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

Los Gatos Planning Commissioners:	Emily Thomas, Chair Kendra Burch, Vice Chair Susan Burnett Steve Raspe Joseph Sordi
Community Development Director:	Joel Paulson
Town Attorney:	Gabrielle Whelan
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1 That being said, Ms. Walters will be presenting
2 the Staff Report this evening.

3 ERIN WALTERS: Thank you, Chair, and good
4 evening. Erin Walters, Senior Planner.

5 Before you this evening is a request to subdivide
6 the 17.5-acre vacant lot located at 178 Twin Oaks Drive
7 into 12 lots through a Vesting Tentative Map. The Applicant
8 is requesting approval of multiple architecture and site
9 applications to construct 12 two-story, single-family homes
10 and associated site work requiring a Grading Permit.
11

12 Of the 12 single-family homes, three are
13 designated to be affordable, representing 25% of the total
14 units. These units would be for sale, BMP units restricted
15 to low-income households.

16 The project also includes a request to remove 223
17 protected trees. Twelve trees are large, protected trees
18 per Town Code.

19 This project is being processed under SB 330. The
20 project qualifies for five incentives and unlimited waivers
21 under the Density-Bonus Law, and the Applicant has also
22 invoked Builder's Remedy.

23 The project's underlying zoning is RC, which
24 would not support the proposed density. The Applicant is
25 utilizing Builder's Remedy for the General Plan land use

1 designation zoning and density. The Town is applying R-1:10
2 zoning standards to this project.

3 Primary access to the subdivision would be
4 provided by a 20' wide private street with a cul de sac
5 connecting to Twin Oaks Drive. A 20' wide emergency vehicle
6 access would extend south to the site, 2 Brooke Acres
7 Drive, providing secondary emergency access consistent with
8 the Fire Department's standards. A private driveway will be
9 accessed off of Cerro Vista Court, which will provide
10 access to Lot 10.

11
12 The Town requested the Applicant meet all the
13 Town's Objective Standards; however, the Applicant has
14 requested incentives and waivers allowed through State
15 laws.

16 The Applicant has requested four incentives
17 through State Density Bonus Law, which include not
18 installing story poles and netting, not providing
19 sidewalks, not providing trails, and not providing open
20 space easements. The Applicant has also requested 58
21 different waivers, as summarized on page 13 of the Staff
22 Report. The Applicant has provided written justification,
23 which can be found in Exhibit 5.

24 An Initial Study was prepared for the project and
25 it included a number of project-level technical studies.

1 All technical reports were peer reviewed by the Town and
2 prepared by the Town's consultants. The Initial Study
3 concluded that the project will not have a significant
4 impact on the environment with the adoption of the MND and
5 the Mitigation Monitoring and Reporting Program to mitigate
6 potential impacts to less than a significant level. An EIR
7 was therefore not required.

8
9 Eighteen mitigation measures are included in the
10 MMRP and Conditions of Approval, which are in Exhibit 3.

11 The MND did not have to be recirculated as there
12 were no major modifications that were identified after the
13 public review. Minor changes are described in the errata
14 sheet, which is found in Exhibit 14.

15 There are two addendums this evening, as well as
16 a Desk Item, that were distributed for this item.

17 This concludes Staff's report. Staff, as well as
18 the Town's environmental consultants from Raney, the Town's
19 traffic consultants, and outside legal counsel are
20 available to support your discussion.

21 Now, I'm going to turn it over to the Town
22 Attorney, who will provide background on the regulatory
23 framework.

24 ATTORNEY WHELAN: Thank you. I'm Gabrielle
25 Whelen, Town Attorney. There are a number of different

1 State housing laws that apply to this project, and so I
2 have prepared a brief PowerPoint to go over the applicable
3 laws so that everybody has the framework. Also available on
4 Zoom is Nazanin Salehi with the law firm of Goldfarb &
5 Lipman. The law firm of Goldfarb & Lipman has been
6 assisting the Town with its review of the various Senate
7 Bill 330 planning applications that have come in.

8
9 There are four major laws that are implicated by
10 the project, and I'll discuss them in turn. The first is
11 Senate Bill 330, the second is the State Housing
12 Accountability Act, the third is State Density Bonus Law,
13 and the fourth is the California Environmental Quality Act.

14 Senate Bill 330 authorizes applicants to submit
15 what's called a preliminary application, and once that
16 preliminary application has been submitted the Applicant
17 vests to whatever development standards were in place at
18 the time the application was submitted. There are 17 things
19 that are required for the preliminary application to be
20 deemed submitted, and applicants who meet those 17 criteria
21 will vest.

22 This Applicant vested at a time prior to
23 certification of the Town's Housing Element, so as a result
24 this Applicant is eligible to use what is called the
25 Builder's Remedy, which I'll get into later.

1 Pursuant to SB 330, the Town is limited to five
2 public hearings on any SB 330 project, and tonight's
3 hearing will constitute the first of those five.

4 This project vested to developments standards in
5 place when it submitted its preliminary application, and in
6 addition to SB 330 the project is using State Density Bonus
7 Law and the Builder's Remedy.

8 The State Housing Accountability Act is the
9 statute that contains what is colloquially called the
10 "Builder's Remedy." It's codified at Government Code
11 Section 65589.5, and it provides that local agencies cannot
12 apply objective standards that would render qualified
13 housing projects infeasible, and interpretations of the
14 term "infeasible" mean both physically impossible and
15 economically infeasible. A project qualifies if it has a
16 sufficient amount of low-income housing as a component of
17 it. The requirement is that it be 20% affordable to low-
18 income households. This particular Applicant is proposing a
19 project that has 25% of the units affordable to low-income
20 households.
21

22 Also, there are three ways that a project can be
23 deemed an eligible housing development project. The first
24 of those is that it's a project for residential units only,
25 which this project is, so it therefore qualifies.

1 Then, we discussed the fact that more than 20% of
2 the units will be low-income, so it qualifies on that basis
3 to use the Housing Accountability Act.

4 The Town does have the ability to apply its
5 Objective Development Standards, so long as those standards
6 will not render the project infeasible, and so the question
7 often comes up: What is an Objective Development Standard?
8 It needs to be a standard that is consistent with the Town
9 meetings its Regional Housing Needs Allocation (RHNA), and
10 it has to be applied to facilitate development at the
11 density that is proposed. It can't be a subject
12 determination, it needs to be something that's based on a
13 written, uniformly applied standard.

14 The Housing Accountability Act also goes into
15 what it means for a local agency to disapprove a housing
16 development project, and the definition is broader than
17 simply voting no on a housing proposal. It can also be not
18 meeting the Town's statutory deadlines for making a
19 decision, and it can also mean imposing a Condition of
20 Approval that would render a project infeasible.

21 Pursuant to the statute, the Town does bear the
22 burden to show that the Condition of Approval will not
23 render the project infeasible, and the Town makes this
24 determination based on the preponderance of evidence
25

1 standard, meaning that the evidence in favor of it not
2 rendering a project infeasible outweighs evidence on the
3 other side.

4 The Housing Accountability Act does have a number
5 of grounds upon which a local agency can deny a Builder's
6 Remedy project or impose a condition that renders it
7 infeasible.

8 The first would be that the Town had an adopted
9 Housing Element and has met its share of the Regional
10 Housing Needs Allocation in all income categories proposed
11 in the project. The Town at this point has not met its
12 Regional Housing Needs Allocation, so that first reason is
13 inapplicable.

14 The second reason would be that the project will
15 have a specific adverse impact on public health or safety,
16 and that determination needs to be based on an objective
17 written standard.

18 The third basis for denying or rendering a
19 project infeasible would be that it's required in order to
20 comply with a specific State or Federal law.

21 The fourth reason would be that the project is on
22 agricultural land without adequate water or wastewater
23 treatment facilities.
24
25

1 Then the fifth reason would be that the
2 development is inconsistent with both the Zoning Ordinance
3 and General Plan land use designation. However, this reason
4 is only available to public agencies that had a certified
5 Housing Element at the time that the project vested.

6 The sixth and final reason for denying would be
7 if the project did not qualify as a Builder's Remedy
8 project. Based on the 2025 version of the statute, projects
9 that are much denser than are allowed in the new version of
10 the statute will no longer qualify as a Builder's Remedy
11 project. However, this project does not meet that density,
12 and so it does qualify.

13 Are there any questions on the Housing
14 Accountability Act before I move to State Density Bonus
15 Law? Okay.

16 State Density Bonus Law provides that applicants
17 who are providing specified levels of affordability can get
18 Density Bonuses, meaning they can build a denser project
19 than they could otherwise, a specified number of incentives
20 or concessions, and unlimited waivers. Pursuant to the law,
21 applicants do not need to utilize the Density Bonus portion
22 of the statute, meaning they don't have to build denser in
23 order to take advantage of the ability to use incentives,
24 concessions, and waivers, and so that is what this
25

1 Applicant has chosen to do. They are not seeking to
2 increase the density, but they are seeking incentives,
3 concessions, and waivers.

4 An incentive or concession can be any reduction
5 in standards that results in identifiable and actual cost
6 reductions to the project. It can also be approval of
7 Mixed-Use zoning, which is not applicable here, or any
8 other thing that will result in a cost reduction. An
9 example of that would be the request not to comply with the
10 story pole policy.

11 The public agencies have several grounds upon
12 which to deny a request for an incentive or concession, and
13 the first would be if the request does not result in
14 identifiable or actual cost reductions to provide for
15 affordable housing. The second reason would be if the
16 proposal would have a specific adverse impact on public
17 health or safety and that impact cannot be mitigated
18 without rendering the project unaffordable. The third
19 grounds for denial would be if the requested incentive or
20 concession were contrary to State or Federal law.

21 The State Density Bonus Statute also provides for
22 waiver, and a waiver is defined as not applying any
23 development standard that would have the effect of
24 "physically precluding the project." It's important to note
25

1 that there is case law holding that that means physically
2 precluding the project as proposed, meaning that public
3 agencies don't have the ability to redesign the project.

4 The final law that applies is the California
5 Environmental Quality Act, and as Ms. Walters mentioned,
6 the Town's consultant did prepare an Initial Study, and
7 based on the results of that Initial Study the Town
8 determined that a Mitigated Negative Declaration was
9 appropriate, and what that means is there may be
10 significant environmental impacts, but all of those impacts
11 can be mitigated to less than significance.

12
13 That concludes my presentation, and both I and
14 Ms. Salehi are available to answer any follow-up questions.

15 CHAIR THOMAS: Before we get to questions to
16 Staff, because at tonight's meeting there is a lot to
17 cover, I just wanted to request that Commissioners limit
18 our questions to Staff at this time to clarifying
19 questions, something specific to the Staff Report,
20 procedural questions, or something that might take a few
21 minutes to answer that they can seek information on, but
22 hold most of our bigger questions, or some things that
23 might open up some greater discussion, until after we've
24 heard from the Applicant team. Vice Chair Burch had a
25 question, and then Commissioner Burnett.

1 VICE CHAIR BURCH: It's just a clarifying
2 question. It has come up in one of the letters that we have
3 about adhering to the Objective Standards, and I would just
4 like for you to confirm that because of the Density Law the
5 waivers that they have requested, while they may be against
6 our Objective Standards, they should be granted to them.

7 ATTORNEY WHELAN: What's interesting about this
8 project is there are so many different laws that apply, and
9 so there is going to be a slightly different analysis based
10 on each law. Under the Housing Accountability Act the Town
11 can apply its Objective Standards so long as it doesn't
12 render the project infeasible, so that's like one level of
13 inquiry.

14
15 Then under Density Bonus Law the Town has those
16 three reasons for denying a requested incentive or
17 concession, and the one that seems most apropos is the one
18 that says it has to result in a cost reduction and it has
19 to be demonstrated that it would.

20 Then, for waivers the question will be would
21 application of the Town's Objective Standard physically
22 preclude the project as proposed?

23 CHAIR THOMAS: Commissioner Burnett and then
24 Commissioner Sordi.
25

1 COMMISSIONER BURNETT: Thank you, Chair. To
2 follow-up on the Mitigated Negative Declaration approach
3 preferred over an EIR, did this come up by the Applicant
4 and was there a comment by Staff, or was there
5 recommendation by the Staff, given the complexity of this
6 project?

7 ATTORNEY WHELAN: The determination is made by
8 the Town's environmental consultant on behalf of the Town,
9 and representatives from Raney Planning & Management are
10 here if you have more questions about that determination.
11 Many applicants do choose to do an Environmental Impact
12 Report. They will ask the Town, they will say, "Even though
13 I qualify for a Mitigated Negative Declaration, I would
14 like to do an Environmental Impact Report," and under those
15 circumstances the Town will prepare an Environmental Impact
16 Report.
17

18 COMMISSIONER BURNETT: Thank you.

19 COMMISSIONER SORDI: Just a follow-up on that. I
20 know there was an EIR referenced in the materials in a few
21 places. I think there's an EIR dating back to about 2017,
22 and then there is some old correspondence that seemed to
23 have been related to prior engagement of agencies going
24 back around that time. I guess my question is—I think I
25 know the answer, but just for clarity—the EIR is not part

1 of this consideration at all, and does the Initial
2 Study/Mitigated Negative Declaration stand completely on
3 its own?

4 ATTORNEY WHELAN: In order to make its
5 recommendation to the Town Council, as you know, the
6 Planning Commission will have to make a determination on
7 the CEQA, and so the Commission is being asked to make a
8 determination on a CEQA that will be presented tonight,
9 which is the Mitigated Negative Declaration.

10 COMMISSIONER SORDI: Then just for clarity, since
11 affordable housing is so relevant to so many parts of this
12 Builder's Remedy application, I think I saw in the file
13 what the Applicant's opinion is and what the minimum
14 required affordable percentage is on this project. Maybe it
15 was in the Staff Report and I missed it. So, what is the
16 minimum affordable housing percentage required?

17 ERIN WALTERS: It would be 20%. In this case the
18 Applicant is providing 25%.

19 COMMISSIONER SORDI: Okay, thank you.

20 CHAIR THOMAS: Any more questions for Staff at
21 this time? No. We will now open the public portion of the
22 public hearing on Item 1 and give the Applicant an
23 opportunity to address the Commission for up to five
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25

1 minutes. I believe that Mr. Foley will be speaking on
2 behalf of the Applicant first. Thank you.

3 JIM FOLEY: That's correct. Good evening,
4 Planning Commission. It's nice to see you. It's been a
5 little bit since I had the pleasure of being up here. Jim
6 Foley from Pennant Properties. I'm representing the Dodge
7 family as the Applicant and the property owners. Thank you
8 for taking the time to have this special meeting for us
9 this close to the holidays and the end of the year.
10

11 First, I wanted to thank the Town Staff, Town
12 Attorney Gabrielle Whelan, Town Manager Chris Constantin,
13 Joel Paulson, Sean Mullin, Erin Walters, the Planning team,
14 and the Engineering team as well, who all played a big role
15 in getting this application to where it is. It's been a
16 long time. I think we submitted the preliminary application
17 two years ago in December 2023.

18 Just to give a little background on the project,
19 the Dodge family have been stakeholders in Los Gatos for
20 generations. Bob Dodge began this Surrey Farms development
21 in the early 1950s. This final phase, the Surrey Farms
22 Estates is the culmination of a lifetime of Los Gatos-
23 serving developments, neighborhood developments, by the
24 Dodge family.
25

1 A similar project was brought forward in 2018 and
2 went all the way to Town Council for approval, but was not
3 approved because at that time the property was in the
4 Williamson Act. The Williamson Act for this particular
5 property expired early this year in January 2025. The
6 Dodges were disappointed at that time that the project did
7 not get approved and they would have to wait a little bit
8 longer, and that's what brings us here today.

9
10 A couple of other notes just to remember and keep
11 in mind while you guys are making your deliberations, Staff
12 has worked tirelessly on this project, provided a very
13 detailed framework for you to hopefully provide a positive
14 recommendation to the Town Council, which we are
15 requesting.

16 This project is going to bring some of the first
17 new affordable units for sale in town since I think
18 Bellaterra @ North Forty. We have a couple of other
19 projects coming forward from SummerHill and City Ventures
20 that are going to deliver some units. Then there are a
21 number of other SB 330 applications pending, and we don't
22 know what's going to happen with those. At this time every
23 unit counts towards Los Gatos' Housing Element, so we think
24 that this is a good use of the property to try to further
25 that effort.

1 We could have proposed an enormously denser
2 project and abused the Builder's Remedy, but that is not
3 the intent of the Dodge family or anything that we would
4 consider doing as their decades long vision for the
5 development of the property. This proposal is an elegant
6 extension of the neighborhood as originally envisioned by
7 the family.

8 We attempted to comply with as many of the
9 various potentially applicable development standards that
10 could have been in place for the zoning for the project, as
11 many as we could in order to deliver a first-class project.
12 We have our project team here tonight that can elaborate a
13 little bit more about that during the meeting.

14 We also took into consideration a lot of public
15 comments that happened in the 2018 project, including road
16 alignment, home orientation, headlight pollution, etc. Many
17 of the objectors are expected with every project site, the
18 inadequacy of the EIR and CEQA, however, believe me, there
19 was tremendous additional study and updating of the
20 technical reports and studies; it added a lot of time to
21 what we anticipated for getting the application prepared
22 for you.

23 So yes, there was an EIR done in 2018. There is
24 some background. The CEQA, the IS/MND was prepared and
25

1 there was a lot of effort put into that to make sure we got
2 it right.

3 For other members of the public that plan on
4 speaking, just remember that this is a long-time family and
5 community stakeholders, and I think if a lot of us and you
6 all were in their position, you'd want the same legacy for
7 your children and your grandchildren.

8 We're excited to move through this process,
9 hopefully deliver a first-class project, and have a
10 fruitful conversation about this tonight. We're all here,
11 our team is here, to answer any questions you guys may have
12 regarding the project.

13 CHAIR THOMAS: Okay, thank you very much. Are
14 there any questions for the Applicant team at this time?
15 Okay, thank you. We will now be moving on to public
16 comment. If you have not already filled out a speaker card,
17 please do that and return it to Staff, and if you are on
18 Zoom you can raise your hand now. When you are called to
19 speak, please state your name and address for the record
20 and know that you will have three minutes to make your
21 comments. Then after that, Commissioners will have an
22 opportunity to ask any questions. The first speaker card I
23 have is for Cindy Clark.
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1 CINDY CLARK: My name is Cindy Clark. I live at
2 16326 West La Chiquita Avenue in Los Gatos. I'm not in the
3 neighborhood; I'm about a mile-and-a-half away.

4 First off, I want to thank all the Commissioners
5 for the hard work you've done, and all you do for our town.
6 We really appreciate it.

7 I'm going to make two points tonight in
8 opposition to the development plans. We had a really great
9 presentation on the Builder's Remedy and SB 330, and all
10 that is about building more housing, and yet the developer
11 is asking to use 17 acres of rare, wooded land to build
12 three, I'm going to say "token," below market homes, and
13 nine giant homes. These are homes for the very rich. We see
14 this all the time, and I'm really afraid they're going to
15 be like so many other houses that are that big in Los
16 Gatos. They're used for second or third houses; they are
17 investment opportunities. These really aren't houses as SB
18 330 is thinking about. I believe that building this type of
19 housing in this type of area is very wasteful and
20 shortsighted.
21

22 My second point is if this development does
23 proceed—and I hope it doesn't—the Town should deny permits
24 to remove the 223 protected trees. These are mostly oaks,
25 they are large trees, they're old, and they're not

1 replaceable at all. They are vital to healthy ecosystems.
2 I'm an outdoor education docent at Mid-Peninsula Open
3 Space. I teach third, fourth, and fifth graders all about
4 our ecosystems, all about these oaks and their roles. They
5 are considered keystone species, and they support thousands
6 of organisms, organism that live in the ground, that live
7 in the tree, and also live in Los Gatos, live in Cupertino,
8 live in Sunnyvale, owls and such that return at night to
9 roost, but they have to have those trees.

10
11 These trees should also be preserved and the
12 developers should set aside this land underneath them,
13 including community walkways. All these trees are located
14 on the southwest portion, so it's not like they're
15 everywhere, and it would be really easy to do community
16 paths. You can see an example of that at Kennedy Court
17 where they've got that open space. I think our town
18 deserves more compensation for the loss of this rare,
19 heritage space, than three token under-market homes. That's
20 it.

21 CHAIR THOMAS: Thank you. Are there any questions
22 for the speaker? Thank you for speaking tonight. Next
23 speaker card I have is for Gus Who.

24 GUS WHO: Hi, again. Just listening in on just
25 what was happening.

1 I think that the public in general would want a
2 road connected to, because it's up in between two things
3 and there is a lot of traffic going, so it would be better
4 to have a loop in the two roads instead of the one at the
5 Cerro, I don't know, the lower court: there's just one
6 house.

7 Another thing is when I built, I bought it off
8 Cupertino. It's Seven Springs and it was a 400-acre lot
9 that our neighbor sold. They kept 40 acres, and they gave
10 the City three lots, and I bought one of the lots. It was a
11 park, but I bought one of the lots off of them, and it
12 would be better to do that remedy for the builders instead
13 of trying a lower market, because this is things.

14 And another thing was when I built I designed a
15 3,500 square-foot house. It was too small for the
16 neighborhood, and I had to double it, because it was a big,
17 giant house. I didn't want a big, giant house, but I had to
18 build a big, giant house, so it was one of those things.
19 You can probably limit the size of the house. It's 14
20 acres, so you can probably up it a couple houses.

21 If there was a loop around there, it's for safety
22 reasons. I think that would be the most important thing.
23 Even if nobody builds there, you should have a road
24 connecting that high up, to try to work a deal with the
25

1 builders. I mean, he just said they are family-oriented and
2 they look for these long projects, and they're probably
3 going to build something up there, so a road between the
4 two for safety issues is my biggest concern for the public.

5 CHAIR THOMAS: Thank you very much. The next
6 speaker card I have is for John Witkin.

7 JOHN WITKIN: Thank you, Commissioners. I'm John
8 Witkin, 188 Twin Oaks Drive, right next door to the
9 development. I've lived on Twin Oaks Drive on and off for
10 70 years now, and there's a reason that that hillside has
11 never been developed. It's a hillside with an oak forest
12 and a Ross Creek feeder stream at the base; that's not
13 feasible for a subdivision for multiple home tracts.

14 All these similar developments have had issues in
15 California. When we cut down 250 trees, move 200 loads of
16 dirt, and pave over a riparian corridor, what can we
17 anticipate? Last year the hillside was recategorized as a
18 high fire danger zone, and eventually in California for all
19 of us that have lived here we know we will have a flood or
20 an earthquake or a fire, and these altered landscapes, they
21 just ultimately fail.

22 We will experience as before landslides, massive
23 property damage, and just a major safety hazard. It is just
24 not safe to build these structures for 12 \$6 million homes,
25

1 and I don't think that's going to reduce any of the housing
2 crisis in California.

3 Let's keep Los Gatos safe and beautiful. We need
4 the existing open space to remain. Thank you for your
5 consideration.

6 CHAIR THOMAS: Thank you very much. Are there any
7 questions for the speaker? Commissioner Burnett has a
8 question for you.

9 COMMISSIONER BURNETT: Thank you. So, the creek
10 runs in the back of your property, and your property
11 actually has the most exposure to the ramifications of the
12 creek and the water and that drainage. I know they've put
13 in drainage areas there, but can you comment on that? Is
14 that one of your concerns, flooding (inaudible)?

15 JOHN WITKIN: We've had flooding twice in the
16 last 30 years, and it brings dirt and silt down from the
17 hillside, and it's also overflowed at the Dodge property
18 where it goes into a culvert, so we've had multiple
19 experiences where we've had to take dirt out of the pool
20 and similar issues. Thank you.

21 COMMISSIONER BURNETT: Thank you for that.

22 CHAIR THOMAS: Thank you very much. The next
23 speaker card I have is for Bill Meleyco.
24
25

1 BILL MELEYCO: Hello, my name is Bill Meleyco; I
2 live at 189 Longmeadow Drive, where we've lived there for
3 45 years. We're adjacent to the proposed project at the
4 border with Hillbrook, where this property drains its
5 hillside onto our property, which is an open culvert. Our
6 major concern is privacy, trees, noise, and the drainage.

7 From a privacy standpoint, I've prepared a visual
8 simulation showing how it would look with these houses, but
9 I now understand that we can't show them visually, so I'll
10 distribute these somehow.

11 But the elevation of our back yards is 407 feet,
12 while the base elevation of the houses that are going to be
13 built are 430 feet, and that's the base of those
14 elevations. So, these new homes are going to look down into
15 our backyard and into our windows; it's going to be a major
16 privacy concern.

17 From a tree standpoint, the Applicant's rendering
18 on the architectural submittal shows 35 trees that are
19 supposed to be installed. These are between Lots 5 and 6,
20 and my house and the Fordyce house, which is next door.
21 When reviewing the plans, if you look at it, they are only
22 going to install seven, so there is a discrepancy between
23 what the rendering is and what they are actually planning
24 to do.
25

1 Also from a tree standpoint, they are removing
2 six protected trees on these two lots. Their reasoning for
3 removing these trees is, "The retention of the tree
4 restricts the economic enjoyment of the property and
5 creates an unusual hardship for the property owner by
6 severely limiting the use of the property." These trees are
7 along the property line with Hillbrook; they don't
8 interfere with anything and don't interfere with the
9 construction. If you do approve this, we ask that you—from
10 a privacy standpoint for us—require the developer to add
11 these 35 trees.
12

13 The other problem we have is noise. When
14 Hillbrook was preparing their studies to get their
15 Conditional Use Permit the report stated that the current
16 sound level at our home was at the threshold of
17 unacceptable. Surely, with the cumulation effect of
18 Hillbrook and the proposed houses, it would put the sound
19 above the unacceptable level.
20

21 The third problem is drainage. This hillside
22 drains entirely towards our property. Currently there is a
23 catch basin at the corner, which is about 80% capacity.
24 That will surely overflow with the drainage that's going to
25 be created.

 The other problem is the retention basin.

1 CHAIR THOMAS: Thank you. Are there any
2 questions? Commissioner Burnett.

3 COMMISSIONER BURNETT: Thank you. You did
4 mention, just to follow-up on the catch basin, which is in
5 your back yard now, it runs at an 80% capacity, you're
6 saying? Is that most of the time?

7 BILL MELEYCO: That's during heavy rains, yes.
8 If you look at the concrete on it, you can see where the
9 water staining is about 80%.

10 COMMISSIONER BURNETT: Right. Then they want to
11 add an additional water retention pond behind your
12 property, which is 6' below your residence.

13 BILL MELEYCO: Well, the retention pond. The
14 bottom of that retention pond I think is like 4-5' above
15 our yard.

16 COMMISSIONER BURNETT: Okay.

17 BILL MELEYCO: During the summer months our back
18 yard is soggy. We've had to add drainage in there to drain
19 it. During the winter, we've got standing water in our back
20 yard.

21 COMMISSIONER BURNETT: I just wanted that
22 clarification. Thank you.

23 CHAIR THOMAS: Then I had a question too for you,
24 Mr. Meleyco. You mentioned the removal of the protected
25

1 trees and the seven versus the 35 trees on the plans. You
2 made a request about them. Can you just clarify what you
3 would like?

4 BILL MELEYCO: On their rendering they show 35
5 trees between their houses and our property.

6 CHAIR THOMAS: Yes.

7 BILL MELEYCO: That's going to create a lot of...
8 It will solve some of the noise problem that is created
9 from these houses, and it will keep the visibility of them
10 from viewing into our back yard and into our windows.
11

12 CHAIR THOMAS: Okay. Did you have any preferences
13 on the types of tree species?

14 BILL MELEYCO: No, not off the top of my head.

15 CHAIR THOMAS: Okay, thank you. The next speaker
16 card is from Monica Herzi.

17 MONICA HERZI: Hello, my name is Monica Herzi; I
18 live at 185 Longmeadow Drive. A house separates me and the
19 Meleycos, and two houses to the Fordyces, so we're about
20 three houses from the proposed development. I actually face
21 Twin Oaks. I don't have a lot of data in front of me to
22 present to you, it's more of a heart comment that I want to
23 say.
24

25 I moved here in 2011. We've launched three kids
from Los Gatos. Our final one we just launched in October

1 to Seattle, and we've trying to find every reason to stay
2 in California, and unfortunately a proposal like this tends
3 to keep people like us from retiring here.

4 I want to paint a picture that at any given day,
5 if it's night or day, if you're in my house or in my yard
6 there are owls, coyotes, deer, rabbits, and foxes. I have
7 all this on film, because we have a security camera. There
8 are now turkeys, I've seen a wildcat once, hawks, and
9 quails, and yes, the occasional snake, and I think about
10 that all the time whenever Ms. Fordyce brings us up to date
11 on this proposal, because unfortunately that's all going to
12 go away. The hawks aren't going to be in the sky anymore,
13 because the trees are going to be gone, and I'm not going
14 to hear the coyotes yipping in the middle of the night,
15 because their habitat is going to be destroyed, and it
16 worries me.

18 I understand that the State needs housing, and
19 I'm a teacher, so I understand that we need affordable
20 housing, but I tend to agree with the former speaker that
21 is it second home housing? Are these houses going to
22 produce ADUs on each of them? Are they then going to be
23 subdivided and sold as individual lots, which I've seen
24 happen in this town? It frightens me. I mean, my husband is
25 a little bit more cynical than I am, and he often says to

1 me, "Well, we have no control over this." And I like to
2 think that we do have control over this, being property
3 owners. I love living in this town, and I hope that you do
4 take into consideration me and my neighbors' comments
5 today.

6 I also worry about safety and access to the site.
7 We have a young man who is autistic on Longmeadow Drive,
8 and I've watched him grow up, and he often stands in the
9 middle of the street. When we have all this housing going
10 on, all this building, and I worry about the children in
11 our neighborhood and wonder what's going to happen to them,
12 because access is so limited to their proposal.

14 That's about it, and thank you, again, for
15 allowing me to comment this evening.

16 CHAIR THOMAS: Thank you. Any questions for the
17 speaker? Thank you very much for your comments. Next I have
18 Jill Fordyce.

19 JILL FORDYCE: Hi, I'm Jill Fordyce. We live at
20 191 Longmeadow Drive. I've lived there since 1999 and we've
21 raised our five children there. We've enjoyed both the
22 peacefulness of the natural hill and the wildlife behind
23 us, all that Monica Herzi just spoke of, as well as the
24 lovely, vibrant, thriving Surrey Farms neighborhood. Kids
25 playing in the street. It's an old-fashioned neighborhood;

1 it's one of the main reasons we moved there: the backdrop
2 of the beautiful hill and the beautiful construction that
3 was done by the Dodge family.

4 When we were deciding to move to Surrey Farms in
5 1999 we went to the Town to inquire about the likelihood of
6 the hill being developed. We're in the court next to the
7 Meleycos and the Witkins, so we abut the project
8 specifically. The clerk pointed to the property on the map
9 and said, "It is resource conservation space and it won't
10 likely be developed in your lifetime."

11 In 2018 the Applicant here filed the nonrenewal
12 for the Williamson Act and we are now facing a new reality:
13 it is no long resource conservation space, we have all
14 these Builder's Remedy laws, and we understand that the
15 times have changed, not only because of the loss of the
16 Williamson Act protection, but because of this environment
17 that we're living in.

18 The laws that the Applicant relies on for
19 affordable housing, it should be clear that it's a 12-unit
20 development, nine of which are large, luxury homes directly
21 behind the Surrey Farms neighborhood, and there are three
22 small affordable housing units; they share one driveway at
23 the bottom of the development.
24
25

1 There still exists an obligation to the community
2 to ensure that the proposed development is environmentally
3 vetted appropriately for the scope of the project and it
4 does not put our health and safety at risk.

5 We request the project is denied, because it
6 would result in specific adverse impact to us. We spoke in
7 our letters, and then also in videos and photos that we
8 have sent, that we are worried about the risk of wildfire
9 and appropriate evacuation from the one-way-in/one-way-out
10 from Twin Oaks to Longmeadow to Kennedy, or even if you go
11 out Brooke Acres we're on two-lane roads.

12 There is a possibility to erosion, mudslides, and
13 landslides on the project site, which is in a geologic
14 hazard zone. I am right below that. It exposes the
15 surrounding area to the risk of flooding, water quality
16 degradation, water pollution, and harms associated with the
17 proposed bioretention plan, that again, will be right
18 behind my home. Each of these risks are acknowledged in the
19 Negative Declaration, but the mitigation of each is vague,
20 uncertain, deferred, and potentially unenforceable.

21 I wish I had more time, but I would encourage you
22 to look at the letters that we submitted. They are very
23 detailed, and what is required and what is lacking under
24
25

1 mitigation for fire for the geologic hazard zone and for
2 the potential to pollute and flood our property.

3 I'm happy to answer any questions. Thank you for
4 listening.

5 CHAIR THOMAS: Thank you for speaking tonight.
6 Are there any questions for the speaker. Thank you very
7 much. Next, I have Craig Fordyce.

8 CRAIG FORDYCE: Hello, Craig Fordyce. I'm at 191
9 Longmeadow Drive. An EIR is required, in our opinion. The
10 fate of an undeveloped rural Los Gatos hillside, home to
11 protected trees, species, and a riparian corridor requires
12 at a minimum a detailed understanding of the environmental
13 impact of the proposed development. In this case, we have
14 not been given the necessary information to have such an
15 understanding.

16 Housing law does not waive or reduce CEQA review.
17 Compliance with CEQA is mandatory and independent of zoning
18 or housing authorization. The Mitigated Negative
19 Declaration approach suggests environmental review is
20 secondary to entitlement, which is legally incorrect. The
21 MND relies on an outdated, uncertified EIR from 2017.

22 Natural environments change over the course of
23 the years. Species appear and disappear and are not fixed
24 in time. The proposal is not the same as the one considered
25

1 in 2018. One key difference is the scope of the development
2 13% increase. The lots are different, the number of homes
3 is different, the home sites are different, the ingress and
4 egress are different.

5 An uncertified EIR cannot legally be relied upon
6 for the adoption of an MND. See letters submitted by the
7 Sierra Club, the Santa Clara Valley Bird Alliance, and the
8 San Francisco Regional Bay Regional Water Control Board.
9 Each site has multiple issues that were not adequately
10 addressed by the MND.
11

12 The Bird Alliance and the Sierra Club note that
13 because the project is located within an ecologically
14 sensitive transition zone between existing development and
15 the natural hillside habitat, preparation of an EIR is
16 essential.

17 The Sierra Club and the Bird Alliance found
18 substantial evidence that the project may result in
19 significant hydrological and biological impacts that are
20 not adequately disclosed, analyzed, or mitigated.

21 The Sierra Club and the Bird Alliance have
22 supplied a fair argument that the project may have a
23 significant environmental impact, including the following
24 issues: the MND fails to adequately assess significant and
25 irreversible impacts to biological resources, including

1 native woodland habitat, wildlife movement corridors,
2 nesting birds and special status, pollinators in the Ross
3 Creek watershed, and are known to support raptors,
4 migratory songbirds, and oak-associated wildlife. The MND
5 removes a substantial number of mature coast live oaks and
6 associated understory vegetation. It does not quantify
7 total tree loss, assess habitat fragmentation, or evaluate
8 impacts to wildlife corridor functionality across the Ross
9 Creek drainage interface.

10
11 CHAIR THOMAS: Thank you. Are there any questions
12 for the speaker? No. Okay, thank you very much. Next I have
13 Chris Bayoric.

14 CHRIS BAYORIC: Good evening. Chris Bayoric, 120
15 Clover Way in the community nearby that proposed
16 development.

17 My main concern is centered on the fact that the
18 property as proposed, the development as proposed, clearly
19 exceeds the drainage capability of that land. The
20 mitigating requests are to build at least three, possibly
21 more, wetlands, ponds, to catch the effluence from drainage
22 of that property, and ponds are a health concern with the
23 presence of West Nile Virus in our community, and the fact
24 that ponds breed mosquitos and mosquitos transfer that
25 virus.

1 I think it would be extremely challenging to
2 maintain adequate health safety factors via these various
3 ponds proposed on the property. I don't know if you've read
4 the report—it's 1,242 pages long—but I call to your
5 attention page 27 that lists in a very long paragraph at
6 least three, possibly four, proposed wetlands.

7 They call them bioretention basins, but they're
8 basically proposing wetlands to capture the effluence, and
9 those wetlands will breed mosquitos and you'll cause the
10 danger of having those mosquitos spread the West Nile
11 Virus. It's adjoining to a school, and it's adjoining to
12 several residential areas that surround that property. I
13 don't think the Town would like to be responsible for
14 allowing the formation of said wetlands.

15 The second concern I have to compound the problem
16 is that the proposal is very fuzzy about who is going to be
17 responsible for maintenance of those wetlands. The Town is
18 not going to want to maintain them. They talk about the
19 Applicant being responsible, the owner will be responsible.
20 Who is the owner of the wetland? Have they carved out
21 specific parcels that contain the wetlands so that somebody
22 is responsible for a well-defined (inaudible) for those
23 wetlands? No. Various homeowners will be stuck with having
24 to deal with this, and the consequence of that will be that
25

1 this will end up right on the Town's lap, because not only
2 will those homeowners be concerned about dealing with those
3 maintenance issues, but the entire surrounding community
4 will be responsible.

5 I think the scope of the development needs to be
6 downsized to avoid the dependence on these wetlands.

7 CHAIR THOMAS: Thank you. Are there any questions
8 for the speaker? No. Okay, thank you very much for your
9 comments. Next speaker I have is Lee Quintana.

10 LEE QUINTANA: Good evening, Lee Quintana. I am
11 here not to speak on the project, but to speak on the
12 environmental review. Currently I serve on the Historic
13 Preservation Committee, but I am not representing the
14 Historic Preservation Committee here. I am relying on 15
15 years of experience working for the City of San Jose doing
16 environmental review.

17 There were two things that were paramount in the
18 review of projects.

19 One is the purpose of environmental review is to
20 provide decision makers with adequate information to make
21 informed decisions. That's adequate information as to the
22 potential significant impacts and the mitigation to
23 mitigate those impacts that is necessary for them to make
24 informed decisions.

1 The second thing that is always paramount is to
2 make our documents bulletproof, which means that we achieve
3 the first purpose and provide all the information, the
4 studies, and the mitigation that flows from the studies
5 before a document is released.

6 In this case, as you have lots of letters from
7 professionals, there appears to be a certain incompleteness
8 in those studies and deferred mitigation, and lack of
9 consultation with agencies that have jurisdiction over
10 lands in Los Gatos.

11 Once you approve a project and then you go back
12 and do your studies and consultations, you are limited in
13 many cases in what you can do, and you may not be able to
14 achieve full mitigation, so it's really important to have
15 those studies up front. For that reason, I would not
16 support approving the Mitigated Negative Declaration. Thank
17 you.
18

19 CHAIR THOMAS: Thank you very much. Next I have
20 Jan Schwartz.

21 JAN SCHWARTZ: Hi, I'm Jan Schwartz and I live at
22 15966 Cerro Vista Drive. I'm on the other side of the hill,
23 and I have concerns for my neighbors. We will have one or
24 two houses on our side, more will be on the other side, and
25

1 I am concerned for my neighbors. I've heard flooding,
2 landslides, mosquitos; I think those are significant risks.

3 My concern—as the speaker talked about before—is
4 the wildlife that we have here, and we've got a riparian
5 corridor next to the library that the Town has put a lot of
6 effort into building. We have a natural one already up
7 there. We have a den of coyotes; I also sit out at night
8 and listen to them. Western screech owls, bobcats, red
9 foxes, I saw 18 turkeys when I came home last night,
10 Cooper's hawks, lots of deer. We have a lot of wildlife
11 that's going to disappear.
12

13 I'm in Los Gatos; I love Los Gatos. I've been
14 here since 1975, and I know progress moves on. I've seen
15 the North Forty. We've seen certainly a lot of development,
16 but I do hope we can maintain the wildlife and riparian
17 corridor that we have right now. Thank you.

18 CHAIR THOMAS: Thank you very much. Are there any
19 questions? No. Thank you very much. Next speaker card I
20 have is Anne Griffin.

21 ANNE GRIFFIN: Anne Griffin, 158 Twin Oaks Drive.
22 I've lived in my home for over (inaudible) years. I have
23 had a flooded back yard due to the Ross Creek flooding
24 twice, and I live up the road from the property.
25

1 I'm not here to talk about regulations and
2 (inaudible) housing. I see in my home, I am a caretaker of
3 oak trees that have been passed on to me so I can give them
4 (inaudible) follow me, and the thought of if I had to tear
5 one down, you would probably penalize me. I am the
6 caretaker (inaudible) other generations.

7 My concern is safety. The street of Longmeadow is
8 Twin Oaks Drive, Clover Way, and Blueberry Hill Drive
9 travel onto Longmeadow to exit, the one big exit for all of
10 these homes. We are adding probably two cars to every home,
11 most of which will go through Longmeadow. I counted four
12 cars parked on Longmeadow at 7:00 o'clock tonight. It is a
13 narrow street. Well, an adequate street. No streetlights,
14 no sidewalk.

15 During the day, if you were to travel on
16 Longmeadow you would probably see four or five landscaping
17 trucks, cars parked, service people, children riding bikes,
18 and people walking dogs. I am concerned about safety. I
19 live at the end of Twin Oaks, and I would like an emergency
20 vehicle to be able to come to my home if I needed it, and
21 if you travel it at any given time, you have to stop and
22 let a car pass as you (inaudible) exit your property.

23 So, I'm not here to talk about anything, but we
24 have a lot of people enjoying our community, and safety is
25

1 an issue that we have to continue. If we increase the cars,
2 you remove people from walking, children from riding bikes,
3 and the integrity of our community would be limited. Thank
4 you.

5 CHAIR THOMAS: Thank you very much for your
6 comment. Are there any questions for the speaker? Are there
7 any hands raised on Zoom?

8 DIRECTOR PAULSON: There are no hands raised
9 currently on Zoom.

10 CHAIR THOMAS: Okay. I do not have any speaker
11 cards, and since there are no hands raised on Zoom, we will
12 return to the Applicant so that the Applicant team can
13 provide closing remarks. You'll have three minutes,
14 followed by questions.

15 JIM FOLEY: Thank you, and thanks to all the
16 people that took their time to come and speak and provide
17 letters; we reviewed a lot of the letters. A lot of these
18 topics aren't new. They are some of the things that
19 informed what we tried to create for the project and what
20 was provided, just to tick off a couple of things that we
21 just heard. Then you guys may have some similar questions,
22 and we've got our team here to delve into those further if
23 they require it.
24
25

1 The trees by Hillbrook School and the screening,
2 I think we have our consulting arborist hopefully on Zoom
3 if that comes up; that's certainly something to look at.

4 Safety and access. There is extensive language in
5 the conditions of approval about best management practices,
6 safety, access during construction, everything else, so I
7 don't think there is any intention of the project with the
8 limited number of houses to create any unsafe environment
9 in this extension of the neighborhood.

10 The bioretention areas and those concerns, they
11 are engineered, they're widely accepted, it's all gone
12 through the process. I don't think this is anything
13 different from what is typical, and we can elaborate on
14 drainage, the stormwater, and what those bioretention areas
15 may look like.

16 There is a lot of language in the Conditions of
17 Approval: the requirements for CC&Rs, who is going to
18 manage them, ongoing access review, proactive submitting of
19 reporting to the Town of Los Gatos, so the idea of how we
20 created that and the drainage for the neighborhood was well
21 thought out.

22 As far as the wildlife and those concerns, we
23 still have this ephemeral swale through the site. It is
24 kind of the main feature, I think, where you're going to
25

1 find wildlife and protected areas. We stayed away from
2 that. That photo doesn't really do it justice, but there is
3 still a lot of that being preserved with this project, if
4 we want to get into the details.

5 Then on the matter of CEQA, we talked about it
6 before. We're not here to debate the merits of EIRs, I just
7 want to reiterate that a lot of effort went in. Raney
8 Planning Management spent a lot of time taking prior
9 information, new information, updating, making sure all the
10 technical studies were adequate for what we were trying to
11 do, and I think they did a good job, and I just don't think
12 everything needs an EIR. We're going to start doing EIRs
13 for ADUs, I don't know.

15 CEQA seems to be changing daily in California,
16 but I think the information that's provided, whatever you
17 want to call it, is really good and thorough information
18 that should help you make an informed decision on what
19 we're proposing, and if there are more questions, we'll be
20 here, we have the team ready.

21 CHAIR THOMAS: Commissioner Burnett.

22 COMMISSIONER BURNETT: Thank you. One question.
23 It seems you didn't meet with any of the neighbors. I know
24 that that isn't needed, but that would have been a good
25 gesture, I would think.

1 JIM FOLEY: I've had a lot of meetings with a lot
2 of neighbors for a lot of projects over time. Specifically,
3 we had a lot of information from 2018; I think it was very
4 clear what a lot of the concerns were, and this is a
5 different kind of project. We have different laws and tools
6 that we're using and just chose to take the information
7 that we had, rely on that, and move on. We've had project
8 signs for over a year up there with contact information, my
9 cell phone number, and I never heard from one neighbor
10 either.

11
12 COMMISSIONER BURNETT: May I follow-up? Although
13 this project is 60,000 square feet, the one you were
14 talking about was 5,500, so surely there were more
15 questions around this project, so I would think that there
16 would be even more reason to want to touch out with them,
17 not that you needed to.

18 JIM FOLEY: It was sort of just a decision for
19 how we were going to bring the project forward.

20 COMMISSIONER BURNETT: Another question I have.
21 The size of the basins on average, because every home has
22 one, I was just wondering what's the average size there,
23 and is it a graded basin? Because my concern is the water,
24 the drainage. I hear from the neighbors there is a lot of
25 concern over that issue.

1 JIM FOLEY: Right. I'll probably ask our civil
2 engineer to weigh in on that a little bit, but we've seen
3 some of these comments provided prior and in current
4 letters. I'm not a civil engineer, so I'll let them answer
5 it a little bit more, but the general notion is that we
6 think that we now have engineered solutions that are going
7 to treat and direct drainage, like project wide. The
8 retention basins are just a portion of it, so it's possible
9 that we'll even improve the situation and be able to catch
10 and divert runoff drainage from winding up in swimming
11 pools or whatever else you've got. We've got HMH here.

13 ZEFERINO JIMENEZ: Zeffy Jimenez with HMH, civil
14 engineer on the project.

15 Your question regarding the sizing of the
16 bioretention cells, it is based off how much water is
17 actually going to it, so its tributary area; it's roughly
18 about 3%, so it does vary based off of what is tributary to
19 it.

20 If there is concern about water standing in it,
21 that is not the intent. We are following the local County
22 and State guidelines to be able to treat the water. The
23 intent is for the water to be able to be treated before it
24 flows out into the waterways and eventually out to the bay.
25

1 COMMISSIONER BURNETT: And the homeowners
2 association or the homeowner, are they going to be
3 responsible for the removal of debris and any issues?

4 JIM FOLEY: Yes, there is maintenance
5 requirements and reporting and inspection requirements that
6 have been provided as part of the Conditions of Approval.

7 COMMISSIONER BURNETT: Another question. The
8 concern over why you wouldn't want to put in trails, would
9 that be too costly for your project? Would it impact your
10 ability to have your low-income housing? That's usually
11 what it's tied to.

12 JIM FOLEY: Yes, the question of cost is always
13 kind of on top of mind, and everything is so costly to do
14 now that I'm sure you hear time and time again, especially
15 where we live, and getting the pieces of the puzzle with
16 land values, construction costs, costs of financing,
17 carrying costs, and everything else to align, it's very
18 thin.

19
20 And having land dedicated is a cost, having the
21 ongoing management of it is a cost. We created the project
22 in a way where there are CC&Rs and there are maintenance
23 obligations, but there is no homeowners association, which
24 is also a cost to manage and something that you can have
25 challenges going forward.

1 So, again, just based on the vision for the
2 project, the kind of project that we wanted to bring
3 forward at this time, it just wasn't a consideration
4 generally for those reasons cost-wise.

5 COMMISSIONER BURNETT: Thank you.

6 CHAIR THOMAS: Can I follow-up? I have a follow-
7 up question directly to that. The trails, you did not
8 consider that cost then is what you're saying?

9 JIM FOLEY: We considered it a cost that would
10 create the project... It would be too challenging to fund the
11 project by adding public trails through the project, and
12 the way we proposed the project, it wasn't required, so we
13 did not design it that way.

14 CHAIR THOMAS: Okay, thank you. Back to you,
15 Commissioner Burnett.

16 COMMISSIONER BURNETT: And a quick follow-up.
17 With Larry Canon's report, our Town Architect, I know you
18 didn't want to have to follow his sort of recommendations,
19 but there were a few I know you would respond to, maybe a
20 color, some kind of color suggestion on the homes. That was
21 in the report, and that was one thing that you sort of
22 agreed to, that you would be open maybe to color
23 suggestions.
24
25

1 JIM FOLEY: Yes, we have our architect team here
2 too. He worked directly with Larry on some of those
3 comments, if you've got specific questions regarding
4 architecture or color or recommendations.

5 COMMISSIONER BURNETT: That was one, but the slim
6 windows. I noticed all the homes have very slim windows, so
7 that was one comment by Larry Canon.

8 The second one, which I sort of agreed with,
9 there was no window trim, so the homes are very... Just from
10 an architectural standpoint, I know you don't have to
11 follow any of those guidelines.

12 JIM FOLEY: Right. I don't know if Chris wants to
13 get up and talk. Chris Hall is our architect for platform
14 architecture, and we chose him for many reasons, including
15 his vision for the custom home neighborhood and whether
16 some of those design elements are things that are in his
17 vision, our vision, the public's vision, a marketable
18 vision; we certainly relied on him. Do you have a specific
19 question you want to know, if we want to change a color or
20 window trim?
21

22 COMMISSIONER BURNETT: Well, I know in the report
23 that your answer was that you would be open to color
24 suggestions, because I think his comment was it was all
25

1 like one color, the homes need a little bit more diversity,
2 but colors that would work in a hillside (inaudible).

3 JIM FOLEY: Sure. I mean, if there's a proposal
4 I'd look to Chris to help me determine whether or not it's
5 something that's going to fit in with the overall look and
6 feel of the neighborhood that we're proposing.

7 CHAIR THOMAS: Commissioner Sordi.

8 COMMISSIONER SORDI: Thank you. I did want to
9 follow-up on some of the questions about drainage, and
10 maybe the civil engineer can pop up here again.
11 Specifically, just some kind of general set the table
12 question. So, we have a creek going through the site, but
13 we also have ephemeral drainage, which are two different
14 features I understand. Is there any function to the storm
15 drain system that has anything to do with Ross Creek, or is
16 it just passing through the site separately?

17 ZEFERINO JIMENEZ: Essentially, yes, it's
18 separate, and so what we have done too is work with the
19 environmental consultant, identify the riparian age so that
20 we are staying out of it so that it can be separate. I know
21 there was a concern about removing some water from the
22 creek itself, so we have implemented a swale to be able to
23 have that water be reintroduced, and so it's not being
24 diverted because of it.
25

1 And also understanding that there were past
2 issues with drainage to the neighboring properties. What we
3 are doing with our subdivision is helping to alleviate that
4 by taking that water away into the storm drain system. Yes,
5 goes into the Biocell per local regulations for treatment
6 of water to take out the contaminants before it goes
7 through the storm drain system, but yes, all that was taken
8 into (inaudible).

9
10 COMMISSIONER SORDI: Just really quick, a recap
11 there. So, we've got the creek, and then we've got the
12 ephemeral drainage, which is a separate swale, and you're
13 saying that--and correct me if I missed it--there is the
14 drainage coming off the swale, which I know is intermittent
15 and probably driven by storm events. That doesn't go to the
16 creek then, right? That goes into the storm retention
17 system.

18 ZEFERINO JIMENEZ: Right.

19 COMMISSIONER SORDI: Okay. In terms of overall
20 picture with respect to storms, what is the pre and post
21 condition? Can you characterize whether post-project we're
22 dealing with net increase, net decrease?

23 ZEFERINO JIMENEZ: I don't have those numbers
24 with me, but we can look at that and get right back to you.
25

1 COMMISSIONER SORDI: Okay. I do have some other
2 questions about the ephemeral drainage, but they're going
3 to be more for the environmental consultant, so I can hold
4 on to those for now, or I can jump into them.

5 CHAIR THOMAS: I would say that you should ask if
6 there is anything relevant that you want to hear back from
7 the Applicant team, because once that's closed.

8 COMMISSIONER SORDI: Got it. I consider the
9 riparian areas and the ephemeral drainage to be an area of
10 pretty big concern. Part of the reason why is we've got a
11 letter in the file from Brian Wines with the Regional
12 Board, which was a specific request to characterize that
13 area under the possibility that it could be a wetland, and
14 from what I'm seeing in the record it doesn't look like
15 anybody actually went to the trouble of truly defining that
16 I've had some experience of doing this as a developer in
17 the past and I've had to go through some of this painful
18 process associated with working with the Army Corps and
19 regional board.
20

21 What I'm curious about is if there had been any
22 analysis of that ephemeral drainage with respect to
23 hydrophytic soils or plant species that are wetland
24 characteristic plant species? That's my first question.
25

1 JIM FOLEY: I think you were right the first
2 time; that's a question for Raney. They did go through
3 their process in their responses to Brian Wines' letter.
4 They talked about their efforts and what they thought.

5 We had some follow-up conversations with Brian on
6 Zoom and looked at the site. I think post-his-letter he may
7 have been oriented a little bit differently as far as up
8 and downhill, and we kind of got all on the same page with
9 him with what he was looking at, and he further asked us
10 for clarifications about where that ephemeral swale meets
11 the roadway and what the condition is.
12

13 We're set back 10'; that's what is required.
14 There's a retaining wall towards the end of it. We put
15 together some exhibits for him to explain that to him. I
16 don't think he was necessarily satisfied, so we're having
17 an ongoing dialogue, but our position is that whatever
18 we've gotten back from Raney, we're in agreement with that,
19 and we've completely avoided the area.

20 The entire subdivision has been moved downhill
21 and there are a couple of lots on either side of it, and
22 where the natural, visible, and then, I guess, even
23 calculated, delineation of the swale meets the road in
24 between those two homes, it just goes up the hill and back
25

1 into the hillside and the back yards of the homes. That's
2 all I can speak to.

3 COMMISSIONER SORDI: Okay. Is there anyone from
4 Raney available to speak to the issue? Are they on Zoom or
5 are they here?

6 DIRECTOR PAULSON: No, they're here.

7 COMMISSIONER SORDI: Oh, got you. They're over
8 there.

9 DIRECTOR PAULSON: But I don't know if we want to
10 get into a back-and-forth with the dialogue with the
11 Applicant and dialogue with consultants.

12 COMMISSIONER SORDI: Okay, so hold off on that
13 for now.

14 DIRECTOR PAULSON: Yes.

15 COMMISSIONER SORDI: Got you, okay. Thank you.

16 CHAIR THOMAS: Just as a follow-up to that, I
17 understand the cost of the story pole situation. Did your
18 team at all contemplate possibly doing something
19 alternative so that when we went out and did a site visit
20 we would be able to determine exactly where these lot lines
21 are and where this is, because we all did and we all have
22 different levels of experience with environmental surveying
23 and development.
24
25

1 Just to be honest, it was difficult for us to
2 know. I don't feel like I necessarily have enough
3 information to confirm that where I saw this what I
4 consider a wetland as an environmental scientist is
5 avoided. So, was there any alternative considered, and if
6 we are continuing this item or in the future, would you be
7 willing to put up some sort of--obviously not story poles--
8 indicators of delineation between lots and structures or
9 anything road-wise?

10
11 JIM FOLEY: Challenging question. Story poles are
12 expensive, staking is expensive, visual simulations are
13 very expensive. I wish I could go out there and meet with
14 you guys and tour the project and have study sessions out
15 there. That's also something that may or may not be
16 allowed, which I've for a time said isn't always that
17 helpful. I think the plans are pretty clear. We're happy to
18 try to do something more. I think a week before we had
19 determined or heard that there was going to be Planning
20 Commission site visits, can you get the site staked? Kind
21 of last minutes and challenging to try to do that, and also
22 very costly. And it is a tricky site--it's a hillside site--
23 to get out there, as you know, because you visited it.

24
25 But we spent a lot of money with our architect
trying to create a very good visual representation; this is

1 part of it here. We also, I think, spent \$18,000; the Town
2 required visual simulations, for, I think, four photos that
3 they gave us. It's just really hard to get all that done,
4 and it's very costly.

5 As far as the part of your question asking did we
6 consider it? From a project perspective, yes, we considered
7 everything and we thought we did a lot; there's just been a
8 lot that's gone into this. As far as last minute doing site
9 visits and the staking and things, I guess it just didn't
10 come together. I wish we could have created something more
11 helpful.
12

13 CHAIR THOMAS: Vice Chair Burch.

14 VICE CHAIR BURCH: As a follow-up to that, and
15 then I have some questions for the civil engineer.

16 Really, I think it would honestly be the corner
17 of Lot 8 that needs to be staked, and clearly your civil
18 engineer has gone out and done a layout. That would not be
19 very expensive, and I think if they could just lay out the
20 corner so that we could stand against those. I don't think
21 the entire property needs to be staked, but I think that's
22 the one that would help.

23 JIM FOLEY: Okay.

24 VICE CHAIR BURCH: Then I have some questions
25 about stormwater and drainage.

1 My first question is on Sheet 5.0. It's this one,
2 and it maps out the stormwater drains and the path. You
3 said that it doesn't go into Ross Creek, but when you look
4 at the path, basically that goes past Lot 1 and it actually
5 looks like it goes into a storm drain at Ross Creek.

6 ZEFERINO JIMENEZ: I don't know if that sheet is
7 up.

8 VICE CHAIR BURCH: 5.0. Okay, so we can wait a
9 second on that. My other question comes to the way the
10 other lots, basically Lots 5, 6, 7, and 8, feed into the
11 existing large storm drain at the corner of the property.
12 Was an assessment done on that storm drain, taking into
13 account that now there is going to be basically less open
14 space, less open soil, to absorb all that water that comes
15 down, and that most of that water now is going to probably
16 get diverted into that line. Has there been a study done on
17 that?
18

19 ZEFERINO JIMENEZ: Yes, and my colleague actually
20 just reminded me to your question prior, Commissioner
21 Sordi, of what is the delta between pre- and post-runoff,
22 and I believe that is maybe getting to your question right
23 now.
24

25 Because the site is in a hydromodification zone,
we have looked at that pre- and post-condition to make sure

1 that what is pre-construction and post-construction still
2 is mitigated. We are providing that, so yes, that was taken
3 into account with that calculation.

4 VICE CHAIR BURCH: And so, what you're saying by
5 that is that existing 36" pipe is adequate to pick up not
6 only what comes straight down from the ephemeral stream,
7 but the additional water not being absorbed in the ground,
8 that study has been done. You're saying that pipe is
9 adequate.

10
11 ZEFERINO JIMENEZ: Yes, what we have looked at is
12 the site itself, how much water is tributary to the site.
13 Hydromodification: we are installing an orifice to allow
14 for the water to not exceed what is currently being
15 discharged, and we've reviewed that with the Town Engineer.

16 VICE CHAIR BURCH: On this, I don't know how easy
17 it would be to point this out, but on the bottom left
18 corner, essentially if you look along the yellow path, the
19 street, and you go past Lot 1, there is a note that says,
20 "Valley Water 110' Flood Plane Easement." There is a catch
21 basin or storm drain right down there; it is by DMAA to the
22 left. However, I have no understanding of where that water
23 actually then goes to, and it appears to be by the creek,
24 so where does the water from the bioswales at Lots 4, 9, 1,
25 11, 12, and 3 go to?

1 JIM FOLEY: Mike, can you jump in?

2 ZEFERINO JIMENEZ: (Inaudible), Mike. If you
3 could repeat it for me one more time.

4 VICE CHAIR BURCH: If you take a look at the, I
5 don't know, bioswales, bioretention ponds, whatever you
6 want to call them, that are for Lots 4, 9, 1, 11, 12, 3,
7 and 2, those all feed into some storm drains that are in
8 the street there, and then that line goes over towards the
9 note of DMAA, and then it just ends. It doesn't really
10 indicate where that water then goes to. Go down a bit.
11 Right there, that's where it seems to end. There is no
12 further line from that. And if you look at the topography,
13 obviously it's going down. There is no way it's going to
14 the corner.
15

16 ZEFERINO JIMENEZ: The water that is tributary to
17 here, this roadway, this hatch here, is pervious pavement
18 for water quality purposes. The water and subdrain go to
19 this catch basin and out to this existing storm drain
20 system. Are we understanding the question?

21 VICE CHAIR BURCH: Into what existing storm drain
22 system?

23 ZEFERINO JIMENEZ: This line right here.

24 VICE CHAIR BURCH: Yes, so it's Ross Creek. So,
25 it is going into Ross Creek.

1 ZEFERINO JIMENEZ: Yes.

2 VICE CHAIR BURCH: Okay. All right, I have
3 another question then about the bioretention ponds. There's
4 a note in there that they're lined with an impervious
5 liner. Why would you do that?

6 ZEFERINO JIMENEZ: The impervious liner, they are
7 located to be able to allow the water to go through the
8 media filter. We worked with a geotechnical engineer to
9 determine whether or not the soils are adequate enough to
10 allow for water to be able to permeate through the existing
11 soil type, so that's based off recommendations that we work
12 with the geotechnical engineer based off of the current
13 standards.
14

15 VICE CHAIR BURCH: And were all of those studies
16 then presented to the Town Engineer? My experience with
17 those has been that they accumulate silt pretty quickly,
18 and then those fill up and spill over.

19 ZEFERINO JIMENEZ: There is an overflow that is
20 built into it per the current standards that allow for the
21 water... So, it is intended to be able to treat the water in
22 a subdrain, and in a high-flow situation there is an
23 overflow, and through the operation and maintenance plan
24 there is regularly scheduled maintenance of it.
25

1 VICE CHAIR BURCH: Okay. I'm going to switch
2 gears. If you look at the back of Lots 4 and 5, those
3 properties, the backs of them are built up pretty high.
4 Those retaining walls, they do step, but they go up about
5 12'. The existing properties on the other side are
6 significantly lower than that, and I don't see any type of
7 water catch system or anything on the back sides of Lots 4
8 and 5 that would catch any overflow water and divert it to
9 the existing storm drain.
10

11 MIKE: All of this area along back sides of both
12 of the lots here are pervious. The water will infiltrate
13 into the ground. This is not hardscape by any means. There
14 is a treatment system here that ultimately will treat both
15 of these lots, but back here, it will be landscape, etc.,
16 that allows any of the surface drainage to basically
17 infiltrate the ground.

18 VICE CHAIR BURCH: Did you do any type of study?
19 Like you know how we have the hundred-year rain out here
20 that seems to happen more often than a hundred years? That
21 wind and excessive rain, since that elevation is so high,
22 to prove that we're not going to wind up now flooding
23 neighbors' properties, that that is enough pervious square
24 footage for that amount of water.
25

1 ZEFERINO JIMENEZ: We did do the calculations,
2 but specific to that area that just focused on that. We do
3 have a calculation just for that strip. The way that we
4 were looking to mitigate that and reduce the amount of
5 water that is currently going to neighbors is by grading
6 these lots away from the neighboring property to help
7 alleviate any of the overflow that was an existing
8 condition going in that direction. What we could do is look
9 at having an earth swale in that location to be able to
10 address your concern.

11
12 VICE CHAIR BURCH: Okay. I'll give somebody else
13 a chance.

14 CHAIR THOMAS: Commissioner Raspe.

15 COMMISSIONER RASPE: Thank you, Chair. Pivoting
16 quickly from water—I think you guys can probably sit down—
17 to trees. I'm sure you heard many of the members of the
18 public are concerned about trees, the removal of trees,
19 relocation of trees, and I wanted to address two
20 specifically.

21 I think one neighbor indicated that there were
22 trees on the Hillbrook School side that you indicated
23 needed to be removed. They seemed to indicate they were on
24 the property edge and did not need to be removed. I wanted
25 to get your thoughts on that.

1 Then, secondly, another neighbor indicated that
2 there were trees that either disappeared from the plans or
3 changed the plans, and mentioned 35 trees that should have
4 been used for privacy but no longer appeared the plan. If
5 you can address those two issues.

6 JIM FOLEY: I think that's the same thing. I
7 think those are the 35 trees that were down by Hillbrook
8 that the gentleman was talking about screening his
9 property. We have our consulting arborist on Zoom.

10 DIRECTOR PAULSON: Your consulting arborist? Your
11 landscape architect?

12 JIM FOLEY: Our arborist through HMM Engineers
13 that worked with your consulting arborist on the trees.

14 DIRECTOR PAULSON: Is that Michael?

15 JIM FOLEY: Hold on. We're checking.

16 DIRECTOR PAULSON: It must be, because he's
17 raising his hand.

18 JIM FOLEY: Yes. Is he on audio?

19 DIRECTOR PAULSON: Not yet.

20 MICHAEL GLADDEN: Can everyone hear me?

21 DIRECTOR PAULSON: Yes.

22 COMMISSIONER RASPE: Thank you. First of all,
23 this is Steve Raspe. Did you hear my question for the
24 Applicant?
25

1 MICHAEL GLADDEN: If you could repeat it, I'd
2 appreciate it.

3 COMMISSIONER RASPE: Of course, and for our
4 record, if you could also state your name. But the question
5 essentially was we had commentators indicate concern about
6 the trees, specifically the movement or removal of trees on
7 the Hillbrook side, that would have created privacy for the
8 neighboring lots. There seems to be some concern that
9 either those trees were removed when they didn't need to
10 be, or some other issue. If you could address that.
11

12 MICHAEL GLADDEN: My name is Michael Gladden, and
13 my firm is McClintock Landscape. All the trees that I
14 assessed were in the report, and I believe that the trees
15 that were slated for removal were ones that were in poor
16 condition, and it is on the report. The replacement of 35
17 trees, I think that's part of the landscape team,
18 architecture team.

19 COMMISSIONER RASPE: Chair, may I follow-up?

20 CHAIR THOMAS: Yes.

21 COMMISSIONER RASPE: It would be easier if we had
22 a visual rendering. If the Applicant can point us to
23 something we can look at, drawings.
24
25

1 DIRECTOR PAULSON: Additionally, through the
2 Chair, Shawn Taylor, the landscape architect, also is able
3 to speak.

4 COMMISSIONER RASPE: Oh, very good. Maybe while
5 we're looking for that visual, if the landscape architect
6 would want to speak.

7 SHAWN TAYLOR: Checking to see if you guys can
8 hear me okay.

9 COMMISSIONER RASPE: Yes, please continue.

10 SHAWN TAYLOR: I am Shawn Taylor with HMM
11 Landscape Architecture. Good evening, Planning Commission
12 and attendees. Decisions were made for tree removal based
13 on a few things.

14 First, I want to point out that the majority of
15 trees on this site are being kept, protected, and remain.
16 For that corner of the site, and much of the site where
17 we're developing, we did follow Hillside Wildland Urban
18 Interface for defensible spaces per CAL FIRE requirements,
19 so in keeping with that, through Zone 3 there was some
20 thinning that's done through the site as well per those
21 requirements so that we can control wildfire spread. We
22 definitely looked at the value of each tree, the health of
23 it, and tried to selectively remove, and then keep larger
24 trees to help with some of the screening and view blocking.
25

1 COMMISSIONER RASPE: I will reserve further
2 questions. I think the Chair has questions. Well, let me
3 ask you this, then. What specific efforts are being made to
4 provide privacy plantings for (inaudible)?

5 SHAWN TAYLOR: We maximized the number of
6 proposed trees within our fire zones, as well as located
7 shrubs and retaining walls, to control those views as best
8 we can with our limitation on planting density within these
9 zones.

10 COMMISSIONER RASPE: Let me redirect the question
11 (inaudible). Would you, assuming the project proceeds, be
12 willing to work with the neighbors to directly address any
13 privacy concerns that they might have, and tailor your
14 planting needs to the extent you could, to address their
15 needs?
16

17 JIM FOLEY: Yes, absolutely. The corner in
18 question, obviously we've got a lot happening there. That's
19 where there is grade; it's where there are multiple
20 property owners, including Hillbrook; and just the general
21 direction has been sensitive to that with planting, home
22 orientation, and everything else, but if something was
23 missed or there is a better solution proposed by a neighbor
24 that would be better, then of course.
25

1 The same with just the notion of which trees are
2 being removed. We're not by any means suggesting remove
3 everything possible. Everything that we've relied on based
4 on the feedback from the consultants is preserve what we
5 can and be sensitive to creating the neighborhood through
6 there, so that still applies, whatever we need to do.

7 COMMISSIONER RASPE: Thank you. I appreciate
8 that.

9 CHAIR THOMAS: I have a follow-up question.
10 Michael, I have a question for you. You said that you
11 surveyed and recorded all the trees, and then you said that
12 most trees are being kept. Can you elaborate on what you
13 mean by that? Because according to the stuff I have in
14 front of me, that is not what I see.

15 MICHAEL GLADDEN: I was referring to the area
16 next to Hillbrook School, and the retention numbers are in
17 the report and I believe on the plans.

18 CHAIR THOMAS: Okay. I was confused, because 35%
19 of the trees are being removed, and I guess there's not a
20 definition for most, but... Okay, so you were referring to
21 the trees specifically in that spot near Hillbrook that we
22 just discussed. Okay, thank you. I have a couple other tree
23 questions.
24
25

1 The tree in lieu fees versus plantings, can
2 someone on the Applicant team walk me through how we
3 decided to only be planting 15% of the required replacement
4 trees, where we chose to do this, and the species? Thank
5 you.

6 JIM FOLEY: That's going to be for Shawn, our
7 landscape architect; he's on as well.

8 SHAWN TAYLOR: Again, we maximized the number of
9 proposed trees that we could, and that's based on the areas
10 that we are developing, and the maximum number is being
11 held by following our CAL FIRE Hillside Wildlife Urban
12 Interface zones, so I can't really add trees within that
13 developed area and maintain that defensible space area.

14 Those species of trees that we're using are in
15 the plans. A lot of them are native. We've got Blue Oak,
16 Coast Live Oak, Arbutus, Western Redbud, and then we're
17 supplementing some of the decorative trees with Pineapple
18 Guava, Crepe Myrtles, and the Columbia London Plain Trees.

19 CHAIR THOMAS: Okay, thank you. We've had quite a
20 few projects recently where we have had a lot of trees, and
21 obviously this is a very different site, but a lot of our
22 recent applicants have been very amenable to planting
23 native species, actually. So, is that something that your
24
25

1 team would be open to, planting native species, unless it's
2 a fruit tree, something that provides a food service?

3 SHAWN TAYLOR: Yes, absolutely. Most of our plant
4 palette is native, and we can review that and utilize even
5 more natives; that would not be a problem.

6 CHAIR THOMAS: Okay, thank you. My last question
7 about trees is that as of now the project is requesting to
8 remove 12 large, protected trees. Were there any efforts in
9 the development plans with the lot splitting, the home
10 locations, and structures and roads to try to avoid any of
11 those trees that are being removed in order to incorporate
12 them into the development?
13

14 JIM FOLEY: Yes, and to the extent we worked with
15 Shawn and the team to be the least impactful, there are a
16 lot of levers that have to get pulled to figure out how
17 we're going to navigate the hillside and everything else.
18 That was a just generally broad direction.

19 I don't think we did a deep dive analysis on a
20 particular one or amount. I think I know what you mean,
21 like to the extent you drive down Santa Rosa and maybe
22 there's something and there's a road. I think that as I
23 know the topography, I don't know there's a circumstance
24 like that, but if there is, or again, something has been
25 missed, we're certainly open to taking a look at that.

1 That goes along with the whole character and the
2 design of the neighborhood is to be compatible with the
3 hillside and what's there, and certainly not stick out like
4 a sore thumb to any neighbor or any public view. That was
5 all analyzed in our visual analysis and everything else, so
6 absolutely.

7 CHAIR THOMAS: Okay, thank you. I'm done with
8 trees, but I do have another question, but do you want to
9 go?
10

11 VICE CHAIR BURCH: One question for the landscape
12 architect, please. I'm going to go back to Lots 4 and 5. It
13 looks like behind those lots is where the retaining walls
14 are, and I can see the line of grading. I'd like to know
15 what plantings you're suggesting on the very back side of
16 those that will anchor down the soils. That was a pretty
17 lengthy sprawl of trees of various sizes, which obviously
18 those roots were holding down the soils so that as water
19 came down the hill it was avoiding erosion into the yards,
20 so I'd like to know what kind of plantings you're going to
21 put along that fenceline to maintain that.

22 SHAWN TAYLOR: Along those two lots that are
23 being regraded there are retaining walls going in, and we
24 know that slope needs to be stabilized, so as part of this
25 plan set, not going into too much detail, what we've

1 proposed is a slope stabilizing native hydroseed mix that
2 we would be defining, or it would be defined later in your
3 construction documentation, so that is recognized as
4 needing slope stabilization and the proper planting.

5 VICE CHAIR BURCH: Okay, thank you.

6 CHAIR THOMAS: My next question is about the
7 pervious concrete, and I think the engineers. Thank you.
8 Could you just tell me about what that material is, what
9 your experience with it is, and how durable it is.

10 ZEFERINO JIMENEZ: It is going to be durable
11 enough for an emergency vehicle to be able to drive on top
12 of it; that is per requirements, so we'll have to take that
13 loading. It follows the standards that are made for us to
14 be able to adhere to per local regulations.

15 CHAIR THOMAS: Okay. Vice Chair Burch.

16 VICE CHAIR BURCH: I had a couple of questions
17 about that too, so she's reading my mind. My limited
18 experience with pervious pavement is that it is a lot less
19 durable and not as strong as pavement, and so with frequent
20 trips, especially with heavier vehicles, it actually breaks
21 down faster, they can clog with silt, and it has some
22 issues with seeping into the groundwater.

23 One, I guess I'd be curious to know what does the
24 maintenance of that road look like in the CC&Rs and have
25

1 you really fully analyzed it? You've got it on the main in-
2 and-out spot right there, so it's going to get the weight.
3 If you have done that analysis, is it a report that Staff
4 has?

5 ZEFERINO JIMENEZ: It would be included as part
6 of the Operation and Maintenance Agreement and the
7 frequency of that. We don't have that report or frequency
8 yet, but it will be provided at the time that construction
9 documents are provided and prepared for the project.

10 CHAIR THOMAS: Commissioner Sordi.

11 COMMISSIONER SORDI: Thank you, Chair. I wanted
12 to pivot back to discussion of the concessions and the
13 actual unidentifiable costs, which Commissioner Burnett
14 touched on a little bit earlier, and what I wanted to focus
15 on a little bit more was the rationale behind no trails and
16 no open space easements.

17 I know that the bar is relatively low with
18 respect to Builder's Remedy, and you can just say it's
19 expensive, I guess. I don't see any analysis related to
20 actual unidentifiable costs in the justification letter.
21 It's fairly brief, it's like five pages, not that it needs
22 to be super wordy and long, but I just don't see any
23 analysis at all with respect to finance, and I'm curious to
24 know if you can add a little bit more detail about what you
25

1 anticipate would potentially be an unacceptable cost or an
2 excessive cost associated with the simple addition of a
3 trail. I'll stick to that question first, I guess.

4 JIM FOLEY: It's a hard one to quantify. We're
5 very nervous in general of how long the project is taking
6 to move through the process, what the market is going to be
7 like. It's razor thin all the time now, and trying to
8 deliver a residential subdivision like this is a long
9 project and takes a long time to deliver it as well.

10 I can't quantify in a dollar sense, like okay, we
11 hit a threshold of a hundred or two hundred or \$2 million
12 and decided not to do anything like that. I think the
13 overall proposal was to keep this project very simple. You
14 can see the lotting plan; it's pretty simple. Based on some
15 of the feedback in 2018, we shifted some of the homes down
16 the hill, we didn't have an elaborate cul de sac coming off
17 of Cerro Vista as they did before, there were different
18 options that were proposed with open space and trails and
19 whatnot, and we basically just tried to simplify everything
20 in an overarching attempt to make it a feasible project
21 cost-wise. If we had proposed to put in a trail connection
22 through the upper lots, I don't have how that would look or
23 what the cost would be.
24
25

1 There's a little bit of a marketability issue as
2 well with... I know it's nice for the neighborhood and
3 everybody else, but also for the home, to have public
4 walking through their back yard or how we design around
5 that, or how it fits into part of the topography, that
6 isn't impactful. We didn't spend time or dollars
7 reanalyzing that.

8 I wish I could give you a clearer, definitive
9 answer like it was going to be this and it just took the
10 project budget too high, but I don't think I have that for
11 you.

12
13 COMMISSIONER SORDI: Then, just to follow-up on
14 that, I'm thinking about just the notion of a conservation
15 easement or an open space easement; it seems like a line on
16 a map to me in its simplest form. I know sometimes
17 conservation easements can come with some maintenance that
18 would not necessarily be a cost now to the developer, it
19 would be a maintenance cost to an HOA, or if it's not an
20 HOA, to a private homeowner. I don't know if you can
21 elaborate any more on what would be actual and identifiable
22 costs to a conservation easement.

23 JIM FOLEY: That one is also challenging. We just
24 ran into this issue on another project nearby that Town
25 Staff helped us navigate, something that was done for

1 different reasons and then something changed, and it was
2 something that we had to navigate, and it was an impact.
3 Fortunately, that situation worked out okay.

4 I think we're a little unclear on what needs to
5 be done there or what's being requested. There are some
6 identified lots to say that there might be some features
7 that should be protected or whatever it might be. I think
8 we're open to working with Staff or at your direction on
9 hey, these are the things that we want to see there, and I
10 think that we might be able to get to a point where some of
11 that doesn't have as great of an impact, but it's still...
12

13 Going back to that high level, it's drafting
14 legal, putting easements in place, engineering it, maps,
15 civil, ratcheting up so it was a decision of how we were
16 going to present the project, or to set that to the side if
17 it wasn't going to be something that was necessary. If it
18 becomes a really critical issue, like any of these, we're
19 open to listening and seeing if we can take care of it.

20 COMMISSIONER SORDI: Understood. A lot of the
21 concern and maybe the anxiety associated with something is
22 the unknown, and my mind keeps returning to this, because I
23 see a potential community benefit that just kind of leaps
24 off the page at me.
25

1 I'll disclose that I'm a cyclist, and so I'm a
2 little bit biased in that direction, but Kennedy Road is a
3 particularly dangerous road, and right now we've got trails
4 that are in the adjacent subdivision that almost connect--
5 don't quite make the connection--to Brooke Acres Drive. It
6 doesn't seem to me that it would be too terribly expensive
7 to align a pedestrian bike trail immediately adjacent to
8 the EVA that comes off Brooke Acres and then connects to
9 the roadway system and makes its way out to Longmeadow.
10

11 Then you have the ability to have a cyclist hop
12 off a really dangerous road and spend a considerable amount
13 of time weaving through a beautiful path through
14 neighborhoods and making their way back out to Kennedy, so
15 that's just something I'll throw out there; I don't know if
16 that's something that you would consider. That takes away
17 some of the ambiguity, maybe, to it, and may align well
18 with some of the improvements that are already being done
19 and keep the cost down, I don't know.

20 JIM FOLEY: I see what you're saying logistically
21 through there. Again, we have a number of things that we're
22 going to look at. We'll have to see at the end of the
23 meeting what are the things that we're going to need to
24 look at for the Council, or for you again, or whatever, and
25 definitely open to doing that.

1 All these decisions were predicated on the
2 simplicity—which is what you’re looking at—and some of the
3 other things that have come up, and why we made the
4 decisions that we did, and along with our architect trying
5 to keep the design very rural. It is a luxury home
6 subdivision, but to that end I think it is on the
7 minimalistic side, downplayed architecture and really
8 beautiful stuff.

9
10 Just the way that the driveway is and how the
11 private road is going to look and all that, and I think it
12 would be a wonderful place to cycle and connect in through
13 Brooke Acres to the trail, whatever it might be, so if
14 there is some kind of a design element or safety or feature
15 that we need to put in place to allow for that, of course.

16 If it’s something more than that, if it’s taking
17 property out of some of the back yards of the upper lots,
18 again, we can look at that; I don’t know the logistics and
19 what the cost implications are going to be right now.

20 COMMISSIONER SORDI: Okay, just something to
21 think about. Thank you.

22 CHAIR THOMAS: As a follow-up to that, I
23 understand the maintenance in the long-term is something
24 that the cost is difficult to capture, but would you be
25 open to looking at some of these options and looking into

1 either having some sort of open space conservation easement
2 or trail easement? I don't know, I know that there are land
3 trusts out there, there are resources. This is a very large
4 project. I'm not an expert in this, but would it be
5 possible to set up some sort of land trust that you can
6 collect money from now that can maintain that at least for
7 the foreseeable future? Has any of that financial aspect
8 been considered?

9
10 JIM FOLEY: We have not looked into anything like
11 that. I'm thinking of different conditions around town and
12 how they are, and whether they are owned by the Town,
13 they're public, or they're easement over somebody else's
14 property. I haven't personally done anything like that on a
15 project to understand what all the options are, but just
16 like everything else, if there is a logical way that we can
17 accommodate people or the needs, and it isn't something
18 that is going to prevent the project from going forward
19 financially, we're very open to cooperating.

20 CHAIR THOMAS: Okay, thank you. I did have one
21 more question for, I think, the engineers again. Mr.
22 Mullin, can you pull up 5.0, I guess probably. The very
23 corner between Lots 5 and 6, can you just explain and talk
24 through the engineering and the water situation with that
25 large swale down there? Just that whole corner area—because

1 on some of the plans it even says that it's an existing
2 wetland—and the swale that's there and how it's going to
3 function.

4 And then in the very corner, on some of the
5 documents it says there's an existing wetland to remain, so
6 does that change? Is it seasonal that it changes? Is it
7 existing all year? Is that the maximum?

8 MIKE: This stormwater bioretention here is
9 collecting and treating through hard pipes that are coming
10 in this way. They are conveying water off of this hardscape
11 as well, as well as all the hardscape from Lot 6 and Lot 5.
12 All of it is being conveyed into this bioretention. Bio
13 retention will treat it, bioretention will contain it, and
14 then it will, through hydromodification with an orifice,
15 release it out in this direction to this hard pipe storm
16 drain system, ultimately connecting to the existing system
17 that you have coming out here.

18 CHAIR THOMAS: So, that will be all underground,
19 the connection?

20 MIKE: Yes, all of the storm drain system is
21 completely underground.

22 CHAIR THOMAS: So, then that wetland, it
23 shouldn't impact or connect to the wetland area that's
24 directly adjacent to it?

1 MIKE: This storm drain system here, which is
2 actually tied into this one here, which picks up Lot 10,
3 all of it hydrologically ties into the existing system and
4 exits the site.

5 CHAIR THOMAS: Okay, thank you very much. Are
6 there any other questions for the Applicant at this time
7 before we close the public portion? We will now close the
8 public portion of the public hearing on Item 1. Thank you
9 for everyone from the Applicant team, also on Zoom, that
10 was here to answer all of our questions.

11 I think that we will be taking a break, but
12 before we do that, I wanted to make a recommendation about
13 how we start our discussion when we come back. If we have
14 some specific questions or big major questions for Staff,
15 that's fine, but because there is a lot here I think that
16 we should go through and first talk about the zoning, which
17 I think will be our quickest conversation; and then talk
18 about CEQA, so the Initial Study and the Mitigated Negative
19 Declaration; and then talk about the State Density Bonus
20 Law aspects, including the incentives, concessions,
21 waivers, just making sure that we're all on the same page
22 with that and get questions answered about that; then the
23 specific site plans; then lastly the Conditions of
24 Approval.
25

1 I can repeat that for you guys, but while we take
2 a 10-minute break, if we can just make sure we get our
3 thoughts in order for that, that would be great, and then
4 we'll be back at 9:15.

5 (INTERMISSION)

6 CHAIR THOMAS: We are going to continue with our
7 hearing on Item 1, and we will open it up to comments and
8 questions from Commissioners and for Staff, and we will
9 first start with any zoning questions or comments.
10 Commissioner Raspe.

11
12 COMMISSIONER RASPE: Thank you, Chair. I don't
13 know if I have any questions for Staff. I thought the Staff
14 Report on this issue was exceedingly clear, that is it is
15 currently a resource conservation zone, and because it's
16 (inaudible) a Builder's Remedy project the Town is required
17 to rezone it to allow the development to happen (inaudible)
18 be rezoned to Low-Density Residential, which again, I think
19 makes (inaudible) this particular topic, zoning compliance
20 (inaudible).

21 CHAIR THOMAS: Anyone else have anything to say?
22 No? Okay. Great, then let's move on to our second topic,
23 which is CEQA, so Initial Study/Mitigated Negative
24 Declaration questions. Who would like to kick that off?
25 Commissioner Burnett.

1 COMMISSIONER BURNETT: Thank you. A question for
2 Staff. I have some real issues with the definition of
3 deferred mitigation, mainly that specific of a mitigation
4 measure are not finalized until after project approval. Is
5 there a way we could make it coincide that... I don't
6 understand how you can have an approval before the project
7 is completed.

8 DIRECTOR PAULSON: I'll start, and then probably
9 defer to our representatives from Raney, the environmental
10 consultants.

11 I don't recall when that or those letters were
12 written, but the Mitigation Monitoring and Reporting
13 Program goes through each mitigation, who is the
14 responsible department, and many of them do have timing
15 associated with them. As I recall, we don't believe there
16 is any deferred mitigation that's being put off, but I just
17 want to get confirmation from Raney, from Angela DaRosa.

18 ANGELA DaROSA: Good evening, Chair and
19 Commissioners. Angela DaRosa with Raney Planning and
20 Management. We are the third-party consultants that the
21 Town hired to prepare the CEQA document for this project.

22 As far as deferred mitigation, you are allowed
23 under CEQA to rely on a future study or standards so long
24 as there is specific performance measures listed in the
25

1 mitigation measure, and as long as it identifies the
2 actions to make sure that those performance measures are
3 carried out, and we have included those performance
4 measures in all of the mitigation measures.

5 DIRECTOR PAULSON: I'd just add, one common one
6 that we see in a lot of documents, even for projects that
7 are exempt when they go through Initial Study, there is
8 protected birds, protected bats, depending on what time of
9 the year you're doing it, you have to do them within
10 specific timelines of when construction is going to start,
11 otherwise you have to get your biologist back out there to
12 do another survey if you miss that gap. So, a number of
13 those things do need to be handled after the fact.

15 COMMISSIONER BURNETT: Thank you.

16 CHAIR THOMAS: Commissioner Sordi.

17 COMMISSIONER SORDI: Thank you. I'm wondering if
18 Staff could put up page 157 of the packet.

19 SEAN MULLIN: Was this the architecture report?

20 COMMISSIONER SORDI: It actually is. It does a
21 really good job in color of showing the proximity of the
22 ephemeral drainage to the Lot 8 residence, and it's just
23 helpful for the sake of discussion. There we go.

24 I had a question for the environmental
25 consultant, and this goes back to—and I mentioned it

1 earlier—the letter that came from Ryan Wines with the
2 Regional Water Quality Board. I think the nature of his
3 letter was he disagreed with the analysis. I think that the
4 specific ask was that the riparian drainage—whether we want
5 to call it, ephemeral or riparian, maybe you guys can
6 elaborate on it—be better defined, and that it be defined
7 through the normal process that the Regional Board goes
8 through with respect to identifying whether something is a
9 water of the State or not, something in their jurisdiction
10 that they control.

11
12 When I looked at the response to comments, and
13 I'll just read from here, this is written by the
14 consultant. It says, "A site visit was conducted on May 14,
15 2025 by LOA, a professional biological consulting firm
16 under contract with the Town's environmental consultant, to
17 confirm the characteristics of the onsite ephemeral
18 drainage as part of the biological evaluation."

19 What I'm trying to get a sense of is that area
20 that's kind of a blob there that is dark grey and then has
21 some white around it, I think the dark grey is basically
22 the tree canopy and the white is supposed to be the limit
23 of riparian vegetation, if I'm not mistaken, and we've got
24 a house encroaching pretty closely into it, but who
25 established the boundary of that to begin with? Based on my

1 review of the report, it looks like it's possible that it
2 was established by a survey or an engineer simply looking
3 at topography and looking at vegetation, and then you guys
4 might have gone out to just validate that.

5 ANGELA DaROSA: Yes, that's exactly correct. It
6 was shown on the site plan, and the biologist that was
7 hired for this project, Live Oak Associates, went out and
8 did site surveys to check the conditions of the site and
9 confirm those areas and the limits of the vegetation
10 associated with that ephemeral drainage.

11 COMMISSIONER SORDI: And when you went out to
12 confirm that, was there anything on the site that indicated
13 the limit of development in terms of staking or the limit
14 of the house itself in terms of you guys being able to
15 envision or overlay the development against a riparian
16 area?

17 ANGELA DaROSA: Yes, I believe the biologist had
18 CAD files, so they were able to georeferenced those and
19 essentially overlay the site plan on the site to confirm
20 those areas.

21 COMMISSIONER SORDI: Then my more pressing
22 question is was any analysis done by a biologist? Was any
23 analysis done to establish whether there are hydrophytic
24 soils present? Did you dig into the ground? Did you look at
25

1 the soils and evaluate them? And did they do an analysis of
2 the plant species out there to determine whether or not
3 they're consistent with a wetland or riparian species?

4 ANGELA DaROSA: Yes, there were two surveys of
5 the site conducted exactly for those reasons, to see the
6 conditions of the site and to map out any aquatic features;
7 and there was no wetland type of plants identified for that
8 ephemeral drainage, which is why they had classified it as
9 an ephemeral drainage.

10 COMMISSIONER SORDI: Okay, so it's considered
11 ephemeral drainage, it's got riparian species, but it's not
12 a seasonal wetland by definition.

13 ANGELA DaROSA: Correct. It's also not considered
14 riparian vegetation either.

15 COMMISSIONER SORDI: Okay, it's not.

16 ANGELA DaROSA: It's just oak woodland vegetation
17 that's around it.

18 COMMISSIONER SORDI: It sounds like what the
19 Regional Board person was asking for was some kind of
20 delineation, but I suppose if you could confirm there are
21 no wetlands out there, then you can draw the conclusion
22 that there is no need for a wetland delineation.

23 ANGELA DaROSA: There was one small area of
24 wetland identified on the project site and it is in the
25

1 southwestern most corner associated with Ross Creek, and
2 the project is completely avoiding that. Sorry, I'm mixing
3 it up. Northwestern corner of the site is the small wetland
4 area. The southwestern area of the site is where there is
5 riparian vegetation located, and that's associated with
6 Ross Creek. Sorry for the confusion.

7
8 COMMISSIONER SORDI: I guess then in your opinion
9 there then there wouldn't need to be a formal wetland
10 delineation done for the site?

11 ANGELA DaROSA: Exactly, and the biologist did
12 look at the old reports that were conducted as part of the
13 2017 EIR, and as part of that the US Army Corps did write a
14 letter confirming that the only wetland area under their
15 jurisdiction is that small area in the northwestern corner.

16 COMMISSIONER SORDI: Okay, thank you.

17 CHAIR THOMAS: I have a couple follow-up
18 questions to that. You said the biologist went out to
19 confirm. Can you tell me when that was?

20 ANGELA DaROSA: Yes, I have that noted here. Give
21 me one second. They did two site visits. One was in
22 December of 2024, and they went back out to the site in May
23 2025.

24 CHAIR THOMAS: So, they went in December 2024 and
25 May 2025. Vice Chair Burch.

1 VICE CHAIR BURCH: I did have one quick question.
2 As you can see, there's a 10' buffer you guys have called
3 for. I would like to understand why it's not consistent all
4 the way down. Why does the 10' buffer kind of come and go?
5 I don't see any value in that. Why would we just not
6 continue with the 10' buffer for the entire?

7 ANGELA DaROSA: The 10' buffer was not a
8 requirement for the CEQA process, it was what was on the
9 site plan, so we were just analyzing that. The site plans
10 included a 10' buffer around the vegetated area.
11

12 VICE CHAIR BURCH: Okay, thank you.

13 CHAIR THOMAS: Just as a follow-up to that,
14 because there isn't a 10' buffer everywhere, was that
15 analyzed, or did you assume that there would be a 10'
16 buffer everywhere in your analysis?

17 ANGELA DaROSA: It was our understand that there
18 would be at least a 10' buffer around the entire ephemeral
19 drainage area. I will say that upslope farther of the
20 ephemeral drainage there is no development proposed, so the
21 buffer is much larger.

22 CHAIR THOMAS: Okay, thank you. Then I have a
23 follow-up question Town Staff. Isn't a 10' buffer on these
24 proposed plans, but it sounds like that is what was
25

1 reviewed by the environmental consultant, so how do we
2 remedy that?

3 ERIN WALTERS: These were the plans that were
4 provided to the consultants to review as a part of that,
5 and you can see the dashed line on ephemeral drain, that's
6 the 10' buffer, and it looks like there's a segment that's
7 near Lot 8 that isn't showing that dash line.

8 DIRECTOR PAULSON: I think what Ms. DaRosa tried
9 to explain, but maybe it wasn't caught, was some of these
10 wider sections that have the 10' buffer around them, maybe
11 there was some vegetation, if I recall, and where this
12 other is, there really isn't. It's really just part of the
13 channel, so that buffer is not as wide at that point. You
14 have all been out to the site. Even the grey area isn't
15 what you see on the ground. So, if Ms. DaRosa could provide
16 just a little more clarification on that for the Planning
17 Commission, please.

18 ERIN WALTERS: If I could interject. Mr. Mullin,
19 on Exhibit 15, sheet 6, the erosion control plan, that
20 shows that delineation.

21 ANGELA DaROSA: Just to clarify, the biologist
22 analyzed the site plan as proposed, so where there are 10'
23 buffers shown, they analyzed that and assumed that.

1 CHAIR THOMAS: I have a question about what the
2 process is if a species of concern is found on this site,
3 what ends up happening?

4 ANGELA DaROSA: Just to clarify, you're asking if
5 a species that wasn't addressed in the MND?

6 CHAIR THOMAS: Yes, an additional one, if
7 something comes up, because I did see in the biological
8 report there were a couple that were like this; the closest
9 one is these many miles away, for example. So, there were a
10 few, but I know that I've seen them, and other people have
11 seen them closer than three miles to that site, so just
12 wondering.
13

14 ANGELA DaROSA: Sure. The species that were
15 identified as potentially occurring onsite were based on
16 the biologist expert's opinion and the conditions of the
17 site from their surveying. Of course, if they're out there
18 doing the preconstruction surveys that are required for the
19 special status species that were identified by the
20 biologist as potentially being there, the qualified
21 biologist that would be doing that survey would follow
22 protocol to address any other special status species that
23 they see while they're out there.
24

25 CHAIR THOMAS: Then just quickly, just for the
public's understanding, can someone clarify in general, I

1 know that it is in here, but what is the general protocol
2 when a species of special concern is found? Just because I
3 think that there is a misunderstanding about what happens
4 next.

5 DIRECTOR PAULSON: I can say, I don't recall that
6 ever occurring in town, because most of those species are
7 already known with rats, and the bats, and the raptors, but
8 we would defer, again, as Ms. DaRosa said, to the
9 biologist. There is standard protocol for whether you're
10 encountering that, or your encountering Native American
11 artifacts, or skeletal remains, or any of those things; we
12 would follow the required protocol.

14 CHAIR THOMAS: Sorry, I meant if anything, even
15 included, happened. In general, just the general protocol
16 for when a species of special concern is on a site. It
17 doesn't mean that everything ceases to stop, there are a
18 couple of different...

19 DIRECTOR PAULSON: Again, when something like
20 that happens, then we would defer to the expert, whether
21 it's a biologic issue or some other issue that also has the
22 potential for creating a situation where something unknown
23 is found, and then we would follow that generally State or
24 Federal required protocol, but I do not have that with me.
25

1 CHAIR THOMAS: Okay, thank you. I had a question
2 about the geologic hazard appendix, so in Appendix D, just
3 again wondering on the timing of when this was done. Then,
4 I also could not find a map of where the boreholes that
5 were being described actually were. It's probably in here,
6 but again, this was a giant packet, so if someone could
7 just refer me to where I should be looking for that.

8 ANGELA DaROSA: The geology study was attached to
9 the IS/MND; it was included as Appendix D to the IS/MND,
10 and it was prepared in October 2024. We're trying to pull
11 up the map for you.

12 CHAIR THOMAS: Okay, thank you. Go for it while
13 they're looking.

14 COMMISSIONER SORDI: Just a quick follow-up on
15 the geotechnical report and the indications of slide areas
16 on the site. From reading the report, it appears that there
17 are no mapped known slides on the site, and I guess what I
18 was curious about was what was used as rationale for
19 identifying areas in the slide zone versus not slide zone.
20 Is this strictly based on slope, or is it soil
21 characteristics? And hopefully I'm right about the map
22 slide zone. If I'm wrong, let me know.

23 ANGELA DaROSA: Santa Clara County maps the site
24 as being in a landslide hazard area, but as part of the geo
25

1 study, they did a number of test pits and actually looked
2 at the soils on the site in some of those sloped areas.
3 What they found was no evidence of landslide deposits, no
4 field features indicative of slope failure and instability,
5 so they found that landslide hazards were to be considered
6 low to moderate, and the majority of the proposed
7 residences are outside of the steep slope areas.

8
9 COMMISSIONER SORDI: There's one particular map
10 that shows I think it's most (inaudible) with Lot 8 as
11 being kind of painted yellow, and I thought it was
12 indicating that it was in a slide zone, but maybe I'm not
13 getting that right. Here we go. It's in the packet, page
14 1,092. It's Lot 9, Architecture and Site review, and I'm
15 just noticing that the area... It just says, "(inaudible)
16 Slide Hazard Zone," and it maps it in yellow. It looks like
17 a significant portion of it is on Lot 9 and Lot 8.

18 I don't know if I'm asking the same question, but
19 I guess I'm just wondering what led to the characterization
20 of that area to be in a slide zone versus not the rest of
21 it, and if it's just based on slope or if it's also just
22 based on the civil borings and the characteristics.

23
24 ANGELA DaROSA: I think those shaded areas, I
25 believe, are from the County maps that are showing that
landslide hazard area.

1 COMMISSIONER SORDI: So, the County map shows it,
2 but we're not really sure why? I don't want to draw
3 unnecessary conclusion or unsupported conclusion, but if
4 there were borings done it sounds like there were no mapped
5 actual landslides found, and that way we're not looking at
6 a hazard that severe, we're just looking at a resource and
7 constraint map that looks at things from like a 10,000'
8 level. Is that correct?
9

10 ANGELA DaROSA: Yes, it's definitely based off
11 the borings, and there is a mitigation measure included in
12 the MND that requires compliance with the recommendations
13 of the geostudy, so there are some recommendations to
14 ensure that slope stability is addressed.

15 COMMISSIONER SORDI: Okay, thank you.

16 ANGELA DaROSA: And we found the map of the test
17 borings. It's an attachment to the geotechnical report, the
18 second figure. There are no figure numbers on it.

19 COMMISSIONER SORDI: That's all I had on geo.

20 VICE CHAIR BURCH: While she's looking for the
21 document she's trying to find, I have a non-geotechnical
22 question.

23 We received a couple letters from the Sierra Club
24 and the Santa Clara Valley Bird Alliance. I have one dated
25 October 17th, and in this letter they state a few concerns

1 around the document and that they feel that it doesn't
2 properly address certain concerns, some of them that we've
3 talked about tonight, but one them, which was kind of the
4 biggie I thought, was the statement that says, "Procedural
5 deficiencies under CEQA, including reliance on deferred
6 mitigation, absence of required agency consultation, and
7 disregard of substantial evidence submitted by responsible
8 agency."

9
10 Have you guys taken a look at this document, and
11 is there a way that you would answer to confirm for us that
12 in fact those things have been done?

13 ANGELA DaROSA: Yes, I think included in your
14 packet is detailed responses to that exact letter.

15 DIRECTOR PAULSON: Those might have been in
16 Addendum 2 or the Desk Item, Ms. Walters?

17 ERIN WALTERS: It was in Addendum 2; it was part
18 of the attachment there.

19 ANGELA DaROSA: And I think that comment in
20 particular was related to the Water Board's comments. They
21 were referring to the Water Board's comment letter.

22 CHAIR THOMAS: You said that the geology report
23 was done in October 2024?

24 ANGELA DaROSA: That's correct.
25

1 CHAIR THOMAS: I have a follow-up question,
2 because we've been out to the site, and obviously we
3 haven't had a lot of rain as of now but it's wet out there
4 and those boreholes would have been done when the water
5 table is presumably the lowest, because it's in October. It
6 does explicitly say in this part of the groundwater report
7 that that's likely not represented at the stabilized
8 levels. They can be higher than initial levels encountered,
9 etc., so how is that taken into account? It just is a very
10 wet area, so how can we make sure that there isn't water...
11 Really, like the water table isn't at the surface in some
12 of these spots?

14 DIRECTOR PAULSON: I can start, and then if
15 anyone else has any other questions, but ultimately if the
16 project gets approved and development plans come forward
17 there will be additional geotechnical work that will have
18 to be done for the specific foundations and soils work, but
19 as you mentioned, the water table can fluctuate, and so
20 we're not going to have them go out every week and test the
21 soil, and if they do encounter water, this happens all the
22 time in Town, especially when folks do cellars. Then they
23 end up having to get a system to make sure they're
24 dewatering that, obviously in the appropriate manner, so
25 that it doesn't impact the site or offsite properties.

1 Do you have Exhibit D with you? I think page 37
2 is the last page of the geotech report, so the second page
3 after that is, I believe, what Ms. DaRosa was... Yes, so that
4 shows the borings.

5 CHAIR THOMAS: Okay, thank you. Commissioner
6 Burnett.

7 COMMISSIONER BURNETT: Thank you. I'd like to ask
8 a question representing CEQA. What did you base your
9 findings on to believe that the Mitigated Negative
10 Declaration was all that was needed, and any concerns were
11 less than significant and that could be mitigated on this
12 complex project? This is a very involved project.

13
14 And then, did you rely at all on an outdated,
15 uncertified EIR in 2017? At that time that was based on a
16 55,000 square-foot area, and it did cite potential
17 significant impacts. So, my question to you is did you rely
18 at all on that report? It was uncertified and it was an EIR
19 report. I'm just finding that there is a lot of areas here
20 that I think seem to have a lot of unanswered questions, so
21 that's my question to you.

22 ANGELA DaROSA: The general answer is no; we
23 didn't rely on the prior EIR. As you know, it was
24 uncertified and it was from multiple years ago, so this
25 IS/MND is a full independent analysis with new project-

1 specific reports conducted, so we did not rely on prior
2 reports prepared for that EIR.

3 COMMISSIONER BURNETT: Thank you.

4 DIRECTOR PAULSON: I'd be curious, you mentioned
5 potential significant impacts. All of these reports,
6 whether it's EIR or MND, have potential significant
7 impacts, but it's my recollection that even though that's
8 many moons ago, that even though that project did an EIR,
9 they were able to mitigate all of those impacts to less
10 than significant. There were no significant, unavoidable
11 impacts even with the EIR.
12

13 COMMISSIONER BURNETT: I believe I read that they
14 did cite in that EIR report that there were some potential
15 significant impacts.

16 DIRECTOR PAULSON: Correct. Every one of these
17 looks at potential significant impacts, but if it can't be
18 mitigated, it becomes significant and unavoidable. That's
19 when you absolutely have to do an EIR. We have had in the
20 past—and so the Planning Commission and Council have seen
21 that before—a number of projects that have decided even
22 though they don't have any significant unavoidable impacts
23 and could be CEQA clearance through a Mitigated Negative
24 Declaration, they have chosen to do an EIR, because that
25 has a higher bar from a lawsuit perspective for the

1 Applicant, but in this case the Applicant didn't choose to
2 go down that path, and it's not necessary to go down that
3 path, because there aren't significant unavoidable impacts
4 at this point, but I'll go back and look, because I don't
5 remember any that were from the previous project either.

6 CHAIR THOMAS: Should we move on to the next? If
7 we have any more environmental questions, we can come back
8 to it. Next, I think we should discuss the State Density
9 Bonus Law and all of the incentives, concessions, waivers,
10 walking through some of that.

11
12 I think before I open it up to everyone else, I
13 would like a clarification again from the Town Attorney
14 about the identifiable and actual cost reduction, the
15 language and the findings that we need to make to grant
16 these incentives.

17 ATTORNEY WHELAN: I think I remember what part of
18 the presentation you're referring to. The burden is on the
19 Town to demonstrate that their requested concession or
20 incentive would not result in a cost reduction, and the way
21 that we normally determine that information is we ask the
22 Applicant to give us a general explanation of how the
23 concession or incentive results in a cost reduction.

24
25 There is a case out there saying that public
agencies can't require proformas, and so the Town doesn't

1 require a proforma, but we do require an explanation of
2 what the cost reduction consists of.

3 CHAIR THOMAS: And then, "...to provide for
4 affordable housing." What does that mean?

5 ATTORNEY WHELAN: That language comes from the
6 statute. It's hard to interpret, and so our position has
7 been does this incentive or concession result in a cost
8 reduction to the project overall. Because the project, by
9 definition, has to include a component on affordable
10 housing in order to even qualify.

11 CHAIR THOMAS: I'm just curious, because this is
12 one of the findings that we have to make to the concessions
13 or incentives for the open space conservation trails
14 situation, and in the Staff Report it just says to provide
15 affordable housing costs. I clearly understand how
16 expensive sidewalks can be, and it's very clear that that
17 would significantly change the project financially, but I'm
18 not sure that I personally have enough information about
19 the actual cost reduction by avoiding having an easement
20 for open space, but I'm curious to see what other
21 Commissioners have to say about that.

22 DIRECTOR PAULSON: I would just remind the
23 Planning Commission; Staff wasn't able to make the finding
24 from our perspective for the open space component. We
25

1 actually were for the trails, so you might want to discuss
2 that one as well. Obviously, the initial installation of
3 that, you've been out to the site, it basically comes into
4 the site, traverses their perimeter, and goes all the way
5 up to Cerro Vista. Obviously, there will be a cost
6 associated with that, but I just wanted to throw out that
7 little bit of background for your discussion.

8 CHAIR THOMAS: Thank you.

9 VICE CHAIR BURCH: Can you expand on the trails?

10 DIRECTOR PAULSON: Expand on them? Make them
11 bigger?
12

13 VICE CHAIR BURCH: Aside from maybe saying we
14 have to do physical trails, could we do an easement for
15 trails?

16 DIRECTOR PAULSON: I think you could request that
17 be part of your recommendation to move forward, that at a
18 minimum, trails. We heard tonight from Planning
19 Commissioners that they don't necessarily have enough
20 information on the monetary impact to the project for even
21 going to the level of doing the trails, so that could
22 definitely be part of any recommendation moving forward.

23 CHAIR THOMAS: As a follow-up to that, if there
24 was an easement, if a land trust or community group or
25 something came along down the line to fund and maintain and

1 set up a situation for that, is that how that would legally
2 work?

3 ATTORNEY WHELAN: The condition could be open-
4 ended. It could require the easement be dedicated, and then
5 it could specify that either the Town would make
6 improvements later, or as you mentioned, another group
7 might come along and make improvements.

8 CHAIR THOMAS: Thank you. Commissioner Raspe.

9 COMMISSIONER RASPE: Thanks, Chair. I'm looking
10 at our Staff Report starting at page 14 and going to page
11 15, and it has a list of both the incentives and the
12 waivers, so maybe a good way to do it would be to attack
13 those in order.
14

15 Looking at the incentives, beginning with the
16 story poles and not providing sidewalks, I understand the
17 cost savings with those, and perhaps we can be with the
18 developer on that.

19 Going to trails on the open space easement,
20 again, I think Conditions of Approval for Lots 2, 7, 8, 9,
21 and 10—that's already part of our packet—I would recommend
22 that we incorporate that as part of any approval if we were
23 going to have an approval.
24

25 I would also encourage us to include the trail
system. To me, if cost really is an issue to the developer,

1 it could be foisted back to the homeowners by way of making
2 it an HOA cost for maintenance, for initial building,
3 divided over 12, or even if you wanted to take the BMPs out
4 of it, to a lesser (inaudible), would be an inconsequential
5 (inaudible). I think we can find that it's not an
6 insurmountable burden to (inaudible) the incentives.

7 CHAIR THOMAS: I think that we're all on the same
8 page with regard to that. Then with the waivers, does
9 anyone have any questions or want to discuss? I would just
10 say that the LRDA is something that we see very often
11 obviously in the hillsides, so I don't think that's even
12 something that...

14 DIRECTOR PAULSON: I think, again, Mr. Mullin, if
15 you can bring up the finding, because that one has a little
16 bit different than the monetary, and it really gets back to
17 anything that's going to impact the project as it is
18 proposed.

19 CHAIR THOMAS: Yes. Most of the time when we've
20 been looking at these projects and everything it's just
21 about obviously making sure that these waivers are
22 necessary for these projects, and then just making sure
23 that if there is anything that the Applicant team is still
24 willing to address in a different way, which I think they
25 stated that they want feedback on, I just want to give them

1 an opportunity to hear if we have any concerns with any of
2 these. Even though we know that we would still not be able
3 to make this finding, we would not be rejecting the project
4 because of that, but if they're going to be providing us
5 more information, making any additional changes, or
6 prioritizing things. Commissioner Burnett.

7 COMMISSIONER BURNETT: The question to Staff
8 would be regarding the below market program that we have.
9 There are concerns over the size and location, and I know
10 this is a waiver but under the State Density Bonus Law. I
11 wonder if Staff has any concerns over that, the below
12 market.

13 ATTORNEY WHELAN: We debated it internally,
14 because it is a question as to whether that physically
15 precludes the development as proposed. Where I landed is
16 that I think requiring a different configuration of the BMR
17 units would physically preclude the development as
18 proposed.

19 Then, internally, we also looked at it from the
20 fair housing angle, like is this violating any State Fair
21 Housing laws. We did not locate any State laws that were
22 being violated. That said, nothing prevents the Commission
23 from asking an Applicant if they would be able to
24 reconfigure the BMP units.
25

1 DIRECTOR PAULSON: I think the other challenge
2 that we ran across was that the language of our guidelines
3 related to that area is not objective, from what I recall.
4 We'll go back and look at that language as well, but that's
5 part of my recollection as well, so you can impose it
6 anyway.

7 COMMISSIONER BURNETT: Thank you.

8 CHAIR THOMAS: Assuming that the Applicant is
9 perhaps amenable to some of our feedback, is there anything
10 else related to any of the waivers that we feel like could
11 be addressed in another way? Vice Chair Burch.

12 VICE CHAIR BURCH: I think the one that I had
13 highlighted was actually the swimming pools on slopes
14 greater than 30%, but I saw that was addressed in the
15 proposed Conditions of Approval; that was the one I had
16 highlighted. And the location of the BMPs, which
17 Commissioner Burnette asked about. Aside from that, no, I
18 don't think so.

19 CHAIR THOMAS: Then lets move on to the site
20 plans, starting out with Commissioner Sordi.

21 COMMISSIONER SORDI: I think this falls into the
22 realm of site plans, so this may be a question for Public
23 Works, City Engineer. I think the Conditions of Approval
24 require CC&Rs but not an HOA, right? And so, right now
25

1 presumably the CC&Rs would be written in such a way to put
2 the onus and the responsibility on the individual lot owner
3 to maintain the stormwater facilities, and I'm interested
4 to hear feedback from Public Works, the City Engineer, on
5 that. I know from time-to-time the Regional Board audits
6 these things, and it would be kind of a shame if we ended
7 up getting fined, because I think the fines get directed
8 into the public agency and not to the individual, and you
9 just simply can't control who is going to own those lots
10 and how they're going to treat those facilities, so I would
11 just be interested in your feedback on whether that's a
12 practical solution.
13

14 DIRECTOR PAULSON: I'll start, and then Parks and
15 Public Works can correct me when I'm wrong. Ultimately,
16 yes, it would be in the CC&Rs. It is on the property
17 owners. There are yearly inspections that are done to
18 address that. These are all over town, they're all over
19 single-family lots, so this is not a unique practice, this
20 is just something that we have to do as part of our
21 Stormwater Permit. If there is anything else that needs to
22 be added, I turn to Mr. Sparks or the Town Engineer.
23

24 COMMISSIONER SORDI: A quick follow-up. If
25 something is in disrepair or just destroyed or ruined in
the property, what is the remedy? You fine the property

1 owners? Does it become a code enforcement issue? How do you
2 impose the fix on them?

3 DIRECTOR PAULSON: We have both an engineer that
4 does inspections, and we also have building inspectors that
5 do some different inspections, so it's kind of split, from
6 what I recall, but I imagine there are enforcement
7 capabilities associated with that permit. Let me just look
8 to Mr. Heap for a nod. So, yes, there are enforcement
9 provisions that we, when necessary, will handle.

10 COMMISSIONER SORDI: Thanks. Then it leads me to
11 disclosures, I guess. CC&Rs are one thing. A new homeowner
12 that buys a lot, you can presume they read the CC&Rs, but
13 the way to really make sure they know that there are
14 additional budgetary restrictions associated with owning a
15 lot and having to maintain a storm facility would be like a
16 recorded... Maybe recording something would go pretty far,
17 but having a disclosure, which I know is typically provided
18 by the seller—I guess it's just a suggestion—so that it
19 calls it out, it makes it really crystal clear that
20 somebody is going to have to dip into their pocket and
21 maintain this thing from time to time.

22 DIRECTOR PAULSON: Yes, and we can work with
23 Parks and Public Works. They're generally not going to see
24 the recorded subdivision map either, but I could see that
25

1 as being a note. We could definitely look into that
2 recommendation and see what options are out there.

3 COMMISSIONER SORDI: Okay, thank you.

4 VICE CHAIR BURCH: This might be for Staff, or it
5 might be for the consultants, actually, I'm not sure. Was
6 there any study done on stormwater being drained into Ross
7 Creek?

8 DIRECTOR PAULSON: We definitely have Parks and
9 Public Works Staff here. Our planning application checklist
10 requires that preliminary grading and drainage plans be
11 submitted. You've seen the plans; they go far beyond that,
12 but there still are things that need to be ironed out, and
13 so that will happen again.

14 It's one of those things where once we get down
15 to it, if the project gets approved and they're getting
16 construction drawings, then they'll have to get final
17 signoff for C-3 and other components. If any of those
18 trigger any significant modifications to what was, if
19 approved by the Town Council, then they may be subject to
20 coming back through for modification, which I don't know
21 what, but there may be ramifications there. I know Parks
22 and Public Works has done some work on that, but we're not
23 in a final grading and drainage plan, for instance.
24
25

1 VICE CHAIR BURCH: Can I actually ask a follow-up
2 question of that, because that was going to be one of my
3 questions? What we actually have says it's a preliminary
4 grading plan. When do you guys typically see a more
5 thorough grading plan?

6 DIRECTOR PAULSON: The process is after you go
7 through the Architecture and Site. There's an additional
8 Grading Permit that you go directly to Park and Public
9 Works for, and they have a completely separate process
10 where they are nailing down all of those details, so that's
11 when that is going to get handled. Some of these
12 requirements, and we heard a lot from architects and
13 applicants who said, "I don't even know if I'm going to get
14 to build my house. Why are you going to make me spend tens
15 of thousands of dollars?" getting even to the level we
16 request them to get to, so it's a very significant risk
17 from their perception for an applicant that comes through
18 our process.

19
20 CHAIR THOMAS: Commissioner Burnett.

21 COMMISSIONER BURNETT: How can the Planning
22 Commission recommend this to the Town Council if we don't
23 have all the evidence, especially regarding the drainage?
24 If we're still waiting for reports...

1 DIRECTOR PAULSON: If you're not comfortable with
2 what has been proposed, then you can always recommend
3 denial.

4 COMMISSIONER BURNETT: Thank you.

5 CHAIR THOMAS: Any other questions or anything
6 about the site plans? No. The last thing is Conditions of
7 Approval to look at, discuss, and go through. Are there any
8 questions specifically about the Conditions of Approval,
9 changes, or additions? Vice Chair Burch.

10 VICE CHAIR BURCH: I have one that I wanted to
11 bring up that has to do with the residential street. Since
12 this is a rather large lot, can I request that we add a
13 Condition of Approval that there be conditions made to
14 where construction vehicles and parking would be on the
15 property, not on the street, and not have construction
16 trucks parked or idling on the street for longer than five
17 minutes or something? Okay. He nodded at me.

18 DIRECTOR PAULSON: I'm sure there is already
19 something in there that discusses that, but you are
20 potentially going to be recommending more specificity when
21 they look through that construction management plan moving
22 forward.

23 VICE CHAIR BURCH: Yes, I just added a couple of
24 things on top of what he has in here already.
25

1 DIRECTOR PAULSON: I think the other two I heard
2 was something to handle the trails, and then also the open
3 space easements. Those were two other topics.

4 CHAIR THOMAS: Yes.

5 DIRECTOR PAULSON: And then the other might have
6 been related to trees.

7 CHAIR THOMAS: Yes, the trees. Okay, yes.

8 COMMISSIONER RASPE: If I can follow up on the
9 trees, then. I'm looking in the area of Lots 11, 12, or 13.
10 You heard our prior discussion about coming to some
11 accommodation with respect to privacy that would satisfy
12 neighbors. If we could incorporate some of those ideas into
13 a Condition of Approval, probably in one of those numbered
14 areas.
15

16 DIRECTOR PAULSON: I think, as you heard from the
17 landscape architect, it does get to be a challenge when—
18 actually, I think there was a speaker this evening—they're
19 technically currently in the high fire hazard severity
20 zone, but because they vested to the previous maps prior to
21 the recent modifications they were in very high, and
22 they're still being subject to the very high requirements.
23 Many of Fire's requirements that are currently in there, if
24 they came in today they wouldn't have to do. That's an
25 aside, but again, it was getting to that balance of how

1 many trees can we plant, how dense can they be based on the
2 defensible space requirements that are out there, but to
3 the maximum extent feasible, sure.

4 COMMISSIONER RASPE: Understood. We all agree on
5 the point, to the extent allowed by applicable law. Thank
6 you.

7 VICE CHAIR BURCH: This may be in the Conditions
8 of Approval, but again, this is a lot of paperwork. Don't
9 we have something in here about the type of fencing that
10 can be allowed in open space like this so that it maintains
11 wildlife corridors?
12

13 ERIN WALTERS: It's not specific in the
14 conditions, but that is a part of the Town Code, and so
15 they would be subject to the Town Code requirements. The
16 Town Code does specify what is allowed in the hillside
17 area.

18 VICE CHAIR BURCH: I did have one other one,
19 which I know is going to be like weirdly specific, but what
20 was said and what is on the plans are different. If you
21 look on the plans at Lots 4 and 5, between the lowest
22 retaining wall and the property behind them the landscape
23 architect actually said that there was hydroseed and
24 plantings that would void erosion, that actually isn't on
25 the plans; it's shown on the upper tiers of the retaining

1 walls. I just want to make sure that there are plantings
2 between those properties and the properties behind them,
3 because of elevation change that avoid that type of soil
4 erosion.

5 COMMISSIONER RASPE: If I can just ask my fellow
6 commissioners, one of the issues has been the open space
7 easement, and I'm just curious as to what lots you think
8 (inaudible) 10 and 8, perhaps 9? I want to make sure we all
9 kind of (inaudible).

10
11 COMMISSIONER SORDI: In the conditions though,
12 right?

13 COMMISSIONER RASPE: It's not in there yet.

14 COMMISSIONER SORDI: It is.

15 VICE CHAIR BURCH: Yes, see page 40.

16 COMMISSIONER RASPE: Oh, you're right. Okay. And
17 so Lots 2 and 7 also.

18 VICE CHAIR BURCH: It includes Lots 2, 7, 8, 9,
19 and 10.

20 CHAIR THOMAS: Two already.

21 COMMISSIONER RASPE: Yes, I think that's right.

22 CHAIR THOMAS: So, like 2, and then 7 and 8..

23 VICE CHAIR BURCH: Eight, 9, and 10.

24 CHAIR THOMAS: ...9 and 10, yes. Those, yes.
25

1 COMMISSIONER BURNETT: Chair, when would be the
2 appropriate time to bring up a different point of view on
3 the subject?

4 CHAIR THOMAS: Of the open space, or of anything?

5 COMMISSIONER BURNETT: Of the project.

6 CHAIR THOMAS: I just have a follow-up question
7 about the open space, and then... Actually, it's okay. Never
8 mind, you can bring up whatever you want.

9
10 COMMISSIONER BURNETT: Okay, so I'm coming from a
11 different direction. I went to a Planning Commission
12 seminar and it brought up the idea of fair argument
13 standard. I really believe this project qualifies for that,
14 because you have documents from the Coast Ridge Ecology
15 Report; you have the documents from the Sierra Club; the
16 Loma Prieta chapter; documents from the Santa Clara Bird
17 Alliance; and all the neighbor concerns. You have San
18 Francisco Bay Regional Water Quality Control Board. I mean,
19 these are sophisticated reports and have a lot of issues,
20 you know, strong reports, and that is why I feel we really
21 need an EIR.

22 And when you talk about a fair argument standard,
23 you ask when must an EIR be prepared, and when it can be
24 prepared, when it can be fairly argued based on substantial
25 evidence in light of the whole record that a project may

1 have a significant environmental effect; and when you read
2 all these documents, and you read maybe the past EIR, even
3 though it wasn't certified, the residents and their
4 explanations and their lifelong experiences with this
5 hillside, I think that fairly argued means that there is
6 evidence of the potential for impact in the administrative
7 record before the agency.

8 So, I think there is enough evidence, fair
9 argument standard, which is CEQA, that it really deserves
10 to have a full EIR report. I think there are too many
11 questions regarding the water basins, the trees, the
12 hillside slides, and we have questions after questions.
13 We've gone over where does the water end? Is it going into
14 Ross Creek? Where are the basins? For me, one of the
15 Commissioners, those would be my comments, so that would be
16 the direction I would go. I'm just one Commissioner here.

18 DIRECTOR PAULSON: Through the Chair, I think we
19 talked about this a little bit earlier. I didn't go as in
20 depth as Commissioner Burnett, but the fair argument is the
21 legal standard I was mentioning that is much lower, so if
22 this goes to court it's very easy to prove. It's not as, I
23 think Ms. Quintana used, "bulletproof," which everyone
24 wishes existed even with an EIR, but it doesn't. But it's a
25 far lower bar to overturn a Mitigated Negative Declaration

1 than it is an EIR, which is one of the things we discussed.
2 So, if there was a court case following any approval
3 related to CEQA, then that would be the argument.

4 COMMISSIONER BURNETT: Okay, so then if we didn't
5 go that road, then I would request a follow-up meeting—we
6 have a total of five—and I would like some more of these
7 in-depth answers to some of these serious questions for the
8 neighbors and for the fellow commissioners. I don't feel
9 like a lot of the questions were answered, so that would be
10 my second. If you feel that way about litigation or
11 whatever, then my next Plan B would be to have a second
12 meeting, because we have a total of five, with some of our
13 questions answered, and visiting to the site where the
14 wetlands are; I'd like to see that as well.

16 CHAIR THOMAS: Commissioner Sordi.

17 COMMISSIONER SORDI: I just wanted to respond to
18 that a little bit and maybe get into a little more detail.
19 I am hesitant to require more process just for the sake of
20 process, so I think what we really need to do is focus on
21 which questions haven't been answered, and to what extent
22 an IS/MDN is or is not the document appropriate to do that.
23 If you think you're going to find more analysis and it's
24 going to come to a different conclusion just by virtue of
25 changing the process and moving to an EIR from an IS/MND, I

1 think you need to go into detail about what it is that
2 you're going to uncover by adding process that is going to
3 be a different conclusion from a technical standpoint and
4 environmental standpoint.

5 DIRECTOR PAULSON: Going back to what we
6 discussed before, I think its Initial Study checklist, it's
7 the same checklist whether you do a Mitigated Negative
8 Declaration—we've even done them for categorical
9 exemptions—as it is for an EIR. All the same topics are
10 studied, all the same impacts, all the same thresholds and
11 criterion for the various impacts, so the reality, my
12 opinion is—and Ms. DaRosa can speak up if she thinks I'm
13 speaking out of turn—that it would be the same, exact
14 conclusions. There would be no different conclusions. We
15 would be including alternatives to the project, and we've
16 seen this with other projects where they don't have to do
17 an EIR, because they have no significant unavoidable
18 impacts, but we have to do alternatives so it has, "less
19 less than significant," impacts, so, it doesn't really hit
20 that threshold.

21
22 The other thing that it looks at, I believe, is a
23 little more different cumulative impact perspective, but
24 we're talking about 12 lots here: that's not going to rise
25 to a cumulative impact, so just a little more background

1 from a planning perspective. Ms. DaRosa, anything else to
2 add?

3 CHAIR THOMAS: I have a question just about the
4 mitigation and monitoring. Obviously, a project like this
5 takes a while, and so a lot of these, like the
6 implementation schedule is like for the big eared bat, for
7 example, it just is like up to one year prior and then
8 within seven days prior to the start of construction. What
9 happens if there is a delay in construction because of
10 weather, or another pandemic, or we can't get parts and the
11 site is sitting there un-path developed for a while? How
12 does that factor into it?

14 ERIN WALTERS: Folks try to get it done really
15 quick to get construction, because they have to have those
16 letters prepared by a certified biologist per the
17 mitigation direction. Those would have to be redone if
18 there is a delay, and so there is a specific timeframe
19 that's attached to that through those conditions.

20 DIRECTOR PAULSON: That one we do have a
21 protocol, and we run into that sometimes where if they
22 don't hit those timelines they have to start that clock
23 back over, get the biologist back out there for that
24 specific one you mentioned.
25

1 CHAIR THOMAS: I hear what Commissioner Burnett
2 is saying, and I agree with Commissioner Sordi that I don't
3 know what... I need more information to make a motion and to
4 vote on this project as of now, but I think that it's
5 important for us to explain what additional information and
6 questions we have so that Staff, consultants, Applicant
7 team can provide that information so that we can move
8 forward with the project in whatever way, shape, or form
9 that's going to happen, so I would like Commissioners to
10 express what additional information they would need or
11 like, and then open questions they still have.
12

13 Before that though, I do have a question about
14 site visits. As we said, it was a little bit difficult when
15 we went out there, because of the lack of story poles,
16 etc., which I understand why that is happening and it's
17 expensive. Is there a way that we could do some sort of
18 site visits and be able to better understand lot
19 delineations and/or where structures are going? Also,
20 possibly, is it normal to be able to go out with any
21 consultants to be able to ask some questions and get some
22 answers about some of the space?
23

24 DIRECTOR PAULSON: Going out with consultants
25 would be unique from my perspective. This is a challenging
site. You guys have all been out there. We went out there

1 once or twice recently, or I did. I think the Applicant
2 heard your request about the difficulty of trying to orient
3 yourself in the different levels and capabilities, from
4 kind of orienting yourself while you're out there without
5 any real landmarks other than trying to identify, okay, I
6 see this tree, the general idea.

7 We can also work with the Applicant to see if
8 they are willing to put just some kind of staking or some
9 general area, generally delineating the roadway, maybe
10 corners where the lots hit the roadway, and then you can
11 get a general idea of where that faces to see where those
12 are. Ultimately, that will be up to the Applicant to get
13 that site access.

14 Those are what come to mind at this point, but I
15 think that could be part of your direction, depending on
16 your decision this evening. And Staff definitely can go
17 back out there, and more Staff can go out there as well to
18 just kind of help with the effort. We can have Staff stand
19 at the corners of lots.

20 CHAIR THOMAS: Thank you. Okay, yes, so as a
21 follow-up to that, the reason I was asking about the
22 consultants is because the biologist has been out there a
23 couple of time, obviously, and done some surveying. When we
24 were just out there I saw some very specific plants that
25

1 grow in very specific conditions, and it was hard for me to
2 tell if that was fully captured on what has been mapped,
3 and so that is my main concern, I guess, with regard to
4 understanding where the water is, the soil saturation,
5 where the actual edge of this area is. That's something, I
6 guess, from the environmental review and your team over
7 there, if I could get a better understanding of that.

8
9 DIRECTOR PAULSON: We can definitely look. I'm
10 sure we're probably past budget already, so we're going to
11 have to request additional funds from the Applicant, but at
12 a minimum we can probably get some additional information
13 and/or conversations with the biologist in this instance.

14 CHAIR THOMAS: Okay. Also, if we have access to
15 some of the GPS or CAD data and stuff, if that doesn't
16 require like use from... Some of us can use that information
17 too, ourselves, if we don't have the budget or we can't
18 (inaudible) any more money for any of that kind of thing,
19 if there are ways for us to access it in that regard. Vice
20 Chair Burch.

21 VICE CHAIR BURCH: I agree that it does sound
22 like a lot of people up here feel like there should be more
23 information. For me, specifically, it still has to do with
24 Ross Creek. I understand what you were saying, but having
25 heard that it does flood rather regularly, and knowing now

1 that there's a decent amount of stormwater that's going to
2 be dumped into that that probably was not before, I would
3 like a little bit more information on that, what that's
4 going to look like, and what the impact on the creek would
5 be.

6 I also would probably like to know from you your
7 experience with pervious concrete and its ability to handle
8 the kind of weight required. I guess my experience has not
9 been good, so maybe if we could look into that a little bit
10 and just have a reassurance that this isn't going to become
11 like a horrible maintenance nightmare that could not
12 withstand 75,000 pounds if an emergency vehicle has to
13 drive through.

14
15 CHAIR THOMAS: Commissioner Raspe.

16 COMMISSIONER RASPE: Thank you, Chair. I agree
17 with Commissioner Burnett's concerns about making a
18 decision when we don't have all the information and her
19 desire to have a full CEQA analysis, but I'm going to lean
20 into Mr. Paulson's comments. He's got far more expertise
21 (inaudible).

22 I believe that the EIR process probably doesn't
23 land us in a significantly different place. I think I am
24 satisfied to go through with the Negative Declaration
25 subject to containing more information. I would echo my

1 fellow Chair and Vice Chair's request for a site visit with
2 some delineation, a better understanding of the hydrology
3 issues, especially the creek, especially flooding into the
4 neighboring properties.

5 I would add, too, that the trails and open space
6 issues, whether they are available to the development, and
7 if the position is going to be that they are cost
8 prohibitive I'd like a discussion of what those costs are
9 so we can evaluate if those are serious prohibitions to
10 doing those.

11
12 Lastly, I would like a further discussion or
13 analysis of the trees, plus privacy issues (inaudible).
14 Those would be the open issues I would add.

15 CHAIR THOMAS: I just want to add onto that with
16 the trees with the request to update to as many native
17 species as possible. Most of those species are less
18 flammable, or at least a little bit. They are fire adapted
19 at least, and so I think that that ties into that also.

20 I did have a question about the noise as brought
21 up by one of the residents with regard to something I think
22 related to Hillbrook. Can you just quickly explain what the
23 baseline... Like, it's not cumulative. Now there is a new
24 baseline, and then how we mitigate the noise beyond that.
25

1 DIRECTOR PAULSON: We'll definitely bring that
2 back as well. I believe there is also discussion of that in
3 the MND, if I remember correctly, but we also have Town
4 Code that deals with it, but a single-family home is not
5 going to generate a noise that is going to be more than the
6 school. I know a lot of work went into the Hillbrook issue,
7 but typically that's not going to be an issue from another
8 single-family home, but we'll get you that information as
9 well.
10

11 CHAIR THOMAS: No, it is in the MND, but it's
12 just that there's a new baseline because the Hillbrook
13 situation already exists, so the current conditions are
14 what is the baseline for then the next... Like a new project
15 doesn't have to take into account that Hillbrook is there
16 and loud.

17 DIRECTOR PAULSON: That's correct, and there will
18 also be other noise impacts, but they're going to be short-
19 term, related to construction typically.

20 CHAIR THOMAS: Yes, and there are restrictions on
21 that, too, in town. Okay, thank you. Commissioner Burnett.

22 COMMISSIONER BURNETT: Thank you, Chair. My other
23 concerns then, if we're moving in this direction, would be
24 concerns for the buffer zones around the homes. I also
25 would wonder if the Applicant would look at maybe doing

1 extra effort for the homes that are really impacted by Lot
2 5, the lots that are really impacted by, if water, in just
3 an overwhelming amount; if you could do some extra kind of
4 basins, or work with the homeowners just to ease their
5 fears, which are reasonable, so that would be my suggestion
6 as well.

7 CHAIR THOMAS: Commissioner Sordi.

8 COMMISSIONER SORDI: If we are going in the
9 direction of continuing the item, I would support that. I
10 think that it's always a challenge when we're thrown like a
11 2,000-page packet just a few days in advance, so I support
12 my colleagues' desire to get more information on the items
13 discussed.
14

15 I would encourage the Applicant on the trails
16 item to maybe consider some options, and maybe be prepared
17 to speak more in detail about what might be on the table. I
18 know you don't want to negotiate in a vacuum, but if we're
19 going in that direction I just want to take note of the
20 fact that I think the existing alignment of a trail, if I
21 understand it right, would pass through Lots 4, 5, 6, and 7
22 and make its way up to the top of the hill to Cerro Vista,
23 and that might be a little bit troublesome and possibly
24 pretty expensive considering the slope you have to cover
25 and then lots that you have to cross.

1 Then there is a possibility that you'd have to
2 secure an onsite easement versus the potential ease of
3 coming through Brooke Acres and possibly placing a
4 pedestrian bike easement right over the top of the EVE and
5 connecting. Anyway, just wanted to put a little more detail
6 to that. That's it.

7 CHAIR THOMAS: Is there anything else that we
8 would like to say before we move on? Okay, so it looks like
9 we're in favor of a continuance of this item. I think that
10 the goal would be to do that as soon as everyone is ready
11 to come back with information, but not with a date certain,
12 because we have no idea how long any of this is going to
13 take any of you. Well, I think we'll decide that.

14 I know it's a little unconventional, but I do
15 want to ask the Town Attorney if we can open up public
16 comment just to ask the Applicant if there are any
17 additional things that they want us to provide guidance or
18 feedback on before we close this, so that they can get
19 clarification on the additional information that we're
20 seeking.

21 ATTORNEY WHELAN: Yes, if the Commission does
22 that, I recommend opening up public comment for everybody
23 if it's not a specific question, if you're just getting
24 feedback.

1 CHAIR THOMAS: Can I ask just a yes or no?

2 ATTORNEY WHELAN: Do you have a specific question
3 for the Applicant? Because you could open up the comment
4 period just to get an answer to that specific question.

5 CHAIR THOMAS: Yes, I just wanted a specific yes
6 or no on if we were able to provide enough information and
7 details going forward for them to answer some of our
8 questions more in depth at the continuance meeting.

9
10 ATTORNEY WHELAN: So, is the question does the
11 Applicant have enough information to provide Staff for the
12 following meeting?

13 CHAIR THOMAS: Yes.

14 ATTORNEY WHELAN: Yes.

15 CHAIR THOMAS: I will open up public comment just
16 to ask yes or no.

17 JIM FOLEY: Yes.

18 CHAIR THOMAS: Thank you. Okay, thank you very
19 much. I am reclosing the public comment. Do we have anyone
20 that wants to make a motion to continue? Vice Chair Burch.

21 VICE CHAIR BURCH: I will make a motion to
22 continue this item, not to a date certain, but until Staff
23 feels they have the information gathered based on the
24 conversation they heard here tonight.

25 COMMISSIONER RASPE: Second.

1 CHAIR THOMAS: Thank you. Any discussion? I'll
2 call the question. All those in favor, please raise your
3 hand. The motion passes unanimously, and there are no
4 appeal rights because it's a continuance.

5 DIRECTOR PAULSON: That's correct.

6 CHAIR THOMAS: Okay, thank you.

7 (END)
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