

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

Date: Nov 12th, 2021

RE: Appeal of 17200 Los Robles Way Lot Line Adjustment (LLA) Application

Dear Town Council Members,

In light of the information of the Town Attorney's untimely resignation, we are requesting the Town Council directly consider the information presented below and the evidence already submitted with regard to our Town's Lot Merger ordinance.

It's clear that other California towns, cities and counties have lot line adjustment and merger ordinances or procedures which state in various ways and forms that you cannot use a lot line adjustment procedure to make a non-buildable parcel, buildable. When I questioned the Santa Clara County ordinance, found [here](#), our Town Attorney responded that their ordinance is not in conflict with the subdivision maps act. It does state that there can be no increase in the number of developable parcels as a result of the lot line adjustment, and it goes on to describe how to determine whether a parcel is developable. In bullet (iii) it states

(iii) Be a whole lot on a numbered tract map (recorded on or after February 3, 1931) or a whole lot on a parcel map issued pursuant to a legal subdivision, and also be an **approved building site.**

This would appear to be putting a condition on the existing parcel as to its buildability, and not on how the resulting parcels will look with respect to conformance to the General Plan, and zoning and building ordinances. So, what is the Town of Los Gatos missing in our interpretation of the application of our lot merger ordinance relative to all these other ordinances that are in existence?

As we know, APN 532-36-077 has no approved building site. If you consider setback requirements there is nowhere to build inside of the LRDA, making it unbuildable per our Hillside Development Standards & guidelines. But most importantly, the land has no legal access. Per Town Code Sec 29.10.070, it does not meet the criteria for using our lot line adjustment procedure, and mandates that land shall be merged.

Regarding the comments surrounding whether a new ROW could be created to access the landlocked property, per the merger doctrine, you cannot create an easement over your own land. More details can be found here:

<https://schorr-law.com/property-owner-cannot-create-easement-over-own-land/>

How exactly would a new ROW from Los Robles Way to the landlocked parcel be implemented?

It is unusual that the enforceability of our ordinance is still being questioned, and that there is a discussion around whether to enforce it or not. We have established that it can be enforced in compliance with SMA 66451.11 per our lot merger procedure. The statement that the landowner might sue the Town for enforcing a lot merger isn't grounds to not enforce an ordinance that is written as mandatory, especially with respect to the economic damage to numerous residents that abut the property if this LLA is approved. APN 532-36-077 is clearly a landlocked parcel and the Merger Doctrine prescribes that no new access could be created.

If the Town Council is reviewing the lot line adjustment application per our [2020 General Plan](#) we have a Land Use Element and a Safety Element that both need to be taken into consideration with respect to this property and its future use. Policy LU-1.3 requires we preserve existing trees, natural vegetation, natural topography, riparian corridors and wildlife habitats. With respect to this, it's clear from the conceptual plans that the additional building sites with access from Worcester Lane would result in significant removal of protected trees and unnecessary grading and scarring of the hillside to install retaining walls and additional impervious surface, that would not occur if the access remains for APN 532-36-075 from Los Robles Way. In addition, wildlife frequent the property and it houses a coyote den. Please see photo taken from our backyard of a family of 6 coyotes living on the hillside right where the new residence would be placed. This coyote population helps manage the ground squirrel problem on the land and subsequent neighboring properties



Policy LU-1.3



To preserve existing trees, natural vegetation, natural topography, riparian corridors and wildlife habitats, and promote high quality, well-designed, environmentally sensitive, and diverse landscaping in new and existing developments.

Goal SAF-1 from the Safety Element also seems very clear on the restrictions of approving development where there are potential geologic hazards, including slope instability etc.

2. Goals, Policies, and Actions

Goal SAF-1 To minimize exposure to geologic hazards, including slope instability, subsidence, and expansive soils, and to seismic hazards, including groundshaking, fault rupture, liquefaction and landslides.

Policies

Policy SAF-1.1 Require reliable evaluations of the existing geologic conditions of sites proposed for development where conditions indicate the possibility of weak supporting soils or geologic structures.

Policy SAF-1.2 Restrict new development and redevelopment based on the levels of acceptable risk and potential severity of geologic hazards.

Policy SAF-1.3 Preserve as open space property that is unbuildable due to geologic conditions.

We ask the Town Council to reconsider the request for lot merger of APNs 532-36-076 and 532-36-077 which we believe is clearly supported based on the evidence provided to date.

Yours Sincerely,

Alison and David Steer

304 Harding Ave

From: [Alison Steer](#)
To: [Ryan Safty](#)
Cc: [Jennifer Armer](#); [Robert Schultz](#)
Subject: Re: Lot Line Adjustment Application M-20-012 -Letter for Town Council
Date: Wednesday, December 1, 2021 11:07:18 AM

EXTERNAL SENDER

Hi Ryan,

I have reviewed the conceptual drawings that you shared with me today. This does not show how a 12ft driveway and turnaround would be implemented on the existing configuration that would be adequate for emergency vehicle access. This would also need review from the Fire Prevention Department. Otherwise this lot is in fact required to be merged involuntarily.

I would request this be submitted for Town Council review ahead of the Dec 7th meeting.

Please submit this email for public record also.

Thank you,
Alison

From: [Alison Steer](#)
To: [Ryan Safty](#)
Cc: [Robert Schultz](#); [Jennifer Armer](#)
Subject: Re: Lot Line Adjustment Application M-20-012 -Letter for Town Council
Date: Tuesday, November 30, 2021 5:03:04 PM

EXTERNAL SENDER

Hi Ryan,
Yes, please save them to public record, Thank you for checking.

Alison

On Nov 30, 2021, at 15:59, Ryan Safty <RSafty@losgatosca.gov> wrote:

Hi Alison,

Please confirm if you would like your emails saved to the public record.

Respectfully,

Ryan Safty • Associate Planner

Community Development Department • 110 E. Main Street, Los Gatos CA 95030

Ph: 408.354.6802 • rsafty@losgatosca.gov

www.losgatosca.gov • <https://www.facebook.com/losgatosca>

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Think Green, please consider the environment before printing this e-mail.

From: Robert Schultz <RSchultz@losgatosca.gov>

Sent: Tuesday, November 30, 2021 1:22 PM

To: Alison Steer <alison.steer@gmail.com>; Ryan Safty <RSafty@losgatosca.gov>

Cc: Jennifer Armer <JARmer@losgatosca.gov>

Subject: RE: Lot Line Adjustment Application M-20-012 -Letter for Town Council

Alison,

Although I stated " Nothing contained within the Santa Clara county ordinance violates SMA", the Santa Clara county ordinance has absolutely no legal standing in the Town nor do any other ordinances from other cities and towns that may or may not violate the SMA.

<image001.png>

From: Alison Steer <alison.steer@gmail.com>
Sent: Tuesday, November 30, 2021 12:49 PM
To: Ryan Safty <RSafty@losgatosca.gov>
Cc: Jennifer Armer <JArmer@losgatosca.gov>; Robert Schultz <RSchultz@losgatosca.gov>
Subject: Re: Lot Line Adjustment Application M-20-012 -Letter for Town Council

EXTERNAL SENDER

Hi Ryan,

Actually what I heard at the Town Council meeting from our Town Attorney is that the Lot Merger ordinance can be enforced, including requesting a soils report, however he believes that if enforced the owner would put in a new ROW in such that the land would have legal access. Putting the merger doctrine aside, which says they couldn't do this, Tony Jeans and planning department have failed to show that APN 532-36-077 has legal access which is adequate for vehicular and safety equipment access and maneuverability. The DRC should confirm that the existing parcel could implement a turnaround suitable for the fire department, per the attached. If this can be done then it seems there would be no issue, if they can show where the 12ft wide driveway to access the parcel would go. This is a mandatory ordinance that requires the Town to do an involuntary lot merger should the parcel not meet any of the 8 requirements.

Secondarily, the Town Attorney has stated via email to the Town Council that " Nothing contained within the Santa Clara county ordinance violates SMA". The Santa Clara County Lot line adjustment ordinance copied below puts a condition on the existing parcel that it must be an approved building site. This contradicts what the Town is saying. I find it surprising that our Town believes that all these other Towns, Cities and Counties have incorrectly interpreted the wording of the subdivision maps act, given they all are putting conditions on the existing site before a lot line

adjustment procedure can be used. The lot merger ordinance takes precedence. In fact, failure to follow the guidance of the Town's own Lot Merger ordinance will certainly lead to more situations where lot line adjustment will be used to create new buildable parcels such as in this case.

https://library.municode.com/ca/santa_clara_county/codes/code_of_ordinances?nodeId=TITCCODELAUS_APXIZO_ART5PRAD_CH5.55LOLIAD_S5.55.010PU

Category 1 - No Increase in Number of Developable Parcels.

- 1.a.No substandard parcel may be reduced in area by more than 20,000 square feet or ten percent of its original lot area, whichever is less.
- b.Each adjusted lot must retain at least 90 percent of the real property included in the parcel prior to the proposed lot line adjustment.
- c.The lot line adjustment would not result in any additional developable parcels or a greater allowable density than existed prior to the lot line adjustment. **In determining if a parcel is developable, the parcel must meet at least one of the following criteria:**
 - (i)pursuant to and in compliance with a validly issued Building Site Approval, Architecture and Site Approval (ASA) or Use Permit;
 - (ii)Be subject to a valid, unexpired Building Site Approval, ASA, or Use Permit for the parcel, including a grading approval, if one is required. The owner must demonstrate ability to comply with all conditions of approval and County requirements and standards, including the issuance of the project clearance form from the County Office of Development Services; or
 - (iii)Be a whole lot on a numbered tract map (recorded on or after February 3, 1931) or a whole lot on a parcel map issued pursuant to a legal subdivision, and **also be an approved building site.**

Sincerely,
Alison

On Tue, Nov 30, 2021 at 10:27 AM Ryan Safty <RSafty@losgatosca.gov> wrote:

Hi Alison,

The response packet from the applicant, which was forwarded to you last week, shows how driveway and emergency vehicle access can be provided on each parcel configuration resulting from the lot line adjustment.

As clarified by the Town Attorney during the Planning Commission and Town Council hearings, the Town Code Section you have referenced (29.10.070-a-5) is not enforceable. See excerpt from the Planning Commission staff report below.

A. Town Attorney's Office

Part (b) of Town Code Section 29.10.070, requiring involuntary lot mergers, was adopted in 1976 and amended in 1988. However, this provision of the Town Code is unenforceable as it is inconsistent with the SMA. The SMA has

contained express merger provisions since 1976 and the current SMA merger provisions were enacted in 1986. Government Code Section 66451.10 states that, “two or more contiguous parcels or units of land which have been created under the provisions of this division [...] shall not be deemed merged by virtue of the fact that contiguous parcels or units are held by the same owner.” The SMA’s current merger provisions reflect two overall concerns. First, they provide landowners with elaborate procedural safeguards of notice and opportunity to be heard before their lots can be involuntarily merged (*Morehart v. County of Santa Barbara*). Second, they reveal, “a state concern over local regulation of parcel merger for purposes of development,” as well as for purposes of sale, lease, or financing. In addition, California Civil Code Section 1093 requires an, “express written statement of the grantor,” of their intent to alter or affect the separate and distinct nature of the parcels described therein. Therefore, the legal merger of two parcels occurs only through the express written statement of the grantor (*ibid.*) or through a local agency’s compliance with the merger procedures contained in Sections 66451.10 and 66451.11 of the SMA, including the due process requirements contained therein (See *Morehart v. County of Santa Barbara*, *supra*, 7 Cal. 4th at p. 761 [SMA preempts the field for parcel mergers]).

Additionally, part (b) of Town Code Section 29.10.070, disallowing a, “parcel to be modified through a lot line adjustment procedure in order to meet the criteria listed above,” is also unenforceable as it is inconsistent with the SMA. The SMA states that for a lot line adjustment, “a local agency or advisory agency shall limit its review and approval to a determination of whether or not the parcels resulting from the lot line adjustment will conform to the local general plan, any applicable specific plan, any applicable coastal plan, and zoning and building ordinances.” Therefore, the Town cannot impose as conditions to a lot line adjustment that the current configuration of the lots meet certain criteria. Instead, the Town must confine its approval of a lot line adjustment on its conformance to the local general plan, any applicable specific plan, any applicable coastal plan, and zoning and building ordinances resulting from the lot line adjustment.

Respectfully,

Ryan Safty • Associate Planner

Community Development Department • 110 E. Main Street, Los Gatos CA 95030

Ph: 408.354.6802 • rsafty@losgatosca.gov

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 Think Green, please consider the environment before printing this e-mail.

From: Alison Steer <alison.steer@gmail.com>

Sent: Tuesday, November 30, 2021 7:36 AM

To: Ryan Safty <RSafty@losgatosca.gov>

Subject: Re: Lot Line Adjustment Application M-20-012 -Letter for Town Council

EXTERNAL SENDER

Thanks Ryan,

For access to the landlocked parcel, can we request conceptual drawings for the Town Council to review on how the driveway and emergency vehicle turnaround would be implemented to APN 532-32-077? Additionally the building site it would access? Can Kenny Ip from the DRC please provide comment on whether this parcel access meets bullet 5 of our mandatory ordinance?

(5) Has legal access which is adequate for vehicular and safety equipment access and maneuverability.

Thank you,
Alison

On Wed, Nov 24, 2021 at 8:58 AM Ryan Safty <RSafty@losgatosca.gov> wrote:

Hi Alison,

Please see attached response letter from the applicant.

Respectfully,

Ryan Safty • Associate Planner

Community Development Department • 110 E. Main Street, Los Gatos CA 95030

Ph: 408.354.6802 • rsafty@losgatosca.gov

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