



**TOWN OF LOS GATOS  
PLANNING COMMISSION  
REPORT**

MEETING DATE: 07/26/2023

ITEM NO: 3

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DATE: July 21, 2023  
TO: Planning Commission  
FROM: Joel Paulson, Community Development Director  
SUBJECT: Requesting Approval for Modification to an Existing Subdivision Application (PRJ-97-117) on Property Zoned HR-2½. APN 537-24-030. **Located at 200 Happy Acres Road.** APN 537-24-030. Categorically Exempt Pursuant to CEQA Guidelines Section 15315: Minor Land Divisions and Section 15061(b)(3): Common Sense Exemption. Subdivision Application M-21-006. Property Owner: Fred and Fereshten Toofan. Applicant: Noel Cross.

RECOMMENDATION:

Approval.

PROJECT DATA:

General Plan Designation: Hillside Residential  
Zoning Designation: HR-2½  
Applicable Plans & Standards: General Plan, Hillside Development Standards and Guidelines, and Hillside Specific Plan  
Parcel Size: 2.72 acres (118,483 square feet)  
Surrounding Area:

	Existing Land Use	General Plan	Zoning
North	Residential	Hillside Residential	HR-2½
South	Residential	Hillside Residential	HR-2½
East	Commercial	Hillside Residential	HR-2½ and RC
West	Residential	Hillside Residential	HR-2½

CEQA:

The project is Categorically Exempt pursuant to the adopted Guidelines for the Implementation of the California Environmental Quality Act, 15315: Minor Land Divisions and Section 15061(b)(3): Common Sense Exemption.

PREPARED BY: Jocelyn Shoopman  
Associate Planner

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Reviewed by: Planning Manager and Community Development Director

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FINDINGS:

- The project is Categorically Exempt pursuant to the adopted Guidelines for the Implementation of the California Environmental Quality Act, Section 15315: Minor Land Divisions and Section 15061(b)(3): Common Sense Exemption.
- The project meets the objective standards of Chapter 29 of the Town Code (Zoning Regulations).
- The project complies with the Hillside Development Standards and Guidelines (HDS&G).
- The project complies with the Hillside Specific Plan.

ACTION:

The decision of the Planning Commission is final unless appealed within ten days.

BACKGROUND:

The subject property is located south of Shannon Road, at the terminus of Happy Acres Road (Exhibit 1). The vacant hillside property is approximately 2.72 acres, that is served by a private shared driveway which provides access to three other single-family homes.

On January 13, 1999, the Planning Commission approved the subdivision of a 10.26-acre parcel into two lots, subject to conditions of approval. This approval created the two parcels located at 15400 Suview Drive and 200 Happy Acres Road.

The Subdivision application has been referred to the Planning Commission since the applicant is requesting to modify the conditions of approval for an existing Subdivision Application (PRJ-97-117) that was previously approved by the Planning Commission.

In order to fulfill Condition #4 of PRJ-97-117 (Exhibit 4), the applicant would be required to construct a culvert. The request for this construction design was denied by the California Regional Water Quality Control Board as they did not support the culverting of an open channel.

PROJECT DESCRIPTION:

A. Location and Surrounding Neighborhood

The subject property is approximately 2.72 acres, located south of Shannon Road, and is accessed by a private shared driveway which provides access to three other parcels via an egress and ingress right-of-way easement (Exhibit 1). The subject hillside property is currently vacant. The surrounding hillside properties to the north, east, south, and west are developed with single-family homes.

PROJECT DESCRIPTION (continued):

B. Project Summary

The applicant is requesting a modification to the conditions of approval for Subdivision Application PRJ-97-117, which approved the subdivision of one lot into two lots. The applicant is requesting approval to remove Condition #4 because the required cul-de-sac cannot be constructed in the location as shown on the approved tentative map due to the inability to obtain a permit from the California Regional Water Quality Control Board.

The modified condition of approval would provide access to the parcel further up the private shared driveway, entirely within the boundary of the subject parcel (Exhibit 8). Review by Planning, Parks and Public Works, and the Santa Clara County Fire Department of proposed site improvements to the private shared driveway have not been completed at this time. A future Architecture and Site application would be required for a new single-family residence and site improvements; however, the applicant cannot apply for an Architecture and Site application until the conditions of approval for the Subdivision application have been complied with.

C. Zoning Compliance

The applicant's request does not propose any structures and the request to modify the approved conditions of approval does not conflict with Town Code.

DISCUSSION:

A. Modified Conditions of Approval

The applicant is requesting approval to remove Condition #4, items a through c of the conditions of approval (Exhibit 4):

4. DEDICATIONS. The following shall be dedicated on the parcel map. The dedication shall be recorded before any permits are issued.
  - a. Happy Acres Road. A 20-foot street right-of-way with a standard 42-foot radius cul-de- sac.
  - b. Public Service Easement (PSE). Ten (10) feet wide, next to the Happy Acres Road right- of-way.
  - c. Ingress-egress, storm drainage and sanitary sewer easements, as required.

An ephemeral stream is located to the south of the site, downslope of the private shared driveway. In order to fulfill Condition #4 to provide sufficient flat area to accommodate the cul-de-sac, it would have required the applicant to construct a culvert.

DISCUSSION (continued):

The request for this construction design was denied by the California Regional Water Quality Control Board. In response, the applicant has proposed an alternative location for the turnaround for emergency access, further up the private shared driveway, within the parcel boundaries of the subject site (Exhibit 8). Since the location of the proposed firetruck turnaround has been relocated, the applicant is also requesting the removal of Conditions #8 and #9 since a permit from either agency is no longer required.

8. FISH AND GAME REQUIREMENTS. A "1603" permit shall be obtained for the California Department of Fish and Game for proposed improvements in or near riparian areas within their jurisdiction. A copy of the permit shall be provided to the Planning Department before the parcel map is recorded.
9. 401 CERTIFICATION. A 401 Certification shall be obtained from the San Francisco Bay Region Water Quality Control District for work in "waters of the State of California." A copy of the certification shall be provided to the Planning Department before the parcel map is recorded.

The applicant's letter of justification states that future improvements under a separate Architecture and Site application will provide a safer situation for the neighbors whose properties are served by the current private driveway, as there currently is no safe place to turn around for either emergency vehicles or passenger cars (Exhibit 5).

Modified conditions of approval are being recommended by the Planning Division, Engineering Division, and Santa Clara County Fire Department to reflect the current project scope, Town Code regulations, and individual department requirements (Exhibit 3). The modified conditions of approval contained in Exhibit 3 would therefore replace the conditions provided in Exhibit 4.

B. Fire Conditions of Approval

The Santa Clara County Fire Department has provided six conditions of approval on the Subdivision application (Exhibit 3) to replace the three conditions from the Fire Department in the original approval. Condition #16 states the following: "At time of architectural/site development application, compliance with the State Fire Safe Regulations (14 California Code of Regulations §1270), in effect at time of application, shall be clearly demonstrated. Any request for exception shall be processed prior to approval of the site development application."

The applicant's attorney has submitted a letter objecting to the language of Condition #16, and requesting that the Planning Commission modify the condition of approval to include new language, shown in the underlined text below (Exhibit 6): "At time of architectural/site

DISCUSSION (continued):

development application, compliance with the State Fire Safe Regulations (14 California Code of Regulations §1270), in effect at time of application, shall be clearly demonstrated, to the extent an appeal and/or a waiver of those Regulations has not been upheld and/or granted by the Town of Los Gatos. Any request for exception shall be processed prior to approval of the site development application.”

The applicant’s attorney states that the modified language to the condition of approval only adds a clause to recognize the property owner’s right to challenge future conditions of approval imposed by the Santa Clara County Fire Department related to California Public Resources Code 4290 for sites designated as very high fire hazard severity zones (Exhibit 6).

C. Tree Impacts

The request to modify the approved conditions of approval does not include approval for the removal of existing trees. Future development of the site would require an Architecture and Site application, which would review and consider trees proposed for removal to accommodate future site improvements. Given preliminary discussions with the Santa Clara County Fire Department regarding future improvements of the private shared driveway, the applicant has already begun neighborhood outreach to the adjacent neighbors located at 165 Happy Acres Road and 333 Happy Acres Road regarding the potential for future tree removals (Exhibit 7).

D. Grading

The request to modify the approved conditions of approval does not include approval for any site grading. Future development of the site would require an Architecture and Site application, which would review and consider all proposed grading to accommodate a future single-family residence and improvements to the existing shared private driveway.

E. Neighbor Outreach

The property owner has indicated that they have communicated with their adjacent neighbors to discuss the proposed project and potential future improvements.

F. CEQA Determination

The project is Categorically Exempt pursuant to the adopted Guidelines for the Implementation of the California Environmental Quality Act, Section 15315: Minor Land Divisions and Section 15061(b)(3): Common Sense Exemption.

PUBLIC COMMENTS:

At the time of this report's preparation, the Town has not received any public comment.

CONCLUSION:

A. Summary

The applicant is requesting approval of a Subdivision application to modify the conditions of approval for Subdivision Application PRJ-97-117. The requested modification to Condition #4 would propose a new location further up the shared private driveway for the required turnaround for emergency access. Review by Planning, Parks and Public Works, and the Santa Clara County Fire Department of the proposed site improvements to the private shared driveway have not been completed at this time. A future Architecture and Site application will be required for a new single-family residence and site improvements; however, the applicant cannot apply for an Architecture and Site application until the conditions of approval for the Subdivision application have been complied with.

B. Recommendation

Based on the analysis above, staff recommends approval of the Subdivision application subject to the recommended conditions of approval (Exhibit 3). If the Planning Commission finds merit with the proposed project, it should:

1. Make the finding that the proposed project is Categorically Exempt, pursuant to the adopted Guidelines for the implementation of the California Environmental Quality Act, Section 15315: Minor Land Divisions and Section 15061(b)(3): Common Sense Exemption (Exhibit 2);
2. Make the finding that the project complies with the objective standards of Chapter 29 of the Town Code (Zoning Regulations) (Exhibit 2);
3. Make the finding that the project in compliance with the Hillside Development Standards and Guidelines (Exhibit 2);
4. Make the finding that the project complies with the Hillside Specific Plan (Exhibit 2); and
5. Approve Subdivision Application M-21-006 with the conditions contained in Exhibit 3 and the Plans in Exhibit 8.

C. Alternatives

Alternatively, the Commission can:

1. Continue the matter to a date certain with specific direction; or
2. Approve the application with additional and/or modified conditions; or
3. Deny the application and leave the conditions of PRJ-97-117 unchanged.

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SUBJECT: 200 Happy Acres Road/M-21-006

DATE: July 21, 2023

EXHIBITS:

1. Location Map
2. Required Findings
3. Recommended Conditions of Approval
4. Subdivision Application PRJ-97-117 Conditions of Approval
5. Project Description
6. Letter from the Applicant's Attorney
7. Neighborhood Outreach
8. Plans

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