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December 18, 2023

Town of Los Gatos
Attn: Town Council
110 E. Main St
Los Gatos, CA 95030

Re: Supplemental Response to Appeal of PC Decision Regarding Lot Line Adjustment Approval
17200 Los Robles Way, Los Gatos, CA
Application M 23-001

Dear Councilmembers:

Our office represents Mark von Kaenel and Daran Goodsell, Trustee (collectively, the "Applicants") in connection with their Application, M 23-001 ("Application"), to modify the Town's prior approval of Applicants' application for lot line adjustment ("LLA"), M 20-012. After reviewing the Town's staff report dated December 14, 2023, as well as the separate letter submitted by Applicants' architect, Tony Jeans, on behalf of Applicants on or about December 8, 2023, in response to appellant Allison Steer's ("Appellant") Appeal of the Planning Commission Decision ("Appeal"), dated November 3, 2023, we submit the following supplemental points in support of the Application.

It should be noted that many of Appellant's arguments (including but not limited to items 3 and 5, below) are premature and/or inapplicable, and therefore, should be disregarded.

1. Appellant: "Approving the LLA challenged by [Appellant's] appeal is not a ministerial act. This is evidenced in part by the fact that the Town and Planning Staff both previously concluded that an essentially identical LLA was a discretionary decision, but subject to a specific CEQA exemption. Without any explanation, the Planning Commission has now reached the opposite conclusion. What changed? [¶] [R]eaching a different conclusion based on the same facts is arbitrary and capricious."

Response: In arguing that the Town approved an "essentially identical" LLA, Appellant ignores that the Town's initial Staff Report in connection with the previous LLA

application M 20-012 incorrectly found that the proposed LLA would resolve all existing nonconformities, "except that Parcel 1 frontage on Los Robles Way will continue to be non-conforming." By finding that the adjusted Parcel 1 would not be in conformity with the zoning code and building ordinances, the Town (incorrectly) found that Parcel 1 would not satisfy frontage requirements, and thus did not consider the original LLA application under Government Code Section 66412(d), as the proposed LLA would not have met the requirements that the resulting parcels "conform to the local general plan, any applicable specific plan, any applicable coastal plan, and zoning and building ordinances." (Gov. Code § 664142(d).)

As noted in the Application, Parcel 1 "is traversed by a portion of Los Robles Way." The Town's Staff Report (correctly) notes that "Parcel 1 would have approximately 242 feet of frontage on the Los Robles Way right-of-way where 100 feet is required." As further outlined in the Staff Report's findings, all existing non-conformities would be remedied with the proposed LLA, such that the Application must be considered under Government Code Section 66412(d), which requires ministerial approval. Therefore, contrary to Appellant's arguments, the Town's decision is neither arbitrary nor capricious.

2. Appellant: "Staff claims the case of Sierra Club v. Napa County Board of Supervisors (2012) 205 Cal.App.4th 162 ("Sierra Club v. Napa") stands for the proposition that all minor (between less than [sic] adjoining parcels) lot line adjustments pursuant to Government Code section 66412, subdivision (d) are per se ministerial. This is not a new case; it is from 2012. It was already established law and known to the Staff and the Town Attorney when the prior LI.A was deemed to be discretionary, so why did the Town's interpretation of the same case change? Furthermore, Sierra Club v. Napa only looked at Napa County's regulation for approving lot line adjustments. The court was not asked to rule on Government Code section 66412 or decide whether CEQA Guideline section 15305 is no longer valid."

Response: Appellant's continued reliance on and citation to CEQA Guideline Section 15305 is incorrect, as CEQA Guidelines are superseded by statutory authority—in this case, the Subdivision Map Act ("SMA"), including but not limited to the exemption for lot line adjustments codified in Government Code Section 66412(d). This exemption renders approval of LLAs that fit within the requirements and definitions of Section 66412(d) as a ministerial act, rather than a discretionary one. As a matter of law, "ministerial projects are exempt from CEQA requirements." (*Sierra Club v. Napa County Bd. Of Supervisors* (2012) 205 Cal.App.4th 162, 176-77 (citations omitted).)

In *San Dieguito Partnership v. City of San Diego*, an application for LLA was denied by the City of San Diego. On appeal, the court found that, when presented with the proposed LLA, the City's regulatory function was "strictly circumscribed by the Legislature," and that the City had "very little authority" as compared to the City's function and authority in

connection with a subdivision. (*San Dieguito Partnership v. City of San Diego* (1992) 7 Cal.App.4th 748, 760.) The court further found that the City was "not to deal with a lot line adjustment in a way similar to the way it deals with a subdivision," noting that when an LLA is within the language of Section 66412(d), the City was required to consider the LLA under that section. (*Id.*)

Contrary to Appellant's arguments, the court in *Sierra Club* did consider Government Code Section 66412(d), and concurred with and followed *San Dieguito Partnership*, finding that:

> [T]he Map Act exempts from discretionary reviews, exactions and conditions those lot line adjustments that fit the specifications of section 66412(d). Local agency review is expressly limited to determining whether the resulting lots will conform to the local general plan, any applicable specific or coastal plan, and building and zoning ordinances. [ ] Section 66412 describes a prototypical ministerial approval process, and indeed approval of a lot line adjustment application has been characterized as involving "only a ministerial decision," as contrasted with a subdivision proposal.

(*Sierra Club*, 205 Cal. App. 4th at 179 (citations omitted).) (Emphasis added.)

3. Appellant: "The approval of the LLA is not ministerial because it required the exercise of judgment and imposition of conditions. [¶] For example, one of the proposed findings requires the Town to decide if the project conforms with the policy of 'limiting the intensity of new development to a level that is consistent with surrounding development and with the town at large.' This requires the exercise of discretion; it is not just a matter of checking a box."

Response: There is no proposed change of use and/or development project associated with the three (3) parcels that are the subject of the LLA. Accordingly, the Town need not consider whether approval of the LLA would conform to the policy of "limiting the intensity of new development to a level that is consistent with surrounding development and with the town at large." This issue is premature. Under Government Code Section 66412(d), the Town's review of the application is "expressly limited to determining whether the resulting lots will conform to the local general plan, any applicable specific or coastal plan, and building and zoning ordinances." (*Sierra Club*, 205 Cal.App.4th at 179 (citations omitted).)

Additionally, as addressed in the Town's prior Staff Report to the DRC, "one residential unit already exists on Adjusted Parcel 1, and Adjusted Parcels 2 and 3 are both greater than 20,000 square feet, allowing one future single-family residential dwelling unit on each parcel if pursued in the future (speculative at this point), equating to a potential future density

consistent with that allowed by the General Plan." Appellant appears to be conflating approval of an LLA with approval of development plans, in an effort to argue that the Town must consider the potential impact of further development of the parcels, which is not before the Town at this juncture. As noted above, the only task before the Town is the ministerial approval of the LLA pursuant to Government Code Section 66412(d). Therefore, this issue should not be considered.

As noted in the Town's Staff Report, CEQA Guidelines section 15369 defines "ministerial" as a public agency's decisions, "involving little or no personal judgment by the public official as to the wisdom or manner of carrying out the project. The public official merely applies the law to the facts as presented but uses no special discretion or judgment in reaching a decision. A ministerial decision involves only the use of fixed standards or objective measurements, and the public official cannot use personal, subjective judgment in deciding whether or how the project should be carried out." Government Code Section 66412(d) further mandates that the Town limit its review and approval, "to a determination of whether or not the parcels resulting from the lot line adjustment will conform to the local general plan, any applicable specific plan, any applicable coastal plan, and zoning and building ordinances."

4. Appellant: "[I]mplementing the Town's lot line regulation allows the Town to impose conditions or mitigations to ensure the LLA complies with all applicable General Plan policies and other regulations. Here, the Planning Commission, on recommendation of the Staff, approved a condition that requires an offer of dedication for a cul de sac to ensure the resulting lots comply with the minimum frontage requirement."

Response: Government Code Section 66412(d) contemplates that an agency may impose conditions for LLA approval. (*See* Gov. Code § 66412(d) ("An advisory agency or local agency shall not impose conditions or exactions on its approval of a lot line adjustment **except to** conform to the local general plan, any applicable specific plan, any applicable coastal plan, and zoning and building ordinances, to require the prepayment of real property taxes prior to the approval of the lot line adjustment, or to facilitate the relocation of existing utilities, infrastructure, or easements") (emphasis added). Imposing such conditions does not render the Town's consideration and approval of the LLA discretionary rather than ministerial and is consistent with ministerial approval under Government Code Section 66412(d).

5. Appellant: "The Planning Commission's conditions of approval for the LLA implicitly created a new street without adequate environmental review as required by law. [¶] The Town code requires lot frontage on 'the property line of a lot abutting on a street, which affords access to a lot other than the side line of a corner lot.' In other words, frontage must be abutting a street. 'Street' is defined by the Town's municipal code section 29.10.020 as 'any thoroughfare for the motor vehicle travel which affords the principal means of access to abutting property, including public and private rights-of-way and easements. [¶] [T]o

> make a finding that resulting lots 2 and 3 comply with the frontage requirements, the Planning Commission implicitly found that the cul de sac, as depicted on the maps, is a 'street' that will provide the primary access to lots 2 and 3. This means that in order to ensure the LLA is consistent with Town regulation regarding frontage, the Town essentially approved a new street without any environmental regulation or review. [¶] Town's approval of the cul de sac violates CEQA because the Town has made no effort to analyze the environmental impacts associated with the cul de sac, including for example, how many trees would have to be cut to make room for the cul de sac, or how much grading, or how the new street would impact the site's hydrology, storm drainage, traffic, etc."

Response: As noted by the Town in its Staff Report, Town Code Section 29.40.400 does not mandate that the cul-de-sac street frontage be along a paved roadway. The Town further notes that street frontage would need, at a minimum, frontage on a right-of-way or easement to comply with Town Code. The Applicants' proposed dedication of land as an easement for cul-de-sac right-of-way purposes would satisfy this requirement for frontage purposes.

The Application does not request approval of plans to develop the cul-de-sac easement area. The only Application before the Town is for an LLA. Appellant appears to be conflating approval of an LLA with approval of non-existent cul-de-sac development plans in an effort to argue that the Town must consider the potential impact of development of a cul-de-sac for the parcels, which is not before the Town.

Thank you for your attention to this matter. If you have any questions, please feel free to contact us.

Very truly yours,

SHANNON B. JONES

SBJ:dmj

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