



MEETING DATE: 5/05/08
ITEM NO. 10
ADDENDUM

COUNCIL AGENDA REPORT

DATE: May 2, 2008

TO: MAYOR AND TOWN COUNCIL

FROM: GREG LARSON, TOWN MANAGER *GL*

SUBJECT: CONSIDER A REQUEST FOR APPROVAL OF A PLANNED DEVELOPMENT ORDINANCE TO CONSTRUCT A NEW RESIDENCE, POOL, TENNIS COURT AND ACCESSORY STRUCTURES ON PROPERTY ZONED HR-2½. NO SIGNIFICANT ENVIRONMENTAL IMPACTS HAVE BEEN IDENTIFIED AS A RESULT OF THIS PROJECT AND A MITIGATED NEGATIVE DECLARATION HAS BEEN RECOMMENDED. APNS 537-29-007 & 008. PROPERTY LOCATION: **KENNEDY ROAD @ FORRESTER ROAD**. PROPERTY OWNER: ACORN TRUST. APPLICANT: ROB DESANTIS. FILE #PD-06-03 & ND-07-04.

DISCUSSION:

Mitigated Negative Declaration

Staff and the Town's Environmental Consultant have prepared a response to comments received on the Mitigated Negative Declaration (see Attachment 38). In addition, the applicant's attorney has prepared a written response (see Attachment 40).

Subdivision

The applicant's attorney has provided a written response to comments regarding subdivision potential of the property (see Attachment 39). Staff further evaluated this issue and again concluded that the property has subdivision potential. The original proposal for 18 lots was proposed based on existing zoning. The 18 lot scenario went through an extensive review process, including preparation of an EIR. Ultimately the owner (Maslesa) dropped two lots and received approval of a 16-lot subdivision in August 1978. The Town Code was amended in 1979 to include the slope density formula. Going back to the original subdivision indicates the potential for two additional lots within the area that includes properties on Forrester Road and the applicant's land.

BLL
PREPARED BY: Bud N. Lortz, Director of Community Development

Reviewed by: _____ Assistant Town Manager *dk* Town Attorney _____ Clerk _____ Finance
_____ Community Development

Revised: 5/2/08 1:04 PM

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MAYOR AND TOWN COUNCIL

SUBJECT: KENNEDY ROAD @ FORRESTER ROAD; FILE #PD-06-03, ND-07-04.

May 5, 2008

A 1988 Council report indicated that the property should be rezoned to preclude further subdivision, however, this never occurred and the property remains in the HR-2½ zoning district. Application of the HR-2½ slope density formula to the applicant's property results in a potential yield of 2.9.

Additional public comments

Attachments 41 through 43 are letters that were received following completion and distribution of the Council report. In addition to further analysis of the subdivision potential discussed above, the April 29, 2008 staff report includes a detailed discussion of the requested exceptions to Hillside Development Standards & Guidelines.

Attachments:

- 1.-37. Previously received
- 38. Response to comments on Mitigated Negative Declaration (16 pages)
- 39. Letter from Norman E. Matteoni (two pages), received May 2, 2008
- 40. Letter from Andrew L. Faber (seven pages), received May 2, 2008
- 41. Letter from Sandy Decker (nine pages with one page attachment), received May 2, 2008
- 42. Letter from Lee Quintana (one page), received May 2, 2008
- 43. Letter from Christine Curry (three pages), received May 2, 2008

Distribution:

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GEIER & GEIER CONSULTING, INC.

Memorandum

To: Suzanne Davis, Town of Los Gatos

From: Fritz and Valerie Geier

Date: May 2, 2008

Subject: Clarifications Responding to CEQA-related Comments Submitted on the Initial Study and Mitigated Negative Declaration (MND) for DeSantis Residence, Kennedy Road @ Forrester Road, Planned Development Application PD-06-03, Negative Declaration ND-07-04

Prior to approving or denying a project, Section 15074(b) of the *California Environmental Quality Act (CEQA)* requires the decision-making body of the Lead Agency (Town Council) to adopt the proposed Mitigated Negative Declaration (MND) "only if it finds on the basis of the whole record before it (including the Initial Study (IS) and any comments received) that there is no substantial evidence that the project will have a significant effect on the environment and that the MND reflects the lead agency's independent judgment and analysis." Although CEQA does not specifically require that formal responses be prepared for any comments received on an IS/MND, we are providing the following clarifications in response to written comments received on April 28, 2008, prior to the close of the public review period. Neither these clarifications nor the comments raised identify any new significant impacts or require substantial revisions to the IS/MND. Therefore, recirculation of the IS/MND would not be required.

Written comments were received on April 28, 2008 regarding this project from two residents of Los Gatos, Lee Quintana and David Crites.

Lee Quintana Comments

The comments pertaining to CEQA and clarifications addressing these comments are organized sequentially according to presentation in Ms. Quintana's letter.

Environmental Checklist

Comment 1: Background history, environmental settings, and project description are incomplete, do not address the project as a whole, and do not meet many of the basic purposes or policies implicit in CEQA.

Requests addition of various background information regarding planning history, open space lands in the vicinity, subsequent approvals, actions, or permits required by outside agencies or the town, a description of the project as a whole, background for Condition of Approval #16, project's compliance with relevant plans, policies and regulations, summaries of technical reports, policies and land use regulations on this property, summary of technical reports, more detailed description of existing physical characteristics and natural setting.

Clarification: A discussion of a project's background history is not required by CEQA (Section 15063). Environmental setting information is provided under each topic and limited to aspects of the setting that are germane to the impact discussions. The commenter requests inclusion of information that is typically required by CEQA for Environmental Impact Reports (EIRs). The level of detail presented in the Initial Study (IS) is commensurate with the size of the project and its relative impact on the environment. Essentially, the proposed project involves about one acre of development (driveway, motor court, house, pool, pool house, art studio, tennis court, pavilion, and landscaping) on a 13.7-acre site. Comparatively, the Los Gatos Highlands project proposed approximately five acres of development (roads, building pads for homes, driveways) on a 66-acre site and an Environmental Impact Report was prepared for that project.

To clarify, the "project" being evaluated in the IS is a Planned Development proposal, not a specific development project. The consistency of the proposed PD with applicable local plans, policies and regulations is discussed in the IS where these policies and regulations are relevant to a physical environmental impact (e.g., biological and geotechnical impacts of proposed grading). The Council Agenda Report (dated April 29, 2008) provides a detailed review of project consistency with the Hillside Development Standards & Guidelines (HDS&G) as well as relevant policies of the General Plan and Hillside Specific Plan. More detailed evaluation of the specific development proposal's consistency with these policies will be done during Architecture and Site review, when a more detailed site development plan has been prepared.

Project Description

Comment 2: *Numerous items included in the PD Zoning Ordinance should be added to the Project Description and subsequent analysis, including maximum floor area, square footage of the cellar, new well for irrigation, new shed, lot merger, 11 retaining walls, open space/conservation easement, square footage of ornamental/formal landscape and turf, square footage of fencing allowed to be enclosed.*

In addition, grading volumes, maximum cut and fill depths, size of flat pads created, total area disturbed, lowering of ridge to allow driveway grade, development and grading beyond the LRDA, direct and indirect tree impacts, projected on-going resource uses, and a site plan with topography, trees, etc. should be included.

Clarification: The Project Description section in the IS (page 1) provides general information about the project, but details of the project are presented and discussed, where relevant, under the specific environmental topics. For example, proposed cut and fill volumes associated with project grading are presented in the Geology/Soils (page 12) and Transportation (page 22)

impact discussions. Although the well is not specifically referenced in the IS, construction and operation of the well will have to comply with the time and noise limits specified in the Town's Noise Ordinance, and therefore, potential noise impacts would be less than significant. Well design would also need to comply with Santa Clara Valley Water District and Santa Clara County Health Department requirements, which would reduce the potential for groundwater impacts to a less-than-significant level.

The IS evaluates the impacts of developing 14,591 square feet of structural development on the site. Condition #4 of the PD Ordinance specifies a total floor area limit for the overall project of 14,700 square feet with an additional 600 square feet for an accessory structure for storage and maintenance equipment. A difference of 100 to 700 square feet of additional development would not alter impact significance determinations in the IS. All other project design elements listed in the PD Ordinance would not alter the conclusions of the IS.

Environmental Factors Potentially Affected

Comment 3: "Several potential impacts identified in the text are not checked. For example: Aesthetics, Hazards, Transportation/Traffic as well as several others."

Clarification: An impact's significance must take into account all regulatory requirements and conditions of approval prior to making the significance determination since it would be implemented as part of the project. Therefore, if Town conditions or applicable regulations are implemented as part of the project, the impact would not rise to the level of significance and the impact is identified as *less than significant*. When a mitigation measure reduces an impact to a less-than-significant level, this impact is identified as *potentially significant*, but mitigated to a less-than-significant level with implementation of a referenced mitigation measure. More detailed explanation of the significance determinations made in the Aesthetics and Traffic sections, see clarifications to Comments 5 and 17. Under Air Quality, the IS (page 7) notes that implementation of the Town's standard dust control measures would ensure that the project's impact would be less than significant. In the Hazards section (pages 14 and 15 of the IS), compliance with the Fire Code and required compliance with standards contained in the Town's HDS&G would maintain the level of fire hazard impacts at a less-than-significant level. Similarly, compliance with the Town's Noise Ordinance would maintain potential construction-related and operational noise impacts at a less-than-significant level (page 19 of the IS).

Land Use Planning

Comment 4: Regarding consistency with Zoning Code and General Plan land use designations, "the representation that the site could support 13 single family homes is inaccurate." A discussion of the relationship between the General Plan, Zoning Code, and Hillside Development Standards and Guidelines is presented, along with a discussion of the project's consistency with the Hillside Development Standards and Guidelines as well as Hillside Specific Plan.

Clarification: The referenced sentence reads, "Since the site is 13.71 acres, the General Plan could allow up to 13 single-family residences without slope considerations." This statement

indicates that slope density requirements in the Zoning Ordinance are not included in this calculation. However, the IS also states that “with slope considerations, as implemented under the Zoning Ordinance” the project would be within allowable densities.

The Council Agenda Report (dated April 29, 2008) provides a detailed review of the project’s consistency with the Hillside Development Standards & Guidelines (HDS&G). Staff also reviewed relevant policies of the General Plan and Hillside Specific Plan and determined the project to be consistent with these policies (staff analysis is on file at the Los Gatos Community Development Department). The Hillside Specific Plan encourages “clustering of dwelling units” to preserve the scenic nature of the hillsides and allow for economies in the construction of required public and private facilities. This policy does not specifically relate to the proposed project, which is one dwelling unit, but project facilities would cover approximately seven percent of the site (based on approximately one acre of impervious surfaces). More detailed evaluation of the specific development proposal’s consistency with these policies will be done during the Architecture and Site review process, when a more detailed site development plan has been prepared. The consistency of the proposed PD with applicable local plans, policies, and regulations is discussed in the IS where these policies and regulations are relevant to a physical environmental impact (e.g., biological and geotechnical impacts of proposed grading). For example, project consistency with the General Plan Land Use Plan designation and Zoning Ordinance are discussed in the Land Use section; requirements of the Tree Ordinance are discussed in the Biological Resources section; NPDES discharge requirements are discussed in the Hydrology/Water Quality section, and the Noise Ordinance is discussed in the Noise section; and project consistency with the fire hazard-related policies of the HDS&G and General Plan are discussed in the Hazards section.

Aesthetics

Comment 5: “Aesthetics section has not been revised to reflect the additional 10,000 cy of fill proposed by the revised project. An assessment and analysis of visual impact has not been completed, nor does the MND contain a discussion the project’s consistency with HDSG. Both are essential to identify potential impacts to the sites existing physical character as well impacts off site visibility. Both of these items have been deferred to the subsequent Architecture and Site Permit application.”

“The environmental setting does not include proposed grading volumes, cut/fill depths, extent of area disturbed, extensive use of retaining walls, visibility of site from valley floor and adjacent homes and nearby hillsides, 3-d simulation showing effects of grading, and discussion of consistency with the HDSG. Deferral of this discussion to review of the subsequent Architecture and Site permit splits the project’s environmental review and limits the public participation in the CEQA process.”

“Since the discussion focuses primarily on the main house site and tree removal, and a complete assessment and analysis of visual and aesthetic impacts has not been completed all impacts resulting from implementation of the project may not have been identified.”

"With respect to the view from the south the MND states "Although this could be considered a substantial change in views from these houses...." The basis for "recommending for consideration" as opposed to "requiring mitigation is not clear."

Clarification: Fill material is proposed to be placed in the area south of the tennis court and this area is not visible from surrounding properties because views of this area are blocked by the site's terrain. Visual impacts from tree removal are evaluated in the Aesthetics section, while the visual impacts of changing topography are considered a temporary impact (see clarification to Comment 8).

Visual impacts associated with graded slopes and retaining walls and their consistency of with the HDS&G will be considered during Architecture and Site review. If the areal extent of grading or tree removal impacts result in new significant impacts as a result of design changes during Architecture and Site review, the IS/MND will need to be revised. The public will have the opportunity to comment on all aspects of the specific development proposal during the Architecture and Site review process.

The IS (page 5) presents a design recommendation for consideration by the Town during Architecture and Site review to address visibility of the pool and cabana from residences to the south. As noted in the IS, since "views from these homes already include views of residential development on nearby ridges and hillsides, ... addition of the project structures would not substantially degrade the visual character." Since this impact was determined to be *less than significant*, no mitigation measure can be required. However, in recognition that the project would incrementally increase the extent of development contained in these views, this design recommendation was included for Town consideration.

Comment 6: *"Sudden oak death has not been addressed. What happens if the majority of oaks or a significant number of the oaks that are being relied on for screening were afflicted?"*

Clarification: Mobile spores and cysts can spread Sudden Oak Death. During wet weather, infected hosts, such as bay laurels, can release large numbers of mobile spores that can travel in moist soil or through the air. People and animals can also track spores to uninfected hosts.¹ Therefore, the potential for Sudden Oak Death to occur on this specific site is not predictable and is thus considered in this analysis to be speculative and not reasonably foreseeable.

Comment 7: *"The CEQA checklist is incorrectly identified as significance criteria"*

Clarification: CEQA Section 15064.7 encourages local agencies to develop and publish their own significance thresholds. Since the Town has not adopted thresholds of significance, the CEQA checklist and Town policy direction are the only thresholds of significance that are available. Quantitative thresholds are used under specific topics where appropriate, such as under Biological Resources (trees), water quality (C.3 requirements) and noise (speech interference criterion). The HDS&G also provide specific thresholds for analysis and

¹ University of California, Forest and Pathology Mycology Laboratory, *EH&S Fact Sheet*, May 1, 2008. Available on Website: <http://nature.berkeley.edu/garbelotto/english/factsheet.php>

project consistency with these guidelines is included in the Council Agenda Report (dated April 29, 2008).

Comment 8: "Changes to the existing visual and physical character that would result from the proposed grading have not been adequately described. Note: Grading resulting in the alteration of topography can result in visual impacts and/or geotechnical impacts. The methods of analysis and significance criteria for each are different. A project's proposed grading may have a significant or potentially significant impact to the site's existing visual character or impact off-site views without resulting in a potential or significant geotechnical impact."

"The MND tends to minimize the projects impact rather than present a worst-case analysis. For example, the use of 'mostly', 'probably not', 'not expected to' and 'however'. Using the reasoning applied here no home could be considered to have a visual impact if there are already homes in the area."

Clarification: The change in visual character resulting from proposed grading is evaluated in terms of the extent of tree removal (page 5 of the IS) since tree removal would result in a change in views that would be visible for an extended period of time, until landscape trees sufficiently mature. However, changes in topography that result from proposed grading are considered a temporary visual impact that is less than significant because prescribed revegetation occurs immediately following grading (to address erosion hazards) and topographic changes would not be evident once they are covered by any vegetation. Conditions where topographic changes would result in visual impacts include creation of man-made cut slopes that contrast with natural slopes or high visibility of retaining walls. These conditions are specifically addressed in the HDS&G and compliance with these guidelines to minimize such visual impacts will be required during Architecture and Site review.

Visibility of a proposed home is not strictly defined as a significant visual impact and the Town has established a precedent for approving homes that are visible from surrounding areas, but the designs of these homes must be consistent with applicable design guidelines (e.g., HDS&G) at the time. For example, in the 2005 EIR for the proposed Highlands of Los Gatos development, views of homes were also not considered to be a significant adverse visual impact because the viewshed of existing residences already included other residences (page 4.2-15). However, views of proposed homes from the valley floor were considered to be a significant visual impact if they were visible from viewing platforms as identified in the HDS&G. For this project, the proposed home would not be visible from these viewing platforms. Therefore, this project's visual impacts were determined to be less than significant.

The term "mostly" is not used to define the significance of the impact but to describe visibility of proposed development. For example, the IS (page 5) uses the term several times to describe the effectiveness of screening by existing trees, "views are mostly screened by existing oak trees" as opposed to "completely screened" or "not screened". The IS (page 5) states, "Since views of the proposed home from surrounding areas would be mostly screened by vegetation, the project is not expected to significantly alter any existing scenic vistas available in this area." The term "not expected to" is applied since

the final design of the proposed home is still subject to evaluation and refinement during Architecture and Site review. The term "probably not" is not found in the Aesthetics discussion, and the term "however" is not used to minimize impacts but to qualify impacts.

Biological Resources

Comment 9: "The environmental setting/baseline data is incomplete, site-specific surveys were not conducted, analysis and mitigation are deferred, analysis is inappropriately focused on the tree survey and there is not mention of wildlife corridors that are known to cross the property. All potential impacts cannot be disclosed without the site-specific surveys and modifications to the project to substantially avoid or reduce potential impacts cannot be identified or recommended."

"The environmental setting/baseline data is insufficient. Biological resources are very site specific and identification and disclosure of potential impacts must be based on site-specific surveys conducted by qualified individuals"

"There is no habitat map: What is the potential for wetlands (riparian habitat, seeps, or seasonal wetlands"

Clarification: The Initial Study characterizes the habitat types supported by the project site and specifically identifies vegetative resources on the portion of the site that would be affected by the proposed project. Discussion on page 9 of the Initial Study indicates that "the value of the habitat for wildlife species is moderate to high" and concludes that the removal of a portion of the moderate value woodland habitat would be a significant impact on the woodlands and the wildlife species using them. The Initial Study includes a mitigation measure (#3) that would result in the establishment of mitigation habitat on the site to replace the lost functions and values associated with the removal of trees from the property. There is no requirement under CEQA to prepare a habitat map as part of the Initial Study's analyses.

Comment 10: "The Tree Survey Report, and Tree Ordinance are the only biological issues discussed in any detail. Tree reports typically focus on tree impacts and mitigation to preserve the remaining trees, not the more important ecological impacts. The tree report states that all but few trees recommended for removal are moderate to excellent candidates for preservation. This is information pertinent to assessing the projects impacts, however, it is not in the text of the MND or in the appendix of the Initial Study. And it does not appear to have been factored into the analysis and the determination of significance"

"The discussion of tree impacts is confusing at best, does not summarize the impacts of the revised project, and does not reach any conclusion of significance prior to mitigation, nor are tree impact adequately factored into impacts to wildlife habitat or to wildlife movement corridors... Approximately 40% of the 143 trees in the area of proposed development will be impacted before mitigation. The Town has not required any mitigation to substantially avoid these impacts. Most of the remaining trees on the site are located above the 30% slope break or close to Kennedy road where they would likely not be impacted by any project."

Clarification: The comment is incorrect. Pages 9 and 10 of the Initial Study include discussion that addresses the potential significance of tree removal and habitat alteration prior to mitigation; please see clarification to Comment 9. The IS (page 10) notes that the removal of six percent of moderate to high value woodland habitat would constitute a significant impact on these woodlands. The IS also states that the Town's arborist provides recommendations to reduce potential effects of the project on trees that could experience moderate to high-level impacts; these recommendations are imposed as conditions of approval for the project. Mitigation Measure 3 addresses appropriate replacement standards for tree removal based on the Town's policies for conservation of natural resources.

Comment 11: *"A section on Special Status Plant Species has been added, however, it is not based on site specific surveys. A site specific survey needs to be completed. There is no site specific survey for wildlife or wildlife habitat for special status, threatened or endangered species to determine if they are present, and if so to develop appropriate mitigation. For example, the drainage along Kennedy Road may be potential habitat for the California red-legged frog and/or the California tiger salamander. If either species are present the proposed project may impact their summer habitat on the adjacent grasslands, and if so could require take authorization under the Endangered Species Act. Survey are required."*

"The Federal Migratory Bird Treaty Act is also not addressed. Removal of oaks could impact nesting birds and bats. Surveys are required and mitigation be may required."

Clarification: Pages 8 and 9 of the Initial Study identify the vegetation types and habitats that would be affected by the proposed project. Proposed development would not extend to the drainage channel along Kennedy Road. In the spring, the property owner conducts annual maintenance disking of the site's grassland areas for fire hazard reduction purposes. The process of disking destroys the erect stems and breaks up the extensive rhizome system that keeps plants alive during dry conditions. All grasses and other herbaceous plants in open areas of the site proposed for development are lost annually through this process, thereby minimizing the value of these open areas as potential summer grassland habitat for wildlife species. Accordingly, a site-specific survey for special status plants would not be helpful and is not warranted for this project.

Comment 12: *"Mixed Woodland Habitat: A discussion was added but is not based on a site-specific survey. The record does not support the determination of moderate quality habitat or the loss of 6% of moderate habitat. Grasslands habitat are considered an essential part oak savannah habitat, however, the loss of grassland habitat is not addressed nor is the loss of habitat to large areas of ornamental landscaping. An oak woodland mitigation plan prepared by a qualified biologist should be included in the MND, not deferred."*

"Drainage patterns on the site will be altered. Indications are drainage will be directed from the area of the motor court and turnaround to the area south of the driveway between the garage and tennis court apparently in the direction of the oak grove and from the area of the yard to the area below the house. This is in conflict with the tree preservation measures to keep drainage away for the base of oaks or draining in their direction. This conflict has not been addressed."

Clarification: The quality of woodland habitat was based on field review, arborists' assessments of tree conditions, and arborist mapping of woodland distribution over the project site. The Initial Study identifies woodland habitat values as "moderate to high." Mitigation Measure 3 requires the preparation of a Tree Replacement and Enhancement Plan by a qualified restoration ecologist and peer-reviewed by a restoration ecologist retained by the Town. The Town's Tree Protection Ordinance in addition to the Tree Replacement and Enhancement Plan will require tree replacement at appropriate planting levels to ensure the potential impacts associated with vegetation removal are mitigated to less-than-significant levels.

Initial drainage plans for the proposed development indicated that collected drainage would be directed to rip-rap dispersion (energy dissipating) pads to be located in open areas generally on the north side of the proposed driveway. One energy-dissipating pad was proposed south of the tennis court to disperse runoff generated by the court; the pad is situated above an open area containing no oaks. No conflict with Recommendation #6 from the Town arborist was indicated. In the event that future project design considerations require relocation of rip-rap energy dissipators, the Development Review Committee would be charged with implementing the Town arborist's recommendation and condition of approval that drainage flows are to be directed away from individual oak trees and oak woodland areas.

Grading

Comment 13: "The setting section does not adequately summarize information from the referenced sources, does not provide adequate description of proposed grading and does not provide significance criteria. The discussion tends to minimize impacts, and the minimally acceptable slope stability factor may not support the conclusion that the project will have a less than significant impact."

"The Geomatrix Peer Review (November 3, 2005) states 'The proposed project requires extensive grading and retaining walls, mainly to construct the proposed driveway and level benches for the proposed tennis court and residence, pool, cabana, and associated yard in the generally steep slope hillside environment'"

"The revised project requires approximately 1640 linear feet of retaining wall. Approximately 700 feet of the retaining walls are between 4' and 5' high. Portions of the driveway, drive circle, and motor court, retaining walls, portions of the swimming pool, cabana, residence and several drainage outlets/dissipaters are located on slopes greater than 30%. The revised project has .63 acres of proposed work on slopes greater than 30%. This is a decrease of only .01 acres from that shown on C-1, however, the amount of total area graded shown on Ex6 has increased from 2.45 to 3.46 acres."

"The primary constraints to the proposed development include the colluvium filled swales, project's proximity to the San Andreas and Berrocal fault zones, and control of surface drainage, which is critical to the successful development of the proposed improvements. Geomatrix in their Third Supplemental Peer Review (2/28/08) states that the reduced off-haul volume is still significant and there are continued concerns about slope stability,

drainage and erosion/sedimentation. The grading between the main structure and art studio is steeper than the underlying slope and results in an unnatural contour. The alternative would result in more grading and tree removal that would also be unacceptable. No recommendation has been made to revise the project to avoid this impact or other grading impacts. The project grading is not consistent with several HDSG standards including "avoid building in hazardous areas."

"The design of the revised grading was not driven by an attempt to reduce impacts but rather to staying within the off-haul limit set by council (which are consistent with the of the previously circulated draft before the numbers were realized to be incorrect. This is counter to the intent of CEQA. In fact, the revised grading plan results in an increase in the area outside the LRDA, increases the total area disturbance (from 2.45 to 3.4 acres) and results in greater impacts to trees. Yet another indication that it is not possible to reduce the projects impacts or bring it into conformance with HDS&G without substantially modifying the design program and significantly changing the project."

"Given the minimally acceptable slope stability, and the increased tree and grading impacts it is not clear that conclusion of less than significant can be supported or that it is supported by evidence in the record. UUP's March 13th response to Geometric February 28th comments state '... it is our opinion that the additional fill placed in the area will increase the resisting fore of the modeled slope' but it does state the factual basis for the opinions or how placing fill at the base of the slope increases the stability."

Clarification: Use of retaining walls and their extent do not indicate an environmental impact, but are indicative of the extent of grading that is proposed. Limiting heights of retaining walls are included in the HDS&G to minimize grading, but the HDS&G does not specify quantitative limits on the linear extent of retaining walls permitted. Since the HDS&G does not specify quantitative thresholds for determining the significance of grading impacts, the direct and indirect effects of grading are evaluated in the Aesthetics, Air Quality, Biological Resources (trees), Geology (slope stability), Noise, and Traffic sections of the IS.

Regarding the site's proximity to fault zones, the IS (page 12) identifies proximity to these faults and notes that compliance with applicable UBC requirements for site grading, drainage, pavement design, retaining wall design, erosion control, and foundation design would be adequate to address regional seismic safety concerns such as groundshaking. UBC standards account for a development's vulnerability to seismic hazards based on its proximity to active faults. Los Gatos utilizes a different section of the UBC seismic table due its proximity to Class B faults. It should also be noted that recommendations contained in detailed geotechnical studies consider fault proximity and were peer reviewed.

CEQA Section 15125 requires the impact analysis to compare the project condition to existing conditions, not to provide a relative comparison to the previous development proposal on the site. Since the previous development plan was not approved, any relative comparison would not be relevant to the current development proposal or the IS.

Comments related to slope stability in the tennis court vicinity are noted. To address slope stability concerns, the Town will require full-time observation by a geotechnical engineer and engineering inspector during placement of fill (Conditions #44, 45, and 66). The IS summarizes the findings of detailed geotechnical studies and peer reviews, and presents the recommendations. Copies of these reports are available for public review at the Los Gatos Community Development Department.

Comment 14: "There is no staging plan. Can the site accommodate the grading, the stockpiles, the equipment needed for the grading, grinding and compaction? How will grading and compaction equipment and the fill access the upper pad without increasing the need for grading impacts and tree removal?"

Clarification: There is no specific proposal for off-site staging. Project conditions of approval will limit project staging to the LRDA. Project Condition 55 has been modified (added text is underlined) as follows:

"CONSTRUCTION MANAGEMENT PLAN. The Applicant shall submit a construction management plan that shall incorporate at a minimum the Earth Movement Plan, Traffic Control Plan, Project Schedule, site security fencing, employee parking, construction staging area, construction trailer, and proposed outhouse locations. All staging shall be performed within the LRDA."

In addition, the following project condition has been added:

"LRDA. Prior to issuance of a grading permit, a fence shall be constructed delineating the LRDA or approved grading limit, whichever is least restrictive. The "least restrictive" provision accommodates locations where the approval allowed grading beyond the LRDA limits."

Hydrology and Drainage

Comment 15: "There is no base line data on peak flow runoff under current condition or calculation for runoff resulting from the project with and without the pervious cement, nor is the adequacy of Ross Creek to accommodate storm runoff discussed. The connection (and differences) of concern from run off with respect to peak flow and flooding and runoff with respect to concerns with sedimentation of stream and water quality, and drainage and erosion on site are not discussed."

"The MND states that over an acre of land will be covered by hard surfaces, and that about 25% of that will be pervious concrete driveway, but no information is given on the efficiency of pervious cement on slopes. If slopes allow less infiltration, what additional pervious surface would be required to make up for the loss in efficiency. If pervious surfaces are located in areas above oaks will there be a potential impact to the oaks? Given that the proposed development is equivalent to more than one hillside home and to 7-8 average sized home consideration should be given to requiring a decrease in the amount of hardscape and requiring an increase in the amount of pervious surfaces?"

"Design criteria for storm drainage is not given"

"The Storm Water Management Plan and storm filtration devices should be identified as mitigation"

"No performance criteria are established for the maintenance agreement with the Town for the stormwater filtration devices."

Clarification: Under Provision C.3, post-project runoff will not be allowed to exceed pre-project levels when a project discharges directly to water bodies listed as impaired by pollutants pursuant to Clean Water Act Section 303(d). Since runoff from the site ultimately discharges to South San Francisco Bay, which is on the Section 303(d) list, the project would not be allowed to increase storm water runoff. The overall performance of permeable surfaces will be taken into account when the project is reviewed for compliance with C.3 standards during the Architecture and Site review process.

The IS (page 17) states that although single-family homes are exempt for C.3 standards (pursuant to National Pollution Discharge Elimination System [NPDES] permit program), the larger project size is recognized and serves as the basis for the Town preparation and implementation of a Storm Water Pollution and Prevention Plan (SWPPP) as well as compliance with NPDES Permit Provision C.3. Although a performance criterion is not required to be specified under CEQA (this is a condition of project approval not a mitigation measure), the required maintenance agreement will have to meet C.3 standards, which will be the performance criterion.

Fire Hazards and Prevention

Comment 16: *"The project as currently proposed does not meet fire code for slope of driveway (16%) or turnaround radius. The Conditions of Approval state that the project **will meet** the requirement but there has been no further analysis done to determine whether these conditions are feasible without increasing grading or tree impacts or retaining walls. This determination needs to be made before project approval."*

"The fire department only requires a 12foot driveway. The proposed driveway is 20' wide. Could grading, tree removal or tree impacts be reduced if the driveway were narrowed to the minimum required."

*"Section VII. General Plan Policy S.P.2.3 (to minimize hazards in the fire hazard areas) and lists HDSG Standards to minimize fire hazards through the site planning and design, but does not reach any conclusion regarding consistency. This section also states that adequate fire flow is available which conflicts with Section XIII that states fire flow is **not available**."*

*"All three sections do state that the project **will be required** to meet fire standards not that it **meets** them now."*

Clarification: First, it should be noted that sections of the driveway are less than 15 percent and the Fire Department has allowed exceptions to the 15 percent maximum grade requirement. However, if sections of the driveway must be reduced by 1 percent, this could be

accomplished with only minor changes to the driveway to achieve the Fire Department's standards. Therefore, no significant increase in identified grading or tree impacts would occur with such a redesign of the driveway. The Fire Department is requiring a 20-foot wide driveway and the IS evaluates this driveway width since this would be the maximum (worst-case) width that would be developed. However, a narrower driveway with turnouts could be considered during Architecture and Site review when a specific development proposal is prepared.

The discussion on page 15 of the IS identifies what aspects of the proposed project would and would not be consistent with the HDS&G. When more detailed development plans are formulated during Architecture and Site review, a more detailed evaluation of whether proposed development is located on slopes over 30 percent can be completed. In Section XIII, Public Services, the IS (page 20) states that the Fire Department will require installation of an approved fire sprinkler system in the residence, art studio and cabana because required fire flow to these structures is not available. The referenced statement in Section VII, Hazards and Hazardous Materials (page 15 of the IS) refers to the required "adjusted fire flow" being adequate because the preceding statement in that paragraph already notes that automatic sprinklers will be required. In other words, required fire flows are inadequate without sprinklers, but the requirement is adjusted when sprinklers are installed and these adjusted flows are adequate.

Transportation/Traffic

Comment 17: "Construction traffic is not identified as a potential impact even though the MND states the Town will require the applicant to develop a traffic control plan to ensure safe traffic that will reduce potential traffic safety hazards to a less than significant level. Traffic safety is, therefore, a potentially short-term impact not identified."

Clarification: Development of the traffic control plan is a condition of project approval that will be required by the Town and implemented as part of the project. An impact's significance must take into account all regulatory requirements and conditions of approval prior to significance determination since they would be implemented as part of the project. Therefore, all Town conditions of project approval and applicable regulations are applied prior to determining the significance of an impact. With this Town condition implemented as part of the project, the impact would be less than significant. When a mitigation measure reduces an impact to a less-than-significant level, this impact is identified as potentially significant, but mitigated to a less-than-significant level with implementation of a referenced mitigation measure.

Noise

Comment 18: "Does not include base line ambient noise data nor update section to reflect increased on site fill, grinding and compaction activities, including vibration. Include existing ambient noise levels as baseline data."

"Modified the discussion of the projects noise impacts to reflect the revised project, including the increased fill, grinding and compacting activities and if blasting will be required. The modified project requires substantial quantities of engineered fill, including

an unspecified quantity of 'over excavated' soils, that will require grinding on site and compaction when replaced as engineered fill. Indicate the length of time grading, grinding and compaction of engineered fill will take, as well as other construction phases. Indicate the criteria used to determine when construction activity crosses the line to a significant short term impac."

Clarification: Baseline ambient noise levels are not required to evaluate construction-related noise impacts. Noise generated by construction equipment always exceeds ambient noise levels in a residential noise environment. Since construction noise levels would not increase with addition of the ambient noise level, identified noise impacts and their significance would not change.

The IS (page 19) presents noise levels (94 to 97 dBA at 25 feet) that would be generated by operation of heavy equipment typically used for earthmoving (bulldozers, graders, scrapers, front loaders, etc.), and estimates noise levels of up to 67 dBA at the closest residences. The IS indicates that enforcement of Town Noise Ordinance noise limits (85 dBA at 25 feet, which can be achieved with feasible noise controls)² would ensure that construction-related noise levels would not result in speech interference effects in the interiors of the closest residences. The IS indicates that the outdoor noise level threshold for interior speech interference effects is 70 to 80 dBA (with windows closed), and the IS states this is applied as the significance criterion. Rock crushing equipment typically generates noise levels of approximately 91 dBA at 25 feet, and also would be subject to the Town Noise Ordinance noise limit of 85 dBA at 25 feet. Blasting is not proposed as part of the project.

Air Quality

Comment 19: *"The Air Quality section of the Initial Study was not revised to reflect the current proposed project and therefore minimizes the projects impacts, and does not identify any additional mitigation that may be required given the expanded grading quantities and area of disturbance."*

"The revised project will disturb approximately 3.46 acres. The MND states that the BAAQMD'S standard dust control measures are required on sites of three acres or less. Do sites with disturbance over 3 acres require an other level of mitigation measures. If so, state the requirements. This is one single family home, however it's size is equal to 7+ average sized homes, and likely exceeds grading volumes for single homes at least by 36 times (assuming 1000 cy for an average house, which probably a high estimate). Would a multi-unit project be subject to higher standards? If so shouldn't this project be subject to those requirements."

"The Initial Study states that the project is consistent with its General Plan land use designation and is therefore consist with CAP. It could also be argued the General Plan did not anticipate single family homes with the level of intensity or grading volumes

² Feasible noise controls include selection of quieter procedures or equipment , or using best available noise control techniques including mufflers, intake silencers, ducts, engine enclosures, and acoustically-attenuating shields and shrouds (U.S. Environmental Protection Agency, *Noise from Construction Equipment and Operations, Building Equipment, and Home Appliances*, December 1971).

proposed by this project. The project does not meet the standards for intensity of development or grading established by the HDSG, which implements the General Plan. Therefore, it could be argued the proposed project is not consistent with CAP."

Clarification: The BAAQMD's CEQA Guidelines (Table 2, page 14) specify "Basic Control Measures" for all construction sites and "Enhanced Control Measures" for construction sites greater than four acres. Since the area of disturbance is less than four acres, the BAAQMD's Basic (or Standard) Control Measures would be required, which is consistent with the discussion on page 7 of the IS.

The consistency of a General Plan with the *Clean Air Plan (CAP)* relates to criteria air pollutants generated by project-related motor vehicle use, not construction-related emissions. Therefore, the project's consistency with the *CAP* relates to the land use density planned for the site and air pollutant emissions associated with long-term operation of the proposed use. As stated on page 7 of the IS, rather than require quantification of construction emissions, the BAAQMD provides guidelines for the level of mitigation required based on the extent of grading proposed and the previous paragraph describes the two levels of mitigation.

Cultural Resources

Comment 20: *"It does not appear that any data bases were consulted to support the conclusion of this section The Initial Study does not identify any potential impacts to cultural resources although it does state 'The potential for encountering cultural resources during construction would be low.' It follows that there is still a possibility of encountering cultural resources during construction that data bases should be consulted and require incorporation of standard cultural resource mitigation measures."*

Clarification: As stated on page 10 of the IS, the project's potential for impact on cultural resources is based on the topography, proximity to Ross Creek, and areas proposed for development. In general, open areas and seasonal water sources are needed for hunting camps and/or occupation areas. However, the steep topography on this site combined with its elevated location away from Ross Creek, and on-going surface disturbance for fire control (as stated on page 10 of the IS) would reduce the potential for encountering archaeological resources. Therefore, the IS determined the potential to encounter archaeological resources during project construction to be less than significant.

Cumulative Impact

Comment 21: *"As stated in the record, in effect, approval of this project will provide a model for all future 'estate homes'. An analysis of potential cumulative impacts resulting from the approval of this project should be completed before the project is acted on"*

Clarification: This statement is speculative since there are already other estate homes in the project area that include a pool, pool house, and tennis court facilities. Each site must be evaluated on an individual basis and is subject to environmental constraints that exist on that particular site. The Town's standards and guidelines will be applied to future development proposals, as it is being applied to this project.

David Crites Comments

The comment pertaining to CEQA and clarification addressing this comment is as follows:

Comment 22: The Mitigated Negative Declaration (MND) and the Initial Study (IS) do not adequately address conflicts with Los Gatos land use plans, policies, or regulations adopted for the purpose of avoiding or mitigating environmental effects. Therefore the IS is inadequate and does not support the MND.

Clarification: The Council Agenda Report (dated April 29, 2008) provides a detailed review of the project's consistency with the Hillside Development Standards & Guidelines (HDS&G). Staff also reviewed relevant policies of the General Plan and Hillside Specific Plan and determined the project to be consistent with these policies (staff analysis is on file at the Los Gatos Community Development Department). More detailed evaluation of the specific development proposal's consistency with these policies will be done during the Architecture and Site review process, when a more detailed site development plan has been prepared. The consistency of the proposed PD with applicable local plans, policies, and regulations is discussed in the IS where these policies and regulations are relevant to a physical environmental impact (e.g., biological and geotechnical impacts of proposed grading). See the clarification to Comment 4 above for more discussion.



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TOWN OF LOS GATOS
PLANNING DIVISION

Norman E. Matteoni

May 2, 2008

Peggy M. O'Laughlin

Bradley M. Matteoni

Barton G. Hechtman

Gerry Houlihan

Honorable Mayor and Members of the Town Council
Town of Los Gatos
110 E. Main Street
Los Gatos, California 95030

**Re: Planned Development Application (PD-06-03; DeSantis)
Town Council Agenda May 5, 2008**

Dear Mayor and Members of the Council:

I represent the applicant and wish to clarify certain points raised in the letter of May 1, 2008, from Sandy Decker to the Council regarding the 1978 subdivision which created the DeSantis lot of 13.71 acres.

First, Mr. DeSantis is not claiming he has two existing legal parcels, based on the County Assessor showing two APNs for the property.

His position is that, if he chose to do so, he can legally apply for and obtain a division of his property on Kennedy Road at Forrester Road, under the applicable slope density formula provided by the Hillside zoning ordinance. The calculations based on the slope of the property will permit a two lot division; the calculations which the Town has for the parcel indicated a density of 2.9 units.

Second, I have reviewed the history of the original subdivision by Maslesa in 1978. The original application was for 18 lots, which met the zoning standards of the day and for which environmental review was performed. In the process before the Commission, it was suggested to Maslesa that the density be reduced (the record states: "*As part of your alternate proposals, the Commission requested that you consider a decrease in the total number of units*"), based on the layout of lots along Forrester Road



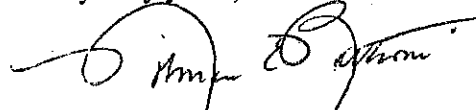
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("produce greater variation in building and street alignment"), and not based on slope density. Maslesa decided to amend his application to show 16 lots and slightly reconfigure the lots along Forrester Road. There was no specific focus on the large lot (now owned by DeSantis) on Kennedy Road. Sixteen lots were approved; but there was no restriction on the subdivision against further division; there was no PD zoning for the subdivision. The slope density calculations now applicable were not adopted by the Town until 1979. The Lee Bowman Memorandum to the Council of January 12, 1988, was both 10 years after the fact and never implemented.

Conclusion

Robert DeSantis has the right to divide his property today. He has not so applied. He only offers the potential of division as background to the application before the Town. And, he is willing to accept a restriction against further division, as a part of the approval of the application before the Town.

Very truly yours,



NORMAN E. MATTEONI

cc: Bud Lortz
Orry Korb
Rob DeSantis

BERLINER COHEN

ATTORNEYS AT LAW

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May 2, 2008

BY EMAIL AND U.S. MAIL

Suzanne Davis
Town of Los Gatos
Community Development Department
110 E. Main Street
Los Gatos, CA 95032

Re: DeSantis Residence (APN 537-29-007 & -008)
Kennedy Road at Forrester Road
Mitigated Negative Declaration ND-07-04
Planned Development Application PD-06-03
Our File No.: 17237-001

Dear Ms. Davis:

This letter is submitted on behalf of Robert DeSantis, the applicant for Planned Development Application PD-06-03, in support of the above-referenced Mitigated Negative Declaration, dated April 7, 2008 ("MND"), and in partial response to the comments on the MND submitted by Lee Quintana, dated April 28, 2008.

I. General Comments on Negative Declarations

A. Negative Declarations and Mitigated Negative Declarations

A negative declaration is a written statement by the lead agency describing the reasons a proposed project will not have a significant effect on the environment and, therefore, why an environmental impact report ("EIR") need not be prepared. CEQA Guidelines, section 15371. A negative declaration shall be prepared if the initial study shows no substantial evidence that

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Suzanne Davis
Town of Los Gatos

May 2, 2008

the project may have a significant effect on the environment or if the project's effects can be mitigated to the extent that there is no substantial evidence in light of the whole record that the revised project will have a significant effect on the environment. Pub. Res. Code section 21080(d); CEQA Guidelines, sections 15063(b)(2), 15064(f), 15070. If, however, the lead agency finds substantial evidence in the initial study or elsewhere in the record that the project may have a significant effect on the environment that cannot be mitigated, or in other words, whenever substantial evidence in the record supports a "fair argument" that significant impacts may occur, then the agency must prepare an EIR. CEQA Guidelines, section 15063(b)(1), 15064(f)(1); No Oil, Inc. v. City of Los Angeles (1974) 13 Cal. 3d 68, 75.

A "mitigated negative declaration" is defined in CEQA to mean:

[a] negative declaration prepared for a project when the initial study has identified potentially significant effects on the environment, but 1) revisions in the project plans or proposals made by, or agreed to by, the applicant before the proposed negative declaration and initial study are released for public review would avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment would occur, and (2) there is no substantial evidence in light of the whole record before the public agency that the project, as revised, may have a significant effect on the environment.

Pub. Res. Code section 21064.5.

CEQA encourages the preparation of mitigated negative declarations for appropriate projects, like the one at issue here, where there will be no unmitigated potentially significant impacts. One purpose of the initial study is to "enable an applicant or lead agency to modify a project, mitigating adverse impacts before an EIR is prepared, thereby enabling the project to qualify for a negative declaration. CEQA Guidelines, section 15063(c). Furthermore, the Guidelines state that agencies should "urge" the use of mitigated negative declarations, rather than EIRs, in order to reduce paperwork and delay. CEQA Guidelines, section 15006(h).

B. Substantial Evidence

Section 15382 of the CEQA Guidelines defines a "significant effect on the environment" as "a substantial, or potentially substantial, adverse change in the any of the physical conditions within the area affected by the project, including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance."

CEQA defines "substantial evidence" as, "enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached." CEQA Guidelines, section 15384(a). "Substantial evidence includes fact, a reasonable assumption predicated upon fact, or expert

May 2, 2008

opinion supported by fact.” Pub. Res. Code section 21080(e)(1). “Substantial evidence is not argument, speculation, unsubstantiated opinion or narrative, evidence that is clearly inaccurate or erroneous, or evidence of social or economic impacts that do not contribute to, or are not caused by, physical impacts on the environment.” Pub. Res. Code section 21080(e)(2).

At several places in Lee Quintana’s letter, she argues that certain issues should have been addressed in the MND. However, she does not present any factual, substantial evidence to support a fair argument of potentially significant environmental effects.

Statements by members of the public do not constitute substantial evidence unless they are supported by an adequate factual foundation, and if this foundation is not established, the agency must disregard the comments. For example, in one case, a neighbor argued that certain views would be blocked by a proposed new home, but the court held that her testimony was not substantial evidence because it was not supported by credible facts. Gabric v. City of Ranch Palos Verdes (1977) 73 Cal. App. 3d 183, 199. In another case, the court rejected a residents’ opinion testimony on the effects of a road widening project on recreational use because the testimony was not supported by specific facts. Gentry v. City of Murrieta (1995) 36 Cal. App. 4th 1359, 1417. Several other cases hold that complaints, fears, and suspicions about a project’s potential environmental likewise do not constitute substantial evidence. See Bowman v. City of Berkeley (2004) 122 Cal. App. 4th 572, 588-90 [aesthetic impacts]; San Joaquin Raptor/Wildlife Rescue Ctr. v. County of Stanislaus (1996) 42 Cal. App. 4th 608 [cumulative impacts]; Lucas Valley Homeowners Ass’s v. County of Marin (1991) 233 Cal. App. 3d 130 [parking and traffic]; Leonoff v. Monterey County Board of Supervisors (1990) 222 Cal. App. 3d 1337 [traffic].

C. Basic Requirements for Negative Declarations

A negative declaration is required to include only the following information:

- (a) A brief description of the project, including a commonly used name for the project, if any;
- (b) The location of the project, preferably shown on a map, and the name of the project proponent;
- (c) A proposed finding that the project will not have a significant effect on the environment;
- (d) An attached copy of the initial study documenting reasons to support the finding; and
- (e) Mitigation measures, if any, included in the project to avoid potentially significant effects.

CEQA Guidelines, section 15071.

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The April 7, 2008 MND satisfies all of these requirements, and the proposed finding that the inclusion of the mitigation measures described therein will mitigate all potential impacts to a less-than-significant level is supported by substantial evidence.

D. Recirculation

Once a negative declaration has been circulated, it need only be recirculated for another round of public review if it is "substantially revised." CEQA Guidelines, section 15073.5(a). A substantial revision is when either:

- (1) A new, avoidable significant effect is identified, and mitigation measures or project revisions must be added in order to reduce that effect to a level of insignificance, or
- (2) The lead agency finds that the mitigation measures or project revisions originally included in the negative declaration will not reduce potentially significant impacts to less than significance, and new mitigation measures or project revisions must be required.

CEQA Guidelines, section 15073.5(b).

The addition of new information that merely clarifies or amplifies or makes insignificant modifications to a negative declaration does not require recirculation. CEQA Guidelines, section 15073.5(c)(4).

II. Response To Lee Quintana's Comments

A. The Project Description Is Adequate

CEQA's project description requirements for EIRs are quite detailed, requiring precise map and topographic information, a statement of objectives to be used for alternatives analyses, a description of the project's technical, economic, and environmental characteristics, and engineering proposals. CEQA Guidelines, section 15124. In contrast, CEQA only requires project descriptions in negative declarations to include, "a brief description of the project, including a commonly used name for the project, if any." CEQA Guidelines, section 15071(a). See also El Dorado Taxpayers for Quality Growth v. County of El Dorado (2004) 122 Cal. App. 4th 1591, 1597 [project description in negative declaration was adequate in setting forth nature of specific project (reclamation), type of activities, and environmental goals].

The Project Description in the subject MND complies with these requirements. It adequately describes the project site, the types of structures to be constructed (including the new driveway), the areas of the site where the structures will be constructed, and the square footages of the various structures. CEQA does not require a project description in a negative declaration to contain all details of a project, as requested in Ms. Quintana's letter.

Suzanne Davis
Town of Los Gatos

May 2, 2008

B. Analysis of Specific Aesthetic Impacts is Premature

In Ms. Quintana's letter, she complains that the MND should contain more analysis of potential aesthetic impacts, and compliance with the Town's Hillside Development Standards and Guidelines ("HDSGs"). However, a specific aesthetic and HDSG analysis would be premature at this point because specific building plans have not been developed. Such analysis will be conducted during the formal Architectural and Site Review phase of the project.

The level of environmental analysis required by CEQA for any given project is relative to the amount of information about the project that is available. In other words, CEQA does not require detailed environmental analysis when doing so would be premature. See Friends of the Sierra Railroad v. Tuolumne Park and Recreation Dist. (2007) 147 Cal. App. 4th 643, 647 [environmental review at time of land sale was premature even though some kind of development was reasonably foreseeable].

The same rationale has been applied to the level of review required in negative declarations. For example, in Schaeffer Land Trust v. San Jose City Council (6th Dist. 1989) 215 Cal. App. 3d 612, the court approved a negative declaration prepared for a general plan amendment, and held that a traffic analysis could be deferred to future environmental review of a specific development, given that future development would be required to conform with the city's level of service (LOS) criteria for traffic. Id. at 625-26.

As indicated in the MND, the Town will conduct additional review of aesthetic impacts, and assessment of compliance with the HDSGs during Architectural and Site review, when more detailed plans are developed.

C. The Project Is Consistent With Applicable Plans; Local Agencies' Consistency Determinations Are Entitled To Great Deference.

Ms. Quintana also complains that the project requires the preparation of an EIR because it is inconsistent with the Town's general plan and zoning code. However, we believe that the MND's conclusion that the project is consistent with the Town's general plan and zoning code is supported by substantial evidence, consistent with the legal requirements.

In a case challenging a general plan consistency determination regarding a large development, the court upheld the city's decision even though some aspects of the project deviated from particular planning provisions, explaining the general rule as follows: "An action, program, or project is consistent with the general plan if, considering all its aspects, it will further the objectives and policies of the general plan and not obstruct their attainment...State law does not require perfect conformity between a proposed project and the applicable general plan." Friends of Lagoon Valley v. City of Vacaville (2007) 154 Cal. App. 4th 807, 817 (internal citations omitted).

Suzanne Davis
Town of Los Gatos

May 2, 2008

Furthermore, reviewing courts are required to give great deference to local agencies' consistency decisions. The court in Friends of Lagoon Valley summarized the case law on this issue as follows:

"[A] governing body's conclusion that a particular project is consistent with the relevant general plan carries a strong presumption of regularity that can be overcome only by a showing of abuse of discretion." (Napa Citizens for Honest Government v. Napa County Bd. of Supervisors (2001) 91 Cal.App.4th 342, 357; see Sequoyah Hills Homeowners Assn. v. City of Oakland (1993) 23 Cal.App.4th 704, 717)). "An abuse of discretion is established only if the city council has not proceeded in a manner required by law, its decision is not supported by findings, or the findings are not supported by substantial evidence. (Code Civ. Proc., § 1094.5, subd. (b).) We may neither substitute our view for that of the city council, nor re-weigh conflicting evidence presented to that body. [Citation.]" (Sequoyah Hills, *supra*, 23 Cal.App.4th at p. 717.) This review is highly deferential to the local agency, "recognizing that the body which adopted the general plan policies in its legislative capacity has unique competence to interpret those policies when applying them in its adjudicatory capacity. [Citations.] Because policies in a general plan reflect a range of competing interests, the governmental agency must be allowed to weigh and balance the plan's policies when applying them, and it has broad discretion to construe its policies in light of the plan's purposes. [Citations.] A reviewing court's role "is simply to decide whether the city officials considered the applicable policies and the extent to which the proposed project conforms with those policies." [Citation.] [Citation.]" (San Franciscans Upholding the Downtown Plan v. City and County of San Francisco (2002) 102 Cal.App.4th 656, 677-678).

Friends of Lagoon Valley, *supra*, at 816.

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Suzanne Davis
Town of Los Gatos

May 2, 2008

In summary, we believe that the MND for the project is adequate and complies with the requirements of CEQA. Ms. Quintana's letter does not constitute substantial evidence to the contrary.

Very truly yours,

BERLINER COHEN

A handwritten signature in black ink, appearing to be 'A. Faber', written over the printed name.

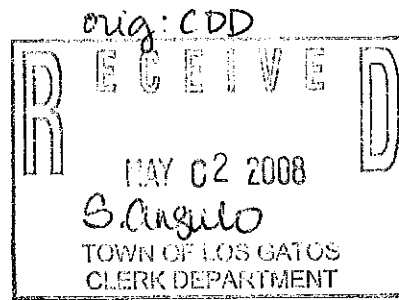
ANDREW L. FABER

E-Mail: andrew.faber@berliner.com

ALF:mjd

cc: Robert DeSantis

Town of Los Gatos
Honorable Mayor Barbara Spector
110 E. Main Street
Los Gatos, California 95030



May 1, 2008

To The Honorable, Mayor Barbara Spector and Town Council

Subject: De Santis Project, Planned Development Application, PD-06-03

I am writing on behalf of myself, Lee Quintana and Christine Curry concerning the De Santis Project. I request this letter be made part of the official public record on the project.

We believe we represent the concerns of many who vigorously supported the adoption of the Hillside Development Standards and Guidelines. Our concerns have been and continue to be that the project does not comply with the basic provisions of the Hillside Development Standards and Guidelines (HDS&G). Our objective is to see that the project is consistent with the Town's plans and land use regulations, particularly the HDS&G and General Plan. Revisions that have been made to the project fall far short of complying with Town requirements and in fact have evolved the project in a direction that appears to bring it even further from compliance with them.

Since we find the Town's review of the project less than complete, and due to the extensive community effort leading to the adoption of the HDS&G, we felt compelled to obtain professional planning assistance from Spangle Associates to objectively review and evaluate the project and to advise us with respect to our concerns. We asked Spangle Associates to bring our concerns to the attention of the Town Council. The comments presented here are based on their assistance and, reflect information obtained by them.

Our five major concerns are set forth below. The discussion that follows expands upon these concerns. We trust the Council will seriously consider these issues.

- **The assumption that the DeSantis is two parcels that can be merged or is one large lot that can be subdivided is wrong! It is one legal parcel with two APN numbers.** Lee Quintana confirmed with the county assessor's office on 5/1/08 that the two assessor's parcels comprise a single legal parcel. Her enclosed letter dated 5/1/08 documents this information. Furthermore, the 1978 Meslesa/Kennedy Estates subdivision restricts the parcel from any further subdivision. The arguments favoring one large house over two smaller houses based on the speculated development potential of the site are therefore inaccurate and should not be cited as justification to allow the proposed intensity of development. This new information completely negates the primary argument presented by Mr. DeSantis and cited by some officials as justification for the extraordinarily large project. **Allowing the proposed intensity of development would be inconsistent with the intent, objectives and provisions of the HDS&G.** The proposed project exceeds normal standards for maximum allowed floor area by more than 100%,

exceeds maximum allowed cut and fill depths over a large portion of the project area, extends well beyond the Least Restrictive Development Area (LRDA) and the main structure exceeds the maximum allowed height of 25 feet. In addition to these quantitative standards identified by staff, the project exceeds multiple qualitative standards and applicable guidelines. In addition the project does meet the required criteria to consider an exception to the maximum permitted floor area.

- **Nothing in the reports and record before the Town Council provide evidence to support the required findings for approving the several major exceptions being requested.** Granting exceptions from the HDS&G is a major responsibility of the Town Council. The findings for exceptions must be clearly stated for the record prior to approval. The Town Council bears the responsibility for determining the basis for the granting of any exceptions from the HDS&G. Prudent and defensible procedures require that such determinations NOT be left to staff as part of an "after-the-fact" process.
- **The Initial Study and Negative Declaration are inadequate. They do not address the potential for significant environmental impacts on the biology of the site, change to the topography and natural character of the site, or the visual impacts on surrounding residential areas.** These are major flaws in the documents. Only with proper field checks and evaluations can appropriate judgments and findings, including those related to CEQA, be made.
- **If it is the intention of the Town Council to allow larger homes on large parcels than is currently allowed under the HDS&G (i.e., "estate properties" as characterized in the staff documents), then the only acceptable way to proceed is to revisit the HDS&G to determine if they represent the current sentiments of the residents.** This should be done prior to any action to approve the DeSantis project as it is now proposed. Anything less would be a disservice to the very recent efforts the town council, planning commission, staff and community residents put into the HDS&G process.

The discussion below expands on the above key concerns.

Subdivision History and Lot Density.

We are especially concerned with the reliance by the applicant, staff and the Town Council on the existence of "two parcels" or the assumption that there is potential for a two (or more) parcel development as the primary justification to exempt the project from the hillside standards. First, there is nothing in the HDS&G that suggests such a basis for exemption. More importantly, any assumption that there is potential for more than one parcel, irrespective of size of property or "assessor's parcel numbers," represents a serious flaw in the development review process. The 13.7 acre property was actually restricted to one developable parcel as part of the Meslesa/Kennedy Estates Subdivision in 1978. The larger area of the De Santis property is required to off set the smaller lot size of the other 15 lots in the Kennedy Estates subdivision. This restriction is clearly explained in the January 12, 1988 report from Planning Director Lee Bowman (copy attached).

The Town's past determinations take precedence over the County Assessor's use of two parcel numbers. Thus the argument that two (or more) parcels could be separately improved is inaccurate. It is pointed out that a county assessor can add property lines to a map for assessment purposes that do not represent approved subdivision.

Thus, the De Santis property must be analyzed as one parcel for development purposes. Town planning staff has been advised of our view on this subdivision matter. Staff acknowledges that there have been no changes to the circumstances in terms of density since the January 12, 1988 report from Mr. Bowman.

We cannot find any statement by the Town staff that confirms the contention of Mr. De Santis that he does in fact have two separate legal parcels as parcels are defined in the Town's planning regulations. The only reference we can find of a staff position is the statement made by Bud Lortz found on the tape of town council hearing of the 2/5/06 as follows: "First off, there are two parcels that are shown on the assessors parcel map for this site and **the applicant has asserted** that there are two parcels that are there that could be developed in the future or a lot line adjustment could occur to create two more functional properties (emphasis added)." In this statement, Mr. Lortz is relying on Mr. De Santis's characterization of the legal status of the parcels. The **Town Council should demand a clear statement from staff** regarding the legal status of the parcels under the Town's planning regulations. This is a critical part of Mr. De Santis' application and complete clarity is needed.

This subdivision history is obviously critical to a balanced analysis of this project, and the Town Council may find it appropriate to postpone any further consideration of the project to allow staff time to evaluate this aspect in conjunction with the analysis of the proposal competed thus far.

If, at some point, the Council wishes to proceed with review of the merits of the project, we offer these following additional comments and concerns:

Lack of Project Conformity with the Basic Provisions and Objectives of the HDS&G

The overall approach to the proposed development does not conform to the objectives of the HDS&G for several reasons. While the comments that follow are specific, the basic conclusion, we believe leads to the need for a fundamental reconsideration of the proposal. It is difficult to correct one deficiency without seriously impacting other aspects of the plans, as is evident from the decision to reduce off-haul by retaining additional fill on the site instead of looking to redesign the project to reduce grading quantities.

1. Siting, size, scope of proposed development and requested exceptions to HDS&G. Although the property is relatively large, the most developable part is tightly constrained by steep slopes, tree covered areas and visual openness to the community. The large portion of the property that falls outside of the Least Restricted Developable Area (LRDA) illustrates this. The LRDA boundary is a critical provision of the HDS&G. Extensions beyond this boundary require

exceptions that must each be considered and only permitted based on meeting stringent criteria.

2. Building location. While the proposed house appears to occupy the most developable part of the property, the available building site is too small to accommodate the proposed development without extensive grading. **The fundamental problem is the house was designed without consideration of the obvious site constraints.** The proposed house, garage, parking area, turnaround, pool and pool house extend significantly beyond the LRDA boundary by .63 acres, and require grading over 3.46 acres of the site. In addition, the ridge, in the area of the house, would be lowered 21 feet so the house and driveway can meet. The HDSG permits a maximum cut of only 8 feet!
3. Driveway. Although the proposed driveway is almost entirely within the LRDA it requires considerable grading and extensive use of retaining walls. Given the steepness of the land and location of the chosen building site, the driveway is probably located about as well as it can be, but some adjustments should be considered to reduce the scope of needed grading. The planned 20-foot width is far greater than the 12-foot minimum width required for fire access. Typically, a 12 to 14 foot width is provided for such access, with periodic wider pullouts. The 20-foot width is not a required standard. A reduced driveway width would result in significantly less grading and would be more in keeping with the provisions of the HDS&G.

Further, the driveway turnaround provided at the house site on the plan has a radius of less than 30 feet, while the minimum radius required by the fire department is 36 feet. It appears some plan adjustments will be needed to properly accommodate the fire department turnaround standard. These adjustments could lead to more grading at the house site and/or changes to the house footprint.

4. Development Beyond LRDA. The proposed design results in major parts of the project encroaching well beyond the limits of the LRDA as is readily apparent on the attached figures C-1 and Ex6 showing areas of development and grading beyond the LRDA. Also, only the 30% slope break was used to define the LRDA limit line. The HDS&G identifies other factors that need to be considered in the determination of the LRDA, including vegetation, drainage courses, wildlife habitats and corridors, etc. Thus, it is possible that the encroachment is even greater if all of the HDS&G factors are properly accounted for. A different house and site plan might well comply with the LRDA. However, there has been reluctance by the applicant to consider such an approach.
5. Floor Area. Based on the floor area table provided with the current plans, the project has a total floor area of 14,591 sf., greatly exceeding the permitted floor area of 6,000 sf. A Condition of Approval of the Planned Development Ordinance would raise the permitted floor area to 15,500 square feet. Even with the "two lot argument" the proposed floor area would be well over the allowed maximum for two lots with no finding offered in terms of the appropriateness of such excess floor area.

The staff report prepared for the April 2007 Council review states the house size was reduced below 10,000 sf. as required by previous Council direction. *We note, however, the plan table states the current house design, with "attached guest house" and includable attached garage, totals 12,891 sf. Thus, the one continuous house structure appears to have a countable floor area that is well above 10,000 sf.*

The Town planning staff advised our consultants they understood the Council's 10,000 sf. direction to apply only to the "house" part of the residential structure. The fallacy of using that approach is that the scope of the largest building is then only limited by what floor area spaces are labeled and not by the overall size of the structure. The entire residential structure should be treated as a whole. In terms of visual impact and site disturbance, it is the building size and design that are the relevant issues and what need to be evaluated with regard to the provisions of the HDS&G.

6. Excessive Cut and Fill. Grading disturbance occurs over 3.46 acres of the site. Maximum allowed cut or fill depths are exceeded over the majority of the disturbed area. In fact, more than half of the 12 categories listed on Table 1 Maximum Graded Cuts and Fills on page 7 of the HDS&G are exceeded, some by 200%-300%. It is noteworthy that the Town's General Plan includes the following policy:

Emphasize preserving the natural landforms by minimizing grading. *Grading should be limited only to the area needed to place the main house on the property.*
Policy L.P. 8.4 (Emphasis added)

The HDS&G go further and include the following standards under Site Planning:

The following cut and fill criteria are intended to ensure that new construction retains the existing landform of the site and follows the natural contours.

Cuts and fills in excess of the following levels are considered excessive and contrary to the objectives of the Hillside Design Standards and Guidelines. Grade to the minimum amount necessary to accommodate buildings and to site structures consistent with slope contours. These are maximum numbers and may be reduced by the deciding body if the project does not meet other grading standards or is not consistent with the goals and objectives of the Hillside Development Standards and Guidelines.

Table 1
Maximum Graded Cuts and Fills

Site Element	Cut*	Fill*
House and attached garage	8'**	3'
Accessory Building*	4'	3'
Tennis Court*	4'	3'
Pool*	4'***	3'
Driveways*	4'	3'
Other (decks, yards)*	4'	3'

- * Combined depths of cut plus fill for development other than the main residence shall be limited to 6 feet.
- ** Excludes cellars.
- *** Excludes excavation for pool.

The tennis court, with fills up to 16 feet, greatly exceeds the maximum permitted fills of 3 feet. It may be possible to build a tennis court on the subject property in a more suitable location, but this has yet to be demonstrated. In addition, the need for the extensive water feature, especially where it requires an exception by being partially located outside of the LRDA, and on an oak and grass covered slope near a ridgeline, is questionable. How can a "compelling" reason for such a feature be stated?

We have similar concerns with the proposed pool and pool house. These features also partially extend beyond the LRDA and require cuts of at least 12 feet. The maximum permitted cut for either a pool or accessory structure is 4 feet.

It is important to recognize the HDS&G clearly state:

Due to topographic constraints, not every lot will be able to accommodate a pool or sport court. Swimming pools and sport courts are prohibited on slopes greater than 30 percent. (VI. Site Elements, E. Accessory buildings, pools and sport courts.)

7. Building Height. Beyond what has already been stated, the house extends in several places to a height of 30 feet, which exceeds the allowed height of 25 feet. While the HDS&G allow for the maximum height of a building's tallest elevation to be as much as 35 feet, that is only when measured from the lowest part of the building to the highest part, and only when appropriate to accommodate nestling a structure into a hillside (V. Architectural Design, E. Building Height). In this case, the grading is to change the landforms to accommodate the desire for a design not suited to a hillside setting and NOT to "nestle" the project into the site.
8. **Visual analysis and CEQA review.** There has been no technical demonstration in the review documents that the project will not be visible from the viewing platforms in the Town. No materials have been submitted to support this contention. In addition, current CEQA documentation asserts no significant impact on views from neighboring properties, but there are no visual analyses to support this conclusion. We believe there will be significant impact on views from at least properties on the hillside to the southwest and, with the fill for development of a part of the house, there may also be impacts on views from hillside properties to the north. The views to the tennis court, pool and pool house may be very significant, but this can only be properly judged with story poles in place and a clear understanding of impacts on trees and other site vegetation.

Planning staff has advised that the only view impacts of importance are in terms of the viewing platforms and, that due to topography, the subject site is not visible from any of these platforms. Yet, the HDS&G expressly call for a project to fit the hillside conditions of the property and the HDS&G illustrations clearly show how

this is to be achieved. Illustrations in the HDS&G also demonstrate that the visual change to the site is to be limited.

Not only does the CEQA analysis downplay any potential for visual impacts, the peer review architectural analysis completed for the Town in October of 2005 makes no mention of the design in terms of conformity to the site design or architectural criteria in the HDS&G. (Further, neither the CEQA nor architectural review documents comment on conformity with basic provisions and policies in the Town's general plan.) Story poles, staking and outlining of proposed development areas at the site are typical and standard procedures in many hillside communities like Los Gatos, in order to permit a full architectural (not to mention CEQA) analysis of such a project. This is the case even when basic Town standards are not proposed to be exceeded, but essential to full analysis and making of findings in support of exceptions such as those proposed in this case.

Additional comments on the CEQA documentation, including concerns over biological impacts and other inadequate evaluations, have been submitted separately.

Need for Clear Statements and Factual Evidence for Granting of Requested Exceptions to the HDS&G

The HDS&G states the following,

Exceptions from the standards in this document may only be granted after carefully considering the constraints on the site. Any deviation from the standards contained in this document **shall include the rationale and evidence to support the deviation.** The burden of proof shall be on the applicant to show that there are compelling reasons for granting the requested deviations. (Emphasis added).

We find nothing in the material that is before the Town Council that supports finding "compelling reasons" for granting the four requested deviations listed in the staff reports (i.e., floor area, height, LRDA limit and grading). Nowhere have compelling reasons been clearly articulated.

The sole reason Mr. De Santis has given to justify the excess floor area is his contention he could develop the property as two lots with two projects of up 6,400 sf. each, for a total floor area up to 12,800 sf. Such reasoning is not "compelling," and if it is the only reason for allowing the proposed development, there is no basis for it due to the Town's restrictions imposed in conjunction with the Kennedy Estates subdivision. With respect to exceeding the maximum allowed floor area the HDS&G sets out 9 criteria, all of which must be met before exceptions to floor area can even be considered. It has not been demonstrated that all 9 criteria are met.

It has also been suggested an important consideration is the "exceptional" nature of the property. In our view the exceptional nature of the property is the open, natural

hillside condition, much of which would be lost with the scope of grading and other proposed project improvements.

If, despite the subdivision history, the Town Council decides to simply use the large parcel size to support the requested exceptions, the Council then in effect is altering the maximum allowable floor area and other HDS&G provisions. Essentially, the Council would be saying that if a property owner has a parcel that is considerably larger than the other similarly situated parcels, development would not be controlled by the table incorporated into the HDS&G, but one could build a very large estate project, **without regard to any of the HDSG standard's or applicable guidelines**. This approach is a fundamental departure from the HDS&G and would be setting a new precedent that is inconsistent with the community effort made in adopting the HDG&S. Such an action would impact future plans for other vacant parcels, expansion plans for existing development on larger parcels or encourage combination of properties to support larger development. This was not what was intended by those who supported the development and adoption of the HDS&G. If there is a desire to revise the provisions of the HDS&G, the revisions should be processed in an appropriate and formal manner, not in an ad hoc fashion to accommodate a single development.

Planning staff has advised that the exception provisions in the HDS&G and the proposed PD ordinance allow for exceeding the requirements of the HDS&G and for "Estate" projects within the town's hillsides. At the same time, the presentations to the Planning Commission and Council by staff have also advised that the PD does not relieve the applicant from conformity to the provisions of the HDG&S including the demonstration of findings needed in support of any exceptions. The arguments offered to support "Estate" projects, particularly the De Santis project, don't appear to have any basis in the HDS&G."

However, were the project intensity limited to the maximum floor area permitted, did not exceed grading standards and stayed within the LRDA it might be possible for some arguments to be made to support a reasonable increase in floor area, but as the Assistant Director of Community Development stated at the April 2, 2007 Town Council Hearing this would likely take a significant amount of time.

Summary and Conclusion

Based on the information in this letter, we ask that the proposed development be denied. The reasons for denial are abundant and include:

1. It is clear that the two assessors parcels form but a single legal parcel, not two as contended, and that therefore all arguments for allowing an overly large home that are based on the existence of two parcels are not valid.
2. It is clear that the 1978 Meslesa/Kennedy Estates subdivision required that the subject property be retained as a single parcel in exchange for allowing the balance of possible lots in the rest of the subdivision.

Attachments:

Letter from Lee Quintana, May 1, 2008

e-mail from Suzanne Davis to Lee Quintana, August 10, 2007

Council Agenda Report Jan. 12, 1988, for Jan. 19, 1988 Council Meeting

May 1, 2008

Town of Los Gatos
Honorable Mayor Barbara Spector
110 E. Main Street
Los Gatos, California 95030

Subject: Planned Development Rezoning Application PD-06-03, ND-07-04
 APN 573-29-007 & 008

I meet with Tuan Au of the Santa Clara County Assessors Office this morning discuss the two APN numbers for the DeSantis parcel (APN573-29-007 & 008). He informed me Lot 16 *is one legal parcel with two APN numbers* assigned for tax purposes in 1980 at the request of the State Board of Equalization. The line that divides the parcel is a Tax Rate Area Line not a parcel line. Mr. Au showed me the State Board of Equalization Map. While the Tax Rate Area Line dissects the DeSantis property it continues on to east along the centerline of Kennedy Road.

Also see the attached e-mail from Susan Davis to me dated 8/10/07.

Sincerely,

A handwritten signature in black ink, appearing to read 'Lee Quintana', with a stylized, flowing script.

Lee Quintana

From: "Suzanne Davis" <SDavis@losgatosca.gov>
Subject: **Re: Kennedy and Forrester Roads**
Date: August 10, 2007 4:58:00 PM PDT
To: "Lee Quintana" <leeandpaul@earthlink.net>

Lee,

The MND has not been revised, we are still working on the grading plan. The project will probably not go to Council before October.

The project site is one parcel although there are two APNs. It has the potential to be split into two lots. If a small amount of land is added, it may be possible to get three lots.

I don't have a plan with just topo and trees on it.

Suzanne

>>> Lee Quintana <leeandpaul@earthlink.net> 08/10/2007 4:13 PM >>>
Please update me on the status of the DeSantis project, with respect to circulation of the environmental document and anticipated hearing date.

Two questions:

Is this one or two legal parcels? Some speakers seem to assume this is one parcel, others indicated that there are two existing parcels. The plan set has a sheet showing APN numbers for surrounding property and this property appears to have two parcel numbers but does not indicate a parcel line. Is it possible that this is really one legal parcel with two APN's for tax or some other purpose?

Can I obtain plan set sheet showing only existing topo and trees?

Thanks Lee

TOWN OF LOS GATOS
Council Agenda Report

DATE: January 12, 1988

TO: MAYOR AND TOWN COUNCIL

FROM: DEBORAH SWARTFAGER, TOWN MANAGER *DS*

SUBJECT: Zone Change for the Maslesa Property Located on Kennedy Road
at Forrester Road (APN: 537-29-007 and 008)

RECOMMENDATION: Refer this issue to the Planning Commission for recommendation.

EXHIBIT: 1. Zoning Map that identifies the Maslesa property
2. Zoning Ordinance Section 4.24.045(6)

DISCUSSION:

On January 4, 1988, the Town Council introduced an Ordinance regarding the updated Zoning Maps for the Town. While this matter was being discussed, it was noted that the Maslesa property, which was part of the Kennedy Estates Subdivision, cannot be further subdivided pursuant to Zoning Ordinance Section 4.24.045(6) (Exhibit 2) and, therefore, should be rezoned so it is obvious that any future subdivision of the property is not possible. This issue should be referred to the Planning Commission for recommendation.

PREPARED BY: LEE E. BOWMAN *LEB*
Planning Director

:de

GP01:TC MASLESA

cc: Regular Distribution

Betty Maslesa, 222 Hollywood Ave., L. A. 95030

Reviewed by:

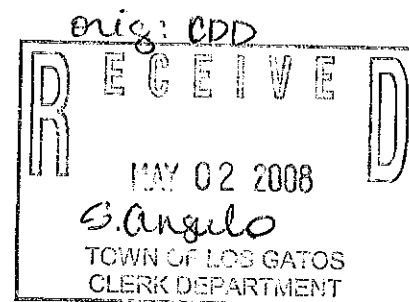
TOWN COUNCIL ACTION DIRECTED TO:

ACTION OF COUNCIL:

COMMENTS:

May 1, 2008

Town of Los Gatos
Mayor Barbara Spector
110 E. Main Street
Los Gatos, California 95030



To: Mayor Barbara Spector and Members of the Town Council

Subject: Letter dated April 28, 2008 with attached comments on Mitigated Negative Declaration for PD-06-03.

While re-reading the comments I submitted on the Mitigated Negative Declaration attached to my letter dated April 28, 2008, I noticed a number of typos and formatting errors. While embarrassing most did not affect meaning. However, two did change my meaning 180 degrees.

Please attach this as an error sheet to my submitted comments to correct those two sentences. The corrections are shown in **bold**

On page 2 the second bullet should read:

Project description is incomplete, does **not** disclose the full scope of the project's impacts and is continuing to evolve

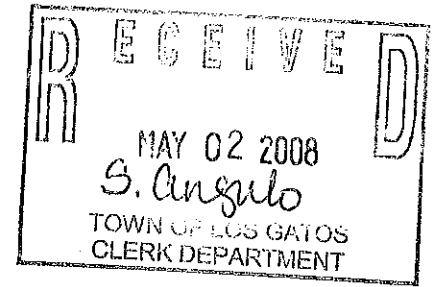
On page 4 the second bullet from the bottom should read:

Section 29.40.260 allows for a minimum lot size of 40,000 sf, but this does **not** increase the maximum density allowed.

Thank You,


Lee Quintana

May 1, 2008



The Honorable Mayor Barbara Spector
And Town Council Members
110 E Main St
Los Gatos Ca 95030

Dear Madame Mayor and Council Members Wasserman, McNütt,
Prizynski, and Glickman

After reading the letter outlining the DeSantis property written by Mr. DeSantis on 4-20-08, I felt obliged to the community to clarify and correct many of the issues raised concerning the planned development on Forrester and Kennedy Roads, Tract #6514. It is also my request that this letter be included in the public record as a rebuttal to the incorrect and incomplete data offered by Mr. DeSantis in his letter dated 40-20-08.

Many CEQA issues were brought up in the last council meeting. After careful examination of the public record, I found no evidence of these issues being considered or addressed. Contrary to Mr. DeSantis' assurance the third party independent environmental consultant did NOT find it exhaustive or complete. In a letter dated 2/12/08 the third party consultant Geomatrix states, "Given the new proposed grading, the results from the old proposed grading is no longer valid. Analysis on stability needs to be current". Geomatrix also states in the same letter "We have continued concerns about the slope stability analysis and slope with respect to grade and grading" CEQA requires data to be current and follow any and all changes to a proposed development.

CEQA also requires documentation concerning potential visual impacts on views from neighboring properties. No visual analysis such as story poles were ever used.

The General Plan outlines standards for intensity of developments, HDSG for grading and this project does not meet those standards with CAP.

Another third party review by Terra search on page 9 of 62 states "Site is generally unchanged" the idea of returning natural contours is NOT applicable. CEQA also offers support with regard to this statement from Terra search.

With regard to the house size, we applaud the (10%) reduction in size, but the continued concern of community has never been about the house size. The size and the scope of the project built in the hillsides is the key concern. Almost four acres of grading and 8,000 cubic yards of off haul is a major concern, with no compliance to the town GP or (HSDG.)

The 100% neighbor support figure is flawed and inaccurate. With regard to the neighborhood support issue the public record contains letters stating concerns of grading, noise, and visibility issues directly affecting neighbors. Gregg Westerbeck, who is an immediate neighbor as well as a vocal opponent to this current design has spoken out against the project, as well as written letters for the public file. These letters are not new to the file, yet Mr. DeSantis continues to talk about the neighborhood support. Other neighbors have recently moved into the area, without receiving notice of the proposed development.

On the issue of sustainability, when disturbing 3.46 acres of land and off hauling 8,000 cubic yards of fill, any LEED standard is canceled out by the overwhelming scope and size of this project (i.e.- grading volume for this one project is equal to seven (7) average size homes.) To call this project environmentally sensitive as Mr De Santis has stated is disingenuous. Planning an architecturally green project and Green building techniques are one thing. This proposed development is not considered "green."

With regard to the land use closure concept, the following points need to be addressed:

This is one parcel of land, not two. Only one house can only be built, two was never an option. There can be no PD for land closure because this area was subdivided already and a PD cannot apply to this particular parcel number. Verification of this is available at the County of Santa Clara office of the Recorder. Book F309, page 689. Dated May 5, 1980.

The overall square footage of the entire development was never in line with the GP or HSDG nor did the project ever comply with Town land use regulations. The developer never achieved conformance with town planning documents.

With regard to changes of the proposed project all figures effecting the hillside have gotten larger, including the area of disturbance a top this hillside parcel of 3.46 acres vs. 2.6 acres. No reduction in the total number of square feet with regard to grading outside the LRDA. Tree removal, which is now 59 vs. the original 35.

It is imperative that council and the town planning staff understand that the intent of our HSDG was to protect the hillsides from over development. Careful consideration went into this document, it is my hope that it be given the weight it deserves. Sending this project back to the drawing board, or building upon a non hillside property.

Thank you for your time,

Christine Currie
117 Broadway
Los Gatos CA 95030