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A P P E A R A N C E S:

Los Gatos Planning Commissioners:	Kendra Burch, Chair Susan Burnett Adam Mayer Joseph Sordi Emily Thomas
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1 COMMISSIONER MAYER: Yes, I did go to the site. I
2 just want to disclose that in a professional capacity I've
3 worked with HMM, the landscape architect and civil engineer
4 on the project, but I haven't spoken to anyone there about
5 this particular project.

6 CHAIR BURCH: Thank you for that. Ms. Walters,
7 will you be presenting the report this evening?

8 ERIN WALTERS: Yes. Good evening, Chair and
9 Commissioners. Erin Walters, senior planner.

10 The 17.5-acre hillside site at 178 Twin Oaks
11 Drive is currently vacant and proposed to be subdivided
12 into 12 single-family residential lots, which also include
13 three below-market price units that represents 25% of the
14 proposed homes.

15 The application is being processed under Senate
16 Bill 330 and includes requests pursuant to State Density
17 Bonus Law and the Builder's Remedy provisions of the
18 Housing Accountability Act.

19 The Planning Commission previously did consider
20 this project on December 17th and continued the item to
21 allow the Applicant and the Town Staff additional time to
22 respond to questions that were raised by the Commissioners.
23 Since that hearing, the Applicant has provided written
24 responses addressing questions regarding pervious paving,
25

1 drainage, privacy screening, open space easement, and trail
2 easements.

3 The Applicant has submitted a revised vegetation
4 buffer plan, which can be found in Exhibit 36. In addition,
5 the Applicant has also modified a proposal to provide
6 private open space easements and public trail easements on
7 multiple lots, and that can be found in Exhibit 35.

8 However, the Applicant is still requesting an incentive
9 under State Density Bonus Law to waive the requirement to
10 construct and maintain the trails.

11
12 In response to questions and comments regarding
13 biological resources, the Town's environmental consultant
14 conducted an additional review of the onsite ephemeral
15 drainage feature. Following a field investigation after a
16 storm event, it was determined that a portion of the
17 feature does extend to Lot 5.

18 As a result, a recirculated Initial Study and
19 Mitigated Negative Declaration were prepared to address the
20 impact, and this also includes two additional mitigation
21 measures related to biological resources: Measure 410 and
22 Measure 411. The recirculated Mitigated Negative
23 Declaration was recirculated for 30 days for public review.
24 The environmental document concludes that all potential
25 impacts can be mitigated to a less than significant level

1 through implementation of the mitigation measures
2 identified in the Mitigation Monitoring and Reporting
3 Program.

4 The Commission has received an Addendum and Desk
5 Item containing the Applicant's public outreach, additional
6 public comments, and clarifying language related to
7 Mitigation Measure 410.

8 Staff recommends that the Commission forward the
9 recommendation to Town Council to adopt the recirculated
10 Mitigated Negative Declaration and approve the project's
11 application, subject to the revised findings and Conditions
12 of Approval.

13 In addition to Planning Staff this evening,
14 Public Works Staff is here to assist with questions, and
15 then also Angela DaRosa and Nick Pappani of Raney, the
16 Town's environmental consultants, are here, as well as Rick
17 Hopkins from Live Oak and Associates, who is the project
18 biologist; they are here for questions.

19 At this time, I'm going to turn this over to Mr.
20 Pappani from Raney to add any additional information
21 regarding this recirculated entity.

22 NICK PAPPANI: Thank you very much. Again, Nick
23 Pappani, Vice President with Raney Planning & Management.

1 Good evening, Chair and members of the Commission. A
2 pleasure to be here.

3 Upon receipt of public comments when the original
4 Initial Study and Mitigated Negative Declaration was
5 routed, we carefully reviewed all comments, and in response
6 to comments and feedback we worked with our consultant,
7 Live Oak Associates—again, Rick Hopkins is here, Principal
8 of Live Oak—to conduct additional onsite investigation, and
9 that was during a very heavy rain event, and there was
10 identification of an additional segment of the ephemeral
11 stream that extended into Lot 5, as Ms. Walters mentioned.
12

13 As a result of that, when a new but avoidable
14 impact was identified, the recirculation is required, and
15 so we worked with Live Oak closely to identify mitigation
16 measures to offset that impact, and we can discuss that in
17 more detail as may be needed tonight, but approximately 122
18 lineal feet of that channel would be impacted by Lot 5
19 development, so we've developed a mitigation measure to
20 offset that, basically creation and restoration of the
21 onsite channel elsewhere on the project site to fully
22 mitigate that impact.
23

24 So, at this point the document includes
25 substantial evidence that all potential impacts would be

1 mitigated fully to a less than significant impact, and so
2 an MND is an appropriate document in that case.

3 I'll just kind of leave it there, and we're happy
4 to answer any further questions as we move forward.

5 CHAIR BURCH: All right, thank you. Are there
6 questions of Staff? Commissioner Sordi.

7 COMMISSIONER SORDI: Yes, thank you. Just a quick
8 follow-up. I'm going to have more questions down the road.
9 I'd like to know a little more detail about the ephemeral
10 drainage. We did get an erratum, and it addresses, I think,
11 the compensation component to IV-410, which is a pretty
12 important mitigation measure. It looks like almost a
13 substantial rewrite of that, or at least a lot of text
14 added, so could you provide a little more background on why
15 this happened just in the last 24 hours or so, it sounds
16 like?
17

18 NICK PAPPANI: Thank you, Commissioner. We
19 decided, in response to public comment, to add some
20 additional language to the performance standards that were
21 included in that mitigation measure. You'll notice that
22 it's mainly restricted to those bullet points where we
23 decided to work, again, in concert with Live Oak to provide
24 some additional performance language in terms of success
25 criteria for the revegetation along the channel.

1 Essentially, we're trying to leave some
2 flexibility open in the measure though, recognizing that
3 it's ultimately up to negotiation with the regional board
4 in terms of the final mitigation package, so we don't want
5 to box the project in too much to strict criteria, because
6 we want to allow some flexibility, but we did decide to
7 provide some additional detail in response to public
8 comment to show what an acceptable package should be from a
9 biological perspective.
10

11 COMMISSIONER SORDI: Just a quick follow-up. I
12 know this is a reference to Valley Water, which is another
13 public agency we hadn't seen before, associated with the
14 project and with that condition anyway, that mitigation
15 measure. Is there a little more background on how Valley
16 Water plays into this?

17 NICK PAPPANI: I think the reference is to the
18 storm event. It's just to provide the metric as to a ten-
19 year storm event, as defined by Valley Water. Rick, maybe
20 you can provide some additional info, if you'd like, but
21 that's just kind of tying the storm event that after a size
22 storm of that nature to make sure that a qualified
23 individual goes out and inspects that channel to make sure
24 that there is no erosion occurring, and if so, adaptive
25 measures could be implemented.

1 COMMISSIONER SORDI: Okay, thank you.

2 CHAIR BURCH: Are there any other questions of
3 Staff? Commissioner Burnett.

4 COMMISSIONER BURNETT: Yes, thank you. My
5 question is these mitigation measures, are they deferred
6 until after permitting, or are they done along with the
7 project?

8 NICK PAPPANI: The permits cannot be obtained
9 until the CEQA process is complete, so permits will not be
10 obtained until after this process, so that's why we try to
11 have some level of flexibility. Not deferring, but having
12 some flexibility in these measures to recognize that at the
13 end of this, if the project does get approved, that the
14 Applicant will have to obtain permits from the agencies,
15 and at that point the fine details of the mitigation will
16 be developed.

17
18 In CEQA, you have to make sure that you have
19 performance standards in a mitigation measure. You don't
20 have to have every detail worked out, especially when you
21 have to get a permit from an agency, because the agency is
22 going to have some level of input on that process, so it's
23 acceptable to allow performance-based mitigation, making
24 sure that we specify here's how that channel area needs to
25 be restored elsewhere onsite to offset the impact, but the

1 fine details, those can be worked out with the agency down
2 the line, so it's kind of a fine balance. Yes, you're not
3 supposed to defer in CEQA, but you don't have to figure out
4 every single detail when you're working with agencies to
5 kind of determine the final package.

6 COMMISSIONER BURNETT: My readings, actually,
7 that mitigation to be determined at a future date is
8 impermissible, deferral of mitigation in terms of CEQA, so
9 I was just wanting to know your view on that, because
10 that's the reading.

11
12 NICK PAPPANI: I would offer that we haven't
13 deferred mitigation. When it comes to the biological
14 mitigation, for example, with respect to the creek, we have
15 a requirement that the amount of channel that's being
16 impacted has to be compensated at a one-to-one ratio, so
17 that's the performance standard basis. That's something
18 that will have to be met, that the equivalent amount of
19 channel onsite that's being impacted will have to be
20 restored elsewhere on the site, so it's not deferred. We
21 set it forth very clearly that the equivalent amount of
22 impacted channel has to be created and restored on the
23 project site.

24
25 COMMISSIONER BURNETT: Okay, thank you for that.

CHAIR BURCH: Commissioner Mayer.

LOS GATOS PLANNING COMMISSION 6/11/2026
Item #1, 178 Twin Oaks Drive

1 COMMISSIONER MAYER: Following up on my fellow
2 Commissioner's question just now, what does that mean in
3 practice? Let's say a project is constructed here. Does
4 that mean culverts? What does that look like physically?

5 NICK PAPPANI: Thank you, Commissioner. I'll
6 start out, and if we want to get deeper into it, certainly
7 Rick can assist. But what we've identified is there are a
8 couple of ways to approach it in concert, again, with Live
9 Oak.

10
11 The first suggestion is to remove the existing
12 culvert. We want to naturalize that channel as much as
13 possible. There's an existing culvert that's about 15-20'
14 long, I think, a little bit upslope in the ephemeral
15 stream. Remove that culvert, restore that portion of the
16 channel, and then also—which Live Oak has been involved in
17 in other projects—the onsite ephemeral feature. It has some
18 in-size portions where there is actually a little bit of a
19 bed, and then it has just kind of swale areas that are more
20 kind of just flat areas, and so creating additional incise
21 portions of that channel, so it's kind of a more fluid,
22 natural channel feature. There is ample room onsite to do
23 that and exceed the amount of area that's being impacted by
24 the project, which again, is that approximately 122 lineal
25 feet. So, it's remove an existing culvert, naturalizing the

1 channel, creating more in-size portions, and there is ample
2 room onsite to do that.

3 COMMISSIONER MAYER: Great. Thank you.

4 CHAIR BURCH: Are there any further questions of
5 Staff at this time? Commissioner Thomas.

6 COMMISSIONER THOMAS: I do have a couple of
7 questions just about the area having to do with some of the
8 plantings and everything near Lots 5 and 6, so I'm not
9 exactly sure who on Staff, or maybe this is something that
10 the landscape architect should answer in a little bit. If
11 that's the case, that's really fine, I can ask when we have
12 the Applicant team up.
13

14 It just is about the appropriateness of some of
15 the plants that are being planned to plant there, so I was
16 hoping that the environmental consultants would be able to
17 confirm that or not. Is that an appropriate question to ask
18 of them?

19 ERIN WALTERS: The proposed vegetation that's
20 being planted on the individual lots? The question is, is
21 that appropriate to plant onsite or close to the ephemeral
22 feature?

23 COMMISSIONER THOMAS: Close to the ephemeral
24 features, yes.
25

1 DIRECTOR PAULSON: I would defer to the Applicant
2 first, the landscape architect

3 COMMISSIONER THOMAS: And then follow-up?

4 DIRECTOR PAULSON: ...and then you follow up that.

5 COMMISSIONER THOMAS: Perfect. Thank you.

6 CHAIR BURCH: All right, any further questions of
7 Staff at this time? Seeing none, I will now open the public
8 portion of the hearing, and I will call the Applicant to
9 speak. Jim Foley.

10 JIM FOLEY: Good evening, Planning Commission and
11 Staff. Happy to be back here. This was continued, as you
12 heard, from our hearing in December.

13 There were a number of questions that came out of
14 that hearing from the Planning Commission, and those are
15 found in the report. I'm sure you'll have additional
16 questions or want feedback about those, but the consultant
17 team has answered that, I think, pretty clearly.

18 We also heard from several of the neighbors; many
19 of them are here tonight. We were able to meet with a few
20 of them, specifically the ones on Twin Oaks that are
21 immediately adjacent to that property line, and discuss a
22 few of the things that we had heard in the last meeting.
23 That didn't occur until just a couple of weeks ago, and
24 then we got some really, I guess, mortifying feedback from
25

1 them yesterday, and I think a lot of the requests that they
2 have as follow-ups are going to be achievable, so hopefully
3 we can work with them to satisfy that.

4 I know some of the items that had come up prior
5 we sort of took a stab at along the property line as far as
6 drainage is concerned and things like that, so I think
7 we're happy to provide that as shown in what we have, or if
8 there are other ways to design what we do along that
9 property line, we're open to working with them on that.
10 Request for additional screening, we're happy to do all
11 these things subject to what we can do with defensible
12 space and to your question about appropriate species and
13 things like that.

14 So, I think that there's a little bit of work in
15 progress there. We have some time before hopefully this
16 goes to Town Council next for approval. Other than that,
17 we're here with the team. We have a couple of people
18 online. We have our architect, our consulting arborist, our
19 landscape architect as well. We can answer any follow-ups
20 you have from the last hearing or what you found in the
21 Staff Report.

22 CHAIR BURCH: Thank you. Are there any questions
23 of the Applicant? I do. I did see the letter where you
24 reference speaking to three of the neighbors. I do realize

1 you probably kind of hurried to get that in to verify that
2 you had had those conversations, and I was wondering if you
3 would expand a bit on those conversations of what screening
4 means, of what you talk about regarding the draining, so on
5 our part, as this moves forward, we fully understand what
6 those things mean and what tentative agreements you've
7 made.

8 JIM FOLEY: Sure. We don't have any agreement
9 yet. I think that from the last hearing one of the things
10 that we heard was a lot of concerns about drainage and site
11 drainage. We did go into it a little bit with HMH, the
12 engineer here, about the overall plan for the site and the
13 drainage, and I think some of the stuff got lost through
14 that conversation, so we wanted to clarify that. That has
15 been found in some of the comment responses that have come
16 back to you about how that design works.

17 Then, on top of that, just to give assurances to
18 those neighbors who have lived there much longer and
19 understand how that hillside can flow or not flow and had
20 complaints in the past about mudslides into the pool or
21 whatnot, we worked with HMH to try to come up with like a
22 belt and suspenders approach of what can we do along the
23 property line.
24
25

1 So, that was something that we proposed and we
2 put back in our Exhibit, along with some of the other
3 questions from the Planning Commission regarding the open
4 spaces easements that we hadn't necessarily planned for
5 before, regarding some of the trail reservation that we
6 hadn't planned for before, as a suggestion to address
7 those.

8 I don't think we got specific feedback from the
9 neighbors about we like this or we don't like this. There
10 were some questions about it. Where does it go? How does it
11 handle the drainage? Our original design, we think, is
12 adequate to handle the drainage of the hillside, but again,
13 this was something extra we wanted to provide just to be
14 doubly sure. We're happy to continue that conversation. Is
15 it appropriate to have it? Does it then compete with the
16 screening that we'd like to offer them? I don't know, but
17 we can work through that.

18 As far as screening, the request was let's get
19 some taller trees there along the property line to screen
20 some of the views of what's going to be developed on the
21 hillside. We're happy to pursue that, and we think it's a
22 very reasonable request, we just don't know what we can
23 accommodate. There's a list of questions that we just got,
24
25

1 and just generally speaking, we haven't even had a chance
2 to reengage with the neighbors on those specific items.

3 But let's say there are ten items, eight of them
4 are a certainty, two of them we might have to look into a
5 little bit more as far as making accommodations and working
6 with them. But beyond that, I wish I had more specifics to
7 share, but we just haven't had enough time to do that.

8 CHAIR BURCH: The ten questions came from the
9 neighbors direct to your team then?

10 JIM FOLEY: Yes.

11 CHAIR BURCH: They're not part of our packet, so
12 I assume.

13 JIM FOLEY: No.

14 CHAIR BURCH: All right. Are there any other
15 questions of the Applicant? Commissioner Burnett.

16 COMMISSIONER BURNETT: Yes, I have a question.
17 Somewhere I read, did the hardscape increase since it came
18 before us in December? It seems like I read somewhere that
19 it was quite an increase.

20 JIM FOLEY: That's a specific question for our
21 civil engineer, and I think they put details in there as to
22 what the discrepancy was about how it was originally
23 designed, what was represented in certain versions of our
24 submittal, and then ultimately there was an edit that
25

1 showed a larger number of impervious surfaces. If you want
2 to get technical about it, I'll have to bring up HMM to
3 describe to you what exactly happened there and the cadence
4 of in what submittals that occurred, but in any event, the
5 entire design of the drainage, the treatment, and the
6 stormwater and all that has all been engineered and
7 compliant with what we have designed.

8 COMMISSIONER BURNETT: Thank you.

9 CHAIR BURCH: Any other questions of the
10 Applicant at this time?

11 COMMISSIONER THOMAS: Yes, I had a question. With
12 regard to the trails, did you... I know that the current
13 proposal includes the easement along, you know, that area,
14 and but obviously not including the construction and/or
15 maintenance of the trail, so the... In your Letter of
16 Justification, you just are claiming that the... Sorry, let
17 me find the specific. Essentially, I don't want to misquote
18 it, but basically the project is already so expensive that
19 any additional cost is just too much. Did you happen to
20 look at all into how much it would cost to add the trail?

21 JIM FOLEY: I don't have like a rough order of
22 magnitude or dollar figure associated with it. We've been
23 through an exhaustive process. The soft cost budget for
24 this over the years, and the time that it's taken, it's
25

1 just well beyond what was originally budgeted, so it's
2 literally at a breaking point, and under the State laws
3 we're at that point where it just is what it is.

4 I mean, we did our best. We came here in the last
5 hearing to take all the feedback we can, but in that
6 hearing it was we are not going to do this, we just can't,
7 and now we're here, okay, we have been able to spend a lot
8 of dollars with HMH on designing easements. There are even
9 more dollars that have to be spent to finalize and
10 formalize the easements, record the easements. I mean,
11 consulting fees in the hundreds of thousands of dollars, if
12 that helps you.
13

14 Then also on top of that, the trail, which
15 luckily aligns with some of that, so some of that can be
16 helpful to, hey, we're going to prepare for this.

17 As far as grading exercises, or whatever would be
18 done in an ongoing maintenance program, each individual lot
19 here, there is no common area association created in the
20 HOA. The CC&Rs are specifically for some of the ongoing
21 maintenance and drainage requirements they apply to each
22 specific property owner, so there is not an entity there
23 that could have an ongoing maintenance, assess each
24 property owner for the trail. I don't know what I've just
25 kind of said off the top of my head in the last five

1 minutes, but are we in the millions of dollars yet to do
2 that. It's just literally impossible to accommodate the
3 installation and maintenance of the trail.

4 But we thought let's at least put our best foot
5 forward to prepare for it in case Midpeninsula Open Space
6 or a private donor was able to come in and put that in
7 place later, or another project somehow that needed
8 something, that we could at least take one more step than
9 we're able to do just on the project on its own.

10
11 COMMISSIONER THOMAS: Okay, thank you. I know
12 that's it's been a long project process, but for us, part
13 of our job is to make sure for any of the waivers that if
14 we required it, it would render the project infeasible
15 essentially, so I appreciate the information, and I
16 appreciate the step of including the easement part, because
17 that does a lot. Thank you.

18 CHAIR BURCH: Are there any further questions of
19 the Applicant at this time? Seeing none, we'll move onto
20 other speakers, and I'm sure we will have plenty of
21 questions for you at the end.

22 JIM FOLEY: Thank you.

23 CHAIR BURCH: Thank you. I'm now going to call
24 forward Cindy Clark.
25

1 CINDY CLARK: Thank you, Commissioners, for your
2 time tonight. I know this has been a great deal of work and
3 you've put a lot of enthusiasm in it, and I really
4 appreciate it, and I appreciate this time to speak as well.

5 My name is Cindy Clark. I'm a Los Gatos resident,
6 and I live about a mile-and-a-half away from the proposed
7 project. Tonight I'd like to make three points.

8 Just going back to how this all started, you're
9 quite aware of the California legislature, they passed
10 bills to alleviate the State's severe affordability crisis
11 and provide homes for working and middle-class families,
12 and yet this 17-acre development is going to provide only
13 three token below-market homes, and nine giant homes for
14 the very wealthy who will probably be purchasing these as
15 second or third houses for investment opportunities.

16 Number two, the loss of these 17 acres of open
17 space and the removal of 225 established trees will cause
18 destruction of food sources and homes for native animals,
19 including songbirds, owls, hawks, and pollinators that the
20 residents of Los Gatos enjoy. It will cause increased risk
21 of runoff and flooding, and risk of damage to the ephemeral
22 stream and its inhabitants. Neighbors and Town residents
23 deserve an EIR to determine and address the full impact of
24 these damages before (inaudible).
25

1 Number three, I really appreciate your
2 Commissioner's request for clarification on whether open
3 space easements and/or trails can be implemented on the
4 proposed project, however, I don't think this is a very
5 good solution. I'm an open space outdoor education docent
6 with Midpeninsula Open Space, so I've spent a lot of time
7 in open space. Open space usually has native trees and a
8 place for animals to roam, and this is like two edges on
9 the property, and I couldn't tell if the edges actually
10 continued off so there was a trail that would connect to
11 areas, or just like it went one way and it stopped. It
12 looks like it stops.

14 And then, finally, there is no money for trails,
15 so I just think that it was a rather weak solution for all
16 the loss that the community is going to experience. Thank
17 you very much.

18 CHAIR BURCH: Thank you. Are there any questions
19 for the speaker? No. Thank you. Next, I have John Witkin.

20 JOHN WITKIN: Thank you, Commissioners. I think
21 it should be the duty of the Planning Commission to protect
22 its citizens from zealous over-building and subsequent
23 safety concerns.

24 There is a developer gold rush to build houses
25 for multi-millionaires, and we are disregarding the safety

1 components of building on a sensitive hillside with an
2 earthquake/landslide zone. Also, we have a high fire zone,
3 and a watershed stream running through the development at
4 its highest building density.

5 We need the State mandated Environmental Impact
6 Report to ensure the issues are dealt with properly. There
7 was an EIR done previously. Why can't we just slow down and
8 update and certify this plan? These issues should not be
9 resolved during construction and be subject to mitigation
10 by tractor. These red flag safety issues need to be fully
11 understood and taken into account before the shovels hit
12 the dirt.

13
14 Please reconsider a short pause and require a
15 certified EIR before approval of this entitlement. Think of
16 the current neighbors, landslide and fire issues, with a
17 riparian corridor, and the ephemeral stream potential for
18 catastrophes.

19 Thank you for listening. I've been really lucky
20 to live on this property for seven years. I was born and
21 raised there and had a chance to move back in ten years. We
22 love our hillside, we love our neighbors, we love our
23 neighborhood. Thank you very much.

24
25 CHAIR BURCH: Thank you. Are there any questions?
Commissioner Burnett.

1 COMMISSIONER BURNETT: Yes, thank you. Have you
2 spoken with...

3 JOHN WITKIN: We had an hour last week with Mr.
4 Foley.

5 COMMISSIONER BURNETT: Have any of your issues
6 been resolved?

7 JOHN WITKIN: I just think there are some issues
8 with dealing with some of these things that haven't been
9 resolved. I mean, it was, I think, eight years ago they did
10 an 850-page environmental report, but it didn't really... It
11 just needs to be certified and gone through, in my opinion.

12 COMMISSIONER BURNETT: Thank you,

13 CHAIR BURCH: Can I ask, during the time that you
14 did meet with the Applicant, were there any specific
15 concerns that perhaps you didn't mention tonight—I know you
16 mentioned the landslides, fire safety—that you potentially
17 did discuss with the Applicant that you would like us to be
18 aware of?

19 JOHN WITKIN: No, we had a nice conversation with
20 Mr. Foley. He listened.

21 CHAIR BURCH: Thank you. All right, Craig
22 Fordyce.

23 CRAIG FORDYCE: Hello. We have lived at 191
24 Longmeadow Drive since 1999 and raised our five children

1 there. Our home is at the end of the cul de sac,
2 immediately downhill from the project site. Lot 5, which
3 appears to include a home constructed on top of the
4 ephemeral stream, is located directly behind our home. Our
5 home was one of the last four constructed on Longmeadow.

6 A review of the submissions to the Town Council
7 from the 1950s and 1970s offer evidence that both the rural
8 hillside was to remain in exchange for density given at the
9 time, and that the Surrey Farms neighborhood would stop at
10 the end of the cul de sac specifically to halt a
11 development before it reached Ross Creek. Since 1975, this
12 land has been held in the Resource Conservation space.

13 This development will radically affect the
14 landscape, the environment, and the biological resources in
15 the neighborhood. Because of the reliance on a Mitigated
16 Negative Declaration instead of conducting a formal EIR, we
17 believe we're not even aware of the potential impacts this
18 development will have, because much of the mitigation is
19 speculative, future-oriented, and to be determined. We have
20 no security that our health and safety will not be
21 affected.

22 The recirculated MND identifies a newly
23 recognized significant impact associated with the project's
24 intrusion into a jurisdictional ephemeral stream,
25

1 particularly in the area of proposed Lot 5. The
2 recirculated MND also includes an increase in the project's
3 residential square footage from 62,000 feet to more than
4 97,000 feet. This is a substantial change in the scale and
5 intensity of the proposed development, and raises serious
6 concerns regarding the adequacy of the environmental review
7 conducted under CEQA.

8 Technical analyses are only reliable if they are
9 based upon an accurate and stable project description. It
10 should be noted that the MND relies in part on an
11 uncertified 2017 EIR, which was analyzed in a project that
12 was much smaller than the current proposed project. This is
13 not addressed in the Staff Report.

14 A full EIR presents the opportunity for study and
15 evaluation that the MND admittedly did not provide, one of
16 which would be alternatives to the project that could
17 protect both the biological resources of the rural hillside
18 and the neighborhood below. For example, an EIR might have
19 evaluated a project without Lot 5, which seems to be at
20 least one logical alternative. The Applicant is relying on
21 State housing laws to build this project.

22 Housing law does not reduce or waive CEQA review.
23 Compliance with CEQA is mandatory and independent of zoning
24 or housing authorization. The standard for conducting an
25

1 EIR is intentionally low. If there is a fair argument
2 supported by substantial evidence that the project may have
3 a significant environmental impact, then the agency is
4 required to prepare a full EIR instead. We know that there
5 will be significant environmental impacts. They have been
6 identified by the neighbors, Santa Clara Valley Alliance,
7 Sierra Club, and the Water Quality Board. Thank you.

8 CHAIR BURCH: Thank you. Please don't move. Are
9 there any questions for the speaker? I have one. Go ahead,
10 Commissioner Thomas. Then I'll go.

11 COMMISSIONER THOMAS: You go.

12 CHAIR BURCH: I'm going to go back to the letter
13 that we got from Mr. Foley today that appears to reference
14 a conversation concerning the proximity of the home to your
15 property. Could you please share with us that conversation,
16 what you took away from it, what your understanding was at
17 the end of it, and what steps there may be?

18 JOHN WITKIN: Well, all of our conversation was
19 just a conversation. Mr. Foley was kind to come over to our
20 house, we all met, and we talked about the project, what
21 was changed, and maybe some mitigation things.

22 For one, the home on Lot 5 is very close to our
23 house, and we didn't know if it could be pushed off the
24 ephemeral stream, and he was going to looking into that,

1 and I think it's going to be... I don't know if that's doable
2 or not, or we just say hey, Lot 5 is off the table and
3 we're going to do eight homes, but we talked about that.

4 We talked about doing a couple of rows of redwood
5 trees, not against the property line, but a little bit
6 farther inland. And then if you look at the plan on those
7 Lots 5 and 6, you'll see that initially you had a lot of
8 trees that were planted, and then the new plan, and I don't
9 know if it's defensible space or not, but it had less trees
10 and it had some shrubs put in there, and so one of our
11 concerns—and I think I can speak for my neighbors—is that
12 we're going to be looking into this huge development that
13 is raised above us, that is going to be even raised higher
14 when they build the homes, and it's just going to have a
15 pretty big screening issue for all of us, so we just didn't
16 know how to mitigate it all.

18 We did talk about water mitigation, and they are
19 offering a culvert at the bottom as like a belt and
20 suspenders option, and if that works, that's great. We
21 don't know if it works. We think maybe an EIR could help
22 determine that.

23 We talked about, there were about ten things, off
24 the top of my head. We did talk about the size
25 differential, which was brought up today, about the two

1 different... Well, about the mistake that was made that made
2 the edit, but we still don't know the resolution of that.

3 It wasn't like we were argumentative or anything.
4 It was a friendly conversation, just talking about like how
5 do we do this, if we do it.

6 CHAIR BURCH: And based on that conversation, if
7 this moves forward today, what is your understanding of
8 next steps between you and the Applicant?

9 JOHN WITKIN: Jim was going to talk to his team,
10 and then they were going to digest it, and that was from
11 our meeting. Then Jill, my wife, subsequently we said okay,
12 well, what are some of the things that he asked us to send
13 to him, and we did send it to him recently—we've been
14 traveling—and so, we forwarded that along, and he says,
15 "We'll consider it," but there was no hard answer; it was
16 just more of a conversation.

17 CHAIR BURCH: Okay, thank you. Commissioner
18 Thomas. That was yours? Commissioner Sordi.

19 COMMISSIONER SORDI: I did want to follow-up on
20 one thing you just said. You mentioned a culvert.

21 JOHN WITKIN: Yes.

22 COMMISSIONER SORDI: And I'm a little curious to
23 know what the culvert would be for. Is it to address
24 potential flood issues?

1 JOHN WITKIN: Yes, I believe. What I understand
2 is they developed a plan that they think mitigates the
3 water runoff, I guess. So, we weren't so sure about that,
4 because we've had a lot of water runoff without any
5 building up there, or any streets and roads and houses that
6 couldn't absorb water. He showed us a plan that shows a
7 culvert like on the, I think it's on the property line.
8 This kind of feeds down towards the catch basin.

9
10 COMMISSIONER SORDI: That's okay; we don't have
11 to get into it too much. I think I will have some follow-up
12 questions for the civil engineer about it, because my
13 understanding was that the storm drain would come down the
14 hill, effectively be defused by the storm drain
15 improvements and not be intended to... We're dealing with a
16 net decrease, which I'll get into a little bit more later,
17 but thank you.

18 CHAIR BURCH: Are there any further questions?
19 Commissioner Burnett.

20 COMMISSIONER BURNETT: Yes, I have a question.
21 Did it come up at all about the CC&Rs or the homeowners'
22 responsibilities to maintain the ponds or the catch basins?
23 Did you discuss that at all?

24 JOHN WITKIN: Yes, we discussed our concerns
25 about that, meaning like who is going to manage this? If

1 there is a problem, who is responsible? How do you go after
2 them? Is there like a board or an HOA? How is the HOA
3 funded? Does it have enough money in an HOA to offset any
4 potential risks? We talked about all those concerns.

5 COMMISSIONER BURNETT: And that if you had a pond
6 on your...

7 JOHN WITKIN: That's on Lot 6, the pond, but
8 we've had water intrusion from the hill.

9 COMMISSIONER BURNETT: Okay, thank you.

10 CHAIR BURCH: Any further questions? Commissioner
11 Thomas.

12 COMMISSIONER THOMAS: I know that there's a lot
13 of concerns, but I just don't want to make any assumptions,
14 so I would say that probably the water drainage and runoff
15 issue and potential flooding, is that pretty much your top
16 concern, and then the second is the screening and privacy?

17 JOHN WITKIN: Well, I think it's a whole bucket
18 that holds all that, including the ephemeral stream and
19 keeping that the way it is currently, and noise mitigation,
20 light mitigation, just all the effects that you would have
21 from such a development.

22 Also, we did talk about how does the development
23 occur, and I believe the way it's going to occur is they'll
24 put the infrastructure in place, and then they'll build

1 houses over time, and so we are concerned about a "ghost
2 town" and if it does get built or doesn't get built all the
3 way, and then they can't build the homes, and now we're
4 looking at a ghost town, which is even probably worse than
5 a development.

6 COMMISSIONER THOMAS: Okay, thank you.

7 CHAIR BURCH: All right, any further questions?
8 No. Thank you very much. Lee Quintana.

9 LEE QUINTANA: Good evening. First, I have to say
10 that I'm speaking as an individual resident and not as a
11 member of the Historic Preservation Committee. I'm going to
12 try to talk really fast, which is not my mode, because I
13 have a lot to say.

14
15 The first thing I want to say is that I recommend
16 that you do not adopt the Mitigated Negative Declaration
17 and that you forward the project to the Town Council
18 without a recommendation, since it's impossible to approve
19 a project if you don't have the environmental done.

20 I want to talk about the CC&Rs and the individual
21 property responsibilities. I want to talk about hydrology,
22 specifically aboveground, underground, and the importance
23 of looking at it as a complete system, and not putting
24 things off for further study later, particularly in
25 response to other agencies that issue permits. If they

1 issue permits and you've approved the project, you actually
2 limit their ability to impose conditions.

3 This project is all about water: aboveground
4 water, belowground water, runoff, and NPDES, and it's all
5 connected. You have an existing state, you have a proposed
6 project, the proposed project creates impacts, which are
7 then mitigated, but if you're not looking at everything at
8 the same time and there is an interconnectedness between
9 aboveground hydrology and belowground hydrology, then you
10 can't possibly do a good job of assessing the impacts of
11 the entire project. I think that's one of the downfalls of
12 this Negative Declaration.
13

14 The other thing I want to talk about is the CC&Rs
15 and the responsibility of the individual homeowners to
16 monitor and report on the various things that are required
17 as mitigation. This project as a whole is the subdivision,
18 and the subdivision creates the impacts and requires the
19 mitigation. If you just put it on the individual property
20 owners after the subdivision, you are not treating all
21 equally, and you're putting a greater burden on some and
22 not on others.
23

24 In addition to that, you're creating what I would
25 call not good governance, because you're going to have to
get all these individual reports on each property rather

1 than one report that comes to the Town that they can
2 consider as a whole.

3 I don't have time to say anything else, so I
4 guess I'll just see if you have any questions.

5 CHAIR BURCH: Any questions for the speaker? I
6 have a question. You were talking about the CC&Rs and the
7 responsibility being on the individuals versus like an HOA
8 or something. In your experience, do you feel if this
9 becomes less an individual responsibility and more of a
10 governing body, does that create a better situation?

11 LEE QUINTANA: I think in my experience in San
12 Jose, there are several instances where it was put on
13 individual properties rather than on the whole, and what
14 happened was that it didn't get done, because it was on
15 each individual property owner, and some of this stuff is
16 technical, they don't know how to do that, and it didn't
17 work; we had problems if it was on that.

18 And we also had problems if we approved a project
19 before we had the permits from Fish and Game or the Water
20 Board, because it could change the project, and sometimes
21 since they had approval already, the Water Board and the
22 Fish and Game couldn't get the requirements that they
23 wanted and there was a compromise made, because the project
24 was already approved and it limited them, because they're
25

1 permit issuing, and once you've approved the project,
2 they're almost obliged to issue a permit and get as best
3 mitigation as they can.

4 CHAIR BURCH: In an instance like that where,
5 let's say, the other jurisdiction was able to review prior
6 to a permit, what's an example in this of something you
7 think they would be able to do to benefit that they
8 wouldn't be able to do if we had already approved?

9 LEE QUINTANA: Well, for one thing, I've heard
10 controversy over whether the culvert should be taken out or
11 the culvert shouldn't be taken out. From what I read, the
12 Water Control Board wants the culvert taken out, wants it
13 out of the Waters of the State, and so that's one thing,
14 and that affects other things. Especially in the hillsides
15 where the hydrology is more complicated, you need to know
16 ahead of time as best you can what all the impacts on the
17 hydrology are, both aboveground and belowground. By that, I
18 mean what mitigation is going to occur belowground and if
19 those mitigations are going to create other impacts, which
20 then need to be addressed, and to do that you have to
21 coordinate it altogether, not piecemeal.

22 CHAIR BURCH: Understood. Thank you. Are there
23 any other questions for the speaker? No. Thank you very
24 much. Jill Fordyce.

1 JILL FORDYCE: Hi. Thank you so much for being
2 here tonight. Because there are so many issues of public
3 interest, the environment and safety, regarding this
4 project, I personally have given very little time to
5 addressing our own issues of us abutting the project, so
6 I'm going to do that a little bit tonight.

7 This neighborhood is built on top of our home and
8 the homes of our two adjacent neighbors. Literally on top,
9 on a hillside above us, looking down into our homes and
10 yards. All the water, dust, debris, noise, lights,
11 pollution, both during construction and afterward, will
12 flow downhill into our homes.

13
14 Lot 5 is the closest, directly behind us, and
15 proposes the largest home, a 40' structure atop a retaining
16 wall. There is currently no screening in place between Lot
17 5 and our home. We will go from looking out at a rural
18 hillside to looking at an enormous structure with all of
19 its lights, noise, and cars.

20 In the Staff Report, Applicant response to the
21 request to address our privacy concerns to tree placement
22 and buffering with native species is as follows: "HMH can
23 add shrubs and proposed trees to create a stronger
24 vegetative buffer in the area discussed." Staff's note is
25 that there is minimal screening between the neighboring

1 rear properties and Lot 5. Indeed, there does not appear to
2 be any between our home and the development as a whole.
3 Shrubs are not a buffer; there needs to be more.

4 We have proposed to Mr. Foley rows of redwood
5 trees, an additional area of open space or easements, or
6 reorientation or elimination of Lot 5, and we hope that at
7 a minimum these measures will be taken to ensure that both
8 the existing neighborhood and the proposed new neighborhood
9 are protected.

10 We've talked a lot about the ephemeral stream,
11 and I really appreciate Ms. Quintana's comments about
12 looking at this project holistically. When we start
13 modifying one part, what happens to the next part
14 aboveground and belowground? This is a newly discovered
15 thing in February of this year, and I don't believe the
16 study has been adequate.

17 One of the mitigation measures is to submit an
18 application to the Water Quality Control Board and obtain
19 written verification of certification before ground
20 disturbance begins. How can the Town approve the project if
21 there is a primary issue that has not been resolved? The
22 Water Quality Control Board itself commented that the
23 recirculated MND does not quantify the project's impacts on
24 Waters of the State or demonstrate that it's feasible to
25

1 mitigate the project impacts to a less than significant
2 level. In other words, the board acknowledged jurisdiction
3 and questioned whether the CEQA document actually proves
4 that the mitigation will work. So, what happens if these
5 permits are granted?

6 They spoke earlier about replacing things and
7 adding different parts to the channel and part of it is
8 taken away, and I think this also ignores the fact that we
9 are dealing with a natural, rural environment that has
10 never been disturbed. It's the same thing with the trees.
11 We've submitted evidence and reports before that say once
12 you take away this historic oak forest, ancient oak forest,
13 replacing the trees, the habitat will never be the same.

14 CHAIR BURCH: Thank you. Are there any questions
15 for the speaker? Okay, thank you. Next is William Meleyco.

16 WILLIAM MELEYCO: My name is William Meleyco.
17 I've lived at 189 Longmeadow Drive for 42 years. The
18 developer's drainage system flows directly into my back
19 yard. I want to raise two connected problems that will
20 require a full Environmental Impact Report.
21

22 Number one, the paved and roof surface of this
23 project grew by 56% between the original filing and updated
24 version, from 62,000 to 97,000 square feet. No one has
25 explained why. Every technical study submitted, the

1 drainage model, the soil stability report, and the air
2 quality analysis, was calculated using the smaller,
3 original number. This Commission is being asked to approve
4 a project based on engineering studies of a much smaller
5 project.

6 The environmental baseline itself is still
7 incomplete. The stream on the lot directly behind our homes
8 was missed entirely by the original surveys, discovered
9 only when a biologist visited during an actual storm 14
10 months into the review. If a whole stream is missed, the
11 Commission should ask what else did a dry season survey
12 fail to find?

13 The developers say there is no stream, but their
14 own environmental consultant wrote in June 2026, Exhibit
15 37, that the water feature being filled is, "presumed to be
16 the Water of the State." Presumed, not confirmed. Two State
17 agencies have independent authority here: the San Francisco
18 Bay Regional Water Quality Control Board, which raised
19 concerns about this property in 2015; and the California
20 Department of Fish and Wildlife. Under California law, the
21 ephemeral stream is protected Waters of the State. The
22 draft conditions that put those agency reviews after
23 tonight's vote is backwards. If either agency requires a
24 redesign, this Commission will have approved something that
25

1 could no longer be built. Those reviews must come before,
2 not after, your approval.

3 Also, please note that the air quality study and
4 the noise study both admit that the project exceeds legal
5 limits, but was run as if nothing could be done to fix it.

6 I'm asking for three things. Require a full
7 Environmental Impact Report; require that these two
8 agencies complete their reviews before, not after, your
9 approval; and require a full explanation of the increase in
10 the surface area with updated studies to match. Thank you.

11
12 CHAIR BURCH: Thank you. Don't leave yet. Are
13 there any questions of the speaker? I do. For
14 clarification, you mentioned the stream that was more
15 recently found. Can you clarify when there were people
16 onsite that...

17 WILLIAM MELEYCO: No, I can't. It just came from
18 the reports.

19 CHAIR BURCH: Just came from the reports. Okay.
20 My next question, I'm going to kind of go back. I know you
21 have had some conversations with the Applicant, and some of
22 those were about drainage and how they're going to be
23 trying to redirect water away from your property.

24 WILLIAM MELEYCO: There was very little
25 conversation about drainage. They simply proposed this

1 culvert along the property line between our property and
2 theirs, suggesting that well, things will be taken care of
3 in the future. During that meeting, there were no promises,
4 there was we'll look into it, we'll do what we can.

5 CHAIR BURCH: Okay. Any other questions?
6 Commissioner Thomas.

7 COMMISSIONER THOMAS: Can you just repeat your
8 second ask again?
9

10 WILLIAM MELEYCO: My second ask?

11 COMMISSIONER THOMAS: From your list of three.

12 WILLIAM MELEYCO: Number two. That the two state
13 agencies do their reviews before you guys approve this.

14 COMMISSIONER THOMAS: Okay, thank you.

15 CHAIR BURCH: Any other questions? No. Thank you
16 very much. Next I have is Cathy Frazier.

17 CATHY FRAZIER: Hi, thank you for having the
18 meeting. My concern remains the same as it always was, that
19 this seems to be a very high-density development on a
20 substandard road in a high fire danger zone, and that's my
21 biggest concern and continues to be. I've lived in Surrey
22 Farms, but not right next to the development, for about 30
23 years.

24
25 I also wanted to just make a comment on something
that the developer had said at a prior meeting. He said

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1 these huge, two-story homes fit right in with the
2 neighborhood. Only Twin Oaks has two-story homes. All the
3 rest of Surrey Farms is limited to one-story homes, so
4 these really are kind of overwhelming. That's all I have to
5 say. Thank you.

6 CHAIR BURCH: Thank you. Are there any questions
7 for the speaker? No. Thank you very much. The last speaker
8 card I have, unless somebody is holding onto one, is Dave
9 Greenfield.

10 DAVE GREENFIELD: Hi, thank you, Planning
11 Commission. I'm Dave; I live on 141 Longmeadow Drive.

12 As the builder mentioned, this has been going on
13 for a lot of years, and we've been presenting a lot of the
14 same issues for a lot of years. I totally support the EIR
15 comments. I don't need to go into them in more depth; I
16 think my neighbors very well articulated them.

17 As one of the original requesters of the trail, I
18 do appreciate that efforts are being made here. I think
19 they're a little bit inadequate, but thank you for a start
20 here.

21 And I also want to support the fire safety
22 concerns in terms of limited amount of traffic all funneled
23 eventually down Kennedy and in a very constrained manner,
24 which seems to be a concern.

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1 An issue that's been brought up for years and
2 years is the impact on Longmeadow and a few houses on Twin
3 Oaks, and of this building, of all the trucks going in, all
4 the noise, all the traffic, all the safety concerns, all
5 going down one road. Having 11 homes and one home off a
6 different street doesn't really equate an additional
7 mitigation on other neighbors. It seems like everything is
8 on Longmeadow, and 95,000 feet of hardscape and trucks
9 going up Longmeadow scares me. I mean, it's months to years
10 of construction traffic coming in and amplifying points
11 that have been brought up in the past, but they don't seem
12 to have made any difference, and I wanted to bring these up
13 again. I know you've heard them before, but the impact on a
14 few blocks of Longmeadow and Twin Oaks seems really, really
15 severe. Thank you.

17 CHAIR BURCH: Thank you. Are there any questions
18 for the speaker? All right, thank you very much. I do not
19 have any more speaker cards, unless somebody at the last
20 minute is going to want to speak. If not, the Applicant now
21 can come back up to the podium and give any final
22 statements, address anything that you just heard, or
23 provide any additional information.

24 JIM FOLEY: Sure. Thanks for that. I appreciate a
25 lot of these comments. There are not a lot of new comments.

1 We've reviewed a lot of this information in written form
2 submitted over time. I think just the notion of the
3 environmental document; all I'll say is we stand behind our
4 consultants. Actually, the Town is the lead agency who then
5 has hired Raney, who has done a very good job of analyzing
6 what the correct documents are, what the correct technical
7 studies are, amended them, and responded to everything
8 thoroughly. I think there is a lot of opinion that we hear,
9 and that's fair, because it's not everybody's everyday
10 business to engage in these types of activities, so our
11 approach is to help respond as much as we can.

13 I know it was a little short timeframe, but at
14 least the three specific neighbors we had a chance to
15 discuss with are right there against the property line, and
16 our intention is to continue to work with them on the
17 questions that you have asked them. Like we said earlier,
18 we haven't had a lot of time, and I think if you have faith
19 in us, and hopefully they do too, that we want to be good
20 neighbors with this, best management practices for
21 construction, a lot of those things over time. I know it
22 may seem scary, but that's our intention as a thoughtful
23 developer.

25 The technical questions with regard to the
impervious surface, with regard to the drainage, we have

1 HHM here. I'm sure you have, Chair, some of those concerns,
2 and hopefully those questions get answered for the members
3 of the public that are raising them as well.

4 I think the Dodge family is a generational
5 family, they're well intended with this project, and they
6 have been for a long time. There may be some debate on what
7 the issue was, but we have conflicting evidence that Bob
8 Dodge originally did intend for this to be the final phase
9 of Surrey Farms, and that's been stated in prior letters
10 that we've submitted, so we just want to help see that
11 through and finish it off in a responsible and elegant way.
12

13 We're here for more questions. Like I said
14 before, we have our whole team here available to you.

15 CHAIR BURCH: Great. Are there questions of the
16 Applicant? Commissioner Sordi.

17 COMMISSIONER SORDI: You might have covered this
18 last time, but I wanted to at least ask what's the
19 construction build-out plan starting from square one? Are
20 you staying on as the owner, builder, contractor, or is
21 this property going to be sold to others? Can you share
22 some of the details?

23 JIM FOLEY: From an entitlement development
24 perspective, multiple exits are always on the table. Right
25 now, the intention is to entitle, plan, permit, build,

1 deliver, and sell. That's a long process, as you know.
2 There's a lot more that goes into this. There are all the
3 agency permits that we've talked a lot about tonight. There
4 are all the improvement drawings and permits that need to
5 be obtained, and that needs to get started. There is plenty
6 of work to do that is probably going to take the better
7 part of two years before you'll see a shovel in the ground.
8 Maybe the improvements start a little bit early, but then
9 we have to plan for and permit each individual home, so
10 it's a longer rollout, which hopefully is less impactful to
11 the neighborhood and everything else, but a subdivision of
12 this nature definitely takes some time, and that's the plan
13 for now, to continue down that path and stay the course and
14 deliver it.

16 COMMISSIONER SORDI: Have you thought through any
17 details? Like is there going to be a model complex and
18 where it would be located, and any phasing?

19 JIM FOLEY: Model?

20 COMMISSIONER SORDI: Yes, a model complex. Would
21 there be model homes?

22 JIM FOLEY: No, I don't think so. The character
23 of these homes is kind of full, custom home design. We've
24 got a cohesive planning and architecture plan for all of
25 them, but it wouldn't be... Maybe what you're thinking of is

1 more like if we had a 30-40 home subdivision with a model.
2 I don't think in this setting the model works. I think we
3 have three home types, and then we have the affordable home
4 types, so maybe just be more conceptual from that.

5 COMMISSIONER SORDI: So, there wouldn't be any
6 sales operation onsite?

7 JIM FOLEY: That's not intended, no.

8 COMMISSIONER SORDI: Okay. Twelve lots, pretty
9 simple to come up with a phasing plan, or at least a draft
10 of the phasing plan. You know which ones you're going to
11 build first, or start at the top and work down?
12

13 JIM FOLEY: We haven't quite got to that detail
14 yet, but I know in the conditions we have to deliver the
15 affordables, so I think that makes sense, and if you just
16 look at the way that it's laid out, I think that coming
17 from the bottom and continuing on is probably the likely
18 direction. The construction logistics and all that, again,
19 haven't really been vetted yet until we get into that
20 phase. I don't know if I have a good answer on exactly how
21 that sequence is going to go.

22 COMMISSIONER SORDI: Okay, and forgive me,
23 because this is a little hazy. Is this a publicly dedicated
24 street, and if not, is it in a private road maintenance
25 agreement?

1 JIM FOLEY: (Inaudible).

2 COMMISSIONER SORDI: Okay. So, there would be a
3 private road maintenance agreement at the very least, it
4 sounds like, between all...

5 JIM FOLEY: Yes, on every lot. Private road goes
6 over the lot.

7 COMMISSIONER SORDI: Okay. So, the guy at the
8 end, is he the one that travels? Let's say, Lot 11. I know
9 one of the lots comes off Cerro Vista, not sure of this
10 one, but the ones...

11 JIM FOLEY: I know which areas...

12 COMMISSIONER SORDI: Is everyone equally on the
13 hook?

14 JIM FOLEY: Yes.

15 COMMISSIONER SORDI: I guess what I'm getting at
16 is have you guys thought through the details, not only this
17 private road maintenance agreement, but how it might fan
18 out to cover other features, the storm facilities, which
19 are going to be on individual lots?

20 JIM FOLEY: Yes, all of that is in the CC&Rs
21 draft. Instead of an association managing that, each home
22 is bound by the recorded CC&Rs on their lot, which is a
23 code enforceable obligation.

24 COMMISSIONER SORDI: Right.

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1 JIM FOLEY: And then the same with maintenance of
2 the road and participation. I mean, it's going to be
3 between neighbors. They all own one segment of the road.

4 COMMISSIONER SORDI: Okay, thanks.

5 CHAIR BURCH: Commissioner Thomas.

6 COMMISSIONER THOMAS: How does that impact the
7 affordable units?

8 JIM FOLEY: That's a good question.

9 COMMISSIONER THOMAS: Is that maybe a question
10 for Staff? Does that impact the cost, or like the long-
11 term? I don't know.

12 JIM FOLEY: I know that Los Gatos, it has house
13 keys or whatever, that manages the affordable program. I
14 don't know if they manage that part of it.

15 ERIN WALTERS: The way the lots are shown and
16 presented is that each of the affordable units own to the
17 center of the street in front of their home. Lot 1, I think
18 it's Lot 1, or the first one as you approach, owns a longer
19 stretch of land that goes all the way out to Twin Oaks.
20 Those would all be part of the agreement for the affordable
21 unit; they'd be responsible for that.

22 COMMISSIONER THOMAS: How is that financially
23 factored into the affordability, or the cost, because
24
25

1 that's more of a maintenance issue than just your typical
2 land?

3 DIRECTOR PAULSON: I'm happy to jump in. This is
4 not typical from a BMP perspective. This is exactly one of
5 the reasons why we don't do BMPs in the hillsides
6 typically, so we will have to work through those issues. I
7 know there is not going to be an HOA, so I don't know if
8 there will be dues. In other typical projects, the BMPs pay
9 the HOAs just like every other unit, so they manage those
10 common areas. So, we'll have to work through logistics on
11 this on the back end of what that means, from whether it's
12 road maintenance or onsite maintenance.

14 CHAIR BURCH: I'm going to ask a follow-up
15 question about that then. Would you be willing, as part of
16 this discussion, in lieu of having Lot 1 be responsible for
17 hundreds of feet of that road, to move some of that
18 responsibility to like Lot 2 and Lot 3? I think when you're
19 talking about people who are already struggling, that level
20 of maintenance is going to be really difficult, and what
21 will happen is the maintenance will be deferred to the
22 point that the road will be unmanageable.

23 JIM FOLEY: I don't know. I can't answer or
24 commit without understanding what it means. I was headed
25 where Mr. Paulson was headed too, which is either a BMP or

1 a BMR is still subject to HOA dues. Do they get subsidized
2 through the program? I can't answer that, so in the same
3 regard would the program also subsidize a maintenance
4 assessment five years down the road? If it's yes, then does
5 that question... I know what you're getting at, but does it
6 matter? Is it since they're going to have to do that whole
7 segment anyway no matter who is in there, because they're
8 all BMRs, does it not impact any individual owner? I don't
9 know the answer to that.

10
11 CHAIR BURCH: No, but if you look at the others,
12 the Lot 11 and Lot 12 have an equal street frontage and an
13 equal footage on the road. It would make sense to me that
14 Lot 1 would have an equal footage of the road, and then the
15 balance be distributed.

16 JIM FOLEY: I just don't know that if it's
17 possible that none of them are going to end up paying for
18 that anyway.

19 CHAIR BURCH: No, I'm not saying they shouldn't,
20 I'm saying if Lot 11 and Lot 12 are paying for what looks
21 like maybe 25'-30' if I'm just scaling of street
22 maintenance that's in front of their property, in my
23 opinion Lot 1 should probably have the same, not what
24 appears to be hundreds, and not just for that. We both know
25 that maintaining roads is not cheap. That will not be done,

1 so if we were to try to put some language in that limited
2 Lot 1 to be equal in responsibility to the other BMR
3 properties.

4 JIM FOLEY: Yes, if you're talking about creating
5 a condition or something, I don't think that bothers us. I
6 mean; I guess we'd have to see after the fact. I just don't
7 know. Those house keys say that no matter what it is,
8 they're just going to subsidize all of that 20, 20, and 60,
9 so then it doesn't matter to the individual lot. I just
10 don't know. Or is it like you say? Is it pro rata to each
11 one and it's actually coming out of the bankroll of each
12 owner? I have no idea. I mean, we're happy to do whatever
13 is fair.

14 CHAIR BURCH: Okay. Commissioner Thomas.

15 COMMISSIONER THOMAS: I actually have a follow-up
16 about that road area, because the material being used is
17 going to be permeable, correct? Is it for the entire road,
18 all the way from Twin Oaks, or just the part that is more
19 this portion closer to the ephemeral?
20

21 JIM FOLEY: I'd direct this to HMH to get the
22 specific details, if you want them to come now.

23 COMMISSIONER THOMAS: Yes, thank you.

24 RAFAEL HERNANDEZ: Rafael Hernandez, HMH. The
25 pervious pavement would go basically up to Lot 3.

1 COMMISSIONER THOMAS: So, would go from Lot 3 to
2 the cul de sac?

3 RAFAEL HERNANDEZ: No, from Lot 3 down to Twin
4 Oaks.

5 COMMISSIONER THOMAS: That's the only part that's
6 the permeable?

7 RAFAEL HERNANDEZ: Along the private road, yes.

8 CHAIR BURCH: To clarify, that is where you're
9 talking about the permeable concrete going from Lot 3 all
10 the way up to Lot 6 and Lot 7; it's the standard concrete
11 material?
12

13 RAFAEL HERNANDEZ: Correct.

14 COMMISSIONER THOMAS: Okay, sorry, that's not
15 what I remember from last... Did that change from the
16 previous?

17 RAFAEL HERNANDEZ: No. We had permeable pavers on
18 the private driveways. We did eliminate some of those from
19 the last time.

20 COMMISSIONER THOMAS: Okay. Which ones were
21 swapped out, and what material are they now?

22 RAFAEL HERNANDEZ: I believe we had permeable
23 pavers on Lot 9, Lot 8, and Lot 7, and we swapped that out
24 for just standard concrete.
25

1 COMMISSIONER THOMAS: Okay. And can you explain
2 the reason for that change?

3 RAFAEL HERNANDEZ: Yes, just efficiency of
4 stormwater. There were some concerns about the grade of the
5 driveway leading up to those homes, and after revisiting
6 our stormwater approach and calculations, we saw
7 opportunities to simplify the design by just proposing
8 standard concrete and leaving pervious pavement where it
9 was required.

10 COMMISSIONER THOMAS: Can you also walk us
11 through for the road material, the reason and the choice of
12 the permeable versus impervious?
13

14 RAFAEL HERNANDEZ: Sure. Basically, from Twin
15 Oaks Drive...

16 COMMISSIONER THOMAS: Sorry, I'm actually going
17 to interrupt you. Is it possible to have the site plan up
18 while we're talking about this?

19 CHAIR BURCH: It's the overall site plan 2.0?

20 RAFAEL HERNANDEZ: If we can go to Sheet 5.0, we
21 have the hatching for the permeable pavement shown, and
22 actually I apologize, it's from Lot 2, not Lot 3.

23 DIRECTOR PAULSON: I for sure will not pull up
24 the plans, because there are 45 different attachments, but
25

1 I'm trying to find a different attachment that might give
2 us what we're looking for.

3 COMMISSIONER THOMAS: Thank you.

4 RAFAEL HERNANDEZ: Mr. Paulson, I have that
5 available and can share it.

6 COMMISSIONER THOMAS: And if you want to point,
7 you can remove the microphone, and it's also easier
8 probably over there if you want to do it. No pressure, but
9 if it's easier for you to talk about it that way.

10 RAFAEL HERNANDEZ: I think the hatch is self-
11 explanatory. If we can just go to Sheet 5.0, it's pretty
12 obvious. There you go, that one. So, if we can zoom into
13 the bottom left corner there of the site, you can see the
14 different hatching for the roadway. That would be the
15 portion that is being proposed as pervious concrete or
16 pavement.

17 COMMISSIONER THOMAS: Okay, and so then can you
18 talk about the decision and the management of the water in
19 those two different areas?

20 RAFAEL HERNANDEZ: Yes. Along the private drive
21 there is a high point at one point. I think it's somewhere
22 around Lot 4, there's a high point there where north of Lot
23 4 everything drains to the cul de sac, and south of Lot 4
24 it drains down the hill. So, what we were trying to
25

1 establish within that bottom portion of the roadway is how
2 can we present a stormwater solution that is considered
3 self-treating where we didn't have to propose bioretention
4 areas or some other stormwater treatment measure that could
5 be a little bit difficult to build just because of the lack
6 of the storm drain infrastructure that's located at the
7 bottom of the hillside?

8 We felt that pervious pavement for that portion
9 of the road can be considered an acceptable way of
10 mitigating stormwater treatment, and everything beyond that
11 point would be collected through traditional standard
12 inlets directed to an underground storm drain system to a
13 bioretention area and treated as such.
14

15 COMMISSIONER THOMAS: And then the part that runs
16 down from Lot 4, where is that water going? I think last
17 time there was some confusion about which drain.

18 RAFAEL HERNANDEZ: Yes, so Lot 4, Lot 5, Lot 8,
19 Lot 6, and Lot 7, all that is essentially...

20 COMMISSIONER THOMAS: The other direction.

21 RAFAEL HERNANDEZ: Oh, the other direction?

22 COMMISSIONER THOMAS: Yes, yes, the other
23 direction.

24 RAFAEL HERNANDEZ: There is a bioretention area
25 in front of Lot 1, if we can zoom in, just south of that.

1 Yes, there you go. That bioretention area is capturing
2 basically the runoff that's in front of Lot 4, Lot 11, and
3 Lot 12, and we have an inlet that is capturing the water
4 before it goes into the pervious pavement section, directs
5 it into a bioretention area that's placed on Lot 1.

6 COMMISSIONER THOMAS: Okay, and then what about
7 Lot 2 and Lot 3, and is any water going into Ross Creek?

8 RAFAEL HERNANDEZ: Lot 2 and Lot 3, and the same
9 can be said for Lot 4, Lot 5, and Lot 6, they're going to
10 have their own treatment facility within their front yard,
11 so all of the runoff from the proposed driveway paving,
12 roof water, all that will be directed to their own facility
13 onsite, and then from there it will be directed to an
14 underground storm drain system.

15 COMMISSIONER THOMAS: Okay, and then for the
16 underground storm drain system, where does that go to?

17 RAFAEL HERNANDEZ: There are two systems; the
18 site is broken up into two systems. About maybe a fourth of
19 the overall site will be draining to Ross Creek, which is
20 essentially an underground storm drainpipe, and the rest,
21 the other remaining portion of the site, will drain towards
22 the northwest corner where there is another existing inlet
23 that is connected to essentially the same system, Ross
24 Creek, just farther downstream.
25

1 COMMISSIONER THOMAS: Okay.

2 CHAIR BURCH: Commissioner Sordi.

3 COMMISSIONER SORDI: I think this might be a good
4 time to address the question that's come up from a couple
5 of the speakers, and that's the apparent increase of
6 impervious that went from something along the lines of
7 63,000 feet up to 90,000, if I have that right. Maybe you
8 guys can take some time to clarify why the change.

9
10 RAFAEL HERNANDEZ: Yes, I can clarify that. It
11 was just misrepresented early on. I think the first two
12 submittals showed somewhere around that 60,000 square feet
13 that was mentioned. We caught it around the third
14 submittal, and then from the third submittal on it's been
15 represented around 90,000 square feet, so it was just a
16 miscalculation on our end.

17 We did coordinate with the hydrology consultant,
18 which is making sure that we ensure that we're not having
19 any impacts to the existing site and downstream of the
20 site, so the hydrology report that we provided does take
21 into account the 90,000 number that allegedly was
22 determined as increased.

23
24 COMMISSIONER SORDI: When was the third
25 submittal? Was the third submittal way back before we had a
hearing in December?

1 RAFAEL HERNANDEZ: I'd have to go back. I think
2 it was sometime around maybe October of last year.

3 COMMISSIONER SORDI: Okay, so maybe can I pivot
4 over and ask the environmental team a question? We've had a
5 few speakers imply not only that that change in impervious
6 surface and that significant increase, which sounds like
7 it's something along the lines of 50%, could affect a whole
8 bunch of other things, environmental review, beyond just
9 simply runoff. Somebody even implied that that would have
10 something to do with things that could affect air quality
11 and balloon into other impacts, so maybe you guys could
12 address that, if you don't mind.

13
14 ANGELA DaROSA: Angela DaRosa with Raney Planning
15 & Management. Good to see you all. Thank you. As the
16 Applicant's team has noted, there was an error in their
17 calculations, and that was related to the C-3 calculations
18 and the hydro modification modeling that was conducted. The
19 Town Public Works and Engineering has reviewed those
20 documents and that modeling and has confirmed that it meets
21 the appropriate requirements.

22 As far as the other issue areas, the analysis
23 already assumed the correct disturbance area. It wasn't
24 necessarily tied to the impervious surface area provided as
25 part of that modeling. We analyzed the five point--sorry, I

1 can't remember exactly what it is--the five-point-something
2 acres of the project site that would be disturbed. That
3 includes the air quality and greenhouse gas analysis.

4 COMMISSIONER SORDI: So, is it safe to assume
5 some of those other disciplines, air quality, traffic,
6 we're not evaluating the project's environmental impact
7 based on the square footage, for example, of impervious
8 surface, which includes homes and paved areas, but in fact
9 a unit count basis, and that unit count didn't change? I
10 don't mean to lead you too much, but that would be my
11 assumption.
12

13 ANGELA DaROSA: That's exactly right, yes. Much
14 of the modeling was based on the number of units as well as
15 the overall disturbance area of the site based on acreage.

16 COMMISSIONER SORDI: Okay, thank you.

17 CHAIR BURCH: Commissioner Burnett.

18 COMMISSIONER BURNETT: Yes, I have question, just
19 for learning purposes. These ponds are in front of each
20 home, like a basin to catch the water, the runoff, and then
21 they all connect underneath? I mean, how far down is the
22 connection? How far down is the main line that they all
23 connect to that would lead you out the corner of, the very
24 edge, of this development?
25

1 RAFAEL HERNANDEZ: The storm drain line is going
2 to be about 4'-5' deep below this basin treatment facility
3 that we have, and it's just interconnected with the main
4 trunk line that's serving the entire development.

5 COMMISSIONER BURNETT: When you call it a
6 treatment facility, what do you mean? There is probably
7 gravel in there that...

8 RAFAEL HERNANDEZ: Yes, it functions two ways in
9 this case, because the site is subject to hydro
10 modification. So, we are developing the site; it's
11 currently undeveloped, as we all know. When we develop
12 sites, it increases runoff. That's the concern: how are we
13 mitigating the extra runoff that we're going to be
14 introducing to the site? Because we are subject to hydro
15 modification, the purpose of hydro modification is
16 essentially just ensuring that the post-condition mimics as
17 close as possible to the existing.

18 So, the treatment facility's function is two
19 things: storm water quality, storm water treatment, and
20 holding the water; and then metering and releasing it at a
21 much slower rate to mimic the existing conditions, so that
22 way we're not impacting the existing storm drain system
23 that's downstream.
24
25

1 COMMISSIONER BURNETT: How do you monitor? Is
2 there a mechanism?

3 RAFAEL HERNANDEZ: The metering of it?

4 COMMISSIONER BURNETT: Yes, the metering of it.

5 RAFAEL HERNANDEZ: Simplistically, one common
6 practice that we do is everything will drain into a box,
7 and instead of having that box be a 12" storm drainpipe
8 coming out, it might be a 4" hole instead, and that just
9 allows the water to dissipate at a slower rate. So, that's
10 one way that we can meter how much water leaves that
11 facility, by restricting the size of the outlet structure.
12

13 COMMISSIONER BURNETT: That's very interesting.
14 Thank you.

15 CHAIR BURCH: Any further questions? Commissioner
16 Thomas.

17 COMMISSIONER THOMAS: In the recent conversations
18 that have happened with some of the neighbors, there is
19 mention of a culvert. What would be the purpose of the
20 culvert? Where would it exist? How would it function?

21 RAFAEL HERNANDEZ: I believe we're talking about
22 along the western edge, correct?

23 COMMISSIONER THOMAS: Yes.

24 RAFAEL HERNANDEZ: There are concerns of existing
25 flooding, 14 acres of runoff coming down the hill into

1 these adjacent property owners. I don't believe there is a
2 well-defined edge along that property line, and what we're
3 really trying to help is essentially creating a berm along
4 that edge, and then an earth swale. I wouldn't call it a
5 culvert, I'd call it like an earth swale with a berm along
6 the edge, and that's just an added protection against the
7 property owner, so that in the event that we do need a
8 channel water along that boundary, it's at least contained
9 and conveyed north where it's supposed to go, as opposed to
10 continuing to the west.

11
12 COMMISSIONER THOMAS: So, it wouldn't be just
13 like a concrete culvert?

14 RAFAEL HERNANDEZ: It can be. It can be.

15 COMMISSIONER THOMAS: But, I mean, ideally it
16 would be something that has some vegetation and like gravel
17 and things to help with...

18 RAFAEL HERNANDEZ: Maybe not vegetation. It can
19 be paved, it can be concrete, and it can be different
20 things that are open to discussion in terms of what we
21 think best fits those needs.

22 CHAIR BURCH: I'm going to ask a follow-up
23 question about that, because there actually was a little
24 detail provided and there is a material for the erosion
25 control. One of my experiences with the material like this

1 is that it can hold onto leaves or larger pieces of matter.
2 This may not necessarily be for you, so I'm going to ask
3 about maintenance in a minute, but what I would like to
4 understand is when you put together this detail, one, how
5 deep would you propose this be to truly capture enough
6 water to make sure the water is diverted and not
7 overflowing, and two, in your opinion do you think the
8 EnkaMat is the best material for helping capture matter and
9 move it down?
10

11 RAFAEL HERNANDEZ: There are different options.
12 In terms of the size, we're not into that level of detail
13 yet. I think this was really intended to be a placeholder,
14 a picture of what the intent is. There are sizing
15 calculations that we can figure out to determine how much
16 runoff is actually going to make it to the western
17 boundary, and then determine the width and the depth of the
18 swale, whether it's concrete or some other material. There
19 are different options. There is going to be maintenance
20 involved regardless of what material is chosen. But yes,
21 those types of details we really haven't gone into, but we
22 will go into farther down the road.
23

24 CHAIR BURCH: Okay. Well, can I ask a follow-up
25 just to that to Mr. Foley? I'm going to assume, but I would
rather just ask since this is running along the back of a

1 number of the lots, is it the individual homeowner's
2 responsibility then to keep dense matter out of that to
3 maintain water flow?

4 JIM FOLEY: Right, so something we were
5 discussing. I guess we want to be clear without putting
6 together the HOA, because there are not common areas. There
7 is still a maintenance association of owners, and those are
8 the ones that are going to have the annual meetings and
9 ensure that the maintenance comes in and files a reporting
10 with the State, and all the requirements and things like
11 that. So, as far as administering all of that, the
12 discussion on whether it's pro rata per square footage of
13 property or it's on somebody's property and nobody else's,
14 I think there are different categories of what the
15 maintenance is going to be. That's all going to have to be
16 administered by the maintenance association.

18 This was a suggestion, again, to help the
19 neighbors feel more comfortable, like have us put our best
20 foot forward, because they may not necessarily understand
21 or believe in what the civil engineer has designed as far
22 as the site drainage. This is not a required aspect,
23 correct? This is something additional that could be
24 anything, and whether it's gravel or it's concrete or we
25 need it at all, we're open to working with them on what's

1 best for them before the new owner comes in and takes over,
2 right?

3 CHAIR BURCH: Yeah, no.

4 JIM FOLEY: There have been a lot of comments and
5 an ongoing conversation with working with them on
6 screening. Is it that we can get to the point where they
7 are educated enough that they believe the site is going to
8 be better off post development, and like Rafael just
9 explained, handle the water more efficiently, that they're
10 not going to have that, and we'd rather do plantings and
11 screening through there instead? I think that's open for
12 conversation.
13

14 But I think you rightly asked the priorities.
15 What is the priority? Is it screening or drainage? Because
16 they both seem to be aligning in the same place, we can
17 evaluate all of that, but I just wanted to be clear on that
18 portion of it, that we believe the initial design for the
19 water treatment and everything that's been vetted by C3
20 consultants, checked by the Town, and everything else, it
21 works, so this is additional, and maybe it's causing more
22 trouble than it's worth.

23 CHAIR BURCH: No, I actually probably think it
24 would be helpful; I just wanted to understand it better. It
25 was just a little bit of a different material than what

1 I've seen used in them, so I just wanted to understand
2 that.

3 All right; do we have other questions? I'll go to
4 Commissioner Thomas, and then Commissioner Burnett.

5 COMMISSIONER THOMAS: I have a question for Staff
6 about that. If this is the plan that we are forwarding as a
7 recommendation, but know that the Applicant and the
8 neighbors are open to alternatives, how does that affect
9 the approval or a forwarded recommendation?
10

11 ATTORNEY WHELAN: If the Commission is interested
12 in adding a Condition of Approval, then that would need to
13 be part of the recommendation.

14 COMMISSIONER THOMAS: But isn't this included in
15 our... Aren't we forwarding this site plan?

16 ATTORNEY WHELAN: I don't see that plan reflected
17 in the current Conditions of Approval that are before the
18 Commission.

19 CHAIR BURCH: I'm going to clarify. I took all
20 kinds of information and made my own plan, so they would
21 have to be in Conditions of Approval to capture all of it.
22

23 COMMISSIONER THOMAS: Sorry, what was that?

24 CHAIR BURCH: I took information from various
25 pieces of information they gave us, and put it all on one
plan for my simplicity, so we would either need to include

1 specific documents from their packet, or we just write a
2 Condition of Approval that the culvert as discussed, for
3 example.

4 COMMISSIONER THOMAS: Okay, yes, because this
5 design is included in...

6 CHAIR BURCH: In one of these (inaudible)...

7 COMMISSIONER THOMAS: ...in their something that we
8 have... Okay.

9 CHAIR BURCH: ...but not on a drawing. It's
10 included in...

11 COMMISSIONER THOMAS: It's included in just a
12 packet, okay. Thank you.

13 CHAIR BURCH: Yes. Commissioner Burnett, then
14 Commissioner Sordi.

15 COMMISSIONER BURNETT: Yes, just a question. Did
16 you ever consider not building house number five, because
17 that seems to be where all the issues are? I mean, all the
18 runoff of the homes behind it, that impacts everything, and
19 you would look at... I mean, you have so many other acres
20 there, you would think someone could have come up with a
21 little bit better configuration. I know it's after the fact
22 and all.

23 JIM FOLEY: The project has a long history, and
24 there have been many plans, you've seen a lot of them, and
25

1 then each of the different iterations has different
2 impacts. There was one with a through-road, and then there
3 were neighbors that were upset about the lights coming down
4 the hill. So, it's been an iterative process over time to
5 arrive at this plan, which we think is the best version,
6 and I know that that has different impacts on different
7 neighbors that we're trying to do the best that we can.

8 So, if we take that away, then where else does it
9 go, and then what does that cause? The cause and effect of
10 the change. I wish I had the perfect one that satisfied
11 everybody; that's what we're working to get to through the
12 iterative process, and that's just where we are now.

13 COMMISSIONER BURNETT: Okay. I just had to ask
14 the question. Thanks.

15 CHAIR BURCH: Commissioner Sordi.

16 COMMISSIONER SORDI: You mentioned a maintenance
17 association, and I guess a simple question is, is that a
18 Condition of Approval somewhere? There are so many
19 conditions, I haven't found it.

20 ATTORNEY WHELAN: I did not see it in my review
21 of the Conditions of Approval, but I'll also defer to Parks
22 and Public Works.

23 DIRECTOR PAULSON: And I think it's possible as
24 well that it would be something that would be included in
25

1 the CC&Rs, but we'd be looking for confirmation of that. If
2 you want something more explicit, that can be part of the
3 direction to the Council.

4 COMMISSIONER SORDI: Just a question for the
5 Applicant, because a few moments ago, a few steps back, we
6 were talking about certainly the affordables and how some
7 of these maintenance obligations might fall pretty heavy on
8 them, and I'm still not quite sure I understand the
9 logistics.

10
11 I think what's happening here is the property
12 lines are going to the center of the street in sort of a
13 pie-shaped wedge. As you work your way up the street, the
14 different lots have their obligation to maintain their
15 piece. I think it comes back to the most traveled piece
16 over the long-term, and we're talking many years from now,
17 would suffer more wear and tear, and that might land more
18 heavy on somebody who is at the entrance of the
19 subdivision, so it might be smart to come up with a
20 maintenance association and then define the scope of the
21 shared maintenance. It would seem to be that the road would
22 fall squarely into that, and I suppose what could happen is
23 it could be divided up on a proportionate basis in some
24 way, shape, or form so that it doesn't fall particularly
25 heavy on one lot owner.

1 And then it does beg the question of some of the
2 anxiety that the community has about the drainage
3 facilities that are on the private lots, and the
4 accountability, and the ability to fall back on a budget or
5 an account to have those taken care of if somebody is
6 remiss or if for some reason somebody doesn't pay. It just
7 seems like that would be a logical thing to do. I guess my
8 question is would you be open to that as a condition?

9 JIM FOLEY: Yes, I think that's kind of where I
10 hear some of you headed, and that is whether it just
11 accompanies the recommendation to say this condition needs
12 to be clarified a little bit more, make sure it's in there.
13 The draft of the CC&Rs and all these documents, which are
14 boilerplates and templates across other developments and
15 all that, we tailored those to Surrey Farms Estates, has
16 gone into Parks and Public Works and been reviewed up to
17 this point where it has become a part of it, and then the
18 conditions are those documents are in there and done, how
19 they're managed.

20 So, without flipping through the pages and
21 figuring that out, I think your direction is the right one,
22 which is to say if there is a concern, just recommend that
23 that goes in there, that's a change that gets made prior to
24 the approval or prior to the issuance of the Building
25

1 Permit or whatever the condition you're going to put on
2 there is. Again, without page flipping on the exact
3 logistics as to how it's laid out, I think it's more
4 conceptual at this point as to what you want to see happen
5 from a fairness standpoint, or the extent it's a below-
6 market owner, I don't know.

7 COMMISSIONER SORDI: Yes, I think before we
8 conclude, we'll tighten up that as a recommended condition.

9 CHAIR BURCH: Any other questions to the
10 Applicant? Commissioner Thomas.

11 COMMISSIONER THOMAS: My questions are about the
12 plantings. I do have some questions about some of the soil
13 saturation and everything, and some of the choices of
14 landscaping near the current wetland area, because the
15 intent of them is to be screening trees, so I guess is the
16 landscape architect available to answer questions? They're
17 on Zoom?

18 JIM FOLEY: Yes, Shawn Taylor.

19 COMMISSIONER THOMAS: My question is that I think
20 there are Blue Oaks and Coast Live Oaks that are planned
21 for that northwest corner of the property to be planted as
22 landscape trees. What is the potential for those species to
23 struggle in that location if that soil is wet a lot of the
24 year?

1 SHAWN TAYLOR: Good evening, everyone. Thanks for
2 having me. Shawn Taylor from HMM Landscape; I'm the
3 landscape architect on the project.

4 Any time we have plantings near any of the
5 waterways, water areas, on the site, the riparian areas, we
6 are hydroseeding with a native slope stabilizing hydroseed.
7 I should say, first of all, that we're staying off and away
8 per the setback, which looks like over 12' away. Then we go
9 into a native hydroseed to stabilize slopes, and then we go
10 into a shrub planting of mostly native, so Ceonothus,
11 Toyon, Coffeeberry, and Manzanita, before we get into tree
12 planting. And yes, there are quite a few native species of
13 trees in our plant palette, and some that are nonnative, so
14 adaptive species.

16 I don't think we have wet soils where we're
17 proposing oak trees, but if that is the case when we're out
18 there, we can adjust that to a different species on our
19 plant palette. But an oak tree, of course, would not
20 survive with wet feet.

21 COMMISSIONER THOMAS: This is one of the
22 questions I wanted to ask and talk about with the
23 environmental consultants, but there are some oak trees in
24 that... Sorry, I'm just trying slide over and zoom out, I
25 think to confirm some oak trees in that corner that

1 potentially could have a substantial amount of wet soil, I
2 think, in what is typically the dry season. So, which
3 option from the list that you have do you feel would be
4 best to switch out?

5 SHAWN TAYLOR: Are you talking strictly our
6 proposed trees, nothing existing?

7 COMMISSIONER THOMAS: Yes.

8 SHAWN TAYLOR: I think the first swap we would
9 make if we're finding out we're too close to the water and
10 we have that sort of condition could be our Platanus
11 Acerifolia Columbia. Typically, its native habitat would be
12 near waterways and river edges. It's the first go-to I
13 would pull from our plant palette for that swap.

14 COMMISSIONER THOMAS: Okay, perfect. Thank you
15 for answering that. I mean, there is technically an
16 existing wetland in that very corner. How close to an
17 ephemeral wetland at the very bottom, noting that this is
18 where the water goes basically on this hillside? How close
19 to that would you feel comfortable planting an oak?

20 SHAWN TAYLOR: Honestly, just scaling off our
21 plans right now as our latest update for that corner, I'm
22 trying to keep the majority of our trees out of Zone 3
23 related to CAL FIRE, Urban Wildfire Interface, so we're
24 balancing a lot of different areas for the best locations.

1 Right now, it looks like we're well over 30' from where
2 that typical water edge was demarcated, and then again, I
3 do have other shrubs and hydroseed and all that leading up
4 into that area as well, so short answer, roughly 30-some
5 feet.

6 COMMISSIONER THOMAS: I'm sorry, you're saying
7 30' feet from which water feature?

8 SHAWN TAYLOR: I thought we were talking about
9 the one in the northwest corner of the site.

10 COMMISSIONER THOMAS: Yes.

11 SHAWN TAYLOR: So, the back end of Lots 6 and 5?

12 COMMISSIONER THOMAS: Yes, the back corner of Lot
13 6 and Lot 5. Okay, thank you.

14 SHAWN TAYLOR: My pleasure.

15 CHAIR BURCH: Do we have any further questions
16 for the Applicant? Commissioner Burnett.

17 COMMISSIONER BURNETT: Another question here. Do
18 you have a plan to obtain written confirmation from the
19 Water Board and the CDFW regarding the jurisdictional
20 status of the ephemeral creek on the project site, a step
21 that the Water Board has been requesting?

22 JIM FOLEY: We've had engagement with them and
23 provided them information. I think that engagement through
24 their questions and establishing that has largely gone
25

1 through Raney and Live Oak Associates, if they want to
2 speak to any of that. I mean, we have to get their permit,
3 along with the other agencies, before surveying anything
4 out there, so they have a permit process that we have to
5 adhere to.

6 But as far as taking jurisdiction over the swale,
7 or whatever it was, I know there's been a lot of
8 conversation about that, but I don't think I'm the right
9 one to answer.

10 COMMISSIONER BURNETT: Yes, I think that's one of
11 the biggest issues, actually.

12 RICK HOPKINS: (Inaudible)?

13 COMMISSIONER BURNETT: Yes.

14 RICK HOPKINS: Yes, there is some
15 misunderstanding about how the agencies interact in this
16 process. Some of it may be historic time. Back in the
17 1990s, the courts ruled that to get a streambed alteration
18 agreement was an action under CEQA, and so at that time in
19 the late-1990s they required that all projects, in order to
20 get a streambed alteration agreement, and/or the Regional
21 Board, it's a project and it requires that CEQA be approved
22 prior to them ever engaging and preparing a permit, so
23 there is a misunderstanding about the timing.
24
25

1 You do not go to the Regional Board for a permit
2 until you have an NOD. You have to provide in your
3 application evidence of the environmental filing fee and
4 the NOD. If you look at the application, it says, "What
5 form of CEQA have you done? CatEx, MND, EIR." So, it's very
6 explicit that they won't even talk to you for a permit
7 until you have that in place.

8 What they do as a responding agency, they can and
9 do respond to MNDs and CEQA requests. Corps rarely does.
10 CFW about 50% of the time. Regional Board a little more
11 than the other two agencies. CFW did not respond to this
12 EIR; the Regional Board did. So, what we've done is we've
13 built mitigations based on experience and what's typically
14 done for an ephemeral stream, and there is also some
15 misunderstanding that it's an ephemeral stream.

16 This ephemeral stream was identified back in
17 2010-2012, and in 2016 the Corps came out and verified the
18 delineation for the whole site, and at that time they
19 disclaimed the ephemeral stream and they claimed the little
20 section of Ross Creek and the wetland in the northwest
21 corner. That was what was under the Army Corps of Engineers
22 jurisdiction at that time. In fact, they don't take
23 jurisdiction of ephemeral streams, because it's not
24 connected to a navigable water.
25

1 So, what is misunderstood is that in the ten
2 years since they verified the delineation, some incised
3 sections crept down the hill. Some water flowed down the
4 hill and created some incised sections, so that is a 57'
5 gap from where the Corps ended their jurisdiction to a 24'
6 incised section, and then there is 21' or so to a 10'
7 section.

8 So, over ten years, what happens with ephemeral
9 streams, if we rank streams from water, if you will, an
10 ephemeral stream is the lowest. It doesn't support any
11 wetland vegetation or riparian vegetation. In other words,
12 riparian is water loving plants. Hydrophytes are plants
13 that evolve in wetland systems.

14 You asked a great question. Are upland trees
15 going to be too close to a wetland? That's a very good
16 question, because you don't want them too close. Thirty
17 feet is probably a good distance, because even though the
18 roots will get there, they do like water, but they don't
19 like their feet wet all the time.

20 So, what you have is this stream. It's basically
21 the whole thing, that water follows the path of least
22 resistance. Ephemeral streams have water in them during and
23 shortly after rainfall events, and then they're dry, so
24 they're dry much of the year. It's not the appropriate

1 conditions to create seasonal wetlands, freshwater
2 wetlands, or riparian habitat, because there's not enough
3 water to support that kind of vegetation. The vegetation
4 that is in that ephemeral stream is the exact vegetation
5 that is on the hillside; it's upland.

6 So, what happened over time, as water does, it
7 will erode further sections, and it did; over a ten-year
8 period of time, it eroded some sections. Not much, very
9 small when you consider that it only grew about 16%, so I
10 think those are the things. I don't know if I've answered
11 your question.
12

13 COMMISSIONER BURNETT: I think you have, and
14 actually, it's probably why the Town at that time actually
15 suggested to have a full EIR report on that whole area at
16 that time.

17 COMMISSIONER THOMAS: I have some follow-up
18 questions about the ephemeral stream. I'm happy to ask them
19 now, or wait until we close public comment and get to our
20 discussion.

21 DIRECTOR PAULSON: Yes, get through all the
22 comments with the Applicant.

23 CHAIR BURCH: Yes, these are not to the
24 Applicant.
25

1 COMMISSIONER THOMAS: We can always reopen if
2 it's a specific change or ask or question that needs to be
3 clarified.

4 CHAIR BURCH: Okay. Are there further questions
5 of the Applicant? I had one. I was just going back through
6 my notes in December, and there was one thing that I
7 remember came up about Lot 8's proximity to the ephemeral
8 stream, and for some reason, the way this drawing is, there
9 is like a protection distance around it, but only in some
10 areas, and one of the notes that we had noted is that it
11 appears at the corner and Lot 8 actually impedes on that.
12 We don't have updated drawings, but in the conversation we
13 had, it was yes we will shift Lot 8, I think it's like 10'
14 over, but to ensure that Lot 8 does not impede in that. Was
15 that done?

17 JIM FOLEY: My understanding of that was that in
18 that section where it's there, the buffer disappears
19 because there is a break in the ephemeral swale. That's
20 what I thought the interpretation was. Then we went out and
21 we staked it, so everybody could go look at it, and that
22 was kind of our result.

23 CHAIR BURCH: I guess I thought that that changed
24 based on what has recently been discovered with the stream,
25 and so I can ask the consultants later.

1 JIM FOLEY: That's a different area.

2 CHAIR BURCH: I'll ask. Are there any other
3 questions for the Applicant? (Inaudible) was this.

4 COMMISSIONER THOMAS: I guess the only question
5 was the buffer changed in other spaces from 10' to 15', so
6 is that impacting any of the lots or developments in a way?

7 JIM FOLEY: I haven't seen that conflict on the
8 plans.

9 CHAIR BURCH: I think we'll have to ask.

10 COMMISSIONER THOMAS: Okay, thank you.

11 CHAIR BURCH: If there are no further questions
12 of the Applicant at this time, I'm going to close the
13 public portion of this item. I'm also going to say we're
14 going to take a quick break, because I think the next round
15 is probably going to go on for a little bit, so we're going
16 to take a 10 to 15-minute break.

17 (INTERMISSION)

18 CHAIR BURCH: All right, I will now reopen the
19 Planning Commission meeting and invite my fellow
20 commissioners to ask any questions of Staff or our
21 consultants. Commissioner Sordi.

22 COMMISSIONER SORDI: Thank you. I did want to
23 take some time to ask some questions about biology; I know
24 we've touched on it a little bit. Would it be possible to
25

1 put up page 80 in the packet; it's called Revised Figure 1
2 of the Onsite Ephemeral Stream. Can you guys find that?

3 SEAN MULLIN: Give me one second and I'll put it.

4 COMMISSIONER SORDI: Yes, I think that's it. No,
5 it's not. And then I guess maybe we can try to zoom into
6 that northern 121' section. Perfect. Thank you so much.

7 I guess this is probably what we could
8 characterize as a big change that happened last time. I
9 think the Initial Study and Mitigated Negative Declaration,
10 and then the associated Buy Report, certainly didn't show
11 this. I think what maybe you guys found when you did your
12 field visit in February was much wetter conditions, and
13 maybe it kind of highlighted this a little bit better.

14 But the thing that I wanted to just focus on, and
15 we talked about a little bit already, it appears to me what
16 we're looking at is an intermittent stream that flows
17 underneath Lot 5, is that correct?

18 RICK HOPKINS: I'm sorry, can you say that again,
19 please?

20 COMMISSIONER SORDI: If I look at the legend
21 right, I think that the darker blue was heavier flow, and
22 then the light blue was intermittent flow, and maybe I
23 don't have that quite right, but I guess my question is are
24 we really just... I don't think that we saw this last time,
25

1 and what we're seeing here, is an intermittent stream that
2 flows under Lot 5 and also crosses the road.

3 RICK HOPKINS: Yes, I think the terminology is
4 incorrect. It's an ephemeral stream in that it carries
5 water infrequently, and once it quits raining for a few
6 days there is no longer water. Intermittent streams carry
7 water for much of the year, and dry up in the dryer
8 portions of the year, such as Ross Creek. That's an
9 intermittent stream.

10
11 So, ephemeral is something that carries water,
12 because water flows and it finds the path of least
13 resistance, which are these swales, and these kinds of
14 incisions that occur are not atypical of ephemeral streams.
15 In fact, we've worked on ephemeral streams that are much
16 wider and deeper than this, but they still only carry
17 water. In other words, intermittent means several months a
18 year it has water.

19 COMMISSIONER SORDI: Okay, so an ephemeral stream
20 still carries water during heavy flow.

21 RICK HOPKINS: Correct.

22 COMMISSIONER SORDI: It was certainly confirmed
23 by my second field visit when I went out there, and I
24 actually went out there right around the December timeframe
25 after a particularly heavy storm. I walked all over that

1 area and I would barely get around that area without my
2 foot sinking all the way down to the knee almost, and it
3 wasn't just in a channel, it was like spread all over.

4 One of my colleagues was using the term
5 "wetland," and I just wanted to zero in on this a little
6 bit more, and I wanted to focus on two things. I hopefully
7 don't have this wrong, but you have an ephemeral stream,
8 and it appears as though that could be what we consider to
9 be Waters Of The State that fall into the regional ward
10 jurisdiction, right?

11
12 RICK HOPKINS: Correct.

13 COMMISSIONER SORDI: And that's how we know
14 effectively that we've got something that is a potentially
15 significant impact if not mitigated to reduce it to a level
16 of insignificance; we have obviously an issue on the site.

17 I've been through this before, so I'll just
18 disclose that, as a consultant to a builder/developer, and
19 it was about six years ago. I did go through the Regional
20 Board and get a Section 401, so I remember there being some
21 sort of delineation process associated with that, and I
22 guess my question is, what I'm getting at here is given the
23 fact that this area gets so inundated, my understanding is
24 it is not impossible for an area like this to still have
25 wetland characteristics and support wetland vegetation. I

1 think the area that we've acknowledged in the IS/MND that
2 needs to be mitigated is certainly the stream area, the
3 very focused area, but is it possible after further study
4 that we would be talking about isolated wetlands that would
5 fan out and cover a bigger area?

6 RICK HOPKINS: The first thing is this is not a
7 wetland. A wetland is defined by hydrophytic soils,
8 hydrophytes and hydrology. This does not have hydrophytic
9 soils or hydrology. I mean, it has hydrology, but it
10 doesn't have hydrophytic soils or hydrophytes, so it's
11 lacking two of the three criteria that classify it as a
12 wetland.
13

14 COMMISSIONER SORDI: Did you use grab samples?

15 RICK HOPKINS: It is an ephemeral stream, which
16 we see these fairly common in California.

17 COMMISSIONER SORDI: Can I ask a follow-up
18 question? In the course of the project I worked on we
19 certainly had to make an application to fill a very small
20 area of wetland, and in the course of doing that
21 application with the Regional Board they actually went out
22 and assigned Staff to take grab samples. They actually went
23 out with like a digger and they pulled grab samples in
24 order to take them back to a lab and test them themselves,
25

1 and so I'm under the impression that even if you have an
2 area that is...

3 RICK HOPKINS: I'm sorry, they pulled what?

4 COMMISSIONER SORDI: Grab samples of soil below
5 the surface. I guess what I'm getting at is my
6 understanding is that even if something dries out, it can
7 stay moist enough during enough time over the course of the
8 year that it can support wetland vegetation, and I guess
9 that's my question: Is it possible that this area could
10 grow? Part of the reason I ask that is I'm wondering
11 whether it's possible we lose a lot on this project and it
12 just changes the project.
13

14 RICK HOPKINS: No, it can't. In ten years, it's
15 grown, as I said, 24' of incisions, which are a few inches
16 wide, in one case 14' wide, 10' long, and that's ten years
17 of time it took to do that.

18 Again, we dug a pit. You don't send soil samples
19 in anywhere. You dig a pit, you have a color chart, and you
20 look to see if there are redocks there. In other words,
21 soils form conditions that have been wet and moist for long
22 periods of time, and you can see that. As I said, you dig
23 this pit, which we did, and you determine that these are
24 not hydric soils.
25

1 In fact, the Regional Board lacks the capacity to
2 do delineations. They rely on the Corps' delineations; the
3 Corps comes out and verifies. So, even when we know we
4 don't have the Corps taking jurisdiction, we'll submit the
5 jurisdictional delineation to the Corps, because they
6 officially designate... They'll look at it and say, "It's an
7 ephemeral stream, it not a Water of the U.S." Then the
8 Regional Board now has a delineation which delineates that.

9
10 COMMISSIONER SORDI: Okay, I just have a follow-
11 up. So, you said that you dug a pit and you evaluated the
12 soils on this site on one occasion, more than one occasion?
13 When did this happen?

14 RICK HOPKINS: Pardon me? I didn't hear; I'm
15 sorry.

16 COMMISSIONER SORDI: Just to clarify my question,
17 and I wasn't aware of this because I don't think there is
18 evidence of it in your report, but I could have missed it,
19 you actually dug a pit on this site and evaluated the soils
20 for these characteristics that support wetland?

21 RICK HOPKINS: Correct. As part of the
22 delineation that Jeff Gurule and our staff did in February;
23 as he always does, he digs a pit, looks at the soils. There
24 wasn't a single hydrophyte anywhere in the channel; he
25 looked at that.

1 COMMISSIONER SORDI: Can I ask you if, just
2 politely asking, if this is the case, how come there is no
3 survey, or there is no evidence of this in the report? We
4 have this broad-brush overview biological report from Live
5 Oak that really seems to be flying at a pretty high level,
6 and I don't see any lab reports, I don't see testing, I
7 don't see anything like that.

8 RICK HOPKINS: The map you're looking at is from
9 our February survey. In fact, we marked it, flagged it; HMM
10 surveyed that end, so that's a surveyed end. Every segment
11 Jeff marked. We then went out, I don't know, a month later
12 with the Town Staff and we relooked at everything. The
13 Applicant was with us, the Town was with us, and we
14 relooked at everything at that point.

15 COMMISSIONER SORDI: But you're talking about the
16 flow of the stream.

17 RICK HOPKINS: Yes, everything you see here was
18 flagged and surveyed by HMM.

19 COMMISSIONER SORDI: Right, but where are the
20 results of the soil test? And maybe it's unconventional,
21 but I'm just used to like, say, for example, the
22 geotechnical engineer, you get a big log in the back that's
23 an appendix that goes into detail about all their borings,
24 right?
25

1 RICK HOPKINS: Right. There isn't a soil test.
2 You look at the soils and you say are they hydric, or not?
3 Do they have oxidizing characteristics, or not? And then if
4 they don't, you just mark that down on a form; you mark yes
5 or no, so there's no test that you submit to a lab
6 somewhere. The way you do soil tests is you visually
7 inspect it, compare it sometimes to a soil chart for
8 complicated soils, and if you see hydric characteristics in
9 the soil, you mark yes.
10

11 COMMISSIONER SORDI: Yes, I get that, and I
12 understand. I guess it could be just a personal opinion,
13 but if that kind of work to that level of detail is done
14 and it proves a positive or negative, it would just seem
15 that we would have some kind of a test result, or log, or
16 something attached to the report that determines that and
17 confirms it. So, yes, that's just a statement I had to
18 make.

19 I guess when I think about the level of
20 evaluation and detail by the Regional Water Board, I guess
21 in the past I've been under the impression that they had
22 the expertise and the ability to evaluate the hydrological
23 characteristics of an area and make their own determination
24 about whether or not it is in fact an isolated wetland or
25

1 not. It sounds like you're saying they really don't; they
2 have to rely on the delineation done by the Army Corps.

3 RICK HOPKINS: That is correct. They rely on the
4 Corps' delineation. They, themselves, while they have a
5 definition of what is a wetland, and definitions of streams
6 and things, they, themselves do not delineate, and in fact,
7 in this case it wouldn't be a 401 certification, because
8 the Corps will disclaim it. It will be a Water Discharge
9 Permit under Porter-Cologne.

10 COMMISSIONER SORDI: Right, okay.

11 RICK HOPKINS: Which is the State act, because
12 the federal act isn't involved, so they rely on the State
13 act to issue the permit.

14 COMMISSIONER SORDI: Okay.

15 CHAIR BURCH: Can we let Commissioner Thomas
16 weigh in here very quickly, and then you keep going?

17 COMMISSIONER THOMAS: In February, when you went
18 out and looked and saw that there were changes from ten
19 years ago, we didn't receive any of the information about
20 where any holes were dug or anything to look at the soil
21 and to see what the soil saturation was in that area, so is
22 that information available to us?

23 RICK HOPKINS: Yes, it was one data sheet. We dug
24 one pit. As I said, the channel is pretty consistent. It's
25

1 incised in places, and then water just runs over the
2 surface in places, and it's a classic ephemeral stream.

3 COMMISSIONER THOMAS: Yes. Can you like show us
4 maybe on the map where the pit was dug? Is that a
5 possibility?

6 RICK HOPKINS: I wasn't with Jeff the whole time,
7 so I can't say exactly where, but I'll get the data sheet
8 and submit it.

9 COMMISSIONER THOMAS: Okay, thank you. In the
10 response to the general comments from the Planning
11 Commission, Comment 2 was all lumped together, and it was:
12 Did the biologist map vegetation? When did that happen?
13 Where are the areas of soil saturation? Where does that
14 extend to? Where is there standing or seasonal water
15 present? And where are the edge and boundary of these
16 areas?

17
18 In the response to Comment 2, I understand that
19 there were these changes to the ephemeral stream portion,
20 and then in other parts of the responses and in the Staff
21 Report there were notes about also an ephemeral wetland,
22 etc., but I don't really feel like the response to Comment
23 2 answered any of the questions about the soil, so I just
24 think that that's really what Commissioner Sordi is trying
25

1 to get around. And I know that you weren't here at our
2 first meeting.

3 RICK HOPKINS: No, I wasn't.

4 COMMISSIONER THOMAS: Yes. The questions were
5 many of us have been out at the site in the wet months, and
6 it is very, very wet in an area that is much larger than
7 just the very small ephemeral stream that exists, so I
8 don't know if this was lost in translation between the
9 groups or whatnot, but that was the information that we
10 were hoping to get more details on. I don't know who on
11 this team could respond to that, but that would help.

13 RICK HOPKINS: I think I could respond to soil
14 saturation, because soil saturation is only relevant if
15 there are hydrophytic vegetation that grows because of it.
16 Soils get wet all the time. You go out on an open hillside
17 where there is no ephemeral drainage and they can be wet
18 and muddy. It depends a lot on the soil, if it's clay or
19 whatever, so soil saturation by itself doesn't mean much.

20 Now, if there are hydrophytes there, that
21 indicates that that soil is holding water for very long
22 periods of time, because it's developing the
23 characteristics where the vegetation which is associated
24 with wetland, like down below on the northwest corner, show
25 up, and without hydrophytes, that's evidence that the soil

1 saturation doesn't mean anything. You need all three
2 criteria to have a wetland.

3 COMMISSIONER THOMAS: For it to be considered a
4 wetland.

5 RICK HOPKINS: Sometimes we dig pits in upland
6 areas just to dig pits in upland areas.

7 COMMISSIONER THOMAS: To just make sure and look
8 at the soil and see what's happening.

9 RICK HOPKINS: But even if the soils were wet,
10 it's still not a wetland.

11 COMMISSIONER THOMAS: Yes. So, then, as a follow-
12 up to that, what is considered, then, an ephemeral wetland?
13 It just appears not wet part of the year?

14 RICK HOPKINS: It's not a wetland.

15 COMMISSIONER THOMAS: That was one of my
16 questions.

17 RICK HOPKINS: Technically, you can't use the
18 term "wetland," because that's inferring that there are
19 soils, hydrophytes, and hydrology.

20 COMMISSIONER THOMAS: So, then I guess my follow-
21 up question for Raney and/or Staff is if that is indicated
22 in the documents, what does that mean, because it is
23 referred to as an "ephemeral wetland" in the documents?
24
25

1 NICK PAPPANI: Are you referring to the stream?
2 You referred to an ephemeral stream.

3 COMMISSIONER THOMAS: No, I'm referring to the
4 wetland that was referred to as an ephemeral wetland, which
5 is an oxymoron.

6 RICK HOPKINS: In the northeast corner?

7 COMMISSIONER THOMAS: No, the northwest corner.

8 NICK PAPPANI: Northwest.

9 RICK HOPKINS: Northwest corner?
10

11 NICK PAPPANI: Northwest.

12 RICK HOPKINS: Oh, that's a different story. I
13 thought (inaudible).

14 COMMISSIONER THOMAS: I mean, the channel flows
15 towards that wetland.

16 RICK HOPKINS: Interestingly enough, it just kind
17 of peters out, or where the water goes from there it's
18 difficult to say for sure. The water may be percolating. I
19 saw somebody emptying their pool water on one of the houses
20 there along that section when I was out there in March, so
21 who knows what's all the water getting there, because that
22 channel doesn't necessarily connect to it, it just sort of
23 stops.
24
25

1 COMMISSIONER THOMAS: I mean, there is some
2 probably underground flow from way above that, way up high,
3 that is also going. So, when we say there are no hydro...

4 RICK HOPKINS: Wetland plants.

5 COMMISSIONER THOMAS: ...wetland plants. Which
6 plants are out there right now in that space?

7 RICK HOPKINS: I'd have to look at the report to
8 see what plants are in that wetland, but that has always
9 been defined as a wetland.

10 COMMISSIONER THOMAS: Sorry, not the wetland. Now
11 we're back at the ephemeral stream.

12 RICK HOPKINS: Okay. I'll have to look at the
13 list of plants in our report, but the list of plants in
14 that stream are the same ones on the hillside.

15 COMMISSIONER THOMAS: Yes, so if you could look
16 that up and answer that, because there is one specific
17 species that's there, and I believe that it's a species
18 that is not native, but it's from when it was planted
19 probably when this land was used for grazing cattle, so if
20 you could look that up and get back.

21 RICK HOPKINS: What species are you interested
22 in?

23 COMMISSIONER THOMAS: The main grass species that
24 exists in like all of the ephemeral stream area.

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1 RICK HOPKINS: I'm sorry, I thought you had a
2 particular species that you knew, and so sorry.

3 COMMISSIONER THOMAS: I don't know if it's
4 Timothy grass. It's a grass that I think is what you plant
5 when you graze cattle. Anyway, thank you.

6 NICK PAPPANI: We can come back to Rick, and
7 he'll look that up.

8 COMMISSIONER THOMAS: Thank you.

9 COMMISSIONER SORDI: Thanks for clarifying that
10 you're confident it's not a wetland, because being a
11 layperson and walking around, especially during a
12 particularly wet period where the water is fanning out and
13 you're sinking down quite a bit, I appreciate you defining
14 that and indicating what the three precursors are.

15 I just have one other follow-up. There have been
16 some comments made, certainly by the public, and some
17 concern about the fact that the mitigation is happening
18 post project. I think I understand why that needs to be the
19 case now.

20 I am interested in your reaction to the comment
21 from Brian Wines, who wrote, I think, four letters over the
22 years in various states going back to 2015. He was
23 consulted this time just a few weeks ago. In his letter, he
24 did express concern about whether this is mitigatable, and
25

1 so I'm curious about your reaction to comments made by the
2 very agency that's going to be charged with issuing a
3 permit. I think it's a Section 401 water quality
4 certification, if I'm not mistaken.

5 He says, "Removal of a culvert from the creek may
6 provide mitigation for the fill of the portion of the creek
7 if removed culvert is at least as long as the filled reach
8 of the creek," does highlight the fact that the discussion
9 of mitigation for impacts to the ephemeral creek is
10 insufficient because the recirculated IS/MND does not
11 provide the length of the ephemeral creek channel that will
12 be impacted by the project.

14 It seems like that could be clarified in the
15 course of the permit. He does go on to say, however, that
16 "It's likely that the recirculated IS/MND will not be
17 adequate to support the issuance of State permits for
18 impacts to the ephemeral creek channel," and that statement
19 rings a little bit loud to me. I don't know whether he's
20 just saying based on what he had, now it appears as though
21 a permit is not issuable, but I guess I would be interested
22 in your reaction to that.

23 I still, having gone through this process before,
24 know that it was challenging, and there were moments where
25 we weren't sure we were going to be able to get the permit,

1 because the situation of our relatively minor amount of
2 fill was going to be unmitigable. It was difficult to
3 change the hydrology on the site, so we actually had to pay
4 a mitigation fee to a bank, and we had to go find a
5 mitigation bank, and they weren't easy to find. So, in a
6 situation like that, you have an unmitigable condition, and
7 I guess I just want to get your response to his somewhat
8 skeptical comment about whether or not this is a
9 permittable condition.

10
11 RICK HOPKINS: That's a great question, and I'll
12 get to the response to comments that we did, which I think
13 clarifies the questions that he had.

14 But while you ask, I thought I'd give you the
15 species that were found in the grassland area, which
16 include the ephemeral stream: canary grass, slender oat,
17 and filaree are the three key species that we saw in the
18 grassland. Herbaceous cover. So, that occurs in the
19 ephemeral stream and occurs on the upland. Those are not
20 wetland plants, so just to clarify that for you.

21 RICK HOPKINS: So, even if the question of could
22 they be hydrophytic soils, which they're not, but if they
23 were, it still would not be a wetland, because it lacks
24 hydrophytic vegetation.
25

1 So, to your question about whether or not the
2 mitigation is sufficient, we provided some clarifications
3 to Brian. I've worked with Brian for 25-30 years, I've
4 gotten maybe 20-30 permits from him over the years, so it's
5 like I know him, I know how he works, and I know his
6 system.

7 We've mitigated ephemeral drainages in much the
8 same way that have been approved by the Regional Board and
9 much the same way we recommend here, which is creating
10 these incised channels in between where there is currently
11 no incision, so you create a little longer connected
12 stream.

13 We've done that on a number of projects we've
14 done where we've had ephemeral drainages. Most of our
15 impacts are to what we call the more significant side of
16 the equation. Ephemeral streams are often mitigated at one-
17 to-one. When we talk about intermittent or perennial
18 streams, impacts are two- or there-to-one, plus a lot of
19 vegetation planting, and there is a lot more hydrology that
20 goes into designing those, for obvious reasons. Less
21 hydrology goes into designing... Not less hydrology, but it's
22 less complicated to design ephemeral drainages or
23 connecting these incisions, because it's a fairly simple
24 system.
25

1 So, we clarified the fact that we would do a
2 minimum of one-to-one, one of the things would probably be
3 pulling out the culvert that just exists upstream, pulling
4 that out and creating an incision in there, but there are
5 significant sections where there is no incision that one
6 could create more than one-to-one, so you could create
7 greater...

8 So, from a feasibility perspective, you can
9 create onsite more than the impact, so you can exceed one-
10 to-one, and you could plant some vegetation, and depending
11 on where it is, woody vegetation, depending on where it is,
12 but it's not going to be wetland woody vegetation, because
13 it does not have the conditions to support willows and
14 things of this sort, so you would plant the coyote brush
15 and other things that are kind of there. Blue oak, coast
16 live oak, things like that could be planted along there if
17 there were space to do that, and so that's why the
18 feasibility is there, it just wasn't clear enough in the
19 original comments and the original recirculated draft, so
20 the comment letter clarified what would be done.

21
22 COMMISSIONER SORDI: Okay, thank you for that. I
23 mean, just to conclude, it sounds like what you're saying
24 is it's not exactly a super heavy lift to accomplish in a
25 one-to-one replacement ratio, even if the Regional Board

1 got carried away and wanted a one-and-a-half to one- or
2 two-to-one, it could even be feasible that you would be
3 able to mitigate onsite.

4 RICK HOPKINS: Right.

5 COMMISSIONER SORDI: All right, thank you.

6 CHAIR BURCH: Commissioner Thomas.

7 COMMISSIONER THOMAS: I'm sorry, could you just
8 repeat the list?

9 RICK HOPKINS: Canary grass, slender oat, and
10 filaree.

11 COMMISSIONER THOMAS: Okay.

12 CHAIR BURCH: Are there further questions to
13 Staff or the consultants?

14 COMMISSIONER THOMAS: My question is not
15 specifically for Lot 8, but the change from the 10' to the
16 15' buffer, can you just like walk us through the process
17 of why that change was recommended for the mitigation
18 strategy? I can pull it, which one it is.

19 NICK PATTANI: Yes, Commissioner, I have some
20 notes on that. One of the things I wanted to indicate is
21 that in the 2017 EIR the mitigation required a minimum
22 setback of 10' from the top of bank, which we actually have
23 15' now, so from that standpoint in terms of measurement
24 from top of bank, it's actually an increased protection.

1 But it had language in there about "End 10' from the oak
2 canopy," so a little unclear. It seems like if you take
3 that, in some places you have just the channel, and in some
4 places you have oak canopy, so I guess it's 10' from the
5 channel, but where there is oak canopy there is 10' out
6 from that.

7 Our Exhibit in the document is based on the land
8 use near streams guidance document that the Town relies
9 upon. It doesn't necessarily require a setback from oak
10 canopy, but as you can see from our exhibit, which is
11 Exhibit 16 of the recirculated document, none of that oak
12 canopy is going to be impacted; it's fully respected with
13 the design, so through design there is essentially a
14 setback that protects the oak.

16 COMMISSIONER THOMAS: Okay, so it was after
17 review of the old EIR and looking at Town recommendations
18 in general you felt like that was a better mitigation
19 strategy?

20 NICK PATTANI: Correct. We wanted to make it
21 comport with the Town's guidance and based on the design
22 with that 15' buffer from the incised channel area, and
23 then the design avoiding the oaks; it's fully protected.

24 COMMISSIONER THOMAS: Thank you. I have one
25 question, and I think that I asked this the last time, so

1 I'm really sorry, Staff, if we have to look this up again.
2 I was trying to look in the original Staff Report. In what
3 year was this land stopped being used for grazing and used
4 for livestock, do you remember?

5 ERIN WALTERS: I'll have to search that. I'm
6 sorry; I know we talked about that the other day.

7 COMMISSIONER THOMAS: And I forgot. Okay, thank
8 you.

9 CHAIR BURCH: While you're looking that up, could
10 I perhaps ask a different question? I wanted to ask a bit
11 about the maintenance, and this is actually for Ms. Whelan.

12 Have we in the past written anything in
13 Conditions of Approval to ensure some type of... My concerns
14 are like when a road maintenance is being placed on a
15 homeowner, homeowners tend to defer expensive maintenance,
16 and ultimately that becomes a public safety issue. How does
17 the Town address those types of maintenance issues?

18 ATTORNEY WHELAN: I can start, and then we do have
19 representatives from Parks and Public Works and they can
20 speak to it in more detail, but for the Los Gatos Lodge
21 project the project was proposing to form a Homeowners
22 Association, and so the Condition of Approval required that
23 the Town and the Applicant enter into a Maintenance
24 Agreement, and that agreement provided that it would run
25

1 with the land and it would bind the future Homeowners
2 Association. And I did find some language in the proposed
3 Conditions of Approval that we could discuss later, but I
4 wanted to see if Parks and Public Works had information to
5 add.

6 JAMES WATSON: James Watson, Parks and Public
7 Works. This one is a little bit different. This one doesn't
8 really have an HOA being proposed, so the maintenance
9 solution is kind of in flux right now; I'm not exactly sure
10 how we'll end up doing it. Obviously, maintenance costs,
11 especially roadwork, is very expensive, and having a
12 homeowner... I understand your concerns. I don't know that
13 we've had a chance to really work out the solution that
14 we're going to go with here with the Planning Department
15 and with the developer on the maintenance approach.

17 CHAIR BURCH: Do we have an example of like it's
18 not an HOA, it's a Maintenance Association, anywhere else
19 in town, any other development? I've never heard that
20 before.

21 JAMES WATSON: I just actually ran into Chris
22 Constantine out in the lobby, and he had mentioned the
23 potential of maybe a Bond Assessment District or some other
24 tools that could be used to create some sort of assessment
25 district over all of the parcels that would then run with

1 the land and could provide a vehicle or means to collect a
2 fee that could be used for that maintenance.

3 CHAIR BURCH: If we do something like that, does
4 somebody from the Town actually verify that certain
5 maintenance is being done?

6 JAMES WATSON: Typically, we would hear
7 complaints. Homeowners don't typically know what's private
8 and what is public, and so we would definitely hear
9 complaints about dilapidated facilities, and then we would
10 contact whoever is the contact person on any agreements
11 that are in place to let them know their obligation.
12

13 CHAIR BURCH: Okay.

14 DIRECTOR PAULSON: And through the Chair, I can't
15 remember if it was mentioned before, but this is a little
16 unique. Usually, the HOA covers all that stuff. This is
17 going to be done a little bit differently, but you could
18 recommend in your direction for whatever the recommendation
19 is that the CC&Rs and Maintenance Association include
20 provisions for roads and whatever other provisions you had
21 in mind, and then we can move forward from there.

22 CHAIR BURCH: I think my question would be we had
23 this actually come up eons ago, Mr. Paulson, on a
24 development off Union where there was water there and there
25 was a sump pump or something, and it was supposed to be

1 that maintenance group's job to maintain it. They didn't,
2 it died. There were some issues that came out of that, and
3 I'm also thinking of this culvert, which I think is a good
4 idea, but we also know that if a culvert is not cleaned out
5 and maintained it just causes more flooding. I don't want a
6 good thing to become a bad thing, so can we include
7 language around something like that being...

8
9 DIRECTOR PAULSON: I think you should just do a
10 for example list of what you're looking to include. I think
11 I recall what you're talking about. That was on a private
12 property, so whether it's C3 with these detention basins on
13 individual lots, which come up quite often on individual
14 lots, not projects, or sump pumps that fail, ultimately
15 it's the property owner's responsibility, but we can
16 definitely weave some language into the Maintenance
17 Association to try to cover as much of that as possible.

18 CHAIR BURCH: Okay. Then I have one other
19 question, probably for Parks and Public Works. I was
20 listening to one of the neighbors who mentioned a
21 conversation he had about planting some trees, some
22 vegetation, to provide screening, and the trees they
23 referenced specifically was redwoods, and I thought we
24 weren't recommending redwoods because of fire, or they
25 weren't a native tree, or because of the water usage, was

1 that it? I know there was a reason we were not recommending
2 them, so if I wanted to ensure there was some kind of
3 language, I would probably then say vegetation for
4 screening, that they would work with Staff to determine.
5 Okay, thank you.

6 ERIN WALTERS: Through the Chair, Staff has not
7 been able to find that language, and we looked through past
8 years of documentation, so I don't know if the Applicant's
9 team has additional information.

10 CHAIR BURCH: Should I open up the public portion
11 of the hearing to ask that?

12 ERIN WALTERS: That would be great.

13 CHAIR BURCH: Okay, I'm going to open up the
14 public portion of the hearing to ask the Applicant to come
15 forward.

16 JIM FOLEY: Could you repeat that request?

17 COMMISSIONER THOMAS: It was just about when
18 grazing was stopped on the land.

19 JIM FOLEY: Oh, I do not have that information.
20 Sorry.

21 COMMISSIONER THOMAS: Do you feel like more than
22 ten years, or you have no idea? It's fine if you have no
23 idea.

1 JIM FOLEY: I'm 47 years old, and I've never seen
2 grazing, but I've never been... I have no idea.

3 CHAIR BURCH: I don't think there was cattle
4 grazing in 2014.

5 COMMISSIONER THOMAS: No, there wasn't.

6 SEAN MULLIN: Through the Chair, the best and
7 closest I can get is a memo to the CDAC from 2016 that
8 noted that cattle grazing is no longer occurring. It
9 doesn't say for decades...

10 COMMISSIONER THOMAS: Yes, when it stopped.

11 SEAN MULLIN: ...but it was in the context of
12 cancelation of the Williamson Act contract, so by at least
13 2016, presumably earlier.

14 CHAIR BURCH: Okay, I will reclose, unless you
15 have a follow-up question.

16 COMMISSIONER THOMAS: No, that's it. I mean, the
17 neighbors probably know best.

18 CHAIR BURCH: Probably.

19 JIM FOLEY: To follow-up on your questions and
20 your debate about the Maintenance Association, I think
21 there are some pretty clear State guidelines that dictate
22 what happens there. I don't know if Staff has any of that
23 on hand, but I think it will be very helpful.
24
25

1 CHAIR BURCH: I'll make sure I discuss with the
2 attorney. Thank you. All right; I'm going to reclose the
3 public portion of the hearing. Are there further questions?

4 COMMISSIONER THOMAS: My last question, I guess,
5 really about this, if the Army Corps of Engineers came out
6 and determined the...the courts and everything determined in
7 2016, that is when it was determined where the edge of the
8 wetland was, and like the portion of Ross Creek, that they
9 are considered a Water Body of the State and they're
10 responsible for, it's been ten years since then, and if
11 this land has just been sitting there, is that delineation...
12 As environmental consultants, did you confirm that the
13 specific delineation where the fence is right now is still
14 what they determined and what existed in 2016? Is that
15 confirmed with what plants exist there today at the border
16 of the wetland in that northwest corner?

18 RICK HOPKINS: Yes, it does, and just so you
19 know, what's called an Approved Jurisdictional Delineation,
20 AJD, it has a five-year life, so that wetland delineation
21 expired in 2021. Ultimately, the Corps will disclaim that
22 wetland now under the new rules, but the State will claim
23 it, so it essentially doesn't mean much from the
24 Applicant's perspective; they're not going to impact it, so
25 they don't need a permit from the Regional Board, but even

1 if they did impact it, they wouldn't get a permit from
2 Corps, and the reason the Regional OCA Corps would disclaim
3 it is that it's not contiguously connected to a navigable
4 water, but Ross Creek is, so Ross Creek would stay
5 jurisdictional.

6 COMMISSIONER THOMAS: Okay, but that little area
7 doesn't.

8 RICK HOPKINS: Right.

9 COMMISSIONER THOMAS: But that space that was
10 determined in 2016, you confirmed that it's the same?
11

12 RICK HOPKINS: It's approximately the same.

13 COMMISSIONER THOMAS: Okay, because obviously
14 things have changed on the property; that's why I was
15 asking about the grazing. It's when we stop actively
16 managing the land that things are going to change over
17 time, so five years is the typical.

18 RICK HOPKINS: Yes. It hasn't grown, it might
19 have even shrunk a little bit, but I don't think it's
20 significantly different, but that would be something they
21 would just delineate anyway, because what you do for the
22 Corps is you list any aquatic feature, even if it's a road
23 ditch, so that everything is on the table. They come out,
24 they look, and they go, "Yeah, that's a road ditch. We
25 don't claim that" kind of thing. So, all of those features

1 are put on a delineation for the Corps to come out and look
2 at and then make a decision.

3 COMMISSIONER THOMAS: Okay, thank you.

4 CHAIR BURCH: Are there any further questions of
5 the consultants, Staff? Commissioner Sordi, and then
6 Commissioner Thomas.

7 COMMISSIONER SORDI: Would Staff mind putting up
8 Figure 31 again? This was just the easement and swale
9 locations, which had the swale on it, but I just had a
10 question about the open space future trail easement.
11

12 DIRECTOR PAULSON: Mr. Mullin will be much
13 quicker, so we'll just give him a second.

14 COMMISSIONER SORDI: Thank you. This is for me
15 another of the big changes that I appreciate the Applicant
16 making. I don't think that we had extensive easements. It
17 looks to me like what is possible here is that if someone
18 was to ride a bike down Brooke Acres Drive, they could use
19 the EVAE to make their way through to the primary road
20 serving the project and make their way out to Twin Oaks on
21 a bike, theoretically. Hopefully, I'm correct in my
22 assumption.

23 The question I really wanted to zoom in on is
24 it's very steep to go to the right and then to the north,
25 but a hiking trail is always a possibility; I don't think

1 it would be a bike trail. The piece of dirt, real estate,
2 whatever, immediately adjacent to Cerro Vista Court where
3 the easement ends right at the north end, is that
4 controlled by the Town, or is that someone's private
5 panhandle for their lot? Do we have any way of knowing
6 that?

7 CORVELL SPARKS: This is Corvell Sparks, Parks
8 and Public Works, Assistant Engineer. Yes, that portion
9 actually belongs to the resident on the left side of the
10 connection there.

11 COMMISSIONER SORDI: Okay, thanks. So, we're
12 almost there. What I'm seeing is the possibility if
13 somebody wanted to go on a robust hike sometime in the
14 future, if we're able to secure funding to build a little
15 trail, that can be pretty simple. You could come down
16 Brooke Acres Drive, you could take a hard left and make
17 your way ultimately out to Shannon Road and other parts of
18 town if you could get across that little piece there, and I
19 don't know if there's a way to extend that down to the
20 driveway of the lot. It would be like a really brief,
21 really small little connection that would enable people to
22 get out to Cerro Vista. I'm just suggesting that.

23 COMMISSIONER THOMAS: The Cerro Vista driveway is
24 an agreement. There's an easement there with that

1 landowner. Yes, if that's what you're talking about, if
2 connecting those two easements just in a way so that there
3 could be an actual move through.

4 COMMISSIONER SORDI: Yes, that's exactly what I'm
5 talking about, so we have a way...

6 COMMISSIONER THOMAS: Maybe we should ask.

7 COMMISSIONER SORDI: ...to make the connection, and
8 then we really do have kind of a potentially great
9 pedestrian/bike pathway through the project, and a hikable
10 pathway.
11

12 DIRECTOR PAULSON: We'll wait and see if Parks
13 and Public Works has any additional comments, but I think
14 that could be, again, direction as part of any
15 recommendation that that connection be made, and then the
16 Applicant can respond to that when they move forward to
17 Council.

18 COMMISSIONER SORDI: Okay, thank you.

19 CHAIR BURCH: My question is do you guys want me
20 to open the public portion to ask the Applicant about this
21 specifically? All right; I will open the public portion of
22 the meeting to ask the Applicant that specific request.

23 JIM FOLEY: Thank you. I don't think I have this
24 wrong, but there is an easement there already that we had a
25 big dispute over, and we had to go purchase an additional

1 easement for our roadway, because the easement for the
2 benefit of the Town and public was not able to be used, so
3 you already have that easement across that land.

4 CHAIR BURCH: When you mean across the land, are
5 you specifically talking like close to the driveway, or
6 where your easement is already up to the...

7 JIM FOLEY: Where your hand is there, it begins
8 there and it goes all the way to the property line of the
9 adjacent property owner that controls that. Then we went
10 and purchased a different easement over the top of that for
11 the driveway.

12 COMMISSIONER SORDI: That was contiguous with it,
13 just for a different purpose. So, the existing one, it
14 sounds like and looks like you're making reference to a
15 recorded document that exists there.

16 JIM FOLEY: Yes.

17 COMMISSIONER SORDI: And we would have the
18 ability to place a condition essentially expanding the use
19 of the easement to include...

20 JIM FOLEY: I don't think so. I believe that
21 there is a recorded... Do you remember this?

22 JAMES WATSON: Yes, through the Chair, there is
23 actually an easement that was offered for a throughway, but
24 it was only offered to the Town if we created a throughway,

1 and so in my opinion, we don't actually have an easement
2 there because we never had a developer that wanted to
3 create the throughway which would allow us to actually
4 execute that offer of dedication to us. It was dedicated
5 for a specific reason that we weren't able to use, and
6 that's why Jim had to go ahead and actually get a separate
7 easement for the purposes that he intended to use it for,
8 which is this driveway to this lot.

9
10 There is recorded on the maps in this area a
11 horse easement that actually comes off of Shannon Road and
12 then comes up and parallels right on this Cerro Vista
13 section, and then just dead-ends a little bit at the end of
14 that parcel that owns that large wedge, it stops right
15 there, so there is an old equestrian easement there.

16 CHAIR BURCH: There is an easement for horses?

17 ERIN WALTERS: Yes.

18 CHAIR BURCH: All right.

19 JAMES WATSON: But when you look at it, it's
20 completely overgrown and it's hard to tell that there's an
21 easement there. There isn't an actual easement. He's got to
22 have a horse.

23 COMMISSIONER SORDI: So, if it's for that
24 specific purpose, and it's in a slightly different
25

1 alignment, it looks like we would have to make a specific
2 recommendation for a new one. It's better safe than sorry.

3 CHAIR BURCH: I think I can close the public
4 portion again for now. All right; do we have any further
5 questions of Staff? Then I do, to Ms. Whelan.

6 I want to go back to the maintenance agreement
7 and CC&R. You said you had some thoughts on that?

8 ATTORNEY WHELAN: Yes, there are two conditions
9 that speak to maintenance. The first one is Condition of
10 Approval 104, and it says that "The Applicant shall prepare
11 and submit project's covenants, conditions, and
12 restrictions," and it says that "The CC&R shall include
13 language that restricts the Homeowners Association from
14 making changes to CC&Rs without approval from the Town, and
15 it requires that reference to the stormwater treatment
16 facilities, Maintenance Agreement, and obligations be
17 incorporated."
18

19 CHAIR BURCH: But there is no Homeowners
20 Association, so would we say the Maintenance Association?

21 ATTORNEY WHELAN: So then, there is Condition of
22 Approval 110, and it says, "The Applicant shall execute and
23 record a stormwater treatment facilities Maintenance
24 Agreement to ensure perpetual maintenance. The agreement
25 shall outline operation and maintenance. The agreement

1 shall be executed prior to occupancy of the first building
2 and include the following." And then it says, "The property
3 owner shall operate and maintain all onsite stormwater
4 treatment facilities." So, as proposed, I read that to
5 require that each individual property owner is responsible
6 for the stormwater treatment facilities on their property.

7 CHAIR BURCH: To you, you would include the
8 individual bioswales and the culvert in that language?

9 ATTORNEY WHELAN: I think that's a better
10 question for Public Works.

11 CHAIR BURCH: We don't normally see this in
12 stormwater conditions.

13 JAMES WATSON: Yes, this one is a little bit
14 different as well. I think that's a little bit of our
15 template language merged in there where we're talking about
16 HOAs with the assumption that there is going to be an HOA.
17 The stormwater Maintenance Agreement is generally executed
18 with the HOA responsible for it. Obviously, the way this
19 one is unfolding, it looks like the developer desires each
20 individual property owner to maintain their own facilities,
21 and so I would imagine that we would need to have
22 stormwater Maintenance Agreements executed against every
23 single parcel for their maintenance activities, so this is
24 an area that I think we may need a motion to tweak that

1 language, or we can perhaps come to Council, if this goes
2 to Council, with some better language on that.

3 CHAIR BURCH: I could make maybe some
4 recommendations to add a little bit to it, and then it
5 moves forward, and if it gets tweaked a bit. But that's the
6 stormwater. If I were going back to Condition 104, I assume
7 that is where I would make a notation about road
8 maintenance. Is it?

9
10 ATTORNEY WHELAN: I would recommend, because
11 Condition 104 is really talking about what the CC&Rs have
12 to include, that roadway maintenance be included in both
13 Conditions 104 and a new condition we added to require
14 roadway maintenance.

15 CHAIR BURCH: Okay. Can we add on that though to
16 confirm that there will be a Maintenance Association? Can
17 that be written in there?

18 ATTORNEY WHELAN: Yes. And if you're inclined to
19 do that, I would write it to say there shall be a
20 Maintenance Association.

21 CHAIR BURCH: And then I wanted to add some form
22 of language around that road maintenance that ensured that
23 a huge swath of this road isn't falling to one of the below
24 market homes. Can I add something along the lines... There
25 are obviously specific conditions to each lot. Would I

1 write something in that, or would be in the CC&Rs that
2 makes a statement?

3 ATTORNEY WHELAN: CC&Rs are enforced privately,
4 so they can only be enforced by members of the association,
5 and so if it's something that you would like the Town to be
6 able to enforce, I recommend having it as a separate
7 Condition of Approval.

8 CHAIR BURCH: Okay.

9 ATTORNEY WHELAN: And then one of the
10 Commissioners asked about a State law that dictates how
11 easements are maintained in the absence of any other
12 agreement, and the planning manager located the section.
13 It's Civil Code Section 845, and it provides that as a
14 general rule, "The owner of an easement that's a private
15 right-of-way is responsible for its repair. If the easement
16 is owned by more than one person, or is attached to parcels
17 of land under different ownership, the cost of maintaining
18 and repair shall be shared by each owner of the easement or
19 the owners of the parcels of land pursuant to the terms of
20 any agreement entered into the parties for that purpose. In
21 the absence of an agreement, the cost shall be shared
22 proportionately to the use made of the easement by each
23 owner."
24
25

1 CHAIR BURCH: So, does that mean in this instance
2 if this easement is crossing through very specific lots, so
3 it's Lots 9,8, 10... Oh, that goes all on the back, 7, 2, and
4 3, then that falls to the responsibility of each individual
5 homeowner too?

6 ATTORNEY WHELAN: Yes, the statute provides that
7 in the absence of any agreement, it will be shared by all
8 the property owners based on how much use they each make of
9 the easement.
10

11 CHAIR BURCH: Candid, I'm just seeing a
12 maintenance nightmare here. Okay.

13 DIRECTOR PAULSON: Through the Chair, the last
14 piece that Ms. Whelan was speaking to is if there wasn't an
15 agreement. We're going to require an agreement, so that can
16 be written into it. I think it's also probably the use. If
17 they're all single-family homes, I would assume they're all
18 using it in the same manner, so depending on how that was
19 looked at, but that ultimately would be a civil issue.

20 I'll also add that we don't want any new public
21 roads, so all of our subdivisions are private roads, and so
22 we have other instances where Roadway Agreements have been
23 done through Parks and Public Works, so they're very
24 familiar with those.
25

1 CHAIR BURCH: Okay. I'm used to seeing this with
2 an HOA, and it's a little cleaner. This is just where I see
3 the issue.

4 COMMISSIONER THOMAS: I have one question for
5 Staff just to clarify for us and the public, because often
6 a lot of our projects don't see major portions depending on
7 getting permits from outside agencies that are not pretty
8 much guaranteed or typical. So, what typically happens if
9 this were forwarded to Town Council and the project moved
10 forward, and then an outside agency has to issue permits
11 also? What is the typical process that ends up happening
12 with that?
13

14 SEAN MULLIN: I can start. Prior to any ground
15 disturbance and prior to issuance of the permit is probably
16 how we would trigger it. We would need to see evidence that
17 the Streambed Alteration Agreement or the 401 was obtained.
18 The Applicant would need to work with those outside
19 agencies to get those permits.

20 The Town is not directly involved there, and to
21 the biologist's point, we've written the Condition of
22 Approval to be a little bit broad to allow... If you paint
23 them too close into a box, then they have to come back if
24 there are some significant changes from the Regional Water
25 Quality Board.

1 That said, if there are significant changes that
2 don't fit within the project that was approved, that would
3 be problematic for the developer, but that's something that
4 they'll work out with Regional Water Quality and CFW.

5 COMMISSIONER THOMAS: So, significant changes
6 would be like Lot 5, there is too much... To mitigate all of
7 that it would be these bigger changes than anticipated, and
8 so then the project would need to be adjusted for that?

9 SEAN MULLIN: I think the term we would typically
10 use is, are these changes in substantial conformance with
11 what was approved by the Town? We see this all the time on
12 smaller projects, but it's the same thing here on this type
13 of project.

14 COMMISSIONER THOMAS: Okay, thank you for
15 clarifying that. I don't have a question for Staff, but I
16 do think that because we just talked a lot about the
17 Conditions of Approval, and some of the language changes
18 and everything, that I would appreciate just a couple of
19 minutes to be able to look over and make sure that we
20 individually understand what we just discussed.

21 CHAIR BURCH: Okay, then I'm going to call a ten-
22 minute break. Thank you.

23 (INTERMISSION)

1 CHAIR BURCH: ...reopen the meeting. Thank you
2 very, very much for your patience. All right, coming back
3 and everybody reviewing all the information in front of
4 them, are there any final questions of Staff or the
5 consultants that anyone has? Commissioner Thomas.

6 COMMISSIONER THOMAS: I have a question for Staff
7 about some language for a Condition of Approval. Today we
8 had in Exhibit 36 the proposed Lots 5 and 6 vegetation
9 buffer. In Staff's opinion, what is the best way to include
10 that into a Condition of Approval, and is it possible to
11 include some language that extends similar species list,
12 etc. to the other lots? This was the only vegetation thing
13 that we got to.
14

15 ATTORNEY WHELAN: Are you thinking of adding a
16 Condition of Approval to require this screening?

17 COMMISSIONER THOMAS: Sorry, not the screening. I
18 mean, part of this would cover the screening, but yes,
19 making sure that saying that what is currently presented in
20 Exhibit 36. The proposed list of plant species, in general,
21 is good in what is supported and what we would want to
22 include in a Condition of Approval, but also make sure that
23 it can be adjusted to accommodate for changes due to
24 screening, and also it is weird to only have it be for Lots
25 5 and 6? Should the list be expanded to other lots?

1 ATTORNEY WHELAN: It sounds like maybe you're
2 thinking of two conditions, so maybe one condition to say
3 that any plantings will conform with the species identified
4 in Exhibit 36, and then maybe a second condition to discuss
5 screenings for Lots 5 and 6.

6 COMMISSIONER THOMAS: Whatever language is
7 appropriate so that they don't conflict with each other, I
8 guess, when we come up with that.

9 ATTORNEY WHELAN: And when you do, I think it
10 would be safe to say that any plantings have to conform
11 with the species identified in Exhibit 36, because that
12 would include any screening that you impose for Lots 5 and
13 6.

14 COMMISSIONER THOMAS: Okay, maybe, or potential
15 substitutions or alternatives approved by Staff.

16 DIRECTOR PAULSON: Through the Chair, obviously
17 we're in the hillside area, so there is an approved list in
18 the Hillside Development Standards and Guidelines, so maybe
19 just refer to other species from that list.

20 CHAIR BURCH: That said, does anybody want to
21 venture a motion?

22 COMMISSIONER SORDI: Okay. I'll go ahead and try
23 to make a motion here. It's kind of a long winded one, and
24
25

1 if there are any adjustments to conditions, we'll talk
2 through those.

3 I'll go ahead and make a motion to forward a
4 recommendation to Town Council to approve the Architecture
5 and Site Applications, Subdivision Application, and
6 Mitigated Negative Declaration Application by taking the
7 following actions:

8 Adopt the recirculated Mitigated Negative
9 Declaration ND-25-001, and the recirculated Mitigation
10 Monitoring Program included there in Exhibits 38 and 39.

11 Make the finding that the project is consistent
12 with the General Plan, including the incentives and waivers
13 requested pursuant to the State Density Bonus Law and the
14 granting of requested exceptions of the maximum allowed
15 density pursuant to the Builder's Remedy provision of the
16 Housing Accountability Act.

17 Make the finding that the proposed project
18 complies with Section 66474 of the State Subdivision Map
19 Act with granting other requested exceptions to Town
20 standards pursuant to the Builder's Remedy provision of the
21 Housing Accountability Act.

22 Make the findings for the Tentative Map approved
23 with respect to State responsibility area for very high
24 fire hazard severity zones, findings of such that are made
25

1 with respect to the State Board of Forestry and Fire
2 Protection Board.

3 Make the finding that the project meets the
4 Objective Standards of Chapter 29 of the Zoning Code with
5 the incentives and waivers requested pursuant to the State
6 Density Bonus Law in granting other requested exceptions to
7 Town standards pursuant to Builder's Remedy and the Housing
8 Accountability Act.

9 Make the finding that the project complies with
10 the Hillside Development Standards and Guidelines with
11 respect to granting of the requested exceptions to Town
12 standards.

13 Make the finding that the project complies also
14 with the Hillside Specific Plan with the incentive and
15 waivers requested pursuant to State Density Bonus Law.

16 Make affirmative findings as required by State
17 Density Bonus Law for granting an incentive pursuant to
18 California Government Code Section 65915, and for granting
19 waivers also consistent with Government Code 65915(a)(2),
20 and to make the finding as required under Government Code
21 65589.5 of the Housing Accountability Act.

22 None of the findings for denial of a Builder's
23 Remedy project can be made.
24
25

1 Make considerations as required by Section
2 2920.150 of the Town Code approving an Architecture and
3 Site Application.

4 Finally, approving the Architecture and Site
5 Applications S-24-023 through S-24-033 and S-24-059,
6 including Subdivision Application M-24-023, and the
7 recirculated Mitigated Negative Declaration with the
8 recommended revised conditions contained in Exhibit 42, and
9 the development plans in Exhibits 15 through 27, Exhibit
10 35, and Exhibit 36. Did I cover it all?

11
12 CHAIR BURCH: You did a really good job. Didn't
13 you, however, have a... Hold on. Yes.

14 ERIN WALTERS: Through the Chair, also if we
15 could just add to add Exhibit 46 that describes the changes
16 to the Mitigation Measure, the errata.

17 COMMISSIONER SORDI: Okay, thank you, yes. And
18 also, to approve subject to Exhibit 46 that describes the
19 changes to the Mitigation Measure as it relates to agency
20 permitting.

21 CHAIR BURCH: All right. Is there a second?
22 Commissioner Thomas.

23 COMMISSIONER THOMAS: Second the motion.
24
25

1 CHAIR BURCH: To the Maker of the Motion and the
2 Second of the Motion, could I make some Conditions of
3 Approval modifications?

4 COMMISSIONER THOMAS: In order?

5 CHAIR BURCH: Yes, so you go first.

6 COMMISSIONER THOMAS: For Condition of Approval
7 12, can we make sure that the replacement tree language
8 includes the number and size of replacement trees shall be
9 determined using the canopy replacement table in the Town
10 Code, and the..
11

12 DIRECTOR PAULSON: The approved tree list from
13 the Hillside Development Standards and Guidelines.

14 COMMISSIONER THOMAS: And that. Thank you. And
15 then an addition of a Condition of Approval; this has to do
16 with landscaping and what I was just asking about, so to
17 include a Condition of Approval that Exhibit 36 of the list
18 of landscaping plants and designs from Exhibit 36 from
19 today's Staff Report be included with the landscaping, and..
20 I'm sorry, Ms. Whelan, you had some specific language that
21 I like, but that I did not write down; I apologize.

22 ATTORNEY WHELAN: "Any plantings shall conform
23 with the list of approved plant species from Exhibit 36,"
24 but I want to make sure that doesn't conflict with the
25

1 Hillside Plantings Guidelines, so how about "...shall conform
2 with both the Hillside Planting Guidelines and Exhibit 36"?

3 COMMISSIONER THOMAS: Yes.

4 CHAIR BURCH: All right. Do I need to probably
5 specifically to the Maker of the Motion is that acceptable,
6 since it's a different person making that recommendation?

7 COMMISSIONER SORDI: I accept the condition. I
8 accept the amendment to my motion.

9 COMMISSIONER THOMAS: And I second.

10 CHAIR BURCH: All right, so then I'm on 104. We
11 need to strike the language that references the Homeowners
12 Association making changes, and instead I would like it to
13 read, "The CC&Rs shall include relevant project Conditions
14 of Approval, and shall include a Maintenance Association
15 responsible for maintaining..." Oh, no, I don't think we want
16 to say maintaining the redwoods, but that they need to
17 include a Maintenance Association Agreement. Is there other
18 language—I'm asking Parks and Public Works—that you feel I
19 should add to that? You think that's fine?

20 SEAN MULLIN: Through the Chair, this is specific
21 to a roadway Maintenance Agreement?

22 CHAIR BURCH: Correct. Yes, sorry. No, the other
23 items are in stormwater. And then on 110...

1 ATTORNEY WHELAN: Question for you on 104, did
2 you want the Maintenance Association to be responsible for
3 both the stormwater treatment and the roadway, or did you
4 want to handle the roadway separately?

5 CHAIR BURCH: When we had talked, I was going to
6 put the comment about the Maintenance Association and the
7 culverts and bioswales under 110A, or do you want me to
8 have it in both sections? I mean, I couldn't care less.

9 ATTORNEY WHELAN: Since 104 is talking about what
10 needs to be included as the responsibility of the
11 Maintenance Association, I would be inclined to include
12 everything that's their responsibility.

13 CHAIR BURCH: Okay. I don't think the Maintenance
14 Association... They're still saying the individual properties
15 maintain some of these, but if I want the culverts and the
16 bioswales and stuff to be part of that, I can?

17 ATTORNEY WHELAN: I'll defer to Public Works, but
18 the way this is set up right now is the individual property
19 owners are responsible for the stormwater treatment
20 facilities.

21 CHAIR BURCH: Right.

22 ATTORNEY WHELAN: And then the conditions are
23 silent of roadway maintenance, and so that Civil Code
24 section would apply.
25

1 CHAIR BURCH: Yes, that's what I thought. I was
2 putting the roadway in the CC&R with the Maintenance
3 Agreement, and in 110A I was going to add "...includes, but
4 not limited to," for the repair responsibility, "culverts,
5 bioswales, catch basins, and stormwater infrastructures on
6 sites."

7 JAMES WATSON: Yes, we agree with that.

8 CHAIR BURCH: Okay. I said that really fast. Do
9 you want me to slow that down? 110A. So, it says, "The
10 property owner shall operate and maintain," etc. I'm saying
11 this "...includes, but not limited to, culverts, bioswales,
12 catch basins, and stormwater infrastructures on sites." Are
13 you ready for my next one?
14

15 The next one is 120, and I promise you, moving
16 forward this is just going to be included. This is actually
17 project construction activities, not excavation, and I
18 would like to add that "No trucks can sit and idle on Twin
19 Oaks Drive or Cerro Vista Court," that "The developer is
20 responsible to create space onsite for all trucks,
21 equipment, personnel trucks, and material."

22 And then I have two new conditions to add when
23 you're ready.
24

25 ATTORNEY WHELAN: Before we leave Condition of
Approval 104, right now it says, "References to the

1 stormwater treatment facilities Maintenance Agreement
2 obligations shall be incorporated in the CC&Rs." Did the
3 Commission want other obligations to be incorporated into
4 the CC&Rs, like the culverts, bioswales, catch basins?

5 CHAIR BURCH: I'm not sure what else that would
6 be. If I've already covered the road...

7 COMMISSIONER THOMAS: (Inaudible).

8 CHAIR BURCH: Well, that's what I'm asking.

9 COMMISSIONER THOMAS: I think that it's the
10 stormwater, all of the culverts, etc., but I feel like all
11 stormwater treatment facilities is covered.

12 CHAIR BURCH: If I put it in A, and I'm adding it
13 to A, doesn't that cover it?

14 COMMISSIONER THOMAS: Yes, it does.

15 CHAIR BURCH: All right, and then, Ms. Whelan, I
16 might want your assistance with this. I did also want to
17 add a condition that probably goes somewhere around the
18 CC&Rs to file a formal private road Maintenance Agreement
19 with the Town, and then include that in the CC&Rs so all
20 buyers are notified. Does that sound okay?

21 ATTORNEY WHELAN: It does. If you give me a
22 minute, I can read something into the record.

23 CHAIR BURCH: Okay.

1 ATTORNEY WHELAN: One possible way that could
2 read is "Prior to the issuance of any Building Permits or
3 the filing of a final map, the Applicant shall record a
4 legally enforceable private road Maintenance Agreement. The
5 agreement must be reviewed and approved by the Town
6 Engineer and Town Attorney. It must explicitly state that
7 all property owners benefiting from the private road share
8 equitably in the perpetual maintenance, repair, and
9 liability of the roadway. The recorded document shall run
10 with the land and bind all future successors."

12 CHAIR BURCH: I like everything about that,
13 except one thing. I would like that to say "...with the
14 exception that the below market rate properties are only
15 responsible for their proportional frontage and maximum."
16 Does that sound okay?

17 SEAN MULLIN: Just a question for clarification.
18 When you look at the shape of Lot 1, which is one of the
19 BMP units, it peninsulas all the way out to Twin Oaks, so
20 if we look at proportional to...

21 CHAIR BURCH: That's what I was trying to figure
22 out, how to say this. So, can I say it like equal to the
23 adjacent BMRs? I guess I just do not think it is right to
24 put that much road maintenance on a BMR owner. Can I just
25 say, "...with the exclusion of the BMRs," and that the street

1 responsibility is covered by the other lots? I mean, I
2 could make that a lot easier and just say it's split
3 between the other lots. Can I do that?

4 ATTORNEY WHELAN: I think there has to be like a
5 reasonable relationship between the burden and the
6 property. Maybe it could say, "The frontage bordering the
7 residences."

8 DIRECTOR PAULSON: Just to step back, I think
9 what Ms. Whelan originally said was the proportionate share
10 of the use of the road, so I don't see that as related to
11 frontage. These are all single-family homes, they all have
12 the same use, so we can work through those details down the
13 road, which is different than your latest statement, which
14 was they don't pay anything, but those are two things to
15 consider.
16

17 CHAIR BURCH: Do we say... Joel had a good
18 suggestion, based on the square footage of the house?

19 ATTORNEY WHELAN: It would be simplest to revert
20 to the civil code where it says based on proportional use
21 of the roadway.

22 CHAIR BURCH: Okay, I'm getting three nods. I
23 like that. Okay. I have one more. This goes back to
24 landscape. I'm so sorry. Just that the Applicant work with
25 adjacent neighbors to develop a landscape plan to address

1 screening between the properties, and they will work with
2 Staff to select the appropriate trees or shrubs. I'm
3 leaving it that way since it's hillside, and fire. Does
4 that sound okay? Okay, I like it when they nod.

5 Are those acceptable to the Maker of the Motion?

6 COMMISSIONER SORDI: Those are acceptable
7 amendments to my motion.

8 CHAIR BURCH: And to the Seconder?

9 COMMISSIONER THOMAS: Yes.

10 COMMISSIONER SORDI: I have another.

11 CHAIR BURCH: Oh, you have one to add? Oh, yes,
12 you do.

13
14 COMMISSIONER SORDI: I do, to add a couple
15 conditions related to trails. Staff actually had clarified
16 that right now the EVAE that runs through Lot 3 is really
17 for that purpose and that purpose only, so I would like to
18 suggest that the EVAE be shown on the map, and this is
19 specifically the EVAE that starts where Brooke Acres Drive
20 ends at the property line and runs all the way over to the
21 private road, which is the main road for the project. That
22 the final map show that as not just an EVAE, but also a
23 bike and pedestrian easement, so that would run over the
24 EVAE and that bike and pedestrian easement would continue
25 over the private road all the way out to Twin Oaks.

1 JAMES WATSON: Through the Chair, would you like
2 to add something about a gate perhaps? I think it's going
3 to have a full gate at the property line, so you maybe want
4 to add some access to that condition.

5 COMMISSIONER SORDI: Sure. I mean, if we could
6 have just a gate wide enough for bike and pedestrian
7 access, that would be ideal.

8 COMMISSIONER THOMAS: So, the one that's like
9 the...

10 COMMISSIONER SORDI: Right.

11 COMMISSIONER THOMAS: You know, like we have
12 along the trail downtown before you hit the road, so people
13 don't get run over.

14 JAMES WATSON: I recommend you just say, "As
15 approved by the Town Engineer."

16 COMMISSIONER SORDI: Okay.

17 COMMISSIONER THOMAS: Perfect.

18 COMMISSIONER SORDI: "As approved by the Town
19 Engineer." Sounds great.

20 SEAN MULLIN: And I would suggest, "...and the Fire
21 Department." Since that is an EVAE, we want to make sure
22 we're not constraining it by putting in the pedestrian
23 access.

1 COMMISSIONER SORDI: Okay, so "As approved by the
2 Town Engineer and Fire Department."

3 Secondly, would like to modify Condition 9
4 relating to public trail easements, which already is over a
5 portion of Lot 10. Right now, there is a 125' wide trail
6 easement over Lot 10, running all the way up to the
7 northern property boundary. I'd like to have that shift to
8 a 20' wide pedestrian easement that runs along that
9 northern boundary and connects with the driveway to Lot 10,
10 and that the Applicant make good faith efforts to obtain
11 the appropriate easement to cross that small section of
12 land and connect with Cerro Vista. That would involve
13 approaching the property owner, which I think is
14 (inaudible) Lu (phonetic), which is an adjacent property
15 owner. Does that sound practical?
16

17 CHAIR BURCH: If maybe you could show Public
18 Works your markup.

19 DIRECTOR PAULSON: I think we understand what
20 you're looking for.

21 COMMISSIONER SORDI: Okay, thanks.

22 CHAIR BURCH: All right.

23 COMMISSIONER SORDI: Any other amendments?

24 COMMISSIONER THOMAS: No, but the Secorder is
25 fine with that.

1 CHAIR BURCH: Okay. Then before we call, I need
2 to ask if there are any other motions on the table?

3 ATTORNEY WHELAN: Did the Commission want to add
4 a Condition of Approval regarding the culvert or the
5 screening?

6 DIRECTOR PAULSON: They did.

7 CHAIR BURCH: I did.

8 DIRECTOR PAULSON: Yes, both were done.

9 ATTORNEY WHELAN: Oh, okay.

10 CHAIR BURCH: Yes, I did. Okay. All right, if
11 there are no other motions, is there any discussion to
12 have? Commissioner Burnett.

13
14 COMMISSIONER BURNETT: Well, I'm not unusual, but
15 I cannot support my fellow commissioners on this. My
16 comments from the December 19, 2025 Planning Commission
17 meeting have not changed in that a fair standard argument
18 under CEQA can be made requiring an EIR.

19 With the additional new facts that have
20 conclusions as to the environmental impact on the ephemeral
21 stream, as well as the Water Board's concerns in a letter
22 dated April 26, 2025, an EIR is required when there is
23 subjective evidence when there is one or more significant
24 impacts on the environment, and it can be fairly argued,
25 based on substantial evidence in the light of the whole

1 record, that a project may have a significant environmental
2 effect, and that requires an EIR.

3 The complexity of this project, and so many more
4 questions today actually give me more emphasis, or I feel
5 more strongly to require a full EIR, which should have been
6 done in the first place. Thank you.

7 CHAIR BURCH: Thank you, Commissioner Burnett. Is
8 there any other discussion? Commissioner Mayer.

9 COMMISSIONER MAYER: I think I will be supporting
10 the motion on the table, and I agree with all the
11 amendments made. I haven't spoken much this evening,
12 because I actually was on the Commission during the first
13 time you guys heard this last year, so I've just been
14 listening to all the really robust discussion.

15 Thank you to Staff and Public Works, and also the
16 environmental consultants; it was really interesting
17 learning about the whole process for the Mitigated Negative
18 Declaration.

19 I want to say, just looking at the Applicant's
20 package, and especially the civil engineering drawings,
21 they are very thorough. I think HMM did a really good job,
22 especially with stormwater control and drainage. From my
23 professional experience, what I'm seeing here is a state-
24 of-the-art approach to stormwater management, so I think if
25

1 it is constructed as is drawn, the stormwater issue is
2 going to be well managed, so that's just my read of it, and
3 that's all I have to say. Thanks.

4 CHAIR BURCH: Thank you, Commissioner Mayer. Any
5 further discussion? If not, I will call the question. All
6 in favor? Opposed? Motion passes 4-1. As this is a
7 recommendation for the Council, I assume there are no
8 appeal rights?

9 SEAN MULLIN: That's correct.

10 CHAIR BURCH: Thank you.

11 (END)

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