

On Mon, Nov 1, 2021 at 2:27 AM Alison Steer [REDACTED] wrote:

Dear Mr Prevetti,

Please see below excerpt from the Planning Commission appeal meeting on Sept 9th and supporting evidence of Town initiated lot mergers are enforceable:

3 ROBERT SCHULTZ: The Appellant's argument is that
4 our ordinance overrules the Subdivision Map Act and the
5 case law that has determined how mergers occur-but I don't
6 hear much on mergers so I think maybe they've dropped that
7 argument and now we're concentrating on the lot line
8 adjustment-and the Subdivision Map Act is very clear in
9 what your scope is and it's limited to the effect of after
10 the lot line is completed.
11
12 I've been doing this 32 years and the argument
13 has never been that if there are unbuildable lots you
14 cannot do a lot line adjustment, and I'm trying to look up
15 Napa County's to see where they have, but I do know that's
16 a county, there might be different rules with counties, but
17 I have not found any city that has the same language that
18 we have that requires you to apply the lot line beforehand,
19 and all I can assume is the ordinance is very old, around
20 the time the Subdivision Map Act was applied, and we do
21 need to go back and change the merger language and the lot
22 line language so it confirms the Subdivision Map Act. The
23 Subdivision Map Act language is very clear that you apply
24 what the lots will be afterwards and not before.
25

LOS GATOS PLANNING COMMISSION 9/8/2021
Item #2, 17200 Los Robles Way

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1) City of Saratoga Lot Merger Ordinance (and other Town Ordinances that were highlighted in Exhibit 11 of supporting exhibits attached)

https://library.municode.com/ca/saratoga/codes/code_of_ordinances?nodeld=CH14SU_ART14-65MEPA_14-65.020NOINME

2) Woodside Lot Merger Ordinance

https://library.municode.com/ca/woodside/codes/municipal_code?nodeld=CD_ORD_TITXVLAUS_CH152SU_ARTIVTOINLOME_S152.040TOINLOME

And the Town Council meeting where it was discussed in January 2021.

https://www.woodsidetown.org/sites/default/files/fileattachments/town_council/meeting/32358/item_b_-_mcam2018-0001_amend_subdivision_ordinance.pdf

From the above link:

Although Town-initiated Lot Mergers are very rare, the local ordinance must include these regulations for consistency with, and the ability to carry out, the Map Act. The Town-Initiated Lot Merger regulations are still very close to those outlined in the current Map Act. *The Ordinance needs to be updated with make minor modifications to these regulations to ensure consistency with the Map Act requirements for local jurisdiction-initiated Lot Mergers.*

Note that the comment about consistency with the Map Act.

Please also note that Mr Jeans, Mr Paulson, and the Town Attorney were aware of the lot merger ordinance back in 2019 as is documented here, and no effect has been made to remove this ordinance from our Town Code.

<http://weblink.losgatosca.gov/weblink/0/edoc/1230776/Item%204%20-%20Addendum.pdf>

In this case the structure was sitting on both lots and per the SMA and Town's lot merger ordinance this would not have applied in this case.

I believe someone may have confused what a Certificate of Compliance signifies. It doesn't confer building rights, zoning variances or other privileges. In fact, Compliance Certificates are often issued for "interior" parcels that lack legal means of access.

<https://info.courthousedirect.com/blog/bid/263554/what-is-a-compliance-certificate>

Please let me know if you have any further questions.

Best Regards,
Alison

On Sat, Oct 30, 2021 at 1:03 PM Alison Steer [REDACTED] wrote:

attaching the City of Berkeley appeal of merger which I inadvertently left off this email, but was included in the exhibits that were submitted to the Town Council packet for the Nov 2nd 17200 Los Robles Way LLA meeting.

Given the appeal packet material was large, I also want to point out the job description of the DRC committee, which refers to the lot merger ordinance. This was included as exhibit 3.

https://library.municode.com/ca/los_gatos/codes/code_of_ordinances?nodid=CO_CH29ZORE_ARTIIADEN_DIV7ASDU_S29.20.745DERECO

(11) Under the provisions of section 29.10.070 of this chapter and section 66424.2 of the Subdivision Map Act, determine whether lots have merged.

Thank you,
Alison

On Sat, Oct 30, 2021 at 12:30 PM Matthew Hudes <MHudes@losgatosca.gov> wrote:

Thank you.

Regards, Matthew

In compliance with the Ralph M. Brown Act, please do not forward my email.

Councilmember Matthew Hudes

Town of Los Gatos

[REDACTED]
[REDACTED]

On Oct 30, 2021, at 9:40 AM, Alison Steer [REDACTED] wrote:

EXTERNAL SENDER

Hi Matthew,

I have read the Town Attorney's findings that involuntary lot mergers are unenforceable but would like to direct you to this link that discusses the Morehart vs Santa Barbara ruling, and the attached involuntarily lot merger in the City of Berkeley. I find the Town Attorney's behavior incredulous, and very concerning that he will not defend our Town ordinances, that are clearly supported by the Subdivision maps act, and wonder what his personal motivation is in this case. Allowing developers to skirt formal subdivision review is asking for disaster.

<https://law.justia.com/cases/california/supreme-court/4th/7/725.html>

best regards,
Alison

B. Merger Provisions' Procedural Safeguards

Section 66451.11 provides that "[a] local agency may, by ordinance which conforms to and implements the procedures prescribed by this article [§§ 66451.10-66451.21], provide for the merger of a parcel or unit with a contiguous parcel or unit held by the same owner" if at least one of the parcels meets certain requirements. The prescribed procedures, found in sections 66451.12 through 66451.18 and described more fully in the margin, are somewhat elaborate. fn. 21 The local agency must initiate a merger by a "notice of intention to determine status" that may be recorded as

well as mailed to the record owner. (§ 66451.13.) fn. 22 The owner may request a hearing and present evidence on whether the parcels meet the standards for merger specified in the ordinance. (§§ 66451.14-66451.16.) After deciding whether to merge the parcels, the local agency must record either a notice of merger or a release of the notice of intention to determine status. (§§ 66451.16-66451.18.)

Petitioners contend that the county ordinances improperly transgress a legislative intent that a required merger of parcels be accompanied by these procedural safeguards. But as the record in this case illustrates, a property owner receives just as much due process under the ordinances as would be **[7 Cal. 4th 757]** afforded under the Act's merger provisions. Under the Act, a merger of parcels is initiated by recorded notice to the owner of an intention to determine status. Such a notice would be superfluous under the ordinances because application of the merger requirement is initiated by the owner's own application for a development permit.

Under both the Act and the ordinances, an owner desirous of resisting the merger is entitled to a hearing. Here, plaintiffs were heard before the county's planning commission and board of supervisors. The only issue on which the Act provides a hearing is whether the property meets the standards for merger that are specified in the merger ordinance as authorized by the Act. (§§ 66451.13, 66451.16.) Here, plaintiffs were fully heard before the county's bodies on their contention that the ordinances' merger requirements did not apply because the parcels adjacent to plaintiffs' block 132 were under separate, rather than common, ownership.

Finally, the county ordinances provide that any merger they require be put into effect by the owner's own "recordation of a reversion to acreage, voluntary merger, final parcel map or final tract map." (Ord. No. 3718, § 2, amending § 35-102.3.) Thus, there is no need under the ordinances for the requirement, imposed by sections 66451.12 and 66451.16 through 66451.18 of the Act, that the county itself record a decision to merge or not to merge.

Since the county ordinances provide as much procedural protection to parcel owners as the Act's merger provisions (§§ 66451.12-66451.18), the ordinances are not impliedly preempted by the state concern underlying those provisions for the owners' procedural rights.

From: [Alison Steer](#)
To: [Robert Schultz](#)
Cc: [Joel Paulson](#); [Ryan Safty](#); [Jennifer Armer](#); [Planning](#)
Subject: 17200 Los Robles Way LLA Application M-20-12 - Town Initiated Lot Mergers
Date: Monday, November 1, 2021 9:19:28 AM
Attachments: [image.png](#)
[image.png](#)
[image.png](#)
[image.png](#)
[Supporting Exhibits for Appeal of 17200 Los Robles Way LLA Application.pdf](#)

EXTERNAL SENDER

Dear Mr Schultz,

I have read your findings regarding the details on Lot Merger. I'm including the excerpt below from the Planning Commission appeal meeting on Sept 8th and am including supporting evidence of Town initiated lot mergers. I believe your argument is around semantics that our Ordinance does not specifically describe the procedure required for involuntary lot merger per SMA 66451, even though we know we operate under the provisions of the Subdivision Maps Act? It should be noted that we also do not have a lot line adjustment ordinance that specifically calls out Section 66412 either. If this was a concern, I am wondering why this ordinance wasn't addressed two years ago when the 11/15 Peralta Ave lot merger request was submitted by neighbors to the Town? In this case, the request for merger did not apply since there was a building on both properties, but it did afford an opportunity for review of the Town's ordinance with regard to enforceability.

<http://weblink.losgatosca.gov/weblink/0/edoc/1230776/Item%204%20-%20Addendum.pdf>

You had mentioned in the Planning Commission appeal meeting (transcribed excerpt below) that you would check for other cities that may have ordinances that prevent unbuildable parcels from becoming buildable. I submitted numerous examples of them in the supporting exhibits (exhibit 11), including our neighboring city of Saratoga. Have you found a ruling that supports that a non-buildable parcel cannot be made buildable through lot line adjustment is in fact not enforceable in the State of California? The City of Berkeley successfully processed an involuntary lot merger by following SMA 66451.

3 ROBERT SCHULTE: The Appellant's argument is that
4 our ordinance overrules the Subdivision Map Act and the
5 case law that has determined how mergers occur—but I don't
6 hear much on mergers so I think maybe they've dropped that
7 argument and now we're concentrating on the lot line
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9 what your scope is and it's limited to the effect of after
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16 a county, there might be different rules with counties, but
17 I have not found any city that has the same language that
18 we have that requires you to apply the lot line beforehand,
19 and all I can assume is the ordinance is very old, around
20 the time the Subdivision Map Act was applied, and we do
21 need to go back and change the merger language and the lot
22 line language so it confirms the Subdivision Map Act. The
23 Subdivision Map Act language is very clear that you apply
24 what the lots will be afterwards and not before.
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In addition, here is the Woodside Lot Merger Ordinance

https://library.municode.com/ca/woodside/codes/municipal_code?nodeId=CD_ORD_TITXVLAUS_CH152SU_ARTIVTOINLOME_S152.040TOINLOME

And the Town Council meeting where it was discussed in January 2021.

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From the above link:

*Although Town-initiated Lot Mergers are very rare, the local ordinance must include these regulations for consistency with, and the ability to carry out, the Map Act. The Town-Initiated Lot Merger regulations are still very close to those outlined in the current Map Act. **The Ordinance needs to be updated with make minor modifications to these regulations to ensure consistency with the Map Act requirements for local jurisdiction-initiated Lot Mergers.***

As they mention, Town-initiated lot mergers are very rare, and given the situation with how this parcel of land (APN 532-36-077) exists in the first place, you would not expect them to be common. You had mentioned previously that staff share my frustration with regard to providing certificate of compliance on these non-conforming lots. This is why Town Ordinance Sec 29.10.070 is required to ensure new buildable sites cannot be created without proper due diligence. The creation of a new buildable parcel should go through the formal subdivision process, because of the serious concern of property damage to the neighbors at the bottom of the hillside, and because this may lead to another Bellavista situation when this comes back to planning, which could harm the future owner of APN 532-36-075 when it is sold.

At the Woodside link above please also see the section regarding CEQA, bullet 2 which says that a Lot Line adjustment including steeper average slopes than 20% cannot be exempt from CEQA. I have raised this in my appeal packet as well.

https://library.municode.com/ca/woodside/codes/municipal_code?nodeId=CD_ORD_TITXVLAUS_CH152SU_ARTVLOLIAD

California Environmental Quality Act (CEQA)

CEQA Guidelines provide three main exemptions for Lot Mergers, Lot Line Adjustments, and divisions of land. Below is a summary of the three exemptions:

1. **CEQA Guidelines Section 15300.1 – Ministerial Action:** All ministerial permits that do not require any discretionary action are exempt from CEQA. For example, a Lot Merger application reviewed by Town staff shall be approved if it meets all Municipal Code development standards. Since Town staff must approve a Lot Merger that meets minimum standards, it would be considered a ministerial action and therefore be exempt from CEQA under Section 15300.1.
2. **CEQA Guidelines Section 15305(a) – Minor Alterations to Land Use Limitation for an Lot Line Adjustment:** A Lot Line Adjustment may be exempt from CEQA under Section 15305 if the gross average slope of all properties combined is less than 20%. A Lot Line Adjustment including steeper average slopes cannot be exempt from CEQA.
3. **CEQA Guidelines Section 15315 – Minor Land Divisions:** This Section exempts Land Divisions of properties into four or fewer parcels, in urbanized areas (defined by CEQA guidelines), zoned for residential or commercial use, consistent with the General Plan and zoning, with no exceptions required, having all services and access to the proposed parcel, having not been involved in a division of land in the previous two years, and not having an average slope greater than 20%, and not creating significant adverse environmental impacts.

It should be noted that CEQA Guidelines Section 15300.2 indicates that even if a CEQA exemption exists for a project, there could be certain circumstances in which a project could result in significant impacts, which would not allow the listed exemption to be used by the Town.

A detailed summary of the Morehart case finds the following:

<https://law.justia.com/cases/california/supreme-court/4th/7/725.html>

"the act does impliedly preempt any local zoning ordinance provision that purports to require, as a condition to issuance of a development permit, a merger of parcels that the county **could not compel** under section 66451.11"

Given the appeal packet material was large, and perhaps items were overlooked, I also want to point out the job description of the DRC committee, which refers to the lot merger ordinance. This was included as exhibit 3.

https://library.municode.com/ca/los_gatos/codes/code_of_ordinances?nodeId=CO_CH29ZORE_ARTIIADEN_DIV7ASDU_S29.20.745DERECO

(11) Under the provisions of section 29.10.070 of this chapter and section 66424.2 of the Subdivision Map Act, determine whether lots have merged.

Please let me know if this is not sufficient evidence for the Town to deny lot line adjustment of APN 532-36-077.

Thank you,
Alison Steer



EXHIBITS

Exh.#	Item
1	Town of Los Gatos Lot Merger Ordinance (Sec 29.10.070)
2	Sub Division Maps Act Gov Code 66451.11
3	Requirements of the Development Review Committee (Sec. 29.20.745)
4	Sierra Club vs Napa County Superior Court Ruling on Lot Line Adjustment for Sequential Lots.
5	Town Lot Line Adjustment Procedure Handout.
6	CEQA Categorical Exemption Class 5, Guidelines Section 15305 (minor alterations in land use limitations).
7	List of CEQA Exemption Types
8	City of Santa Barbara criteria for Environmental Review
9	17200 Los Robles Way Average Slope Calculations
10	Required Findings For 17200 Los Robles Way
11	Links to other CA Town and County Lot Line Adjustment Ordinances: <ul style="list-style-type: none">a. Santa Cruz Countyb. Napa Countyc. Saratogad. Laguna Beache. Sonoma Countyf. City of Fillmoreg. Marin County
12	Burke Lot Line Adjustment- Big Sur
13	Subdivision Maps Act Gov Code 66412(d)
14	Santa Clara County Fire Department Requirements for driveways >150ft.
15	Non-Buildable Area of APN 532-36-077 outside the LRDA
16	Berkeley Merger of Two Parcels
17	Attached Sierra Club vs Napa County Highlighted PDF
18	Thompson Title Deed for 17200 Los Robles Way showing acknowledgement of the Thompson/Clifford Quit Claim to Harding Ave ROW (Parcel 4 description)

Exhibit 1: Town of Los Gatos Lot Merger Ordinance

Sec. 29.10.070. - Lot merger.

(a) A parcel of land does lawfully exist separately from other land and is a lot when the parcel meets each of the following criteria:

(1) Comprises at least five thousand (5,000) square feet in area.

(2) Was created in compliance with applicable laws and ordinances in effect at the time of its creation.

(3) Meets current standards for sewage disposal and domestic water supply.

(4) Meets slope stability standards.

(5) Has legal access which is adequate for vehicular and safety equipment access and maneuverability.

(6) Development of the parcel would create no health or safety hazards.

(7) The parcel would be consistent with the applicable general plan and any applicable specific plan, other than minimum lot size or density standards.

(8) No structures are built over a common property line which is shared with another parcel under the same or substantially the same ownership.

(b) Any parcels under the same or substantially the same ownership that do not meet the criteria listed above shall be considered merged. In addition, no parcel shall be modified through a lot line adjustment procedure in order to meet the criteria listed above.

(Ord. No. 1316, § 3.10.010, 6-7-76; Ord. No. 1337, 11-1-76; Ord. No. 1432, 6-4-79; Ord. No. 1438, 8-6-79; Ord. No. 1756, § I, 8-1-88)

Exhibit 2: Subdivision Maps Act Gov Code 66451.11

https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=GOV§ionNum=66451.11

GOVERNMENT CODE - GOV

TITLE 7. PLANNING AND LAND USE [65000 - 66499.58] (*Heading of Title 7 amended by Stats. 1974, Ch. 1536.*)

DIVISION 2. SUBDIVISIONS [66410 - 66499.38] (*Division 2 added by Stats. 1974, Ch. 1536.*)

CHAPTER 3. Procedure [66451 - 66472.1] (*Chapter 3 added by Stats. 1974, Ch. 1536.*)

ARTICLE 1.5. Merger of Parcels [66451.10 - 66451.24] (*Article 1.5 added by Stats. 1983, Ch. 845, Sec. 2.*)

66451.11.

A local agency may, by ordinance which conforms to and implements the procedures prescribed by this article, provide for the merger of a parcel or unit with a contiguous parcel or unit held by the same owner if any one of the contiguous parcels or units held by the same owner does not conform to standards for minimum parcel size, under the zoning ordinance of the local agency applicable to the parcels or units of land and if all of the following requirements are satisfied:

(a) At least one of the affected parcels is undeveloped by any structure for which a building permit was issued or for which a building permit was not required at the time of construction, or is developed only with an accessory structure or accessory structures, or is developed with a single structure, other than an accessory structure, that is also partially sited on a contiguous parcel or unit.

(b) With respect to any affected parcel, one or more of the following conditions exists:

- (1) Comprises less than 5,000 square feet in area at the time of the determination of merger.
- (2) Was not created in compliance with applicable laws and ordinances in effect at the time of its creation.
- (3) Does not meet current standards for sewage disposal and domestic water supply.
- (4) Does not meet slope stability standards.
- (5) Has no legal access which is adequate for vehicular and safety equipment access and maneuverability.
- (6) Its development would create health or safety hazards.

(7) Is inconsistent with the applicable general plan and any applicable specific plan, other than minimum lot size or density standards.

The ordinance may establish the standards specified in paragraphs (3) to (7), inclusive, which shall be applicable to parcels to be merged.

This subdivision shall not apply if one of the following conditions exist:

(A) On or before July 1, 1981, one or more of the contiguous parcels or units of land is enforceably restricted open-space land pursuant to a contract, agreement, scenic restriction, or open-space easement, as defined and set forth in Section 421 of the Revenue and Taxation Code.

(B) On July 1, 1981, one or more of the contiguous parcels or units of land is timberland as defined in subdivision (f) of Section 51104, or is land devoted to an agricultural use as defined in subdivision (b) of Section 51201.

(C) On July 1, 1981, one or more of the contiguous parcels or units of land is located within 2,000 feet of the site on which an existing commercial mineral resource extraction use is being made, whether or not the extraction is being made pursuant to a use permit issued by the local agency.

(D) On July 1, 1981, one or more of the contiguous parcels or units of land is located within 2,000 feet of a future commercial mineral extraction site as shown on a plan for which a use permit or other permit authorizing commercial mineral resource extraction has been issued by the local agency.

(E) Within the coastal zone, as defined in Section 30103 of the Public Resources Code, one or more of the contiguous parcels or units of land has, prior to July 1, 1981, been identified or designated as being of insufficient size to support residential development and where the identification or designation has either (i) been included in the land use plan portion of a local coastal program prepared and adopted pursuant to the California Coastal Act of 1976 (Division 20 of the Public Resources Code), or (ii) prior to the adoption of a land use plan, been made by formal action of the California Coastal Commission pursuant to the provisions of the California Coastal Act of 1976 in a coastal development permit decision or in an approved land use plan work program or an approved issue identification on which the preparation of a land use plan pursuant to the provisions of the California Coastal Act is based.

For purposes of paragraphs (C) and (D) of this subdivision, "mineral resource extraction" means gas, oil, hydrocarbon, gravel, or sand extraction, geothermal wells, or other similar commercial mining activity.

(c) The owner of the affected parcels has been notified of the merger proposal pursuant to Section 66451.13, and is afforded the opportunity for a hearing pursuant to Section 66451.14.

For purposes of this section, when determining whether contiguous parcels are held by the same owner, ownership shall be determined as of the date that notice of intention to determine status is recorded.

(Amended by Stats. 1995, Ch. 162, Sec. 1. Effective January 1, 1996.)

Exhibit 3: Requirements of the Development Review Committee

Sec. 29.20.745. - Development Review Committee.

The Development Review Committee shall:

- (1) Regularly review and make recommendations to the Planning Commission concerning the determination of all matters which come before the Planning Commission except zoning ordinance amendments, zone changes (not including rezoning to PD), general plan adoptions and amendments, specific plan adoptions and amendments, and capital improvement plans.
- (2) Review and make recommendations to the Council concerning community-oriented bulletin boards and kiosks proposed to be erected on public property.
- (3) May on its own motion review and make recommendations concerning matters not assigned to it.
- (4) Reserved.
- (5) Determine and issue zoning approval for the storage of hazardous materials as provided in division 1 of article VII of this chapter.
- (6) Determine appropriate screening (fencing, landscaping or a combination) for hazardous materials storage sites as provided in division 1 of article VII of this chapter.
- (7) Determine and issue zoning approval for grading permits as provided in [section 29.10.09045](#)(b) and (c) of this chapter.
- (8) Reserved.
- (9) Determine and issue zoning approval for lot line adjustments and lot mergers.
- (10) Reserved.
- (11) Under the provisions of [section 29.10.070](#) of this chapter and section 66424.2 of the Subdivision Map Act, determine whether lots have merged.

Exhibit 4: Sierra Club vs Napa County Superior Court Ruling on Lot Line Adjustment for Sequential Lots. (See highlighted sections in attached pdf)

[Sierra-Club-v.-Napa-County-Board-of-Supervisors.pdf](#)

Exhibit 5: Town Lot Line Adjustment Procedure Handout.

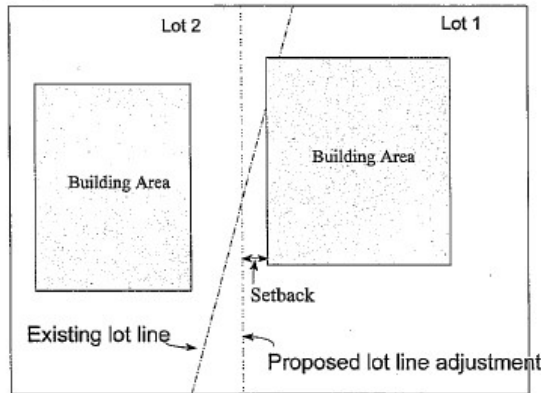
This procedure cannot be used because of State Law SMA 66451.11 stating lots meet merger criteria. Building on APN 532-36-076 is derelict. APN 532-36-077 is land-locked due to quit claim deeds signed in 1978 and has no frontage. Is non-conforming.

<https://www.losgatosca.gov/DocumentCenter/View/348>

What is a lot line adjustment?

Lot line adjustment is the relocation of an interior lot line between two or more neighboring parcels. Lot line adjustments are reviewed according to Section 66412(d) of the Government Code of the State of California. The applicant has the option of using this procedure or completing the lot line adjustment by filing a Parcel Map.

Example illustration:



How to apply for a lot line adjustment?

Application for lot line adjustments (boundary changes) shall be made to the Community Development Department on the prescribed form. Application forms and pertinent information can be obtained at the Community Development Department.

What items shall be submitted with the application?

- All owners of record must sign the application.
- Evidence that any holders of Deeds of Trust have no objections to the proposed boundary changes.
- Title reports covering all parcel involved

dated *within 30 days*.

- The required Community Development Department processing fee.
- Seven (7) copies of a drawing no larger than 24" x 36" showing existing and proposed boundaries, all improvements (houses, driveways, trees, etc.) and required building setbacks that may be affected by the proposed boundary change.

What is the lot line adjustment process?

Once an application is accepted at the Community Development Department, all Lot Line Adjustment application will be reviewed by the Development Review Committee (DRC) and sent to pertinent departments and organizations for review and recommendation.

1. The DRC will limit its review to the following items:
 - Lot size remains conforming to the existing zoning ordinance. If the lots are currently nonconforming as to size, they cannot become more nonconforming (smaller).
 - Setbacks remain conforming or do not become more nonconforming.
 - Lot frontage and lot depth requirements remain conforming.
 - The existing houses do not become nonconforming as for Floor Area Ratio (FAR) requirements of the zone.
 - The existing buildings meet the requirement of the Uniform Building Code for fire separation or fire wall construction.
2. After final action by the DRC, the applicant will be notified by the Community Development Department that the

Exhibit 6: CEQA Categorical Exemption Class 5, Guidelines Section 15305 (minor alterations in land use limitations).

[Cal. Code Regs. tit. 14 § 15305](#)

Section 15305 - Minor Alterations in Land Use Limitations

Class 5 consists of minor alterations in land use limitations in areas with an average slope of less than 20%, which do not result in any changes in land use or density, including but not limited to:

(a) Minor lot line adjustments, side yard, and set back variances not resulting in the creation of any new parcel;(b) Issuance of minor encroachment permits;(c) Reversion to acreage in accordance with the Subdivision Map Act.

Exhibit 7: List of CEQA Exemption Types

<https://sfplanning.org/list-ceqa-exemption-types>

Categorical Exemptions from the California Environmental Quality Act (CEQA)

The California Environmental Quality Act (CEQA) and the Guidelines for implementation of CEQA adopted by the Secretary of the California Resources Agency require that local agencies adopt a list of categorical exemptions from CEQA. Such list must show those specific activities at the local level that fall within each of the classes of exemptions set forth in Article 19 of the CEQA Guidelines, and must be consistent with both the letter and the intent expressed in such classes.

In the list that follows, the classes set forth in CEQA Guidelines Sections 15301 - 15332 are shown *in bold italics*, with further elaboration or explanation for applying these exemptions in San Francisco shown in normal upper- and lower-case type. The Secretary of the California Resources Agency has determined that the projects in these classes do not have significant effect on the environment, and therefore are categorically exempt from CEQA. The following exceptions, however, are noted in the State Guidelines.

*** CLASS 5: MINOR ALTERATIONS IN LAND USE LIMITATIONS**

Class 5 consists of minor alterations in land use limitations in areas with an average slope of less than 20%, which do not result in any changes in land use or density, including but not limited to:

(a) Minor lot line adjustments, side yard and setback variances not resulting in the creation of any new parcel.

This item covers only the granting of lot line adjustments and variances, not construction that could occur as a result of such approvals. Setback variances include both front and rear yard variances and modification or abolition of legislated setback lines. Class 15 may also apply for minor land divisions into four or fewer parcels when no variance is required.

CLASS 15: MINOR LAND DIVISIONS

*Class 15 consists of the division of property in urbanized areas zoned for residential, commercial, or industrial use into four or fewer parcels when the division is in conformance with the General Plan and zoning, no variances or exceptions are required, all services and access to the proposed parcels to local standards are available, the parcel was not involved in a division of a larger parcel within the previous two years, and the **parcel does not have an average slope greater than 20 percent.***

Only land divisions into four or fewer parcels requiring no variances from the City Planning Code and no exceptions from the San Francisco Subdivision Ordinance are covered by this Class.

Exhibit 8: City of Santa Barbara criteria for Environmental Review

https://www.santabarbaraca.gov/SBdocuments/Advisory_Groups/Staff_Hearing_Officer/Archive/2018_Archives/03_Staff_Reports/2018_06_20_June_20_2018_Item_IV.D_125-127_Eucalyptus_Hill_Circle_Staff_Report.pdf



City of Santa Barbara California

STAFF HEARING OFFICER STAFF REPORT

REPORT DATE: June 13, 2018
AGENDA DATE: June 20, 2018
PROJECT ADDRESS: 125-127 Eucalyptus Hill Circle (MST2017-00756)
Lot Line Adjustment in Eucalyptus Hill Planned Unit Development
TO: Susan Reardon, Senior Planner, Staff Hearing Officer
FROM: Planning Division, (805) 564-5470
Beatriz Gularte, Senior Planner *BGG*
Megan Arciniega, Associate Planner *MAA*

VIII. ENVIRONMENTAL REVIEW

The project is a minor land transfer between two lots developed under a PUD for 28 residential units. The City's list of projects qualifying as categorically exempt from the provisions of CEQA includes an exemption for projects involving minor lot line adjustments where no new building site has an average slope greater than 20%, and there would be no changes in land use or density. Because there is no change to land use or increase in density associated with the Lot Line Adjustment since it would not create a new building site, as the building site was already approved, the Environmental Analyst has determined that the project is exempt from further environmental review pursuant to the California Environmental Quality guidelines Section §15305 (Minor Alteration in Land Use Limitations).

Exhibit 9 Los Robles Way Average Slope Calculations:

AVERAGE SLOPE CALCULATIONS:
(ENTIRE PROPERTY)

CONTOUR INTERVAL (I) 5 FEET
CONTOUR LENGTH (L) 7102 FEET
AREA (A) 3.13 ACRES 136343 SQUARE FEET

AVERAGE SLOPE (S)

$$S=I/L/A = 5' \cdot 7102' / 136343 \text{ S.F.} = 26\%$$

Exhibit 10 Required Findings For 17200 Los Robles Way:

(No development proposed yet Town is able to make these affirmative findings without review of proposed development?)

PLANNING COMMISSION – September 8, 2021

REQUIRED FINDINGS FOR:

17200 Los Robles Way

Subdivision Application M-20-012

Consider an Appeal of a Development Review Committee Decision Approving a Lot Line Adjustment Between Three Adjacent Lots on Properties Zoned R-1:20. APNs 532-36-075, -076, and -077. PROPERTY OWNERS: Daren Goodsell, Trustee and Mark Von Kaenel.

APPLICANT: Tony Jean. APPELLANTS: Alison and David Steer, Terry and Bob Rinehart, Nancy and Jim Neipp, Gary and Michelle Gysin, and Gianfranco and Eileen De Feo.

PROJECT PLANNER: Ryan Safty.

FINDINGS

Required findings for CEQA:

■ The project is not subject to the California Environmental Quality Act pursuant to the adopted Guidelines for the Implementation of CEQA, Section 15061(b)(3): A project is exempt from CEQA when the activity is covered by the common sense exemption that CEQA only applies to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question will have a significant effect on the environment, the activity is not subject to CEQA. The project proposes to modify lot lines between three legal, adjacent parcels. **No development is proposed at this time.**

Required findings to deny a Subdivision application:

■ As required by Section 66474 of the State Subdivision Map Act the map shall be denied if any of the following findings are made: **None of the findings could be made to deny the application.**

Instead, the Planning Commission makes the following **affirmative findings:**

a. That the proposed map is consistent with all elements of the General Plan.

b. That the design and improvement of the proposed subdivision is consistent with all elements of the General Plan.

c. That the site is physically **suitable for the type of development.**

d. That the site is physically suitable for the **proposed density of development.**

e. That the design of the subdivision and the proposed improvements are not likely to cause **substantial environmental damage nor substantially and avoidably injure fish or wildlife or their habitat.**

f. That the design of the subdivision and type of improvements is not likely to cause serious public health problems.

g. That the design of the subdivision and the type of improvements will not conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision.

EXHIBIT 11 Links to other CA Town and County Lot Line Adjustment Ordinances:

A) Santa Cruz County

<https://www.sccoplanning.com/LinkClick.aspx?fileticket=qoSS8epYHGU%3D&tabid=1097>

SANTA CRUZ COUNTY PLANNING DEPARTMENT POLICY/ORDINANCE INTERPRETATION

Interpretation No.: LD-02 (Lot Line Adjustments)
Effective Date: 06/30/06
Originally Issued: 06/30/06 (LD-02 replaces a portion of LD-01)

Question:

What standards are applied when processing Lot Line Adjustments?

**Applicable Ordinance Section(s)
and/or General Plan/LUP Policy(ies)**
§13.10.673; §14.01.105-L; §14.01.107.4

Interpretation:

In addition to the regulations found in the County Code Sections listed above, the following standards will be applied to Lot Line Adjustment applications:

1. Maximum number of parcels. Lot line adjustments shall involve four or fewer parcels, in conformance with Senate Bill 497. Adjustments of five or greater parcels require Tentative and Final Maps;
2. Proximity of parcels. The parcels must be adjoining, i.e. touching, and not merely adjacent or nearby, in conformance with Senate Bill 497;
3. Additional Building Sites. No additional building sites may be created by a lot line adjustment. A lot must be buildable before a lot line adjustment can be approved, except where the entirety of the unbuildable lot will become part of one or more buildable, legally created parcels. A lot that is not buildable for whatever reason (lack of access, unstable slopes, inadequate sewage disposal, etc.) cannot be made buildable by means of a lot line adjustment.

B) Napa County Lot Line Adjustment Ordinance

https://library.municode.com/ca/napa_county/codes/code_of_ordinances?nodeId=TIT17SU_CH17.46LOLIAD_17.46.030LOLIADPPDECO

C. The county surveyor shall tentatively approve the lot line adjustment if it meets the following standards at the time the filed application is deemed complete, provided however that the county surveyor may impose conditions as part of such tentative approval to ensure that the standard established by subsection (E) of [Section 17.46.060](#) will be satisfied prior to recordation of the deed(s) consummating the lot line adjustment. Applications complying with the following standards are deemed to conform to the county general plan, any applicable specific plan, and county zoning and building ordinances:

1. The lot line adjustment will result in the transfer of property between at least two, but no more than four, existing adjoining legal parcels. Parcels are adjoining only if each of the parcels proposed for adjustment abuts at least one of the other parcels involved;

2. A greater number of parcels than originally existed will not result from the lot line adjustment;

3. A nonbuildable parcel will not be made buildable by the lot line adjustment. For purposes of this standard, a lot is considered buildable if it meets all three of the following criteria:

a. The parcel contains a minimum two thousand four hundred square feet of net lot area as defined in [Section 17.02.350](#);

b. The parcel **has existing access rights to a public street** as defined in [Section 17.02.020](#); and

c. The parcel contains a building site, as defined in [Section 17.02.080](#), which is a minimum of twenty-five feet wide and twenty-five feet deep;

- **17.02.080 - Building site.**

"Building site" means a site on a lot which is suitable for construction of a main building and is reasonably free from geotechnical hazards such as settlement, landsliding, mudsliding and flood hazards, and to which there is reasonable access.

(Ord. 854 § 2 (part), 1987: prior code § 11602.2 (b))

C) Town of Saratoga

https://library.municode.com/ca/saratoga/codes/code_of_ordinances?nodeId=CH14SU_ART14-50LOLIAD

Category 1—No increase in number of Developable Lots.

- (1) No substandard lot is reduced or further reduced in area; and
- (2) Each adjusted lot retains at least ninety percent of the real property included in the lot prior to the proposed lot line adjustment; and
- (3) The lot line adjustment would not result in any additional developable lots or a greater allowable density than prior to the lot line adjustment. In determining if a lot is developable, the lot must meet at least one of the following criteria.
 - (i) Contain a legal dwelling constructed pursuant to and in compliance with a validly issued design review and subsequent building permit; or
 - (ii) Be subject to an unexpired design review approval and or building permit; or
 - (iii) Be a whole lot on a numbered tract map or parcel map issued pursuant to a legal subdivision.

[14-65.010 - Requirements for parcel merger. | Code of Ordinances | Saratoga, CA | Municode Library](#)

14-65.010 - Requirements for parcel merger.



A parcel or unit of land may be merged with a contiguous parcel or unit of land held by the same owner if any one of such parcels or units does not conform to the applicable standard for minimum site area as prescribed in the Zoning Ordinance, and all of the following requirements are satisfied:

- (a) At least one of the affected parcels is undeveloped by any structure for which a building permit was issued or for which a building permit was not required at the time of construction, or is developed only with an accessory structure or accessory structures, or is developed with a single structure other than an accessory structure that is also partially sited on a contiguous parcel or unit.
- (b) With respect to any affected parcel, one or more of the following conditions exist:
 - (1) The parcel comprises less than five thousand square feet in gross site area at the time of the determination of merger.
 - (2) The parcel was not created in compliance with applicable laws and ordinances in effect at the time of its creation.
 - (3) The parcel does not meet current standards for sewage disposal and domestic water supply.
 - (4) The parcel does not meet slope stability standards.
 - (5) The parcel has no legal access which is adequate for vehicular and safety equipment access and maneuverability.
 - (6) Development of the parcel would create health or safety hazards.
 - (7) The parcel is inconsistent with the General Plan and any applicable specific plan, other than minimum lot size or density standards.
- (c) For purposes of determining whether contiguous parcels are held by the same owner, ownership shall be determined as of the date that notice of intention to determine status is recorded pursuant to [Section 14-65.020](#) of this Article.

14-65.020 - Notice of intended merger.



Whenever the Community Development Director believes that a parcel or unit of land may satisfy the requirements set forth in [Section 14-65.010](#) and ought to be merged, or whenever the Planning Commission or the City Council makes such determination and instructs the Community Development Director to initiate proceedings under this Article, the Director shall cause to be mailed by certified mail to the then current owner of the property a notice of intention to determine status, notifying the owner that the affected parcels may be merged pursuant to the standards of this Article, and advising the owner of the opportunity to request a hearing on determination of status and to present evidence at the hearing that the property does not meet the criteria for merger. The notice of intention to determine status shall be filed for record in the office of the County Recorder on the date such notice is mailed to the property owner.

(Amended by Ord. 221 § 2 (part), 2003)

D) Laguna Beach

http://qcode.us/codes/lagunabeach/view.php?topic=21-21_08-21_08_030

21.08.030 Lot line adjustments exempted.

In accordance with Section 66412(d) of the California Government Code, a lot line adjustment between two or more existing building sites, or between parcels of land contained within an existing building site, where the land taken from one building site is added to an adjacent building site, or where interior parcel lines are eliminated for the purpose of consolidation, and where a greater number of parcels than originally existed is not thereby created, is exempt from this chapter, provided the lot line adjustment is approved by the city council of the city of Laguna Beach and observes the following requirements:

- (a) The project site described in the proposal consists of legal building sites as defined in Title 25 (Zoning) of this code;
- (b) **The proposal does not create one or more building site(s);**
- (c) Any land taken from one site will be added to an adjacent site and no additional sites will result from the lot line adjustment;
- (d) The project **complies** with the requirements of the **California Environmental Quality Act**;
- (e) The proposal is consistent with the general plan;
- (f) The parcels proposed to be adjusted by the lot line adjustment comply with all applicable zoning regulations or, in the case of existing, legal nonconforming lots, do not significantly or adversely increase the extent of such nonconformity;
- (g) The lot line adjustment, in and of itself, will not result in the need for additional improvements and/or facilities;
- (h) The proposal does not include any lots or parcels created illegally;
- (i) The project does not impair any existing access, create a need for new access, impair any existing easements or create a need for any new easements serving any adjacent lots or parcels.

Lot line adjustment applications shall be filed by the legal owner(s) on a form prescribed by the director of community development and submitted with a fee as established by resolution of the city council. Since the forms, if approved, must be filed for record with the Orange County recorder they shall be drawn in a clear, legible and professional manner using conventional surveying or civil engineering techniques. An acceptable current title report, except or lot book report that verifies the legal ownership of the parcels under consideration shall be submitted.

Any failure to file for the record an approved lot line adjustment form within ninety days from the date of approval by the city council shall result in a termination of approval unless prior to expiration an application for extension not to exceed an additional ninety days is submitted in writing for approval by the director of community development. (Ord. 1216 § 2, 1991).

E) Sonoma County

<https://sonomacounty.ca.gov/PRMD/Instructions-and-Forms/PJR-030-Lot-Line-Adjustment/>

Minor Lot Line Adjustment:

A request for a LLA shall be deemed minor only if all of the following statements are true:

1. No parcel is completely relocated;
2. No parcel is reduced in size by more than 30% or enlarged by more than 100%;
3. **No existing parcel is subject to merger or otherwise undevelopable; and**
4. The adjustment is not subject to the California Environmental Quality Act, (CEQA) pursuant to Section 25-70.2 of the Subdivision Ordinance.

Major Lot Line Adjustment:

A request for a LLA shall be deemed major, unless exempted by the Director of Permit Sonoma, if any of the following statements are true:

1. A parcel is completely relocated;
2. A parcel is reduced in size by more than 30% or enlarged by more than 100%;
3. An existing parcel is subject to merger or otherwise undevelopable;
4. The adjustment is subject to the California Environmental Quality Act (CEQA), pursuant to Section 25-70.2 of the Subdivision Ordinance.

F) CITY OF FILLMORE Lot Line Adjustment Criteria

<https://www.fillmoreca.com/home/showpublisheddocument/6559/637245227149470000>

CRITERIA:

- LLAs and LMs are not valid until such time as the forms and exhibits are approved and signed by the Community Development Director and recorded in the Ventura County Recorder's Office in conformance with the requirements of the Fillmore Municipal Code. In addition, all deeds granting the merged/adjusted lots to the respective owners must also be recorded with the Ventura County Recorder's Office.
- For LLAs and LMs to be processed ministerially, they must involve only legal lots (per the Subdivision Map Act) provided that the adjustment or merger is consistent with the Fillmore Municipal Code, and that either: (1) all of the resulting lot(s) will conform to all applicable zoning and subdivision requirements (e.g., area, width, frontage and yard requirements), (2) will not change land use or density, or (3) no conforming lot will be made nonconforming with applicable zoning requirements and the adjustment or merger will not reduce the aggregate area of all affected lots which do not meet the minimum area requirements of their zoning designations.

G) Marin County Lot Merger Ordinance

https://library.municode.com/ca/marin_county/codes/municipal_code?nodetid=TIT22DECO_ARTVISU_CH22.92MEPA_22.92.02OREME

22.92.020 - Requirements for Merger.

On or after January 1, 1984, when any one of two or more contiguous parcels or units of land, which are held by the same owner or owners, does not conform to the minimum lot area requirements of the applicable zoning district or the minimum lot area requirements based on lot slope (Section [22.82.050](#) - Hillside Subdivision Design), the contiguous parcels shall merge if required by Subsection A of this Section (Merger Required), except where otherwise provided by Subsection B of this Section (Exemptions from Merger Requirements). Such mergers may be initiated either by the County or by the property owner.

A. Merger required. Contiguous, nonconforming parcels held by the same owner or owners shall merge if both of the following requirements are satisfied:

1. At least one of the affected parcels is undeveloped by any structure for which a Building Permit was issued or for which a Building Permit was not required at the time of construction, or is developed only with an accessory structure or accessory structures, or is developed with a single structure, other than an accessory structure, that is also partially sited on a contiguous parcel or unit of land; and

2. With respect to any affected parcel, one or more of the following conditions exist:

a. Comprises less than 5,000 square feet in area at the time of the determination of merger;

b. Was not created in compliance with applicable laws and ordinances in effect at the time of its creation;

c. Does not meet current standards for sewage disposal in [Title 18](#) (Sewers) of the County Code;

d. Does not meet current standards for domestic water supply in [Title 7](#) (Health and Sanitation) of the County Code;

e. Does not meet slope stability standards. A parcel will be deemed to not meet slope stability standards if more than 50 percent of its gross area is located within slope stability zone 3 or 4 as shown on the latest slope stability maps on file with the Agency;

f. Has no legal access which is adequate for vehicular and safety equipment access and maneuverability. The standards of access shall be those contained in [Title 24](#) (Improvement and Construction Standards) of the County Code;

g. Its development would create health or safety hazards; or

h. Is inconsistent with the Marin Countywide Plan, the Local Coastal Plan or any applicable Community Plan or Specific Plan, other than minimum lot size or density standards.

For purposes of determining whether contiguous parcels are held by the same owner, ownership shall be determined as of the date that the Notice of Intent to Determine Status is recorded in compliance with [Section 22.92.040](#) (Notice of Intent to Determine Status).

Exhibit 12: Burke Lot Line Adjustment- Big Sur

<https://documents.coastal.ca.gov/reports/2009/9/W19a-9-2009.pdf>

“The LUP contains a policy that encourages lot line adjustments when no **new developable lots are created** and when plan policies are better met through the adjustment. In other words, a lot line adjustment must not take unbuildable parcels and make them buildable, and the new lot configuration must improve the potential development’s consistency with the LUP. This emphasis on only encouraging lot line adjustments when they would facilitate less and more sensitive development is consistent with the LCP’s strong policy to minimize development in Big Sur. The three existing Burke parcels contain numerous constraints that would preclude them from being deemed buildable under the LCP’s guidelines, including 30% or greater average slopes, sensitive riparian corridor habitat, and substandard sizes relative to minimum parcel size requirement”

A. Relevant LCP Provisions

The LCP contains numerous references to and provisions for residential compatibility with sensitive coastal resources in Big Sur. The LCP also includes provisions that identify when a parcel is considered buildable in the context of parcel creation and adjustment.

LUP Policy 5.4.2.1. All development and use of the land whether public or private shall conform to all applicable policies of this plan and shall meet the same resource protection standards.

LUP Policy 5.4.2.5. Existing parcels of record are considered buildable parcels and are suitable for development of uses consistent with the plan map provided all resource protection policies can be fully satisfied, there is adequate building areas of less than 30% cross slope, and they are not merged by provisions elsewhere in this plan.

LUP Policy 5.4.3.H.4. Resubdivisions and lot line adjustments are encouraged when no new developable lots are created and when plan policies are better met by this action.

LUP Policy 5.4.2.8. It is the policy of Monterey County that lands in excess of thirty percent cross slope, located east of Highway 1, shall not be developed. Those portions of a parcel in this area that have a cross slope of thirty percent or more shall receive a density of one dwelling unit (d.u.) for 320 acres.

The calculation of residential development potential on property east of Highway 1 will be based on the following slope density formula:

Exhibit 13: SMA Gov Code 66412(d).

(Irrelevant due to APN 532-36-077 meeting criteria for merger.)

GOVERNMENT CODE – GOV

TITLE 7. PLANNING AND LAND USE [65000 - 66499.58] (*Heading of Title 7 amended by Stats. 1974, Ch. 1536.*)

DIVISION 2. SUBDIVISIONS [66410 - 66499.38] (*Division 2 added by Stats. 1974, Ch. 1536.*)

CHAPTER 1. General Provisions and Definitions [66410 - 66424.6] (*Chapter 1 added by Stats. 1974, Ch. 1536.*)

ARTICLE 1. General Provisions [66410 - 66413.5] (*Article 1 added by Stats. 1974, Ch. 1536.*)

66412.

This division shall be inapplicable to any of the following:

(a) The financing or leasing of apartments, offices, stores, or similar space within apartment buildings, industrial buildings, commercial buildings, mobilehome parks, or trailer parks.

(b) Mineral, oil, or gas leases.

(c) Land dedicated for cemetery purposes under the Health and Safety Code.

(d) A lot line adjustment between four or fewer existing adjoining parcels, where the land taken from one parcel is added to an adjoining parcel, and where a greater number of parcels than originally existed is not thereby created, if the lot line adjustment is approved by the local agency, or advisory agency. A local agency or advisory agency shall limit its review and approval to a determination of whether or not the parcels resulting from the lot line adjustment will conform to the local general plan, any applicable specific plan, any applicable coastal plan, and zoning and building ordinances. An advisory agency or local agency shall not impose conditions or exactions on its approval of a lot line adjustment except to conform to the local general plan, any applicable specific plan, any applicable coastal plan, and zoning and building ordinances, to require the prepayment of real property taxes prior to the approval of the lot line adjustment, or to facilitate the relocation of existing utilities, infrastructure, or easements. No tentative map, parcel map, or final map shall be required as a condition to the approval of a lot line adjustment. The lot line adjustment shall be reflected in a deed, which shall be recorded. No record of survey shall be required for a lot line adjustment unless required by Section 8762 of the Business and Professions Code. A local agency shall approve or disapprove a lot line adjustment pursuant to the Permit Streamlining Act (Chapter 4.5 (commencing with Section 65920) of Division 1).

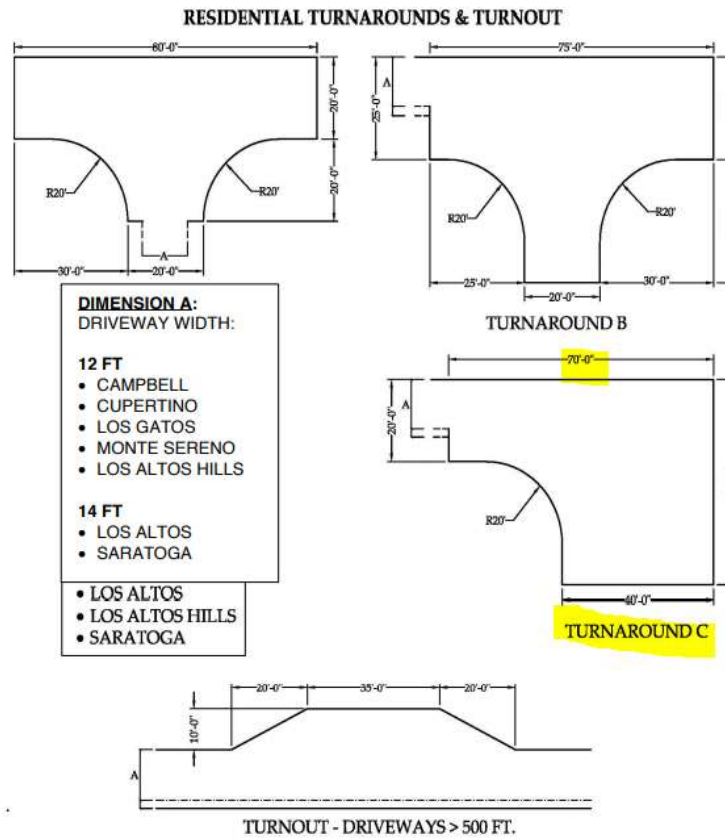
Exhibit 14: Santa Clara County Fire Department Requirements for driveways >150ft.

17200 Los Robles Way does not have an adequate turnaround for emergency vehicle access.

https://www.sccfd.org/images/documents/fire_prevention/standards/DS_D-1_DrivewaysTurnaroundsTurnOuts_04272021_1.pdf

X. TURNAROUNDS:

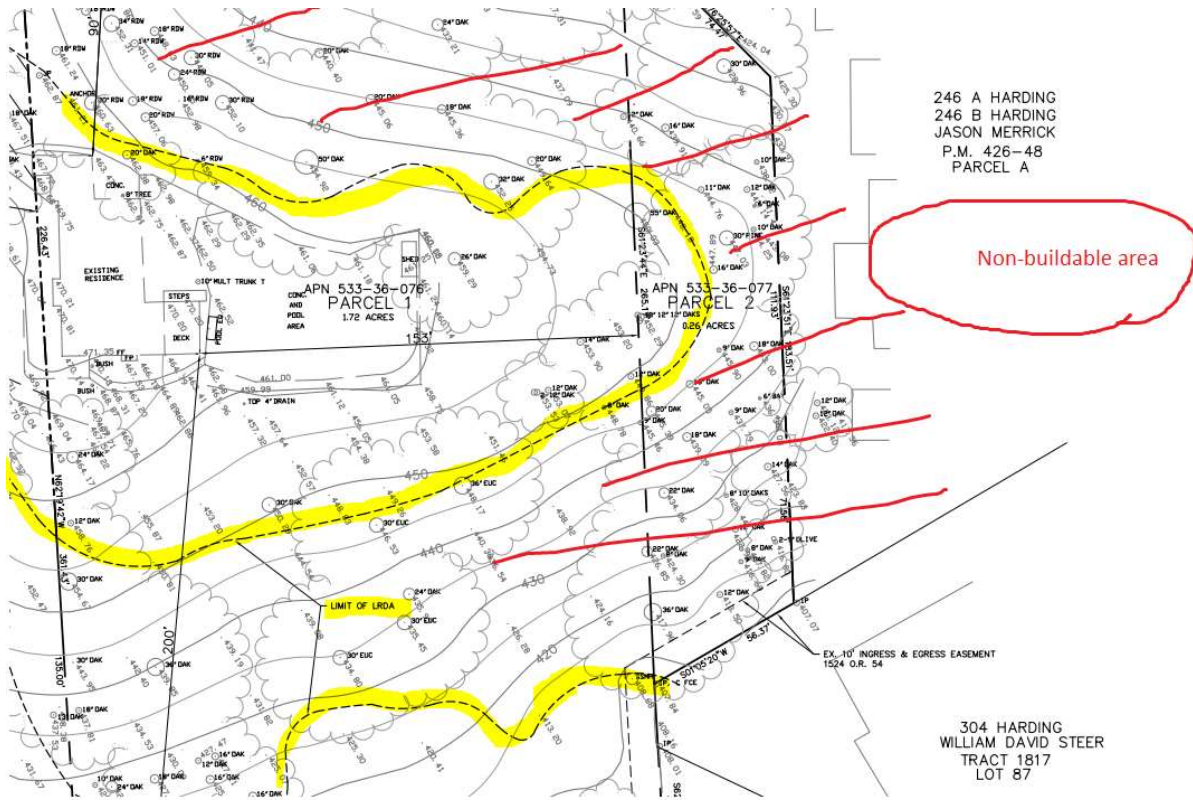
Turnarounds are required for all driveways with a length in excess of 150 feet.



NOTE: Turnarounds cannot exceed 5% in any one direction.

Exhibit 15: Non Buildable Area of APN 532-36-077 outside the LRDA

(note APN error on the surveyor drawings)



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