TOWN OF LOS GATOS
PLANNING COMMISSION
REPORT

MEETING DATE: 10/25/2023

ITEM NO: 2

ADDENDUM

DATE: October 24, 2023

TO: Planning Commission

FROM: Joel Paulson, Community Development Director

SUBJECT: Consider an Appeal of a Development Review Committee Decision to Approve a Lot Line Adjustment Application in Accordance with California Government Code Section 66412(d) for Three Adjoining Lots on Property Zoned R-1:20. Located at 17200 Los Robles Way. APNs 532-36-075, -076, and -077. Lot Line Adjustment Application M-23-001. Statutorily Exempt from CEQA as a Ministerial Approval in Accordance with Public Resources Code Section 21080(b)(1) (CEQA Statute) and CEQA Guidelines Section 15268. Application is Only for Ministerial Approval of a Lot Line Adjustment Pursuant to Section 66412(d) of the Subdivision Map Act.
Property Owners: Daran Goodell, Trustee and Mark Von Kaenel.
Applicant: Tony Jeans. Appellant: Alison Steer. Project Planner: Ryan Safty.

REMARKS:

Exhibit 10 includes a supplemental response letter to the appeal, received from the applicant on October 24, 2023.

EXHIBITS:

Previously received with the October 25, 2023 Staff Report:
1. Location Map
2. Required Determinations Pursuant to Government Code Section 66412(d)
3. Recommended Conditions of Approval with Staff Edits
4. August 15, 2023 Development Review Committee Report and Desk Item
5. August 15, 2023 Development Review Committee Meeting Minutes
6. Applicant’s Letter of Justification, received June 2, 2023
7. Diagram of Existing and Proposed Parcel Configurations, received August 9, 2023
8. Appeal of Development Review Committee, received August 22, 2023
9. Applicant’s Response to Appeal, received October 16, 2023

PREPARED BY: RYAN SAFTY
Associate Planner

Reviewed by: Planning Manager, Community Development Director, and Town Attorney

ATTACHMENT 2

Received with this Addendum Report:
10. Supplemental Response to Appeal, Received October 24, 2023

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October 24, 2023

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

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

Dear Commissioners:

Our office represents Mark von Kaenel and Daran Goodsell, Trustee (collectively, the "Applicants") in connection with their Application, M 23-001, 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 October 20, 2023, as well as the separate letter submitted by Applicants' architect, Tony Jeans, on behalf of Applicants on or about October 13, 2023, in response to appellant Allison Steer's ("Appellant") Appeal of the Decision of Development Review Committee ("Appeal"), dated August 22, 2023, we submit the following supplemental points in support of the Application.

It should be noted that most of Appellant's arguments (including but not limited to items 2, 3 and 4, below) are premature, inapplicable, and therefore, should be disregarded. Further, Appellant's fifth argument is wrong and inapplicable.

1. Appellant: "Staff's position that LLA approvals are per se ministerial is clearly erroneous in light of CEQA Guideline § 15305, which provides that LLA approvals are exempt from CEQA under some circumstances. If, as Staff contends and the DRC apparently accepted, LLA approvals are per se ministerial, §15035 [sic] is completely pointless and nonsensical because ministerial acts are not subject to CEQA at all, and therefore there would be no point in adopting a guideline to exempt them from CEQA. [. . .] The fact that under § 15035 [sic], LLAs between four or fewer lots with average slopes of >20% are not exempt from CEQA review is further persuasive evidence that approval of an LLA on parcels with greater than 20% slopes require [sic] exercise of discretion.

Response: Appellant's reliance 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.*)

The court in *Sierra Club* 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).)

2. Appellant: "Town is required to analyze the proposed LLA's consistency with goal and policies of the General Plan including land use elements (LU 6.4) which 'Prohibit uses that may lead to the deterioration of residential neighborhoods, or adversely impact the public safety or the residential character of a residential neighborhood.' The Town has conducted no such analysis, and in any event, a finding that the LLA is, or is not, consistent with LU 6.4 necessarily requires an exercise of discretion."

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 have any such impact, such as "deterioration of residential neighborhoods" or "adverse[] impact [to] the public safety or the residential character" of the neighborhood. 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.

3. Appellant: "[T]he Town has failed to analyze the potential impacts associated with the proposed cul-de-sac or its consistency relative to the Hillside Development Standards which also changes principal means of access to parcel 2 and 3. It is important to note, moreover, that regardless of whether the LLA could be approved without compliance with CEQA, the Town must analyze the environmental impacts associated with the proposed access driveway to parcels 2 and 3, which is an essential part of the proposed LLA."

Response: This application does not request approval of plans to develop the cul-de-sac easement area. As such, there is no "proposed" cul-de-sac or "access driveway" before the Town. The only Application before the Town is for an LLA. Again, 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 parcels, which is not before the Town.

4. Appellant: "To the extent the LLA creates a new buildable parcel from an unbuildable parcel (and this is not just moving lines around on paper as was mentioned at the DRC meeting (minute 6:20)), the Town is required to but has thus far failed to carefully review the consistency of the newly configured parcels with the Town's General Plan. Approval of the LLA will most likely result in the siting of up to two new dwellings on parcel 2, which is more than capable of

creating ecological and visual impacts to neighboring properties (General Plan CD 6.4)[.]"

Response: Government Code Section 66412(d) does not address "buildable" or "unbuildable" parcels. The only requirement relating to the parcels in Section 66412(d) relates to the total number of parcels resulting from the LLA, and allows such LLAs so long as "a greater number of parcels than originally existed is not thereby created." Appellant's suggestion that approval of the LLA will "most likely" result in development of the Property is telling, as no such development plans are currently before the Town. Additionally, Appellant's reliance on such phantom "plans" which she claims are "more than capable of creating ecological and visual impacts to neighboring properties" reveals that Appellant seeks to have the Town consider development plans that have not been submitted, going far beyond the ministerial approval of the LLA under Section 66412(d).

5. Appellant: "The Town's General Plan 2040 website specifically states the adopted plan 'does not allow new housing potential in the Very High Fire Hazard Severity Zones' which is where this land is located. Increasing density increases fire risk to the neighborhood. The Town must consider whether this proposed LLA is consistent with the Town's policy of not increasing density in the Very High Fire Hazard Severity Zones."

Response: Appellant's reference to the General Plan 2040 is unavailing, as the 2040 Land Use Element and Community Design elements have not yet been implemented. As noted on the Town's website, the 2040 Land Use Element and Community Design Element are "currently on hold," as a referendum was submitted to the Town Clerk/Elections Official that suspended the Town Council's adoption of those two (2) elements, which referendum will be placed on the ballot for consideration by the voters. As to Appellant's argument of "increasing density," there is no "increased density" for the Town to consider, as there are no additional parcels being created by the proposed LLA. Moreover, there is no proposal for development of the adjusted parcels before the Town. Therefore, this issue should not be considered.

6. Appellant: "Today Parcel 2 today [sic] is not buildable, is landlocked, does not conform to minimum parcel size, cannot be accessed by vehicular or safety equipment (there's a house/pool in the way, which according to the staff report will remain), and due to the steepness of the slope is outside of the LRDA where no turnaround could be built, nor does it meet slope stability standards, yes [sic] the Town refuses to consider this land for merger per municode Sec. 29.10.080."

Response: Appellant refers to Municipal Code section 29.10.080, which does not apply to mergers. Assuming Appellant meant to refer to Municipal Code section 24.10.080, which addresses parcel mergers, this Code section is permissive (not mandatory), as it only specifies the Town "may" initiate a merger. Section 24.10.080 does not include any mandatory language by which the Town would be required to consider the land for merger, regardless of whether Appellant thinks it satisfies the conditions for merger. On the other hand, Government Code Section 66412(d) expresses what the Town "shall" do in considering LLAs that meet the criteria for approval under that section, making it mandatory. This argument is another red herring.

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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