FILING FEES
$438.00 (PLAPPEAL) Residential $1,763.00 (PLAPPEAL), per Commercial, Multi-family, or Tentative Map Appeal

TRANSCRIPTION $500 (PLTRANS)
Town of Los Gatos
Office of the Town Clerk

110 E. Main St., Los Gatos CA 95030

APPEAL OF PLANNING COMMISSION DECISION

I, the undersigned, do hereby appeal a decision of the Planning Commission as follows: (PLEASE TYPE OR PRINT NEATLY)
DATE OF PLANNING COMMISSION DECISION
Sept 8th 2021 _____

PAID
SEP 20 2021
TOWN OF LOS GATOS
BP32347

PROJECT / APPLICATION NO: __M-20-012_____ ADDRESS LOCATION: 17200 Los Robles Way, Los Gatos_____

Pursuant to the Town Code, any interested person as defined in Section 29.10.020 may appeal to the Council any decision of the Planning Commission.

Interested person means:

1. *Residential projects*. Any person or persons or entity or entities who own property or reside within 1,000 feet of a property for which a decision has been rendered, and can demonstrate that their property will be injured by the decision. 2. *Non-residential and mixed-use projects*. Any person or persons or entity or entities who can demonstrate that their property will be injured by the decision.

Section 29.20.275 The notice of appeal shall state specifically wherein it is claimed there was an error or abuse of discretion by the Commission or wherein its decision is not supported by substantial evidence in the record.

1. There was an error or abuse of discretion by the Planning Commission:

_____

_____

_____

_____; **OR**

2. The Planning Commission's decision is not supported by substantial evidence in the record:

i) Town ordinance §29.10.70 (exhibit 1) states that "Any parcels under the same or substantially the same ownership that do not meet the criteria listed above **shall** be considered merged. In addition, no parcel **shall** be modified through a lot line adjustment procedure in order to meet the criteria listed above."

ii) Subdivision Maps Act § 66451.11 (exhibit 2) specifies that "a local agency **may**, by ordinance which conforms to and implements the procedures prescribed by this article, provide for the merger of a parcel or unit with a contiguous parcel or unit held by the same owner if any one of the contiguous parcels or units held by the same owner does not conform to standards..."

ii) Why, when the town ordinance states **SHALL** and the SMA states **MAY** is the Town not following its own ordinance for Lot Merger?

Previously submitted quit claim deeds (exhibit 19) along with exhibits 14 and 15 prove incontestably that APN 532-36-077 has no legal access which is adequate for vehicular and safety equipment access and maneuverability. Exhibit 18, 2005 Title Deed for 17200 Los Robles Way acknowledges the quit claim to Harding Ave ROW (see parcel 4 description). All the conditions have been in place since 1978 that this merge technically should have happened per the Town Ordinance, it just hasn't been procedurally implemented, given this information was not disclosed to the DRC at the time of Lot Line application. The fact that the Town has not done this should not be a reason to permit the use of the LLA procedure. Other towns and counties (Exhibit 11) have similar lot merger ordinances that follow the Subdivision Map Act, and lot line

adjustment procedures which exclude non-developable parcels from being made developable. If a lot is deemed merged, then SMA §66412(d) is irrelevant. Per § 29.20.745 (exhibit 3) it states that the Development Review Committee " Under the provisions of §29.10.070 of this chapter and section 66424.2 of the Subdivision Map Act, determine whether lots have merged." We understand that the Community Development Director would make the initial determination to start the lot merger process, with the DRC being the deciding body. We expect this would also happen per the direction of the Planning commission or Town Council.

We have an example of City of Berkeley merging parcels (exhibit 16) due to both parcels not meeting the requirement for 5,000 square ft in area :

https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Commissions/Commission_for_Planning/2013-10-16_Item%2010_Appeal%20of%20Merger-Combined.pdf

In addition, we have exhibit 12, Big Sur lot line adjustment application, that was denied due to creation of new developable lots based on the Big Sur LUP Policy, which also specified slopes >30% as non-developable. https://documents.coastal.ca.gov/reports/2009/9/W19a-9-2009.pdf

There does not appear to be any rulings that support denials of Lot Line Adjustment applications, due to the language specified in SMA §66412(d) (exhibit 13). This is most likely attributed to towns, cities and counties implementing their Lot Merger ordinances on parcels that do not meet the requirements described in SMA §66451.11. SMA §66451.11 clearly describes a parcel of land, that based on the criteria provided, would be unbuildable/undevelopable.

Town Ordinance §29.10.070 states that the lot line adjustment procedure cannot be used for parcels that lack legal access or parcels that do not meet slope stability standards. APN 532-36-077 is landlocked due to quit claim deeds signed in 1978 for Harding ROW. Parcel non-conforming to current zoning requirements, is land-locked and non-buildable with regard to LRDA and slopes >30%. Hillside Development and Standards Guidelines also apply to R-1 zones with slope stability issues. Town of Los Gatos Lot Line Procedure (exhibit 5) requires that lot frontage remains conforming (APN 532-36-077 has no frontage) and that "The existing buildings meet the requirement of the Uniform Building code for fire separation or fire wall construction". Existing building on APN 532-36-076 is derelict.

Please refer to highlighted sections in attached Sierra Club vs Napa County ruling (exhibit 17) on sequential lot line adjustments which explains that the local ordinances for lot line adjustment ensure land speculators and developers cannot exploit loopholes in the SMA to turn non-buildable parcels into buildable lots, and this is supported in the other Town Ordinances for Lot Line adjustments (exhibit 11). The Los Gatos Town Ordinance §29.10.070 provides direction that Lot Line Adjustment procedures cannot be used for land-locked parcels or lots with slope stability issues.

If the Town believes the broad language in SMA 66412(d) preempts the Town Ordinance Sec 29.10.070 , how is it that other towns and counties will not allow a non-buildable parcel to be made buildable (exhibit 11)? It's because SMA §66451.11 exists. Why does the Town not follow the guidance provided by Subdivision Maps Act §66541.10 and §66541.11, along with §66541.13 and §66541.14? If the Town allows the developer to skirt the lot merger ordinance, they are setting a precedent for illegal use of the LLA procedure to establish a buildable parcel where none existed, and increase density without formal review of the development.

Per Town Attorney's Office:

> "California Civil Code Section 1093 requires an, "express written statement of the grantor," of their intent to alter or affect the separate and distinct nature of the parcels described therein. Therefore, the legal merger of two parcels occurs only through the express written statement of the grantor (ibid.) or through a local agency's compliance with the merger procedures contained in Sections 66451.10 and 66451.11 of the SMA, including the due process requirements contained therein"

We are asking for the Town to follow this requirement for Lot Merger of APNs 532-36-076 and 532-36-077 by notifying the owner of the merger proposal pursuant to, SMA §66451.13, and afford a hearing pursuant to SMA §66451.14.

We also request that the remaining two buildable parcels, APN 532-36-075 and merged APN 532-36-076/77 maintain access from Los Robles Way, to avoid unnecessary scarring and destabilization of the hillside through grading and removal of trees, and to preserve the natural scenic character of the Town. In addition, this would assure the buildable parcels share a driveway to minimize impervious surface. This hillside causes flooding issues to residents on Worcester Lane, and visible landslide concerns to 246 Harding Ave.

We'd also like to appeal the Required Findings made by the DRC.

Required Findings (exhibit 10) states that the project is not subject to the California Environmental Quality Act (CEQA). 17200 Los Robles Way lot line adjustment application is not categorically exempt from CEQA. CEQA Class 5, "Minor Alterations in Land Use Limitations," exemption per Section 15305 of the CEQA Guidelines excludes slopes >20% and lot line adjustments that result in changes to land use density. Exhibit 6 and exhibit 7 clearly state these requirements, and exhibit 8 shows that the City of Santa Barbara includes this in their Environmental Review. Per Exhibit 9, 17200 Los Robles Way has 26% average slope. We would request compliance to CEQA should a lot line adjustment on 17200 Los Robles Way be approved.

Section 15305 - Minor Alterations in Land Use Limitations

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

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

Cal. Code Regs. Tit. 14, § 15305

Exhibit 10 Findings by DRC in conflict **"No development proposed"**, yet DRC/Planning Commission makes the affirmative findings that the site is physically suitable for **proposed density** of development and the **type of development**, and **proposed improvement not likely to cause substantial environmental damage nor injure wildlife or their habitat.**

A coyote den exists on the property and deer and wildlife frequent the property. Planning commission did not visit the

land nor did they review any plans for the development as the developer has not shared the development plans with the town. How can the Town approve the suitability of the development without knowing what will be built, or whether it is in conformance to the surrounding established neighborhood? We are appealing the decision of the DRC to approve suitability of development before they have reviewed the proposed development and parcel maps.

We would very much like to meet with the Town Council members individually at the proposed site at Worcester Lane to hear our concerns.

IF MORE SPACE IS NEEDED, PLEASE ATTACH ADDITIONAL SHEETS.

IMPORTANT:

1. **Appellant is responsible for fees for transcription of minutes. A $500.00 deposit is required at the time of filing.** 2. Appeal must be filed within ten (10) calendar days of Planning Commission Decision accompanied by the required filing fee. Deadline is 5:00 p.m. on the 10th day following the decision. If the 10th day is a Saturday, Sunday, or Town holiday, then it may be filed on the workday immediately following the 10th day, usually a Monday.
3. The Town Clerk will set the hearing within 56 days of the date of the Planning Commission Decision (Town Ordinance No. 1967).
4. Once filed, the appeal will be heard by the Town Council.
5. If the basis for granting the appeal is, in whole or in part, information not presented to or considered by the Planning Commission, the matter shall be returned to the Planning Commission for review.

PRINT NAME:_ Alison and David Steer SIGNATURE: _____

DATE: _____Sept 19th 2021 ADDRESS: ___304 Harding Ave, Los Gatos, CA 95030

PHONE: _____650-996-5809 EMAIL: ___alison.steer@gmail.com

***** OFFICIAL USE ONLY *****

DATE OF PUBLIC HEARING: _____ CONFIRMATION LETTER SENT: Date:
Pending Planning Department Confirmation TO APPLICANT & APPELLANT BY:

DATE TO SEND PUBLICATION: _____ DATE OF PUBLICATION:

EXHIBITS

Exh.#	Item
1	Town of Los Gatos Lot Merger Ordinance (Sec 29.10.070)
2	Sub Division Maps Act Gov Code 66451.11
3	Requirements of the Development Review Committee (Sec. 29.20.745)
4	Sierra Club vs Napa County Superior Court Ruling on Lot Line Adjustment for Sequential Lots.
5	Town Lot Line Adjustment Procedure Handout.
6	CEQA Categorical Exemption Class 5, Guidelines Section 15305 (minor alterations in land use limitations).
7	List of CEQA Exemption Types
8	City of Santa Barbara criteria for Environmental Review
9	17200 Los Robles Way Average Slope Calculations
10	Required Findings For 17200 Los Robles Way
11	Links to other CA Town and County Lot Line Adjustment Ordinances:
	a. Santa Cruz County
	b. Napa County
	c. Saratoga
	d. Laguna Beach
	e. Sonoma County
	f. City of Fillmore
	g. Marin County
12	Burke Lot Line Adjustment- Big Sur
13	Subdivision Maps Act Gov Code 66412(d)
14	Santa Clara Count 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&sectionNum=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

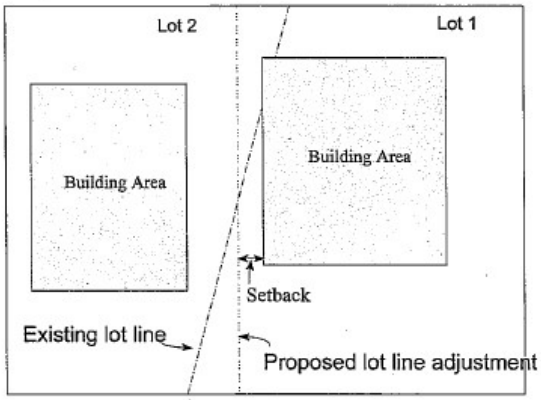
Exhibit 5: Town Lot Line Adjustment Procedure Handout.
This procedure cannot be used because of State Law SMA 66451.11 stating lots meet merger criteria. Building on APN 532-36-076 is derelict. APN 532-36-077 is land-locked due to quit claim deeds signed in 1978 and has no frontage. Is non-conforming.

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 BSG Megan Arciniega, Associate Planner MA

VIII. ENVIRONMENTAL REVIEW

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

Exhibit 9 Los Robles Way Average Slope Calculations:

AVERAGE SLOPE CALCULATIONS:
(ENTIRE PROPERTY)

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

AVERAGE SLOPE (S)

S=IL/A = 5'*7102'/136343S.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, excerpt 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?nodeId=TIT22DECO_ARTVISU_CH22.92MEPA_22.92.020REME

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).

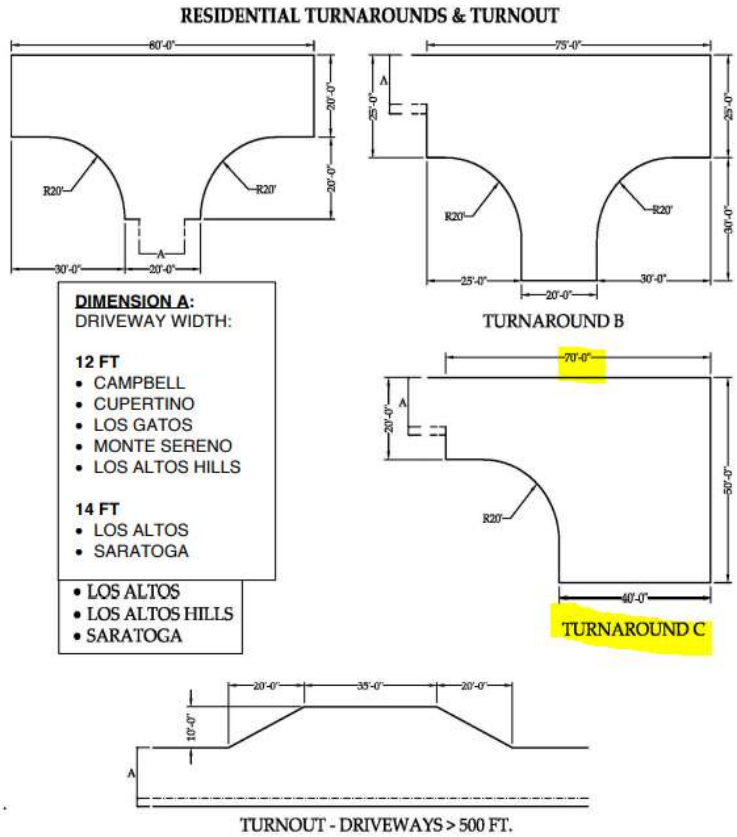
Exhibit 14: Santa Clara Count Fire Department Requirements for driveways >150ft.

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

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

X. TURNAROUNDS:

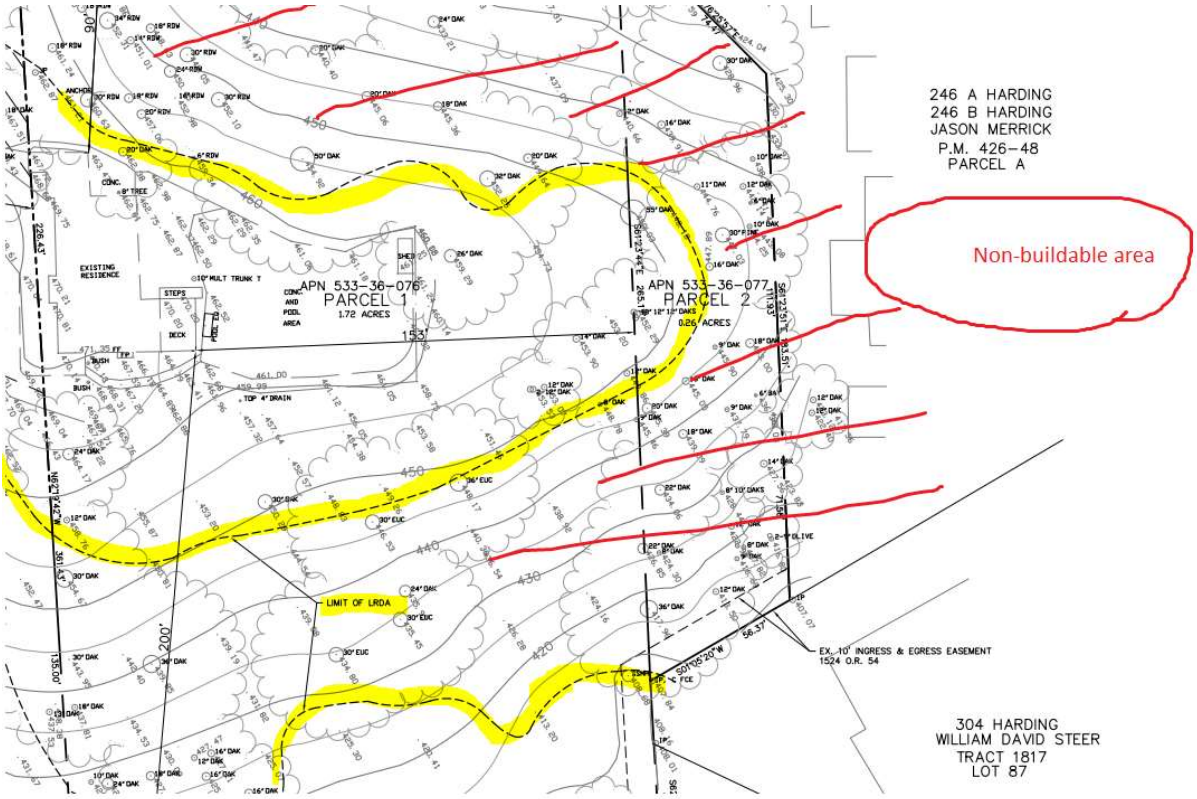
Turnarounds are required for all driveways with a length in excess of 150 feet.



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

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

(note APN error on the surveyor drawings)



CALIFORNIA COASTAL COMMISSION
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W19a

Appeal filed:	1/31/2007
49th day:	waived
Staff report prepared:	8/19/2009
Staff report prepared by:	Katie Morange
Staff report approved by:	Dan Carl
Hearing date:	9/9/2009

APPEAL STAFF REPORT
SUBSTANTIAL ISSUE DETERMINATION & DE NOVO HEARING

Appeal number.....**A-3-MCO-07-004, Burke Lot Line Adjustment**

Applicant.....Timothy and Dana Burke

Appellants.....Commissioners Sara Wan and Meg Caldwell

Local government.....Monterey County

Local decision.....Approved by the Monterey County on December 14, 2006 (Monterey County Coastal Development Permit (CDP) Application Number PLN060189).

Project location.....Three undeveloped parcels (APNs 418-011-041, 418-011-042, and 418-011-043) accessed via private road from Palo Colorado Road, south of Twin Peaks and immediately west of the Ventana Wilderness of the Los Padres National Forest, Big Sur, Monterey County.

Project description.....Lot line adjustment to reconfigure three undeveloped parcels to result in three lots measuring 6.69 acres, 7.58 acres and 39.92 acres.

File documents.....Administrative record for Monterey County CDP Number PLN060189; Correspondence Submitted by the Applicant; Monterey County certified Local Coastal Program (LCP), including Big Sur Coast Land Use Plan (LUP) and Coastal Implementation Plan (IP).

Staff recommendation ...**Substantial Issue Exists; Deny Coastal Development Permit**

A.Staff Recommendation

1. Summary of Staff Recommendation

On December 14, 2006, the Monterey County Minor Subdivision Committee approved a CDP for a lot line adjustment among three undeveloped parcels resulting in three reconfigured parcels remaining at the existing sizes of 6.69 acres, 7.58 acres and 39.92 acres. The parcels are located immediately west of the Ventana Wilderness area of the Los Padres National Forest and south of Twin Peaks in northern Big Sur. The Appellants contend that the lot line adjustment would convert currently unbuildable parcels to buildable parcels and result in the creation of parcels that do not meet the minimum density standard, thereby placing greater demands on limited water supplies and contribute to cumulative adverse impacts

on traffic and circulation, subsequently adversely affecting public access and recreation along the Big Sur coast. **Staff recommends that the Commission find that the appeal raises a substantial issue and take jurisdiction over the CDP for the project**.

The primary land use planning objective for Big Sur, as stated in the Big Sur Land Use Plan, is to minimize development of the Big Sur coast in order to preserve it as a scenic rural area. The LUP acknowledges that certain areas of Big Sur are not suitable for full development because of the potential for resource degradation, and in order to guide and determine where future land use development should occur, one of the LUP's development policies (Policy 5.4.2.5) characterizes what constitutes a buildable parcel. Under this policy, parcels are considered buildable parcels provided that all resource protection policies can be fully satisfied, there are adequate building areas of less than 30% cross slope, and they are not merged by other provisions of the LCP.

The LUP contains a policy that encourages lot line adjustments when no new developable lots are created and when plan policies are better met through the adjustment. In other words, a lot line adjustment must not take unbuildable parcels and make them buildable, and the new lot configuration must improve the potential development's consistency with the LUP. This emphasis on only encouraging lot line adjustments when they would facilitate less and more sensitive development is consistent with the LCP's strong policy to minimize development in Big Sur. The three existing Burke parcels contain numerous constraints that would preclude them from being deemed buildable under the LCP's guidelines, including 30% or greater average slopes, sensitive riparian corridor habitat, and substandard sizes relative to minimum parcel size requirements. The proposed lot line adjustment also does not include any elements that would allow for plan policies to be better met beyond what exists under the current parcel configuration. Although the lot line adjustment could result in shorter access roads and greater clustering of development than if the parcels were developed in their current configuration (assuming each of the parcels can be approved for development through the use of waivers and policy exceptions), all development would still be inconsistent with slope policies, etc. The lot line adjustment does not offer anything additional to ensure that plan policies are better met, such as a reduction in potential overall development density, retirement of development credit elsewhere, or protective easements.

The LCP envisions lot line adjustments as a useful tool for existing buildable parcels (i.e., those parcels with suitable building, septic, and access road area under 30% slopes, outside the critical viewshed, outside of ESHA, and consistent with all other LCP requirements) if an adjustment would improve the resource setting and thereby further the intent of the LCP to protect coastal resources and public access and recreation. There is no evidence in the LCP that lot line adjustments and resubdivisions were meant to be a means solely to achieve a more marketable parcel configuration, regardless of existing constraints. In fact, the LCP is designed to "substantially curtail" new residential development that could be facilitated through subdivisions or other land intensification mechanisms, such as lot line adjustments.

Since the purpose of the proposed lot line adjustment is to transform nonresidential lots into buildable residential lots, it is not a proper use of the LUP's lot line adjustment tool and it is inconsistent with the

LCP's policies designed to minimize residential development. It would undermine the (already very low) residential buildout assumptions upon which the Big Sur Coast Area LUP was founded. **Accordingly, staff recommends denial of the proposed lot line adjustment.** The motions and resolution on the substantial issue determination and CDP application follow.

2. Staff Recommendation on Substantial Issue

Staff recommends that the Commission determine that a **substantial issue** exists with respect to the grounds on which the appeal was filed. A finding of substantial issue would bring the project under the jurisdiction of the Commission for hearing and action.

Motion. I move that the Commission determine that Appeal Number A-3-MCO-07-004 raises no substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act.

Staff Recommendation of Substantial Issue. Staff recommends a **NO** vote. Failure of this motion will result in a de novo hearing on the application, and adoption of the following resolution and findings. Passage of this motion will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by an affirmative vote of the majority of the appointed Commissioners present.

Resolution to Find Substantial Issue. The Commission hereby finds that Appeal Number A-3-MCO-07-004 presents a substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency with the certified Local Coastal Program.

3. Staff Recommendation on CDP Application

Staff recommends that the Commission, after public hearing, **deny** the CDP for the proposed development subject to the standard and special conditions below.

Motion. I move that the Commission approve Coastal Development Permit Number A-3-MCO-07-004 pursuant to the staff recommendation.

Staff Recommendation of Approval. Staff recommends a **NO** vote. Failure of this motion will result in denial of the coastal development permit and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

Resolution to Deny the Coastal Development Permit. The Commission hereby denies the coastal development permit on the grounds that the development will not conform with the policies of the Monterey County Local Coastal Program. Approval of the coastal development permit would not comply with the California Environmental Quality Act because there are feasible mitigation measures or alternatives that would substantially lessen the significant adverse impacts of the development on the environment.

Report Contents

B.Findings and Declarations

The Commission finds and declares as follows:

1. Project Location and Description

The project site is located immediately west of the Ventana Wilderness area of the Los Padres National Forest and south of Twin Peaks in the northern Big Sur area (Exhibit C). Access to the site is provided via a private, unpaved access road (the "Zufich" road, as referred to by local residents) that extends to the site from Palo Colorado Road, and continues on toward Twin Peaks. The three existing parcels (APNs 418-011-041, 418-011-042, and 418-011-043, also known as Lots 17, 18, and 1, respectively) are undeveloped except for several footpaths on Lot 17 and an old springbox on Lot 18. The three parcels cover mountainous terrain and range in elevation from approximately 2,250 to 3,000 feet.

The County approval adjusts these three parcels, resulting in three reconfigured parcels remaining at the existing sizes of 6.69, 7.58 and 39.92 acres, as shown in Exhibit D.

2. Monterey County CDP Approval

On December 14, 2006, the Monterey County Minor Subdivision Committee approved the proposed project subject to multiple conditions (see Exhibit A for the County's staff report, findings and conditions on the project). The Minor Subdivision Committee's approval was not appealed locally (i.e., to the Board of Supervisors). Notice of the Minor Subdivision Committee's action on the coastal development permit (CDP) was received in the Commission's Central Coast District Office on January 17, 2007. The Commission's ten-working day appeal period for this action began on January 18, 2007 and concluded at 5pm on January 31, 2007. One valid appeal (see below) was received during the appeal period.

3. Appeal Procedures

Coastal Act Section 30603 provides for the appeal of approved coastal development permits in jurisdictions with certified local coastal programs for development that is (1) between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tideline of the sea where there is no beach, whichever is the greater distance; (2) on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of any coastal bluff; (3) in a sensitive coastal resource area; (4) approved by counties, unless it is designated as the principal permitted use under the zoning ordinance or zoning district map; and (5) any action on a major public works project or energy facility. This project is appealable because a lot line adjustment is not the principally permitted use in the Watershed and Scenic Conservation zoning district.

The grounds for appeal under Section 30603 are limited to allegations that the development does not conform to the standards set forth in the certified LCP and/or the public access policies of the Coastal Act. Section 30625(b) of the Coastal Act requires the Commission to conduct a de novo coastal development permit hearing on an appealed project unless a majority of the Commission finds that "no substantial issue" is raised by such allegations. Under Section 30604(b), if the Commission conducts a de novo hearing and approves a CDP, the Commission must find that the proposed development is in conformity with the certified LCP. If approved, Section 30604(c) also requires an additional specific finding that the development is in conformity with the public access and recreation policies of Chapter 3 of the Coastal Act if the project is located between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone.

The only persons qualified to testify before the Commission on the substantial issue question are the Applicant, persons who made their views known before the local government (or their representatives), and the local government. Testimony from other persons regarding substantial issue must be submitted in writing. Any person may testify during the de novo stage of an appeal.

4. Summary of Appeal Contentions

The two Commissioner Appellants contend that the lot line adjustment would result in the creation of

parcels that do not meet the 40-acre minimum density standard and convert currently unbuildable parcels to buildable parcels, inconsistent with LCP provisions that do not support such a conversion. The Appellants also contend that the increase in development density facilitated by the lot line adjustment will place greater demands on limited water supplies and contribute to cumulative adverse impacts on traffic and circulation, subsequently adversely affecting public access and recreation along the Big Sur coast. See Exhibit B for the Appellants' complete appeal document.

5. Substantial Issue Determination

Monterey County's approval of the Burke lot line adjustment has been appealed to the Coastal Commission on the basis that: (1) none of the new lots created by the lot line adjustment conform to LCP minimum parcel size requirements; (2) the adjustment will increase the density of residential development beyond that which is allowed by the LCP; and (3) the increase in development density resulting from the lot line adjustment will have cumulative adverse impacts on coastal access and recreation, water supplies, and the unique coastal resources of the Big Sur coast. Project location and plans are attached as Exhibits C and D. The County's Final Local Action Notice (FLAN), approving the project (Minor Subdivision Committee Resolution Number 06030), is attached to the report as Exhibit A. The submitted reasons for appeal are attached to this report as Exhibit B.

The Commission finds that the appeal raises a substantial issue regarding the project's conformance to the Monterey County certified LCP.

First, the project area is governed by the Big Sur LCP and is within the LCP's Watershed and Scenic Conservation (WSC) land use designation and zoning district. Sections 20.17.060.B, 20.145.140.A.6, and 20.145.140.A.7 of the LCP's Coastal Implementation Plan (IP) establish a 40-acre minimum parcel size for such areas. In this case, there is no way the density standard of 40-acre minimum parcel size could be met, since a minimum of 120 acres is necessary to have three conforming lots. With a combined total area for the three lots (which currently measure 6.69, 7.58 and 39.92 acres each) of 54.19 acres, conformance with the 40-acre minimum required by IP sections 20.17.060.B, 20.145.140.A.6, and 20.145.140.A.7 can not be accomplished by this lot line adjustment because it results in establishing three lots that are non-conforming with regards to minimum lot size. This raises a substantial issue.

Second, LUP Policy 5.4.2.8 and IP Section 20.145.140.A.7 prescribe that for steep parcels (those with a slope of more than 30%) that are designated WSC, the maximum allowable density for development is 1 unit/320 acres. The lot line adjustment approved by the County thus raises a substantial issue of consistency with the minimum lot size requirements, as well as with Big Sur IP Section 20.145.140.A.1,[1] because the project would adjust and facilitate development of three substandard parcels.

Finally, a substantial issue is also raised by the fact that the existing parcels are not considered buildable by LCP standards, creating a conflict with Big Sur LUP Policy 5.4.3.H.4 which states that "lot line

[1] Section 20.145.140.A.1 of the IP requires the development to conform and be consistent with the development standards of the IP.

adjustments are encouraged when no new developable lots are created and when plan policies are better met by this action" (emphasis added). In other words, Policy 5.4.3.H.4 encourages reconfiguration of buildable parcels so that coastal resources can be better protected, and discourages adjustments that convert unbuildable parcels into buildable parcels. LUP Policy 5.4.2.5 and IP Section 20.145.140.A.15 state that existing parcels of record are considered buildable when there is adequate building area on less than 30% slopes and all other resource protection policies and standards can be fully met. The three Burke parcels consist largely of 30% slopes or greater and contain a riparian corridor (an environmentally sensitive habitat area) raising LCP conflicts for development of residences, septic systems, and access roads, and rendering them unbuildable under these LCP standards. As such, the County approval raises a substantial issue of consistency with Policy 5.4.3.H.4 because it converts what are unbuildable sub-standard parcels into potentially buildable parcels, and sets a precedent that would have significant adverse cumulative impacts on the coastal resources of Big Sur (for example, through increased traffic on Highway 1 during peak visitor times, impacting coastal access and recreation) that do not advance the policies and intent of the Big Sur LCP.

6. Coastal Development Permit Determination

The standard of review for this application is the Monterey County certified LCP. All Substantial Issue Determination findings above are incorporated herein by reference.

A. Relevant LCP Provisions

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

> ***LUP Policy 5.4.2.1.*** *All development and use of the land whether public or private shall conform to all applicable policies of this plan and shall meet the same resource protection standards.*
>
> ***LUP Policy 5.4.2.5****. Existing parcels of record are considered buildable parcels and are suitable for development of uses consistent with the plan map provided all resource protection policies can be fully satisfied, there is adequate building areas of less than 30% cross slope, and they are not merged by provisions elsewhere in this plan.*
>
> ***LUP Policy 5.4.3.H.4****. Resubdivisions and lot line adjustments are encouraged when no new developable lots are created and when plan policies are better met by this action.*
>
> ***LUP Policy 5.4.2.8.*** *It is the policy of Monterey County that lands in excess of thirty percent cross slope, located east of Highway 1, shall not be developed. Those portions of a parcel in this area that have a cross slope of thirty percent or more shall receive a density of one dwelling unit (d.u.) for 320 acres.*
>
> *The calculation of residential development potential on property east of Highway 1 will be based on the following slope density formula:*

CROSS SLOPE	*DWELLING UNIT/ACRE*
Under - 15%	*1 - 40*
15 - 30%	*1 - 80*
Over - 30%	*1 - 320*

LUP Policy 3.3.3.A.4 *- Setbacks of 150' on each side of the streambank shall be required for all streams to protect riparian plant communities unless a narrower corridor can be demonstrated to be sufficient to protect existing vegetation and provide for restoration of previously disturbed vegetation.*

LUP Key Policy 3.2.1. *Recognizing the Big Sur coast's outstanding beauty and its great benefit to the people of the State and Nation, it is the County's objective to preserve these scenic resources in perpetuity and to promote the restoration of the natural beauty of visually degraded areas wherever possible. To this end, it is the County's policy to prohibit all future public or private development visible from Highway 1 and major public viewing areas (the critical viewshed), and to condition all new development in areas not visible from Highway 1 or major public viewing areas on the siting and design criteria set forth in Sections 3.2.3, 3.2.4, and 3.2.5 of this plan. This applies to all structures, the construction of public and private roads, utilities, lighting, grading and removal or extraction of natural materials.*

LUP Policy 3.2.3.A.4. *New roads, grading or excavations will not be allowed to damage or intrude upon the critical viewshed. Such road construction or other work shall not commence until the entire project has completed the permit and appeal process. Grading or excavation shall include all alterations of natural landforms by earthmoving equipment. These restrictions shall not be interpreted as prohibiting restoration of severely eroded water course channels or gullying, provided a plan is submitted and approved prior to commencing work.*

Monterey County Code Section 19.09.025 *Action on the lot line adjustment.*

A. Upon completion of the environmental documents, or finding that the proposed adjustment is exempt from CEQA the Director of Planning and Building Inspection shall set the matter before the appropriate decision making body which shall approve, disapprove, or conditionally approve the lot line adjustment in conformance with standards set forth in the Subdivision Map Act and this Chapter.

B. A lot line adjustment application may be granted based upon the following findings:

1. That the lot line adjustment is between two (or more) existing adjacent parcels.

2. A greater number of parcels than originally existed will not be created as a result of the lot line adjustment.

3. The parcels resulting from the lot line adjustment conform to County zoning and building ordinances.

IP Section 20.145.140.A.1. *All development and land use, whether public or private, shall conform to and be consistent with the policies of the Big Sur Coast Land Use Plan and with the development standards of this ordinance. (Ref. Policy 5.4.2.1)*

IP Section 20.145.140.A.4*. Development shall not be located on slopes of 30% or greater. The Director of Planning may grant a waiver to the standard upon applicant request and explanation of the request justification if: a. there is no alternative which would allow development to occur on slopes of less than 30%; or, b. the proposed development better achieves the resource protection objectives and policies of the Big Sur Coast Land Use Plan and development standards of this ordinance.*

IP Section 20.145.140.A.5*. Development of a parcel shall be limited to density, land use, and site development standards specific to that parcel's land use designation, as shown in Attachment 3.*

IP Section 20.145.140.A.6*. East of Highway 1, residential development in "RDR" (Rural Density Residential) and "WSC" (Watershed and Scenic Conservation) zoning districts shall be allowed at maximum densities established according to the following steps:*

a. The maximum density is established by the zoning district in which the parcel lies, e.g., "Watershed and Scenic Conservation/40 (CZ)" provides a 40 acre minimum building site.

b. The maximum density is established according to the slope density analysis required for the project according to Section 20.145.140.A.7.

c. The development standards of this ordinance and the policies of the Big Sur Coast Land Use Plan are applied to the parcel. Any policy or standard resulting in a decrease in density are then tabulated and subtracted from the maximum density allowed under the slope density formula.

d. Whichever of the two resulting densities, from the slope formula and from zoning, the lesser is then established as the maximum allowable density for the parcel. (Ref. Policy 5.4.2.8)

IP Section 20.145.140.A.7*. A slope density analysis shall be required for applications for residential development beyond the first residential unit on parcels which are east of Highway 1 and in a "WSC" (Watershed and scenic Conservation) or "RDR" (Rural Density Residential) zoning district. The analysis shall be required and submitted to the County prior to the application being considered complete. The slope density analysis shall include the following elements:*

a. topographic map of the entire parcel at an appropriate scale and contour interval of 40 feet or less ;

b. table showing the calculation of average cross slope as per Sec. 19.08.030 and 20.145.020.W;

c. the resulting maximum allowable number of dwelling units using the following slope density formula:

Existing Slope	*Maximum Allowable Density*
Under 15%	*1 unit/40 acres*
15 - 30%	*1 unit/80 acres*
Over 30%	*1 unit/320 acres*

(Ref. Policy 5.4.2.8)

***IP Section 20.145.140.A.13**. On-site septic or other waste disposal systems shall not be permitted on slopes exceeding 30%. One acre shall be considered to be the minimum area for development of a septic system.*

***IP Section 20.145.140.A.15**. Existing parcels of record are considered to be buildable parcels suitable for development of uses consistent with the provisions of the ordinance and land use plan, provided that: a) all resource protection policies of the land use plan and standards of the ordinance can be met; b) there is adequate building area on less than 30% slopes; and, c) that all other provisions of the Coastal Implementation Plan can be fully met. (Ref. LUP Policy 5.4.2.5)*

B. Big Sur Parcelization

Most of the original parcels in Big Sur were created under the original Township and Range survey system, under which the lands of Monterey County not within recognized Mexican-era land grants were divided into square-mile blocks termed "townships." Each township was further divided into 36 square sections of 640 acres each. Settlers were given the opportunity to homestead and eventually patent a quarter-section, amounting to 160 acres, as sufficient to maintain a farmstead. Some quarter sections were further divided into quarters (a sixteenth section, a quarter of a square mile), i.e. 40-acre lots. The smallest unit of survey was the "U.S. Lot" comprising 10 acres. These U.S. Lots could be aggregated under a single deed to define a particular homestead claim. Hundreds of homesteads were attempted in Big Sur's pioneer days, and dozens of successfully-patented homesteads remain to this day.

Review of the parcelization of Big Sur finds that certain anomalies exist in the pattern of square sections of lots. When the townships westerly of the Mount Diablo Meridian were first surveyed, some of the U.S. lots within Township 18 North, Range 1 East (in which the Burke parcels are located) turned out to have irregular shapes. Specifically, a sliver of land remained between Sections 1 and 2. This appears to have resulted from the desire to have a rectilinear land survey system, with future homestead parcels having consistent shapes and dimensions. Of course, the problem in drawing north-south section lines along the presumed lines of longitude is that the lines of longitude are not in fact exactly parallel but gently curved along the Earth's surface. So, Commission staff's research shows that some small "make-up" lots were inserted to keep the principal tiers of townships and sections regularly-shaped and parallel. These lots are identified in Exhibit E. The Burke Lot 17 appears to be one of the original 40-acre lots (although it measures just under 40 acres at 39.92 acres), and Lots 18 and 1 (6.60 acres and 7.58 acres, respectively) are two of these remnant "make-up" lots that lie on the border of Sections 1 and 2.

C. LCP Framework

The Big Sur Coast LUP is premised on preservation of the area's natural and scenic qualities, and repeatedly demonstrates a strong policy objective to strictly limit new development of the area. The LUP's basic objective for land use and development (Section 2.2.4) states:

> *The County's primary land use planning objective is to minimize development of the Big Sur coast in order to preserve the coast as a scenic rural area where residents' individual lifestyles can flourish, traditional ranching uses can continue, and the public can come to enjoy nature and find refuge from the pace of urban life.*
>
> *The County's basic policy is that future land use development on the Big Sur coast shall be extremely limited, in keeping with the larger goal of preserving the Coast as a natural scenic area. In all cases, new land uses must remain subordinate to the character and grandeur of the Big Sur coast. All proposed uses, whether public or private, must meet the same exacting environmental standards and must not degrade the Big Sur landscape.*

The LUP describes that the majority of residential development in Big Sur is located in a number of residential areas (designated Rural Residential) that have generally been developed to a level where the natural environment is perceived to have been significantly altered, and where residential development is very apparent on the land. These areas include Otter Cove, Garrapata Ridge/Rocky Point, Garrapata and Palo Colorado Canyon, Bixby Canyon, Pfeiffer Ridge, Sycamore Canyon, Coastlands, Partington Ridge, and Buck Creek to Lime Creek. The LUP states that the size and density of these residential areas varies, but in all cases, they are more densely developed than surrounding lands. They contain a number of subdivided and residentially-zoned lots in close proximity, yet do not contain resources or land use activities which generate significant employment services for the public. The Big Sur Coast LUP acknowledges that while these areas would continue to be developed, full buildout of all other existing parcels raises inconsistencies with the rural, scenic character of Big Sur and that certain parcels are not suitable for development. Section 5.1.1 of the LUP states:

> *While there are historic expectations that buildout of these areas [the identified Rural Residential areas] would proceed, a number of areas are not suitable for full development of all existing parcels because of conflicts with the broad objectives of this plan – particularly the protection of water and scenic resources or limited capacity of local roads.*

Big Sur Coast LUP Section 5.3.3 goes on to state:

> *The plan is flexible concerning the siting of new development, allowing a range of land use proposals to be made at any particular location. Yet the plan's resource protection standards, and slope and road requirements, are stringent, ultimately causing new development to be sited on the most physically suitable locations and limiting buildout to a level that can be accommodated on those sites that can meet all of the plan's requirements.*

The development of all parcels in Big Sur, regardless of their physical suitability or buildability, would result in significant cumulative impacts to the area's natural and scenic resources as well as place

additional burden on existing residents. State Highway 1, for example, is already frequently at capacity and operates at the worst level of service (LOS F) during the peak summer period, and can not be widened to accommodate more residential traffic. An increase in the projected residential buildout would also cumulatively exacerbate impacts to water supplies, sensitive habitats, and the area's other natural and limited manmade features beyond the area's capacity to sustain such development. In general, an increase in residential development potential (beyond that which is contemplated by the LCP) could alter the unique character of Big Sur that makes it such a popular destination for coastal access and recreation.

Accordingly, the LUP's Key Policy 5.4.1 for development states that "future land use development on the Big Sur coast should be extremely limited, in keeping with the larger goal of preserving the coast as a scenic natural area." In order to guide and determine where future land use development should occur, one of the LUP's development policies (Policy 5.4.2.5) characterizes what constitutes a buildable parcel. Under this policy, parcels are considered buildable parcels provided that "all resource protection policies can be fully satisfied, there are adequate building areas of less than 30% cross slope, and they are not merged by provisions elsewhere in this plan." A sampling of the resource protection policies of the LUP includes the prohibition against development in the critical viewshed, prohibition against development on 30% slopes, and protection of ESHA (including a 150-foot stream setback requirement).

In addition, the LCP prescribes maximum allowable densities for parcels east of Highway 1 based on slopes in order to protect against excessive development in steep mountainous terrain. IP Section 20.145.140.A.6 requires a 40-acre minimum parcel size in the WSC designation (or, in other words, a maximum of 1 residential unit per 40 acres), assuming a site of less than 15% average slope. Under the slope density analysis also required in that section of the IP and LUP Policy 5.4.2.8, the minimum parcel size for areas with slopes that average 30% or more is 320 acres (1 unit per 320 acres). Thus, a minimum of 40 acres is required for parcels that average less than 15% slopes and a minimum of 320 acres is required for steep parcels that average 30% or greater slopes, and the creation of parcels that do not meet these criteria is inconsistent with the LCP.

In general, the Big Sur LUP's resource protection policies are borne out of the basic goal of the LUP:

> *To preserve for posterity the incomparable beauty of the Big Sur country, its special cultural and natural resources, its landforms and seascapes and inspirational vistas. To this end, all development must harmonize with and be subordinate to the wild and natural character of the land.*

Despite the LUP's resource protection goals, objectives, and policies and the basic premise of minimal development, the LCP includes various waivers and exceptions to its resource protection policies. These waiver and exception allowances include exceptions to 30% slope restrictions, riparian setback requirements, and other development restrictions. It is understood that these waiver and exception allowances were built into the LCP because it was acknowledged that some departure from the resource protection policies was necessary to allow for a limited level of development on a number of existing

legal parcels. Although these exceptions to the resource protection policies exist in the LCP, they are discretionary, and may only be employed when no alternatives exist (to development on 30% slopes, for example) and when some level of development must be granted to allow reasonable economic use of a property consistent with the prohibition against the governmental taking of private property without just compensation. Any deviation from the LCP's resource protection policies requires careful consideration since, as discussed above, the Big Sur Coast LCP is premised on minimal development and protection of the area's natural and scenic qualities, and maximum protection of public access to and along the Big Sur shoreline.

There are some circumstances in which the Big Sur LUP encourages lot line adjustments. Policy 5.4.3.H.4 states that "resubdivisions and lot line adjustments are encouraged when no new developable lots are created and when plan policies are better met by this action." For this policy to apply, however, the lot line adjustment must not result in the creation of new developable parcels, and the new configuration must improve the potential development's consistency with the LUP. This emphasis on only encouraging lot line adjustments when they would facilitate less and more sensitive development is consistent with the LCP's strong policy to minimize development in Big Sur, and is supported by LUP Section 5.2 which states:

> *A major challenge of this plan is to find a way to substantially curtail further commitment to residential development resulting from subdivision or other land use intensification while also assisting landowners in achieving the most sensitive possible development of existing parcels.*

Thus, the LCP is designed to curtail the manipulation of parcels that would facilitate further residential development. Instead, it appears that subdivisions and lot line adjustments were seen as tools for protecting the public interest, by allowing shifts in the location of buildable density to better comply with the LUP's resource protection policies and/or to simply correct property line mistakes or adjust poorly-shaped parcels or acreages for logistical purposes.

The LCP envisions lot line adjustments as useful for existing buildable parcels (i.e., those parcels with suitable building, septic, and access road area under 30% slopes, outside the critical viewshed, outside of ESHA, and consistent with all other LCP requirements) if an adjustment would improve the resource setting and thereby further the intent of the LCP to protect coastal resources and public access and recreation. By correcting obsolete or unhelpful property lines, lot line adjustments have the potential to be used as a tool for protecting coastal resources. There is no evidence in the LCP that lot line adjustments and resubdivisions were meant to be a means solely to achieve a more marketable parcel configuration, regardless of existing constraints. In fact, the LCP is designed to "substantially curtail" new residential development that could be facilitated through subdivisions or other land intensification mechanisms, such as lot line adjustments.

D. LCP Consistency Analysis

The three existing undeveloped Burke parcels that are the subject of the County-approved lot line adjustment contain a variety of resource constraints that make them unbuildable under Policy 5.4.2.5. First, the majority of all three parcels contain slopes greater than 30%, as shown in Exhibit F. LUP

Policy 5.4.2.5 and IP Sections 20.145.140.A.15 require adequate building area (for all development) on less than 30% slopes in order for a parcel to be considered buildable, and IP Section 20.145.140.A.4 prohibits development on slopes of 30% or greater. While there may be enough area under 30% slopes for a small residence on each of the existing parcels, there would be no way to develop access roads to those residences, without slope waivers, because of the prevalence of steep slopes. Furthermore, the LCP prohibits onsite septic systems or other waste disposal systems on slopes exceeding 30% and requires a minimum one-acre area on less than 30% slopes for development of a septic system (CIP Section 20.145.140.A.13). A septic system(s) would be necessary for these parcels, given that a sewer system does not exist for Big Sur. As shown in Exhibit F, no one-acre areas on less than 30% slopes exist on any of the three existing parcels.

Even if the small pockets of relatively flat area could be accessed on Lots 1 and 18 without the use of slope waivers and even if one-acre areas on less than 30% slopes existed on each of the parcels, development of residences would be precluded by their proximity to the north fork of Rocky Creek. LUP Policy 3.3.3.A.4 requires 150-foot setbacks from all streams, and much of the area under 30% slopes on Lot 18 lies within 150 feet from Rocky Creek, and the area of Lot 1 that would be closest to an access road from the other commonly-owned parcels would also be within 150 feet of Rocky Creek.

In addition, access roads to Lots 1 and 18 would have to traverse steep slopes that could be visible from Highway 1 and/or other public viewing areas (possibly from trails in the Los Padres National Forest), and they would therefore be subject to the critical viewshed policies of the LCP. (This would require field verification, but appears to be the case based on aerial photograph and map review.). The LCP prohibits all new development in the critical viewshed (LUP Policies 3.2.1 and 3.2.3.A.4).

In sum, the three existing parcels would not meet the Policy 5.4.2.5 definition of buildable parcels because all resource protection policies of the LUP (including prohibition of development on slopes greater than 30%) cannot be met on them. As described above, it is possible that the parcels could be developed with allowed uses through the discretionary granting of slope waivers and other exceptions, if some level of development must be granted to allow reasonable economic use of the properties. Also as discussed above, such granting of waivers and exceptions on these properties would require careful consideration, and the merits of any project(s) on these properties would need to be weighed against the LCP's resource protection policies and the basic LCP premise of extremely minimal development in Big Sur. As part of that consideration, the parcels' land use designation and the LUP priorities for that designation would need to be evaluated and weighed. These three parcels are designated Watershed and Scenic Conservation (WSC), the LUP's primary objective of which is protection of watersheds, streams, plant communities and scenic values. The principal uses in the proposed WSC LUP land use designation include agriculture/grazing and supporting ranch houses and related ranch buildings. Residential use is a secondary, conditional use in this land use designation. Unlike the Rural Residential land use designation, described above, residential use of WSC land was deemed of secondary importance to protection of the natural environment.

The proposed lot line adjustment would reconfigure these three lots to facilitate the development of Lots 1 and 18, which are currently exceedingly constrained, as described above. While lot line adjustments

are encouraged under some circumstances, this lot line adjustment does not meet the standard in Policy 5.4.3.H.4 because it attempts to create new buildable parcels. Not only would the lot line adjustment make currently unbuildable parcels more buildable, it would also facilitate the development of lots that are substandard as to minimum parcel size. The zoning for the Burke parcels (WSC/40) requires the parcels to be a minimum of 40 acres. The parcels, due to the prevalence of 30% slopes or greater, are also subject to additional density requirements. Namely, LUP Policy 5.4.2.8 and CIP Section 20.145.140.A.7 prescribe that for parcels with an average slope of 30% or greater, the allowable density is 1 unit per 320 acres. These minimum parcel sizes were determined to be the appropriate sizes for WSC lands, given the prevalence of difficult terrain and the LCP's primary objectives for this zoning district, described above. The County-approved lot line adjustment does not correct existing sub-standard parcel size deficiencies, and it reconfigures sub-standard parcels to facilitate their development, thus encouraging the development of parcels that are a fraction of the required minimum size. Such development is inconsistent with the minimum lot size requirements of the LCP that are designed to ensure that new development occurs only on lots of sufficient size in order to protect the area's natural and scenic resources.

Furthermore, with respect to the developability and the substandard sizes of the existing parcels, it does not appear that the applicant's two small easterly parcels (Lots 1 and 18) were meant as homestead sites. Instead, as discussed under the "Big Sur Parcelization" section above, they are artifacts of an early-day land survey process that produced leftover odd fragments of land. Their purpose was not for settlement, but to keep the survey lines straight. At the time of their creation, there could not have been any reasonable expectation that either of the Applicants' very steep, brush-covered, extremely-remote "sliver" parcels would match the homestead ideal of a freestanding, self sufficient residential ownership. By the standards of County zoning in effect for many decades, as well as the more recent California Subdivision Map Act and the certified Monterey County LCP, these lots are substandard.[2]

Recognition of the Applicants' existing "sliver" parcels as developable and fully eligible for ordinary residential construction would intensify the incentive to develop other substandard lots, the amount of which is unknown but potentially substantial.[3] Each vacant parcel cumulatively adds to Big Sur's potential total residential buildout. The LCP stresses minimal development in Big Sur because full buildout of all lots will place an untenable stress on the area's high quality natural and scenic resources, public access to the coast, as well as unfairly burden owners of existing developed properties with added congestion and diminished water supplies, among other things. Highway 1, for example, is already frequently at capacity, and can not be widened to accommodate more visitor-serving let alone residential traffic.

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[2] Nonetheless, each of these lots has been treated as a separate legal parcel. These findings do not dispute such claim of separate standing.

[3] The Big Sur Coast Area has more than 300 residences on existing, developed parcels. In addition, there are possibly an equal or greater number of vacant parcels. The total parcel count is indeterminate. The main reason for this is that from time to time more parcels are identified and submitted to the County for Certificates of Compliance (COCs). Essentially, the County may issue a COC for the purposes of recognizing a particular, separate parcel of land that was legally-created under whatever parcelization rules were in existence at the time.

The County-approved lot line adjustment also does not include any elements that would allow for plan policies to be better met (another requirement of Policy 5.4.3.H.4) beyond what exists under the current parcel configuration. Although the lot line adjustment could result in shorter access roads and greater clustering of residential development than if the parcels were each residentially developed in their current configuration (assuming each of the parcels can be approved for development through the use of waivers and policy exceptions), all development would still be inconsistent with slope policies, etc. The County-approved lot line adjustment does not offer anything additional to ensure that plan policies are better met, such as reduction in overall development density, retirement of development credit elsewhere, or protective easements.

Since the purpose of the proposed lot line adjustment is to transform nonresidential lots into buildable residential lots, it is not a proper use of the LUP's lot line adjustment tool and it is inconsistent with the LCP's policies designed to minimize residential development. It would undermine the (already very low) residential buildout assumptions upon which the Big Sur Coast Area LUP was founded. As stated in Section 5.2 of the LUP, "Continued residential development and subdivision for residential purposes is a trend at odds with the preservation of the coast's natural, scenic, and rural character." Therefore, the lot line adjustment cannot be found consistent with the LCP and must be denied.

E. Conclusion

The County-approved lot line adjustment is inconsistent with the Big Sur Coast LUP's basic premise of extremely limited development. In addition, the proposed project would facilitate the development of significantly substandard parcels, inconsistent with LCP policies designed to minimize residential development where such development is inconsistent with protection of coastal resources. While lot line adjustments are encouraged under one provision of the LUP, this lot line adjustment does not meet the standards for when a lot line adjustment should be encouraged, as it is designed to facilitate development of undevelopable lots and plan policies are not better met by this action. Therefore, the proposed lot line adjustment is denied, and the parcels remain as currently configured, subject to all applicable LCP policies.

7. California Environmental Quality Act (CEQA)

Public Resources Code (CEQA) Section 21080(b)(5) and Sections 15270(a) and 15042 (CEQA Guidelines) of Title 14 of the California Code of Regulations (14 CCR) state in applicable part:

> ***CEQA Guidelines (14 CCR) Section 15042. Authority to Disapprove Projects.*** *[Relevant Portion.] A public agency may disapprove a project if necessary in order to avoid one or more significant effects on the environment that would occur if the project were approved as proposed.*
>
> ***Public Resources Code (CEQA) Section 21080(b)(5). Division Application and Nonapplication.*** *…(b) This division does not apply to any of the following activities: …(5) Projects which a public agency rejects or disapproves.*

> ***Public Resources Code (CEQA) Section 21080.5(d)(2)(A).*** *Require that an activity will not be approved or adopted as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.*
>
> ***CEQA Guidelines (14 CCR) Section 15270(a). Projects Which are Disapproved.*** *(a) CEQA does not apply to projects which a public agency rejects or disapproves.*

Section 13096 (14 CCR) requires that a specific finding be made in conjunction with coastal development permit applications about the consistency of the application with any applicable requirements of CEQA. This staff report has discussed the relevant coastal resource issues with the proposal. All above LCP conformity findings are incorporated herein in their entirety by reference. As detailed in the findings above, the proposed project would have significant adverse effects on the environment as that term is understood in a CEQA context.

Pursuant to CEQA Guidelines (14 CCR) Section 15042 "a public agency may disapprove a project if necessary in order to avoid one or more significant effects on the environment that would occur if the project were approved as proposed." Section 21080(b)(5) of CEQA, as implemented by Section 15270 of the CEQA Guidelines, provides that CEQA does not apply to projects which a public agency rejects or disapproves. Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

Monterey County, the lead agency for the project, determined that there is no substantial evidence that the project may have a significant effect on the environment, and therefore issued a categorical exemption for the project. On appeal, the Commission finds that denial, for the reasons stated in the findings in this report, is necessary to avoid the significant effects on coastal resources that would occur if the project were approved as proposed. Accordingly, the Commission's denial of this project represents an action to which CEQA, and all requirements contained therein that might otherwise apply to regulatory actions by the Commission, does not apply.

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COASTAL COMMISSION
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MONTEREY COUNTY

RESOURCE MANAGEMENT AGENCY

PLANNING DEPARTMENT, Mike Novo, Interim Director

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Date: January 12, 2007

To: California Coastal Commission, Central Coast District Office
Applicant/Representative: ~~Sam~~ Bose (incorrect)
Other Interested Parties: ~~Peter~~ MacLaggan

From: Monterey County Planning and Building Inspection Department

Subject: Final Local Action on Coastal Permit
Application PLN060189

FINAL LOCAL ACTION NOTICE

REFERENCE # 3-MCO-07-024
APPEAL PERIOD 1/18/07-1/31/07

Please note the following **Final Monterey County Action** for the following coastal development permit type:

☑CDP/CAP ☐ CDP Amendment ☐ Extension ☐ Emergency CDP
☐ Exemption ☐ Exclusion ☐ Other: _____

☑all local appeals processes have been exhausted for this matter

☐ The project includes an amendment to the LCP

Project Information

Application #: PLN060189
Project Applicant: Timothy & Dana Burke
Applicant's Rep: Arden Handshy
P.O. 51758
Pacific Grove, CA 93950
Project Location: On Palo Colorado Road, South of Twin Peaks, Big Sur area
Project Description: COASTAL DEVELOPMENT PERMIT TO ALLOW A LOT LINE ADJUSTMENT THAT WOULD RECONFIGURE THREE EXISTING VACANT LOTS RESULTING IN TWO OF THE SMALLER LOTS BEING MOVED FROM THE EASTERLY LOCATION TO THE WESTERLY LOCATION FOR THE PURPOSES OF BETTER ACCESS. THE RESULTING LOT SIZES WOULD REMAIN AT EXISTING SIZES TO INCLUDE 39.92, 6.60 AND 7.56 ACRES (ASSESSOR'S PARCEL NUMBERS 418-011-041-000, 418-011-043-000, 418-011-042-000). THE PROJECT IS LOCATED ON PALO COLORADO ROAD, SOUTH OF TWIN PEAKS, BIG SUR AREA, COASTAL ZONE.

Final Action Information

Final Action Date:
Final Action: ☑Approved w/conditions ☐ Approved w/o conditions ☐ Denied
Final Action Body: ☐ Zoning Administrator ☐ Planning Commission ☑Minor Subdivision Committee

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(page 1 of 13 pages)

For Coastal Commission Use Only

MCO

Reference #:

FLAN received:

Appeal period:

Final Local Action Notice Attachments Included

Required Materials Supporting the Final Action	Enclosed	Previously Sent (date)	Notes/Comments
Adopted Staff Report	✓		
Adopted Findings	✓		
Adopted Conditions	✓		
Site Plans	✓		
Elevations	✓		
Location/Vicinity Map	✓		
Additional Materials Supporting the Final Action	Enclosed	Previously Sent (date)	Notes/Comments
CEQA Document(s)			
Geotechnical Report(s)			
Biotic Report(s)			
Forest Management Plan(s)			
Other_____			
Other_____			

Coastal Commission Appeal Information

Monterey County has determined that this Final Local Action is:

☐ **NOT APPEALABLE** to the California Coastal Commission. The Final Monterey County Action is now effective.

☑ **APPEALABLE** to the California Coastal Commission. The Coastal Commission's 10-working day appeal period begins the first working day after the Coastal Commission receives adequate notice of this Final Monterey County Action. The Final Monterey County Action is not effective until after the Coastal Commission's appeal period has expired and no appeal has been filed. Any such appeal must be made directly to the California Coastal Commission Central Coast District Office in Santa Cruz; there is no fee for such an appeal. Should you have any questions regarding the Coastal Commission appeal period or process, please contact the Central Coast District Office at 725 Front Street, Suite 300, Santa Cruz, CA 95060, (831) 427-4863.

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(page 2 of 13 pages)

Submitted by

Signature: Connie Mendoza

Name: Connie Mendoza
Title: Land Use Technician
Phone/Fax: (831) 755-5184 fax (831) 757-9516
email: mendozac@co.monterey.ca.us

Planner: David Lutes
Title: Senior Planner
Phone/Fax: 831-755-5304 / 831-757-9516 (fax)
Email: lutesd@co.monterey.ca.us

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MINOR SUBDIVISION COMMITTEE
COUNTY OF MONTEREY, STATE OF CALIFORNIA

RESOLUTION NO. 06030

A.P. # : 418-011-041-000;
418-011-042-000; and
418-011-043-000

FINDINGS AND DECISION

In the matter of the application of
Timothy and Dana Burke (PLN060189)

for a Coastal Development Permit in accordance with Title 20 (Monterey County Coastal Implementation Plan Ordinances) Chapter 20.140 (Coastal Development Permits) of the Monterey County Code, to allow a lot line adjustment between three contiguous legal lots of record, resulting in 3 reconfigured parcels remaining at existing sizes to include: Parcel "A" (6.60 acres), Parcel "B" (7.58 acres), and Parcel "C" (39.92 acres). No existing development occurs on the property except for an access road off Palo Colorado Canyon Road that reaches the northeast corner of the proposed Parcel "A" through mountainous terrain. The project is located on Palo Colorado Road, south of Twin Peaks, west of the Los Padres National Forest, in the Big Sur Coast Area, Coastal Zone, and came on regularly for hearing before the Minor Subdivision Committee on December 14, 2006.

Said Zoning Administrator, having considered the application and the evidence presented relating thereto,

FINDINGS OF FACT

1. **FINDING:** **CONSISTENCY** – The project, as described in Condition No. 1 and as conditioned, conforms to the policies, requirements, and standards of the Monterey County General Plan, Big Sur Coast Land Use Plan, Title 20 Monterey County Codes, Monterey County Coastal Implementation Plan - Part 3 (Chapter 20.145), and Monterey County Code Title 19, Subdivision Ordinance which designates this area as appropriate for development.

EVIDENCE: (a) The text, policies, and regulations in the above referenced documents have been evaluated during the course of review of applications. No conflicts were found to exist. No communications were received during the course of review of the project indicating any inconsistencies with the text, policies, and regulations in these documents.

(b) The property is located off of Palo Colorado Road, south of Twin Peaks, west of the Ventanna Wilderness in the Los Padres National Forest (418-011-041-000; 418-011-042-000; 418-011-043-000, between parcels in Section 2, Township 18 South, Range 1 East), in the Big Sur Coast Area of the Coastal Zone. The parcels are designated as in a Watershed and Scenic Conservation area allowing for 40 acre minimum parcel sizes (WSC/40 [CZ]). The subject properties contain development constraints such as the prevalence of 30% slopes and environmentally-sensitive habitats, as well as non-conforming parcel sizes in an area requiring 40 acre minimum parcel sizes. The legal status of the parcels as lots of record require that the lot line adjustment result in a reconfiguration of the parcels to minimize the potential impacts of these development constraints such that future development will be achieved with minimal adverse effect and will be subordinate to the resources of the particular site and area, pursuant to the states purposes of Section 20.17.010 of Title 20, the Coastal Zoning Ordinance. As a lot line adjustment, the resulting parcels are made more compatible with, and do not obstruct, the objectives and policies of the WSC zoning, the Big Sur Coast Land Use Plan and Coastal

Implementation Plan, as required by Government Code Section 66412 (d) of the Subdivision Map Act.

(c) The project was not referred to the Big Sur Land Use Advisory Committee (LUAC) for review. Based on the current review guidelines adopted by the Monterey County Board of Supervisors (Resolution No. 04-236), this application did not warrant referral to the LUAC for the following reasons: the project is exempt from CEQA review per Section 15305 and implementation of the project will not require the issuance of a Variance.

(d) The application, plans, and related support materials submitted by the project applicant to the RMA- Planning Department for the proposed development found in Project File PLN060189.

2. **FINDING:** **SITE SUITABILITY** – The site is physically suitable for the use proposed.

EVIDENCE: (a) The project has been reviewed for site suitability by the following departments and agencies: California Coastal Commission, RMA-Planning Department, California Department of Forestry, Big Sur Coast Fire Protection District, Public Works, Environmental Health Division, and Water Resources Agency. There has been no indication from these departments/agencies that the site is not suitable for the proposed development. Conditions recommended have been incorporated.

(d) Materials in Project File PLN060189.

3. **FINDING:** **CEQA (Exempt): -** The project is categorically exempt from environmental review.

EVIDENCE: (a) Section 15305(a) (Class 5) of the CEQA Guidelines (minor lot line adjustments not resulting in the creation of any new parcel) categorically exempts the proposed development from environmental review.

(b) The lot line adjustment is intended to move the 6.60 acre and 7.58 acre parcels closer to the existing access road at the northwest portion of the properties such that all 3 proposed building sites can be relatively clustered and the driveways can be much shorter from the existing access road, resulting in less grading, and thereby less impact to the land.

(c) Potential adverse environmental effects were identified during staff review of the lot line adjustment application such as the prevalence of 30% slopes and environmentally sensitive habitats. The tentatively proposed building sites remove future development from Oak Woodland and Canyon Riparian habitat as reported by consulting ecologist, Nicole Nedeff in a letter dated August 20, 2006, after conducting a preliminary site assessment on August 19th, 2006 pursuant to RMA - Planning Department requirements for biology reports. Her report shall be identified as a note on the recorded Record of Survey, as required in Condition 3 of this Minor Subdivision Committee Resolution.

(d) In a letter dated July 31, 2006, consulting geotechnical engineer, Lawrence E. Grice, states that in general he finds the proposed lot line adjustment will provide suitable areas for installation of septic leachfields within the new boundary of the parcels.

(e) Based on available information, there is no reasonable possibility that the proposed lot line adjustment will have a significant effect on the environment due to unusual circumstances, but future development proposals shall require additional discretionary review. It is considered that the proposed lot line adjustment will serve to help mitigate future potential environmental effects on the environment.

(e) See preceding and following findings and supporting evidence.

(f) Materials in project file PLN060189.

4. **FINDING:** **SUBDIVISION ORDINANCE (TITLE 19) LOT LINE ADJUSTMENTS (CHAPTER 19.09)** The Burke Lot Line Adjustment (PLN060189) is consistent with the requirements as specified within Title 19.

CCC Exhibit A
(page 5 of 12 pages)

EVIDENCE: (a) The lot line adjustment is between three contiguous legal lots of record:

- Parcel 17, Assessor's Parcel Number 413-011-041-000, as established by Certificate of Compliance, recorded Document G 22368 (39.92 acres);
- Parcel 18, Assessor's Parcel Number 413-011-042-000, as established by Certificate of Compliance, recorded Document G 22367 (6.60 acres);
- Lot 1, Assessor's Parcel Number 418-011-043-000, as established by Certificate of Compliance, recorded Document G 22370 (7.58 acres).

(b) A greater number of parcels than originally existed will not be created as a result of the lot line adjustment.

(c) The two smaller parcels are being moved from the easterly location to the northwesterly location for the purposes of better access, with the resulting parcel adjustments remaining at existing sizes.

(d) Upon approval of the lot line adjustment, Parcel "A," Parcel "B," and Parcel "C" will remain non-conforming as to designated 40 acre parcel sizes, but shall further the WSC purpose to subordinate future proposed development to the resources of the particular site and area, mainly the watershed, plant, streams and riparian corridors found at the site.

(e) The Lot Line Adjustment Map contains all items required for processing including slope contours, trails, and general locations of future building areas and roadways.

(f) A Condition of Approval has been incorporated requiring the applicant to record a Record of Survey as approved.

5. FINDING: **PUBLIC ACCESS** – The project is in conformance with the public access and public recreation policies of the Coastal Act and Local Coastal Program, and does not interfere with any form of historic public use or trust rights (see 20.70.050.B.4). No access is required as part of the project as no substantial adverse impact on access, either individually or cumulatively, as described in Section 20.70.050.B.4.c of the Monterey County Coastal Implementation Plan, can be demonstrated.

EVIDENCE (a) The subject property is not described as an area where the Local Coastal Program requires access.

(b) The subject property is not indicated as part of any designated trails or shoreline access as specified in Policy 6.1.6 and Figure 2, Shoreline Access Plan of the Big Sur Coast Land Use Plan. The trails eastward off Palo Colorado Canyon Road are "inappropriate for access or suitability not yet determined."

(c) No evidence or documentation has been submitted or found showing the existence of historic public use or trust rights over this property.

6. FINDING: **NO VIOLATIONS** – The subject property is in compliance with all rules and regulations pertaining to zoning uses, subdivision, and any other applicable provisions of the County's zoning ordinance. No violations exist on the property. Zoning violation abatement costs, if any, have been paid.

EVIDENCE: Staff reviewed RMA- Planning Department and RMA-Building Services records and is not aware of any violations existing on subject property.

7. FINDING: **HEALTH AND SAFETY** – The establishment, maintenance, or operation of the project applied for will not under the circumstances of this particular case be detrimental to the health, safety, peace, morals, comfort, and general welfare of persons residing or working in the neighborhood of such proposed use, or be detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the County.

EVIDENCE: Preceding findings and supporting evidence.

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(page 6 of 13 pages)

8. **FINDING:** **APPEALABILITY** – The decision on this project is appealable to the Board of Supervisors and the California Coastal Commission.

EVIDENCE: (a) Section 20.86.030 and 20.86.080 of the Monterey County Zoning Ordinance.

DECISION

It is the decision of said Minor Subdivision Committee that said request for a Coastal Development Permit be approved as shown on the attached sketch, subject to the attached conditions.

PASSED AND ADOPTED this 14th day of December 2006, by the following vote.

AYES: Moss, Main, Hori, Treffry, Vandevere
NOES: None
ABSENT: Burgess, McPharlin

Jeff Main, Secretary Pro Tem

COPY OF THIS DECISION MAILED TO APPLICANT ON JAN - 3 2007

THIS APPLICATION IS APPEALABLE TO THE BOARD OF SUPERVISORS. IF ANYONE WISHES TO APPEAL THIS DECISION, AN APPEAL FORM MUST BE COMPLETED AND SUBMITTED TO THE CLERK OF THE BOARD OF SUPERVISORS ALONG WITH THE APPROPRIATE FILING FEE ON OR BEFORE JAN 1 3 2007

THIS APPLICATION IS ALSO APPEALABLE TO THE COASTAL COMMISSION. UPON RECEIPT OF NOTIFICATION OF THE DECISION BY THE BOARD OF SUPERVISORS, THE COMMISSION ESTABLISHES A 10 WORKING DAY APPEAL PERIOD. AN APPEAL FORM MUST BE FILED WITH THE COASTAL COMMISSION. FOR FURTHER INFORMATION, CONTACT THE COASTAL COMMISSION AT (831) 427-4863 OR AT 725 FRONT STREET, SUITE 300, SANTA CRUZ, CA

This decision, if this is the final administrative decision, is subject to judicial review pursuant to California Code of Civil Procedure Sections 1094.5 and 1094.6. Any Petition for Writ of Mandate must be filed with the Court no later than the 90th day following the date on which this decision becomes final.

Monterey County RMA-Planning Department Condition Compliance and/or Mitigation Monitoring Reporting Plan	**Project Name:** BURKE, Timothy and Dana **File No:** PLN060189 **APNs:** 418-011-041-000, 418-011-042-000, 418-011-043-000 **Approved by:** MINOR SUBDIVISION COMMITTEE **Date:** DECEMBER 14,2006

Monitoring or Reporting refers to projects with an EIR or adopted Mitigated Negative Declaration per Section 21081.6 of the Public Resources Code.

Permit Cond. Number	*Mitig. Number*	*Conditions of Approval and/or Mitigation Measures and Responsible Land Use Department*	*Compliance or Monitoring Actions to be performed. Where applicable, a certified professional is required for action to be accepted.*	*Responsible Party for Compliance*	*Timing*	*Verification of Compliance (name/date)*
1.		**PBD029 - SPECIFIC USES ONLY** This Coastal Development Permit (PLN060189/Burke) allows a lot line adjustment that would reconfigure three (3) existing vacant parcels, resulting in two of the smaller parcels being moved from the easterly location to the westerly location for the purposes of better access. The resulting parcel sizes would remain at existing sizes to include 39.92, 6.60 and 7.56 acres (Assessor's Parcel Numbers 418-011-041-000, 418-011-043-000, 418-011-042-000). The project is located on Palo Colorado Road, south of Twin Peaks, west of the Los Padres National Forest, in the Big Sur Coast Area, Coastal Zone. This permit was approved in accordance with County ordinances and land use regulations subject to the following terms and conditions. Neither the uses nor the construction allowed by this permit shall commence unless and until all of the conditions of this permit are met to the satisfaction	Adhere to conditions and uses specified in the permit.	Owner/ Applicant	Ongoing unless otherwise stated	

CCC Exhibit A (page 8 of 12 pages)

		of the Director of the RMA-Planning Department. Any use or construction not in substantial conformance with the terms and conditions of this permit is a violation of County regulations and may result in modification or revocation of this permit and subsequent legal action. No use or construction other than that specified by this permit is allowed unless additional permits are approved by the appropriate authorities. **(RMA-Planning Dept.)**				

Permit Cond. Number	Mitig. Number	Conditions of Approval and/or Mitigation Measures and Responsible Land Use Department	Compliance or Monitoring Actions to be performed. Where applicable, a certified professional is required for action to be accepted.	Responsible Party for Compliance	Timing	Verification of Compliance (name/date)
		RESOURCES MANAGEMENT AGENCY - PLANNING DEPARTMENT CONDITIONS OF APPROVAL				
2.		**PBD025 - NOTICE-PERMIT APPROVAL** The applicant shall record a notice which states: "A permit (Resolution 060189) was approved by the Minor Subdivision Committee for Assessor's Parcel Numbers 418-011-041-000, 418-011-042-000, 418-011-043-000 on December 14, 2006. The permit was granted subject to 5 conditions of approval which run with the land. A copy of the permit is on file with the RMA-Planning Department." Proof of recordation of this notice shall be furnished to the Director of the RMA-Planning Department prior to issuance of building permits or commencement of the use. **(RMA - Planning Department)**	Proof of recordation of this notice shall be furnished to the RMA-Planning Department.	Owner/ Applicant	Prior to Recordation of Record of Survey	

CCC Exhibit A (page 10 of 12 pages)

Permit Cond. Number	Mitig. Number	Conditions of Approval and/or Mitigation Measures and Responsible Land Use Department	Compliance or Monitoring Actions to be performed. Where applicable, a certified professional is required for action to be accepted.	Responsible Party for Compliance	Timing	Verification of Compliance (name/date)
3.		**PD015 - NOTE ON MAP-STUDIES** A note shall be placed on the Record of Survey map or a separate sheet to be recorded with the Record of Survey map stating that: "A letter report dated August 20, 2006, has been prepared on this property by consulting biologist, Nicole Nedeff, and is on file in the Monterey County RMA - Planning Department. The recommendations contained in said report shall be followed in all further development of this property; namely, that detailed assessments should be included as a component of future development plan on any of the proposed parcels under consideration in the proposed lot line adjustment." The note shall be located in a conspicuous location, subject to the approval of the County Surveyor. **(RMA – Planning Department)**	Final recorded Record of Survey map with notes shall be submitted to the RMA - Planning Department and Public Works for review and approval.	Owner/ Applicant	Prior to recordation of Record of Survey	
		PUBLIC WORKS DEPARTMENT CONDITIONS OF APPROVAL				
4.		**PW0034 – LOT LINE ADJUSTMENT** Obtain a survey of the new line and have the line monumented. **(Public Works)**	Owner shall have a surveyor monument the new lines. Evidence of completion of monumentation shall be submitted to DPW for review and approval.	Owner/ Applicant/ Surveyor		

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Permit Cond. Number	*Mitig. Number*	*Conditions of Approval and/or Mitigation Measures and Responsible Land Use Department*	*Compliance or Monitoring Actions to be performed. Where applicable, a certified professional is required for action to be accepted.*	*Responsible Party for Compliance*	*Timing*	*Verification of Compliance (name, date)*
5.		**PW0035 – RECORD OF SURVEY** File a Record of Survey showing the new line and its monumentation. **(Public Works)**	Owner's Surveyor to prepare record of survey and submit to DPW for review and approval.	Owner/ Surveyor	Prior to Recordation of Record of Survey	

END OF CONDITIONS

CCC Exhibit A (page 12 of 12 pages)

PLN000189

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(page 13 **of** 13 **pages)**

CALIFORNIA COASTAL COMMISSION
CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
(831) 427-4863
www.coastal.ca.gov

COMMISSION NOTIFICATION OF APPEAL

DATE: February 1, 2007

TO: Mike Novo, Interim Director
County of Monterey, Planning Department
168 West Alisal St., 2nd Flr.
Salinas, CA 93901

FROM: Steve Monowitz, District Manager

RE: **Commission Appeal No. A-3-MCO-07-004**

Please be advised that the coastal development permit decision described below has been appealed to the California Coastal Commission pursuant to Public Resources Code Sections 30603 and 30625. Therefore, the decision has been stayed pending Commission action on the appeal pursuant to Public Resources Code Section 30623.

Local Permit #:	**PLN060189**
Applicant(s):	**Timothy & Dana Burke**
Description:	**Lot line adjustment between three contiguous legal lots of record, resulting in three reconfigured parcels remaining at existing sizes of 6.60, 7.58 and 39.92 acres.**
Location:	**Palo Colorado Rd. (South of Twin Peaks and west of Ventana Wilderness in the Los Padress National Forest), Big Sur (Monterey County) (APN(s) 418-011-041, 418-011-042, 418-011-043)**
Local Decision:	**Approved w/ Conditions**
Appellant(s):	**California Coastal Commission, Attn: Commissioner Meg Caldwell; Commissioner Sara J. Wan**
Date Appeal Filed:	**1/31/2007**

The Commission appeal number assigned to this appeal is A-3-MCO-07-004. The Commission hearing date has not yet been established for this appeal. Within 5 working days of receipt of this Commission Notification of Appeal, copies of all relevant documents and materials used in the County of Monterey's consideration of this coastal development permit must be delivered to the Central Coast District office of the Coastal Commission (California Administrative Code Section 13112). Please include copies of plans, relevant photographs, staff reports and related documents, findings (if not already forwarded), all correspondence, and a list, with addresses, of all who provided verbal testimony.

A Commission staff report and notice of the hearing will be forwarded to you prior to the hearing. If you have any questions, please contact Katie Morange at the Central Coast District office.

cc: Timothy & Dana Burke
Arden Handshy
David Lutes, MCO Plng. Dept.

CCC Exhibit B
(page 1 of 7 pages)

CALIFORNIA COASTAL COMMISSION
CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
(831) 427-4863

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

Please review attached appeal information sheet prior to completing this form.

SECTION I. Appellant(s):

Name, mailing address and telephone number of appellant(s):

Commissioner Caldwell	Commissioner Wan
California Coastal Commission	California Coastal Commission
45 Fremont Street, Suite 2000	45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219	San Francisco, CA 94105-2219
(415) 904-5200	(415) 904-5200

SECTION II. Decision Being Appealed

1. Name of local/port government:
   Monterey County

2. Brief description of development being appealed:
   PLN060189 – Lot line adjustment between three contiguous legal lots of record, resulting in three reconfigured parcels remaining at existing sizes (6.60, 7.58, and 39.92 acres).

3. Development's location (street address, assessor's parcel number, cross street, etc.:
   APNs 418-011-041, 418-011-042, and 418-011-043, located off Palo Colorado Road, south of Twin Peaks and west of the Ventana Wilderness in the Los Padres National Forest, in the Big Sur Area of Monterey County.

4. Description of decision being appealed:

   a. Approval; no special conditions: _____
   b. Approval with special conditions: xx
   c. Denial: _____

Note: For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-3-MCO-07-004
DATE FILED: 1/31/07
DISTRICT: Central Coast District

RECEIVED
JAN 31 2007
CALIFORNIA COASTAL COMMISSION CENTRAL COAST AREA

CCC Exhibit B
(page 2 of 7 pages)

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (PAGE 2)

5. Decision being appealed was made by (check one):

a. ___	Planning Director/Zoning Administrator	c. ___	Planning Commission
b. ___	City Council/Board of Supervisors	d. X	Other: Minor Subdivision Cmte.

6. Date of local government's decision: December 14, 2006

7. Local government's file number: PLN060189 (Resolution No. 06030)

SECTION III Identification of Other Interested Persons

Give the names and addresses of the following parties: (Use additional paper as necessary.)

a. Name and mailing address of permit applicant:

Timothy and Dana Burke
77 Omaikai Place
Lahaina, HI 96761

b. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearings (s). Include other parties which you know to be interested and should receive notice of this appeal.

(1) David Lutes
Monterey County Planning & Building Inspection
168 West Alisal Street, 2nd Floor, Salinas, CA 93902

(2) Arden Handshy (Representative)
P.O. Box 51758
Pacific Grove, CA 93950

(3) _____

SECTION IV. Reasons Supporting This Appeal

See attached "Reasons for Appeal"

Note: Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section, which continues on the next page.

State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

See Attached.

Note: The above description need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.

Signed: Meg Caldwell
Appellant or Agent

Date: January 31, 2007

Agent Authorization: I designate the above identified person(s) to act as my agent in all matters pertaining to this appeal.

Signed: _____

Date: _____

(Document2)

State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

See Attached.

Note: The above description need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.

Signed: _____
Appellant or Agent

Date: January 31, 2007

Agent Authorization: I designate the above identified person(s) to act as my agent in all matters pertaining to this appeal.

Signed: _____

Date: _____

(Document2)

Reasons for Appeal of Monterey County Coastal Development Permit PLN060189 (Burke Lot Line Adjustment)

Monterey County Coastal Development Permit PLN060189 authorizes a lot line adjustment among three parcels off Palo Colorado Road, south of Twin Peaks and west of the Ventana Wilderness in the Los Padres National Forest, in the Big Sur Area of Monterey County. The approval allows a lot line adjustment between three contiguous legal lots of record, resulting in three reconfigured parcels remaining at existing sizes (6.60, 7.58, and 39.92 acres). The County's approval of the project is inconsistent with the Monterey County certified Local Coastal Program for the following reasons:

1. **None of the new lots created by the lot line adjustment conform to LCP minimum parcel size requirements.**

The project area is within the LCP's Rural Density Residential (RDR) land use designation and Watershed and Scenic Conservation (WSC) zoning district. Sections 20.17.060.B and 20.145.140.A.8 of the LCP's Coastal Implementation Plan (CIP) establish a forty acre minimum parcel size for such areas. In this case, the proposed lots are inconsistent with these LCP density standards (120 acres is necessary to have three buildable lots; the lots proposed for adjustment total only 54.1 acres). Conformance with the 40-acre density standard could be achieved by merging the three parcels into one legally conforming parcel, as provided for by the Big Sur LUP Policy 5.4.3.G,[1] provided there is substantial evidence demonstrating that there is at least one currently buildable lot.

2. **The adjustment will increase the density of residential development beyond that which is allowed by the LCP.**

CIP Section 20.145.140.A.5 states that development of a parcel shall be limited to density, land use, and site development standards specific to that parcel's land use designation. Furthermore, CIP Section 20.145.140.A.15 states that existing parcels of record are considered to be buildable provided that: a) all resource protection policies of the land use plan and standards of the ordinance can be met; b) there is adequate building area on less than 30% slopes; and, c) that all other provisions of the Coastal Implementation Plan can be fully met (Ref. LUP Policy 5.4.2.5). Pursuant to these standards, the buildability of the existing parcels is called into question. The County approval does not provide evidence as to the extent of the site area with 30% slopes or greater, however it appears as though the existing parcels consist largely of 30% slopes or greater. As such, these parcels would not be considered buildable pursuant to CIP Section 20.145.140.A.4. Furthermore, the existing parcels would not meet the on-site wastewater treatment standards established by CIP Section 20.145.140.A.13 which prohibit onsite septic systems on slopes exceeding 30%. In addition, the County's approval of the lot line adjustment does not contain evidence of an adequate water supply

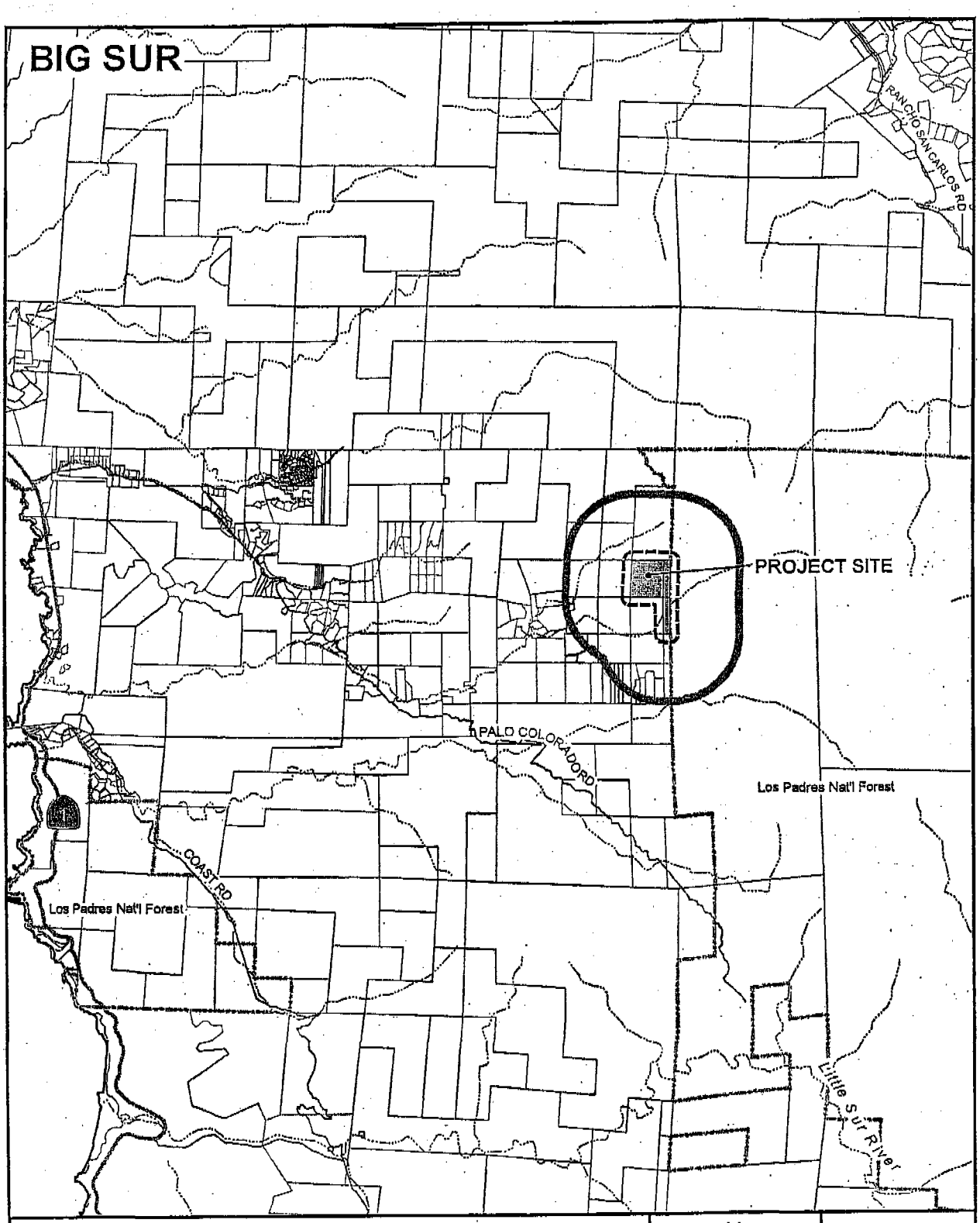
[1] Big Sur LUP Policy 5.4.3.G – Specific Policies for Rural Residential land uses – Reconstitution of parcels or mergers may be required for any area of the coast where past land divisions have resulted in parcels being unusable under current standards or where cumulative impacts on coastal resources require limitations on further development. Parcel mergers shall be based on the following criteria: a) the minimum buildable parcel shall be one acre; b) each parcel must contain a suitable septic and drainfield location on slopes less than 30%, and must be able to meet regional Water Quality and County stream setback and septic system requirements; and c) each parcel must conform to all Plan policies for residential development on existing parcels.

to support future residential development, and thereby does not address the requirements of Big Sur LUP Policy 3.4.2.3, which limits development to prevent overuse of limited water supplies, protect the public's health and safety, and preserve the natural value of streams and watersheds.

In summary, the increase in residential development enabled by the adjustment conflicts with Big Sur LUP Policy 5.4.3.H.4, which states that "lot line adjustments are encouraged when no new developable lots are created and when plan policies are better met by this action (emphasis added)." The County approved lot line adjustment is inconsistent with Policy 5.4.3.H.4 because it converts sub-standard parcels that appear to not be developable with residential uses into buildable parcels, and sets a precedent that would have significant adverse cumulative impacts on coastal resources that run contrary to LCP policies, as discussed further below.

3. The increase in development density resulting from the lot line adjustment will have cumulative adverse impacts on coastal access and recreation, water supplies, and the unique coastal resources of the Big Sur coast.

The reconfiguration of sub-standard parcels that cannot safely accommodate residential development into new buildable parcels would cumulatively increase the level of residential development in Big Sur well beyond that which is anticipated and allowed by the LCP. This will result in increased traffic on Highway One, which currently operates at the worst level of service (LOS F) at peak times, and would thereby interfere with the public's ability to access and recreate on the Big Sur Coast. Such an increase in residential development will also place greater demands on limited water supplies, which would, in turn, adversely impact riparian habitats. Furthermore, increases in residential development potential (over and above that already contemplated in the LCP) throughout the planning area could alter the unique character of Big Sur that makes it such a popular destination for coastal access and recreation. Because of these cumulative impacts, the lot line adjustment is inconsistent with Big Sur LUP Policy 5.4.3.G.3, as well as with Coastal Act Sections 30211 and 30213.

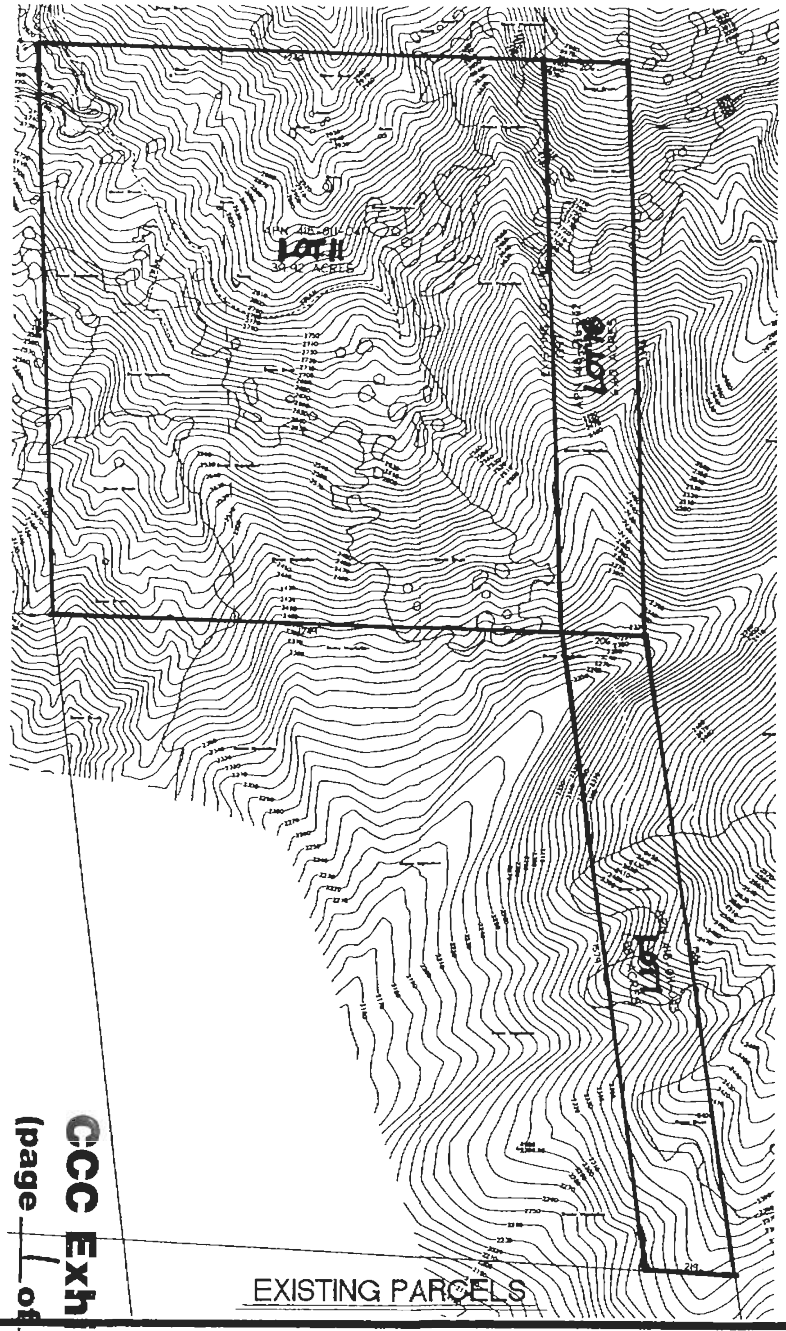


Source: Monterey County Resource Management Agency, Dec. 2006

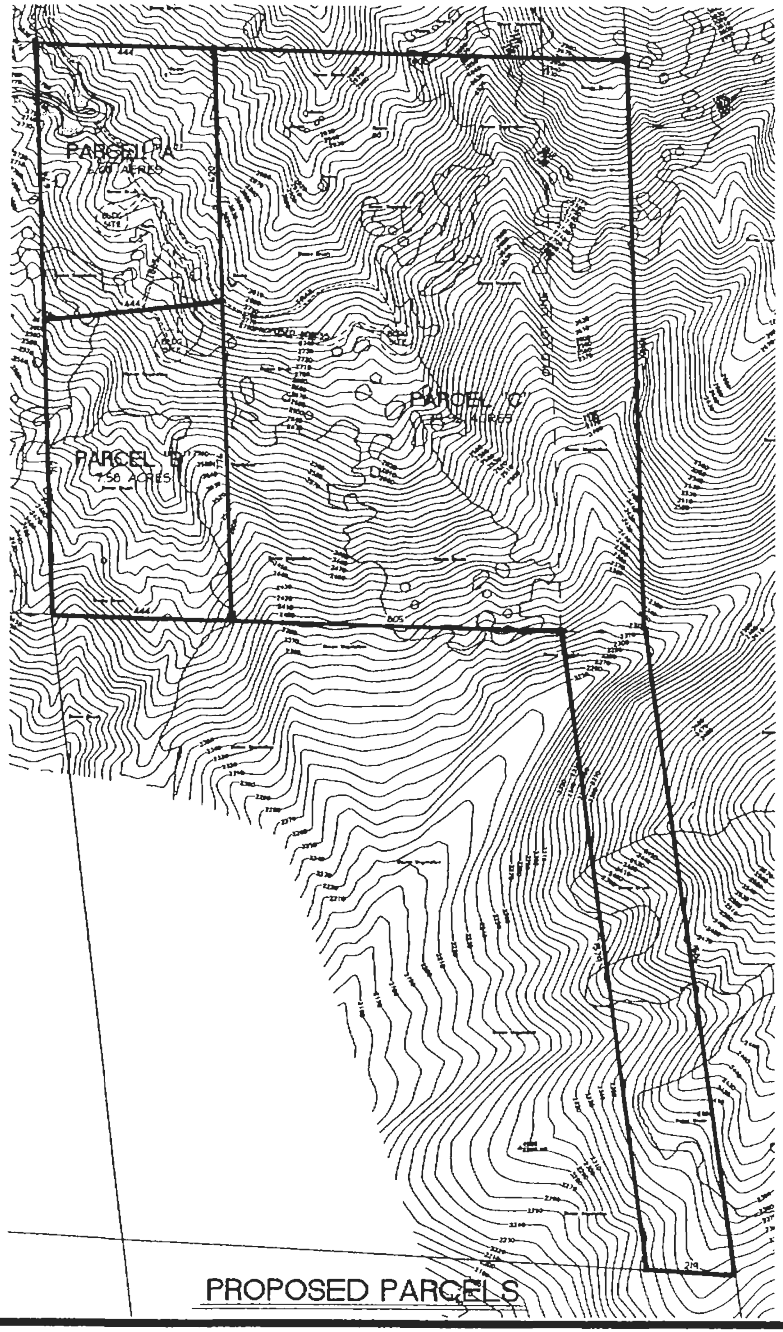
PLANNER: BONEKEMPER

CCC Exhibit 6

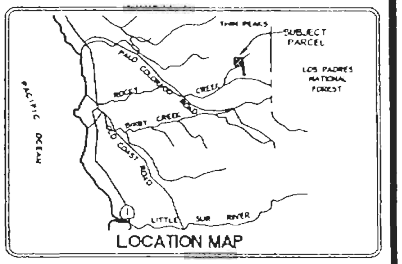
(page 1 **of** 1 **pages)**



EXISTING PARCELS



PROPOSED PARCELS



LOCATION MAP

SCALE 1"=150'

PROPOSED LOT LINE ADJUSTMENT

BETWEEN PARCELS IN SECTION 2, TOWNSHIP 18 SOUTH, RANGE 1 EAST, MONTEREY COUNTY, CALIFORNIA.

PREPARED FOR
TIM BURKE
77 OTAIKAI PLACE LAHAINA, HI 96761

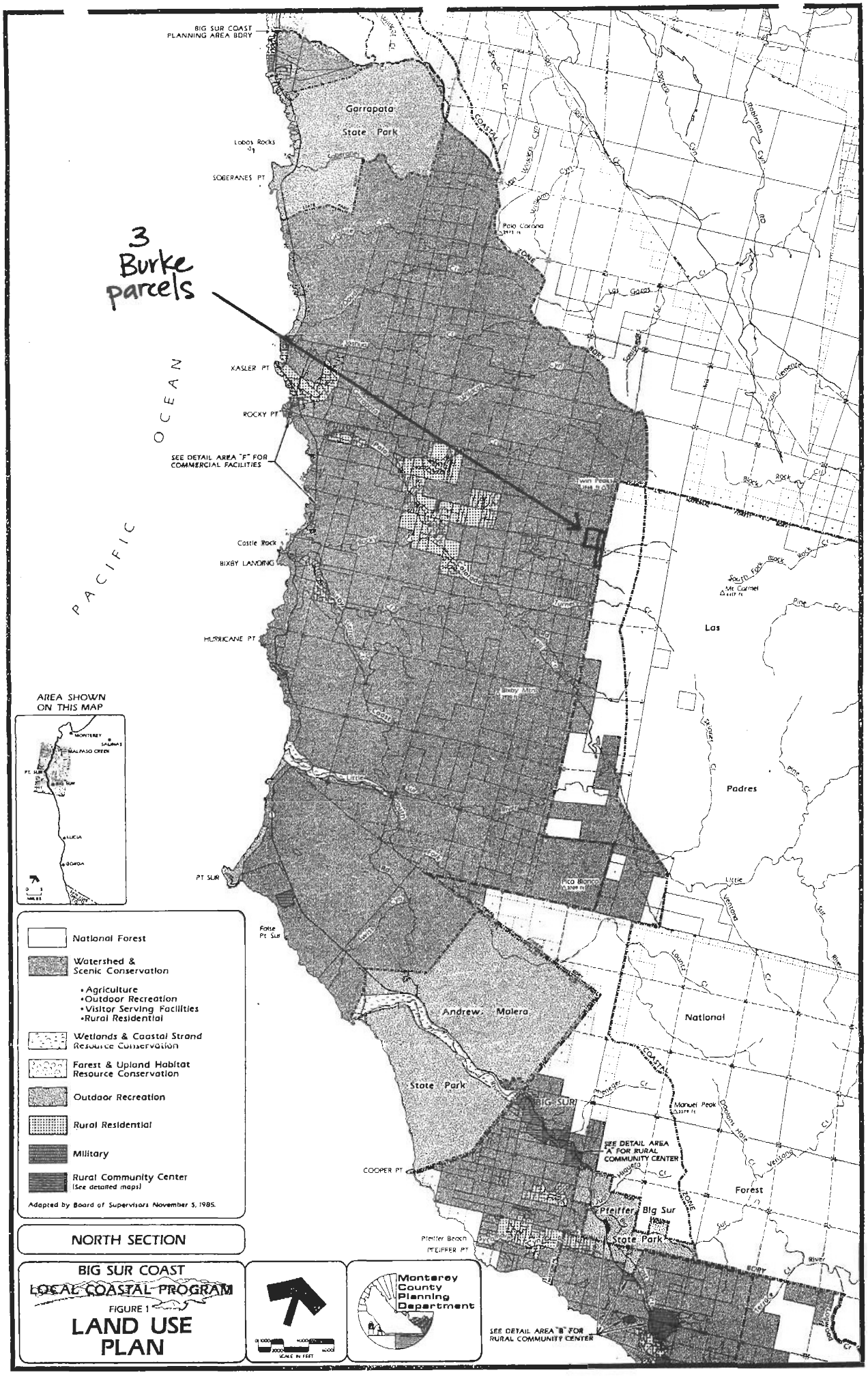
APN 416-011-041, 042, & 043
MAY 19, 2006

JOB NO. 34-05
SHEET ONE OF ONE

MJG
M J GOETZ AND ASSOCIATES
465 CORPORATE AVE, SUITE E | 118 ALISAL STREET
PASO ROBLES, CA 93446 | SALINAS, CA 93901
(805) 237-9677 | (831) 424-4114

CCC Exhibit D
(page 1 of 1 pages)

PLN060189



CCC Exhibit E
(page 1 of 1 pages)

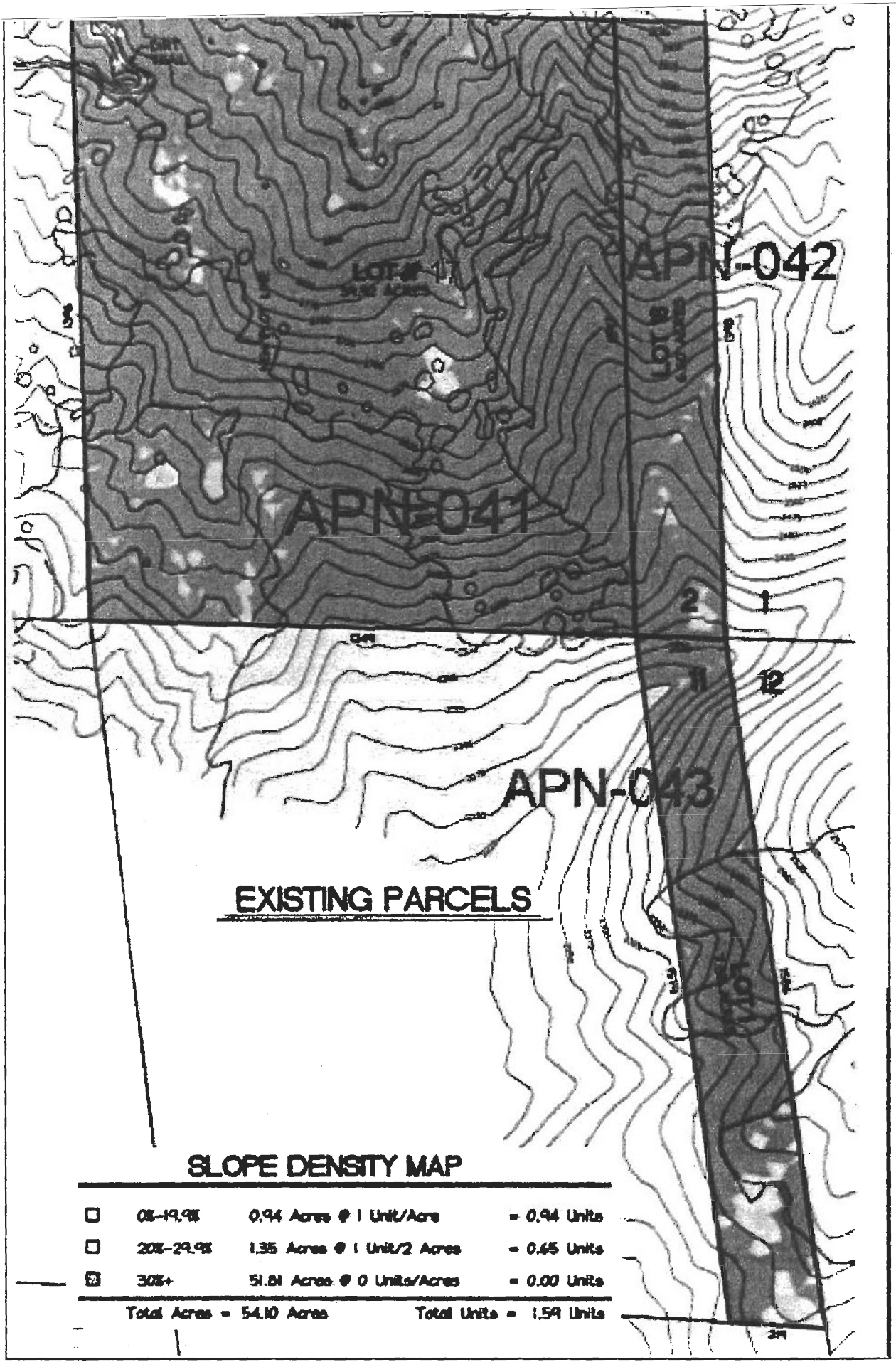


Figure 2 - Slope Density Map of existing Burke Assessor's Parcels.
Prepared from aerial survey by M.J. Goetz and Associates, Licensed Surveyor.

CCC Exhibit F
(page 1 of 1 pages)

ARDEN HANDSHY LAND USE FACILITATOR
P.O.BOX 51758 PACIFIC GROVE CA 93950 (831) 649-6420 FAX: 649-1338
e-mail: arden@handshy.com

April 2, 2007

To: California Coastal Commission
Central Coast District Office
725 Front Street, Suite 300
Santa Cruz, CA 95060

Attention: Katie Morange
Sent via email: *kmorange@coastal.ca.gov*

From: Arden Handshy, representing Tim and Dana Burke

Re: **APPLICANT RESPONSE TO CCC APPEAL NO. A-3-MCO-07-004 (BURKE)**

The purpose of this letter is to respond to the "*Reasons for Appeal*" given by the CCC, and to more fully explain the circumstances of the lot line adjustment that was approved by Monterey County. It is hoped that this dialog will continue in meetings with CCC staff, and result in withdrawal of the appeal.

PROJECT DESCRIPTION:

Tim and Dana Burke have owned these three parcels since 1983, and plan to sell two lots and keep the third for a retirement home. The only access to the property is over an unpaved private and gated road that crosses the northwest corner of the 40 acre parcel, and continues up toward Twin Peaks, providing access to at least three parcels that have received development permits from Monterey County since 1996. This area is more than four miles east of Highway 1.

The Burke property contains several fresh water springs, and viable building sites for residential development. Geotechnical/civil engineer Lawrence Grice has visited the site and found soil conditions suitable for septic systems and road construction, as long as prudent engineering and erosion control design is followed. Consulting Ecologist Nicole Nedeff has visited the site and provided an August 20, 2006 report, and a follow-up letter dated March 30, 2007. She concludes that the existing parcel configuration could support development, but that the proposed configuration would reduce impacts.

Regardless whether boundaries are adjusted, access driveways must traverse slopes greater than 30%. However, the driveways will be shorter and thus less impactful after the lot line adjustment approved by Monterey County. The Burkes have chosen to make this adjustment prior to selling the two smaller parcels, thereby ensuring that all development will occur near the existing access road and further away from Los Padres National Forest. It is anticipated that as a condition of the future Coastal Development Permits that will enable residential development, a conservation easement will be required that will provide a permanent buffer between the clustered development, Los Padres National Forest and Rocky Creek.

APPLICANT RESPONSE TO APPEAL:

CCC Appeal, Reason #1: *"None of the new lots created by the lot line adjustment conform to LCP minimum parcel size requirements."*

Response to #1: The three parcels are legal, non-conforming as to size, per the Big Sur LCP, as certified in 1986/87. (The largest is a nominal 40 acre parcel, being only 0.08 acre under.) The legality of the parcels was determined by Monterey County, and Unconditional Certificates of Compliance were issued for each in 1982.

There are many examples of lot line adjustments approved by Monterey County between parcels that are not consistent as to minimum parcel size, where findings were made that the resultant building sites will better meet resource protection requirements. Such findings and evidence are presented in County Resolution No. 06030, approving the Burke lot line adjustment.

The Appeal cites CIP Section ***20.145.140.A.8*** (re: 40 acre zoning) but that section is for parcels *west* of Highway 1. The subject parcel is over four miles *east* of Hwy.1. The correct reference is ***20.145.140.A.6***.

The Appeal cites LUP Policy ***5.4.3.G*** (re: merger of parcels) and provides a footnote quoting a portion thereof, ***5.4.3.G.3*** , without identifying the quote as a subsection. Section ***5.4.3.G*** is entitled "Rural Residential" and includes a variety of policies that discuss the clustering of residential units, limiting rural residential areas to residential uses, and targeting Garrapatos Redwoods for merger. Consideration of the quoted Policy ***5.4.3.G.3*** leads one to conclude that merger should be recommended for extreme cases, such as Garrapatos Redwoods (subdivided into tiny parcels long ago), and *reconstitution* for less impactful situations.

Considering the phrase "Reconstitution of parcels or mergers may be required" it is understood that reconstitution is a less restrictive option than merger. The dictionary tells us that reconstitute means to reconstruct, to reassemble, to constitute again. Constitute means to set up, to establish, to form. That is exactly what a lot line adjustment does, it reconstructs the boundaries. This policy was designed by the authors of the Big Sur LCP to suggest either reconstitution (lot line adjustment) or merger as available, but not required, options, depending on the particular circumstances. The three criteria listed in the final sentence of ***5.4.3.G.3*** refer to mergers, not reconstitution of parcels, and the following Policy ***5.4.3.G.4*** specifically tie those criteria, as "merger provisions", to Garrapatos Redwoods.

CCC Appeal, Reason #2: *"The adjustment will increase the density of residential development beyond that which is allowed by the LCP"*

Response to #2: The density allowed is one unit per 40 acres, but LUP Policy ***5.4.2.5*** allows development of smaller existing parcels of record as long as resource protection policies can be met. The Burke proposal computes to one unit per 18 acres. This is ample room for resource protection by use of avoidance and mitigation. Many smaller Big Sur parcels are routinely approved for development. With the proposed lot line adjustment, all development will be clustered close to the existing access road and relocated further from the Los Padres National Forest.

The appeal correctly cites CIP Section ***20.145.140.A.5*** (re: density, land use, and site development standards being limited to land use designation.) That CIP section concludes with a reference to "Attachment 3" in which it is stated that, in a WSC zoning district, the site development standard is "1 acre minimum with clustering"

The Appeal calls into question the buildability of the existing parcels based on the prevalence of slopes greater than 30%, and the provisions of CIP Section ***20.145.140.A.4***. That section actually *allows* development on 30% slopes if there is no alternative, with the granting of a waiver by the Director of Planning. CIP Section ***20.145.140.A.13*** is cited in the Appeal as a prohibition of septic systems on slopes greater than 30%. Where there is no alternative, septic systems can be designed for 30% slopes (or with a less than 50 foot setback from 30% slope) with a variance application to and approval by the Monterey County Division of Environmental Health (EH), in addition to the slope waiver from the Planning Department.

The Burke application included a slope map that clearly shows that the preponderance of the property is over 30% slope, but that there are areas of less than 30% on each parcel, existing and proposed. A slope waiver will be required for road access to building sites, as allowed by LUP Policy ***5.4.3.K.2.e***, with or without the lot line adjustment, but there will be available land less than 30% for structures and septic systems.

The Appeal states that the County approval does not contain evidence of an adequate water supply, and cites LUP Policy ***3.4.2.3*** "*which limits development to prevent overuse of limited water supplies.*" Policy ***3.4.2.3*** actually says: "Where watersheds are affected or are threatened by overuse of the water supply..." There is no evidence that the Rocky Creek watershed is so affected or threatened. The subject property has several springs on it, indicating ample ground water which will be developed to supply each parcel. With or without a lot line adjustment, such water supply will have to be demonstrated to the satisfaction of EH at the time of a Coastal Development permit for development of each of the three parcels.

In a summary to *Reason #2*, the Appeal claims that the County-approved lot line adjustment enables an increase in residential development that conflicts with LUP Policy ***5.4.3.H.4*** because it converts sub-standard parcels into buildable parcels.

LUP Section ***5.4.3.H*** is entitled "Residential Subdivision" and ***5.4.3.H.4*** describes an alternative to subdivision (the policy begins: "Resubdivision and lot line adjustments are encouraged...") which is preferable to the creation of new lots, when policies are thereby better met.

The Burke proposal does not create new developable lots. There are 3 lots before and 3 lots after adjustment. With or without lot line adjustment, development will be a challenge, as it is with most Big Sur parcels. With or without lot line adjustment, there are available building sites, septic sites, and water supply, and access driveways will have to traverse 30% slopes. The primary difference is that driveways will be shorter after the lot line adjustment.

CCC Appeal, Reason #3: "*The increase in development density resulting from the lot line adjustment will have cumulative adverse impacts on coastal access and recreation, water supplies, and the unique coastal resources of the Big Sur Coast.*"

Response to #3: The development of the three Burke parcels was anticipated by the LCP. Even if it had not been, the impact on Highway 1 traffic is less than significant, the impact on coastal access even less, and the impact on water supplies non-existent.

The Appeal states that the development of the Burke parcels "*would cumulatively increase the level of residential development in Big Sur well beyond that which is anticipated and allowed by the LCP.*" In fact, the Monterey County Planning Commission adopted the LUP in February, 1981. County planners included consideration of LUP policies when they issued Unconditional Certificates of Compliance in May, 1982. The certificates say: "The County of Monterey has determined that the herein described real property complies with the applicable provisions of the Subdivision Map Act of the State of California, and other applicable laws of the State of California with respect to subdivisions and complies with the provisions of local ordinances enacted pursuant thereto..." and the three lots constitute separate legal parcels.

The recordation of the three certificates of compliance provided constructive knowledge of the existence of, and availability for development of, the Burke parcels prior to certification of the LCP by the CCC.

The Appeal claims that increased residential development (presumably two residences) will increase traffic on Highway 1, which "*currently operates at the worst level of service (LOS F) at peak times*" It is not clear what portion of Highway 1 is referred to, but it should be noted that traffic from the Burke property would be expected to have impacts primarily on only the northernmost ten miles of the Big Sur coast portion of Highway 1. It should also be noted that residents, as opposed to visitors, learn to avoid Highway 1 at peak times.

The Big Sur LUP states in ***Section 4.1*** that recreation traffic comprises 95% of all summer traffic on Highway 1, and that "efforts to reduce highway congestion by limiting land use development within Big Sur itself can have only marginal effects." In this context, two residences more or less is a considerably less than significant impact. The situation today can be assumed to even more extreme, with a greater percentage of visitor to resident traffic and a number of parcels having been acquired by public agencies.

As to cumulative impacts on water supplies, it has been stated above that the 54 acre Burke property contains ample water reserves to develop 3 lots without adverse impacts, either internally or externally.

The Appeal discussion of *Reason #3* concludes by stating that the lot line adjustment is inconsistent with LUP Policy ***5.4.3.G.3*** and Coastal Act Sections ***30211*** and ***30213***. As discussed above, ***5.4.3.G.3*** actually implies that lot line adjustments may be a preferred option for development. The two Coastal Act sections are not applicable as they deal with public access to the sea and low cost visitor and recreational facilities, respectively.

CONCLUSION:
After reviewing other lot line adjustments appealed by the CCC and noting the similar wording to the Burke appeal, it appears that CCC staff may have thought the Burke project had similar

deficiencies. However, there are substantive differences that support the Monterey County approval of Burke: Unlike the other appeals, the Burke property is not on the coast, is not between the first public road and the sea, but is in fact over four miles east of Highway 1, in an area inaccessible to the public. There are no Burke parcels which are too small to develop; the smallest is 6.60 acres, the largest nearly 40 acres. There are no identified environmentally sensitive habitats on the existing parcels (Redwood Forest and Canyon Riparian) that cannot be avoided or mitigated. The necessity of development on slopes greater than 30% is the single unavoidable factor common to existing and proposed configurations. LCP policies discussed above provide procedures that allow development on slopes greater than 30% where there is no alternative or where other policies are better served. ***LUP Section 3.3*** even permits roads in environmentally sensitive habitats where there is no alternative access, and as long as no significant adverse impacts will result.

Approval of this lot line adjustment provides an opportunity to minimize future impacts of the inevitable development of these three parcels, by ensuring that all three building sites will be clustered near the existing access road, and internal driveways will be as short as possible. If this lot line adjustment is disallowed, the Burkes will sell the two smaller parcels and grant road and utility easements over the larger parcel. Then the new owners will be forced to develop parcels in the current configuration.

I look forward to discussing this project with you further. Thank you,

Arden Handshy

Arden Handshy

Attached: Nikki Nedeff 3/30/2007 Memo

c/c: Tim and Dana Burke
John Briscoe
Nikki Nedeff

MEMO

TO: Arden Handshy
FROM: Nikki Nedeff
DATE: March 30, 2007
SUBJECT: BURKE Lot Line Adjustment, APN 418-011-041, 042, 043

Tim and Dana Burke have proposed a lot line adjustment to reconfigure their three lots in the Upper Rocky Creek watershed. The acreage for each lot will remain the same when reconfigured. The purpose of the Lot Line Adjustment is to facilitate access and shorten the distance that driveways will have to traverse across slopes that in some places are in excess of 30%.

On August 19, 2006, I conducted a preliminary site assessment and prepared a letter report (dated August 20, 2006) that describes general habitat features on the Burke property. No special status plant or wildlife species were observed on the Burke property during the preliminary site inspection.

As noted in my August 20, 2006 report, the Burke property supports a mosaic of coastal and inland natural communities typical of Pacific slope watersheds. The patchwork of habitat types reveals significant microclimatic variability over relatively short geographic distances due to soil differences, moisture retention, slope steepness, aspect, and the inland extension of marine influences.

As presently configured, each of the Assessor's Parcels owned by the Burkes could support development sites on gentle terrain with slopes less than 20%. However, the construction of driveway access to reach these more gently sloped house sites would involve very long traverses across slopes that are 30% and greater. To reach a potential development envelope on the "flag pole" lot would also require crossing a perennial tributary of Rocky Creek and working through Redwood Forest habitat on the north-facing side of Long Ridge. With appropriate engineering, erosion control and restoration, reaching developable areas on the currently configured lots is technically feasible, although impacts to natural resources would be significantly reduced if the proposed lot line adjustment is finalized.

The environmental impacts to habitat resources on the Burke property would be greatly reduced with the proposed lot line adjustment. The reconfigured parcels cluster tentative development sites according to the placement of buildable locations on more gently sloped sites. The construction of driveway access from each proposed lot would still involve traversing across slopes 30% and greater, however the distance from each of the proposed building locations to the shared route that cuts across the northwest corner of proposed Parcel A would involve far less environmental impact.

CCC Exhibit 6
(page 6 of 28 pages)

Nicole Nedeff
Consulting Ecologist
11630 McCarthy Road
Carmel Valley, CA 93924
(831) 659-4252
nikki@ventanaview.net

BIOLOGICAL ASSESSMENT

BURKE PROPERTY - ROCKY CREEK

APN 418-011-041, 042 and 043

Prepared for:
Tim and Dana Burke
77 Omaikai Place
Lahaina, HA 96761

Prepared by:

Nicole Nedeff
Consulting Ecologist
11630 McCarthy Road
Carmel Valley, CA 93924
831/659-4252
nikki@ventanaview.net

August 20, 2007

TABLE OF CONTENTS

PROJECT PROFILE

DATE: August 20, 2007

PREPARED BY: Nicole Nedeff

SITE NAME: Burke

APN: 418-011-041, 39.92 acres, U.S. Lot 17, Section 2. Referenced in report as APN-041.
418-011-042, 6.60 acres, U.S. Lot 18, Section 2. Referenced in report as APN-042.
418-011-043, 7.58 acres, U.S. Lot 1, Section 11. Referenced in report as APN-043.

PHYSICAL ADDRESS: Upper Rocky Creek Watershed, south of Twin Peaks

ACREAGE: Total acreage in project area = 54.1 acres

USGS QUAD: Mt. Carmel 7.5'. T18S, R1E, SE1/4 of the SE1/4, Section 2, and a portion of the NE1/4 of the NE1/4 Section 11.

OWNER: Tim and Dana Burke, 77 Omaikai Place, Lahaina, HA 96761.

OWNER REPRESENTATIVE: Arden Handshy, Land Use Facilitator, P.O. Box 51758, Pacific Grove, CA 93950. 831/649-6420.

MONTEREY COUNTY PLANNING AREA: Big Sur LUP. Lot Line Adjustment application approved by Monterey County Minor Subdivision Committee on December 14, 2006, PLN: 060189.

ZONING/PRESENT LAND USE: WSC/40 (CZ) = Watershed and Scenic Conservation Residential, with a maximum gross density of one unit per 40 acres, within the Coastal Zone. The site occurs in the Big Sur Land Use Plan Area in the mountainous upper drainage of Rocky Creek. Similar rural residential parcels are in the vicinity.

SITE LOCATION: The Burke property is located in the Rocky Creek watershed approximately 4.5 miles inland from Highway 1. The property is accessed from Palo Colorado Road and a gated private road that veers northward from the local landmark called "The Hoist". The property abuts the western boundary of the Ventana Wilderness in the Los Padres National Forest.

PROJECT DESCRIPTION: Coastal Development Permit for Lot Line Adjustment to reconfigure exiting parcels to facilitate access and reduce environmental impacts associated with building access roads. Biological Assessment pertains to overall habitat conditions on existing lots of record and proposed reconfigured parcels.

SITE VISITS: August 20, 2006, May 12, 2007, July 30, 2007.

HABITAT IN PROJECT AREA: Mixed Evergreen Forest, Oak Woodland, Canyon Riparian, Chaparral.

SIGNIFICANT BIOLOGICAL ATTRIBUTES:

√ Riparian habitat along primary tributaries to Rocky Creek

BIOLOGICAL ASSESSMENT
APN 418 - 011- 041, 042, 043

EXECUTIVE SUMMARY

Tim and Dana Burke have proposed a lot line adjustment to reconfigure their three lots in the Upper Rocky Creek Watershed. The number of legal lots will be the same and the acreage for each lot will remain unchanged when reconfigured. The purpose of the Lot Line Adjustment is to cluster developable areas and shorten the distance that access roads will have to traverse across slopes that are in excess of 30%.

On August 20, 2006, I prepared a letter report describing general habitat features on the Burke property in the vicinity of feasible building areas on the three reconfigured parcels. No special status plants, wildlife or natural communities were observed in the vicinity of clustered development sites during the preliminary site inspection. It was noted that Canyon Riparian, Oak Woodland, Mixed Evergreen Forest and indicators of moist soil conditions (willows, big-leaved maples and sycamores) occur on the Burke property.

On May 12, 2007 and July 30, 2007, I conducted more extensive field work and visited each of the existing lots of record to assess environmental conditions in feasible building areas. The proposed roadway connecting the "flag-pole" lots (APN-042 and APN-043) to the main access road was also inspected. In addition, the proposed project was evaluated for potential impacts to natural resources that exist in the project site, and in the Upper Rocky Creek Watershed.

The existing Assessor's Parcels support:

- APN-041 - 39.92 acres, square parcel closest to existing road access. Canyon Riparian, Mixed Evergreen Forest, Oak Woodland, Chaparral, and disjunct indicators of moist soils: sparse willows near road, sycamores near building site "B", chain fern stand.

- APN-042- 6.6 acres, narrow northeastern parcel adjacent to Ventana Wilderness. Canyon Riparian, Mixed Evergreen Forest, Oak Woodland, Chaparral.

- APN-043- 7.58 acres, narrow southeastern parcel adjacent to Ventana Wilderness. Canyon Riparian, Mixed Evergreen Forest, Oak Woodland, Chaparral, primary tributary to Rocky Creek (Rocky Creek is known for the presence of steelhead in the South/Central California Ecologically Significant Unit - ESU).

No occurrences of plants or wildlife species protected under either the federal or California Endangered Species Acts were documented in the project area. However, all three existing parcels support Canyon Riparian habitat in narrow, steep canyons. A primary tributary to Rocky Creek crosses the northern edge of APN-043. Rocky Creek is known to sustain the federally threatened steelhead in its lower reaches. Potential habitat exists in Canyon Riparian areas on APN-042 and APN-043 for a number of sensitive species, including California spotted owl, Coast Range newt and foothill yellow-legged frog.

No occurrences of special status plants listed by the California Native Plant Society or the Los Padres National Forest, Monterey District were documented on the Burke property.

Based on field reconnaissance and analysis of maps and aerial photography, it is my determination that the potential development of each of the existing Assessor's Parcels is possible. With appropriate engineering, erosion control and restoration, reaching developable areas on the existing lots is feasible, however road construction impacts to natural resources would be significantly reduced if the proposed Lot Line Adjustment is finalized.

If suggestions to minimize potential biological impacts are incorporated into future development plans, reconfiguring the existing Assessor's Parcels according to the proposed Lot Line Adjustment will not significantly affect biological resources in the Upper Rocky Creek Watershed of the Big Sur Planning Area. The reconfigured parcels will require less road construction for access and will not be adjacent to sensitive riparian habitat or the edge of the Ventana Wilderness.

This Biological Assessment pertains to habitat conditions on the existing Assessor's Parcels and on the reconfigured lots under consideration in the proposed Lot Line Adjustment. Specific and focused biological assessments should be completed and mitigation measures recommended if infrastructure and construction is proposed pursuant to Combined Development Permit applications for road and residential development on any of the individual parcels in the project area.

~~~~~~~~~~~~~~~~~~

The Monterey County Minor Subdivision Committee approved the Coastal Development Permit to implement the Burke Lot Line Adjustment on December 14, 2006, PLN 060189.
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I. SURVEY METHODS

Local maps, written references, Internet-based searches and consultations with knowledgeable individuals were used during the preparation of this Biological Assessment. In addition, maps and aerial photographs were provided by Land Use Facilitator Arden Handshy.

Botanical and habitat surveys were conducted in August 2006, May 2007 and July 2007. Prior to on-site field visits, the California Department of Fish and Game Natural Diversity Data Base (CNDDB) maps and computer print-outs for the vicinity of the Burke property (Soberanes Point, Mt. Carmel, Big Sur and Pt. Sur USGS 7.5' quadrangles) were consulted. Appendix A lists the CNDDB species that were considered during site visits to the Burke property. In addition, because the project area abuts the Los Padres National Forest, lists of sensitive species found on the Monterey Ranger District of the Los Padres National Forest were also reviewed and potential occurrences of noted species listed in Appendix B were considered during surveys on the Burke property.

CNDDB maps for the Mt. Carmel quadrangle display no specific records or element occurrences of sensitive species recorded in the vicinity of the Burke property. Most of the species listed in Appendix A and Appendix B do not have potential habitat on the Burke parcels.

No sensitive or special status plants or animals were observed on the Burke property during on-the-ground field surveys, however the property supports "Canyon" Riparian habitat. This natural community is a local phase of Riparian habitat, which is considered an Environmentally Sensitive Habitat Area (ESHA) in the Monterey County Big Sur Land Use Plan, Local Coastal Program. Potential habitat exists in appropriate Canyon Riparian communities on APN-042 and APN-043 for a number of sensitive species, including Coast Range newt and foothill yellow-legged frog. Potential habitat exists in heavily forested areas in the general region for California spotted owl.

Policies pertaining to Riparian habitat are detailed in chapter 3.3.3, page 20 of the 1985 LUP and Section 20.145.040.C.1 (Specific Development Standards, Terrestrial Plant, Riparian and Wildlife Habitats), in the 1988 Coastal Implementation Plan.

A complete list of species observed on the Burke property is included in Appendix C.

Common names for plant species are used throughout the text.

II. SITE DESCRIPITON and EXISTING CONDITIONS

Assessor's Parcel Numbers for existing lots of record:

418-011-041, 39.92 acres. Referenced in this report as APN-041.
418-011-042, 6.60 acres. Referenced in this report as APN-042.
418-011-043, 7.58 acres. Referenced in this report as APN-043.

The Burke property is located approximately 4.5 miles inland from Highway 1 in the upper portion of the Rocky Creek Watershed. The three Assessor's Parcels owned by Tim and Dana Burke are situated between the prominent geographic features of Twin Peaks and Long Ridge, and are adjacent to large, rural, residential properties developed in similar terrain. Two of the existing Burke parcels (APN 042 and APN-043) are immediately adjacent to the northwestern border of the Ventana Wilderness in the Los Padres National Forest. Figure 1 is a general regional map depicting the Burke project area.

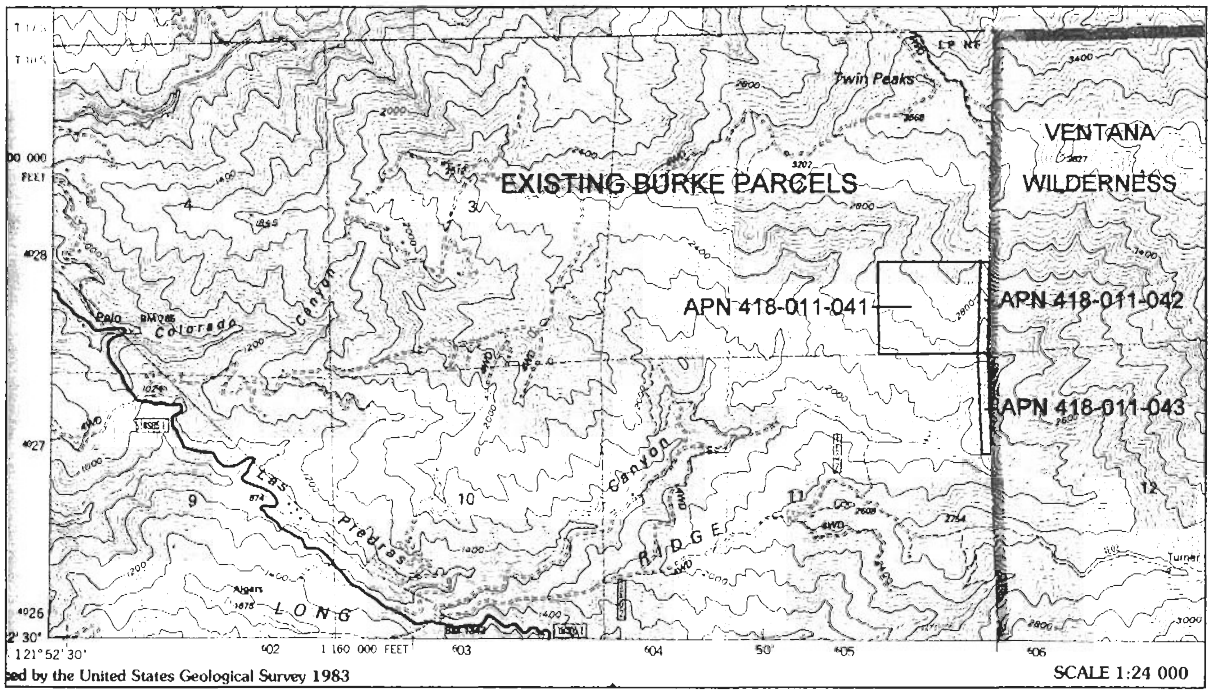

Figure 1 - A portion of the USGS Mt. Carmel 7.5' quadrangle with the existing Burke parcels outlined. Highway 1 is approximately 1.5 miles to the left of the western edge of the map.

The majority of the Burke property is positioned on steep slopes that face west, south and east. Most of the Burke property has slopes in excess of 30%. The topography levels out to more gentle slopes along the southerly extensions of several short ridges and towards the canyon bottom along a principal tributary to Rocky Creek. A slope density map based on an aerial survey is presented in Figure 2.

The northern edge of APN-043 crosses a primary tributary to Rocky Creek (the North Fork of Rocky Creek), while APN-041 and APN-042 are situated at higher elevations on the lower flanks of Twin Peaks. Elevations range from a low of 2250' at the stream crossing on APN-043, to approximately 3030' at the highest location on APN-041.

The vehicular approach to the Burke property is located at the western edge of APN-041 along a private dirt road that is accessed through a locked gate at the Hoist along Palo Colorado Road, approximately three miles inland from Highway 1. This road is referred to by locals as the "Zufich" Road in the vicinity of the Burke property.

The three existing Burke parcels are completely undeveloped, except for an old springbox located in the southerly portion of APN-042. Several footpaths have been created in APN-041 to facilitate access to the eastern portion of the property.

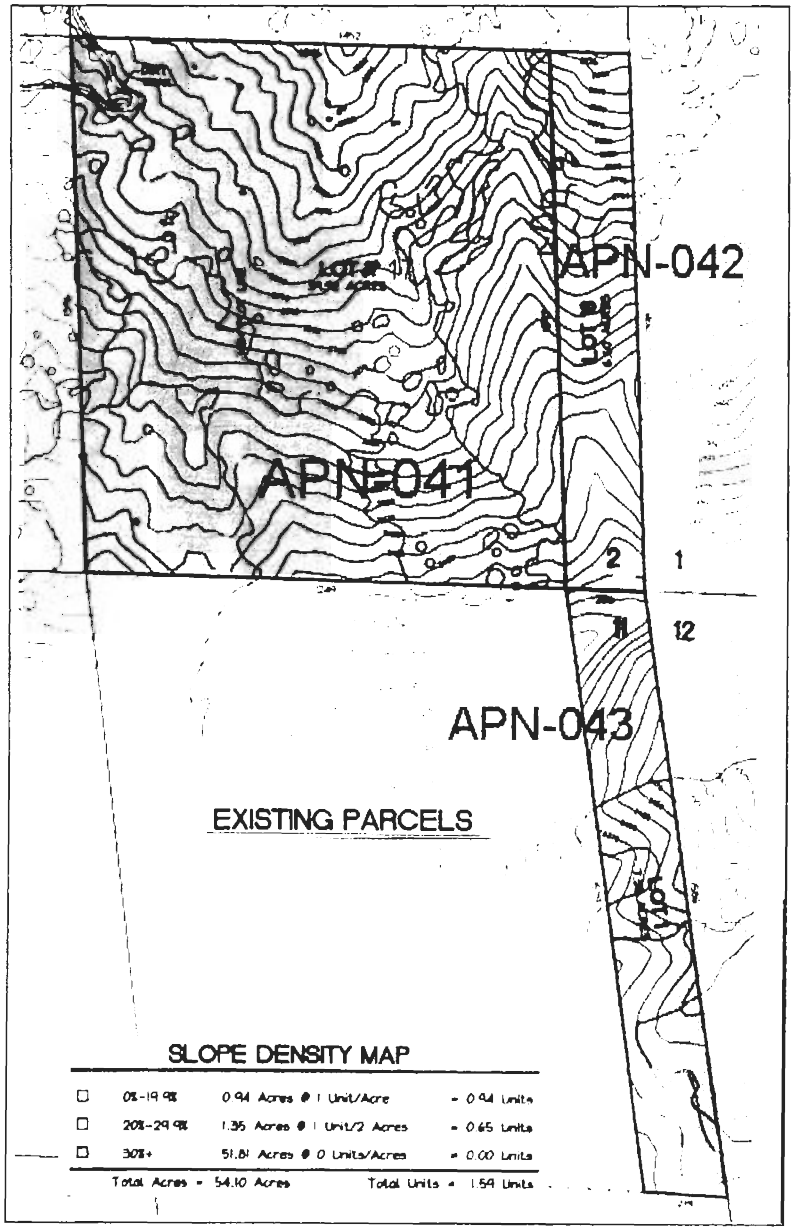

Figure 2 - Slope Density Map of existing Burke Assessor's Parcels.
Prepared from aerial survey by M.J. Goetz and Associates, Licensed Surveyor.

A. GENERAL HABITAT

The Burke property supports a classic mosaic of natural communities and plant associations typical of Pacific slope watersheds in central California. The Upper Rocky Creek Watershed below Twin Peaks is in a transitional area where inland conditions predominate and marine influence in the form of cooling fog penetrates only rarely. The patchwork of habitat types reveals significant microclimatic variability over relatively short geographic distances due to soil differences, slope steepness, aspect, and moisture.

The underlying bedrock geology is composed of granitic rock types that weather to coarse soils of varying depth. Large boulders outcrop in scattered locations on the Burke property and create unusual and interesting landforms. Sunny, exposed, generally south and west-facing slopes are mantled with dense chamise-dominated Chaparral, with patches of Oak Woodland tucked into pockets of deeper soils and folds of narrow canyons. The drainage bottoms in APN-042 and APN-043 support linear Canyon Riparian communities that snake their way along increasingly steep gradients towards watershed divides. Small areas of north-facing slopes on APN-042 and APN-043, and several of the canyons with seasonal streams tend to be vegetated with stands of Mixed Evergreen Forest vegetation.

Vegetation classifications utilized in the September 2003 publication "List of California Terrestrial Natural Communities Recognized by the California Natural Diversity Database" (CA Dept. of Fish and Game) are noted in the descriptive sections below.

Figure 3 - Granitic boulder outcrop on APN-041.

1. Chaparral: DFG Chamise Chaparral Shrubland Alliance, *Adenostoma fasciculatum* 37.101.00, with occasional Associations featuring co-dominant Eastwood's manzanita, 37.101.07 *Adenostoma Fasciculatum - Arctostaphylos glandulosa.* Eastwood's manzanita has gone through a recent taxonomic revision and the previous taxon description for the subspecies found on the Burke property, *Arctostaphylos glandulosa* ssp. *zacaensis* (Matthews 1997 and 2006) has been reclassified as *A. glandulosa* ssp. *leucophylla* (Vasey and Parker, March 2007).

On the hottest, driest slopes that are often the poorest in term of soil development, shrub-dominated Chaparral vegetation is characterized by a predominance of chamise. Chamise is the signature plant of Chaparral habitat on the Burke property and other attendant species tend to be widely separated in this natural community. Chamise Chaparral is one of the most common natural communities in California, covering approximately 6 million acres in the state.

In Chaparral on the Burke property, yerba santa occurs in small patches along the access road, while Eastwood's manzanita, black sage, deerweed, toyon and golden fleece can be found scattered in the shrub matrix dominated by chamise. Occasional stands of Eastwood's manzanita create bright green patches in otherwise nearly pure chamise. A few specimens of buck brush, coffeeberry and redberry were seen and small groves of Coast live oak were noted in areas of deeper soil.

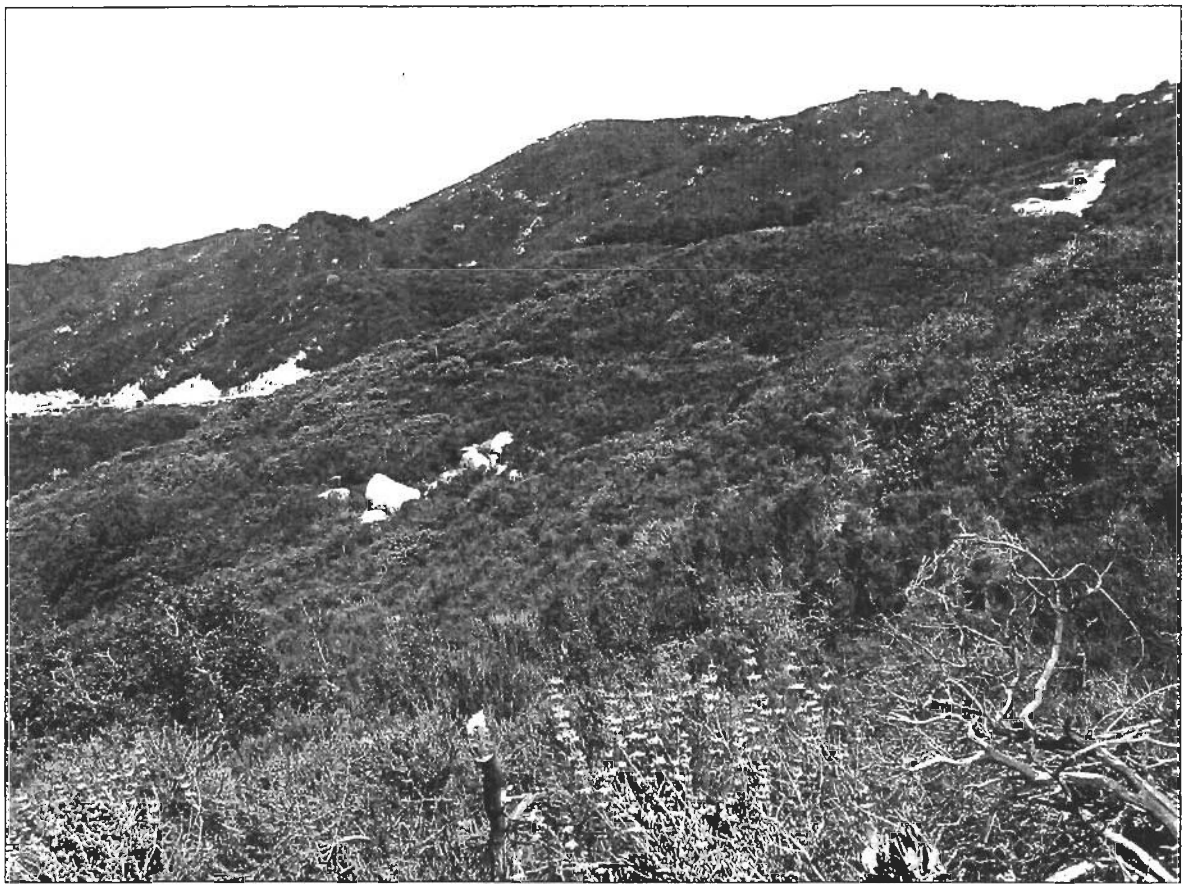

Figure 4 - Chamise-dominated Chaparral with scattered stands of coast live oak and Eastwood's manzanita. Black sage in the foreground. View is looking west across the middle of existing APN-041 along route of proposed driveway. Note vehicles parked along "Zufich" access road in top right of photograph - this is the approximate location of where the driveway entrance would be placed to access all three Monterey County-approved building areas in the lot line adjustment (currently existing APN-041). Chamise Chaparral is the dominant plant community throughout the developable areas on the lots proposed under the Lot Line Adjustment. Building site A is marked by a white PVC pole immediately above the boulder outcrop left of center.

2. **Coast Live Oak Woodland**: DFG Coast Live Oak Forest and Woodland Alliance, *Quercus agrifolia* 71.060.00, with Associations of Central Coast Live Oak Forest 71.060.21 and Coast Live Oak - Canyon Live Oak Woodland, *Quercus agrifolia - Q. chrysolepis* (no DFG code).

Discontinuous patches of Oak Woodland and Forest are found in pockets of deeper soils and along seasonal drainages where soil moisture tends to persist. Coast live oak is the dominant

oak species on the Burke property. Canyon live oak, a species indicative of higher elevation and more inland environments, also occurs on the Burke property and black oaks were observed near the Rocky Creek tributary on APN-043. Canyon live oak was seen growing adjacent to coast live oak in mixed populations in some locations, which is an interesting sign marking the transition zone between coastal and inland climates. Several large, stately madrone and a few California bay trees were also observed in association with oak-dominated woodland/forest vegetation on the Burke property.

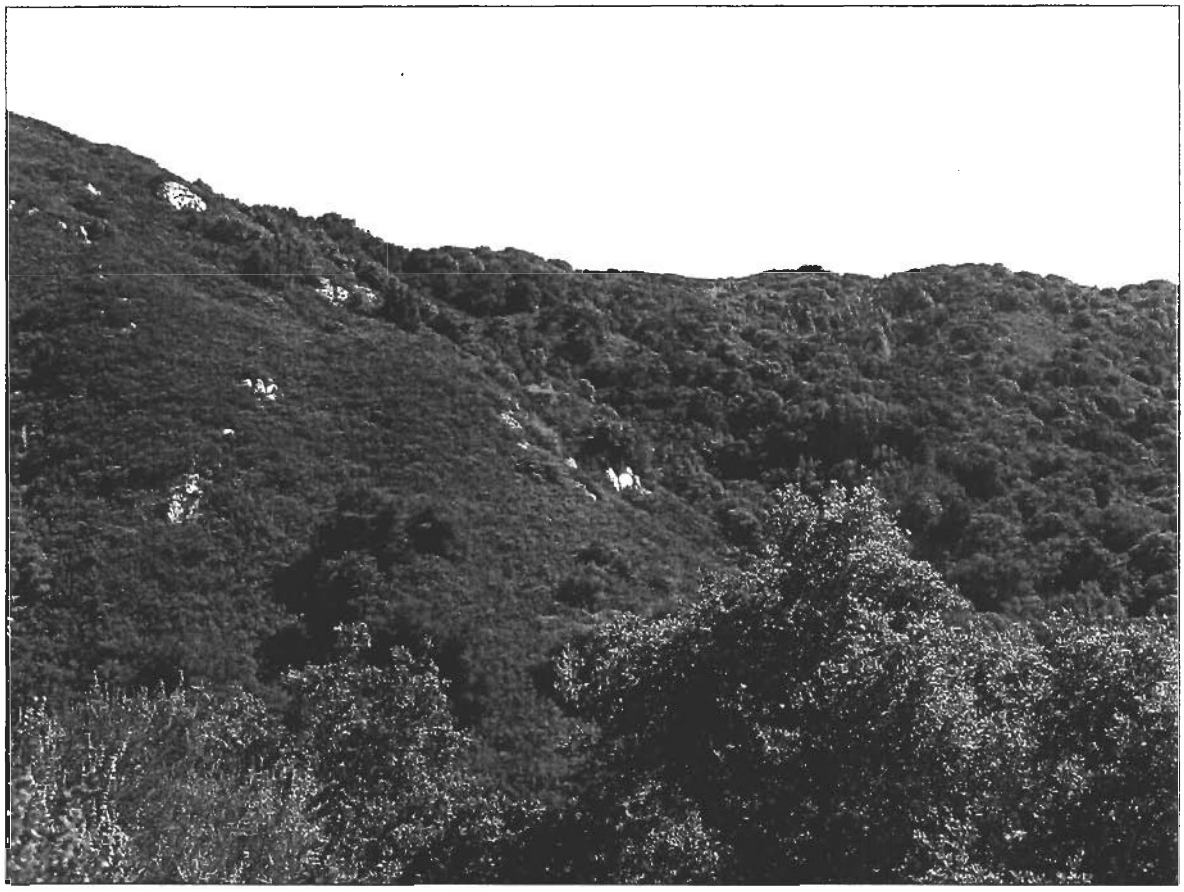

Figure 5 - Mosaic of Chaparral and Coast Live Oak Woodland. View is towards the east across the northern portion of existing APN-041. Note boulder outcrops on the steep hillslope. This photograph depicts the very steep terrain upslope of Monterey County-approved building areas and road alignment proposed under the Lot Line Adjustment.

3. Mixed Evergreen Forest: DFG Mixed Oak Woodland and Forest Alliance, 71.100.00, is the most inclusive classification category for this highly variable natural community. Stands of single species trees (oaks, tanbark oaks, bays, madrones) are intermixed with individuals of all species in a changeable mosaic that reflects microclimate and soil differences.

The only significant north and northwest-facing hillslopes on the Burke property occur on APN-042 and APN-043 flanking the narrow drainages of Rocky Creek tributaries. These aspects support restricted stands of Mixed Evergreen Forest vegetation. Forested hill-slopes on north-facing aspects of the Burke property and similar sites in typical central coast watersheds are

generally damper, more shaded and vegetated with a variety of tree species, including tanbark oak, coast live oak, canyon live oak, madrone, California bay and a variety of shrubs, ferns and herbaceous species in the shaded understory. It appears that the pathogen responsible for Sudden Oak Death, *Phytophthora ramorum*, has infected many tanbark oak trees in Mixed Evergreen Forest habitat in the Rocky Creek Watershed. Fuel loads are extremely high, since many tanbarks display dead foliage or have already died from the disease.

Understory vegetation in Mixed Evergreen Forest communities can be quite variable, with poison oak, straggly gooseberry, coffeeberry, sword fern, western bracken and California blackberry intermixed with shade-tolerant wildflowers and native grasses. Potential habitat occurs in the forest habitat on the Burke property for the California spotted owl (*Strix occidentalis occidentalis*, a California Species of Concern and Forest Service Sensitive Species).

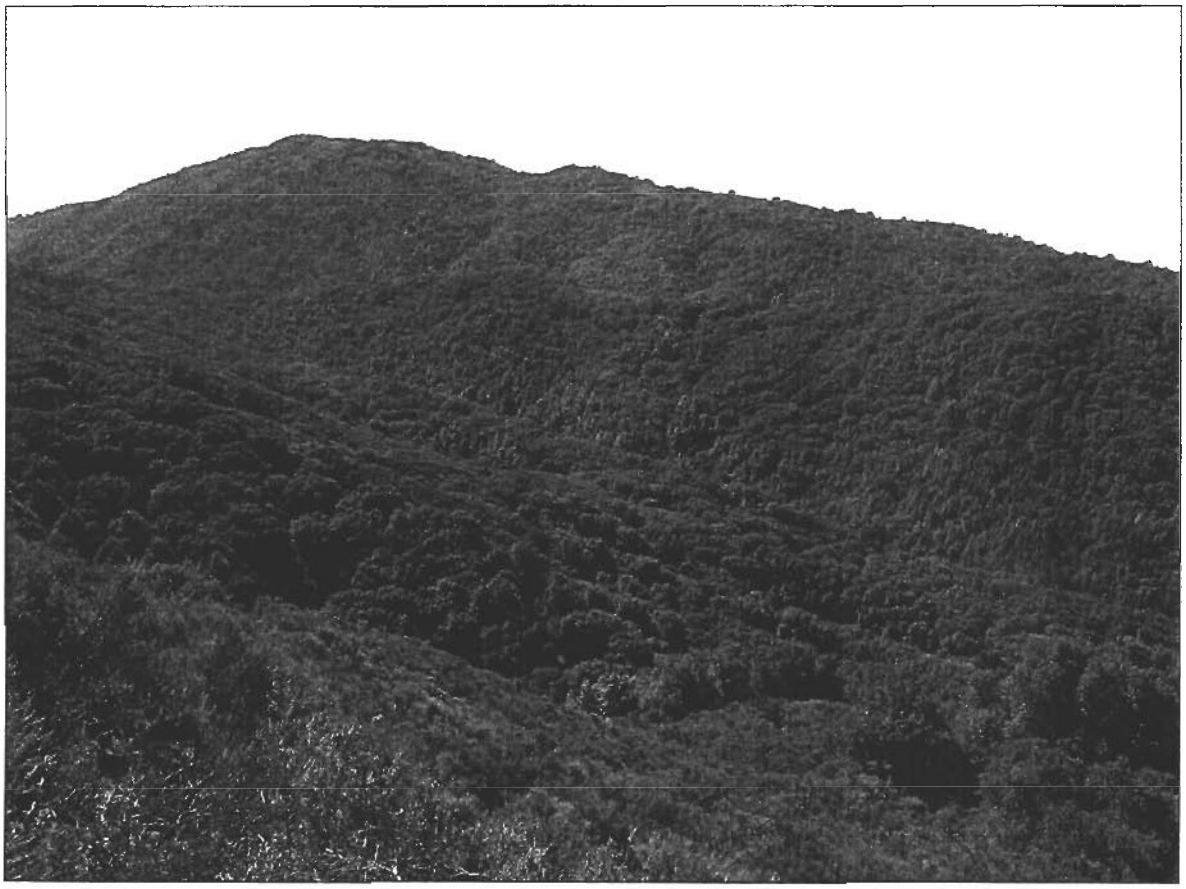

Figure 6 - Looking southeast across Burke property towards dense Mixed Evergreen Forest on north-facing slopes of the Ventana Wilderness, Devil's Peak, Skinner Ridge and Long Ridge. Foreground of Chaparral and middle ground vegetated mostly with Coast Live Oak Woodland.

4. Canyon Riparian Habitat: The 2003 DFG List of California Terrestrial Natural Communities includes Riparian and Bottomland Habitat, 60.000.00, and an Association for Central Coast Arroyo Willow Riparian, *Salix lasiolepis*, *61.201.01 (the * indicates this is a rare community). White Alder Forest and Woodland, *Alnus rhombifolia*, 61.420.00, is also

referenced. Riparian habitat is considered Environmentally Sensitive Habitat Area (ESHA) in the Big Sur LUP.

Stands of arroyo willow and white alder that are typically associated with Riparian habitat do not occur on the Burke property, however individuals of each of these species are found in areas of damp soil (e.g., willow seedlings along the Zufich road) and in the narrow canyon riparian corridors, where these tress are associated with other indicator species like big-leaved maple, sycamore, chain fern and elk clover. Riparian plants are scattered along the drainage bottoms in widely separated locations and floristic changes occur within relatively short distances. As elevations increase, the number of obligate and facultative wetland or riparian species along the seasonal creeks lowers as the number of upland taxa increases. Eventually, Riparian habitat found in the damp canyons gives way to communities of Chaparral, Oak Woodland or Mixed Evergreen Forest at the higher elevations.

There does not appear to be a DFG Vegetation Classification that adequately characterizes the highly variable Riparian vegetation found on the Burke property, or in other Central Coast watersheds where narrow canyons gain elevation dramatically along steep gradients. At any single location along the longitudinal profile of these steep drainages, the species composition of the vegetation can be described in a specific and definitive way. Generally, "stands" of vegetation (where collections of a single species of plant can be found) do not occur with any regularity and species composition along the drainages changes very quickly. Species composition reveals differences in moisture availability, amount of sunlight received and width of the riparian recruitment zone. Riparian indicators can be intermixed with plants more typical of xeric habitats, depending on amount and seasonality of streamflow and the width of the "floodplain" available for plant colonization.

Canyon Riparian habitat on the Burke property is restricted to the narrow canyon bottoms in APN-042 and APN-043, and at the eastern edge of APN-041. The moisture dependent vegetation is densest and most diverse along the portion of the drainage at the northern edge of APN-043, where less than 0.5 cfs (cubic feet per second) of streamflow was observed on May 12, 2007. Slopes in the drainage bottom are relatively level at this particular location and the composition and structure of the riparian habitat reflects this accommodating plant environment. Riparian habitat on APN-043 includes black oak, white alder, big-leaved maple, sycamore, leather root, elk clover, thimbleberry and madrone. The side tributary that snakes upstream onto APN-041 and APN-042 becomes increasingly steep, however short reaches support dense stands of chain fern and occasional sycamore. To illustrate the complexity of environmental conditions in APN-042, at one point along the drainage, yucca, an indicator or dry rocky conditions, was growing within a short, damp section of the creek covered with mugwort and chain fern.

The upper reaches of steelhead spawning (*Onchorhynchus mykiss*, listed as federally threatened) are not known in the Rocky Creek Watershed, however it is doubtful that the North Fork of Rocky Creek maintains perennial flow through the Burke property. It is possible that there are reaches of the narrow side canyons where moisture remains all year long in pockets and short reaches where groundwater is forced to the surface over shallow bedrock.

Potential habitat occurs in the wettest riparian areas on the Burke property for foothill yellow-legged frog (*Rana boylii*) and Coast Range newt (*Taricha torosa torosa*).

Figure 7 - North Fork Rocky Creek in APN-043, looking downstream. Thimbleberry on left bank and large woody debris in streambed.

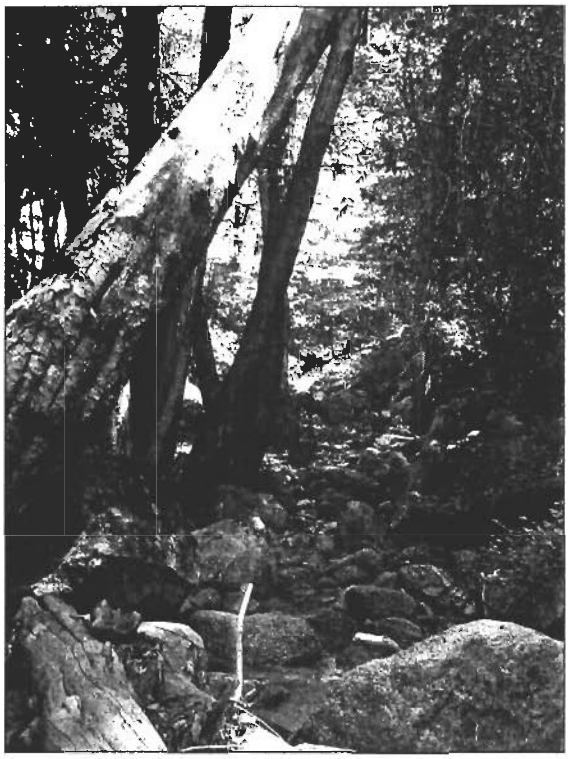

Figure 8 - North Fork Rocky Creek in APN-043, looking upstream.

III. POTENTIAL DEVELOPMENT OF EXISTING ASSESSOR'S PARCELS

Figure 9 depicts potential road alignments to possible building areas on existing Assessor's Parcels on the Burke property, which are referenced as APN-041, APN-042 and APN-043 in this report. The potential road alignments and each of the possible building areas were field surveyed on May 12, 2007 and July 30, 2007. Note that APN-041 has three possible building areas identified as A, B and C; each of these generally corresponds to building areas on reconfigured lots, as approved by Monterey County in December 2006. There is one additional building area on the southern edge of existing APN-043, however this site was not field checked as it must be accessed from an illegal road constructed on to the Burke's land from the adjoining private Kitaji property. The southern portion of APN-043 is not shown on Figure 9.

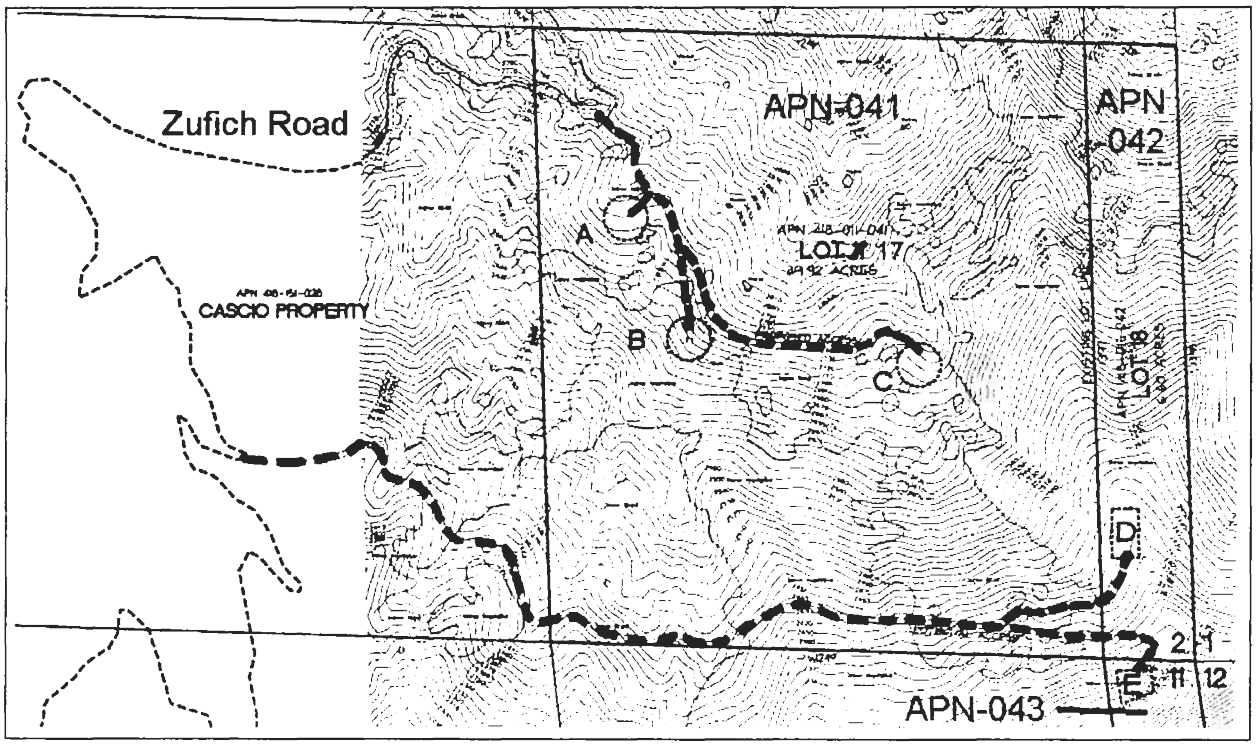

Figure 9 - Map of potential road alignments and building areas, July 2007. Possible building areas on APN-041, which would be located on three reconfigured parcels approved by Monterey County, are labeled A, B and C. Alternative building areas located on the existing "flag-pole" parcels APN-042 and APN-043 are noted as D and E. The potential lower road alignment is the dashed dark green line and the upper road alignment is the dashed red line.

A. CONDITONS AT POTENTIAL BUILDING SITES

1. APN-041: the large, 39.92-acre square parcel. There are at least three possible building areas on APN-041 and each of these has been placed into reconfigured lots approved by the Monterey County Minor Subdivision Committee. Building areas "A" and "C" are in chamise-

dominated Chaparral habitat, with occasional black sage, Eastwood manzanita, deerweed and toyon. The shrub canopy is too dense to support a significant understory. A large boulder outcropping occurs in "A".

The possible building area at site "B" straddles the margin of Coast Live Oak Woodland and Chaparral natural communities. The Oak Woodland has deep leaf litter with a very sparse understory. An interesting collection of sycamores occurs under the canopy near this location. About 20 sycamore trees were noted, each between 2" and 10" DBH (diameter at breast height, 5' above ground surface). The presence of the moisture-dependent sycamores indicates relatively shallow soil moisture in this area. No other moisture-dependent vegetation was observed - no spring, wetland or riparian plants were seen in what is otherwise a typical upland Oak Woodland setting at the lower margin of building area "B". The sycamores are an anomaly at this site and likely reflect some sort of past growing environment that is no longer operative at this location. The sycamores are probably being sustained today by shallow groundwater conditions, however the attendant environment that promoted the original propagation or sprouting of the sycamores is no longer in place. Environmental conditions that favor the development of Coast Live Oak Woodland habitat currently prevail at this site. Sycamores were not observed under the canopy of other Oak Woodland areas on other portions of the Burke property, except along narrow drainages where Canyon Riparian habitat was present.

2. APN-042: narrow northeastern parcel adjacent to the Ventana Wilderness. The possible building area "D" is near the confluence of two small side canyons that each support sparse and discontinuous Canyon Riparian vegetation. Locating structures at this site may require slope waivers to build on slopes greater than 30%, and will require building within the 150' setback from Canyon Riparian ESHA. A water source could easily be developed from an old, existing springbox upstream in the westerly canyon.

The building location at "D" is situated in Coast Live Oak Woodland near sparse Canyon Riparian habitat that is confined to the narrow canyon bottom. The westerly drainage supports a small stand of chain fern, with mugwort, western bracken and stinging nettle under an open canopy dominated by coast live oak. Two straggly sycamores struggle for light from the drainage bottom. This possible development area is within 175-feet of the Ventana Wilderness.

3. APN-043: narrow southeastern parcel adjacent to the Ventana Wilderness. The possible building area "E" is above the North Fork Rocky Creek, where the photographs in Figures 7 and 8 were taken. This site is situated on the steep slope (over 30%) above the canyon bottom and just within the 150 lineal-foot setback from ESHA. The overstory is composed of coast live oak, with California bay and black oak occurring on lower slopes closer to the stream. The very open understory has widely scattered poison oak, native western ryegrass, and non-native annual grasses. A few notable populations of the beautiful elongate rein-orchid also occur under the oak canopy in this general vicinity.

Developing the suggested building area "E" on APN-043 would avoid a problematic stream crossing over the primary tributary of Rocky Creek and a difficult traverse across extremely steep terrain on the south side of the stream channel. Good possible building areas occur in the southerly portion of APN-043, however unless access can be obtained from the illegal road crossing the neighboring Kitaji parcel, road construction to the very south of APN-043 on the Burke property would be prohibitive because of topographic difficulty. Site "E" is within approximately 175-feet of the border of the Los Padres National Forest and the Ventana Wilderness.

B. CONDITONS ALONG ROAD ALIGNMENTS

There are two suggested road alignments to access possible building areas on the existing Burke parcels (see Figure 9).

1. Lower Route: Access to APN-042 (building site "D") and APN-043 (building site "E") would be across neighboring private land and the southern portion of APN-041. The tentative alignment for the lower route would depart from the private "Zufich" road and cross the intervening Cascio property to the southwestern corner of the Burke property in APN-041. This route involves securing an access easement from Mr. Cascio, who has agreed to this proposal. The suggested route crosses open slopes vegetated with dense Chaparral, as well as several pockets of Coast Live Oak Woodland and small stands of Mixed Evergreen Forest (with coast live oak, bay, sycamore and big-leaved maple in small, narrow drainages on the Cascio property). The tentative alignment has been designed to minimize disturbance to Oak Woodland habitat by situating the roadway in Chaparral as much as possible.

This roadway would traverse approximately 2400-feet across slopes in excess of 30% for most of its route to provide access to building areas on APN-042 and APN-043. The proposed route aims for areas of more gradual terrain in the southwestern portion of APN-041, however the majority of this route will occur on slopes of 30% and greater. The access across the Cascio property would take advantage of existing trails and clearings.

Of note are several small patches of chain fern that appear in one location on APN-041 below the understory of Oak Woodland habitat. This species is typically considered an indicator of extremely high soil moisture levels, and in fact requires abundant moisture to persist. No other wetland or riparian indicators are present with the chain ferns, which appear as discrete and isolated patches mid-slope under the oak canopy. It is possible that these chain ferns are somehow connected to the subsurface hydrology that sustains the small stand of sycamores farther upslope near building area "B".

2. Upper Route: The tentative 1050-foot alignment for the upper route would depart from the private "Zufich" road at the northwestern corner of the Burke property on APN-041. The road alignment to the three building sites on APN-041 is entirely in Chaparral habitat, with a spur driveway to site "B".

Across from the point at which the proposed upper roadway would depart from the "Zufich" road is a spring area where several small arroyo willow saplings and patches of mosses indicate damp soil conditions. The individual willow plants do not constitute a "stand" at this location, however the presence of these phreatophyes is indicative of wetland-like conditions. Clearly the site supports high soil moisture levels.

Figure 10 - Arroyo willows in damp soils along "Zufich" road in the northwestern corner of APN-041.

C. POTENTIAL IMPACTS OF DEVELOPING EXISTING PARCELS

Tim and Dana Burke own three lots that have challenging slope constraints, however each parcel has adequate building areas that could be accessed with carefully engineered roadways. Water sources exist at several locations where springs and surface drainage could be tapped. At the present time, no specific construction plans have been prepared for either the existing parcels, or the reconfigured parcels in the Monterey County-approved Lot Line Adjustment. Tentative building areas and road alignments have been identified on the existing parcels and also on the reconfigured lots, although the implementation of any proposed project will require specific Coastal Development Permit applications with additional focused biological survey.

1. Biological Impacts: The primary potential biological impacts associated with developing the Burke lots (either the existing Assessor's Parcels or the reconfigured lots) will result from the required removal of vegetation and soil disturbance related to construction of roads and structures. Removal or modification of additional vegetation will likely ensue for fire clearance and landscaping. The removal and/or modification of vegetation for road development and building sites will eliminate Chaparral habitat and a minor amount of Oak Woodland in all parcels. Development of building site "D" on APN-042 will require construction well within the 150-foot ESHA setbacks for Canyon Riparian habitat, however sensitive Canyon Riparian habitat can be avoided at this site. Potential impacts may result for Canyon Riparian-associated species like Coast Range newt and yellow-legged frog. No other special status species would likely be impacted.

Developing road access to APN-042 and APN-043 will involve an easement across adjoining private land and approximately 2400-feet of new road construction across steep terrain. Developing road access to buildable areas on APN-041 will involve between 600-feet and 1050-feet of new road construction, depending on where development is situated. The preferred building site identified by the Burke family is site "C", which would require 1050-feet of new road construction. New road construction to "D" and "E" would occur in Mixed Evergreen Forest, Oak Woodland and Chaparral communities, while the road to "A", "B" and "C" would be entirely in Chaparral.

Ecological impacts may result from potential erosion following vegetation removal and the creation of bare soil conditions, as well as erosion and sedimentation associated with increased runoff from impervious surfaces. Soils on the Burke property are primarily derived from granitic bedrock and tend to be coarse and highly erosive. Sediment delivery to Rocky Creek tributaries could impact the steelhead fishery downstream in the mainstem of Rocky Creek.

2. Wilderness Impacts: The development of APN-042 and APN-043 will require locating structures within a couple hundred feet, or less, of the boundary of the Ventana Wilderness in the Los Padres National Forest. Private land uses so close to designated wilderness could compromise the wilderness values sustained in the Ventana backcountry, where opportunities for solitude and quiet recreation are preserved. The biotic refuge provided by untrammeled wilderness could be affected by having developed home sites so close to the wilderness boundary, which should be buffered from rural residential development to the maximum extent possible.

3. Cumulative Impacts:

a. Habitat Value: Development of the Burke parcels, whether the existing configuration or the County-approved lot line adjustment, will result in the ongoing fragmentation of natural communities and wildlife habitat. Habitat fragmentation will continue as the pattern of rural residential development proceeds in Pacific slope watersheds like the upper Rocky Creek

drainage, where extensive tracts of undeveloped wildlife habitat are undergoing persistent and incremental change. With the introduction of roads, structures, pets, livestock and horticultural vegetation, pressure on native species of plants and wildlife increases. The impact of potential development in areas particularly close to the boundary of the Ventana Wilderness diminishes the effectiveness of the wilderness boundary as a line where human-induced alterations to the environment should be minimized.

b. Water Resources: Potential biological impacts associated with the development of domestic water sources could occur in localized riparian or wetland-type habitat around springs and in areas of shallow groundwater. The diversion of spring, surface and groundwater could reduce the local availability of water for wildlife and moisture-dependent plants, particularly during dry seasons and periods of drought. Long-term soil water depletion in wetland or riparian habitat results in the conversion of these natural communities to more xeric associations typically found in upland locations.

The incremental reduction of regional watershed drainage resulting from the development of water sources for the three parcels on the Burke property is expected to be minimal - this is important for the upstream inflow provided for steelhead and other aquatic organisms that occur in downstream reaches of the Rocky Creek watershed. The Rocky Creek drainage basin is not identified as a Water Resource Study Area in the Big Sur LUP.

c. Visual Impacts: Although not addressed in this Biological Assessment, there will be visual impacts associated with the development of roads and structures on the prominent mid-slope landscape in the project area. The open nature of the chaparral habitat provides little screening of building areas and the steepness of the slopes will likely result in road cut and fill scars that will take time to revegetate. Developing the existing Burke parcels will result in the creation of two parallel road scars across the flank of Twin Peaks.

IV. POTENTIAL DEVELOPMENT OF PARCELS RECONFIGURED BY COUNTY-APPROVED LOT LINE ADJUSTMENT

The actual administrative process of approving the Lot Line Adjustment proposed by Tim and Dana Burke technically has no biological, wilderness or cumulative impacts, however the realignment of the Burke lots will reconfigure the parcels in such a way as to facilitate clustering all development areas on the existing 39.92-acre APN-041. Individual Combined Development Permits and project-specific Biological Assessments will be required for any proposed infrastructure or building development on any portion of either the existing or reconfigured parcels on the property.

Potential environmental impacts associated with developing the reconfigured lots will result in less road construction across steep slopes and no construction in Canyon Riparian ESHA or near the Ventana Wilderness. Reconfiguring the parcels will also eliminate the need for constructing the lower access road, which includes crossing neighboring private land.

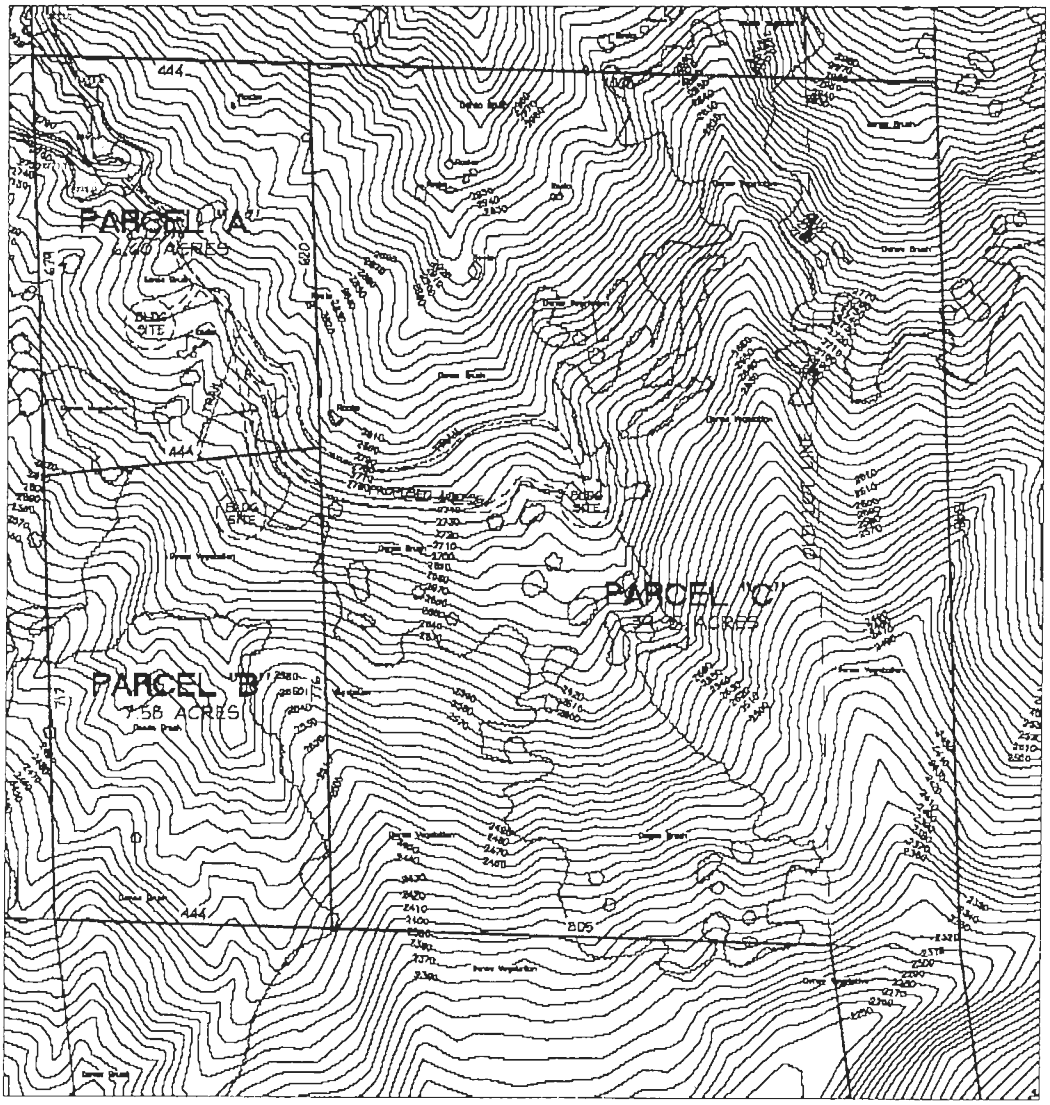

Figure 11 - Map of parcel configuration approved by Monterey County lot line adjustment, File No. PLN 060189.

CCC Exhibit 6
(page 26 of 28 pages)

A. BUILDING SITES

Tentative building sites have been identified in each of the Monterey County-approved reconfigured lots. Parcel A has a building site centered near a boulder outcrop surrounded by chamise-dominated Chaparral. Parcel B has a proposed building site at a location that straddles Chaparral and Oak Woodland habitat, with an unusual stand of light-starved sycamore growing under the oak canopy. Parcel C has a building site entirely surrounded by Chaparral.

Developing these three clustered building sites would eliminate construction within Canyon Riparian ESHA on APN-042 and at the edge of the 150-foot buffer for APN-043. In addition, pursuing development on the reconfigured parcels would move the building areas on APN-042 and APN-043 westward well away from the Ventana Wilderness.

B. ROADS

The development of the three proposed building sites on lots reconfigured under the Monterey County-approved lot line adjustment would entirely eliminate the need to construct a new "lower" road across the southern margin of the Burke property. This "lower" road alignment crosses pockets of Mixed Evergreen Forest on the neighboring Cascio property, small areas of Oak Woodland and large expanses of Chaparral on slopes in excess of 30% for most of its 2400-foot traverse.

As proposed under the lot line adjustment, the "upper" road would provide access to each of the tentative building sites. This route would be constructed from the Zufich Road for approximately 1050 feet across open slopes of Chaparral to the Burke's preferred building site at location "C". A short driveway spur would connect building site B, which is located in both Chaparral and Oak Woodland habitat.

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Although development of the existing Assessor's Parcels 418-011-041, 042 and 043 is feasible, the reduction of road construction and the placement of clustered building sites away from wilderness and ESHA through lot line adjustment is recommended.

Approving the Lot Line Adjustment previously endorsed by Monterey County will result in the elimination of: 2400 feet of new road construction, development within ESHA set-backs, building sites adjacent to the Ventana Wilderness, impacts to oak woodland habitat at sites "D" and "E".
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Roberson, D. 2002. Monterey Birds. The Monterey Peninsula Audubon Society. P.O. Box 5656, Carmel, CA 93921.

Rogers, D. 1991. The Santa Lucia Mountains: Diversity, Endemism, and Austere Beauty. Fremontia. 19(4):3-11.

Vasey, M. and T. Parker. March 2007. Revised taxonomic treatment for the genus *Arctostaphylos* in California. Untitled and unpublished draft manuscript prepared for the on-going revision of the Flora of North America.

Appendices A-C are available for review upon request at the Central Coast District Office of the Coastal Commission.

CCC Exhibit 6
(page 28 of 28 pages)

STANDARD DETAILS & SPECIFICATIONS SUBJECT: Specifications for Driveways, Turnarounds and Turn Outs Serving up to Two (2) Single Family Dwellings	Spec No D-1 Rev. Date 04/27/21 Eff. Date 01/23/97 Approved By Page 1 of 4

SCOPE

This standard is applicable to driveways serving up to two (2) single family dwellings where any portion of the dwelling(s) is greater than 200 feet from the center line of a public roadway. The specifications contained in this standard apply only to properties located within the incorporated city/town services areas of the Santa Clara County Fire Department. Fire department access for dwellings in unincorporated County areas shall conform to County of Santa Clara driveway/roadway standards.

AUTHORITY

California Fire Code (C.F.C), Applicable Municipal/Town Codes and Standards

DEFINITIONS

Driveway: A vehicular access roadway less than 20 feet in width and serving no more than two single-family dwellings.

Roadway: A vehicular access roadway greater than or equal to 20 feet in width serving more than two single-family dwellings.

REQUIREMENTS

I. DRIVEWAY WIDTH

A. For Campbell, Cupertino, Los Gatos, Monte Sereno, and Los Altos Hills: A 12-foot-wide paved surface.

B. For Los Altos: A 14-foot-wide paved surface.

C. For Saratoga: A 14-foot-wide paved surface.

II. VERTICAL CLEARANCE

A. The vertical clearance above the entire length of the driveway shall be in accordance with the CFC; 13 feet 6 inches.

III. GRADE

NOTE: When approved by the Fire Code official, grades up to 20% may be allowed. In no case shall the portion of driveway exceeding 15% gradient be longer than 300-feet in length. For longer driveways, there shall be at least 100-feet of driveway at 15% or less gradient between each 300-foot section that exceeds 15%.

IV. GATES

The installation of gates or other barricades across driveways shall comply with Santa Clara County Fire Department's Standard G-1.

V. PAVEMENT SURFACE:

Driveways shall be an all-weather surface of either asphalt, concrete or another engineered surface acceptable to the fire department. The surface shall be approved by a civil engineer and be able to support apparatus weighing at least 75,000 pounds.

NOTE: For alternative roadway surfaces such as "Turf Block" or other materials that blend into landscaping and/or that do not readily appear to be driving surfaces, the boundary edges of the alternate material shall be delineated as approved by the fire code official. Delineation shall be by concrete curbs, borders, posts, or other means that clearly indicate the location and extent of the driving surface.

VI. BRIDGES AND CULVERTS:

A. Where a bridge or an elevated surface is part of a fire apparatus access road, the bridge shall be constructed and maintained in accordance with AASHTO HB-17.

B. All bridges, elevated surfaces and culverts shall be designed for a live load sufficient to carry the imposed load of a fire apparatus weighing at least 75,000 pounds. Vehicle load limits shall be posted at the entrance to the bridge. Additional signs may be required by the fire code official. Where elevated surfaces designed for emergency vehicle use are adjacent to surfaces which are not designed for such use, approved barriers, approved signs or both shall be installed and maintained when required by the fire code official.

VII. ANGLES OF APPROACH AND DEPARTURE:

For driveways sloping upward from the access roadway, the angles of approach and departure shall be as approved by the fire code official.

VIII. TURNING RADIUS:

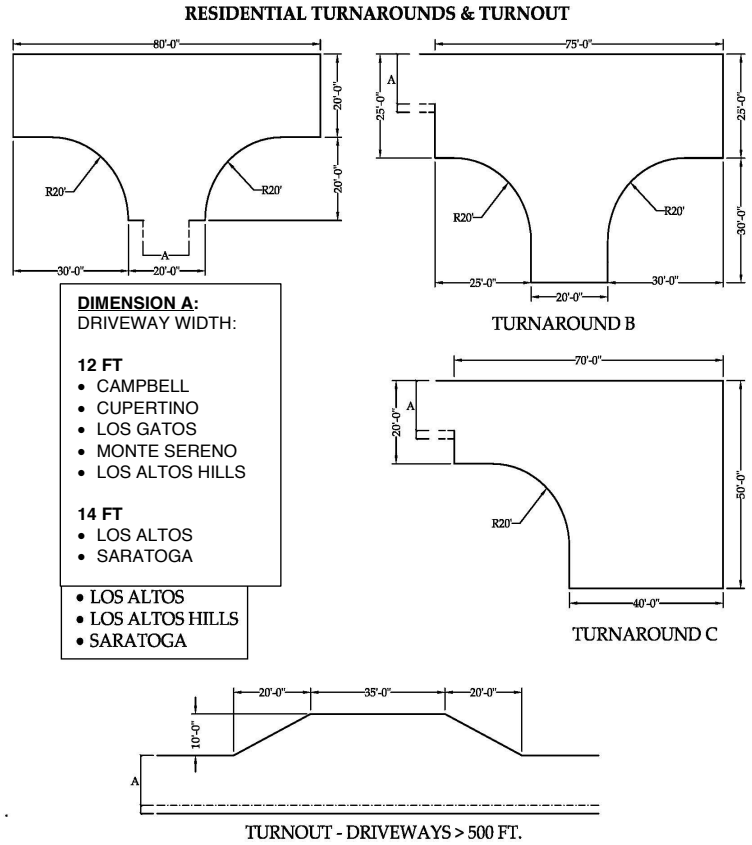
The minimum outside turning radius is 40 feet, unless otherwise specified.
Exception: Modified turning radius may be allowed by the fire code official in cases where conditions acceptable under the CFC allow for such deviation. Requests for such modifications must be made in writing to the fire code official for review.

IX. TURNOUTS:

Turnouts are required every 500 feet for driveways in excess of 500 feet.

X. TURNAROUNDS:

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



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

Planning and Development Department

October 16, 2013

TO: Planning Commission

FROM: Wendy Cosin, Deputy Planning Director

SUBJECT: Appeal of Proposal to Merge Two Lots at 2750 Cedar Street (Assessor's Parcel No. 058 2211 02 000) and 0 La Vereda (Assessor's Parcel No. 058 2211 01 1802)

RECOMMENDATION

Affirm the determination of the Director of Planning and Development that the property known as 2750 Cedar Street (Assessor's Parcel No. 058 2211 02 000) and 0 La Vereda (Assessor's Parcel No. 058 2211 01 1802) is merged pursuant to the requirements of the City's Merger Ordinance, Chapter 21.52 of the Berkeley Municipal Code, and Section 66451.11 of the California Government Code.

BACKGROUND

In response to several inquiries regarding the proposed sale and development potential of 2750 Cedar Street (Assessor's Parcel No. 058 2211 02 000) and 0 La Vereda (Assessor's Parcel No. 058 2211 01 1802), the Planning Director recorded the attached "Notice of Intention to Determine Status" for the properties. The purpose of the City action is to merge the two lots and to limit the development potential to that which could be constructed on one R-1H lot, rather than two lots. The current property owner, Lisa Iwamoto, filed an appeal of the determination. Michael Tolleson, the architect for the new owner, Louis B. Lin, filed the basis for the appeal.

The State Subdivision Map Act sets forth procedures and requirements for cities and counties to merge legally established and contiguous lots under common ownership. To merge parcels, the local agency must have an ordinance that conforms to the requirements of Government Code Section 66451 et. seq. In 1987, Berkeley adopted a Merger Ordinance that is part of the Subdivision Ordinance and is codified as BMC Chapter 21.52.

The Map Act authorizes local agencies to merge contiguous parcels that are under the same ownership if they meet criteria in the law. Any one of the parcels must be smaller than the minimum parcel size that the local Zoning Ordinance specifies, and at least one parcel must not be developed with any structure for which a building permit was issued or for which a building permit was not required at the time of construction, or must be developed only with

an accessory structure or structures, or with a structure other than an accessory structure that is partially sited on a contiguous parcel (Gov. Code Sec. 66451.11). In addition, any of the parcels to be merged must meet one or more of the following conditions:

1. Less than 5,000 square feet in area;
2. Not created in compliance with applicable laws and ordinances;
3. Not meet current standards for sewage disposal and domestic water supply;
4. Not meet slope stability standards;
5. No legal access adequate for vehicular and safety equipment access and maneuverability;
6. Development would create health or safety hazards; or
7. Inconsistent with any applicable general plan or specific plan, other than minimum lot size or density standards.

Summary of Applicability of Merger Criteria

Merger Criteria	**Subject Property**
Any one of the parcels must be smaller than the minimum parcel size that the local zoning ordinance specifies, and at least one parcel must not be developed with any structure for which a building permit was issued or for which a building permit was not required at the time of construction, or must be developed only with an accessory structure or structures or with a structure other than an accessory structure that is partially sited on a contiguous parcel.	Each parcel is less than 5,000 square feet in area. One parcel is vacant (0 La Vereda Road - Assessor's Parcel No. 058 2211 01 1802)
Any of the parcels to be merged must meet one or more of the following conditions: 1. Less than 5,000 square feet in area.	Each parcel is less than 5,000 square feet in area.

PROPERTY DESCRIPTION

A map is attached to the Public Hearing Notice showing the location of the property. The steeply sloped properties are briefly described below:

- 2750 Cedar Street (Assessor's Parcel No. 058 2211 02 000) is a 3,125 square foot lot (based on City records), developed with an uninhabitable single-family dwelling. The architect for the new owner represents the lot size as 3,106 square feet. The property has street frontage on an undeveloped portion of the Cedar Street right-of-way and is located behind 1601 La Vereda.
- 0 La Vereda Road (Assessor's Parcel No. 058 2211 01 1802) is a 3,892 square foot (based on City records) vacant flag lot with approximately 14 feet of street frontage on La Vereda Road. The architect for the new owner represents the lot size as 4,007 square feet. The lot is located between and behind 1601 and 1611 La Vereda.

The Building and Safety Division of the Planning Department recently sent a Notice of Violation to the property owners regarding structural issues with the porch at 2750 Cedar Street. In addition, the Parks Department recently sent a citation for $1,200 to the property owners due to the illegal removal of one Coast Live Oak tree.

Vehicular access to the properties is not currently possible, and is likely impossible in the future. Although 2750 Cedar Street is located adjacent to a public right-of-way, Cedar Street is not developed, nor does the City have plans for the street to be developed. It is steeply sloped (estimated slope is 40 – 50 percent) and is heavily vegetated, including Coast Live Oak trees. For a street to be developed, significant grading would be required, and at least four protected Coast Live Oak trees would need to be removed, which is not allowed.

The structure located on 2750 Cedar was constructed in 1950. It is a one-story building, approximately 52 feet long and 14 feet wide. It is dilapidated and not habitable in its current condition. The 25-foot wide lot slopes from contour line 174 to 188, which would be more than a 50 percent slope if the property were not already graded for the existing structure. There is no vehicular access to the property; the stairs through the La Vereda lot provide pedestrian access.

The La Vereda lot, which is vacant, has access from a narrow portion of the lot with street frontage on La Vereda. At the street, the lot is 14 feet wide, but it narrows to 10 feet approximately 25 feet behind the front property line. The slope of this portion of the lot is more than 40 percent, with elevations increasing from contour line 102 at the front property line to 164 over the 145 foot length of the north lot line leading to the 2750 Cedar structure. There are stairs in this area. There is no vehicular access. The area of the La Vereda lot that could potentially be developed if the lots are not merged is approximately 47 feet x 52 feet, with the slope increasing at approximately 65 percent from contour line 132 at the southwest corner of this area to 162 at the northeast corner.

The property is located in the R-1H zoning district. The R-1 district is a low density, single-family residential district. The purposes of the Hillside (H) districts are to:

A. Implement the Master Plan's policies regarding Hillside Development;
B. Protect the character of Berkeley's hill Districts and their immediate environs;
C. Give reasonable protection to views yet allow appropriate development of all property;
D. Allow modifications in standard yard and height requirements when justified because of steep topography, irregular lot pattern, unusual street conditions, or other special aspects of the Hillside District area.

Merger of the lots is consistent with the R-1H district purposes because limiting development to one single-family dwelling and any other development allowable in the R-1H district would be more protective of the sensitive hillside area than allowing separate development of the two lots. This is especially true, given that there is no vehicular access to the property, it is steeply sloped, and there are Coast Live Oak trees on the property and on the Cedar Street right-of-say.

The property is in Fire Zone Two, one of two fire zones that the City established following the 1991 Oakland-Berkeley Hills Fire to encompass the City's urban/wild land interface areas. These are areas where structures may be more vulnerable to fire due to topography, vegetation and their location close to extensive parks and other wild land areas. The City amended the Building and Fire Codes to impose more stringent requirements in these zones. In Fire Zone Two, the Building Code requires that new structures and alterations to existing buildings include

non-combustible decks, Class A roofs, protection of exterior walls with fire-resistive materials, double glazed windows, protection of eaves and overhangs, and the enclosing of under floor areas.

As described above, the property and the Cedar Street right-of-way are very steeply sloped, varying from 40 – 65 percent. The City is not citing the lack of "legal access adequate for vehicular and safety equipment access and maneuverability" as a basis for merger because the Fire Department has the ability to allow exceptions regarding provision of fire apparatus access roads. However, the topography and vegetation are additional reasons that it is appropriate to limit development of the property. In particular, emergency vehicular access cannot be provided to either lot, and while response to fires may be mitigated through provision of standpipes and sprinklers, emergency response personnel may not be able to assist individuals with medical difficulties since the only access is from a steep, narrow staircase.

APPEAL AND RESPONSE

Michael Tolleson, Architect, submitted a September 17, 2013, letter and attachments on behalf of his client, Dr. Louis B. Lin, who was in escrow to purchase the property at the time.

The points raised in the letter are briefly summarized below, with a response provided.

Comment: The Notice of Intention to Determine Status was in error.
Response: Mr. Tolleson does not state how he believes the Notice was in error. The Notice was not in error - it was prepared in accordance with Government Code Sections 66451.1 - 66451.18 and Berkeley Municipal Code Chapter 21.52.

Comment: The letter quotes sections of the zoning regulations regarding nonconforming uses and lots. In particular, Mr. Tolleson cites the following sections as the basis of his conclusion that the lots cannot be merged because their combined square footage exceeds the 5,000 square foot minimum requirements for the R-1H zoning district.

> ***23C.04.020 Establishment of Lawful Non-Conforming Uses, Buildings, Structures & Lots***
>
> *A. Any **Use**, structure or building **which is a Lawful Non-Conforming Use**, structure or building shall be deemed to be in compliance with this Ordinance if it has remained in **continuous existence**. The non-conformity may result from any inconsistency with the requirements of this Ordinance, whether substantive or procedural, including, but not limited to, the inconsistency of the Use, building or structure or aspects thereof, with any requirement of this Ordinance or the lack of a Zoning Certificate or Use Permit.*
>
> *B. The following **lots which have areas less than the minimum lot size required** by this Ordinance shall be considered **Lawful Non-Conforming Lots. Such lots may be used as building sites** subject to all other requirements of this Ordinance, **except that if the total area of all contiguous vacant lots fronting on the same street and under the same ownership on or after September 1, 1958 is less than that required for one lot under this Ordinance, such lots may be used as only one building site**.*
>
> *1. **Any lot** described in the official records on file in the office of the **County Recorder of Alameda County** or Contra Costa County as a **lot of record under one ownership prior to November 30, 1950** or which was shown as a lot on any recorded subdivision map, filed prior to November 30, 1950; …*

Response: Staff concurs that under Section 23C.04.020, the two existing lots appear to be "lawful nonconforming lots", and that each lot is less than the minimum lot size required by the zoning district. The language in Subsection A, regarding Lawful Non-Conforming **Uses,** is

not relevant to the question of whether the property has two legal nonconforming lots. The language in Subsection B that that lawful nonconforming lots are buildable does not prevent their merger, as the authority to merge the lots derives from the Subdivision map Act and the City's local implementing ordinance, which are independent of the Zoning Ordinance. Nothing in the zoning regulations regarding nonconforming lots limits the City's ability to follow the merger provisions of state and local subdivision law. The zoning regulations speak only to whether the use and development of such lots is permissible *under the Zoning Ordinance*.

Comment: The following section of the City's Subdivision Ordinance provides that the above zoning ordinance sections are an exception to the City's merger authority.

> *21.52.020 Mergers required.*
> *If any one of two or more contiguous parcels or units held by the same owner does not conform to existing zoning regulations regarding site area to permit development (whether or not already developed), and at least one parcel or unit has not been developed with a building for which a building permit is required and was issued, or which was built prior to the time such permits were required, then such parcels shall be considered as merged for the purposes of this title,* ***subject to any exceptions provided in the Berkeley zoning ordinance****, (Ord. 6478-N.S.) ...*

Response: Mr. Tolleson's position appears to be that because the Zoning Ordinance acknowledges lawful nonconforming lots, such lots are an "exception" and cannot be merged. There is no basis for this. The purpose of state and local merger laws is to provide a process for jurisdictions to combine contiguous parcels *that were created legally*, but that do not meet current local standards. Reading this provision and Section 23C.04.020.B as prohibiting the merger of lawful nonconforming lots would render the merger provision of the local subdivision ordinance meaningless. Such interpretations are to be avoided.

Comment: Individual deeds for the lots were provided.
Response: Not relevant; as indicated above, the City accepts that the two lots are Lawful Non-Conforming Lots pursuant to BMC Section 23C.04.020.

Comment: Fire Codes are cited. In particular, the Codes state that when approved fire apparatus access roads cannot be provided within 150 feet of all portions of a building, the Fire Department official may increase the dimension when a sprinkler system is installed, an alternative to fire access roads is provided, and there are not more than two buildings. Mr. Tolleson notes that most of the existing structure at 2750 Cedar Street is greater than 150 feet from Fire Department access on La Vereda, but its use can be continued, and that while there are areas of the vacant site that are less than 150 feet from La Vereda, exceptions could be allowed for development further from the street.
Response: Noted. While the Berkeley Fire Department has the option of approving modified requirements for any fire access roadways for houses with a full fire sprinkler system, it is not required to do so, and generally requires additional mitigations as well.

Comment: Excerpt from Subdivision Map Act cited regarding presumption of lawful creation of certain parcels.
Response: Not relevant. Government Code Section 66451 et. seq. establishes the process for merger of lawful parcels.

Comment: The letter's conclusions are summarized below:

Utilizing all provided Code sections and supporting documents, the two parcels may remain separate; the vacant parcel may be developed with a new single-family dwelling consistent with the R-1(H) zoning requirements, provided that an easement be provided to the 2750 Cedar Street parcel; required parking could be provided with mechanical stacking; and the City could request a Certificate of Compliance to assure Chain of Title.

Response: Not relevant. The statement is true -- if the parcels are not merged, the vacant parcel could be developed with a new single family dwelling. However, Government Code Section 66451 et. seq. establishes the process for merger of lawful parcels, which the City has followed.

Responses to individual points raised in the appeal are provided above. In summary, the two adjoining parcels are subject to merger into one parcel because City records and County Assessor's records show that they meet the criteria of Government Code Section 66451.11 and BMC Chapter 21.52 (the Berkeley Subdivision Ordinance), as follows:

1. Each parcel is smaller than the minimum 5,000 square foot minimum lot size in the R-1 District (BMC 23D.16.070A), and

2. One of the parcels (0 La Vereda - Assessor's Parcel No. 058 2211 01 1802) is undeveloped by any structure for which a building permit was issued, or for which a building permit was not required, or is developed only with an accessory structure.

In addition to meeting the aforementioned criteria, which are sufficient legal basis for merging the two lots, any further development on this property would exacerbate existing access problems. 2750 Cedar Street only has access from an undeveloped street which is steeply sloped and heavily vegetated, 0 La Vereda only has access via a 10 – 14 foot strip of land that is steeply sloped and not accessible to vehicles or emergency equipment.

OPTIONS FOR ACTIONS ON APPEALS

California Government Code Section 66451.16 states that the owner of property proposed for merger shall be given an opportunity to present any evidence that the affected property does not meet the standards for merger. Following the hearing, the local agency shall make a determination that the affected parcels are to be merged or are not to be merged and shall notify the owner of its determination. Section 21.52.030 of the Subdivision Ordinance, of the City of Berkeley, provides that the Planning Commission shall conduct hearings if there are appeals of any of the proposed lot mergers. The decision of the Planning Commission is final.

RECOMMENDATION

Staff recommends that the Planning Commission affirm the decision of the Planning and Development Director to merge the subject properties and reject the appeal based on the following findings:

1. City and county records identify Lisa Iwamoto and Craig Scott as the owners of two contiguous parcels identified as 2750 Cedar Street (Assessor's Parcel No. 058 2211 02 000) and 0 La Vereda (Assessor's Parcel No. 058 2211 01 1802).

2. A "Notice of Intention to Determine Status" was recorded on September 4, 2013, and was sent by Certified Mail to the property owner of record on the same date.

3. A notice of the time, date, and place for the hearing was sent by Certified Mail to the property owner of record on September 30, 2013.

4. The two parcels described above meet the requirements for merger under the Subdivision Map Act (Gov. Code §§66451.10, et seq.) and City Ordinance (BMC 21.52) for the following reasons:

   A. The two parcels are contiguous;
   B. Each parcel is smaller than the minimum 5,000 square foot minimum lot size in the R-1 District. According to City records, 2750 Cedar is a 3,125 square foot lot; 0 La Vereda is a 3,892 square foot lot;
   C. One of the parcels (0 La Vereda - Assessor's Parcel No. 058 2211 01 1802) is undeveloped by any structure for which a building permit was issued, or for which a building permit was not required, or is developed only with an accessory structure. The other parcel is developed with a residential structure;
   D. There are no exceptions in the Berkeley Zoning Ordinance that limit the City's ability to merge the parcels pursuant to state and local subdivision regulations.

Attachments:

   A. Public Hearing Notice, with Map of Property
   B. Notice of Intention to Determine Status, including Attachments (Letter to Owner, Recorded Notice, Assessor Parcel Map, Government Code Section 66451 et. seq., R- 1 and H Zoning Regulations, & Fire Department Requirements)
   C. Appeal Letter from Lisa Iwamoto, dated September 20, 2013
   D. Letter and Attachments (Site Plan, Deed, Perspective View of Existing Single Family Dwelling to be Repaired) from Michael Tolleson, Architect, dated September 17, 2013
   E. E-mail from Michael Tolleson, Architect, dated October 7, 2013
   F. BMC Chapter 21.52 - Parcel Mergers
   G. Moratorium on the Removal of Coast Live Oak Trees (Ordinance No. 6,905-N.S.)

PLANNING COMMISSION

NOTICE OF PUBLIC HEARING

OCTOBER 16, 2013

LOT MERGER HEARING
ASSESSOR'S PARCEL NOS. 058 2211 01 1802 & 058 2211 02 000
2750 Cedar Street and 0 La Vereda

The Planning Commission of the City of Berkeley will hold a public hearing on the above matter, on **Wednesday October 16, 2013** at the North Berkeley Senior Center, 1901 Hearst Ave. (at Martin Luther King, Jr. Way), Berkeley (wheelchair accessible). The meeting starts at 7:00 p.m.

PROPOSED PROJECT SCOPE:
The City recorded a "Notice of Intention to Determine Status" for the above property, shown on the reverse side of this notice, because the two lots are in common ownership, neither lot meets the City's current zoning and subdivision requirements and one of the lots is undeveloped. The purpose of the City action is to merge the two lots and to limit the number of houses that can be constructed on the property. The current property owner, Lisa Iwamoto, filed an appeal of the determination.

- 2750 Cedar is a 3,125 square foot lot, developed with a single-family dwelling; the lot has street frontage on an undeveloped portion of Cedar Street.
- 0 La Vereda Road is a 3,892 square foot vacant flag lot with approximately 14 feet of street frontage on La Vereda Road .

The State Subdivision Map Act sets forth procedures and requirements for merger of legally established and contiguous lots under common ownership. Pursuant to the City's Subdivision Ordinance, the Planning Commission conducts hearings if there are appeals of proposed lot mergers. At the hearing, the owner of property proposed for merger is given an opportunity to present any evidence that the affected property does not meet the standards for merger. Following the hearing, the Planning Commission will make a determination that the affected parcels are to be merged or are not to be merged. The decision of the Planning Commission is final.

ENVIRONMENTAL REVIEW STATUS: Exempt

PUBLIC COMMENT & FURTHER INFORMATION
Comments may be made verbally at the public hearing and in writing before the hearing. Written comments or questions concerning this project should be directed to:

Planning Commission
Alex Amoroso, PC Secretary E-mail:
aamoroso@cityofberkeley.info
Land Use Planning Division (510) 981-7410
2120 Milvia Street
Berkeley, CA 94704

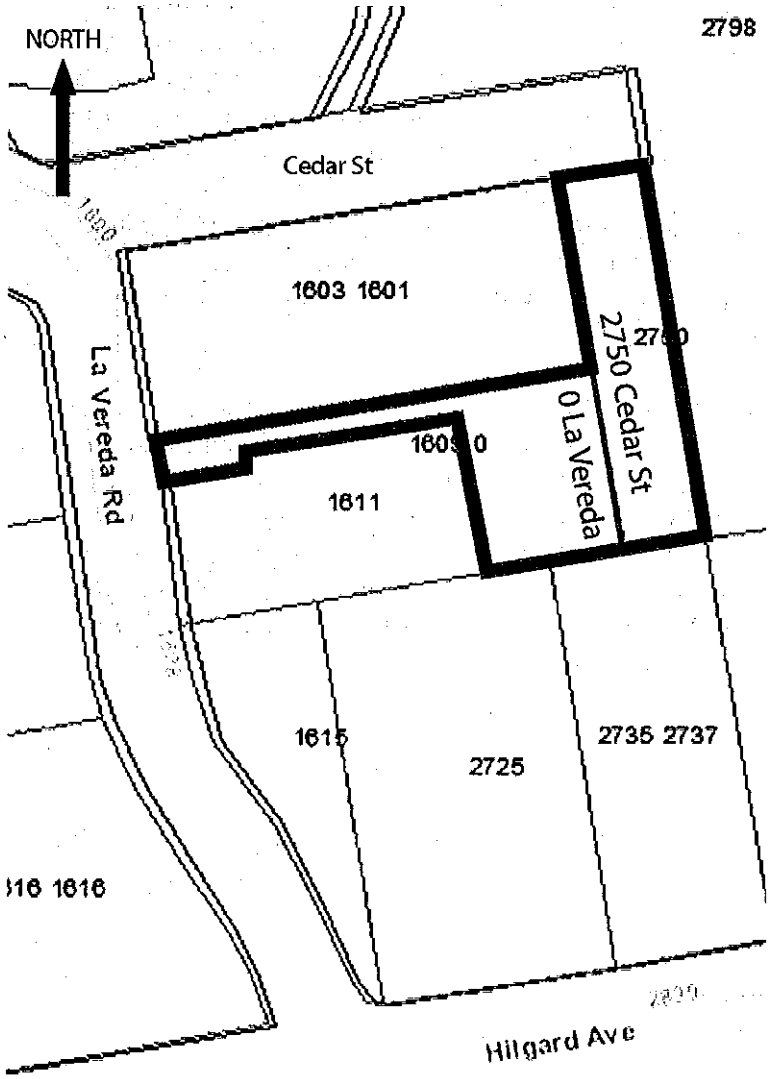
To assure distribution to Commission members prior to the meeting, **correspondence must be received by 12:00 noon, seven (7) days before the meeting.** For items with more than ten (10) pages 15 copies must be submitted to the Secretary by this deadline. For any item submitted less than seven days before the meeting 15 copies must be submitted to the Secretary prior to the meeting date.

COMMUNICATION ACCESS

To request a meeting agenda in large print, Braille, or on audiocassette, or to request a sign language interpreter for the meeting, call (510) 981-7410 (voice) or 981-6903 (TDD). Notice of at least five (5) business days will ensure availability. Agendas are also available on the Internet at: www.ci.berkeley.ca.us.

FURTHER INFORMATION

Questions should be directed to Alex Amoroso, at 981-7410, or aamoroso@cityofberkeley.info .



Outlined in bold:

Assessor Parcel Nos. to be merged:
058 2211 01 1802 & 058 2211 02 000
2750 Cedar Street and 0 La Vereda

Located between 1601 & 1611LaVereda

Planning and Development Department

September 4, 2013

Lisa Iwamoto and Craig Scott
1306 20th Street
San Francisco, CA 94107

Re: Notice of Intention to Determine Status -1609 La Verada Road (058 221101802) and 2750 Cedar Street (058 221102000)

Dear Lisa Iwamoto and Craig Scott:

This letter is to let you know that the City is taking action to combine separate lots that you own into one lot. Your property at 2750 Cedar Street and 0 La Verada Road (aka 1609 La Verada), Berkeley, encompasses one or more lots that do not meet the City's current zoning and subdivision requirements. The lots in question are shown on the enclosed map. The purpose of the proposed lot merger is to limit the number of houses that can be constructed on the property.

Local and state laws allow the City to merge all of the lots that you own into a single residential parcel in certain situations. As described further in the attached excerpt from state law, any one of two or more contiguous parcels that do not conform to the zoning regulations regarding site area needed to permit development can be merged if at least one parcel has not been developed and if other conditions exist with respect to lot size, access or other factors. I have attached the following documents to provide you with additional information.

- Government Code Sections 66451.11 – 66451.18
- The zoning standards for your property
- Berkeley Fire Code requirements that would apply to any new development

The purpose of the attached "Notice of Intention to Determine Status", which has been recorded, is to provide the required legal notice and to let you know that you have the right to request a public hearing on this determination. If you do not file a written request for a hearing within 30 days of this notice or, if a hearing does occur followed by a decision to support this determination, we will record a notice that the lots in question have been merged.

You may wish to consult an attorney regarding this matter. If you have any questions, please feel free to call Deputy Planning Director Wendy Cosin at 510-981-7402.

Sincerely,

Eric Angstadt
Director, Planning and Development

Enc.

cc: Zach Cowan, Assistant City Attorney
Wendy Cosin, Deputy Director, Planning and Development

2118 Milvia Street, 3rd Floor Berkeley, CA 94704 Tel: 510.981-7400 Fax: 510 981-7490 TDD:510 981-7474
E-mail: planning@ci.berkeley.ca.us

[Rev. 06/14/07]

PLEASE COMPLETE THIS INFORMATION

RECORDING REQUESTED BY:
WENDY COSIN, Deputy Planning Director, City of Berkeley

WHEN RECORDED MAIL TO:
2118 Milvia St.
Berkeley CA 94704

2013298794 09/04/2013 02:23 PM
OFFICIAL RECORDS OF ALAMEDA COUNTY
PATRICK O'CONNELL
RECORDING FEE: 0.00

2 PGS

D18
9+

(THIS SPACE FOR RECORDER'S USE ONLY)

G.C. 6103

Determination of Merger

TITLE OF DOCUMENT

THIS PAGE ADDED TO PROVIDE ADEQUATE SPACE FOR RECORDING INFORMATION (GOVT. CODE 27361.6)
(additional recording fee applies)

Property owner: Lisa Iwamoto + Craig Scott

NOTICE OF INTENTION TO DETERMINE STATUS
(California Government Code Section 66451.13)
(Berkeley Municipal Code Section 21.52.030)

NOTICE IS HEREBY GIVEN to Owner, that the real property within the City of Berkeley, as more specifically described below, may be merged pursuant to standards specified in the City's merger ordinance, Chapter 21.52 of the Berkeley Municipal Code, and Section 66451.11 of the California Government Code.

This notice shall be deemed to be constructive notice of the City's intent to merge the affected parcels based on a determination of their status. You may request a hearing on this determination within 30 days of this notice to present evidence and argument that the property does meet the criteria for merger. If you do not file a written request for a hearing within 30 days of this notice, the City may, at any time thereafter, make a determination that the following parcels are merged:

AP No. 058 221101802 (1609 La Verada Road, aka 0 La Verada Road)
AP No. 058 221102000 (2750 Cedar Street)

DETERMINATION OF MERGER

I hereby certify that I have reviewed the above-cited property and have found it to be subject to merger under the applicable provisions of the Berkeley Municipal Code and California Government Code Section 66451.11 et. seq.. The parcels are subject to merger into one parcel because each parcel has an area less than 5,000 square feet, which is less than the standard for minimum parcel size under the Berkeley Zoning Ordinance, one is undeveloped by any structure for which a building permit was issued or for which a building permit was not required at the time of construction, and both parcels lack required access for emergency vehicles.

By: Eric Angstadt, Planning and Development Director
City of Berkeley

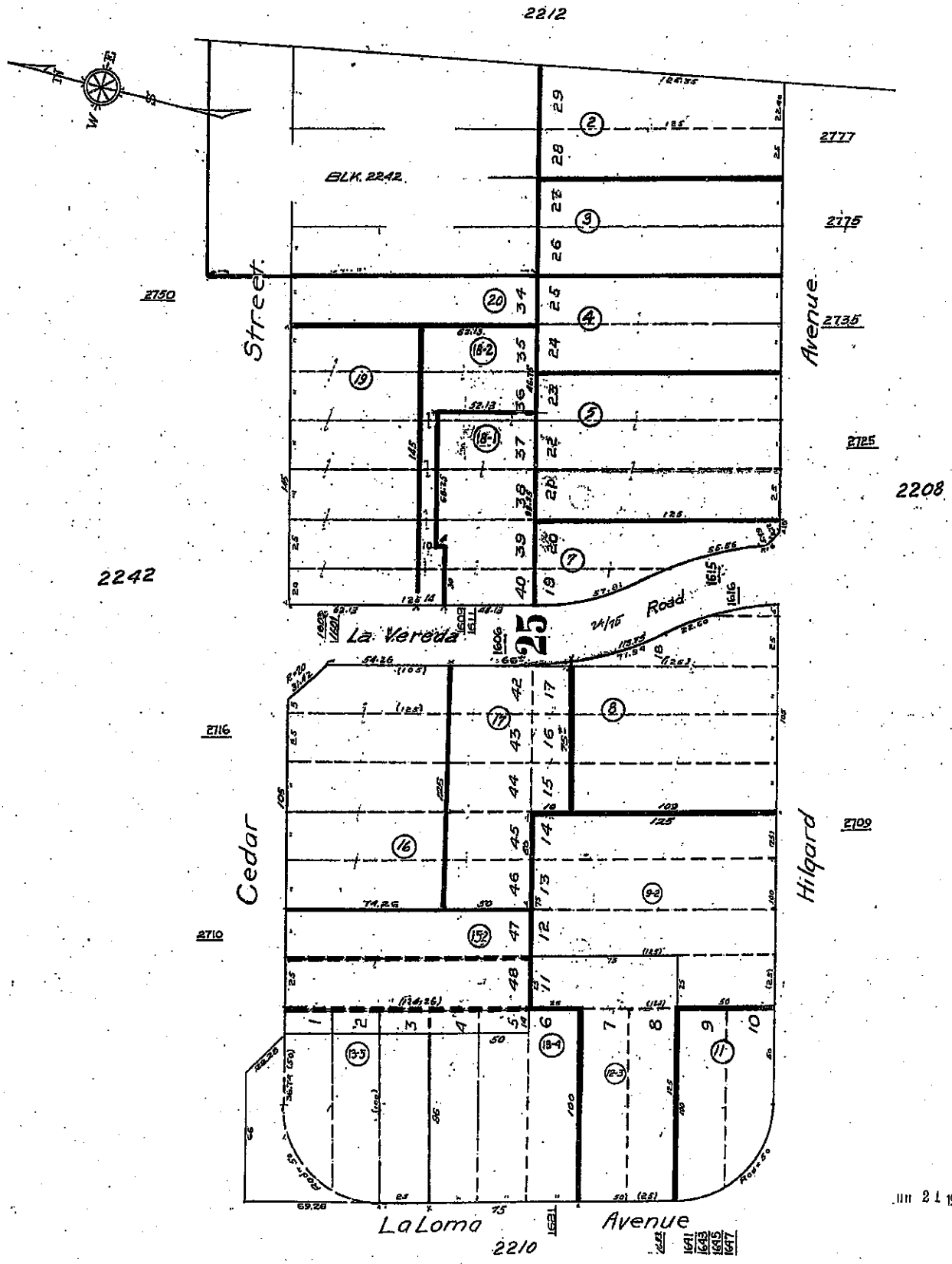
Date: 9/4/2013

ASSESSOR'S MAP 58 Code Area No. 13-000

2211

Map showing subdivision of Block 25 and resubdivision of Lots 21-22-23-24 Block 15. Lot 6. Block 16. Lot 6 Block 24. Lot 6 Block 23 Lot 8-9 Block 26. in Daleys Scenic Park. (Bk. 9, Pg. 35)

Scale 1 in = 40 ft



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Ind. 2

GOVERNMENT CODE SECTIONS 66451.10 – 66451.18

66451.10. (a) Notwithstanding Section 66424, except as is otherwise provided for in this article, two or more contiguous parcels or units of land which have been created under the provisions of this division, or any prior law regulating the division of land, or a local ordinance enacted pursuant thereto, or which were not subject to those provisions at the time of their creation, shall not be deemed merged by virtue of the fact that the contiguous parcels or units are held by the same owner, and no further proceeding under the provisions of this division or a local ordinance enacted pursuant thereto shall be required for the purpose of sale, lease, or financing of the contiguous parcels or units, or any of them.
(b) This article shall provide the sole and exclusive authority for local agency initiated merger of contiguous parcels. On and after January 1, 1984, parcels may be merged by local agencies only in accordance with the authority and procedures prescribed by this article. This exclusive authority does not, however, abrogate or limit the authority of a local agency or a subdivider with respect to the following procedures within this division:
(1) Lot line adjustments.
(2) Amendment or correction of a final or parcel map.
(3) Reversions to acreage.
(4) Exclusions.
(5) Tentative, parcel, or final maps which create fewer parcels.

66451.11. A local agency may, by ordinance which conforms to and implements the procedures prescribed by this article, provide for the merger of a parcel or unit with a contiguous parcel or unit held by the same owner if any one of the contiguous parcels or units held by the same owner does not conform to standards for minimum parcel size, under the zoning ordinance of the local agency applicable to the parcels or units of land and if all of the following requirements are satisfied:
(a) At least one of the affected parcels is undeveloped by any structure for which a building permit was issued or for which a building permit was not required at the time of construction, or is developed only with an accessory structure or accessory structures, or is developed with a single structure, other than an accessory structure, that is also partially sited on a contiguous parcel or unit.
(b) With respect to any affected parcel, one or more of the following conditions exists:
(1) Comprises less than 5,000 square feet in area at the time of the determination of merger.
(2) Was not created in compliance with applicable laws and ordinances in effect at the time of its creation.
(3) Does not meet current standards for sewage disposal and domestic water supply.
(4) Does not meet slope stability standards.
(5) Has no legal access which is adequate for vehicular and safety equipment access and maneuverability.
(6) Its development would create health or safety hazards.
(7) Is inconsistent with the applicable general plan and any applicable specific plan, other than minimum lot size or density standards. The ordinance may establish the standards

specified in paragraphs (3) to (7), inclusive, which shall be applicable to parcels to be merged. This subdivision shall not apply if one of the following conditions exist:
(A) On or before July 1, 1981, one or more of the contiguous parcels or units of land is enforceably restricted open-space land pursuant to a contract, agreement, scenic restriction, or open-space easement, as defined and set forth in Section 421 of the Revenue and Taxation Code.
(B) On July 1, 1981, one or more of the contiguous parcels or units of land is timberland as defined in subdivision (f) of Section51104, 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 20of 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, ors and extraction, geothermal wells, or other similar commercial mining activity.
(c) The owner of the affected parcels has been notified of the merger proposal pursuant to Section 66451.13, and is afforded the opportunity for a hearing pursuant to Section 66451.14. For purposes of this section, when determining whether contiguous parcels are held by the same owner, ownership shall be determined as of the date that notice of intention to determine status is recorded.

66451.12. A merger of parcels becomes effective when the local agency causes to be filed for record with the recorder of the county in which the real property is located, a notice of merger specifying the names of the record owners and particularly describing the real property.

66451.13. Prior to recording a notice of merger, the local agency shall cause to be mailed by certified mail to the then current record owner of the property a notice of intention to determine status, notifying the owner that the affected parcels may be merged pursuant to standards specified in the merger ordinance, and advising the owner of the opportunity to request a hearing on determination of status and to present evidence at the hearing that

the property does not meet the criteria for merger. The notice of intention to determine status shall be filed for record with the recorder of the county in which the real property is located on the date that notice is mailed to the property owner.

66451.14. At any time within 30 days after recording of the notice of intention to determine status, the owner of the affected property may file with the local agency a request for a hearing on determination of status.

66451.15. Upon receiving a request for a hearing on determination of status from the owner of the affected property pursuant to Section66451.14, the local agency shall fix a time, date, and place for hearing to be conducted by the legislative body or an advisory agency, and shall notify the property owner of that time, date, and place for the hearing by certified mail. The hearing shall be conducted not more than 60 days following the local agency's receipt of the property owner's request for the hearing, but may be postponed or continued with the mutual consent of the local agency and the property owner.

66451.16. At the hearing, the property owner shall be given the opportunity to present any evidence that the affected property does not meet the standards for merger specified in the merger ordinance. At the conclusion of the hearing, the local agency shall make a determination that the affected parcels are to be merged or are not to be merged and shall so notify the owner of its determination. If the merger ordinance so provides, a determination of nonmerger may be made whether or not the affected property meets the standards for merger specified in Section 66451.11. A determination of merger shall be recorded within 30 days after conclusion of the hearing, as provided for in Section 66451.12.

66451.17. If, within the 30-day period specified in Section66451.14, the owner does not file a request for a hearing in accordance with Section 66451.16, the local agency may, at any time thereafter, make a determination that the affected parcels are to be merged or are not to be merged. A determination of merger shall be recorded as provided for in Section 66451.12 no later than 90 days following the mailing of notice required by Section 66451.13.

66451.18. If, in accordance with Section 66451.16 or 66451.17, the local agency determines that the subject property shall not be merged, it shall cause to be recorded in the manner specified in Section 66451.12 a release of the notice of intention to determine status, recorded pursuant to Section 66451.13, and shall mail a clearance letter to the then current owner of record.

Chapter 23D.16

R-1 SINGLE FAMILY RESIDENTIAL DISTRICT PROVISIONS

Sections:

Section 23D.16.010 Applicability of Regulations

The regulations in this Chapter shall apply in all R-1 Districts. In addition, the general provisions contained in Subtitle 23C shall apply. Where the H District overlays a property so as to be classified R-1(H), the Hillside District provisions of Chapter 23E.96 shall also apply. (Ord. 6478-NS § 4 (part), 1999)

Section 23D.16.020 Purposes

The purposes of the Single Family Residential (R-1) Districts are to:

A. Recognize and protect the existing pattern of development in the low density, single family residential areas of the City in accordance with the Master Plan;

B. Make available housing for persons who desire detached housing accommodations and a relatively large amount of Usable Open Space;

C. Protect adjacent properties from unreasonable obstruction of light and air; and

D. Permit the construction of community facilities such as places for religious assembly, Schools, parks and libraries which are designed to serve the local population when such will not be detrimental to the immediate neighborhood. (Ord. 6478-NS § 4 (part), 1999)

Section 23D.16.030 Uses Permitted

The following table sets forth the Permits required for each listed item. Each Use or structure shall be subject to either a Zoning Certificate (ZC), an Administrative Use Permit (AUP), a Use Permit approved after a public hearing (UP(PH)) or is Prohibited.

Table 23D.16.030		
Use and Required Permits		
Use	**Classification**	**Special Requirements (if any)**
Uses Permitted		
Child Care Centers	UP(PH)	
Clubs, Lodges	UP(PH)	
Community Care Facilities/Homes Changes of Use New Construction	ZC UP(PH)	Subject to parking requirements. See Section 23D.16.080.A
Community Centers	UP(PH)	
Dwelling Units, Single-family, subject to R-1 Standards	UP(PH)	
Residential Additions (up to 15% of lot area or 600 square feet, whichever is more restrictive)	ZC	See Section 23D.16.070 for restrictions.
Major Residential Additions	AUP	See definition in Sub-title F. Denial subject to Section 23D.16.090.B.
Libraries	UP(PH)	Subject to parking requirements. See Section 23D.16.080.A
Parks and Playgrounds	ZC	
Parking Lots	UP(PH)	Subject to Section 23D.12.090
Public Safety and Emergency Services	UP(PH)	
Religious Assembly Uses	UP(PH)	
Schools, Public or Private	UP(PH)	
Accessory Uses and Structures		
Accessory Buildings or Structures	ZC	Must satisfy the requirements of Chapter 23D.08
If has either habitable space and/or exceeds the requirements under Chapter 23D.08	AUP	
When located on a vacant lot without a Main Building	AUP	
Accessory Dwelling Units in compliance with applicable standards	ZC	Subject to Section 23D.16.040
Accessory Dwelling Unit which does not comply with requirements under Section 23D.16.080	AUP	Subject to making applicable findings in Section 23D.16.090
Accessory Dwelling Unit which involves a Major Residential Addition (500 sq. ft. or more)	AUP	Denial subject to Section 23D.16.090.B
Accessory Dwelling Unit which involves meeting the on-site parking requirement with tandem parking (See Section 23D.16.040.F)	AUP	Subject to making applicable findings in Section 23D.16.090.D
Accessory Dwelling Unit in a detached Accessory Building which does not conform to the setbacks in 23D.16.070	AUP	In no case shall side or rear setbacks be allowed to be less than four feet, or the front setback to be less than 20 feet. Subject to making the finding in Section 23D.16.090.A

Table 23D.16.030

Use and Required Permits

Use	Classification	Special Requirements (If any)
Accessory Dwelling Unit in a detached Accessory Building which does not conform to the height limit in Section 23D.16.040.E.2	AUP	Subject to making applicable findings in Section 23D.16.090
Child Care; Family Day Care		
Small Family Day Care Homes: of eight or fewer children	ZC	
Large Family Day Care Homes: of nine to 14 children	AUP	
Fences		
If six ft. or less in height	ZC	
Exceed six ft. in height	AUP	In required setbacks
Home Occupations		
Low Impact	ZC	If the requirements of Section 23C.16.020 are met
Moderate Impact, teaching-related	AUP	Subject to the requirements of Section 23C.16.030.A
Moderate Impact	UP(PH)	Subject to the requirements of Section 23C.16.030.B
Hot Tubs, Jacuzzis, Spas	AUP	See Section 23D.08.060.C
Stables for Horses	AUP	
Miscellaneous Uses		
Cemeteries, Crematories, Mausoleums	Prohibited	
Columbaria	AUP	Allowed with a ZC if incidental to a Community and Institutional Use, limited to 400 niches, and no more than 5% of the subject property area. When located outside of the main building columbaria structures are subject to Chapter 23D.08.
Commercial Excavation	UP(PH)	Including earth, gravel, minerals, or other building materials including drilling for, or removal of, oil or natural gas
Public Utility Substations, Tanks	UP(PH)	
Wireless Telecommunications Facilities		
Microcell Facilities	AUP	Subject to the requirements and findings of Section 23C.17.100
All Other Telecommunication Facilities	UP	Subject to the requirements and findings of Section 23C.17.100

Legend:
ZC -- Zoning Certificate
AUP -- Administrative Use Permit
UP(PH) -- Use Permit, public hearing required
Prohibited -- Use not permitted

(Ord. 7155-NS § 1, 2010; Ord. 7129-NS § 2, 2010; Ord. 6949-NS § 2 (part), 2006: Ord. 6909-NS § 2 (part), 2006: Ord. 6854-NS § 3 (part), 2005: Ord. 6763-NS § 4 (part), 2003: Ord. 6671-NS § 6, 2001: Ord. 6644-NS § 1, 2001: Ord. 6478-NS § 4 (part), 1999)

Section 23D.16.040 Special Provisions: Development Standards for Accessory Dwelling Units

A. The Zoning Officer shall issue a Zoning Certificate to establish an Accessory Dwelling Unit in compliance with this section if all requirements of the R-1 District and other applicable requirements are met. The Zoning Officer may approve an AUP for cases not in compliance as set forth in Section 23D.16.030.

B. Accessory Dwelling Units shall conform to the following standards in all cases:

1. The gross floor area of an Accessory Dwelling Unit shall contain no more than 25% of the gross floor area of the main dwelling in existence prior to the construction of the Accessory Dwelling Unit, except that if the house is less than 1,200 sq. ft., an Accessory Dwelling Unit of 300 sq. ft. will be allowed.

2. The gross floor area of an Accessory Dwelling Unit shall be no less than 300 square feet but no greater than 640 square feet.

3. No subdivision of land, air rights or condominium is allowed so as to enable the sale or transfer of the Accessory Dwelling Unit independently of the main Dwelling Unit or other portions of the property.

4. Each application shall be on a lot with access from a roadway that meets the fire apparatus access road requirements of the California Fire Code Section 902.2.2.1 (as it may be amended or renumbered from time to time), to be determined prior to either issuance of a Zoning Certificate or approval of an AUP.

5. Prior to issuance of a Building Permit, all owners of record of the subject property shall sign and file a Declaration of Restrictions with the County Recorder, in a form satisfactory to the Zoning Officer, which makes any transfer of the property specifically subject to the restrictions contained in this section, and requires that either the primary Dwelling Unit or the Accessory Dwelling Unit be occupied by the owner of the subject property. Non-occupancy of an owner for periods of up to three years are allowed before the property will be found to be in non-compliance with this requirement.

C. An Accessory Dwelling Unit may be converted from a portion of the floor area of a pre-existing main Dwelling Unit subject to the following:

1. There shall be a separate entrance for the Accessory Dwelling Unit, but it shall not be located on the front of the existing building.

D. An Accessory Dwelling Unit may be created through a building addition to an existing main dwelling subject to the following:

1. There shall be a separate entrance for the Accessory Dwelling Unit, but it shall not be located on the front of the existing building.

2. The subject lot shall have an area not less than 4,500 square feet.

E. An Accessory Dwelling Unit may be created in a new or existing detached Accessory Building subject to the following:

1. The subject lot shall have an area not less than 4,500 square feet.

2. An Accessory Dwelling Unit located in an Accessory Building shall not exceed 12 feet in average height.

3. The detached accessory building shall conform to the setbacks in Section 23D.16.070.D to be allowed by right. Any reduction from the setbacks is subject to review and approval of an Administrative Use Permit, but in no case shall the setbacks be reduced below four feet on the side or 20 feet on the front setback.

F. Where off-street parking in conformance with Section 23D.16.080 would cause detriment to the property due to reduction of open space on the lot, the Zoning Officer may approve an AUP to allow tandem parking. (Ord. 6763-NS § 5 (part), 2003: Ord. 6478-NS § 4 (part), 1999)

Section 23D.16.050 Reserved

Section 23D.16.060 Reserved

Section 23D.16.070 Development Standards

A. No lot of less than 5,000 square feet may be created.

B. No Dwelling Unit may be established on a lot with an area of less than 5,000 square feet, except that Accessory Dwelling Units may be created in a detached accessory building, or in an addition to an existing Main Building, on lots which have an area of no less than 4,500 square feet.

C. Each Main Building shall be limited in height as follows:

	Height limit average (ft.)	Stories limit (number)
Main Building	28*	3
All Residential Additions	14**	Not applicable
* The Zoning Officer may issue an Administrative Use Permit to allow Main Buildings to exceed 28 feet in average height, up to 35 feet in average height ** The Zoning Officer may issue an Administrative Use Permit to allow residential additions to exceed 14 feet in average height, up to the district limit.		

D. The Main Building shall be set back from the respective lot lines as follows:

	Yard location		
Stories (number)	Front	Rear*	Side**
1-3	20 ft.	20 ft.	4 ft.
* See Section 23D.16.070.D.1 **See Sections 23D.16.070.D.2 and D.3			

1. When the depth of any lot is less than 100 feet, the Rear Yard may be reduced to 20% of the lot depth.

2. When the width of any lot is less than 40 feet, the width of each Side Yard may be reduced to 10% of the lot width, but in no case to less than three feet.

3. The side yards on a corner lot shall be as follows:

   a. On a corner lot, where there is a key lot to the rear thereof, the street side yard of the corner lot shall be not less than one-half the Front Yard required or existent on the key lot, whichever is smaller. This regulation shall not be applied so as to reduce the buildable area of the lot to a width of less than 20 feet, or to require the side yard to be in excess of ten feet.

   b. Where a rear yard of not less than 50 feet in depth is maintained on a corner lot, adjacent to a key lot, the side yard may be reduced to four feet.

E. Maximum lot coverage may not exceed 40% of the lot area.

F. Each lot shall contain minimum usable open space area for each Dwelling Unit, including Accessory Dwelling Units: 400 square feet. (Ord. 6949-NS § 3 (part), 2006: Ord. 6478-NS § 4 (part), 1999)

Section 23D.16.080 Parking -- Number of Spaces

A. A lot shall contain the following minimum number of Off-street Parking Spaces:

Table 23D.16.080	
Parking Required	
Use	Number of spaces
Dwellings*	One per unit
Employees	One per two non-resident employees for a Community Care Facility**
Libraries	One per 500 sq. ft. of floor area that is publicly accessible
Rental of Rooms	One per each two roomers or boarders
* This also shall include Accessory Dwelling Units. An application for an Accessory Dwelling Unit that does not meet this standard may apply for an AUP to waive this requirement subject to a special finding under Section 23D.16.090.C. **This requirement does not apply to those Community Care Facilities which under state law must be treated in the same manner as a single family residence	

B. Other Uses requiring Use Permits, including, but not limited to, Child Care Centers, Clubs, Lodges, and community centers, shall provide the number of Off-street Parking Spaces determined by the Board, based on the amount of traffic generated by the particular Use and comparable with specified standards for other Uses.

C. Schools having a total gross floor area exceeding 10,000 square feet, shall provide off-street loading spaces at the rates of:

1. One space for the first 10,000 square feet of gross floor area; and

2. One additional space for each additional 40,000 square feet of gross floor area. (Ord. 6854-NS § 4 (part), 2005: Ord. 6763-NS § 6 (part), 2003: Ord. 6478-NS § 4 (part), 1999)

Section 23D.16.090 Findings

A. In order to approve any Permit under this chapter, the Zoning Officer or Board must make the finding required by Section 23B.32.040. The Zoning Officer or Board must also make the findings required by the following paragraphs of this section to the extent applicable:

B. To deny a Use Permit for a major residential addition or residential addition subject to 23D.16.070 the Zoning Officer or Board must find that although the proposed residential addition satisfies all other standards of this Ordinance, the addition would unreasonably obstruct sunlight, air or views.

C. To approve a parking waiver the Zoning Officer or Board must find that additional or new on-site parking would be detrimental, and that the existing parking supply in the immediate neighborhood is adequate, or that other mitigating conditions are present and apply to the property.

D. To approve tandem parking for an Accessory Dwelling Unit, the Zoning Officer or Board must find that additional or new on-site parking consistent with applicable standards would be detrimental due to reduction of open space on the lot, and that the oversight over the parking which will be provided by the resident owner, which is guaranteed by the requirement of owner-occupancy, will mitigate any potential detrimental effects of the tandem parking. (Ord. 6980-NS § 1 (part), 2007: Ord. 6763-NS § 7 (part), 2003: Ord. 6478-NS § 4 (part), 1999)

Chapter 23E.96

H HILLSIDE OVERLAY DISTRICT PROVISIONS

Sections:

Section 23E.96.010 Applicability of Regulations

The regulations in this chapter shall apply in all H Overlay Districts and which shall be combined with the underlying Districts as shown on the official Zoning Map. Construction of buildings shall also be subject to the building standards set forth in Ordinance No. 6128-N.S. or Chapter 19.68 of the BMC. (Ord. 6478-NS § 4 (part), 1999)

Section 23E.96.020 Purposes

The purposes of the Hillside (H) Districts are to:

A. Implement the Master Plan's policies regarding Hillside Development;

B. Protect the character of Berkeley's hill Districts and their immediate environs;

C. Give reasonable protection to views yet allow appropriate development of all property;

D. Allow modifications in standard yard and height requirements when justified because of steep topography, irregular lot pattern, unusual street conditions, or other special aspects of the Hillside District area. (Ord. 6478-NS § 4 (part), 1999)

Section 23E.96.030 Uses Permitted

A. Any use permitted in the underlying District which is combined with an H Overlay District, shall be allowed subject to obtaining a Use Permit when required in the underlying District, except as provided below:

B. No multiple dwellings shall be permitted in any H District which is combined with any R-2 District. (Ord. 6478-NS § 4 (part), 1999)

Section 23E.96.040 Reserved

Section 23E.96.050 Reserved

Chapter 23E.96: H Hillside Overlay District Provisions

Section 23E.96.060 Reserved

Section 23E.96.070 Development Standards

A. Building height and yard setbacks in any combined H District shall be as set forth below. All other development standards, including but not limited to lot size, density, lot coverage, FAR, usable open space and off-street parking spaces, shall be as specified in the underlying Zoning District.

B. The height for main and accessory buildings shall be limited as follows; provided, however, that the limits may be exceeded subject to obtaining an AUP and the required finding under Section 23E.96.090.B. In addition, building heights shall also be subject to the limitation and exception provisions set forth in Sections 23D.04.020 and 23E.04.020, as the case may be.

1. Main buildings shall be limited in average and maximum height, and in the number of stories in accordance with the following requirements:

	Height limit average (ft.)		
Underlying Zoning District	**Avg**	**Max**	Stories limit (number)
R-1, R-1A, R-2, R-2A	28	35	3
R-3, R-4, R-5, R-S, C-N, C-NS	35	35	3
All Residential Additions	See district standards or the highest portion of the roof, whichever is more restrictive	20	Not Applicable

2. Notwithstanding the definition of average height in Section 23F.04.010, for residential additions located above the lowest existing story that is partially or fully above grade, is not habitable, and projects beyond the footprint of the habitable portion of the building, the average height of such additions shall be measured from the floor plate of the lowest habitable story. However, the maximum height shall be measured from grade in all cases.

3. Accessory buildings shall be limited to 12 feet in average height and one story, provided, however, that increased height or stories may be allowed subject to obtaining an AUP and making the findings required under Sections 23D.08.010.B and 23E.96.090.B.

C. Main buildings shall be set back from the respective lot lines, and separated between one another, as required by the regulations for the underlying District which is combined with the H District, except that such setbacks and building separations may be reduced subject to obtaining an AUP and making the required finding under Section 23E.96.090.B. In addition, yards and building separation shall also be subject to the limitation and exception provisions set forth in Sections 23D.04.030 or 23E.04.030, as the case may be. (Ord. 7210-NS § 25, 2011: Ord. 6949-NS § 18 (part), 2006: Ord. 6848-NS § 16 (part), 2005: Ord. 6478-NS § 4 (part), 1999)

Section 23E.96.080 Reserved

Section 23E.96.090 Findings

A. No Use Permit shall be granted under the H District's provisions unless the Board or the Zoning Officer makes the finding under Section 23B.32.040.

B. In order for an Administrative Use Permit to be granted under Sections 23E.96.070.B or C, a finding shall be made that the height modification or the yard reduction is consistent with the purposes for the H District. (Ord. 6854-NS § 21 (part), 2005: Ord. 6478-NS § 4 (part), 1999)

FIRE DEPARTMENT REQUIREMENTS

Berkeley Fire Code BMC 19.48 Sec. 902.2.1 Required access. Fire apparatus access roads shall be provided in accordance with Sections 901 and 902.2 for every facility, building or portion of a building hereafter constructed or moved into or within the jurisdiction when any portion of the facility or any portion of an exterior wall of the first story of the building is located more than 150 feet (45 720 mm) from fire apparatus access as measured by an approved route around the exterior of the building or facility.

Berkeley Fire Code BMC 19.48 Sec. 903.2 Required Water Supply for Fire Protection. An approved water supply capable of supplying the required fire flow for fire protection shall be provided to all premises upon which facilities, buildings or portions of buildings are hereafter constructed or moved into or within the jurisdiction. When any portion of the facility or building protected is in excess of 150 feet (45,720 mm) from a water supply on a public street as measured by an approved route around the exterior of the facility or building, on-site fire hydrants and mains capable of supplying the required fire flow shall be provided when required by the chief. See Section 903.4.

IWAMOTOSCOTT ARCHITECTURE
729 TENNESSEE STREET
SAN FRANCISCO CA 94107
415 643 7773

September 20, 2013

Wendy Cosin
Fax 510-981-7470

Re: 2750 Cedar Street & 1609 La Vereda Rd
APN 058-2211-20 & 058-2211-18-2

Dear Wendy

We are requesting a hearing to respond to the Notice of Intention to Determine Status dated September 4, 2013.

Please let me know if you have any questions.

Sincerely,

Lisa Iwamoto

RECEIVED
SEP 30 2013
TOXICS MGMT. DIVISION

MICHAEL TOLLESON, ARCHITECT
1331 40TH ST
UNIT 309
EMERYVILLE, CA 94608
MICHAEL@MICHAELTOLLESON.COM

17 September 2013

Wendy Cosin, Deputy Planning Director
Planning & Development
2118 Milvia St
3rd Floor
Berkeley, CA 94704

Re Notice of Intention to Determine Status - 2750 Cedar St & <1609 La Vereda Rd
APN 058-2211-20 & 058-2211-18-2

Wendy,

Thank you for your time yesterday and acceptance of this correspondence on behalf of my client, Dr Louis B Lin, the forthcoming Owner of the subject parcels, currently in escrow.

As the period for response to the Notice is thirty days and I have just received the documents contained in the package sent to the prior owners, it would be greatly appreciated if we could resolve the difference in our positions as soon as possible.
My recommendation below is that the Notice is in error and that a Hearing is not required.

Please provide a reply that includes consensus with Eric Angstadt and Zach Cowan.
This is a priority in my schedule and I am available to meet with you on short notice.

Berkeley Municipal Code states:

23C.04.020 Establishment of Lawful Non-Conforming Uses, Buildings, Structures & Lots

A. Any Use, structure or building which is a Lawful Non-Conforming Use, structure or building shall be deemed to be in compliance with this Ordinance if it has remained in continuous existence. The non-conformity may result from any inconsistency with the requirements of this Ordinance, whether substantive or procedural, including, but not limited to, the inconsistency of the Use, building or structure or aspects thereof, with any requirement of this Ordinance or the lack of a Zoning Certificate or Use Permit.

B. The following lots which have areas less than the minimum lot size required by this Ordinance shall be considered Lawful Non-Conforming Lots. Such lots may be used as building sites subject to all other requirements of this Ordinance, except that if the total area of all contiguous vacant lots fronting on the same street and under the same ownership on or after September 1, 1958 is less than that required for one lot under this Ordinance, such lots may be used as only one building site.

1. Any lot described in the official records on file in the office of the County Recorder of Alameda County or Contra Costa County as a lot of record under one ownership prior to November 30, 1950 or which was shown as a lot on any recorded subdivision map, filed prior to November 30, 1950; ...

The subject parcels are 3,106 sf and 4,007 st, respectively.
Their combined square footage of 7,113 sf is greater than the 5,000 sf minimum requirement for the R-1(H) zone.

510 658 2945
www.michaeltolleson.com

The parcels cannot be merged based on combined size.
(Note that the parcels do not front on the same street.)
See attached Site Plan (A-PLAN-SITE-002.pdf).

An extensive title search, including Chain of Title extending back before 1950, has been generated for the purchase of these parcels.
Parcel 058-2211-18-2 is described in the official records of the County Recorder of Alameda County on 15 June 1948 and meets the requirements of 23C.04.020.B.1 for a Lawful Non-Conforming Use.
See attached Deed (Deed_1948_058-2211-18-2.pdf).

California Fire Code adopted by the Berkeley Municipal Code states:

SECTION 503 FIRE APPARATUS ACCESS ROADS

503.1 Where required. Fire apparatus access roads shall be provided and maintained in accordance with Sections 503.1.1 through 503.1.3.

503.1.1 Buildings and facilities. Approved fire apparatus access roads shall be provided for every facility, building or portion of a building hereafter constructed or moved into or within the jurisdiction. The fire apparatus access road shall comply with the requirements of this section and shall extend to within 150 feet (45 720 mm) of all portions of the facility and all portions of the exterior walls of the first story of the building as measured by an approved route around the exterior of the building or facility.

Exception: The fire code official is authorized to increase the dimension of 150 feet (45 720 mm) where:

1. The building is equipped throughout with an approved automatic sprinkler system installed in accordance with Section 903.3.1.1, 903.3.1.2 or 903.3.1.3.

2. Fire apparatus access roads cannot be installed because of location on property, topography, waterways, nonnegotiable grades or other similar conditions, and an approved alternative means of fire protection is provided.

3. There are not more than two Group R-3 or Group U occupancies.

Parcel 058-2211-20 contains an existing SFR, which is to be repaired and improved at its current square footage and height.
See attached Perspective View (A-COVR-001.pdf).
Most of the structure is greater than 150' from the Access at La Vereda.
(Note that its legal frontage is on the unimproved section of Cedar St.)
As no additional square footage is planned, it may be repaired without fire sprinklers, though the forthcoming Owner is likely to include them in improvements.
See also Sam Law, Berkeley Fire & Safety, 510 981 7447, slaw@ci.berkeley.ca.us.

Parcel 058-2211-18-2 provides buildable site area less than 150' from La Vereda.
Exceptions 1-3 can be utilized for areas greater than 150' from La Vereda.

The Notice-quoted California Government Code 66451.10.a states:

...two or more contiguous parcels...shall not be deemed merged by virtue of the fact that the contiguous parcels...are held by the same owner...

The California Government Code states:

Subdivision Map Act
(Excerpt)

66412.6. Presumption of Lawful Creation of Certain Parcels

(a) For purposes of this division or of a local ordinance enacted pursuant thereto, any parcel created prior to March 4, 1972, shall be conclusively presumed to have been lawfully created if the parcel resulted from a division of land in which fewer than five parcels were created

and if at the time of the creation of the parcel, there was no local ordinance in effect which regulated divisions of land creating fewer than five parcels.

(b) For purposes of this division or of a local ordinance enacted pursuant thereto, any parcel created prior to March 4, 1972, shall be conclusively presumed to have been lawfully created if any subsequent purchaser acquired that parcel for valuable consideration without actual or constructive knowledge of a violation of this division or the local ordinance. Owners of parcels or units of land affected by the provisions of this subdivision shall be required to obtain a certificate of compliance or a conditional certificate of compliance pursuant to Section 66499.35 prior to obtaining a permit or other grant of approval for development of the parcel or unit of land.

(c) This section shall become operative January 1, 1995.

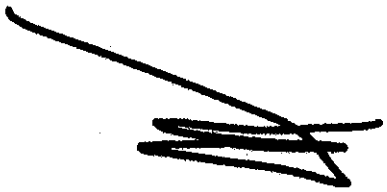
Either 66412.6.a or 66412.6.b may be utilized.

Utilizing all provided Code sections and Supporting Documents, Parcel 058-2211-18-2 may remain separate from Parcel 058-2211-20 and may be developed to include construction of a new SFR within current R-1(H) requirements.
An easement through Parcel 058-2211-18-2 to access Parcel 058-2211-20 must be created prior to construction of the new SFR.
Required Parking must be mechanically stacked to provide Parking to both parcels.

The City of Berkeley may request a Certificate of Compliance to assure Chain of Title.

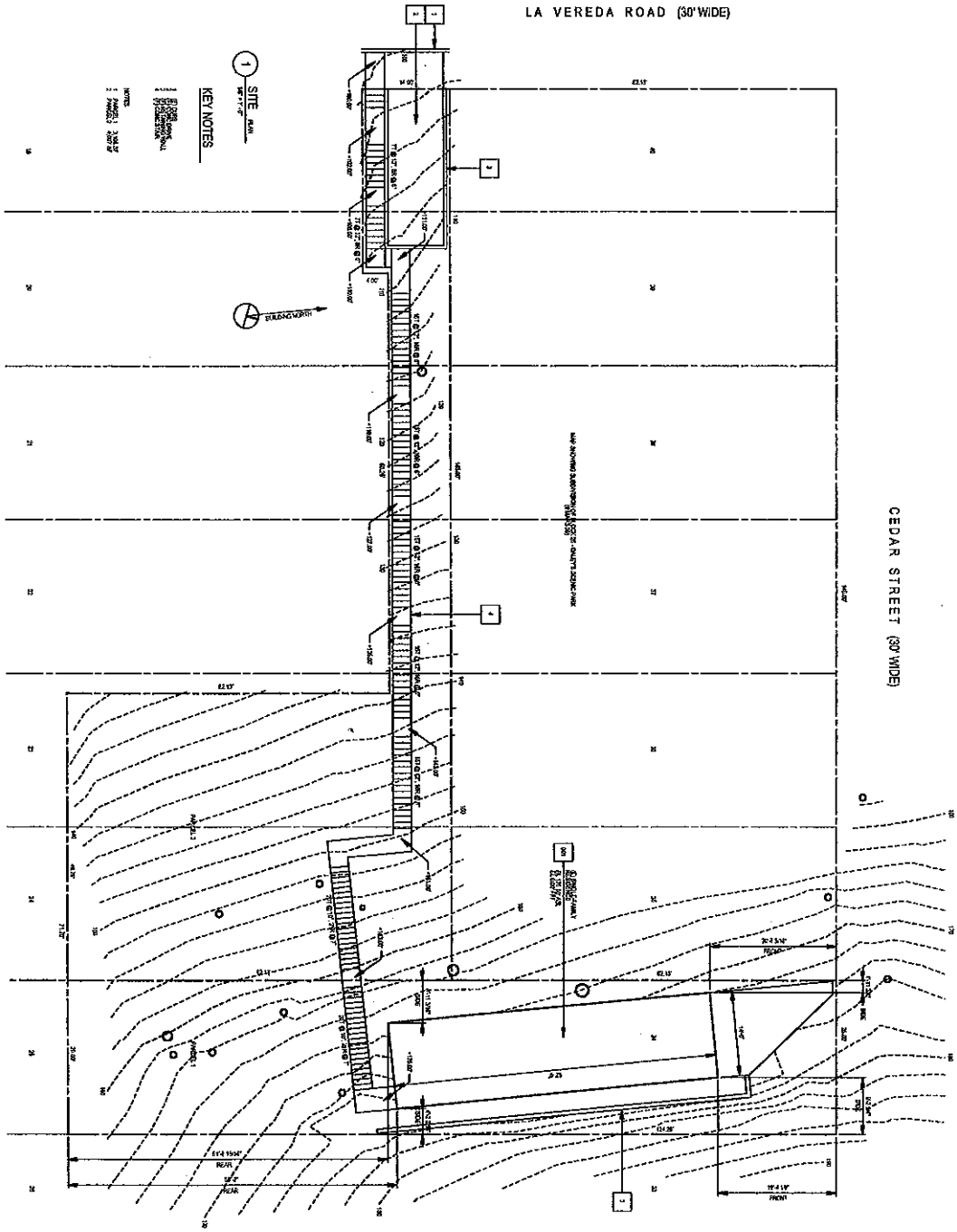
My recommendation is that the Notice of Intention to Determine Status is in error, relying on Code sections superseded by the those provided.
The Notice should be withdrawn and the Status recommended herein permanently recorded with Alameda County Records.
The City of Berkeley may request a Certificate of Compliance to assure Chain of Title.

Sincerely,



Michael Tolleson, Architect, LEED AP
1331 40th St, Unit 309
Emeryville, CA 94608
510 658 2945
michael@michaeltolleson.com

cc Eric Angstadt, Director, Planning & Development
Zach Cowan, Assistant City Attorney


LA VEREDA ROAD (30' WIDE)
CEDAR STREET (30' WIDE)
SITE PLAN
KEY NOTES
BUILDING NORTH

BOOK 5531 PAGE 204 — 404940

THIS SPACE FOR RECORDER'S USE ONLY

AC47787

Deed

(JOINT TENANCY)

10
361-C

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, EDGAR DORSEY TAYLOR hereby

GRANTS to P. K. BUSKIRK and CLEMENS JAMESON BUSKIRK, his wife,

AS JOINT TENANTS

all that real property situated in the City of Berkeley, County of Alameda, State of California, described as follows:

Portion of Lots 35, 36, 37, 38, 39 and 40, in Block 25, as said lots and block are shown on the "Map showing subdivision of Block 25, and resubdivision of lots 21, 22, 23, 24, Block 15; lot 6, block 16; lot 6, block 24; lot 6, block 23; lots 8 and 9, block 26 in Daley's Scenic Park, Berkeley, Cal.", filed September 16, 1889, in Book 9 of Maps, page 35, in the office of the County Recorder of Alameda County, bounded as follows:

Beginning at a point on the eastern line of Highland Place, formerly LaVereda, as said line is described in the deed to the City of Berkeley, dated September 23, 1909 and recorded September 25, 1909, in Book 1643 of Deeds, page 289, Alameda County Records, distant thereon southerly 62.13 feet from the southern line of Cedar Street as said street is shown on said map; running thence along said line of Highland Place southerly 14.00 feet; thence easterly parallel with the said line of Cedar Street 30.00 feet; thence northerly parallel with the said line of Highland Place 4.00 feet; thence easterly parallel with the said line of Cedar Street 68.25 feet; thence southerly parallel with the said line of Highland Place 52.13 feet to a point on the southern boundary line of said lot 36; thence easterly along the southern boundary lines of said lots 36 and 35, a distance of 46.75 feet to a point on the eastern line of said lot 35; thence along the last mentioned line northerly 62.13 feet to a line drawn easterly from the point of beginning and parallel with the said line of Cedar Street; thence parallel with the said line of Cedar Street westerly 145.00 feet to the point of beginning.

EXCEPTION OF 18.2

DATED June 15th, 1948

Edgar Dorsey Taylor

STATE OF CALIFORNIA } ss.
COUNTY OF ALAMEDA }

On June 15th, 1948 before me, the undersigned a Notary Public in and for said County and State personally appeared

Edgar Dorsey Taylor

known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

(SEAL)

Notary Public in and for said County and State.

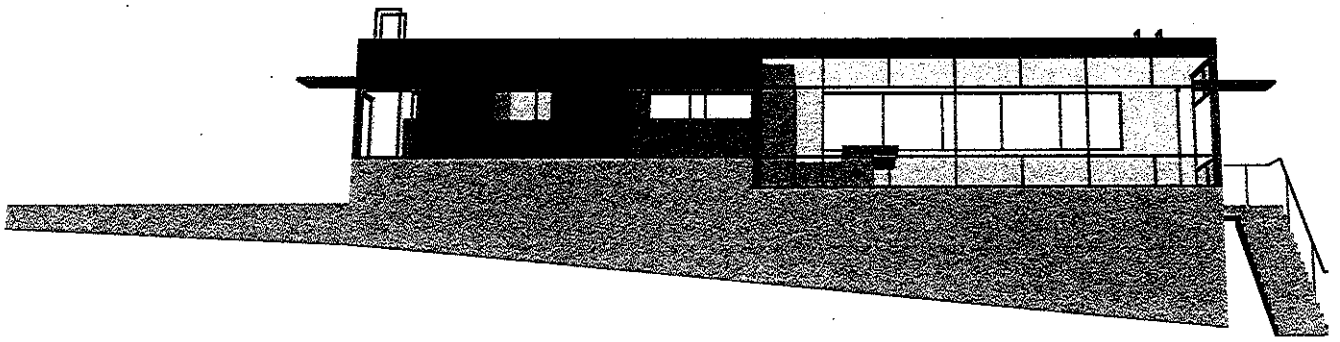
(When recorded mail to:
Name P.K. BUSKIRK
Address 421 COLUSA AVE
City EL CERRITO State CALIF
Form 12 Appl. No. 404940 Nc

FOR RECORDER'S USE ONLY

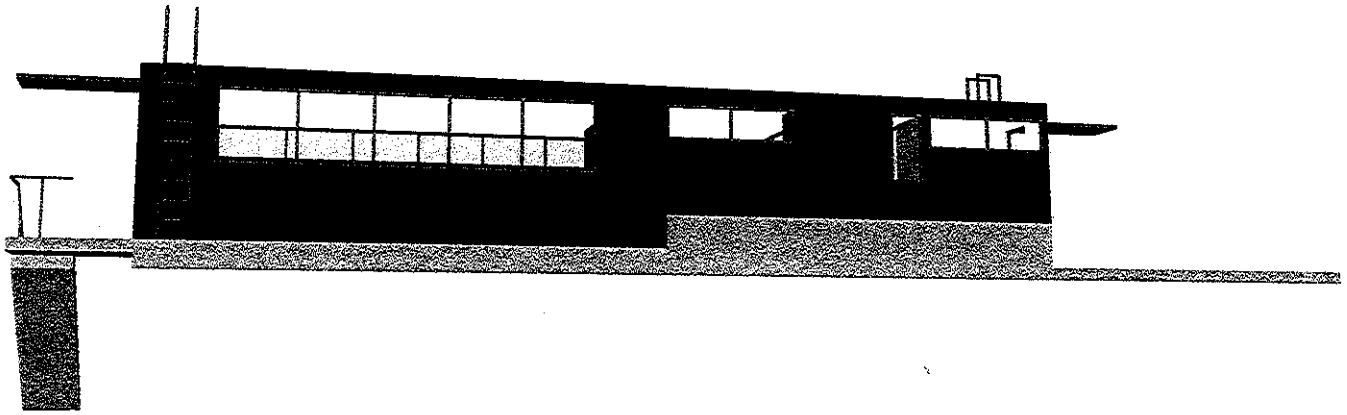
RECORDED at REQUEST OF
ALAMEDA COUNTY
EAST BAY TITLE INS. CO.
AT 9 A. M.

JUN 17 1948
BOOK 5531, PAGE 204
OFFICIAL RECORDS OF
ALAMEDA COUNTY, CALIFORNIA
Thomas W. Fitzsimmons
COUNTY RECORDER

2 00 7F



1 PERSPECTIVE WEST - FRONT
VIEW2



2 PERSPECTIVE NORTH - REAR
VIEW

MICHAEL TOLLESON, ARCHITECT

A - 0.2

CEDAR

EXTR VIEW

Cosin, Wendy

Subject: FW: Notice-2750 Cedar

From: Michael Tolleson, Architect [mailto:michael@michaeltolleson.com]
Sent: Monday, October 07, 2013 3:39 PM
To: Cosin, Wendy
Subject: Re: Notice-2750 Cedar

Wendy,

I have further reviewed State and Berkeley Codes.

I am adding the following as Supplemental reference as of today:

21.52.020 Mergers required.
If any one of two or more contiguous parcels or units held by the same owner does not conform to existing zoning regulations regarding site area to permit development (whether or not already developed), and at least one parcel or unit has not been developed with a building for which a building permit is required and was issued, or which was built prior to the time such permits were required, then such parcels shall be considered as merged for the purposes of this title, subject to any exceptions provided in the Berkeley zoning ordinance, (Ord. 6478-N.S.), ...

The specific Exceptions are noted in my original, provided Response.

If you could provide the Staff Report in PDF so that I may have adequate time to review it prior to the Hearing, it would be greatly appreciated.

Sincerely,

Michael Tolleson, Architect, LEED AP
1331 40th St
Unit 309
Emeryville, CA 94608
510 658 2945
510 332 9520 iPhone
michael@michaeltolleson.com
www.michaeltolleson.com

Chapter 21.52

PARCEL MERGERS

Sections:

Section 21.52.010 Mergers not required.

Two or more contiguous parcels or units of land which have been subdivided under the provisions of this title or the Subdivision Map Act shall not merge by virtue of the fact that such contiguous parcels are held by the same ownership. No further proceedings under this title shall be required for the purpose of sale, lease or financing, except as provided by this chapter. (Ord. 5793-NS § 2 (part), 1987)

Section 21.52.020 Mergers required.

If any one of two or more contiguous parcels or units held by the same owner does not conform to existing zoning regulations regarding site area to permit development (whether or not already developed), and at least one parcel or unit has not been developed with a building for which a building permit is required and was issued, or which was built prior to the time such permits were required, then such parcels shall be considered as merged for the purposes of this title, subject to any exceptions provided in the Berkeley zoning ordinance, (Ord. 6478-N.S.), and provided that the requirements of Article 1.5, Sections 66451.10 through 66451.21 of the Subdivision Map Act are satisfied. (Ord. 5793-NS § 2 (part), 1987)

Section 21.52.030 Intention to merger and hearing.

Whenever the Director of Planning has knowledge that real property has merged pursuant to this chapter, he/she shall carry out the duties of the local agency specified in Sections 66451.13 through 66451.18 of the Subdivision Map Act, in a manner which assures that the specified time limits will be met. Hearings shall be conducted by the Planning Commission. (Ord. 5793-NS § 2 (part), 1987)

Section 21.52.040 Determination of merger.

Whenever the Director of Planning has knowledge that real property has merged pursuant to this chapter, and that the requirements specified in Section 21.52.030 have been met, he/she shall cause to be filed with the County Recorder a determination of merger in accordance with Sections 66451.16 or 66451.17 of the Subdivision Map Act. (Ord. 5793-NS § 2 (part), 1987)

Section 21.52.050 Release of the notice of intention to determine status.

If, at the conclusion of a hearing, the Planning Commission determines that affected parcels are not to be merged, the Director of Planning shall cause to be recorded a release of the notice of intention to determine status, and shall notify the owner, in accordance with Section 66451.18 of the Subdivision Map Act. (Ord. 5793-NS § 2 (part), 1987)

Section 21.52.060 Request by property owner.

Upon request of the legal owner of contiguous parcels, the Director of Planning may approve the merger of the property. Such request shall be in writing and shall be accompanied by such data and documents as

ORDINANCE NO. 6,905–N.S.

AMENDING SECTION 1 OF ORDINANCE 6,321-N.S., AS AMENDED (ORDINANCES 6,462-N.S., 6,484-N.S., 6,550-N.S., AND 6,796-N.S.), DECLARING A MORATORIUM ON THE REMOVAL OF COAST LIVE OAK TREES, TO PROHIBIT ANY PRUNING OF A COAST LIVE OAK THAT IS EXCESSIVE AND INJURIOUS TO THE TREE

BE IT ORDAINED by the City Council of the City of Berkeley as follows:

Section 1. That Section 1 of Ordinance No. 6,321-N.S., declaring a Moratorium on the removal of Coast Live Oak Trees, as amended, by Ordinances 6,462-N.S., 6,484-N.S., 6,550-N.S., and 6,796-N.S., is hereby amended to read as follows:

Section 1.

a. A Moratorium is declared on the removal of any single stem Coast Live Oak tree of a circumference of 18 inches or more and any multi-stemmed Coast Live Oak with an aggregate circumference of 26 inches or more at a distance of four feet up from the ground within the City of Berkeley.

b. Any pruning of a Coast Live Oak that is excessive and injurious to the tree is prohibited. Excessive and injurious pruning is defined as the removal of more than one-fourth of the functioning leaf, stem or root system of a tree in any 24 month period.

c. An exception may be made to this Section if the City Manager, or his designee, finds that any tree described in this Ordinance is a potential danger to life or limb due to the condition of the tree, or is a danger to property, and that the only reasonable mitigation would be removal of the tree.

d. This Section will not prevent the one-time removal, to be determined by the Director of Parks and Waterfront in consultation with the Parks and Recreation Commission of up to four young Coast Live Oaks, 14 inches or less in diameter (DBH), from the area adjacent to the Berkeley Rose Garden deer fence at the Euclid Avenue Overlook, for the purposes of restoring or maintaining public view corridors at the Berkeley Rose Garden.

e. This Section will not prevent the one-time relocation on-site of one Coast Live Oak tree at 3000 Shasta Road, on the site of the proposed Hills Fire Station, consistent with condition 16 of Use Permit 01-10000057 as approved by the Zoning Adjustments Board, or, removal of said tree if the City Council so determines on appeal of said Use Permit. This paragraph shall be ineffective if the Hills Fire Station is not built.

Section 2.

Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Old City Hall, 2134 Martin Luther King, Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

* * * * * *

At a regular meeting of the Council of the City of Berkeley held on January 24, 2006, this Ordinance was passed to print and ordered published by posting by the following vote:

Ayes: Councilmembers Anderson, Capitelli, Maio, Moore, Olds, Spring, Worthington, and Wozniak.

Noes: None.

Absent: Mayor Bates.

At a regular meeting of the Council of the City of Berkeley held on February 7, 2006, this Ordinance was adopted by the following vote:

Ayes: Councilmembers Anderson, Capitelli, Maio, Moore, Olds, Spring, Worthington, Wozniak, and Mayor Bates.

Noes: None.

Absent: None.

Tom Bates

Tom Bates, Mayor

ATTEST: Sara T. Cox

Sara T. Cox, City Clerk

In effect: March 9, 2006

Filed 4/20/12

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

SIERRA CLUB, Plaintiff and Appellant, v. NAPA COUNTY BOARD OF SUPERVISORS et al., Defendants and Respondents.	A130980 (Napa County Super. Ct. No. 26-51193)

In 2009 respondent Napa County Board of Supervisors[1] adopted clarifying lot line adjustment Ordinance No. 1331 (Ordinance). Subject to provisos, sequential lot line adjustments are included within the definition of "lot line adjustment." (Napa County Code, § 17.02.360.) Appellant Sierra Club has facially challenged the Ordinance as violative of both the Subdivision Map Act[2] (Map Act or act) and the California Environmental Quality Act[3] (CEQA). We hold that the provisions of the Ordinance allowing sequential lot line adjustments are consistent with the Map Act's exclusion of lot line adjustments from the requirements of the act. Further, since the Ordinance spells out a ministerial lot line adjustment approval process, the Ordinance is exempt from CEQA purview. Finally, we reject respondents' claim that appellant's action is time-barred. Accordingly, we affirm the judgment.

[1] We refer collectively to respondents Napa County Board of Supervisors (Board) and the County of Napa as "County" or "respondents."

[2] Government Code section 66410 et seq. Unless otherwise noted, all statutory references are to the Government Code.

[3] Public Resources Code section 21000 et seq.

I. BACKGROUND

A. *History of Lot Line Adjustment Provisions under the Map Act*

In 1976 the Legislature amended the Map Act to exempt from the procedures of the act any lot line adjustment between two or more adjacent parcels, where the land taken from one parcel was added to an adjacent parcel but no additional parcels were thereby created, and provided the lot line adjustment was approved by the local agency. (§ 66412, as amended by Stats. 1976, ch. 92, § 1, p. 150.) Prior to that time, some local jurisdictions required that a parcel map be filed before a conveyance could be made to effect a lot line adjustment. The amendment eliminated the need to file a parcel map for minor adjustments to lot lines between adjacent parcels. (Dept. of Real Estate, Enrolled Bill Rep. on Assem. Bill No. 2381 (1975-1976 Reg. Sess.) Mar. 26, 1976.) The legislation was also described as allowing a " 'friendly neighbor' [lot line] adjustment without going through procedures provided in the map act . . . . " (Sen. Local Gov. Com., Staff Analysis on Assem. Bill No. 2381, as amended Jan 15, 1976.)

Fifteen years later, the Legislature enacted a bill that restricted the scope of the exemption to lot line adjustments "between four or fewer existing adjoining parcels," with the same proviso that a greater number of parcels than originally existed is not thereby created. (§ 66412, subd. (d) (§ 66412(d)).) The statute further provides that the lot line adjustment must be approved by the local agency or advisory agency, and the agency's review and approval shall be limited "to a determination of whether or not the parcels resulting from the lot line adjustment will conform to the local general plan, any applicable specific plan, any applicable coastal plan, and zoning and building ordinances." (*Ibid*.)

B. *History Of Napa Ordinances Governing Lot Line Adjustments*

In 2002 the County revised its local ordinance to coincide with the changes set forth in the amended section 66412(d), specifically reflecting that lot line adjustments involving four or fewer adjoining parcels were exempt from the Map Act. The ordinance also prohibited lot line adjustments that transformed nonbuilding parcels into buildable ones, as determined by parcel size, shape, geographic features, legal restrictions and other

unspecified factors. The ordinance was silent on whether sequential adjustments affecting four or fewer parcels would be permitted.

Around December 2007, the County planning director solicited direction from the Board concerning whether sequential lot line adjustments should be permitted, and if so, to what degree. At the time there were pending applications from one owner for lot line adjustments affecting 16 contiguous parcels, in which each application only affected four parcels but were sequential in that a lot adjusted under one application was further adjusted under a sequential application. A survey of other county practices revealed that one county prohibited sequential lot line adjustments outright and another allowed them with a waiting period between each sequential application. Another option would allow sequential adjustments outright without delay. At the time, there were less than 100 instances countywide in which a single owner owned more than four contiguous parcels, but that ownership affected nearly 100,000 acres. The director recommended an ordinance allowing the processing of successive applications, but with a waiting period or delay of six to eight weeks between applications during which time the first reconfiguration would be recorded. The Board accepted the recommendation and directed staff to prepare an ordinance.

In 2008 the County received lot line adjustment applications from Calness Vintners affecting a total of six parcels located within the Agricultural Preserve Zoning District. The Town of Yountville objected to the lot line adjustments, complaining that the adjustment of parcels adjacent to its boundaries appeared to set the stage for future residential development that would reduce agricultural use and raise other potential environmental impacts. At least one property owner appealed. At the hearing, the Board asked staff to prepare an agenda item enabling it to reconsider its position on sequential lot line adjustments specifically, and the approval process generally.

In May 2009 a draft ordinance was presented to the Board. The draft distinguished between "major" lot line adjustments dependent on discretionary approval subject to CEQA, and "minor" adjustments treated as ministerial and thus outside CEQA's purview. Sequential lot line adjustments and adjustments requiring a variance

would be considered "major," as would those entirely relocating an existing parcel, or seeking to enlarge a parcel to more than 10 acres.[4] "Sequential lot line adjustment" was defined as any readjustment of a parcel which had been previously adjusted in the past five years. As well, the draft ordinance revised the definition of "buildability" to provide further guidance as to what was a "buildable" lot eligible for adjustment.

At the hearing, the Board grappled with how to distinguish between major and minor lot line adjustments. One supervisor put it this way: "I think there is a sequential lot line adjustment that is used to subvert—to get around CEQA and that's what we . . . want to include as a major lot line adjustment, but how you distinguish that from the tractor turn around and the other adjustment that is sometimes . . . needed . . . ." The Board directed staff to develop a draft ordinance in concert with stakeholders representing a variety of interests. Four meetings were held over the summer, resulting in a substantially revised ordinance. Gone was the distinction between major and minor lot line adjustments. Additionally, all adjustments were deemed ministerial except those requiring a variance or processed concurrently with a discretionary permit. As well, the ordinance revised the definition of "buildability" and continued to authorize sequential lot line adjustments.[5]

The revised ordinance went to the planning commission in October 2009, with the commission recommending Board approval. During the hearing, the chairperson expressed concern that although the ordinance did not allow for the creation of new

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[4] Ten acres is the minimum parcel size on which a winery may be built in the County. (Napa County Code, § 18.104.240, subd. B.)

[5] Specifically, the ordinance provides that "[l]ot line adjustments shall include sequential lot line adjustments, in which parcels which have been previously adjusted are subsequently readjusted, provided that the prior adjustment has been completed and resulting deeds recorded prior to the sequential lot line adjustment application being filed." (Napa County Code, § 17.02.360, subd. B.) The ordinance defines "[l]ot line adjustment" as "a reorientation of a property line or lines between four or fewer existing adjoining parcels, where the land taken from one parcel is added to an adjoining parcel and where a greater number of parcels than originally existed is not thereby created." (*Id*., § 17.02.360, subd. A.)

parcels, "maybe you're modifying something that is gonna lead to more development. And I struggle with that one philosophically . . . . [W]hat are we really doing here?"

The Board adopted the Ordinance in December 2009, with an effective date of January 7, 2010. The approvals asserted that the Ordinance was exempt from CEQA based on a class 5 categorical exemption[6] and general rule.[7] At the hearing, questions again arose as to the ministerial-discretionary distinction, particularly where there are ministerial lot line adjustments proposed concurrently with discretionary approvals. The planning director acknowledged that "if someone wants to game the system and has the time to invest in a long process of sequential applications," an applicant could "get around this."

The Ordinance as adopted continued the County's existing administrative practice of allowing lot line adjustments impacting four or fewer parcels to readjust lots included in a prior application, provided the prior adjustments had been completed and recorded. So, too, the new Ordinance continued existing policy and practice such that line adjustments are ministerial acts not subject to CEQA.

[6] A class 5 exemption "consists of minor alterations in land use limitations in areas with an average slope of less than 20%, which do not result in any changes in land use or density, including but not limited to: [¶] (a) Minor lot line adjustments . . . ." (Cal. Code Regs., tit. 14, § 15305 (hereafter Regs.).)

[7] A project is exempt from CEQA if "[t]he activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA." (Regs., § 15061, subd. (b)(3).)

C. *Litigation*

Sierra Club challenged the Ordinance by a petition for writ of mandate, alleging (1) violation of the Map Act's limited lot line adjustment exemption; (2) violation of the Map Act and CEQA due to classifying all lot line adjustment approvals as ministerial; (3) violation of CEQA's prohibition on piecemealing; and (4) that the Ordinance did not qualify for any CEQA exemption.

Sierra Club requested that the County stipulate to a court order extending its time to prepare the record, pursuant to Public Resources Code section 21167.6, subdivision (c). The County agreed and the court ordered that the deadline to prepare the record was extended to May 14, 2010.

The County demurred on grounds that Sierra Club failed to effect summons within 90 days of the decision, as required by section 66499.37, for any proceeding challenging a decision "concerning a subdivision." (*Ibid*.) Overruling the demurrer, the trial court held that the County's stipulation to extend time to prepare the record amounted to a general appearance, and thus the County waived any irregularities in the service of summons.

Thereafter the court denied the petition on the merits, ruling that the language of the Map Act was clear on its face and did not bar sequential lot line adjustments. It concluded that while the legislative history of the applicable amendment demonstrated a concern over unfettered land reconfiguration through the lot line adjustment process, it was plausible that rather than seeking to ban all sequential lot line adjustments, the Legislature was attempting to find a balance for "an appropriate pace of land reconfiguration." (Italics omitted.) Further, the court ruled that because the County's approval of lot line adjustments was constrained under the Map Act and the Ordinance, such approvals were ministerial and not subject to CEQA. The court further found that the County's adoption of the Ordinance came within the "common sense" CEQA exemption. In this regard, it noted that there was substantial evidence that the ministerial approval of sequential lot line adjustments was already legal and practiced by the County, and thus there was no possibility of affecting the physical environment.

II. DISCUSSION

A. *Sierra Club's Action Was Not Time-barred*

The County raises an issue of error concerning the trial court's nonappealable order overruling its demurrer, continuing to press that Sierra Club's action is time-barred. It is proper to raise this issue in the respondent's brief. (See *Selger v. Steven Brothers, Inc*. (1990) 222 Cal.App.3d 1585, 1593-1594.) Nevertheless, the ruling was correct.

In March 2010, pursuant to Public Resources Code section 21167.6, subdivision (c), the County stipulated to entry of an order by the trial court extending the time for preparing, certifying and lodging the administrative record. That statute provides for an extension "only upon the stipulation of all parties who have been properly served in the action or proceeding or upon order of the court." (*Ibid*.)

The County's action of agreeing in writing that the court had authority to enter an order extending the record preparation deadline constituted a general appearance. A general appearance waives any irregularities and is equivalent to personal service of the summons on a party. (Code Civ. Proc., § 410.50.) The list of acts constituting an appearance set forth in Code of Civil Procedure section 1014 (e.g., answering, demurring, moving to strike or transfer) is not exclusive. Instead, the determining factor is " 'whether defendant takes a part in the particular action which in some manner recognizes the authority of the court to proceed.' [Citation.]" (*Hamilton v. Asbestos Corp.* (2000) 22 Cal.4th 1127, 1147.)

Here, the County took part in the action by stipulating in writing to an order granting Sierra Club a 60-day extension to prepare the administrative record. That action acknowledged the authority of the court to grant the extension and foreshadowed certification of the record by the County so that a certified record could be lodged with the court, a necessary precondition for a hearing. As such, the action constituted a general appearance and waived all irregularities.

B. *No Map Act Conflict*

Sierra Club is adamant that the Ordinance violates the Map Act by negating its limited exemption for lot line adjustments. This essentially is a claim that section

66412(d) preempts the local lot line adjustment Ordinance because the Ordinance facially conflicts with the statutory exclusion. Not so.

Section 66412(d) states that the Map Act shall be inapplicable to "[a] lot line adjustment between four or fewer existing adjoining parcels, where the land taken from one parcel is added to an adjoining parcel, and where a greater number of parcels than originally existed is not thereby created, if the lot line adjustment is approved by the local agency, or advisory agency. A local agency or advisory agency shall limit its review and approval to a determination of whether or not the parcels resulting from the lot line adjustment will conform to the local general plan, any applicable specific plan, any applicable coastal plan, and zoning and building ordinances. An advisory agency or local agency shall not impose conditions or exactions on its approval of a lot line adjustment except to conform to the local general plan, any applicable specific plan, any applicable coastal plan, and zoning and building ordinances, to require the prepayment of real property taxes prior to the approval of the lot line adjustment, or to facilitate the relocation of existing utilities, infrastructure, or easements. No tentative map, parcel map, or final map shall be required as a condition of approval of a lot line adjustment. . . . The lot line adjustment shall be reflected in a deed, which shall be recorded."

A municipality such as the County "may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws." (Cal. Const., art. XI, § 7.) It is this constitutional police power which confers on municipalities the authority to enact land use regulations and control their own land use decisions. (*Associated Home Builders etc., Inc. v. City of Livermore* (1976) 18 Cal.3d 582, 604.) Under the police power, municipalities "have plenary authority to govern, subject only to the limitation that they exercise this power within their territorial limits and subordinate to state law. [Citation.] . . . [¶] If otherwise valid local legislation conflicts with state law, it is preempted by such law and is void." (*Candid Enterprises, Inc. v. Grossmont Union High School Dist.* (1985) 39 Cal.3d 878, 885.) Facial challenges to legislation are the most difficult to successfully pursue because the challenger must demonstrate that " ' " no set of circumstances exists under which the

[law] would be valid." ' [Citation.]" (*T.H. v. San Diego Unified School Dist*. (2004) 122 Cal.App.4th 1267, 1281.) Thus, the moving party must establish that the challenged legislation inevitably is in total, fatal conflict with applicable prohibitions. (*Ibid*.)

When local municipalities regulate in areas over which they traditionally have exercised control, our courts presume, absent a clear preemptive intent from the Legislature, that such regulation is not preempted by state law. (*Big Creek Lumber Co. v. County of Santa Cruz (*2006) 38 Cal.4th 1139, 1149.) Local land use regulations conflict with general laws and are void if the local legislation duplicates, contradicts, or enters an area occupied fully by the general law. Local legislation is contradictory to general law when it is inimical to it. (*Id*. at p. 1150.)

The Ordinance does not conflict with section 66412(d). First, according to the plain, clear and unambiguous language of the statute, the Legislature has excluded from the Map Act lot line adjustments meeting the following criteria: (1) the adjustment is between four or fewer parcels; (2) the parcels must be adjoining; (3) the adjustment does not result in more parcels than originally existed; and (4) the lot line adjustment is approved by the local agency. The Ordinance's inclusion of sequential lot line adjustments within the definition of a "lot line adjustment" does not run afoul of any of these criteria and hence should likewise be exempt from the Map Act. Sequential lot line adjustments are only allowed in cases where a prior adjustment involving four or fewer adjoining parcels has been completed and approved; no new parcels have been created; and deeds reflecting the adjustment have been recorded prior to any sequential lot line application being filed.

Second, Sierra Club's insistence that the County distorts the plain language of the statute by inserting the word "application" into it is not persuasive. The County is not "inserting" the term "application" into the statute. Rather, the term "sequential lot line adjustment" is defined in part with reference to the timing of a sequential lot line application. Timing is important because there will be no sequential lot line adjustment or application for the same unless the prior adjustment has been completed and deeds have been recorded reflecting the initial adjustment. This issue of timing comports with

section 64412(d), notably the requirement that qualifying adjustments pertain to existing adjoining parcels and the directive that the adjustment be reflected in a recorded deed.

To make its point, Sierra Club declares: "To adjust the boundaries of 16 parcels by submitting four applications affecting four parcels each is gamesmanship. A straightforward reading of the statute requires the County to disregard such artifice, and look instead at the aggregate number of parcels whose boundaries are to be adjusted." (Fn. omitted.) There are several problems with this statement. First, four applications affecting four parcels each would not be submitted at the same time. Rather, each application would have to result in recorded deeds and the approval standards for the adjustment would have to be met, including that the adjustment will not result in a nonbuildable parcel becoming buildable,[8] parcels will not be reduced below certain minimum standards, and the like. (Napa County Code, § 17.46.040.) More to the point, Sierra Club illustrates its argument with an as applied example, but its attack on the Ordinance is facial.[9] The challenger mounting a facial attack must show that the defective regulation presently poses a total and fatal conflict. (*T.H. v. San Diego Unified School Dist*., *supra*, 122 Cal.App.4th at p. 1281; see *Association of California Ins. Cos. v. Poizner* (2009) 180 Cal.App.4th 1029, 1054.) Sierra Club cannot meet this burden. In any event, we are not reviewing the approval of the proffered illustration, and surmise that a variety of attacks on purported gamesmanship might be available.

Next, Sierra Club prods us to review the legislative history, which it maintains evinces an unmistakable intent to curtail the scope of the exemption. In essence appellant suggests section 66412(d) is ambiguous in light of the Ordinance, because the statute is silent on the matter of sequential lot line adjustments. As the trial court did, in an abundance of caution we will take a look at that history.

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[8] To be considered buildable, a parcel must meet the following criteria: (1) it must contain a minimum of 2,400 square feet of net lot; (2) it must have existing access rights to a public street; and (3) the parcel must contain a building site, by definition a minimum of 25 feet wide and 25 feet deep. (Napa County Code, § 17.46.040, subd. C.3.a.-c.)

[9] The same can be said for the case law cited, which likewise involve as applied challenges.

We begin with case law, namely *San Dieguito Partnership v. City of San Diego* (1992) 7 Cal.App.4th 748, involving a prior iteration of the statute which exempted lot line adjustments " 'between two or more existing adjacent parcels' " with the proviso that the adjustment not result in a greater number of parcels than originally existed. (*Id*. at p. 751.) There, the owners sought reconfiguration of their nine parcels, five of which had no frontage to a street, so all would have street frontage. The trial court found that the exemption was intended only to apply to minor changes in parcel lines and there was a limit to the number of lots that could be adjusted under the exemption. (*Id.* at p. 754.) Reversing, the reviewing court held that the only numerical limitation on parcels that could be included in a lot line adjustment is that the adjustment not result in the creation of more parcels than originally existed, commenting that had the Legislature been interested in limiting the number of parcels which could be subject to an adjustment, "[i]t surely would have been an easy task to attach such a limit . . . ." (*Id*. at p. 757.)

Such a limit came with the 2001 amendments to section 66412(d), limiting the exemption to adjustments between four or fewer parcels. The enrolled bill memorandum summarizes arguments in support of the amendments: "This bill closes a loophole in the [Map Act] that allows major subdivisions of land to occur without adequate local review. This practice has resulted in inappropriate new development that does not comply with local general planning, does not provide adequate infrastructure such as sewers and roads, and does not meet affordable housing requirements of approved general plans." (Enrolled Bill Mem. to Governor on Sen. Bill No. 497, Sept. 24, 2001.) Another report further explained that developers and land speculators recently have " 'changed the landscape' by exploiting loopholes in the . . . Map Act. Although many antiquated parcels are inconsistent with minimum lot size and development requirements, lot line adjustments are now used as an exception to the usual requirements for subdivision approval in order to effectively 'resubdivide' the property without providing infrastructure or conforming to community land use plans. By this method, antiquated subdivision owners reconfigure their parcels and make them buildable merely by obtaining certificates of compliance and processing a lot line adjustment. . . . This allows

speculators to avoid not only the Map Act but also infrastructure, general plan, specific plan, local coastal plan, and [CEQA] requirements that would otherwise apply." (Governor's Office of Planning & Research, Enrolled Bill Rep. on Sen. Bill No. 497, Oct. 3, 2001, p. 2, underscore omitted.) The report went on to state that the same "end run around state law and local regulations" occurred in new subdivisions, in which developers would apply for lot line adjustments at some point that resulted in dramatic impacts with significant environmental effect, with no CEQA review and the like. (*Id.* at p. 3.)

Sierra Club intones that the Ordinance has "reopened" the loophole that the section 66412(d) amendments were intended to close, by folding sequential lot line adjustments into the permissible lot line adjustments that are exempt from the Map Act. The legislative history sampled above reveals that there were a number of concerns with unchecked land reconfiguration through inappropriate lot line adjustments that circumvented state and local review. However, we do not divine an intent to bring all sequential lot line adjustments within the Map Act's ambit. The Ordinance does not allow an endless stream of lots to be adjusted at one time, nor does it allow a nonbuildable parcel to become buildable through the adjustment process. The requirements that a landowner must obtain approval of adjustments of no more than four adjoining lots at one time, then record the deeds reflecting those adjusted lots before filing and processing another application, serve the purpose of deterring simultaneous adjustment of unlimited parcels, while still fostering the benefits served by a simple lot line adjustment process. The sequential lot line adjustment process set forth in the Ordinance injects meaningful temporal constraints on larger scale lot line adjustments. We concur with the trial court's conclusion that it was plausible the Legislature "was seeking to strike a balance for an appropriate pace of land reconfiguration through the use of lot line adjustments, whether for potential development or otherwise. . . . [T]he language of the 2001 amendment does dictate a slower rate of reconfigurations through adjustments than could occur under the former language of the statute. Curtailing, without prohibiting such lot line adjustments may well have been precisely the

legislature's intent in implementing the language it chose for the amendment. Certainly, if the legislature had intended to bring all sequential lot line adjustments within the purview of the Map Act, it easily could have used alternative language to make that intention clear." (Italics omitted.)

C. *The Approval of Sequential Lot Line Adjustments under the Ordinance Is Not Subject to CEQA*

Sierra Club insists that the approval of a sequential lot line adjustment is a discretionary act within the meaning of CEQA, and thus subject to the act's requirements. We disagree.

1. *Legal Framework*

As a general matter, CEQA applies to all discretionary projects[10] proposed or approved by a public agency that do not fall within a statutory exemption. (Pub. Resources Code, § 21080, subd. (a).) A "[d]iscretionary project" is a project the approval or disapproval of which requires exercise of judgment or deliberation, as contrasted with situations in which the public agency merely determines whether the project conforms with applicable statutes, ordinances or regulations. (Regs., § 15357.) CEQA will apply where the public agency uses its judgment in deciding not only whether to approve, but also how to carry out, a proposed project. (*Id*., § 15002, subd. (i).)

On the other hand, ministerial projects are exempt from CEQA requirements. (Pub. Resources Code, § 21080, subd. (b)(1); Regs., § 15268, subd. (a).) Determining what is "ministerial" for CEQA purposes is most appropriately made by the public agency involved in a particular decision, based on the agency's analysis of its own laws, and each agency preferably should make this determination as part of its implementing regulations or ordinances. (Regs., § 15268, subds. (a), (c).) Whether a particular agency

[10] Under CEQA, a "project" is "an activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment" that is undertaken or supported by a public agency or involves issuance of an entitlement for use by a public agency. (Pub. Resources Code, § 21065.)

exercises discretionary or ministerial controls over a project "depends on the authority granted by the law providing the controls over the activity." (*Id.*, § 15002, subd. (i)(2).)

The term "ministerial" refers to a public agency's decisions "involving little or no personal judgment by the public official as to the wisdom or manner of carrying out the project. The public official merely applies the law to the facts as presented but uses no special discretion or judgment in reaching a decision. A ministerial decision involves only the use of fixed standards or objective measurements, and the public official cannot use personal, subjective judgment in deciding whether or how the project should be carried out." (Regs., § 15369.)

2. *Analysis*

In keeping with the CEQA Guidelines, the Ordinance classifies lot line adjustments as ministerial acts, as follows: "The tentative approval of lot line adjustments and subsequent review and approval of deeds are ministerial acts and not subject to CEQA; except that the tentative approval of lot line adjustments are discretionary and subject to CEQA when, (a) the lot line adjustment requires a variance . . . ; or (b) is processed concurrent with a related application for a use permit or other discretionary approval." (Napa County Code, § 17.46.020.) Additionally, the County's local procedures for implementing CEQA lists lot line adjustments among the approvals "conclusively presumed to be ministerially exempt from the requirements of CEQA . . . ."

Applications that comply with 12 specified standards are deemed to conform to the general plan, any specific plan, and county zoning and building ordinances, and *must be* approved.[11] (Napa County Code, § 17.46.040, subd. C.) The only condition of

[11] These standards include the following: (1) the lot line adjustment will result in the transfer of not more than four existing, adjoining legal parcels; (2) the adjustment will not result in a greater number of parcels than originally existed; (3) a nonbuildable parcel will not be made buildable by the adjustment; (4) the lot line adjustment will not reduce parcels that equal or exceed a minimum parcel size established by the applicable zoning district or designated by the Ordinance below the pertinent minimum or set size, unless a corresponding number of parcels that are (a) smaller than such minimum, (b) included within the lot line adjustment and (c) located in the same zoning district will be increased to exceed such minimum size; (5) subject to exception, the resultant parcel will not be

approval that the director of public works can impose is a deed condition to ensure that standard (12) above is satisfied prior to recording the deed/s consummating the adjustment. (*Ibid*.)

Sierra Club argues we should not pay any deference to the County's classification of sequential lot line adjustments, but surely that is not the law. Otherwise, why would the governing regulations acknowledge that the local public agency is the most appropriate entity to determine what is ministerial, based on analysis of its own laws and regulations, and urge that the agency make that determination in *its* implementing regulations? (Regs., §§ 15022, subd. (a)(1)(B), 15268, subds. (a), (c).)

Sierra Club also maintains that CEQA requires individualized decisions concerning lot line adjustments, decisions that are inherently discretionary. Appellant misunderstands the distinction between discretionary and ministerial decisions. "The statutory distinction between discretionary and purely ministerial projects implicitly recognizes that unless a public agency can shape the project in a way that would respond to concerns raised in an [environmental impact report], or its functional equivalent, environmental review would be a meaningless exercise." (*Mountain Lion Foundation v. Fish & Game Com*. (1997) 16 Cal.4th 105, 117; *Health First v. March Joint Powers Authority* (2009) 174 Cal.App.4th 1135, 1143 (*Health First*).) *Health First* involved a

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bisected or internally severed by a road previously dedicated for public use; (6) unless waived by a granted variance, the resultant parcels will comply with all parcel design provisions in the Zoning Ordinance; (7) the resultant parcels will have legal access to a publicly maintained road, as shown on the application map; (8) no public utility easement shown on a final or parcel map will be adversely affected by the adjustment; (9) the size of an adjusted parcel that will use an individual sewage system must equal or exceed the minimum parcel size established by the applicable code; (10) if the adjustment reduces a parcel greater than 10 acres to less than 10 acres, the resulting parcel must be connected to a public sewer or be suitable for an on-site sewage disposal system or qualify for such system on an abutting parcel; (11) subject to exception, after recordation of the deed consummating the adjustment, no recorded security interest will encumber only a portion of any resulting parcel; and (12) the transfer of property from one parcel to the adjoining parcel will not enable more parcels to be created through future subdivision than could have been created through merger and resubdivision of the original parcels. (Napa County Code, § 17.46.040, subd. C.)

challenge to the review of a grocer's design plan application for a large warehouse distribution facility. Review of the plan entailed deciding whether the application was in keeping with the requirements, fixed standards and proposed mitigation measures set forth in the specific plan, the environmental impact report and the design guidelines. The review team accomplished its mission by completing a checklist of 125 yes or no questions. As such it exercised no discretion and instead acted ministerially. (*Health First, supra,* at p. 1144.)

The ministerial/discretionary distinction has also been framed this way: "As applied to private projects, the purpose of CEQA is to minimize the adverse effects of new construction on the environment. To serve this goal the act requires assessment of environmental consequences where government has the power through its regulatory powers to eliminate or mitigate one or more adverse environmental consequences a study could reveal. Thus the touchstone is whether the approval process involved allows the government to shape the project in any way which could respond to any of the concerns which might be identified in an environmental impact report. And when is government foreclosed from influencing the shape of the project? Only when a private party can legally compel approval without any changes in the design of its project which might alleviate adverse environmental consequences." (*Friends of Westwood, Inc. v. City of Los Angeles* (1987) 191 Cal.App.3d 259, 266-267, italics omitted (*Friends of Westwood*).)

Following *Friends of Westwood,* the court in *Leach v. City of San Diego* (1990) 220 Cal.App.3d 389, 394-395 held that a municipality was not required to prepare an environmental impact report before being permitted to draft water from a reservoir; despite environmental consequences, the municipality had little or no ability to minimize in any significant way the environmental damages that might be identified in the report. As one reviewing court recently put it, quoting from a major treatise: " 'CEQA does not apply to an agency decision simply because the agency may exercise some discretion in approving the project or undertaking. Instead to trigger CEQA compliance, the discretion must be of a certain kind; it must provide the agency with the ability and authority to

"mitigate . . . environmental damage" to some degree.' [Citations.]" (*San Diego Navy Broadway Complex Coalition v. City of San Diego* (2010) 185 Cal.App.4th 924, 934 (*San Diego Navy*).)

Here, the Map Act exempts from discretionary reviews, exactions and conditions those lot line adjustments that fit the specifications of section 66412(d). Local agency review is expressly limited to determining whether the resulting lots will conform to the local general plan, any applicable specific or coastal plan, and building and zoning ordinances. (*Ibid.*) Section 66412 describes a prototypical ministerial approval process, and indeed approval of a lot line adjustment application has been characterized as involving "only a ministerial decision," as contrasted with a subdivision proposal. (*Loewenstein v. City of Lafayette* (2002) 103 Cal.App.4th 718, 721.) In other words, "the regulatory function of the approving agency is strictly circumscribed by the Legislature in a lot line adjustment, with very little authority as compared to the agency's function and authority in connection with a subdivision." (*San Dieguito Partnership v. City of San Diego*, *supra*, 7 Cal.App.4th at p. 760.)

In keeping with section 66412(d), the procedure for approving lot line adjustments under the Oridinance involves only ministerial acts unless a variance or use permit is involved. The fixed approval standards delineate objective criteria or measures which merely require the agency official to apply the local law—e.g, building and zoning code provisions—to the facts as presented in a given lot line adjustment application. (Regs., § 15369.) The approval process is one of determining conformity with applicable ordinances and regulations, and the official has no ability to exercise discretion to mitigate environmental impacts. (*Id.*, § 15357; *San Diego Navy, supra*, 185 Cal.App.4th at p. 934.)

Sierra Club cites *La Fe, Inc. v. County of Los Angeles* (1999) 73 Cal.App.4th 231 for the notion that lot line adjustments can affect development potential, and thus their approval constitutes a project subject to CEQA. However, CEQA only applies to *discretionary* projects, and we have determined that lot line adjustments under the Ordinance entail only ministerial acts. The *La Fe* court found that lot line adjustments

constituted development under the Coastal Act that fell within the permit jurisdiction of the California Coastal Commission, and as such the commission had jurisdiction to deny the owner's application for a coastal development permit or waiver. (*Id.* at pp. 239-242.) *La Fe* involved primarily the authority of a *state agency*——the Coastal Commission—over "development" as defined distinctly in the *Coastal Act* to include "any other division of land, including lot splits . . . ." (Pub. Resources Code, § 30106.) The issue of statutory interpretation posed by *La Fe* is thus inapposite to the case at hand. Further, the lot line adjustment in question would have made all the lots accessible to a public street, but the street could not facilitate adequate access to the lots by firefighting equipment. On the other hand, the Ordinance would not allow such an outcome, because it prohibits lot line adjustments that render a nonbuildable parcel buildable, and defines buildable as including access rights to a public street. (Napa County Code, § 17.46.040, subd. C.)

Finally, it bears pointing out that the Ordinance did nothing to change existing land use policies and regulations in the County's general plan and building and zoning ordinances, and it in fact codified the County's existing, legal practice of allowing Map Act, exempt sequential lot line adjustments that conform to other laws to be approved ministerially. Thus the Ordinance does not enable any development beyond what already is possible through existing land use policies and zoning laws.

III. DISPOSITION

In light of our conclusion that the approval of a lot line adjustment under the Ordinance is a ministerial act and thus not subject to CEQA, we need not consider Sierra Club's remaining CEQA arguments.

The judgment is affirmed. Parties to bear their own costs on appeal.

_____
Reardon, J.

We concur:

_____
Ruvolo, P.J.

_____
Sepulveda, J.[*]

Sierra Club v. Napa County Board of Supervisors, A130980

[*] Retired Associate Justice of the Court of Appeal, First Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Trial Court:	Napa County Superior Court
Trial Judge:	Hon. Francisca P. Tisher
Counsel for Appellant:	Block, DeVincenzi & Zelazny Kevin P. Block
Counsel for Respondents:	Robert Westmeyer County Counsel Laura J. Anderson Deputy County Counsel Miller Starr Regalia Arthur F. Coon
Counsel for Amicus Curiae on Behalf of Respondents:	Allen Matkins Leck Gamble Mallory & Natsis Michael Patrick Durkee David H. Blackwell Thomas P. Tunny

RECORDING REQUESTED BY:
JAVED ELLAHIE
The Ellahie Law Firm
12 S. First St., Suite 600
San Jose, Ca 95113

WHEN RECORDED MAIL TO:
James & Nancy Thompson
17200 Los Robles Way
Los Gatos, CA 95030

DOCUMENT: 18382343

Pages: 3

Fees ... 13 00
Taxes. .
Copies
AMT PAID 13 00

BRENDA DAVIS
SANTA CLARA COUNTY RECORDER
Recorded at the request of
Grantee

RDE # 010
5/20/2005
1:58 PM

Parcel Number(s): 532-36-075, -076 &-077

TRUST TRANSFER DEED

Documentary transfer tax is none. No Consideration.

James McNair Thompson and Nancy A. Thompson

hereby **CONVEY** to

James McNair Thompson and Nancy A. Thompson, Trustees JNT Trust

the following described real property in the City of Los Gatos, in the County of Santa Clara, State of California:

See Exhibit A

Dated: ~~April~~ MAY 6, 2005
NAT

James McNair Thompson

Nancy A. Thompson

STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

On ~~April~~ May 6, 2005, before me, GIRISH H PATEL, a Notary Public in and for said State, personally appeared James McNair Thompson and Nancy A. Thompson, ~~personally known to me (or~~ proved to me on the basis of satisfactory evidence~~)~~ to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

Witness my hand and official seal.

Notary Signature

GIRISH H. PATEL
Comm. # 1362322
NOTARY PUBLIC - CALIFORNIA
Santa Clara County
My Comm. Expires June 28, 2006

MAIL TAX STATEMENTS TO: James & Nancy Thompson
17200 Los Robles Way
Los Gatos, CA 95030

the following described real property in the State of California, County of Santa Clara, Town of Los Gatos:

PARCEL ONE.

PORTION OF LOTS 15 AND 16, AS SHOWN UPON THAT CERTAIN MAP ENTITLED, "MAP OF LOS ROBLES SUBDIVISION", WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, ON AUGUST 12, 1929 IN BOOK "X" OF MAPS, AT PAGES 48 AND 49, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE DIVIDING LINE BETWEEN LOTS 15 AND 16 WHERE THE SAME IS INTERSECTED BY THE TERMINUS OF THE CENTER LINE OF LOS ROBLES WAY, AS SAID LOTS AND WAY ARE SHOWN UPON THE MAP HEREINABOVE REFERRED TO; THENCE RUNNING ALONG THE DIVIDING LINE BETWEEN SAID LOTS 15 AND 16, SOUTH 62° 05' EAST, 276.3 FEET TO THE EASTERLY COMMON CORNER OF SAID LOTS 15 AND 16; THENCE RUNNING ALONG THE SOUTHEASTERLY LINE OF SAID LOT 15, SOUTH 34° 30' WEST, 194 FEET TO THE MOST SOUTHERLY CORNER THEREOF. THENCE RUNNING NORTH 62° 05' WEST, AND ALONG THE SOUTHWESTERLY LINE OF SAID LOT 15 210 FEET; THENCE LEAVING SAID LINE AND RUNNING NORTH 34° 30' EAST AND PARALLEL WITH THE SOUTHEASTERLY LINE OF SAID LOT 15, 129 FEET; THENCE NORTH 62° 05' WEST AND PARALLEL WITH THE SOUTHWESTERLY LINE OF SAID LOT 15, 148.30 FEET, MORE OR LESS, TO A POINT ON THE DIVIDING LINE BETWEEN LOTS 14 AND 16 OF SAID LOS ROBLES SUBDIVISION THENCE RUNNING NORTH 34° 30' EAST AND ALONG SAID DIVIDING LINE 65 FEET TO A POINT FORM WHICH THE POINT OF BEGINNING OF THIS DESCRIPTION BEARS SOUTH 62° 05' EAST THENCE LEAVING SAID DIVIDING LINE AND RUNNING SOUTH 62° 05' EAST 82 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

PARCEL TWO:

PORTION OF LOT 16, AS SHOWN UPON THAT CERTAIN MAP ENTITLED, "MAP OF LOS ROBLES SUBDIVISION", WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, ON AUGUST 12, 1929 IN BOOK "X" OF MAPS, AT PAGES 48 AND 49, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE DIVIDING LINE BETWEEN LOTS 15 AND 18 WHERE THE SAME IS INTERSECTED BY THE TERMINUS OF THE CENTER LINE OF LOS ROBLES WAY, AS SAID LOTS AND WAY ARE SHOWN UPON THE MAP HEREINABOVE REFERRED TO; THENCE RUNNING ALONG THE DIVIDING LINE BETWEEN SAID LOTS 15 AND 16, SOUTH 62° 05' EAST, 276.3 FEET TO THE EASTERLY COMMON CORNER OF SAID LOTS 15 AND 16; THENCE RUNNING ALONG THE SOUTHEASTERLY L)NE OF SAID LOT 16, NORTH 34° 30' EAST, 207.4 FEET TO THE MOST EASTERLY CORNER OF SAID LOT 16; THENCE ALONG THE NORTHEASTERLY LINE OF SAID LOT 16, NORTH 61° 29' WEST; 360.60 FEET TO THE MOST EASTERLY CORNER OF LOT 12; THENCE RUNNING SOUTH 34° 30' WEST. AND ALONG THE NORTHWESTERLY LINE OF SAID LOT 16, 207.4 FEET, MORE OR LESS, TO A POINT FROM WHICH 62° 05' EAST, THENCE RUNNING SOUTH 62° 05' EAST, 84.03 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

PARCEL THREE:

BEGINNING AT A ONE INCH BAR IN THE SOUTHWESTERLY BOUNDARY OF THAT CERTAIN 24.98 ACRE TRACT OF LAND CONVEYED BY SCOTT INVESTMENT COMPANY, A CORPORATION, TO L BALL AND GRACE BALL, HIS WIFE, BY DEED DATED FEBRUARY 27, 1945 AND RECORDED MARCH 21, 1945 IN BOOK 1250 OF OFFICIAL RECORDS, AT PAGE 168, SANTA CLARA COUNTY RECORDS, AND DISTANT THEREON SOUTH 62° EAST, 174,60 FEET FROM THE WESTERLY CORNER OF SAID 24.98 ACRE TRACT OF LAND, SAID POINT OF BEGINNING ALSO BEING THE MOST WESTERLY CORNER OF THAT CERTAIN PARCEL OF LAND CONVEYED BY TOM C. HAIRE, ET UX, TO JOSEPH W. OSTLE, ET UX, BY DEED DATED NOVEMBER 4, 1947, AND RECORDED NOVEMBER 5, 1947 IN BOOK 1524 OF OFFICIAL RECORDS, AT PAGE 548; THENCE RUNNING ALONG SAID SOUTHWESTERLY BOUNDARY LINE OF THE 24.98 ACRE PARCEL OF LAND SOUTH 62° EAST 265,30 FEET TO THE POINT 0 INTERSECTION THEREOF WITH THE CENTER LINE OF A TWENTY FOOT RIGHT OF WAY; THENCE ALONG SAID CENTER LINE NORTH 0° 33' EAST 56.34 FEET TO THE MOST SOUTHERLY CORNER OF SAID PARCEL OF LAND SO CONVEYED TO OSTLE, NORTH 62° WEST, 184 FEET THENCE ALONG A SOUTHEASTERLY LINE OF SAID PARCEL SO CONVEYED TO OSTLE SOUTH 75° 51' WEST, 74.51 FEET TO THE POINT OF BEGINNING, AND BEING A PART OF THE SAID 24.98 ACRE TRACT IN THE RANCHO RINCONADA DE LOS GATOS, AND ALSO BEING A PORTION OF THAT CERTAIN PARCEL OF LAND DESIGNATED AS PARCEL NO. 3 ON THAT CERTAIN MAP ENTITLED, "RECORD OF SURVEY OF A PORTION OF LAND OF L.N. AND GRACE BALL, BEING A PORTION OF THE KENNEDY TRACT IN THE RANCHO RINCONADA DE LOS GATOS, SANTA CLARA COUNTY, CALIFORNIA", AND WHICH SAID MAP WAS RECORDED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, ON AUGUST 8, 1946 IN BOOK 9 OF MAPS, AT PAGE 28.

PARCEL FOUR:

TOGETHER WITH A NON-EXCLUSIVE RIGHT OF WAY FOR INGRESS AND EGRESS OVER A STRIP OF LAND 20 FEET IN WIDTH, THE CENTER LINE OF WHICH IS THE EASTERLY LINE OF PARCEL NO. 3 HEREINABOVE DESCRIBED AND THE EASTERLY LINE OF THE CERTAIN PARCEL OF LAND CONVEYED BY TOM C. HAIRE, ET UX, TO JOSEPH W. OSTLE, ET UX, BY DEED DATED NOVEMBER 4, 1947 AND RECORDED NOVEMBER 5, 1947 IN BOOK 1524 OF OFFICIAL RECORDS, AT PAGE 548 AND SAID CENTER LINE BEING MORE FULLY DESCRIBED AS BEGINNING AT THE MOST SOUTHERLY CORNER OF PARCEL NO. 3 HEREINABOVE DESCRIBED, AND RUNNING THENCE NORTH 0°

EXHIBIT A

33' EAST, 124.61 FEET, NORTH 2° 14' WEST, 50.04 FEET AND NORTH 11° 52' WEST, 100.52 FEET TO THE SOUTHERLY LINE OF THE PROPOSED EASTERLY EXTENSION OF HARDING AVENUE, SAID POINT ALSO BEING THE NORTHEASTERLY CORNER OF SAID PARCEL OF LAND SO CONVEYED TO OSTLE.

EXCEPTING FROM PARCEL 4 THAT PORTION THEREOF LYING WITHIN THE DEED RECORDED JUNE 5, 1978 IN BOOK D71 7, OFFICIAL RECORDS, PAGE 171, SANTA CLARA COUNTY RECORDS,

This is to certify that this is a
true copy of the document
on file in this office.
ATTEST:
Regina Alcomendras
CLERK-RECORDER
Santa Clara, CA
07/27/2021

6035362

D 717 PAGE 171
FILED FOR RECORD
AT REQUEST OF
Bradley Clifford
JUN 5 10 22 AM '78

OFFICIAL RECORDS
SANTA CLARA COUNTY
GEORGE A MANN
REGISTRAR RECORDER

Order No.
Escrow No.
Loan No.

WHEN RECORDED MAIL TO:

Bradley Clifford
246 Harding Ave
Los Gatos, CA 95030

D 717 PAGE 171

4.00

SPACE ABOVE THIS LINE FOR RECORDER'S USE

MAIL TAX STATEMENTS TO:
Bradley & Polly Clifford
246 Harding Ave
Los Gatos, CA 95030

DOCUMENTARY TRANSFER TAX $ NONE
___ COMPUTED ON FULL VALUE OF PROPERTY CONVEYED
___ COMPUTED ON FULL VALUE LESS LIENS AND ENCUMBRANCES REMAINING AT TIME OF SALE
CONSIDERATION LESS THAN $100.-
Bradley Clifford
Signature of Declarant or Agent determining tax – Firm Name

QUITCLAIM DEED

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

R. BLAINE THOMPSON and WINIFRED M. THOMPSON, his wife

do hereby REMISE, RELEASE AND FOREVER QUITCLAIM to

BRADLEY CLIFFORD and POLLY CLIFFORD,
his wife, as joint tenants

the real property in the City of
County of Santa Clara, State of California, described as

FOR DESCRIPTION OF PREMISES SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

Dated 4/28/78

R. Blaine Thompson
Winifred M. Thompson

STATE OF CALIFORNIA
COUNTY OF Santa Clara } ss.

On 4/28/78
before me, the undersigned, a Notary Public in and for said State, personally appeared R. Blaine Thompson and Winifred M. Thompson

known to me to be the person s whose name s are subscribed to the within instrument and acknowledged that they executed the same.

WITNESS my hand and official seal.

Signature Norman A. Stoner

OFFICIAL SEAL
NORMAN A. STONER
NOTARY PUBLIC - CALIFORNIA
SANTA CLARA COUNTY
My Commission Expires Aug. 4, 1978

(This area for official notarial seal)

1085 (10/69)

MAIL TAX STATEMENTS AS DIRECTED ABOVE

EXHIBIT "A" ATTACHED TO DEED FROM THOMPSON TO CLIFFORD

That parcel of land in the County of Santa Clara, State of California, described as follows:

D 717 PAGE 172

BEGINNING at a one inch bar in the Southwesterly boundary of that 24.98 acre tract of land conveyed to L. N. Ball, et ux, by Deed recorded March 21, 1945 in Book 1250 Official Records, page 168, and distant thereon S. 62° E. 174.60 feet from the Westerly corner of said 24.98 acre tract of land; thence parallel with the Northwesterly boundary of said 24.98 acre tract of land N. 34° E. 232.45 feet to a 3/4 inch iron pipe set in the Southwesterly line of the proposed extension of Harding Avenue; thence along the Southwesterly line of proposed extension of Harding Avenue S. 62° E., 93.65 feet to a point in the center line of a right of way 20 feet wide, hereinafter referred to; thence along the center line of said 20 foot right of way S. 11° 52' E. 100.82 feet, S. 2° 14' E., 50.04 feet and S. 0° 33' W., 68.27 feet to the point of intersection of said center line with a line running parallel with and distant Northeasterly at right angles 50 feet from the Southwesterly line of said 24.98 acre tract, said point of intersection being distant N. 0° 33' E., 56.34 feet from a point in the Southwesterly line of said 24.98 acre tract, said last mentioned point being distant along said Southwesterly line S. 62° E., 265.30 feet from the point of beginning of this description; thence leaving the center line of said 20 foot right of way and along said line that is parallel with and distant Northeasterly 50 feet at right angles from the Southwesterly line of said 24.98 acre tract N. 62° W., 184.00 feet to a point in said parallel line that is distant thereon S. 62° E., 50 feet from the intersection of said parallel line with the first course of this description; thence S. 75° 51' W., 74.51 feet to the point of beginning and being a portion of said 24.98 acre tract in the Rancho Rinconada de Los Gatos and being a portion of that parcel of land designated as Parcel No. 3 on that Map of Record of Survey of a portion of land of L. N. and Grace Ball, recorded on August 8, 1946, in Book 9 of Maps, page 28, Santa Clara County Records.

This is to certify that this is a
true copy of the document
on file in this office.
ATTEST:

AUG 20 2021

COUNTY CLERK-RECORDER
SANTA CLARA COUNTY, CALIFORNIA

6619884

6619884 F _72 PAGE 400

Order No.
Escrow No.
Loan No.

F _72 PAGE 400

FILED FOR RECORD
AT REQUEST OF
Daniel E. Williams
JAN 9 4 51 PM '80
OFFICIAL RECORDS
SANTA CLARA COUNTY
GEO. E. KAHN
RECORDER

38

WHEN RECORDED MAIL TO:
DANIEL E. WILLIAMS
304 HARDING AVENUE
LOS GATOS, CA 95030

SPACE ABOVE THIS LINE FOR RECORDER'S USE

MAIL TAX STATEMENTS TO:

SAME AS ABOVE

DOCUMENTARY TRANSFER TAX $ CONSIDERATION OVER 100.00

___ COMPUTED ON FULL VALUE OF PROPERTY CONVEYED
___ COMPUTED ON FULL VALUE LESS LIENS AND ENCUMBRANCES REMAINING AT TIME OF SALE

Signature of Declarant or Agent determining tax -- Firm Name

QUITCLAIM DEED

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged
BRADLEY CLIFFORD AND POLLY CLIFFORD, his wife

do hereby REMISE, RELEASE AND FOREVER QUITCLAIM to

DANIEL ENOCH WILLIAMS AND RAYBORNA S. WILLIAMS, his wife as joint tenants

the real property in the City of LOS GATOS
County of SANTA CLARA , State of California, described as

LOT 67, AS SHOWN ON THE MAP OF TRACT NO. 1817 LOS GATOS TERRACE UNIT NO. 2, WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, ON JULY 2, 1958 IN BOOK 95 OF MAPS, AT PAGE 2.

Dated DECEMBER 17, 1979

STATE OF CALIFORNIA
COUNTY OF SANTA CLARA } ss.

On DECEMBER 17, 1979
before me, the undersigned, a Notary Public in and for said State, personally appeared
BRADLEY CLIFFORD AND POLLY CLIFFORD
known to me to be the person S whose name S ARE subscribed to the within instrument and acknowledged that THEY executed the same.

WITNESS my hand and official seal.

Signature Linda Conley

Bradley Clifford
Polly Clifford

OFFICIAL SEAL
LINDA CONLEY
NOTARY PUBLIC — CALIFORNIA
PRINCIPAL OFFICE IN THE
COUNTY OF SANTA CLARA
Comm. Exp. July 26, 1981

(This area for official notarial seal)

1085 (10/69)

MAIL TAX STATEMENTS AS DIRECTED ABOVE

This is to certify that this is a
true copy of the document
on file in this office.
ATTEST

AUG 20 2021

COUNTY CLERK-RECORDER
SANTA CLARA COUNTY, CALIFORNIA

D 817 PAGE 504
6079048

Order No.
Escrow No.
Loan No.

WHEN RECORDED MAIL TO:

Daniel E. Williams
304 Harding Ave
Los Gatos, CA 95030

FILED FOR RECORD
AT REQUEST OF
Daniels C. Williams
JUL 17 4 20 PM '78

OFFICIAL RECORDS
SANTA CLARA COUNTY
GEORGE A MANN
REGISTRAR RECORDER

P
3
D 817 PAGE 504

SPACE ABOVE THIS LINE FOR RECORDER'S USE

MAIL TAX STATEMENTS TO:
Daniel & Rayborna Williams
304 Harding Ave
Los Gatos, CA 95030

DOCUMENTARY TRANSFER TAX $_____
___ COMPUTED ON FULL VALUE OF PROPERTY CONV YED
___ COMPUTED ON FULL VALUE LESS LIENS AND ENCUMBRANCES REMAINING AT TIME OF SALE

Signature of Declarant or Agent determining tax – Firm Name

QUITCLAIM DEED

Consideration under $100.00

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

R. BLAINE THOMPSON and WINIFRED M. THOMPSON, his wife

do hereby REMISE, RELEASE AND FOREVER QUITCLAIM to

DANIEL ENOCH WILLIAMS and RAYBORNA S. WILLIAMS, his wife, as joint tenants

the real property in the City of Los Gatos
County of Santa Clara, State of California, described as

Lot 67 as shown on the Map of Tract No. 1817 Los Gatos Terrace Unit No. 2, which Map was filed for record in the office of the Recorder of the County of Santa Clara, State of California, on July 2, 1958 in Book 95 of Maps, at page 2.

Dated 4/28/78

R. Blaine Thompson
Winifred M. Thompson

STATE OF CALIFORNIA
COUNTY OF Santa Clara } ss.

On 4/28/78
before me, the undersigned, a Notary Public in and for said State, personally appeared R. Blaine Thompson and Winifred M. Thompson

known to me to be the person s whose name s are subscribed to the within instrument and acknowledged that they executed the same.

WITNESS my hand and official seal.

Signature Norman A. Stoner

OFFICIAL SEAL
NORMAN A. STONER
NOTARY PUBLIC - CALIFORNIA
SANTA CLARA COUNTY
My Commission Expires Aug. 4, 1978

(This area for official notarial seal)

1085 (10/69)

MAIL TAX STATEMENTS AS DIRECTED ABOVE

This is to certify that this is a
true copy of the document
on file in this office.
ATTEST:

AUG 20 2021

COUNTY CLERK-RECORDER
SANTA CLARA COUNTY, CALIFORNIA

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