, repair and renew the Facility ("Maintenance Activities").

6.1.1 Owner agrees to provide reasonable access to the Facility for the purposes of any of the Public Entities performing Maintenance Activities.

6.1.2 Owner agrees to refrain from undertaking any action, or allowing any use of the Property, that would or could reasonably be expected to damage or harm the Facility or impair the Public Entities' ability to perform Maintenance Activities.

6.1.3 Owner acknowledges and agrees that Owner is not entitled to any compensation from any of the Public Entities for any such Maintenance Activities, regardless of the impacts such Maintenance Activities might have on the Property.

6.2 Owner agrees to save, indemnify, and hold harmless the Indemnitees, and each of them, and defend with counsel reasonably acceptable to the Indemnitees, from any and against any and all Losses, caused, or alleged to be caused, to the Property related to the Maintenance Activities, except to the extent that such liabilities, claims, actions, losses, injuries, damages, judgments, or expenses are determined by a court of competent jurisdiction to be the sole result of the gross negligence of each of the Public Entities.

6.2.1 This indemnification shall become irrevocable upon the commencement of Project construction and shall survive the termination of this Agreement.

~~6.2.2 The Parties agree that this Agreement may not be recorded until the Application has been approved by the City.~~

Commented [Justin G23]: This is fine so long as an executed copy is required to be provided to the City as a completeness condition for the permit

7. CONSIDERATION BY PUBLIC ENTITIES.

7.1 All Parties agree that execution of this Agreement shall not, and may not, be utilized as evidence of any particular Public Entity's respective ownership interest in the Drainage Easement, the Culvert, or the Flume.

Commented [Moshref-Danesh, Leila J.24R23]: Dealt with in sections 4 and 9

7.2 In making the promises in this Agreement, Owner specifically acknowledges and agrees that but for the presence of the Culvert resulting in a covered rather than an open water channel on the Property, and given the Culvert's position on the Property, the existing single-family residence on the Property could not have been constructed.

Commented [Justin G25]: This language needs to stay. First, it's factually accurate. Second, it highlights the benefits of the existence of the culvert to the property

7.3 In making the promises in this Agreement, Owner specifically acknowledges and agrees that, if the Property had been undeveloped at the time that the Application was submitted, and had an existing single-family residence not been already present on the Property at the time the Application was submitted, the City would not have processed the Application based on the existence of the Culvert as both a potential safety hazard and as a barrier to accessing the Facility.

Commented [Moshref-Danesh, Leila J.26R25]: Reverted

7.4 In making the promises in this Agreement, Owner acknowledges and agrees that the presence of a single-family residence on the Property substantially increases the difficulty of the Public Entities accessing the Facility and the cost of performing Maintenance Activities, including potential future upgrade and replacement of the Culvert.

Commented [Justin G27]: What is City's position on this deletion?

Commented [Moshref-Danesh, Leila J.28R27]: Reverted

7.5 By execution of this Agreement, the City is not committing itself to or agreeing to undertake any act or activity requiring the separate independent exercise of discretion by the City. Execution of this Agreement by the City is merely an agreement to process an application(s) for the Required Approvals in accordance with the terms hereof, reserving for subsequent City action the final discretion and approval regarding the Required Approvals and all proceedings and decisions in connection therewith. Any action on the Required Approvals shall become effective only if and after certification, adoption or approval of any analysis required under the California Environmental Quality Act ("CEQA"), and only if such Required Approvals have been duly considered and approved by the City following conduct of all legally required procedures. Failure of the City to approve the Required Approvals after a public hearing thereon shall not constitute a default or a breach of the terms of this Agreement by City.

Commented [Moshref-Danesh, Leila J.29]: Applicant's attorney expressed that this language is not accurate because there is an existing SFR on the property. City is ok with deleting.

Commented [Justin G30R29]: We disagree—first, this is true. Second, it highlights the benefit the property receives from the culvert, and what the public entities have given up from not asserting the easement rights

Commented [Moshref-Danesh, Leila J.31R29]: Reverted

Commented [Moshref-Danesh, Leila J.32]: County requests this language remain

7.6 This Agreement does not limit in any way the discretion of City in acting on any applications for the Required Approvals for the proposed Project or any portion thereof.

8. TERM; TERMINATION.

8.1 This Agreement shall be effective upon execution by all Parties.

8.2 This Agreement shall remain in effect until the soonest date that (1) the Facility is removed from underlying the Property; or (2) until this Agreement is terminated as provided herein.

8.3 The Parties may terminate this Agreement upon the occurrence of any of the following conditions:

8.3.1 Mutual written agreement of all Parties, with or without conditions.

8.3.2 Withdrawal or denial of the Application without the Project having commenced construction.

8.4 Notwithstanding any other provision to the contrary, once construction of the Project has commenced, the indemnification provisions described herein shall survive termination of this Agreement.

9. GENERAL PROVISIONS.

9.1

~~6.2.2~~ The Parties agree that this Agreement Upon Project approval, the City shall record or cause to be recorded this Agreement with the Santa Cruz County Recorder's office. If Project is not approved, City shall not record this Agreement. ~~may not be recorded until the Application has been approved by the City.~~

9.24 This Agreement shall be construed and interpreted both as to validity and to performance of the Parties in accordance with the laws of the State of California.

9.32 The sole venue for all legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be the Superior Court of the County of Santa Cruz, State of California.

9.43 The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against any Party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply.

9.54 The persons executing this Agreement on behalf of the Parties hereto warrant that (i) they are duly authorized to execute and deliver this Agreement on behalf of said Party, (ii) by so executing this Agreement, such Party is formally bound to the provisions of this Agreement, and (iii) the entering into this Agreement does not violate any provision of any other agreement to which said Party is bound.

9.65 Any modification to this Agreement must be in writing and executed by all Parties hereto.

9.76 This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute the same agreement.

//

//

Signatures are included on the following pages

Commented [Justin G33]: This is fine so long as an executed copy is required to be provided to the City as a completeness condition for the permit

Commented [Moshref-Danesh, Leila J.34R33]: Dealt with above

EXHIBIT 77

From: Moshref-Danesh, Leila J. <LMoshref@bwsllaw.com>
Sent: Tuesday, September 03, 2024 6:45 PM PDT
To: Anna DiBenedetto <anna@dibenedetto.law>
CC: Rae Spencer <rspencer@dibenedetto.law>; Zutler, Samantha W. <SZutler@bwsllaw.com>; Justin Graham <Justin.Graham@santacruzcountyca.gov>; Jason Heath <Jason.Heath@santacruzcountyca.gov>; Herlihy, Katie(kherlihy@ci.capitola.ca.us) <kherlihy@ci.capitola.ca.us>; Kahn, Jessica <jkahn@ci.capitola.ca.us>
Subject: RE: 427 Riverview Indemnity Agreement
Attachment(s): "090324 Draft Indemnity Agreement Re 427 Riverview CAO CountyRedline.docx"

Hi Anna,

Thanks for meeting with Justin Graham (Santa Cruz County) and me last Thursday. I've cleaned up the draft Indemnity Agreement based on our discussions and additional input from the County. You can see a few comments remain where the County has requested additional information regarding your requested change.

Once you have had a chance to review please let me know if you have any questions regarding the updated draft.

Thank you.

Leila J. Moshref-Danesh | Senior Associate
she, her, hers

Burke, Williams & Sorensen, LLP
1770 Iowa Avenue, Suite 240, Riverside, CA 92507
D 951.801.6626 | O 951.788.0100 | F 951.788.5785
lmoshref@bwsllaw.com | [vCard](#) | [Bio](#) | [LinkedIn](#) | [bwsllaw.com](#)

photo

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From: Anna DiBenedetto <anna@dibenedetto.law>
Sent: Thursday, August 22, 2024 10:02 AM
To: Moshref-Danesh, Leila J. <LMoshref@bwsllaw.com>
Cc: Rae Spencer <rspencer@dibenedetto.law>; Zutler, Samantha W. <SZutler@bwsllaw.com>
Subject: RE: 427 Riverview Indemnity Agreement

EXTERNAL

Good Morning Leila, our Clients asked me to check in for an update on circulation of the Agreement.
Thank you.

Best,

Anna DiBenedetto, Esq.
DiBENEDETTO LAW GROUP, PC
1101 Pacific Avenue, Suite 200
Santa Cruz, CA 95060
Office Tel. (831) 253-0499, Ext. 101
Direct Tel. (831) 253-0503
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anna@dibenedetto.law

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From: Moshref-Danesh, Leila J. <LMoshref@bwsllaw.com>
Sent: Friday, August 16, 2024 11:33 AM
To: Anna DiBenedetto <anna@dibenedetto.law>
Cc: Rae Spencer <rspencer@dibenedetto.law>; Zutler, Samantha W. <SZutler@bwsllaw.com>
Subject: RE: 427 Riverview Indemnity Agreement

Hi Anna,

It was great speaking with you as well. The updated draft is currently with City staff. I hope to hear back from them very soon so we can get this over to the County.

Leila J. Moshref-Danesh | Senior Associate
she, her, hers

Burke, Williams & Sorensen, LLP

1770 Iowa Avenue, Suite 240, Riverside, CA 92507

D 951.801.6626 | **O** 951.788.0100 | **F** 951.788.5785 | **M** 858.722.1327

lmoshref@bwsllaw.com | [vCard](#) | [Bio](#) | [LinkedIn](#) | bwsllaw.com

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From: Anna DiBenedetto <anna@dibenedetto.law>
Sent: Friday, August 16, 2024 10:55 AM
To: Moshref-Danesh, Leila J. <L.Moshref@bwsllaw.com>
Cc: Rae Spencer <rspencer@dibenedetto.law>; Zutler, Samantha W. <SZutler@bwsllaw.com>
Subject: RE: 427 Riverview Indemnity Agreement

EXTERNAL

Good Morning Leila,

Thanks very much for speaking with me on Tuesday. It was very helpful, and it was very nice to meet you. You indicated that you'd try to make the City's proposed revisions to the Indemnity Agreement this week, circulate those amongst City staff and then get them to County Counsel as soon as possible. Any progress in that regard?

Anna DiBenedetto, Esq.
DIBENEDETTO LAW GROUP, PC
1101 Pacific Avenue, Suite 200
Santa Cruz, CA 95060
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Direct Tel. (831) 253-0503
Fax (831) 253-0502
anna@dibenedetto.law

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From: Moshref-Danesh, Leila J. <L.Moshref@bwsllaw.com>
Sent: Monday, August 12, 2024 4:19 PM
To: Anna DiBenedetto <anna@dibenedetto.law>
Cc: Rae Spencer <rspencer@dibenedetto.law>; Zutler, Samantha W. <SZutler@bwsllaw.com>
Subject: RE: 427 Riverview Indemnity Agreement

Hi Anna, thanks for returning my call. I understand you are driving this afternoon. I've got a block of availability tomorrow between 12 and 4, is there a time that would work for you and I can send a zoom invite?

Thanks,
Leila

From: Zutler, Samantha W. <SZutler@bwsllaw.com>
Sent: Friday, August 9, 2024 9:40 AM
To: Anna DiBenedetto <anna@dibenedetto.law>; Moshref-Danesh, Leila J. <L.Moshref@bwsllaw.com>
Cc: Rae Spencer <rspencer@dibenedetto.law>; Jason Heath <Jason.Heath@santacruzcountyca.gov>; Justin Graham <Justin.Graham@santacruzcountyca.gov>; Herlihy, Katie (<kherlihy@ci.capitola.ca.us> <kherlihy@ci.capitola.ca.us>; Kahn, Jessica <jkahn@ci.capitola.ca.us>
Subject: RE: 427 Riverview Indemnity Agreement

CAP-CAMPBELL_001588

Thanks Anna. Based on our call, I expected your revisions to be pretty minor. These are not that. Leila will be giving you a call to discuss. Thanks, Sam

From: Anna DiBenedetto <anna@dibenedetto.law>
Sent: Thursday, August 8, 2024 3:01 PM
To: Zutler, Samantha W. <SZutler@bwsllaw.com>; Moshref-Danesh, Leila J. <LMoshref@bwsllaw.com>
Cc: Rae Spencer <rspencer@dibenedetto.law>; Jason Heath <Jason.Heath@santacruzcountyca.gov>; Justin Graham <Justin.Graham@santacruzcountyca.gov>; Herlihy, Katie (<kherlihy@ci.capitola.ca.us>) <kherlihy@ci.capitola.ca.us>; Kahn, Jessica <jkahn@ci.capitola.ca.us>
Subject: RE: 427 Riverview Indemnity Agreement

EXTERNAL

Please see attached.

Anna DiBenedetto, Esq.
DiBENEDETTO LAW GROUP, PC
1101 Pacific Avenue, Suite 200
Santa Cruz, CA 95060
Office Tel. (831) 253-0499, Ext. 101
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anna@dibenedetto.law

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From: Zutler, Samantha W. <SZutler@bwsllaw.com>
Sent: Thursday, August 8, 2024 1:50 PM
To: Anna DiBenedetto <anna@dibenedetto.law>; Moshref-Danesh, Leila J. <LMoshref@bwsllaw.com>
Cc: Rae Spencer <rspencer@dibenedetto.law>; Jason Heath <Jason.Heath@santacruzcountyca.gov>; Justin Graham <Justin.Graham@santacruzcountyca.gov>; Herlihy, Katie (<kherlihy@ci.capitola.ca.us>) <kherlihy@ci.capitola.ca.us>; Kahn, Jessica <jkahn@ci.capitola.ca.us>
Subject: RE: 427 Riverview Indemnity Agreement

Thanks Anna. Could you please send a redline from the draft we sent over previously?

From: Anna DiBenedetto <anna@dibenedetto.law>
Sent: Thursday, August 8, 2024 1:05 PM
To: Moshref-Danesh, Leila J. <LMoshref@bwsllaw.com>
Cc: Rae Spencer <rspencer@dibenedetto.law>; Zutler, Samantha W. <SZutler@bwsllaw.com>; Jason Heath <Jason.Heath@santacruzcountyca.gov>; Justin Graham <Justin.Graham@santacruzcountyca.gov>; Herlihy, Katie (<kherlihy@ci.capitola.ca.us>) <kherlihy@ci.capitola.ca.us>; Kahn, Jessica <jkahn@ci.capitola.ca.us>
Subject: RE: 427 Riverview Indemnity Agreement

EXTERNAL

Hi Leila, please find attached our version of the Indemnity Agreement that we believe provides the Public Entities with the indemnity and protections it seeks vis-à-vis the subject drainage facility. I've also attached the referenced exhibits. Please confirm receipt and anticipated turn around as this agreement is considered by the City as an application completeness item. Thanks very much.

Best,

Anna DiBenedetto, Esq.
DiBENEDETTO LAW GROUP, PC
1101 Pacific Avenue, Suite 200
Santa Cruz, CA 95060
Office Tel. (831) 253-0499, Ext. 101
Direct Tel. (831) 253-0503
Fax (831) 253-0502
anna@dibenedetto.law

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From: Moshref-Danesh, Leila J. <LMoshref@bwsllaw.com>
Sent: Wednesday, June 12, 2024 11:42 AM
To: Anna DiBenedetto <anna@dibenedetto.law>
Cc: Rae Spencer <rspencer@dibenedetto.law>; Zutler, Samantha W. <SZutler@bwsllaw.com>; Jason Heath <Jason.Heath@santacruzcountyca.gov>; Justin Graham <Justin.Graham@santacruzcountyca.gov>; Herlihy, Katie (<kherlihy@ci.capitola.ca.us>) <kherlihy@ci.capitola.ca.us>; Kahn, Jessica <jkahn@ci.capitola.ca.us>
Subject: 427 Riverview Indemnity Agreement

Good Morning Anna,

Thank you for your patience as the City and County worked to draft the attached indemnity agreement. Given the novel nature of the project and the complexities associated with the culvert, we had to expand fairly significantly upon your original draft, but the outcome is an agreement that will ultimately allow the City to process your client's application.

We would be happy to set up a time to meet with you and your client if you have any questions on the agreement, once you have had a chance to review.

Thank you.

Leila Moshref-Danesh | Senior Associate

Pronouns: she, her, hers

1770 Iowa Avenue, Suite 240 | Riverside, CA 92507-2479

d - 951.801.6626 | t - 951.788.0100 | f - 951.788.5785

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**RECORDING REQUESTED BY AND
WHEN RECORDED, MAIL TO:**

City of Capitola
Community Development
420 Capitola Avenue
Capitola, CA 95010

EXEMPT FROM RECORDING FEES

APN NO. 035-132-01-000

The undersigned declare:

Documentary Transfer Tax is: \$0

No monetary consideration.

INDEMNITY AGREEMENT

RECITALS

WHEREAS, Joseph W. McLean, Jr., Trustee of The Joseph W. McLean Jr. Trust, established March 2, 2022 (“McLean” or “Owner”) is the owner of that certain real property described in **Exhibit “A”** hereto (“Property”);

WHEREAS, the Property was created by a subdivision map dated April 1922 recorded in the Official Records of Santa Cruz County on May 13, 1922 in Map Book 18, Page 36 of the Santa Cruz County Records (the “Map”) and attached hereto as **Exhibit “B”**;

WHEREAS, Sheet 3 of the Map depicts drainage from Noble Creek through a downstream flume (“Flume”) traversing several properties, including the McLean Property, to Soquel Creek;

WHEREAS, the Flume is believed to be located within the bounds of an easement created by a Grant Deed dated May 10, 1922 and recorded in the Official Records of Santa Cruz County on July 11, 1922 in Volume 314 at Page 193 of the Deeds of Santa Cruz County Records (“Grant Deed”), granting to the County of Santa Cruz (“County”) a permanent eight foot wide easement and right of way to “construct, maintain, operate, repair and renew a drainage ditch, canal or flume, for the purpose of conveying storm and drainage water (from the most easterly boundary of the property hereinafter described to the Soquel Creek),” and including all necessary and convenient means of ingress and egress thereto (“Drainage Easement”). A true and correct copy of the Grant Deed is attached hereto as **Exhibit “C”**;

WHEREAS, for purposes of this Indemnity Agreement, “Flume” refers to the portion of the flume traversing the McLean Property and “Drainage Easement” refers to the portion of said drainage easement traversing the Property;

WHEREAS, the Drainage Easement and Flume burden the Property, as depicted on page 7 of the Amended Preliminary Title Report by First American Title Company, prepared for the Property on November 3, 2022, a copy of which is attached hereto as **Exhibit “D;”**

WHEREAS, at an indeterminate point in time the Flume was converted into a culvert (“Culvert”), which Culvert underlies the Property within the bounds of the Drainage Easement;

WHEREAS, the Culvert, Flume, and Drainage Easement are sometimes collectively referred to herein as the “Facility” and any reference to “Facility” refers to that portion of the Facility traversing the McLean Property;

WHEREAS, City, County, and the Santa Cruz County Flood Control and Water Conservation District- Zone 5 (“Zone 5”) are sometimes collectively referred to herein as “Public Entities”;

WHEREAS, City, County, Zone 5 and McLean are sometimes collectively referred to herein as the “Parties” and individually as “Party”;

WHEREAS, one or more of the Public Entities may have an interest in any part or all of the Facility, and there is a dispute between them as to what the nature of their respective interests may be, but it is the Parties’ intent to leave the determination of those interests unresolved by the execution of this Agreement;

WHEREAS, the Facility is not maintained by any Party;

WHEREAS, the Public Entities have previously made temporary emergency repairs to the area of the public pathway situated adjacent to the Property and related to the Culvert’s outfall for the purposes of preserving public safety, but no permanent repairs have been made;

WHEREAS, on or about August 31, 2023, McLean submitted Application No. 23-0400 (“Application”) for a coastal development permit and design review (the “Required Approvals”) to demolish the existing two story single family residence at the Property and construct a new residence within the same footprint, with the first-floor of the new residence to be elevated above the Federal Emergency Management Agency (“FEMA”) base flood elevation;

WHEREAS, on [REDACTED], 2024, McLean submitted a modified project application consisting of an interior and exterior remodel, including the existing detached garage and construction of a new second floor living space, reinforcement of existing foundation with potential new footings, and a new second story enclosed bridge to connect the primary residence to the proposed living space above the garage, resulting in an approximate 2,625 sf, 3 bedroom, 2 and ½ bath two story single family residence (the “Project”);

Commented [Moshref-Danesh, Leila J.1]:
This may be the updated project description, but does not reflect the application that was submitted by the applicant in August 2023. Once the applicant submits the updated plans this section will need to be updated to reflect the modified submittal and submittal date. Staff will also need to review the plans to confirm this PD matches the updated plans. ¶
¶
Have reworded to reflect the resubmittal

WHEREAS, as both a completeness item for processing the Application, and condition to approval of the Application, the City is requiring McLean to obtain permission from the Public Entities to erect a structure on top of the Drainage Easement (the "Clearances");

Whereas, in order to provide the Clearances, the Public Entities are requiring McLean and future Owners of the Property to agree to indemnify, defend and hold harmless the City, County and Zone 5 Public Agencies from (1) any damage caused to the Facility by the Project, and (2) any damage caused to the Property by the present or future condition of the Facility, or due to the Property being located over the underground Facility;

WHEREAS, all Parties acknowledge that the residential construction in the Application would not normally be considered as presented given the presence of the Facility lying below and transversing the Property, but given that McLean purchased an existing single-family home on the Property overlying the Facility, has been living on the Property for a number of years, and the Project proposes merely to demolish and reconstruct within the same footprint the existing single-family home located on the Property while elevating the residential portion of the structure above the FEMA base flood elevation, basic principles of fairness allow the City to consider the Application in exchange for the promises McLean has made in this Agreement;

WHEREAS, it is the intent of the Parties that this Agreement will allow the City to process the Application for the benefit of McLean, but that execution of this Agreement will not guarantee the approval of the Project or the Application or otherwise bind the City in any way to any future approval of the Application; and

WHEREAS, the Parties agree that execution of this Agreement does not resolve the ownership of the Facility, or prejudice any rights or affirmative defenses that the Public Entities may have relating to determination of the ownership of the Facility or the Public Entities' respective rights and responsibilities in the Property or Facility.

NOW THEREFORE, the Parties agree as follows:

AGREEMENT

1. INCORPORATION OF RECITALS.

1.1 The above recitals are hereby incorporated into this Agreement as though set forth in full.

1.2 The Parties agree that the above recitals are true and correct representations of the Parties' respective understanding of the circumstances giving rise to the Agreement.

2. OWNERSHIP OF THE PROPERTY.

2.1 For the purposes of this Agreement, an "Owner" means the person or entity that is

the owner, holder, or beneficiary, of any interest in the Property other than the Drainage Easement, including but not limited to a fee simple interest, an easement, a profit, a license, a life estate, a joint tenancy, a lien, a deed-of-trust or other security interest.

2.1.1 McLean is the Owner of the Property at the time of execution of this Agreement.

2.1.2 Upon purchase, sale, or any other conveyance of an interest in the Property, the person or entity receiving that interest shall become an Owner and shall be bound by the terms of this Agreement and become a Party.

2.1.3 Upon alienation, sale, or transfer, of an interest in the Property that would make a person or entity an Owner, that person or entity's Ownership shall terminate, and they shall thereafter no longer be an Owner.

2.1.4 For the purposes of this Agreement, there may be more than one Owner of the Property at any given time. Each Owner shall be jointly and severally responsible for each promise and obligation applicable to an Owner under this Agreement.

2.2 For the purposes of this Agreement, "Ownership" shall mean the status of being an Owner.

3. INDEMNIFICATION FOR CONSTRUCTION; PROTECTION OF FACILITY.

3.1 Owner agrees to indemnify and hold harmless the Public Entities, and each of their respective officials, officers, directors, commissioners, employees, agents, and volunteers (collectively, "Indemnitees"), and defend with counsel reasonably acceptable to Indemnitees, from and against any and all liabilities, claims, actions, losses, injuries, damages, judgments, or expenses, including attorneys' fees and costs, of any kind (collectively, "Losses"), related to the Facility, neighboring properties and public infrastructure bordering the Facility, or any combination of the same, resulting from, or in any way related to Owner's performance of the Project.

3.1.1 The Public Entities, and each of them, may tender demands for Owner's performance under this provision at any time after becoming aware of a claim, demand, or lawsuit covered by this provision.

3.1.2 This indemnification shall survive the termination of both this Agreement and each Owner's Ownership.

3.2 Owner agrees to include in the Project plans reasonable protective measures and practices for the Facility, as well as neighboring properties and public infrastructure bordering the Facility that could foreseeably be impacted by the Project and, if the Application is approved by

the City, to implement those protective measures and practices as part of construction of the Project.

3.2.1 The Public Entities shall confer regarding the adequacy of said protective measures and form a consensus regarding said measures. City shall impose said measures as conditions of approval on any permit issued pursuant to the Application.

3.2.2 Owner agrees and promises to implement said protective measures and practices if the Application is approved by the City and the Project is constructed.

3.2.3 Owner shall likewise be obligated to undertake measures to protect properties and public infrastructure bordering the Facility to the extent such properties and public infrastructure may be damaged or impacted by Owner performing the Project in, above and around the Facility.

Commented [Justin G2]: Re-inserted

3.3 McLean agrees that, as a condition of approval of any permit issued pursuant to the Application, each Public Entity shall be named as an additional insured by each contractor and consultant employed by McLean to perform any portion of the Project which would otherwise be required to provide insurance to McLean or the City, or both of them, by including language substantially similar to the following in each of their respective contracts:

“Contractor agrees, to the fullest extent permitted by law, to indemnify, defend, and hold harmless the City of Capitola, County of Santa Cruz, the Santa Cruz County Flood Control and Water Conservation District – Zone 5, and each of their respective officials, officers, directors, commissioners, employees, agents, and volunteers (collectively, “Indemnitees”) from and against any and all liability, claim, action, loss, injury, damage, judgment, or expense, including attorneys’ fees and costs (“Losses”) caused by or resulting from negligence, recklessness, or willful misconduct of Contractor, Contractor’s officers, employees, agents, or subcontractors in any way related to this (construction) agreement. Contractor’s duty to indemnify and hold harmless Indemnitees shall not apply to the extent such Losses are caused by the sole ~~or active~~ gross negligence or willful misconduct of Indemnitees. Contractor’s obligation to defend shall arise regardless of any claim or assertion that Indemnitees caused or contributed to the Losses, without waiving any rights Contractor may have to demand reimbursement of such defense costs upon a finding that the Losses were caused by the sole ~~or active~~ gross negligence or willful misconduct of any of the Indemnitees. This indemnification clause shall survive termination of the agreement.”

Commented [Moshref-Danesh, Leila J.3]:
Deletion rejected by the County

3.4 Owner further agrees to refrain from undertaking any action during or after construction of the Project or allowing any use of the Property that might reasonably be expected to damage the Facility or interfere with its operation for its intended purposes.

4. INDEMNIFICATION FOR POST-CONSTRUCTION DAMAGE TO PROPERTY.

4.1 Beginning with the commencement of construction of the Project, and continuing in perpetuity thereafter, Owner agrees to save, indemnify, and hold harmless the Indemnitees, and each of them, and defend with counsel reasonably acceptable to the Indemnitees, from any and all Losses, caused, alleged to be caused, or in any way related to the Facility being located under, transversing and/or abutting the ~~Property Project~~ wherein the operative facts that serve as the basis for such Losses are alleged to have occurred during that Owner's Ownership of the Property.

4.2 The Public Entities, and each of them, may tender demands for Owner's performance under this provision at any time after becoming aware of a claim, demand, or lawsuit covered by this provision.

4.3 This indemnification shall survive the termination of both this Agreement and expiration of each Owners' Ownership.

5. **RUNS WITH THE LAND; SUCCESSORS BOUND; RECORDATION.**

5.1 It is the Parties' intent, and McLean specifically promises, that this Agreement shall be binding on McLean's successors and assigns, and McLean's successors in interest in the Property, to the same extent that it is binding on McLean.

~~5.1.1 Therefore, for avoidance of doubt, should Owner sell or otherwise transfer the Property or any interest therein, including by sale, lease, gift, bequest, or otherwise, the person or entity receiving any interest in the Property shall become an Owner and shall have all the same obligations under this Agreement as McLean had at the time this Agreement was executed.~~

5.1.2 Owner shall provide a copy of this Agreement, executed by all Parties, to the City ~~for recordation~~ prior to the City ~~acting on~~ considering the Application ~~to be complete~~. ~~City shall thereafter record the executed copy of this Agreement in order to provide notice of its terms to Owner's successors in interest.~~

~~5.1.3 Owner shall deliver to each subsequent owner, heir, or successor in Owner's interest in the Property, a copy of this Agreement and shall inform them of their obligation to be bound by its terms prior to or at the time of transferring such interest.~~

5.2 The provisions of this Agreement shall be construed and interpreted as covenants running with the land in regard to the Property.

~~5.2.1 This Agreement's provisions shall be binding, to the fullest extent permitted by law and equity, on all future Owners of an interest, of any nature, in the Property.~~

~~5.2.2 This Agreement's provisions shall be interpreted, to the fullest extent~~

Commented [Moshref-Danesh, Leila J.4]:
Moved this to the General terms below

Commented [Moshref-Danesh, Leila J.5]:
County would like to understand your clients' specific concerns with the rest of this language

~~permitted by law and in equity, for the benefit and in favor of, and shall be enforceable by, the Public Entities, their successors and assigns, against Owner, and against Owner's successors and assigns, and every successor in interest to the Property, or any part of the Property, any interest in the Property, and any party in possession or occupancy of the Property.~~

Commented [Justin G6]: We would like to understand the objection to including this language.

6. PUBLIC ENTITIES' RIGHT TO ACCESS FACILITIES AND PERFORM VARIOUS ACTIVITIES.

6.1 Owner agrees and acknowledges that one or several of the Public Entities have the right to access the Facility pursuant to the terms of the Drainage Easement to construct, maintain, operate, repair and renew the Facility ("Maintenance Activities").

6.1.1 Owner agrees to provide reasonable access to the Facility for the purposes of any of the Public Entities performing Maintenance Activities.

6.1.2 Owner agrees to refrain from undertaking any action, or allowing any use of the Property, that would or could reasonably be expected to damage or harm the Facility or impair the Public Entities' ability to perform Maintenance Activities.

6.1.3 Owner acknowledges and agrees that Owner is not entitled to any compensation from any of the Public Entities for any such Maintenance Activities, regardless of the impacts such Maintenance Activities might have on the Property.

6.2 Owner agrees to save, indemnify, and hold harmless the Indemnitees, and each of them, and defend with counsel reasonably acceptable to the Indemnitees, from any and against any and all Losses, caused, or alleged to be caused, to the Property related to the Maintenance Activities, except to the extent that such liabilities, claims, actions, losses, injuries, damages, judgments, or expenses are determined by a court of competent jurisdiction to be the sole result of the gross negligence of each of the Public Entities.

6.2.1 This indemnification shall become irrevocable upon the commencement of Project construction and shall survive the termination of this Agreement.

~~6.2.2 The Parties agree that this Agreement may not be recorded until the Application has been approved by the City.~~

Commented [Justin G7]: This is fine so long as an executed copy is required to be provided to the City as a completeness condition for the permit

Commented [Moshref-Danesh, Leila J.8R7]: Dealt with in sections 4 and 9

7. CONSIDERATION BY PUBLIC ENTITIES.

7.1 All Parties agree that execution of this Agreement shall not, and may not, be utilized as evidence of any particular Public Entity's respective ownership interest in the Drainage Easement, the Culvert, or the Flume.

7.2 In making the promises in this Agreement, Owner specifically acknowledges and agrees that but for the presence of the Culvert resulting in a covered rather than an open water channel on the Property, and given the Culvert's position on the Property, the existing single-family residence on the Property could not have been constructed.

7.3 In making the promises in this Agreement, Owner specifically acknowledges and agrees that, if the Property had been undeveloped at the time that the Application was submitted, and had an existing single-family residence not been already present on the Property at the time the Application was submitted, the City would not have processed the Application based on the existence of the Culvert as both a potential safety hazard and as a barrier to accessing the Facility.

7.4 In making the promises in this Agreement, Owner acknowledges and agrees that the presence of a single-family residence on the Property substantially increases the difficulty of the Public Entities accessing the Facility and the cost of performing Maintenance Activities, including potential future upgrade and replacement of the Culvert.

7.5 By execution of this Agreement, the City is not committing itself to or agreeing to undertake any act or activity requiring the separate independent exercise of discretion by the City. Execution of this Agreement by the City is merely an agreement to process an application(s) for the Required Approvals in accordance with the terms hereof, reserving for subsequent City action the final discretion and approval regarding the Required Approvals and all proceedings and decisions in connection therewith. Any action on the Required Approvals shall become effective only if and after certification, adoption or approval of any analysis required under the California Environmental Quality Act ("CEQA"), and only if such Required Approvals have been duly considered and approved by the City following conduct of all legally required procedures. Failure of the City to approve the Required Approvals after a public hearing thereon shall not constitute a default or a breach of the terms of this Agreement by City.

7.6 This Agreement does not limit in any way the discretion of City in acting on any applications for the Required Approvals for the proposed Project or any portion thereof.

8. TERM; TERMINATION.

8.1 This Agreement shall be effective upon execution by all Parties.

8.2 This Agreement shall remain in effect until the soonest date that (1) the Facility is removed from underlying the Property; or (2) until this Agreement is terminated as provided herein.

8.3 The Parties may terminate this Agreement upon the occurrence of any of the following conditions:

8.3.1 Mutual written agreement of all Parties, with or without conditions.

Commented [Justin G9]: What is City's position on this deletion?

Commented [Moshref-Danesh, Leila J.10R9]: Reverted

Commented [Moshref-Danesh, Leila J.11]: Public Entities reject this deletion

Commented [Moshref-Danesh, Leila J.12]: County rejects this deletion

8.3.2 Withdrawal or denial of the Application without the Project having commenced construction.

8.4 Notwithstanding any other provision to the contrary, once construction of the Project has commenced, the indemnification provisions described herein shall survive termination of this Agreement.

9. GENERAL PROVISIONS.

9.1

~~6.2.2~~ The Parties agree that this Agreement Upon Project approval, the City shall record or cause to be recorded this Agreement with the Santa Cruz County Recorder's office. If Project is not approved, City shall not record this Agreement. ~~may not be recorded until the Application has been approved by the City.~~

9.24 This Agreement shall be construed and interpreted both as to validity and to performance of the Parties in accordance with the laws of the State of California.

9.32 The sole venue for all legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be the Superior Court of the County of Santa Cruz, State of California.

9.43 The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against any Party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply.

9.54 The persons executing this Agreement on behalf of the Parties hereto warrant that (i) they are duly authorized to execute and deliver this Agreement on behalf of said Party, (ii) by so executing this Agreement, such Party is formally bound to the provisions of this Agreement, and (iii) the entering into this Agreement does not violate any provision of any other agreement to which said Party is bound.

9.65 Any modification to this Agreement must be in writing and executed by all Parties hereto.

9.76 This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute the same agreement.

//

//

Signatures are included on the following pages

Commented [Justin G13]: This is fine so long as an executed copy is required to be provided to the City as a completeness condition for the permit

Commented [Moshref-Danesh, Leila J.14R13]: Dealt with above

EXHIBIT 78



T Thatcher <terrirthatcher@gmail.com>

Application No. 23-0400 (427 Riverview)

12 messages

Joe McLean <jwmjr116@gmail.com>

Fri, Oct 25, 2024 at 9:47 AM

To: "Herlihy, Katie (kherlihy@ci.capitola.ca.us)" <kherlihy@ci.capitola.ca.us>, "Sesanto, Sean" <ssesanto@ci.capitola.ca.us>

Cc: Rae Spencer <rspencer@dibenedetto.law>, Anna DiBenedetto <anna@dibenedetto.law>, T Thatcher <terrirthatcher@gmail.com>

Dear Katie and Sean,

After spending considerable time and money on back-and-forth negotiations regarding the Indemnity Agreement, we have decided that we are not comfortable (nor legally obligated) to give the City any more indemnity than what it already has pursuant to the language in the Application – see below.

“In submitting this Application, I agree to defend, indemnify, and hold harmless the City of Capitola,

It’s officers, employees, and agents, from and against any claim, including attorney’s fees and

Litigation costs, arising out of or in any way related to the City of Capitola’s processing, consideration,

or approval of this application.”

We cannot sign something that releases the City and County from its liability for a public culvert that has clearly not been repaired or maintained for some time. We also never understood why we would have to indemnify the County for a public easement for which it claims no responsibility and has nothing to do with approval of our project being built within the City of Capitola. We understand that refusing to sign the agreement means the City will not further process our application, therefore deeming it incomplete again. We take that to mean our application is denied. Assuming that to be the case, please let us know immediately so that we can start the administrative appeal process.

Thank you.

Joe McLean

T Thatcher <terrirthatcher@gmail.com>

Wed, Oct 30, 2024 at 5:59 AM

To: Joe McLean <jwmjr116@gmail.com>

Cc: "Herlihy, Katie (kherlihy@ci.capitola.ca.us)" <kherlihy@ci.capitola.ca.us>, "Sesanto, Sean" <ssesanto@ci.capitola.ca.us>, Rae Spencer <rspencer@dibenedetto.law>, Anna DiBenedetto <anna@dibenedetto.law>

Katie,

Can you provide an update when we can expect the denial letter?

Thank you,

Terri and Joe

[Quoted text hidden]

Herlihy, Katie (kherlihy@ci.capitola.ca.us) <kherlihy@ci.capitola.ca.us>

Mon, Nov 4, 2024 at 12:54 PM

To: Joe McLean <jwmjr116@gmail.com>, "Sesanto, Sean" <sseanto@ci.capitola.ca.us>

Cc: Rae Spencer <rspencer@dibenedetto.law>, Anna DiBenedetto <anna@dibenedetto.law>, T Thatcher <terrirthatcher@gmail.com>

Dear Mr. and Mrs. McLean,

We have reviewed the information provided and have determined that your application for a Design Review and Conditional Use Permit is complete. Please be advised that staff will be recommending that your project be subject to conditions of approval requiring you to obtain consent from the easement holder(s) to construct your project, and that you enter into an indemnification agreement with the City, both prior to prior to obtaining a building permit to construct within the easement.

Regards,

Katie Herlihy, AICP

Community Development Director - [City of Capitola](#)

[420 Capitola Avenue, Capitola, CA 95010](#)

831.475.7300 ext. 216



[Quoted text hidden]

Sesanto, Sean <sseanto@ci.capitola.ca.us>

Thu, Nov 7, 2024 at 9:53 AM

To: Joe McLean <jwmjr116@gmail.com>

Cc: Rae Spencer <rspencer@dibenedetto.law>, Anna DiBenedetto <anna@dibenedetto.law>, "Herlihy, Katie (kherlihy@ci.capitola.ca.us)" <kherlihy@ci.capitola.ca.us>, T Thatcher <terrirthatcher@gmail.com>

Good morning, Joe,

Following up on Katie's email.

In light of the deemed-complete status, we'd like to proceed to the next step, which is scheduling you for a Development and Design Review (DDR) meeting. This would be for the plans we have on file. However, you had previously indicated that you may be revising the plans and/or changing architects.

Please let us know if you intend to submit a new plan package or if you'd like to be scheduled for a DDR meeting based on the previously submitted plans. The City has the plan submittal package dated 8/31/2023 and prepared by Faulkner Architects.

DDRs are staff-level meetings in advance of the Planning Commission hearing between the project representatives and City Planning, Public Works, and Building. DDR meetings are an opportunity to discuss project comments, receive staff recommendations, and cover next steps. DDR Meetings occur on Wednesdays at 3:30pm. Upcoming dates are:

- November 20, 2024 (not available if resubmitting)
- December 11, 2024

Thank you,

Sean Sesanto | Associate Planner

City of Capitola

831.475.7300

Planning Counter Hours: 1 p.m. - 4 p.m., Monday - Friday

[Quoted text hidden]

Anna DiBenedetto <anna@dibenedetto.law>

Thu, Nov 7, 2024 at 10:26 AM

To: T Thatcher <terrirthatcher@gmail.com>, Joe McLean <jwmjr116@gmail.com>

Cc: Rae Spencer <rspencer@dibenedetto.law>

Are you available to discuss this afternoon or tomorrow?

Anna DiBenedetto, Esq.

DiBENEDETTO LAW GROUP, PC

1101 Pacific Avenue, Suite 200

Santa Cruz, CA 95060

Office Tel. (831) 253-0499, Ext. 101

Direct Tel. (831) 253-0503

Fax (831) 253-0502

anna@dibenedetto.law

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T Thatcher <terrirthatcher@gmail.com>

Thu, Nov 7, 2024 at 10:27 AM

To: Anna DiBenedetto <anna@dibenedetto.law>

Cc: Joe McLean <jwmjr116@gmail.com>, Rae Spencer <rspencer@dibenedetto.law>

Yes. Just let us know works for you.

[Quoted text hidden]

2 attachments



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Anna DiBenedetto <anna@dibenedetto.law>

Thu, Nov 7, 2024 at 11:00 AM

To: T Thatcher <terrirthatcher@gmail.com>

Cc: Joe McLean <jwmjr116@gmail.com>, Rae Spencer <rspencer@dibenedetto.law>

1:30?

Anna DiBenedetto, Esq.

DiBENEDETTO LAW GROUP, PC

1101 Pacific Avenue, Suite 200

Santa Cruz, CA 95060

Office Tel. (831) 253-0499, Ext. 101

Direct Tel. (831) 253-0503

Fax (831) 253-0502

anna@dibenedetto.law

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T Thatcher <terrirthatcher@gmail.com>

Thu, Nov 7, 2024 at 11:27 AM

To: Anna DiBenedetto <anna@dibenedetto.law>

Cc: Joe McLean <jwmjr116@gmail.com>, Rae Spencer <rspencer@dibenedetto.law>

1:35!

[Quoted text hidden]

Sesanto, Sean <ssesanto@ci.capitola.ca.us>

Tue, Nov 12, 2024 at 2:09 PM

To: Joe McLean <jwmjr116@gmail.com>

Cc: "Herlihy, Katie (kherlihy@ci.capitola.ca.us)" <kherlihy@ci.capitola.ca.us>, T Thatcher <terrirthatcher@gmail.com>

FYI,

Resend for Terri.

Sean Sesanto | Associate Planner

City of Capitola

831.475.7300

Planning Counter Hours: 1 p.m. - 4 p.m., Monday - Friday

From: Sesanto, Sean

Sent: Tuesday, November 12, 2024 4:08 PM

To: Joe McLean <jwmjr116@gmail.com>

Cc: Herlihy, Katie (kherlihy@ci.capitola.ca.us) <kherlihy@ci.capitola.ca.us>; Terrirthatcher@gmail.com

Subject: RE: Application No. 23-0400 (427 Riverview)

Hi Joe and Terri,

January Development & Design Review dates are tentatively 1/8/25 and 1/22/25. In my call last week with Dan Gomez, he indicated FUSE would like to draft plans and resubmit under the existing application, as Katie said. If the resubmittal revises the scope of work as well, that is fine. A less intensive scope of work would be preferred by staff but to still expect condition(s) of approval referenced in Katie's 11/4 email.

Thank you,

Sean Sesanto | Associate Planner

City of Capitola

831.475.7300

Planning Counter Hours: 1 p.m. - 4 p.m., Monday - Friday

From: Herlihy, Katie (kherlihy@ci.capitola.ca.us) <kherlihy@ci.capitola.ca.us>
Sent: Tuesday, November 12, 2024 3:43 PM
To: Joe McLean <jwmjr116@gmail.com>; Sesanto, Sean <ssesanto@ci.capitola.ca.us>
Cc: Terri Robbins <Terrirrthatcher@gmail.com>
Subject: RE: Application No. 23-0400 (427 Riverview)

Hi Joe and Terri,

Attached is the billing explanation provided the City Attorney's office. From your email, I understand that you are requesting to move forward with the application the City has on file. Fuse Architecture reached out to both Sean and I regarding your application. Can you please clarify their role moving forward?

As requested, Sean will send dates for the January development and design review meetings.

Regards,

Katie

From: Joe McLean <jwmjr116@gmail.com>
Sent: Tuesday, November 12, 2024 11:54 AM
To: Sesanto, Sean <ssesanto@ci.capitola.ca.us>; Herlihy, Katie (kherlihy@ci.capitola.ca.us) <kherlihy@ci.capitola.ca.us>
Cc: Terri Robbins <Terrirrthatcher@gmail.com>
Subject: Re: Application No. 23-0400 (427 Riverview)

Sean,

Unfortunately, we are not prepared to get in front of the city on either of those dates. We did not feel comfortable investing any more money into an updated design given the friction we've experienced thus far. In June we asked if an updated design, that would be more of a remodel, would be considered. We never got a response.

Can you please put us on the schedule in January?

Additionally, we're still waiting for the breakdown of the bill spent with your city attorney.

Please advise on January date.

Thank you,

Joe and Terri

From: Sesanto, Sean <ssesanto@ci.capitola.ca.us>

Date: Thursday, November 7, 2024 at 9:53 AM

To: Joe McLean <jwmjr116@gmail.com>

Cc: Rae Spencer <rspencer@dibenedetto.law>, Anna DiBenedetto <anna@dibenedetto.law>, Herlihy, Katie (<kherlihy@ci.capitola.ca.us>) <kherlihy@ci.capitola.ca.us>, T Thatcher <terrirthatcher@gmail.com>

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Joe McLean <jwmjr116@gmail.com>

Fri, Nov 15, 2024 at 10:43 AM

To: "Sesanto, Sean" <ssesanto@ci.capitola.ca.us>

Cc: "Herlihy, Katie (<kherlihy@ci.capitola.ca.us>)" <kherlihy@ci.capitola.ca.us>, T Thatcher <terrirthatcher@gmail.com>

Sean,

We spoke to Dan yesterday. He's requested a date in February for the review. He'll need that time to update the plans. Please advise as to what is available.

Thank you,

Joe and Terri

From: Sesanto, Sean <ssesanto@ci.capitola.ca.us>

Date: Thursday, November 7, 2024 at 11:53 AM

[Quoted text hidden]

[Quoted text hidden]

Sesanto, Sean <ssesanto@ci.capitola.ca.us>

Fri, Nov 15, 2024 at 11:16 AM

To: Joe McLean <jwmjr116@gmail.com>

Cc: "Herlihy, Katie (<kherlihy@ci.capitola.ca.us>)" <kherlihy@ci.capitola.ca.us>, T Thatcher <terrirthatcher@gmail.com>

Hi Joe,

If that's the case, likely 2/14/25 and 2/28/25.

Regards,

Sean Sesanto | Associate Planner

City of Capitola

831.475.7300

Planning Counter Hours: 1 p.m. - 4 p.m., Monday - Friday

[Quoted text hidden]

T Thatcher <terrirthatcher@gmail.com>

Fri, Nov 15, 2024 at 11:23 AM

To: "Sesanto, Sean" <ssesanto@ci.capitola.ca.us>

Cc: Joe McLean <jwmjr116@gmail.com>, "Herlihy, Katie (kherlihy@ci.capitola.ca.us)" <kherlihy@ci.capitola.ca.us>

Sean,

Let's do the 14th.

Thank you

[Quoted text hidden]

2 attachments



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image001.png
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EXHIBIT 79

From: Herlihy, Katie (kherlihy@ci.capitola.ca.us) <kherlihy@ci.capitola.ca.us>
Sent: Monday, November 04, 2024 3:03 PM PST
To: Justin.Graham@santacruzcountyca.gov <Justin.Graham@santacruzcountyca.gov>; Matt Machado <Matt.Machado@santacruzcountyca.gov>
CC: Samantha Zutler <SZutler@bwsllaw.com>; Moshref-Danesh, Leila J. <LMoshref@bwsllaw.com>
Subject: FW: Application No. 23-0400 (427 Riverview)

Hi Matt and Justin,

I wanted to bring you up to date on 427 Riverview. The applicant requested a denial letter related to being incomplete. As stated in my email below, we are going to proceed with the application and include a condition of approval that they obtain consent from the easement holder(s) to construct the project and that they enter into an indemnification agreement with the City, prior to obtaining a building permit to construct within the easement. We appreciate your willingness to work with us through the initial efforts. I will continue to keep you in the loop as this application moves forward. Feel free to reach out with any questions.

Regards,
Katie

From: Herlihy, Katie (kherlihy@ci.capitola.ca.us)
Sent: Monday, November 4, 2024 2:55 PM
To: Joe McLean [REDACTED]; Sesanto, Sean <ssesanto@ci.capitola.ca.us>
Cc: Rae Spencer <rspencer@dibenedetto.law>; Anna DiBenedetto <anna@dibenedetto.law>; T Thatcher <[REDACTED]>
Subject: RE: Application No. 23-0400 (427 Riverview)

Dear Mr. and Mrs. McLean,

We have reviewed the information provided and have determined that your application for a Design Review and Conditional Use Permit is complete. Please be advised that staff will be recommending that your project be subject to conditions of approval requiring you to obtain consent from the easement holder(s) to construct your project, and that you enter into an indemnification agreement with the City, both prior to obtaining a building permit to construct within the easement.

Regards,

Katie Herlihy, AICP
Community Development Director - City of Capitola
420 Capitola Avenue, Capitola, CA 95010
831.475.7300 ext. 216



From: Joe McLean [REDACTED]
Sent: Friday, October 25, 2024 12:48 PM
To: Herlihy, Katie (kherlihy@ci.capitola.ca.us) <kherlihy@ci.capitola.ca.us>; Sesanto, Sean <ssesanto@ci.capitola.ca.us>
Cc: Rae Spencer <rspencer@dibenedetto.law>; Anna DiBenedetto <anna@dibenedetto.law>; T Thatcher <[REDACTED]>
Subject: Application No. 23-0400 (427 Riverview)

Dear Katie and Sean,

After spending considerable time and money on back-and-forth negotiations regarding the Indemnity Agreement, we have decided that we are not comfortable (nor legally obligated) to give the City any more indemnity than what it already has pursuant to the language in the Application – see below.

“In submitting this Application, I agree to defend, indemnify, and hold harmless the City of Capitola, its officers, employees, and agents, from and against any claim, including attorney’s fees and Litigation costs, arising out of or in any way related to the City of Capitola’s processing, consideration, or approval of this application.”

We cannot sign something that releases the City and County from its liability for a public culvert that has clearly not been repaired or maintained for some time. We also never understood why we would have to indemnify the County for a public easement for which it claims no responsibility and has nothing to do with approval of our project being built within the City of Capitola. We understand that refusing to sign the agreement means the City will not further process our application, therefore deeming it incomplete again. We take that to mean our application is denied. Assuming that to be the case, please let us know immediately so that we can start the

EXHIBIT 80

From: Sesanto, Sean <ssesanto@ci.capitola.ca.us>

Sent: Tuesday, November 12, 2024 4:09 PM PST

To: Joe McLean <[REDACTED]>

CC: Herlihy, Katie (kherlihy@ci.capitola.ca.us) <kherlihy@ci.capitola.ca.us>; T Thatcher <[REDACTED]>

Subject: RE: Application No. 23-0400 (427 Riverview)

FYI,
Resend for Terri.

Sean Sesanto | Associate Planner

City of Capitola

831.475.7300

Planning Counter Hours: 1 p.m. - 4 p.m., Monday - Friday

From: Sesanto, Sean

Sent: Tuesday, November 12, 2024 4:08 PM

To: Joe McLean <[REDACTED]>

Cc: Herlihy, Katie (kherlihy@ci.capitola.ca.us) <kherlihy@ci.capitola.ca.us>; [REDACTED]

Subject: RE: Application No. 23-0400 (427 Riverview)

Hi Joe and Terri,

January Development & Design Review dates are tentatively 1/8/25 and 1/22/25. In my call last week with Dan Gomez, he indicated FUSE would like to draft plans and resubmit under the existing application, as Katie said. If the resubmittal revises the scope of work as well, that is fine. A less intensive scope of work would be preferred by staff but to still expect condition(s) of approval referenced in Katie's 11/4 email.

Thank you,

Sean Sesanto | Associate Planner

City of Capitola

831.475.7300

Planning Counter Hours: 1 p.m. - 4 p.m., Monday - Friday

From: Herlihy, Katie (kherlihy@ci.capitola.ca.us) <kherlihy@ci.capitola.ca.us>

Sent: Tuesday, November 12, 2024 3:43 PM

To: Joe McLean <[REDACTED]>; Sesanto, Sean <ssesanto@ci.capitola.ca.us>

Cc: Terri Robbins <[REDACTED]>

Subject: RE: Application No. 23-0400 (427 Riverview)

Hi Joe and Terri,

Attached is the billing explanation provided the City Attorney's office. From you email, I understand that you are requesting to move forward with the application the City has on file. Fuse Architecture reached out to both Sean and I regarding your application. Can you please clarify their role moving forward?

As requested, Sean will send dates for the January development and design review meetings.

Regards,

Katie

From: Joe McLean <[REDACTED]>

Sent: Tuesday, November 12, 2024 11:54 AM

To: Sesanto, Sean <ssesanto@ci.capitola.ca.us>; Herlihy, Katie (kherlihy@ci.capitola.ca.us) <kherlihy@ci.capitola.ca.us>

Cc: Terri Robbins <[REDACTED]>

Subject: Re: Application No. 23-0400 (427 Riverview)

Sean,

Unfortunately, we are not prepared to get in front of the city on either of those dates. We did not feel comfortable investing any more money into an updated design given the friction we've experienced thus far. In June we asked if an updated design, that would be more of a remodel, would be considered. We never got a response.

Can you please put us on the schedule in January?

Additionally, we're still waiting for the breakdown of the bill spent with your city attorney.

Please advise on January date.

Thank you,

Joe and Terri

CAP-CAMPBELL_001674

From: Sesanto, Sean <ssesanto@ci.capitola.ca.us>
Date: Thursday, November 7, 2024 at 9:53AM
To: Joe McLean [REDACTED]
Cc: Rae Spencer <rspencer@dibenedetto.law>, Anna DiBenedetto <anna@dibenedetto.law>, Herlihy, Katie (<kherlihy@ci.capitola.ca.us> <kherlihy@ci.capitola.ca.us>), T Thatcher [REDACTED]
Subject: RE: Application No. 23-0400 (427 Riverview)

Good morning, Joe,

Following up on Katie's email.

In light of the deemed-complete status, we'd like to proceed to the next step, which is scheduling you for a Development and Design Review (DDR) meeting. This would be for the plans we have on file. However, you had previously indicated that you may be revising the plans and/or changing architects.

Please let us know if you intend to submit a new plan package or if you'd like to be scheduled for a DDR meeting based on the previously submitted plans. The City has the plan submittal package dated 8/31/2023 and prepared by Faulkner Architects.

DDRs are staff-level meetings in advance of the Planning Commission hearing between the project representatives and City Planning, Public Works, and Building. DDR meetings are an opportunity to discuss project comments, receive staff recommendations, and cover next steps. DDR Meetings occur on Wednesdays at 3:30pm. Upcoming dates are:

- November 20, 2024 (not available if resubmitting)
- December 11, 2024

Thank you,

Sean Sesanto | Associate Planner

City of Capitola

831.475.7300

Planning Counter Hours: 1 p.m. - 4 p.m., Monday - Friday

From: Herlihy, Katie (<kherlihy@ci.capitola.ca.us> <kherlihy@ci.capitola.ca.us>)
Sent: Monday, November 4, 2024 2:55 PM
To: Joe McLean [REDACTED]; Sesanto, Sean <ssesanto@ci.capitola.ca.us>
Cc: Rae Spencer <rspencer@dibenedetto.law>; Anna DiBenedetto <anna@dibenedetto.law>; T Thatcher [REDACTED]
Subject: RE: Application No. 23-0400 (427 Riverview)

Dear Mr. and Mrs. McLean,

We have reviewed the information provided and have determined that your application for a Design Review and Conditional Use Permit is complete. Please be advised that staff will be recommending that your project be subject to conditions of approval requiring you to obtain consent from the easement holder(s) to construct your project, and that you enter into an indemnification agreement with the City, both prior to obtaining a building permit to construct within the easement.

Regards,

Katie Herlihy, AICP
Community Development Director - City of Capitola
420 Capitola Avenue, Capitola, CA 95010
831.475.7300 ext. 216



From: Joe McLean [REDACTED]
Sent: Friday, October 25, 2024 12:48 PM
To: Herlihy, Katie (<kherlihy@ci.capitola.ca.us> <kherlihy@ci.capitola.ca.us>); Sesanto, Sean <ssesanto@ci.capitola.ca.us>
Cc: Rae Spencer <rspencer@dibenedetto.law>; Anna DiBenedetto <anna@dibenedetto.law>; T Thatcher [REDACTED]
Subject: Application No. 23-0400 (427 Riverview)

Dear Katie and Sean,

After spending considerable time and money on back-and-forth negotiations regarding the Indemnity Agreement, we have decided that we are not comfortable (nor legally obligated) to give the City any more indemnity than what it already has pursuant to the language in the Application – see below.

“In submitting this Application, I agree to defend, indemnify, and hold harmless the City of Capitola, It's officers, employees, and agents, from and against any claim, including attorney's fees and Litigation costs, arising out of or in any way related to the City of Capitola's processing, consideration, or approval of this application.”

We cannot sign something that releases the City and County from its liability for a public culvert that has clearly not been repaired or maintained for some time. We also never understood why we would have to indemnify the County for a public easement for which it claims no responsibility and has nothing to do with approval of our project being built within the City of Capitola. We understand that refusing to sign the agreement means the City will not further process our application, therefore deeming it incomplete again. We take that to mean our application is denied. Assuming that to be the case, please let us know immediately so that we can start the administrative appeal process.

Thank you.

Joe McLean

EXHIBIT 81

From: Moshref-Danesh, Leila J. <LMoshref@bwsllaw.com>
Sent: Thursday, December 19, 2024 1:17 PM PST
To: Anna DiBenedetto <anna@dibenedetto.law>
CC: Zutler, Samantha W. <SZutler@bwsllaw.com>; Goldstein, Jamie(jgoldstein@ci.capitola.ca.us)
<jgoldstein@ci.capitola.ca.us>; Herlihy, Katie (kherlihy@ci.capitola.ca.us) <kherlihy@ci.capitola.ca.us>; Rae Spencer
<rspencer@dibenedetto.law>
Subject: RE: 427 Riverview, Capitola - Conditions of Approval

Hi Anna,

Thank you for meeting with us yesterday to go over your concerns with the 427 Riverview proposed Design Review conditions of approval. We understand your points and concerns to be as follows:

1. You do not believe the City needs to require a condition of approval for your clients to obtain permission from the County of Santa Cruz to construct improvements on top of the County's easement/existing culvert.
2. You believe that the indemnification language in the application is sufficient to address the City's exposure in case your client's project damages the culvert, or is damaged by the culvert's collapse.

During our meeting, we addressed your points as follows:

1. The Design Review permit requires the City to make certain findings, including related to public health, safety and existing improvements.
2. Construction/improvements on top of the culvert is a potential hazard not just to the culvert, but to the project -- requiring at minimum that your client agree to indemnify/hold the City harmless and waive the ability to sue for damages to the project.
3. The current indemnification language in the application covers challenges to the City's issuance of the permits but additional indemnification/hold harmless language is needed to address the issues in No. 2.
4. At this time, we will continue to recommend the City require the conditions of approval requiring County permission and indemnification/waiver of damages for the City.

Please let us know if we have missed any points and we hope that this will help your clients in determining their next steps.

Leila J. Moshref-Danesh | Senior Associate
she, her, hers

Burke, Williams & Sorensen, LLP
1770 Iowa Avenue, Suite 240, Riverside, CA 92507
D 951.801.6626 | O 951.788.0100 | F 951.788.5785
lmoshref@bwsllaw.com | [vCard](#) | [Bio](#) | [LinkedIn](#) | bwsllaw.com

photo

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From: Anna DiBenedetto <anna@dibenedetto.law>
Sent: Wednesday, December 18, 2024 2:32 PM
To: Zutler, Samantha W. <SZutler@bwsllaw.com>; Moshref-Danesh, Leila J. <LMoshref@bwsllaw.com>
Subject: RE: 427 Riverview, Capitola - Conditions of Approval

EXTERNAL

Please call me on (831) 253-0503

Anna DiBenedetto, Esq.
DiBENEDETTO LAW GROUP, PC
1101 Pacific Avenue, Suite 200
Santa Cruz, CA 95060
Office Tel. (831) 253-0499, Ext. 101
Direct Tel. (831) 253-0503
Fax (831) 253-0502
anna@dibenedetto.law

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From: Zutler, Samantha W. <SZutler@bwsllaw.com>
Sent: Wednesday, December 18, 2024 2:30 PM
To: Anna DiBenedetto <anna@dibenedetto.law>; Moshref-Danesh, Leila J. <LMoshref@bwsllaw.com>

CAP-CAMPBELL_001728

EXHIBIT 82



DATE: 1.23.2024

MEETING MINUTES NO. 02

PROJECT: 427 Riverview / McClean Residence

MEETING DATE: 01.22.2025

ISSUED TO: Dan Gomez, Joe McLean, Terri Robbins, Katie Herlihy, Jamie Goldstein

ATTENDANCE: Dan Gomez, Joe McLean, Terri Robbins, Katie Herlihy, Jamie Goldstein, Courtney Christiansen

PREPARED BY: Courtney Christiansen

NEXT MEETING DATE & LOCATION: TBD.

PROJECT GOAL/MILESTONE: Internal review of reduced scope / Design / Permitting

1. **Agenda Item : Review Schematic Design / Present Legal Standing**

- i. Terri expressed that her and Joe's intention in requesting a meeting with the City leadership is to appeal to the greater need to strategize a solution and to avoid additional legal counsel.
- ii. Reviewed design that utilized a reduced scope to limit alterations to the foundation. It was proposed that any disturbance to the foundation and/or finish grade would be done with the intention of repairing / bracing the flume beneath. It was discussed that these alterations are perceived to be necessary to avoid catastrophic failure of the flume and/or possible property loss / health and safety. ****This note intends to illustrate the need to alter the foundation to ensure the structure of the home, not to reinforce their flume. The City understands that to maintain a safe structure the foundation needs to be altered/reinforced regardless. The alterations proposed to the existing foundation are to ensure the health and safety of the home, avoiding the flume by (structurally) building around / above it. Any liability absorbed by the client shall only be recognized during construction.*
- iii. It was noted that as it presently stands; Joe & Terri's deed for 427 Riverview states that they are not responsible for flume failure and if failure were to occur and damage to their property / structure, the responsibility would fall on the county / city to make whole.
- iv. Indemnity during construction would have been acceptable - not in perpetuity
- v. It was noted that Jamie has a letter on his desk referencing 'limitations' on the property. Clients verbally asked both Jamie and Katie for a copy of that document.

2. **Agenda Item : Discussed Solutions / Path Forward**

- i. Cosmetic remodel is acceptable to the City if the foundation alterations are made in an effort to reinforce flume and to prolong the life of the structure.
- ii. It was also discussed that the County would like to require indemnification in perpetuity as the value of this house would go up significantly and the county doesn't want to be responsible for replacing it if the culvert fails.
- iii. Jamie suggested that the clients utilize the neighboring parcel that they also own to develop one larger home, moving the structure off of the flume itself - Joe and Terri were not amenable to that idea as they just remodeled the smaller home and do not want to consolidate two separate assets into one.
- iv. Jamie suggested that they could possibly consider making the home moveable, this was also not an idea that was acceptable to the home owners.
- v. It was further discussed that the most realistic strategy would be to reinforce the foundation as it exists over the flume in an effort to work with the city /county and to not sign any indemnity agreements with exception of a course of construction indemnity agreement that will expire at the end of the proposed remodel.
- vi. It was deemed acceptable to remodel the home and to leave the foundation as it exists with exception to any structural modifications to span the flume beneath.
- vii. Katie suggested that we meet with the project structural engineer to further vet the reinforcement strategy and then once we have a clear understanding and a path forward we approach the county with the findings and ultimately the solution.

3. **Next Steps:**

- i. Fuse to schedule a structural review meeting with Leonard / Redwood Engineering to review strategy for structural report documentation.
- ii. Fuse to obtain said Structural Report for home located over the flume.
- iii. Fuse to send a cohesive package to the County of Santa Cruz & the City of Capitola of the existing & proposed schematic drawings that coincide with the prepared structural report to start discussion of the proposed (possible) solution.

The above documents are our understanding of the items discussed in the above referenced meeting. Unless notice to the contrary is received, the notations will be considered acceptable and Fuse Architects, Inc. will proceed with the work based on these understandings. Any discrepancies should be brought to our attention within forty eight (48) hours of receipt of this document.

EXHIBIT 83

From: [Terri](#)
To: [Goldstein, Jamie \(jgoldstein@ci.capitola.ca.us\)](#); [Herlihy, Katie \(kherlihy@ci.capitola.ca.us\)](#)
Cc: [Joe McLean](#)
Subject: Follow up to Jan 22 meeting
Date: Friday, February 7, 2025 9:44:09 AM

Hello Jamie and Katie,

We're following up on our meeting from a couple of weeks ago.

Jamie, can you share the document you referenced from the 1980's that references the exceptions and limitations on development associated with our property? Thank you in advance.

Additionally, is there any followup from the county?

We look forward to hearing from you.

Terri and Joe

EXHIBIT 84

From: [Herlihy, Katie \(kherlihy@ci.capitola.ca.us\)](mailto:kherlihy@ci.capitola.ca.us)
To: [Derric G. Oliver](#)
Subject: FW: 427 Riverview
Date: Wednesday, June 4, 2025 9:51:04 AM
Attachments: [image001.png](#)

Hi Derric,

This is the last email correspondence I had with Terri and Joe. I look forward to discussing at 10 am.

Regards,

Katie

From: Herlihy, Katie (kherlihy@ci.capitola.ca.us) <kherlihy@ci.capitola.ca.us>
Sent: Monday, March 10, 2025 1:24 PM
To: Terri <terrirobbins1221@gmail.com>; Joe McLean <jwmjr116@gmail.com>
Subject: 427 Riverview

[EXTERNAL]

Dear Terri and Joe,

I hope this email finds you well. I wanted to follow up regarding next steps related to improvements to your property and determine whether you would like the City to proceed with the necessary changes to the draft agreement. The changes would stipulate that the City/County are not liable for the additional value of improvements as we had discussed during the meeting at Fuse. To ensure an accurate assessment of added value, we will require a third-party appraisal for improvements, as building permit valuations are lower than actual value when completed.

You had also asked me what the threshold for county sign off on a building permit. Based on my discussions with the Building Official, county sign-off on a permit would be required for any disturbance to the ground related to the structure. Also, any improvements which typically require county sign off in our normal routing for permits. For instance, if county sanitation is required to sign off any part of a development application, the permit would be routed to the county regardless of whether or not the work is done in the ground.

Please let us know if you would like the City to move forward with these amendments or if you have any questions or input. In order to proceed we will need an additions \$3,000 deposit to cover the cost of attorney/staff time. I would want to have an initial meeting with our attorney before they begin the amendments to ensure we are all on the same page.

I appreciate your time and look forward to your response.

Regards,

Katie Herlihy, AICP
Community Development Director - City of Capitola

420 Capitola Avenue, Capitola, CA 95010
831.475.7300 ext. 216



EXHIBIT 85



City of Capitola

MASTER APPLICATION

Application #	_____
Filing Date	_____
Total Fee	_____
Received by	_____

Project Address: _____

A.P.N.: _____ Zone District: _____

Existing Condition/Current Use _____

☐ New ☐ Addition ☐ Remodel ☐ Variance ☐ Demo ☐ CUP ☐ Coastal Permit ☐ Other _____

☐ **Residential:** # of Bldgs. _____ # of Stories _____ # of Units _____ ☐ **Commercial:** # of Bldgs. _____ # of Stories _____

Project Description:

Proposed Use/Occupancy: _____

IMPORTANT: Please check the box ☒ next to the name of the person listed below whom we should contact regarding this application.

☐ **Property Owner:** _____ Phone: _____
Mailing Address: _____
Email: _____

☐ **Applicant:** _____ Phone: _____
Mailing Address: _____
Email: _____

☐ **Architect/Designer:** _____ Phone: _____
Mailing Address: _____
Email: _____

☐ **Engineer:** _____ Phone: _____
Mailing Address: _____
Email: _____



City of Capitola

MASTER APPLICATION

Application # _____

Proposed

New Commercial Building: _____ sq. ft.
New Residential Building: _____ sq. ft.
Addition: _____ sq. ft.
Remodel/Tenant Improvement: _____ sq. ft.
Carport/Patio Cover: _____ sq. ft.
New Deck: _____ sq. ft.
New Fencing: _____ sq. ft.
New Paving: _____ sq. ft.
Parking Spaces: _____
Other (specify): _____

Existing

Lot: _____ x _____ = _____ sq. ft.
Main Building: _____ sq. ft.
Parking Spaces: _____
Other (specify): _____ sq. ft.

PLANNING STAFF USE ONLY

- ☐ ARCHITECTURAL AND SITE REVIEW
- ☐ COASTAL REVIEW: EXCLUSION, EXEMPTION OR REC. TO CCC
- ☐ ENVIRONMENTAL REVIEW
- ☐ ADMINISTRATIVE REVIEW
- ☐ PLANNING COMMISSION REVIEW (PC)
- ☐ ZONING ADMINISTRATOR
- ☐ OTHER _____

I, the undersigned, understand approval of this project does not waive any requirements, laws, or ordinances of the City of Capitola. All statements contained herein, including all documents and plans submitted in connection with this application, are true and accurate to the best of my knowledge.

In submitting this Application, I agree to defend, indemnify, and hold harmless the City of Capitola, its officers, employees, and agents, from and against any claim, including attorneys' fees and litigation costs, arising out of or in any way related to the City of Capitola's processing, consideration, or approval of this Application.

Signature: _____
Property Owner

Date: _____

I hereby authorize the above named contact person to act as my agent in all matters pertaining to this application.

Signature: _____
Applicant

Date: _____

AGREEMENT FOR PAYMENT OF PROCESSING FEES

City of Capitola (hereinafter CITY) and _____ (hereinafter APPLICANT) agree to the following:

1. This Agreement is in reference to the permit processing costs associated with Planning Application # _____.
2. A minimum deposit or fixed fee will be collected at the time of project submittal. Fixed fees are non-refundable, flat fee payments. Deposit accounts require an initial payment as stipulated in the City's Fee Schedule. If the initial deposit is depleted, the APPLICANT is responsible for replenishing the account to continue processing. Projects with deposit accounts will receive an invoice prior to issuance of a planning permit to be paid within 25 days from the invoice date. Upon completion of project review, any remaining deposit will be refunded to the APPLICANT. If it is necessary to utilize consultant services, a deposit to cover the consultant's costs will be requested from the APPLICANT prior to execution of the contract with the consultant.
3. The APPLICANT is responsible for payment of all permit processing costs associated with this project. If during the course of processing, the financial responsibility changes, the new financially responsible party must complete an Agreement for Payment which will release the previous APPLICANT from further financial obligations and designate the new APPLICANT.
4. If an invoice is not paid within 25 days CITY may stop work and close the application.
5. APPLICANT agrees to pay all fees applicable under the City's Fee Schedule prior to approval and issuance of land use clearance, map clearance or clearance for record of survey, building permit and post discretionary case clearance. No clearances or permits will be issued without receipt of fully payment for fees unless waived or adjusted by the Community Development Director upon a showing of good cause.
6. If the APPLICANT owes any amount due on any other project application, the CITY will not accept any subsequent permit application from the APPLICANT, unless waived by the Community Development Director.

Executed this _____ day of _____, 20_____

CITY

APPLICANT

Community Development Department

Signature

Print Name

Mailing Address



City of Capitola

MASTER APPLICATION

Application # _____

PLANNING STAFF USE ONLY

Current Fee Schedule Can Be Found Online

APPLICATION/FEE TYPE		FEE In effect at the time of application	TOTAL
	Conceptual Review – PC		
	Conceptual Review – PC and CC		
	Pre-Application Review		
ENVIRONMENTAL REVIEW			
	EIR Processing		
	Mitigation/Condition Monitoring Program		
	Negative Declaration and Mitigated Negative Declaration		
	NEPA Compliance		
AMENDMENT/REZONE			
	Annexation		
	Planned Development Rezone		
	Rezone		
	Specific Plan		
	Zoning Ordinance/General Plan/Local Coastal Plan Amendment		
COASTAL			
	Coastal Permit Exclusion		
	Coastal Development Permit		
SUBDIVISIONS			
	Certificate of Compliance & Lot Merger		
	Boundary Line Adjustment		
	Tentative Parcel Map		
	Tentative Map		
	Revised Map/Subdivision Modification		
	Map Time Extension		
Design Permits			
	Residential Single-Family Staff Review		
	Residential Single-Family PC Review		
	Residential Multi-Family – PC Review / Minor Design Permit – Staff Rev.		
	Commercial – PC Review / Minor Design Permit – Staff Review		
	Secondary Dwelling Unit – Staff Review		
	Secondary Dwelling Unit – PC Review		
	Variance		
	Historic In-Kind Replacement Design Permit		
	Outdoor Dining – Custom Deck		

SIGNS			
	Master Sign Program		
	Sign Permit – Staff Review		
	Sign Permit – PC Review		
	Temporary Signs & Banners		
	Village Sidewalk Sign Permit		
USE PERMITS			
	Commercial Sidewalk/Parking Lot Sale Permit		
	Conditional Use Permit / Minor Use Permit – Staff Approval		
	Conditional Use Permit – PC Approval		
	Home Occupation Use Permit		
	Master Conditional Use Permit		
	Sidewalk Vendor Permit / Sidewalk Vendor Annual Refuse Fee		
	Tenant Use Permit (within MCUP) – Staff approval		
	Temporary Use Permit / Temporary Sidewalk Dining		
	Transient Rental Occupancy Use Permit		
ADDITIONAL FEES:			
	Appeals by applicant		
	Appeals by City Official		
	Appeals by Other		
	Appeals to Coastal Commission		
	Appeal – Building/Zoning Code Violation		
	Code Compliance		
	Continuance Request – Applicant (2+)		
	Development Agreement		
	Developer Agreement Annual review		
	Fence Permit - Staff Approval		
	Fence Permit - Planning Commission Approval		
	Mobile Home Park - Change of Use or Closure		
	Records Search/Special Report – ½ hour minimum		
	Technical Study Preparation or 3 rd Party Review		
	Permit Amendment		
	Permit Time Extension – Staff Approval		
	Permit Time Extension – PC Approval		
	Stormwater Development Review Fee		
	Tree Removal – Staff Approval		
	Tree Removal – 3 or more trees on a property		
	Tree Installation Deposit		
	Information Technology Fee (Resolution No. 3796 adopted 11/12/09)	5% of Permit Fee(s)	
		TOTAL FEES:	
Applications which include a fee & deposit will be processed as deposit account. At time of building permit, the following planning fees may be collected if applicable: General Plan Maintenance Fee; Inclusionary housing fees; and Public Art			

PLAN SPECIFICATIONS

General Information on All Applications:

1. Two (2) sets of 24" x 36" (maximum) drawings and one (1) set of 8 ½" x 11" reductions of plans or a pdf file of drawings. Additional sets may be required for public hearings.
2. All plans must be prepared to scale.
3. Include the name of the person preparing the drawings, for whom, and date.
4. Include the Assessor's Parcel Number, street address, vicinity map, or other property identifying information.

All applications must include appropriate information as it pertains to the project including:

A. Survey

1. Stamped survey of existing conditions by licensed surveyor
2. Include locations of all existing features, buildings, trees and shrubs, and location of structures on adjacent lots.

B. Site Plan

1. North arrow
2. Scale: 1/8" = 1", or engineer's scale (not less than 1" = 10 feet)
3. Dimensions of the lot based on the submitted certified survey.
4. Building locations, roof lines, and lot lines with dimensions. Include existing buildings to be demolished and all proposed structures.
5. Location of existing and proposed on-site lighting, height and hooding devices.
6. Total square footage of gross floor area of all stories, and percent of total net
7. Locations of all existing features, buildings, trees and shrubs, and approximate footprint of structures on adjacent lots.
If the diameter is larger than 6" inches measured 48" above existing grade and the tree is proposed for removal, a Tree Permit is required.
8. Topography, existing and proposed – REQUIRED on all slopes over 10%. *All topographic maps shall be prepared by a registered civil engineer, or licensed surveyor.* The contour interval shall be two (2) feet for slopes up to 20% and five (5) feet for slopes over 20%. Cut and Fill – Indicate cuts with red shading. Indicate fill with blue shading. Include the location of the disposal site and a site cross section.

C. Floor Plans, Roof Plan, and Elevations

1. Scale: 1/4" = 1'
2. Interior room layout. Label each room – existing and proposed.
3. Elevations: All four sides of the structure including exterior stairs, ramps, elevators, downspouts, flues, fans, and roof equipment – existing and proposed.
4. Materials: Incorporate all exterior materials and label accordingly on all elevations. Including siding, trim, windows, doors, railings, fencing, screening, roof, exterior lighting, and stone, brick, or tile work. Exterior paint colors are not required.
5. Screening of mechanical equipment, trash enclosures, etc.
6. Additional information that will indicate the design aesthetics, affect and compatibility with neighboring properties and uses.
7. Roof plan: Roof plan of all structures on site having ridgelines reference height
8. Demolition Plan: For remodels and additions a demolition plan shall be submitted showing all areas of walls and floors to be demolished clearly identified in the drawings and a work scope statement. For additions to nonconforming structures the city may require a letter from a Structural Engineer.

D. Landscape Plan

1. Existing landscaping, trees, and vegetation to be retained specifying plant location, species, and size. Details of all existing trees shall also include tree diameter measured forty-eight inches above existing grade and outer limit of tree canopy and a label identifying if the tree will remain or be removed. Trees to be removed may require tree replacement pursuant to Section 12.12.190.
2. New landscape proposed showing plant type, size, quantity of plants and/trees.
3. Irrigation plan.

E. Exterior Material Information

1. Exterior materials must be incorporated into the architectural elevations and labeled accordingly, as outlined in C4 above. The applicant may provide additional details of materials on a separate PDF exhibit through the use of photo-simulations, manufacturer cut sheets, or renderings Exterior paint colors are not required.

F. Storm Water Permit Project Application – (Included as pages 8-9)

F. Drainage Plan/Erosion Control Plan-may be included on Site Plan

1. Show and label existing and proposed drainage features (e.g. curbs, channels, dikes, ditches, swales, rain gutters, splash blocks, energy dissipaters, storm drain inlets and pipe systems, French drains, culverts, creeks, etc.)
2. Show topography and use arrows to show pathways of runoff
3. Show the methods by which stormwater runoff from roofs and other new impervious areas- such as driveways, walkways and patios-will be conveyed away from structures to vegetated areas.
Use arrows to depict pathways of runoff.
4. Show proposed erosion control measures, such as waddles, silt fencing, seeding, etc.
5. Re-vegetation proposal for all exposed soil surfaces.
6. Sediment containment measures and special precautions for winter operations (October 1st through April 30th)
7. Drainage and erosion control plan – details implementing Low Impact Development BMP's outlined in the *Slow It. Sink It. Spread It. Homeowner's Guide to Greening Stormwater Runoff* by the Resource Conservation District of Santa Cruz County

G. Nonconforming Structures - Construction Cost Calculation - attached

1. A completed Construction Cost Calculation form for each nonconforming structure with proposed modifications. Nonconforming structures are defined under Capitola Municipal Code §17.92.030.
2. The value of total work to a nonconforming structure may not exceed 80% of the present fair market value of the structure as described under §17.92.070 CMC. *Demonstration of compliance may require a demolition plan or other documentation as determined by the Building Official and/or Planning staff.*



City of Capitola

Storm Water Permit Project Application

All projects must comply with the City's Storm Water Post Construction Requirements (CMC 13.16.090). Complete the following information in order for the Public Works Department to determine the applicable requirements for a project. Once this has been submitted the applicant will be notified and provided guidance on achieving compliance.

PROJECT ADDRESS: _____

OWNER:	REPRESENTATIVE:
Contact Name:	Contact Name:
Address:	Address:
City: Zip:	City: Zip:
Phone: Fax: Email:	Phone: Fax: Email:

Project Type: ☐ Residential ☐ Commercial ☐ Industrial

Project is a: ☐ New Development ☐ Redevelopment

Project Description: _____

Stormwater Project Information	
<p>► When completing this section, consider the entire site, not separate parcels or development sites within the project area</p> <p>► Impervious Area = structures, pavement, hardscaping – any surface that will not allow water to infiltrate into the ground</p>	
Parcel Size	_____ sq. ft.
Amount of existing (pre-project) impervious surface area (e.g., existing buildings, paving, hardscape)	_____ sq. ft.
Amount of replaced impervious surface area (e.g., parking lot replaced by a building)	_____ sq. ft.
Amount of new impervious surface area created (e.g., new building addition and/or patio)	_____ sq. ft.
Total proposed (post-project) impervious surface area	_____ sq. ft.

I hereby affirm that this information is accurate and understand it will be used to determine compliance with the City's Storm Water Post Construction Requirements for this project.

Property Owner or Authorized Agent

Print Name

Signature

Date

Staff to complete below

Net Impervious Area* (New + Replaced – (Existing- Proposed))	_____ sq. ft.	
Tier Determination	<input type="checkbox"/> Basic	Tier _____

Check One	Tier**	Detached Single Family Homes	All Others (Commercial, Industrial, Two- & Multi-Family Homes)
<input type="checkbox"/>	Basic Tier***	New/Replaced impervious area < 2,500 sf	
<input type="checkbox"/>	Tier 1	New/Replaced impervious area \geq 2,500 sf	New/Replaced impervious area \geq 2,500 sf
<input type="checkbox"/>	Tier 2	N/A	Net impervious area \geq 5,000 sf
<input type="checkbox"/>	Tier 3	Net impervious area \geq 15,000 sf	New/Replaced impervious area \geq 15,000 sf
<input type="checkbox"/>	Tier 4	New/Replaced impervious area \geq 22,500 sf	

Notes:

- * *Net impervious area = new impervious + replaced impervious – (pre-project minus post-project) Cannot be less than zero*
- ** *Tier numbers correspond to "Performance Requirements" identified in the State Water Resources Control Board resolution for PCRs.*
- *** *Basic Tier projects must incorporate runoff reduction measures into site plan, e.g. disperse runoff to vegetated area, pervious paving, rain barrel or cistern*

EXHIBIT 86

From: Herlihy, Katie (kherlihy@ci.capitola.ca.us) <kherlihy@ci.capitola.ca.us>
Sent: Thursday, August 08, 2024 6:37 AM PDT
To: Joe McLean <[REDACTED]>; Sesanto, Sean <ssesanto@ci.capitola.ca.us>
CC: Daniel Gomez <gomez@fusearchitecture.com>; Anna DiBenedetto <anna@dibenedetto.law>; Terri <[REDACTED]>
Subject: 427 Riverview

Hi Joe,

Thank you for your email. In terms of timing, the City Attorney's office will review the indemnity agreement upon receipt of revisions from your attorney, which we expect to be soon. Please also keep in mind that, after the City Attorney reviews, the County must also review. The City obviously cannot account for the County's timing but, as we have done thus far, we will forward our revisions timely, and follow up with them to obtain their revisions.

Please provide a \$5,000 deposit to cover attorney costs moving forward. Burke Williams bills at \$275/hour for Senior Associate Leila Moshref-Danesh and \$300/hour for City Attorney Samantha Zutler. Any portion of the deposit not utilized will be refunded.

We had a good meeting with Dan Gomez yesterday related to the design and design permit process.

Regards,
Katie

From: Joe McLean <[REDACTED]>
Sent: Monday, August 5, 2024 4:26 PM
To: Herlihy, Katie (kherlihy@ci.capitola.ca.us) <kherlihy@ci.capitola.ca.us>; Sesanto, Sean <ssesanto@ci.capitola.ca.us>
Cc: Daniel Gomez <gomez@fusearchitecture.com>; Anna DiBenedetto <anna@dibenedetto.law>; Terri <[REDACTED]>
Subject: Funds for legal

Katie,

We want to continue the conversation. We just ask that there is more communication with the legal teams so that we don't have any surprises going forward. We expect that we are close to resolution, so time spent should be minimal from here on out.

That said, please let me know what amount you need, and I will come into the office first thing tomorrow with a check. We would love for you and Dan to continue to move forward with the application.

Thank you,
Joe and Terri

EXHIBIT 87

From: [Moshref-Danesh, Leila J.](#)
To: [Derric G. Oliver](#)
Cc: [Goldstein, Jamie \(jgoldstein@ci.capitola.ca.us\)](#); [Sesanto, Sean](#); [Herlihy, Katie \(kherlihy@ci.capitola.ca.us\)](#); [Zutler, Samantha W.](#)
Subject: RE: 427 Riverview Avenue - City of Capitola Design Review & CDP App. 23-0400 - COAs 2 & 4
Date: Monday, September 29, 2025 1:25:02 PM
Attachments: [ITEM-Attachment-008-3ef777ac286745bebf2c76dbe6de25c4.pdf](#)

Good Afternoon Derric,

Your email and letter correspondence have been included in the agenda packet for the 427 Riverview item, which will be considered by the Planning Commission on Thursday. For the answers to your questions I would refer you to the published staff report, which I have attached here for your convenience.

See you Thursday.

Leila J. Moshref-Danesh | Partner
she, her, hers

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From: Derric G. Oliver <doliver@fentonkeller.com>
Sent: Wednesday, September 24, 2025 11:36 AM
To: Moshref-Danesh, Leila J. <LMoshref@bwsllaw.com>
Cc: Goldstein, Jamie (jgoldstein@ci.capitola.ca.us) <jgoldstein@ci.capitola.ca.us>; Sesanto, Sean <ssesanto@ci.capitola.ca.us>; Herlihy, Katie (kherlihy@ci.capitola.ca.us) <kherlihy@ci.capitola.ca.us>; Zutler, Samantha W. <SZutler@bwsllaw.com>; planningcommission@ci.capitola.ca.us
Subject: 427 Riverview Avenue - City of Capitola Design Review & CDP App. 23-0400 - COAs 2 & 4

[EXTERNAL]

Good morning, Leila-

Attached please find my letter to you of today's date regarding the above-referenced subject.

Best,

Derric

Derric G. Oliver

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