



**TOWN OF LOS GATOS**  
**PLANNING COMMISSION STAFF REPORT**  
Meeting Date: August 13, 2008

**ITEM NO.:** 3

PREPARED BY: Suzanne Davis, Associate Planner

APPLICATION NO.: S-08-55

LOCATION: **Kennedy Road @ Forrester Road** (north side of Kennedy Road just east of Forrester Road)

APPLICANT: Rob DeSantis

PROPERTY OWNER: Acorn Trust

CONTACT PERSON: Rob DeSantis: 408-348-1202

APPLICATION SUMMARY: Requesting approval to construct a new single family residence within an approved Planned Development on property zoned HR-2½:PD. APN 537-29-007 & 008.

DEEMED COMPLETE: August 7, 2008

FINAL DATE TO TAKE ACTION: February 7, 2009

RECOMMENDATION: Approval, subject to conditions.

PROJECT DATA: General Plan Designation: Low Density Residential

Zoning Designation: HR-2½:PD

Applicable Plans & Standards: PD Ordinance 2162  
Hillside Development  
Standards & Guidelines  
Hillside Specific Plan

Parcel Size: 13.7 acres

Surrounding Area:

	Existing Land Use	General Plan	Zoning
North	Single Family	Low Density	HR-2½
East	Single Family	Low Density	HR-2½
South	Single Family	Low Density	HR-2½
West	Single Family	Low Density	HR-1

CEQA: A Mitigated Negative Declaration and Mitigation Monitoring Plan were prepared for the Planned Development and were adopted by the Town Council on May 5, 2008. No further environmental analysis is required.

FINDINGS:

- That the project is consistent with the Hillside Development Standards & Guidelines.
- That the project is consistent with the Hillside Specific Plan
- That the project is consistent with Planned Development Ordinance 2162

CONSIDERATIONS: As required by Section 29.20.150 of the Town Code for Architecture and Site applications.

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

EXHIBITS:

1. Location map (one page)
2. Planned Development Ordinance 2162 (18 pages inclusive of Exhibit A)
3. Council Resolution 2008-56
4. Required findings and considerations (three pages)
5. Recommended conditions of approval (five pages)
6. Applicant's letter (one page), received August 4, 2008
7. Project data sheet (one page)
8. Exterior colors and materials (one page), received July 30, 2008
9. Development Plans (22 sheets), received August 7, 2008

#### BACKGROUND:

On May 5, 2008 the Town Council approved a Planned Development (PD) application for a new residence, accessory buildings, pool, tennis court and pond on a 13.71 acre property. As part of that action, Council approved the Mitigated Negative Declaration and Mitigation Monitoring Plan and introduced the PD Ordinance. The ordinance was adopted by Council on May 19, 2008 (see Exhibit 2).

In approving the PD, the Council approved the following four exceptions to the Hillside Development Standards & Guidelines (HDS&G):

- Main residence exceeds the allowable floor area
- Main residence and art studio exceed allowable height limits
- Development is allowed outside the LRDA
- Cuts and fills exceed allowable depths

The Town Council resolution documenting the findings for approval of the PD, inclusive of the exceptions to the HDS&G, is attached for the Commission's information (see Exhibit 3).

PROJECT DESCRIPTION:

A. Location and Surrounding Neighborhood

The 13.71 acre property is surrounded by large hillside lots developed with single family homes and ancillary uses. With the exception of 200 Forrester Road, none of the homes on abutting parcels have a direct line of sight to any of the building locations. Farther outlying homes have partial views into the site, primarily those on upper Teresita Way and Wooded View and Hilltop Drives.

B. Architectural and Site Approval

Architecture and Site approval is required for construction of the new residence and accessory buildings. The PD Ordinance stipulates that the Planning Commission shall be the deciding body for the application. Considerations for the review of architecture and site applications are included in Exhibit 4.

C. Zoning Compliance

The proposed residence, garage, guest quarters and accessory structures are within the allowable floor area for the property (15,700 square feet) and are compliant with setbacks, size and heights included in the PD Ordinance.

ANALYSIS:

A. Architecture & Site

The PD allows for an 8,650 square foot primary residence and a total floor area of 14,700 square feet. Staff and the Consulting Architect reviewed the plans for consistency with the PD Ordinance and conceptual development plans. The proposed project complies with the approved PD Ordinance and Official Development Plans. The Consulting Architect recommended that the column/jamb elements separating the windows in the circular form on the rear elevation be the same as the building wall base material or treated as decorative half-round column elements. The applicant agrees with this changes and a condition has been included requiring the design detail to be refined when the construction plans are prepared. General project data is provided in Exhibit 6. Exterior materials and colors are presented in Exhibit 7.

Story poles were not installed since the size, location and building heights have been established through approval of the PD. The Town Council determined that story poles were not required during the PD process.

B. Neighborhood Compatibility

The main residence and accessory buildings are set apart from development on surrounding properties. The development will not relate directly to other residences in the area due to large setbacks and topographic barriers. Homes sizes in the immediate area vary from 3,589 to 8,905 square feet and lot sizes from .88 to 10 acres.

C. Green Building/Sustainability

The applicant has committed to building a green project. Staff used the Build It Green standards (adopted by Town Council on June 2, 2008) to determine that the project can meet certification requirements. Condition #3 of the PD Ordinance requires the project to be certified as green through evaluation using the GreenPoint checklist. The checklist must be completed by a Certified Green Building Professional. The applicant completed a preliminary checklist and far exceeded the minimum number of points (50) needed to achieve certification with a score of 280 points.

D. Open Space Easement

As required by the PD, an open space easement will be granted over approximately 10 acres of the property. The easement grant must be completed before an occupancy permit is issued for the main residence.

E. Driveway

The applicant is working with staff and the Fire Department to narrow the driveway width in locations that will not compromise sight lines or emergency vehicle access in an effort to reduce grading, the height and length of retaining walls and the amount of impervious coverage on the site. A condition has been included requiring the refinement of the driveway width to be completed to the satisfaction of the Town Engineer and Director of Community Development, prior to acceptance of construction plans for building plan check. The driveway will be surfaced with permeable concrete.

F. Landscape Plan

A preliminary landscape plan has been provided (see sheets 3 and 4 of the development plans). Ornamental planting is proposed in the immediate vicinity of the developed areas, with native and low water plantings transitioning to the natural hillside areas. The final planting plan will be reviewed with the construction plans to ensure compliance with HDS&G requirements. A condition has been included requiring evaluation of the area south of the pool and cabana to determine if additional planting is needed for screening of the rear yard and back of the main residence. The evaluation will be done once these improvements have been constructed, prior to final inspection and issuance of an occupancy permit.



G. Fencing

There is existing fencing along the north, east and west property lines. New wildlife permeable fencing will be installed along the south property line, following Kennedy Road. The fence will be set back 30 feet from the road and will blend into the vegetation. The perimeter fencing was approved as part of the PD. The only additional fencing that is proposed is a wrought iron fence around the pool area.

H. CEQA Determination

A Mitigated Negative Declaration was prepared for the Planned Development and was approved by the Town Council on May 5, 2008. No further environmental analysis is required.

PUBLIC COMMENTS:

Staff has not had any contact with neighbors. Public hearing notices were sent to 55 surrounding property owners and residents. House occupants are noticed in addition to the property owner where the owner does not reside on the property.

CONCLUSION AND RECOMMENDATION:

A. Conclusion


The project is in compliance with the PD Ordinance, the Hillside Specific Plan and the Hillside Development Standards & Guidelines other than the previously approved exceptions. Staff recommends that the application be approved as outlined in the recommendation section below.

B. Recommendation

Staff recommends that the Planning Commission take the following actions to approve the Architecture and Site application:

1. Find that the project is consistent with the HDS&G and Hillside Specific Plan (Exhibit 4);
2. Find that the project is consistent with the PD Ordinance 2162;
3. Find that the project is consistent with the considerations for approval of Architecture and Site applications; and
4. Approve Architecture and Site application S-08-55 subject the conditions in Exhibit 5.

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Kennedy Road @ Forrester Road/S-08-55  
August 13, 2008



Prepared by:  
Suzanne Davis  
Associate Planner



Approved by:  
Bud N. Lortz, AICP  
Director of Community Development

BNL:SD

cc: Rob & Ranae DeSantis, 200 Forrester Road, Los Gatos, CA 95032  
Eric Morley, The Morley Brothers, 506 N. Santa Cruz Avenue, Los Gatos, CA 95030  
Richard Landry, Landry Design Group, 11333 Iowa Avenue, Los Angeles, CA 90025

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# Acorn Meadows PD





## ORDINANCE 2162

### 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 Planning Commission shall 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](http://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 May 19, 2008 and becomes effective 30 days after it is adopted.

COUNCIL MEMBERS:

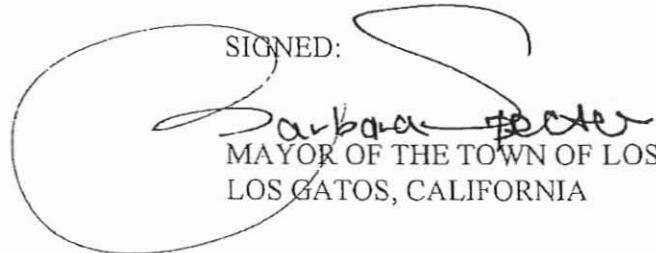
AYES: Steve Glickman, Diane McNutt, and Joe Pirzynski

NAYS: Mike Wasserman, and Mayor Barbara Spector

ABSENT:


ABSTAIN:

SIGNED:



MAYOR OF THE TOWN OF LOS GATOS  
LOS GATOS, CALIFORNIA

ATTEST:



CLERK OF THE TOWN OF LOS GATOS  
LOS GATOS, CALIFORNIA





## 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: 5/19/2008 Ord: 2162

Clerk Administrator

Mayor

**RESOLUTION 2008-056**

**RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF LOS GATOS MAKING  
FINDINGS REGARDING APPROVAL OF A REQUEST TO APPROVE A PLANNED  
DEVELOPMENT TO CONSTRUCT A NEW RESIDENCE, POOL, TENNIS COURT AND  
ACCESSORY STRUCTURES ON PROPERTY ZONED HR-2 ½**

**APNS: 537-29-007 & 008  
PLANNED DEVELOPMENT APPLICATION PD-06-03  
NEGATIVE DECLARATION ND-07-04  
PROPERTY LOCATION: KENNEDY ROAD AT FORRESTER ROAD  
PROPERTY OWNER: ACORN TRUST  
APPLICANT: ROB DESANTIS**

**WHEREAS:**

- A. This matter came before the Town Council for public hearings on February 5, 2007, April 2, 2007, and May 5, 2008, and was regularly noticed in conformance with State and Town law.
- B. Council received testimony and documentary evidence from the applicant and all interested persons who wished to testify or submit documents. Council considered all testimony and materials submitted, including the record of the Planning Commission proceedings and the packet of material contained in the Council Agenda Reports, Addenda and Desk Items prepared for the Council hearings on this application.
- C. The applicant seeks approval for a Planned Development (PD) for a large hillside property. The development includes a new residence with attached garage and guest quarters, cabana, art studio, pool, tennis court, pavilion and entry gatehouse. The total floor area of the house is 8,650 square feet and the attached garage is approximately 1,778 square feet. A 6,287 square foot cellar is also proposed and is exempt from floor area calculations. The cellar element will be completely below grade and will not appear as part of the above ground bulk and mass of the main residence. The majority of the site (approximately 75%) will be maintained in a natural state through a required open space and conservation easement.

D. The project is subject to the Town's Hillside Development Standards & Guidelines ("HDS&G"), from which the applicant seeks the following four exceptions:

1. An exception to exceed the 25 foot maximum height restriction to allow a 25 foot long segment of the highest roof ridge, the highest portion of which would reach 30 feet, and two projecting elements on the rear elevation, one reaching 26 feet 10 inches, and the other reaching 25 feet 10 inches;

2. An exception from the requirement that development occur within the Least Restrictive Development Area ("LRDA") to allow portions of the tennis court, motor court, pool and cabana, which extend onto slopes greater than 30%;

3. An exception to exceed the maximum allowable floor area of 6,000 square feet; and

4. An exception to exceed the maximum cut depth for the driveway, house and rear yard area, and the maximum fill depth for the tennis court lower fill area, the motor court and the upper knoll.

E. The application was considered by the Planning Commission on September 13, 2006, which recommended denial of the project

F. Council finds as follows:

1. The zone change is internally consistent with the General Plan and its elements and the Hillside Specific Plan. The agenda reports for the Town Council and Planning Commission hearings, the Initial Study and the proposed Mitigated Negative Declaration do not identify any conflicts with the General Plan and its elements or the Hillside Specific Plan. In a memorandum to Suzanne Davis dated May 2, 2008 (May 2, 2008 Addendum to Agenda Report, Attachment 38), Geier & Geier Consulting, the Town's environmental consultant, state at pages 4 and 16 of the memorandum that Town Staff evaluated the project's consistency with these policies and determined that the project is consistent with said policies. The adoption of the HDS&G

implements policies contained in the General Plan and Hillside Specific Plan. While the project applicant seeks exceptions to four standards and guidelines of the HDS&G, such exceptions are contemplated in the HDS&G and are permitted under certain circumstances. Such circumstances are present in this application, including the environmentally sensitive design of the project, the layout and design of the project in relation to the existing topography, the substantial lack of visibility of the project from the valley floor (including the official "viewing platforms" designated in the HDS&G), and the potential subdivision potential of the site.

2. Based upon substantial evidence in the record as a whole, the Initial Study and the April 7, 2008 Proposed Mitigated Negative Declaration ("MND") are sufficient with regard to the potential environmental impacts associated with the project. There is no substantial evidence in the record supporting a fair argument that the project may have a significant unmitigated effect on the environment. The May 2, 2008 Geier & Geier memorandum (Attachment 38) provides a detailed response to public comments regarding the sufficiency of the environmental analysis, specifically with regard to completeness of the Environmental Checklist, the Project Description in the Initial Study, the Land Use Planning analysis, aesthetics, biological resources, grading, hydrology, and drainage, fire hazards and fire protection, transportation and traffic, air quality, cultural resources, and cumulative impacts.

3. Pursuant to the HDS&G, Council incorporates by reference as though set out in full herein, the findings for exceptions to the HDS&G regarding building height, development outside the LRDA, exceeding the allowable floor area, and exceeding maximum allowable cuts and fill depths contained on pages 3 and 4 of the Council Agenda Report dated April 29, 2008. Council also notes in this regard the project justifications provided by the applicant (April 29, 2008 Council Agenda Report, Attachment 30). The applicant has met his burden of proof to show compelling reasons to grant the requested exceptions. The exceptions actually improve the project in relation to the hillside environment. For example, one reason for additional cut and fill is to lower the house

into the hillside to reduce visibility. The project, as approved, is designed to be sensitive to the hillside environment and is consistent with the overall purpose of hillside preservation embodied in the HDS&G.

**RESOLVED:**

That this resolution be incorporated into the record of Council's determination of this application as the statement of findings regarding the matters contained herein.

**PASSED AND ADOPTED** by the Town Council of the Town of Los Gatos, State of California, on the 19th day of May, 2008 by the following vote:

**COUNCIL MEMBERS:**

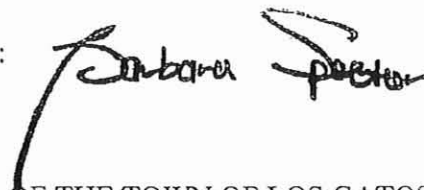
AYES: Steve Glickman, Diane McNutt, Joe Pirzynski

NAYS: Mike Wasserman, and Mayor Barbara Spector

ABSENT:

ABSTAIN:

SIGNED:

A handwritten signature in black ink, appearing to read "Barbara Spector". The signature is written in a cursive, flowing style.

MAYOR OF THE TOWN OF LOS GATOS  
LOS GATOS, CALIFORNIA

ATTEST:

A handwritten signature in black ink, appearing to read "Jackie Rose". The signature is written in a cursive, flowing style.

CLERK OF THE TOWN OF LOS GATOS  
LOS GATOS, CALIFORNIA

**PLANNING COMMISSION – AUGUST 13, 2008**  
***REQUIRED FINDINGS & CONSIDERATIONS FOR:***

Kennedy Road @ Forrester Road  
Architecture & Site Application S-08-56

Requesting approval of a grading plan for an approved Planned Development on property zoned HR-2½:PD. APNS 537-29-007 & 008.  
PROPERTY OWNER: Acorn Trust  
APPLICANT: Rob DeSantis

**FINDINGS:**

***Required compliance with Hillside Development Standards & Guidelines:***

- That other than the exceptions granted by the Town Council (house size, building height, grading cut and fill depths and encroachment outside the LRDA) the project is in compliance with the Hillside Development Standards & Guidelines.

***Required compliance with Hillside Specific Plan:***

- That the project is in compliance with the Hillside Specific Plan.

**CONSIDERATIONS:**

***Section 29.20.150, Required considerations in review of Architecture & Site applications:***

The deciding body shall consider all relevant matter including, but not limited to, the following:

- (1) *Considerations relating to traffic safety and traffic congestion.* The effect of the site development plan on traffic conditions on abutting streets; the layout of the site with respect to locations and dimensions of vehicular and pedestrian entrances, exits, drives, and walkways; the adequacy of off-street parking facilities to prevent traffic congestion; the location, arrangement, and dimension of truck loading and unloading facilities; the circulation pattern within the boundaries of the development, and the surfacing, lighting and handicapped accessibility of off-street parking facilities.
  - a. Any project or development that will add traffic to roadways and critical intersections shall be analyzed, and a determination made on the following matters:
    1. The ability of critical roadways and major intersections to accommodate existing traffic;
    2. Increased traffic estimated for approved developments not yet occupied; and

3. Regional traffic growth and traffic anticipated for the proposed project one (1) year after occupancy.
- b. The deciding body shall review the application for traffic roadway/intersection capacity and make one (1) of the following determinations:
  1. The project will not impact any roadways and/or intersections causing the roadways and/or intersections to exceed their available capacities.
  2. The project will impact a roadway(s) and/or intersection(s) causing the roadway(s) and/or intersection(s) to exceed their available capacities.

Any project receiving Town determination subsection (1)b.1. may proceed. Any project receiving Town determination subsection (1)b.2. must be modified or denied if the deciding body determines that the impact is unacceptable. In determining the acceptability of a traffic impact, the deciding body shall consider if the project's benefits to the community override the traffic impacts as determined by specific sections from the general plan and any applicable specific plan.

- (2) *Considerations relating to outdoor advertising.* The number, location, color, size, height, lighting and landscaping of outdoor advertising signs and structures in relation to the creation of traffic hazards and the appearance and harmony with adjacent development. Specialized lighting and sign systems may be used to distinguish special areas or neighborhoods such as the downtown area and Los Gatos Boulevard.
- (3) *Considerations relating to landscaping.* The location, height, and materials of walls, fences, hedges and screen plantings to insure harmony with adjacent development or to conceal storage areas, utility installations, parking lots or unsightly development; the planting of ground cover or other surfacing to prevent dust and erosion; and the unnecessary destruction of existing healthy trees. Emphasize the use of planter boxes with seasonal flowers to add color and atmosphere to the central business district. Trees and plants shall be approved by the Director of Parks, Forestry and Maintenance Services for the purpose of meeting special criteria, including climatic conditions, maintenance, year-round versus seasonal color change (blossom, summer foliage, autumn color), special branching effects and other considerations.
- (4) *Considerations relating to site layout.* The orientation and location of buildings and open spaces in relation to the physical characteristics of the site and the character of the neighborhood; and the appearance and harmony of the buildings with adjacent development.

Buildings should strengthen the form and image of the neighborhood (e.g. downtown, Los Gatos Boulevard, etc.). Buildings should maximize preservation of solar access. In the downtown, mid-block pedestrian arcades linking Santa Cruz Avenue with existing and new parking facilities shall be encouraged, and shall include such crime prevention elements as good sight lines and lighting systems.



- (5) *Considerations relating to drainage.* The effect of the site development plan on the adequacy of storm and surface water drainage.
- (6) *Considerations relating to the exterior architectural design of buildings and structures.* The effect of the height, width, shape and exterior construction and design of buildings and structures as such factors relate to the existing and future character of the neighborhood and purposes of the zone in which they are situated, and the purposes of architecture and site approval. Consistency and compatibility shall be encouraged in scale, massing, materials, color, texture, reflectivity, openings and other details.
- (7) *Considerations relating to lighting and street furniture.* Streets, walkways, and building lighting should be designed so as to strengthen and reinforce the image of the Town. Street furniture and equipment, such as lamp standards, traffic signals, fire hydrants, street signs, telephones, mail boxes, refuse receptacles, bus shelters, drinking fountains, planters, kiosks, flag poles and other elements of the street environment should be designated and selected so as to strengthen and reinforce the Town image.
- (8) *Considerations relating to access for physically disabled persons.* The adequacy of the site development plan for providing accessibility and adaptability for physically disabled persons. Any improvements to a nonresidential building where the total valuation of alterations, structural repairs or additions exceeds a threshold value established by resolution of the Town Council, shall require the building to be modified to meet the accessibility requirements of title 24 of the California Administrative Code adaptability and accessibility. In addition to retail, personal services and health care services are not allowable uses on non-accessible floors in new nonresidential buildings. Any change of use to retail, health care, or personal service on a non-accessible floor in a nonresidential building shall require that floor to be accessible to physically disabled persons pursuant to the accessibility requirements of title 24 of the California Administrative Code and shall not qualify the building for unreasonable hardship exemption from meeting any of those requirements. This provision does not effect lawful uses in existence prior to the enactment of this chapter. All new residential developments shall comply with the Town's adaptability and accessibility requirements for physically disabled persons established by resolution.
- (9) *Considerations relating to the location of a hazardous waste management facility.* A hazardous waste facility shall not be located closer than five hundred (500) feet to any residentially zoned or used property or any property then being used as a public or private school primarily educating persons under the age of eighteen (18). An application for such a facility will require an environmental impact report, which may be focused through the initial study process.



**PLANNING COMMISSION – AUGUST 13, 2008**  
**CONDITIONS OF APPROVAL**

Kennedy Road @ Forrester Road  
Architecture & Site Application S-08-56

Requesting approval of a grading plan for an approved Planned Development on property zoned HR-2½:PD. APNS 537-29-007 & 008.

PROPERTY OWNER: Acorn Trust

APPLICANT: Rob DeSantis

TO THE SATISFACTION OF THE DIRECTOR OF COMMUNITY DEVELOPMENT:

*Planning Division*

1. APPROVAL: This application shall be completed in accordance with all of the conditions of approval listed below and in substantial compliance with the plans approved on August 13, 2008 and noted as received by the Town on August 7, 2008. Any changes or modifications to the approved plans shall be approved by the Community Development Director or the Planning Commission depending on the scope of the change(s).
2. EXPIRATION OF APPROVAL: The Architecture and Site application will expire two years from the date of the approval pursuant to Section 29.20.335 of the Town Code, unless the approval is used prior to expiration.
3. TOWN INDEMNITY. Applicants are notified that Town Code Section 1.10.115 requires that any applicant who receives a permit or entitlement from the Town shall defend, indemnify, and hold harmless the Town and its officials in any action brought by a third party to overturn, set aside, or void the permit or entitlement. This requirement is a condition of approval of all such permits and entitlements whether or not expressly set forth in the approval.
4. PLANNED DEVELOPMENT. All conditions included in Planned Development Ordinance 2162 shall be complied with unless modified by the conditions contained herein.
5. EXTERIOR COLOR. The exterior color of the house shall not exceed a light reflectivity value of 30 and shall blend with the natural vegetation.
6. 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 requires all exterior paint colors to be maintained in conformance with the Town's Hillside Development Standards.
7. ARCHITECTURE. The final detailing for the windows on the circular element on the rear elevation shall be reviewed and approved by staff with input from the Consulting Architect, prior to issuance of a building permit.
8. OUTDOOR LIGHTING. House exterior and landscape lighting shall be kept to a minimum, and shall be down directed fixtures that will not reflect or encroach onto adjacent properties. The outdoor lighting plan can be reviewed during building plan check. Any changes to the lighting plan shall be approved by the Planning Division prior to installation.

9. FINAL LANDSCAPE PLAN. Any non-native species and/or ornamental planting shall be located 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. The final landscape plan shall be included with the construction plans and will be reviewed for compliance during the building plan check process.

*Building Division*

10. APPLICABLE CODES. The project shall conform to the 2007 California Building, Fire, Mechanical, Electrical, and Plumbing Codes. The CC's are based on model codes; 2006 International Building Code and Fire Code and 2006 Uniform Plumbing and Mechanical Codes and the 2005 National Electrical Code.
11. SIZE OF PLANS: Four sets of construction plans shall be provided with the building permits submittal (maximum size 24" x 36").
12. CONDITIONS OF APPROVAL: The Conditions of Approval must be blue-lined in full on the cover sheet of the construction plans. A compliance memorandum shall be prepared and submitted with the building permit application detailing how the Conditions of Approval (inclusive of the PD Ordinance) will be addressed.
13. SOILS REPORT: A soils report, prepared to the satisfaction of the Building Official, containing foundation and retaining wall design recommendations, shall be submitted with the building permit application. The report shall be prepared by a licensed civil engineer specializing in soils mechanics (California Building Chapter 18).
14. SHORING. Shoring plans and calculations will be required for all excavations that exceed four (4) feet in depth or that remove lateral support from any existing building, adjacent property or the public right-of-way. Shoring plans and calculations shall be prepared by a California licensed engineer and shall conform to Cal/OSHA regulations.
15. 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 building pad elevation, 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. Building pad elevation
  - b. Finish floor elevation
  - c. Foundation corner locations
  - d. Retaining Walls
16. BACKWATER VALVE. The scope of this project may require the installation of a sanitary sewer backwater valve per Town Ordinance 6.50.025. Please provide information on the plans if a backwater valve is required and the location of the installation. The Town of Los Gatos Ordinance and West Valley Sanitation District (WVSD) requires backwater valves on drainage piping serving fixtures that have flood level rims less than 12-inches above the elevation of the next upstream manhole.
17. WILDLAND URBAN INTERFACE. This project is in a Wildlife Urban Interface Fire Area and must comply with Chapter 7A of the 2007 California Building Code.
18. DEFENSIBLE SPACE. A Defensible Space/Fire Break Landscape plan prepared by a California licensed architect shall be provided. The plan shall be in conformance with the California Public Resources Code 4291 and California Government Code Section 51182.

19. LANDSCAPE CERTIFICATION. A letter shall be provided from a California licensed architect certifying that landscaping and vegetation clearance requirements have been completed in compliance with California Public Resources Code 4291 and California Government Code Section 51182, prior to final inspection.
20. NONPOINT SOURCE POLLUTION STANDARDS: The Town standard Santa Clara Valley Nonpoint Source Pollution Control Program shall be part of the plan submittal as the second page. The specification sheet is available at the Building Division Service Counter for a fee of \$2 or at San Jose Blue Print.
21. APPROVALS REQUIRED: The project requires the following departments and agencies approval before issuing a building permit:
  - a. Community Development - Planning Division: Suzanne Davis at 354-6875
  - b. Engineering/Parks & Public Works 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: The Town will forward the paperwork to the appropriate school district(s) for processing. A copy of the paid receipt is required prior to permit issuance.

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

##### *Engineering Division*

22. DRIVEWAY WIDTH. The applicant shall reduce the driveway width to the satisfaction of the Town Engineer and the Director of Community Development prior to submittal of plans for building plan check. Width reductions shall be made strategically to reduce retaining wall height and length, tree impacts, grading volumes and impervious area while still satisfying Engineering and Santa Clara County Fire Department standards.
23. DRIVEWAY APPROACH. The developer shall install a Town standard residential approach. The new driveway approach shall be constructed per Town Standard Details.
24. SITE DRAINAGE. Rainwater leaders shall be discharged to splash blocks. No through curb drains will be allowed.
25. NPDES. On-site drainage systems shall include a filtration device such as a bio-swale or permeable pavement.
26. SANITARY SEWER BACKWATER VALVE. Drainage piping serving fixtures which have flood level rims less than twelve (12) inches (304.8 mm) above the elevation of the next upstream manhole and/or flushing inlet cover at the public or private sewer system serving such drainage piping shall be protected from backflow of sewage by installing an approved type backwater valve. Fixtures above such elevation shall not discharge through the backwater valve, unless first approved by the Administrative (Sec. 6.50.025). The Town shall not incur any liability or responsibility for damage resulting from a sewer overflow where the property owner or other person has failed to install a backwater valve, as defined section 103(e) of the Uniform Plumbing Code adopted by section 6.50.010 of the Town Code and maintain such device in a functional operating condition. Evidence of West Valley Sanitation District's decision on whether a backwater device is needed shall be provided prior to issuance of a building permit.
27. SANITARY SEWER LATERAL. Sanitary sewer laterals are televised by West Valley Sanitation District and approved by the Town of Los Gatos before they are used or reused. Install a sanitary sewer lateral clean-out at the property line.



28. UTILITY SETBACKS. House foundations shall be set back a sufficient distance from utility lines to allow excavation without undermining the foundation. The Town Engineer shall determine the appropriate setbacks based on the depth of the utility line, input from the solids engineer and the type of foundation.
29. COSTRUCTION STREET PARKING. No vehicle having a manufacturer's rated gross vehicle weight exceeding ten thousand (10,000) pounds shall be allowed to park on the portion of a street which abuts property in a residential zone without prior approval from the Town Engineer (§ 15.40.070).
30. GOOD HOUSEKEEPING. Good housekeeping practices shall be observed at all times during the course of construction. Superintendence of construction shall be diligently performed by a person or persons authorized to do so at all times during working hours. The storing of goods and/or materials on the street will not be allowed unless a special permit is issued by the Engineering Division.
31. TRAFFIC CONTROL PLAN. The project sponsor shall work with the Engineering Division of the Parks and Public Works Department and coordinate with the Police Department, Santa Clara County Fire Department, School District(s), and any public transportation agencies that share the same route(s) as construction traffic for the project to develop a Traffic Control Plan. The Plan shall be incorporated into the bid documents (specifications) and shall include, but is not limited to, the following measures:
  - a. Construction activities shall be strategically timed and coordinated to minimize traffic disruption for schools, residents, businesses and special events. The schools located on the haul route shall be contacted to help with coordination of the trucking operation.
  - b. All construction traffic shall not exceed a speed of 15 MPH.
32. NEW TREES. All newly planted trees are required to be double staked to Town Standards.
33. GENERAL. All existing trees being retained and replacement trees are specific subjects of approval of this plan and must remain on the site.
34. PERMIT ISSUANCE. Permits for each phase (reclamation, grading and landscaping) shall be issued simultaneously.

TO THE SATISFACTION OF THE SANTA CLARA COUNTY FIRE DEPARTMENT:

35. REQUIRED FIRE FLOW. Required fire flow is 1,750 GPM at 20 psi. residual pressure.
36. WILDLAND URBAN INTERFACE. A State of California licensed (C-16) Fire Protection contractor shall submit plans, calculations, a completed permit application and appropriate fees to the Fire Department for review and approval prior to beginning work.
37. AUTOMATIC FIRE SPRINKLER SYSTEM REQUIRED. An approved automatic fire sprinkler system is required for the new residence, guest quarters, garage, and all accessory structures 500 square feet or greater. The sprinkler system shall be hydraulically designed per National Fire Protection Association (NFPA) Standard #13D and local ordinances. The fire sprinkler system supply valving shall be installed per Fire Department Standard Detail & Specifications W-1/SP-6.
38. PUBLIC FIRE HYDRANT(S) REQUIRED. Provide pubic fire hydrant(s) at location(s) to be determined jointly by the Fire Department and San Jose Water Company. Maximum hydrant spacing shall be 600 feet, with a minimum single hydrant flow of 1,500 GPM at 20 psi residual. If area fire hydrants exist, reflect their location on the civil drawings included with the building permit submittal.

39. FIRE HYDRANT LOCATION IDENTIFIER. Prior to final inspection the general contractor shall ensure that an approved "Blue Dot" fire hydrant location identifier has been placed in the roadway as directed by the Fire Department.
40. FIRE APPARATUS (ENGINE) ACCESS DRIVEWAY REQUIRED. An access driveway with a paved all weather surface, minimum unobstructed width of 12 feet, vertical clearance of 13 feet six inches. Installations shall conform to Fire Department Standard Details and Specifications sheet D-1.
41. FIRE APPARATUS (ENGINE) DRIVEWAY TURNAROUND REQUIRED. Provide an approved Fire Department engine driveway turnaround with a minimum radius of 36 feet outside and 23 feet inside. Installations shall conform to Fire Department Standard Details and Specifications D-1.
42. EMERGENCY GATE/ACCESS REQUIREMENTS. Gate installations shall conform to Fire Department Standard Details and Specification G-1 and shall not obstruct and portion of the required width for emergency access roadways or driveways when open. Locks, if provided, shall be approved by the Fire Department prior to installation
43. PREMISE IDENTIFICATION. Approved addresses shall be placed on all new buildings so they are clearly visible and legible from Kennedy Road. Numbers shall be a minimum of four inches high and shall contrast with their background.

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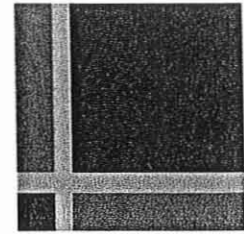


## Los Gatos – Project Description

TO: **Town of Los Gatos**

PROJECT: **Acorn Meadows- DeSantis Residence**  
APN# 537-29-007 & 537-29-008  
Lot 16, Tract # 6514  
Kennedy Road at Forrester Road

DATE: August 4<sup>th</sup>, 2008



LANDRY  
DESIGN  
GROUP

The proposed single-family home is set into a spectacular 13.7 acre property in the hills of Los Gatos. All materials used in the project are appropriate to the rural character of the landscape. Approaching the property the only visible structure will be a stone and wood gatehouse. Ascending the driveway, one will pass through several of the 600 trees on the property, driving past a tennis court that is partially sunken into the ground. The court also has a small toilet room and a trellised seating area. At various points along the road there are terraced stone-clad retaining walls that allow the slope of the driveway to be accessible by emergency vehicles as required. Arriving at a knoll mid-level on the property, the house sits back from the edge behind the motor-court. The house is sited in such a way that it does not front the major views toward the cityscapes, but rather primarily faces out toward the less populated hills & valleys. As with all the structures on the property, the 2-story house plus cellar is composed primarily stone and wood. Stepped antiqued flat-clay tile roofs and varied massing give the house a scale that is fitting for a rural hillside setting. In the rear, there is a swimming pool and a small 1-story cabana attached via a trellis to the main-house. Walking to the upper knoll on the property one will find a small 1-story Art Studio on the side of an existing field. Designed with a copper standing-seam roof, it evokes the imagery of an old farming building. Here one can view the taller hills that surround the property or at night look back toward the city lights.

The property has previously been quite disturbed; there has been much grading over the last century and an access road with berms cut through the center. As a way to restore the property to more of its original character, the owner, architects & Town staff have worked extensively with the civil engineer using some of the soil slated for export to re-contour the property to a more natural state. They have also worked with Arborists to retain as many of the trees as possible, and developed a plan to add many additional trees.

Sustainability and green architecture will be incorporated in many ways. The proposed siting of the house is oriented to take advantage of passive solar principles. Active solar will be utilized through radiant heating and photovoltaic panels. Green materials and methods including renewable and recycled resources will also be specified. An on-site well will supply water for irrigation and water features.

The DeSantis family is very excited about the project and look forward to a home that supports their growing family. As the architects, we feel this not only satisfies their family goals but also is consistent with the town's vision statement and objectives as described in the Hillside Development Standards and Guidelines, and a suitable development for a unique property.

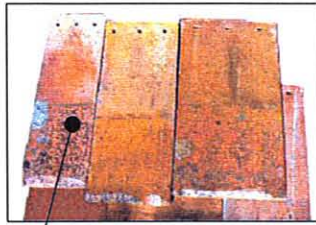
11333 IOWA AVENUE  
LOS ANGELES, CA 90025  
T 310.444.1404  
F 310.444.1405

[www.landrydesigngroup.com](http://www.landrydesigngroup.com)  
[architect@landrydesign.net](mailto:architect@landrydesign.net)



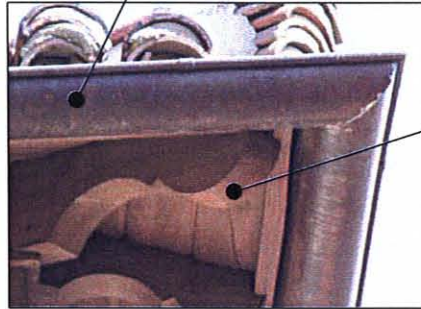
ACORN MEADOWS - PROJECT DATA			
	EXISTING CONDITIONS	PROPOSED PROJECT	REQUIRED/ PERMITTED
<i>Zoning district</i>	HR-2½	same	-
<i>Land use</i>	undeveloped	single family residence	-
<i>General Plan Designation</i>	low density residential	same	-
<i>Lot size</i>			
• square feet	596,772	same	40,000 sq. ft. minimum
• acres	13.71	same	.92 acres minimum
<i>Exterior materials:</i>			
• siding	-	stone	-
• trim	-	stained wood	-
• windows	-	stained wood	-
• roofing	-	terra cotta tile	-
<i>Building floor area:</i>			
• first floor		5,802	-
• second floor		2,848	-
• cellar		5,802	
• garage		1,778	400 sq. ft. exempt
• guest unit		1,148	
• cabana		840	-
• art studio		600	
• pavilion		120	
• gatehouse		140	
• total (excluding cellar)		13,276	14,700 sq. ft. maximum
<i>House Setbacks (ft.):</i>			
• front		272'	30 feet minimum
• rear		158'	25 feet minimum
• side		367'	20 feet minimum
• side		458'	20 feet minimum
<i>Maximum height (ft.)</i>		30'	30 feet maximum
<i>Average slope (%)</i>		39.3	-
<i>Building coverage (%)</i>		.0155	no maximum
<i>Parking</i>			
<i>garage spaces</i>		5	six spaces minimum
<i>uncovered spaces</i>		3	
<i>Sewer or septic</i>		sewer	-





**ROOF**  
ANTIQUE RECLAIMED FLAT  
CLAY TILE W/ STANDARD  
GREY MORTAR

**GUTTERS, VENTS, AND FLASHINGS**  
COPPER OR COPPER COLORED METAL  
GUTTERS AND DOWNSPOUTS



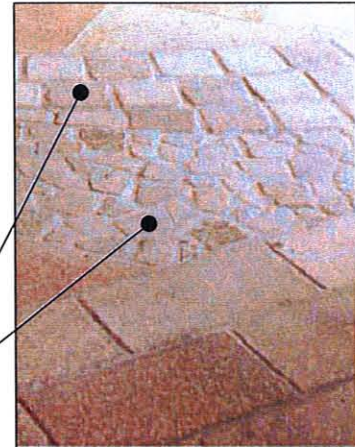
**EAVES AND  
EXPOSED BEAMS**  
STAIN GRADE  
DOUGLAS FIR T&G  
AND RAFTER TAILS  
FINISHED WITH SEMI-  
TRANSPARENT  
BROWN STAIN, SUCH  
AS DUNN-EDWARDS  
DE-499 "EVENING"



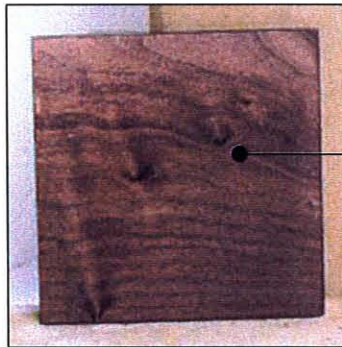
**HOUSE EXTERIOR AND  
RETAINING WALL FINISH**  
AGED LIMESTONE, SUCH AS DALLE DE  
BOURGOGNE, OR SIMILAR LOCALLY  
QUARRIED STONE

**EXTERIOR COLUMNS,  
TRIM & ACCENTS**  
NATURAL "LIMESTONE" OR  
SIMILAR EARTHTONE COLOR  
OF PRE-CAST CONCRETE

**DRIVEWAY COLORS**  
NATURAL STONE AND  
STONE PAVERS;  
EXPOSED-AGGREGATE  
CONCRETE



**ALL WINDOWS, DOORS & SHUTTERS**  
TRANSPARENT BROWN STAIN, SUCH AS  
DUNN-EDWARDS DE-499 "EVENING"



**WOOD SIDING  
(ART STUDIO)**  
LIGHT BROWN STAIN

**COPPER ROOF  
(ART STUDIO)**  
STANDING SEAM



(NOTE: ALL GLASS TO BE NON-GLARE)

 <b>LANDRY DESIGN GROUP</b> 11333 IOWA AVENUE LOS ANGELES, CA 90025 T 310.444.1404 F 310.444.1405	JOB NAME ACORN MEADOWS	JOB # 0406.00	DATE 7.25.08	SHEET -----
	DRAWING EXTERIOR FINISH EXHIBIT	SCALE NONE		





**TOWN OF LOS GATOS**  
**PLANNING COMMISSION STAFF REPORT**  
**Meeting Date: August 13, 2008**

**ITEM NO.:**  
**DESK ITEM**

**3**

PREPARED BY: Suzanne Davis, Associate Planner

APPLICATION NO.: S-08-55

LOCATION: **Kennedy Road @ Forrester Road** (north side of Kennedy Road just east of Forrester Road)

APPLICANT: Rob DeSantis

PROPERTY OWNER: Acorn Trust

CONTACT PERSON: Rob DeSantis: 408-348-1202

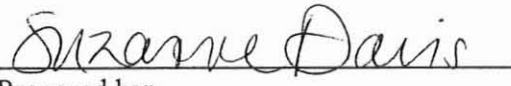
APPLICATION SUMMARY: Requesting approval to construct a new single family residence within an approved Planned Development on property zoned HR-2½:PD. APN 537-2~~7~~<sup>9</sup>-007 & 008.

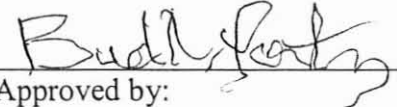
DEEMED COMPLETE: August 7, 2008  
FINAL DATE TO TAKE ACTION: February 7, 2009

EXHIBITS: 1.-9 Previously received  
10. Letter from Andrew L. Faber (two pages with nine page attachment)

DISCUSSION:

Exhibit 10 is a letter that was received from the applicant's attorney today.

  
Prepared by:  
Suzanne Davis  
Associate Planner

  
Approved by:  
Bud N. Lortz, AICP  
Director of Community Development

BNL:SD

N:\DEV\REPORTS\2008\KennedyAcorn-A&S.doc





# BERLINER COHEN

ATTORNEYS AT LAW

A PARTNERSHIP INCLUDING  
PROFESSIONAL CORPORATIONS

TEN ALMADEN BOULEVARD  
ELEVENTH FLOOR  
SAN JOSE, CALIFORNIA 95113-2233

TELEPHONE: (408) 286-5800  
FACSIMILE: (408) 998-5388

www.berliner.com

THOMAS P. MURPHY  
H. ANN LIKOFF  
VICTOR A. PAPPALARDO  
MILES J. DOLINGER  
CHRISTIAN B. PICONE  
THOMAS D. MORRELL  
BRADLEY G. HUBERT  
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HARRY A. LOPEZ  
CHARLES W. VOLPE  
MICHAEL VIOLANTI

\*A Professional Corporation  
RETIRED  
SAMUEL J. COHEN  
ROBERT W. HUMPHREYS

Branch Office - Merced, CA

IN ASSOCIATION WITH  
MCGRANE GREENFIELD LLP  
SAN JOSE - SAN FRANCISCO

OF COUNSEL  
HUGH L. ISOLA  
STEVEN L. HALLGRIMSON  
ERIC WONG  
LINDA J. LEZOTTE  
PHILIP GOLDEN  
NANCY L. BRANDT

August 13, 2008

VIA FACSIMILE (408) 354-8431

Chairman Michael D. Kane  
Members of Los Gatos Planning Commission  
Town Hall  
110 E. Main Street  
Los Gatos, CA 95030

Re: Planning Commission Agenda August 13, 2008  
Item 3 Architecture and Site Application S-08-55 (Rob DeSantis)  
Our File No.: 17237-002

Dear Chairman Kane and Members of the Commission:

As you know, the approval of this Project by the Town Counsel is currently in litigation. The Town has been sued by a group calling themselves "Friends of the Hillside", an Unincorporated Association." The Complaint alleges that members of Friends of the Hillside are "residents, taxpayers and/or property owners residing within the town of Los Gatos, or in unincorporated areas within Santa Clara County located in close proximity to the site of the proposed Project." (Petition Par. 4). It also states that "[t]he claims asserted herein and the relief sought by this action are intended for the beneficial interest of the members of Friends of the Hillside others similarly situated" (Par. 6)

This office represents the interests of the applicant, Rob DeSantis. It has come to our attention that there is a possibility that one or more members of the Planning Commission may have attended a meeting of Friends of the Hillside and/or its supporters, and/or be a member of Friends of the Hillside and/or have met or discussed opposition to this project with one or more members of Friends of the Hillside (the "Conflict Activities").

RECEIVED

AUG 13 2008

TOWN OF LOS GATOS  
PLANNING DIVISION

VALF769582.1  
081308-17237002

EXHIBIT 10

The proceeding in front of the Planning Commission tonight is a quasi-judicial proceeding. The Planning Commissioners are required to essentially have the impartiality of judges (who are expected to recuse themselves when there is even an appearance of impartiality). They are not to make policy with respect to this Project, nor to second guess or question the decision of the Town in approving the Project. They are to apply the Town's site and architectural regulations to the Project consistent with the approval already granted by the Council.

As such, Planning Commissioners should be held to the same standard of impartiality as judges. We hereby request that any commissioner who has engaged in one or more of the Conflict Activities as identified above, or any other conduct that would indicate any previous position or bias against the Project or the applicant should recuse himself from the hearing tonight and not participate in any way in the matter, including voting.

Attached to this letter is a copy of the California Court of Appeal Decision in the case of *Nasha v. City of Los Angeles* (2004), 125 Cal.App.4<sup>th</sup> 470. In that case, a planning commission denial of a hillside project based on environmental issues was overturned because one member of the commission was biased against the project and had engaged in activities similar to the Conflict Activities. The court found that the participation of this biased commissioner in a quasi-judicial proceeding (such as the one at issue tonight in Los Gatos) deprived the applicant of a fair hearing.

Thank you very much for your consideration of this request.

Very truly yours,

BERLINER COHEN



ANDREW L. FABER

E-Mail: [andrew.faber@berliner.com](mailto:andrew.faber@berliner.com)

ALF:cb

Cc: Orry Korb, Town Attorney (w/attach.)  
Bud Lortz, Planning Director (w/attach.)  
Rob DeSantis (w/attach.)  
Marilyn Cosden (w/attach.)

LEXSEE 125 CAL.APP.4TH 470

NASHA L.L.C., Plaintiff and Appellant, v. CITY OF LOS ANGELES et al., Defendants and Respondents.

B167071

COURT OF APPEAL OF CALIFORNIA, SECOND APPELLATE DISTRICT, DIVISION THREE

125 Cal. App. 4th 470; 22 Cal. Rptr. 3d 772; 2004 Cal. App. LEXIS 2247; 2004 Cal. Daily Op. Service 11410; 2004 Daily Journal DAR 15369; 35 ELR 20007

December 29, 2004, Filed

**SUBSEQUENT HISTORY:** Request denied by *Nasha L.L.C. v. City of Los Angeles*, 2005 Cal. LEXIS 11344 (Cal., Oct. 12, 2005)

**PRIOR HISTORY:** [\*\*\*1] Superior Court of Los Angeles County, No. BC258585, David P. Yaffe, Judge.

**DISPOSITION:** Reversed with directions.

**SUMMARY:**

**CALIFORNIA OFFICIAL REPORTS SUMMARY**

The trial court denied a company's petition for writ of mandate under *Code Civ. Proc.*, § 1094.5, filed against a city, its planning commission, and a commission member, wherein the company sought to overturn an adverse decision by the planning commission. The company had a project to develop land. The commission member authored a critical article concerning the company's project, then participated in an appeal to the planning commission that resulted ultimately in the conditional approval of the project being overturned. The trial court found that a particular plan was applicable irrespective of whether the project was visible from a certain road, and substantial evidence supported the administrative decision that the large homes that the company intended to construct were out of character with the surrounding neighborhood. The trial court also found that the company was precluded from raising the issue of the commission member's bias for the first time at the superior court level. (Superior Court of Los Angeles County, No. BC258585, David P. Yaffe, Judge.)

The Court of Appeal reversed with directions that a writ of mandate be issued vacating the planning commission's decision and the planning commission be directed

to conduct a new hearing. The proceeding before the planning commission was quasi-judicial in nature because the matter involved the determination and application of facts peculiar to an individual case. Thus, procedural due process principles were applicable. The company showed there was an unacceptable probability of actual bias on the part of the commission, based on the commission member's authorship of the article attacking the project in question. The authorship of the letter was sufficient to preclude the commission member from serving as a reasonably impartial, noninvolved reviewer. His participation in the appeal to the planning commission required that decision to be vacated. The trial court's finding of waiver was erroneous. The record established that the company did raise the issue of bias at the administrative level. Because it was only in the course of the trial court action that the company had the opportunity to take the commission member's deposition to [\*471] fully develop the issue of bias, under *Code Civ. Proc.*, § 1094.5, subd. (e), such evidence properly was before the trial court in the mandamus proceeding and was entitled to due consideration. (Opinion by Klein, P. J., with Croskey and Kitching, JJ., concurring.)

**HEADNOTES**

CALIFORNIA OFFICIAL REPORTS HEADNOTES  
Classified to California Digest of Official Reports

(1) Administrative Law § 113--Judicial Review--Scope and Extent--Procedural Fairness--De Novo Review.--A challenge to the procedural fairness of the administrative hearing is reviewed de novo on appeal because the ultimate determination of procedural fairness amounts to a question of law.

(2) **Administrative Law § 38--Administrative Actions--Adjudication--Character of Proceedings--Due Process Principles--Applicability.**—In considering the applicability of due process principles, the court must distinguish between actions that are legislative in character and actions that are adjudicatory. In the case of an administrative agency, the terms quasi-legislative and quasi-judicial are used to denote these differing types of action. Quasi-legislative acts involve the adoption of rules of general application on the basis of broad public policy, while quasi-judicial acts involve the determination and application of facts peculiar to an individual case. Quasi-legislative acts are not subject to procedural due process requirements while those requirements apply to quasi-judicial acts regardless of the guise they may take.

(3) **Administrative Law § 56--Administrative Actions--Adjudication--Hearing--Constitutional and Statutory Requirements--Procedural Due Process.**—Procedural due process in the administrative setting requires that the hearing be conducted before a reasonably impartial, noninvolved reviewer. The broad applicability of administrative hearings to the various rights and responsibilities of citizens and businesses, and the undeniable public interest in fair hearings in the administrative adjudication arena, militate in favor of assuring that such hearings are fair.

(4) **Administrative Law § 56--Administrative Actions--Adjudication--Hearing--Constitutional and Statutory Requirements--Standard of Impartiality.**—The standard of impartiality required at an administrative hearing is less exacting than that required in judicial proceedings. It is recognized that administrative decision makers are drawn from the [\*472] community at large. Especially in a small town setting they are likely to have knowledge of and contact or dealings with parties to the proceeding. Holding them to the same standard as judges, without a showing of actual bias or the probability of actual bias, may discourage persons willing to serve and may deprive the administrative process of capable decision makers.

(5) **Administrative Law § 56--Administrative Actions--Adjudication--Hearing--Constitutional and Statutory Requirements--Fair Hearing--Claim of Bias.**—In order to prevail on a claim of bias violating fair hearing requirements, one must establish an unacceptable probability of actual bias on the part of those who have actual decisionmaking power over their claims. A party seeking to show bias or prejudice on the part of an administrative decision maker is required to prove the same with concrete facts; bias and prejudice are never implied and must be established by clear averments.

(6) **Administrative Law § 61--Administrative Actions--Adjudication--Hearing--Disqualification of Hearing Officers--Bias--Effect on Agency Decision.**—A planning commission member's authorship of a newsletter article critical of a company's construction project gave rise to an unacceptable probability of actual bias and was sufficient to preclude the member from serving as a reasonably impartial, noninvolved reviewer of the project. The member clearly should have recused himself from hearing the matter. His participation in the appeal to the planning commission required the commission's decision be vacated.

[7 Witkin, Summary of Cal. Law (9th ed. 1988) Constitutional Law, § 527; 9 Witkin, Cal. Procedure (4th ed. 1997) Administrative Proceedings, § 3; 8 Witkin, Cal. Procedure (4th ed. 1997) Extraordinary Writs, § 324.]

(7) **Administrative Law § 112--Judicial Review--Administrative Mandamus--New or Improperly Excluded Evidence--Procedural Fairness.**—Where the issue on administrative mandamus is whether the administrative hearing was procedurally fair, the trial court may consider evidence not presented at the administrative hearing if the evidence addresses the petitioner's claim that he or she was denied due process or a fair hearing at that hearing. *Code Civ. Proc., § 1094.5, subd. (e)*, enables the trial court to admit relevant evidence that, in the exercise of reasonable diligence, could not have been produced at the administrative hearing. [\*473]

**COUNSEL:** Luna & Glushon and Robert L. Glushon for Plaintiff and Appellant.

Rockard J. Delgadillo, City Attorney, Jeri L. Burge, Assistant City Attorney, and Steven N. Blau, Deputy City Attorney, for Defendants and Respondents.

**JUDGES:** Klein, P. J., with Croskey and Kitching, JJ., concurring.

**OPINION BY:** Klein

# OPINION

[\*\*773] **KLEIN, P. J.**—Plaintiff and appellant Nasha L.L.C. (Nasha) appeals a judgment denying its petition for writ of mandate (*Code Civ. Proc., § 1094.5*), wherein Nasha sought to overturn an adverse decision by the South Valley Area Planning Commission (Planning Commission).<sup>1</sup>

1 All further statutory references are to the Code of Civil Procedure, unless otherwise indicated.

2 In addition to the Planning Commission, Nasha named as defendants the City of Los Angeles (the City) and Tony Lucente (Lucente), in his capacity as a member of the Planning Commission. The Planning Commission, the City and Lucente are the respondents in this appeal.

[\*\*\*2] The essential issue presented is whether the Planning Commission's decision should be set aside due to an unacceptable probability of actual bias on the part of one of the decision makers.

While this matter was pending before the Planning Commission, one of its members authored an article attacking the project under consideration. Accordingly, Nasha's claim of bias is well founded. The judgment is reversed with directions.

#### FACTUAL AND PROCEDURAL BACKGROUND

Nasha owns five legal lots on Multiview Drive, north of Mulholland Highway and east of Laurel Canyon. The lots, which are surrounded by single-family residences, range in size from 22,675 square feet to 46,244 square feet. Nasha seeks to develop the property with five new three-story single-family homes, with a maximum height of 36 feet and square footage ranging from 5,173 square feet to 6,648 square feet, including garages, decks and balconies. Each home also would have an outdoor pool.

The site of the project is located within an area subject to the Mulholland Scenic Parkway Specific Plan (Mulholland Plan). The stated purposes of the Mulholland Plan include preservation of the area's scenic features as well as preservation [\*\*\*3] of the existing ecological balance and biologic features.

[\*474] [\*\*\*774] Although it is asserted the site of the proposed project is not visible from Mulholland Highway, due to its geographic location within the boundaries of the Mulholland Plan, Nasha was required to file an application to determine the proposed development's compliance with the Mulholland Plan.

#### 1. Administrative proceedings.

##### a. The mitigated negative declaration (MND).<sup>3</sup>

3 " 'Mitigated negative declaration' means a negative declaration prepared for a project when the initial study has identified potentially significant effects on the environment, but (1) revisions in the project plans or proposals made by, or agreed to by, the applicant before the proposed

negative declaration and initial study are released for public review would avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment would occur, and (2) there is no substantial evidence in light of the whole record before the public agency that the project, as revised, may have a significant effect on the environment." (*Pub. Resources Code*, § 21064.5.)

[\*\*\*4] In November 2000, in accordance with the *California Environmental Quality Act* (CEQA) (*Pub. Resources Code*, § 21000 et seq.), the City Planning Department issued a proposed MND for the project. The Planning Department proposed an MND be adopted on the ground the mitigation measures which it outlined would reduce any potential significant adverse effects to a level of insignificance.

Thereafter, the Santa Monica Mountains Conservancy (Conservancy) submitted written comments. The Conservancy argued the proposed MND was deficient for inadequately addressing potential impacts to the wildlife movement corridor which connects Griffith Park to Fryman Canyon.

Various neighbors, including one Mark Hennessy (Hennessy), also submitted comments. Hennessy likewise contended the MND was deficient and complained the project would substantially interfere with deer and wildlife habitat, and would degrade wildlife migration.

In December 2000, based on comments submitted pertaining to the wildlife corridor, the Planning Department amended the proposed MND to include the following mitigation measure: "Provision of escape routes or wildlife corridors to allow resident wildlife access to uninhabited [\*\*\*5] areas where they dwell, and monitoring of animal use of these escapes or corridors; [¶] Consultation with the Department of Animal Regulation, Wildlife Specialist or Supervisor, regarding animal relocation, design standards and management guidelines for escape routes or wildlife corridors; [¶] Mapping of these escape routes or [\*475] wildlife corridors with regards to their location, topography, and vegetation; and [¶] Post-construction landscape treatment to insure preservation of habitat for wildlife. Where habitat has been preserved, use of native plant materials is required."

##### b. The Mulholland Design Review Board (DRB) recommends disapproval.

Nasha's application also was considered by the DRB, which is an advisory body. On December 14, 2000, the DRB recommended disapproval on the grounds that the size and massing were incompatible with the Mulholland Parkway environment, the flat roofs were incompatible, the retaining walls were too tall and



long, and the development did not conform to the site. The DRB also recommended that an environmental impact report (EIR) be prepared for the project.

c. *The City Director of Planning (Director) approves the project.*

On March 23, 2001, the [\*\*\*6] Director, as the decision maker, conditionally approved Nasha's [\*\*\*775] application and certified the MND. The Director determined that as conditioned, there were "no significant adverse impacts which have not been mitigated to a level of insignificance."

d. *The appeal to the Planning Commission.*

In April 2001, the Conservancy and Hennessy, for himself and other neighborhood residents, appealed the Director's decision to the Planning Commission.

The Conservancy contended the project would result in significant unavoidable adverse impacts to wildlife movement in the eastern Santa Monica Mountains and habitat resources, the MND was inadequate, an EIR was required, and the proposed buildings were incompatible with the terrain.

Similarly, Hennessy asserted, *inter alia*, the Director's decision "creates a disastrous effect not only to the property itself, including the numerous wildlife species within this wildlife corridor canyon contained within this property, but also to the properties immediately adjacent ..."

The public hearing on the appeal was scheduled for June 28, 2001.

[\*476] e. *Shortly before the Planning Commission hearing on the appeal, Commissioner Lucente authors an [\*\*\*7] article hostile to the project.*

In advance of the Planning Commission hearing, the June 2001 issue of the Studio City Residents Association newsletter contained the following news update:

**"MULTIVIEW DRIVE PROJECT THREAT TO WILDLIFE CORRIDOR [¶]** A proposed project taking five legal lots totaling 3.8 acres for five proposed large homes with swimming pools served by a common driveway off Multiview Drive is winding its way through the Planning process. The Mulholland Design Review Board denied it unanimously. However, the Deputy LA City Planning Director overrode that denial. The Santa Monica Mountains Conservancy and the neighbors both appealed it to the South Valley Area Planning Commission. The Appeal hearing is set for June 28th after 4:30 pm in Van Nuys. (Please see Hearings/Meetings, Page Two.) [¶] After wildlife leaves Briar Summit heading eastward they must either head south towards Mt. Olym-

pus or north to the slopes above Universal City. *The Multiview Drive site is an absolutely crucial habitat corridor.* Please contact Paul Edelman with the Conservancy at 310/ ... or Mark Hennessy who lives adjacent to the project at 323/ ... if you have any questions. [\*\*\*8] " (Italics added.)

The newsletter article was unsigned. Lucente later admitted in deposition he was the author.

f. *While the appeal to the Planning Commission was pending, Lucente introduced Hennessy to speak against the project at a neighborhood association meeting.*

In addition to serving on the Planning Commission, Lucente also was president of the Studio City Residents Association. In June 2001, during the pendency of the appeal to the Planning Commission, Lucente introduced Hennessy at the association's monthly meeting. At that meeting, Hennessy proceeded to speak against the project and in support of his appeal.

4 According to Lucente, he left the room for the duration of Hennessy's remarks.

[\*477]

[\*\*\*776] g. *The June 28, 2001 hearing before the Planning Commission; no disclosure by Lucente of his authorship of the article or of his contact with Hennessy.*

On June 28, 2001, the matter came on for hearing before the Planning Commission. At the outset, Lucente made the following statement: "I did [\*\*\*9] want to state that in another capacity, as president of the Studio City Residents Association, we have included information on this matter in our monthly newsletter at the request of one of our members, which is a routine thing that we do. And I have not, however, had any direct contact with the appellants, nor have I discussed this project in any substantive way with anyone involved in this. So, therefore, I feel I can make a fair and impartial decision regarding this matter."

An unidentified speaker then stated: "It doesn't impact you financially in any way."

Lucente responded: "And there is no financial impact in any way. Therefore, I will be hearing this matter. Thank you."

Thus, in Lucente's opening remarks, he did not disclose he in fact had authored the article which appeared in the association's June 2001 newsletter. Also, contrary to Lucente's characterization thereof, the newsletter article was not merely informational. The article advocated a position against the project, which it characterized as a "threat to wildlife corridor," and sought to rally residents to support the appeal to the Planning Commission.

Lucente's assertion he had not "had any direct contact" with [\*\*\*10] any of the appellants likewise was inaccurate. As noted, earlier that month, Lucente had introduced Hennessy at an association meeting to speak against the project.

*h. At the conclusion of the hearing, Lucente brings a motion to grant the appeal.*

At the hearing, the Planning Commission heard from various speakers, including representatives of Nasha, the Conservancy, and various area residents, including Hennessy. Nasha took the position that the MND adequately addressed the issue of the wildlife corridor, a position which the Conservancy and neighboring homeowners disputed.

At the conclusion of the hearing, Lucente made a motion "to grant the appeal and find that the Director of Planning erred in the determination [\*478] regarding this project and that the findings could not be made to ... deny the appeal based on the testimony that we had here tonight."

The motion was carried by a three-to-one vote.

*i. Nasha's unsuccessful requests for reconsideration.*

On July 5, 2001, one week after the hearing, Nasha filed a request for reconsideration based on new facts relating to bias by Lucente. First, contrary to Lucente's statement at the June 28, 2001 Planning Commission [\*\*\*11] hearing, Lucente did have ex parte contact with Hennessy, one of the appellants, whom Lucente had introduced at a June 12, 2001 meeting of the Studio City Residents Association. Further, at the Planning Commission hearing, Lucente had failed to disclose his role in the newsletter article opposing the project.

On July 12, 2001, Nasha reiterated its request for reconsideration in another letter to the Planning Commission, stating: "In order to protect even the perception of bias and conflict, the Commission should vote for reconsideration of this case, either for the purpose of allowing Commissioner Lucente to recuse himself or to request an [\*\*\*777] opinion from the City Attorney pursuant to Charter Section 222."

The Planning Commission did not reconsider its decision.

*j. The Planning Commission's findings.*

Four months after the hearing, the Planning Commission issued findings setting forth the basis for its decision overturning the Director's conditional approval of the project. The Planning Commission's decision indicated:

"1. The Commission arrived at its determination based upon its review of available records and evidence contained in the subject and related files and upon [\*\*\*12] testimony and evidence provided at the Commission hearing on the subject matter.

"a. Based on a review of the building plans, landscape plans, and color palette, the five proposed buildings and associated landscaping are not compatible with the surrounding buildings and parkway environment for the following reasons: The Specific Plan states, per Section 11.1.2.e., that the building or structure should conform to the surrounding buildings and parkway environment. In this case, the proposed houses are 'box like' with little articulation or stepping back. Furthermore, the visual massing and appearance resulting from the cumulative size of the homes and their [\*479] retaining wall structures would not be compatible with the appearance of existing houses in this neighborhood.

"b. On December 14, 2000, the City Planning Department Environmental Staff Advisory Committee issued a proposed Mitigated Negative Declaration (MND) No. 2000-3622-DRB (Article V-City CEQA Guidelines) and determined that by imposing conditions, the potential impacts resulting from the project would not have a significant impact on the environment. At the June 28, 2001, South Valley Area Planning Commission appeal hearing [\*\*\*13] for this case, the Santa Monica Mountains Conservancy presented evidence that potentially significant impacts to the wildlife corridor would result from project implementation and that the proposed mitigation measures identified in the proposed Mitigated Negative Declaration No. 2000-3622-DRB were insufficient to reduce impacts to less than significant levels. The project, as proposed, would not preserve the natural vegetation, existing ecological balance and environmentally sensitive areas and the biologic features in conformance with Section 2.K. and L. of the Specific Plan. The potential impacts to the wildlife and the corridors were not adequately analyzed by the proposed Mitigated Negative Declaration No. 2000-3622-DRB and therefore it was determined to be inadequate.

"c. Project Permit Compliance Finding. The proposed project does not comply with the regulations, standards, and provisions of the Mulholland Scenic Parkway Specific Plan."

*2. Trial court proceedings.*

*a. Pleadings.*

On October 25, 2001, Nasha filed a first amended verified petition for writ of mandate to overturn the Planning Commission's decision (§ 1094.5), joined with causes of action for [\*\*\*14] declaratory relief and tem-

porary taking without just compensation.<sup>5</sup> Nasha named as defendants the City, the Planning Commission, and Lucente (\*\*778) in his capacity as a planning commissioner.

5 Nasha later filed a request for dismissal without prejudice of its declaratory relief and taking claims.

Nasha alleged, inter alia, that the Planning Commission's reversal of the Director's approval of the project was arbitrary, capricious, an abuse of discretion, a denial of Nasha's fundamental right to a fair and impartial decision, and unsupported by substantial evidence.

With respect to Lucente's conduct, Nasha alleged his role in introducing Hennessy as a speaker against the project at a neighborhood association [\*480] meeting, and his role in allowing publication of the newsletter article attacking the project while the matter was pending before the Planning Commission, reflected, at a minimum, a reasonable appearance of bias which required his recusal from hearing the matter. Further, to ensure that quasi-judicial decisionmaking [\*\*\*15] is not tainted by even the reasonable appearance of bias and unfairness, Lucente's vote and the Planning Commission's decision should be set aside.

Additionally, Nasha alleged the Planning Commission failed to act in the manner required by law in various respects, including failing to make certain necessary findings and in misinterpreting the Mulholland Plan; and the Planning Commission's decision was not supported by substantial evidence, in that, inter alia, the MND was adequate to protect wildlife access.

#### b. Lucente's deposition.

On January 18, 2002, during the pendency of the mandamus proceedings, Nasha took Lucente's deposition. In the deposition, Lucente admitted he authored the newsletter article, that he had spoken to Hennessy before the association meeting and that he introduced Hennessy at that meeting.<sup>6</sup>

6 The deposition transcript includes the following colloquy:

"Q And you didn't know what [Hennessy] was going to say?

"A I knew that he was going to speak about this project

"Q And you told Mr. Hennessy that you would introduce him to speak?

"A Yes.

"Q And did you introduce Mr. Hennessy to speak?

"A Yes, I did."

Lucente then added that he left the room and did not listen to Hennessy's remarks.

#### [\*\*\*16] c. The City's opposition.

The City filed opposition papers, asserting substantial evidence supported the Planning Commission's findings, the decision was principled and followed a clear analytical path, the Planning Commission duly relied on applicable provisions of the Mulholland Plan, and the attack on Lucente was spurious.

The City emphasized Lucente had no financial interest, he was not the sole decision maker, and the standard for disqualification was not an appearance of bias but a probability of actual bias, a standard that was not met here.

#### d. Trial court's rulings and judgment.

On July 26, 2002, the matter came on for hearing. The trial court rejected Nasha's claim of bias arising out of Lucente's prehearing involvement [\*481] attacking the project, stating: "I am going to reject [Nasha's] argument ... I think that [Nasha] either knew or had reason to believe at the administrative level that this guy had something to do with that, with the writing of that article, and therefore should--has not shown sufficiently that this argument could not have been made in the exercise of due diligence at the administrative level and therefore is precluded from [\*\*\*17] urging disqualification for the first time here in court [\*\*779] on the basis that he wrote that. *And I don't think there's enough to show that he must be disqualified if he did not write it.* So I'm not going to permit any further briefing or argument with respect to that." (Italics added.)<sup>7</sup>

7 As indicated, Lucente admitted he wrote the article. Therefore, the trial court's comment "I don't think there's enough to show that he must be disqualified if he did not write it" did not speak to the issue. Further, the trial court faulted Nasha for raising the issue of Lucente's bias for the first time at the superior court level. However, as set forth above, the record reflects Nasha did raise the issue of bias at the administrative level--Nasha promptly requested reconsideration on that basis before the Planning Commission, twice, to no avail.

The trial court then continued the matter to allow supplemental briefing on the sole issue of whether the



Mulholland Plan applies to development projects that are not visible [\*\*\*18] from Mulholland Drive.

On September 26, 2002, the trial court denied Nasha's petition for writ of mandate, ruling that the Mulholland Plan is applicable irrespective of whether a project is visible from Mulholland Drive, and that substantial evidence supported the administrative decision "that the large homes that [Nasha] intended to construct upon the 5 lots were out of scale and character with, and incompatible with, the surrounding neighborhood."

On April 11, 2003, the trial court entered judgment in favor of the City, the Planning Commission and Lucente.

Nasha filed a timely appeal from the judgment denying its petition for writ of mandate.

## CONTENTIONS

Nasha contends: the Planning Commission's decision should be set aside because Commissioner Lucente's prehearing actions attacking the project constituted actual bias; the Planning Commission's decision is not supported by substantial evidence; the Planning Commission failed to make any of the required findings to support its decision; the stated purpose for a design review process in the Mulholland Plan is to review projects that are visible from Mulholland Drive; and the Planning Commission's decision reversing [\*\*\*19] the Director's approval of the MND was unsupported by substantial evidence.

## [\*482] DISCUSSION

### 1. Standard of review.

The petition for superior court review of the final administrative decision by the Planning Commission was brought pursuant to section 1094.5. "The inquiry in such a case shall extend to the questions whether the respondent has proceeded without, or in excess of jurisdiction; whether there was a fair trial; and whether there was any prejudicial abuse of discretion." (§ 1094.5, *subd. (b)*, italics added.)

(1) A challenge to the procedural fairness of the administrative hearing is reviewed de novo on appeal because the ultimate determination of procedural fairness amounts to a question of law. (*Clark v. City of Hermosa Beach* (1996) 48 Cal.App.4th 1152, 1169-1170 [56 Cal. Rptr. 2d 223]; *Anserv Ins. Services, Inc. v. Kelso* (2000) 83 Cal.App.4th 197, 205 [99 Cal. Rptr. 2d 357].)

2. Nasha has shown an unacceptable probability of actual bias.

a. Procedural due process principles apply to quasi-judicial decisionmaking.

(2) As explained in *Beck Development Co. v. Southern Pacific Transportation* [\*\*\*780] Co. (1996) 44 Cal.App.4th 1160, 1188 [52 Cal. Rptr. 2d 518], "In considering [\*\*\*20] the applicability of due process principles, we must distinguish between actions that are legislative in character and actions that are adjudicatory. In the case of an administrative agency, the terms 'quasi-legislative' and 'quasi-judicial' are used to denote these differing types of action. Quasi-legislative acts involve the adoption of rules of general application on the basis of broad public policy, while quasi-judicial acts involve the determination and application of facts peculiar to an individual case. [Citations.] Quasi-legislative acts are not subject to procedural due process requirements while those requirements apply to quasi-judicial acts regardless of the guise they may take. [Citations.]"

Here, the proceeding before the Planning Commission was quasi-judicial in nature, rather than quasi-legislative, because the matter involved the determination and application of facts peculiar to an individual case, rather than the adoption of rules of general application on the basis of broad public policy. (*Beck Development Co., supra*, 44 Cal.App.4th at p. 1188.) Accordingly, procedural due process principles are applicable. (*Ibid.*)

[\*483] b. Procedural [\*\*\*21] due process requires a reasonably impartial, noninvolved decision maker.

(3) Procedural due process in the administrative setting requires that the hearing be conducted " 'before a reasonably impartial, noninvolved reviewer.' " (*Gai v. City of Selma* (1998) 68 Cal.App.4th 213, 219 [79 Cal. Rptr. 2d 910], italics added.) As this court observed in *Nightlife Partners, Ltd. v. City of Beverly Hills* (2003) 108 Cal.App.4th 81 [133 Cal. Rptr. 2d 234], "the broad applicability of administrative hearings to the various rights and responsibilities of citizens and businesses, and the undeniable public interest in fair hearings in the administrative adjudication arena, militate in favor of assuring that such hearings are fair." (*Id.*, at p. 90.)

c. The nature of the required showing: an unacceptable probability of actual bias.

(4) The "standard of impartiality required at an administrative hearing is less exacting than that required in ... judicial proceeding[s]." (*Gai v. City of Selma, supra*, 68 Cal.App.4th at p. 219.) It is recognized that "administrative decision makers are drawn from the community at large. Especially in a small town setting they are likely to have [\*\*\*22] knowledge of and contact or dealings with parties to the proceeding. Holding them to the same

standard as judges, without a showing of actual bias or the probability of actual bias, may discourage persons willing to serve and may deprive the administrative process of capable decision makers." (*Id.*, at p. 233.)

(5) Therefore, in order to prevail on a claim of bias violating fair hearing requirements, Nasha must establish "an unacceptable probability of actual bias on the part of those who have actual decisionmaking power over their claims." (*BreakZone Billiards v. City of Torrance* (2000) 81 Cal.App.4th 1205, 1236 [97 Cal. Rptr. 2d 467].) A party seeking to show bias or prejudice on the part of an administrative decision maker is required to prove the same "with concrete facts: '[b]ias and prejudice are never implied and must be established by clear averments.'" (*Id.*, at p. 1237; accord, *Hongsathavij v. Queen of Angels etc. Medical Center* (1998) 62 Cal.App.4th 1123, 1142 [73 Cal. Rptr. 2d 695].)

[\*\*781] d. Nasha has shown an unacceptable probability of actual bias based on Lucente's authorship of the newsletter article attacking the project.

The newsletter [\*\*\*23] article by Lucente, attacking the project as a "threat to wildlife corridor," gives rise to an unacceptable probability of actual bias.

[\*484] We reiterate portions of the offending article for emphasis: "MULTIVIEW DRIVE PROJECT THREAT TO WILDLIFE CORRIDOR [¶] A proposed project taking five legal lots totaling 3.8 acres for five proposed large homes with swimming pools served by a common driveway off Multiview Drive is winding its way through the Planning process. ... [¶] After wildlife leaves Briar Summit heading eastward they must either head south towards Mt. Olympus or north to the slopes above Universal City. The Multiview Drive site is an absolutely crucial habitat corridor. Please contact Paul Edelman with the Conservancy at 310/ ... or Mark Hennessy who lives adjacent to the project at 323/ ... if you have any questions." (Italics added.)

Contrary to the position taken by Lucente, the newsletter article was not merely informational. The article clearly advocated a position against the project, which it characterized as a "threat to wildlife corridor."

(6) Lucente's authorship of the newsletter article gave rise to an unacceptable probability of actual bias and was [\*\*\*24] sufficient to preclude Lucente from serving as a "reasonably impartial, noninvolved reviewer." (*Gai v. City of Selma, supra*, 68 Cal.App.4th at p. 219.) Lucente clearly should have recused himself from hearing this matter. His participation in the appeal to the Planning Commission requires the Commission's decision be vacated. ', '

8 Respondents have emphasized that Lucente was not the sole decision maker. However, any attempt to characterize Lucente's participation as somehow harmless is meritless. Lucente's vote was decisive. The Planning Commission's vote was three to one in favor of overturning the Director's approval of the project, with Lucente voting with the majority. Had Lucente duly recused himself, there would have been only two votes to overturn the Director's decision. Because the votes of three commissioners were required to overturn the Director's decision (L.A. City Charter, § 503(c)), absent Lucente, the administrative appeal would have failed. Therefore, Lucente's involvement clearly affected the outcome of the administrative appeal.

9 Because Lucente's authorship of the newsletter article, standing alone, is sufficient to give rise to an unacceptable probability of actual bias, it is unnecessary to address Nasha's arguments relating to Lucente's undisclosed ex parte contact with Hennessy.

[\*\*\*25] e. There was no waiver by Nasha.

In an attempt to salvage the Planning Commission's decision, respondents contend Nasha waived the issue of Lucente's bias by failing to raise the issue at the administrative level. (*NBS Imaging Systems, Inc. v. State Bd. of Control* (1997) 60 Cal.App.4th 328, 337 [70 Cal. Rptr. 2d 237] [superior court erred in granting relief based on legal theory not presented during administrative proceedings].) The trial court was persuaded by this position, finding Nasha was precluded from raising the issue of Lucente's bias for the first time at the superior court level. The trial court's finding of waiver is erroneous, both factually and legally.

(1) Nasha initially challenged Lucente's bias at the administrative level.

[\*485] The record establishes that Nasha in fact did raise the issue of bias at the administrative level. As indicated, on July 5, 2001, one week after the Planning Commission hearing, Nasha filed a request for [\*\*782] reconsideration based on new facts relating to bias by Lucente, specifically, Lucente's undisclosed ex parte contact with Hennessy, and Lucente's undisclosed authorship of the newsletter article attacking the project.

Thereafter, [\*\*\*26] on July 12, 2001, Nasha reiterated its request for reconsideration in another letter to the Planning Commission, stating: "In order to protect even the perception of bias and conflict, the Commission should vote for reconsideration of this case, either for the purpose of allowing Commissioner Lucente to recuse

himself or to request an opinion from the City Attorney pursuant to Charter Section 222."

In view of the above, the trial court's ruling that Nasha raised the issue of Lucente's bias for the first time at the superior court level is contrary to the record.

(2) *Superior court may consider evidence not presented at administrative level relating to procedural fairness.*

(7) Where the issue on administrative mandamus is whether the administrative hearing was procedurally fair, "the trial court may consider evidence not presented at the administrative hearing if the evidence addresses the petitioner's claim that he or she was denied due process or a fair hearing at that hearing. [Citations.]" (*Nightlife Partners, Ltd. v. City of Beverly Hills*, *supra*, 108 Cal.App.4th at pp. 89-90.) Section 1094.5, subdivision (e), enables the trial court to admit relevant evidence [\*\*\*27] that, in the exercise of reasonable diligence, could not have been produced at the administrative hearing. Here, it was only in the course of the superior court

action that Nasha had the opportunity to take Lucente's deposition to fully develop the issue of bias. Therefore, such evidence properly was before the trial court in the mandamus proceeding and is entitled to due consideration.

3. *Remaining issues not reached.*

Because the Planning Commission's decision was tainted by bias and must be vacated, it is unnecessary to address Nasha's other contentions.

#### [\*486] DISPOSITION

The judgment is reversed with directions to issue a writ of mandate vacating the Planning Commission's decision and directing the Planning Commission to conduct a new hearing on the appeal from the Director's decision, before an impartial panel. Nasha shall recover its costs on appeal.

Croskey, J., and Kitching, J., concurred.





**TOWN OF LOS GATOS**  
**PLANNING COMMISSION STAFF REPORT**  
**Meeting Date: August 27, 2008**

**ITEM NO.: 2**

PREPARED BY: Suzanne Davis, Associate Planner

APPLICATION NO.: S-08-55

LOCATION: **Kennedy Road @ Forrester Road** (north side of Kennedy Road just east of Forrester Road)

APPLICANT: Rob DeSantis

PROPERTY OWNER: Acorn Trust

CONTACT PERSON: Rob DeSantis: 408-348-1202

**APPLICATION  
SUMMARY:**

Requesting approval to construct a new single family residence within an approved Planned Development on property zoned HR-2½:PD. APN 537-29-007 & 008.

DEEMED COMPLETE: August 7, 2008

FINAL DATE TO TAKE ACTION: February 7, 2009

**EXHIBITS:**

- 1.- 9. Previously received
10. Required findings and considerations (three pages)
11. Recommended conditions of approval (five pages)
12. Fencing details (one page), received August 19, 2008
13. Proposed light fixtures (four pages), received August 19, 2008
14. Revised Landscape and Fencing plan (one sheet), received August 19, 2008

**BACKGROUND:**

The Planning Commission continued the subject application from August 13, 2008 to this agenda to allow the applicant to provide details of proposed fencing, lighting and landscaping. The Commission also requested that irrigation and hydraulic calculations be provided and indicated that public testimony and discussion at the August 27 meeting would be limited to landscaping, fencing and lighting. The applicant has submitted supplemental information as discussed below.

ANALYSIS:

Landscape Plan

The landscape plan included with the plans attached to the August 13 staff report shows proposed planting and the location of outdoor lighting. Ornamental planting is proposed in the immediate vicinity of the developed areas, with native and low water plantings transitioning to the natural hillside areas. The landscape plan is consistent with the Planned Development Ordinance. As required by the Hillside Development Standards & Guidelines, final plant selections will be reviewed for compliance when the construction plans are submitted for building plan check. A minimum of 99 24-inch box trees will be planted on the site as mitigation for the trees being removed. This represents a three to one replacement ratio.

Irrigation and hydraulic calculations were not provided. The applicant will address this at the meeting.

Fencing

A plan that shows locations of outdoor lighting and fencing has been provided (see Exhibit 14). Exhibit 12 shows the style of proposed fencing, inclusive of the perimeter fencing along Kennedy Road and interior pool and security fencing. There is existing fencing located on the north, west and east property lines. Where it will be visible, new security fencing will be wrought iron. In areas where it cannot be seen, vinyl coated chain link will be used. Fencing around the pool area will be decorative wrought iron. The wildlife permeable fencing along Kennedy Road is a split rail design.

Lighting

Exhibit 13 shows the proposed light fixtures. All light fixtures will be down directed including the lights to be attached to trees. The tree mounted lights are not intended to light up vegetation. These fixtures will provide soft lighting along the driveway and pathways. Lighting has been located to provide adequate safety and security. An arborist will review and approve the method of attaching the lights to trees.

Well

The approved Planned Development (PD) allows a well on the property subject to issuance of a permit by the Santa Clara Valley Water District.

CONCLUSION AND RECOMMENDATION:

A. Conclusion

The project is in compliance with the Hillside Specific Plan and the Hillside Development Standards & Guidelines as determined by the Town Council in approving the PD. The Architecture and Site plans are in compliance with the PD Ordinance and it is recommended that the application be approved as outlined in the recommendation section below.

B. Recommendation

Staff recommends that the Planning Commission take the following actions to approve the Architecture and Site application:

1. Find that the project is consistent with the HDS&G and Hillside Specific Plan (Exhibit 10);
2. Find that the project is consistent with the PD Ordinance 2162;
3. Find that the project is consistent with the considerations for approval of Architecture and Site applications; and
4. Approve Architecture and Site application S-08-55 subject the conditions in Exhibit 11.



Prepared by:  
Suzanne Davis  
Associate Planner



Approved by:  
Bud N. Lortz, AICP  
Director of Community Development

BNL:SD

cc: Rob & Ranae DeSantis, 200 Forrester Road, Los Gatos, CA 95032  
Eric Morley, The Morley Brothers, 506 N. Santa Cruz Avenue, Los Gatos, CA 95030  
Richard Landry, Landry Design Group, 11333 Iowa Avenue, Los Angeles, CA 90025





**PLANNING COMMISSION – AUGUST 27, 2008**  
***REQUIRED FINDINGS & CONSIDERATIONS FOR:***

Kennedy Road @ Forrester Road  
Architecture & Site Application S-08-56

Requesting approval of a grading plan for an approved Planned Development on property zoned HR-2½:PD. APNS 537-29-007 & 008.

PROPERTY OWNER: Acorn Trust

APPLICANT: Rob DeSantis

**FINDINGS:**

***Required compliance with Hillside Development Standards & Guidelines:***

- That the project is in compliance with the Hillside Development Standards & Guidelines.

***Required compliance with Hillside Specific Plan:***

- That the project is in compliance with the Hillside Specific Plan.

**CONSIDERATIONS:**

***Section 29.20.150, Required considerations in review of Architecture & Site applications:***

The deciding body shall consider all relevant matter including, but not limited to, the following:

- (1) *Considerations relating to traffic safety and traffic congestion.* The effect of the site development plan on traffic conditions on abutting streets; the layout of the site with respect to locations and dimensions of vehicular and pedestrian entrances, exits, drives, and walkways; the adequacy of off-street parking facilities to prevent traffic congestion; the location, arrangement, and dimension of truck loading and unloading facilities; the circulation pattern within the boundaries of the development, and the surfacing, lighting and handicapped accessibility of off-street parking facilities.
  - a. Any project or development that will add traffic to roadways and critical intersections shall be analyzed, and a determination made on the following matters:
    1. The ability of critical roadways and major intersections to accommodate existing traffic;
    2. Increased traffic estimated for approved developments not yet occupied; and
    3. Regional traffic growth and traffic anticipated for the proposed project one (1) year after occupancy.

b. The deciding body shall review the application for traffic roadway/intersection capacity and make one (1) of the following determinations:

1. The project will not impact any roadways and/or intersections causing the roadways and/or intersections to exceed their available capacities.
2. The project will impact a roadway(s) and/or intersection(s) causing the roadway(s) and/or intersection(s) to exceed their available capacities.

Any project receiving Town determination subsection (1)b.1. may proceed. Any project receiving Town determination subsection (1)b.2. must be modified or denied if the deciding body determines that the impact is unacceptable. In determining the acceptability of a traffic impact, the deciding body shall consider if the project's benefits to the community override the traffic impacts as determined by specific sections from the general plan and any applicable specific plan.

- (2) *Considerations relating to outdoor advertising.* The number, location, color, size, height, lighting and landscaping of outdoor advertising signs and structures in relation to the creation of traffic hazards and the appearance and harmony with adjacent development. Specialized lighting and sign systems may be used to distinguish special areas or neighborhoods such as the downtown area and Los Gatos Boulevard.
- (3) *Considerations relating to landscaping.* The location, height, and materials of walls, fences, hedges and screen plantings to insure harmony with adjacent development or to conceal storage areas, utility installations, parking lots or unsightly development; the planting of ground cover or other surfacing to prevent dust and erosion; and the unnecessary destruction of existing healthy trees. Emphasize the use of planter boxes with seasonal flowers to add color and atmosphere to the central business district. Trees and plants shall be approved by the Director of Parks, Forestry and Maintenance Services for the purpose of meeting special criteria, including climatic conditions, maintenance, year-round versus seasonal color change (blossom, summer foliage, autumn color), special branching effects and other considerations.
- (4) *Considerations relating to site layout.* The orientation and location of buildings and open spaces in relation to the physical characteristics of the site and the character of the neighborhood; and the appearance and harmony of the buildings with adjacent development.

Buildings should strengthen the form and image of the neighborhood (e.g. downtown, Los Gatos Boulevard, etc.). Buildings should maximize preservation of solar access. In the downtown, mid-block pedestrian arcades linking Santa Cruz Avenue with existing and new parking facilities shall be encouraged, and shall include such crime prevention elements as good sight lines and lighting systems.

- (5) *Considerations relating to drainage.* The effect of the site development plan on the adequacy of storm and surface water drainage.

- (6) *Considerations relating to the exterior architectural design of buildings and structures.* The effect of the height, width, shape and exterior construction and design of buildings and structures as such factors relate to the existing and future character of the neighborhood and purposes of the zone in which they are situated, and the purposes of architecture and site approval. Consistency and compatibility shall be encouraged in scale, massing, materials, color, texture, reflectivity, openings and other details.
- (7) *Considerations relating to lighting and street furniture.* Streets, walkways, and building lighting should be designed so as to strengthen and reinforce the image of the Town. Street furniture and equipment, such as lamp standards, traffic signals, fire hydrants, street signs, telephones, mail boxes, refuse receptacles, bus shelters, drinking fountains, planters, kiosks, flag poles and other elements of the street environment should be designated and selected so as to strengthen and reinforce the Town image.
- (8) *Considerations relating to access for physically disabled persons.* The adequacy of the site development plan for providing accessibility and adaptability for physically disabled persons. Any improvements to a nonresidential building where the total valuation of alterations, structural repairs or additions exceeds a threshold value established by resolution of the Town Council, shall require the building to be modified to meet the accessibility requirements of title 24 of the California Administrative Code adaptability and accessibility. In addition to retail, personal services and health care services are not allowable uses on non-accessible floors in new nonresidential buildings. Any change of use to retail, health care, or personal service on a non-accessible floor in a nonresidential building shall require that floor to be accessible to physically disabled persons pursuant to the accessibility requirements of title 24 of the California Administrative Code and shall not qualify the building for unreasonable hardship exemption from meeting any of those requirements. This provision does not effect lawful uses in existence prior to the enactment of this chapter. All new residential developments shall comply with the Town's adaptability and accessibility requirements for physically disabled persons established by resolution.
- (9) *Considerations relating to the location of a hazardous waste management facility.* A hazardous waste facility shall not be located closer than five hundred (500) feet to any residentially zoned or used property or any property then being used as a public or private school primarily educating persons under the age of eighteen (18). An application for such a facility will require an environmental impact report, which may be focused through the initial study process.



**PLANNING COMMISSION – AUGUST 27, 2008**  
**CONDITIONS OF APPROVAL**

Kennedy Road @ Forrester Road  
Architecture & Site Application S-08-56

Requesting approval of a grading plan for an approved Planned Development on property zoned HR-2½:PD. APNS 537-29-007 & 008.

PROPERTY OWNER: Acorn Trust

APPLICANT: Rob DeSantis

TO THE SATISFACTION OF THE DIRECTOR OF COMMUNITY DEVELOPMENT:

*Planning Division*

1. APPROVAL: This application shall be completed in accordance with all of the conditions of approval listed below and in substantial compliance with the plans approved on August 27, 2008 and noted as received by the Town on August 7 & 19, 2008. Any changes or modifications to the approved plans shall be approved by the Community Development Director or the Planning Commission depending on the scope of the change(s).
2. EXPIRATION OF APPROVAL: The Architecture and Site application will expire two years from the date of the approval pursuant to Section 29.20.335 of the Town Code, unless the approval is used prior to expiration.
3. TOWN INDEMNITY. Applicants are notified that Town Code Section 1.10.115 requires that any applicant who receives a permit or entitlement from the Town shall defend, indemnify, and hold harmless the Town and its officials in any action brought by a third party to overturn, set aside, or void the permit or entitlement. This requirement is a condition of approval of all such permits and entitlements whether or not expressly set forth in the approval.
4. PLANNED DEVELOPMENT. All conditions included in Planned Development Ordinance 2162 shall be complied with unless modified by the conditions contained herein.
5. EXTERIOR COLOR. The exterior color of the house shall not exceed a light reflectivity value of 30 and shall blend with the natural vegetation.
6. 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 requires all exterior paint colors to be maintained in conformance with the Town's Hillside Development Standards.
7. ARCHITECTURE. The final detailing for the windows on the circular element on the rear elevation shall be reviewed and approved by staff with input from the Consulting Architect, prior to issuance of a building permit.
8. OUTDOOR LIGHTING. House exterior and landscape lighting shall be kept to a minimum, and shall be down directed fixtures that will not reflect or encroach onto adjacent properties. The outdoor lighting plan can be reviewed during building plan check. Any changes to the lighting plan shall be approved by the Planning Division prior to installation.

9. LANDSCAPE PLAN. Any non-native species and/or ornamental planting shall be located 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. A planting plan shall be included with the construction plans and shall be reviewed for compliance during the building plan check process.

*Building Division*

10. APPLICABLE CODES. The project shall conform to the 2007 California Building, Fire, Mechanical, Electrical, and Plumbing Codes. The CC's are based on model codes; 2006 International Building Code and Fire Code and 2006 Uniform Plumbing and Mechanical Codes and the 2005 National Electrical Code.
11. SIZE OF PLANS: Four sets of construction plans shall be provided with the building permits submittal (maximum size 24" x 36").
12. CONDITIONS OF APPROVAL: The Conditions of Approval must be blue-lined in full on the cover sheet of the construction plans. A compliance memorandum shall be prepared and submitted with the building permit application detailing how the Conditions of Approval (inclusive of the PD Ordinance) will be addressed.
13. SOILS REPORT: A soils report, prepared to the satisfaction of the Building Official, containing foundation and retaining wall design recommendations, shall be submitted with the building permit application. The report shall be prepared by a licensed civil engineer specializing in soils mechanics (California Building Chapter 18).
14. SHORING. Shoring plans and calculations will be required for all excavations that exceed four (4) feet in depth or that remove lateral support from any existing building, adjacent property or the public right-of-way. Shoring plans and calculations shall be prepared by a California licensed engineer and shall conform to Cal/OSHA regulations.
15. 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 building pad elevation, 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. Building pad elevation
  - b. Finish floor elevation
  - c. Foundation corner locations
  - d. Retaining Walls
16. BACKWATER VALVE. The scope of this project may require the installation of a sanitary sewer backwater valve per Town Ordinance 6.50.025. Please provide information on the plans if a backwater valve is required and the location of the installation. The Town of Los Gatos Ordinance and West Valley Sanitation District (WVSD) requires backwater valves on drainage piping serving fixtures that have flood level rims less than 12-inches above the elevation of the next upstream manhole.
17. WILDLAND URBAN INTERFACE. This project is in a Wildlife Urban Interface Fire Area and must comply with Chapter 7A of the 2007 California Building Code.
18. DEFENSIBLE SPACE. A Defensible Space/Fire Break Landscape plan prepared by a California licensed architect shall be provided. The plan shall be in conformance with the California Public Resources Code 4291 and California Government Code Section 51182.



19. LANDSCAPE CERTIFICATION. A letter shall be provided from a California licensed architect certifying that landscaping and vegetation clearance requirements have been completed in compliance with California Public Resources Code 4291 and California Government Code Section 51182, prior to final inspection.
20. NONPOINT SOURCE POLLUTION STANDARDS: The Town standard Santa Clara Valley Nonpoint Source Pollution Control Program shall be part of the plan submittal as the second page. The specification sheet is available at the Building Division Service Counter for a fee of \$2 or at San Jose Blue Print.
21. APPROVALS REQUIRED: The project requires the following departments and agencies approval before issuing a building permit:
  - a. Community Development - Planning Division: Suzanne Davis at 354-6875
  - b. Engineering/Parks & Public Works 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: The Town will forward the paperwork to the appropriate school district(s) for processing. A copy of the paid receipt is required prior to permit issuance.

#### TO THE SATFISFATION OF THE DIRECTOR OF PARKS &PUBLIC WORKS

##### *Engineering Division*

22. DRIVEWAY WIDTH. The applicant shall reduce the driveway width to the satisfaction of the Town Engineer and the Director of Community Development prior to submittal of plans for building plan check. Width reductions shall be made strategically to reduce retaining wall height and length, tree impacts, grading volumes and impervious area while still satisfying Engineering and Santa Clara County Fire Department standards.
23. DRIVEWAY APPROACH. The developer shall install a Town standard residential approach. The new driveway approach shall be constructed per Town Standard Details.
24. SITE DRAINAGE. Rainwater leaders shall be discharged to splash blocks. No through curb drains will be allowed.
25. NPDES. On-site drainage systems shall include a filtration device such as a bio-swale or permeable pavement.
26. SANITARY SEWER BACKWATER VALVE. Drainage piping serving fixtures which have flood level rims less than twelve (12) inches (304.8 mm) above the elevation of the next upstream manhole and/or flushing inlet cover at the public or private sewer system serving such drainage piping shall be protected from backflow of sewage by installing an approved type backwater valve. Fixtures above such elevation shall not discharge through the backwater valve, unless first approved by the Administrative (Sec. 6.50.025). The Town shall not incur any liability or responsibility for damage resulting from a sewer overflow where the property owner or other person has failed to install a backwater valve, as defined section 103(e) of the Uniform Plumbing Code adopted by section 6.50.010 of the Town Code and maintain such device in a functional operating condition. Evidence of West Valley Sanitation District's decision on whether a backwater device is needed shall be provided prior to issuance of a building permit.
27. SANITARY SEWER LATERAL. Sanitary sewer laterals are televised by West Valley Sanitation District and approved by the Town of Los Gatos before they are used or reused. Install a sanitary sewer lateral clean-out at the property line.

28. UTILITY SETBACKS. House foundations shall be set back a sufficient distance from utility lines to allow excavation without undermining the foundation. The Town Engineer shall determine the appropriate setbacks based on the depth of the utility line, input from the solids engineer and the type of foundation.
29. CONSTRUCTION STREET PARKING. No vehicle having a manufacturer's rated gross vehicle weight exceeding ten thousand (10,000) pounds shall be allowed to park on the portion of a street which abuts property in a residential zone without prior approval from the Town Engineer (§ 15.40.070).
30. GOOD HOUSEKEEPING. Good housekeeping practices shall be observed at all times during the course of construction. Superintendence of construction shall be diligently performed by a person or persons authorized to do so at all times during working hours. The storing of goods and/or materials on the street will not be allowed unless a special permit is issued by the Engineering Division.
31. TRAFFIC CONTROL PLAN. The project sponsor shall work with the Engineering Division of the Parks and Public Works Department and coordinate with the Police Department, Santa Clara County Fire Department, School District(s), and any public transportation agencies that share the same route(s) as construction traffic for the project to develop a Traffic Control Plan. The Plan shall be incorporated into the bid documents (specifications) and shall include, but is not limited to, the following measures:
  - a. Construction activities shall be strategically timed and coordinated to minimize traffic disruption for schools, residents, businesses and special events. The schools located on the haul route shall be contacted to help with coordination of the trucking operation.
  - b. All construction traffic shall not exceed a speed of 15 MPH.
32. NEW TREES. All newly planted trees are required to be double staked to Town Standards.
33. GENERAL. All existing trees being retained and replacement trees are specific subjects of approval of this plan and must remain on the site.
34. PERMIT ISSUANCE. Permits for each phase (reclamation, grading and landscaping) shall be issued simultaneously.

TO THE SATISFACTION OF THE SANTA CLARA COUNTY FIRE DEPARTMENT:

35. REQUIRED FIRE FLOW. Required fire flow is 1,750 GPM at 20 psi. residual pressure.
36. WILDLAND URBAN INTERFACE. A State of California licensed (C-16) Fire Protection contractor shall submit plans, calculations, a completed permit application and appropriate fees to the Fire Department for review and approval prior to beginning work.
37. AUTOMATIC FIRE SPRINKLER SYSTEM REQUIRED. An approved automatic fire sprinkler system is required for the new residence, guest quarters, garage, and all accessory structures 500 square feet or greater. The sprinkler system shall be hydraulically designed per National Fire Protection Association (NFPA) Standard #13D and local ordinances. The fire sprinkler system supply valving shall be installed per Fire Department Standard Detail & Specifications W-1/SP-6.
38. PUBLIC FIRE HYDRANT(S) REQUIRED. Provide public fire hydrant(s) at location(s) to be determined jointly by the Fire Department and San Jose Water Company. Maximum hydrant spacing shall be 600 feet, with a minimum single hydrant flow of 1,500 GPM at 20 psi residual. If area fire hydrants exist, reflect their location on the civil drawings included with the building permit submittal.



39. FIRE HYDRANT LOCATION IDENTIFIER. Prior to final inspection the general contractor shall ensure that an approved "Blue Dot" fire hydrant location identifier has been placed in the roadway as directed by the Fire Department.
40. FIRE APPARATUS (ENGINE) ACCESS DRIVEWAY REQUIRED. An access driveway with a paved all weather surface, minimum unobstructed width of 12 feet, vertical clearance of 13 feet six inches. Installations shall conform to Fire Department Standard Details and Specifications sheet D-1.
41. FIRE APPARATUS (ENGINE) DRIVEWAY TURNAROUND REQUIRED. Provide an approved Fire Department engine driveway turnaround with a minimum radius of 36 feet outside and 23 feet inside. Installations shall conform to Fire Department Standard Details and Specifications D-1.
42. EMERGENCY GATE/ACCESS REQUIREMENTS. Gate installations shall conform to Fire Department Standard Details and Specification G-1 and shall not obstruct and portion of the required width for emergency access roadways or driveways when open. Locks, if provided, shall be approved by the Fire Department prior to installation
43. PREMISE IDENTIFICATION. Approved addresses shall be placed on all new buildings so they are clearly visible and legible from Kennedy Road. Numbers shall be a minimum of four inches high and shall contrast with their background.

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DECORATIVE IRON  
POOL FENCE



DECORATIVE IRON  
SECURITY FENCE

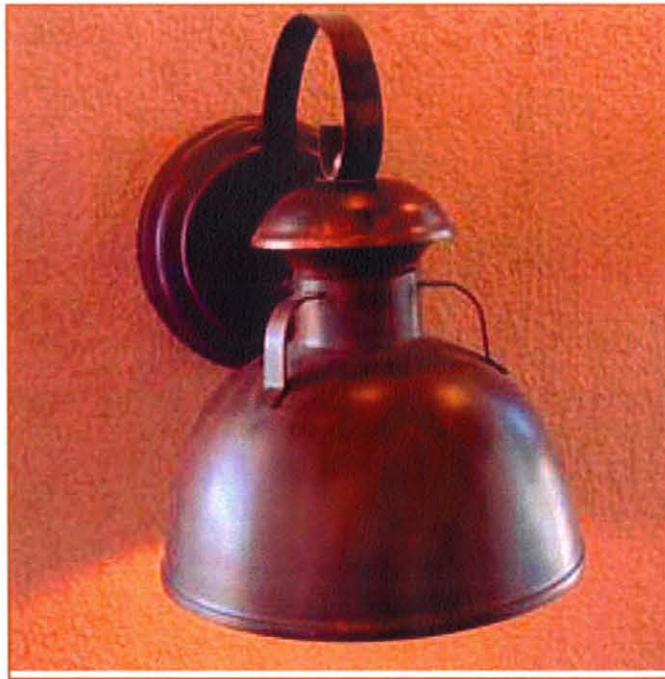


WILDLIFE PERMEABLE  
FENCE

ALL NON-VISIBLE FENCE TO BE  
VINYL COATED CHAIN LINKED



## Custom Fabricated Rustic Bell Wall Sconce



Lamp: 1x100 watt

Size: 14"Hx11" x11"D

Finish: Custom Bronze Finish





PATH LIGHT: 22" TALL





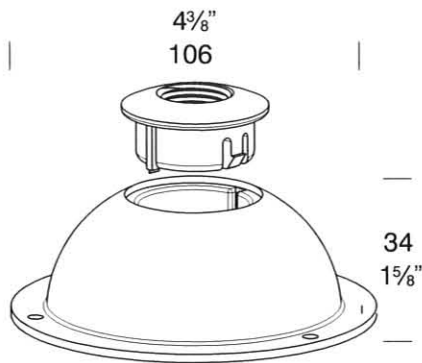


# Tree Mount

Cat. No. SSP/T



The Tree Mount Kit enables a HUNZA® NPS Spot to be mounted onto a tree to create moon lighting effects. A cable connection can be made at the rear of the dome. The Kit consists of a mounting dome and three 316 stainless steel bolts. The bolts initially fix the dome 40mm (1½") out from the tree's surface, which allows the tree to grow without causing any harm.



## Ordering Information

### Luminaire Type

TMK - Tree Mount Kit

### Material

Black Polycarbonate

### Accessories

CJK150 - Cable Joint Kit

Ordering Example: TMK- Tree Mount Kit in Black

CJK150 - Cable Joint Kit  
(Accessories ordered separately)

Patent Pending



**FACTORY:** Ph: 64-9-528 9471 Fax: 64-9-528 9361.  
**USA:** Ph. 310 560 7310 Fax. 1 877 692 4589.  
hunza@hunza.co.nz www.hunza.co.nz  
Specifications may change without notice.

130 Felton Mathew Ave, Glen Innes, Auckland, New Zealand.  
3237 Long Island St, W. Sacramento, California 95691, USA.

Manufactured in New Zealand.

Ver 1.3

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## Construction

### Dome :

Molded from UV stable polycarbonate with snap in ½" NPS female adaptor.

### Fixings supplied:

3 x 95mm (3¾") 316 stainless steel bolts.

3 x 3mm (1/8") 316 stainless steel screws.

### Mounting

The Tree Mount dome is secured to the tree with 3 x 95mm (3¾") 316 stainless steel bolts. The HUNZA® NPS spot is screwed into the ½" nps adaptor.

## Features

### Dome:

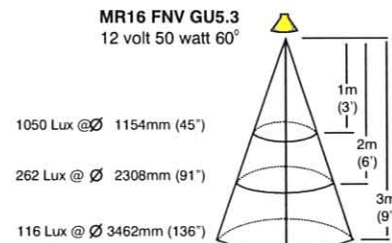
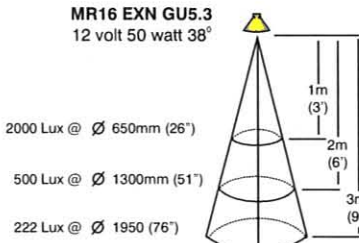
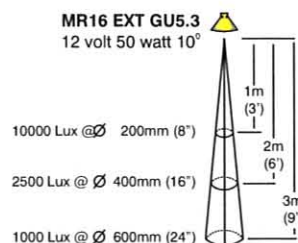
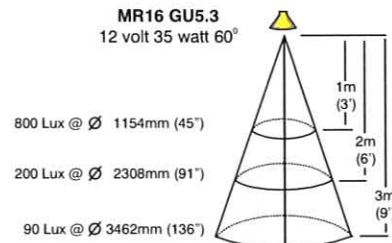
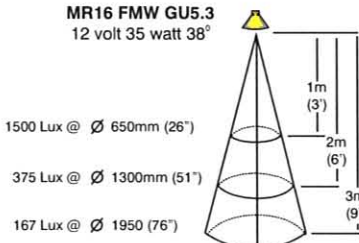
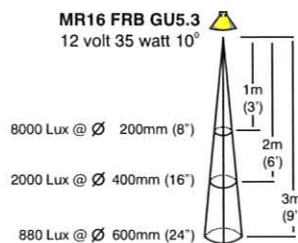
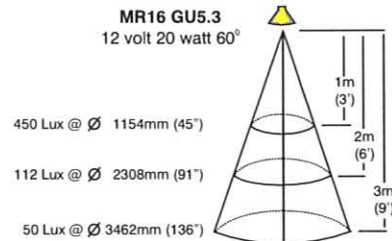
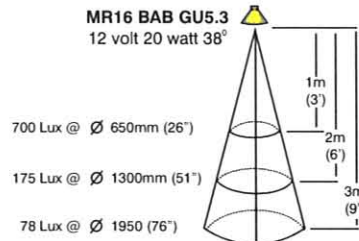
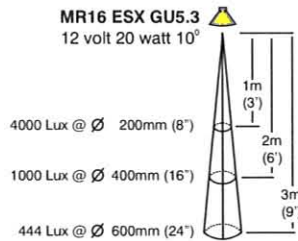
The Dome is fixed 40mm (1½") out from the trees surface by three bolts allowing cabling to be run in behind the dome for connection to the luminaire.

### Size:

½" NPS

### Polycarbonate:

UV stable polycarbonate, suitable for use with aluminium, copper and 316 stainless steel luminaires.



**FACTORY:** Ph: 64-9-528 9471 Fax: 64-9-528 9361.

**USA:** Ph. 310 560 7310 Fax. 1 877 692 4589.

hunza@hunza.co.nz www.hunza.co.nz

Specifications may change without notice.

130 Felton Mathew Ave, Glen Innes, Auckland, New Zealand.

3237 Long Island St, W. Sacramento, California 95691, USA.

Manufactured in New Zealand.

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Ver 1.3





**TOWN OF LOS GATOS**  
**PLANNING COMMISSION STAFF REPORT**  
**Meeting Date: August 27, 2008**

**ITEM NO.:**  
**ADDENDUM**

**2**

PREPARED BY: Suzanne Davis, Associate Planner

APPLICATION NO.: S-08-55

LOCATION: **Kennedy Road @ Forrester Road** (north side of Kennedy Road just east of Forrester Road)

APPLICANT: Rob DeSantis

PROPERTY OWNER: Acorn Trust

CONTACT PERSON: Rob DeSantis: 408-348-1202

APPLICATION SUMMARY: Requesting approval to construct a new single family residence within an approved Planned Development on property zoned HR-2½:PD. APN 537-29-007 & 008.

DEEMED COMPLETE: August 7, 2008  
FINAL DATE TO TAKE ACTION: February 7, 2009

EXHIBITS: 1.-14. Previously received  
15. Gate and wall details (one sheet)  
16. Full size landscape plan (one sheet)

**DISCUSSION:**

A full size fencing and lighting plan was provided with the staff report. A full size planting plan that also shows the fencing and lighting locations is attached as Exhibit 16.

In approving the Planned Development, the Town Council determined that the project is consistent with the Hillside Specific Plan and the Hillside Development Standards & Guidelines (HDS&G) with specific exceptions being granted.

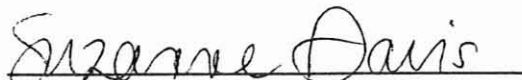
The Planning Commission's purview in reviewing the A&S application is the architecture of the approved structures, landscape, outdoor lighting and fencing. At the August 13, 2008 meeting the scope of the review was narrowed to the landscape, fencing and lighting plans.

Fencing is not a required element of the plan except for the fence around the pool area. The HDS&G includes criteria for fencing (Chapter VI, pages 42 and 43). Proposed fencing is all open style designs, and most of it is located in areas where it will not be viewed from off the site. An exhibit showing the gate house structure and decorative front gate will be displayed at the meeting. A reduced copy is attached at Exhibit 15.

The landscape plan is inclusive of hardscape elements such as pathways and terraces, and a deck at the tennis pavilion (all shown on Exhibit 15). The railing for the tennis pavilion deck is wrought iron. All retaining and decorative walls will be faced with stone.

Required findings for the approval of the Architecture and Site application are as follows:

- a. That the project is consistent with the approved PD
- b. That the A&S application is consistent with the HSP and HDS&G
- c. That the project is consistent with the considerations for the review of A&S applications



Prepared by:  
Suzanne Davis  
Associate Planner

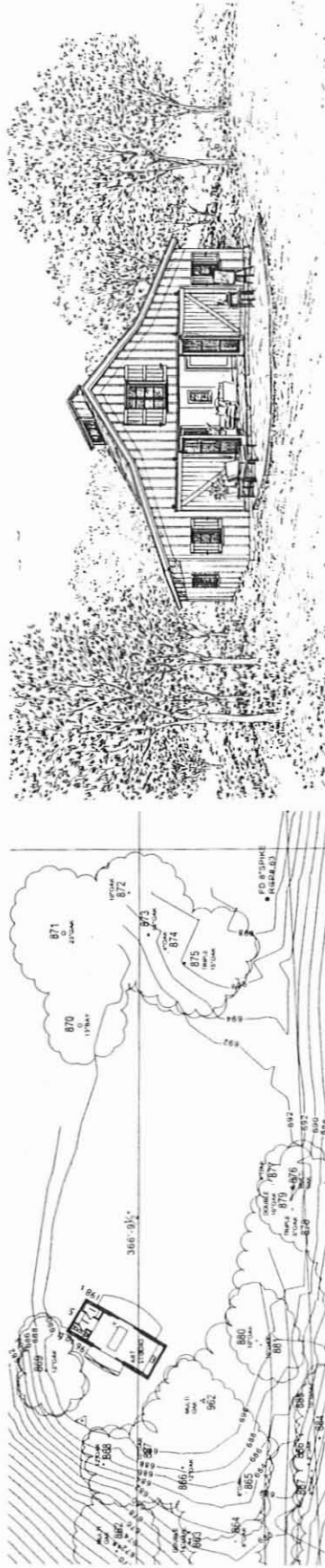
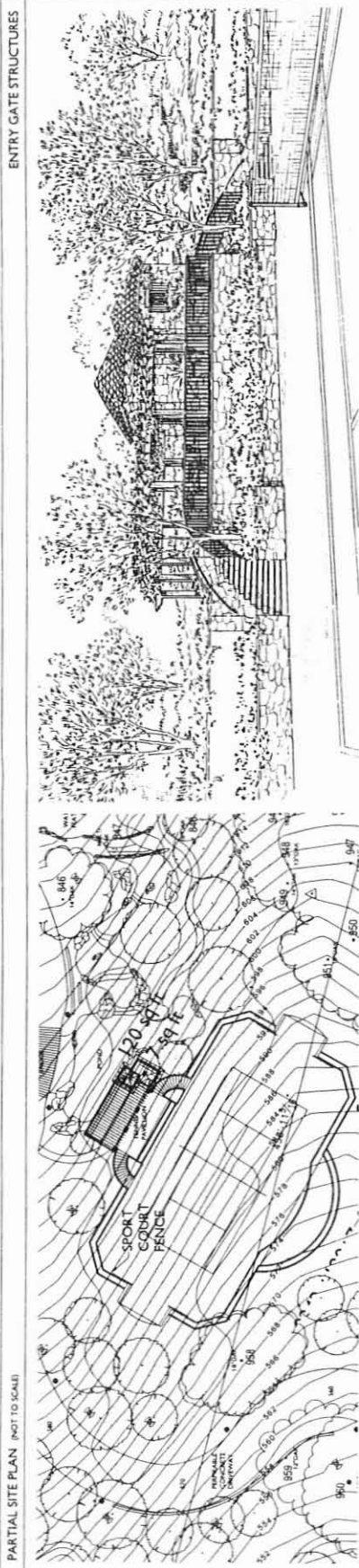
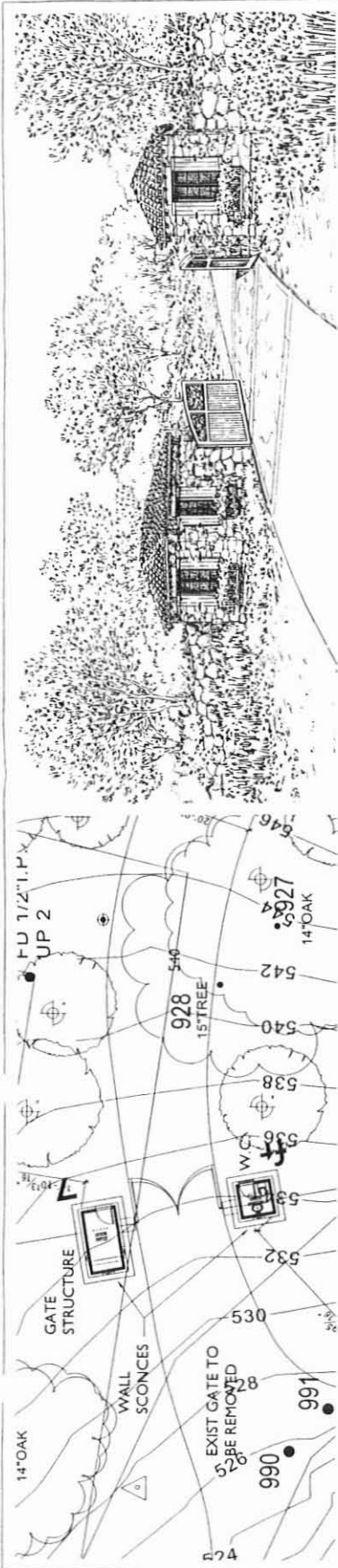


Approved by:  
Bud N. Lortz, AICP  
Director of Community Development

BNL:SD



ART STUDIO







**TOWN OF LOS GATOS**  
**PLANNING COMMISSION STAFF REPORT**  
**Meeting Date: August 27, 2008**

**ITEM NO.:**  
**DESK ITEM**

**2**

PREPARED BY: Sandy L. Baily, Associate Planner

APPLICATION NO.: S-08-55

LOCATION: **Kennedy Road @ Forrester Road** (north side of Kennedy Road just east of Forrester Road)

APPLICANT: Rob DeSantis

PROPERTY OWNER: Acorn Trust

CONTACT PERSON: Rob DeSantis: 408-348-1202

**APPLICATION  
SUMMARY:**

Requesting approval to construct a new single family residence within an approved Planned Development on property zoned HR-2½:PD. APN 537-29-007 & 008.

DEEMED COMPLETE: August 7, 2008

FINAL DATE TO TAKE ACTION: February 7, 2009

**EXHIBITS:**

- 1.- 15 Previously received
- 16. CEQA excerpts from Christine Currie (two pages) received August 27, 2008.
- 17. Letter from Christine Currie (seven pages) received August 27, 2008.
- 18. Comments from Lee Quintana (two pages) received August 27, 2008.
- 19. Email, tree removal permit and letter from Lee Quintana (three pages) received August 27, 2008.

**DISCUSSION:**

Attached are Exhibits 16 through 19 that were received today.

Prepared by:  
Sandy L. Baily, AICP  
Associate Planner

Approved by:  
Bud N. Lortz, AICP  
Director of Community Development

BNL:SLB:mdc

N:\DEV\REPORTS\2008\KennedyAcorn-dsk.1.doc



Pg 10 of 15

Cont 10 of 15

- (1) Inform governmental decision-makers and the public about the potential, significant environmental effects of proposed activities.
- (2) Identify the ways that environmental damage can be avoided or significantly reduced.
- (3) Prevent significant, avoidable damage to the environment by requiring changes in projects through the use of alternatives or mitigation measures when the governmental agency finds the changes to be feasible.
- (4) Disclose to the public the reasons why a governmental agency approved the project in the manner the agency chose if significant environmental effects are involved.

(b) Governmental Action. CEQA applies to governmental action. This action may involve:

- 15002(d)  
definition of  
↓ Project
- ...n by a governmental agency,
  - ...or in part by a governmental agency, or
  - ...ire approval from a governmental agency.
  - ...n is not subject to CEQA unless the action involves governmental
  - ...oval.

(d) Project. A "project" is an activity subject to CEQA. The term "project" has been interpreted to mean far more than the ordinary dictionary definition of the term. (See: Section 15378.)

(e) Time for Compliance. A governmental agency is required to comply with CEQA procedures when the agency proposes to carry out or approve the activity. (See: Section 15004.)

(f) Environmental Impact Reports and Negative Declarations. An Environmental Impact Report (EIR) is the public document used by the governmental agency to analyze the significant environmental effects of a proposed project, to identify alternatives, and to disclose possible ways to reduce or avoid the possible environmental damage.

(1) An EIR is prepared when the public agency finds substantial evidence that the project may have a significant effect on the environment. (See: Section 15064(a)(1).)

(2) When the agency finds that there is no substantial evidence that a project may have a significant environmental effect, the agency will prepare a "Negative Declaration" instead of an EIR. (See: Section 15070.)

(g) Significant Effect on the Environment. A significant effect on the environment is defined as a substantial adverse change in the physical conditions which exist in the area affected by the proposed project. (See: Section 15382.) Further, when an EIR identifies a significant effect, the government agency approving the project must make findings on whether the adverse environmental effects have been substantially reduced or if not, why not. (See: Section 15091.)

(h) Methods for Protecting the Environment. CEQA requires more than merely preparing environmental documents. The EIR by itself does not control the way in which a project can be built or carried out. Rather, when an EIR shows that a project would cause substantial adverse changes in the environment, the governmental agency must respond to the information by one or more of the following methods:

- (1) Changing a proposed project
- (2) Imposing conditions on the approval of the project;
- (3) Adopting plans or ordinances to control a broader class of projects to avoid the adverse changes;

RECEIVED

AUG 27 2008

TOWN OF LOS GATOS  
PLANNING DIVISION

EXHIBIT 16

in the statute. In way of a cross-reference or other entitlement

15378(a)

statute sets up special requirements that apply by the issuance of a lease, license, certificate, permit, or other entitlements to refer to private projects.

pg 2 of 2 -

from pg 2 of 8

## 15378. Proj

(a) "Project" means the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and that is any of the following:

(1) An activity directly undertaken by any public agency including but not limited to public works construction and related activities clearing or grading of land, improvements to existing public structures, enactment and amendment of zoning ordinances, and the adoption and amendment of local General Plans or elements thereof pursuant to Government Code Sections 65100-65700.

(2) An activity undertaken by a person which is supported in whole or in part through public agency contracts, grants, subsidies, loans, or other forms of assistance from one or more public agencies.

(3) An activity involving the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies.

(b) Project does not include:

(1) Proposals for legislation to be enacted by the State Legislature;

(2) Continuing administrative or maintenance activities, such as purchases for supplies, personnel-related actions, general policy and procedure making (except as they are applied to specific instances covered above);

(3) The submittal of proposals to a vote of the people of the state or of a particular community that sponsored initiative. (Stein v. City of Santa Monica (1980) 110 Cal.4th 165; *Madre v. City of Sierra Madre* (2001) 25 Cal.4th 165);

15378(c)

including mechanisms or other government fiscal activities that result in a direct or indirect impact on the environment.

and the activities of governments that will not result in direct or indirect impact on the environment.

(c) The term "project" refers to the activity which is being approved and which may be subject to several discretionary approvals by governmental agencies. The term "project" does not mean each separate governmental approval.

(d) Where the Lead Agency could describe the project as either the adoption of a particular regulation under subsection (a)(1) or as a development proposal which will be subject to several governmental approvals under subsections (a)(2) or (a)(3), the Lead Agency shall describe the project as the development proposal for the purpose of environmental analysis. This approach will implement the Lead Agency principle as described in Article 4.

Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21065, Public Resources Code; *Kaufman and Broad-South Bay, Inc. v. Morgan Hill Unified School District* (1992) 9 Cal.App.4th 464; *Fullerton Joint Union High School District v. State Board of Education* (1982) 32 Cal.3d 779; *Simi Valley Recreation and Park District v. Local Agency Formation Commission of Ventura County* (1975) 51 Cal.App.3d 648; and *Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98.

## 15379. Public Agency

AUG 27 2008

Desk Item for the Planning Commission  
8/27/08

TOWN OF LOS GATOS  
PLANNING DIVISION

Chair D. Michael Kane, Vice Chair Thomas O'Donnell, Commissioner Phillip Micciche, Marico Sayoc, Joanne Talesfore, Marcia Jensen.

Dear Planning Commissioners,

I am requesting a clarification as to what has or has not been "approved." It would appear by a reading of the Minutes that the Commission is not clear on this topic, and it would seem that agreement would not be possible because the commission did not have enough information. CEQA is all about providing sufficient information so the decision makers can make an informed decision.

**The following objections are for the public record. Consistency with the town's development standards and guidelines for hillside development must be followed in this precedent setting development.** The Planning Commission is the decision making body for projects that have the greatest potential impact.

The next six pages outline the Town of Los Gatos Hillside Development Standards and Guidelines and how the Desantis/Acorn Trust Property Development does not follow our town standards and general plan.

**Ms. Jensen If you could address:** The conflicts with land ordinance 2162 and the conditions of A & S approval. My concern is the language seems to change from what was approved. (Please see page 3 of 17, under ornamental landscaping.)

The first sentence of Chapter III states:

The intent of the site planning section is to insure that new development fits into the topography with minimal impact to the site physically and visually.

The proposed project does not meet this intent and is not consistent with Standards and applicable Guidelines for grading (A), Drainage (B), Driveways

2. Drainage. (Pg.58.) **Commissioner Bourgeois please address:**

Not clear if project meets this standard. MND states that run off stays on site (no data to support) but it also indicates that the natural drainage patterns will be changed and will require the construction of both above and below grade drainage facilities.

Guidelines 1 and 3. These guidelines may be applicable but there is insufficient detail on drainage design to determine if the project is consistent with them.



Guidelines:

a. Where terrace drains are required, they should follow a landform slope configuration.

Down drains should be placed in the least conspicuous locations.

Standard 2a. Upslope development shall not negatively impact downslope drainage.

-The extent of the roofline exceeding 25 feet (30 ft.) Makes 70% of the linear length at or above the limit set by HSDS. This also effects water displacement.

-Because no Hydrology report was offered we do not know the potential impacts.

b. Natural drainage courses shall be preserved. Drainage features should be Incorporated as an integral part of the project design in order to enhance the overall aesthetic and natural quality of the development.

Standard 4. There is insufficient information to determine how man made drainage channels will be treated.

Geologic Hazards Standards The geotechnical report suggests that the project is only "minimally acceptable".

-To address this standard the 14,000 cubic yards of infill to help form a flat pad for the tennis pavilion would be considered an impact under CEQA. CEQA measures impacts of a project from the base line of the existing physical setting of the property.

Standard 4 & 5 the project is not consistent since grading extends far beyond the areas and the site will not be restored to its original (existing) topography.

Question: The "rough" grading area has been expanded to accommodate getting trucks up and down the hillsides? This would offer even greater scope to the grading to take place. No plans have been made available for the public to study this.

**Commissioners: Do you have expanded grading plans within your packet to explain the extent?**

- Standard 3: The project is not consistent with this standard because a portion of the pool and a large portion of the tennis court are built on slopes over 30%

V11. Landscape Design (page 50.)

A. Landscape design concepts:

Standard 1. Project is not consistent. From plans and partial landscape plans the landscaping design does not maintain the natural appearance of the hillsides.

Standard 3, 4, and 7. The project is not consistent.

B. Plant Materials:

-Landscaping plans are not detailed enough to determine conformance.  
The parameters are not met per ordinance 2162 as approved within the PD.  
Please address.

4. Street layout and driveways.

Standards:

a. Hillside street and drainage standards shall reflect a rural rather than urban character and shall allow for special designs where natural features such as rocks, slopes, and trees require special treatment.

- The wide straight alignment of the tennis pavilion accompanied with the over excavation and infill of 14,000 cu yards would be considered a major alteration to the landscape.

**Chair Kane: Please address this issue.**

-The central portion of the ridge will be lowered 23' to maintain the required maximum 15% grade for the driveway.

Standard 5 is not currently met. However, Exhibit 6, the revised grading and drainage plan indicate that the driveway slope is 16%. The question arises on how a landscape plan can be finalized without addressing these questions of grade?

Has this been finalized on exhibit B? Are the plans in compliance with Ordinance 2162? (pg 3)

d. Road lighting should be limited to intersections, dangerous curves, dead ends, and multi-use parking areas, and shall be installed to A cut-off@ standards.

-Is there a way to check if this was followed? It is not found within the plans.

Visual analysis: (See Section II.B.1.) No materials or technical demonstration is provided in the review documents of the project that supports the contention that the project will not be visible from the viewing platforms. In addition, current CEQA documentation finds no significant impact on views from neighboring properties, but again there are no visual analyses to support this conclusion. Based on our analysis, we believe there will be significant impact on views from at least properties on the hillside to the southwest and, with the fill for development of a part of the house, there may also be impacts on views from hillside properties to the north. The views to the driveway, tennis court, pool and pool house and +1400 linear feet of retaining wall may be very significant, but this can only be properly judged with story poles in place and a clear understanding of impacts on trees and other site vegetation which might be

removed.

In addition, the amount and height of fencing and the area of ornamental landscaping allowed may have additional visual impacts from on and off site. Neither of these conditions was considered in determining consistency with the HDSG or in the CEQA analysis.

**Planning staff has advised that the only view impacts of importance are in terms of the viewing platforms and that due to topography the subject site is not visible from any of these platforms. While this may be the case, the HDSG expressly call for a project to fit the hillside conditions of the property and the illustrations in the HDSG clearly show how this is to be achieved. These also demonstrate that the visual and topographic changes are to be limited.**

- Not only does the CEQA analysis downplay the potential for any visual impacts, the peer review architectural analysis completed for the Town in October of 2005 makes no mention of the proposed project's conformity to the HDSG standards and applicable guidelines for choosing the building site, planning or architectural design site.

Neither the Initial Study or architect's review comment on the projects conformity with basic provisions and policies in the Town's General Plan nor does it address the changes to site topography or site character (physical changes), viewed from on site and off-site. While changes in the topography of the site may or may not result in potential impact to Geology and Soils the physical changes proposed by the project are not consistent with several objectives of the HDSG or with several of its Standards and applicable Guidelines. In order to permit a full architectural, visual and CEQA analysis story poles, staking and outlining of proposed development areas at the site are typically standard procedures in many hillside communities like Los Gatos.

This is essential for a full analysis of visual impacts and is necessary to support findings for the proposed exceptions to the HDSG and to support the findings for a Negative Declaration.

## VI. SITE ELEMENTS

### Standards:

1. The use of fences and walls shall be minimized and located so that natural landforms appear to flow together and are not disconnected. The primary emphasis shall be on maintaining open views, protecting wildlife corridors, and maintaining the rural, open, and natural character of the hillsides.

2. Fences and walls shall not exceed a height of six feet measured from the highest side of the fence or wall and should be limited to those areas where fences and walls of this height are necessary for protection of ornamental

landscaping, security, or play areas.

3. Solid fencing materials shall not be used unless needed for privacy.

4. Deer fencing up to a maximum height of eight feet shall be limited to areas around ornamental landscaping. Larger areas shall not be enclosed unless specific reasons for keeping deer out have been demonstrated to the satisfaction of the decision making body.

5. Fences shall not be allowed in areas that would impede the movement of wildlife as determined by the decision making body.

-No studies of wildlife corridors prepared. This proposed project has retaining walls and fences.

6. Temporary construction fencing shall be limited to the building envelope or shall be elevated to allow for movement of small animals.

-this has not been shown on the plans.

Standards:

-Standard 5: Given the proposed building site, in order for the driveway to meet the County of Santa Clara Fire Department requirements requires the ridge to be lowered 26' to enable the main structure to meet the grade of the proposed driveway. This is not consistent with Standard 5.

1. Entryways shall be designed to blend with the natural environment and to maintain the rural character of the hillsides.

- While of natural materials the proposed entry way with two gate houses and what appears to be a solid gate is not consistent with the Don't do illustration the Do this illustration.

Guidelines: Is not consistent with either guideline.

3. Lighting fixtures at entryways shall direct light downwards and shall be designed so that no part of the light source is visible from the street.

-No plans submitted?

#### RETAINING WALLS

1. Retaining walls shall not be used to create large, flat yard areas. The limited use of retaining walls may be allowed when it can be demonstrated that their use will substantially reduce the amount of grading.

- The project is not consistent because it does use retaining walls to create large, flat yard areas.

2. Retaining walls that are visible from a public street shall have a veneer of natural stone, stained concrete, or textured surface to help blend the wall with the natural hillside environment and to promote a rural character.
- However, approximately 700 feet of retaining wall are between 4 and 5 feet and there are 11 retaining walls totaling over 1600 linear feet do not embrace the rural character of the hillsides and would be visible.

An application for architecture and site approval or subdivision shall be accompanied by a written letter of justification that describes how the proposed project complies with the General Plan, Hillside Specific Plan and the Hillside Development Standards and Guidelines.

- This letter does not exist because of the inability of the project to comply with our Hillside Specific Plan and the Hillside Development standards and guidelines.

#### B. Project Approval Authority

##### Grading:

The proposed project is not consistent with Standard 1 and 3, or applicable Guideline 1.

Standard 1. The proposed project is not consistent with Standard 1. Standard 1 states:

"The following cut and fill criteria are intended to ensure that new construction retains the existing landform of the site and follows the natural contours. Cuts and fill in excess of the following levels are considered excessive and contrary to the objectives of the Hillside Design Standards and Guidelines. It then follows that a project that does not meet this standards is not consistent with the General Plan.

The +1600 linear feet of retaining wall, and the creation of large flat pad proposed by the project also supports the conclusion that the proposed project does not retain the existing landforms or contours of the site.

Standard 3. The project is not consistent with Standard 3. It is not located in a manner that minimizes the need for grading (tennis court, spread over 3.46 acres, reduces ridge up to 21'. In addition there have been no site-specific wildlife surveys done, however, a mountain lion and coyotes and numerous deer have been observed on the site. Also see selecting a Building Site, Standard 5.

Not only does the CEQA analysis downplay the potential for any visual impacts, the peer review architectural analysis completed for the Town in October of 2005 makes no mention of the proposed project's conformity to the HDSG standards and applicable guidelines for choosing the building site, site planning or

architectural design.

Neither the Initial Study or architect's review comment on the projects conformity with basic provisions and policies in the Town's General Plan nor does it address the changes to site topography or site character (physical changes), viewed from on site and off-site. While changes in the topography of the site may or may not result in potential impact to Geology and Soils the physical changes proposed by the project are not consistent with several objectives of the HDSG or with several of its Standards and applicable Guidelines.

In order to permit a full architectural, visual and CEQA analysis story poles, staking and outlining of proposed development areas at the site are typically standard procedures in many hillside communities like Los Gatos.

This is essential for a full analysis of visual impacts and is necessary to support findings for the proposed exceptions to the HDSG and to support the findings for a Negative Declaration.

As a member of the concerned community, it is my hope that the Planning Commission be given enough information to help with making an informed decision in this important and precedent setting development. The Hillside Standards are a community value that show no boundaries. We are all neighbors when it comes to the enjoyment and enhancement of the surrounding hillsides.

Christine Currie

A handwritten signature in black ink, appearing to be 'C. Currie', followed by a long horizontal line extending to the right.

117 Broadway  
Los Gatos, Ca 95030





U.S.

PD ordinance  
allows cellar  
up to 6287 sq ft

eet minimum  
 eet minimum  
 eet minimum  
 eet minimum  
 eet maximum  
 -  
 no maximum  
 -  
 ses minimum

1-AUG 27 2008

Not Staff report +  
Town fact sheet  
list both 15,700  
and 14,700 as  
maximum approved  
by PD ordinance

EXHIBIT 18

8/27/08

500

- ① - one legal parcel with 2 APN numbers
- ② - this is not consistent with PD Ordinance
- ③ - the list of 91 homes is not provided - of the  $\pm 34$  homes over 7,000 sq ft listed all were approved prior to approval of HDSG
- ④ FAR does not apply to homes on lots larger than 32,000 sq ft
- ⑤ this does not address all standards and guidelines that are not met - nor does it indicate the extent that the 4 exceptions are out of compliance

DeSantis PD

---

**From:** Suzanne Davis <SDavis@losgatosca.gov>  
**To:** leeandpaul@earthlink.net  
**Subject:** DeSantis PD  
**Date:** Aug 25, 2008 6:19 PM

---

Lee,

You'll need to ask Engineering for the status on the grading permit. Trang and Fletcher and handling it. I believe the grading plans are complete and that they are working on the Construction Management Plan.

The Tree Removal Permit can be issued any time, it is not tied to the grading permit. I believe the applicant has applied for a permit with PPW. Tim Boyer, Parks Superintendent is usually who would sign that off.

Suzanne

RECEIVED

AUG 27 2008

TOWN OF LOS GATOS  
PLANNING DIVISION



## Tree Removal Application and Permit

**Finance:**  
 Pymt Received: \_\_\_\_\_  
 Receipt #: \_\_\_\_\_ Check#: 430  
 TREEREM: \_\_\_\_\_  
708-142

### Important Information:

Please review Tree Ordinance and other Tree Removal Information documents for important information.

**Process:** Staff will review each application and notify applicant of approval or denial within two (2) weeks of receipt. You must receive and post the written tree removal permit in advance on the property before removing tree(s).

### \*\* APPLICATION SECTION \*\*

Please PRINT the following information:

Property Owner Name: ACORN TRUST Contact Person: Rob DeSantis  
 Site Street Address: ~~41 Miles Avenue~~ LOT 16, TRACT 6514 Zip Code: 95032 Phone#: 408-348-1202  
 Mailing Address (if different): \_\_\_\_\_ Nearest Cross Street: Kennedy/Hickory  
 I request to remove the following tree(s) because: MLTC - FOS  
Per PD: 600 TRANS ST, SUITE 7450  
HUSTON, TX 77002  
 Owner's Signature: [Signature] Date Submitted: 8/19/08

Fees: \$120.00 per application for one tree, plus \$100.00 for each additional tree on same application.

Tree Type: \_\_\_\_\_ Trunk Diameter-(measured 3 feet from ground): \_\_\_\_\_ Fee Amount: \_\_\_\_\_ Tree Size Verified: \_\_\_\_\_

PER DRAWINGS BY RICHARD IRISH

Total number of Trees requesting to be removed: 33 Total Fees: \$2,040.00

A photo of tree(s) & a map indicating their location on the property is required (and Arborist Report, if applicable).

Attach payment (money order or check). Payments are accepted Mondays-Fridays, at the following locations:  
 8AM-3PM at 41 Miles Avenue and 8AM to 5PM at 110 East Main Street, (downstairs-Finance), Los Gatos.  
 Call (408) 399-5770 for more information. Thank you.

### \*\*\*\*\* Staff Use Only

\*\* PERMIT SECTION \*\*

Application Received Date: 8/21/08 Inspection Date: 8/21/08 Inspection Conducted By: \_\_\_\_\_  
 Pursuant to Section 29.10.0990 of the Zoning Ordinance of the Town of Los Gatos Code, the removal of tree(s) is:  
 APPROVED XXX DENIED \_\_\_\_\_

Summary of Inspection:

Remove as per planning approval.

Replacement Tree Requirement: As per planning

**NOTE:** Replacement Trees are required to be planted within 60 days of tree removal. Verification and photos of replacement tree(s) will be requested approximately 2-3 months after the tree removal permit is approved. A copy of this permit must be available on the premises for inspection at the time the trees are removed. This permit will expire two years from the date of approval pursuant to section 29.20.320 of the Los Gatos Town Code.

If denied, a 50% Application Refund Amount will be Due: Amount of Refund \$ \_\_\_\_\_

Appeal Notification date: \_\_\_\_\_ Appeal Deadline Date: \_\_\_\_\_

If permit is denied, you may appeal the decision to the Planning Commission in writing to: P.O. Box 949, Los Gatos CA 95031. The appeal letter must be received within 10 days after the date of inspection, (listed above), with a private arborist's report attached to the letter of appeal. The private arborist is retained at the cost of the appellant/applicant.

Once reviewed and processed, form distribution: Planning Dept; PPW; Applicant (received after Town Arborist processes this application).

**COMPLETED**

8/35/08

Susan,

What is the current status of the grading permit? What items are still outstanding?

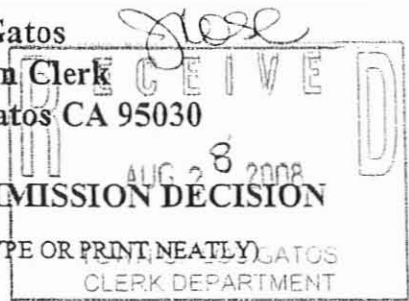
Are the tree permits included in the grading permit? If not, what is the status of the tree permits?

Thanks Lee



**FILING FEES**  
\$272.00 Residential  
\$1089.00 per Commercial, Multi-family or Tentative Map Appeal

Town of Los Gatos  
Office of the Town Clerk  
110 E. Main St., Los Gatos CA 95030



**APPEAL OF PLANNING COMMISSION DECISION**

I, the undersigned, do hereby appeal a decision of the Planning Commission as follows: (PLEASE TYPE OR PRINT NEATLY)

DATE OF PLANNING COMMISSION DECISION: 8-27-08

PROJECT / APPLICATION NO: S-08-55

ADDRESS LOCATION: KENNEDY ROAD AT FORRESTER RD.

Paid Ck# 635  
\$500.00  
DEPOSIT  
\$297.00  
fee

Pursuant to the Town Code, the Town Council may only grant an appeal of a Planning Commission decision in most matters if the Council finds that one of three (3) reasons exist for granting the appeal by a vote of at least three (3) Councilmembers. Therefore, please specify how one of those reasons exist in the appeal:

1. The Planning Commission erred or abused its discretion because IT DENIED THE A+S APPLICATION BASED ON MATTERS ALREADY APPROVED IN PD. SEE ATTACHMENT. (LETTER TO FOLLOW)

2. There is new information that was not reasonably available at the time of the Planning Commission decision, which is \_\_\_\_\_; OR

\_\_\_\_\_ (please attach the new information if possible); OR

3. The Planning Commission did not have discretion to modify or address the following policy or issue that is vested in the Town Council: THE PC DID NOT ACT WITHIN THE SCOPE OF THE COUNCIL'S PD. SEE ATTACHMENT

IF MORE SPACE IS NEEDED, PLEASE ATTACH ADDITIONAL SHEETS.

**IMPORTANT:**

1. Appellant is responsible for fees for transcription of minutes.
2. Appeal must be filed within ten (10) calendar days of Planning Commission Decision accompanied by the required filing fee. Deadline is 5:00 p.m. on the 10<sup>th</sup> day following the decision. If the 10<sup>th</sup> day is a Saturday, Sunday, or Town holiday, then it may be filed on the workday immediately following the 10<sup>th</sup> day, usually a Monday.
3. The Town Clerk will set the hearing within 56 days of the date of the Planning Commission Decision (Town Ordinance No. 1967)
4. An appeal regarding a Change of Zone application or a subdivision map only must be filed within the time limit specified in the Zoning or Subdivision Code, as applicable, which is different from other appeals.
5. Once filed, the appeal will be heard by the Town Council.
6. If the reason for granting an appeal is the receipt of new information, the application will usually be returned to the Planning Commission for reconsideration.

PRINT NAME: ROB DESANTIS  
DATE: 8/28/08  
PHONE: 408-348-1202

SIGNATURE: [Signature]  
ADDRESS: 200 FORRESTER RD  
LOS GATOS, CA 95032

**\*\*\* OFFICIAL USE ONLY \*\*\***

DATE OF PUBLIC HEARING: 9/15/08  
Pending Planning Department Confirmation  
DATE TO SEND PUBLICATION: 8-28-08

CONFIRMATION LETTER SENT: Date: \_\_\_\_\_  
TO APPLICANT & APPELLANT BY: \_\_\_\_\_  
DATE OF PUBLICATION: 9/3/08

N:\DEV\FORMS\Planning\Planning Commission Appeal.wpd - July 1, 2005

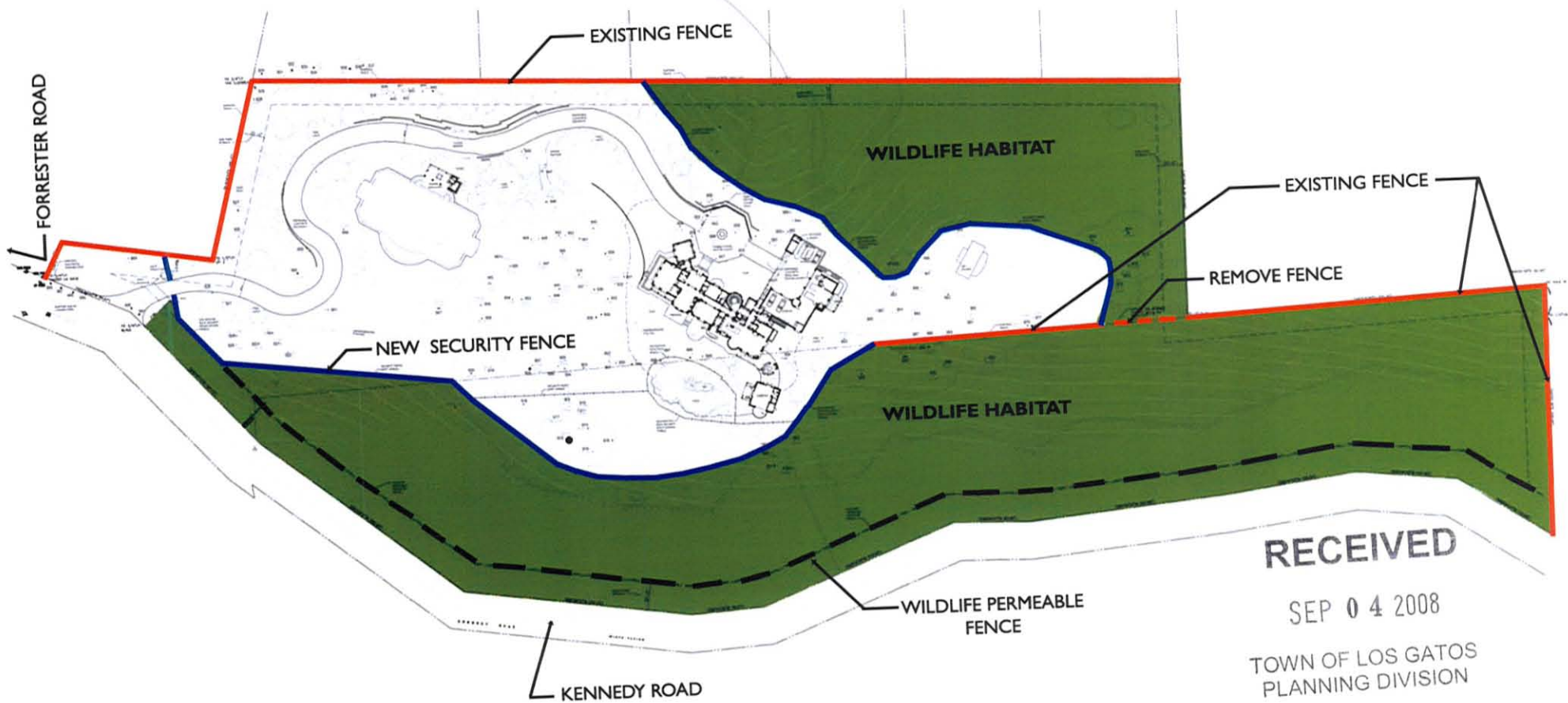


## General comments for appeal

### Appeal Reasons:

1) ...erred or abused its discretion because: "it denied the A&S based on matters that had already been approved by the Council as part of the PD, instead substituting its own views. It also wanted to impose arbitrary and capricious requirements based on personal preferences of some of the Commissioners, not on Town codes or policies."

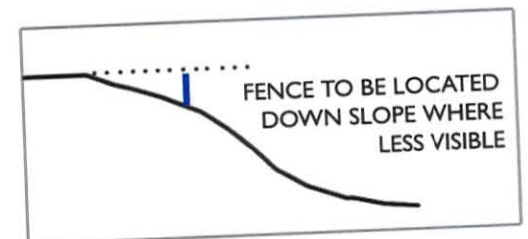
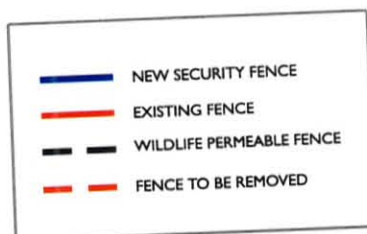
3) ...no discretion to modify policy set by Council: "The PC did not act within the scope of the Council's PD approval. Four members disagreed with the Council approval, and took this action based on that disagreement with the Council, instead of adhering to the Council approval as having set the zoning for this project."



**RECEIVED**

SEP 04 2008

TOWN OF LOS GATOS  
PLANNING DIVISION



FENCE AND WILDLIFE DIAGRAM

