

Planning Department
Community Development Department, Town of Los Gatos
110 E. Main Street
Los Gatos, CA 95030

January 30, 2023

**Re: The Bouknight Residence, 144 Wood Road, Los Gatos, CA 95032
Written Description of Project**

To Whom it May Concern:

On behalf of my family, I am pleased to present background and perspective on our prospective single-family home, which received Architectural and Site Development application approval via the Planning Commission in August, 2021.

DESCRIPTION OF EXISTING PROPERTY

The subject property: Assessor Parcel Number (APN) 510-47-045 is a vacant, undeveloped parcel located approximately at the end of the public portion of Wood Road. It has a general plan designation under hillside residential with a zoning designation of HR-5 and applicable plans and standards of the Los Gatos Town (Town) General Plan and Hillside Development Standards and Guidelines.

On August 26, 2014 a certificate of compliance was approved by the Town via its Development Review Committee (DRC) to legalize the lot. In 2016, the Town approved a lot line adjustment via its DRC, providing support for single-family residential development. The lot line adjustment was recorded by the Town on October 26, 2016. As part of the approval process, the DRC determined that the site was physically suitable for this type of development as part of its findings under the State Subdivision Map Act. Easements were established at the time of the lot line adjustment along with 138 Wood Road to provide ingress/egress, utilities access to the subject property and a Santa Clara County Fire Department (SCCFD) turnaround at the driveway of 138 Wood Road. This SCCFD turnaround was recorded as easement #23549384 on January 3, 2017 (Exhibit 4d).

Access

The 29,632 sq. ft. (0.68 Acre) vacant property is accessed from the north side of Wood Road, approximately 1,633 feet from the intersection of Wood Road and South Santa Cruz Avenue. On September 27, 2017 exclusive use easement and agreement #23763494 was recorded providing the parcel with access and broad use rights to an additional approximately 0.5 Acres of land physically adjoined to the vacant property. There are presently ten (10) other single-family residences along Wood Road and one non-operational senior living community (Exhibit 4e).

Topography

The site has a north-east facing slope that averages at 35%. This is an undeveloped site with no existing driveway or building pad. A least restrictive development area (LRDA) was outlined on areas that are under 30% slope for the proposed building area, which happens to coincide with a natural clearing that is void of trees. The southern portion (along the “front” property line facing Wood Road) has a relatively steep exposed cut bank that was created when Wood Road was constructed. Apart from being visible to the adjacent Draa Residence at 138 Wood Road, the property is relatively private and isolated.

PROPERTY ACQUISITION AND ARCHITECTURAL AND SITE DEVELOPMENT APPROVAL

Property Acquisition

Kavita Bouknight (spouse) and I acquired the subject property in June 2020 with a clear intent to build a single-family residence in accordance with the certificate of compliance and lot line adjustment approvals given by the DRC in 2014 and 2016. Prior to purchasing the subject property, Kavita and I spoke to multiple architects to understand its viability for a single-family residence. We ultimately selected a local, well-regarded Los Gatos architect who is very familiar with the Town’s approval processes. Together, we outlined a path to approval in accordance with the Town’s development review process (Exhibit 4f, pages 1-6).

Architectural and Site Development Approval

In January 2021, we submitted an architectural and site development application (S-21-003) for the subject property, requesting approval to construct a new single-family residence. As noted on page 2 of Exhibit 3, all development applications are required to go through a three or four step process in order to obtain approval. The technical review is a critical step in the development review process. As part of the technical review, staff representatives from Town departments (Planning and Building Divisions, Fire and Parks and Public Works) meet with the project applicant to ensure that the project: “is complete, meets all code and policy requirements” and meets the requirements of CEQA.

Our staff technical project review meeting was held on May 19, 2021 (Exhibit 4g) following the standard process steps and with staff representatives present, including a representative from the SCCFD. We had a focused and effective dialogue with the representatives in an effort to finalize our application. Subsequent to our technical review meeting, there was additional engagement with SCCFD to further address its needs, and our application was modified with the necessary features to satisfy SCCFD requests. We received our approval letter from SCCFD dated June 22, 2021 (Exhibit 4h). As noted in the letter, site access is a component of the review, which is in alignment with the Town’s development guidelines that the technical review is to ensure that the project meets “all” code and policy requirements. The approval letter contains specific conditions of approval, which were proposed and eventually finalized through the Planning Commission approval process.

On June 23, 2021 we were notified that with the SCCFD approval (the other divisions approved as follows: Building (6/15/2021), Engineering (6/16/2021), and Planning 6/10/2021), our project

was in line for Planning Commission evaluation in conjunction with a public hearing. With a notification period beginning on July 8, 2021, we posted the appropriate signage (Exhibit 4i) in preparation for a July 28, 2021 Planning Commission review meeting.

On July 28, 2021 our application was formally reviewed by the Planning Commission in conjunction with a public hearing. Staff recommended approval of the Architecture and Site application subject to recommended conditions of approval. During the review, the Planning Commission noted that at one of the four primary viewing areas within a particular viewing window, parts of the home would be visible. The Planning Commission asked whether we were open to exploring placing screening trees to reduce visibility. We agreed to explore placing screening trees as well as reducing the overall height of the structure and agreed to a continuance with a date certain of August 25, 2021.

On August 25, 2021 our application was formally reviewed by the Planning Commission in conjunction with a public hearing. Our application was updated to reflect the Planning Commission's direction with plans reflecting a reduction in height and the addition of screening trees to reduce visibility. After the formal review and public hearing, the Planning Commission approved our architectural and site development application to build a single-family residence along with applicable site improvements. As part of its approval, the Planning Commission made the findings that the project complies with the objective standards of Chapter 29 of the Town Code (zoning regulations), including site access. This includes Section 29.10.06708, which guides the appropriateness of the Town's roadways.

On September 9, 2021 we were notified by the Town that the appeal period had closed and no appeal had been filed, thus confirming the finalization of our architectural and site development application. We were instructed that we could now submit for our building permits and that we should do so in alignment with our conditions of approval. On September 13, 2021 the Town furnished us with a formal letter noting that the Town Planning Commission had approved the meeting minutes from August 25, 2021, confirming any additional or modified conditions of approval for the project and that the Planning Commission's decision was "now considered final" (Exhibit 4k). With this action, our final conditions of approval (Exhibit 4k) were codified and became an inseparable feature of our building permit submission(s). As part of our final conditions of approval, SCCFD confirmed that the approved application had been reviewed for the acceptability of site access (point #92). The Town's development review process guidelines (Exhibit 4f, page 4) states: "The action of the Planning Commission is final on all applications except for certain applications such as zone, changes, planned developments, and/or Conditional Use Permits with alcohol service."

As part of its approval, the Planning Commission made the finding that the project complies with the objective standards of Chapter 29 of the Town Code (zoning regulations), including site access. This includes Section 29.10.06708, which guides the appropriateness of the Town's roadways.

BUILDING PERMIT SUBMISSION AND RESPONSE

Building and Grading Permit Submission

After working diligently to assemble our construction document package according to our approved architectural and site development application and associated final conditions of approval, we submitted a request for our grading permit in October 2021 and a request for building permits in December 2021.

SCCFD Response

In a letter dated February 3, 2022, SCCFD proposed new conditions of approval never before discussed related to our application. These new conditions of approval related to PRC 4290 and focused on elements of Wood Road (public roadway) compliance. On March 10, 2022 we were notified by our architect of these new proposed conditions of approval. Over the next three months, we tried to assess what these new proposed conditions of approval could mean for our project status. I had significant concerns related to an attempt to alter the final conditions of approval post hoc.

On May 26, 2022 I met with a Town planner to understand the implications of SCCFD proposing to alter our final conditions of approval and he recommended that I connect with SCCFD with his help.

On June 16, 2022 we (Omari, Kavita and Planning) met with representatives from SCCFD to discuss the new proposed conditions of approval. The representatives recommended that we conduct a road survey to better understand at what level Wood Road (public roadway) was in compliance with the new proposed conditions of approval. On June 20, 2022 after our collective meeting, I communicated to representatives from SCCFD my significant concerns related to altering the final conditions of approval. On August 4, I communicated my concerns regarding altering final conditions of approval with Town Planning.

Over a period of seven (7) months (mid-June to mid-January 2022), we had a detailed topographical survey of Wood Road completed, we had a geotechnical engineer conduct a fire truck apparatus load assessment of both Wood Road and our driveway (Exhibit 4I) and we had numerous communications and meetings with representatives of SCCFD in an attempt to address its compliance questions related to Wood Road. Over this time period, we re-submitted (after the initial SCCFD rejection response dated February 3, 2022) our application twice more in an attempt to obtain our building permits. We received disapproval letters to those submissions as well (dated: June 22, 2022 and November 30, 2022).

On November 16, 2022 a representative from SCCFD informed us that we should pursue the submission of an exception (AMMR) request. We undertook significant efforts and engaged SCCFD representatives significantly in the development of our exception request. The exception request was submitted on December 5, 2022. On January 18, 2023 we received notification that our exception request was been denied and we received our fourth disapproval letter from

SCCFD citing proposed new conditions of approval that would alter our final conditions of approval.

We are now appealing SCCFD's exception denial and the Town's decision to uphold the alteration of our final conditions of approval.

CONCERNS WITH BUILDING AND GRADING PERMIT PROCESS FOR APPLICATIONS B22-0025 AND GR21-354

While we remain grateful for the continuous engagement of the SCCFD and the Town, we have raised important concerns as part of this process that must be noted in this Project Description and we hope can be helpful for the future.

On October 27, 2022, at my request, our attorney sent a seven-page letter to the Town outlining our concerns with the process.

Permit Streamlining

We have concerns that altering final conditions of approval after they have been approved by the Town's Planning Commission is a violation of the Permit Streamlining act (Exhibit 4m) and represents a violation of the Town's guidelines (Exhibit 4f).

Requirement for Offsite Improvements

We have concerns regarding whether CalFire's regulations require offsite improvements. The Office of the County Counsel in the County of Santa Clara has been following the implementation of PRC 4290 in the local county and issued a comprehensive memorandum dated September 26, 2022 (Exhibit 4n). The memorandum summarizes the issues surrounding PRC 4290 implementation, provides a recommendation for processing related applications and discusses the application of the regulations to existing roads and the approaches that other counties have taken, waiting to implement the Regulations or seeking to implement them with a practical, common-sense based approach.

The memorandum notes on page 2, "...many other CAL FIRE units are still not applying the Regulations or are only applying them to new subdivisions and other large developments. CAL FIRE's inconsistent approach to implementation across the state has created a challenging regulatory landscape for project applicants and local governments alike."

Further on page 5:

"We contacted other local government attorneys across the state who have significant experience dealing with the Regulations to better understand how the Regulations have been applied over time. They reported that many local jurisdictions have previously received delegations of authority from CAL FIRE to implement the regulations and the Board of Forestry had also certified some local ordinances that exempted existing roads. They believe many of those jurisdictions are still operating under those prior delegations

and are either not applying the Regulations to existing roads or are liberally granting exceptions from the Regulations.”

We have tried to understand what approaches other counties around the State have undertaken to the best of our ability and it does appear that Los Gatos is taking an approach that is misaligned with the other Cities and Towns in the State. Even broader Santa Clara County, which was the first to adopt these Regulations in such an impractical and irregular manner, has significantly changed its approach.

Regarding approach, the memorandum states the following:

“To facilitate a streamlined approach to the Regulations designed to accelerate review and action on a project application subject to the Regulations, County Counsel recommended that the County undertake project-specific evaluations as soon as feasible during the application process to determine whether the County could lawfully waive compliance with some or all of the Regulations on the basis that applying them would violate the Takings Clause of the U.S. Constitution. This approach was developed in coordination with and is supported by the Administration, which began implementing this process in July 2022.”

Lastly, the memorandum comments on the obscure process of having applicants apply for exception requests. The memorandum states: “However, CAL FIRE has denied all exception requests on the grounds that the applicants have not proposed mitigation that would have the ‘same practical effect’ as the Regulations.” Since the time of this memorandum, it appears that there has been some movement on exception request approval, although it's clear that the vast majority of them cannot be successful with a point-by-point evaluation, which appears to be the primary practice. It is also not clear how determinations of exception approval would be made should they be issued. For these reasons, as well as concerns regarding violations of Permit Streamlining, the County of Santa Clara has moved away from this procedure while it remains the standard in the Town of Los Gatos.

Requirement for Significant Reengineering to Wood Road Would Constitute a Taking

Under three different legal doctrines, the requirement to reengineer Wood Road would constitute a taking without just compensation in violation of the Fifth Amendment to the United States Constitution. First, the requirement is disproportionate to the impacts of our proposed single-family development project, and therefore violates the essential nexus and rough proportionality test announced by the United States Supreme Court in *Dolan v. City of Tigard* (1994) 512 U.S. 374 (“Dolan”). Second, the requirement constitutes a per se taking as described by the United States Supreme Court in *Lucas v. South Carolina Coastal Council* (1992) 505 U.S. 1003 (“Lucas”). Finally, applying the test announced by the United States Supreme Court in *Penn Central Transportation Co. v. City of New York* (1978) 438 U.S. 104 (“Penn Central”), the requirement constitutes a regulatory taking (Exhibit 4p).

Conclusion

Despite these concerns, we have endeavored to work positively with both SCCFD and the Town to obtain building permits for our approved Architectural and Site Development application. We have worked hard for nearly a year to have our building permits released and more than two years to start this project since preparing our application. In our letter of justification, we step through our appeal, addressing each of the items noted. We have pursued this appeal because of our desire to work with SCCFD and the Town, although the concerns raised have not been resolved. Exhibit 4q has been included to summarize the timeline and amount of engagement that has occurred across the course of this project.

Thank you for the consideration of our appeal.

Respectfully,

A handwritten signature in black ink, appearing to read "Omari V. Bouknight", with a stylized flourish at the end.

Omari V. Bouknight
16717 Shannon Road
Los Gatos, CA 95032

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