



MEETING DATE: 5/05/08

ITEM NO. 10

COUNCIL AGENDA REPORT

DATE: April 29, 2008

TO: MAYOR AND TOWN COUNCIL

FROM: GREG LARSON, TOWN MANAGER

A handwritten signature in cursive script, appearing to read "Greg Larson".

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.

RECOMMENDATION:

1. Open and hold the public hearing and receive public testimony.
2. Close the public hearing.
3. Council may take either of the following actions:
 - a. Approve the PD application as proposed or with modified conditions; or
 - b. Deny the PD application.

If the Council decides to approve the project, the following actions are recommended:

1. Make the Negative Declaration (**motion required**);
2. Adopt the Mitigation Monitoring Program (Attachment 27) (**motion required**);
3. Make the required findings (Attachment 28) and approve subject to the conditions included in the Planned Development Ordinance (Attachment 29) (**motion required**);
4. Direct the Clerk Administrator to read the title of the ordinance (no motion required);
5. Move to waive the reading of the ordinance (**motion required**);
6. Introduce the ordinance to effectuate Planned Development PD-04-3 (**motion required**).

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

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

Revised: 4/29/08 3:47 PM

Reformatted: 5/30/02

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MAYOR AND TOWN COUNCIL

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

May 5, 2008

BACKGROUND

The Council considered this project on February 5 and April 2, 2007. On April 2, 2007 Council continued the matter to allow the environmental report to be reviewed and provided additional direction to the applicant on plan revisions as discussed below. Staff and the applicant have refined the proposed project to address the concerns raised by Council and the Mitigated Negative Declaration was revised and redistributed for public review.

DISCUSSION:

The applicant has submitted revised plans in response to the Council's direction from the two previous meetings. The three main issues that Council requested the applicant to address are as follows (staff comments are in italics):

1. Reduce the house size to less than 10,000 square feet.

The plans reviewed in April 2007 reduced the house size from 11,775 to 9,965 square feet. Under the current plan the applicant has agreed to further reduce the house size to 8,650 square feet, exclusive of cellar, guest quarters, and garage. Condition #4 of the PD Ordinance limits the square footage of the house.

2. Reduce the encroachment outside the Least Restrictive Development Area (LRDA).

The April 2007 plan reduced the amount of development located outside the LRDA from 17,000 to 15,500 square feet. The current plan has not reduced the amount of encroachment outside the LRDA. The applicant's letter (Attachment 29) describes the challenges and impacts associated with reducing the encroachment outside the LRDA. Staff estimates the encroachment to be about two percent of the total project for the 13.71 acre site.

3. Reduce the amount of export to 8,000 cubic yards or less.

The grading plan has been further refined since the April 2, 2007 meeting reducing the amount of export from 7,900 to 7,560 cubic yards. The export was decreased by reducing the cut for the main house and increasing the amount of fill being placed on the site. The fill areas are around and below the tennis court, between the pond and the house, on the upper knoll above the art studio and an area behind the house. The modified grading was evaluated by the project geotechnical consultant and peer reviewed by the Town's consultant. The conclusion of the expanded geotechnical investigation is the proposed fill can be distributed as proposed. The work will be done under the supervision of the project geotechnical consultant and a full time engineering inspector.

May 5, 2008

Hillside Development Standards & Guidelines

In order to approve the PD, the Council must grant the four exceptions (listed below) to the Hillside Development Standards & Guidelines (HDS&G). The HDS&G contains the following criteria for granting an exception:

“Exceptions from the standards in this document may only be granted after carefully considering the constraints of 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 deviation.”

Discussion of each exception follows.

1. The height of the main residence exceeds 25 feet:

On the front elevation, an approximately 25 foot long segment of the highest roof ridge would exceed 25 feet, the highest peak being 30 feet. On the rear elevation two projecting elements exceed 25 feet, one is at 26 feet 10 inches and the other is 25 feet nine and a half inches. The areas that exceed 25 feet are indicated on the elevations. The reason for the requested height exceptions is to achieve a balanced design and architectural consistency.

2. Development outside the Least Restrictive Development Area (LRDA):

Portions of the tennis court, motor court, pool and cabana are extending onto slopes greater than 30%. In reviewing the site plan, staff estimates that the amount of development outside the LRDA is about 2% of the project site.

3. Exceeding the allowable floor area:

In addition to the general criteria contained above, the HDS&G contains additional criteria for allowing an exception to the maximum allowed floor area (pages 29 and 30 of the HDS&G). The criteria are being met as follows:

- a. *The development will not be visible from any of the established viewing platforms.*
- b. *There will be no significant impacts on protected trees, wildlife habitat or movement corridors as established by the environmental review (a Mitigated Negative Declaration is recommended). As the project is refined during the A&S process, any modifications will be required to be consistent with the adopted MND.*

May 5, 2008

- c. *Grading necessary to accommodate the building area that exceeds the allowable floor area will be minimized. Export has been reduced from 16,000 cubic yards to 7,560 cubic yards. The grading plan will be further refined through the A&S process and will be held to the parameters established through conditions of approval included in the PD Ordinance.*
- d. *All standards and applicable guidelines are being met other than the requested four exceptions discussed above.*
- e. *The margin for compliance to Title 24 Energy Efficiency Standards will exceed 10.0 (estimated to be 30.0).*
- f. *The house will be pre-wired for future photovoltaic (PV) installation.*
- g. *A minimum of 25% of hardscape material will be permeable.*
- h. *A significant cellar element is included in the design.*
- i. *There will not be a significant visual impact to neighboring properties.*

In addition to the above criteria, the house will meet certification requirements as a green building using the GreenPoint Rated Standards.

4. Cuts and fills exceed maximum allowed depths:

The maximum cut depths established by the HDS&G are exceeded in some areas of the driveway, house and rear yard area. The cuts are a result of lowering the house into the site to reduce its profile and limit its visibility to neighbors. The driveway leading up to the motor court is designed to minimize grading impacts. The grading associated with the installation of the driveway is necessary to gain access to the main building site.

Fill depths are exceeded for the tennis court and the fill area below it, the motor court and upper knoll. The fill areas around the tennis court will help blend it into the site and lowers the height of retaining walls on the south side. The fill areas on the upper knoll and around the house will further reduce the amount of export from the site. The following chart summarizes the worst-case cut and fill depths that are proposed for various project components.

Grading Summary				
Area	Cut Depth (feet)		Fill Depth (feet)	
	Allowed	Proposed	Allowed	Proposed
House	8	23	3	2
Driveway	4	12	3	0
Motor court	4	5	3	5
Tennis court	4	4	3	16
Cabana	4	12	3	4
Pool	4	6	3	5

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MAYOR AND TOWN COUNCIL

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

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Green Building

The applicant has committed to building a green project. Staff used the GreenPoint Rated Standards to determine that the project can meet certification requirements. Condition #3 requires the project to be certified as green through evaluation using the GreenPoint checklist (required to be completed by a Certified Green Building Professional). The applicant completed a preliminary checklist and far exceeded the minimum number of points needed to achieve certification. A minimum of 50 points is required and the applicant scored 280.

Number of Lots

There has been some question as to the number of lots that comprise the applicant's property. The applicant believes that the property is comprised of two parcels. While there are two County Assessor parcels and corresponding numbers, staff has been unable to confirm that there are two separate lots. The applicant also points out that even if the property is a single parcel, it could be subdivided into two lots. Preliminary slope density calculations support this assertion, and staff believes that there is subdivision potential based on background research of the Maslesa subdivision files. Slope density calculations for the original subdivision that created Forrester Road and the applicant's property indicated a development potential of 18 lots. Ultimately 16 lots were approved, leaving the possibility for future subdivision since the maximum density was not achieved under the 1978 approval.

Environmental Review

The Mitigated Negative Declaration was revised to reflect current project conditions and data. The document was re-circulated for a 20-day public review on April 7, 2008. The public comment period ended on April 28, 2008. Revisions were primarily made in the Biological Resources and Geology and Soils sections. Since the environmental analysis was completed prior to the applicant deciding to further reduce the size of the house, the floor area numbers are actually lower than indicated in the Mitigated Negative Declaration. Three mitigation measures are recommended as follows:

- All recommendations of the Consulting Arborist shall be followed for preservation of existing trees and replacement of trees to be removed.
- A Tree Replacement and Enhancement Plan will be required to replace trees being removed and to re-vegetate graded areas.
- All recommendations of the geotechnical consultant will be implemented and necessary inspections made during the course of grading and construction.

Two letters were submitted with comments on the Mitigated Negative Declaration (Attachments 32 and 35). A response to these comments is being prepared by staff and the Town's Environmental Consultant and will be sent to the Council as an Addendum.

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MAYOR AND TOWN COUNCIL

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

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CONCLUSION:

The Town Code establishes a two-step process for PD projects; PD approval and a subsequent A&S approval. PD applications are required to provide conceptual development plans only. Detailed plans are not required as part of the PD process, although the applicant has presented well-developed plans to demonstrate the quality of the project being proposed. The Planning Commission did not offer any recommendations for changes to the architectural design of the house or accessory buildings, although several made positive comments about the proposed architecture. If the PD is approved, a detailed Architecture and Site application will be required for the project.

FISCAL IMPACT: None

Attachments:

- 1.-25. Previously received
26. Mitigated Negative Declaration (*previously received under separate cover*)
27. Mitigation Monitoring Plan (one page)
28. Required Findings (one page)
29. Planned Development Ordinance (16 pages), Rezoning Exhibit and Conceptual Development Plans (19 sheets)
30. Applicant's letter (four pages), received May 1, 2008
31. Email correspondence from Scott Cooley (one page), received April 22, 2008
32. Letter from David Crites (one page), received April 22, 2008
33. Revised grading plan & sections (two sheets), received March 14, 2008
34. Letter from Lee Quintana (two pages), received March 13, 2008
35. Letter from Lee Quintana (11 pages), received April 28, 2008
36. February 5, 2007 Town Council Minutes
37. April 2, 2007 Town Council Minutes

Distribution:

Rob & Ranae DeSantis, 200 Forrester Road, Los Gatos, CA 95032

Richard Landry, Landry Design Group, 11333 Iowa Avenue, Los Angeles, CA 90025

Andy Faber, Berliner Cohen, 10 Almaden Boulevard, Suite 1100, San Jose, CA 95113

Norm Matteoni, 848 The Alameda, San Jose, CA 95126

BNL:SD

<u>Mitigation</u>	<u>Monitoring Action</u>	<u>Responsibility</u>	<u>Timing</u>
<i>BIOLOGICAL RESOURCES</i>			
The applicant shall implement all recommendations made by the Town's consulting arborist, Arbor Resources, in reports dated February 10 and July 27, 2006 and October 3, 2007.	Required as a condition of approval.	Director of Community Development	Prior to and during construction
The applicant shall submit a Tree Replacement and Enhancement Plan prepared by a qualified restoration ecologist. The plan shall be peer reviewed by a qualified restoration ecologist selected by the Town and implemented by the applicant prior to final inspection for the main residence. Replacement plantings shall include a range of tree sizes, appropriate irrigation and periodic monitoring to ensure successful revegetation. Specific guidelines for replanting locations and percent tree cover shall be included in the plan. Candidate planting locations shall include graded portions of the site to provide long-term slope stabilization as well as habitat replacement.	Required as a condition of approval.	Directors of Community Development & Parks & Public Works	Prior to final inspection for residence.
<i>GEOLOGIC HAZARDS</i>			
The project design shall incorporate all applicable recommendations in UPP Geotechnology, Inc.'s geotechnical investigation (March 17, 2006 and March 13, 2007) for the proposed project in order to minimize the potential impacts resulting from regional seismic activity and soil engineering constraints.	Required as a condition of approval.	Director of Parks & Public Works	Prior to building plan check and during construction.

TOWN COUNCIL MEETING – MAY 5, 2008
REQUIRED FINDINGS FOR:

Kennedy Road @ Forrester Road

Planned Development Application PD-06-03

Negative Declaration ND-07-04

Requesting approval of a Planned Development to construct a new residence, pool, tennis court and accessory structures on property zoned HR-2½. No significant environmental impacts have been identified and a Mitigated Negative Declaration is recommended. APNS 537-29-007 & 008.

PROPERTY OWNER: Acorn Trust

APPLICANT: Rob DeSantis

Required consistency with the Town's General Plan:

- That the proposed Zone Change is internally consistent with the General Plan and its Elements.

Consistency with the Hillside Specific Plan:

- That the proposed Zone Change is consistent with the Hillside Specific Plan.

NADEV\FINDINGS\KennedyAcorn-TC.wpd

**ORDINANCE OF THE TOWN OF LOS GATOS
AMENDING THE TOWN CODE EFFECTING A ZONE CHANGE
FROM HR-2½ TO HR-2½:PD FOR PROPERTY LOCATED ON KENNEDY ROAD,
JUST EAST OF FORRESTER ROAD (APNs 537-29-007 & 008)**

THE TOWN COUNCIL OF THE TOWN OF LOS GATOS DOES ORDAIN AS
FOLLOWS:

SECTION I

The Town Code of the Town of Los Gatos is hereby amended to change the zoning on property at Kennedy Road, east of Forrester Road (Santa Clara County Assessor Parcel Numbers 537-29-007 & 008) as shown on the map attached hereto as Exhibit A, and is part of this Ordinance, from HR-2½ (Hillside Residential, 2½-10 Acres per Dwelling Unit) to HR-2½:PD (Hillside Residential, 2½-10 Acres per Dwelling Unit, Planned Development).

SECTION II

The PD (Planned Development Overlay) zone established by this Ordinance authorizes the following construction and use of improvements:

1. Construction of a new single-family dwelling, guest quarters and attached garage.
2. Accessory structures inclusive of art studio, pool cabana, tennis pavilion and gatehouse.
3. Driveway, pool, tennis court, and landscaping as shown and required on the Official Development Plan.
4. Water well for irrigation, subject to issuance of a permit from Santa Clara Valley Water District.
5. Uses permitted are those specified in the HR (Hillside Residential) zone by Sections 29.40.235 (Permitted Uses) and 29.20.185 (Conditional Uses) of the Zoning Ordinance, as those sections exist at the time of the adoption of this Ordinance, or as they may be amended in the future. However, no use listed in Section 29.20.185 is allowed unless specifically authorized by this Ordinance, or by a Conditional Use Permit.

SECTION III

COMPLIANCE WITH OTHER DEVELOPMENT STANDARDS

All provisions of the Town Code apply, except when the Official Development Plan specifically shows otherwise.

SECTION IV

A recorded parcel merger and Architecture and Site Approval are required before construction work for the dwelling units is performed, whether or not a permit is required for the work and before any permit for construction is issued. Construction permits shall only be in a manner complying with Section 29.80.130 of the Town Code.

SECTION V

The attached Exhibit A (Map), and Exhibit B (Official Development Plans), are part of the Official Development Plan. The following conditions must be complied with before issuance of any grading, or construction permits:

TO THE SATISFACTION OF THE DIRECTOR OF COMMUNITY DEVELOPMENT:

Planning Division

1. ARCHITECTURE AND SITE APPROVAL REQUIRED. A separate Architecture and Site application and approval is required for the new single family home and accessory structures. The Development Review Committee may be the deciding body for the Architecture and Site application provided it is in compliance with the Official Development Plans and the provisions of this Planned Development Ordinance.
2. OFFICIAL DEVELOPMENT PLANS. The Official Development Plans provided are conceptual in nature. Final building footprints and building designs shall be determined during the architecture and site approval process.
3. GREEN BUILDING. The house shall be designed to achieve compliance with GreenPoint Rated Standards for green building certification. The GreenPoint checklist shall be completed by a Certified Green Building Professional.

4. PROJECT FLOOR AREA. The house size shall not exceed 8,650 square feet and the total floor area for the overall project shall not exceed 14,700 square feet. The Director of Community Development may approve an additional accessory structure not exceeding 600 square feet for storage and maintenance equipment. No other enclosed structures other than those shown on the Official Development Plans shall be added to the site. Adjustments may be made to the size of structures through the Architecture & Site process, provided that the total allowable floor area is not exceeded.
5. ORNAMENTAL LANDSCAPING. All formal landscaping shall be confined to within 30 feet of the perimeter of the area formed by the main house, pool and cabana, and within 30 feet of other structures on the property, inclusive of the water feature. Any planting beyond these areas shall be native vegetation that is drought and fire resistant, and planted in natural clusters.
6. LANDSCAPE PLAN. A landscape plan shall be reviewed and approved with the Architecture & Site application. The landscape plan shall be reviewed to evaluate the need for additional landscape screening south of the pool and cabana to minimize long-term changes in views from existing residences to the south.
7. FENCING. Fence locations shall be reviewed and approved during the Architecture & Site review. Fencing shall be restricted to open design, as provided for in the Hillside Development Standards & Guidelines, except as necessary to provide security or enclose ornamental landscaped areas as described in condition 5 to prevent wildlife grazing. This condition does not apply to fencing along the common property line with 200 Forrester Rd.
8. MAIN RESIDENCE HEIGHT. The height of the main residence may exceed 25 feet in the limited locations shown on the elevations included with the Official Development Plans.
9. ACCESSORY STRUCTURE HEIGHT. The height of the art studio shall not exceed 21 feet (excluding the 2'9" cupola). All other accessory structures shall not exceed 15 feet.
10. SETBACKS. The minimum building setbacks are those specified by the HR zoning district.
11. HORSES. Horses are allowed on the property in compliance with Town Code provisions for horses. The art studio building may be used as an animal barn.

12. **EXTERIOR LIGHTING.** All exterior lighting shall be reviewed and approved as part of the Architecture & Site review(s) and shall comply with the Hillside Development Standards & Guidelines. Shielded lighting shall be shielded down directed and shall not reflect or encroach onto neighboring properties. Shielded flood lights on motion detectors may be installed only if it can be demonstrated that they are clearly needed for safety.
13. **COLOR REFLECTIVITY DEED RESTRICTION.** Prior to the issuance of a building permit, a deed restriction shall be recorded by the applicant with the Santa Clara County Recorder's Office that states that all exterior paint colors shall not exceed a light reflectivity value of 30, shall blend with the natural color of the vegetation that surrounds the site, and shall be maintained in conformance with the Town's Hillside Development Standards as may be amended by the Town.
14. **TREE REMOVAL PERMIT.** A Tree Removal Permit shall be obtained for the removal of any ordinance protected tree prior to the issuance of a Building, Grading or Encroachment Permit.
15. **TREE PROTECTION.** Tree protection fencing shall be placed at the dripline of existing trees to be saved in the area of construction. Fencing shall be four feet high chain link attached to steel poles driven two feet into the ground when at the dripline of the tree. If the fence has to be within eight feet of the trunk of the tree a fence base may be used, as in a typical chain link fence that is rented. The fencing must be inspected and approved by the Parks Superintendent and must be installed prior to issuance of a grading and/or building permit.
16. **TREE PRESERVATION MEASURES.** Tree preservation measures shall be shown on the construction management plan.
17. ****BIOLOGICAL RESOURCES MITIGATION MEASURE-1.** The project applicant shall implement all recommendations made by the Town's consulting arborist, Arbor Resources, in reports dated February 10 and July 27, 2006 and October 3, 2007, as well as any updates.
18. ****BIOLOGICAL RESOURCES MITIGATION MEASURE-2.** Replacement trees shall be planted for trees that are removed at a three to one ratio. The applicant shall submit a Tree Replacement and Enhancement Plan prepared by a qualified restoration ecologist. The plan

shall be peer reviewed by a restoration ecologist selected by the Town and shall be implemented by the applicant prior to final inspection for the main residence. Replacement plantings shall include a range of tree sizes, appropriate irrigation and periodic monitoring to ensure successful re-vegetation. Specific guidelines for replanting locations and percent tree cover shall be provided by the plan. Candidate locations shall include graded portions of the project site to provide long term slope stabilization as well as habitat replacement.

19. OPEN SPACE/CONSERVATION EASEMENT. An open space/conservation easement shall be dedicated over the property. The easement may allow uses approved under the Planned Development, including all improvements shown on the Official Development Plans, native pathways and landscaping, trails to satisfy Hillside Specific Plan requirements, and any other improvement determined to be appropriate by the Director of Community Development. The specific uses and improvements that will be allowed shall be determined through the development of the easement document which shall be recorded prior to issuance of an occupancy permit.

Building Division

20. PERMITS REQUIRED: A building permit shall be required for the construction of the new single family residence, accessory structures, site retaining walls, tennis court, pond and pool.
21. CONDITIONS OF APPROVAL: The Conditions of Approval must be blue-lined in full on the cover sheet of the construction plans.
22. ADDRESS/HOUSE NUMBER: Submit requests for new address/house number to the Building Division prior to the building permit application process.
23. SOILS REPORT: A soils report, prepared to the satisfaction of the Building Official, containing retaining wall and pad foundation design recommendations, shall be submitted with the building permit application. This report shall be prepared by a licensed civil engineer specializing in soils mechanics. ALTERNATE: Design the foundation for an allowable soils 1,000 psf design pressure (Uniform Building Code Volume 2-Section 1805).

24. FOUNDATION INSPECTIONS: A pad certificate prepared by a licensed civil engineer or land surveyor shall be submitted to the project building inspector at foundation inspection. This certificate shall certify compliance with the recommendations as specified in the soils report; and, the on-site retaining wall locations and elevations are prepared according to approved plans. Horizontal and vertical controls shall be set and certified by a licensed surveyor or registered civil engineer for the following items:
- a. On-site retaining wall location
 - b. Finish floor elevation
 - c. Foundation corner locations
25. RESIDENTIAL TOWN ACCESSIBILITY STANDARDS. The residences shall be designed with adaptability features for single-family residences per Town Resolution 1994-61.
- a. Wooden backing (no smaller than 2-inches by eight-inches) shall be provided in all bathroom walls at water closets, showers and bathtub, located at 34-inches from the floor to the center of the backing, suitable for installation of grab bars.
 - b. All passage doors shall have at least 32-inches wide on the accessible floor.
 - c. Primary entrance shall have a 36-inch wide door including a five foot by five foot level landing no more than one-inch out of plane with the immediate interior floor level, with an 18-inch clearance at interior strike edge.
 - d. Door buzzer, bell or chime shall be hard wired.
26. SPECIAL INSPECTIONS: When a special inspection is required by UBC Section 1701, the architect or engineer of record shall prepare an inspection program that shall be submitted to the Building Official for approval prior to issuance of the building permit. The Town Special Inspection form must be completely filled-out, signed by all requested parties and be blue-lined on the construction plans. Special Inspection forms are available from the Building Division Service Counter or online at www.losgatosca.gov.
27. SPECIAL ENVIRONMENTAL DESIGN FEATURES. The following features shall be incorporated into the project:
- a. A minimum of 25% of the hardscape shall be of pervious material(s).
 - b. Title 24 shall be exceeded by at least 30%.

- c. Solar power generation shall be included.
 - d. Irrigation shall be provided by an on-site well.
 - e. The possibility of geothermal climate control shall be explored.
28. TITLE 24 ENERGY COMPLIANCE. California Title 24 Energy Compliance forms CR- IR and MF-IR shall be printed on the construction plans.
29. HAZARDOUS FIRE ZONE. This project requires Class A roofing assembly.
30. TOWN FIREPLACE STANDARDS. New fireplaces shall be EPA Phase II approved appliances per Town Ordinance 1905. Tree limbs within 10 feet of chimneys shall be cut.
31. PLANS: The construction plans shall be prepared under the direct supervision of a licensed architect or engineer. (Business and Professionals Code Section 5538).
32. NON-POINT SOURCE POLLUTION STANDARDS. The Town standard Santa Clara Valley Non-point Source Pollution Control Program specification sheet shall be part of plan submittal. The specification sheet is available at the Building Division service counter.
33. APPROVALS REQUIRED: The project requires the following agencies approval before issuing a building permit:
- a. Community Development: Suzanne Davis at 354-6875
 - b. Engineering Department: Fletcher Parsons at 395-3460
 - c. Santa Clara County Fire Department: (408) 378-4010
 - d. West Valley Sanitation District: (408) 378-2407
 - e. Local School District: Contact the Building Service Counter for the appropriate school district and to obtain the school form.

TO THE SATISFACTION OF THE DIRECTOR OF PARKS & PUBLIC WORKS:

Engineering Division

34. **GEOLOGY AND SOILS MITIGATION MEASURE-1. The project design shall incorporate all applicable recommendations in UPP Geotechnology, Inc.'s geotechnical investigation (March 17, 2006 and March 13, 2008) for the proposed project in order to minimize the potential impacts resulting from regional seismic activity and soil engineering constraints.

35. LIMITS OF DISTURBANCE. The limits of ground surface disturbance, including disturbance required for site grading, utility construction, retaining wall construction, or construction of structures shall be restricted to the areas shown on the PD plans.
36. GRADING PERMIT. A grading permit is required for site grading and drainage. The grading permit application (with grading plans) shall be made to the Engineering Division of the Parks & Public Works Department located at 41 Miles Avenue. The grading plans shall include final grading, drainage, retaining wall location, driveway, utilities and interim erosion control. Grading plans shall list earthwork quantities and a table of existing and proposed impervious areas. The grading permit is for work outside the building footprint(s).
A separate building permit, issued by the Building Department on E. Main Street is needed for grading within the building footprint.
37. PHASED GRADING. Two grading phases will be allowed. A separate grading permit is required for each phase. The initial grading permit shall consist of rough grading and may be issued prior to issuance of a building permit. The rough grade permit shall identify finished grades in landscape areas and shall identify pad grades within three-feet of finished grades where structures are proposed. The rough pad grades shall be lower than finished grades in areas of fill, and higher than finished grades in areas of cut. The finished grade grading plan shall identify final grades in all locations. The intent of the phased grading is to allow grading to begin prior to issuance of a building permit, yet to not over-fill or over-excavates in areas where structures are to be placed. The phasing plan shall be approved by both the Director of Parks and Public Works and the Director of Community Development.
38. UTILITY SERVICES. The new home shall be connected to the West Valley Sanitation District sanitary sewer system and to a public water system prior to issuance of a certificate of occupancy. Proof of annexation to WVSD boundaries shall be provided prior to submittal of a building permit application.
39. PRECONSTRUCTION MEETING. Prior to issuance of any permit or the commencement of any site work, the general contractor shall:

- a. Along with the project applicant, attend a pre-construction meeting with the Town Staff Engineer to discuss the project conditions of approval, working hours, site maintenance and other construction matters;
 - b. Acknowledge in writing that they have read and understand the project conditions of approval, and will make certain that all project sub-contractors have read and understand them prior to commencing work and that a copy of the project conditions of approval will be posted on site at all times during construction.
40. RETAINING WALLS. A building permit, issued by the Building Department at 110 E. Main Street, may be required for site retaining walls. Walls are not reviewed or approved by the Engineering Division of Parks and Public Works during the grading permit plan review process.
41. ADDITIONAL SOIL TESTING. Additional laboratory tests shall be performed by UGI for site soils and rock, including plasticity limits, swell potential, and shear strength. The results of such tests shall be incorporated into foundation design recommendations.
42. SOILS REPORT. One copy of the soils report shall be submitted with the grading permit application. The soils report shall include specific criteria and standards governing site grading, drainage, pavement design, retaining wall design and erosion control. The reports shall be signed and "wet stamped" by the engineer or geologist, in conformance with Section 6735 of the California Business and Professions Code.
43. SOILS REVIEW. Prior to issuance of any permit, the applicant's soils engineer shall review the final grading and drainage plans to ensure that designs for foundations, retaining walls, site grading, and site drainage are in accordance with their recommendations and the peer review comments. The applicant's soils engineer's approval shall then be conveyed to the Town either by letter or by signing the plans.
44. SOILS ENGINEER CONSTRUCTION OBSERVATION-1. During construction, all excavations and grading shall be inspected by the applicant's soils engineer prior to placement of concrete and/or backfill so they can verify that the actual conditions are as anticipated in the design-level geotechnical report, and recommend appropriate changes in the recommendations contained in the report, if necessary. The results of the construction

observation and testing should be documented in an “as-built” letter/report prepared by the applicant’s soils engineer and submitted to the Town before final release of any occupancy permit is granted.

45. SOILS ENGINEER CONSTRUCTION OBSERVATION 2. A representative of the geotechnical engineer of record shall be present on site at all times during placement of fill.
46. TRAFFIC IMPACT MITIGATION FEE. The property owner shall pay a proportional the project's share of transportation improvements needed to serve cumulative development within the Town of Los Gatos. The fee amount will be based upon the Town Council resolution in effect at the time the building permit is issued. The fee shall be paid before issuance of a building permit. The traffic impact mitigation fee for this project using the current fee schedule is \$5,742. The final fee shall be calculated from the final plans using the rate schedule in effect at the time the building permit is issued.
47. GENERAL. All public improvements shall be made according to the latest adopted Town Standard Drawings and the Town Standard Specifications. All work shall conform to the applicable Town ordinances. The adjacent public right-of-way shall be kept clear of all job related dirt and debris at the end of the day. Dirt and debris shall not be washed into storm drainage facilities. The storing of goods and materials on the sidewalk and/or the street will not be allowed unless a special permit is issued. The developer's representative in charge shall be at the job site during all working hours. Failure to maintain the public right-of-way according to this condition may result in the Town performing the required maintenance at the developer's expense.
48. TREE REMOVAL. Copies of all necessary tree removal permits shall be provided prior to issuance of a grading permit.
49. ENCROACHMENT PERMIT. All work in the public right-of-way will require a Construction Encroachment Permit. All work over \$5,000 will require construction security.
50. PUBLIC WORKS INSPECTIONS. The developer or his representative shall notify the Engineering Inspector at least forty-eight (48) hours before starting any work pertaining to on-site drainage facilities, grading or paving, and all work in the Town's right-of-way. Failure to do so will result in rejection of work that went on without inspection.

51. SURVEYING CONTROLS. Horizontal and vertical controls shall be set and certified by a licensed surveyor or registered civil engineer qualified to practice land surveying, for the following items:
- a. Retaining wall-top of wall elevations and locations
 - b. Toe and top of cut and fill slopes
52. EROSION CONTROL. Interim and final erosion control plans shall be prepared and submitted to the Engineering Division of the Parks & Public Works Department. A Notice of Intent (NOI) and Storm Water Pollution Prevention Plan (SWPPP) shall be submitted to the San Francisco Bay Regional Water Quality Control Board for projects disturbing more than one acre. A maximum of two weeks is allowed between clearing of an area and stabilizing/building on an area if grading is allowed during the rainy season. Interim erosion control measures, to be carried out during construction and before installation of the final landscaping shall be included. Interim erosion control method shall include, but are not limited to: silt fences, fiber rolls (with locations and details), erosion control blankets, Town standard seeding specification, filter berms, check dams, retention basins, etc. Provide erosion control measures as needed to protect downstream water quality during winter months. The grading, drainage, erosion control plans and SWPPP shall be in compliance with applicable measures contained in the amended provisions C.3 and C.14 of Order No. R2-2005-0035 of the amended Santa Clara County NPDES Permit.
53. DUST CONTROL. Blowing dust shall be reduced by timing construction activities so that paving and building construction begin as soon as possible after completion of grading, and by landscaping disturbed soils as soon as possible. Further, water trucks shall be present and in use at the construction site. All portions of the site subject to blowing dust shall be watered as often as deemed necessary by the Town, or a minimum of three times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas, and staging areas at construction sites in order to insure proper control of blowing dust for the duration of the project. Watering on public streets shall not occur. Streets will be cleaned by street sweepers or by hand as often as deemed necessary by the Town Engineer, or at least once a day. Watering associated with on-site construction activity shall take place between the

hours of 8 a.m. and 5 p.m. and shall include at least one late-afternoon watering to minimize the effects of blowing dust. All public streets soiled or littered due to this construction activity shall be cleaned and swept on a daily basis during the workweek to the satisfaction of the Town. Demolition or earthwork activities shall be halted when wind speeds (instantaneous gusts) exceed 25 MPH. All trucks hauling soil, sand, or other loose debris shall be covered.

54. DUST CONTROL (SITES > 4 ACRES). The following measures should be implemented at construction sites greater than four acres in area:
- a. Hydroseed or apply (non-toxic) soil stabilizers to inactive construction areas (previously graded areas inactive for ten days or more).
 - b. Enclose, cover, water twice daily or apply (non-toxic) soil binders to exposed stockpiles (dirt, sand, etc.)
 - c. Limit traffic speeds on unpaved roads to 15 mph.
 - d. Install sandbags or other erosion control measures to prevent silt runoff to public roadways.
 - e. Replant vegetation in disturbed areas as quickly as possible.
55. 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.
56. STORM WATER MANAGEMENT PLAN. A storm water management shall be included with the grading permit application for all Group 1 and Group 2 projects as defined in the amended provisions C.3.d. of Order No. R2-2005-0035 of the amended Santa Clara County NPDES Permit No. CAS029718. The plan shall delineate source control measures and BMP's together with the sizing calculations. The plan shall be certified by a professional pre-qualified by the Town. In the event that storm water measures proposed on the Planning approval differ significantly from those certified on the Building/Grading Permit, the Town

may require a modification of the Planning approval prior to release of the Building Permit. The applicant may elect to have the Planning submittal certified to avoid this possibility.

57. AGREEMENT FOR STORMWATER BEST MANAGEMENT PRACTICES INSPECTION AND MAINTENANCE OBLIGATIONS. The property owner shall enter into an agreement with the Town for maintenance of the stormwater filtration devices required to be installed on this project by Town's Stormwater Discharge Permit No. CAS029718 and modified by Order No. R2-2005-0035. The agreement will specify that certain routine maintenance shall be performed by the property owner and will specify device maintenance reporting requirements. The agreement will also specify routine inspection requirements, permits and payment of fees. The agreement shall be recorded prior to release of any occupancy permits.
58. SILT AND MUD IN PUBLIC RIGHT-OF-WAY. It is the responsibility of contractor and home owner to make sure that all dirt tracked into the public right-of-way is cleaned up on a daily basis. Mud, silt, concrete and other construction debris shall not be washed into the Town's storm drains.
59. UTILITIES. The developer shall install all utility services, including telephone, electric power and all other communications lines underground, as required by Town Code §27.50.015(b). All new utility services shall be placed underground. Underground conduit shall be provided for cable television service.
60. PRECONSTRUCTION PAVEMENT SURVEY. Prior to issuance of a Grading Permit, the project applicant shall complete a pavement condition survey documenting the extent of existing pavement defects using a 35-mm or digital video camera. The survey shall extend along the full haul route within Town Limits (Kennedy Road between project site and Los Gatos Boulevard, Los Gatos Blvd. from Kennedy Road to Highway 9, and Highway 9 from Los Gatos Blvd. to Highway 17). In addition, a pavement deflection analysis conforming to the same limits as the photographic survey shall be performed to determine pavement strength. The results shall be documented in a report and submitted to the Town for review.
61. POSTCONSTRUCTION PAVEMENT SURVEY. The project Applicant will complete a post construction pavement condition survey and pavement deflection analysis to determine

whether road damage occurred as a result of project construction and whether there were changes in pavement strength. The rehabilitation improvements required to restore the pavement to pre-construction condition and strength shall be determined using State of California procedures for deflection analysis. The results shall be documented in a report and submitted to the Town for review and approval. The Applicant shall be responsible for completing any required road repairs prior to release of the faithful performance bond.

62. **RESTORATION OF PUBLIC IMPROVEMENTS.** The developer shall repair or replace all existing improvements not designated for removal that are damaged or removed because of developer's operations. Improvements such as, but not limited to: curbs, gutters, sidewalks, driveways, signs, pavements, raised pavement markers, thermoplastic pavement markings, etc. shall be repaired and replaced to a condition equal to or better than the original condition. Existing improvement to be repaired or replaced shall be at the direction of the Engineering Construction Inspector, and shall comply with all Title 24 Disabled Access provisions. Developer shall request a walk-through with the Engineering Construction Inspector before the start of construction to verify existing conditions.
63. **AS-BUILT PLANS.** An AutoCAD disk of the approved "as-built" plans shall be provided to the Town prior to issuance of a Certificate of Occupancy. The AutoCAD file shall include only the following information and shall conform to the layer naming convention: (a) Building Outline, Layer: BLDG-OUTLINE; (b) Driveway, Layer: DRIVEWAY; (c) Retaining Wall, Layer: RETAINING WALL; (d) Swimming Pool, Layer: SWIMMING-POOL; (e) Tennis Court, Layer: TENNIS-COURT; (f) Property Line, Layer: PROPERTY-LINE; (g) Contours, Layer: NEWCONTOUR. All as-built digital files must be on the same coordinate basis as the Town's survey control network and shall be submitted in AutoCAD version 2000 or higher.
64. **CONSTRUCTION NOISE.** Between the hours of 8:00 a.m. to 8:00 p.m., weekdays and 9:00 a.m. to 7:00 p.m. weekends and holidays, construction, alteration or repair activities shall be allowed. No individual piece of equipment shall produce a noise level exceeding eighty-five (85) dBA at twenty-five (25) feet. If the device is located within a structure on the property, the measurement shall be made at distances as close to twenty-five (25) feet from the device

as possible. The noise level at any point outside of the property plane shall not exceed eighty-five (85) dBA.

65. **HAULING OF SOIL.** Hauling of soil on or off-site shall not occur during the morning or evening peak periods (between 7:00 a.m. and 9:00 a.m. and between 4:00 p.m. and 6:00 p.m.). Prior to the issuance of a building permit, the developer shall work with the Town Building and Engineering Department Engineering Inspectors to devise a traffic control plan to ensure safe and efficient traffic flow under periods when soil is hauled on or off the project site. This may include, but is not limited to provisions for the developer/owner to place construction notification signs noting the dates and time of construction and hauling activities, or providing additional traffic control. Cover all trucks hauling soil, sand, and other loose debris or require all trucks to maintain at least two feet of freeboard. The haul route for soil export shall be Kennedy Road from the project site to Los Gatos Boulevard, Los Gatos Boulevard from Kennedy Road to Highway 9 to Highway 17.
66. **ENGINEERING INSPECTOR.** In-lieu of the standard grading inspection fee, the applicant shall fund a full time Engineering inspector for the duration of the rough grading and soil export operations, and inspections as required during the remainder of the site work. The applicant will be charged on a time and materials basis. A deposit for the full amount, to be estimated by the Town based on the Contractor's approved schedule, shall be paid prior to issuance of any permit.

TO THE SATISFACTION OF THE SANTA CLARA COUNTY FIRE DEPARTMENT:

67. **AUTOMATIC FIRE SPRINKLER SYSTEM REQUIRED.** The new home and accessory structures shall be protected throughout by an approved automatic fire sprinkler system, hydraulically designed per National Fire Protection Association (NFPA) Standard #13d.
68. **TIMING OF REQUIRED WATER SUPPLY INSTALLATIONS.** Installations of required fire service(s) and fire hydrants(s) shall be tested and accepted by the Fire Department, prior to the start of framing or delivery of bulk combustible materials. Building permit issuance may be withheld until required installations are completed, tested, and accepted.

69. FIRE APPARATUS(ENGINE) ACCESS ROADS. Provide access roadways with a paved all weather surface and a minimum unobstructed width of 20 feet, vertical clearance of 13 feet 6 inches, minimum circulating turning radius of 36 feet outside and 23 feet inside, and a maximum slope of 15%. Installations shall conform with Fire Department Standard Details and Specifications A-1.
70. FIRE APPARATUS (ENGINE) TURN-AROUND. Provide an approved fire department engine roadway turnaround with a minimum radius of 36 feet outside and 23 feet inside. Installations shall conform with Fire Department Standard Details and Specifications A-1. Cul-de-sac diameters shall be no less than 72 feet.
71. TIMING OF REQUIRED ROADWAY INSTALLATIONS. Required driveways and/or access roads up through first lift of asphalt shall be inspected and accepted by the Fire Department prior to the start of construction. Bulk combustible materials shall not be delivered to the site until installations are complete. During construction emergency access roads shall be maintained clear and unimpeded. Note that building permit issuance may be withheld until installations are completed.
72. REQUIRED ACCESS TO BUILDINGS. Provide access to all portions of the residence and all accessory structures within 150 feet travel distance from fire apparatus access points.
73. PREMISE IDENTIFICATION. Approved numbers or addresses shall be placed on all new buildings in such a position as to be plainly visible and legible from Kennedy Road. Numbers shall contrast with their background.

SECTION VI

This Ordinance was introduced at a regular meeting of the Town Council of the Town of Los Gatos on May 5, 2008, and adopted by the following vote as an ordinance of the Town of Los Gatos at a meeting of the Town Council of the Town of Los Gatos on _____, 2008 and becomes effective 30 days after it is adopted.

COUNCIL MEMBERS:

AYES:

NAYS:

ABSENT:

ABSTAIN:

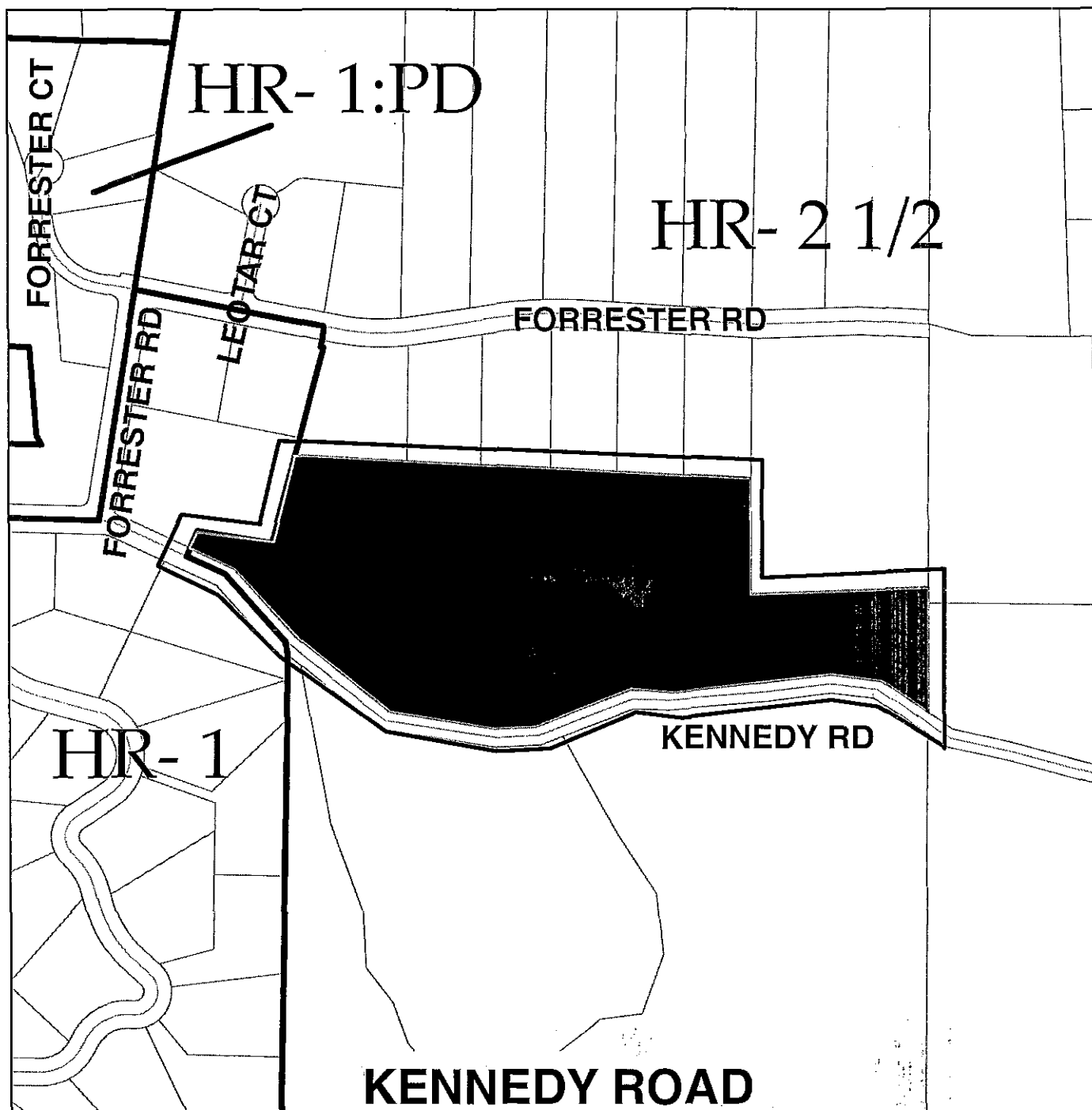
SIGNED:

MAYOR OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

ATTEST:

CLERK ADMINISTRATOR OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

N:\DEV\ORDS\KENNEDY-ACORNMEADOWS-TC.DOC



TOWN OF LOS GATOS

Application No. PD-06-04.

A.P.N. # 537-29-007 & 537-29-008

Change of zoning map amending the Town Zoning Ordinance.

☒ Zone Change

From: HR- 2 1/2 To: HR- 2 1/2 PD

☐ Prezoning

Planning Commission Action

Date: Sept. 13, 2006

Approved by Town Council

Date:

Ord:

Clerk Administrator

Mayor

May 1, 2007

The Honorable Barbara Spector Mayor
Town of Los Gatos
110 E. Main Street
Los Gatos, CA 95032

Dear Mayor Spector and Council Members,

This letter outlines the modifications to our proposal and summarizes additional analysis in direct response to feedback given to me by the Town Council at Town Council Hearings in February and April 2007. As you may recall, the Council was asked not to take action on the project due to a question regarding CEQA at the April 2007 hearing. The following day it was determined the issue raised was not an issue and stopping the action the night before had not been needed. That said, the CEQA review for this project has been reassessed by the Town's third party independent environmental consultant, as well as the Town's professional staff, and is thorough, exhaustive and complete.

At that time, the Council also requested that I continue to refine the plans within the parameters given to me at the first Council meeting in February 2007. We spent several months working with soils, engineering and architecture trying to refine the design. By the fall we had improved grading numbers and felt prepared to return to Council for final consideration of our plans.

In October, I was in a serious accident and my family needed to change focus. By late winter, my wife and I decided we needed to move forward with our life and family direction.

With the above said, below is a summary of the actions requested by Council in February 2007 and our response and a recap of our revised proposal.

1. HOUSE SIZE

Council Direction: Ensure home size is less than 10,000 Square Feet.

Response: Originally proposed at 11,363 sf, the house size has been modified to be below 10,000 sf. and reviewed with the Planning Department. Although the home size was reduced to 9,965 which met the Town Council's direction, I have further reduced the home size since then to 8,650 sf a 13.2% reduction. This is considerably less than the theoretical 12,000 sf maximum and well below the Council direction. By way of reference, this house would also have the 3rd lowest FAR in Town for homes of 6,000 sf and larger.

2. LRDA

Council Direction: Provide same or better than February 2007 compliance (93%)

Response: LRDA – The plan meets Council direction. We looked long and hard, went through numerous plan iterations, and were able to reduce the encroachment outside

the LRDA further. Reducing further would: require more and larger retaining walls, eliminate more trees, increase export and effect visibility concerns. Over the past 4 years we looked at the site plan but clearly found shifting the motor court and structures created other issues such as fire engine support needs, grading and tree removal. Since the April 2007 council meeting we were able to reduce the number of trees to be removed by reworking the grading and improving the LRDA from 94.5% to 95% compliance.

3. GRADING/EXPORT

Council Direction: Export less than 8,000 CY without causing significant environmental impact.

Response: In direct response to the council, we have worked closely with the Planning and Engineering Departments on multiple iterations and have reduced the export to less than 8,000 CY without creating environmental impact. The current plan shows export at 7,560 CY a 4.3% reduction from the April 2007 plan.

Another major element of the site worth mentioning is the potential of this property for more intense development. The property is large enough for further division. Under the applicable zoning when I purchased the property and which remains today, based on engineered slope calculations, there is sufficient land for another lot. With the thorough review by land use attorneys, I have been able to clearly establish the legal ability to subdivide and develop the property in accordance with subdivision. Thus, I could request that my project not preclude me from subdividing in the future because of the property size and other characteristics, and building another home. That all said, I choose to do neither. Instead I choose the less financially favorable choice of locking the entire property into a PD ensuring land use closure for one residential use. I would also like to say that house size is not the issue for this property with respect to the environment or intent of the hillside guidelines. Two houses (regardless of size) and two driveways, pools, barns, hard-scape, etc... would have a much more intense effect on the land than what I am proposing.

In addition, I have provided a short recap of the unique characteristics of the property and home that make this a worthwhile home for the Town, the neighbors and our family.

1. Visibility – The site is not visible from anywhere in Town (except from a few neighboring properties) and has over 600 existing trees to screen the proposed home from our neighbors.
2. Land Use Closure – With 13.71 acres, and the potential for two buildable lots, at the direction of the professional Town staff, we are proposing a PD that would control the whole site, eliminate potential for future subdivision, lock in any approvals, and bring “Land Use Closure” to the site.
3. Project size – Our proposed home has far less square footage than could be built if the property was developed as two separate lots. We have also met the specific direction given to us by the Town Council at the February 5, 2007 Council meeting.
4. Grading – By restoring some of the natural land contours to the property, we have been able to reduce grading to less than 8,000 CY while also reducing the number and size of retaining walls. For example, most walls by the tennis court have now been eliminated and the court is nestled on the property more naturally.

5. Strong Neighborhood Support - There are 13 properties adjacent to our site. 100% of these property owners have signed their support for our project. We contacted an additional 30+ neighbors that had partial view of our property and 100% of all neighbors who responded signed their support or stated they were indifferent. To date we have 55 signatures from the neighborhood, all supporting our project and none of our immediate neighborhood has expressed opposition to our plans.
6. Green Design – We are proposing an environmentally sensitive design with current plans targeting 100% solar energy support and other leading green building and sustainability principles. We will exceed the Build It Green, Greenpoint Single Family rating system guidelines and will hopefully far exceed it once detail design, feasibility and cost analysis are performed. We understand that this rating system has been adopted by the Santa Clara County Cities Association as a guide to evaluate new home proposals.
7. Hillside Guidelines – We conform to the intent of the Town's hillside guidelines and standards. All requirements to allow consideration of additional floor area on this exceptional property are met and shown below:
 - a. Not visible from viewing platforms
 - b. No significant impact to protected trees and wildlife
 - c. Grading minimized
 - d. Standards and guidelines met
 - e. Title 24 compliance
 - f. Pre-wired for photovoltaic
 - g. 25% permeable hardscape incorporated
 - h. Significant cellar included
 - i. No significant visual impact to neighbors

Equally important, we conform to all Town Zoning Codes and Regulations and are not requesting any variances or deviations from the Town Code.

8. Town/ Neighborhood Compatibility: There are 91 homes in Los Gatos greater than 6000 sq ft. Five of the largest 10 homes in Los Gatos are on Kennedy or Forrester. Our proposed home would have the 3rd lowest FAR in the entire Town and would be smaller than 15 other homes currently existing in Los Gatos (many of them on smaller properties than ours).

In closing, we are requesting the approval of this PD for the following reasons:

1. We have directly and meaningfully responded to the specific direction and feedback from the Council and town for the past 4 years.
2. This is a large exceptional property at 13.71 acres in size.
3. There is no visual impact.
4. There is less structure being built than if this property had two homes on it.
5. This is an environmentally sensitive home that incorporates sustainability, green building and green architecture.
6. The PD ensures land use closure and precludes future subdivision.
7. We have collaborated with the Town and have neighborhood support.

Please do not hesitate to contact me if you have questions or need additional information. I can be reached at 348-1202. I thank you for your kind consideration of our home plans.

Sincerely,

Rob DeSantis

Suzanne Davis - Support for Rob DeSantis

From: <scooley@scooley.com>
To: <SDavis@losgatosCA.gov>
Date: 04/22/2008 8:50 AM
Subject: Support for Rob DeSantis

Hi Suzanne,

I live just above Rob's property and perhaps have the best view of it. I'm directly across on Kennedy Rd. and have a birds-eye view. I wanted to let you know that I fully support Rob's desire and right to build his property the way he would like. I believe he should be allowed to build a larger house and that his current proposal should be approved. This will improve property values and upgrade our neighborhood. I also generally feel the city has overstepped their reach into how much they direct the specifics of new houses. While I recognize the need for guidance, I believe the City of Los Gatos has taken this much too far. I've lived my entire life in Los Gatos and feel that property controls have become overly restrictive. While conflicts prevent me from attending the May 5th meeting I did want my voice to be heard.

Thank you for the consideration.

Scott Cooley
Cooley Consulting
15900 Kennedy Rd.
Los Gatos, CA 95032
408-829-4130
www.scooley.com

David and Renee Crites
15900 Rochin Terrace
Los Gatos, CA 95032
(408) 358-0893

April 18, 2008

Planning file for the DeSantis project at Kennedy and Forester Road
Planning Department
Town of Los Gatos
110 East Main Street
Los Gatos, CA 95030

RECEIVED

APR 23 2008

TOWN OF LOS GATOS
PLANNING DIVISION

Dear Town Council:

Having reviewed the Los Gatos provisions for Planned Development zoning, the Los Gatos General Plan, the Hillside Specific Plan, CEQA regulations, applicable California Gov Code, and applicable California case law, I object to the approval of the DeSantis project at Kennedy and Forester Road. The project is inconsistent with the Los Gatos General Plan, the Hillside Specific Plan, and the Hillside Development S&G in areas such as aesthetics, tree conservation, development size & scale, accessory development, impervious surfaces, grading, and environmental impact. As such, approving the project would be an abuse of the council's discretion.

In addition, 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.

Further, the Planned Development (PD) zoning for this project is in violation of California Government Code 65852 and is discriminatory because the regulation of the PD zone is not uniform. The project should not be approved.

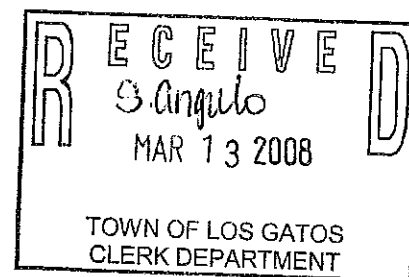
Sincerely,

A handwritten signature in black ink, appearing to read "David Crites", written in a cursive style.

David Crites
Los Gatos

March 13, 2008

The Honorable Barbara Spector, Mayor
Town of Los Gatos
110 East Main Street
Los Gatos, California 95032



Subject: Planned Development Application PD-06-03
 Negative Declaration ND-07-04

Dear Mayor Spector and Members of the Town Council,

I am writing on behalf of myself, Sandy Decker and Christine Currie concerning the DeSantis Project. We represent the concerns of many who vigorously supported the adoption of the Hillside Development Standards and Guidelines.

First, for some time we've been anticipating receipt and recirculation of the revised project Initial Study/Mitigated Negative Declaration (IS/MND). Now we understand that the hearing on the DeSantis project has been tentatively set for April 21, but there is still no information on when the revised IS/MND will be available or circulated for public input. Because of the continuing delays, we've felt it was essential to share the comments in this letter with the council and we look forward to presenting our concerns in more detail when the project is actually again before the council for formal consideration.

It is acknowledged that development will take place on the DeSantis property. Further, we appreciate that Mr. DeSantis has spent time and effort with the Town Staff, the Planning Commission and the Town Council developing his plans to this point. However, as currently proposed, this project raises many question and concerns.

Members of the Planning Commission, staff during the DRC review process, and members of the community, many of whom have a comprehensive knowledge and understanding of the proposed project, the General Plan, the HDSG, and CEQA, have raised many issues and questions concerning the DeSantis project including the following major concerns:

- The proposed project is not in conformance with many basic provisions of the HDSG including, the LRDA, the maximum allowed floor area and grading. The project will require numerous exceptions to HDSG standards and applicable guidelines.
- The project is not designed to fit the site's constraints, to minimize changes to the site's topography and natural features or to minimize visual impact.
- The assumptions, particularly parcel subdivision history, used to justify the project's scope, size and intensity are not valid.
- There is no factual basis to make the findings required to grant the required exceptions to the HDSG.
- All hillside projects are subject to the HDSG whether submitted as a Planned Development Zoning, straight subdivision application or an Architecture and Site Permit. It is inappropriate to use a PD zoning (a legislative act) to, in effect, amend the HDSG to establish a precedent to allow approval of future hillside projects inconsistent with the HDSG.

- The Initial Study does not support the findings necessary to make the Mitigated Negative Declaration.

Revisions made to the project to date fall far short of complying with the basic provisions of the HDSG. We, therefore, felt compelled to seek professional consultation. The urban planning firm of Spangle Associates conducted an objective comprehensive review and analysis of the project that included review of the Town of Los Gatos General Plan, the HDSG, and the Zoning Code; as well as careful study of the Planned Development Ordinance and development plans, the history of the site, staff reports and records of the Planning Commission Study Session, the Planning Commission Public Hearing and the two public hearings before the Town Council. Spangle Associates confirmed the validity of the concerns raised in this letter, including that the project is not consistent with the HDSG.

On November 15, 2007, George Mader and Tom Vlasic of Spangle Associates met with Town Staff to share their analysis of the DeSantis project with the staff and to begin a dialogue. Town Staff, represented by Bud Lortz and Randy Tsuda, communicated no suggestions, solutions or ideas of how the project might be modified or evolved to address these issues.

The efforts of the Town are to be commended for having the fore thought to adopt documents like the HDSG, Hillside Specific Plan and the General Plan that establish a framework for review of all hillside projects. The outcome of DeSantis project is critical to the future of Los Gatos and it's hillsides. The fundamental objective is to ensure that the project, when approved, will be consistent with the Town's General Plan, Zoning Code and other land use regulations, particularly the HDSG, and that the precedent set for future hillside development achieves the high values and standards, and community expectations, established by the council with adoption of the HDSG.

Our request is simple and straightforward. We ask that this project, when approved, be consistent with the HDSG and General Plan of Los Gatos. Please accept this formal request to make this letter part of the official public record on project. Also, we request that we be kept aware of the hearing process on this project and, particularly, that we be advised when the IS/MND is available for public review and input.

Thank you for you consideration of our comments and concerns.

Sincerely,



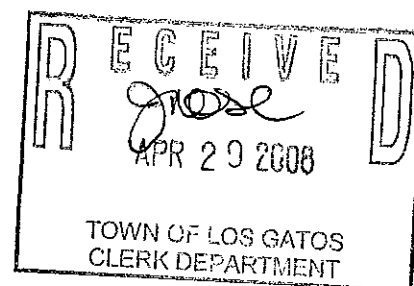
Lee Quintana
5 Palm Avenue
Los Gatos, California 95030
(408) 354-7808

References for Spangle Associates is available on request

cc: Bud Lortz, Director of Community Development
Greg Larsen, Town Manager

April 28, 2008

Town of Los Gatos
Community Development Department
110 E. Main Street
Los Gatos, California 95032



Attention: Suzanne Davis

The attached are our comments on the Mitigated Negative Declaration for:

Kennedy @ Forrester Road
Planned Development Application PD-06-03
Negative Declaration ND-07-04

Once the staff report is available we will address the project itself in more detail.

Thank you for the opportunity to comment and please contact me at 354-7808 if you have any questions.

Sincerely,

Lee Quintana
5 Palm Ave
Los Gatos, California

**Comments on Mitigated Negative Declaration
Kennedy @ Forrester Road
Planned Development Application PD-06-03
Negative Declaration ND-07-04**

SUMMARY OF CEQA ISSUES

Summary: The Mitigated Negative Declaration (MND) is not legally defensible. The MND is not consistent with many of the basic concepts, purposes and policies implicit in CEQA. The MND is not consistent with many of the basic concepts, purposes and policies implicit in CEQA. And the proposed project is not consistent with the Town's land use regulations including the Zoning Code, the Hillside Development Standards and Guidelines. The MND fails to provide sufficient information or analysis to enable an informed decision, it is not a good faith effort at full disclosure. The Fair Argument Threshold is met for both substantial evidence and adequacy of analysis.

- The MND does not contain a discussion of consistency with the General Plan, Hillside Specific Plan, Zoning code or the Hillside Development Standards and Guidelines
- Project description is incomplete, does disclose the full scope of the project's impacts and is continuing to evolve
- Fails to address the action as a whole
- Environmental setting/base line data and background information are not complete
- Significance criteria are not clearly defined or are inappropriately based on regulatory thresholds
- Minimizes the project's potential impacts
- Analysis and conclusions are not supported by substantial evidence
- Analysis of impacts and/or formulation of mitigation are deferred
- Fails to identify or recommend modifications to the project or mitigation measures that avoid or substantially reduce potential impacts
- CEQA issues previously identified by Planning Commission or the public have not been addressed
- The MND fails to summarize pertinent information from technical reports (See discussion in VI. Geology and Soils and IV Biological Resources)
- The MND may not have been properly noticed¹
- Cumulative adverse impacts have not been adequately addressed.²

ENVIRONMENTAL CHECKLIST: (page 1- 3 of Initial Study)

Summary: Background history, environmental setting, 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. (For example: 15002(a)(1)(2)(3). 15002(d), 15064(a)(d), 15378, 15003(h), 15002(f)(1))

Background information and environmental setting; Add the following information

¹ Neither the Santa Clara Valley Water District nor the Mid-Penn Open Space District were on the distribution list nor were jurisdictions that could be affected by the off-haul activity

- Information on the site's prior subdivision history is omitted
- Open space lands in the vicinity of the project
- Subsequent approvals, actions, or permits required by outside agencies or the town.
- Describe and address the project as a whole
- Disclose the background for Condition of Approval #16 in the proposed ordinance³
- Summarize the project's compliance with relevant plan, policies and land use regulations (See Land Use Planning)
- Technical reports and peer reviews are not adequately summarized (VI. See Geology and Soils and IV Biological Resources Tree Survey Report)
- Summary of the sites existing physical characteristics and natural setting provides insufficient information
- Summarize the projects compliance/consistency with Town's General Plan, (GP), Zoning Code, Hillside Specific Plan (HSP) and other land use regulation, especially he Hillside Development Standards and Guidelines (HDSG) (See IX Land Use and Planning)

Project Description:

- Numerous items included in the PD Zoning Ordinance are omitted from the project description or subsequently text. These should be added to the Project Description and included in subsequent analysis. For example:
 - Maximum floor area floor area of 15,500 (Condition of Approval 4)⁴
 - Square footage of cellar (6287 sf)
 - New well for irrigation (Section II.4)
 - New Shed (Condition of Approval #4)
 - Lot Merger (Section IV and Condition of Approval #3)
 - 11 retaining wall totaling over 1600 linear feet,
 - Creation of an Open space/conservation easement - Condition of Approval #16. Determination of area and used of the open space/conservation easement should be determined early in project development not deferred.
 - Square footage of ornamental/formal landscape and turf allowed by Condition of Approval # 5
 - Square footage fencing allowed to be enclosed by Condition of Approval #7
- Numerous other elements of the project should also be added to the description
 - Possible future agricultural use of the site⁵

³ Condition numbers refer to Conditions of Approval prepared for the April 2, 2008 Town Council Public Hearing

⁵ Agricultural use is permitted by right as indicated by Section II.5 of the proposed ordinance. Zoning Code Section 29.40.235 includes agriculture as a permitted use in HR zones. A question by the applicant at one of the public hearings hinted at possible future plans for a vineyard. However, the Initial Study (II. Agricultural Resources) states that the site's sloping topography limits the site's agricultural potential. It would follow that any agricultural activity would have potential erosion impacts. If agricultural use is not specifically excluded by the PD Zoning Ordinance, an area where that use will be allowed should delineated on development plans and appropriate conditions added to the conditions or approval.

- Grading or earthwork volumes, (approximately 36,000 cy total, 22,000 cy cut, 14,000 cy fill, 8,000 export)
- Maximum Cut and fill depths (including cut for cellar and over excavation for tennis court)
- Size of the flat pads created (approximately main building area 37,000 sq ft and tennis court 9,000)
- Total area proposed to be disturbed by grading (3.46)
- Lowering of ridge to allow driveway grade to meet house and to create large pad for yard
- Development and grading beyond the LRDA (.63 area)
- Direct and indirect tree impacts (37-38 direct, indirect 12 severe, 10+ moderate to high)
- Projected on-going resource uses for the entire project
- Does not include a site plan within the Initial Study text showing topography, trees etc. While not explicitly required by CEQA, a site plan with topography is essential to understanding the potential impacts of this project.

Environmental Factors Potentially Affected (p.3 of IS): The Environmental Factors Potentially Affected (page 3 of Initial Study). Several potential impacts identified in the text are not checked. For example: Aesthetics, Hazards, Transportation/Traffic as well as several others.

COMMENTS SECTION BY SECTION

The following comments are specific to each section but are not inclusive of other more general comments applicable to each section.

LAND USE PLANNING

Consistency with Zoning Code and General Plan Land Use Designation Specific

General Plan Land Use Designation: Hillside Residential (0 -1 unit per acre)

Zoning Designation: HR-2 ½ (2/12 to 10 acres per dwelling unit)

The MND states:

“The Los Gatos General Plan designations the project site for “Hillside Residential (HR) and this designation allows for residential densities of zero to one unit per acre. Since the site is 13.71 acres, the General Plan could allow up to 13 single-family residences without slope considerations. Even with slope considerations, as implemented by the Zoning Ordinance, the proposed single-family residence would be within allowable densities. The Zoning Ordinance designates the project as “Hillside Residential 2 ½ to 10 acres per dwelling unit with a minimum lot size of one acre. Since the proposed single-family residence would be located on a 13.71 acre site, it would be consistent with the densities allowed by the Zoning Ordinance.”

The representation that the site could support 13 single family homes is inaccurate. The 40,000 square foot minimum lot size is not automatically applicable for the following reasons:

- The General Plan establishes the density range allowed in the hillsides, however, the Zoning Code establishes density *taking slope into consideration* (Section 29.40.250 a)(1)(2)
- Given the site’s size and slope the maximum allowed density is 2 dwelling units (2.9 rounded down to 2). **But**, two other sections of the Zoning Code also apply. ,
- Section 29.40.260 allows for a minimum lot size of 40,000 sf , but this does increase the maximum density allowed.

- Section 29.40.250(a)(6) further restricts subdivisions in the HR-2 ½. If a parcel were included in previous subdivision that is already at maximum density it cannot be further subdivided. The DeSantis site was part of the 1978 Meslesa 16 lot subdivision, which is at the maximum allowed density.

Relationship between the General Plan, Zoning Code and Hillside Development Standards and Guidelines:

- The General Plan, Zoning Code and HDSG work in conjunction with one another.
- GP designates the type of land use that is allowed. The zoning code control density for areas designated Hillside on the Land Use Plan. Intensity of development in the hillsides is governed by the zoning code and the HDSG.
- The Introduction to the General Plan states that:
 - Many of the issues identified in the General Plan are sustainability issues, including open space, hillside protection, environmental quality, natural plant and animal life, resources conservation and community design. (1.1)
 - To be considered consistent with the General Plan, a project must not only be consistent with the Land Use Plan, it must also be consistent with the goals of all elements of the General Plan and meet the intent of its policies. (1.4)
- The HDSG states that the overall goal of the standards and guidelines is to achieve design excellence that *fosters sustainable development and preserves the natural environment*. (emphasis added) (Introduction I.C.) It further states that the objectives of the HDSG are:
 - ...intended to implement the Town of Los Gatos' vision statement for its hillside and to ensure that all development is in compliance with the goals, policies, and implementation strategies of the General Plan. (Introduction I.E.)
 - It therefore follows that for a project to be consistent with the General Plan it must first be consistent with the HDSG.

Consistency with Hillside Development Standards and Guidelines

The HDS&G is one of the Town's land use regulations. The HDS&G does not contain policies but rather implement the goals and policies of the General Plan by mandatory Standards

Staff has identified four areas where the proposed project is not consistent with the HDS&G including exceeds maximum allowed height, exceed maximum allowed square footage, extends beyond the LRDA and exceeds the maximum allowed cut and fill depths. In addition the project does not meet several of the criteria required to consider granting an exception to the maximum allowed square footage. These are all standards that have quantitative criteria. There are *numbers* other standards and applicable guideline of the HDS&G, both quantitative and qualitative, that the proposed project does not meet. Given the number of standards and applicable guidelines this project does not meet and given the degree to which some of the standards are not met, it follows that the project is not consistent with the General Plan.

Consistency with Hillside Specific Plan - Clustering of development:

- The Hillside Specific Plan encourages the clustering of dwelling units to discourage the development on steeper slopes and to preserve the scenic nature of the hillsides. When units are clustered a minimum lot size of one acre is allowed provided the allowable density is not exceeded.
- Previous developed lots in the Kennedy Estates subdivision clustered development on the less steep lower elevations of the site where development would be less visible, require less grading and preserve more continuous natural open space. This is consistent with the HSP 1.3.3.
- In contrast, the development area of the DeSantis project, the last of the undeveloped lots in the subdivision, is proposed at higher elevations, on steeper slopes than the other lots where the development, will require significantly more grading and will likely to be more visible. In addition

development on the DeSantis site is not closely clustered within the site itself, but rather is spread over an 3.46 acre area.

I. AESTHETICS

Summary: Aesthetic 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 these items have been deferred to the subsequent Architecture and Site Permit application.

The environmental setting does not include the following additional information:

- Extensive grading proposed for this project (both volume, cut/fill depths and extent of the area disturbed)
- Extensive use of retaining wall: 1600 linear feet of retaining wall
- Located on a highly visible hillside that is potentially visible from the valley floor and from adjacent homes and nearby hillsides as indicated by the applicant.⁶
- A 3-d simulation to show how the proposed grading will affect the site.⁷
- There is no discussion of consistency with the HDSG (and apparently the General Plan), this is again deferred to the review of the subsequent Architecture and Site permit that will occur after the MND and the PD Zoning have been approved. Deferral of this discussion not only splits the project's environmental review, it also imits the public participation in the CEQA process since the Fair Argument Threshold would no longer apply. This is particularly odorous because the PD Ordinance contains conditions that are not consistent with the HDSG.

Potential impacts to the visual and physical character of the site

- 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.
- 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?
- The CEQA checklist is incorrectly identified as significance criteria
- Changes to the existing visual and physical character that would result from the proposed grading have not been adequately described.⁸

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 impacts rather than present a worst-case analysis. For example the use of 'mostly', "probably not", "not expected to" and "however". Using the reasoning

⁶ See page 6 Exhibit H of September 13, 2006 Planning Commission public hearing

⁷ As requested by Parks and Public Works

⁸ Terrasearch, Inc. April 15, 2005 Geotechnical Investigation preformed on the site states there have been no changes to the site since the 1930's

applied here no home could be considered to have a visual impact if there are already homes in the area.

- Substantial evidence exists in the record to support a different conclusion. For example: Cross sections of the proposed project, statements by applicant and staff, statements made by the public at hearing.

BIOLOGICAL RESOURCES

Summary: 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 no 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 can not be identified or recommended.

Environmental setting 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

Plants:

- Tree impacts:
 - The Tree Survey Report, and the Tree Ordinance are the only biological issues discussed in any detail. Tree reports typically focus on trees 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 impacts adequately factored into impacts to wildlife habitat or to wildlife movement corridors.⁹ As best we can figure 59 to 60 trees will be impacted by the project, 37-38 directly and at least 22 or more indirectly (12 severely and at least 10+ moderately or highly). 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 proposed project.
 - Significance criteria are not clearly stated.¹⁰

Special Status Plants:

⁹ Far more helpful to understanding potential impacts to trees would be a short summary of sources the a short summary of all relevant background information and a short summary of the potential impact, including the number of trees that will be directly impacted and indirectly impacted (severe, and moderate to high), and most of all a revised tree report that accurately reflects the revised project after its many modifications.

¹⁰ In fact there appears that the interpretation of the Tree Ordinance is that as long as an impacted trees are replaced there is no tree impact – ever.

- 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.

Wildlife:

- 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. Surveys 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 require.
- Wildlife movement corridor and habitat fragmentation have not been addressed even though wildlife are know to cross this property.¹¹ A site specific wildlife survey is required.

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.

GRADING;

Summary: 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.

Pertinent background information and information from the technical reports not summarized in the MND text:

- “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”¹²
- The revised project requires approximately 1640 linear feet of retaining wall (Ex6)
- Approximately 700 feet of the retaining walls are between 4’ and 5’ high (Ex6)
- 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%.¹³

¹¹ Observation reported by Lee Quintana at a public hearing on the project

¹² November 3, 2005 Geomatrix Peer Review

¹³ Geomatrix November 3, 2005 Peer Review-this still holds true for the current project

- 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.¹⁴
- The primary constraints to the proposed development include the colluvium filled swales, project's proximity to the San Andreas and Berrocal fault zones,¹⁵ and control of surface drainage, which is critical to the successful development of the proposed improvements¹⁶
- 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 the 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 3.46 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.
- 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?

HYDROLOGY AND DRAINAGE

Summary: 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.

Environmental Setting and impacts:

- 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

¹⁴Personal communication 3/25/08 Fletcher parsons, Town of Los Gatos Department of Parks and Public Works.

¹⁵ March 17, 2006 Geotechnical Investigation, pages 16 and 36.

¹⁶ Geomatrix February 28, 2008 Third Peer Review

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.

FIRE HAZARDS AND PREVENTION¹⁷

Summary: 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.¹⁸ The proposed driveway is 20' wide. Could grading, tree removal or tree impacts be reduced if the driveway were narrowed to the minimum required.
- VII. Hazards, XIII. Public Services, XV. Transportation/Traffic) all address fire hazards and/or fire prevention.
- Section VII. General Plan Policy S.P.2.3 (to minimize hazards in fire hazard areas) and lists HDSG Standards to minimize fire hazards through 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**.
- Section XV states that the driveway slope is 16% and the proposed driveway width is 20'
- All three sections do state that the project **will be required** to meet fire standards not that it **meets** them now.

TRANSPORTATION/TRAFFIC

- 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
- The summary of construction impacts under Transportation and Traffic deals solely with truck movement. No where in the document is there an indication of where the excavated material will be taken or what impact there might be beyond the Town with respect to traffic or the deposit of material.
- Preparation of the Plan is deferred. The MND has a list of items to be included in the plan but does not set criteria nor does it address all phases of the project both on site and off-site, including extension of utilities or delivery of construction materials and cement.

NOISE

Summary: Does not include base line ambient noise data nor update section to reflect increased on site fill, grinding and compaction activities, including vibration

¹⁷ This discussion is based on the Initial Study, Fire Department Review Comments Plan Review Number 05 2677 and a phone conversation on 4/22/08 with

¹⁸ Phone conversation Santa Clara County Fire Department.

- 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” soil, 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.

AIR QUALITY

Summary: 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.¹⁹ The MND states that 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 is 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 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.

CULTURAL RESOURCES

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.

CUMULATIVE IMPACT

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

¹⁹ Personal communication with Fletcher Parsons Parks and Public Work Department

Approval of this project will establish new policy that would fundamentally change the standards for review and approval for all large parcels throughout the Town subject to the HDS&G. Approval would in effect amend these documents without going through the appropriated public process, without defining “estate homes” or “large lots”, and without establishing clear standards.

¹ In effect, this PD would amend the HDSG without first amending the Zoning Code to create a new Hillside Residential Zone without first adopting a resolution to amend the HDSG to define “estate properties” and without first establishing standards for “estate properties” without first determining the number parcels that could qualify for this designation, and before doing a cumulative impact analysis. The number of parcels would include single undeveloped parcels, developed parcels that meet the definition of estate properties or merger of two undeveloped parcels, to developed parcels (with one home demolished), or one developed parcel with one undeveloped parcel both within the Town borders and within the County but within the Town’s sphere of influence.

It has been stated in the record that there are only a few large undeveloped lots in the vicinity of the project. However, this would apply Town wide to all parcels subject to the HDSG Not just undeveloped single parcels, but undeveloped merged p be applied to existing developed lots, and the merger of undeveloped parcels, merger of an undeveloped lot with a developed lot, or of two developed lots. We don’t know this number and we don’t know what the cumulative impact would be if all the potential lots were developed as “estate properties” at similar intensities what the cumulative impact would be. In effect this amount to creating a new Hillside Zone whi.h would require a through cumulative analysis. This is not speculating but forecasting.

CEQA quote re marinal

Responses are statements not supported by fact

Sstatement that the additional fill by the tennis court will increase slope stability and therefore a slope analysis does not need to be completed. Given the addition of two retaining walls who is this supported

?+ 60% of disturbed area exceeds the maximum allowed cut and will depths
 .7 acres of encroachment onto slopes greater than 30%
 (add what encroaches onto 30%+ slopes and approximate %)
 1640 linear feet of retaining wall required
 35 (?) trees with be removed by construction and (12) will be severely impacted
 950' long 20' wide driveway
 # acres (sf) of potentially landscaped area - guess is over an acre

The proposed PD Zoning is a legislative act that will set precedence not for just the DeSantis parcel but for all properties subject to the HDSG AS ACKNOWLEDGED BY COUNCIL STATEMENT ON THE RECORD.

?+ 60% of disturbed area exceeds the maximum allowed cut and will depths
 .7 acres of encroachment onto slopes greater than 30%
 (add what encroaches onto 30%+ slopes and approximate %)
 1640 linear feet of retaining wall required
 35 (?) trees with be removed by construction and (12) will be severely impacted
 950' long 20' wide driveway
 # acres (sf) of potentially landscaped area - guess is over an acre

APPENDIX I OVERVIEW OF CEQA and list most pertinent sections.

Go to white paper and ceqa and list most important sections.

Purpose, intent, interent policies

Definition of project

Threshold of significance

When established agency thresholds may not apply i.e. special circumstances even if meets t.

Substantial evidence – including standing

Lack of reports or evidence

Interdisiplinary approach

Balance of policies

HDSG applicable because have standards (manditior) and Guidelines suggestions of how to meet – but cant meet in other ways but need to support how.

Project does not meet standards and applicable guidelines in every section with on exception: meets guidelines (maybe) for sustainability, which has no standard! Green is good but a. project that met HDSG would overall probably be greener then proposed project even without being green. Green should not be only reason to approve Sustainability is major theme of GP, and especially in hillside areas and having green arch is only one aspect.

HDSG implements GP per GP so effectively the HDSG is incorporated into the GP by reference. If not consistent with H not consistent with GP, but even sne doc with standards is part of the town's land use regulations and there for project must meet and be consistent with

1

Distribution list: Omission, Santa Clara Valley Water District, given that a new well is proposed that would require a permit form the SCVWD (per personal communication)

Conclusion/Summary

Based on the above it does not appear that a negative declaration for the project as proposed is defensible would be defensible in court. Nor that a revision of the Initial Study based on the present project would support a revised Negative Declaration.

So what are choices:

Remand the application back to the Planning Commission with direction that could potentially be supported by a Negative Declaration. i.e. redesign the project to fit the existing site rather than modify the site to fit the project, as is currently the case. Given the applicant tract record over the last 4 years with respect to meanful changes to the project this is not likely to happen (refer b ack to attachment ...- the one that shows shows little change in the overall design program.

Require an EIR.

Deny the project.

The Initial Study is inadequate as and information and disclosure document

The Fair Argument Threshold has been met both for evidence and analysis

Approval of the Negative Declaration would be an abuse of the Councils descretion.

Introduction of Comments Letter
4/23/08

CEQA requires decision makers to take environmental consequences into consideration in the decision making process. Negative Declarations and Environmental Impact Reports are primarily information and disclosure documents intended to focus discussion on the environmental consequences of a project, to identify its potential impacts, and to identify mitigation, which if incorporated into a project will reduce impacts to a less than significant level either by avoiding the impact or minimizing the impact to the greatest extent possible.

CEQA acknowledges the need for decision makers to balance a variety of factors and policies in their decision-making, however the resulting project may still have an impact on the environment.

CEQA does not prevent a project with significant or potentially significant impacts from being approved. It does, however, require decision makers to take responsibility for their actions. Projects with significant impacts can be approved when accompanied by a statement of overriding consideration and findings supported by evidence in the record. Conversely,

CEQA does not require a decision making body to approve a project simply it will not result in significant environmental impacts.

Most Recent Doc. 13
4/23/08

SUMMARY OF CEQA ISSUES

Summary: The Mitigated Negative declaration is not legally defensible. The project is inconsistent with the Town's land use regulations (including the General Plan, Hillside Specific Plan Zoning Code and the Hillside Development Standards and Guidelines), it does not address the project as a whole, it defers analysis and mitigation, conclusions are not supported by substantial evidence in the record, there is substantial evidence in the record to support a contrary conclusion the Initial Study/Mitigated Negative Declaration fails to provide sufficient information to make an informed decision, and it is not a good faith effort at full disclosure, The Fair Argument Threshold is met for both substantial evidence and adequacy of analysis. It is not consistent with many of the basic concepts, purposes or the policies implicit in CEQA. Council's making the of this Mitigated Negative Declaration and approval of the DeSantis project would arbitrary and capricious and constitute abuse of discretion.

- Discussion of the projects consistency with the Town's land use regulations including the GP, ZC HSP and HDSG
- The project is not consistent with the General Plan, Hillside Specific Plan, Zoning code or the Hillside Development Standards and Guidelines
- Project description is incomplete does not fully disclose the scope of the project or it's potential impacts and as reflected the record, is a moving target
- Fails to address the action as a whole
- Environmental setting/base line data and background information are inadequate
- Significance criteria are not clearly defined or are inappropriately based on regulatory thresholds
- Minimizes the project's potential impacts, both in the long term and short term
- Omits a discussion of cumulative impacts
- Approval of this PD Zoning would represent a fundamental change in approach to how projects subject to the HDSG are reviewed and approved.

- The Initial Study confusing organization makes it difficult at times to distinguish the project's potential impact(s) prior to mitigation and after mitigation.
- Misrepresents the record
- Analysis and conclusions are not supported by substantial evidence
- Analysis and/or formulation of mitigation are deferred²⁰
- The Initial Study fails to identify or recommend modifications to the project or mitigation measures that avoid or substantially reduce potential impacts²¹
- Issues previously identified by Planning Commission or the public have largely been ignored
- Individual sections are not integrated, resulting in inconsistency between sections.²²
- The Initial Study fails to summarize pertinent information from technical reports (See discussion in VI. Geology and Soils and IV Biological Resources)
- The Negative Declaration may not have been properly noticed²³
- Cumulative adverse impacts that would result from approval of the proposed PD zoning for all hillside properties that are interpreted to be "estate properties) through out the Town.²⁴

²⁰ Deferred mitigation for example:

- Conformance with the HDSG (and presumably the General Plan and Hillside specific plan as well) is deferred to the subsequent review of the A&S application. Staff has stated in reports and at public hearing has that the project is not consistent with the HDSG in four specific areas that are quantifiable. However, General Plan Policies, Hillside Specific Plan Policies also have qualitative policies or standards that have not been addressed. The Planning Commission the Study Session and 9/13/06 Public Hearing identify additional General Plan and HDSG policies and Standards conflicting with the project.

Footnote #11 continues

- By deferring parts of the environmental review the environmental consequence of the project as a whole are not available to before decision makers take action.
- Deferring analysis and formulation of mitigation also limits public's participation in the environmental review process, since CEQA's Fair Argument Threshold would not apply once Negative Declaration is adopted.
- Two additional examples are Aesthetics, Biology, Construction management plan

²¹ In part because all of the projects impacts have not been identified

²² For example fire is discussed in the Project Description, Geology and Soils, Public Utilities and Transportation and there are conflicts and inconsistencies between all of the different sections. Nor grading identified in VI. Geology and Soils been integrated into I. Aesthetics

²³ Neither the Santa Clara Valley Water District nor the Mid-Penn Open Space District were on the distribution list

²⁴ In effect, this PD would amend the HDSG without first amending the Zoning Code to create a new Hillside Residential Zone without first adopting a resolution to amend the HDSG to define "estate properties" and without first establishing standards for "estate properties", without first determining the number parcels that could qualify for this designation, and before doing a cumulative impact analysis. The number of parcels would include single undeveloped parcels, developed parcels that meet the definition of estate properties or merger of two undeveloped parcels, to developed parcels (with one home demolished), or one developed parcel with one

undeveloped parcel both within the Town borders and within the County but within the Town's sphere of influence.

Staff Report

Staff report made by Chief Scott Seaman, Los Gatos-Monte Sereno Police Department.

Open/Close Public Hearing

Motion by Council Member Mike Wasserman resolution authorizing the continued use of Supplemental Local Law Enforcement Services Funds (SLESF) to provide funding for one (1) full-time police officer assigned as a motorcycle traffic officer and one (1) full-time police officer assigned as a school resource officer. , be Approve,seconded by Council Member Steve Glickman.

Motion passed unanimously.

10. Consider a request for approval of a Planned Development 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. Planned Development Application PD-06-03. Negative Declaration ND-07-04. APNS 537-29-007 & 008. Property location: Kennedy Road @ Forrester Road. Property owner: Acorn Trust Applicant: Rob DeSantis

Staff Report

Attachments 1-3

Attachment 4

Attachments 5-8

Attachments 9-11

The following documents are available for viewing at the Clerk Department: Exhibit A and B of Attachment 3 Plans and Photos for Attachment 8, 10, 11.

Staff report made by Bud Lortz, Director of Community Development.

Council Comments

Clarification regarding the Negative Declaration and the Environmental Report relating to the two lots.

Clarification regarding the Planning Commission concerns relating to the grading issues.

Clarification regarding the amount of buildable lots that would be allowable on the property.

Clarification relating to the Hillside design Guidelines and the proposed project.

Clarification regarding the allowance of a 10,000 square foot home on the property.

Clarification regarding site disturbance relating to off hauling of the dirt.

Commented regarding the reduction of off-haul and identifying the least amount of impact to the hillside.

Clarification by a staff analyst regarding the off-haul and impact of trees.

Clarification regarding the footprint of the proposed Planned Development.

Clarification regarding the value of designating the project as a Planned Development.

Clarification on the restrictions involved with approving the project as a Planned Development.

OPEN PUBLIC HEARING

Mr. DeSantis, Applicant

Commented regarding the proposed design.

Commented regarding the environmental impacts, design changes, evolved design, and reduction in grading.

Commented on the visibility impacts from the site if the off-haul of dirt was not permitted.

Commented regarding the support from the neighbors.

Commented regarding the proposed home and compliance with the Hillside Guidelines.

Mr. Landry, Architect

Commented regarding the site studies for the proposed project.

Commented regarding the varied roof line.

Commented regarding the accessory structures.

Commented regarding the reduction in the square footage for

the proposed plan.

Commented regarding the options relating to grading and the off hauling of dirt.

Commented that the proposed project conforms to the Town's standards and guidelines.

Mr. De Santis,Architect

Commented regarding the proposed project and the green architecure.

Mr. Berger

Commented on supporting the proposed project.

Mr. Zubrycky

Commented on the environmental concerns and preserving the wildlife.

Commented regarding the views from his home.

Commented on supporting the proposed project.

Mr. Davis

Commented regarding the construction of massive homes in the community.

Commented regarding community values.

Mr. Hancock

Commented on supporting the proposed project.

Commented on concerns to the neighbor's views if the dirt was moved to the top of the property.

Suggested that the trucks which would be off-hauling the dirt from the property not go up Kennedy Road due to the tight turns and road conditions. Suggested that the trucks be diverted down Kennedy Road to Los Gatos Boulevard.

Ms. Weber

Commented on supporting the proposed project.

Ms. Currie

Commented regarding the Hillside Specific Plan.

Commented regarding the off haul of dirt and the amount of trucks which would be traveling on Kennedy Road.

Mr. Guardino

Commented supporting the prososed project.

Mr. Morley

Commented on supporting the proposed project.

Mr. Ardizzoni

Questioned the practice of building large homes in the community.

Mr. Raasch

Commented on supporting the proposed project.

Ms. Quintana

Commented that the project is still in the evolving stages.

Suggested that the proposed project be sent back to staff or the Planning Commission for more study.

Commented regarding the grading issues relating to the proposed project.

Commented on topography if the dirt was to remain on the property.

Mr. DeSantis, Applicant

Commented on supporting the proposed project.

Commented on the reductions made to square footage of the home.

COUNCIL COMMENT

Clarification regarding the option to off haul of dirt from the property.

Clarification regarding option #2 in the staff report relating to the off haul of dirt.

Commented on relocation of dirt through the Architectural and Site Plan.

Commented regarding the proposed square footage for the lots.

Commented on the Hillside Standards relating to the proposed project.

Questioned several issues which exceed the Hillside Guidelines.

Questioned the Least Restrictive Development Area (LRDA) and the cut and fill requirements.

Commented on the construction of slopes which exceed 30% grading policy.

Clarification regarding the Floor Area Ratio (FAR) of the proposed project.

Questioned the open space easement.

Questioned if there was any alternatives besides the grading into the slopes for the cabana, tennis courts, and pool.

Closed Public Hearing**COUNCIL DISCUSSION**

Motion by Council Member Mike Wasserman approve PD application with the conditions to direct staff to minimize encroachment into the LRDA of the proposed project, with the zero off haul option, and have staff bring back a final map. seconded by Council Member Steve Glickman.

This motion was resended by Council Member Mike Wasserman.

Council Comments

Commented on concerns relating to environmental impacts on the property.

Motion by Council Member Diane McNutt continue matter with direction given to staff to:

Limiting quantity of off haul to be under 8,000 square feet.

Reduce to encroachment into the (LRDA).

Reduce House size to be less than 10,000 square feet.

Return to Council on April 2, 2007. , be Approve,seconded by Mayor Joe Pirzynski.

Council Discussion

Commented regarding community values in Town.

Commented regarding environmental preservation.

Commented regarding directions relating to reductions to size of home, reduction to the LRDA, and reduce grading.

Vice Mayor Barbara Spector voted nay. The other Councilmembers voted aye.

Motion passed.

Motion passed 4/1 with Council Member Barbara Spector voting no.

MAYOR CALLED FOR A RECESS.

MEETING RESUMED AT 9:50 PM

VERBAL COMMUNICATIONS

Mr. Davis

Commented regarding an article in the Mercury News relating to the hazardous protozoa in fountains.

Commented that he felt that there should be signs prohibiting diapers in the Town Plaza fountain.

Commented regarding his concerns relating to monster homes in Los Gatos.

Mayor Pirzynski

Commented that the Plaza fountain water was tested and approved by the Santa Clara County Health Department.

Ms. Figone

Commented that the water in the Town Plaza fountain is frequently tested and monitored.

Mr. Greene

Commented regarding his concerns relating to a possible environmental health hazard from a septic tank which he feels may be a potential link to cancer in the Placer Oaks neighborhood.

Requested that Council agendaize the issue for discussion at a Council meeting.

Mrs. Greene

Commented on a possible health hazard in the Placer Oaks neighborhood relating to a possible contamination of a septic tank.

Closed Verbal Communication

PUBLIC HEARINGS

8. 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. Planned Development Application PD-06-03. Negative Declaration ND-07-04. APNS 537-29-007 & 008. Property location: Kennedy Road @ Forrester Road. Property owner: Acorn Trust Applicant: Rob DeSantis (continued from 2/5/07)

Staff report made by Bud Lortz, Director of Community Development.

Staff Report

Staff Report - Desk Item

Council Comment

Questioned the details relating to the grading plan and potential solutions.

Questioned which decisions would be made during the Architecture & Site process.

Clarified that 1/3 of the cellar will be used for mechanical equipment and not living space.

Questioned the guidelines relating to the Development Review process.

Clarification regarding the constraints relating to approval of the Planned Development.

Commented that the Planned Development limits building in the future.

Questioned if a Condition of Approval could address the grading issue.

Commented regarding the motion passed at the prior Town Council meeting relating to the reduction in grading and off haul.

Questioned if there is a specific plan for use of the fill remaining on the property.

Questioned if a possible location is down hill from the tennis courts.

Questioned if the location of the fill would be established as part of the Architecture and Site Plan.

Questioned the Least Restricted Development Area (LRDA) and the placement of the motor court, cabana and tennis courts on a 30% grade.

Questioned if staff is working on reduction of the encroachment of the residential structures.

Questioned if the tennis courts, cabana, and motor court could be adjusted to conform with the LRDA encroachments.

Commented on minimizing the amount of grading that is encroaching into the slopes.

Questioned the specific impacts of the tennis courts relating to the LRDA.

Questioned whether raising the home would increase the height above grade.

Questioned regarding the placement of a tennis court on a more level area of the lot.

Commented regarding the Hillside Standards and their purpose

relating to the proposed project.

Questioned regarding best practices relating to the formula of the LRDA.

Open Public Hearing

Mr. DeSantis, Applicant

Commented regarding the proposed plans which have been designed to meet his families needs, respect his neighbors, and restore the hillsides.

Commented regarding the proposed project relating to the Hillside Standards and Guidelines.

Commented regarding hillside restoration on his property.

Commented regarding some of the larger homes in los Gatos.

Mr. Landry, Architect

Commented regarding the clear direction and guidance provided by Council at the previous meeting.

Commented on the reduction in square footage of the proposed home and the reduction in export of the fill from the property.

Commented that the home blends with the natural hillsides.

Commented regarding several options which have been explored relating to the grading plan.

Commented regarding the reduction of retaining walls on the property.

Commented regarding the 7% reduction of the footprint of the home.

Commented that there are no variances required relating to the project.

Commented regarding the zero visual impacts relating to the proposed project.

Council Comments

Questioned the request for a provision to add an extra storage building on the premises in the future.

Questioned if consideration was given to placing the tennis courts on the upper slope.

Mr. DeSantis

Clarified the request for the provision relating to the extra storage building to be considered as part of the proposed project.

Commented regarding the consideration of a different location for the tennis courts.

Mr. Davis

Commented that he felt there was a lack of public access to visit the

proposed project, and no visible story poles.

Commented that he felt the comments stated by Council Member McNutt regarding the motion to continue the project on February 5, 2007 were not impartial.

Commented against the project and felt that the project does not fit with the Hillside Standards and Guidelines.

Mr. Davis received his first warning for disrupting the meeting.

Council Member McNutt

Clarification regarding her statement relating to the motion to continue at the meeting of February 5, 2007.

Staff Comments

Clarified that the proposed home is below grade so there would be no story poles.

Mr. Horn

Commented that he is one of the closest neighbors and supports the proposed project.

Mr. Faraone

Commented on supporting the proposed project.

Commented on encouragement for the restoration of the hillsides.

Ms. Decker

Commented regarding the Hillside Standards and Guidelines and requested that Council vote no on the proposed project.

Commented that estate homes should not be hillside applicants.

Commented on the future development of the valley.

Ms. Dreger

Commented regarding a previous approved home that was 6,000 square feet.

Commented regarding the homes being built on the hillsides between Cupertino and Los Gatos.

Commented regarding a potential footprint of 20,000 square feet.

Ms. Quintana

Commented regarding the lack of attention to wildlife impacts in the initial study for the proposed project.

Commented regarding the lack of addressing grading adequately.

Commented that this project does not fit the Hillside Standards and Guidelines or the General Plan.

Ms. Currie

Commented on supporting the Hillside Standards and commented that the proposed project does not support these documents.

Commented that she feels the proposed changes do not cover the issues relating to CEQA.

Mr. Silva

Commented regarding the special views of the hillsides in Los Gatos.

Commented regarding the distribution of off haul.

Commented on supporting the proposed plan for a green home.

Mr. Hancock

Commented that he is a neighbor and supports the proposed project.

Mr. Morley

Commented on supporting the project.

Commented on supporting the restoration of the hillsides relating to the proposed project.

Mr. Siemens

Commented that he feels that the project will impact the open space areas.

Commented regarding the removal of 20,000 cubic feet of fill.

Commented on the concerns relating to hillside preservation.

Commented on building homes that fit the hillsides.

Would like to see policies to prohibit double lots to build large homes.

Council Comments

Questioned the impacts to Mid Pen Open Space areas.

Questioned a scenario if the proposed project complied to all the guidelines.

Ms. Dallas

Commented regarding the intent of the Hillside Standards and Guidelines.

Commented on supporting the efforts to build good design and commented that the Hillside Standards and Guidelines has room for exceptions.

Mr. Greene

Commented regarding the off haul and overuse of trucks on the Town's roads.

Commented that he feels there would be traffic concerns.

Commented regarding concerns that staff has spent too much time on this project.

Mr. Zubrycky

Commented regarding his contributions to the growth of the valley.
Commented that he would rather have one house and a tennis court than two developments on the same property.

Mr. Stotler

Commented regarding sight sensitivity issues relating to the proposed project.
Commented regarding design guidelines of the proposed project.
Commented that he feels this is a responsible development.
Commented that the Planned Development process is a smart idea and protects the lot from ever being subdivided.

Ms. Greene

Commented on her concerns relating to the off haul of dirt to other locations.
Commented regarding staying within the Hillside Standards and Guidelines.

Mr. DeSantis

Commented on following the Town's process and direction relating to the project and design of the home.
Commented on following the conditions of approval for the project.
Commented regarding the environmental impacts of the proposed project verses a subdivided two home project.
Commented regarding the fact that the proposed project is considered a green plan.
Commented regarding the support of hillside restoration.

Closed Public Hearing**Council Discussion**

Clarification regarding comments from the public that the assessments and the CEQA requirements had not been met.

Mr. Korb

Commented regarding an error in the CEQA document relating to the greater amount of off haul than proposed in the project.
Commented that the approximate amount of off haul is 8,000 cubic yards verses 10, 000 cubic yards as proposed in the document.
Commented that the document does not address the other grading that will occur on the site.
Suggested to continue the public hearing to a later date to amend the

CEQA report.

Motion by Vice Mayor Barbara Spector continue the public hearing and to re-notice public hearing when the documents are complete and a date is determined.

Request the environmental consultant to determine if the environmental documents need to be amended.

Request the consultants determine if an Environmental Impact Report is needed.

Request the consultant to evaluate the amount and safety of the fill.

Request the consultant to evaluate and determine the safety of the off hauls.

Request the consultant to determine the safety and location of any on-site fill. seconded by Council Member Mike Wasserman.

Council Discussion

Questioned if the work relating to Council concerns be continued prior to the new public hearing date.

Commented on resolving the location of the on-site fill.

Commented regarding the importance of preserving the hillsides in Los Gatos.

Commented regarding the importance of the land use closure.

Questioned if the applicant could minimize the amount of grading and to comply with the LRDA.

Commented regarding the project as a green design.

Commented that Mr. DeSantis has complied with all the requests and direction from Council at the prior public hearing.

Commented on suggestions to reduce the off haul.

Suggested that staff work with the applicant to achieve the direction requested by Council.

Motion passed unanimously.

Mayor Pirzynski called for a break at 9:40 p.m.

Meeting resumed at 9:45 p.m.

OTHER BUSINESS

9. Consider Allocation of Community Grant Funds for Fiscal Year 2007/08. RESOLUTION 2007-035

a. Refer allocation of Fiscal Year 2007/08 General Fund Grants to the Fiscal Year 2007/08 Operating Budget